

BARKO INTERNATIONAL, INC. AND GRANDALAN ENTERPRISES CORPORATION, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND SIXTO R. MAGTIRA, RESPONDENTS.

Ponente: BARRIOS, J.

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BARRIOS, J.:

The petitioners Barko International, Inc. and Grandalan Enterprises Corporation (or the petitioners for brevity unless individualized as Barko and Grandalan respectively) are before Us on certiorari assailing the National Labor Relations Commission's (or NLRC) Resolution dated February 13, 2002 favorable to the respondent Sixto R. Magtira (or Magtira), and the Resolution of July 25, 2002 denying its reconsideration. These are the antecedents of the case:

Magtira was hired by the petitioners as 1st Engineer on board the ocean-going vessel M/N Sanko Spruce. Their employment contract stipulated that Magtira would work for a period of ten (10) months with a monthly salary of US\$948.00. His employment was also covered by a Collective Bargaining Agreement (or CBA) between his mother union All-Japan Seamen's Union - Associated Marine Officers and Seamen's Union of the Philippines (or JSU-AMOSUP) and his foreign principal represented by Barko. He departed from the Philippines on February 9, 1998 and embarked on the said vessel the next day.

Magtira alleged that on August 11, 1998, while the vessel was at the port of New Orleans, he had a mishap while conducting an inspection of the inside gears of the main engine crankshaft deflection. He slipped inside the crankshaft of cylinder #4 and in the process hit his lower back and buttocks. He felt a lacerating pain on his lumbar area but still finished the inspection, after which he took some pain relieving tablets and applied medicinal plaster on his lumbar area. But after two to three hours the pain recurred with numbness radiating to both his legs. His physical condition became worse whenever he would perform his work as engineer of the vessel. Thereafter the pain in his lumbar area became unbearable and excruciating so he requested for a medical check-up upon their arrival in the port of Kobe, Japan.

In the hospital at Kobe, Japan, Magtira's injury was diagnosed as prolapsed intervertebral disc, causing acute lumbago and sciatica. The physician's recommendation was for Magtira to get the necessary orthopedic treatment and to be allowed to disembark to take some rest and shore medical care because he was unfit for sea duty. On September 16, 1998, the ship master reported to Barko that Magtira complained of back pain while on board the vessel and during his service period and the physician's recommendation was for him to be repatriated. Hence, Magtira was repatriated to the Philippines on September 25, 1998.

From September 28 up to December 18, 1998, Magtira underwent medical evaluation and treatment under Dr. Robert Lim (or Dr. Lim) at the Marine Medical Services of the Metropolitan Hospital due to Herniated disc L3-L4 and L4-L5 levels; S/P Laminectomy and Disectomy, L3-L4 and Posterolateral fusion. Magtira claimed that after his treatment and operation at the Metropolitan Hospital until his discharge therefrom, no assessment of his impediment was made by Dr. Lim. He then asked Dr. Rimando Saguin (or Dr. Saguin) for an evaluation of his

disability. On February 25, 1999, Dr. Saguin issued a medical certification stating that Magtira's partial permanent disability is assessed at Grade 8 (33.59% of US\$50,000.00).

On June 28, 1999, Magtira filed a case for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against the petitioners.

The petitioners came out with a certification from a company designated physician dated July 19, 1999 assessing Magtira's disability at Grade 11 (14.93% of US\$50,000.00).

Due to the disparity of the gradings submitted by both parties, the Labor Arbiter ordered Magtira to submit himself to a medical examination to be conducted by the Employees Compensation Commission (or ECC). The ECC physician came out with a finding that the disability of Magtira is partial but permanent with impediment rating of Grade 8.

Magtira claimed that he is entitled to total disability (Grade 1) compensation of US\$80,000.00 based on Article XXI of the JSU-AMOSUP CBA of which Barko is also a signatory.

In their traverse, the petitioners claimed that Magtira's disability is not Grade 1 and the determination of the amount of disability compensation must be made on the basis of the applicable provisions of the POEA Standard Employment Contract and not the JSU-AMOSUP CBA. They argued that the company physician assessed Magtira's disability at Grade 11 (14.93%) and based on Section 3 of the POEA contract, their contractual liability amounts to US\$7,465.00 or 14.93% of US\$50,000.00.

On November 16, 2000, the Labor Arbiter rendered a Decision in favor of Magtira, disposing that:

WHEREFORE, above premises duly considered, judgment is hereby rendered:

- Ordering respondents BARKO INTERNATIONAL, INC., and GRANDALAN ENTERPRISES CORPORATION, jointly and severally, to pay complainant Sixto Magtira the amount of US\$80,000.00 as disability benefits, or its peso equivalent at the time of payment.
- Ordering said respondent jointly and severally to pay complainant sickness allowance equivalent to his basic wage for a period of 120 days or the equivalent in Philippine peso at the time of payment.
- Ordering respondents jointly and severally to pay complainant's counsel ten percent (10%) of the total monetary award due complainant, also in Philippine peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED. (pp. 57-58, rollo)

This was upheld by the NLRC which disposed:

WHEREFORE, the instant appeal is DENIED for lack of merit. Accordingly, the assailed decision of November 16, 2000 is AFFIRMED en TOTO.

SO ORDERED. (p. 46, rollo)

A motion for reconsideration was filed by the petitioners but this was denied by the NLRC in its Resolution dated July 25, 2002.

Hence, this petition.

Claiming that the NLRC committed errors with grave abuse of discretion, the petitioners contend that:

- IT FAILED TO CONSIDER THE TERMS AND CONDITIONS OF THE POEA STANDARD

EMPLOYMENT CONTRACT AND INSTEAD RELIED HEAVILY ON THE PROVISIONS OF THE JSU-AMOSUP COLLECTIVE BARGAINING AGREEMENT WHICH ARE NOT APPLICABLE IN THE CASE A QUO WHEN IT RENDERED PETITIONERS LIABLE TO PRIVATE RESPONDENT MAGTIRA FOR DISABILITY BENEFITS.

- COROLLARILY, IT FAILED TO SUPPORT ITS FINDINGS WITH SUBSTANTIAL EVIDENCE AS IT MERELY RELIED ON THE SELF-SERVING AND BASELESS STATEMENTS OF PRIVATE RESPONDENT MAGTIRA ANENT HIS DISABILITY; AND

- IT AWARDED ATTORNEY'S FEES TO PRIVATE RESPONDENT MAGTIRA WHEN THERE IS CLEARLY NO BASIS THEREFOR. (p. 15, rollo)

We deny the petition.

On the first two issues, the petitioners want Us to review and eventually disregard the factual determination made by the Labor Arbiter as affirmed by the NLRC, as to petitioners' liability for the disability benefits pursuant to the provisions of the JSU-AMOSUP CBA. At this point, it is worthy to reiterate that in certiorari proceedings under Rule 65 of the Revised Rules of Court, this Court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and the NLRC based their decisions. Our query is limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed decision (*Philippine Airlines, Inc. vs. NLRC*, 337 SCRA 286). We find neither lack of jurisdiction nor grave abuse of discretion in this case.

The petitioners express strong dissent to the application of the provisions of the JSU-AMOSUP CBA in awarding the maximum disability benefits to Magtira in the sum of US\$80,000.00 equivalent to a Grade 1 assessment. They maintain that the application of Article XXI of the JSU-AMOSUP CBA is limited and that it applies strictly to permanent disability as a result of an accident, regardless of fault but excluding injuries caused by a Seafarer's willful act, whilst in the employment of the Company, including accidents occurring while travelling to or from the Ship. They claim that Magtira's disability is illness related and did not arise from an accident hence not covered by the CBA. Consequently, Magtira's entitlement to disability compensation must be determined on the basis of the provisions of the Standard Terms of the POEA Contract. And applying the said employment contract, Magtira's disability must be within the range of Grade 11 as determined by the company designated physician, and to Grade 8 as determined by Magtira's personal physician and the ECC doctor.

To begin with, We concur with the findings of the Labor Arbiter and the NLRC that Magtira's injury was accident related and was sustained in the course of his employment and during the term of his contract. We also note that this was not sufficiently challenged and controverted by the petitioners aside from their vacuous claim that Magtira's injury was caused by an illness. Then too, We find the agency a quo correct in accepting the medical findings of the ECC that Magtira is permanently unfit for sea duty.

Accordingly, Section 1 Article XXI of the JSU-AMOSUP CBA provides that a seafarer who suffers permanent disability as a result of an accident while in the employment of the company, and whose ability to work is reduced as a result thereof shall be entitled to sick pay and compensation in accordance with the percentage or rate specified in Section 2, thus:

DEGREE OF DISABILITY RATE OF COMPENSATION

RATINGS

AB & BELOW OFFICERS &

RATINGS

ABOVE AB**% US\$ US\$**

100 60,000 80,000

75 45,000 60,000

60 36,000 48,000

50 30,000 40,000

40 24,000 32,000

30 18,000 24,000

20 12,000 16,000

10 6,000 8,000

It having been established that Magtira's injury is a permanent disability and was accident related, these said provisions of the JSU-AMOSUP CBA of which Barko is a signatory must be applied. Magtira is therefore entitled to a disability benefit amounting to not more than US\$80,000.00, being a ship officer with Above AB rating and who is permanently unfit for sea duty.

Finally, attorney's fees are recoverable for the services rendered by Magtira's counsel to compel the petitioners to pay their monetary obligations under the CBA. Hence, the amount equivalent to 10% of the total monetary award is justified pursuant to Article 111 of the Labor Code.

It is doctrinal that factual findings of the National Labor Relations Commission affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on the court (Philippine Airlines, Inc. vs. Tongson, 413 SCRA 344). Thus finding no grave abuse of discretion which could be basis for the grant of the writ prayed for -

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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