

SECOND DIVISION

[G.R. No. 245917, February 26, 2020]

**JOSUE A. ANTOLINO, PETITIONER, VS. HANSEATIC SHIPPING
PHILS. INC., LEONHARD & BLUMBERG REEDEREI GMBH & CO. KG,
AND/OR ROSALINDA P. BAUMANN, RESPONDENTS.**

DECISION

A. REYES, JR., J.:

Medical abandonment by a seafarer carries serious consequences. When a sick or injured seafarer abandons his or her treatment, he or she forfeits the right to claim disability benefits. Of course, financial incapacity to travel to and from the place of treatment may serve as an acceptable justification for failure to attend a check-up. That said, an allegation of financial incapacity, like all allegations, must be supported by clear and convincing evidence. This is especially true in situations where the manning agency has consistently provided the seafarer with sickness allowance during the treatment period.

This petition for review on *certiorari*^[1] challenges the October 31, 2018 Decision^[2] and the March 7, 2019 Resolution^[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 150538.

Through the challenged decision and resolution, the appellate court upheld the October 21, 2016 Decision^[4] and the February 27, 2017 Resolution^[5] of the National Labor Relations Commission (NLRC), which reversed the August 8, 2016 Decision^[6] of the Labor Arbiter (LA) awarding total and permanent disability benefits to Josue A. Antolino (Antolino).

The Factual Antecedents

Petitioner Antolino was hired by respondent Hanseatic Shipping Phils. Inc. (Hanseatic) on behalf of its foreign principal, respondent Leonhard & Blumberg Reederei^[7] GMBH & Co. KG, to work as a bosun on board the M/V Hansa Fresenburg. Antolino's contract was to last for 10 months, earning him a monthly salary of US\$810.00.^[8]

While performing his duties on board the vessel, Antolino met an accident resulting in the injury complained of At 8:30 a.m. on June 5, 2015, he was preparing the gangway net at the ship's starboard side together with another seafarer. He then stepped on the container stacking shoes and lost his balance. As he fell down, he used his left hand to cushion his fall, hurting his elbow in the process.^[9]

Upon arriving in Singapore, Antolino sought medical treatment.^[10] He underwent a radiological exam, the results of which revealed the following:

Findings:

The radius and ulna are intact with no radiolucent fracture line seen. Specifically, at the radial head.

The bones at the wrist are normally aligned with no fracture or dislocation. Ulnar minus variant noted.

There is a tiny calcific fleck distal to the medial epicondyle that may be due to an avulsed fragment or foreign body. There is no dislocation.

Soft tissue swelling at the left elbow is seen.

There is no displacement of the fat pad to suggest an elbow effusion.

Conclusion:

There is a calcified fleck distal to the medial humeral epicondyle that may be due to an avulsed fragment or foreign body.

No dislocation is seen.

The radius and ulna are unremarkable. Specifically, there is no fracture at the radial head.^[11]

Antolino was thereafter medically repatriated. Upon his arrival in the Philippines, he immediately reported to Hanseatic, who then referred him to its designated medical provider. After a series of tests and consultations, he was subjected to physiotherapy at the Medical Center Manila.^[12]

After his treatment session on October 2, 2015, Antolino returned to his home province in Antique to continue his therapy thereat.^[13] In the meantime, he was paid sickness allowance amounting to US\$3,176.42, for the period covering June 14, 2015 to October 11, 2015.^[14]

On October 5, 2015, Antolino was informed that his next medical examination in Manila was scheduled on November 4, 2015.^[15] Being in dire financial straits, he requested Hanseatic to shoulder his airfare and provide him with ample travel allowance. Hanseatic refused, offering instead to reimburse his expenses upon his arrival in Manila.^[16] Antolino therefore failed to attend the scheduled medical examination.

Antolino was eventually able to finance his trip to Manila. He arrived at the clinic of Hanseatic's medical services provider on January 22, 2016. After presenting the report of the physical therapist who treated him in Antique, he was asked by Dr. Fidel C. Chua (Dr. Chua), the company-designated physician, to sign a fit-to-work document. He was

told that refusal to do so would render him ineligible for disability benefits on the ground that he had abandoned his medical treatment. Dr. Chua cited Antolino's failure to appear at the November 4, 2015 check-up.^[17]

Still in pain, Antolino refused to sign the document, and instead sought the opinion of another doctor. He consulted Dr. Manuel Fidel M. Magtira (Dr. Magtira) who then declared him unfit for sea duty.^[18]

Antolino informed Hanseatic of Dr. Magtira's findings, simultaneously requesting that his case be referred to a third medical expert for a conclusive opinion. Because his request went unheeded, he filed a complaint for disability benefits before the LA.^[19]

Hanseatic, in its defense, cited Antolino's alleged medical abandonment. Pointing to his failure to attend the scheduled November 4, 2015 medical examination, the manning company argued that the seafarer had forfeited his disability benefits claim. Hanseatic averred that it had adequately informed Antolino of the scheduled check-up, as well as the consequences of his failure to attend the same. To prove the assertion, the company presented a series of letters that were sent through private courier and received by Antolino himself.^[20]

The LA's Ruling

On August 8, 2016, the LA rendered a Decision granting Antolino total and permanent disability benefits in the amount of US\$60,000.00 plus ten percent (10%) of the award as attorney's fees. Brushing aside Hanseatic's assertion of abandonment, the LA ruled that Antolino's failure to appear at the scheduled medical examination was justified by his financial incapacity. Since he had no money for a plane ticket, it was held that he had not intentionally abandoned his treatment.^[21]

That being the case, the LA proceeded to determine whether Antolino was indeed entitled to total and permanent disability benefits. Ruling in the affirmative, the LA opined that failure to refer Antolino's case to a third doctor should be taken against Hanseatic. Since the company did not reply to the seafarer's request for referral, the latter was deemed totally and permanently disabled in the eyes of the law.^[22] The LA therefore ordered the award of disability benefits, viz.:

WHEREFORE, [p]remises [c]onsidered, this office finds the Complainant to be [t]otally and [p]ermanently disabled. Respondents, jointly and severally are held liable to [Antolino] in the amount of US\$60,000.00 or its Philippine Peso [e]quivalent at the time of payment as total and permanent disability benefit as well as to pay Attorney[']s fees equivalent to ten percent (10%) of the total award.

[Antolino's] other claims are denied for lack of merit.

SO ORDERED.^[23] (Emphasis in the original)

The NLRC's Ruling

On appeal, the NLRC reversed the LA's ruling, finding that Antolino had in fact abandoned his medical treatment. According to the NLRC, Antolino very-well knew that his check-up was scheduled on November 4, 2015. However, he failed to attend the same despite several correspondences from Hanseatic warning him of the consequences of his absence. Antolino's allegation of financial incapacity was given no credence for not being supported by evidence. Since he appeared before the company-designated physician three months after the scheduled medical examination, he was declared guilty of abandonment.^[24]

Further, the NLRC found that Antolino was not suffering from any total and permanent disability. Since the report of Dr. Magtira, Antolino's chosen physician, was rendered after only one consultation, the veracity of its contents was held to be questionable. Instead, the NLRC relied on the assessment made by Antolino's physical therapist in Antique, which stated that his elbow's range of motion had returned to normal and that its swelling had subsided.^[25] The dispositive portion of the NLRC's decision reads:

WHEREFORE, premises considered, the appeal filed by respondents is GRANTED.

The Decision of Labor Arbiter Eric V. Chuanico dated August 8, 2016 is hereby REVERSED AND SET ASIDE. A new one is entered DISMISSING the complaint for lack of merit.

SO ORDERED.^[26]

After Antolino's motion for reconsideration was denied, he filed a petition for *certiorari* with the CA.

The CA's Ruling

On October 31, 2018, the CA rendered the herein assailed Decision affirming the NLRC. Although the appellate court disagreed that Antolino was guilty of medical abandonment, it still found no merit in his claim for disability compensation. To the CA, Antolino's financial incapacity justified his failure to appear at his scheduled medical examination.^[27] However, it was found that his condition was not of such nature that would warrant an award of total and permanent disability benefits. The CA held that the severity of Antolino's injury did not meet the threshold for such benefits, which, under the law, is "total paralysis of both upper extremities."^[28] The *fallo* of the assailed decision reads:

WHEREFORE, premises considered, the instant petition is **DENIED**. There being no grave abuse of discretion on the part of the public respondent, the assailed Decision dated October 21, 2016 and the Resolution [dated] February 27, 2017 are hereby **AFFIRMED**.

SO ORDERED.^[29] (Emphasis in the original)

Antolino's motion for reconsideration having been denied, he comes before the Court praying for the reversal of the CA's decision and the reinstatement of the LA's award of total and permanent disability benefits.

The Issue

WHETHER OR NOT ANTOLTNO IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS

The Court's Ruling

The petition must be denied for lack of merit.

Antolino's main argument is anchored on Hanseatic's failure to furnish him with the findings of Dr. Chua, the company-designated physician. Citing the Court's ruling in *Gere v. Anglo-Eastern Crew Management Philippines, Inc.*,^[30] he stresses that it is the duty of the company-designated physician to give the seafarer a copy of his or her findings contained in a final and definite medical assessment. He asserts that failure to do so entitles the seafarer to total and permanent disability benefits on the ground that the employer had failed to observe the rudimentary requirements of due process.^[31]

Further, Antolino contends that the absence of a third doctor's opinion rendered the findings of his own physician, Dr. Magtira, conclusive on Hanseatic. He alleges that he had communicated to Hanseatic his intention to refer his case to a third medical expert. However, his request fell on deaf ears. Since the burden to procure the opinion of a third doctor fell on Hanseatic, the fact that it paid no attention to his request entails that the findings of the company-designated physician should not be afforded any weight.^[32]

Antolino's arguments fail to persuade.

Essentially, the parties fault each other for breaching the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). Antolino blames Hanseatic for failing to comply with its duty to disclose the findings of its physician, as well as its duty to set in motion the third doctor procedure. For its part, Hanseatic accuses Antolino of abandoning his medical treatment.

The outcome of this case will therefore depend on who was guilty of transgressing their obligations under the POEA-SEC.

The Court finds that Antolino had unjustifiably abandoned his medical treatment, resulting in the forfeiture of his disability benefits.

It has been said time and again that seafarers are our modern-day heroes,^[33] contributing, as they do, to the Philippine economy in no small degree. It is therefore in keeping with the public interest that all efforts are undertaken to keep each and every Filipino seafarer in good health. For this reason, manning agencies are legally-bound to provide their sick and injured employees with proper and timely medical attention.

Correspondingly, seafarers assume the duty to regularly report to the company-designated physician for treatment. The POEA-SEC, in unmistakable terms, makes this requirement mandatory. This is because a seafarer's wellness is a concern not only of the employer, but more so of the seafarer himself. Surely, it is in all of his best interests that he be kept physically fit for sea duty, primarily so that he is not stripped of a means of sustenance for himself and his family and, secondly, so that he may continue in his pursuit of providing for the nation as a whole. Therefore, when a seafarer abandons his medical treatment, the law steps in to declare the forfeiture of any disability benefits that may have theretofore been claimed.

Relevantly, Section 20(A)(3) of the POEA-SEC provides:

Section 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

X X X X

3. X X X X.

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. **In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**^[34] X X X X (Emphasis and underscoring supplied)

In this case, not only did Antolino fail to substantiate his bear allegation of financial incapacity, the Court also finds the allegation itself to be weak and unconvincing. Recall that for the period from June 14, 2015 to October 11, 2015, Hanseatic regularly furnished Antolino with sickness allowance in an amount equivalent to his monthly salary. During this period, which spanned almost four months, Antolino was paid a total of US\$3,176.42.

As evidenced by an Authorization Letter da ted September 23, 2015,^[35] Hanseatic instructed the Bank of the Philippine Islands Remedios cor. Taft branch to debit its account in the amount of P48,357.46 and credit the same to Antolino. On top of that, another letter dated October 26, 2015,^[36] authorized the transfer of P13,336.29. These amounts represented Antolino's sickness allowance. When Hanseatic ordered the transfers, Antolino was well-aware that he had a medical examination in Manila scheduled on November 4, 2015. If he sincerely cared for the rehabilitation of his injury, he should have taken it upon himself to book his flight in advance upon receipt of his allowance. Alternatively, he could have simply set aside an ample amount of

money for his airfare, as well as his living expenses while away from home. At any rate, Hanseatic promised to reimburse his expenditures upon his arrival in Manila.

Certainly, it was in all of Antolino's best interests that he be present at the November 4, 2015 check-up. Not only would he have been informed of the true status of his injury, but more importantly, the company-designated physician would have been able to assess his condition and declare him fit to work.^[37] Had such a declaration been made, Antolino would have been able to resume his work as a seafarer.

However, Antolino did not attend the scheduled medical examination. Instead, he chose to delay his appearance before the company-designated physician for almost three months. When he arrived in Manila on January 22, 2016, he was told to sign a fit-to-work document. By then, his failure to continue regularly reporting for medical treatment could have impeded his recovery. Worse, the deterioration of his physical condition, which normally occurs as one ages, could have served to aggravate his injury.

At this point, the Court quotes with approval the NLRC's ruling on Antolino's abandonment:

The records clearly established that [Antolino] knew that he had a scheduled medical follow-up on November 4, 2015. [Antolino], however, failed to honor his appointment. Several follow-up letters were sent to him by [Hanseatic] on December 2, 2015 and December 28, 2015, requiring him to report and later warning him about the forfeiture of his medical benefits in case of his non-compliance. [Antolino] still failed to report despite receiving the notices.

[Antolino's] excuse that he had no money for airfare from Antique to Manila and requested assistance from [Hanseatic] but was refused is too tenuous to be believed. Other than his bare allegation, nothing was presented to support his claim. Further, in [Hanseatic's] December 2, 2015 letter, they already assured [Antolino] that they would cover his expenses, but still [Antolino] never sent a word.

The [LA] held that [Antolino] did not abandon his medical treatment as in fact he reported to the company doctor on January 22, 2016. We must stress, however, that by that time, after almost three (3) months from the scheduled consult, any deterioration in the medical condition of [Antolino] would have been attributable to his own negligence.

x x x x

[I]t is the obligation of the seafarer to regularly report to the company-designated doctor on the dates prescribed as much as it is the obligation of the employer to provide medical attention. [Antolino's] failure to comply has thus resulted in the forfeiture of his right to benefits.^[38]

The Court recently discussed medical abandonment in *Cariño v. Maine Marine Phils., Inc.*^[39] That case involved the disability benefits claim of Christian Cariño (Cariño), who, like Antolino, was accused of abandoning his treatment for failure to appear at a scheduled medical examination. Cariño, a La Union resident, similarly invoked financial incapacity to justify his absence at his check-up in Manila. He alleged that his employer, Maine Marine Phils., Inc. (Maine Marine), had failed to furnish him with his sickness allowance, leaving him without funds for his travel expenses. When the case was eventually brought before the Court, Cariño's explanation was given due credence. It was found that Maine Marine had indeed failed to pay him his travel allowance and that it had not even approved his treatment with the company-designated physician. The fact that Cariño consistently followed-up with Maine Marine on these matters showed that he had made every effort to ensure that his treatment would continue. The sound conclusion was that Cariño could not risk travelling to Manila after having been informed that his treatment had yet to be approved. Further, he was able to buttress his claim of financial incapacity by showing th at Maine Marine was remiss in its duty to furnish him with sickness allowance. The company's argument of medical abandonment was therefore given no weight.

Juxtaposing the facts of *Cariño* with those of the instant case, the Court has every reason to conclude that Antolino had indeed abandoned his medical treatment. For one, Hanseatic, unlike Maine Marine, was not remiss in its duty to provide its injured seafarer with sickness allowance. The records show that the company had consistently disbursed to Antolino the appropriate amounts on a monthly basis. To be sure, this was in keeping with its duty under Section 20(A)(3) of the POEA-SEC, *viz.*:

3. In addition to the above obligation on the employer to provide medical attention, **the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage** computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. **Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.**^[40] (Emphasis and underscoring supplied)

Further, the glaring disparity between Antolino's manifest indifference and Cariño's constant diligence militate against the former's case. Cariño was steadfast in following-up with Maine Marine regarding his sickness allowance and the approval of his treatment. On the other hand, Antolino, besides requesting Hanseatic to shoulder his travel expenses, made no effort to communicate with his employer. He did not even have the courtesy to inform Hanseatic that he would not make it to the scheduled medical examination due to his alleged financial situation. In the same vein, he could have very easily requested the deferment of his check-up to give him ample time to secure funds, subject, of course, to the periods provided in the POEA-SEC.

Taken together, these facts lead the Court to conclude that Antolino had indeed abandoned his medical treatment.

On the other hand, Hanseatic, through Dr. Chua, was able to fully comply with its

obligations under the POEA-SEC. *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* [41] succinctly spells out the duties of the company-designated physician when a seafarer is medically repatriated, viz.:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. [42]

While, in this case, the company-designated physician failed to issue a complete and definite medical assessment within the 120-day period, the need to continue Antolino's physical therapy sessions justified the extension of the same to 240 days. [43] This extended period should have given the company-designated physician ample time to completely assess Antolino's injury and recommend the appropriate disability rating, if any. Accordingly, Antolino was advised [44] to report to the clinic of Transglobal Health System, Inc. in Manila on November 4, 2015, or 141 days after he suffered the injury complained of. He was adequately warned that failure to do so would result in the forfeiture of his disability benefits. However, as discussed above, he did not attend the scheduled check-up, and, precisely for this reason, the company-designated physician was unable to issue a complete and definite medical assessment.

Certainly, the Court has not lost sight of the legal truism that the POEA-SEC, being a labor contract, is imbued with public interest. [45] "Accordingly, its provisions must be construed fairly, reasonably[,] and liberally in favor of the seafarer in the pursuit of his [or her] employment on board ocean-going vessels." [46] Nevertheless, this does not mean that every dispute regarding the POEA-SEC shall be decided in favor of the seafarer. [47] Social justice, which serves as the foundation for the Court's preference towards labor, "authorizes neither oppression nor self-destruction of the employer." [48] Management, too, must be sustained when it is in the right. And when it is the employee who is at fault, the Court shall not hesitate to rule against labor and in favor of capital. After all, "[j]ustice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine." [49]

WHEREFORE, the petition is **DENIED**. The October 31, 2018 Decision of the Court of Appeals in CA-G.R. SP No. 150538 as well as the March 7, 2019 Resolution affirming it are accordingly **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, Senior Associate Justice, (Chairperson), Hernando, Inting, and Delos Santos, JJ., concur.

[1] *Rollo*, pp. 30-76.

[2] Penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Jhosep Y. Lopez concurring; *id.* at 77-88.

[3] Penned by Jhoseph Y. Lopez, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier (now a Member of this Court) concurring; *id.* at 89-91.

[4] *Id.* at 436-447.

[5] *Id.* at 449-450.

[6] *Id.* at 217-237.

[7] "Reederie" in some parts of the *rollo*.

[8] *Id.* at 78.

[9] *Id.* at 437.

[10] *Id.* at 78.

[11] *Id.* at 127.

[12] *Id.* at 78.

[13] *Id.*

[14] *Id.* at 87.

[15] *Id.* at 78.

[16] *Id.* at 438.

[17] Id. at 439.

[18] Id.

[19] Id. at 79.

[20] Id. at 80.

[21] Id. at 225-237.

[22] Id. at 227-234.

[23] Id. at 237.

[24] Id. at 443-444.

[25] Id. at 445-446.

[26] Id. at 447.

[27] Id. at 84.

[28] Id. at 86-87.

[29] Id. at 88.

[30] G.R. No. 226656, April 23, 2018, 862 SCRA 432, 442.

[31] *Rollo*, pp. 60-63.

[32] Id. at 63-67.

[33] *DOHLE Philman Manning Agency v. Inc. v. Doble*, 819 Phil. 500, 503 (2017).

[34] Philippine Overseas Employment Administration Memorandum Circular No. 10, series of 2010, Sec. 20(A).

[35] *Rollo*, p. 173.

[36] Id. at 174.

[37] Id. at 84.

[38] Id. at 443-444.

[39] G.R. No. 231111, October 17, 2018.

[40] Philippine Overseas Employment Administration Memorandum Circular No. 10, series of 2010, Sec. 20(A).

[41] 765 Phil. 341 (2015).

[42] *Id.* at 362-363.

[43] *See: Orient Hope Agencies, Inc. v. Jara*, G.R. No. 204307. June 6, 2018. 864 SCRA 428, where a surgical procedure performed 159 days from repatriation as held to constitute sufficient justification for the extension of the period provided in the POEA-SEC, even absent a complete and definite medical assessment.

[44] *Rollo*, p. 164.

[45] CIVIL CODE, Art. 1700.

[46] *The late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374, 389 (2014).

[47] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 794 (2015).

[48] *Phil. Long Distance Telephone Company v. Honrado*, 652 Phil. 331, 339 (2010).

[49] *Auza, Jr. v. MOL Philippines, Inc.*, 699 Phil. 62, 67 (2012).



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