

EVIC HUMAN RESOURCE MANAGEMENT, INC. ET AL.,/ EVIC HUMAN RESOURCE MANAGEMENT, LTD.,/ MS. MA. VICTORIA C. NICOLAS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND VALERIO...

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

After going over the petition and its attachments, including the assailed issuances, this Court finds and so holds that the National Labor Relations Commission (NLRC) judiciously acted in awarding private respondent's permanent total disability benefit and other monetary claims.

Petitioners hired private respondent Valerio Parage as Able Seaman on board M/T Christina on March 27, 2012. He boarded the vessel on May 26, 2012. According to Valerio, he was constantly served with unhealthy food on board the vessel which he was forced to eat because of his heavy, stressful, and physically demanding work. On January 1, 2013, after rendering straight duty for 12 hours, he experienced moderate palpitations, chest pain, auditory hallucinations, tremors, light-headedness, dizziness, upset stomach, and weakness. He also felt discomfort whenever he was alone. Because of his auditory hallucinations, he could no longer sleep and became lethargic and irritable, which consequently affected his work performance. Valerio was repatriated on January 12, 2013.

Upon arrival in Manila, Valerio was referred to the company-designated physician at YGEIA Medical Center to determine and treat his condition. Petitioners later requested their company-designated physician, Dr. Susannah O. Salvador of Sachly International Health Partners to extend medical attention and treatment to Valerio as the latter was repatriated and diagnosed with Major Depression Disorder.[2] Valerio consulted other independent physicians, namely, Dr. Arleen Grace Rosal[3] and clinical psychologist Dr. Elias D. Adamos, who both confirmed that he had Major Depression Disorder. After a series of evaluation and treatment, Dr. Adamos declared Valerio permanently incapacitated to work as seafarer because of his serious medical, mental, and psychological condition equivalent to Grade 1 under the Standard Contract of POEA, and stated that the latter's condition was related to his heavy workload on board the vessel[4]. Petitioners rejected Valerio's claim for disability benefits on the strength of the Master's Report stating that Valerio allegedly requested to be signed off from the vessel due to family problem[5]. Valerio, thus, filed the complaint below for total and permanent disability benefits, moral and exemplary damages, and attorney's fees[6]. Both the labor arbiter[7] and the NLRC[8] ruled in Valerio's favor granting his money claims, but denying his claim for damages due to lack of proof of bad faith or malice on petitioners' part.

Petitioners now seek affirmative relief claiming that Valerio is not entitled to permanent total disability benefit because he was not medically repatriated, but requested for voluntary repatriation prior to the completion of his contract, and his illness is not work-related but only brought about by news that his daughter had been abused.

For a seafarer's employment to be deemed effectively pre-terminated by resignation and sign-off, the same must

be done in writing as required under Section 18 (B) 3 of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), viz:

Section 18. Termination of Employment

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

3. when the seafarer, in writing, voluntarily resigns and signs off prior to expiration of contract pursuant to Section 19 (G) of this Contract.

Here, there is no substantial evidence that Valerio actually pre-terminated his employment. Apart from the Master's report, petitioners failed to show any written proof that Valerio, indeed, requested for early disembarkation because his daughter was abused. The Master's report which only narrates accounts of other seafarers regarding Valerio's alleged request and reason for early disembarkation cannot outweigh the concurring findings of the labor arbiter and the NLRC that Valerio was medically repatriated. This falls short of the written proof of voluntary pre-termination of the contract required under the POEA-SEC.

Further, petitioners' own acts belie their claim that Valerio voluntarily resigned and was not medically repatriated. First. A perusal of petitioners' Request for Medical Attention[9] would show that they acknowledge the fact that Valerio was indeed repatriated and is suffering with Major Depression Disorder. Second. The fact that they paid Valerio's repatriation cost also militates against their interest since the POEA-SEC requires the seafarer who requested for pre-termination of his contract to shoulder the repatriation and transportation cost of his replacement. It expressly singled out the seafarer's transportation cost as the only expense the employer may assume as a form of compassionate gesture.[10] Beyond that, it may already be deemed an admission of liability for the seafarer's early repatriation.

To escape liability, petitioners further argue that Valerio's illness is not work-related. Relying on the Master's report, they allege that the news about the abuse of his daughter was the proximate cause of his depression and his subsequent request for voluntary repatriation. The Master's Report with respect to this matter has no probative value for being hearsay as the Master, Dimitrios Theodorou, only recited therein what another seafarer, Bosun Flores Danilo, told him, i.e. Valerio's reason for requesting early disembarkation was the incident regarding his daughter.

Though Major Depression Disorder may not be listed as an occupational disease under Section 32-A of the POEA-SEC, it is presumed to be work related and compensable pursuant to Section 20 (B), paragraph (4) of the said POEA-SEC[11]. The employer bears the burden to overcome this statutory presumption. Hence, unless the employer presents a contrary evidence, this disputable presumption stands.[12]

Here, there was no sufficient evidence presented to overcome the presumption of work-relation. Other than the Master's Report and the alleged declaration of the company-designated physician that Valerio's illness was not work-related,[13] petitioners failed to discharge their burden. In fact, they even acknowledged and informed their company-doctors that Valerio was repatriated and has Major Depression Disorder.[14] Too, Valerio underwent Pre-Employment Medical Examination (PEME), was declared fit to work before joining petitioner's vessel, and later manifested symptoms of his illness while on board the vessel which show that his working conditions either caused or aggravated his illness. Further, petitioners' unsubstantiated assertions cannot stand against Dr. Adamos' detailed medical opinion and the labor arbiter and NLRC's concurring findings that that Valerio is suffering from a work-related disorder.

Under our labor laws, a disability is total and permanent if as a result of the injury or sickness, the employee is

unable to perform any gainful occupation for a continuous period exceeding 120 days[15] or the disability to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.[16] The notion of disability is intimately related to the worker's capacity to earn. It should be understood less on its medical significance but more on the loss of earning capacity inasmuch as what is being compensated is not the worker's injury or illness but his inability to work resulting in the impairment of his earning capacity.[17] An employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.[18]

Here, Valerio was repatriated on January 12, 2013 and was referred to a company designated physician who was not shown to have issued any medical report or certificate to prove that the latter has already made a definite assessment of Valerio's fitness or disability. On the other hand, Dr. Adamos categorically declared Valerio permanently unfit for sea duties because of the disability caused by his work-related illnesses. Valerio was not able to perform his customary duty or any gainful occupation for an uninterrupted period of more than 120 days due to said illness. There is no showing that he has been re-employed by petitioners for the same position or any similar capacity since he got repatriated. All these give rise to the conclusive presumption that Valerio is totally and permanently disabled. The labor arbiter and NLRC are, therefore, correct in declaring that Valerio suffered permanent total disability considering that his mental and psychological condition or illness affects his mental faculties, is recurrent, and effectively prevents him from regaining full use of his mental faculties and returning to his usual work as seafarer.

Valerio, too, is entitled to the balance of his sickness allowance benefits because he has never become fit again to resume his duties nor cured of his illness from the time he disembarked for medical treatment.

Further, the NLRC correctly awarded attorney's fees considering that petitioners' failure to satisfy Valerio's valid claim compelled him to litigate and incur expenses to protect his rights.[19]

Absent any arbitrary or despotic exercise of judicial power as to amount to abuse of discretion on the part of the NLRC, therefore, the petition cannot prosper.[20]

ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED for utter lack of merit.

SO ORDERED.

Castillo, (Chairperson) and Barrios,[1] JJ., concur.

[1] Per Office Order No. 243-14-ABR dated May 23, 2014.

[2]Manning Agents Request for Medical Attention dated February 21, 2013, Rollo, p. 94.

[3] Medical Certificate dated February 7, 2013, Rollo, p. 93.

[4] Medical Certificate dated April 16, 2013, Rollo, pp. 95-98.

[5] Master's Report dated January 23, 2013, Rollo, p. 63.

[6] Rollo, pp. 64-66.

[7]Decision dated September 27, 2013, Rollo, pp. 126-136.

[8] Decision dated January 13, 2014, Rollo, pp. 36-45; Resolution dated February 20, 2014, Rollo, 31-33.

[9]Manning Agents Request for Medical Attention, Rollo, p. 94.

[10] SECTION 19. REPATRIATION

G. A seafarer who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. The employer may, in case of compassionate grounds, assume the transportation cost of the seafarer's replacement.

[11] 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:

xxx xxx xxx

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

[12] Jebsens Maritime, Inc., vs. Eleno A. Babol, G.R. No. 204076, December 4, 2013.; Magsaysay Maritime Services and Princess Cruise Lines, Ltd., vs. Earwin Meinrad Antero F. Laurel, G.R. No. 195518, March 20, 2013.

[13] Rollo, p. 18.

[14] Manning Agents Request for Medical Attention, Rollo, p. 94. [15]Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules).

[16] Carmelito N. Valenzona vs. Fair Shipping Corporation and/or Sejin Lines Company Limited, G.R. No. 176884, October 19, 2011.

[17] Joelson O. Iloreta vs. Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K., Ltd., G.R. NO. 183908, December 4, 2009.

[18] Alpha Ship Management Corporation vs. Eleosis V. Calo, G.R. No. 192034, January 13, 2014.

[19] Carmelito N. Valenzona vs. Fair Shipping Corporation and/or Sejin Lines Company Limited, G.R. No. 176884, October 19, 2011; MCC Industrial Sales corporation vs. Ssangyong Corporation vs. Kamalig resources, Inc., 540 SCRA 139.

[20] Santiago Land Development Company v. Court of Appeals, et.al., G.R. No. 103922, July 9, 1996.

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