

BSM CREW SERVICE CENTRE PHILS. INC. AND VORTZETZEN BEREDEERUNGS-UND SCHIFFFAHRTKONTO AND MR. NARCISSUS L. DURAN, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISI...

Ponente: TIJAM, J.

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TIJAM, J.:

The Case

This Petition for Certiorari (With Extremely Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) assails the twin Resolutions, dated March 22, 2011[1] and May 17, 2011[2] of the Public Respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000210-10 ordering Petitioners jointly and severally to pay Private Respondent permanent and total disability benefits, plus attorney's fees equivalent to ten (10%) percent of the monetary award.

The Facts

On April 24, 2009, a Complaint[3] for payment of permanent and total disability benefits, sickness wages, damages and attorney's fees was filed by Private Respondent Reynaldo L. Rous with the Arbitration Branch of the NLRC against Petitioners BSM Crew Service Centre Phils. Inc. (BSM), Vortzetzen Beredeerungs-UND Schiffahrtkonto GMBH Co. KG and Narcissus L. Duran.

Private Respondent Reynaldo Rous alleged that since 2003, he was hired continuously as an Able Seaman by Petitioner BSM, a local manning agent of Petitioner Vortzetzen Beredeerungs-UND Schiffahrtkonto GMBH Co. KG. On June 4, 2008, he entered into a Contract of Employment[4] with Petitioners as Able Seaman for a period of nine (9) months, commencing on July 17, 2008 on board the vessel "MV Angelica Schulte", with a basic monthly salary of US\$558.00, exclusive of overtime pay and other benefits.

Sometime in December 2008, while on board the vessel, Private Respondent noticed a mass in the lower portion of his pelvis and immediately informed his captain. He was referred for medical treatment in Seattle, USA and he was diagnosed with "Acute Lumbago/LUS Syndrome: Atheam Inguinal". On February 26, 2009, he disembarked from the vessel, and upon arrival in the Philippines, he was referred to the Metropolitan Medical Center, c/o Dr. Ricardo L. Dy (Dr. Dy). He was diagnosed to be suffering from "Trichilemmal Cyst, Right Pubic Area; S/P Excision of Cystic Mass, Right Pubic Area". He was confined for three (3) days in the said hospital and after which, he was treated as an outpatient. The company-designated physician suddenly stopped the treatment and informed him that the subsequent medical treatment will be shouldered by him but he refused since he knew that all medications shall be at the expense of the company in accordance with existing laws.

In his previous employment contract with Petitioner BSM on board the vessel "Gaschem Ben Flor", he was afflicted with serious back pain in the spinal cord. He was given medical attendance in Germany and was advised to take a rest and pain reliever. Subsequently, he was declared fit to work by the company-designated physician

and made to sign another employment contract.

While on board the vessel MV Angelica Schulte, he was repatriated to the Philippines due to the occurrence of a mass in his right lower pelvis and the recurring severe back pain. Notwithstanding his unfitness to resume sea duty as his medical, physical, mental and emotional condition were still deteriorating, Petitioners abandoned him by unjustifiably refusing and inexcusably neglecting to give him medical assistance. This prodded the filing of this complaint.[5]

In their Position Paper,[6] Petitioners claimed that on January 28, 2009, while on board the vessel, Private Respondent experienced discomfort due to a cyst/mass in his pelvic area. Upon examination, he was found to be suffering from “Abscess (groin)”, hence, the doctor recommended “elective surgery” when Private Respondent goes off-duty. At the next port of call at Bellingham, Washington D.C., he was diagnosed with “Sebaceous apt abscess”, and so, “surgery with dermatologist or general surgeon” was recommended. Upon arrival in the country, Private Respondent was referred to the company-designated physician Dr. Mylene Cruz-Balbon (Dr. Balbon) of the Marine Medical Services of the Metropolitan Medical Center. He was diagnosed with “Cystic Mass, Right Pubic Area”[7].

During the physical examination, he was observed to be conscious, coherent, cooperative and not in cardio-respiratory distress. To determine the nature of the cyst, excision was recommended. On March 24, 2009, the procedure was conducted and the histopathology result dated April 1, 2009 showed that his Trichilemmal Cyst was benign. Said illness was found by Dr. Balbon[8] to be not work-related. During the follow-up examination and treatment on April 13, 2009, it was noted that “post-op site on the right pubic area” was “healing well”. On May 8, 2009, the company-designated physicians, Dr. Dy and Dr. Balbon, declared him fit to work since the wound had healed.

After due proceedings, the Labor Arbiter rendered a Decision,[9] dated November 27, 2009, dismissing Private Respondent's complaint. She opined that Private Respondent was not suffering from any disability since his cyst was benign. She further stressed that the declaration of the company-designated physician that Private Respondent was fit to work as contained in the May 8, 2009 Medical Report prevails over the opinion of Dr. Rimando C. Saguin (Dr. Saguin), the private doctor of Private Respondent. The decretal portion of the decision states, to wit:

“WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.

All other claims are likewise denied for want of any basis.

SO ORDERED.”[10]

Undaunted, Private Respondent elevated the case on appeal to the NLRC, which in a Resolution[11], dated September 14, 2010, affirmed the Labor Arbiter's decision. It opined that the company-designated physician's findings and declaration that Private Respondent's illness is not work-related was more credible than that of Dr. Saguin. It expounded that the company-designated physician is more competent to assess the true condition of the complainant as against the private doctor who examined the patient only once. Hence, the illness is not compensable. The NLRC disposed of the case, in this wise:

“WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The Decision appealed from is AFFIRMED.

SO ORDERED”.[12]

Private Respondent filed a motion for reconsideration of the NLRC decision. He averred that it was error not to consider the medical assessment of Dr. Saguin who found that he can no longer work as seafarer in any capacity

because of his recurrent back problems arising from his “Trichilemmal Cyst”. To support his claim for compensation, Private Respondent also submitted the assessment of Dr. Manuel C. Jacinto (Dr. Jacinto), an orthopedic specialist, who declared that he still experiences on and off pain on the right pubic area and was assessed to be physically unfit to resume his work. He asserted that since Dr. Jacinto's findings are reflective of his actual physical and mental condition, he is the most competent person to assess his true condition.

In a Resolution[13], dated March 22, 2011, the NLRC reconsidered its earlier resolution and ordered Petitioners to pay, jointly and severally, Private Respondent, disability benefits in the amount of US\$89,100.00 as well as attorney's fees equivalent to ten percent (10%) of the monetary award. Giving credence to the latest medical opinion of Dr. Jacinto, the NLRC declared that Private Respondent would no longer be able to perform strenuous activities such as the rigorous duties of an able seaman. It expounded that the healing of the wound does not entail the restoration to normalcy of the ability to work. The trichilemmal cyst on his right pubic area, although healed, has an impact on his capacity to work as able seaman. His recovery from the aftermath of the surgical operation is not yet cleared. It was further opined that Petitioners' failure to summon Private Respondent for sea duty led to the conclusion that he is no longer fit to work. Even if operated on for the removal of the trichilemmal cyst, disability would still be permanent as no employer would readily hire him as able seaman if it is known that he is suffering from the illness. The NLRC further emphasized that there is serious doubt in the declaration of fitness to work by the company-designated physician since Dr. Jacinto corroborated the findings of Dr. Saguin. Thus, considering the Discovery Cruiseship CBA and Private Respondent's membership of the AMOSUP CBA, the NLRC awarded him US\$89,100.00 as disability benefit, as well as attorney's fees equivalent to ten percent (10%) of the monetary award, in this manner:

“WHEREFORE, the Motion for Reconsideration of the complainant-appellant is hereby GRANTED and the Decision of this Commission dated September 14, 2010 is hereby MODIFIED. The respondents BSM Crew Service Centre Phils., Inc./Vortzetzen Beredeerungs-UND Schiffahrtkonto/Narcissus L. Duran are jointly and severally ordered to pay complainant Reynaldo L. Rous his permanent and total disability benefits in the sum of US\$89,100.00 and ten percent (10%) attorney's fees.

The dismissal of the complaint (sick) for sick wage allowance and damages is AFFIRMED.

SO ORDERED”. [14]

Upon motion for reconsideration filed by Petitioners, the NLRC issued a Resolution,[15] dated May 17, 2011 reducing the amount of permanent and total disability benefits to US\$60,000.00 in accordance with the POEA-SEC and sustained the award of attorney's fees, in this manner:

“WHEREFORE, premises considered, the Motion for Reconsideration of respondents-appellees is PARTLY GRANTED. The permanent and total disability benefits of the complainant-appellant is reduced to US\$60,000.00.

All other dispositions in our assailed resolution STANDS AFFIRMED.

SO ORDERED”. [16]

Consequently, this Petition was filed imputing grave abuse of discretion to the NLRC, viz:

“I.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NEGLECTING TO APPLY THE INDISPENSABILITY OF WORK CAUSATION UNDER THE POEA SEC FOR COMPENSABILITY OF SEAFARER'S ILLNESS/INJURY.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FIT TO WORK ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN ON THE BASIS OF THE MEDICAL OPINION OF SEAFARER'S SECOND DOCTOR, WHICH WAS ISSUED MORE THAN A YEAR FROM THE ISSUANCE OF THE AFORESAID FITNESS DECLARATION.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN IGNORING THE UNDISPUTED FACT THAT THE SUBJECT FITNESS CERTIFICATION WAS ISSUED WITHIN THE 120 DAY LIMITATION.

IV.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING PRIVATE RESPONDENT'S ATTORNEY'S FEES DESPITE THE FACT THAT THE SEAFARER'S CLAIM WAS DENIED ON VALID, LEGAL AND JUST GROUNDS.”[17]

In support of the Petition, Petitioners alleged that Private Respondent failed to present evidence showing that his Trichilemmal Cyst, an unlisted condition under the POEA-Standard Employment Contract, was caused or aggravated during his duty on board the vessel. They claimed that it was palpable error to consider the medical report of Dr. Jacinto, Private Respondent's personal doctor, that was belatedly issued and proffered as evidence. Petitioners averred that the fitness to work was issued on May 8, 2009 by Dr. Dy, the company-designated physician while Dr. Jacinto, the private doctor, issued the medical certificate only on October 7, 2010, or after one (1) year and five months. Hence, the medical report of Dr. Jacinto has no evidentiary value for Private Respondent's health may have drastically changed in the interregnum.

On October 6, 2011, Private Respondent filed a Manifestation[18] alleging that since Petitioners have eventually settled the judgment award when they tendered with the NLRC the full amount thereof on September 6, 2011, the petition is rendered moot and academic.

In their Counter-Manifestation[19], Petitioners averred that they only made a conditional settlement of the judgment award subject to the resolution of the instant Petition for Certiorari filed on July 11, 2011.

The Issues

The core issues for resolution are:

- Whether Private Respondent is entitled to compensation for permanent and total disability benefit;
- Whether he is entitled to attorney's fees; and
- Whether the instant Petition was rendered moot by the conditional satisfaction of the judgment award.

The Court's Ruling

The petition is meritorious.

Basically, the POEA-SEC mandates that a claim for disability benefit for a work-related illness or injury be supported by a post employment medical report conducted by the company-designated physician, to wit:

“Section 20 (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

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.” [Emphasis supplied]

Undeniably, Private Respondent was repatriated for medical reason. Upon arrival in the country, he submitted himself to a series of post medical examinations conducted by the company-designated physician. On March 24, 2009, Private Respondent underwent excision of the mass to determine its nature. Thereafter, the company-designated physician issued an assessment that his condition, Cystic Mass, Right Pubic Area; S/P Excision of Cystic Mass, Right Pubic Area is benign and the same is not work-related[20]. On April 13, 2009, another Medical Report[21] was issued stating that his post-op site on the right pubic area was noted to be healing well. On May 8, 2009, Private Respondent was pronounced fit to resume sea duties by Dr. Balbon and Dr. Dy.[22]

Worthy to note that the NLRC, in granting Private Respondent's claim for full disability benefit, relied on the declaration of Dr. Saguin and Dr. Jacinto, Private Respondent's private doctors, that he is not fit to work as seafarer in any capacity.

Jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer.[23] In the case under consideration, the NLRC rejected the assessment made by the company-designated physicians that Private Respondent's illness, Trichilemmal Cyst, Right Pubic Area, S/P Excision of Cystic Mass, Suprapubic Area is not work-related and that he is fit to work since his mass was benign and his wound had healed. We cannot subscribe to the NLRC's pronouncement that the medical assessment of the company-designated physician is biased, unreliable and self-serving. We emphasize that Dr. Balbon continuously attended, monitored and treated Private Respondent since his repatriation on February 26, 2009. Hence, We agree with Petitioners that Dr. Balbon was more competent to assess Private Respondent's illness and his fitness to resume sea duty. Dr. Balbon possessed personal knowledge of the medical condition of Private Respondent, and considering the time and effort she devoted to monitor and treat him, her declaration as embodied in the Medical Certificate dated May 8, 2009 that he is fit to resume sea duties and confirmed by Dr. Dy, should be given credence. Hence, the NLRC erred in relying on the assessment of Private Respondent's private doctors that he is not fit for sea duty and is entitled to permanent and total disability benefits.

It bears to emphasize that the disability assessments of Dr. Saguin dated July 15, 2009 and Dr. Jacinto dated October 10, 2010, the physicians appointed by Private Respondent, were based on a medical report that resulted from a single examination or treatment. On the other hand, Dr. Balbon delineated the development of Private Respondent's medical condition from the time he complained of the mass/cyst while on board the vessel until he was repatriated for medical reasons. Undeniably, the medical examinations conducted by Dr. Balbon were much more extensive than the examination conducted by Dr. Saguin and Dr. Jacinto in their respective clinics. Thus, as between the findings of Dr. Balbon and Dr. Saguin/Dr. Jacinto, the former deserves to be given greater evidentiary weight.

Essentially, compensability for a permanent and total disability benefit should arise from a work-related illness during the term of the contract. We agree with the company-designated physician's assessment that Trichilemmal Cyst is not work-related. Said illness is not even listed as an occupational disease under Section 32-A of the the 2000 POEA-SEC. In fact, the records are bereft of any showing that Private Respondent's working condition increased the risk of contracting the cyst, or that the development or exacerbation of the cyst could be attributed to the nature of his job. We therefore have difficulty in finding any link between the Private Respondent's position as Able Seaman and his illness, Trichilemmal Cyst. Private Respondent had nothing to support his claim, other than the assessment of his own physicians, that he cannot work in any capacity because of recurrent back problems, without elaborating on how they arrived at this finding. Under the circumstances, Trichilemmal Cyst, under which compensation is sought, is clearly not work-related. Hence, We are more in accord with the ruling of the Labor Arbiter in denying the claim for permanent and total disability benefits.

Suffice it to say that the claim for sickness and permanent disability benefits arose from the stipulations in the POEA Standard Employment Contract, which is intended for all parties involved in the employment of Filipino seamen on board any ocean-going vessel.[24] Thus, Petitioners and Private Respondent are both bound by the provisions thereof which declares that the degree of disability or fitness to work of a seafarer should be assessed by the company-designated physician and that the illness must be work-related.

What is more, Private Respondent's mere inability to work does not necessarily entitle him to a full disability benefit. While it is true that it is not the injury, but rather the incapacity to work resulting in the loss or impairment of earning capacity that is compensated, it must be stressed that the company-designated physician issued an assessment within the 120-day initial period[25] allowed by the POEA-SEC that Private Respondent is fit to work. However, after such declaration, Private Respondent did not re-apply for employment with Petitioners.

The fact that he was never again summoned for sea duty and was not redeployed should not be taken against Petitioners. It is incumbent upon Private Respondent to seek re-employment if he still wants to work with Petitioners. Seafarers are considered contractual employees and their employment is governed by the contract they sign every time they are rehired and their employment is terminated once the contract expires. The exigencies of their work necessitates that they be employed on a contractual basis.[26] Thus, We are not inclined to agree with the ruling of the NLRC that the failure to redeploy would lead to the conclusion that Private Respondent is not fit to resume sea duty. The general principle is that one who makes an allegation has the burden of proving it. A party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process.[27]

Furthermore, the May 8, 2009 assessment of Dr. Balbon was disputed by Dr. Saguin after more than two (2) months and one (1) year and by Dr. Jacinto after five (5) months. To be exact, Dr. Saguin and Dr. Jacinto's assessments were issued after four and one half months (4 1/2) and one (1) year and seven (7) months, respectively, from the time of Private Respondent's repatriation on February 26, 2009. While it is true that Private Respondent may oppose the medical assessment of the company-designated physician, his independent doctor's assessment cannot be given credence considering that it was not seasonably done and was only based on a single medical treatment. Indeed, the medical assessment of Dr. Jacinto was presented only during the proceedings before the NLRC, or specifically, in Private Respondent's motion for reconsideration of the September 14, 2010 Resolution.

Suffice it to state, We observe that in case of a divergence of medical assessment by the company-designated physician and the doctor appointed by the employee, it is beyond cavil that a mechanism for resolution is provided by Section 20 (B), paragraph 3 of the POEA-SEC as follows:

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.

The ruling in *Vergara vs. Hammonia Services, Inc. and Atlantic Marine Ltd.*[28] is pertinent, thus:

“Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.”

Had Private Respondent properly complied with the above procedure, the disagreement could have been easily clarified or resolved. Thus, in filing the complaint for disability benefit on April 24, 2009, without resort to the prescribed procedure, compensation for full disability benefit in accordance with the private doctors' assessment, should be denied. Strict rules of evidence are not applicable in claims for compensation and disability benefits, but the Court cannot altogether disregard the mandatory provisions of the law.[29]

In conclusion, the Court finds that the NLRC has acted with grave abuse of discretion in ignoring the medical assessment of the company-designated physicians that Private Respondent was cleared for work resumption as a seafarer and in granting his claim for disability on the basis of a single medical examination report of his physicians contrary to the clear, unambiguous provisions regarding disability benefit claims contained in the POEA Contract.

Considering the above disquisition, We find no basis to award attorney's fees to Private Respondent.

Private Respondent, in his Manifestation filed on October 6, 2011, alleged that Petitioners have amicably settled the judgment award by tendering the full amount of the NLRC's award hence, the case is fully terminated. However, the records are bereft of any showing that Petitioners and Private Respondent have entered into a compromise agreement or amicable settlement that will result in the latter's claims as fully satisfied and the case dismissed with prejudice, and with an undertaking that Private Respondent will desist from prosecuting and/or instituting any other case or claim against the Petitioners. A settlement that puts an end to litigation is one whereby the parties undertake reciprocal obligations to resolve their differences in order to avoid litigation or put an end to one already instituted. It is a judicial covenant having the force and effect of a judgment, subject to execution in accordance with the Rules of Court, and having the effect and authority of *res judicata* upon its approval by the court where the litigation is pending[30].

Undeniably, Petitioners made only a conditional satisfaction[31] of the judgment award by way of deposit to the NLRC. The deposit was by virtue of the Order of Execution issued by the Labor Arbiter, on motion of Private Respondent, for the execution of the judgment award as contained in the March 22, 2011 and May 17, 2011 Resolutions of the NLRC. In order to prevent further execution proceedings, Petitioners conditionally satisfied the judgment award on September 6, 2011, in the amount of US\$66,000.00 inclusive of attorney's fees by way of Manager's Check No. 480917 and further paid the corresponding Execution Fees assessed by the NLRC Cashier at P26,747.44 as shown by Manager's Check No. 480896.

Under prevailing Rules, a petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court.[32] Since no temporary restraining order was issued by this Court, Petitioners were compelled to deposit with the NLRC the total amount of the judgment award as stated in its May 17, 2011 Resolution, as the Labor Arbiter granted the motion for execution and issued an order of execution. Notwithstanding the finality of the NLRC's decision and deposit of the full money judgment by Petitioners, these do not necessarily result in the dismissal of the petition on the ground that it is already moot. Otherwise, all pending petitions for certiorari with

this Court would be dismissed outright on the ground that the judgment award has been satisfied by virtue of an order of execution.

In *Leonis Navigation Co., Inc. vs. Villamater*[33], it was held that even if the NLRC decision became final and executory and the judgment award has been paid by Petitioners (Leonis Navigation), the Private Respondent (Sonia Villamater) is estopped from claiming that the controversy had already reached its end with the issuance of the order closing and terminating the case. Thus-

“Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for certiorari, unless it is restrained by the proper court. In the present case, petitioners already paid Villamater's widow, Sonia, the amount of P3,649,800.00, representing the total and permanent disability award plus attorney's fees, pursuant to the Writ of Execution issued by the Labor Arbiter. Thereafter, an Order was issued declaring the case as "closed and terminated." However, although there was no motion for reconsideration of this last Order, Sonia was, nonetheless, estopped from claiming that the controversy had already reached its end with the issuance of the Order closing and terminating the case. This is because the Acknowledgment Receipt she signed when she received petitioners' payment was without prejudice to the final outcome of the petition for certiorari pending before the CA.”

It is clear in Petitioners' Manifestation on the Conditional Satisfaction of the Judgment Award By Way of Deposit to the NLRC and Urgent Motion to Lift Notice of Garnishment[34] that the payment of the judgment award with the NLRC is without prejudice to the resolution of the pending petition for certiorari before this Court and any further action and resolution by the Supreme Court. It is also explicitly stated that Private Respondent and his counsel had the obligation to return the money paid conditionally assuming there is a reversal by the High Court.[35] Furthermore, there is no mention of any waiver of right to prosecute any action or pursue any claim against the Petitioners. Neither was there any Order issued by the Labor Arbiter to the effect that the case had been finally settled and terminated in view of the deposit made by Petitioners through the conditional satisfaction of judgment.

Considering the wording of the Manifestation on the Conditional Satisfaction of the Judgment Award that Private Respondent should return the payment to Petitioners if the Petition would be granted and that he is not barred from taking any further action to prosecute his money claims, this undertaking was fair and just to both the Petitioners and Private Respondent. This being so, the conditional satisfaction of the judgment award cannot be considered as a final settlement that would render the instant Petition moot and academic.[36]

WHEREFORE, the foregoing considered, the Petition is GRANTED. The assailed Resolutions are hereby ANNULLED and SET ASIDE. Accordingly, the Decision of the Labor Arbiter dated November 27, 2009 dismissing Private Respondent's Complaint is hereby REINSTATED. No costs.

SO ORDERED.

Baltazar-Padilla and Sorongon,[*] JJ., concur.

[*] Vice J. Reyes-Carpio, per Office Order No. 200-14-ABR, dated May 9, 2014.

[1] Rollo, pp. 42-52.

[2] Rollo, pp. 52-54.

[3] Rollo, pp. 55-56.

[4] Rollo, p. 117.

- [5] Rollo, pp. 99-102.
- [6] Rollo, pp. 60-63.
- [7] Rollo, pp. 89-90 (Initial Medical Report dated March 2, 2009).
- [8] Rollo, p. 93.
- [9] Rollo, pp. 164-170.
- [10] Rollo, p. 170.
- [11] Rollo, pp. 254-259.
- [12] Rollo, p. 258.
- [13] Rollo, pp. 42-50.
- [14] Rollo, p. 49.
- [15] Rollo, pp. 52-54.
- [16] Rollo, pp. 53-54.
- [17] Rollo, pp. 14-15.
- [18] Rollo, pp. 358-361.
- [19] Rollo, pp. 369-371.
- [20] Medical Report dated April 1, 2009, Rollo, p. 93.
- [21] Rollo, p. 94.
- [22] Rollo, pp. 95-96.
- [23] Sarocam vs. Interiorient Maritime Ent., Inc. vs. Demaco United Ltd., 493 SCRA 502; German Marine Agencies vs. NLRC, G.R. No. 142049, January 30, 2001.
- [24] Seagull Shipmanagement and Transport, Inc. vs. NLRC, G.R. No. 123619, June 18, 2000.
- [25] Vergara vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933, October 6, 2008.
- For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary disability as he is totally unable to work. He receives his basic wage during this period until he is 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-SEC and by applicable Philippine Laws. If the 120- day 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 seafarer may, of course, also be declared fit to work at anytime such declaration is justified by his medical condition.

Section 20 (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: xxxx xxxx xxxx

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 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.

[26] Paul V. Santiago vs. CF Sharp Crew Management, Inc., G.R. No. 162419, July 10, 2007.

[27] Alex Cootauco vs. MMS Phil. Maritime Services, Inc., G.R. No. 184722, March 10, 2010.

[28] G.R. No. 172933, October 6, 2008.

[29] Magsaysay Maritime Corp., et al. vs. Velasquez, G.R. No. 179802, November 14, 2008.

[30] California Manufacturing Company, Inc. v. City of Las Piñas, G.R. No. 178461, June 22, 2009.

[31] Rollo, pp. 373-377.

[32] Section 10, Rule XI, 2005 New Rules of Procedure of the NLRC.

[33] G.R. No. 179169, March 3, 2010.

[34] Rollo, pp. 373-377.

[35] Rollo, p. 375.

xxxx xxxx xxxx

11. That further, the payment of the above sum of money is WITHOUT PREJUDICE TO THE RESOLUTION OF THE PENDING PETITION FOR CERTIORARI BEFORE THE COURT OF APPEALS AND ANY FURTHER ACTION AND RESOLUTION BY THE SUPREME COURT.

12. Assuming the reversal by the High Court, herein respondents point out that complainant and his counsel are bound by law to RETURN the above sum of money. Under the circumstance, both complainant and his counsel shall return the entire amount paid conditionally which is by law owing to herein respondents.

[36] Philippine Transmarine Carriers, Inc. vs. Leandro Legaspi, G.R. No. 202791, June 10, 2013.

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