691 Phil. 521

SECOND DIVISION

[G.R. No. 193679, July 18, 2012]

C.F. SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINES AND NORWEGIAN SUN, AND/OR ARTURO ROCHA, PETITIONERS, VS. JOEL D. TAOK, RESPONDENT.

D E C I S I O N

REYES, J.:

This is a petition for review on *certiorari* assailing the Decision[1] dated May 25, 2010 and Resolution[2] dated September 8, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 103728 for being contrary to law and jurisprudence.

The Facts

Petitioner C.F. Sharp Crew Management, Inc. (C.F. Sharp) is a domestic corporation engaged in the recruitment and placement of Filipino seafarers abroad. Petitioner Norwegian Cruise Line, Ltd. (Norwegian Cruise), C.F. Sharp's principal, is a foreign shipping company, which owned and operated the vessel M/V Norwegian Sun. C.F. Sharp, on Norwegian Cruise's behalf, entered into a ten (10)-month employment contract with respondent Joel D. Taok (Taok) where the latter was engaged as cook on board M/V Norwegian Sun with a monthly salary of US$396.00. Deemed written in their contract is the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), which was issued pursuant to Department Order No. 4 of the Department of Labor and Employment and POEA Memorandum Circular No. 9, both series of 2000. Taok boarded the vessel on January 8, 2006.[3]

On July 25, 2006, Taok complained of pain in his left parasternal area, dizziness, difficulty in breathing and shortness of breath prompting the ship physician to bring him to Prince Rupert Regional Hospital in Canada for consultation. Taok was confined until July 29, 2006 and his attending physician, Dr. Johann Brocker (Dr. Brocker), diagnosed him with atrial fibrillation and was asked to take an anti-coagulant and anti-arrhythmic drug for four (4) weeks. He was advised not to report for work until such time he has undergone DC cardioversion, echocardiography and exercise stress test. Dr. Brocker projected that Taok may resume his ordinary duties within six (6) to eight (8) weeks.[4] On August 5, 2006, Taok was repatriated to the Philippines for further treatment.

On August 7, 2006, upon his arrival, Taok went to Sachly International Health Partners, Inc. (Sachly), a company-designated clinic, and the physician who attended to his case, Dr. Susannah Ong-Salvador, recommended the conduct of several tests while

considering the possibility of atrial fibrillation.[5]

On September 18, 2006, Taok was once again examined at Sachly and his attending physicians, including a cardiologist, diagnosed him with "cardiomyopathy, ischemic vs. dilated (idiopathic); S/P coronary angiography." Taok was advised to regularly monitor his Protime and INR and to continue taking his medications. He was asked to return on October 18, 2006 for re-evaluation.[6]

Taok did not subject himself to further examination. Instead, he filed on September 19, 2006 a complaint for total and permanent disability benefits, which was docketed as NLRC NCR OFW Case No. (L) 06-0902902-00 and raffled to Labor Arbiter Elias H. Salinas (LA Salinas).

In a Decision[7] dated March 7, 2007, the dispositive portion of which is quoted below, LA Salinas dismissed Taok's claim for total and permanent disability.

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for permanent disability benefits for lack of merit. Respondents C.F. Sharp Crew Management, Inc. and Norwegian Cruise Line, Ltd. are however ordered to jointly and severally pay [Taok] the peso equivalent at the time of actual payment of the sum of US$1,584.00 as sickness wages plus the amount of ten percent thereof as attorney's fee.
>
> All other claims are ordered dismissed.
>
> SO ORDERED.[8]

LA Salinas ruled that Taok had no cause of action for total and permanent disability at the time he filed his complaint:

> Under the Amended POEA Standard Employment Contract, disability benefits are granted to a seafarer when he suffers a work-related illness and/or injury while working on board the vessel and such illness or injury renders him disabled. This is extant from Section 20(B) of the POEA Standard Employment Contract which is quoted hereunder:
>
> > *"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 xxx xxx xxx"*
>
> Under the Amended POEA Contract, it is essential that the following

requirements are met in order for a seafarer to be entitled to disability benefits:

> a. the seafarer suffers an illness or injury during his employment;
> b. that the illness [or] injury is proven to be work- related;
> c. that the seafarer is declared disabled because of the illness or injury;
> d. that the disability of the seafarer is assessed by the company doctor.

As borne out by the records, [Taok] filed the present claim for disability benefits on September 19, 2006. On said date, he was still undergoing treatment with the company-designated doctor. More importantly, there was still no assessment or declaration that the seafarer is disabled on said date. Hence, there was still no finding of disability on the part of [Taok].

It is therefore clear that [Taok] has no cause of action at the time that he instituted the present complaint. He was still undergoing treatment with the company-designated physician and there exists no medical finding that he was disabled. The allegation that "[Taok] feels that he is already unfit for sea duty as his condition is rapidly deteriorating" is not sufficient to give him a cause of action to lodge a complaint for disability benefits.[9]

LA Salinas also ruled that Taok failed to prove that his illness is work-related:

Under the Amended POEA Contract, the important requirement of work-relatedness was incorporated. The incorporation of the work-related provision has made essential the causal connection between a seafarer's work and the illness upon which the claim for disability is predicated upon.

In the case at bar, atrial fibrillation is not work-related since it is not an occupational disease under the Amended POEA Contract. Likewise, [Taok] failed to introduce credible evidence to show that his illness is work-related. It should be emphasized that it is [Taok] who has the burden of evidence to prove that the illness for which he anchors his present claim for disability benefits is work-related. As held in the case of Rosario vs. Denklav, G.R. No. 166906, March 16, 2005:

> "The burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability. Here, petitioner failed to discharge this burden."

In the present case, [Taok] has not presented any evidence to prove that his

> illness is work-related. Aside from his bare allegations that his illness is work-related, [Taok] miserably failed to introduce evidence to support such an allegation.
>
> Thus, in the absence of substantial evidence, working conditions cannot be presumed to have increased the risk of contracting the disease, (Rivera v. Wallem, G.R. No. 160315, November 11, 2005).[10]

Despite the unavailability of total and permanent disability benefits, LA Salinas ruled that Taok is entitled to sickness benefits. Specifically:

> However, with respect to [Taok's] claim for sickness wages, there is no evidence on record that the same had been duly paid by the [petitioners]. It should be stressed that parties have not disputed that [Taok] was repatriated for medical reasons. Though there is no proof that [Taok's] ailment is work-related that would have entitled him to the payment of disability benefits, the liability of the [petitioners] for the payment of [Taok's] sickness wages subsist pursuant to the provision of paragraph 3, B of Section 20 of the Standard Contract for Filipino Seafarers, to wit:
>
> > *"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 the period exceed one hundred twenty (120) days."*
>
> Thus, it stands to reason that [Taok] should be paid his sickness wages equivalent to his four months salary in the amount of US$1,584.00.[11]

Taok appealed to the National Labor Relations Commission (NLRC) and presented two (2) medical certificates to support his claim for total and permanent disability benefits. The medical certificate dated December 4, 2006, which was issued by Dr. Francis Marie A. Purino, stated that Taok was suffering from cardiomyopathy and moderately severe systolic dysfunction.[12] The medical certificate dated June 13, 2007, which was issued by Dr. Efren R. Vicaldo (Dr. Vicaldo), stated that Taok manifested signs compatible with those of atrial fibrillation and declared him unfit for sea duty. Dr. Vicaldo declared that Taok's illness is work-related.[13]

In a Resolution[14] dated November 19, 2007, the NLRC affirmed the dismissal of Taok's complaint:

Upon the other hand, before the seafarer may be entitled to disability compensation, the following conditions must be sufficiently established by the seafarer like [Taok]:

> "1. That the illness/injury was suffered during the term of employment;
> 2. That the illness/injury is work-related;
> 3. That the seafarer report to the company-designated physician for a post[-]employment medical examination and evaluation within three (3) working days from the time of his return; AND
> 4. That any disability should be assessed by the company-designated physician on the basis of the Schedule of Disability Grades as provided under the POEA-SEC."

A careful scrutiny of the records, however, reveals that [Taok] failed to establish or satisfy all the foregoing requirements. While his illness manifested during the term of his employment and he reported to the company-designated physician for post[-]employment medical examination within the required period, there is no showing that his illness is work-related and that as a consequence of such work-related illness, he is suffering from a disability assessed by a company[-] designated physician on the basis of the Schedule of Disability Grades specified under the POEA-SEC. In fact, as aptly observed by the Labor Arbiter[,] when [Taok] instituted his complaint for disability benefits barely a month after his repatriation, he was still undergoing treatment and evaluation by the company-designated physician. Thus, there was still no finding as to whether or not his ailment is work-related and whether or not he is suffering from any disability. x x x[15]

Taok moved for reconsideration but this was denied by the NLRC in a Resolution[16] dated March 18, 2008.

Taok, thus, filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, alleging that the assailed issuances of the NLRC were attended with grave abuse of discretion. The CA, in its Decision[17] dated May 25, 2010 agreed with Taok and reversed the findings of the NLRC:

> **WHEREFORE**, premises considered, the assailed Decision of the NLRC in NLRC NCR CA No. 052971-07 is hereby **REVERSED** and **SET ASIDE**. Private respondents C.F. SHARP CREW MANAGEMENT, INC., ARTURO ROCHA, NORWEGIAN CRUISE LINE and NORWEGIAN SUN, are **ORDERED** to pay jointly and severally the amount of **US$60,000.00** as permanent and total disability benefits of [Taok] and **US$1,584.00** as sickness wages plus the amount of **ten (10) percent** thereof as attorney's fee.
>
> SO ORDERED.[18]

In holding that petitioners are liable for total and permanent disability benefits, the CA ruled that: (a) Taok's illness is compensable under Section 32-A of POEA-SEC; and (b) since Taok was asymptomatic prior to boarding and he manifested signs of his illnesses while under the petitioners' employ, the causal relationship between his work and his illness is presumed pursuant to paragraph 11(c) of Section 32-A of POEA-SEC and the petitioners failed to prove the contrary:

> "Under the Labor Code, as amended, the law applicable to the case at bar, in order for the employee to be entitled to sickness benefits, the sickness resulting therefrom must be or must have resulted from either (a) any illness definitely accepted as an occupational disease listed by the Commission, or (b) any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions." In other words, "for a sickness and the resulting disability to be compensable, the said sickness must be an occupational disease listed under Sec. 32 of POEA Memorandum Circular No. 09, S-2000, otherwise, the claimant or employee concerned must prove that the risk of contracting the disease is increased by the working condition."
>
> x x x x
>
> [Taok's] illness was characterized as "*cardiomyopathy, ischemic vs. dilated (idiopathic); S/P coronary angiography"* or dilated myopathy which falls under the classification "cardiovascular diseases" under Sec. 32-A of Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 09, S-2000.
>
> Likewise, Sec. 32-A of POEA Memorandum Circular No. 09, S-2000 provides the following conditions in order for the cardiovascular disease to be considered as compensable occupational disease:
>
> > "a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work.
> > b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty[-]four (24) hours by the clinical signs of a cardiac insult to constitute causal relationship.
> > c) If a person who was apparently asymptomatic before subjecting himself to strain of work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship."
>
> x x x x

> Indisputably, cardiovascular diseases, which, as herein above-stated, include atherosclerotic heart disease, atrial fibrillation, cardiac arrhythmia, are listed as compensable occupational diseases under Sec. 32-A Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 09, S-2000, hence, no further proof of causal relation between the disease and claimant's work is necessary.[19] (Citation omitted)

The CA found the evidence submitted by Taok sufficient to establish a causal connection between his illness and his work. According to the CA, it is not necessary that Taok prove with certainty that it was his work that caused his illness. As he displayed no signs of having any cardiovascular disease prior to being employed, it would suffice that there was evidence that he manifested the symptoms of his medical condition during his employment to show the probability of a causal relationship. The petitioners failed to demonstrate that Taok's consumption of sixty (60) cigarette sticks per day for twenty (20) years and regular alcohol intake were the proximate causes. Below are the relevant portions of the CA's decision:

> Contrary to private respondents' claim, [Taok's] strenuous work is the proximate cause of his hypertensive cardiovascular disease. Private respondents' assertion that subject illness was developed by [Taok's] consumption of sixty (60) sticks of cigarettes a day for 20 years and drinking of alcohol deserves scant consideration. On the contrary, Dr. Johann Brocker of Prince Rupert Internal Medicine indicated in his medical findings that [Taok] is a non-smoker and had no recent excessive alcohol intake. Secondly, private respondents' designated physician declared [Taok] ill and unfit in their medical progress report on 7 August [2006] and 18 September 2006, respectively, that they recommended that [Taok] should continue with his medications and should be monitored weekly.[20] (Citation omitted)

Petitioners moved for reconsideration but this was denied by the CA in a Resolution[21] dated September 8, 2010.

Before this Court, petitioners are principally contending that the CA has no basis in awarding Taok with total and permanent disability benefits and sickness wages. It is the company-designated physician who should determine the disability grading or fitness to work of seafarers and such determination was yet to be made at the time Taok filed his complaint.

Petitioners claim that the CA's issuance of a writ of *certiorari* to reverse and set aside the NLRC's Resolutions dated November 19, 2007 and March 18, 2008 is erroneous as: (a) Taok's illnesses are not compensable; (b) assuming the contrary, Taok failed to prove that it was his working conditions that caused his ailments or that they aggravated the risk of contracting them; (c) contrary to Taok's claim that it was his duties as cook that engendered his medical condition, his excessive smoking for a considerable period of time and regular alcohol intake are the primary causes thereof;

and (d) while stress is one of the recognized causes of atrial fibrillation and cardiomyopathy, his duties as cook are definitely not strenuous. Petitioners claim that the CA had no basis for stating that evidence of a causal relationship between a seafarer's illness and his work is presumed as Section 32-A of the POEA-SEC requires proof of work- relatedness.

Petitioners also claim that assuming as true that Taok had been rendered unfit for sea duty as stated in the medical certificate issued by Dr. Vicaldo in June 13, 2007, it was because of his failure to return for a follow- up check-up on October 18, 2006 for further examination. This falls short of the diligence required given the circumstances and this bars him from claiming disability benefits.[22]

With respect to the award of sickness wages, petitioners allege that they had already paid Taok the said benefit in an amount corresponding to the period from August 6, 2006 to September 31, 2006.[23]

Our Ruling

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings. The relevant legal provisions are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation (AREC). The relevant contracts are the POEASEC, the collective bargaining agreement (CBA), if any, and the employment agreement between the seafarer and his employer.

Considering that the present dispute centers on Taok's claim for total and permanent disability and given the nature of his ailments, this Court makes reference to the definition of total and permanent disability under Article 192(c)(1) of the Labor Code:

> (c) The following disabilities shall be deemed total and permanent:
>
> > (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules; x x x x

This Court also deems it necessary to cite Section 2(a), Rule X of the AREC for being the rule referred to in Article 192(c)(1) of the Labor Code:

> Sec. 2. 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 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 any time 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.

On the other hand, Paragraphs 1, 2, 3, 5 and 6 of Section 20-B of the POEA-SEC enumerate the duties of an employer to his employee who suffers work-related diseases or injuries during the term of their employment contract. To quote:

> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.
>
> 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 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.
>
> 5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation, or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.
>
> 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 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.

This Court likewise takes note of the Paragraph 11 of Section 32-A of the

> POEA-SEC quoted in the assailed decision of the CA, which enumerates the three (3) conditions for a cardiovascular disease to be considered compensable. This is in view of the CA's conclusion that Taok complied with the third condition and that his ailments are cardiovascular in nature.

This Court observed that the CA's appreciation of the case is different from that of the NLRC and that of LA Salinas. Particularly, the CA deemed it appropriate to award total and permanent disability benefits to Taok because atrial fibrillation and cardiomyopathy are cardiovascular diseases and the evidence on record sufficiently proved the existence of one of the conditions stated in Paragraph 11, Section 32-A of the POEA-SEC. The CA stressed that under this particular condition, Taok's illnesses are presumed to be work-related based on the undisputed fact that Taok manifested the symptoms while he was in the performance of his duties.

On the other hand, while the labor tribunals resolved the issue of whether Taok's illnesses are compensable under the provisions of the POEA-SEC, it is apparent that the dismissal of Taok's complaint is primarily based on its supposed lack of a cause of action. They held that the duty to pay total and permanent disability benefits will not arise in the absence of a finding of disability by the company-designated physician and Taok's opinion that his medical condition had rendered him unfit for sea duty is not the kind of assessment contemplated and acceptable under the POEA-SEC.

The CA did not rule on the issue of whether NLRC was correct in holding that the determination of the company-designated physician is necessary for a cause of action for total and permanent disability benefits to arise. As far as the CA is concerned, Taok acquired a cause of action for total and permanent disability benefits when he became symptomatic while on sea duty, subsequently diagnosed with atrial fibrillation and cardiomyopathy by the company-designated physician, then repatriated and under treatment by the company-designated physician. That there was no declaration by the company-designated physician that Taok is totally and permanently disabled is inconsequential.

Taok is not entitled to total and permanent disability benefits.

This Court finds the CA to have committed a serious error in this regard. The NLRC and LA Salinas did not commit grave abuse of discretion in dismissing Taok's complaint that would warrant the issuance of a writ of *certiorari.*

The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive

duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[24]

In this case, Taok failed to demonstrate that the NLRC's dismissal of his complaint was attended with grave abuse of discretion or that the NLRC had no jurisdiction to order the same. On the contrary, the dismissal was warranted since at the time Taok filed his complaint against the petitioners, he had no cause of action against them.

When Taok filed his complaint on September 19, 2006, the 120-day period for him to be considered in legal contemplation as totally and permanently disabled under Article 192(c)(1) of the Labor Code had not yet lapsed. It was on July 27, 2006 that he was brought to Prince Rupert Medical Hospital for medical attention. If this would be considered as his first day of disability pursuant to Section 2(a), Rule X of the AREC or the day he signed-off from the vessel based on Paragraph 3, Section 20-B of the POEA-SEC, only 55 days had elapsed.

The importance of this 120-day period cannot be overemphasized that the CA's failure to consider and apply it in the disposition of this case strikes this Court as absurd. In *Vergara v. Hammonia Maritime Services, Inc.*,[25] this Court discussed the significance of the 120-day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability.

It is also in *Vergara* that this Court addressed the apparent conflict between Paragraph 3, Section 20 of the POEA-SEC on the one hand and Article 192(c)(1) of the Labor Code and Section 2, Rule X of the AREC. While it may appear under Paragraph 3, Section 20 of the POEA-SEC and Article 192(c)(1) of the Labor Code that the 120-day period is non- extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with Section 2, Rule X of the AREC indicates otherwise. That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days. Within such period, the seafarer is entitled to sickness wages. In *Vergara*, this Court stated:

> As these provisions operate, 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 Standard Employment Contract and by applicable Philippine laws. If the 120 days 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 to a maximum of

> 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course be declared fit to work at any time such declaration is justified by his medical condition.[26] (Citations omitted)

Based on this Court's pronouncements in Vergara, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

As the facts of this case show, Taok filed a complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the petitioners were still attempting to address his medical condition which the law considers as temporary; and while the company-designated doctors were still in the process of determining whether he is permanently disabled or still capable of performing his usual sea duties.

None of the enumerated instances when an action for total and permanent disability benefits may be instituted is present. As previously stated, the 120-day period had not yet lapsed and the company-designated physician has not yet made any declaration as to his fitness or disability. Thus, in legal contemplation, Taok was still considered to be totally yet temporarily disabled at the time he filed the complaint. Being in a state of temporary total disability, Taok cannot claim total and permanent disability benefits as he is only entitled to: (a) sickness wages under Section 20-B(3) of the POEA-SEC; (b) repatriation with the employer shouldering the full costs thereof under Section 20-B(5); and (c) medical treatment including board and lodging with the full costs thereof borne by the employer. Taok cannot be considered as having acquired a cause of action for

total and permanent disability benefits.

Consequently, any further discussion as to whether Taok's ailments are compensable or whether his alleged disability is partial and permanent or total and permanent would be a mere surplusage. The medical certificates Taok presented to prove that he is totally and permanently disabled are of no use and will not give him that cause of action that he sorely lacked at the time he filed his complaint. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable. Under the same provision, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings. It is patent from the records that Taok submitted these medical certificates during the pendency of his appeal before the NLRC. More importantly, Taok prevented the company- designated physician from determining his fitness or unfitness for sea duty when he did not return on October 18, 2006 for re-evaluation. Thus, Taok's attempt to convince this Court to put weight on the findings of his doctors of-choice will not prosper given his failure to comply with the procedure prescribed by the POEA-SEC.

Taok is not entitled to sickness wages from the period after he filed a complaint for total and permanent disability benefits.

As provided under Paragraph 3, Section 20-B of the POEA-SEC, a seafarer is entitled to sickness wages during the period he is deemed to be temporarily and totally disabled. Without need for further extrapolation, the objective of the law in providing for the payment of sickness wages is to aid the seafarer while his disability prevents him from performing his usual duties.

As discussed above, this condition of temporary and total disability may last for a period of 120 to 240 days depending on the need for further medical treatment. It bears emphasis, however, that the seafarer is not automatically entitled to 120 to 240 days worth of sickness wages. If the company-designated physician determines that the seafarer is already fit for sea duty, then, the employer's obligation to pay sickness wages ceases and he is entitled to reinstatement to his former position. On the other hand, if the company-designated physician declares that the seafarer is already permanently disabled, the employer's obligation to pay sickness wages likewise ceases as the obligation to pay the corresponding disability benefits.

The lower tribunals unanimously ruled that Taok is entitled to sickness allowance in an amount equivalent to his wages for 120 days. This, however, is erroneous. They should have not lost sight of the fact that Taok had taken a position, albeit erroneous, that he was no longer temporarily disabled by filing a complaint for total and permanent disability benefits. Alternatively, the claim that petitioners should not be paying him sickness wages but the benefits corresponding to total and permanent disability is necessarily implied from Taok's choice of remedy and the time within which he made that choice: while the company-designated physician was still in the process of determining his fitness or unfitness for sea duty and within the 120-day period. Apart

11-om considering Taok as having abandoned his claim for sickness wages for the period after he filed the subject complaint, there is an inherent inconsistency between Taok's claim for total and permanent disability benefits and sickness wages for the period that he claimed to be total and permanently disabled.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 25, 2010 and Resolution dated September 8, 2010 of the Court of Appeals in CA-G.R. SP No. 103728 are hereby **REVERSED** and **SET ASIDE** Joel D. Taok's complaint docketed as NLRC NCR OFW Case No. (L) 06-09-02902-00 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Samuel H. Gaerlan, concurring; *rollo*, pp. 72-80.

[2] Id. at 108-100.

[3] Id. at 34.

[4] Id. at 134-136.

[5] Id. at 73, 137-139.

[6] Id. at 140.

[7] Id. at 112-120.

[8] Id. at 119-120.

[9] Id. at 115-116.

[10] Id. at 117-118.

[11] Id. at 119.

[12] Id. at 143.

[13] Id. at 142.

[14] Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring; id. at 122-130.

[15] Id. at 126-127.

[16] Id. at 132-133.

[17] Id. at 72-80.

[18] Id. at 79.

[19] Id. at 76-78.

[20] Id. at 78.

[21] Id. at 108-109.

[22] Id. at 55-58.

[23] Id. at 97-100, 144-145.

[24] *Julie's Franchise Corporation v. Ruiz,* G.R. No. 180988, August 28, 2009, 597 SCRA 463, 471, citing *Vergara v. Ombudsman,* G.R. No. 174567, March 12, 2009, 580 SCRA 693.

[25] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[26] Id. at 628.
