

STOLT-NIELSEN PHILIPPINES, INC. and JANE SY, Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and ANDRES M. SUCK, Respondents.

Ponente: BARZA, J.

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BARZA, J.:

Assailed in this petition for certiorari under Rule 65 is the Resolution[1] of the public respondent National Labor Relations Commission (NLRC) dated 27 March 2013, in OFW (M) 03-03742-12 (LAC No. 01-000093-13), which affirmed the Decision[2] of the Labor Arbiter dated 29 November 2012, granting to private respondent Andres M. Suck his permanent total disability and benevolent fund. The NLRC Resolution[3] dated 25 June 2013 denying reconsideration filed by petitioners is likewise being assailed.

The facts as summarized by the Labor Arbiter are, as follows:

"It appears from the record that on May 31, 2011, complainant was hired by the respondent local manning agency, acting for and in behalf of the respondent principal, to work as Chief Cook on board the vessel 'Stolt Fulmar' for a period of nine (9) months with a basic monthly salary of US\$792.00. After passing the required pre-employment medical examination, complainant departed from the Philippines to join the vessel of his assignment. Complainant's employment is covered by an overriding collective bargaining agreement.

Complainant claims that he was employed by respondent Stolt for thirty (30) contracts for the span of 30 years, that is, from 1981 up to his last contract of employment entered into on May 31, 2011; that on October 6, 2011, while the vessel was at the port of Rotterdam, Netherlands, he collapsed while lying on his bed and lost consciousness; that upon recovery of his consciousness, he vomited and was admitted at the hospital from October 7 to 8, 2011; that upon discharge, he was again sent back to his assigned vessel where he again performed his duties and functions as chief cook.

Complainant further claims that on October 25, 2011, he was medically repatriated; that upon arrival in Manila on October 26, 2011, he was brought to the company physician, Dr. Fidel C. Chua and was referred to a psychiatrist, Dr. Raymond L. Rosales; that after tests conducted and examinations made, Dr. Rosales in his follow-up report dated January 20, 2012 diagnosed complainant to be suffering from Anxiety Disorder and recommended complainant for disability; that Dr. Chua became angry upon presentation to him of the follow-up report made by Dr. Rosales and even questioned asked (sic) complainant why he wanted to go on disability; that complainant was complainant (sic) was asked by Dr. Chua to set an appointment with Dr. Rosales as the former was determined to have complainant declared fit for employment; that Dr. Rosales was surprised to see complainant considering he was already recommended for disability; that sometime in February 2012, complainant was asked by Dr. Chua to sign a form which he later came to know as a declaration of fitness to work. Further, complainant alleges that sometime in February 2012, complainant was informed by respondent Stolt's Crewing Officer that his employment was put on hold that he would not be hired; that he was also advised to sign a prepared letter, which later turned out to be an application for retirement, for the release of his benevolent fund; x x x; that a follow-up check with Dr. Rosales confirmed that is (sic) suffering from Generalized Anxiety Disorder; that Dr. Rosales made a recommendation for his disability and was advised to continue his medication; that complainant consulted Dr. J.M. Castillo-Carcereny,

a renowned psychiatrist, for a second opinion; that complainant was found by Dr. Castillo-Carcereny to be suffering from severe Generalized Anxiety Disorder which is severe in character; that complainant was advised not to return to work due to the severity of his disability and considering that the somatic manifestations of his illness are triggered with the exposure to the demands of past employment, causing symptoms to increase in severity; that despite such findings, respondents refused to grant complainant his disability benefits under the CBA. Finally, complainant claims respondents also refused to release to (sic) his Benevolent Fund and his service bonus.

Respondents on the other hand claim that on October 07, 2011, complainant complained of stomach pain and as part of the standard procedure onboard the vessel, he was sent to a doctor in Rotterdam, Amsterdam for treatment; that complainant was found to have epigastric pain DD gastritis and was given medication; that complainant was thereafter declared fit for duty and fit to travel by the attending doctor; that the Master of the vessel deemed it better if he can be sent home early to take vacation and rest; that on October 25, 201 (sic), complainant left his vessel; that apart from his epigastric pain DD gastritis, complainant never had any other medical complaint nor was there any record of other medical complaints while he was working onboard his vessel from June 4 to October 25, 2011; that upon arrival in the country, complainant was referred to the respondents' company designated doctor, Dr. Fidel Chua of Trans-Global Health System Inc; that laboratory results ruled out medical possibilities of Transient Global Brain Ischemia and abnormal thyroid function hence complainant was only given medication for anxiety disorder; that on February 20, 2012, complainant was found asymptomatic of any illness including gastritis and anxiety disorder and thus was given neuropsychiatric clearance; that complainant signed a Certificate of Fitness to Work dated 21 February 2012; that after complainant was declared and certified as completely cured and fit to work, complainant Suck was referred back to Dr. Fidel Chua on February 27, 2012 for PEME and further asked to return for other required laboratory examinations; that complainant instead of reporting for further examinations, filed this instant case; that during the mandatory conference of the case, complainant clearly stated that he was asking for disability Grade 12 equivalent to US\$7,759.00.

In his Reply, complainant belies respondents' allegation that he allegedly complained of stomach pain and was sent to Rotterdam, Amsterdam for treatment and was sent home by the Master of the vessel of Stolt Fulmar for an early vacation. Instead he maintains that per his medical report, he was admitted to Rotterdam because he collapsed on his bed while the vessel was in Rotterdam and vomited upon recovery of his consciousness. Complainant further claims that the email sent by J. Allot (j.allot@stolt.com) dated October 14, 2011, addressed to respondents' crewing officer shows that he was repatriated upon request of the respondents' principal for health reasons and for further medical check up and not upon instruction of the Master of vessel for him to go on early vacation which respondents are again insinuating. Complainant further maintains that he is entitled to his claim against herein respondents. Respondents on the (sic) hand maintained that complainant is not entitled to such claim."^[4]

In the decision dated 29 November 2012, the Labor Arbiter held that the permanency of Suck's injury/illness is not disputed, and his General Anxiety Disorder is compensable. The CBA entered into between AMOSUP and petitioners covers all Filipino crew members on board Stolt Tankers Fleet Vessels. Section 11.2.1 of the CBA covers work-related illness or injury suffered by the seafarer while in the employ of Stolt, and seafarers who became permanently disabled as a result of work-related illness or injury while in the employment of the company shall be entitled to disability compensation. Suck has been a seafarer for 30 years and been assigned by Stolt to various vessels. His GAD was acquired during the course of his employment with Stolt.

The Labor Arbiter also struck down the statements made by Dr. Chua that Dr. Rosales could not have recommended Suck's disability. Dr. Rosales is a renowned doctor specializing in neurology and psychiatry, who could not have recommended the permanent disability of complainant without properly assessing his health condition. As further held, when Dr. Chua referred the case of Suck to Dr. Rosales, the former certainly could

have trusted the qualifications and abilities of Dr. Rosales to render a correct medical opinion in having referred Suck for examination and treatment, not to mention the fact that Dr. Rosales was already appraised by Dr. Chua of said parameter set under the POEA Contract for Seafarers after Dr. Rosales issued his follow-up report dated 20 January 2012 recommending Suck for disability. The Labor Arbiter found as illogical and absurd the assertion that it was Suck who asked Dr. Rosales to declare him permanently disabled for sea duty. Citing jurisprudence where findings of the independent physicians were given more credence than those of the company-designated physicians, the Labor Arbiter held that between the comprehensive psychiatric evaluation made by Dr. Carcereny and the declaration in the affidavits made by Dr. Chua and Dr. Rosales, wherein the latter doctor disclaimed having declared Suck's disability, Dr. Carcereny's evaluation is more credible.

As for Suck's entitlement to the benevolent funds, having been declared to be totally and permanently disabled, the Labor Arbiter granted the same, pursuant to Article 14.3 of the CBA and the Members Booklet which provides that seafarers are entitled to disability benefits when his disability lasted for more than 120 days and that it is the company (Stolt) who approves the disability claim and advise the administrator of said approval. Attorney's fees equivalent to ten (10%) of the total award was also awarded by the Labor Arbiter.

The dispositive portion of the Labor Arbiter's decision reads:

"WHEREFORE, a decision is hereby rendered ordering respondents to pay complainant his permanent total disability in the amount of US\$89,100.00 and benevolent fund benefit as of December 21, 2006 in the sum of US\$7,490.47, in its peso equivalent at the time of payment, plus 10% of the total award as attorney's fees. Other claims are denied.

SO ORDERED.

On appeal by the petitioners, the NLRC upheld the Labor Arbiter. Reconsideration sought by the petitioners was denied.

Hence, this petition on the following grounds:

APUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE ARBITER'S ERRONEOUS FINDING THAT THE ILLNESS OF PRIVATE RESPONDENT:

(A) WAS ACQUIRED DURING HIS PERIOD OF EMPLOYMENT; AND

(B) IS A WORK-RELATED ILLNESS AS DEFINED UNDER THE POEA CONTRACT.

BPUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE ARBITER'S ERRONEOUS FINDING THAT THE ILLNESS HAS BECOME PERMANENT AFTER THE LAPSE OF 120 DAYS FROM INITIAL TREATMENT.

CPUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE FINDINGS OF THE SEAMAN'S OWN PRIVATE DOCTOR WHEN;

(A) THE PRIVATE DOCTOR'S FINDINGS IS INCONCLUSIVE OF WHETHER THE ILLNES IS WORK-RELATED OR NOT;

(B) THE POEA CONTRACT, AS WELL AS THE COLLECTIVE BARGAINING AGREEMENT AND

EXISTING JURISPRUDENCE, UPHELD THE AUTHORITY OF THE COMPANY-DESIGNATED DOCTOR TO MAKE SUCH DETERMINATION OF WORK-RELATED ILLNESS, AND

(C) THE PROPER PROCEDURE IS TO APPOINT A THIRD DOCTOR TO RESOLVE THE CONFLICT BETWEEN THE COMPANY DOCTOR AND THE SEAMAN'S PRIVATE DOCTOR.

DPUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF BENEVOLENT FUNDS AND DAMAGES TO PRIVATE RESPONDENT WITHOUT LEGAL BASIS.

In his Comment[5], private respondent contends that no grave abuse of discretion has been committed by the NLRC. As posited, the findings of the NLRC in affirming the decision of the Labor Arbiter declaring Suck entitled to disability and benevolent fund benefits are well-supported with overwhelming evidence. Suck's disability, in this case, has been declared twice by the company-designated physician. Also, from 27 October 2011 until his last consultation with Dr. Rosales, more than 120 days has lapsed. The Members Booklet on disability also provides that disability benefit is paid if the disability lasted for more than 120 days.

It is also posited that aside from the presumption on work-related character of the injury or illness suffered by the seafarer during the term of the contract, Suck has established with overwhelming evidence the work-related character of his illness at the time that Suck was repatriated to the Philippines for further medical check-up, he was then under a contract with the petitioners and assigned to the vessel Stolt Fulmar. The company-designated physician, Dr. Rosales recommended Suck for disability finding him suffering from GAD, which finding was confirmed by the comprehensive psychological evaluation of Dr. Carcereny whose evaluation of Suck was never disputed. Further, Suck argues that causative circumstances had been shown in this case leading to his disability during the term of his employment and in line with his work as a seafarer with the petitioners. Further, in defending his decision to seek a second opinion from an independent specialist, Suck argues that case law has allowed adopting the findings favorable to the claimant and that whatever medical report that the company-designated physician may issue will not be conclusive as the same may be disputed by promptly consulting a physician of his own choice.

Suck also finds the certificate of fitness to work as void, and intended to defraud him and deny him of his disability benefits as it is more of a waiver than a certificate. He was the one who signed it and not either Dr. Rosales or Dr. Chua.

If, as petitioner would like to impress, that Suck has been found to be asymptomatic of GAD and was found fit for duty, Suck argues that he should have been hired again. He points out that from the time that he was medically repatriated on 25 October 2011 up to the present, he is still unable to resume his job as a seaman which is a clear indication that his disability is total and permanent.

As regards entitlement to the benevolent fund, Suck refers to Paragraph 14 of the Members Booklet on disability, which provides that "The Company will advise the Administrations if your disability claim has been approved. The Company decide if you are disabled based on medical evidence by a doctor approved by them." The said provision belie petitioner's assertion that they do not have control on the release on the benevolent fund due to Suck.

The petition is bereft of merit.

At the outset, let it be stressed that the appellate court's jurisdiction to review a decision of the NLRC in a petition for certiorari is confined to issues of jurisdiction or grave abuse of discretion. An extraordinary remedy, a petition for certiorari is available only and restrictively in truly exceptional cases. The sole office of the writ of

certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of certiorari will lie.[6]

Applied in this case, the Court finds no grave abuse of discretion on the part of the NLRC in issuing the assailed resolutions granting disability benefits to Suck.

Relevant to the instant case are the following provisions of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships:

"SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

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 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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 the 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.

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

x x x"

There can be no dispute, as the NLRC correctly found, that Suck's GAD occurred during his term of employment. Suck had been hired by Stolt and placed overseas to their foreign principals in the past 30 years.[7] Definitely, his illness was acquired in the course of his employment with the petitioners.

Suck was first treated on 27 October 2011 by Dr. Rosales, the specialist to whom the company-designated physician (Dr. Chua) referred Suck to. Suck last went to see Dr. Rosales in April 2012[8] but he was not declared cleared of GAD. For more than 120 days, Suck had not gone back to performing his duty or been gainfully employed. This is a clear indication that Suck's illness rendered him incapable of effectively and competently performing his job as a seafarer. In fact, as early as 20 January 2012 or even without the lapse of 120 days, Dr. Rosales already made a finding on Suck's disability. At this point, it is well to note that disability is intimately

related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity[9].

Moreover, the petitioners cannot rely on the ruling in the case of Vergara vs. Hammonia requiring that the temporary total disability period may be extended up to a maximum of 240 days if the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention. In this case, Suck's disability is already settled when Dr. Rosales declared him so twice, to wit: during the 20 January 2012 follow-up check up[10] and in his 20 April 2012 report.

And while petitioners maintain that there is no basis to rely on the findings of Dr. Carcereny, being not the company-designated physician, it must be noted that the Supreme Court in several instances in the past, held that the seafarer can seek second opinion and consult a physician of his choice. While it is the company-designated physician who is indeed entrusted with the task of assessing the seaman's disability during the term of the latter's employment, this does not mean that his assessment is final and that the seafarer is not given the opportunity to assert his claim. [11]

It has been held that:

"The conflicting findings of the company's doctor and the seafarer's physician often stir suits for disability compensation. As an extrajudicial measure of settling their differences, the POEA-SEC gives the parties the option of agreeing jointly on a third doctor whose assessment shall break the impasse and shall be the final and binding diagnosis.

While it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. This is because resort to a third doctor remains a mere directory not a mandatory provision as can be gleaned from the tenor of Section 20(B)(3), POEA-SEC itself. Further, the right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.

Hence, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him." [12]

And as aptly framed by the Supreme Court in the case of Esguerra vs. Limited Philippine Lines:[13]

"x x x The Court is not naive of such interplay of force between the seafarer, the company and the latter's accredited physicians. As the medical coordinators of the hospital that represents the company in the conduct of medical evaluations, they are accustomed to do so in order to underrate the compensation the company must pay to the seafarer-claimant. This is precisely one of the reasons why the seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician."

The NLRC also did not commit grave abuse of discretion when it gave credence to the findings of Dr. Carcereny[14] since it is consistent with the findings of Dr. Rosales. In the Esguerra case above cited, the Supreme Court upheld the NLRC when the latter granted disability benefits to the claimant as evidence on record reveal similar conclusions or findings of the physician designated by the company and that of the claimant's independent specialist regarding therein claimant's permanent and total disability.

Furthermore, for petitioners to insist that it should be the findings of the company-designated physician which must prevail, will militate against their assertion that the certification dated 21 February 2012 of Suck's fitness to work should be given weight in this case. To reiterate, Suck's case has been referred by Dr. Chua to Dr. Rosales. Dr. Rosales has declared Suck's disability twice, which runs counter to the certification of fitness to work which

the petitioners are pressing.

Corollarily, the NLRC correctly disregarded the certification^[15] showing Suck as fit to work. The records is bereft of a medical report issued by a doctor certifying Suck as fit to work as a seafarer despite his illness. As correctly pointed out by Suck, what petitioners insist as a certificate of fitness to work dated 21 February 2012, is more of a waiver, and was not prepared by either Dr. Chan or Dr. Rosales. Besides, Suck claimed that he executed the said certification upon the understanding that it would be used for his next employment. The certificate was correctly given scant consideration considering its doubtful veracity.

Thus, as correctly held by the NLRC:

"x x x since it was Dr. Rosales who treated complainant, and found him with GAD, it is him who has the authority to issue a certificate of fitness to work or disability, and no other doctor, even Dr. Chua, because that authority was given to Dr. Rosales when his assistance was sought by Dr. Chua."

There is also no merit in petitioners' claim that they do not have control over the release of the Benevolent Fund. The NLRC decision finds basis in Section 14.3 of the CBA wherein it is stated that "When an officer/seafarer suffers injury or illness and is consequently certified as permanently unfit for sea duty, said member-seaman shall be entitled, apart from disability benefits, to Benevolent Fund benefits accrued in his name." And as aptly found in the assailed Decision, "The CBA itself speaks that it was respondent Stolt who appointed UNI Storebrand to administer the Benevolent Fund, hence, it possesses personality to cause the release of the benevolent funds due the complainant." The claim for the Benevolent Fund is likewise amply supported by the Members Booklet providing disability benefits when the disability lasted for more than 120 days, as in this case.

Considering the foregoing, the Court finds no reason to issue the writ being prayed for. A writ of certiorari is warranted when: (1) any tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. An act of a court or tribunal may be considered as grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility,^[16] which petitioners failed to prove in this case.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Abdulwahid, (Chairperson), and Cruz, JJ., concur.

[1] Rollo, pp. 257-263

[2] Rollo. pp. 197-203

[3] Rollo, pp. 299-300

[4] NLRC Decision, pp. 2-5, Rollo, pp. 258-261

[5] Rollo, pp. 382-403

[6] Odango vs. NLRC, G. R. No. 147420, June 10, 2004

[7] Certification, Rollo, p. 106

[8] Rollo, p. 119

[9] Austria vs. Court of Appeals, 387 SCRA 216

[10] Rollo, p. 115

[11] NYK-FIL Ship Management v. Talavera, G.R. No. 175894, November 14, 2008; Coastal Safeway Marine Services Inc. v. Esguerra, G.R. No. 185352, August 10, 2011; MAERSK v. Mesina, G.R. No.185352, June 5, 2013.

[12] Maersk Filipinas Crewing Inc. v. Mesina, G.R. No. 200837, June 5, 2013.

[13] Esguerra vs. Limited Philippine Lines, G.R. No. 199932, July 3, 2013

[14] Psychiatric Evaluation, Rollo, pp. 133-142

[15] Rollo, p. 83

[16] People of the Philippines vs. de Grano, G.R. No. 167710, June 5, 2009

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