

NYK-FIL SHIP MANAGEMENT, INC. AND/OR NYK SHIP MANAGEMENT (HONGKONG) LTD., PETITIONERS, VS. ANDRE TEJIDO ROJO AND THE HON. BISHOP TEODORO BUHAIN, IN HIS CAPACITY AS VOLUNTARY ARB...

Ponente: BARRIOS, J.

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BARRIOS, J.:

Petitioners NYK-FIL Ship Management Inc. and / or NYK Ship Management (HK) Ltd. (or NYK-FIL for brevity) in this petition for certiorari asks that the Decision dated December 27, 2002 of Voluntary Arbitrator Bishop Teodoro Buhain, be reversed and set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The controversy before Us is rooted on the complaint for disability benefits filed by the respondent Andre Tejido Rojo (or Rojo) against NYK-FIL, the uncontroverted facts of which are as presented in the assailed decision as follows:

Complainant was contracted by Respondent NYK-FIL MANAGEMENT INC., a domestic corporation, on behalf of NYK-SHIP MANAGEMENT (HK) Ltd., a foreign corporation not doing business in the Philippines, as an oiler on May 1999 under terms and conditions of a Contract of Employment x x x approved by the POEA.

Complainant departed from the Philippines for his assigned ship, SS DOHA, on or about 31 May 1999 to serve his contract on board.

On or about the latter half of October 1999, within the terms of his contract and while serving on board for roughly less than five (5) months, Complainant complained of urinary discomfort and flank pain, for which Complainant sought and was provided by Respondent with medical attention. He was referred to Marmedic Services Ltd., at Ise Bay in Japan, where he was diagnosed as having “Prostatitis” (inflammation of the prostate gland) and first stage of “Hernia of Intervertebral Disc.” He was prescribed appropriate medication and instructed to limit himself to light duties for fourteen (14) days xxx. He was also made to undergo laboratory examinations with results being faxed after his vessel left port. Said results appeared normal in all respects, but the attending physician cautioned that “he needed examination closely with enlargement of the prostate at hospital xxx.

Thus, Complainant was repatriated from the next convenient port on the 25th of November 1999, and as soon as practicable after his arrival in the Philippines, he was referred to the Company’s designated physicians at the Metropolitan Hospital for further evaluation and management. He was referred to both an orthopedic surgeon and a urologist for his conditions, and the diagnosis abroad was confirmed with an impression of “r/o lob back strain” “r/o herniated disc. lumbosacral area” and “prostatitis.” xxx

Complainant was prescribed medication; made to undergo several diagnostic procedures, including EMG-NCV studies, MRI of the lumbosacral spine and started on regular monitoring checks-ups. He was also started on physical therapy. His MRI showed “small broad disc herniation at L5-S1 level” xxx.

Complainant was thereafter made to undergo repeated EMC-NCV studies, which showed normal findings xxx. By the 29th February 2000, he was noted to have improvement with less pain in his lumbosacral area. xxx. In the meantime, his prostatitis appear to have been cured by 22nd March 2000, while he continued to complain of back pain, and was thus continued on therapy xxx.

Complainant again underwent repeat EMC-NCV studies on the 5th of April 2000, and the same showed "S1 radiculopathy, bilateral, incomplete with acute denervation changes." Thus, his attending orthopedic surgeon recommended that he undergo laminectomy and discectomy as management for his condition xxx.

Complainant was admitted for the suggested procedures on the 3rd of May 2000. He underwent the procedures on the 4th of May 2000, and he tolerated the same well. He was thereafter fitted with a chair back brace and continued on therapy post-operatively. He was discharged on 16th of May 2000 xxx.

By the 22nd of May 2000, his wound was observed dry, and his stitches were removed. He was instructed to maintain use of his lumbar brace, and was allowed to go home to Iloilo but to continue rehabilitation there xxx. His attending physician opined at the time that "he will be fit to resume sea duties in 3-4 months barring unforeseen events."

By the 2nd of August 2000, Complainant continued to complain of lumbosacral pains, notwithstanding the fact that his repeat EMG-NCV studies showed negative findings xxx. Thereafter, as early as September 2000, his attending orthopedic surgeon pronounced that "he should be able to go back to work if he so desires" xxx.

Complainant's attending orthopedic surgeon confirmed his earlier diagnosis of Complainant's fitness by the 19th of October 2000, on the basis of his latest EMG-NCV findings which "showed normal findings compared to pre-operative findings which was abnormal" xxx. For the sake of prudence, repeat EMG-NCV studies were again done on the 6th of November 2000, which showed essentially normal results xxx. On this basis, he was declared fit to work xxx, but he refused to acknowledge the same and did not sign his certificate of fitness for work.

While undergoing treatment at the expenses of Respondent, Complainant filed the instant Complaint on or about September 2000, in which he sought to recover Grade 1 disability compensation of US\$60,000.00, plus unquantified compensation for "loss of earning capacity," "reimbursement of medical expenses," moral and exemplary damages, and attorney's fees. (pp. 44-46, rollo)

Finding that the suit involves the interpretation of the claim of disability benefits in the Collective Bargaining Agreement, the Labor Arbiter pronounced in his Order dated December 6, 2001 that he has no jurisdiction to resolve the complaint. He then ordered for the records of the case to be forwarded to the National Conciliation and Mediation Board (NCMB). The parties mutually chose the respondent Bishop Teodoro Buhain to serve as the Voluntary Arbitrator.

In settling the controversy, the Voluntary Arbitrator in his decision declared that:

Under the circumstances, therefore, Complainant should be entitled to compensation for total disability pay only amounting to US DOLLARS SIXTY THOUSAND (US\$60,000.00) or its equivalent in Philippine Pesos at the time of payment is due to the Complainant and must be paid by the Respondent. Other damages prayed for are denied for lack of merit for such award. (p. 48, rollo)

As recourse NYK-FIL filed this petition for certiorari raising as the errors for the consideration of this Court the following:

I CONTRARY TO THE EVIDENCE AND DOCUMENTS PRESENTED IN THE PROCEEDINGS A QUO, THE PUBLIC RESPONDENT VOLUNTARY ARBITRATOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT RESPONDENT ROJO WAS SUFFERING FROM DISABILITY AND IS THUS ENTITLED TO

DISABILITY BENEFITS.

II THE PUBLIC RESPONDENT VOLUNTARY ARBITRATOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE MISAPPLIED THE PROVISIONS OF THE POEA STANDARD CONTRACT OF EMPLOYMENT AS WELL AS THE COLLECTIVE BARGAINING AGREEMENT, AND IN HOLDING THAT THE PROVISIONS OF THE LABOR CODE FIND APPLICATION IN THE INSTANT CASE. (p. 19, rollo)

NYK-FIL contends that contrary to the findings of the Voluntary Arbitrator, Rojo is not entitled to disability benefits. This is because the company-designated physician made no findings that Rojo was suffering from any disability, permanent or temporary, total or partial. While Rojo underwent several treatments, this was because he claimed he was experiencing lumbosacral pains. But this notwithstanding, he was declared fit to work. NYK-FIL argues that the award of the Voluntary Arbitrator of the disability benefit is an error because the basis was merely the persistent pain claimed by Rojo but which is unsubstantiated and should not be the basis for the grant of disability benefits.

NYK-FIL states too that the Voluntary Arbitrator erred when it applied the provisions of the Labor Code in this case. It argues that the contract between the parties is the POEA Employment Contract which is covered by the Terms and Conditions Governing the Employment of Filipino Seafarers on-Board Ocean-Going Vessels. Thus any dispute between the parties must be resolved on the basis of the Standard Contract. According to Section 20 of the Standard Contract, its liabilities consists only of:

1. payment of wages on board (Sec 20 (B) 1);
2. treatment at cost to employer and board and lodging at foreign port and treatment at cost after repatriation until declared fit or disability is assessed (Sec 20 (B) 2);
3. payment of sickness allowance equivalent to basic wage until fit to work assessed disabled, maximum of 120 days (Sec 20 (B) 3);
4. full cost of repatriation (Sec 20 (B) 4) ; and
5. disability if warranted. (p. 31, rollo)

NYK-FIL avers that in faithful compliance of its contractual and legal obligations, it provided all the medical treatments during the time that Rojo was disabled.

In its insistence that it should not be held liable for disability benefits to Rojo, NYK-FIL argues that the latter's disability if any, arose out of a herniated disc, an occurrence arising out of a degenerative condition of the spine. It is a slowly progressive disease, and is not classifiable as an accidental injury (p. 33, rollo) hence this should not be compensable under the CBA. NYK-FIL raises too that even if Rojo's injury were caused by his falling off a ladder while on board vessel, still he is no longer entitled to a disability benefit because he was already properly compensated. Aside from shouldering all the medical expenses and treatments, Rojo was also provided with sickness allowance equivalent to his basic wage while he was being medically treated. NYK-FIL ratiocinates that to grant Rojo disability benefits again after having received sickness allowance, would result in double compensation.

We find merit in the petition.

It is a fact that Rojo started to seek medical attention from October 1999 and his treatment and rehabilitation lasted until November 2000. The illness having lasted over 120 days, it would under the provisions of the Labor Code be categorized as permanent total disability (Article 92, parag. c [1]). However, as opposed to the to the

stance of the Voluntary Arbitrator, the provisions of the Labor Code should not be applied. Filipino seamen are governed by the rules and regulations of the POEA (Pentagon International Shipping, Inc. vs. Adelantar, 435 SCRA 342). It is clear that there is an existing Collective Bargaining Agreement between the parties. Since the controversy involve benefits which are contractual in nature, they should be governed by the terms and conditions of the POEA Standard Contract which has the force of law between them. A contract is the law between the parties and they are bound by its stipulations (Salvador vs. Court of Appeals, 426 SCRA 433).

Scrutinizing the medical records of Rojo, he was not suffering from permanent disability which would entitle him to disability benefits. In Section 20 (B) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarer On-Board Ocean Going Vessels, it is provided that:

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 fit to work or the degree of permanent disability has been assessed by the company-designated physician 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 x x x (Annex "2", p. 117, rollo, emphasis supplied)

From this, it is thus clear that in order to establish a seafarer's claim of disability, it is the company designated company physician who should give his findings.

Records show that before and after Rojo underwent operation, he had successive treatment and rehabilitation. In fact 18 weeks after his operation it was already declared by the orthopedic surgeon that:

THIS IS WITH REGARDS TO YOUR QUERY ABOUT THE PROGNOSIS OF MR. ANDRE ROJO WHO UNDERWENT LAMINECTOMY AND DISCECTOMY X X X

X X X

HE STILL HAS SUBJECTIVE COMPLAINT OF BACK PAIN BUT FOLLOW-UP PHYSICAL EXAMINATION WAS NEGATIVE. HIS MOST RECENT BLOOD EXAMINATION WAS ESSENTIALLY NORMAL. REPEAT EMG-NCV STUDIES REVEALED NEGATIVE EVIDENCE OF ANY RADICULUPATHY. HE SHOULD BE ABLE TO GO BACK TO WORK IF HE SO DESIRES.(Annex "14", p. 108, rollo)

Then again on October 5, 2000, the report of the company doctor, Robert Lim stated that:

THIS IS A FOLLOW-UP REPORT ON MR. ANDRE ROJO X X X

HE STILL HAS MULTIPLE COMPLAINTS NOT RELATED TO HIS SURGERY.

HE WAS ADVISED TO CONTINUE HIS HOME EXERCISES. X X X (Annex "15", p. 109, rollo)

On November 6, 2000, the same company doctor made a report that:

THIS IS A FOLLOW-UP REPORT ON MR. ANDRE ROJO X X X

HE WAS INITIALLY SEEN ON DECEMBER 01, 1999.

HE HAS BEEN UNDER THE CARE OF OUR ORTHOPEDIC SURGEON.

HE STILL COMPLAINS OF BACK PAINS.

HIS LATEST EMG-NCV DONE ON NOVEMBER 6, 2000 AND JULY 7, 2000 SHOWED ESSENTIALLY NORMAL RESULTS.

OUR SPECIALIST OPINES THAT PATIENT IS NOW FIT TO WORK. HOWEVER, THE PATIENT REFUSED TO SIGN HIS CERTIFICATE OF FITNESS FOR WORK.

X X X (Annex “18”, p. 115, rollo, emphasis supplied)

From the various reports made by the company designated physician, there was never a declaration that Rojo was suffering from any disability, permanent or temporary. In fact in due time, he was declared fit to work. Rojo’s recovery from his illness was even recognized by the Voluntary Arbitrator, and so stated in his decision that:

x x x in fact Complainant was totally cured from such disability after proper medical attention and treatment was given to him at the expense of Respondent. To award “loss of earnings” during this period of treatment and therapy would therefore be unfair to the Respondent, as the same may be considered as “double compensation.” After all, after treatment, Complainant had been restored to his healthy self and it is up to him to look for employment for living. (p. 47, rollo, parag. 5, emphasis supplied)

Rojo’s insistence that he still suffers from back pain is not supported by the various medical examinations conducted upon him by the company-designated physician. The cause of his pain is undetermined for the very existence of the pain itself is unsubstantiated. Even the medical report from a doctor which Rojo sought personally for another examination does not indicate that he was suffering from disability. It was merely stated by said doctor that:

x x x After surgery, he still had his original complaints of back pain. He also started having erectile dysfunction.

x x x

Present working impression: failed back syndrome. Etiology unknown, possibly secondary to retained disc material. (p. 223, rollo, emphasis supplied)

The statement is only a physician’s offhand opinion with no medical record to prop this.

On the other hand it is undisputed that NYK-FIL has performed all its obligations under its contract as to payment of sick allowance and medical treatment among others as provided under Section 20(B) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarer On-Board Ocean-Going Vessels. Since Rojo has already been declared fit to work by the company physician, disability benefit is not warranted.

WHEREFORE, the petition is GRANTED and the decision of the Voluntary Arbitrator is ANNULLED and SET ASIDE. The case is hereby DISMISSED.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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