

VERONICO O. TAGUD, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, BSM CREW SERVICE CENTRE PHILS., INC./NARCISSUS DURAN AND/OR BERN-HARD SCHULTE SHIPMANAGEMENT (CYPRUS), RE...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court as amended seeking to set aside the decision[1] promulgated on January 12, 2011, and resolution[2] promulgated on March 24, 2011, both rendered by the public respondent National Labor Relations Commission in NLRC LAC No. 10-000839-10.

The facts, as culled from the records, are as follows:

Petitioner Veronico O. Tagud (Tagud) was employed by private respondent Bernhard Schulte Shipmanagement (Bernhard) (formerly Hanseatic Shipping Company Ltd.) through its local agent private respondent BSM Crew Service Centre Philippines (BSM) in 2005[3].

On March 7, 2008, Tagud was rehired by private respondents as "Able Bodied Seaman" for Kota Pemimpin vessel under a POEA-approved contract with the following terms and conditions of employment:[4]

"Duration of contract: 7 months
Position: Able Bodied Seaman
Basic Monthly Salary: US\$ 648.00/month
Hours of Work: 40 hrs/week
Leave and Food Allowance: \$317/month
Gtrd Ot: \$561.00/month
Overtime: \$4.68/hr, after 120 hours
Point of Hire: Manila, Philippines"[5]

On February 28, 2008, Tagud passed the required pre-employment medical examination at the American Outpatient Clinic and was subsequently declared to be "Fit for Sea Duty (without restriction)"[6]. On March 24, 2008, he was deployed and he joined Kota Pemimpin in Hong Kong on the same day.[7]

As "Able Bodied Seaman", Tagud was required to stand watch while in port or sea and perform routine deck department maintenance tasks, such as cleaning, painting and preserving the ship. His other responsibilities include underway replenishment, cargo handling, forklift operation and helicopter flight deck operations.[8]

Sometime on October 18, 2008, while on duty, Tagud lost his balance due to the sudden tilting of the ship and his right elbow region crashed against a hard object. Immediately, he lost sensation and strength involving his right upper extremity. Three days after, he was brought to a doctor for medical attention when the vessel berthed in Wynnum, Queensland.[9]

On November 8, 2008, Tagud was repatriated in Singapore and arrived in Manila on the same day. In his position

paper, Tagud alleged that when he reported to his manning agency, he was not referred to a company-designated physician for follow-up medical examination and was not given any assistance. On March 9 and 10, 2009, he sought medical attention at Sta. Isabel Medical Clinic in Caloocan. Dr. Ruben Chua examined him and prescribed medicines[10] for pain in his upper right extremities and elevated blood pressure.[11] Five months thereafter, Tagud sought medical consultation with Dr. Sisinio Quilicot of Peter The Rock, Family Medical Polyclinic in Caloocan City[12].

On December 11, 2009 or more than one (1) year after Tagud's disembarkation, he filed a complaint for permanent and total disability benefits, damages and attorney's fees.

On January 16, 2010[13], Tagud returned to Dr. Quilicot for follow-up treatment of his neuritis.[14] On February 3, 2010, he sought medical attention at the Veterans Memorial Medical Center. Dr. Casison attended to him and found him with "permanent disability neurologic in nature caused by repetitive vibratory trauma and physical trauma during work" with disability rating 1 as well as with "left atrial abnormality." [15] He stated that he was covered by a higher rate of disability compensation.[16]

Private respondents denied any liability to Tagud. They contended that the latter was repatriated to the Philippines on a finished contract; and that this is the reason stated in the disembarkation report which shows the note "F.C." after the phrase "Reason for Discharge" in the said disembarkation report.[17] Private respondents asserted that after Tagud's disembarkation, the latter did not complain of any illness/infirmity. He did not mention any accident or incident on board. He also did not ask for any post medical examination after his disembarkation from the subject vessel. Private respondents emphasized that Tagud failed to report to his manning agency within the three (3)-day period reckoned from the date of his repatriation.[18]

Despite mandatory conferences at the office of the Labor Arbiter, the parties failed to enter into an amicable settlement and were required to file their respective position papers.

On September 10, 2010, the Labor Arbiter rendered a decision[19], the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents BSM Crew Service Centre Inc., and/or Bernhard Schulte Shipmanagement (Cyprus) to pay complainant Veronico O. Tagud jointly and severally, the Philippine Peso equivalent at the time of actual payment of One Hundred Twenty-Five Thousand US Dollars (US\$ 125,000) representing total permanent disability benefits plus ten (10%) of the judgment award as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED."

Private respondents appealed the case to the National Labor Relations Commission (NLRC).

On January 12, 2011, the NLRC rendered a decision[20], the dispositive portion of which reads:

"WHEREFORE, all the foregoing premises considered, the assailed Decision is hereby REVERSED and/or SET ASIDE, and a new one entered DISMISSING the instant complaint for lack of merit.

SO ORDERED."

On January 28, 2011, Tagud filed a motion for reconsideration of the decision of the NLRC. On, March 24, 2011, the latter denied petitioner's motion for reconsideration for lack of merit.

Hence, this petition.

Petitioner contends that the NLRC erred in dismissing his claim for failure to comply with the three (3)-day

mandatory reporting requirement; that Section 20 (B)(3) of the POEA Standard Employment Contract (SEC) on the post-employment medical examination of a seafarer by a company-designated physician within three working days upon his return, does not apply to him; that said provision applies only to a seafarer who was repatriated for medical treatment during the effectivity of his employment contract; and that he is entitled to moral damages and attorney's fees equivalent to ten (10%) of the total monetary award.

The petition is devoid of merit.

Under the law, petitioner has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the injury he suffered is work-related and it must have existed during the term of his employment contract. For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (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. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

The 2000 POEA-SEC defines "work-related injury" as "injury resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[21]

In the instant case, record shows that petitioner was repatriated from Singapore on November 8, 2008 and arrived in Manila on the same day. Petitioner disembarked due to a finished contract and not for any other reason. During petitioner's employment on board M/V Kota Pemimpin, there was no incident or accident report submitted by his captain; and upon his arrival in the Philippines, he did not report to private respondents of any ailment or injury allegedly suffered on board said vessel.

As with all other kinds of workers, the terms and conditions of a seafarer's employment are governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the POEA called the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which is considered to be the minimum requirement acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[22]

Clearly, when petitioner was hired on March 7, 2008, it was the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels that applied, and was deemed written in or appended to his POEA-SEC. This section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract. Primarily, for an injury or illness to be duly compensated under the POEA-SEC, there must be a showing that such injury or illness occurred or was suffered during the effectivity of the employment contract. The same is true with respect to any disability caused by either injury or illness.[23]

Section 20(B), paragraph (3) thereof states:

x x x x.

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.

Based on the foregoing provisions, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three working days from arrival for diagnosis and treatment.[24] Applying the above provision of Section 20(B), paragraph (3), petitioner is required to undergo post-employment medical examination by a company-designated physician within three working days from arrival, except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period would suffice. The rationale behind the rule is clear. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness. To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[25]

The Supreme Court in *Maunlad Transport, Inc. vs. Manigo, Jr.*[26], explicitly declared that it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. The Supreme Court reiterated the same ruling in the case of *Coastal Safeway Marine Services, Inc. vs. Elmer T. Esguerra*[27], where it was written:

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.

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.

This rule, however, is not absolute. The Supreme Court made an exception regarding the compulsory reporting requirement in *Wallem Maritime Services vs. National Labor Relations Commission*[28]. The Supreme Court explained that the seaman therein was physically incapacitated from complying with the requirement because he was already terminally ill, and for a man in that condition and in need of urgent medical attention, one could not reasonably expect that he would immediately resort to and avail of the required medical attention assuming that he was still capable of submitting himself to such examination at that time.[29]

Unfortunately, *Wallem Maritime Services vs. National Labor Relations Commission*[30] is not applicable in the instant case as the circumstances in the former do not obtain in this case. There is no showing that petitioner is physically incapacitated to comply with the mandatory reporting requirement to justify exemption from the application of the rule. Significantly, petitioner was incontrovertibly repatriated due to the completion of his contract and not due to any ailment or injury. Further, upon petitioner's arrival in the Philippines on November 8, 2008, he sought medical attention in March 2009 only, a period of about four months or 120 days. During such period, many things could have happened to petitioner which could have triggered his March 2009 medical condition.

Based on the foregoing, this Court cannot grant petitioner's claim for disability benefits and other monetary awards prayed for by him. This Court is surely saddened by the plight of the petitioner, but is constrained to deny his claim for compensation benefits absent proof of compliance with the requirements set forth in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive proposition.[31] While it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[32]

In light of the foregoing conclusion, there is no necessity of discussing the other monetary awards prayed for by petitioner.

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 32-46.

[2] Rollo, pp. 47-49.

[3] Rollo, p. 35.

[4] Ibid.

[5] Rollo, p.69.

[6] Rollo. p.70.

[7] Rollo, p.36.

[8] Ibid.

[9] Ibid.

[10] Rollo, pp. 73-74.

[11] Rollo, p.37.

[12] Rollo, p.75.

- [13] Rollo, p.76.
- [14] Rollo, p.37.
- [15] Rollo, pp.81-84.
- [16] Rollo, p.85.
- [17] Rollo, p.89.
- [18] Rollo, 89-90.
- [19] Rollo, pp.236-245.
- [20] Rollo, pp.32-46.
- [21] Gilbert Quizora vs. Denholm Crew Management (Philippines), Inc., G.R. No. 185412, November 16, 2011.
- [22] Nisda vs. Sea Serve Maritime Agency, G.R. No. 179177, July 23, 2009.
- [23] Ibid.
- [24] Vergara vs. Hammonia Maritime Services, Inc., G.R. No. 172933, 6 October 2008.
- [25] Jebsens Maritime Inc., Represented By Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd. vs. Enrique Undag, G.R. No. 191491, December 14, 2011.
- [26] G.R. No.161416, 13 June 2008.
- [27] G.R. No. 185352, August 10, 2011.
- [28] G.R. No. 130772, November 19, 1999.
- [29] Ibid.
- [30] G.R. No. 130772, November 19, 1999.
- [31] Alex C. Cootauco vs. MMS Phil. Maritime Services, Inc., Ms. Mary C. Maquilan and/or MMS Co. Ltd., G.R. No. 184722, March 15, 2010.
- [32] Edgardo M. Panganiban vs. Tara Trading Shipmanagement Inc. and Shinline Sdn Bhd, G.R. No. 187032, October 18, 2010.

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