FIRST DIVISION

[G.R. No. 216795, April 01, 2019]

MAERSK-FILIPINAS CREWING INC.; AND A.P. MOLLER A/S, PETITIONERS, V. EDGAR S. ALFEROS, RESPONDENT.

D E C I S I O N

BERSAMIN, C.J.:

The assessment made by the company-designated physician of the condition of the seafarer is controlling on the determination of the claim for disability benefits for the seafarer. The filing of a claim based on the assessment of his condition by the seafarer's chosen physician without his having given to the employer notice of his intent to submit his condition for assessment by a third physician is premature and in violation of the provisions of the POEA-Standard Employment Contract (POEA-SEC).

The Case

This appeal stems from the claim for disability benefits, sick wages, damages, and attorney's fees filed by the respondent against the petitioners. The latter hereby appeal the decision promulgated on November 10, 2014,[1] whereby the Court of Appeals (CA) dismissed their petition for certiorari docketed as C.A.-G.R. SP No. 136293 and upheld the decision dated April 30, 2014[2] rendered by the National Labor Relations Commission (NLRC) affirming the award of US$60,000.00 representing the respondent's permanent total disability benefits plus attorney's fees.

Antecedents

The petitioners had employed the respondent as an Able Seaman without interruption since 1995. They had redeployed him each time under a new contract upon being subjected to the Physical Employment Medical Examination (PEME) that always found him fit for work. For his last employment contract, he was again hired by the petitioners as an Able Seaman on board the vessel M/S Laura Maersk with a basic salary of US$585.00/month for a period of six months commencing on May 10, 2012. Upon completion of his contract, the parties mutually extended his services because there was no person available to take over his position on board the vessel.[3]

On December 20, 2012, he suddenly felt pain in his lower back and abdomen while in the performance of his duty. He also experienced difficulty and pain when urinating. He reported his condition to his superior officer, who brought him to the Dulsco Medical Clinic in Dubai, which, upon medical examination, diagnosed his condition as "Dysuria, with loin pain and back pain." He was treated thereat, and was later on discharged and allowed to return to the vessel. However, despite treatment in Dubai, his condition did

not improve but became worse. He was medically repatriated and was disembarked on January 12, 2013.

The company-designated physicians, Dr. Karen Frances Hao-Quan (Dr. Quan) and Dr. Robert D. Lim (Dr. Lim), referred him to an urologist. According to the medical report, the respondent complained of "pain in urination accompanied with urinary frequency and back discomfort since December 2012 on board the sea vessel and was diagnosed to have dysuria with loin pain and back pain; urinalysis showed red blood cells; kidney, urinary bladder and prostate gland ultrasound showed focal cortical calcification, right kidney and Grade 1 prostate hypertrophy; he was recommended to undergo CT Stonogram and was given medications.[4] He was to return on January 31, 2013 for re-evaluation, and the impression was "Prostatitis rule out Urolithiasis."[5]

In the medical report dated January 31, 2013 prepared by Dr. Quan and Dr. Lim, the earlier impression was restated, and the respondent was asked to return on February 4, 2013 for re-evaluation.

In the follow-up medical reports dated February 4, 2013 and February 18, 2013, the respondent was advised to continue his medications. In the medical report dated March 5, 2013, the company-designated physician pronounced the respondent as already fit to resume sea duties as of said date inasmuch as his prostatitis had already been resolved. The petitioners then made him sign a document entitled "Certificate of Fitness to Work" dated March 5, 2013, with his company-designated physician as witness.[6]

Not feeling fit to resume sea duties despite the final diagnosis by the company-designated physician, and despite having been made to sign the "Certificate of Fitness for Work," the respondent submitted himself for examination by another physician. The records show that on March 19, 2013 he sought further medical evaluation and management at the Supercare Medical Services (Supercare), as shown by the "Agreement to Proceed with Further Evaluation and Management" signed by him.[7]

On further evaluation of his health condition, the respondent was diagnosed to be suffering from kidney stones and vertigo. Due to such diagnosis, he was referred to St. Luke's Medical Center on April 29, 2013, where he was diagnosed to be suffering from nephrolithiasis by Dr. Jaime C. Balingit (Dr. Balingit). He was then further referred to Dr. Manuel C. Jacinto (Dr. Jacinto) for further examination, and the latter diagnosed him to be suffering with nephrolithiasis, diabetic nephropathy, osteoarthritis, lumbosacral spine radiculopathy, and benign positional vertigo. Dr. Jacinto issued a medical assessment in writing declaring the respondent's condition as rendering him physically unfit to return to work as a seafarer.[8]

Subsequently, the respondent filed a complaint with the Arbitration Office of the National Labor Relations Commission (NLRC) to recover permanent disability compensation pursuant to the collective bargaining agreement (CBA), payment of sick wages for 120 days, moral and exemplary damages, attorney's fees and other benefits under the law.

Decision of the Labor Arbiter

On September 16, 2013, Labor Arbiter Enrique Flores Jr. (LA) rendered his decision granting the claim and ordering the petitioners to pay to the respondent: (1) the amount of US$60,000.00, representing permanent total disability benefit; and (2) attorney's fees equivalent to 10% of the total award.[9]

Ruling of the NLRC

On appeal, the NLRC rendered its ruling on April 30, 2014 affirming the decision of the Labor Arbiter, to wit:

> A closer look at the medical assessment of the company-designated physician reveals that the said physician confined his treatment solely to his diagnosis of *PROSTATITIS* and simultaneously *RULE OUT UROLITHIASIS*. There was no further mention at all about the cause of *Dysurea with Loin Pain and Back Pain* being suffered by complainant as earlier diagnosed by the physician who initially examined him in Dubai and for which complainant was medically repatriated. Neither was there any pronouncement at all whether other ailments such as *Dysurea* was completely resolved as well. We further took note of respondent appellants contention that complainant was repatriated due only to *Dysuria With Loin Pain and Back Pain*, and did not include other ailment such as *Nephrolithiasis, Diabetic Nephropathy; Osteoarthritis; Degenerative Changes of Lumbar Spine with Minimal L3-L4 caudad to L5-S1 Disc Protrusion; and Benign Positional Vertigo*. To our mind, respondent-appellants were evading these medical issues in their haste to declare complainant as fit to work to free themselves from the obligation of paying the complainant's claim for permanent total disability compensation.[10]

After their motion for reconsideration was denied, the petitioners assailed the ruling of the NLRC on *certiorari* in the CA.

Decision of the CA

The petitioners contended in C.A.-G.R. SP No. 136293 that the NLRC had gravely abused its discretion amounting to lack or excess of its jurisdiction in affirming the findings of the Labor Arbiter and awarding the respondent with permanent total disability compensation notwithstanding the findings of the company-designated physician to the effect that he had already been declared fit to resume his seafaring duties; and in relying on the assessment of the second physician contrary to the "third doctor appointment" procedure stipulated in the POEA-Standard Employment Contract (POEA-SEC).

On November 10, 2014, however, the CA promulgated the assailed decision dismissing the petition for *certiorari* and upholding the NLRC, *viz*.:

> **WHEREFORE**, premises considered, the Petition is **DENIED**. Costs against petitioners.
>
> **SO ORDERED.**[11]

Issue

In this appeal, the petitioners submit that the CA erred in upholding the ruling of the NLRC based on the findings of the respondent's second physician, thereby disregarding Section 20-A(3) of the POEA-SEC that required the parties to jointly appoint a third physician in the event of the conflicting assessments between their respective nominated physicians.

Ruling of the Court

The appeal is meritorious.

In upholding the decision of the NLRC,[12] the CA observed that the findings of Labor Arbiter and NLRC about the respondent being entitled to permanent total disability benefits were anchored on substantial evidence; that after the company-designated physician had given him the fit-to-work assessment, he had again undergone the PEME at Supercare, which provided medical services to the seafarers to be employed by the petitioners; that Supercare found him to be suffering from kidney stones and benign positional vertigo, thereby rendering him unfit to work as a seafarer; and that the fit-to-work declaration by the company-designated physician was not reflective of the true state of health of the respondent.

Given the provisions of the POEA-SEC, the Court disagrees with the observations of the CA.

Under the POEA-SEC, when the seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work should be determined by the company-designated physician. However, if the physician appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third physician might be agreed upon jointly by the employer and the seafarer, and the third physician's decision would be final and binding on both parties. The Court has held in *TSM Shipping Phils., Inc. v. Patiño*[13] that the non-observance of the requirement to have the conflicting assessments determined by a third physician would mean that the assessment of the company-designated physician prevails.[14]

According to *C.F Sharp Crew Management, Inc. v. Taok*,[15] a seafarer may have a basis to pursue his claim for total and permanent disability benefits under any of the following conditions, namely:

(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 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 said periods.[16]

There was no basis for holding that the respondent's condition came under the aforementioned circumstances.

Furthermore, although the respondent was not precluded from seeking a second medical opinion of his condition, the third paragraph of Section 20(B)3 of the POEA-SEC laid down the procedure to be followed when there is a disagreement between the assessments of the respective physicians of the parties, stating: "If a doctor appointed by the seafarer disagrees with the assessment (of the company-designated physician), 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."

The records do not indicate that the parties jointly sought the opinion of a third physician for the determination and assessment of the respondent's disability or the absence thereof. The failure of the respondent to give notice to the petitioners of his intent to submit himself to a third physician for evaluation negated the need for the determination by a third physician. For this reason, the filing of the respondent's claim for disability was premature.

The need for the evaluation of the respondent's condition by the third physician arose after his physician declared him unfit for seafaring duties. He could not initiate his claim for disability solely on that basis. He should have instead set in motion the process of submitting himself to the assessment by the third physician by first serving the notice

of his intent to do so on the petitioners. There was no other way to validate his claim but this. Without the notice of intent to refer his case to the third physician, the petitioners could not themselves initiate the referral. Moreover, such third physician, because he would resolve the conflict between the assessments, must be jointly chosen by the parties thereafter. Unless the respondent served the notice of his intent, he could not then validly insist on an assessment different from that made by the company-designated physician.[17] This outcome, which accorded with the procedure expressly set in the POEA-SEC, was unavoidable for him, for, as well explained in *Hernandez v. Magsaysay Maritime Corporation*:[18]

> Under Section 20 (A) (3) of the 2010 POEA-SEC, "[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." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, **unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.** (Underscoring and emphasis supplied)

Moreover, the failure of the respondent to signify the intent to submit himself to the third physician was a direct contravention of the terms and conditions of his contract with the petitioners.[19] Such contravention disauthorized the making of the claim for the benefits.

On the basis of the foregoing, the respondent's claim for disability benefits predicated on his physician's assessment would be bereft of basis considering that his non-compliance with the procedure expressly provided by law led to the fit-to-work assessment by the company-designated physician becoming the controlling and only reliable medical assessment.[20]

Anent the result of the PEME that found and declared the respondent unfit for duty as a seafarer, we accord it weight. The physical examination undertaken by him at Supercare was only for the purpose of his re-employment and the approval of another contract for him. We have observed before that -

> .... while a PEME may reveal enough for the petitioner to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[21]

Indeed, the tentativeness of the findings of fitness following the PEME was precisely the reason why Supercare still referred the respondent to Dr. Balingit. Neither could the

findings by Supercare be equated to the required notification to the petitioners on his health condition. As earlier clarified, he must himself actively or expressly request the referral to the third physician.

To warrant the issuance of the writ of *certiorari*, the abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*,[22] "must be grave, which means either that the judicial or quasijudicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." That standard was fully met by the petitioners in the CA, for the circumstances truly showed that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the findings of the Labor Arbiter because it thereby whimsically and capriciously disregarded the express language of the law requiring the respondent to first give to the petitioners his notice of intent to resolve the conflicting assessments through the third physician.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on November 10, 2014 in C.A.-G.R. SP No. 136293; and **DISMISSES** the respondent's claim for disability benefits, sick wages, damages, and attorney's fees for lack of factual and legal basis, without costs of suit.

SO ORDERED.

Del Castillo, Gesmundo, and *Carandang, JJ*., concur.
Jardeleza, J., on official business.

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[1] *Rollo*, pp. 58-73; penned by Associate Justice Celia C. Librea-Leagogo with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Melchor Q. C. Sadang.

[2] Id. at 313-331.

[3] Id. at 59.

[4] Id. at 68.

[5] Id. at 69.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 227-239.

[10] Id. at 325.

[11] Id. at 72.

[12] Id. at 313-331.

[13] G.R. No. 210289, March 20, 2017, 821 SCRA 70.

[14] Id. at 86.

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

[16] Id. at 314-315.

[17] *Bahia Shipping Services, Inc. v. Constantino*, G.R. No. 180343, July 9, 2014, 729 SCRA 361, 373, where the Court states:

> In the absence of any request from Constantino (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

[18] G.R. No. 226103, January 24, 2018.

[19] *INC Navigation Co. Philippines, Inc. v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 451.

[20] *Hernandez v. Magsaysay Maritime Corp*., G.R. No. 226103, January 24, 2018; citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53. 65; see also *Abosta Shipmanagement Corporation v. Delos Reyes*, G.R. No. 215111, June 20, 2018; and *Formerly INC Shipmanagement, Incorporated (now INC Navigation Co., Philippines, Inc. v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 450.

[21] *C.F. Sharp Crew Management, Inc. v. Castillo*, G.R. No. 208215, April 19, 2017, 824 SCRA 14, 42 citing *NYK-FIL Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

[22] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.