

ALBAR SHIPPING & TRADING CORPORATION, DOJIMA MARINE CO., LTD. AND ALBAR KATO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND REYNALDO S. CUSTODIO, RESPONDENTS.

Ponente: CORALES, J.

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CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) assailing the January 22, 2013 Decision[2] and the February 28, 2013 Resolution[3] of the National Labor Relations Commission (NLRC), Fourth Division in NLRC LAC No. OFW (M)-11-000972-12. The assailed decision affirmed the October 5, 2012 Decision[4] of the Labor Arbiter ordering petitioners Albar Shipping Corporation/Dojima Marine Co., Ltd. & Albar Kato (petitioners) to pay private respondent Reynaldo S. Custodio (Custodio) permanent total disability benefits, sickness allowance and attorney's fees while the challenged Resolution denied petitioners' subsequent motion for reconsideration.

The Antecedents

Albar Shipping and Trading Corporation, for and in behalf of Dojima Marine Co., Ltd./Tuk Management System, hired Custodio as Master for M/V Forest Arrest vessel. Custodio boarded the vessel on November 17, 2011 after having been declared "fit for sea duty" in his Pre-Employment Medical Examination (PEME).[5]

In the course of his employment, Custodio experienced a terrible pain in the stomach and difficulty in walking. On December 4, 2011, he was brought to a hospital in China where he was advised to undergo surgery due to acute appendicitis. Custodio opted for less invasive management and was eventually repatriated on December 7, 2011 for further medical treatment.

Upon arrival in Manila, Custodio went to Muntinlupa Medical Center and was diagnosed of Urinary Tract Infection (UTI) and Urolithiasis. His wife informed Albar Shipping and Trading Corporation of Custodio's confinement and the latter was referred to the company-designated physician at NGC Medical Specialist Clinic, Inc. (NGC Clinic). After a series of tests, Dr. Nicomedes Cruz (Dr. Cruz) of NGC Clinic diagnosed Custodio with prostatitis or prostate enlargement and placed him under medication.[6] On January 19, 2012, Dr. Cruz reported to petitioners his diagnosis and opined that Custodio's prognosis is good and the latter would be declared fit to work after 60 to 90 days treatment. He also stated that prostatitis is neither work-related nor work-aggravated.[7] After being treated for 57 days, on February 4, 2012, Custodio was scheduled for biopsy to further determine the cause of his ensuing leg pain but petitioners advised discontinuance of medical treatment due to absence of causal connection between Custodio's illness and his working condition; as such further treatment would be for his own account.[8]

Custodio filed a complaint for disability benefits and damages but he eventually moved for its dismissal on the ground of prematurity because his illness is yet to be diagnosed. On April 11, 2012, the Labor Arbiter dismissed

the case without prejudice.[9]

In the interim, Custodio consulted his own physician, Dr. May S. Donato-Tan (Dr. Donato-Tan), an Internal Medicine-Cardiologist from the Philippine Heart Center, who advised him to undergo Chest PA. It appears from the Roentgenological Report[10] dated April 2, 2012 that Custodio has an “atheromatous aorta”. On April 23, 2012, Dr. Donato-Tan diagnosed Custodio of “HACVD (Hypertensive Atheros, HPN Stage II, S/P CVA, Infarct Multiple Location, BPH (Benign Prostatic Hyperthropy), R/O Prostatic Carcinoma (elevated PSA 14.89) N-(0.00-4.10 ug/L)” which were classified as Impediment Grade 1 (120%) equivalent to a total permanent disability.[11]

Alarmed with his condition, Custodio asked petitioners to pay him his complete sickness allowance. When his requests were repeatedly unheeded, he filed a complaint[12] for disability benefits, unpaid sickness allowance, hospitalization and medical expenses, and attorney's fees against petitioners.

The Rulings of the Labor Arbiter and NLRC

The Labor Arbiter ruled in favor of Custodio due to herein petitioners' failure to rebut the disputable presumption that illnesses which are not listed as an occupational disease, like prostatitis, are work-related. It was also noted that the cited medical treatises on the etiology of prostatitis did not categorically rule out the prevailing working conditions of a seafarer as its cause and petitioners failed to show that such work environment did not contribute to the growth, development, acceleration and even aggravation of Custodio's illness. The dispositive portion of the Labor Arbiter's Decision reads:[13]

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to pay complainant as follows: US\$60,000.00 as permanent total disability benefits; US\$7,200.00 as sickness allowance; and ten percent (10%) of the said total judgment award as and for attorney's fees.

All other claims of the complainant are dismissed for lack of merit.

SO ORDERED.

On appeal,[14] the NLRC sustained the findings of the Labor Arbiter through its January 22, 2013 Decision.[15] It held that Custodio's prostatitis was work-related and work-aggravated considering his dietary provisions on board the vessel, his age as he was already 65 years old at the time he was medically repatriated, and the stress resulting from the demands and requirements of his duties and obligations as Master to command the vessel. According to the NLRC, the Master cannot just leave his watch to answer the call of nature thereby frequently suspending his urge to urinate for a long time, thus, he is prone to develop prostatitis. The NLRC made its own research and explained that the most common cause of an attack of prostatitis is holding on to urine for a long time which forces the urine into tubes and ducts of the prostate making it more susceptible to infection. It then disposed the case as follows:

WHEREFORE, premises considered, the respondents' appeal is hereby DISMISSED for lack of merit and the appealed Decision is hereby AFFIRMED en toto. (sic)

SO ORDERED.

Petitioners sought reconsideration[16] but the NLRC denied the same in its February 28, 2013 resolution.[17] Hence, the instant petition for certiorari anchored on the following grounds:

A. THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE LABOR ARBITER'S AWARD OF TOTAL AND PERMANENT DISABILITY OF US\$60,000, US\$7,200 AS SICKNESS ALLOWANCE, AND 10% ATTORNEY'S FEES. SEAFARER SHOULD NOT

HAVE BEEN AWARDED BY THE HONORABLE PUBLIC RESPONDENT TOTAL AND PERMANENT DISABILITY BENEFITS FOR THE FOLLOWING REASONS:

I. The seafarer's condition is not work-related.

B. THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN AWARDING 10% ATTORNEY'S FEES. PRIVATE RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES. PETITIONERS WERE NOT REMISS IN FULFILLING THEIR OBLIGATIONS TO PRIVATE RESPONDENT, AND THEIR DENIAL OF HIS CLAIMS IS NOT TAINTED WITH BAD FAITH BUT IS BASED ON VALID AND LEGAL GROUNDS.

Petitioners agree with the NLRC's findings that under Section 20(B) of the POEA Standard Employment Contract (POEA-SEC), illnesses which are not listed as occupational diseases are disputably presumed work-related. However, they insist that the nature and causes of prostatitis cannot possibly relate to a seafarer's occupation and cited the causes of prostatitis as enumerated by the Prostatitis Foundation. Petitioners also harp on the significance that should be given to the diagnosis of the company-designated physician and argue that Custodio bears the burden of proving that his illnesses could be considered as total and complete disability.[18]

For his part, Custodio maintains that the burden of proof to rebut the disputable presumption is on the employer especially when the latter claims that the enlarged prostate and ischemic stroke is not aggravated by the working conditions in the vessel. He also avers that despite the lapse of 18 months from the time he was repatriated until to date, he remains unfit to return to his usual work as seafarer and was not able to work for more than 120 days.[19]

This Court's Ruling

The petition lacks merit.

A petition for certiorari under Rule 65 of the Rules of Court would prosper only if there is a clear showing of grave abuse of discretion on the part of the public respondent. It is therefore imperative for the petitioners to prove that the power of discretion is being exercised in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law.[20] They must satisfactorily establish that the NLRC capriciously, whimsically, or arbitrarily disregarded evidence which is material to or decisive of the controversy in order that the extraordinary writ of certiorari will lie.[21]

After a thorough examination of the records and the respective arguments of the parties, We are more inclined to affirm the findings of the NLRC which were well supported by substantial evidence and in accord with established jurisprudence.

Employer Bears the Burden of Rebutting the Presumption of Work-Related Illness under Section 20(B) of POEA-SEC

Under Section 20(B), paragraph 6[22] of POEA-SEC, a seafarer may be granted disability benefits when he suffers a work-related injury or illness which is defined as "injury(ies) resulting in disability or death arising out of and in the course of employment" and as "any sickness resulting to disability or death as a result of an occupational disease listed in Section 32-A of the contract with the conditions therein satisfied." [23] However, Section 20 (B), paragraph 4[24] of the same rule clearly established a disputable presumption in favor of compensability of an illness suffered by a seafarer during the term of his contract. In *David v. OSG Management Manila, Inc.*, [25] the Supreme Court elucidated that this disputable presumption works in favor of the employee pursuant to the mandate under Executive Order No. 247 under which the POEA-SEC was created, i.e. "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and

“to promote and protect the well-being of Filipino workers overseas.” The presumption stands unless the seafarer's employer presents contrary evidence. Accordingly, and contrary to the position taken by petitioners, the burden rests upon the employer to overcome the statutory presumption under Section 20 (B) of the POEA-SEC[26] or at least show that the growth, development and aggravation of the seafarer's illness did not arise out of the seafarer's working conditions.

Here, other than the general declaration of the company-designated physician that Custodio's prostatitis is not work-related, petitioners failed to present any substantial evidence to disprove the statutory presumption in favor of the seafarer. A review of the records readily shows that the company-designated physician did not make any medical explanation to support his conclusion that prostatitis has no relation to Custodio's customary work as seafarer. In the absence of such substantial evidence, the findings of the company-designated physician cannot be considered as binding or conclusive on the employee. As held by the Supreme Court, the merits of company-designated physician's assessment as regards causal relation between work and illness would be weighed and duly considered depending on the evidence adduced.[27]

The medical treatises from Prostatitis Foundation cited in petitioners' pleadings did not also help their case. This Court notes that the common causes of prostatitis enumerated by the Prostatitis Foundation, specifically the bacterial infection, benign prostatic hyperlasia, a food allergy, or a virus, support the conclusion of the NLRC that there is a reasonable connection between Custodio's illness and his work as Master of the ship. As aptly put by the NLRC, viz.:

Prostatitis [Chronic Prostatitis or Chronic Pelvic Pain Syndrome (en.wikipedia.org)] is the general term used to describe prostate inflammation. The most common causes leading to an attack of prostatitis is holding on to urine for a long time, as on a car or plane trip or lifting or straining with a full bladder. This high pressure situation forces urine into the tubes and ducts of the prostate, causing severe irritation, and making the prostate more susceptible to infection [www.wmfurology.com/prostati.htm. (date visited: September 21, 2012)].

As Master (seaman), complainant's [Custodio] main duty was navigation, taking ship's position daily and setting the sails as appropriate for the required course and conditions. xxx The master was responsible for fitting out the ship, and making sure they had all the sailing supplies necessary for the voyage. The master also was in charge of stowing the hold and ensuring the ship was not too weighted down to sail effectively. xxx The master was in charge of the entry of parts of the official log such as weather, position, and expenditures. As such, the Master (Seaman) cannot just leave his watch to answer the call of nature thereby frequently suspending his urge to urinate for a long time. Thus he is prone to develop Prostatitis. (Emphasis supplied)

Noteworthy, petitioners did not controvert the nature and conditions of Custodio's work. On the other hand, Custodio recounted that the stress arising from his obligation as well as the dietary provisions on board degenerated his immune system which lead to the development of his illness or its aggravation. In fact, upon his repatriation, the attending physician in NGC Clinic found that he has urinary tract infection and he was directed to take antibiotics.[28] Even the medical treatise cited by petitioners acknowledged that urinary tract infection may be a cause of prostatitis. Thus, the reasonable connection of Custodio's illness and his work as a seafarer was clearly established by the evidence on record. It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease and the seafarer's work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[29]

Considering that the compensability of Custodio's prostatitis has been established with substantial evidence, the opinion of the company-designated physician that the illness was not work-related no longer holds any significance.[30]

Custodio Entitled to Permanent Total Disability and Attorney's Fees

At any rate, the Court also notes that despite the lapse of the 120-day period stated in the Section 20 (B) of the POEA-SEC, the company-designated physician has not issued any fit to work certificate in favor of Custodio. The ruling in *Kestrel Shipping Co., Inc. v. Munar*,^[31] citing the case of *Vergara v. Hammonia Maritime Services, Inc.*,^[32] is instructive on this matter, thus:

In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Section 20-B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled. xxx

xxx

Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises. (Emphasis supplied)

Although Dr. Cruz made a medical impression on January 19, 2012 that Custodio “will be declared fit to work after 60 to 90 day treatment”, the same cannot be considered as sufficient compliance with the mandate enunciated in the *Vergara* case^[33] and reiterated in the *Kestrel* case.^[34] It must be remembered that after 57 days of medical attention, petitioners stopped Custodio's treatment due to the earlier findings that his condition is not work-related and despite the lapse of more than two (2) years from his repatriation on December 7, 2011, the company-designated physician did not make any definite assessment on Custodio's fitness or disability to work. Pursuant to the doctrine in the *Vergara* and *Kestrel* cases which was reiterated in the recent case of *Alpha Ship Management Corporation v. Calo*,^[35] the conclusive presumption that Custodio was totally and permanently disabled arose as a result of the failure of the company-designated physician to make such declaration within the 240-day period. The NLRC is therefore correct in declaring that Custodio suffered permanent total disability.

We also sustain the award of attorney's fees in favor of Custodio because he was compelled to litigate due to petitioners' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.^[36]

WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed January 22, 2013 Decision and February 28, 2013 Resolution of the National Labor Relations Commission in NLRC LAC No. OFW (M)-11-000972-12 are AFFIRMED.

SO ORDERED.

CERTIFICATION

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

Villon, J., Chairperson and Macalino, JJ., concur.

[1] Rollo, pages 3-24.

[2] Penned by Presiding Commissioner Herminio V. Suelo and concurred by Commissioners Angelo Ang Palana and Numeriano D. Villena, *ibid.*, 32-45.

[3] *Ibid.*, pages 58-60.

[4] Penned by Labor Arbiter Jose G. De Vera, *ibid.*, pages 47-56.

[5] *Ibid.*, page 85.

[6] See Medical Report dated January 4, 2011, *ibid.*, page 116.

[7] See Letter/Memo of Dr. Cruz dated January 19, 2012, *ibid.*, page 117.

[8] Please see page 5 of Petition for Certiorari, *ibid.*, page 7.

[9] Penned by Labor Arbiter Vivian H. Magsino-Gonzalez, *ibid.*, page 118.

[10] Roentgenological Report dated April 2, 2012, *ibid.*, page 86.

[11] The medical certificate issued by Dr. Donato-Tan was not attached in the records but it was cited in the Labor Arbiter and NLRC's decision.

[12] *Ibid.*, pages 61-62.

[13] *Supra*, at note 4.

[14] See petitioners' Notice of Appeal with Memorandum on Appeal, *rollo*, pages 120-136.

[15] *Supra*, at note 2.

[16] Motion for Reconsideration filed on February 8, 2013, *rollo*, pages 203-213.

[17] *Supra*, at note 3.

[18] See Petition for Certiorari, *supra*, at note 1.

[19] See Custodio's Opposition/Comment, *rollo*, pages 218-232.

[20] See *Fernandez v. Comelec*, G.R. No. 171821. October 9, 2006.

[21] See *Leonis Navigation Co., Inc. v. Villamater*, G.R. No. 179169. March 3, 2010 and *Odango v. NLRC*, G.R. No. 147420. June 10, 2004.

[22] SECTION 20. COMPENSATION AND BENEFITS

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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

- 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.

[23] Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Laurel, G.R. No. 195518. March 20, 2013.

[24] SECTION 20. COMPENSATION AND BENEFITS

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- Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

[25] G.R. No. 197205. September 26, 2012.

[26] See Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Laurel, supra, at note 23. See also David v. OSG Management Manila, Inc., supra, at note 25.

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

[28] See Medical Report dated December 23, 2011, rollo, pages 112-113.

[29] Sarocam v. Interiorient Maritime Ent., Inc., G.R. No. 167813. June 27, 2006; See Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Laurel, supra, at note 23. See also David v. OSG Management Manila, Inc., supra, at note 25.

[30] See Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Laurel, supra, at note 23.

[31] G.R. No. 198501. January 30, 2013.

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

[33] Ibid.

[34] Supra, at note 31.

[35] G.R. No. 192034. January 13, 2014.

[36] Alpha Ship Management Corporation v. Calo, ibid.

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