

ROBERTO M. DONGON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BW GYRON CREW, INC., RESPONDENTS.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6f3059379eb0/>

GALAPATE-LAGUILLES, J:

This Petition for Certiorari[1] filed under Rule 65 of the Rules of Court impugns the Resolution[2] dated 29 June 2012 of public respondent National Labor Relations Commission (NLRC for brevity) which affirmed on appeal the Labor Arbiter's Decision[3] dated 28 February 2012 denying for lack of merit petitioner Roberto M. Dongon's claim for disability benefits and other monetary claims. Likewise assailed is the Resolution[4] dated 31 August 2012 denying the Motion for Reconsideration[5] thereof.

The facts are simple.

On 2 October 2009, Dongon signed an 8-month contract for ship deployment aboard the vessel M/V “Scelveringhe” with the Gyron Crew, Inc., a manning agency acting for and in behalf of its foreign principal, Gyrom Shipping Ltd.[6] He was designated as an Able Seaman with a monthly basic salary of USD583.00.[7] On 24 October 2009, Dongon departed the Philippines and boarded the cargo vessel Scelveringhe the following day. He immediately performed his duties in accordance with his job description as Able Seaman.[8]

On 29 May 2010, Dongon was repatriated and arrived in the Philippines on 30 May 2010.[9]

On 2 June 2010, Dongon applied with private respondent for re-engagement as an Able Seaman. As a standard procedure, Dongon submitted himself to a Pre-Employment Medical Examination (PEME) which yielded, however, the following recommendation:

The above mentioned candidate is

UNFIT TO WORK.

Dx. of Adrenocortical Ca, 2010.[10]

On 7 September 2010, Dongon filed before the Arbitration Branch of the NLRC a Complaint,[11] docketed as NLRC NCR Case No. (M)09-12579-10, for disability benefits, sickness allowance, refund of medical expenses, moral damages and attorney's fees against private respondent. Mediation failed, thus parties were ordered to submit their respective position papers.[12]

In his Position Paper,[13] Dongon claimed that sometime in the first week of May 2010, while carrying heavy painting materials in the Engine Room of the vessel, he felt dizzy and experienced shortness of breath. He felt off-balance and fell on the floor, his chest landing first followed by his abdomen. According to Dongon, he then

experienced terrible chest and abdominal pains which radiated all over his body and numbness on the left side of his body. His fellow crew member allegedly reported the incident to his Supervisor, who, on the other hand, also reported the incident to the ship's Medical Officer. The latter gave him (Dongon) several analgesics which afforded no relief. He was then confined at the ship's clinic.[14]

At nighttime, Dongon claimed that he experienced fever, headaches, tremors on the left upper and lower extremities of his body and had difficulty in sleeping. This notwithstanding, on 8 May 2010, he was requested to perform his duties as Able Seaman. After two (2) days, Dongon experienced numbness and tenderness of his abdomen and chest, and he also vomited. He fell in the Engine Room and was sent to the vessel's clinic. He was observed for three (3) days and the medical officer decided that he be sent to a doctor.[15]

On 19 May 2010, Dongon was allegedly diagnosed to be suffering from Upper Abdominal Enhancing Mass. Unfortunately, he was not issued a medical report. As the pain persisted, Dongon was advised to be repatriated for further examinations in the Philippines.[16]

Dongon continued that a day after his arrival in the Philippines or on 31 May 2010, he allegedly reported to private respondent for a medical referral. However, to his dismay, he was denied medical assistance by private respondent since his injury/illness was not work-related.[17] Thus, Dongon was constrained to have on various dates medical examinations with two (2) doctors, namely: Dr. Donald S. Camero (Dr. Camero) of the Cavite Asthmazone Clinic; and Dr. Eduardo M. Yu (Dr. Yu), an internist at the Mary Chiles General Hospital. In their separate medical certificates,[18] both doctors diagnosed Dongon to be suffering from "Hypertension and Adrenocortical Carcinoma Stage II (T2NOMO). Moreover, both doctors noted that the said physical findings "has been noted with POEA Grade 1 for Severe Residuals of Impairment of Intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment." They concluded that Dongon was permanently unfit for sea duty and that his illnesses are "work-related since exposed to toxic and hazardous materials."

Despite his condition, private respondent allegedly continued to deny Dongon medical assistance. Hence, the filing of the Complaint.[19]

On the other hand, private respondent countered in its Position Paper[20] that Dongon was able to finish his contract on 30 May 2010. On 2 June 2010, he expressed his intention to rejoin MV Scelveringhe, thus he underwent the required PEME and signed his supposed fourth employment contract with private respondent. Dongon's Ultrasound Report, however, showed that he had hepatic mass.[21]

Private respondent further contended that on 5 June 2010, Dongon underwent CT-Guided aspiration biopsy for his suprarenal mass at the Manila Doctor's Hospital and he was diagnosed by Dr. Jose M. Carnate, Jr. to be suffering from Adrenocortical Carcinoma. Dongon then underwent surgery at the Philippine General Hospital (PGH) for excision of adrenal gland tumor. On 19 August 2010, Dr. Wenceslao S. Lauderer of Galenus Clinic issued a medical report that Dongon was "Unfit for Work, Dx of Adrenocortical Ca 2010." [22]

On 20 August 2010, by mutual consent of the parties, they decided to cancel Dongon's employment contract.[23] This was reported to the POEA on 23 August 2010.[24]

Private respondent thus posited that Dongon was not entitled to disability compensation because he did not contract his illness during the period of his employment.[25] It insisted that Dongon's illness was not listed as an occupational disease in the Table of Occupational Diseases embodied in Section 32-A of the Standard Contract and his (Dongon's) working conditions could not have increased the risk of contracting the disease.

On 28 February 2012, the Labor Arbiter rendered a Decision[26] dismissing the Complaint of Dongon for lack of

merit holding that Dongon's affliction was not contracted during the effectivity of his contract.

Aggrieved, Dongon appealed to the NLRC but he was likewise unsuccessful in obtaining a favorable judgment. The NLRC sustained the dismissal of his Complaint in the Resolution[27] dated 29 June 2012 with the following ratiocination:

x x x

The records indubitably establish that under his latest employment contract, complainant was to work on board respondents' vessel for eight months. He joined the vessel in October 2009 and arrived in the Philippines in May 2010. When complainant disembarked on May 29, 2010 and arrived at the point of hire on May 30, 2010, he did so for no other reason but for completion of his contract, and not because he was medically repatriated. Complainant's engagement was thus terminated upon his sign-off. Consequently, when he was later diagnosed with Adrenocortical Carcinoma, his services with respondent had already been terminated.

Complainant's allegation that he suffered the illness on board is specious. His claim that he felt dizzy, was short of breath and experienced terrible chest and abdominal pains and numbness of the left side of his body just before his disembarked was uncorroborated. It is self-serving at best. There is no record of any report of any incident which would show that complainant suffered these medical complaints during his employment. Complainant's statement cannot be regarded as substantial evidence. Allegation is not proof. It is an established doctrine that mere allegation cannot serve as evidence. x x x

Moreover, the Master of the vessel himself, Roel Den Herder, issued a statement on December 30, 2010 categorically stating that there were no incidents of whatever nature prior to complainant's signing off and that the latter was never ill onboard (sic) the vessel nor received any medical attention since October 25, 2000 until he signed off on May 29, 2010.

The new employment contract which he signed prior to his PEME cannot also be the source of his claim. Complainant has not been deployed yet and has not commenced employment and there is no employer-employee relations as of yet. And as complainant conceded, the contract was cancelled by mutual consent. There is, thus, no effective contract subsisting between the parties.

Neither are we convinced that complainant's Adrenocortical Carcinoma is work-related. It cannot be denied that it is not listed as a compensable occupational disease in the POEA-SEC. Thus, there is a need to prove the causal relation between the illness and seafarer's work. The claimant must be able to submit proof as would constitute a reasonable basis for concluding either that the seafarer's working conditions caused the ailment or that such working conditions had aggravated the risk of contracting the ailment. Unfortunately, complainant failed to show this. He merely alleged that he was exposed to extreme physical and physiological stresses at work and that his exposure to chemicals, solvents, pesticides and other toxic agents contribute to the development of the illness. But barely alleging that the nature of his job on board is contributory if not the primary cause of the development of the illness is not proof of work-relation. Awards of compensation cannot rest on speculations or presumptions.[28] x x x (Citations omitted)

Dongon sought reconsideration of the adverse ruling but the NLRC likewise denied the same per Resolution[29] dated 31 August 2012. Hence, Dongon resorted to the present recourse raising the following issues:

- (1) Is the petitioner entitled to disability benefits; illness allowances; and refund of medical expenses? (2) Is the petitioner entitled to moral damages and attorney's fees?[30]

The Petition lacks merit.

It is axiomatic that factual findings of the NLRC 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 this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.[31]

In the case at bench, the NLRC, in affirming the Decision of the Labor Arbiter, unerringly denied Dongon's entreaty for payment of disability compensation and other benefits.

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers.[32] The issue of whether Dongon is entitled to disability benefits should then be resolved in the light of Section 20 (B), paragraph 6, of the 2000 Amended Standard Terms and Conditions which reads:

SECTION 20. COMPENSATION AND BENEFITS. —

xxx xxx xxx

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

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[33] In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[34]

Here, Dongon miserably failed to prove that he contracted Adrenocortical Carcinoma during the term of his employment with private respondent. The records are bereft of any documentary proof that he had indeed referred his illness to a medical officer of the vessel, as claimed by him, in order to avail of proper treatment. There was no record that he manifested any symptoms of his disease while on board the vessel. Neither was there any medical record indicating that he was diagnosed with any illness. While Dongon averred that the medical report was not available,[35] he failed to explain, however, the reason for its unavailability. These observations by the Court are fortified by the NLRC's ruling that the Master of the vessel himself, Roel Den Herder, had issued a statement on 30 December 2010 categorically stating that Dongon was never ill on board nor did he receive any medical attention until he signed off on 29 May 2010.[36] Verily, Dongon was repatriated not for medical reason but because his contract has ended. More importantly, his illness was diagnosed only by the company-designated physician after he underwent another PEME for a new contract with private respondent. These facts alone sufficiently debunk Dongon's main claim that he acquired the disease while in the course of his employment with private respondent.

Even assuming that Dongon acquired his illness during the term of his contract, such occurrence does not necessarily guarantee payment of disability benefit. To be compensable, Dongon must prove that his illness is work-related. The 2000 POEA-SEC defines "work-related illness" as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These conditions are:

"SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- 1.) The seafarer's work must involve the risks described herein;
- 2.) The disease was contracted as a result of the seafarer's exposure to the described risks;
- 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
- 4) There was no notorious negligence on the part of the seafarer." [37]

Here, petitioner's illness, Adrenocortical Carcinoma, is not listed as a disability under Section 32 of the 2000 POEA-SEC or considered as an occupational disease under Section 32-A thereof. Nonetheless, Paragraph (4), Section 20(B) provides that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Therefore, it behooves upon Dongon to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions.[38]

Unfortunately, the disputable presumption that the illnesses not listed in Section 32 of the 2000 POEA-SEC are work-related does not operate in Dongon's favor.[39] There is dearth of evidence to prove that Dongon's illness was aggravated by his working condition. Moreover, he failed to establish that the nature of his employment or working conditions increased the risk of contracting Adrenocortical Carcinoma or contributed to the development and aggravation of the same. Dongon had nothing to support his claim that his illness was work-related other than the diagnosis of Dr. Camero and Dr. Yu who did not even elaborate on how they arrived at such a conclusion. Suffice it to state that the factual circumstances which link his work as an Able Seaman to his illness are wanting. It is settled that in the absence of substantial evidence, working conditions cannot be presumed to have increased the risk of contracting the disease.[40]

Assuming further that Dongon acquired his illness during the term of his contract, it is settled that in order to claim disability benefits under the POEA-SEC, 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.[41] But this does not preclude Dongon from seeking the medical opinion of another physician of his choice, as he in fact did. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3)[42] of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable.

In this case, Dongon would want to impress upon this Court that upon his arrival in the Philippines, he immediately sought a medical referral which was however rejected by private respondent, and this constrained him to seek the medical opinion of doctors who are not company-designated. It is well to note that while Dongon went to private respondent's office on 2 June 2010, he did so only for the purpose of applying for re-engagement and had in fact signed a contract with private respondent for re-engagement. However, by mutual agreement of the parties, they canceled the contract when Dongon was declared unfit to work by the company-designated physician of private respondent.[43] These factual circumstances clearly belie Dongon's dubious assertion that private respondent denied his request for medical referral. The fact remains that there was no pronouncement by the company-designated physician that Dongon's illness was work-related, which is fatal to his cause.

From the foregoing disquisitions, Dongon failed to prove that his illness was acquired during the term of his contract, and that it is work-related or at least aggravated by his working conditions.

Lastly, the claim of damages and attorney's fees was without basis as no bad faith can be attributed to private respondent's denial of Dongon's claim of disability benefits.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on conjectures and probabilities. When there is no evidence on record to permit compensability, the Court has no choice but to deny the claim, lest injustice is caused to the employer.[44]

All thus told, We find no grave abuse of discretion on the part of public respondent NLRC when it rendered the assailed issuances. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment

which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[45] Mere abuse of discretion is not enough.[46] Quite the contrary, public respondent NLRC issued the assailed issuances in accordance with law and jurisprudence.

WHEREFORE, premises considered, the instant Petition is hereby **DISMISSED**. The assailed Resolutions dated 29 June 2012 and 31 August 2012, respectively, of public respondent National Labor Relations Commission are **AFFIRMED**.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo, pp. 3-32.

[2] Id., pp. 46-53, Annex “A” to the Petition.

[3] Id., pp. 155-161, Annex “F” to the Petition.

[4] Id., pp. 54-55, Annex “B” to the Petition.

[5] Id., pp. 56-80, Annex “C” to the Petition.

[6] Id., pp. 188-189. See Contract of Employment.

[7] Id. The POEA-approved Contract specified the following terms and conditions:

1.1 Duration of Contract: Eight (8) months

1.2 Position: AB Seaman

1.3 Basic Monthly Salary: \$ 583.00

1.4 Hours of Work: 44hrs./week

1.5 Overtime: \$ 326.00/85 hrs. (\$4.27/Hr if excess overtime)

1.6 Vacation Leave with Pay: \$ 145.00

1.7 Point of Hire: Manila, Philippines

[8] Id., p. 165.

[9] Id., p. 47.

[10] Id., p. 270.

[11] Id., p. 236.

[12] Id., p. 155.

[13] Id., pp. 162-187, Annex “G” to the Petition.

[14] Id., p. 165.

[15] Id., p. 166.

[16] Id., p. 167.

[17] Id.

[18] Id., pp. 206, 214-216.

[19] Id., p. 118.

[20] Id., pp. 237-260, Annex “H” to the Petition.

[21] Id., p. 239.

[22] Id., p. 240.

[23] Id., p. 272.

[24] Id., p. 241.

[25] Id., pp. 242-243.

[26] Id., pp. 155-161, Annex “F” to the Petition.

[27] Id., pp. 46-53, Annex “A” to the Petition.

[28] Id., pp. 50-51.

[29] Id., pp. 54-55, Annex “B” to the Petition.

[30] Id., p. 21.

[31] Bolinao Security and Investigation Service, Inc. v. Toston, G.R. No. 139135, January 29, 2004, citing PAL vs. Arthur B. Tongson, G.R. No. 153157, October 14, 2003 at 10; Planas Commercial and Marcial Cohu vs. NLRC, 303 SCRA 49 (1999); Bogo-Medelin Sugarcane Planters Association, Inc. vs. NLRC, 296 SCRA 108 (1998); and Cocoland Development Corporation vs. NLRC, 259 SCRA 51 (1996).

[32] Jebsens Maritime, Inc. v. Undag, G.R. No. 191491, December 14, 2011.

[33] Id.

[34] Magsaysay Maritime Corporation v. National Labor Relations Commission, G.R. No. 186180, March 22, 2010, citing Masangcay v. Trans-Global Maritime Agency, Inc., G.R. No. 172800, October 17, 2008, 569 SCRA 592, 609.

[35] Rollo, p. 12.

[36] Id., p. 50.

[37] See Jebsens Maritime, Inc. v. Undag, supra.

[38] Maersk Filipinas Crewing, Inc. v. Mesina, G.R. No. 200837, June 5, 2013, citing Magsaysay Maritime Corporation vs NLRC, supra.

[39] Sec. 20B, paragraph 4 of the 2000 POEA-SEC states: “Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.”

[40] Rivera v. Wallem Maritime Services, Inc., et al., G.R. No. 160315, November 11, 2005.

[41] Panganiban v. Tara Trading Shipmanagement, Inc., G.R. No. 187032, October 18, 2010.

[42] “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 (120) 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.

If a 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.” (Emphasis supplied).

[43] See Seafarer Medical Certificate, Rollo, p. 270.

[44] The Estate of Posedio Ortega v. Court of Appeals, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 660.

[45] Ligeralde v. Patalinghug, G.R. No. 168796, April 15, 2010, citing Salma v. Hon. Miro, G.R. No. 168362, January 25, 2007, 512 SCRA 724.

[46] Manila Electric Company v. Barlis, G.R. No. 114231, June 29, 2004.

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.