

THIRD DIVISION

BERGESEN D.Y. PHILIPPINES,
INC. and/or ROLANDO C.
ADORABLE,

Petitioners,

- versus -

G.R. No. 141269

Present:

PANGANIBAN, J., Chairman,
SANDOVAL-GUTIERREZ,
CORONA,
CARPIO MORALES, and
GARCIA, JJ.
Promulgated:

RIZALINO M. ESTENZO,
Respondent.

December 9, 2005

x -----x

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated September 30, 1999 and Resolution^[2] dated December 29, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 52269, entitled *Rizalino M. Estenzo vs. National Labor Relations Commission (Third Division), Bergesen D.Y. Phils., Inc. and/or Rolando C. Adorable*.

The facts as borne by the records are:

Bergesen D.Y. Philippines, Inc., *petitioner*, is a corporation engaged in the operation of shipping vessels, including LPG/C Helikon.

On May 18, 1996, petitioner employed Rizalino M. Estenzo, *respondent*, as a deck fitter in LPG/C Helikon with a monthly salary of US \$618.00. His employment covered a period of ten (10) months or from May 18, 1996 to March 18, 1997.

Barely three (3) months thereafter or on August 16, 1996, petitioner sent notice to its officers and crew, including respondent, advising them of the sale of LPG/C Helikon to Varun Shipping-Bombay, thus:

As you already are aware of the LPG/C Helikon was sold to Varun Shipping-Bombay with expected delivery mid of September 1996.

You are therefore requested to give notice to Filipino officers and crew accordingly.

All Manila employed crew will be taken cared of according to TCC/CBA. They are entitled to two (2) months basic wages, if Manila cant employ them within 30 days after arrival in Manila. Such payment will be made in Manila and not onboard.

As a consequence, on September 21, 1996, respondent was repatriated to the Philippines. Petitioner paid him ₱32,074.20 representing his unpaid wages for four (4) months and separation benefits at the rate of two months basic salary. He then executed and signed a Release and Quitclaim dated October 28, 1996.

Subsequently or on November 18, 1996, respondent filed with petitioner an application for re-employment in its other vessels. As a pre-employment requirement, petitioner directed him to undergo a medical examination at the American Hospital. On January 2, 1997, he was diagnosed with hypertensive cardiovascular disease with ischemia. On February 1, 1997, his attending physician issued a medical certificate declaring him unfit for sea duty.

On two separate occasions or on March 11, 1997 and April 15, 1997, respondent sought for a second opinion at the Seamans Hospital. It confirmed his sickness as hypertensive cardiovascular disease and declared him unfit for work. This prompted respondent to file with the Social Security System (SSS) a claim for disability benefits. Later, he filed with petitioner a similar claim for disability benefits under the POEA Standard Employment Contract. However, petitioner rejected his claim.

On April 29, 1997, respondent filed with the Labor Arbiter a complaint for non-payment of disability benefits against petitioner and Rolando C. Adorable, its president and/or general manager, also impleaded as *petitioner*, docketed as NCR Case No. 97-04-3634.

In due course, the Labor Arbiter rendered a Decision dated December 22, 1997, the dispositive portion of which is quoted as follows:

WHEREFORE, respondents Bergesen D.Y. Phils., Ind. and Rolando C. Adorable are hereby, jointly and solidarily, ordered to pay complainant Rizalino R. Estenzo as follows:

1. Permanent disability compensation under POEA Standard Employment Contract US \$ 60,000.00
2. Moral damages P 100,000.00
3. Exemplary damages P 20,000.00
4. Medical reimbursement P 2,000.00

plus 10% attorneys fees on the total judgment award.

All payable in Philippine peso at the exchange rate prevailing at the time of payment.

SO ORDERED.

Upon appeal, the National Labor Relations Commission (NLRC) promulgated its Decision dated September 30, 1998 reversing the Labor Arbiters Decision and dismissing the complaint, thus:

After a judicious review of records herein, we find the appeal of respondents meritorious.

We disagree with the argument of the Labor Arbiter in that after the sale of vessel Helikon and the repatriation of complainant, complainants services were deemed uninterrupted by a cause not attributable to his fault or his own making. This argument is untenable because after the sale of Helikon, complainant was repatriated on 20 September 1996 and was paid separation pay of two months salary which he accepted voluntarily as

shown in the Quitclaim which complainant signed on 28 October 1996. On that day, the employer-employee relations of complainant and respondents ceased. It was in January, 1997, when complainant re-applied for another employment contract with respondents and when he had to undergo a medical test that this illness of Hypertensive Cardiovascular Disease with Ischemia was diagnosed. By this time, he was not yet employed with respondents. The records even show that he withdrew his application on 7 February 1997. In April 29, 1997, he filed this case.

We cannot agree with complainant that this illness was with him already while he was employed with respondents for as pointed out by respondents in their Reply and Appeal, complainant failed to show proof that his illness was work-connected or that he was suffering from it already while he was on board Helikon.

It is then erroneous for the Labor Arbiter to apply the POEA Standard Employment Contract and TCC-CBA either for disability benefits or medical expense reimbursement in favor of complainant in the absence of employment relations.

X X X X X X

Consequently, the award of damages and attorneys fees must be deleted.

WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is VACATED and a new one entered DISMISSING instant complaint for lack of merit.

SO ORDERED.

Respondent then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated January 29, 1999.

Consequently, on April 14, 1999, respondent filed with the Court of Appeals a petition for *certiorari* alleging that the NLRC committed grave abuse of discretion in dismissing the complaint; in finding that he was diagnosed with hypertensive cardiovascular disease; and in declaring unfit for duty after the termination of his services.

In a Decision dated September 30, 1999, the Court of Appeals reversed the NLRC Decision, holding that:

Petitioners pre-employment medical examination reveals that he suffered no heart trouble nor high blood pressure and was diagnosed as fit for work (Annex B-4, p. 75, Rollo). It is not disputed that petitioners work (deck fitter) required routine hard manual labor. The extreme and hazardous working environment in the engine room tended to develop symptoms of headache, dizziness and cardiac lapses. Heeding private respondents request, petitioner also performed emergency overhauling work inside the compressor room for two weeks in time for the vessels delivery to the new owners. Inevitably, he was exposed to ammonia, causing chest pains and abnormal breathing (pp. 34-35, Rollo).

Contrary to private respondents claim, petitioners strenuous work is the proximate cause of his hypertensive cardiovascular disease. Private respondents assertion that subject illness was developed after the termination of petitioners employment deserves scant consideration. Firstly, petitioner performed no strenuous work after the delivery of private respondents vessel to the new owners. Secondly, private respondents designated physician declared him unfit for sea duty on January 2, 1997 (Annex I-1).

Respondent NLRCs finding that petitioner failed to show proof that his illness was work-connected, constitutes a reversible error. As heretofore elucidated, petitioners work as deck fitter and the two-week emergency overhauling job caused him to develop hypertensive cardiovascular disease. Basic is the rule that actual proof of causation is not necessary to justify compensability. Probability, not certainty, is the test. Substantial proof, not actual proof, is the requirement. To require otherwise would be inconsistent with the liberal interpretation of the Labor Code and the social justice policy of the State.

Petitioners employment having been terminated due to a cause beyond his control, his services shall be deemed uninterrupted pursuant to TCC-CBA covering his employment, thus:

Section 3. Service shall be deemed uninterrupted when a seaman is paid on vacation or awaiting assignment after his paid vacation, or is on leave due to medical reasons, or when the interruption is not attributable to the seamans fault or own-making.

x x x x x

In fine, the Court is fully convinced that respondent NLRC did act with grave abuse of discretion in setting aside the Labor Arbiters decision.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Accordingly, the decision dated December 22, 1997 of Labor Arbiter Romulus S. Protasio is REINSTATED.

No pronouncement as to costs.

SO ORDERED.

On October 20, 1999, petitioners filed a motion for reconsideration but was denied by the Appellate Court in its Resolution dated December 29, 1999.

Hence, this petition for review on *certiorari*.

The sole legal issue for our resolution is whether the termination of respondents services precludes his entitlement to permanent disability benefits.

Petitioners, citing Sections 18^[3] and 23^[4] of the POEA Standard Employment Contract, contend that it is not liable to pay respondent his permanent disability benefits. He suffered hypertensive cardiovascular disease with ischemia after his repatriation to the Philippines by reason of the sale of the vessel. Thus, there was no more employer-employee relationship between them.

But respondent, citing Section 3 of the parties TCC-CBA, quoted as follows:

Section 3. **Services shall be deemed uninterrupted** when a seaman is paid on vacation or awaiting assignment after his paid vacation, or is on leave due to medical reasons, or **when the interruption is not attributable to the seamans fault or own-making.**

maintains that the employer-employee relationship with petitioner has not been interrupted since his repatriation was obviously not attributable to his own fault but actually by reason of the sale of petitioners vessel. Thus, petitioners are still liable to pay him his permanent disability benefits.

We agree with respondent. The POEA Standard Employment Contract for Seaman is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its

provisions must, therefore, be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect. ^[5]

Section 20 B of the POEA Standard Employment Contract provides:

B. Compensation and Benefits for Injury or Illness. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

X X X X X X

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time that he is declared fit to work or the degree of permanent disability has been assessed
X X X.

X X X X X X

5. In case of permanent, total, or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of this contract x x x

Here, it is undisputed that the sale of LPG/C Helikon resulted in the pre-termination of respondents employment contract and his eventual repatriation to the Philippines on September 21, 1996. Nevertheless, **petitioners responsibility for respondents welfare subsisted** since his services remained uninterrupted but was pre-terminated for reasons not attributable to his own fault.

In sum, we find that the Court of Appeals did not gravely abuse its discretion in ruling that petitioners are liable to pay respondent his permanent disability benefits.

WHEREFORE, the instant petition is **DENIED**. The challenged Decision dated September 30, 1999 and Resolution dated December 29,

1999 of the Court of Appeals in CA-G.R. SP No.
52269 are **AFFIRMED**. Costs against petitioners.

SO ORDERED.

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Associate Justice
Chairman

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

CANCIO C. GARCIA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN
Associate Justice
Chairman, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice

^[1] Penned by Justice Artemio G. Tuquero (retired), and concurred in by Justice Eubulo G. Verzola (deceased) and Justice Elvi John S. Asuncion, Annex A of the Petition for Review, Rollo at 49-57.

^[2] Annex C, *id.* at 67-68.

^[3] Section 18. *Termination of Employment.*

- A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs-off from the vessel and arrives at the point of hire.
- B. The **employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:**

x x x x x

- 1. When the seafarer signs-off due to shipwreck, **ships sale**, lay-up of vessel, discontinuance of voyage or change of vessel principal in accordance with Sections 22, 23 and 24 of this Contract.

x x x x x.

^[4] Section 23. *Termination due to Vessel Sale, Lay-up or Discontinuance of Voyage.*

Where the vessel is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the contract, the seafarer shall be entitled to earned wages, repatriation at employers cost and one month basic wage as termination pay, unless arrangements have been made for the seafarer to join another vessel to complete his contract in which case the seafarer shall be entitled to earned wages until the date of joining the other vessel.

^[5] *Philippine Transmarine Carriers vs. NLRC*, G.R. No. 123891, February 28, 2001, 353 SCRA 47, 5