711 Phil. 614

SECOND DIVISION

[G.R. No. 191903, June 19, 2013]

MAGSAYSAY MARITIME CORPORATION AND/OR WESTFAL-LARSEN AND CO., A/S, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION, AND WILSON G. CAPOY, RESPONDENTS.

D E C I S I O N

BRION, J.:

We resolve the present petition for review on *certiorari*[1] assailing the decision[2] dated December 18, 2009 and the resolution[3] dated April l9, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 104859.

The Factual Antecedents

The petitioner manning agency, Magsaysay Maritime Corporation, in behalf of its foreign principal, co-petitioner Westfal-Larsen and Co., A/S, hired respondent Wilson G. Capoy as Fitter on board the vessel *M/S Star Geiranger* for nine months, with a monthly salary of US$666.00.[4]

Sometime in July 2005, while he was at work, Capoy allegedly fell down a ladder from a height of about two meters. He claimed that he immediatetly felt numbness in his fingertips that gradually extended to his hands and elbows. Despite the incident, he continued performing his work. On August 15, 2005, while climbing a flight of stairs, he again fell from a height of one meter. He claimed that he could not tightly hold to the railings of the stairs due to the numbness of his fingers and that he felt electricity-like sensation in his body, legs and hands.

After being first examined by Dr. Dietmar E. Raudzus in Vancouver, Canada, Capoy was referred to Dr. Charles Tai, also in Vancouver. Dr. Tai assessed Capoy to be suffering from C-spine disease with bilateral sensory symptoms and upper neuron disorder. Dr. Tai expressed concern that Capoy had a central cord problem requiring an urgent magnetic resonance imaging *(MRI)*. He found Capoy unfit to work and advised him not to return to work until the examination was complete.[5] Subsequently, Capoy was referred to Dr. J. Clement of the CML Health Care, still in Vancouver, for further examination. Dr. Clement's "impression"[6] of Capoy's condition substantially confirmed Dr. Tai's assessment.

On August 31, 2005, Capoy was medically repatriated. The following day, he reported to the company-designated physician, Dr. Sussanah Ong-Salvador of the Sachly

International Health Partners, Inc. (SHIP). Dr. Salvador required him to undergo physical and neurological examinations.[7] Dr. Salvador initially diagnosed Capoy's condition as "spinal stenosis, cervical."[8] On September 16, 2005, Capoy underwent an MRI. On September 20, 2005, Dr. Salvador reported that the orthopedic surgeon who examined the MRI results recommended that Capoy undergo a multilevel laminectomy, C3 to C6 spine, to relieve him of his pain.[9] The estimated cost of the surgical procedure was P280,000.00, which the petitioners later on shouldered.

Capoy was hesitant to submit to a laminectomy, suggesting that he would just undergo physiotherapy, but he eventually agreed to the procedure which took place on October 24, 2005. His post-surgery condition was diagnosed as Herniated Nucleous Pulpusos C3-C4; Chronic bilateral C6 Radiculopathies; S/P Laminoplasty of the C3-C5. He was seen and evaluated by SHIP'S specialists and was cleared for discharge. He remained under the care of the specialists for therapy sessions[10] which continued until March 17, 2006. He was to return on April 6, 2006 for re-evaluation by the orthopedic surgeon.[11]

In the interim (*i.e.*, on January 19, 2006 or while still undergoing treatment by the company doctors), Capoy filed a complaint for disability benefits, maintenance allowance, damages and attorney's fees against the petitioners.[12] He argued that after the lapse of 120 days without being declared fit to work, he was entitled to permanent total disability benefits in accordance with the collective bargaining agreement (CBA) his union, the Associated Marine Officers and Seamen's Union of the Philippines *(AMOSUP)*, had with his employer.

Capoy presented in compulsory arbitration two documents to support his claim. He first introduced a one-page paper, purportedly a part of the AMOSUP/TCCC Collective Agreement for 2004-2005.[13] Under this document, the compensation for a 100% degree of disability for "Ratings" was US$75,000.00. Thereafter, Capoy presented a second document, supposedly the CBA for January 1, 2004 to December 31, 2005 between the Norwegian Shipowners Association (*NSA*), on the one hand, and the AMOSUP and the Norwegian Seamen's Union (*NSU*), on the other hand.[14] It provides for a "Ratings" compensation of $70,000.00 for a l00% degree of disability.

The petitioners responded to the complaint by denying liability. They argued that Capoy was not entitled to permanent disability benefits as his claim was premature since no disability assessment has yet been made by the company-designated physician. The petitioners further argued that the injury which caused Capoy's disability was self-inflicted due to his failure to follow the recommended medical treatment. Additionally, they disputed Capoy's claim that he suffered a fall twice on board the vessel, in July and August 2005, pointing out that the vessel's logbook had no record of the incidents. They presented the affidavit of the vessel M/S *Star Geiranger's* Master, Tomas Littaua, on the absence of reports regarding the incidents.[15]

Before the complaint could be resolved (or on April 28, 2006), Capoy had himself examined by a physician of his choice, Dr. Raul F. Sabado, who declared him "[u]nfit to

any kind of work permanently."[16]

The Compulsory Arbitration Rulings

On June 26, 2006, Labor Arbiter (*LA*) Teresista D. Castillon-Lora rendered a decision finding merit in the complaint.[17] She awarded Capoy permanent total disability benefits of US$70,000.00, pursuant to the NSA/AMOSUP-NSU CBA. Citing *Crystal Shipping, Inc. v. Natividad*,[18] LA Lora held that Capoy suffered from permanent total disability as the medical records showed that he was unable to perform work or earn a living in the same kind of work for more than 120 days from his repatriation.

The petitioners appealed. In its decision of March 28, 2008,[19] the National Labor Relations Commission (*NLRC*) denied the appeal and affirmed with modification LA Lora's award by absolving Eduardo U. Menese, the President of the manning agency, from liability. The NLRC likewise denied the petitioners' motion for reconsideration,[20] prompting them to elevate the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

On December 18, 2009, the CA denied the petition for lack of merit and upheld the NLRC rulings.[21] It sustained the application by the labor authorities of the NSA/AMOSUP-NSU CBA for 2004-2005[22] as basis for Capoy's claim to disability benefits, in relation to Article 20(B) of the Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)*.[23] The CA pointed out that the petitioners failed to disprove the authenticity of the CBA.

The CA brushed aside the petitioners' contention that Capoy failed to show proof that his injury was work-connected. It stressed that according to jurisprudence, "probability and not the ultimate degree of certainty is the test of proof in compensation proceedings."[24] It thus declared that "Capoy's repatriation due to medical reasons raises no other logical conclusion but that, he was injured while on board the vessel."[25]

With respect to the degree of Capoy's disability, the CA took note of the compulsory arbitration finding that Capoy could not perform his work as a fitter for more than one hundred twenty (120) days — **l97** days to be exact — counted from the date of his last Medical Progress Report.[26] It added that Dr. Salvador, the company-designated physician, failed to assess Capoy's condition, by way of either a disability grading or a fit-to-work declaration.

The CA gave no credit to the petitioners' submission that Capoy is not entitled to disability benefits because he willfully and deliberately discontinued his medical treatment under the supervision of the company-designated physician. In any event, it emphasized that Capoy remained under Dr. Salvador's care until March 17, 2007 or for more than 120 days, as above mentioned. In this light, it concluded that there is merit in Capoy's claim for permanent total disability benefits. The petitioners moved for

reconsideration, but the CA denied the motion in its resolution of April 19, 2010. Hence, this petition.[27]

The Petition

The petitioners seek a reversal of the CA rulings under the following arguments:

1. The appellate court committed a serious error of law when it failed to consider that Capoy's abandonment of his medication and therapy with the company-designated physician is a criminal act or a willful or intentional breach of duty, resulting in an injury, incapacity or disability attributable to him. They submit that for this reason, they cannot be held liable under Section 20(D) of the POEA-SEC, which provides as follows:

> No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

The petitioners stress that despite Capoy's failure to faithfully comply with his physical therapy, his condition was improving. In fact, the company-designated physiatrist already cleared Capoy from a physiatrist standpoint;[28] Capoy could have already been considered fit to work had he not totally abandoned his medication and physical treatment.

2. The CA gravely erred in awarding Capoy permanent total disability benefits absent the company-designated physician's assessment of his disability. Section 20(B)(3) of the POEA-SEC recognizes only the disability grading provided by the company-designated physician. The petitioners contend that the absence of the company-designated physician's medical opinion on Capoy's case renders any subsequent medical findings unacceptable and without basis.

3. The CA gravely erred in applying the 120-day rule to justify the award of permanent total disability compensation to Capoy. The rule has already been modified in *Vergara v. Hammonia Maritime Services, Inc.*[29] where the Court held that the company doctor, overseeing a seafarer's treatment, is given a maximum of 240 days to assess the seafarer's disability or declare him fit to work. It is only after the lapse of the 240-day period and the company doctor fails to give a final assessment of the seafarer's medical condition may the seafarer be considered permanently and totally disabled.

4. The CA likewise gravely erred in applying the NSA/AMOSUP-NSU CBA in this case, despite the lack of substantial evidence on the occurrence of an accident on board the vessel. Their implied admission of the existence of the CBA cannot automatically be deemed admission of its application as there are rules to be applied before it is given

effect.

5. It was also grave error on the part of the CA to award Capoy attorney's fees because the petitioners are not guilty of fraud or bad faith in denying his claim as it was based on just, reasonable and valid grounds.

The Case for Capoy

In his Comment dated August 4, 2010,[30] Capoy prays that the petition be denied for lack of merit. He contends that the CA acted in accordance with law and applicable jurisprudence, and that it did not commit any patent error or grave abuse of discretion in affirming the NLRC decision, it being supported by substantial evidence. He insists that after 120 days from his repatriation that he was unable to work, he became entitled to permanent total disability compensation.

Capoy assails the petitioners' reliance on *Vergara* in denying his claim, contending that it is not *Vergara* but the CBA between the parties and the POEA-SEC that are applicable in his case. He argues that under the POEA-SEC, a seafarer in his situation shall be subjected to medical treatment, but for a period not to exceed 120 days, after which the seafarer shall be assessed by the company-designated physician as to whether he is fit to work or not. If the company doctor fails to make the assessment, he is considered to have suffered from permanent total disability.

The Court's Ruling

The issues

Based on the nature of this case — a Rule 45 review of a Rule 65 ruling of the CA — as well as the submissions of the parties, submitted for our resolution is the question of whether the CA correctly found no grave abuse of discretion in the NLRC's ruling and thus denied the company's petition. The question of fact the CA faced was whether Capoy sustained a work-related injury on board the vessel *M/S Star Geiranger*. The question of law involved, on the other hand was on the question of whether the resulting disability entitles him to permanent total disability benefits, assuming that he did indeed sustain a work-related injury.

We find that the CA properly found factual basis in the conclusion that Capoy's injury was work-related. However, it grossly misappreciated and misapplied the law in ruling on Capoy's entitlement to permanent total disability.

Is Capoy's injury work-related?

The records show that Capoy suffered an injury while at work on board the vessel *M/S Star Geiranger*, which injury resulted in his disability. While the petitioners argue that Capoy could not have fallen on deck twice to cause his injury, the evidence shows that Capoy had been examined by three doctors in Vancouver. Two of these doctors, Dr. Tai and Dr. Clement, reported that Capoy was suffering from C-spine injury.[31] The vessel *M/S Star Geiranger's* Master at the time, Rodolfo Casipe (not Tomas Littaua as the

petitioners claimed) confirmed Capoy's condition, even if only for the initial consultation and examination.[32]

Moreover, it is undisputed that Capoy was *medically repatriated* on August 31, 2005. He reported to Dr. Salvador, the company-designated physician, who subjected him to physical and neurological examinations. Dr. Salvador's initial diagnosis — "spinal stenosis, cervical" — confirmed the findings of Dr. Tai and Dr. Clement in Vancouver. Capoy was subsequently examined by an orthopedic surgeon. He also underwent an MRI and later, he went through surgery. These examinations, treatments and procedures duly established that Capoy suffered from a work-related injury while on board *M/S Star Geiranger*.

Is Capoy entitled to permanent total disability benefits?

Although Capoy sustained a work-related injury, the CA did not properly appreciate that Capoy is not entitled to permanent total disability compensation based on the applicable contract, rules and laws. The CA failed to appreciate the grave abuse of discretion that the NLRC committed, as discussed below.

First. There was no assessment of the extent of Capoy's disability by the company-designated physician, as required by Section 20(B)(3) of the POEA-SEC, which provides:

> 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.
>
> x x x x
>
> 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. [underscore ours]

Considering that Capoy was still undergoing medical treatment, particularly through therapy sessions under the care of the company-designated specialists, Dr. Salvador (the lead company doctor) cannot be faulted for not issuing an assessment of Capoy's disability or fitness for work at that time. In fact, as Dr. Salvador's progress report of March 17, 2006[33] showed that Capoy was expected to return on April 6, 2006 for re-evaluation by the orthopedic surgeon. This aspect of the POEA-SEC and Capoy's compliance totally escaped the labor tribunals and the CA.

Second. The conclusions of the LA, the NLRC and the CA that Capoy is entitled to permanent total disability benefits because his disability lasted for more than 120 days,

without need for an assessment from Dr. Salvador, must be viewed in the context of the established facts and the applicable Philippine law. The law in this jurisdiction must be determined in the context of the disagreement on Capoy's claim between the foreign employer, represented by the manning agency, and Capoy whose employment relationship is governed by the POEA-SEC and supplemented by the parties' CBA. As explained in *Vergara*, under Section 31 of the POEA-SEC, in case of any unresolved dispute, claim or grievance arising out of or in connection with the contract, the matter shall be governed by Philippine laws, as well as international conventions, treaties and covenants where the Philippines is a signatory.[34]

This signifies that the terms agreed upon by the parties pursuant to the POEA-SEC are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance. Article 192(3) of the Labor Code which deals with the period of disability states that:

> 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**[.] [emphases ours]

The rule adverted to is Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which provides:

> 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 detemined by the System[.] [emphasis ours; underscore ours]

The above provisions must be read together with Section 20(B)(3) of the POEA-SEC which states as follows:

> 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.

The *Vergara* ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus -

> [T]he 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 up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[35] (italics supplied; citations omitted)

As applied to Capoy's situation based on the records, we cannot see how the award of permanent total disability compensation in his favor can be justified. As pointed out, Capoy reported to the company-designated physician, Dr. Salvador, the day after his repatriation on August 31, 2005. Dr. Salvador's initial diagnosis of Capoy's condition[36] confirmed the findings of the doctors who examined and treated Capoy in Vancouver. Thereafter, he went through specialized medical procedures — an MRI, as suggested by Dr. Tai of Vancouver, and a laminectomy, as recommended by the company orthopedic surgeon who examined the MRI results. **As part of his intensive treatment, he was subjected to continuous therapy sessions before and after his operation**.

The therapy sessions appeared to be yielding positive results. Dr. Salvador's progress report of January l2, 2006[37] showed that Capoy's vital signs were improving and that the orthopedic surgeon observed that he was responding well to therapy, as evidenced by the improved sensation of both his lower extremities. The surgeon recommended that Capoy continue the therapy sessions. But, for reasons known only to him, Capoy became non-compliant to therapy, as reported by the company doctor, which is why there was slow progress in his condition, although the repeat EMG-NCV procedure showed that his nerve injury was healing; thus, he was cleared from the physiatrist standpoint. **He failed to return on April 6, 2006 for re-evaluation by the orthopedic surgeon**.

As matters stood on March 17, 2006, when Dr. Salvador issued her last progress

report, 197 days from Capoy's repatriation on August 31, 2005, Capoy was legally under temporary total disability since the 240-day period under Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code had not yet lapsed. **The LA, the NLRC and the CA, therefore, grossly misappreciated the facts and the applicable law when they ruled that because Capoy was unable to perform his work as a fitter for more than 120 days, he became entitled to permanent total disability benefits.** The CA cited in support of its challenged ruling Dr. Salvador's failure to make a disabability assessment or a fit-to-work declaration for Capoy after 197 days from his repatriation. This is a misappreciation of the underlying reason for the absence of Dr. Salvador's assessment. There was no assessment yet because Capoy was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period provided under the above-cited rule. To reiterate, Capoy was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment.

We cannot, under these circumstances, blame the petitioners for claiming that Capoy abandoned his treatment. Worse, he could even be dealing with the company doctors in bad faith while he was still undergoing treatment. For instance, he never offered any explanation for his failure to report to the orthopedic surgeon. The reason for this could be that he was just going through the motions of undergoing treatment with the company doctors. This is supported by the fact that while he still had schedules with the company doctors and without waiting for Dr. Salvador's assessment of his condition, he filed a claim for permanent total disability benefits on January 19, 2006. [38] Even before his claim could be resolved, he had himself examined by Dr. Sabado who declared him "[u]nfit to any kind of work permanently."[39]

Dr. Sabado's declaration would not alter the fact that Capoy's claim for permanent total disability benefits was premature. **Considering that Capoy was still under treatment by the company doctors even after the lapse of 120 days but within the 240-day extended period allowed by the rules, he was under temporary total disability and entitled to temporary total disability benefits under the same rules.** Moreover, with respect to Capoy's failure to comply with the procedure under the POEA-SEC vis-a-vis Dr. Sabado's certification, we find the following Court pronouncement in *C.F. Sharp Crew Management, Inc. v. Taok*[40] most applicable, thus:

> 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 disablity 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.[41] (emphasis ours)

Very obviously, Capoy's case suffers from the same infirmities committed by Taok in the cited case, when he presented Dr. Sabado's certification to the LA without going through the procedure under the POEA-SEC. **Capoy, needless to say, prevented Dr. Salvador from determining his fitness or unfitness for sea duty when he did not return on April 6, 2006 for re-evaluation.**

For grossly misappreciating the facts, the clear import of the law and the rules, as well as recent jurisprudence on maritime compensation claims, the NLRC gravely abused its discretion in sustaining the award of permanent total disability benefits to Capoy. For upholding the NLRC ruling, the CA itself committed a reversible error of judgment.

In light of these considerations, Capoy's claim for permanent total disabilty benefits must necessarily fail. However, since it is undisputed that Capoy still needed medical treatment beyond the initial 120 days from his repatriation – it lasted for 197 days as found by the CA – he is entitled, under the rules,[42] to the income benefit for temporary total disability during the extended period or for one hundred ninety-seven (197) days. This benefit must be paid to him.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals awarding permanent total disability benefits to Wilson G. Capoy are **SET ASIDE**. The petitioners, Magsaysay Maritime Corporation and Westfal-Larsen and Co., A/S are **ORDERED**, jointly and severally, to pay Wilson G. Capoy income benefit for one hundred ninety-seven (197) days. The complaint is **DISMISSED**.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[1] *Rollo,* pp. 42-83; filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 13-34; penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

[3] Id. at 36-40.

[4] Id. at 137; Contract of Employment dated March 30, 2005.

[5] CA *rollo,* pp. 67-68.

[6] Id. at 70.

[7] Id. at 72.

[8] Ibid.

[9] *Rollo,* p. 143.

[10] Id. at 148.

[11] Id. at 150; Medical Progress Report.

[12] CA *rollo,* pp. 84-85.

[13] Id. at 187.

[14] Id. at 205-220.

[15] Id. at 193; Littaua's Affidavit.

[16] Id. at 185; Medical Certificate dated April 28, 2006.

[17] Id. at 221-243.

[18] 510 Phil. 332 (2005).

[19] CA Rollo, pp. 55-60.

[20] Id. at 61-62; Resolution dated June 10, 2008.

[21] *Supra* note 2

[22] *Supra* note 14.

[23] DOLE Department Order No. 4, series of 2000.

[24] NFD International Manning Agents, Inc. v. NLRC, 336 Phil. 466, 474 (l997).

[25] *Supra* note 2, at 16.

[26] CA *rollo*, p. 83.

[27] *Supra* note 3.

[28] *Supra* note 11.

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

[30] *Rollo,* pp. 154-166.

[31] *Supra* notes 5 and 6.

[32] *Rollo,* p. 138.

[33] *Supra* note 11.

[34] *Vergara v. Hammonia Maritime Services, Inc., supra* note 30, at 626-627.

[35] Id. at 628.

[36] *Supra* note 8.

[37] *Rollo,* p. 148

[38] *Supra* note 12.

[39] *Supra* note 16.

[40] G.R. No. 193679, July 18, 2012, 677 SCRA 296.

[41] Id. at 316-317.

[42] Rules and Regulations implementing Book IV of the Labor Code, Section 2, Rule X.

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