

SEVENTH DIVISION ANGELICO M. CABRAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, TSM SHIPPING (PHILS.) INC., MR. ALFONSO DEL CASTILLO, SILVER CRUISES LTD., AND/OR NORTH...

Ponente: BERSAMIN, L. P., J.

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BERSAMIN, L. P., J.:

On certiorari, the petitioner hereby seeks to nullify the decision dated March 31, 2004 rendered by the National Labor Relations Commission's (NLRC) in OFW Case 02-01-0303-00 (CA No. 036242-03) entitled Angelico M. Cabral v. TSM Shipping (Phils.) Inc./ Alfonso R. Del Castillo,[1] which set aside the decision rendered by the Labor Arbiter on April 30, 2003;[2] and the resolution dated September 17, 2004, which denied the petitioner's motion for reconsideration,[3] claiming that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The antecedents follow.

The petitioner was employed as assistant plumber for a period of 9 months at 44 hours/week by respondent TSM Shipping (Phils), Inc. for and in behalf of its principal Silver Sea Cruises Ltd.. Under the terms of the contract of employment, he was given a basic monthly salary of \$601.00; overtime pay of \$334.00/month; 85 hours/month; \$3.94/hour and vacation leave with pay at \$160.00/month at 8 days/month.

Prior to his deployment, and as required by existing laws, he underwent a pre-employment medical examination (PEME) and was thereby found fit for work by his physician. On April 24, 2004, he boarded the vessel MV SILVER CLOUD where he was assigned.

In July 2001, he sustained an injury to his left collar bone after lifting heavy objects while on board the vessel. He was immediately attended to by the ship's physician and was later examined and treated in London and Portugal hospitals. On September 21, 2001, he was repatriated for further medical treatment.

Upon repatriation, he was referred by his employer to the company-designated physician, Dr. Robert Lim, at the Marine Medical Services, Metropolitan Hospital, who diagnosed him to be suffering from "fracture, left clavicle with osteomyelitis" and recommended him to undergo physical therapy. Dr. Lim also referred him to an orthopedic surgeon.

On March 8, 2002, following months of treatment and therapy, he was declared by Dr. Lim to be fit for sea duty.

Believing, however, that he was entitled to the payment of permanent disability benefits, the petitioner lodged in the NLRC a claim for disability compensation benefits against his employer.

The mandatory conferences failed to have the parties reach an amicable settlement. Hence, the parties filed their respective position papers and other necessary submissions.

On February 20, 2003, the petitioner filed a motion to appoint a third doctor. The private respondent opposed the

motion.

The case was thereafter submitted for resolution.

On April 30, 2003, Labor Arbiter Fedriel S. Panganiban rendered his decision, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering respondents North Sea Marine Services Corporation and its principal Silver Sea Cruises Ltd. to pay complainant the sum of TWELVE THOUSAND NINETY US DOLLARS (US\$12,090.00) or its peso equivalent at the time of payment, representing complainant's disability benefit plus ten (10%) thereof by way of and/as attorney's fees.

The case filed against TSM Shipping (PHILS.) Inc. and Mr. Alfonso R. Del Castillo is dismissed.

All other claims are likewise dismissed for lack of merit.

SO ORDERED.[4]

Dissatisfied, the private respondents appealed to the NLRC, raising the following issues:

1. Whether or not the Honorable Labor Arbiter gravely abused his discretion and committed serious errors in ruling that the respondents-appellants are liable to complainant-appellee for the payment of disability compensation in the amount of US\$12,090.00 considering the facts and circumstances peculiar to this case.

1.1 Whether or not the Honorable Labor Arbiter gravely abused his discretion when he ruled that complainant-appellee is entitled to disability compensation in the amount of US\$12,090.00 despite the fit to work declaration by the company-designated physician. Whether or not the Honorable Labor Arbiter gravely abused his discretion when he awarded disability benefits based on the findings of so-called "independent doctors" and

2. Whether or not the Honorable Labor Arbiter gravely abused his discretion and committed serious error in holding herein respondents-appellants liable for attorney's fees.[5]

On March 31, 2004, the NLRC rendered its assailed judgment, reversing the Labor Arbiter, to wit:

WHEREFORE, premises considered, the assailed decision is hereby, SET ASIDE and a new one is hereby entered dismissing the complaint for lack of merit. Respondent should however give complainant priority in the hiring of employees for overseas employment in accordance with his qualification.

SO ORDERED.[6]

Aggrieved, the petitioner moved for reconsideration but on September 17, 2004, the NLRC denied the motion.[7]

Hence, the petitioner commenced this special civil action, contending that:

I

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS REVERSIBLE ERROR IN SETTING ASIDE THE RULING OF THE LABOR ARBITER IN FAVOR OF THE PETITIONER

II

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS REVERSIBLE ERROR IN NOT GIVING WEIGHT TO OPINION OF THE PRIVATE DOCTORS WHO EXAMINED THE PETITIONER.[8]

Herein, we are confronted with conflicting rulings of the Labor Arbiter and the NLRC. We are thus constrained to re-examine the facts of the case to inquire unto the correctness of the evaluation of the evidence and thus be enabled to determine whether respondent NLRC had committed any grave abuse of discretion in its appreciation of the evidence.

The Labor Arbiter compelled payment of permanent disability benefits because he gave credence to the medical assessment of the petitioner's private physicians. The Labor Arbiter explained:

The company designated physician does not have the sole authority to determine the disability grade of seafarers. He likewise does not have blanket authority to declare a seafarer fit to work or not, as his diagnosis or determination is usually self serving and biased in favor of the company or manning agent. Thus, as ruled in *Wallem Maritime Services vs. NLRC*, 318 SCRA 623, the Supreme Court held that:

xxx we agree with private respondent that opinions of petitioner's doctors to this effect should not be given evidentiary weight as they are palpably self-serving and biased in favor of petitioners, and certainly cannot be considered independent.

We give credence to the medical assessment made by the private doctors consulted by the complainant especially that of Dr. Antonio A. Pobre of the St. Luke's Hospital dated February 25 and 26, 2002 (Annex G of Complainant's Position Paper). The certification given by Dr. Pobre states that the complainant should seek partial permanent disability for the period of healing is undetermined. Likewise, he was diagnosed to have:

1. OSTEOMYELITIS, LEFT STERNO-CLAVICULAR JUNCTION
2. OLD FRACTURE AT THE PROXIMAL END OF THE LEFT CLAVICLE.
3. IMPINGEMENT SYNDROME, RIGHT SHOULDER

More revealing and convincing is the Medical Certificate issued by Dr. Gilbert R. Beltran, an Orthopaedic and Trauma Surgeon, when he attested that

Based on the clinical course and present physical findings the patient is 'unfit to work'. I am recommending a partial disability with POEA Schedule of disability Grading of 10 (20.15%) that is not permitting arm to be raised above a level with the shoulder and/or irreducible fracture or faulty union of the collarbone. Period of healing remains undetermined. xxx (Annex A, Complainant's Motion to Submit case for resolution)

Almost identical medical findings were arrived at by Dr. Pobre and Dr. Beltran in that the complainant is not fit to work and the period of healing of complainant's injury remains undetermined. Moreover, if respondents are really convinced that the findings of the company designated physician are not biased in their favor, they should have agreed to the complainant's voluntary request to submit himself for examination of an independent or a 3rd Doctor, to determine once and for all, the real score on complainant's disability.[9]

On the other hand, the NLRC found that the Labor Arbiter abused his discretion in ruling that the petitioner was unfit to work based on the certification of his private doctors. In arriving at its decision, the NLRC applied Section B (3) of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract which expressly provides that the company designated physician is required to certify to the fitness of the injured seafarer or determine the degree of his disability after undergoing medical treatment. The NLRC ratiocinated as follows:

xxx Obviously, the certification is required from him because he was the one who treated and managed the health condition of the seaman that gives him the authority to assess and evaluate the physical condition of the seafarer. It is quite harsh and unfair to conclude that the certification of fitness to work issued by the company designated physician is self-serving and biased in favor of respondent. To discredit the certification of fitness

to work issued by him is to doubt the authority given him as company physician.[10]

The issue now posed herein may be expressed in the query:- Did the NLRC gravely abuse its discretion in reversing the decision of the Labor Arbiter by ruling that the petitioner was not entitled to any disability compensation benefits?

Upon our careful consideration of the case, we find that the petitioner failed to demonstrate that the NLRC was guilty of grave abuse of discretion in its reversal of the Labor Arbiter.

It is beyond dispute that upon his repatriation, the petitioner was immediately referred to Dr. Lim, the company-designated physician, at the Marine Medical Services, Metropolitan Hospital. Dr. Lim found that the petitioner had: "Impression-Fracture, Left Clavicle." The petitioner thereafter underwent several months of treatment and physical therapy under Dr. Lim. He was also attended to by an orthopedic surgeon, Dr. Lim Tiong Sam, who conducted x-rays and CT scan to further determine the extent of the injury. During the time of the petitioner's injury, he was subjected to continuous check up and medication, as to which Dr. Lim made the corresponding medical

reports showing improvement of his condition.¹¹ Finally, on March 8, 2002, Dr. Lim declared petitioner fit to work, stating:

He is now 8 months post-injury. He has undergone repeat x-ray of the left clavicle and the results already showed no evidence of left clavicular abnormality. Our specialist opines that patient is now fit to work. He was pronounced fit to resume sea duties as of March 08, 2002. Final diagnosis - left clavicular fracture with osteomyelitis healed.[12]

The POEA Standard Contract of Employment is the applicable rule on claims for disability compensation involving seafarers like the petitioner. The pertinent provisions of the contract are quoted as follows:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

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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 be repatriated.

However, if after repatriation the seaman 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 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.

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The abovequoted provides for the liability of the employer in case the seafarer suffers injury or illness during the term of his contract. On the disability of the repatriated seafarer who still requires medical attention, the contract states that the disability can only be assessed by the company physician, who is designated therein as the person responsible for determining the seafarer's true physical condition.

The authority of the company-designated physician to make such assessment is now well-recognized. Specifically, the Supreme Court declared in *Rivera v. Wallem Maritime Services*,^[13] citing *German Marine Agencies v. NLRC*,^[14] that:

In order to claim disability benefits under the Standard Employment Contract, it is the company-designated physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.

The records show that company-designated physician Dr. Lim regularly treated the petitioner from October 2001 up to March 2002. During the months of such treatment and physical therapy, Dr. Lim referred the petitioner to other specialists, particularly an orthopedic surgeon. Dr. Lim issued various medical reports to update the employer of the petitioner's health status. The medical records revealed that from the time of initial consultation, the petitioner's injury continuously improved until Dr. Lim made a final diagnosis, to wit: "Left clavicular fracture with osteomyelitis healed." Hence, for 6 months, Dr. Lim took actual care of the petitioner's medical needs resulting into his being declared fit to work on March 8, 2002.

Based on these established facts, Dr. Lim, the company-designated physician, was the authority on the petitioner's medical condition. In the absence of bad faith, his findings were binding on the petitioner, such findings being based on the petitioner's extensive and actual medical history and treatment from his repatriation until Dr. Lim declared him fit to work.

Yet, the petitioner contends that the NLRC gravely abused its discretion in reversing the Labor Arbiter simply because the Labor Arbiter had himself seen the petitioner's injury during the trial proceedings. He explains that he refused to sign the certification on his fitness to work by the company-designated physician because of the existence of a visible sore on his shoulder at that time; that he was constrained to seek the opinion of 2 private doctors who found that he was still unfit for work and thus should undergo further treatment; and that due to the conflicting opinions of the doctors, he filed the motion to appoint a third doctor, such third opinion being allowed by the parties' ITF collective bargaining agreement (20.1.4.2).

Citing jurisprudence,^[15] the petitioner submits that the Supreme Court has already disregarded the primacy of the medical findings of the company-designated physician.

The petitioner's submissions are not persuasive.

Although his private doctors might themselves be considered experts in their field and possessed of the specialized knowledge to appraise his condition, we cannot prefer their findings to those of Dr. Lim, the company-designated physician. Aside from the record lacking competent showing of the extent of the medical treatment that the private doctors gave to the petitioner, no credible evidence was presented to support the claim that the petitioner was still suffering from the disability. In contrast, Dr. Lim's extensive medical treatment that enabled him to make a final diagnosis on the degree of the petitioner's disability was amply demonstrated. We point out that Dr. Lim's certification that the petitioner was already fit to resume sea duty was arrived at only after months of medical treatment and therapy. We do not dismiss such well-founded findings as biased or less than objective.

Thus, the following observations of the NLRC are apt, viz:

Anyway, we are not prepared to share the view of the Labor Arbiter that the company designated physician's certification is biased. The reason is that the certification was based on medical records of complainant himself which records were based on actual and extensive physical examination and treatment conducted on him. The medical records were authentic and were not fabricated. As such, they are the best evidence of complainant's true state of health.

Whereas, the finding of the doctors appointed by complainant without the knowledge of respondent is rather more inconclusive of complainant's health condition. The reason is that the private doctor did not conduct an extensive and thorough examination on complainant. Apparently, the basis of the certification was the very same medical records that were used by the company physician. Thus, between the certification issued by the company designated physician and the certification issued by the private doctors, we would lend more credence to the certification issued by the company designated physician because it was done in the regular performance of his duties as company physician and who consistently examined complainant's health condition. We cannot simply brushed aside said certification in the absence of solid proof that it was issued with grave abuse of authority as company physician. Moreover, said certification was in accordance with the requirement prescribed in the standard employment contract.

We could give credence to private doctor's assessment of complainant's physical condition only if respondents had failed in its duty to refer complainant to a company designated physician and it failed to provide the proper medical assistance to him. As it is, complainant was adequately provided by respondent with the medical assistance he needed. Of course, complainant cannot be prevented from seeking a second opinion from a private doctor but, for purposes of claim for disability benefits, the private doctor's finding if contrary to the finding of the company designated physician, the latter's finding would prevail. It is in accordance with Section B paragraph 3 of the POEA Standard Employment Contract where the only qualification prescribed for the physician entrusted with the task of assessing the seaman's disability is that he is company designated. (*German Marine Agencies, Inc. vs. NLRC*, 350 629).[16]

xxx

A final word! Although the beneficent provisions of the POEA Standard Employment Contract for seafarers are to be liberally construed in their and their dependents' favor,[17] we cannot apply such liberal construction on account of the facts of the petitioner's case not justifying the grant of disability benefits to him.

In view of the foregoing, the NLRC did not commit any abuse of discretion, least of all grave, that impaired its authority to render its assailed judgment and order. Verily, its ruling accorded with the facts on record and square fully with prevailing law and jurisprudence.

WHEREFORE, the PETITION FOR CERTIORARI is DENIED DUE COURSE and this case is DISMISSED.

SO ORDERED.

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

[1] Rollo, pp. 15-27.

[2] Rollo, pp. 155-163.

[3] Rollo, pp. 28-30.

[4] Rollo, pp. 155-163.

[5] Rollo, p. 172.

[6] Rollo, pp. 15-27.

[7] Rollo, pp. 28-30.

[8] Rollo, pp. 7-8.

[9] Rollo, pp. 161-162.

[10] Rollo, pp. 23-24.

[11] See Annexes B, C, D, E, F, G, H, I, J, K, Reply to Complainant's Position Paper; rollo, pp. 113-122.

[12] Annex L, Reply to Complainant's Position Paper; rollo, p. 123.

[13] G.R. No. 160315, November 11, 2005; 474 SCRA 714.

[14] G.R. No. 142049, January 30, 2001; 350 SCRA 629.

[15] Cuares v. National Labor Relations Commission, G.R. No. L-56379, April 28, 1983; 121 SCRA 812; Wallem Maritime Services, Inc. v. National Labor Relations Commission, G.R. No. 130772, November 19, 1999; 318 SCRA 623; and Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission, G.R. No. 123891, February 28, 2001; 353 SCRA 47.

[16] Rollo, pp. 24-25.

[17] Hermogenes v. Osco Shipping Services, Inc., 467 SCRA 301; Philippine Transmarine Carriers v. NLRC, 353 SCRA 47,54 (2001); Wallem Maritime Services Inc. v. NLRC, 318 SCRA 623, 634 (1999).

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