Republic of the Philippines

SUPREME COURT

Manila

FIRST DIVISION

ORIENTAL SHIPMANAGEMENT CO., INC.,	**G.R. No. 186289**
Petitioner,	Present:
	CORONA, *C.J.*, Chairperson,
	VELASCO, JR.,
- versus -	LEONARDO-DE CASTRO,
	DEL CASTILLO, and
	PEREZ, *JJ*.
ROMY B. BASTOL,	Promulgated:
Respondent.	
	June 29, 2010

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D E C I S I O N

VELASCO, JR., *J.*:

The Case

In a Petition for Review[1][1] on Certiorari under Rule 45 of the Rules of Court, petitioner Oriental Shipmanagement Co., Inc. (OSCI) assails the Decision[2][2] dated August 12, 2008 and the Resolutions dated January 7, 2009[3][3] and February 6, 2009[4][4] of the Court of Appeals (CA) in CA-G.R. SP No. 100090, which annulled and set aside the July 31, 2006 Decision[5][5] and May 30, 2007 Resolution of the National Labor Relations Commission (NLRC), and reinstated the January 28, 1999 Decision[6][6] of the Labor Arbiter.

The Facts

1[1] *Rollo*, pp. 10-33, dated March 11, 2009.

2[2] Id. at 200-229. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

3[3] Id. at 243-244.

4[4] Id. at 249-251.

5[5] Id. at 145-151, per Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

6[6] Id. at 66-78, per Labor Arbiter Jovencio Ll. Mayor, Jr.

OSCI is a domestic manning agency engaged in the recruitment and placement of Filipino seafarers abroad. Paterco Shipping Ltd. (PSL) is a foreign shipping company which owned and operated the vessel MV Felicita and a client of OSCI. Protection & Indemnity Club (PIC) was the insurer of PSL covering contingencies like illness claims and benefits of seamen. Pandiman Philippines, Inc. (PPI) is the local representative of PIC.

As agent of PSL, OSCI hired Romy B. Bastol (Bastol) as bosun on November 29, 1995 evidenced by a Contract of Employment.[7][7] On December 5, 1995, Bastol was deployed on board the vessel MV Felicita.

The genesis of the instant case emerged when, on February 17, 1997, while on board the vessel, Bastol suffered chest pains and cold clammy perspiration. He was hospitalized in Algiers and found to be suffering from anterior myocardial infarction.[8][8] In short, he had a heart attack. He was subsequently repatriated due to his illness on March 7, 1997.

Upon arrival here in the Philippines, on March 8, 1997, he was referred to the Jose L. Gutierrez Clinic in Malate, Manila for a follow-up examination where

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7[7] Id. at 44.

8[8] Id. at 45-46, Rapport Medical dated February 26, 1997.

Dr. Achilles J. Peralta examined and found him to be suffering from "T/C Ischemic Heart Disease. Ant. Myocardial Infection." Dr. Peralta issued a Medical Report[9][9] certifying that he was "Unfit for Sea Duty." In a follow-up medical examination on April 1, 1997, Dr. Peralta still found Bastol "Unfit for Sea Duty."[10][10]

Thus, PPI referred Bastol for medical treatment to the Metropolitan Hospital under the care of company-designated physician Dr. Robert D. Lim, a Diplomate in Rehabilitation Medicine. On April 10, 1997, Bastol was confined and treated at said hospital until May 7, 1997. Dr. Lim certified that Bastol had "Coronary artery dse; S/P Ant. wall MP; Hypercholesterolemia; Hyperglycemia."[11][11] Thereafter, Bastol had regular laboratory and medical examinations with the company-designated physician.

Unsatisfied with the treatment by Dr. Lim and seeking a second opinion, he went to Dr. Efren R. Vicaldo, a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center, who diagnosed him to be suffering from "Coronary Artery Disease and Extensive Anteriorseptalmia" with the corresponding remarks: "For Disability, Impediment Grade 1 (120%)."[12][12]

9[9] Id. at 47.

10[10] Id. at 48.

11[11] Id. at 49, Medical Certificate dated May 7, 1997 issued by Dr. Robert D. Lim.

12[12] Id. at 51.

Feeling abandoned and aggrieved with OSCI and PSL, Bastol, through counsel, sent a November 27, 1997 letter on December 2, 1997 to Capt. Rosendo C. Herrera, the President of OSCI, for a possible settlement of his claim for disability benefits.[13][13] He attached the Medical Certificate issued by Dr. Vicaldo. His letter did not merit a response from OSCI.

Thus, Bastol was compelled to file a Complaint[14][14] before the Labor Arbiter on May 8, 1988 for: (a) medical disability benefit (Grade 1) of USD 60,000; (b) illness allowance until he is deemed fit to work again; (c) medical benefits for the treatment of his ailment; (d) moral damages of PhP 100,000; and (e) attorney's fee of 10% of the total monetary award.

OSCI countered that Bastol is not entitled to his indemnity claims, among others, for disability benefits on account of non-compliance with the requirements of the 1994 revised Standard Employment Contract (SEC) by failing to properly submit himself for treatment and examination by the company-designated physician who is the only one authorized to set the degree of disability, i.e., disability grade. Submitting documentary evidence, OSCI maintained that Bastol submitted to the examination and treatment by the company-designated physician

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13[13] Id. at 50, dated November 27, 1997.

14[14] Id. at 35-36, dated May 8, 1998.

only on April 25, 1997,[15][15] May 23, 1997,[16][16] September 16, 1997,[17][17] and October 28, 1997,[18][18] but he voluntarily discontinued said treatment and did not show up for the follow-up examination on December 2, 1997. Thus, the company-designated physician was not given ample opportunity to properly treat Bastol's ailment and did not have sufficient chance to assess and determine his disability grade, if any.

On January 28, 1999, Labor Arbiter Mayor, Jr. rendered a Decision based on the parties' respective position papers[19][19] and the documentary evidence presented in NLRC NCR OFW Case No. 98-05-0801, the decretal portion reading:

> WHEREFORE, in view of all the foregoing, respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping Ltd. are hereby ordered to jointly and severally pay complainant the sum of US$60,000.00 or its peso equivalent at the time of payment plus the sum equivalent to ten (10%) percent of the award or in the amount of US$6,000.00 as and by way of attorney's fee.
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> SO ORDERED.[20][20]

15[15] Id. at 61, letter dated April 25, 1997.

16[16] Id. at 62, letter dated May 24, 1997.

17[17] Id. at 63, letter dated September 16, 1997.

18[18] Id. at 64, letter dated October 28, 1997.

19[19] Id. at 37-43, Position Paper of Bastol, dated September 21, 1998; id. at 52-59, Respondents' Position Paper dated November 24, 1998.

20[20] Id. at 78.

The Labor Arbiter saw no need to conduct formal hearings. He found that Bastol was healthy when deployed in December 1995 but subsequently contracted or suffered heart ailment during his period of employment with OSCI and PSL. He also found that Bastol did not show any appreciable improvement despite treatment by the company-designated physician, thus ruling that the fact that Dr. Lim had not issued a certification as to Bastol's condition did not negate his claim for disability indemnity, as the determination of the degree thereof by Dr. Vicaldo of the Philippine Heart Center sufficed.

OSCI immediately assailed the above Labor Arbiter decision before the NLRC.[21][21] Subsequently, on July 30, 1999, the NLRC issued a Resolution[22][22] in NLRC NCR CA No. 019238-99, vacating and setting aside the January 28, 1999 Decision of the Labor Arbiter and remanding the case back to the Labor Arbiter for further proceedings, the dispositive portion ordering, thus:

> WHEREFORE, for the reasons [above discussed], the decision appealed from is hereby vacated and set aside and the records of this case Remanded to the Labor Arbiter of origin for conduct of further approximate proceedings and to terminate the same with dispatch.
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> SO ORDERED.[23][23]

21[21] Id. at 79-88, Notice of Appeal with Memorandum of Appeal, dated March 9, 1999.

22[22] Id. at 90-96, per Presiding Commissioner Rogelio I. Rayala, concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

23[23] Id. at 95.

In remanding the case back to the Labor Arbiter, the NLRC ruled that Bastol should have presented himself before the Labor Arbiter for the latter to properly assess his condition, and that Dr. Lim and Dr. Vicaldo should be presented to determine with certainty the status of Bastol's heart ailment.

This prompted both parties to file their respective motions for reconsideration which were rejected by the NLRC through its Resolution[24][24] of October 29, 1999. With the remand, Labor Arbiter Mayor, Jr. proceeded to hear the case. However, upon OSCI's motion for inhibition, Labor Arbiter Mayor, Jr. inhibited himself, and the case was re-raffled to Labor Arbiter Joel S. Lustria.

Subsequently, on May 10, 2001, the case was deemed submitted for decision. Thereafter, on July 25, 2001, OSCI filed before the Labor Arbiter a Motion to Dismiss for failure to prosecute for an unreasonable length of time and insufficiency of evidence. OSCI argued that through the July 30, 1999 Resolution, the NLRC found that Bastol failed to prove his causes of action, and despite

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24[24] Id. at 98-100.

numerous hearings conducted before the Labor Arbiter after the remand of the case, Bastol still failed to present further evidence.

On October 26, 2001, however, Bastol filed a Manifestation/ Compliance[25][25] submitting the following documents: (1) Affidavit[26][26] of Dr. Vicaldo executed on May 10, 2001; (2) Conforme[27][27] for disability benefit settlement in the amount of USD 25,000; (3) Special Power of Attorney (SPA)[28] [28] executed by Bastol in favor of Martin Jarmin, Jr. of OSCI; (4) Medical Disability Grading[29][29] of Bastol issued by Dr. Lim, the company-designated physician, on June 26, 1997; and (5) Assessment and disability grading determined by Dr. H.R. Varwig,[30][30] company-designated physician of PPI.

Bastol's manifestation and the documents he presented showed that prior to filing the instant case on May 8, 1998, Bastol, assisted by counsel, entered into a settlement with PPI through Mrs. Corazon C. Tabuena in the amount of USD 25,000 as disability indemnity. Said settlement was based on the suggested disability grading of Grade 50–60% issued by the company-designated physician

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25[25] Id. at 103-105, dated October 23, 2001.

26[26] Id. at 106-107, dated May 10, 2001.

27[27] Id. at 108, Notes to File of Martin Jarmin, Jr. of OSCI.

28[28] Id. at 109, executed on August 12, 1998.

29[29] Id. at 110.

30[30] Id. at 111, letter dated August 7, 1997.

Dr. Lim on June 26, 1997 and that of Dr. H. R. Varwig, company-designated physician of PPI, embodied in a letter dated August 7, 1997 sent to PPI with the assessment of Bastol's disability at Grade 6 according to the Department of Labor and Employment (DOLE) and the Philippine Overseas Employment Administration (POEA) Schedule of Disability or Impediment. Bastol, assisted by counsel, signed the settlement conforme with PPI on January 22, 1998. The settlement, however, did not materialize due to the cancellation of the coverage by PIC of PSL's vessel M/V Felicita.

Even after Bastol already filed the instant case on May 8, 1998, Jarmin, Jr. of OSCI instructed him to execute a SPA to authorize them to represent him (Bastol) in the auction sale of SPL's vessel M/V Felicita. Forthwith, Bastol executed an SPA in favor of Jarmin, Jr. on August 12, 1998. Unfortunately, Bastol was later informed by Jarmin, Jr. that the amount they recovered from the auction sale of PSL's vessel was not enough to cover his disability claim. Thus, with the collapse of the settlement agreement, Bastol was left with no option than to pursue the instant action. And in support of his medical finding of Grade 1 (120%) disability, Dr. Vicaldo executed an Affidavit on May 10, 2001.

OSCI vehemently objected[31][31] to Bastol's Manifestation/Compliance and the documentary evidence appended thereto.

31[31] Id. at 112-116, Most Vehement Objection to Complainant's Manifestation/Compliance with Reiteration of Motion to Dismiss, dated November 26, 2001.

The Ruling of Labor Arbiter Lustria in

Case No. NLRC NRC OFW Case No. 95-05-0501

On January 31, 2003, Labor Arbiter Lustria rendered a Decision[32][32] similar to that of Labor Arbiter Mayor, Jr. The dispositive portion reads:

> WHEREFORE, in view of all the foregoing, let a judgment be, as it is hereby rendered, ordering respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping, Ltd., to jointly and severally pay complainant Romy Bastol, the sum of US$60,000.00 or its peso equivalent prevailing at the time of payment plus the sum equivalent to ten (10%) percent of the award, or in the amount of US$6,000.00 or its peso equivalent prevailing at the time of payment, as and by way of attorney's fee.
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> SO ORDERED.[33][33]

Labor Arbiter Lustria found that Bastol indeed suffered from a heart ailment for which he is pursuing disability indemnity which was duly proved by the concurring diagnosis of Dr. Peralta, Dr. Lim, Dr. Varwig and Dr. Vicaldo. He found that the settlement agreement with PPI was pursuant to the medical findings and assessments of both company-designated physicians, Dr. Lim and Dr. Varwig. Thus, the reiteration of the award of Labor Arbiter Mayor, Jr.

32[32] Id. at 139-148, per DOLE Region IV-A Regional Director Atty. Maximo B. Lim.

33[33] Id. at 148.

Aggrieved, OSCI promptly filed its Memorandum of Appeal[34][34] before the NLRC.

The Ruling of the NLRC in NLR NCR CA No. 019238-99

(NLRC NCR OCW No. 98-05-0501)

On July 31, 2006, the NLRC First Division rendered its Decision reversing and setting aside Labor Arbiter Lustria's January 31, 2003 Decision and dismissed the instant case, the *fallo* reading:

> WHEREFORE, the appeal is GRANTED. The Decision of Labor Arbiter Joel S. Lustria dated January 31, 2003 is hereby REVERSED AND SET ASIDE and a new one entered dismissing the complaint.
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> SO ORDERED.[35][35]

In dismissing the case, the NLRC held that the sworn affidavit of Dr. Vicaldo and the manifestations of Bastol could not substitute for their presence and testimony, and that of Dr. Lim. It ruled that since not one clarificatory hearing was conducted, the sworn affidavit of Dr. Vicaldo is reduced to mere hearsay sans a

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34[34] Id. at 126-143, dated March 20, 2003.

35[35] Id. at 150-151.

cross-examination by OSCI. Moreover, it noted that the reliance by the LA on the certificates of Dr. Lim and Dr. Varwig is misplaced, for the disability ratings indicated therein do not appear to be final for they were merely suggested ones. Besides, it pointed out that the records show that Bastol was still under treatment and being re-evaluated by Dr. Lim when the purported certificate was issued by Dr. Lim on June 26, 1997. It concluded that the purpose for which the case was remanded had not been served and the true state of Bastol's health not adequately established. In fine, it ruled that even if Bastol's disability has been determined with certainty, still it will not serve to indemnify Bastol for his violation of the SEC when he prematurely sought the medical help of Dr. Vicaldo, emphasizing that the 1994 revised SEC is clear in that **it is only the company-designated physician who could declare the fitness of the seafarer to work; or establish the degree of his disability**.

Undaunted, Bastol went to the CA questioning the reversal of Labor Arbiter Lustria's Decision via a Petition[36][36] for Certiorari under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 100090.

The Ruling of the Court of Appeals

On August 12, 2008, the appellate court rendered the assailed Decision reversing the July 31, 2006 Decision and May 30, 2007 Resolution of the NLRC,

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36[36] Id. at 152-168, dated August 27, 2007.

and reinstated the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. The decretal portion reads:

> WHEREFORE, the premises considered, the petition is GRANTED. The Assailed Decision and Resolution of the NLRC, First Division dated July 31, 2006 and May 30, 2007, respectively are hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion and the January 28, 1999 Decision of the Labor Arbiter, REINSTATED.
>
> SO ORDERED.[37][37]

In reinstating the Labor Arbiter's January 28, 1999 Decision, the appellate court ruled, *first*, that the NLRC gravely abused its discretion in remanding the case back to the Labor Arbiter on the mistaken notion that the determination of Bastol's health ailment and entitlement to disability benefits under the 1994 revised SEC cannot be ascertained without conducting a formal trial. It ratiocinated that Art. 221 of the Labor Code as amended by Sec. 11 of Republic Act No. (RA) 6715 in relation to Sec. 4, Rule V of the NLRC Rules of Procedure then prevailing granted the Labor Arbiter **discretion** to determine the necessity for a formal hearing or investigation. In the instant case, the CA found that the Labor Arbiter acted properly and ruled appropriately on the evidence on record without need for formal hearings. Thus, the NLRC gravely abused its discretion when it dismissed the instant case.

37[37] Id. at 228-229.

Second, relying on and applying the principles enunciated in *Remigio v. National Labor Relations Commission*[38][38] together with the application of Sec. 20 in relation to Secs. 30 and 30-A of the SEC, the appellate court appreciated and found **total and permanent disability** of Bastol, considering the undisputed fact that he could not pursue his usual work as a seaman for a period of more than 120 days. Moreover, it noted that no less than four doctors—Dr. Peralta, Dr. Lim, Dr. Varwig and Dr. Vicaldo—found Bastol to be suffering from a heart ailment which prevented him from being employed at his usual job as a seafarer or seaman.

Third, the CA viewed no violation of Sec. 20, B, 3 of the SEC, for said proviso in its third paragraph does not prohibit a second medical opinion, but, in fact, provides for the seafarer the right to seek a second opinion and even a third opinion in cases where the seafarer's doctor disagrees with the assessment of the company-designated doctor. Thus, the CA ruled that the NLRC gravely erred in construing the proviso that it is only the company-designated physician who could declare the fitness of the seafarer to work or establish the degree of his disability. In fine, the CA pointed out that the SEC does not serve to be a limitation but is a guarantee of protection to overseas contract workers and must, therefore, be construed and applied fairly, reasonably and liberally in favor of and for the benefit of seamen and their dependents.

38[38] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

OSCI moved for reconsideration[39][39] of the above assailed CA Decision but the appellate court denied the same through the first assailed January 7, 2009 Resolution. While affirming its Decision, the CA held in its Resolution:

> Finding no cogent or justifiable reason to set aside the Decision of this Court dated August 12, 2008 ***dismissing the instant petition, the motion for reconsideration filed by the petitioners is hereby not given due course***.
>
> WHEREFORE, the aforementioned decision is hereby AFFIRMED and REITERATED.
>
> SO ORDERED.[40][40]

OSCI then filed a Motion for Clarification[41][41] considering that Bastol, the petitioner in CA-G.R. SP No. 100090, did not file a motion for reconsideration of the assailed Decision which did not dismiss Bastol's petition, but instead annulled the NLRC dismissal of the instant case and reinstated the January 28, 1999 Labor Arbiter Decision.

On February 6, 2009, the CA issued the second assailed Resolution rectifying the first assailed Resolution of January 7, 2009.

39[39] *Rollo*, pp. 284-287, Motion for Reconsideration dated May 18, 2007.

40[40] Id. at 243-244.

41[41] Id. at 245-247, dated January 20, 2009.

Thus, the instant appeal before us.

The Issues

OSCI raises the following issues for our consideration:

a. Whether or not it is contrary to the principles of *res judicata* for the Court of Appeals to have ordered the reinstatement of Labor Arbiter Mayor's Decision dated 28 January 1999 which was already vacated and set aside by the NLRC's Resolution dated 30 July 1999 which in turn has become final and executory without respondent questioning the same.

b. Whether or not it is contrary to the legal principles of the "law of the case" for the Court of Appeals to have disregarded the findings of the NLRC in the latter's Resolution dated 30 July 1999 which by law is already final and executory.

c. Whether or not it was grave and reversible error on the part of the Court of Appeals to have sanctioned Labor Arbiter Lustria's departure from accepted procedure in admitting into evidence the gravely belated submissions of respondent without any justifiable reason being advanced for said belated filing.

d. Whether or not the Court of Appeals erred in recognizing in favor of respondent a declaration of disability grade 1 by an alleged doctor who is not the company-designated physician and whose competence was not established.

e. Whether or not the lack of a proper verification of the Position Paper and/or Manifestation/Compliance filed by respondent before Labor Arbiter Lustria rendered said pleadings without legal effect as an unsigned pleading provided by Sec. 4 in relation to Sec. 3, both of Rule 7.

f. Whether or not respondent's complaint for disability filed with the Labor Arbiter should have been dismissed for failure to be supported by a

certification of non-forum shopping as required under Sec. 5, Rule 7 of the Rules of Court in relation to Sec. 3, rule 1 of the NLRC Rules of Procedure.[42][42]

The foregoing issues can be summarized into three: *first*, on procedural grounds, whether the Complaint filed before the Labor Arbiter ought to be dismissed for lack of certification against forum shopping as required by the Rules and whether the verification by counsel is sufficient for Bastol's Position Paper and Manifestation/Compliance; *second*, whether the July 30, 1999 NLRC Decision constitutes *res judicata* and serves as the "law of the case"; and *third*, whether the belated submissions are allowed by the Rules, and the Affidavit of Dr. Vicaldo sufficient.

In the meantime, pending resolution of the instant case, Romy B. Bastol died on December 13, 2009 from his undisputed ailment of acute *myocardial infarction*.[43][43]

The Court's Ruling

We deny the appeal for lack of merit.

Procedural Issues

42[42] Id. at 361-363, Petitioner's Memorandum dated February 8, 2010.

43[43] Id. at 373, Certificate of Death of Romy B. Bastol.

In its bid to overturn the assailed Decision and Resolutions, OSCI foisted several procedural issues all based on the Rules of Court, the application of which it anchors on Sec. 3, Rule I of the NLRC Rules of Procedure then prevailing, which pertinently provided:

> Section 3. *Suppletory application of Rules of Court and jurisprudence*. — In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Revised Rules of Court of the Philippines and prevailing jurisprudence may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.[44] [44]

OSCI argues that the Complaint of Bastol ought to have been dismissed at the outset, i.e., before the labor arbiter level, since it is an initiatory pleading which lacked the mandatorily required certification of non-forum shopping under Sec. 5,[45] [45] Rule 7 of the Rules of Court.

44[44] The New Rules of Procedure of the National Labor Relations Commission, issued on August 31, 1990 at Cebu City by NLRC Chairman Bartolome S. Carale.

45[45] SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

In the same vein, OSCI contends that Bastol's Position Paper and Manifestation/Compliance ought to have been considered as unsigned pleadings which produce no legal effect under Sec. 3,[46][46] Rule 7 of the Rules of Court for violation of Sec. 4,[47][47] Rule 7, requiring verification to be made upon personal knowledge or based on authentic records, because said pleadings were verified only by counsel, which verification is clearly not based on personal knowledge or based on authentic records.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x

46[46] SEC. 3. *Signature and address*. — Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

47[47] SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading. (*As amended, A.M. No. 00-2-10, May 1, 2000*.)

Pro-forma Complaint Forms Used in the RAB

The foregoing arguments are untenable. For the expeditious and inexpensive filing of complaints by employees, the Regional Arbitration Branch (RAB) of the NLRC provides pro-forma complaint forms. This is to facilitate the exercise and protection of employees' rights by the convenient assertion of their claims against employers untrammeled by procedural rules and complexities. To comply with the certification against forum shopping requirement, a simple question embodied in the Complaint form answerable by "yes" or "no" suffices. Employee-complainants are not even required to have a counsel before they can file their complaint. An officer of the RAB, duly authorized to administer oaths, is readily available to facilitate the execution of the required subscription or *jurat* of the complaint.

This can be seen in the case at bar. Bastol, assisted by counsel, filled out the Complaint form, line No. 11 of which is a question on anti-forum shopping which he answered by underlining the word "No."[48][48] It is thus clear that the strict application of Sec. 4, Rule 7 of the Rules of Court does not apply to labor complaints filed before the NLRC RAB.

Verification by Counsel Sufficient

48[48] *Rollo*, p. 35.

Anent the issue of verification, we have scrutinized both the Position Paper and the Manifestation/Compliance filed by Bastol and we fail to see any violation thereof. *First*, there is no law or rule requiring verification for the Manifestation/Compliance. *Second*, the counsel's verification in Bastol's Position Paper substantially complies with the rule on verification. The second paragraph of Sec. 4, Rule 7 of the Rules of Court provides: "A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records."

On the other hand, the actual verification of counsel in Bastol's Position Paper states: "That I am the counsel of record for the complainant in the above-entitled case; that I caused the preparation of the foregoing Position Paper; that I have read and understood the contents thereof; and that **I confirm that all the allegations therein contained are true and correct based on recorded evidence**."[49][49] Appended to the position paper were Bastol's contract of employment, counsel's letter to OSCI, and various medical certifications issued by several doctors with similar findings and diagnosis of Bastol's heart ailment. Evidently, the verification is proper as based on, and evidenced, by the appended documents, which were not disputed save the contents of the medical certificate issued by Dr. Vicaldo.

First Substantive Issue: *Res Judicata* and "Law of the Case"

49[49] Id. at 42.

OSCI strongly argues that the July 30, 1999 NLRC Decision remanding the case has become final and executory, thus the applicability of the doctrine of *res judicata* and the principle of the "law of the case" thereto. There being *res judicata* between the parties, the NLRC's setting aside of the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. has become final. Thus, OSCI maintains that the CA gravely erred in reinstating the January 28, 1999 Decision of Labor Arbiter Mayor, Jr.

And relying on the Court's pronouncement in *Cucueco v. Court of Appeals*[50][50] on the principle of the "law of the case," OSCI asserts that the ruling of the July 30, 1999 NLRC Decision, remanding the case to the Labor Arbiter for clarificatory hearings requiring the personal appearance of Bastol and the testimonies of Dr. Lim and Dr. Vicaldo, may no longer be disturbed and must be complied with. Thus, it argues that the non-compliance thereof and the belated submission of an alleged affidavit by Dr. Vicaldo are clear contraventions of the

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50[50] G.R. No. 139278, October 25, 2004, 441 SCRA 290, 300-301, which states:

"Law of the case" has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the *case whether that question is right or wrong*, the remedy of the party deeming himself aggrieved being to seek a rehearing.

prevailing "law of the case" as embodied in the final and executory July 30, 1999 NLRC Decision.

The foregoing arguments of OSCI are tenuous at best.

Doctrine of *res judicata* inapplicable

We agree with OSCI that the CA committed double *faux pas* by (1) ruling on the remand of the case by the NLRC to the Labor Arbiter which was not the subject of Bastol's appeal before it; and (2) reinstating the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. which had earlier been set aside and was not the object of OSCI's appeal to the NLRC. But these lapses do not adversely affect the CA's determination of the propriety of the disability indemnity awarded to Bastol, as will be discussed here.

Suffice it to say that the July 30, 1999 NLRC Decision cannot and does not constitute *res judicata* to the instant case. In *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon*,[51][51] extensively quoting from the earlier case of *Vda. de Cruzo v. Carriaga, Jr.*,[52][52] we explained the nature of *res judicata*, as now embodied in Sec. 47, Rule 39 of the Rules of Court, in its two concepts of "bar by former judgment" and "conclusiveness of judgment." These concepts of the

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51[51] G.R. No. 148777, October 18, 2007, 536 SCRA 565.

52[52] G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330.

doctrine of *res judicata* are applicable to second actions involving substantially the same parties, the same subject matter, and cause or causes of action.[53][53] In the instant case, there is no second action to speak of, involving as it is the very same action albeit the NLRC remanded it to the Labor Arbiter for further proceedings.

Principle of "Law of the Case" inapplicable

"Law of the case" has been defined as the opinion delivered on a former appeal—it is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal.[54][54]

OSCI's application of the **law of the case** principle to the instant case, as regards the remand of the case to the Labor Arbiter for clarificatory hearings, is misplaced. The only matter settled in the July 30, 1999 NLRC Decision, which can be regarded as law of the case, was the undisputed fact that Bastol was suffering from a heart ailment. As it is, the issue on the degree of disability of Bastol's heart ailment and his entitlement to disability indemnity, as viewed by the NLRC through said decision, has yet to be resolved. Precisely, the NLRC

53[53] I Regalado, REMEDIAL LAW COMPENDIUM 472-473 (6th rev. ed.).

54[54] *Meralco Industrial Engineering Services Corporation v. National Labor Relations Commission*, G.R. No. 145402, March 14, 2008, 548 SCRA 315, 329-330.

remanded the case to Labor Arbiter Mayor, Jr. "for conduct of further approximate proceedings and to terminate the same with dispatch."[55][55]

Second Substantive Issue: Sufficiency of Sworn Affidavit

And the primordial reason why the argument of OSCI for the mandatory conduct of clarificatory hearings requiring the personal appearance of Bastol and the testimonies of Dr. Lim and Dr. Vicaldo is erroneous is that the law and the rules do not require such mandatory clarificatory hearings.

Labor Arbiter Has Discretion on the Propriety of Conducting Clarificatory Hearings

While it can be argued that the NLRC through its July 30, 1999 Decision skewed to have clarificatory hearings for the presentation of evidence, it cannot be gainsaid that with the remand of the case, the Labor Arbiter must proceed in accordance to the Rules governing proceedings before him provided under the prevailing Rules of Procedure of the NLRC.[56][56]

55[55] Supra note 22.

56[56] As amended by Resolution 3-99, Series of 1999, issued on December 10, 1999 by the NLRC En Banc.

We fully agree with Bastol's arguments that the NLRC, while having appellate jurisdiction over decisions and resolutions of the Labor Arbiter, may not dictate to the latter how to conduct the labor case before him. Sec. 9 of Rule V of the then prevailing NLRC Rules of Procedure, issued on December 10, 1999, provided for the nature of proceedings before the Labor Arbiter, thus:

> Section 9. Nature of Proceedings. — The proceedings before a Labor Arbiter shall be **non-litigious in nature**. Subject to the requirements of due process, the **technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto**. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons. (Emphasis supplied.)

And the Labor Arbiter is given full discretion to determine, *motu proprio*, on whether to conduct hearings or not. Secs. 3 and 4 of Rule V of the then prevailing NLRC Rules of Procedure also pertinently provided:

> Section 3. Submission of Position Papers/Memorandum. — x x x
>
> These verified position papers shall cover those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by **all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony**. x x x
>
> Section 4. Determination of Necessity of Hearing. — Immediately after the submission by the parties of their position papers/memorandum, the **Labor Arbiter shall motu proprio determine whether there is a need for a formal trial or hearing**. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or

> information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness. (Emphasis supplied.)

The foregoing provisos manifestly show the non-litigious and the summary nature of the proceedings before the Labor Arbiter, who is given full discretion whether to conduct a hearing or not and to decide the case before him through position papers. In *Iriga Telephone Co, Inc. v. National Labor Relations Commission*,[57][57] the Court discussed the reason why it is discretionary on the part of the Labor Arbiter, who, *motu proprio*, determines whether to hold a hearing or not. Consequently, a hearing cannot be demanded by either party as a matter of right. The parties are required to file their corresponding position papers and all the documentary evidence and affidavits to prove their cause of action and defenses. The rationale behind this is to avoid delay and curtail the pernicious practice of withholding of evidence. In *Pepsi Cola Products Philippines, Inc. v. Santos*,[58][58] the Court reiterated the Labor Arbiter's discretion not to conduct formal or clarificatory hearings which is not violative of due process, thus:

> The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.[59][59]

57[57] G.R. No. 119420, February 27, 1998, 286 SCRA 600.

58[58] G.R. No. 165968, April 14, 2008, 551 SCRA 245.

59[59] Id. at 252-253; citing *Shoppes Manila, Inc. v. National Labor Relations Commission*, G.R. No. 147125, January 14, 2004, 419 SCRA 354, 361.

In sum, it can be properly said that the proceedings before the Labor Arbiter are non-litigious in nature and the technicalities of law and procedure, and the rules obtaining in the courts of law are not applicable. Thus, the rules allow the admission of affidavits by the Labor Arbiter as evidence despite the fact that the affiants were not presented for cross-examination by the counsel for the adverse party. To require otherwise would be to negate the rationale and purpose of the summary nature of the administrative proceedings and to make mandatory the application of the technical rules of evidence. What the other party should do is to present counter-affidavits instead of merely objecting on the ground that the affidavits are hearsay.

The Court, however, has recognized specific instances of the impracticality for the Labor Arbiter to follow the position paper method of disposing cases; thus, formal or clarificatory hearings must be had in cases of termination of employment: such as, when claims are not properly ventilated for lack of proper determination whether complainant employee was a rank-and-file or a managerial employee,[60][60] that the Labor Arbiter cannot rely solely on the parties' bare allegations when the affidavits submitted presented conflicting factual issues,[61][61] and considering the dearth of evidence presented by complainants the Labor Arbiter should have set the case for hearing.[62][62]

60[60] *Batongbacal v. Associated Bank*, No. L-72977, December 21, 1988, 168 SCRA 600.

61[61] *Greenhills Airconditioning and Services, Inc. v. National Labor Relations Commission*, G.R. No. 112850, June 27, 1995, 245 SCRA 384.

62[62] *Progress Homes v. National Labor Relations Commission*, G.R. No. 106212, March 7, 1997, 269 SCRA 274.

In the instant case, we find substantial evidence to support the decision of Labor Arbiter Lustria. Substantial evidence is such amount of evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[63][63]

Late submission of documentary evidence admissible

OSCI asserts that Labor Arbiter Lustria gravely abused his discretion in admitting as evidence the belated submissions of Bastol through his Manifestation/ Compliance filed on October 26, 2001 or five months after the instant case was deemed submitted for decision on May 10, 2001. It considers suspicious the submission of the Affidavit of Dr. Vicaldo, as Bastol never provided any explanation for such late submission and much less did the Labor Arbiter require Bastol for such explanation. OSCI also rues said admission when Labor Arbiter Lustria did not act on its Motion to Dismiss filed on July 25, 2001 on the ground of Bastol's failure to present additional evidence. Neither did Labor Arbiter Lustria give it an opportunity to submit contrary evidence by setting, at the very least, another hearing. Thus, OSCI concludes that Labor Arbiter Lustria acted wantonly,

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63[63] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316; citing *Vertudes v. Buenaflor*, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 230.

whimsically and capriciously to its grave prejudice by admitting and using the late submission of Bastol as basis for his decision, and the CA, in turn, gravely erred in sanctioning the Labor Arbiter by granting Bastol's petition for certiorari.

We cannot agree.

The nature of the proceedings before the Labor Arbiter is not only non-litigious and summary, but the Labor Arbiter is also given great leeway to resolve the case; thus, he may "avail himself of all reasonable means to ascertain the facts of the controversy."[64][64] The belated submission of additional documentary evidence by Bastol after the case was already submitted for decision did not make the proceedings before the Labor Arbiter improper. The basic reason is that technical rules of procedure are not binding in labor cases.

In *Dacut v. Court of Appeals*, we held that the fact that the Labor Arbiter admitted the company's reply after the case had been submitted for decision did not make the proceedings before him irregular.[65][65] In *Sasan, Sr. v. National*

64[64] Sec. 9, Rule V of the NLRC Rules of Procedure, issued on December 10, 1999.

65[65] *Dacut v. Court of Appeals*, G.R. No. 169434, March 28, 2008, 550 SCRA 260, 267.

Labor Relations Commission, we also held that the submission of additional evidence on appeal before the NLRC is not prohibited by its New Rules of Procedure; after all, rules of evidence prevailing in courts of law or equity are not controlling in labor cases.[66][66] Indeed, technical rules of evidence do not apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as a careful look into the arguments contained in position papers and other documents.[67][67]

And neither can OSCI rely on lack of due process. The essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably he held.[68][68] Considering that OSCI indeed contested the late submission of Bastol by filing its most vehement objection thereto on November 27, 2001, it cannot complain of not being accorded the opportunity to be heard and much less can it demand for the setting of an actual hearing. What OSCI could have and ought to have done was to present its own counter-affidavits. But it did not.

Documentary evidence submitted substantially proves Bastol's claim for disability indemnity

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66[66] G.R. No. 176240, October 17, 2008, 569 SCRA 670, 686.

67[67] Id. at 688.

68[68] *Asian Terminals, Inc. v. Sallao*, G.R. No. 166211, July 14, 2008, 558 SCRA 251, 259; citing *Metropolitan Bank and Trust Company v. Barrientos*, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 321-322.

On the related issue of the certification of a medical doctor other than the company-designated physician, OSCI adamantly maintains that pursuant to Sec. 20 (B) of the 1996 SEC it is only the company-designated physician who is allowed to fix or determine the degree of disability. Thus, according to OSCI, the Labor Arbiter and the CA gravely erred in sanctioning the Grade 1 disability impediment based on a certification issued by a medical doctor who is not the company-designated physician.

We do not agree.

The Contract of Employment of Bastol and PSL, through its agent OSCI, stipulated thus:

1. That the Employee shall be employed on board under the following terms and conditions:

   1.1 Duration of Contract: 9+3 months upon mutual consent of the crew & owners/agent
   1.2 Position Bosun
   1.3 Basic Monthly Salary US$500.00
   1.4 Hours of Work 48 hours a week
   1.5 Overtime F.O.T. – 30% of basic wage
   1.6 Vacation Leave with Pay One month basic wage per one year service or pro-rata

2. The **terms and conditions of the revised Employment Contract for seafarers governing the employment of all Filipino seafarers approved by the POEA/Dole on July 14, 1989 under Memorandum Circular No. 41**

series of 1989 amending circulars relative thereto shall be strictly and faithfully observed.[69][69] (Emphasis supplied.)

The parties having mutually agreed to the application of the 1994 revised SEC under Memorandum Circular No. 41, Series of 1989,[70][70] approved by the DOLE and the POEA on July 14, 1989, it is the law between them.

The pertinent provisos of the 1994 revised SEC provided:

PART II

TERMS OF SERVICE

SECTION A. HOURS OF WORK

x x x x

SECTION C. COMPENSATION AND BENEFITS

x x x x

4. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

a. The employer shall continue to pay the seaman his basic wages during the time he is on board the vessel;

69[69] Supra note 7.

70[70] Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

b. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, dental, surgical and hospital treatment as well as board and lodging until the seaman is declared fit to work or to be repatriated.

However, if after repatriation, the seaman still required 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.

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel, the seaman is entitled to one hundred percent (100%) of his basic wages 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 days**. For the purpose, the seaman shall submit himself to a post employment medical examination by the 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 seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits**. (Emphasis supplied.)

The foregoing provisos were substantially retained in the 1996 SEC with slight changes in Sec. C, 4, c. which was placed under Sec. 20, B, 3, expressed as follows:

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**. (Emphasis supplied.)

Applying the foregoing provisos in the instant case, it is thus clear—in either the revised 1994 and the 1996 SEC—that Bastol, suffering from a heart ailment and repatriated on March 7, 1997, must comply with two requirements: *first*, to submit himself to a post-employment medical examination by a company-designated physician within three working days from his repatriation; *second*, he must allow himself to be treated until he is either declared fit to work or be assessed the degree of permanent disability by the company-designated physician. Most importantly, the mandatory compliance of the second requirement is qualified by the limitation or condition that **in no case shall this period exceed one hundred twenty (120) days**. The 120-day limitation refers to the period of medical attention or treatment by the company-designated physician, who must either declare the seafarer fit to work or assess the degree of permanent disability.

The undisputed facts clearly show Bastol complying with the two mandatory requirements. In fact, OSCI did not dispute that Bastol was referred to the Jose L. Gutierrez Clinic for follow-up examination and treatment with attending company-designated physician Dr. Peralta, who found him unfit for sea duty on March 8 and April 1, 1997. That Bastol submitted himself to the treatment and medical evaluation of company-designated physicians Dr. Peralta and Dr. Lim is undisputed. The facts further show that after Dr. Peralta found Bastol unfit for sea duty, PPI—the local representative of PIC, the insurer of PSL—referred him

(Bastol) to further medical treatment at the Metropolitan Hospital under company-designated physician Dr. Lim. Bastol was confined therein for almost a month, i.e., from April 10, 1997 until May 7, 1997.

Dr. Lim found Bastol to be suffering from a heart ailment certifying that he had "Coronary artery dse; S/P Ant. wall MP; Hypercholesterolemia; Hyperglycemia." Dr. Lim regularly updated PPI on the medical status of Bastol as shown by his letters to PPI addressed to Ms. Charry Domaycos, Claims Executive, Crew Claims Division, on April 23, May 24, September 16 and October 28, 1997.

That Bastol suffered from a heart ailment is not disputed. In fact, as noted by the CA, no less that four medical doctors had similar diagnosis of Bastol's heart ailment, viz: Dr. Peralta of the Jose L. Gutierrez Clinic, Dr. Lim of the Metropolitan Hospital, PPI company-designated physician Dr. Varwig, and Dr. Vicaldo of the Philippine Heart Center. And that is not to count the medical findings of Docteur Bentadj from the Centre Hospitalo-Universitaire D'Oran in Algiers as embodied in his Rapport Medical[71][71] issued on February 26, 1997.

In all, after his repatriation on March 7, 1997, Bastol went to see Dr. Peralta on March 8, 1997, and until the last examination by Dr. Lim on October 28, 1997, he had been treated by these company-designated doctors for a period spanning around **seven months and 20 days** or for approximately **230 days**. Clearly then, the **maximum period of 120 days stipulated in the SEC for medical treatment**

71[71] Supra note 8.

and the declaration or assessment by the company-designated physician of either being fit to work or the degree of permanent disability had already lapsed. Thus, by law, **if Bastol's condition was with the lapse of the 120 days of post-employment medical examination and treatment, which actually lasted as the records show for at least over eight months** and for over a year by the time the complaint was filed, **without his being employed at his usual job**, then it was certainly total permanent disability.

It has been held that disability is intimately related to one's earning capacity.[72][72] It should be understood less on its medical significance but more on the loss of earning capacity.[73][73] Total disability does not mean absolute helplessness.[74][74] In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.[75][75] Thus, permanent disability is the **inability of a worker to perform his job for more than 120 days**, regardless of whether or not he loses the use of any part of his body.[76][76] This is the case of Bastol, aptly held by the CA.

72[72] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448.

73[73] Id.; citing *Austria v. Court of Appeals*, G.R. No. 146636, August 12, 2002, 387 SCRA 216, 221.

74[74] Id. at 449; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, G.R. No. 163838, September 25, 2008, 2008, 566 SCRA 338, 349.

75[75] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, supra note 72, at 449; citing *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, G.R. No. 123891, February 28, 2001, 353 SCRA 47, 53; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, supra note 74.

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[77][77] we cited the consistent application of the definition of permanent disability under Sec. 2 (b), Rule VII of the Implementing Rules of Book V of the Labor Code as amended by PD 626, which provides:

> (b) *A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days*, except as otherwise provided for in Rule X of these Rules.[78][78]

We likewise noted in *Wallem Maritime Services, Inc.*[79][79] that:

> The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad*,[80][80] in which it was reiterated that **permanent**

76[76] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, supra note 72, at 448; citing *Government Service Insurance System v. Cadiz*, G.R. No. 154093, July 8, 2003, 405 SCRA 450, 454; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, supra note 74.

77[77] Supra note 74.

78[78] *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, supra note 74.

79[79] Id. at 349-350.

80[80] G.R. No. 154798, February 12, 2007, Resolution.

disability means the inability of a worker to perform his job for more than 120 days. Also in *Philimare, Inc. v. Suganob*,[81][81] notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the **latter suffered permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months**. Similarly, in *Micronesia Resources v. Cantomayor*[82][82] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*,[83][83] the Court declared the seafarers therein to have suffered from a **permanent disability after taking evidence into account that they had remained under treatment for more than 120 days, and were unable to work for the same period**.

Moreover, we explained in *Wallem Maritime Services, Inc.* that the lapse of the 120-day threshold period is not the benchmark for considering a permanent disability due to injury or illness, "rather, the true test of whether respondent suffered form a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days."[84][84]

Applying the foregoing considerations, it is clear that Bastol was not only under the treatment of company-designated physicians for over seven months, but it is likewise undisputed that he had not been employed as bosun for said time. Note again upon his repatriation on March 7, 1997, Bastol was treated by company-designated physician Dr. Peralta who found him unfit for sea duty on

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81[81] Supra note 72.

82[82] G.R. No. 156573, June 19, 2007, 525 SCRA 42.

83[83] G.R. No. 165934, April 12, 2006, 487 SCRA 248.

84[84] Supra note 74, at 350.

March 8 and April 1, 1997. Thereafter, he was confined at the Metropolitan Hospital under company-designated physician Dr. Lim for almost a month, i.e., from April 10, 1997 until May 7, 1997. After confinement, Dr. Lim treated him until October 28, 1997. In all these seven months and 20 days of treatment, Bastol was not employed at his usual job as bosun. In fact, the Court notes that Bastol was never able to work as bosun thereafter on account of his poor health.

Thus, the declaration by Dr. Vicaldo of Bastol's disability as Disabiltiy Impediment Grade 1 Degree (120%) constituting total permanent disability on November 28, 1997 or eight months and 20 days (approximately 260 days) from March 8, 1997 when he submitted himself to company-designated physician Dr. Peralta merely echoed what the law provides.

Thus, we can say that Bastol had the right to seek medical treatment other than the company-designated physician after the lapse of the 120-day considering that said physician, within the **maximum 120-day period stipulated in the SEC** neither declared him fit to work or gave the assessment of the degree of his permanent disability which he is incumbent to do. Moreover, as the CA aptly noted, Dr. Vicaldo's diagnosis and assessment should be accorded greater weight considering that he is a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center. It is undisputed that Dr. Lim, the company-designated physician, is not a cardiology expert being a Diplomate in Rehabilitation Medicine and who seemed to be not the attending physician of Bastol in the Metropolitan

Hospital as shown in his September 16, 1997 letter to PPI stating "his cardiologist opines that he has to continue taking his maintenance medications."[85][85]

OSCI also erroneously contends that the illness of Bastol is not compensable under the SEC. It has already been settled in *Heirs of the Late R/O Reynaldo Aniban v. National Labor Relations Commission*[86][86] that **myocardial infarction** as a disease or cause of death is compensable, such being occupational. As the CA aptly noted, Bastol's work as bosun caused, if not greatly contributed, to his heart ailment, thus:

> A job of a bosun, as the position of petitioner, is not exactly a walk in the park. A bosun manages actual deck work schedules and assignments directed by the Chief Officer and emergency duties as indicated in the Station Bill. He attends to maintenance and upkeep of all deck equipment, cargo, riggings, safety equipment and helps in maintaining discipline of the deck hands. He assists in ships emergency drills and in any event of emergency and performs other duties and responsibilities as instructed or as necessary. He reports directly to the Chief Officer. What makes the job more difficult, aside from exposure to fluctuating temperatures caused by variant weather changes, the job obviously entails laborious manual tasks conducted in a moving ship, which makes for increased work-related stress. All these factors may have exacerbated petitioner's heart condition. Prolonged and continued exposure to the same could probably risk petitioner [Bastol] to another attack.[87][87]

85[85] Supra note 17.

86[86] G.R. No. 116354, December 4, 1997, 282 SCRA 377.

87[87] Supra note 2, at 223.

We are not blind to the needs of our seafarers who, when getting sick in the line of duty, are given the run around by unscrupulous employers and manning agencies. The instant case has spanned a dozen years with the disability indemnity benefit not granted. Alas, the sad reality is that Romy B. Bastol succumbed to his illness and died on December 13, 2009 of acute *myocardial infarction* and cannot now enjoy the fruits of his long protracted struggle for what is right and what has accrued to him.

WHEREFORE, premises considered, we **DENY** the instant petition for lack of merit. The Decision dated August 12, 2008 and the Resolutions dated January 7, 2007 and February 6, 2009 of the Court of Appeals in CA-G.R. SP No. 100090 are hereby **AFFIRMED** with **MODIFICATION** in that what is **REINSTATED** therein is the **January 31, 2003 Decision of Labor Arbiter**.

Costs against petitioner.

SO ORDERED.

PRESBITERO J. VELASCO, JR.

Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

Chairperson

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

JOSE PORTUGAL PEREZ

Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

RENATO C. CORONA

Chief Justice