738 Phil. 824

SECOND DIVISION

[G.R. No. 203472, July 09, 2014]

MAGSAYSAY MARITIME CORPORATION, EDUARDO U. MANESE AND NORWEGIAN CRUISE LINE, PETITIONERS, VS. HENRY M. SIMBAJON, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve in this petition for review on *certiorari*[1] the challenge to the June 8, 2012 decision[2] and the September 11, 2012 resolution[3] (*assailed CA rulings*) of the Court of Appeals (*CA*) in CA-G.R. SP No. 118610. These assailed CA rulings annulled and set aside the August 31, 2010 decision[4] and the December 30, 2010 resolution[5] (*NLRC rulings*) of the National Labor Relations Commission (NLRC) in NLRC NCR LAC No. 10-000244-07 (NLRC NCR Case (M) 05-08-01988-00). The NLRC rulings in turn reversed and set aside the July 9, 2007 decision[6] of the labor arbiter (*LA*).

Factual Antecedents

On July 21, 2004, petitioner Norwegian Cruise Line (*NCL*) hired respondent Henry M. Simbajon as a cook on board its vessel, the Norwegian Star (Hotel), under a Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). Simbajon's employment contract was coursed through petitioner Magsaysay Maritime Corporation (*Magsaysay*), the authorized manning agent of NCL in the Philippines.[7] This was already the fourth time that NCL hired Simbajon through Magsaysay.[8]

Before hiring, Simbajon was required to undergo and pass the mandatory Pre-Employment Medical Examination (PEME).[9] Simbajon was asked in this examination to disclose all his existing and prior medical conditions. The query focused on 23 medical conditions, including diabetes. Simbajon confirmed that he had never been afflicted with this disease and that he had no family history of it.[10] His medical tests confirmed this claim and he was given a clean bill of health and declared "fit for employment" or "fit for sea service."[11]

On July 24, 2004, Simbajon boarded the Norwegian Star (Hotel) and joined its crew. Only **six days after embarkation**, he complained of increased urination and having a constant feeling of thirst. He consulted the doctor on board and was initially diagnosed with possible *Diabetes mellitus* Type II (*DM Type II*). Subsequently, the doctor referred him to an on-shore physician while the vessel was docked at Alaska. The on-shore physician confirmed that Simbajon was indeed suffering from DM Type II. On August

15, 2004, he was repatriated for further medical treatment.[12]

On August 18, 2004, Simbajon consulted an endocrinologist designated by Magsaysay from the Alegre Medical Clinic. The series of medical tests performed on him confirmed that Simbajon had DM Type II. After a prescription for insulin treatments and oral medication, he was advised to return for a follow-up check-up.[13]

On October 4, 2004, Simbajon again consulted the company-designated doctor and his illness was found to be **asymptomatic**. Nonetheless, the attending physician advised him to continue with his medication.

A month after, or on November 4, 2004, Simbajon reported again to the Alegre Medical Clinic. His laboratory results this time disclosed that his glucohemoglobin, serum glutamic pyruvic transaminase and serum glutamic-oxaloacetic transaminase levels were normal. Despite these findings, the doctors still advised him to continue with his daily insulin regimen.[14]

On two more dates, November 26, 2004 and January 3, 2005, Simbajon was again evaluated to be asymptomatic for DM Type II; thus the doctors reiterated their recommendation that he continue his oral medications. Simbajon had another medical check-up on January 11, 2005 and on this date, his fasting blood sugar and hemoglobin levels were already found to be normal. Subsequently, on February 2, 2005, he underwent another medical evaluation and his tests revealed normal results. Because of these positive developments, the company-designated physician opined on the same date that Simbajon's **DM Type II was already under control**. The physician also declared him "**fit to work**".[15]

Simbajon was paid his illness allowance from the time of his disembarkation on August 15, 2004 until February 2, 2005, the date when he was declared "fit to work" by the company-designated physician.[16]

Despite the "fit to work" declaration of Magsaysay's designated physician, Simbajon was not rehired by petitioners.[17] Dissatisfied with the company-designated physician's medical opinion, Simbajon sought a second opinion from Dr. Efren R. Vicaldo, an internal medicine doctor from the Philippine Heart Center. After conducting a series of tests, Dr. Vicaldo gave the following diagnosis on May 6, 2005:

> Diabetes mellitus II
> Diabetic retinopathy, mild
> Impediment Grade VI (50.00%)[18]

Aside from giving a Grade VI (50%) rating to Simbajon's resulting disability, Dr. Vicaldo opined that Simbajon's DM Type II was "*work-aggravated/related*" and that "*he is now **unfit to resume work as a seaman in any capacity***".[19] Based on this medical assessment, on August 16, 2005, Simbajon filed with the LA a complaint for disability

benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees, against the petitioners.[20]

The Labor Arbitration Rulings

Before the LA, the petitioners argued that there was no basis for Simbajon's claim for disability benefits under the POEA-SEC because his illness was not work-related and did not arise during the term of his contract with NCL.[21] Simbajon was merely on his sixth day on board when he felt the symptoms for DM Type II. To the petitioners, this circumstance only means that Simbajon did not acquire his illness during the term of his contract; he already had a pre-existing disorder at the time of his embarkation.[22]

Moreover, the petitioners asserted that *Diabetes mellitus* in general had been established under jurisprudence to be a disease that is not occupationally acquired.[23] Citing the cases of *De Jesus v. ECC*[24] and *Millora v. ECC*,[25] the petitioners claimed that Diabetes mellitus is a hereditary or developmental disorder that is not obtainable through exposure to harmful working conditions.[26]

On the other hand, Simbajon contended that his disease was work-related. Although he exhibited the symptoms for DM Type II merely six days after boarding, he had been under the employ of NCL during his previous three completed contracts. Hence, his disease actually developed during the period of these contracts.[27]

Simbajon also claimed entitlement to a Grade I (120%) impediment rating[28] notwithstanding the Grade VI (50%) rating given to his disability by Dr. Vicaldo. Citing *Crystal Shipping, Inc. v. Natividad,*[29] he argued that his inability to work as a result of his illness lasted for more than 120 days.

The LA ruled that Simbajon's disease is work-related and, therefore, compensable. It agreed with Simbajon that his work as a cook on board NCL's vessel was strenuous and stressful enough to trigger his affliction with DM Type II.[30] Since the disease took more than 120 days to be treated, it could already be characterized as a permanent and total disability, entitling him to a Grade I (120%) impediment rating.[31]

The petitioners appealed the LA's decision to the NLRC. The NLRC granted the appeal and found Simbajon's disease not to be work-related. It considered the period of six days from Simbajon's embarkation as an insufficient period of exposure to contract a disease. The NLRC also gave credence to the petitioners' assertion that *Diabetes mellitus* is essentially a hereditary, and not an occupational disease.[32]

Simbajon unsuccessfully moved for the reconsideration[33] of the NLRC's decision, prompting him to seek recourse with the CA via a petition for *certiorari* under Rule 65.[34]

The CA's Ruling

The CA reversed the NLRC's ruling and granted Simbajon's petition for *certiorari.*[35] For an illness or injury to be compensable, it is enough that reasonable proof of work-connection and not direct causal relation be proven by the claimant.[36] This was what Simbajon did.

Notwithstanding the findings of the company-designated physician that Simbajon was already "fit to work," the CA ruled that Simbajon must still be declared to have permanent and total disability. He was not able to perform his customary work for more than 120 days.

The CA subsequently denied the petitioners' motion for reconsideration, prompting them to come to this Court on a petition for review under Rule 45.

The Petition

The petitioners submit that the CA did not rule in accordance with the applicable law and jurisprudence when it found that: a) *Diabetes mellitus* is not always a familial or hereditary disease; and b) Simbajon is entitled (i) to permanent and total disability benefits since he was not able to work for more than 120 days, and (ii) to an award of attorney's fees.[37]

The petitioners question the CA's ruling that Simbajon's DM Type II was a work-related condition, aggravated by the supposedly stressful working conditions on board.[38] Simbajon's evidence is insufficient to establish the hostile working environment and emotional turmoil he underwent.[39] Six days are not enough for Simbajon to be exposed to the necessary factors for him to contract his disease.[40]

The petitioners further argue that under the POEA-SEC, a seafarer, who is unable to work for more than 120 days, is not automatically entitled to permanent and total disability compensation unless there is first a determination that an illness or injury is work-related.[41]

Lastly, the petitioners maintain that the award of attorney's fees should be deleted as there was no showing that Simbajon was compelled to litigate his claim because of bad faith on the petitioners' part.[42]

The Case for Simbajon

In his comment,[43] Simbajon prayed for the dismissal of the petition on the following grounds: a) the CA correctly held that his illness is work-related and/or aggravated, hence, compensable under the POEA-SEC; b) the CA correctly held that his disability is total and permanent; and c) he is entitled to an award of attorney's fees.[44]

Simbajon submits that he had no family history of *Diabetes mellitus* and that he only acquired this illness during the period that he worked for NCL as a cook.[45] He also

maintains that his diabetes is not entirely a hereditary disease as several studies have already shown that it can be caused or aggravated by stress.[46] According to him, his work entails the performance of strenuous physical activities, emotional stress of being away from his family, and exposure to varying temperatures and weather conditions. [47]

Simbajon also reiterates that an employee who is not able to work for more than 120 days because of his work-related illness should be considered suffering from a total and permanent disability, hence entitled to a Grade I (120%) rating under the POEA-SEC. [48]

Finally, Simbajon defends the award of attorney's fees as he was forced to litigate when petitioners refused to honor his disability claims.[49]

The Court's Ruling

We resolve to **GRANT** the petition.

Preliminary Procedural Consideration

As a rule, **only questions of law** may be raised in a Rule 45 petition.[50] A Rule 65 petition for *certiorari,* on the other hand, focuses on the **jurisdictional errors** the lower court or tribunal may have committed.[51]

The present petition is a Rule 45 petition reviewing a Rule 65 ruling of the CA. Our jurisdiction is thus limited to errors of law which the CA might have committed in its Rule 65 ruling. A question of law arises when there is doubt as to what the law is on a certain state of facts; we cannot rule on questions of fact, *i.e.,* on the truth or falsity of the facts alleged by the parties.[52]

"In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case, was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review under Rule 45, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: **did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case**?"[53]

We therefore contend with the following principal question: ***did the CA correctly rule that the NLRC committed grave abuse of discretion when it held that Simbajon is not entitled to disability benefits***?

Compensability of Simbajon's disease

"The employment of seafarers and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Such contracts have the force of law between the parties as long as its stipulations are not contrary to law, morals, public order or public policy."[54] By way of background, every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA-SEC as a condition *sine qua non* to the seafarer's deployment for overseas work.[55]

While the seafarers and their employers are governed by their mutual agreements, the POEA rules and regulations require that the POEA-SEC be integrated in every contract. This contains the standard terms and conditions of the seafarer's employment in foreign ocean-going vessels, [56] Under its Section 32-A, for an occupational disease and the resulting disability or death from it to be compensable, all of the following conditions must first be satisfied:

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4. There was no notorious negligence on the part of the seafarer.[57]

An examination of the surrounding facts and circumstances regarding Simbajon's sickness will show that the third condition from the above enumeration is absent in this case.

Simbajon started exhibiting the symptoms of DM Type II barely six days after embarkation. If his disease had been acquired because of his exposure to different kinds of work-related stress, **it is very unusual that it developed in a very short span of time.**

He claimed in his comment that as a seafarer, he had already finished three previous contracts with NCL. In effect, he argues that his exposure to the work-related risks had been long enough to trigger his DM Type II. Unfortunately, Simbajon failed to state the respective dates and durations of his three previous employment contracts with NCL. The absence of this evidence leaves the Court at a loss for supporting data on when he started working for NCL or if there had been long intervals in between his previous contracts to break their continuity. The records do not even disclose how long the interim period was in between his last and most present contract with NCL. To our mind, there is always the possibility that he acquired his disease at some other time when he was not on board and working in any of NCL's vessels.

To support his contention, Simbajon also pointed out that his PEME results cleared him

from pre-identified diseases including *Diabetes mellitus*. This is a point, however, that we have considered in other rulings. In *Nisda v. Sea Serve Maritime Agency,*[58] we noted that it is an accepted rule that **PEMEs are usually not exploratory in nature.** The tests conducted are not intended to be an in-depth and thorough examination of an applicant's medical condition. They merely determine whether the examinee is "fit to work" at sea or "fit for sea service"; **they do not describe the real state of health of an applicant.**[59]

Thus, Simbajon cannot rely on his PEME results alone to support his claim that his disease only developed after embarkation. This is particularly true since several points during his treatment, his DM Type II was found to be **asymptomatic**, *i.e, as symptomless or presenting no subjective evidence of disease*.[60] Thus, it is probable that Simbajon's disease was already pre-existing even before he boarded NCL's vessel; his diabetes was not detected because it was asymptomatic.

For failure to prove that his disease was contracted within his six days of service because of factors necessary to contract it, we cannot support Simbajon's assertion that his DM Type II was a work-related disease that should merit compensation from the petitioners.

Fit-to-work assessment of the company-designated physicians versus the unfit-to-work findings of Simbajon's physician

We now resolve the issue of the conflicting findings of the petitioners' designated physicians and Simbajon's own physician. The company-designated physicians have declared Simbajon as "fit to work" after 172 days of treatment from his disembarkation on August 15, 2004. On the other hand, Simbajon's chosen physician, Dr. Vicaldo, came out with the findings that Simbajon's illness had rendered him "unfit to resume work as a seaman in any capacity," with a Grade VI (50%) disability rating.

In *Philippine Hammonia Ship Agency, Inc. v. Dumadag,*[61] we have ruled that the **POEA-SEC is the law between the parties and as such, its provisions bind both of them**. Under the POEA-SEC, the applicable provision to resolve the issue of conflicting medical findings is Section 20-B (3), which states:

> 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.
>
> xxx
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> **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.** [emphasis ours]

The glaring disparity between the findings of the petitioners' designated physicians and Dr. Vicaldo calls for the intervention of a third independent doctor, agreed upon by petitioners and Simbajon. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors. After being informed of Dr. Vicaldo's unfit-to-work findings, Simbajon proceeded to file his complaint for disability benefits with the LA. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination.[62] Dr. Vicaldo, too, is a medical practitioner not unknown to this Court, as he has issued certifications in several disability claims that proved unsuccessful.[63]

In *Philippine Hammonia*, we have ruled that **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits**.[64] We explained:

> The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. **The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability**.[65] [emphasis ours]

Similarly, we note that Simbajon was the only one who knew of the conflicting results between Dr. Vicaldo's findings with that of the petitioners' designated physicians. The petitioners had no reason to consider a third doctor because they were not aware that Simbajon secured a separate independent opinion regarding his disability. Thus, the obligation to comply with the requirement of securing the opinion of a neutral, third-party physician rested on Simbajon's shoulders. By failing to observe the required procedure under the POEA-SEC, he clearly violated its terms, i.e., the law between the parties. And without a binding third-party opinion, the fit-to-work certification of petitioners' designated physicians prevails over that of Dr. Vicaldo's unfit-to-return-to-work finding.

Lastly, we have observed that Dr. Vicaldo only examined Simbajon once. We take this is in comparison with the series of tests and treatments made by Magsaysay's designated physicians to Simbajon. Between the two, the latter's medical opinion deserves more credence for being more thorough and exhaustive.

Simbajon is not entitled to permanent and total disability benefits

We now resolve Simbajon's claim that his inability to resume his usual work as a cook

for a period exceeding 120 days, automatically entitles him to permanent and total disability benefits based on a Grade I (120%) impediment rating.

Simbajon bases his claim in our ruling in *Crystal Shipping*, where we characterized permanent disability as 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.[66] On the other hand, the petitioners claim that the reckoning period for a declaration of permanent and total disability should not be 120 but rather 240 days.[67] In short, the petitioners claim that *Crystal Shipping* is no longer the governing case law for the fact situation of this case.

In *Vergara v. Hammonia Maritime Services, Inc., et al.,*[68] the Court had the occasion to clarify when a seafarer becomes entitled to permanent and total disability benefits:

> 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 up 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 also be declared fit to work at any time such declaration is justified by his medical condition. [emphasis ours]

Under this ruling,[69] a finding by the company-designated doctor that the **seafarer needs further treatment beyond the initial 120-day period results in the extension of the period for the declaration of the existence of a permanent partial or total disability to 240 days**. Thus, contrary to Simbajon's claim, his inability to resume work after the lapse of more than 120 days from the time he suffered his illness does not by itself automatically entitle him to permanent and total disability benefits.

In the present case, Simbajon's several consultations with the company-designated doctors revealed that his DM Type II was asymptomatic. Because of this finding, the company-designated doctors had to conduct further treatments and prescribe his continuous medication before finally concluding that he was fit to return to work on February 2, 2005, or 172 days from his disembarkation. The period is 68 days short of the 240 days provided in *Vergara.* Within this period, the company can continue to treat the employee or conduct an observation period (while continuing to pay his total

temporary disability pay), before the *Vergara* deadline is reached.

In *C.F. Sharp Crew Management, Inc. v. Taok*,[70] the Court enumerated the following instances when a seafarer may claim for permanent and total disability benefits:

(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.

Thus, even assuming that Simbajon's illness is work-related, he is still not entitled to permanent and total disability benefits because his situation does not fall in any of the foregoing circumstances.

Petitioners' failure to rehire Simbajon despite the "fit to work declaration"

In his motion for reconsideration with the NLRC, Simbajon raised the issue that petitioners failed to rehire him despite the declaration of Magsaysay's designated physician that he is already "fit to resume work".

Simbajon's POEA-SEC shows that the period of his employment with NCL is for ten months.[71] His contract effectively started on July 21, 2004 – the date he boarded NCL's vessel. Thus, his contract should have only ended on May 17, 2005 or 300 days from his embarkation.

Simbajon was subsequently declared fit to resume work on February 2, 2005. Hence, he should have been taken back by petitioners since he still had 104 days left before his contract's expiration. But as alleged by Simbajon, he was not hired again. He contended that his non-rehiring shows that his disability was really permanent and total.[72] We find this contention untenable.

We can only surmise petitioners' reasons for not reemploying Simbajon despite the effectivity of his contract. However, we cannot accept his argument that his non-rehiring translates to the permanent and total character of his disability.

For one, we have already determined that his DM Type II was not a work-related disease for failure to comply with the POEA-SEC's requisites for compensability. Not being work-related, it cannot be the basis of any disability claims. The findings of Simbajon's chosen physician cannot also be considered due to the absence of the medical opinion of a third independent physician.

We further note that this argument was only raised in Simbajon's motion for reconsideration with the NLRC. This was never reiterated in his pleadings with the CA and in his comment to the present petition.

At the very least, Simbajon could have used his non-rehiring to support the argument that his contract was prematurely terminated by petitioners. He was declared fit to work but he was not reaccepted in his former or a similar position despite the remaining 104 days in his contract.

But Simbajon never made an issue out of this. Even at the level of the labor tribunals, his pleadings focused solely on the classification of his disability as permanent and total. Premature contract termination and entitlement to permanent and total disability benefits are two different labor issues. One is based on the untimely termination of the contract without any just or valid cause, while the other is on the compensation that the law aims to give to seafarers who are rendered unable to resume sea service due to work-related disease.

Thus, we cannot rule that Simbajon's contract had been pre-terminated without any just or valid cause, and hold him entitled to payment of his salaries for the unexpired portion of his contract.[73] Otherwise we would be violating petitioners' due process rights. Petitioners never controverted such claim precisely because Simbajon never raised it as an issue. Moreover, the CA and the labor tribunals' rulings never touched on this. Hence, it is beyond the ambit of our review.

On a final note, this Court would like to point out the amendments made of the POEA-SEC which now provides:

> In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall **be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.**
>
> The disability **shall be based solely on the disability gradings provided under Section 32** of this Contract, and **shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.**[74] [emphasis and underscoring ours]

The above amendment finally clarifies the basis for the declaration of a temporary or permanent disability of a seafarer. For work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the **disability grading he received**, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** the Court of Appeals' decision dated June 8, 2012 and resolution dated September 11, 2012 in CA-G.R. SP No. 118610. We thus, **REINSTATE** the decision dated August 31, 2010 and the resolution dated December 30, 2010 of the National Labor Relations Commission. No costs.

SO ORDERED.

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

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[1] *Rollo*, pp. 3-26.

[2] Penned by Associate Justice Samuel H. Gaerlan, and concurred in by Associate Justices Ramon R. Garcia and Ricardo R. Rosario; Id. at 32-45.

[3] Id. at 47.

[4] Penned by Commissioner Romeo L. Go, and concurred in by Commissioner Perlita B. Velasco; Id. at 269-275.

[5] Id. at 304-305.

[6] Penned by Labor Arbiter Aliman D. Mangandog; Id. at 197-203.

[7] Id. at 6.

[8] Id. at 171.

[9] Id.

[10] Id. at 6-7.

[11] *Temporary Rollo*, Comment on the Petition, p. 2.

[12] *Rollo,* p. 7.

[13] Id. at 8.

[14] Id.

[15] Id. at 8-9.

[16] Id. at 9.

[17] Id. at 287.

[18] *TemporaryRollo,* Comment on the Petition, p. 4.

[19] Id. at 5.

[20] Id. at 51-52.

[21] *Rollo,* p. 102.

[22] Id.

[23] Id. at 104.

[24] G.R. No. L-56191, 226 Phil. 33 (1986).

[25] G.R. No. L-69572, July 28, 1986, 143 SCRA 151.

[26] *Rollo,* p. 106.

[27] Id. at 171.

[28] Id. at 176.

[29] G.R. No. 154798, 510 Phil. 332 (2005).

[30] *Rollo,* p. 201.

[31] Id. at 203.

[32] Id. at 274-275.

[33] Id. at 276-289.

[34] Id. at 306-329.

[35] Id.

[36] Id. at 42.

[37] Id. at 13-14.

[38] Id. at 14.

[39] Id. at 16.

[40] Id. at 17.

[41] Id. at 19.

[42] Id. at 24.

[43] *Temporary Rollo,* Comment on the Petition, p. 1-52.

[44] Id. at 1-19.

[45] Id. at 7.

[46] Id. at 10.

[47] Id. at 11-12.

[48] Id. at 16-17.

[49] Id. at 17.

[50] *Career Philippines Shipmanagement, Inc., v. Serna,* G.R. No. 172086, December 3,

2012, 686 SCRA 676, 683.

[51] Ibid. at 684.

[52] *Tongonan Holdings and Development Corporation v. Escaño, Jr.,* G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314.

[53] *Montoya v. Transmed Manila Corporation,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 343; emphasis ours; italics supplied.

[54] *Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 265.

[55] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, 588 Phil. 895, 908-909 (2008).

[56] Ibid.

[57] Section 32-A, DOLE Department Order No. 4, series of 2000, Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.

[58] G.R. No. 179177, July 23, 2009, 593 SCRA 668.

[59] Ibid. at 700.

[60] Webster's Third New International Dictionary Unabridged, 1993, p. 136.

[61] G.R. No. 194362, June 26, 2013, 700 SCRA 53, 65.

[62] Ibid. at 65-66.

[63] See *Magsaysay Maritime Corp. and/or Dela Cruz, et al., v. Velasquez, et al.,* G.R. No. 179802, 591 Phil. 839 (2008); *Musnit v. Sea Star Shipping Corporation*, G.R. No. 182623, December 4, 2009, 607 SCRA 743; *Francisco v. Bahia Shipping Services, Inc.,* G.R. No. 190545, November 22, 2010, 635 SCRA 660; *Jebsens Maritime, Inc., v. Undag,* G.R. No. 191491, December 14, 2011, 662 SCRA 670; *Andrada v. Agemar Manning Agency, Inc.,* G.R. No. 194758, October 24, 2012, 684 SCRA 587; and *Oriental Shipmanagement Co., Inc., v. Nazal,* G.R. No. 177103, June 3, 2013, 697 SCRA 51.

[64] Supra note 61, at 65-66; emphasis ours.

[65] Id.

[66] *Supra* note 29, at 340.

[67] *Rollo,* p. 20.

[68] *Supra* note 55, at 912; citations omitted; emphasis ours; italics supplied.

[69] Ibid.

[70] G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

[71] *Rollo*, p. 117.

[72] Id.

[73] *Skippers United Pacific, Inc., v. Doza, et al.*, G.R. No. 175558, February 8, 2012, 665 SCRA 412.

[74] Section 20-A (6), POEA Memorandum Circular No. 10, series of 2010, Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, October 26, 2010.
