

SOUTHFIELD AGENCIES, INC., DANIA MARINE AND/OR ARSENIO BENJAMIN E. SANTOS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND ANTONIO D. DAYO, RESPONDENTS.

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed in this Petition for Certiorari with Prayer for the Issuance of a Writ Preliminary Injunction and/or Temporary Restraining Order under Rule 65 of the 1997 Revised Rules on Civil Procedure are the Decision[1] dated 22 June 2012 and Resolution[2] dated 27 July 2012 of the National Labor Relations Commission in NLRC-LAC Case No. 05-000475-12(OFW) (NLRC NCR Case No. 04-06600-11[OFW]).

The factual and procedural antecedents of the case, as culled from the records, are as follows:

Southfield Agencies, Inc. (“Southfield Agencies”) is a domestic corporation engaged in the recruitment and manning business for and on behalf of its foreign principal Dania Marine (formerly Graig Ship Management). Arsenio Benjamin E. Santos (“Santos”) is an officer of Southfield Agencies[3] (Southfield Agencies, Dania Marine and Santos shall be hereafter collectively referred to as “petitioners”).

On 1 June 2010, Antonio D. Dayo (“respondent”) was hired by petitioners as its 2nd Deck Officer on board M/V Thor Pioneer. The duration of his contract was for a period of six (6) months with a basic monthly salary of US\$1,013.30, monthly overtime pay of US\$730.00, monthly vacation leave pay of US\$405.00 and monthly provident fund of US\$101.30.[4] Being a member of the Associated Marine Officers' and Seamen's Union of the Philippines[5] (“AMOSUP”), respondent's contract was likewise covered by a Collective Bargaining Agreement (“CBA”) between AMOSUP and International Maritime Employers Committee (“IMEC”).[6]

On 30 October 2010, while respondent was on duty and after he pulled a mooring rope of the vessel, he suddenly experienced pain on his lower back and abdomen.[7] After he reported his condition to the captain,[8] he was immediately brought to Citymed Health Associates, Pte. Ltd. in Singapore where he underwent a series of laboratory tests[9] and was diagnosed with “Epididymitis/Orchitis, associated with Hesitancy and Dysuria”. [10] In addition, he was advised to take all the medications prescribed to him and was declared fit to return to the vessel.[11]

On 25 November 2010, respondent was brought to Carpentaria Medical Centre at Darwin, Northern Territory, Australia because of persistent pain on his lower abdomen, loin and scrotal.[12] However, Dr. Santiosh Linga assessed that his symptoms were vague and required him to undergo further medical investigation.[13] Thus, respondent was medically repatriated on 27 November 2010.[14]

Upon arrival in Manila, respondent was immediately referred by petitioners to Alegre Medical Group of Companies, Inc. at St. Luke's Medical Center, Quezon City where he was attended by Dr. Natalio G. Alegre (hereafter referred to as the “company-designated physician”).[15] To efficiently assess respondent's condition,

the company-designated physician referred him to a Urologist – Dr. Jaime Balingit (“Dr. Balingit”)[16] to which the latter diagnosed him to have “Epididymitis, Left; Spondylolisthesis; Prostatitis”. [17] He was also referred to a Gastroenterologist – Dr. Arnel N. Pangilinan (“Dr. Pangilinan”) where the latter conducted an Esophagogastroduodenoscopy and diagnosed him with “Esophagitis LA Grade A, Hernia, Hemorrhagic Gastritis and H. Pylori Positive”. [18] (Dr. Balingit and Dr. Pangilinan shall be hereafter collectively called as “collaborating physicians”).

On 3 January 2011, the company-designated physician sent a 9th Progress Report[19] to Southfield Agencies stating his assessment on respondent's illness, to wit:

“Assessment:

Low Back Pain to consider Degenerative Disk Disease

Prostatitis, Resolving

Hypertension Stage 2

Tinea Versicolor

Diffuse Gastritis and Esophagitis

To Consider Pulmonary Tuberculosis

Discussion and Plan:

He is advised to continue Amoxicillin 500mg 2 capsules twice daily, Clarithromycin 500mg 1 tablet twice daily, Rebamipide 100mg 1 tablet thrice daily for two weeks, Simvastatin 20mg 1 tablet once daily at bed time, Cetirizine 10mg 1 tablet once daily as needed. Pantoprazole 40mg 1 tablet twice daily pre-meals, Aliskerin 150mg 1 tablet once daily in the morning and Terbinafine cream to be applied on skin lesions twice daily.

Urinalysis, ultrasound of the kidneys, ureters and bladder with prostate study and x-ray of the lumbosacral spine are requested.

Due to noted findings of granuloma of the right midlung on chest x-ray, we are recommending Pulmonary specialist consult and tuberculosis work-up comprising of apicolordotic chest x-ray, purified protein derivative exam, sputum acid fast bacilli test for three consecutive days with sputum culture and gram stain. Estimate cost of the work-up is Php 30,000.00. This is subject to your approval.

Follow-up is advised on 07 January 2011.”[20]

Pursuant to the above-quoted assessment and upon request of the company-designated physician and his collaborating physicians, respondent underwent a series of medical examinations and procedures, to wit:

DATE EXAMINATION/ PROCEDURE INTERPRETATION / FINDINGS IMPRESSION

01/05/11

CT SCAN: Spine-Lumbo-Sacral[21]

- There is exaggerated lumbar lordosis which could be positional in nature.
- Osteophytes of the lumbar vertebral bodies.
- Pedicles are intact.
- Negative for spondylolisthesis.
- Incidental note of pelvic calcifications on the left side suggestive of phleboliths.

Degenerative Changes

01/05/11

SONOGRAPHY: Kidneys, Prostate, Urinary Bladder[22]

KIDNEYS:

The right kidney measures 9.6 x 5.4 cm with cortical thickness of 1.4 cm. while the left kidney measures 10.9 x 5.0 cm. with cortical thickness of 1.1 cm. Both kidneys show normal central echo complexes and corticomedullary junctions. No hydronephrosis nor calculi noted. URINARY BLADDER:

The urinary bladder shows no abnormal intravesical echoes. The wall is not thickened. Pre-void volume measures 1182 cc. while post-void film shows 112 cc. of residual urine.

PROSTATE:

The prostate gland measures 5.6 x 3.7 x 5.2 cm. (56 grams) with calcifications noted within its substance. No discrete mass lesion seen.

KIDNEYS:

Normal Renal Study

URINARY BLADDER:

Residual Urine volume of 9%.

PROSTATE:

Enlarged prostate gland with concretions

02/03/11

MAGNETIC RESONANCE IMAGING: Lumbosacral Spine[23]

- Conus medullaris normally ends at L1. Cauda equina is not thickened.
- Vertebral height and marrow signal are preserved. Osteophytes are noted along the vertebral margins. Cortical endplates are intact.
- Normal lordotic curvature of the spine is maintained. No paravertebral mass is demonstrated.
- The sacroiliac joints show no abnormal signal.
- Varying degrees of disk desiccation is noted at L2-L3 down to L5-S1. There is a left paracentral annular tear at L5-S1. No other disk herniation. The canals are adequate.
- Normal conus medullaris
- Anterior vertebral osteophytes
- Varying degrees of disk desiccation, L2-L3 down to L5-S1
- Left paracentral annular tear, L5-S1

02/22/11

CHEST PA: Magnetic Resonance Imaging[24]

- Subcentimeter nodular density is again noted in the right midlung field.
- The rest of the lung fields are clear.
- Heart is not enlarged.
- Atheromatous aorta.
- Diaphragm and sulci are intact.
- Bony thorax is unremarkable.
- Stable Granuloma, Right Midlung Field
- Atheromatous Aorta

02/28/11

ULTRASOUND GUIDED TRANSRECTAL PROSTATE BIOPSY[25]

Patient placed in left lateral decubitus. Asepsis, Antisepsis done and sterile drapes placed. Ultrasound probe inserted. Prostate identified. Local anesthesia was infiltrated. Biopsy gun inserted taking specimens from the right and left prostate lobes. Instruments withdrawn. Hemostasis was assured. Patient tolerated the procedure well.

Operative Diagnosis : BPH R/O Prostate CA[26]
(Benign Prostatic Hyperplasia)

On 14 March 2011, Dr. Balingit diagnosed respondent with “1. Prostatitis (culture positive *Staphylococcus hemolyticus*) 2. Elevated PSA test due to the above 3. Benign Prostatic Hyperplasia”. [27] Thereafter, he underwent a follow-up sonography and electrodiagnostic examination which revealed that his residual urine volume increased to 12% and that he has an “active lumbar radiculopathy involving the right and left L4-5 spinal roots”, respectively. [28] Also, another collaborating physician of the company-designated physician – Dr. Ronald B. Pidlaon (“Dr. Pidlaon”) assessed respondent to have “Spinal Stenosis Sec. To Degenerative Disc Disease L5 Spine L3-L4 L4-L5” and advised him to undergo “spinal posterior decompression with application of spacer L3-L5” and should continue his medications. [29]

On 27 April 2011, respondent filed a Complaint against petitioners for payment of disability compensation, balance of sick wages, moral and exemplary damages, attorney’s fees and other benefits provided under the CBA and applicable laws. [30]

In the interim, on 28 May 2011, respondent underwent another series of major operations, namely, cystoscopy, transurethral electrosurgical resection of the prostate and transurethral incision. [31]

On 5 July 2011, the company-designated physician issued a medical report to a certain Atty. Ruben del Rosario regarding the condition of respondent. [32] The company-designated physician stated –

“Mr. Antonio Dayo has been diagnosed with Benign Prostatic Hyperthropy, Low Back Pain secondary to Disc Dessication L2L3 to L5S1 with Annular Spinal Stenosis L5-S1, and Neurogenic Bladder secondary to L4L5 Nerve Root Compression, Resolved Diffuse Gastritis and Esophagitis, Treated Dyslipidemia, Controlled Diabetes Mellitus, Resolved Tinea Versicolor, Pulmonary Tuberculosis and controlled Hypertension.

The Prostate pathology is secondary to ageing and is not work related. The Gastritis and Esophagitis, Dyslipidemia, Diabetes, Tinea Versicolor and Hypertension were treated and controlled, Pulmonary Tuberculosis is still under treatment but is expected to be controlled.

The Disk Problem consisting of disc dessication with stenosis and neurogenic bladder is work related and a disability grade of 8 is given based on the POEA Contract, Chest-Trunk-Spine #5, moderate rigidity on 2/3 loss of motion or lifting power of the trunk.” [33]

Also, on 7 July 2011, Dr. Pidlaon issued a Medical Certificate which reads –

“This is to certify that MR. ANTONIO DAYO Age/Sex 53M of Pasig City was examined at SLMC-QC on July 7, 2011 because of the following :

DIAGNOSIS :

Spinal Stenosis L3L4, L4L5

Degenerative Disc Disease

Remarks :

- Patient is advised to have spine surgery (Decompression Laminotomy, Foraminotomy L3L4L5)
- For follow up if approved with insurance
- continue with present x x x"[34]

On 20 July 2011, respondent consulted an independent physician of his own choice, Dr. Manuel Jacinto ("Dr. Jacinto") who issued a Medical Certificate, viz.:

"This is to certify that Antonio D. Dayo Age: 50 Sex: Male Status: Married Citizenship: Filipino Occupation: seaman xxx xxx consulted at Sta. Teresita General Hospital Q.C. and was under my service during the period from July 2011 to present for the following diagnosis: Benign Prostate Hyperplasia; Spinal Stenosis L3-L4-L5 and Degenerative Disc Disease/ Dessication and Radiculopathy.

Surgical Intervention: suggest Posterior Decompression (Laminotomy, Foraminotomy L3 to L5 bones)

Patient's condition on discharge: no improvement was noted on the patient.

Remarks: the patient's condition started at work and symptoms of weakness and progressive numbness of both lower extremities persisted despite management and medications, thus, he was assessed to be physically unfit to go back to work.

Disability

o Temporary

o Partial Temporary

o Partial Permanent

x Total Permanent"[35]

During preliminary conference, the parties failed to reach an amicable settlement. Thus, they were directed to file their respective position papers.

In his Position Paper, respondent argued that he is entitled to disability benefits in the amount of US\$118,800.00 as provided under the CBA because he is a member of AMOSUP. He asserted that, under Section 20.1.4 of the CBA, any illness which resulted to being permanently unfit for further sea service shall entitle the latter to the full amount of US\$118,800.00. Respondent asserted that his illnesses are work-related and work-aggravated because he sustained the same during his employment while on board the vessel of petitioners. Also, since he has become unfit for sea duty for more than 120 days, his disability is already total and permanent. He further asserted that the medical tests he had under the supervision of the company-designated physician which declared him no longer fit to go back to work as his disability is total and permanent was confirmed by Dr. Jacinto who diagnosed him to be suffering from "Benign Hyperplasia; Spinal Stenosis L3-L4-L5 Sec. Degenerative Disc Disease/ Dessication with Radiculopathy." He emphasized that Dr. Jacinto's findings are accurate because these reflect his actual physical and medical condition and the same are independent, neutral and impartial as compared to the findings of the company-designated physician who is inclined to protect the interest of the petitioners. Furthermore, respondent asserted that he is also entitled to "sick wage for ten days" and moral and exemplary damages as well as attorney's fees because the petitioners deliberately and in evident bad faith failed to pay the disability benefits due him.[36]

For their part, petitioners alleged that while respondent's treatment was on-going he already "initiated a grievance proceeding with the Associated Marine Officer's and Seaman's Union of the Philippines"[37] and despite the prematurity of such proceeding, petitioners endeavored to attend to respondent's medical needs and settle the matter." [38] Petitioners countered that respondent is not entitled to the full amount of US\$118, 800.00 because

the company-designated physician only assessed his illness with a Grade 8 disability which only amounts to US\$39,905.00 under the POEA-SEC. Petitioners emphasized that the findings of the company-designated physician should be given credence as it was evaluated well over time and resulted from a series of objective medical examinations starting from the time he was repatriated. Accordingly, respondent is also not entitled to moral and exemplary damages as they have complied with all their obligations in good faith under the POEA-SEC.[39]

Collaterally, a Motion to Exercise Attorney's Lien was filed by Sapalo Velez Bundang & Bulilan Law Offices claiming that respondent hired its services as counsel in pursuing his claims for disability benefits and that it has already rendered substantial services to the latter, such as, but not limited to, accompanying and representing him during the hearing with the AMOSUP. Thus, it is exercising its retaining and charging lien over all documents that has come into its possession and upon all judgment in favor of respondent.[40]

On 13 March 2012, the Labor Arbiter rendered a Decision granting respondent's claim, the dispositive portion of which reads –

“WHEREFORE, premises considered, judgment is hereby rendered as follows:

- 1) Ordering the respondents, jointly and severally, to pay the complainant permanent total disability benefits amounting to US\$118,800.00 pursuant to the Collective Bargaining Agreement.
- 2) Ordering the respondents, jointly and severally, to pay the complainant: a) moral and exemplary damages in the total amount of P100,000.00; and b) attorney's fees equivalent to ten (10%) percent of the monetary award.
- 3) The claim for the balance of sick wage is dismissed on the ground of payment.
- 4) The Motion to Exercise Attorney's Lien by the Sapalo Velez Bundang & Bulilan Law Offices is partially granted to the extent that said firm is hereby awarded the sum of P10,000.00 as a reasonable compensation for the services it rendered to the complainant, which amount is to be deducted from the judgment award in favor of the complainant.

SO ORDERED.”[41]

The Labor Arbiter ratiocinated that it is undisputed that the parties mutually agreed on the coverage of the CBA. As such, under Section 20.1.4 of the CBA and after taking into consideration the medical findings of the company-designated physician, respondent is entitled to Grade 1 disability compensation in the sum of US\$118,800.00. The Labor Arbiter explained that respondent's work-related illness has greatly decreased the dexterity of his extremities such that his trunk has lost more than 50% of its lifting capacity. Also, given respondent's limited strength and capacity, it is without a doubt that he can no longer effectively perform his duties as a seafarer. Thus, his disability should be rendered total and permanent. Accordingly, the Labor Arbiter ruled that respondent is entitled to his claims for moral and exemplary damages and attorney's fees because the petitioners willfully refused to give what is due to the respondent under the CBA.[42]

On appeal by both parties,[43] the NLRC modified the claims awarded by the Labor Arbiter in its Decision dated 22 June 2012, the fallo of which, reads –

“WHEREFORE, premises considered, both appeals are PARTIALLY GRANTED.

Accordingly, the Decision is MODIFIED. The award of damages in the amount of P100,000.00 is DELETED. The attorney's fees of P10,000.00 awarded to Sapalo Velez Bunday & Bulilan Law Offices is likewise DELETED.

All other dispositions stand AFFIRMED.

SO ORDERED.”[44]

The NLRC ruled that the Labor Arbiter was correct in awarding disability compensation benefit equivalent to Grade 1 to respondent because petitioners admitted that the former's employment is covered by a CBA. While the findings of the company-designated physician and respondent's own physician are conflicting with one another, the NLRC ruled that the balance in evaluating the evidence presented by the parties must be tilted in favor of the respondent as it is consistent with the principle of social justice. Moreover, it is not respondent's illness that is being compensated but his incapability to work resulting in the impairment of his earning capacity for more than 120 days. Anent the award of moral and exemplary damages, the NLRC ruled that the same is unwarranted because there is no wrongful act on the part of petitioners as respondent was immediately referred to the care of medical specialists both in the Philippines and abroad.

Undaunted, petitioners filed their Motion for Reconsideration[45] which was denied by the NLRC in its Resolution dated 27 July 2012.[46] Hence, the present recourse of petitioners grounded on the following, viz.:

1. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT TOOK COGNIZANCE OF THE PRESENT CASE DESPITE THE FACT THAT NO GRIEVANCE PROCEEDINGS HAVE BEEN CONCLUDED.
2. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE ERRONEOUS DECISION OF THE LABOR ARBITER IN HOLDING HEREIN PETITIONERS LIABLE TO PRIVATE RESPONDENT FOR US\$118,800.00 IN DISABILITY BENEFITS DESPITE THE GLARING FACT THAT THERE IS NO BASIS FOR THE SAID AWARD.
3. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISREGARDING THE CLEAR FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN OVER THE BIASED OPINION OF THE PHYSICIAN APPOINTED BY THE PRIVATE RESPONDENT.
4. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE AWARD FOR ATTORNEY'S FEES WITHOUT ANY SUBSTANTIAL BASIS WHATSOEVER.[47]

The issues for consideration of this Court are: (1) whether the labor tribunals have jurisdiction over the case; (2) whether the NLRC gravely abused its discretion in affirming the Labor Arbiter's award of total and permanent disability benefits in the amount of US\$118,800.00.

At the outset, it must be emphasized that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, if supported by substantial evidence, are generally accorded not only respect but even finality. In other words, factual findings of the labor tribunals are binding upon this Court, unless the labor tribunals had arbitrarily disregarded evidence before them or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[48]

Anent the first issue, petitioners insist that they are not liable to respondent because the NLRC has no jurisdiction over the case since respondent failed to exhaust all administrative remedies before filing the complaint against them. Petitioners aver that grievance proceedings must first be initiated before a complaint with the NLRC may proceed.[49] Thus, for having failed to exhaust the grievance procedure, petitioners assert that the instant case should be dismissed outright. Nevertheless, assuming that the NLRC has jurisdiction over the case, petitioners also argue, for the first time, that respondent is not covered by the CBA between AMOSUP and IMEC as he

failed to prove his membership therewith. Also, respondent failed to show that the CBA is applicable to his 1 June 2010 contract as the period indicated in said CBA was for the year 2008-2009 and the space provided for the name of the company was left blank.

We are not persuaded.

First. Petitioners cannot raise the issue, for the first time, before this Court that the NLRC has no jurisdiction over the case. Based on the fundamental tenets of fairplay, it is a well-settled rule in this jurisdiction that a party cannot change his theory of the case or his cause of action on appeal.[50] Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. Party litigants are bound by their submissions and should not be permitted to change theory. They cannot subsequently take a position contrary to, or inconsistent with their pleadings.[51]

In the case at bar, We note that petitioners never raised in their position paper and other pleadings filed before the Labor Arbiter and in their appeal with the NLRC that the labor tribunals have no jurisdiction over the case. A perusal of the records reveal that the new defenses of petitioners are contrary to their allegations raised before the labor tribunals. Petitioners themselves admitted respondent's membership with the AMOSUP and his recourse to grievance machinery in their Position Paper, to wit:

“On 1 June 2010, Respondents and complainant entered into a Contract of Employment with a duration of six (6) months. This was approved on 2 June 2010 by the Philippine Overseas Employment Administration, POEA for brevity. A copy of this contract is herein attached as Annex '1'. The employment of complainant has an overriding Collective Bargaining Agreement, CBA for brevity, which is the TCCC/IMEF-IBF. Page 14 of said CBA, which contains its pertinent provisions, is herein attached as Annex '2'.

Xxx xxx xxx

While his treatment was on-going, Complainant initiated a grievance proceeding with the Associated Marine Officer's and Seaman's Union of the Philippines, AMOSUP for brevity. Despite the prematurity of such proceeding, Respondents endeavored to attend to Complainant's medical needs and settle the matter.”[52]

At any rate, the new defenses of petitioners should still be disregarded as they are contrary to the evidence on record. Respondent has substantially proven his membership with the AMOSUP when he presented his membership card and when petitioners failed to present controverting evidence thereto. To reiterate, petitioners admitted respondent's membership and his prior resort to grievance proceeding.

Second. The labor tribunals have jurisdiction over the money claims of respondent. Under the “Migrant Workers and Overseas Filipinos Act of 1995”, as amended,[53] the Labor Arbiter shall have exclusive and original jurisdiction over money claims arising out of an employer-employee relationship involving Filipino workers for overseas deployment, to wit:

“SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry. x x x”

Third. Petitioners have already submitted themselves to the jurisdiction of the labor tribunals when they actively participated in the proceedings before the Labor Arbiter and the NLRC when they filed their position paper and

memorandum of appeal therein. In *Celestino Viviero vs. Court of Appeals, Hammonia Marine Services and Hanseatic Shipping Co., Ltd.*,[54] the Supreme Court held that referring back the case to the voluntary arbitrator would not serve the ends of justice, viz.:

“x x x In any case, private respondents never invoked the application of Policy Instruction No. 56 in the Position Papers, neither did they raise the question in their Motion to Dismiss which they filed nine (9) months after the filing of their Position Papers. At this late stage of the proceedings, it would not serve the ends of justice if this case is referred back to a Voluntary Arbitrator considering that both the AMOSUP and private respondents have submitted to the jurisdiction of the Labor Arbiter by filing their respective Position Papers and ignoring the grievance procedure set forth in their CBA.

After the grievance proceedings have failed to bring about a resolution, AMOSUP, as agent for petitioner, should have informed him of his option to settle the case through voluntary arbitration. Private respondents, on their part, should have timely invoked the provision of the CBA requiring referral of their unresolved disputes to a Voluntary Arbitrator once it became apparent that the grievance machinery failed to resolve it prior to the filing of the case before the proper tribunal. The private respondents should have not waited for nine (9) months from the filing of their Position Paper with the POEA before it moved to dismiss the case purportedly for lack of jurisdiction. As it is, private respondents are deemed to have waived their right to question the procedure followed by petitioner, assuming that they have the right to do so. Under the CBA, both Union and respondent companies are responsible for selecting an impartial arbitrator or for convening an arbitration committee; yet, it is apparent that neither parties made a move towards this end. Consequently, petitioner should not be deprived of his legitimate recourse because of the refusal of both Union and respondent companies to follow the grievance procedure.” [Emphasis supplied]

Anent the second issue, petitioners argue that the NLRC gravely abused its discretion in affirming the ruling of the Labor Arbiter in awarding US\$118,800.00 disability benefits without providing any credible and substantial medical evidence to prove that respondent is suffering from Grade 1 disability. Petitioners maintain that the NLRC erred in disregarding the findings of the company-designated physician despite the explicit provisions of the POEA-SEC that it is the company-designated physician who should determine the fitness or disability of a seafarer as it is the most reliable source of information as to respondent's fitness to work or degree of disability.

Partly, We agree with the petitioners.

Time and again, it must be remembered that entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but also by law and contract.[55] By law, the material statutory provisions are Articles 191 to 193 of the Labor Code of the Philippines, as amended.[56] By contract, the 2000 Philippine Overseas Employment Administration Standard Employment Contract (“POEA SEC”), as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (“CBA”) bind the seafarer and his employer to each other.[57]

Inasmuch as the respondent was a registered member of the AMOSUP, the instant petition should also be decided in accordance with the CBA.[58] The IBF-AMOSUP/IMEC TCC Collective Bargaining Agreement[59] provides

“Art. 20. LIFE/DISABILITY INSURANCE, WELFARE MUTUAL BENEFIT PLAN

x x x x x x x x

20.1.3. COMPENSATION FOR DISABILITY

20.1.3.1. A Seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving

on board, including accidents and work-related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work-related illness, reference shall be made to the Philippine Employees Compensation Law and/or Social Security Law.

x x x x x x x x

20.1.3.3. The aforesaid medical report should determine the degree of disability as defined in the schedule of disability or impediment in the POEA Employment Contract, and the Company shall pay the Seafarer disability compensation based on the degree of disability as stated below. This compensation however shall not exceed US \$148,500.00 for senior officers, US\$118,800.00 for junior officers and US\$89,100.00 for ratings (effective January 1, 2008).

20.1.3.4. The applicable disability compensation shall be in accordance with the Impediment Grade and rate of compensation indicated in the table hereunder, to wit:

Disability Compensation Effective 01 January 2008

Impediment Grade

Rating

\$ Officers

\$ Master, C/E

\$

1

89,100 118,800 148,500

2

79,130 105,506 131,883

3

69,819 93,092 116,365

4

61,176 81,568 101,960

5

52,533 70,044 87,556

6

44,550 59,400 74,250

7

37,244 49,658 62,073

8

29,929 39,905 49,881

9

23,273 31,031 38,788

10

17,954 23,938 29,923

11

13,303 17,737 22,171

12

9,311 12,415 15,518

Any impediment lower than Grade 12 in the POEA Schedule of disability or Impediment shall be paid at Grade 12 level.

Note: 'Senior officers' for the purpose of this clause means Master, Chief Officer, Chief Engineer and Second Engineer."

20.1.4. Permanent Medical Unfitness

A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e., US\$148,500.00 for senior officers, US\$118,800.00 for junior officers and US\$89,100.00 for ratings (effective January 1, 2008). Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation." [Emphasis supplied]

Based on the above-cited contractual provisions, for disability to be compensable, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[60]

After a careful evaluation of the evidence on record and the arguments of the parties, We find that the respondent has sufficiently established the foregoing elements for his disability of "Disc Dessication L2L3 to L5S1 with Annular Stenosis L5S1 and Neurogenic Bladder secondary to L4L5 Nerve Root Compression" to be compensable. First, it is undisputed that respondent's disk problem existed during the term of his contract because he started experiencing back pains on 30 October 2010 when he pulled a mooring rope of the vessel.[61] Second, the company-designated physician, in his Medical Report dated 5 July 2011,[62] categorically declared that "[t]he Disk Problem consisting of the disc dessication with stenosis and neurogenic bladder is work-related and a disability grade of 8 is given based on the POEA Contract, Chest-Trunk-Spine #5, moderate rigidity on 2/3 loss of motion or lifting power of the trunk."[63]

However, contrary to the findings of the NLRC and the Labor Arbiter, We find that respondent is entitled only to Grade 8 disability in the amount of US\$39,905.00. The assessment of the company-designated physician should be given more credence as it was clearly shown from the evidence presented by the respondent himself that his findings were based on a thorough evaluation of respondent's illness after undergoing medical treatments and examination for several months. On the other hand, a cursory perusal of the Medical Certificate of Dr. Jacinto would show that he failed to indicate the particular date he started treating respondent and what particular treatments and examination he prescribed. At best, the Medical Certificate issued by Dr. Jacinto shows that he only examined respondent on 20 July 2011 for the sole purpose of securing said certificate.

In Magsaysay Maritime Corp. and/or Conrado dela Cruz and ODF Jell Asa vs. Jaime M. Velasquez and the Honorable Court of Appeals, the Supreme Court declared that the assessment of the company-designated physician should be given more credence because it shows the treatments given to the seafarer claimant for several months. As such, said findings were more reliable compared to the findings of the chosen physician of the seafarer who made a recommendation based only on a single medical report.[64]

Accordingly, taking into account the assessment of the company-designated physician and applying Section 20.1.3.1 to Section 20.1.3.4 of the CBA, Grade 8 disability for Second Engineers is equivalent to the amount of US\$39,905.00. The permanent medical unfitness clause, i.e., Section 20.1.4 of the CBA wherein the Labor Arbiter based its ruling, as affirmed by the NLRC, is not applicable in the case at bar. Section 20.1.4 of the CBA clearly mandates that, while a seafarer is assessed at less than 50% disability, he should be certified as permanently unfit for further sea duty in any capacity by the company-designated physician to be entitled to 100% compensation.

Anent the award of attorney's fees, although the NLRC deleted the award of Php10,000.00 to Sapalo Velez Bundang & Bulilan Law Offices, nonetheless, the NLRC erred in awarding the 10% attorney's fees of the monetary award to respondent for lack of factual basis. Indeed, attorney's fees are recoverable when a person's act or omission has compelled the claimant to incur expenses to protect his interest.[65] However, in this case, were it not for respondent's insistence that he is entitled to 100% disability benefits, he would not have incurred any expense in litigating the instant case.

All told, We find that the NLRC gravely abused its discretion in affirming the award of the Labor Arbiter of the total disability benefit in the amount of US\$118,800.00 and 10% attorney's fees despite the erroneous appreciation of the evidence on record and the wrongful application of the pertinent laws and jurisprudence.

WHEREFORE, the instant petition is PARTLY GRANTED. The Decision dated 22 June 2012 and Resolution dated 27 July 2012 of the National Labor Relations Commission are AFFIRMED with the MODIFICATION, in that petitioners Southfield Agencies, Inc. and Dania Marine are jointly and severally liable to pay respondent Antonio D. Dayo, partial disability benefit in the amount of US\$39,905.00 or its peso equivalent, with 6% interest per annum from the finality of the decision until the time of actual payment. The award of attorney's fees is deleted.

SO ORDERED.

Zalameda and Diy, JJ., concur.

[1] Rollo, pp. 77-86.

[2] Rollo, pp. 60-62.

[3] Petition for Certiorari, pp. 4-5; Rollo, pp. 6-7.

[4] Contract of Employment, Rollo, pp. 319, 354.

[5] Membership Card, Rollo, pp. 356.

[6] Collective Bargaining Agreement, Rollo, pp. 320, 393; Position Paper for Respondents, Rollo, p. 299.

[7] Position Paper for the Complainant, p. 3; Rollo, p. 327.

[8] Ibid.

- [9] Medical Report dated 15 November 2010, Rollo, p. 357; Ultrasound Report dated 15 November 2010, Rollo, p. 359.
- [10] Medical Report dated 15 November 2010, Rollo, p. 357.
- [11] Medical Report dated 15 November 2010, Rollo, p. 358.
- [12] Medical Report dated 25 November 2010, Rollo, p. 360.
- [13] Ibid.
- [14] Position Paper for Complainant, Rollo, p. 329; Position Paper for the Respondent, Rollo, p. 299.
- [15] Position Paper for the Respondents, Rollo, pp. 299-300; Position Paper for the Complainant, Rollo, p. 329.
- [16] AMC Referral to Doctor/s Form dated 30 November 2010, Rollo, p. 363; Initial Report dated 27 November 2010, Rollo, p. 321.
- [17] Medical Diagnosis dated 30 November 2010, Rollo, p. 364.
- [18] Esophagogastroduodenoscopy Report dated 18 December 2010, Rollo, p. 369; Medical Certificate dated 18 December 2010, Rollo pp. 368; Initial Report dated 27 November 2010, Rollo, p. 321.
- [19] Rollo, pp. 322, 324.
- [20] Ibid.
- [21] Rollo, p. 372.
- [22] Rollo, p. 373.
- [23] Rollo, p. 374.
- [24] Rollo, p. 375.
- [25] Record of Operation dated 28 February 2011, Rollo, p. 378; Attending Physician's Initial Assessment & Initial Order dated 28 February 2011, Rollo, p. 376; Discharge Summary dated 28 February 2011, Rollo, p. 379.
- [26] Benign Prostatic Hyperplasia, as declared in the Medical Certificate dated 28 February 2011, issued by Dr. Jaime C. Balingit, Rollo, p. 377; Surgical Pathology Consultation Report dated 28 February 2011, Rollo, p. 380; Clinical Summary dated 14 March 2011, Rollo, p. 381.
- [27] Clinical Summary dated 14 March 2011, Rollo, p. 381.
- [28] Sonography dated 16 March 2011, Rollo, p. 382; EMG-NCV Report dated 28 April 2011, Rollo, p. 285.
- [29] AMC Referral to Doctor/s Form dated 4 April 2011, Rollo, p. 383.
- [30] Complaint with attached Affidavit/Complaint, Rollo, pp. 422-426.
- [31] Record of Operation, Rollo, p. 387; Certificate of Confinement, Rollo, p. 390; Surgical Pathology Consultation Report, Rollo, p. 389.
- [32] Position Paper for the Respondents, Rollo pp. 300-301.
- [33] Letter dated 5 July 2011, Rollo, p. 323.
- [34] Medical Certificate dated 7 July 2011, Rollo, p. 392.

- [35] Medical Certificate dated 20 July 2011, Rollo, p. 388.
- [36] Position Paper for the Complainant, Rollo, pp. 334-351.
- [37] Position Paper for the Respondent, Rollo, p. 300.
- [38] Ibid.
- [39] Position Paper for the Respondent, Rollo, pp. 302-314.
- [40] Decision dated 13 March 2012, Rollo, pp. 232, 239.
- [41] Decision dated 13 March 2012, pp. 15-16; Rollo, pp. 243-244.
- [42] Decision dated 13 March 2012, Rollo, pp. 234-243.
- [43] Notice of Appeal with Memorandum of Appeal, Rollo, pp. 116-144.
- [44] Decision dated 22 June 2012, p. 9; Rollo, p. 85.
- [45] Motion for Reconsideration, Rollo, pp. 63-72.
- [46] Resolution dated 27 July 2012, Rollo, pp. 60-62.
- [47] Petition for Certiorari, pp. 11-12; Rollo, pp. 13-14.
- [48] Digitel Telecommunications Phil., Inc. vs. Soriano, G.R. No. 166039, 26 June 2006; Philippine Airlines vs. Tongson, G.R. No. 153157, 14 October 2003.
- [49] Petition for Certiorari, Rollo, p. 16.
- [50] Henry L. Mon vs. Court of Appeals et al., G.R. No. 118292, 14 April 2004.
- [51] Manila Electric Company vs. Rogelio Benamira, et al., G.R. 145271, 14 July 2005.
- [52] Position Paper for the Respondents, pp. 2-3; Rollo, pp. 299-300.
- [53] Republic Act No. 8042, as amended by Republic Act No. 10022.
- [54] G.R. No. 138938, 24 October 2000.
- [55] Magsaysay Maritime Corporation, et al. vs. National Labor Relations Commission, G.R. No. 186180, 22 March 2010; Jebsen Maritime, et al. vs. Undag, G.R. No. 191491, 14 December 2011.
- [56] Id.
- [57] Id.
- [58] HFS Philippines, Inc., Ruben T. del Rosario and IUM Shipmanagement AS vs. Pilar, G.R. No. 168716, 16 April 2009.
- [59] Rollo, p. 393.
- [60] Magsaysay Maritime Corporation et al. vs. National Labor Relations Commission, G.R. No. 186180, 22 March 2010; Jebsen Maritime, Inc. et al. vs. Undag, G.R. No. 191491, 14 December 2011
- [61] Position Paper for the Complainant, Rollo, p. 327.
- [62] Rollo, p. 323.

[63] Ibid.; Emphasis supplied.

[64] G.R. No. 179802, 14 November 2008.

[65] Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S vs. Lobusta, G.R. No. 177578, 25 January 2012.

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