

CF SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINES, INC., AND/OR JICKIE ILAGAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND JULIUS CAEZAR ARTIF...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a petition for Certiorari¹ with application for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by CF Sharp Crew Management, Inc., Norwegian Cruise Lines, Inc., and/or Jackie Ilagan ("petitioners") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Decision^[2] promulgated by the Sixth Division of the National Labor Relations Commission ("NLRC") dated April 29, 2014, in NLRC LAC (OFW-M) No. 01-000068-14 which affirmed the Decision^[3] rendered by Labor Arbiter Remedios Tirad-Capinig ("Labor Arbiter") on October 31, 2013. Likewise assailed in the instant petition is the Resolution^[4] promulgated by the NLRC on June 23, 2014 which denied the Motion for Reconsideration^[5] that the petitioners filed on May 16, 2014.

The material and relevant facts of the case, as culled from the record, are as follows:

The present petition stemmed from a Complaint^[6] for the payment of total permanent disability benefits, balance of sickness wages, reimbursement of medical and transportation expenses, moral and exemplary damages and attorney's fees filed by Julius Caesar Artifice ("private respondent) against herein petitioners with the Labor Arbiter in Quezon City which was docketed as NLRC-NCR-(M)NCR-05-7536-13.

On September 6, 2012, herein private respondent entered into a nine-month contract of employment with the petitioner manning agency for its foreign principal Norwegian Cruise Line, Ltd.

The private respondent was hired by the petitioners as an assistant cook aboard the vessel M/S Norwegian GEM (HOTEL). His employment contract that was duly approved by the Philippine Overseas Employment Administration ("POEA") stated the following terms and conditions, to wit:

"1.1 Duration of contract 9.00 months

"1.2 Position ASST. COOK

"1.3 Basic \$378.29 per month

"1.4 FOT \$189.36 (40-56 Hours)

"1.5 GTD O/T Pay 165.69 per month for 60.62 Hours

"1.6 Vacation Pay \$56.74 per month

"1.7 Monthly GTD Pay 0.00 per month (Inclusive compensation for unlimited hours of work)

"1.8 Monthly Incentive \$0.00 per month

"1.9 GTD O/T Rate \$2.73

"1.10 Hourly OT Rate \$3.28 per hour in excess of GOT

"1.11 Seniority Pay 19.00 per month First Hire Date:
September 25, 2011

"1.12 Total Monthly Pay to Seafarer \$804.00 per month

"1.13 Union Fee \$5.00 (Directly remitted to Union)

"1.14 Social Program Compensation \$25.00 (Directly remitted to SSS and Philhealth)–Employer Share

"1.15 Special Monthly Incentive \$0.00

"1.16 Additional Incentive \$0.00

"1.17 Leave Days 4.50 (days)

"1.18 Point of Hire Manila[7]

Additionally, the private respondent's employment contract was governed by NSU Collective Bargaining Agreement.

As a requirement prior to embarking on the aforementioned vessel, private respondent completed the mandatory pre-employment medical examination and he was determined by the petitioners' accredited medical clinics to be fit for sea duty. Thus, on October 27, 2012, the private respondent was deployed to perform his contracted duties.

While on board, the private respondent was tasked to clean and shine stainless steel cooking equipment and utensils which were used by the cruise ship to serve food. According to the private respondent, he was exposed to and suffocated by the foul and pungent smell of the chemicals that he used to clean said cooking wares.

Thereafter, the private respondent began to experience difficulty in breathing and nasal congestion which persisted throughout the day and during the nighttime. He also experienced throbbing pain in his lower back, which then affected his day to day functions.

Consequently, as the private respondent continued to experience discomfort and could no longer perform his duties as an assistant cook, he was medically signed off from the vessel. Based on the Shoreside Referral Slip[8] dated January 15, 2013, private respondent was diagnosed by the ship's physician with constipation, lower left quadrant (LLQ) pain and rectal bleeding. The private respondent was then repatriated to the Philippines and he arrived in the country on January 29, 2012.

Upon arrival in the Philippines, the private respondent was referred by the petitioners for initial medical examination which showed the following:

"Working Diagnosis:

- Bronchial Asthma, controlled

- Lower gastrointestinal bleeding probably secondary to internal hemorrhoids[9]"

The private respondent was also subjected to series of medical examinations with the following test results: (1) MRI of the brain with unremarkable results, (2) Thoracolumbar MRI showing T6 vertebral body hyperintense focus likely representing vertebral hemangioma, (3) Bone Scintigraphy revealing non-specific osteoblastic lesions

in the lateral left occipital bone and the midportions of both tibiae, considerations include trauma, (4) Endoscopy revealing mixed hemorrhoids, (5) MRI of the Cervical Spine showing Cervical Spondylosis, mild disc bulges at C3-4, C4-5 and C6-7, tiny central disc protrusion at C5-6 and reversed cervical lordosis, possibly from muscle spasm and (6) Cervical APL revealing suspicious fracture, spinous process of C3 vertebrae, cervical spondylosis, reversed cervical lordosis[10].

However, after all the aforementioned examinations, the private respondent continued to experience pain on his lower back of body. The private respondent claimed that, despite the lapse of 120 days, the company doctors of the petitioners still failed to make a definite assessment as to his true condition. The private respondent then filed the complaint against the petitioners.

After the private respondent filed the complaint, he also consulted another physician, Dr. Nicanor F. Escutin, who is a specialist/orthopedic doctor. Accordingly, Dr. Escutin, through a medical certificate dated June 29, 2013, declared that the private respondent is unfit to be a seaman in whatever capacity and was given a permanent disability certification[11].

After the parties failed to amicably settle their differences, the Labor Arbiter directed them to submit their respective position papers. Subsequently, on October 31, 2013, the Labor Arbiter rendered a Decision[12] which granted private respondent's complaint. The dispositive portion of the Labor Arbiter's Decision, provides:

"WHEREFORE, premises considered, judgement is hereby rendered ORDERING Respondents CF Sharp Crew Management, Inc., and Norwegian Cruise Lines, Inc., to pay SOLIDARILY the COMPLAINANT as follows:

"(1) Permanent total disability benefits -
US \$60,000;

"(2) 10% Attorney's fees ----- US \$ 6,000

TOTAL AWARD US \$66,000

"Or the peso equivalent of both amounts at the time of actual payment.

"SO ORDERED."

Undaunted with the foregoing disposition by the Labor Arbiter, the petitioners appealed from the same to the NLRC. On April 29, 2014, the NLRC promulgated the assailed Decision[13] which, in part, states:

"It is settled that the company-designated physician has to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. Should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally or permanently disabled.

"It must noted, however, that the period to declare complainants fitness or degree of disability may only be extended to 240 days if there is a need for further medical treatment and the company-designated physician declares so. In the instant case, the company-designated physician did not recommend further medical treatment regarding complainant's herniated disc. The company-designated physicians, in their final report dated July 3, 2013, gave a final assessment regarding the seafarer's mixed hemorrhoids, which they declared to be a non-work related. They failed to make a final assessment of complainant's other illness specifically, disc herniation, neither did they recommend further medical treatment with regard thereto. Hence, the 120 day period given to the company doctor to make an assessment of the seafarer's medical condition was not extended to 240 days. Consequently, the period to make the declaration lapsed without the company-designated physician making a pronouncement as to complainant's fitness of degree of disability with respect to his disc herniation and the seafarer's medical condition remained unresolved, thus he is deemed

totally and permanently disabled."

" xxx.

"Herein complainant was repatriated on January 27, 2013 and consulted with the company-designated on January 30, 2013. On July 3, 2013 or 154 days after the first consultation, the company-designated physician cleared complainant as to his mixed hemorrhoids but no pronouncement was made with respect to his disc herniation. Thus, he is deemed totally and permanently disabled as he was unable to perform his usual sea duties for a period of more than 120 days already and no further medical treatment has been prescribed.

"WHEREFORE, premises considered, the appeal is DENIED and the October 21, 2013 Decision is hereby AFFIRMED.

"SO ORDERED."

Herein petitioners sought for a reconsideration of the said Decision issued by the NLRC. On June 23, 2014, the NLRC promulgated a Resolution[14] which denied herein petitioners' Motion for Reconsideration[15].

Unsatisfied by the foregoing disquisition of the NLRC, petitioners filed the instant petition with this Court ascribing the following acts of grave abuse of discretion purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING THE AWARD OF DISABILITY BENEFITS DESPITE THE ABSENCE OF CAUSE OF ACTION WHEN THE INSTANT CLAIM WAS FILED.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING DISABILITY BENEFITS FOR A CONDITION NOT SUSTAINED WITHIN PRIVATE RESPONDENT'S TERM OF EMPLOYMENT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING ITS AWARD OF BENEFITS ON INABILITY TO WORK WHICH WAS HOWEVER WANTING IN FACTUAL OR LEGAL BASES.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING ATTORNEY'S FEES FOR THIS ARBITRARY, CAPRICIOUS AND WHIMSICAL CLAIM.

In sum, the primordial issue brought before this Court for resolution is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding herein petitioners to be liable for permanent disability to the private respondent.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition bereft of merit.

The petitioners contended that the NLRC gravely abuse its discretion in ruling that private respondent is entitled to permanent disability benefits when allegedly the private respondent did not have cause of action against them.

The petitioners fortified their argument by invoking the ruling in C.F. Sharp Crew Management, Inc. et al. vs. Taok[16], wherein the Supreme Court provided for determinate circumstances on when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Petitioners, however, had misapplied

the aforementioned ruling in the case at bench.

In the aforesaid case of C.F. Sharp Crew Management, Inc. et al., the seafarer was already diagnosed by the company physician with a particular illness and was already undergoing treatment. This particular scenario was not present in this instant case, as the company designated physician of the petitioners had failed to provide for a conclusive assessment or diagnosis regarding the disc herniation of the private respondent. Further, the private respondent in C.F. Sharp Crew Management, Inc. case, had filed his complaint before the 120-day period for him to be considered in legal contemplation as totally and permanently disabled under Article 192(c)(1) of the Labor Code[17].

In fact, in the said case, the Supreme Court held that:

"Thus, a seafarer may pursue an action for total and permanent disability benefits if: (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 being 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 the said periods[18]." (Emphasis supplied).

The Medical Report 4[19], dated April 11, 2013, issued by the company designated physician had only cleared the private respondent with respect to his pulmonary condition, but did not mention anything about the disc bulges of the latter, thus:

"Referral to orthopedic spine surgery was also made for his back pain. Assessment was C4-C5 and C5-C6 disc bulges and hemangioma, T6 vertebral body. He was given analgesics and was started on physical therapy.

"On March 18, 2013, patient was referred back to pulmonology due to complaints of difficulty of breathing associated with back pain. He claimed to have good compliance with his asthma medications. Physical examination was unremarkable. Assessment was asthma, controlled. Difficulty in breathing was attributed to his back pain. Patient was advised follow-up with orthopedic surgery and was deemed maximally medically improved for the pulmonary condition referred.[20]" (Emphasis ours).

Verily, the NLRC was correct in awarding permanent disability benefits to the private respondent who had been incapacitated to work for a period of more than 120 days without any declaration by the company designated physician as to his true condition.

Furthermore, petitioners claimed that the NLRC gravely erred in declaring that the private respondent's injury was work-related and that he sustained the same during his employment. We do not agree.

Section 20 (B) of the 2000 POEA-SEC, indeed, provides the following compensation and benefits for the

seafarers in cases of work-related injury or illness during the term of their contracts, thus:

"SECTION 20. COMPENSATION AND BENEFITS:

"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:

"1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

"2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment, as well as board and lodging, until the seafarer is declared fit to work or to be repatriated.

"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.

"4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

"5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

"6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted."

It is worthy to emphasize that, under the provisions of the POEA-SEC, it is enough that the work has contributed, even in a small degree, to the development of the worker's disease. In fact, the law merely requires a reasonable work connection and not a direct causal connection for a disability to be compensable[21].

In the instant case, there is no question that the injury of the private respondent was sustained during the term of his employment contract and that the same was work-related. The private respondent had been suffering from lower back pain while still on board due to his duties as an assistant cook, which included cleaning the cooking wares and lifting fruit crates. This particular condition was also substantiated by the laboratory examination conducted by no less than the petitioners' accredited physician.

Time and again, we have ruled that a writ of certiorari can be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law[22].

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to virtual refusal to perform the duty enjoined or to act at all in contemplation of law[23]. The public respondent acts

without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law[24]. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility[25].

Evidently, there is no hint of whimsicality nor gross and patent abuse of discretion in this case as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case.

SO ORDERED.

[*]Paredes, and [**]Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[**] Acting Junior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[1] Rollo, pages 3 – 32.

[2] Rollo, Annex "A" pages 34 – 46.

[3] Rollo, Annex "B" pages 47 – 54.

[4] Rollo, Annex "C" pages 56 – 59.

[5] Rollo, Annex "K" pages 242 – 253.

[6] Rollo, Annex "D" page 61.

[7] Rollo, page 75.

[8] Ibid, page 76

[9] Ibid, page 78

[10] Ibid, pages 126 – 131.

[11] Ibid., page 132 -133.

[12] Rollo, Annex "B" pages 47 – 54.

[13] Rollo, Annex "A", pages 33 – 46.

[14] Rollo, Annex "C", pages 55 – 59.

[15] Rollo, Annex "K", pages 242 – 253.

[16] G.R. No. 193679, July 18, 2012.

[17] Ibid.

[18] Ibid.

[19] Rollo, page 789

[20] Ibid, page 79.

[21] Magsaysay Maritime Corporation v. NLRC, G.R. No. 186180, March 22, 2010.

[22] Section 1, Rule 65 of the 1997 Revised Rules of Court.

[23] Cuison vs. CA, G.R. No. 128540, April 15, 1998.

[24] People of the Philippines vs. Court of Appeals, G.R. No. 144332, June 10, 2004.

[25] Estrada v. Desierto, G.R. No. 156160, December 9, 2004.

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