

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**MAGSAYSAY MARITIME
CORPORATION AND/OR
CRUISE SHIPS CATERING AND
SERVICES INTERNATIONAL
N.V.,**

Petitioners,

G.R. No. 186180

Present:

CARPIO, *J.*, Chairperson,
*NACHURA,
BRION,
ABAD, and
PEREZ, *JJ.*

- versus -

**NATIONAL LABOR RELATIONS
COMMISSION (SECOND
DIVISION) AND ROMMEL B.
CEDOL,**

Respondents.

Promulgated:

March 22, 2010

X-----X

DECISION

BRION, *J.*:

We review in this petition for review on *certiorari*^[1] the December 15, 2008 decision^[2] and January 28, 2009 resolution^[3] of the Court of Appeals (*CA*) in CA-G.R. SP. No. 105625 that affirmed the April 30, 2008 and July 31, 2008 resolutions of the National Labor Relations Commission (*NLRC*). The *NLRC*

resolutions affirmed the Labor Arbiter's decision granting respondent Rommel M. Cedol (*respondent*) disability benefits and attorney's fees in the amounts of US\$60,000.00 and US\$6,000.00, respectively.

ANTECEDENT FACTS

On July 14, 2004, the respondent entered into a seven-month contract of employment with petitioner Magsaysay Maritime Corporation (*Magsaysay Maritime*) for its foreign principal, Cruise Ships Catering and Services International N.V. (*Cruise Ships*); he was employed as an assistant housekeeping manager on board the vessel *Costa Mediterranea* with a basic monthly salary of US\$482.00. The respondent submitted himself to the required Pre-Employment Medical Examination (*PEME*), and was pronounced fit to work. He boarded the vessel *Costa Mediterranea* on July 19, 2004.

Prior to the execution of this employment contract, the respondent had previously worked as housekeeping cleaner and assistant housekeeping manager on board the petitioners' other vessels from 2000 to 2004.^[4]

In November 2004, the respondent felt pain in his lower right quadrant. He was brought to and conferred at the AndreasConstantinou Medical Center in Cyprus for consultation. On January 18, 2005, he underwent a procedure called *exploratorylaparotomy* which revealed a massive tumor in the terminal ileum and in the ascending colon near the hepatic flexure. On the same day, the respondent underwent a surgical procedure called *right hemicolectomy with end to end ilectransverse anastomosis*.^[5] The Histopathology Report showed the following findings:

CONCLUSION

The appearances are consistent with a malignant lymphoid infiltration of the ileum and the mesenteric lymph nodes.

The appearances are consistent [with] the interstinal lymphoma of small and large sized lymphoid cells.

The respondent was discharged from the hospital and repatriated to the Philippines on February 1, 2005.

Upon repatriation, the respondent was placed under the medical care and supervision of the company-designated physician, Dr. Susannah Ong-Salvador (*Dr. Ong-Salvador*). In Dr. Ong-Salvador's Initial Medical Report^[7] dated February 10, 2005, she found the respondent to be suffering from lymphoma, and declared his illness to be non-work related.

On April 14, 2005, the respondent was brought to the Chinese General Hospital, where he underwent a surgical procedure called *excision biopsy*.^[8] Dr. Ong-Salvador's Medical Progress Report found the respondent's recurrent lymphoma to be in complete remission, and declared him "fit to resume sea duties" after undergoing six (6) sessions of chemotherapy.^[9]

On June 16, 2006, the respondent filed before the Labor Arbiter a complaint for total and permanent disability benefits, reimbursement of medical and hospital expenses, damages, and attorney's fees^[10] against the petitioners. He claims that he contracted his illness while working on board the petitioners' vessel.

The Labor Arbiter's Decision

Labor Arbiter Marita V. Padolina (*LA Padolina*) ruled in respondent's favor. She found the respondent permanently and totally disabled and awarded him disability compensation of US\$60,000.00 or its peso equivalent; and US\$6,000.00 attorney's fees.

LA Padolina ruled the respondent's illness to be work-related, hence compensable. She held that the respondent's illness was aggravated by his work, as he had always passed the company's physical examinations since 2000. She

explained that the respondent's work need not be the main cause of his illness; it is enough that his employment had contributed even in a small degree to the development of the disease.

LA Padolina likewise held that each person has his own physical tolerance. That it was only the respondent who had contracted lymphoma among the petitioners' workers did not remove the fact that his illness was aggravated by his employment. She also ruled that the respondent was not fit to work as a seafarer because he had undergone chemotherapy.^[11]

The labor arbiter likewise awarded attorney's fees in respondent's favor, as he was forced to litigate to protect his rights.

The NLRC Ruling

The NLRC affirmed the labor arbiter's decision *in toto* in its resolution dated April 30, 2008.^[12] The NLRC held that the respondent is not fit to work as a seafarer because he is suffering from recurrent lymphoma - a sickness that required him undergo chemotherapy. The NLRC explained that the respondent is in a state of permanent total disability because he can no longer earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.

The NLRC ruled that there was a reasonable connection between the nature of the respondent's work as assistant housekeeping manager and the development of his illness. The NLRC explained that the respondent had passed every PEME before signing the six employment contracts with the petitioner from 2000 to 2005, and was declared "fit to work" each time. It was only after the respondent was exposed to an extreme working environment in the petitioners' vessel that he developed his sickness. At any rate, the law merely requires a reasonable work connection, and not a direct causal connection for a disability to be compensable.

The petitioners moved to reconsider this resolution, but the NLRC denied their motion in its resolution of July 31, 2008.^[13]

The CA Decision

The petitioners filed a **petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order**^[14] before the CA, docketed as CA-G.R. SP. No. 105625. The CA, in its decision^[15] of December 15, 2008, denied the petition for lack of merit.

The CA held that under the provisions of the POEA Standard Employment Contract (*POEA-SEC*), it is enough that the work has contributed, even in a small degree, to the development of the worker's disease. The CA further held that the Courts are not bound by the assessment of the company-designated physician. According to the CA, Dr. Ong-Salvador's pronouncement that the respondent is "fit to resume sea duties" was inconsistent with the fact that the respondent had previously undergone chemotherapy, and needed to undergo periodic check-ups.

The CA affirmed the award of attorney's fees because Article 2208 of the Civil Code allows the recovery of attorney's fees in actions for indemnity under the workman's compensation and employer liability laws.

The petitioners moved to reconsider this decision, but the CA denied their motion in its resolution of January 28, 2009.^[16]

The Petition

In the present petition, the petitioners argue that the CA erred in holding the petitioners liable for US\$60,000.00 in total and permanent disability benefits despite the company-designated physician's finding that the respondent's illness was not work-related. They assert that under the 2000 POEA-SEC, only work-related injury or illness is compensable. They likewise maintain that the company-designated physician's finding that the respondent's illness was not work-related should be given credence. Aside from the fact that lymphoma is not listed as an occupational disease under Section 32-A of the POEA-SEC, the respondent's work could not have exposed him to carcinogenic fumes or chemicals that cause cancer because his duties merely involved housekeeping and cleaning.

The Respondent's Position

In his Comment,^[17] the respondent claims that the company-designated physician had no factual basis in ruling that his illness was not work-related. He posits that the opinions of company-designated physicians should not be taken as gospel truth because of their non-independent nature. Finally, he claims that his illness could have only been acquired on board since he passed the company's PEME.

THE COURT'S RULING

We find the petition meritorious.

The petitioners essentially claim that the evidence on record does not support the findings of the labor tribunals and the CA that the respondent's illness was work-related. This argument clearly involves a factual inquiry whose determination is not a function of this Court. We emphasize, however, that we are reviewing in this Rule 45 petition the decision of the CA on a Rule 65 petition filed by the petitioners with that court. In so doing, we review the legal correctness of the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it.

In this task, the Court is allowed, in exceptional cases, to delve into and resolve factual issues when insufficient or insubstantial evidence to support the findings of the tribunal or court below is alleged, or when too much is concluded, inferred or deduced from the bare and incomplete facts submitted by the parties, to the point of grave abuse of discretion.^[18] The present case constitutes one of these exceptional cases.

The Rule on Disability Benefits

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor

and Employment, and the parties' Collective Bargaining Agreement (*CBA*) bind the seaman and his employer to each other.^[19]

Section 20 (B), paragraph 3 of the 2000 POEA-SEC^[20] reads:

Section 20-B. *Compensation and Benefits for Injury or Illness.*

The liabilities of the employer when the seafarer suffers **work-related injury or illness** during the term of his contract are as follows:

X X X X

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [*Emphasis supplied.*]

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.^[21] In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.^[22]

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

Under Section 20 (B), paragraphs (2) and (3) of the 2000 POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, thus:

Section 20-B. *Compensation and Benefits for Injury or Illness.*

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract are as follows:**

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 he is **declared fit or the degree of his disability has been established by the company-designated physician.**

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is **declared fit to work or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a **company-designated physician** within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

X X X X [*Emphasis supplied.*]

Thus, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. If the 120-day initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days,^[23] subject to the right of the employer to declare within this period that a permanent partial or total

Lymphoma is the cancer of the lymph nodes. It has 2 types: Hodgkins and Non-hodgkins lymphoma. Etiology of this condition may arise from genetic predisposition (family history of cancer), cytogenetic abnormalities, viral infection or exposure to highly carcinogenic fumes.

By history, the patient has not been exposed to any carcinogenic fumes nor did he contact any viral infection such as Epstein Barr virus in his workplace nor was there a family history of cancer. His condition may be brought about by cytogenetic abnormalities. Hence, his condition is non-work related.

x x x x^[26] [*Emphasis supplied.*]

While it is true that medical reports issued by the company-designated physicians do not bind the courts, our examination of Dr. Ong-Salvador's Initial Medical Report leads us to agree with her findings. Dr. Ong-Salvador was able to sufficiently explain her basis in concluding that the respondent's illness was not work-related: she found the respondent not to have been exposed to any carcinogenic fumes, or to any viral infection in his workplace. Her findings were arrived at after the respondent was made to undergo a physical, neurological and laboratory examination, taking into consideration his (respondent's) past medical history, family history, and social history. In addition, the respondent was evaluated by a specialist, a surgeon and an oncologist. The series of tests and evaluations show that Dr. Ong-Salvador's findings were not arrived at arbitrarily; neither were they biased in the company's favor.

The respondent, on the other hand, did not adduce proof to show a reasonable connection between his work as an assistant housekeeping manager and his lymphoma. There was no showing how the demands and nature of his job vis-à-vis the ship's working conditions increased the risk of contracting lymphoma. The non-work relatedness of the respondent's illness is reinforced by the fact that under the Implementing Rules and Regulations of the Labor Code (ECC Rules), lymphoma is considered occupational only *when contracted by operating room personnel due to exposure to anesthetics*. The records do not show that the respondent's work as an assistant housekeeping manager exposed him to anesthetics.

In short, the evidence on record is totally bare of essential facts on how the respondent contracted or developed lymphoma and how and why his working conditions increased the risk of contracting this illness. In the absence of

substantial evidence, we cannot just presume that respondent's job caused his illness or aggravated any pre-existing condition he might have had.

The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant.^[27] In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus we held in *NYK-FIL Ship Management, Inc. v. NLRC*.^[28]

While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.

The respondent was declared fit to resume sea duties.

Another factor that further militates against the respondent's claim for permanent and total disability benefits is Dr. Ong-Salvador's Medical Progress Report declaring him to be "fit to resume sea duties." The relevant portions of this report are hereunder reproduced:

MEDICAL PROGRESS REPORT

X X X X

CT Scan of the abdomen

- Comparison is made with the previous examination dated November 29, 2005
- The previously noted irregular soft tissue module inferior to the pancreatic is no longer evident
- There is no gross lymph node enlargement
- Fatty changes in the liver and gallstones are again demonstrated
- The rest of the findings are stationary
- **Impression: Further disease regression since November 2005.**

Our Oncologist examined the patient today who opines that patient has responded well after undergoing 6 sessions of chemotherapy. His present state of remission is supported by further disease regression in his latest CT Scan of the abdomen. Blood chemistry result of his creatinine and lactate dehydrogenase levels are within normal limits. Check-up from year to year was suggested to evaluate periodically his health condition. Since Mr. Cedol is noted asymptomatic he is therefore cleared from Oncology standpoint.

After thorough evaluation by our specialists, Mr. Cedol is now deemed **fit to resume sea duties**.

FINAL DIAGNOSIS: Recurrent Lymphoma, in complete remission.^[29]

As previously discussed, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Since Dr. Ong-Salvador deemed the respondent as fit to resume sea duties, then such declaration should be given credence, considering the amount of time and effort she gave to monitoring and treating the respondent's condition.^[30] It bears emphasizing that the respondent has been under the care and supervision of Dr. Ong-Salvador since his repatriation in February 2005 and no contrary medical evidence exists on record disputing Dr. Ong-Salvador's medical conclusions. The extensive medical attention she has given the respondent undeniably enabled her to acquire familiarity and detailed knowledge of the latter's medical condition. We cannot help but note that the Medical Progress Report was replete with details justifying its "fit to work" conclusion. In addition, the respondent did not contest the findings contained in this Medical Progress Report; neither did he seek the opinion of other doctors.

We emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right.^[31] We should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.^[32]

In sum, we hold that the respondent is not entitled to total and permanent disability benefits *for his failure to refute* the company-designated physician's findings that: (1) his illness was not work-related; and (2) he was fit to resume sea duties. The CA thus erred in not finding grave abuse of discretion on the part of the

NLRC when the latter affirmed the labor arbiter's decision to grant permanent and total disability benefits to the respondent despite insufficient evidence to justify this grant.

WHEREFORE, in view of all the foregoing, the instant petition is **GRANTED**. The assailed decision of the Court of Appeals in CA-G.R. SP. No. 105625 is **REVERSED** and **SET ASIDE**. Accordingly, the respondent's complaint before the Labor Arbiter is **DISMISSED**.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ANTONIO EDUARDO B. NACHURA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson'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's Division.

REYNATO S. PUNO
Chief

Justice

* Designated additional Member of the Second Division in lieu of Associate Justice Mariano C. Del Castillo per Raffle dated March 15, 2010.

^[1] Under Rule 45 of the Revised RULES OF COURT.

^[2] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), and concurred in by Associate Justice Arcangelita M. Romilla-Lontok and Associate Justice Romeo F. Barza; *rollo*, pp. 13-25.

^[3] *Id.* at 135.

- [4] *Id.* at 156.
- [5] *Id.* at 157-158.
- [6] *Id.* at 191.
- [7] *Id.* at 192-195.
- [8] *Id.* at 159.
- [9] *Id.* at 233-234.
- [10] *Id.* at 134-135.
- [11] *Id.* at 239-251.
- [12] *Id.* at 354-364.
- [13] *Id.* at 397-398.
- [14] *Id.* at 399-446.
- [15] *Id.* at 13-25.
- [16] *Id.* at 27.
- [17] *Id.* at 501-513.
- [18] See *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009.
- [19] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.
- [20] Department Order No. 4, s. of 2000 is entitled Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.
- [21] *Supra* note 18.
- [22] See *Masangay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 609.
- [23] See also Rule X, Section 2 of the Rules and Regulations implementing Book IV of the LABOR CODE, which reads: *Period of entitlement.* - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from the onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.
- [24] *Supra* note 19.
- [25] <http://en.wikipedia.org/wiki/Lymphoma>
- [26] *Rollo*, p. 194.
- [27] See *Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 660.
- [28] G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.
- [29] *Rollo*, p. 233.
- [30] See *Magsaysay Maritime Corp. v. Velasquez*, G.R. No. 179802, November 14, 2008, 571 SCRA 239, 251.
- [31] *Sarocam v. Interorient Maritime Ent., Inc.*, G.R. No. 167813, June 27, 2006, 493 SCRA 502, 516.
- [32] *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, G.R. No. 168560, January 28, 2008, 542 SCRA 593, 603.