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FIRST DIVISION

[G.R. No. 204699, November 12, 2014]

**BAHIA SHIPPING SERVICES, INC., FRED OLSEN CRUISE LINE, AND
MS. CYNTHIA C. MENDOZA, PETITIONERS, VS. JOEL P. HIPE, JR.,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Amended Decision^[2] dated May 2, 2012 and the Resolution^[3] dated December 3, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 115888 which reversed and set aside the Decision^[4] dated March 17, 2010 and the Resolution^[5] dated June 22, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW(M) 02-02484-09 denying the claim for disability benefits of respondent Joel P. Hipe, Jr. (Hipe).

The Facts

Hipe had been continuously hired by petitioner Bahia Shipping Services, Inc. (Bahia) for its foreign principal, Fred Olsen Cruise Line (Olsen), and deployed to the latter's various vessels under seven (7) consecutive contracts. He was last employed by Bahia as plumber for the vessel M/S Braemar (vessel) under a six-month contract^[6] commencing on the day of his embarkation on December 6, 2007, with a basic monthly salary of US\$708.00^[7] exclusive of overtime and other benefits.^[8]

Despite the lapse of the six-month contract on June 6, 2008,^[9] Hipe continued to work aboard the vessel without any new contract. On June 22, 2008, in the course of the performance of his duties as plumber, he sustained a back injury while carrying heavy equipment for use in his plumbing job. He was advised to rest and perform only light jobs, and was given the assurance that he will be repatriated at the next convenient port. After one (1) month, however, he claimed that his condition worsened and, upon his request, he was repatriated to Manila on August 5, 2008.^[10]

Upon Hipe's arrival, he was examined by the company-designated physician, Dr. Robert Lim (Dr. Lim). Results of the Magnetic Resonance Imaging revealed that he was suffering from "Lumbosacral Strain with right L5 Radiculopathy."^[11] Thereafter, he was referred to an orthopedic surgeon and a psychiatrist for supervision and therapy.^[12]

On October 2, 2008, Dr. Lim issued a medical assessment that "[Hipe] still has had considerable improvement with less pain and negligible tenderness at the lumbosacral

area,”^[13] and that, per advise of the attending orthopedic surgeon, Hipe was to continue his rehabilitation and medications (Methycobal, Voltaren gel), and to return on October 9, 2008 “for re-evaluation and possible resumption of sea duties.”^[14] On the latter date, Hipe was declared fit to work,^[15] and thus executed the corresponding Certificate of Fitness for Work.^[16]

Subsequently, or on February 25, 2009,^[17] Hipe, however, sought a second opinion from Dr. Venancio P. Garduce, Jr. (Dr. Garduce) of the UP-PGH Medical Center^[18] who (a) opined that he was suffering from “+ Tenderness on low back area, + Straight leg raising test @ Associated with numbness and weakness of both lower extremities,” (b) declared him unfit to work as seaman-plumber, and (c) assessed his disability rating at Grade 5.^[19]

Thereafter, Hipe filed a complaint before the Labor Arbiter (LA) for the payment of permanent disability compensation, sick wages, reimbursement of medical and transportation expenses, moral and exemplary damages, and attorney’s fees against Bahia, its President, Cynthia C. Mendoza, and its foreign principal, Olsen (respondents).^[20]

In his Position Paper^[21] dated March 25, 2009, Hipe averred that he: (a) sustained his injury on board the vessel during the course of his employment with Bahia;^[22] (b) was assessed to be unfit to work as seaman-plumber with a disability classified as disability Grade 5 by Dr. Garduce, an independent, neutral, and impartial medical practitioner, whose findings must be given weight and credence over that of the company-designated physician;^[23] (c) has been unfit for sea work beyond 120 days;^[24] and (d) remained unemployed from the time of his medical repatriation on August 5, 2008.^[25] Since he had lost his capacity to obtain further sea employment or resume sea duties, he therefore claimed entitlement to the following benefits^[26] provided under the Total Crew Cost^[27] Collective Bargaining Agreement (CBA): (a) maximum disability compensation of US\$89,100.00^[28] regardless of the disability grading,^[29] and (b) sick pay for 130 days at a rate equivalent to his US\$583.00 basic monthly salary.^[30] Further, in view of respondents’ unjustified withholding of the payment of his permanent disability benefits and sick wages and clear bad faith in their dealings with him, he sought the payment of moral and exemplary damages,^[31] as well as attorney’s fees for having been compelled to litigate.^[32]

For their part, respondents claimed that Hipe is not entitled to the payment of salaries for the unexpired portion of the contract of three (3) months per year, permanent disability compensation, sick wages, and medical and transportation expenses because: (a) he was deployed back to the Philippines due to the termination of his contract and not for medical reasons;^[33] (b) all the expenses appurtenant to his assessment and treatment/rehabilitation were shouldered by respondents;^[34] (c) he was declared fit to resume sea duties and had executed/signed the corresponding Certificate of Fitness for Work,^[35] agreeing thereto and releasing respondents from any liability concerning his

medical condition.^[36] Also, they posited that there lies no factual or legal basis justifying the award of moral and exemplary damages, and attorney's fees.^[37]

The LA Ruling

In a Decision^[38] dated May 29, 2009, the LA ordered respondents to jointly and severally pay Hipe the sum of: (a) US\$89,100.00 as permanent disability benefits, as well as US\$2,915.00 as sickness allowance, to be paid in Philippine currency at the time of payment; (b) P200,000.00 as exemplary damages; (c) P200,000.00 as moral damages; and (d) attorney's fees equivalent to 10% of the total monetary award.^[39]

The LA found that Hipe was medically repatriated as a consequence of an accident which transpired on board respondents' vessel during the course of his employment,^[40] and that his injuries had caused him to be unfit for sea work permanently.^[41] The LA gave more credence to Dr. Garduce's findings as being more reflective of Hipe's actual physical condition, compared to that of the company-designated physician which was "palpably self-serving and biased" in favor of respondents.^[42]

Unconvinced, respondents filed an appeal^[43] to the NLRC.

The NLRC Ruling

In a Decision^[44] dated March 17, 2010, the NLRC reversed and set aside the LA Ruling and dismissed Hipe's complaint for permanent disability compensation.

It found that Hipe was repatriated due to the expiration of his six-month employment contract, not for medical reasons, and that the delay in his repatriation was because the ship has not reached the port.^[45] Corollarily, it found the CBA provisions on sick pay inapplicable.^[46] Moreover, the NLRC observed that the averred CBA which contains essentially the same provisions as the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) with regard to (a) the authority of the company-designated physician to assess a seafarer's disability, (b) the right of the seafarer to seek another opinion, and (c) the opinion from a third doctor jointly nominated by the parties whose assessment shall be final and binding, was not complied with by the parties in this case.^[47] Accordingly, the NLRC held that the fit-to-work certification of the company-designated physician who has treated Hipe over a period of time should prevail over the finding of the latter's physician who has examined him only once.^[48]

Hipe moved for reconsideration^[49] which the NLRC, however, denied in a Resolution dated June 22, 2010, prompting the filing of a petition for *certiorari* before the CA.^[50]

The CA Proceedings

In a Decision^[51] dated January 31, 2011, the CA dismissed the petition for *certiorari*, and thereby upheld the NLRC Ruling *in toto*. It fully subscribed to the findings of the

NLRC that Hipe was repatriated due to the completion/expiration of his six-month employment contract, not for medical reasons, hence, effectively debunking Hipe's contention that he is entitled to permanent disability compensation. It found that Hipe remained in the ship two (2) months after the completion of his employment contract because the ship has not reached any port and such fact should not be construed to mean that his contract was extended.^[52]

Aggrieved, Hipe filed a motion for reconsideration,^[53] alleging that the CA has misappreciated the facts and misinterpreted the applicable laws in not finding that (a) his original six-month employment contract was in fact extended, and (b) the injury sustained during such period was compensable.^[54]

The CA resolved to hear the parties in an oral argument on the issue of whether or not Hipe was repatriated on account of injuries sustained while on board the vessel or on account of expiration of contract.^[55] After the parties were heard and the required memoranda were filed, the CA issued an Amended Decision^[56] dated May 2, 2012 setting aside its January 31, 2011 Decision and the NLRC's March 17, 2010 Decision and June 22, 2010 Resolution. In effect, the LA's May 29, 2009 Decision granting Hipe's claim for permanent disability compensation, sick wages, damages and attorney's fees was reinstated.

The CA found that while Hipe's employment contract shows that he was indeed employed as plumber for a six-month period, the addendum thereto provides for "possible extension of up to 10 months, at the company's discretion."^[57] Hipe was, thus, still under the employ of respondents when he sustained his injury.^[58] Hence, the referral to the company-designated physician after his repatriation and the subsequent fit-to-work certification issued in his favor support the claim that he was medically repatriated.^[59] Accordingly, the CA declared that Hipe was entitled to his "earned wages and benefits," including permanent disability benefits.^[60]

Dissatisfied, respondents filed a motion for reconsideration^[61] which was, however, denied in a Resolution^[62] dated December 3, 2012, hence, the instant petition.^[63]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in granting Hipe's petition for *certiorari*, thereby setting aside the NLRC Decision dismissing the complaint and adjudging Hipe's entitlement to permanent disability benefits.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and

whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.^[64]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence,^[65] or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[66] The *onus probandi* falls on the seafarer to establish his claim for disability benefits by the requisite quantum of evidence to justify the grant of relief.^[67]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting Hipe's *certiorari* petition since the NLRC did not gravely abuse its discretion in dismissing the complaint for permanent disability benefits for Hipe's failure to establish his claim through substantial evidence.

The issue of whether the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered may be determined from the pertinent provisions of Section 20 (B) of the 2000 POEA-SEC^[68] which enumerates the duties of an employer to his employee who suffers a work-related injury or disease during the term of his employment,^[69] viz.:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

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:

x x x x

2. x x x.

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. (Emphases supplied)

x x x x

Pursuant to the afore-quoted provision, two (2) elements must concur for an injury or illness of a seafarer to be compensable: (a) the injury or illness must be work-related; and (b) that the work-related injury or illness must have existed during the term of the seafarer's employment contract.^[70]

In the present case, Hipe was made to continuously perform work aboard the vessel beyond his six-month contract without the benefit of a formal contract. Considering that any extension of his employment is discretionary on the part of respondents and that the latter offered no explanation why Hipe was not repatriated when his contract expired on June 5, 2008, the CA correctly ruled that he was still under the employ of respondents when he sustained an injury on June 22, 2008. Consequently, the injury suffered by Hipe was a work-related injury and his eventual repatriation on August 5, 2008, for which he was treated/rehabilitated can only be considered as a medical repatriation.

Nonetheless, Hipe was subsequently declared fit to work by the company-designated physician on October 9, 2008, or merely 65 days after his repatriation, thus negating the existence of any permanent disability for which compensability is sought. Said fit-to-work certification must stand for two (2) reasons:

First, while Hipe's personal doctor disagreed with the above-mentioned assessment, opining that "it would be impossible for him to work as seaman-plumber"^[71] and recommending a disability grade of five, records show, however, that such opinion was not supported by any diagnostic tests and/or procedures as would adequately refute the fit-to-work assessment, but merely relied on a review of Hipe's medical history and his physical examination;^[72] and

Second, Hipe failed to comply with the procedure laid down under Section 20 (B) (3)

of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. In *Philippine Hammonia Ship Agency, Inc. v. Dumadag*^[73] (*Philippine Hammonia*), the Court held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician, viz.:^[74]

The filing of the complaint constituted a breach of [the seafarer's] contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. x x x **Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands** x x x.

x x x x

Whatever his reasons might have been, [the seafarer's] disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. x x x The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which [the seafarer] pursued his claim, especially the fact that he caused the non-referral to a third doctor, [the company doctor's] fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.*, the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x **[T]his Court is left without choice but to uphold the certification made by [the company doctor] with respect to [the seafarer's] disability.** (Emphases and underscoring supplied; citations omitted)

In light of the contrasting diagnoses of the company-designated physician and Hipe's personal doctor, Hipe filed his complaint before the NLRC but prematurely did so without any regard to the conflict-resolution procedure under Section 20 (B) (3) of the 2000 POEA-SEC. Thus, consistent with *Philippine Hammonia*, the fit-to-work certification of the company-designated physician ought to be upheld.

In fine, given that Hipe's permanent disability was not established through substantial evidence for the reasons above-stated, the NLRC did not gravely abuse its discretion in dismissing the complaint for permanent disability benefits, thereby warranting the reversal of the CA's contrary ruling. Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, when the evidence

presented then negates compensability, the claim for disability benefits must necessarily fail,^[75] as in this case.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 2, 2012 and the Resolution dated December 3, 2012 of the Court of Appeals in CA-G.R. SP No. 115888 are hereby **REVERSED** and **SET ASIDE**. Respondent Joel P. Hipe, Jr.'s claim for disability benefits is **DENIED**.

SO ORDERED

Velasco, Jr.,^{} Leonardo-De Castro, (Acting Chairperson),^{**} Del Castillo,^{***} and Perez, JJ., concur.*

^{*} Designated Acting Member per Special Order No. 1870 dated November 4, 2014.

^{**} Per Special Order No. 1861 dated November 4, 2014.

^{***} Designated Acting Member per Special Order No. 1862 dated November 4, 2014.

^[1] *Rollo*, pp. 3-35.

^[2] *Id.* at 44-51. Penned by Associate Justice Vicente S. E. Veloso with Associate Justices Francisco P. Acosta and Samuel H. Gaerlan, concurring.

^[3] *Id.* at 53.

^[4] *Id.* at 253-269. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

^[5] *Id.* at 50.

^[6] See Contract of Employment; *id.* at 106.

^[7] "US\$709.00" in the Contract of Employment; *id.*

^[8] *Id.* See also *id.* at 272.

^[9] *Id.* at 48 and 258.

^[10] *Id.* at 45-47 and 255.

^[11] *Id.* at 255. See also the Medical Certificate issued by Dr. Wilanie Romeo-Dacanay, M.D.; *id.* at 213.

[12] Id. at 243.

[13] See 6th Report dated October 2, 2008; id. at 107.

[14] Id.

[15] Id. at 161. See also the 7th & Final Report dated October 9, 2008; id. at 108.

[16] Id. at 109.

[17] See Medical Certificate issued by Dr. Venancio P. Garduce, Jr. M.D., F.P.O.A.; id. at 229.

[18] Erroneously spelled as "US-PGH Medical Center" in the NLRC Decision. (Id. at 255.)

[19] Id. at 255. See also the Medical Certificate dated February 25, 2009 issued by Dr. Venancio P. Garduce, Jr.; id. at 229.

[20] See LA Decision; id. at 241.

[21] Id. at 192-210.

[22] Id. at 197.

[23] Id. at 196.

[24] Id. at 199.

[25] Id. at 195-196.

[26] Id. at 194.

[27] ITF Seafarers: ITF Agreements. (Visited November 5, 2014).

[28] *Rollo*, p. 197.

[29] Id. at 201.

[30] Id. at 204.

[31] Id. at 207.

[32] See id. at 207-209.

[33] See Position Paper for Respondents; *id.* at 99 and 102.

[34] *Id.* at 102.

[35] *Id.* at 109.

[36] *Id.* at 101.

[37] *Id.* at 102.

[38] *Id.* at 241-251. Penned by Labor Arbiter Aliman D. Mangandog.

[39] *Id.* at 250-251.

[40] *Id.* at 245.

[41] *Id.* at 247.

[42] *Id.* at 248.

[43] *Id.* at 112-146.

[44] *Id.* at 253-269.

[45] *Id.* at 258.

[46] *Id.* at 259.

[47] *Id.* at 259-260.

[48] *Id.* at 261-262.

[49] Not attached to the records of the case.

[50] See CA Decision dated January 31, 2011; *rollo*, pp. 271-272.

[51] *Id.* at 271-283.

[52] *Id.* at 280-281.

[53] *Id.* at 284-297.

[54] See *id.* at 292-295.

[55] Id. at 46-47.

[56] Id. at 44-51.

[57] Id. at 47-48.

[58] Id. at 48.

[59] Id. at 48-49.

[60] Id. at 49.

[61] Id. at 54-63.

[62] Id. at 53.

[63] Id. at 3-35.

[64] See *Ayungo v. Beamko Shipmanagement Corporation*, G.R. No. 203161, February 26, 2014.

[65] Id.

[66] Section 5, Rule 133 of the Rules of Court.

[67] See *Andrada v. Agemar Manning Agency, Inc.*, G.R. No. 194758, October 24, 2012, 684 SCRA 587, 601.

[68] Id. at 597.

[69] *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, 237.

[70] Id. at 238.

[71] *Rollo*, p. 229.

[72] Id.

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

[74] Id. at 65-68.

[75] *Francisco v. Bahia Shipping Services, Inc.*, G.R. No. 190545, November 22, 2010, 635 SCRA 660, 667.



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