SECOND DIVISION

VIRGEN SHIPPING CORPORATION,
CAPT. RENATO MORENTE &
ODYSSEY MARITIME PTE. LTD.,
NATIONAL LABOR RELATIONS COMMISSION,
Petitioners,

- versus -

JESUS B. BARRAQUIO,
Respondent.

G.R. No. 178127

Present:

QUISUMBING, *J.*, *Chairperson*
CARPIO MORALES,
TINGA,
VELASCO, JR., and
BRION, *JJ*.

Promulgated:

April 16, 2009

x - x

D E C I S I O N

CARPIO MORALES, *J.*

Assailed *via* petition for review on certiorari is the Court of Appeals[1] Decision of November 13, 2006 holding Virjen Shipping Corporation, Capt. Renato Morente and Odyssey Maritime PTE. Ltd. (petitioners) liable to Jesus B. Barraquio (respondent) for payment of sickness allowance equivalent to 120 days, disability benefits, accrued interest, moral damages, exemplary damages and attorneys fees.

By a contract forged on February 29, 2000, petitioner Odyssey Maritime, PTE. Ltd., through its local manning agent co-petitioner Virjen Shipping Corporation, hired

respondent as chief cook on board the vessel M/T *Golden Progress* for a period of ten (10) months.

Before the contract was executed, respondent was made to undergo the routine Pre-Employment Medical Examination (PEME) at S.M. Lazo Medical Clinic, Inc. and was found to be fit to work by the attending physician Dr. Jose Dante V. Jacinto.

On March 23, 2000, respondent boarded the above-named vessel and commenced to perform his duty as chief cook.

Twenty one (21) days later or on April 13, 2000, while the vessel was docked in Korea, respondent requested medical attention due to chest pains and hypertension and was brought to the Hyundai Surgical Center. The attending physician made no pronouncement as to respondents fitness for work but made the following diagnosis:

> Impression) (1) **Suspected** ischemic heart disease (2) Hypertension
>
> Treatment) Calcium channel block medication. Jao Ho Lee[2] (Emphasis and underscoring supplied)

Subsequently or on April 26, 2000, respondent, by letter of even date addressed to Captain Thomas Cristino, Crewing Manager of petitioner Virjen, wrote, **quoted *verbatim***:

> **With much regret, I would like to say my sincere sorry for having me decided to quit my job**. Poor Health is the main reason and thus affecting the performance of my duty.
>
> However too, if somebody is going to disembark this coming May in Singapore may I respectfully request your permission to **allow me to join said disembarkation crew.** Just in case it is not possible, then I will patiently wait to those are scheduled by early June.
>
> As well, it is clear to me that I am responsible for my airfare and to joining crew as my replacement since I have not complied with the terms of the contract.
>
> Thank you very much to your kind consideration & understanding & hope this **irrevocable resignation** be granted on proper time so as to allow me to accommodate the due expenses for repatriation.[3] (Emphasis and underscoring supplied)

Upon arrival of the vessel in Singapore and prior to his disembarkation, respondent again

requested on May 13, 2000 medical treatment for abscess in his left thumb. Dr. Ivan Chan of Gleneagles Maritime Medical Centre who attended to respondent stated in his report:

> Name/Age: Jesus B. Barraquio/50
> Rank/Nationality: CCK/Filipino
> Agent/Vessel: Heng Fu Kot/Golden Progress
> Allergy: Nil
>
> HISTORY: Painful swelling left thumb for 10 days. History of *hypertension for 3 years*, on calciblock. Medication finished. Cholesterol normal.
>
> x x x x
>
> **DIAGNOSIS**: **ABSCESS LEFT THUMB; HYPERTENSION**
>
> x x x x
>
> RECOMMENDATIONS:
>
> DISPOSITION: Fit to sail.[4] (Emphasis and underscoring in the original; italics supplied)

Respondent was allowed by petitioners to disembark. He arrived in the Philippines on May 15, 2000. On August 2, 2000, respondent signed a Statement of Account acknowledging set-off of his vacation leave pay in the amount of ₱15,188.75 from the cost of finding respondents replacement and the cost of repatriation in the amount of ₱38, 373.65. For the balance of ₱23, 184.90, respondent signed a promissory note in favor of petitioner Virjen.

A year later or on August 1, 2001, respondent filed a complaint for non-payment of 120 days sickness allowance under Section 20 (B) paragraph 2 of the Standard Employment Contract for Seafarers[5], disability benefits, legal interest computed from date of formal demand, reimbursement of medical expenses, and damages.

In his Complaint, respondent alleged that due to constant verbal abuse from the ship master, Captain Marino Kasala, he suffered dizziness, chest pains, headaches and irregular sleep leading to hypertension; that he was forced to execute the request for disembarkation for fear that his health would worsen; and that medical findings in his PEME that he was fit

to sail is binding upon petitioners and proof that his condition developed while on board.

Taking a contrary stand, petitioners countered that hypertension cannot develop in a short span of time; and in any event, respondent committed misrepresentation in his PEME as to his health.

By Decision of April 1, 2002, Labor Arbiter Renaldo O. Hernandez rendered judgment in favor of respondent, disposing as follows:

> WHEREFORE, premises considered, judgment is entered finding respondents foreign principal and manning agency and its president/chairman Eng. Emilio A. Santiago and the rest of the corporate officers liable to pay to complainant his money claims as above discussed, thus ORDERING said respondents and officers *in solido*:
>
> 1) to reimburse to complainant his receipted cost of medical expenses incurred to Annex J-8. Complainants Affidavit dated 01 July 2002) of P1,270.00;
> 2) to pay complainant his sickness allowance up to maximum equivalent of basic wage x 120 days or US $ 2,320.00 under Sec. 20 (B) in par. 2, Standard Employment Contract for Seafarers;
> 3) to pay complainant his disability benefits in accordance with the schedule of benefits in Sec. 30 of the Contract with disability rating of Grade 6 pursuant to Schedule of Disability Allowance in Sec. 30-A of the POEA SEC, with impediment percentage of 50% equivalent to US $25,000.00; and finally,
> 4) to pay complainant moral and exemplary damages in the combined amount of two hundred thousand pesos (P200,000.00) and 10% of the entire award as attorneys fees.
>
> SO ORDERED.[6]

On appeal, the National Labor Relations Commission (NLRC) First Division by Decision of August 30, 2002 reversed the ruling of the Labor Arbiter and dismissed the complaint for lack of merit.[7] Albeit echoing the same factual background, the NLRC found respondents resignation voluntary, hence, he cannot claim entitlement to the benefits under the Standard Employment Contract of the Philippine Overseas Employment Administration (POEA). Thus, the NLRC First Division declared:

> The aforequoted handwritten resignation, the terms and conditions of which are very clear and explicit that he is quitting his job and even executed a promissory note to pay the amount of P23,184.90 representing the balance of his repatriation and his replacements expenses.
>
> Further, complainant-appellee (respondent) even signed the Statement of Account after he signed-off from the vessel on August 02, 2000. The same shows the balance due Virjen Shipping Corporation which apparently may be construed that complainant-appellee knew from the beginning that he is liable for his and his replacement transportation because he pre-terminated his employment contract. (Underscoring supplied)

On respondents petition for certiorari, the Court of Appeals reversed the NLRC Decision in light of the observation that respondents hypertension probably developed while on board the vessel, *viz*:

> Thus, We are constrained to declare compensability primarily because evidence points that petitioners hypertension was **probably** developed while on board the vessel. After all, strict rules of evidence are not applicable in claims for compensation. In fact, in *NFD International Manning Agents, Inc. vs. NLRC*, the High Court held that probability and not the ultimate degree of certainty is the test of proof in compensation proceedings.[8] (Citations omitted, italics in the original, emphasis and underscoring supplied)

The appellate court thus disposed:

> WHEREFORE, the petition is **GRANTED**. The assailed NLRC Decision is hereby **NULLIFIED** and the Labor Arbiter Decision **REINSTATED with the MODIFICATION** that the name Engr. Emilio Santiago and the rest of the corporate officers are ordered deleted from its dispositive portion.
>
> **SO ORDERED**.[9] (Emphasis in the original; underscoring supplied)

Hence, the present petition, petitioners positing the following arguments:

1. . That there is no disharmony between the factual findings of the Labor Arbiter and those of the NLRC. The findings of the NLRC are more in accord with the evidence presented in the proceedings.
2. That private respondents resignation letter was voluntary and made upon

his own instance, the petitioners (sic) argument of involuntariness has no factual basis and is a mere afterthought. Having resigned from his position, private respondent is not entitled to his monetary claims.

3. Assuming, without admitting, that private respondent was medically repatriated as poor health was stated as the reason for his resignation only bolsters the view that private respondent knew of his history of hypertension prior to boarding the MV Golden Progress and that he concealed such material information in his pre-employment medical examination (PEME for brevity).
4. Private respondents PEME is not binding against the petitioners with respect to the determination of his true state of health and that petitioners willful and fraudulent concealment of his known pre-existing medical condition bars him from receiving disability benefits. (Underscoring supplied)

As a general rule, only questions of law may be raised and resolved by the Court as regards petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts, hence, it is not duty bound to re-examine the evidence on record.

Where, as in the present case, the NLRC and the Labor Arbiter arrived at conflicting decisions and the findings of the Labor Arbiter, as partly affirmed by the appellate court, appear to be contrary to the evidence at hand, the Court finds the need to review the records to distill the facts.

From a considered review, the Court finds that respondents resignation was voluntary.

Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment.[10]

Respondents resignation can be gleaned from the **unambiguous** terms of his letter to Captain Cristino.

As earlier reflected, respondent returned home upon docking in Singapore on May 13, 2000 after he was treated for the abscess in his left thumb and diagnosed with hypertension. His return home is in consonance with his request in his letter of April 26, 2000 to the crewing manager.

Respondents bare claim that he was forced to execute his resignation letter deserves no

merit. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation.[11] That such claim was proferred a year later all the more renders his contention bereft of merit.

It bears noting that in respondents previous contract with petitioner aboard another accredited vessel, M/T *Ocean Blossom*, he also requested for early repatriation, citing domestic reasons. Respondent is thus charged with awareness of the consequences of pre-termination, this being his second time to so request. Captain Cristinos alleged statement that respondent had to shoulder the repatriation expenses cannot thus be construed as compulsion.

Respondent claims entitlement under Section 20 (B) [2] of the Standard Employment Contract of the POEA, which must be read in conjunction with Section 20 (B) [3], *viz*:

> SECTION 20. COMPENSATION AND BENEFITS
>
> B. x x x
>
> (2) 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, serious, dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.
>
> However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be provided at cost to the employer until such time he is declared fit and 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 the forfeiture of his right to claim the above benefits.

If the doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctors decision shall be final and binding on both parties. (Underscoring supplied)

If respondent was indeed repatriated for medical reasons, he was, under the above-said provision, required to undergo post-employment medical examination by a company-designated physician within three working days from arrival. Contending that he complied therewith, he invites attention to the written annotation Reported To Office May 17/00 on the medical report from Gleneagles Maritime Medical Centre.

The provision requires respondent to submit himself to a post-medical employment examination by a company designated physician within three working days from arrival or, in respondents case, three working days after May 15, 2000, a Monday, when he arrived by ship or not later than May 18, 2000. Respondent sought examination-treatment on May 17 June 30, 2000 from Dr. Romina Alpasan who appears to be a physician of his choice.[12] He only tried to look for a company-designated physician after treatment by Dr. Alpasan. Clearly, he did not comply with the 3-day requirement to seek the services of a company-designated physician for purposes of post-employment medical examination.

Respondent goes on to claim that he underwent treatment for Ischemic heart disease which developed while employed by petitioners. Ischemic heart disease is a condition in which fatty deposits (*atheroma*) accumulate in the cells lining the wall of the coronary arteries. These fatty deposits build up **gradually** and **irregularly, however,** in the large branches of the two main coronary arteries which encircle the heart and are the main source of its blood supply. This process, called atherosclerosis, leads to narrowing or hardening of the blood vessels supplying blood to the heart muscle (the coronary arteries) resulting in *ischemia* - or the inability to provide adequate oxygen - to heart muscle and this can cause damage to the heart muscle . Complete occlusion of the blood vessel leads to a heart attack.

Finally, respondent claims that in light of the opinion of the physician in Korea that he had suspected ischemic heart, petitioners affirmed his medical repatriation. As reflected in the immediately preceding paragraph, however, ischemic heart disease cannot develop in a short span of time that respondent served as chief cook for petitioners. In fact, as indicated above, the Gleneagles Maritime Medical Centre doctor who treated respondent in May 2000 for abscess in his left hand had noted respondents [h]istory of hypertension for 3 years. Moreover, the Korean physician did not make any recommendation as to respondents bill of health for petitioners to assume that he was fit for repatriation.

IN FINE, respondents actions show that he voluntarily resigned.

WHEREFORE, the Court of Appeals Decision of November 13, 2006 is **REVERSED** and the NLRC Decision of August 30, 2002 is **REINSTATED**.

SO ORDERED.

CONCHITA CARPIO MORALES

Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice

Chairperson

DANTE O. TINGA PRESBITERO J. VELASCO, JR.
Associate Justice Associate Justice

ARTURO D. BRION
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 Courts Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, 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 Courts Division.

REYNATO S. PUNO
Chief Justice

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[1] Penned by Presiding Justice Ruben T. Reyes with the concurrence of Associate Justices Roberto A. Barrios and Juan Q. Enriquez.

[2] NLRC records, p. 39 (Annex D to Complainants [respondent] Position Paper).

[3] Id. at p. 11 (Exhibit 2 of Respondents [petitioners] Position Paper).

[4] Id. at p. 33 (Annex C to Complainants [respondent] Position Paper).

[5] (2) 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, serious, dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be provided at cost to the employer until such time he is declared fit and the degree of his disability has been established by the company-designated physician.

[6] Id. at pp. 9-10.

[7] CA *rollo*, pp. 25-31.

[8] Id. at 237-238.

[9] Id. at p. 239.

[10] *Valdez vs. National Labor Relations Commission*, G.R. No. 125028, February 9, 1998, 286 SCRA 87, 94.

[11] *St. Michael Academy vs. National Labor Relations Commission*, G.R. No. 119512, July 13, 1998, 354 Phil. 491.

[12] NLRC records, p. 41 (Annex E to Complainants [respondent] Position Paper).