

MARIO C. BORJA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), NORTEAM SHIPPING SERVICES, INC., OMCI SHIPMANAGEMENT PVT LTD., AND MR. JULIO B. QUIBAN, JR....

Ponente: DICDICAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6121f6511573/>

DICDICAN, J.:

Before this Court is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the April 8, 2013 Decision[2] of the National Labor Relations Commission (NLRC), First Division, in labor case docketed as NLRC NCR Case No. OFW(M) 04-05730-12 (NLRC LAC No. OFW(M) 01-000134-13) which modified the October 30, 2012 Decision[3] of the Labor Arbiter. Also assailed in this petition is the July 11, 2013 Resolution[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioners.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Norteam Shipping Services Inc. (“Norteam Shipping”) is a Philippine manning agency, with its foreign principal, herein private respondent OMCI Ship Management Pvt Ltd. (“OMCI”). Private respondent Mr. Julito B. Quiban (“Quiban”) is an officer of Norteam Shipping.

Petitioner Mario C. Borja (“petitioner”) was hired by the private respondents as pumpman on board M/V Marida Marguerite for a stipulated period of nine (9) months[5].

Prior to his deployment, the petitioner underwent a series of medical examinations wherein he was found to be “fit to work” by the company designated physician[6].

On October 18, 2011, the petitioner departed Manila, Philippines to join his assigned vessel, M/V Marida Marguerite. Upon his embarkation, he immediately assumed his post as Pumpman and performed his duties without any incident.

However, on November 21, 2011, while the petitioner was attaching a heavy hose to a discharging area, his back hit a round bar while he was carrying a heavy equipment. The petitioner instantaneously felt excruciating pain on his back which dragged even after his working hours. Notwithstanding the pain, the petitioner still continued to perform his duties as Pumpman. However, the petitioner suffered from recurrence of pain with increased intensity. After several days, he encountered difficulty in standing or walking.

Concerned with the petitioner's condition, the Vessel Master coordinated with the private respondents and made arrangements for his needed medical attention. On November 24, 2011, the petitioner was brought to a hospital in Lome, Togo. After being examined, the petitioner was diagnosed as unfit for duty at sea by Dr. Gouta Davi K. Honoré[7].

By reason of the foregoing, the petitioner was medically repatriated to the Philippines on December 1, 2011 for

further evaluation and treatment. He was then referred to the company-accredited doctors at the Ygeia Medical Center Manila, Inc..

The petitioner was admitted at the Ygeia Medical Center, Inc. on December 2, 2011 wherein he underwent a series of tests to determine his medical condition. He was likewise given medications as he continued to experience severe lumbar pain. On December 3, 2011, his x-ray examination result showed that he had Predisposition to Lumboscaral Instability[8]. His final diagnosis showed that he had Herniated Nucleus Pulposus[9]. On December 8, 2011, he was discharged from the hospital since his condition had already improved. He was however advised to undergo physical therapy[10].

The petitioner underwent a series of physical therapy sessions with the company-accredited doctor.

Unfortunately, despite the series of treatments, there was no improvement on the petitioner's condition. During his last check-up with Dr. Cicel M. Reyna, a company doctor, on April 4, 2012, or 122 days since his repatriation, his condition was diagnosed as Disc Disease L3-L2, L2-L3, L5-S1 with Radiculopathy[11].

On the basis of the medical findings and on his incapacity to resume his sea duties after a period of 122 days, the petitioner demanded compensation from the private respondents for his permanent total disability. Unfortunately, the private respondents refused to heed the petitioner's demand.

On April 10, 2012, the company-designated physician gave the petitioner a Grade 11 assessment: Slightly rigid or one (1/3) loss of motion or lifting power of the trunk disability grade[12].

Consequently, on April 16, 2012, the petitioner filed a complaint against the private respondents for payment of permanent total disability benefits, reimbursement of medical expenses, moral and exemplary damages and attorney's fees[13].

After the filing of the complaint or on May 11, 2012, the petitioner sought for a second medical opinion from Dr. Rogelio P. Catapang, Jr. of the Sta. Teresita Hospital in Quezon City. Dr. Rogelio P. Catapang, Jr. confirmed that he had Predisposition to Lumboscaral Instability and was not fit to return to work[14].

In denying their liability, the private respondents claim that the petitioner had no cause of action against them since there was no record of any medical report showing that he suffered from a work-related illness which rendered him permanently and totally disabled while on board the vessel. The private respondents further claim that the petitioner was not entitled to full disability benefits since, based on the assessment of their company doctor, the petitioner was issued a final disability assessment of Grade 11: Slightly rigid or one third (1/3) loss of motion or lifting power of the trunk, pursuant to Section 32 of the POEA Contract which merely entitled him to disability benefits amounting to US\$7,645.00. However, the petitioner refused to accept the same. In the same manner, the private respondents denied any liability for medical expenses as they had shouldered all the medications and treatments of herein petitioner. With respect to damages and attorney's fees, the private respondents assert that, in the absence of malice and bad faith, they should not be held liable for the same.

As all efforts to reach an amicable settlement proved futile during the conciliation conference conducted by the Labor Arbiter, the case underwent proceedings to determine the merit of petitioner's complaint. The parties were made to submit their respective position papers and evidence in support thereof which they did dutifully submit.

After considering the arguments of both parties, Labor Arbiter Virginia T. Luyas-Azarraga rendered a Decision dated October 30, 2012¹⁵ finding the private respondents liable to the petitioner for his permanent total disability benefits. The dispositive portion of the said decision stated as follows:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered directing respondents jointly and

severally to pay complainant U.S.\$60,000.00 or its peso equivalent at the time of payment, representing his permanent total disability benefits, plus 10% of the total award as attorney's fees.

“SO ORDERED.”

The Labor Arbiter ruled that, notwithstanding the company-designated physician's assessment of a Grade 11 disability impediment, the petitioner's disability was permanent and total since he was not able to perform his job for more than 120 days.

Dissatisfied, the private respondents appealed from the decision of the Labor Arbiter to the NLRC.

On April 8, 2013, the NLRC, First Division, rendered the assailed Decision[16] which modified the decision of the Labor Arbiter, to wit:

“WHEREFORE, premises considered, the appealed Decision is MODIFIED. Complainant is declared to be entitled only to US\$7,465.00, corresponding to Grade 11 disability assessment under Section 32 of the POEA Standard Employment Contract. The award of attorney's fees is likewise DELETED for lack of legal basis.

“SO ORDERED.”

According to the NLRC, the petitioner was not entitled to permanent total disability benefits as he failed to qualify therefor. The NLRC ruled that, when a treatment exceeds 120 days, it does not automatically entitle a seafarer to Grade 1 disability benefits. Moreover, the NLRC upheld the Grade 11 disability assessment of the company-designated physician of the private respondents on the ground that their report showed a detailed treatment and evaluation of the petitioner's condition over a period of time. Contrary to the one-time consultation that the petitioner did with his doctor of choice, Dr. Catapang, who also based his evaluation on the MRI and the x-ray performed upon the petitioner by the company-designated physicians, the latter were in a far better position to evaluate the petitioner's medical condition. Also, the petitioner's belated act of consulting another physician only after he filed a complaint with the Labor Arbiter negated the basis of his claim for permanent total disability benefits.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution¹⁷ dated July 11, 2013, viz:

“Acting on the Motion for Reconsideration filed by complainant dated May 5, 2013 relative to the Decision issued by this Commission dated April 8, 2013, We resolve to DENY the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.

“SO ORDERED.”

Unstirred by the foregoing disposition of the NLRC, the petitioner filed the instant petition with this Court assigning the following acts of grave abuse of discretion which were purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT INCORRECTLY FAILED TO CONSIDER THE FACT THAT THE PETITIONER WAS SUFFERING FROM PERMANENT TOTAL DISABILITY AND NOT A PARTIAL DISABILITY AT A GRADE 11 RATING.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT INACCURATELY RELIED SOLELY ON THE SCHEDULE OF DISABILITY OR IMPEDIMENT AS STATED IN THE POEA STANDARD EMPLOYMENT CONTRACT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT ERRONEOUSLY ACCORDED GREATER WEIGHT ON THE ASSESSMENT OF THE COMPANY DOCTOR.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT IMPROPERLY FAILED TO DISCERN THAT THE FACTUAL CIRCUMSTANCES OF THE CASE ENTAIL AN AWARD OF DAMAGES AND ATTORNEY'S FEES.

In sum, the primordial issue brought before this Court for resolution is whether or not the petitioner was entitled to permanent total disability benefits from the private respondents, contrary to the findings of the company-designated physician's assessment of a Grade 11 disability level.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

The petitioner contends that it was inaccurate for the NLRC to state that he had not suffered a total disability just because the company doctor, or even his doctor of choice, classified his disability in relation to his physical impediment only. For the petitioner, the true determinant that to determine whether he suffered from a permanent total disability is the fact that he was unable to perform his customary work as Pumpman for more than 120 days.

There is no dispute that the petitioner's injury is work-related and that he is entitled to disability benefits. The bone of contention is how to classify such injury in order to determine the amount of benefits due to him.

The contention of the petitioner that he is entitled to a permanent total disability benefit, as he was unable to perform his job for more than 120 days, is not totally correct. This issue had been clarified in *Jesus Vergara v. Hammonia Maritime Services*[18] where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In the case of *Magsaysay Maritime Corp. v. Lobusta*[19], the Supreme Court also referred to, and applied, the ruling in *Vergara* case in this manner:

“Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:

ART. 192. Permanent total disability. – x x x

X X X

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

X X X X

“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), reads:

“Sec. 2. Disability. – x x x

“(b) 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, except as otherwise provided for in Rule X of these Rules.

X X X X

“Section 2, Rule X of the ECC Rules reads:

“SEC. 2. Period of entitlement.— (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.”

According to ruling in the Vergara case, these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand with the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract which reads:

“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 (120) days.”

As these provisions are being made to operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from his arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws[20].

If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course, be also declared fit to work at any time such declaration is justified by his medical condition[21].

Verily, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total

disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods[22].

Applying the foregoing principles in the case at bench, the NLRC correctly ruled that the petitioner was not entitled to a permanent total disability benefit. By reason of the necessity of a series of physical therapy sessions to be undertaken by the petitioner, the private respondents were able to give the petitioner a Grade 11 disability assessment only after the lapse of the 120-day period but rightly before the expiration of the 240-day period.

A careful perusal of the record of the case would reveal that, after the petitioner's repatriation on December 2, 2011, he underwent several tests and treatment. On December 3, 2011, he was admitted at the Ygeia Medical Center, Inc.. On December 12, 2011, he started his physical therapy sessions.

Despite a series of physical therapy sessions, on April 10, 2012, the petitioner had his last check-up with the company-designated physician and was advised to continue physical therapy. He was likewise diagnosed with Herniated Nucleus Pulposus and was given a disability assessment of Grade 11: Slightly rigid or one (1/3) loss of motion or lifting power of the trunk disability grade[23].

Counting the days from December 2 to April 10, 2012, the assessment by the company-designated physician was made on the 128th day, more or less, and, therefore, within the 240-day period. Concededly, said period had already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. However, it cannot be denied that the company-designated physician had determined as early as on December 8, 2011 or even before his discharge from the hospital that the petitioner's condition required further medical treatment in the form of physical therapy sessions, thus, justifying the extension of the 120-day period. The company-designated physician therefore had a period of 240 days from the time when the petitioner suffered his injury or until August 2, 2012 within which to make a finding on his fitness for further sea duties or degree of disability.

Thus, the petitioner's condition cannot be considered a permanent total disability that would entitle him to the maximum disability benefit of \$60,000.00. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

As correctly ruled by the NLRC, a seafarer's inability to resume his work after the lapse of more than 120 days from the time when he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor[24].

Indubitably, there is a conflict between the disability ratings made by the company-designated physician and the petitioner's doctor-of-choice and the petitioner's claim that holding the private respondents' determination to be

more credible is contrary to the provisions of the POEA-SEC and prevailing jurisprudence. Absent any substantial challenge to the competence and skill of the company-designated doctors, there is no reason why their assessment should not be given due credence.

Under the afore-mentioned circumstances, we rule that the company-designated physician's assessment is more credible. The doctor more qualified to assess the disability grade of the petitioner seaman is the doctor who regularly monitored and treated him. The company-designated physician possessed personal knowledge of the actual condition of the petitioner. Since the company-designated physician in this case gave the petitioner a Grade 11 disability assessment, then such declaration should be given credence, considering the amount of time and effort that the company doctor gave to monitoring and treating petitioner's condition.

It is likewise undisputed that the recommendation of the petitioner's doctor-of-choice, Dr. Catapang, was based on the tests results conducted by the company-designated physicians and that he examined the petitioner only once. More importantly, at the time of the filing of the complaint with the Labor Arbiter, the petitioner had not yet sought for a second opinion from his doctor-of-choice. Thus, his only basis for his claim for permanent total disability benefit was the lapse of the 120-day period from the time of his repatriation to the Philippines. On the other hand, the company-designated physician outlined the progress of the petitioner over a period of several months in several reports, as can be gleaned from the record. As between the findings of the company-designated physician and the physician appointed by petitioner, the former deserves to be given greater evidentiary weight.

The POEA Contract is clear in its provisions when it provided who should determine the disability grading or fitness to work of seafarers. The POEA contract recognizes only the disability grading provided by the company-designated physicians. Section 20 B.3 of the POEA contract provides:

“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 exceed one hundred twenty (120) days.

xxx

“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 resort in his forfeiture of the right to claim the above benefits.”

These provisions clearly illustrate that petitioner's disability can only be competently and qualifiedly assessed by the company-designated physician. If the company-designated physician declares him fit to work, then the seaman is bound by such declaration.

In *Benjamin L. Sarocam v. Interiorient Maritime Ent., Inc., and Demaco United Ltd*[25], the Supreme Court ruled that the opinion of the company-designated physician should be upheld over that of the doctors appointed by the seafarer considering that the basis of the findings of the seafarer's doctor are the medical findings of the company physician.

It is beyond cavil that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Nevertheless, when the seaman's private physician disagrees with the assessment of the company-designated physician, as here, a third doctor's opinion may be availed of in determining his disability. This however was not resorted to by the parties. As such, the credibility of the findings of their respective doctors was properly evaluated by the NLRC.

Lastly, the petitioner assailed the deletion by the NLRC of the award of attorney's fees in his favor. As a matter of sound policy, an award of attorney's fee remains the exception rather than the rule. It must be stressed that it is necessary for the Labor Arbiter and the NLRC in this case to make express findings of facts and law that would bring the case within the exception[26]. In the absence of a stipulation, attorney's fees are ordinarily not recoverable, otherwise a premium shall be placed on the right to litigate[27].

For lack of bad faith on the part of the private respondents who promptly provided the petitioner with medical assistance and sickness allowance, there is no merit for the award of attorney's fees.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case.

SO ORDERED.

ISAIAS P. DICDICAN

Associate Justice

WE CONCUR:

MICHAEL P. ELBINIAS

Associate Justice

VICTORIA ISABEL A. PAREDES

Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ISAIAS P. DICDICAN

Associate Justice

Chairperson, Twelfth Division

[1]Rollo, pp. 3-30.

[2]Ibid, pp. 31-53.

[3]Ibid, pp. 58-74.

[4]Ibid, pp. 56-57.

[5]Ibid, Seaman's Employment Contract, pp. 117-120.

[6]Ibid, p. 121.

[7]Ibid, p. 134.

[8]Ibid, p. 137.

[9]Ibid, p. 139.

[10]Ibid, p. 138.

[11]Ibid, p. 141.

[12]Ibid, pp. 184-187.

[13]Ibid, pp. 153-155.

[14]Ibid, pp. 142-144.

[15]Ibid, pp. 53-74.

[16]Ibid, pp. 31-54.

[17]Ibid, pp. 56-57.

[18]G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[19]G.R. No. 177578, January 25, 2012.

[20]Vergara v. Hammonia Maritime Services, G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[21]Ibid.

[22]C.F. Sharp Crew Management, Inc. v. Taok, G.R. No. 193679, July 18, 2012.

[23]Supra, Note No. 1, pp. 184-187.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.