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## **SECOND DIVISION**

**[ G.R. Nos. 208896-97. April 06, 2016 ]**

**EDREN RICASATA, PETITIONER, VS. CARGO SAFEWAY, INC. AND EVERGREEN MARINE CORPORATION (TAIWAN), LTD., RESPONDENTS.**

## **D E C I S I O N**

**CARPIO, J.:**

### **The Case**

Petitioner Edren Ricasata (Ricasata) assails in this petition for review<sup>[1]</sup> the Consolidated Decision<sup>[2]</sup> promulgated on 20 March 2013 and the Resolution<sup>[3]</sup> promulgated on 25 July 2013 of the Court of Appeals in CA-G.R. SP No. 122937<sup>[4]</sup> and CA-G.R. SP No. 123015.<sup>[5]</sup> The Court of Appeals denied the petition in CA-G.R. SP No. 122937 and granted the petition in CA-G.R. SP No. 123015 and remanded the case to the Panel of Voluntary Arbitrators (Panel of Arbitrators) for the proper computation of Ricasata's unearned wages, earned leave pay, and basic wages corresponding to the unserved portion of his contract.

### **The Antecedent Facts**

In June 2009, Ricasata was hired as an engine fitter for M.V. Uni Chart, a ship owned by Evergreen Marine Corporation, Ltd. of Taiwan (Evergreen Marine), represented in the Philippines by its local manning agency, Cargo Safeway, Inc. (Cargo Safeway). The deployment was for a period of nine months with a basic monthly salary of US\$704. Ricasata was found fit for sea duty without restrictions and was deployed aboard the vessel on 2 August 2009. His work included handling noisy equipment such as grinders, generators, and pumps in the vessel's engine room on a regular eight to five shift schedule.

In November 2009, Ricasata experienced severe pain in his ears. He reported the pain to the Chief Engineer and requested for a medical check-up, but his request was denied. On 10

January 2010, Ricasata experienced another bout of severe pain in his ears. Again, Ricasata requested for a medical checkup which was also denied. In March 2010, Ricasata was replaced by a reliever. On 19 March 2010, he disembarked from the vessel at Coco Solo, Panama. He returned to the Philippines on 23 March 2010.

On 29 March 2010, Ricasata underwent an Audiogram at the Seamen's Hospital. According to Ricasata, he was diagnosed with Severe Hearing Loss. Later, Dr. Li-Ann Lara-Orencia (Dr. Lara-Orencia), a private doctor, diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" due to a "profound hearing loss."

On 21 July 2010, Ricasata filed an action against Cargo Safeway and Evergreen Marine before the National Labor Relations Commission, claiming disability benefits, moral and exemplary damages, legal interest, and attorney's fees. Cargo Safeway and Evergreen Marine moved for the dismissal of the case and its referral for Voluntary Arbitration on the ground that Ricasata's employment was covered by a Collective Bargaining Agreement (CBA) between the Associated Marine Officers' and Seamen's Union of the Philippines and the National Chinese Seamen's Union. The case was referred to the National Conciliation and Mediation Board and submitted to a Panel of Arbitrators.<sup>[6]</sup>

### **The Decision of the Panel of Voluntary Arbitrators**

Ricasata claimed that his loss of hearing was due to his work in a noisy environment, within an engine room filled with compressed air. As such, his illness is compensable under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC). He sought a total permanent disability benefit of US\$89,100, sickness allowance of US\$2,816 equivalent to four months, moral and exemplary damages, and attorney's fees.

Cargo Safeway and Evergreen Marine countered that Ricasata is not entitled to the benefits claimed because (1) he did not suffer any illness, accident, or injury while on board the vessel; (2) he was repatriated to the Philippines because of the expiration of his contract; and (3) he did not report any illness, injury, or accident upon his arrival in the Philippines, and he did not request for referral to a company-designated physician.

In its Decision<sup>[7]</sup> dated 22 December 2011, the Panel of Arbitrators rejected Cargo Safeway and Evergreen Marine's contention that Ricasata's employment contract expired on 19 March 2010. The Panel of Arbitrators ruled that Ricasata signed off one and a half months before the expiration of his nine-month contract. The Panel of Arbitrators also rejected the

contention of Cargo Safeway and Evergreen Marine that the flexibility provision of the CBA for the completion of the contract “one month more or one month less as a result of operational convenience or convenience of the port of call” should apply to justify Ricasata’s early embarkment. The Panel of Arbitrators ruled that Section 19(C) of POEA-SEC providing for repatriation within three months before the expiration of the contract when the vessel drops anchor in a convenient port would not apply in this case. Instead, the Panel of Arbitrators ruled that Ricasata was not able to complete his contract and thus, he is entitled to sickness allowance equivalent to one and a half months of his monthly wage of US\$704 plus 10% per annum of the resulting amount as penalty for non-payment of the unexpired portion of the contract.

The Panel of Arbitrators also ruled that Ricasata is entitled to full disability benefit. According to the Panel of Arbitrators, Cargo Safeway and Evergreen Marine failed to refute the Audiogram finding by the Seamen’s Hospital and the assessment made by Dr. Lara-Orencia. The Panel of Arbitrators ruled that it is unjust and unfair to award Ricasata a compensation equivalent to Impediment Grade 11, amounting only to US\$13,303, which is the compensation for Severe Hearing Loss under the CBA. However, the Panel of Arbitrators disapproved Ricasata’s claim of US\$89,000 and instead awarded him US\$51,000 as compensation.

The dispositive portion of the Decision of the Panel of Arbitrators reads:

WHEREFORE, premises considered, [t]his Panel ruled that Seafarer EDREN RICASATA is entitled to -

back disability benefit equivalent to US\$51,000.00 plus ten [percent] per annum of this back benefit, at its peso equivalent at the time of actual payment;

back sick allowance equivalent to one and a half months of his monthly salary of US\$704.00 plus ten [percent] per annum of the back allowance, at its peso equivalent at the time of actual payment, and attorney’s fees often percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.

SO ORDERED.<sup>[8]</sup>

Both parties appealed from the Decision of the Panel of Voluntary Arbitrators to the Court of Appeals.

## **The Decision of the Court of Appeals**

In CA-G.R. SP No. 122937, Ricasata prayed for the modification of the Decision of the Panel of Arbitrators by increasing the award for back disability benefit and sick allowance.

In CA-G.R. SP No. 123015, Cargo Safeway and Evergreen Marine sought the reversal of the Decision of the Panel of Arbitrators.

In a Resolution dated 27 November 2012, the Court of Appeals consolidated the two petitions.

The Court of Appeals ruled that entitlement to disability benefits is a matter governed by law and contract and not solely by medical findings. Citing Section 20(B) of the POEA-SEC, the Court of Appeals ruled that for a disability to be compensable, the following elements must be present: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The Court of Appeals ruled that Ricasata forfeited his claim for compensation by failing to comply with the mandatory reporting requirements.

The Court of Appeals ruled that Ricasata failed to undergo a post-employment medical examination by a company-designated physician within three days upon his return. Instead, he went to the Seamen's Hospital on 29 March 2010, six days after his arrival, for an Audiogram. The Court of Appeals noted that the Audiogram did not indicate that it was issued by a company-designated physician, and there was no signature or specification that it was issued by the company-designated physician or at least by Seamen's Hospital. As such, the Court of Appeals ruled that the Audiogram is not a sufficient evidence to prove Ricasata's claim. In addition, the Court of Appeals ruled that Dr. Lara-Orencia is Ricasata's personal physician and her medical certificate was issued on 27 April 2010, or almost a month after Ricasata's repatriation.

The Court of Appeals ruled that entitlement to sickness allowance requires the submission of medical reports. Since Ricasata failed to undergo the mandatory reporting to a company-designated physician, he was not able to submit the medical reports to substantiate his claim for sickness allowance.

The Court of Appeals further ruled that there is no basis for the award of attorney's fees. However, the Court of Appeals ruled that Ricasata was not able to finish his contract. Hence, he is entitled to his unearned wages and earned leave pay and to his basic wages

corresponding to the unserved portion of his contract.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the Petition in CA-G.R. SP No. 122937 is DENIED. On the other hand, the Petition in CA-G.R. SP No. 123015 is GRANTED and the Decision dated December 22, 2011 of the Panel of Voluntary Arbitrators in NCMB-NCR-AC-056 (NCMB-32-01-06-11) is REVERSED and SET ASIDE and a new one is rendered granting Edren Ricasata his unearned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract. For this purpose, the case is REMANDED to the Panel of Voluntary Arbitrators for proper computation in line with the foregoing discussion.

SO ORDERED.<sup>[9]</sup>

Ricasata filed a motion for reconsideration. In its 25 July 2013 Resolution, the Court of Appeals denied the motion for lack of merit.

Ricasata filed a petition for review before this Court for the reversal of the Decision and Resolution of the Court of Appeals. Ricasata alleged that the Court of Appeals committed a reversible error in finding that he is not entitled to disability benefits, sickness allowance, and attorney's fees.

### **The Issues**

There are two issues for resolution in this case. They are:

- (1) Whether Ricasata was able to finish his contract of employment; and
- (2) Whether Ricasata is entitled to disability benefits, sickness allowance, and attorney's fees.

### **The Ruling of this Court**

Ricasata alleged that the Court of Appeals misappreciated the facts of the case and denied him his rightful compensation under the law. Ricasata further alleged that while the Panel of Arbitrators correctly ruled that he is suffering from total permanent disability, it erred in awarding him disability benefits that are contrary to jurisprudence.

We deny the petition.

### ***Expiration of Contract of Employment***

In their Comment,<sup>[10]</sup> Cargo Safeway and Evergreen Marine contend that Ricasata is not entitled to unearned wages, unearned leave pay, and basic wages corresponding to the unserved portion of his contract. They invoke Section 19(C) of the POEA-SEC to the effect that “[i]f the vessel arrives at a convenient port within a period of three (3) months before the expiration of his contract, the master/employer may repatriate the seafarer from such port x x x.” They also invoke Article 5.1 of the CBA which states that “it is mutually agreed that the term of service of the seafarer covered by this Agreement shall be up to NINE (9) months as covenanted by the parties and subject to the provisions of Article 6.5.1.4, however, a flexibility of one (1) month more or one (1) month less as a result of operational convenience or convenience of port of call shall be acceptable x x x.”

We do not agree. Counsels for Cargo Safeway and Evergreen Marine only quoted a portion of Section 19(C) of POEA-SEC. It provides in full:

#### SECTION 19. REPATRIATION

x x x x

C. If the vessel arrives at a convenient port within a period of three (3) months before the expiration of his contract, the master/employer may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided however, that this mode of termination may only be exercised by the master/employer if the original contract period of the seafarer is at least ten (months); provided, further, that the conditions for this mode of termination shall not apply to dismissal for cause.

Clearly, Section 19(C) of POEA-SEC does not apply to this case. Section 19(C) of POEA-SEC states that the mode of termination it provides may only be exercised by the master/employer if the original period of the seafarer is at least ten months. Ricasata’s contract of employment is only for nine months. Granting that the provision is applicable,

Cargo Safeway and Evergreen Marine failed to present proof that they paid Ricasata all his earned wages, his leave pay for the entire contract period, and his termination pay equivalent to one month of his basic salary.

On the other hand, Article 5, Section 5.1 of the CBA provides:

5.1. Subject to the provisions hereinafter provided, the engagement of a seafarer shall be at the time of departure from Manila to the date of expiration of contract or arrival in Manila, unless terminated for just cause or causes enumerated in this Agreement. It is mutually agreed that the term of service of the seafarer covered by this Agreement shall be up to N1NK (9) months as covenanted by the parties and subject to the provisions of Article 6.5.1.4, however, a flexibility of one (1) month more or one (1) month less as a result of operational convenience or convenience of port of call shall be acceptable without penalizing the Company or seafarer. If any lesser period is agreed for operational convenience, this shall be specified in the employment contract.<sup>[11]</sup>

We agree with the Panel of Voluntary Arbitrators and the Court of Appeals that the provision of the CBA was specific: the flexibility period is one month more or one month less from the term of the contract. Ricasata disembarked one and a half months before the expiration of his contract, meaning it does not fall within the one month more or one month less covered by the CBA. The CBA also provides that if any lesser period is agreed for operational convenience, it should be specified in the employment contract. No such provision is present in this case. Hence, the flexibility provision of the CBA does not also apply to this case.

### ***Entitlement to Disability Benefits and Sickness Allowance***

Ricasata arrived in the Philippines on 23 March 2010. On 29 March 2010, he underwent an Audiogram at the Seamen's Hospital. On 27 April 2010, Dr. Lara-Orencia diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" based on the Audiogram.

It is a settled rule that for a seaman's disability claim to prosper, it is mandatory that within three days from repatriation, he is examined by a company-designated physician.<sup>[12]</sup> His failure to do so will result to the forfeiture of his right to claim for compensation and

disability benefits.<sup>[13]</sup> Ricasata failed to comply with this requirement. He also failed to show that he was physically incapacitated to be medically examined by a company-designated physician that would have justified his non-compliance with the mandatory three-day period. We note the finding of the Court of Appeals that Ricasata was inconsistent on whether he was referred to a company-designated physician. In his Petition before the Court of Appeals, he alleged that Cargo Safeway referred him to a company-designated physician<sup>[14]</sup> while in his Memorandum, he alleged that Cargo Safeway refused to refer him for post-medical check-up.<sup>[15]</sup>

Ricasata submitted an Audiogram to support his claim for disability benefits. The Audiogram,<sup>[16]</sup> taken six days after his arrival, did not indicate that it was taken by a company-designated physician. It did not indicate that it came from Seamen's Hospital. It was not signed, and it did not contain an interpretation of the graph. It was simply a printout from the audiometer. Dr. Lara-Orencia, who issued a medical certificate<sup>[17]</sup> diagnosing Ricasata with severe hearing loss, was not a company-designated physician. She specializes in Family and Occupational Medicine and is not an EENT.<sup>[18]</sup> Her medical certificate was based only on the Audiogram. Yet, she declared Ricasata to be suffering from "Permanent Medical Unfitness with a Disability Grade 1" without giving him additional medical examinations and procedures. Dr. Lara-Orencia's medical certificate was only issued on 27 April 2010, or almost a month after the Audiogram.

Considering the foregoing, the Court of Appeals did not err in ruling that Ricasata failed to prove that he is entitled to the disability benefits and sickness allowance that he was claiming.

### ***Monetary Entitlement and Attorney's Fees***

We agree with both the Court of Appeals and the Panel of Arbitrators that Ricasata was not able to complete his employment contract. He was repatriated one and a half months before the end of his contracted service. In ruling on his monetary entitlement, we are guided by Section 19(B) of POEA-SEC. It provides:

B. If the vessel arrives at a convenient port before the expiration of the contract, the master/employer may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. The seafarer shall be entitled only to his earned wages and earned leave pay and to his basic



wages corresponding to the unserved portion of the contract, unless within 60 days from disembarkation, the seafarer is rehired at the same rate and position, in which case the seafarer shall be entitled only to his earned wages and earned leave pay.

The rule applies to repatriation at a convenient port before the expiration of the contract. It could not be used by Cargo Safeway and Evergreen Marine to justify Ricasata's disembarkation because the unexpired portion of his contract was more than one month. However, it can be used as guide to determine Ricasata's remunerations considering that Cargo Safeway and Evergreen Marine did not appear to have acted in bad faith. Thus, applying Section 19(B) of POEA-SEC, the Court of Appeals correctly stated that Ricasata is entitled to his earned wages, earned leave pay, and basic wages corresponding to the unserved portion of his contract. The Court of Appeals correctly remanded the case to the Panel of Arbitrators for their proper computation.

The rule is that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to attorney's fees equivalent to ten percent of the total award at the time of actual payment.<sup>[19]</sup> In this case, Ricasata was forced to protect his rights. Although his claim for disability benefits was denied, it was established that he was not able to finish his contract of employment without fault on his part. We deem it proper to allow him to recover attorney's fees.

**WHEREFORE**, we **DENY** the petition. We affirm the Consolidated Decision promulgated on 20 March 2013 and the Resolution promulgated on 25 July 2013 of the Court of Appeals in CA-G.R. SP No. 122937 and CA-G.R. SP No. 123015 with **MODIFICATION** by ruling that Edren Ricasata is also entitled to attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.

**SO ORDERED.**

*Brion, Del Castillo, Mendoza, and Leonen, JJ., concur.*

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<sup>[1]</sup> Under Rule 45 of the 1997 Rules of Civil Procedure.

<sup>[2]</sup> *Rollo*, pp. 55-69. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang concurring.

<sup>[3]</sup> Id. at 71-73.

<sup>[4]</sup> *Edren Ricasata v. Panel of Voluntary Arbitrators, Cargo Safeway, Inc., and Evergreen Corp., Ltd.*

<sup>[5]</sup> *Cargo Safeway, Inc. and Evergreen Marine Corp. (Taiwan) Ltd. v. Panel of Voluntary Arbitrators (Hon. Hermenegildo Dumlao, Hon. Gregorio Sialsa and Hon. Rene E. Ofreneo) and Edren A. Ricasata.*

<sup>[6]</sup> The Panel of Arbitrators was composed of Atty. Hermenegildo Dumlao as Chairman and Captain Gregorio Sialsa and Dr. Rene E. Ofreneo as members.

<sup>[7]</sup> *Rollo*, pp. 42-53.

<sup>[8]</sup> Id. at 52.

<sup>[9]</sup> Id. at 68.

<sup>[10]</sup> Id. at 75-101.

<sup>[11]</sup> *CA rollo* (CA-G.R. SP No. 123015), p. 52.

<sup>[12]</sup> *InterOrient Maritime Enterprises, Inc. v. Creer III*, G.R. No. 181921, 17 September 2014, 735 SCRA 267.

<sup>[13]</sup> Id.

<sup>[14]</sup> *CA rollo* (CA G.R. SP No. 122937), p. 1

<sup>[15]</sup> Id. at 304.

<sup>[16]</sup> Id. at 97.

<sup>[17]</sup> Id. at 98.

<sup>[18]</sup> Id.

<sup>[19]</sup> *Fil-Pride Shipping Company, Inc. v. Balasta*, G.R. No. 193047, 3 March 2014, 717 SCRA 624.

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