

**CF SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINE,
AND/OR MR. JUAN JOSE P. ROCHA, PETITIONERS, V. NATIONAL
LABOR RELATIONS COMMISSION (SECOND DIVISION), AND
FERDINAND B. SAN...**

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Resolution[2] dated December 14, 2011 of the National Labor Relations Commission ("public respondent NLRC" or "NLRC" for brevity), which affirmed the Decision[3] dated July 14, 2011 of the Labor Arbiter in NLRC-NCR CASE No. (M) 12-17160-10. The Petition also questions public respondent NLRC's Resolution dated February 7, 2012[4], which denied petitioners' eventual Motion for Reconsideration[5].

Among the pertinent and salient facts are those as stated in public respondent NLRC's Resolution[6] dated December 14, 2011, which are as follows:

"Complainant Ferdinand B. Sanlitan (private respondent here) was continuously employed by respondents (petitioners here) onboard its various vessels as a 'Laundry Person' since March 8, 1995 as shown by Respondents' Certification xxx. His last POEA approved employment contract was onboard the vessel 'M/S Norwegian Star,' which he joined on December 17, 2007. xxx

xxx

On September 13, 2008, he arrived back in the Philippines for medical reasons, according to Respondents (petitioners) xxx, but for completion of contract according to Complainant (private respondent) xxx.

Complainant Sanlitan (private respondent) alleged that while still on board his vessel, he underwent a routine pre[-]medical examination sometime on September 12, 2008 and was diagnosed with Hypertension, Diabetes Type II and incidental finding of Nephrolithiasis; that this prompted the ship doctor to prescribe him medication such as Lipitor Metformin, Eralapil 5mg and Hydrochlorothiazide 25 mg, as shown by the prescriptions/notes xxx.

He further alleged that he was advised to have further medical work-up and was repatriated on September 13, 2008 xxx after finishing his contract xxx.

In the Philippines, Complainant (private respondent) was referred to the company designated physician of the Sachly International Health Partners Diagnostic and Medical Clinic. These physicians affirmed the diagnosis made on him on board the vessel. He was prescribed hypertensive and hypoglycemic medicines, advised to practice a healthy lifestyle and required to undergo a series of blood fasting sugar tests xxx. He was examined and treated by the company designated physician on October 11, 2008, November 13, 2008, December 9, 2008, February 10, 2009, February 24, 2009 xxx

Complainant (private respondent) alleged that after five months of medical management, the company-designated physician reported in her Final Medical Report dated April 21, 2009 xxx that he was 'now

fit to resume sea duties' with the final diagnosis of 'Hypertension stage 1, Diabetes Mellitus type 2, controlled'. He was also advised in it 'to continue intake of his hypoglycemic agents to keep his blood sugar levels controlled and to increase his oral fluid intake to prevent formation of renal stone'.

On November 17, 2009, complainant (private respondent) consulted a physician of his choice and underwent an Electrocardiographic test at the Vizcarra Diagnostic Center which resulted in the finding that he had 'Left Ventricular Hypertrophy' xxx. He was prescribed the following medications: Losartan 50 mg[,] Ambroazine 5 mg[,] and Metformin 500 mg xxx

On December 4, 2010, complainant (private respondent) consulted cardiologist Dr. Efren Vicaldo who issued a Medical Certificate' with the following findings and/or diagnosis' and justification for impediment grade 7:

'Essential Hypertension II
Diabetes mellitus II
Impediment Grade VII (41.80%)

xxx

They (petitioners) alleged that there were notable improvements in complainant's (private respondent's) medical condition during the course of his treatment leading to a declaration of fitness to resume sea duties in the February 10, 2009, per Medical Report issued by their company-designated physician xxx. They take issue on complainant's (private respondent's) failure to return for further medical examination from March 10, 2009 which date was set for him to return 'due to noted elevation of his blood sugar beyond normal level' xxx.

Respondents (petitioners) countered that complainant's (private respondent's) claim should be barred; that his hypertension and Type 2 Diabetes Mellitus arose due to the 'genetic make-up, of a person' and no proof was presented by Complainant (private respondent) to show that his illness(es) have any reasonable connection with his job as a laundry man; that their company-designated physician's assessment should be given greater weight than that of complainant's (private respondent's) physician considering that the former attended to his medical needs for about five months."[7] (Emphasis supplied)

Private respondent Ferdinand B. Sanlitan ("private respondent" for brevity) filed before the Labor Arbiter, a Complaint "for disability benefits, illness allowance, damages and attorney's fees"[8] against petitioners "C.F. Sharp Crew Management, Inc./Mr. Juan Jose P. Rocha and/or Norwegian Cruise Line ("petitioners" for brevity)"[9].

On July 14, 2011, the Labor Arbiter rendered a Decision[10] granting private respondent's claim for Permanent Disability Benefits, Sickness Allowance, and Attorney's Fees; but denied his claim for Moral and Exemplary Damages for lack of merit. The dispositive portion of the Decision stated:

"WHEREFORE, premises considered, judgment is hereby rendered finding respondents, C.F. Sharp Crew Management, Inc./Mr. Juan Jose P. Rocha and/or Norwegian Cruise Line, jointly and solidarily liable to pay complainant Ferdinand B. Sanlitan, the amount of SIXTY-SEVEN THOUSAND NINE HUNDRED EIGHTY U.S. DOLLARS (US\$67,980.00) or its peso equivalent converted at the time of payment as disability benefits, illness allowance and attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED."[11] (Emphasis was made in the original)

Upon petitioners' appeal, public respondent NLRC issued its first assailed Resolution[12] of December 14, 2011, which affirmed the Labor Arbiter's Decision and dismissed the appeal for lack of merit[13].

After petitioners' Motion for Reconsideration[14] was denied by public respondent NLRC in its other assailed

Resolution[15] of February 7, 2012, petitioners filed the Petition[16] at bench, praying as follows:

"WHEREFORE, premises considered, petitioners respectfully pray for the following reliefs:

1. Upon the filing of the instant Petition and pending notice and hearing on the application for preliminary injunction in accordance with Sec. 5, Rule 58 of the 1997 Rules of Civil Procedure:

1.1. The Honorable Court immediately issue an ex-parte Temporary Restraining Order, enjoining the NLRC, including any and all persons acting under his authority, from the execution of the judgment in NLRC LAC Case No. 09-000859-11/ NLRC-NCR Case No. (M)-12-17160-10 entitled 'FERDINAND B. SANLITAN VS. C.F. SHARP CREW MANAGEMENT, INC./ MR. JUAN JOSE P. ROCHA AND/OR NCL NORWEGIAN CRUISE LINE';

2. Upon due notice and hearing of the Petition on its merits but before judgment.

2.1. The Honorable Court issue a writ of preliminary injunction enjoining public respondent from enforcing the decision in NLRC LAC Case No. 09-000859- 11 / NLRC-NCR Case No. (M)-12-17160-10 entitled 'FERDINAND B. SANLITAN VS. C.F. SHARP CREW MANAGEMENT, INC./ MR. JUAN JOSE P. ROCHA AND/OR NCL NORWEGIAN CRUISE LINE';

2.2. The Honorable Court issue an Order directing public respondent to elevate the entire records of the present case to this Honorable Court, considering petitioners' allegation that public respondent's findings are directly negated by the records of the case;

3. Upon due notice and hearing, for the Honorable Court to render judgment:

3.1. Ordering that the Decision of the NLRC dated 14 December 2011 and its Resolution [dated] 7 February 2012 be reconsidered, annulled, and set aside; and

3.2. Ordering that private respondent's Complaint against Petitioners be dismissed for utter lack of merit.

Petitioners further pray for such other relief as this Honorable Court may deem just and equitable under the premises."[17]

Petitioners raised the following grounds:

"[A.]

xxx

The NLRC committed grave abuse of discretion when it ruled that Hypertension and Diabetes Mellitus 2 are work-related illnesses, and thus, compensable.

xxx

[B.]

xxx

The NLRC committed grave abuse of discretion when it awarded permanent disability benefits despite a credible and competent finding of the companydesignated physician that the respondent is already fit to resume sea duties.

xxx

[C.]

xxx

The NLRC gravely erred in applying the 120-day doctrine."[18] (Emphasis and underlining were made in the original)

Contrary to petitioners' arguments in their assigned ground A, private respondent's illnesses were work-related.

Petitioners had argued as follows:.

"Under Section 20(B) of the POEA Standard Employment Contract, the employer is liable to the seafarer if the latter suffers work-related injury or illness during the term of his contract.

It bears stressing that the key phrase in the above provision of the POEA Contract is 'WORKRELATED INJURY OR ILLNESS.' For an illness and any resultant disability to be compensable under the POEA Contract, the same must be suffered by reason of or occasioned by a seafarer's work on board the vessel.

xxx

Based on the evidence presented by both parties, it is clear that respondent did not meet all the requirements embodied in the POEA Contract to make his hypertension compensable. The Medical Reports of both petitioners and respondent will also reveal that the latter's hypertension did not impair any of his body organs. Therefore, respondent's hypertension is not the type being referred to by Section 32-A of the POEA Contract.

Second, it has been held in the case of *Fernando vs. Sea Workforce Manila Corp., et al.* that the disease Type II Diabetes Mellitus is not work-related. Diabetes, as a disease or illness is familial or genetic which may arise despite employment. Since the disease is familial, seafarer may have been afflicted from childhood days or adulthood years or there exists a high degree of probability that some family members are likewise affected with the same disease. It takes some considerations like familial pre-disposition, genetics setup, lifestyle, diet and others, not work-connected, for diabetes to develop.

xxx

Notably, the illness and any resultant disability must be work-related. Failure to establish work-relation negates any basis for an award under the governing POEA Contract. xxx

xxx

Applying the foregoing pronouncements to the case at bench, it is clear that evidence showing that illness manifested or was contracted during the employment contract is not enough. Complainant is bound to adduce evidence to prove that he is suffering from permanent total or partial disability due to a work-related illness during the term of her (sic) employment for which she (sic) was contracted for. This he failed to do so."[19] (Emphasis supplied)

Defeating petitioners' arguments however is that as the records showed, private respondent acquired his illnesses which in particular were Hypertension, Diabetes Type II and Nephrolithiasis[20], in connection with his work as a laundry man[21] during the effectivity of his contract with petitioners. Private respondent, as a laundry man on board petitioners' vessel, suffered from chronic physical and mental stress from monotonous sea life with varying geographical temperatures and harsh weather conditions, and from his strenuous manual work[22]. Stress contributes to the wear and tear of the human body, such as the development of Hypertension, Diabetes and Nephrolithiasis.[23] All of these matters were as also found by the Labor Arbiter in its Decision of July 14, 2011[24], as follows:

"This Office cannot agree with the respondents' assertion that complainant's illness is not work-related as the same is not supported by any pronouncement by the attending company-designated specialist. Neither are we convinced that complainant's Hypertension and Type 2 Diabetes Mellitus arises (sic) due to generic make-up of a person, and that no proof was adduced to show that the illness has any reasonable connection with

complainant's job as a laundry man.

We note that complainant, in his position paper has substantially justified the causal relationship of his illness with his work as a 'Laundry Person'. He averred that while on board the respondents' vessel, he 'performed physically strenuous manual works. He also had to contend with frequent overtime works which inevitably caused him tremendous strains and over fatigue; that his work also constantly exposed him to inhalation of and direct contact to xxx various and harmful chemicals; that such adverse conditions of work under the varying temperatures of extreme hot and cold as the vessel crossed ocean and geographical boundaries amidst harsh sea weather conditions, have made his life on board the moving workplace physically and mentally stressful. His separation from his family likewise did him enormous emotional strains'.

We have no doubt that complainant acquired his illness – Essential Hypertension and Diabetes Mellitus II during his term of his employment within the period of fourteen (14) years of service with them as a 'Laundry Person'. Medical research has shown that 'physical stress is also a factor in the development of hypertension'. Disorders that can be caused by stress include hypertension (high blood pressure) xxx. High blood pressure, or hypertension, is one of the most common disorders made worse by stress. In established cases of Essential Hypertension, the blood pressure fluctuates widely in response to emotional stress and physical activity. (*Italics was made in the original*)

On the other hand, medical research on Diabetes shows that there are 'specific factors affecting the development of diabetes in a seafarer'. Accordingly, 'apart from genetic predispositions, environmental factors related with the specificity of the work at sea, favouring the body mass growth, are essential. The most important are: 1) high caloric diet, frequently inadequate to energy expenditure; 2) lack of proper, regular physical activity; 3) psychologic mechanisms: (sic) 4) habits and preferences; 5) chronic stress and deprivation related with the monotony of the life at sea, irregular and/or casual sex life, limited possibilities to realize and cultivate own interests. Seamen frequently treat meals during the sea voyage as a substitute for other unfulfilled pleasures'.

Moreover, medical findings as well as jurisprudence have also shown the effect of stress on the body. There is indeed evidence to show that prolonged stress could cause diabetes. 'Stress is a general term applied when the body has to adapt or react to a difficult situation. Stress may be physical as in illness or injury or mental such as that cause (sic) anxiety or worry. When the body is under stress, many hormones are released which oppose the action of insulin. xxx.' So, 'the release of 'stress hormones' which antagonizes the action of insulin, helps increase levels of blood sugar'. It is likewise shown that physical and emotional stress xxx can increase the risks of diabetes.

Thus, the Supreme Court has recognized that 'a person under physical or emotional stressful situations produces hormones which are 'contra-insulin' in their effects, i.e., increase the blood sugar to outweigh the blood sugar lowering effects of insulin.'xxx. Moreover, it is a matter of judicial notice that an overseas worker having to ward off homesickness by reason of being physically separated from his family for the entire duration of his contract, bears a great degree of emotional strain while making an effort to perform his work well. The strain is even greater in the case of a seaman who is constantly subjected to the perils of the sea while at work abroad and away from his family'. xxx What makes the job all the more difficult is that it is conducted in a moving ship, which makes for increased work-related stress xxx."[25] (Emphasis supplied)

Consequently, petitioners cannot properly argue in their assigned grounds B and C that private respondent was not entitled to permanent disability benefits, and that the 120 day rule should not have been applied by public respondent NLRC.

On these matters, petitioners had alleged:

"Respondent's allegation that he suffered total and permanent disability is unavailing. It was his private doctor who declared him permanently unfit in any capacity for further sea duties. Under Section 20 (B) of the POEA

Standard Employment Contract, which governs the present controversy, it is the company-designated physician who is entrusted with the task of providing medical care and thereafter declaring the fitness to work of the seafarer or otherwise giving an assessment of the degree of his disability.

xxx

In the instant case, the company-designated physician declared and confirmed that the complainant's illness is not work-related. It was the company-designated physician who personally attended to complainant shortly after repatriation, closely monitored his condition, and gave him extensive medical care for a reasonable period. Said physician is, therefore, in the best position [to] assess the condition of complainant, and her findings should be accorded great weight, respect and credence. This is made more imperative by the absence of evidence showing that such findings were arrived at arbitrarily or fraudulently.

On the other hand, the certification of Dr. Vicaldo, respondent's private physician, was evidently sought solely for the purpose of claiming permanent disability benefits and not to determine the real medical condition of the respondent. It must be noted that respondent consulted Dr. Vicaldo only on[c]e and only after the lapse of more than one year from the time that he was found fit to resume sea duties by the company-designated physician and just in time for the filing of his complaint."[26] (Emphasis supplied)

Defeating petitioners' allegations however, is that private respondent's disability was total and permanent, as was supported by the evidence, such as private respondent's medical record[27]. Private respondent was rendered unfit to discharge his duties as a seaman for more than 120 days from the time he was repatriated to the Philippines on September 13, 2008[28] for treatment, until the time that he was issued a "Final Diagnosis" on April 21, 2009[29] by Dr. Susannah Ong-Salvador, the company-designated physician.

In addition, the "Medical Certificate" dated December 4, 2010 issued by Dr. Efren R. Vicaldo disclosed that private respondent had been "now unfit to resume work as a seaman in any capacity". The "Medical Certificate" further disclosed the following:

"JUSTIFICATION FOR IMPEDIMENT GRADE VII
(41.80%) OF SEAMAN FERNANDO (sic) B.
SANLITAN

- This patient/seaman presented with history of nape pain noted in 1997 while working on board ship. He underwent laboratory exams and was noted to have elevated blood sugar and dyslipidemia. He was given Metformin and Atorvastatin. He was allowed to work on board ship in spite his diabetes and dyslipidemia. On subsequent pre-boarding he was not allowed to board ship anymore due to his elevated blood sugar. On September 14, 2008 he was repatriated back to the Philippines for further management.
- When seen at the clinic his blood pressure was 160/100 mmHg; PE of the heart and lungs were unremarkable. History revealed elevated blood pressure apparently since 2001; no medications were taken.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated/related.
- He requires maintenance medication to control his hypertension to prevent cardiovascular complications such as coronary artery disease, stroke and renal insufficiency.
- He has to modify his lifestyle to include low salt, low fat, low carbohydrate diet, regular exercise and nicotine abstinence.
- He is not expected to land a gainful employment given his medical background."[30] (Emphasis supplied)

Private respondent's disability having been total and permanent was as also found by public respondent NLRC, to wit:

"From September 13, 2008 when Complainant was repatriated up to that Final Medical Report of April 21, 2009 is noticeably a period of more than 120 days, as it is in fact a period of about 210 days. Complainant, therefore, was rendered incapacitated to work for a period of 120 days, extending up to about 210 days.

This leads to the conclusion that Complainant[s] disability is indeed total and permanent. Notably, We find no valid reason for Respondents to continue treating complainant beyond 120 days to justify their claim of partial disability, when the condition to extend beyond 120 days is not present in this case.

With these findings, there is no more need to dwell with the belatedly secured second opinion of the Complainant's chosen physician.

Art. 192 of the Labor Code and its implementing Rules provide for the significance of the 120 days period when it defined total permanent disability and its exception which is absent in this case xxx"[31] (Emphasis supplied)

That a seaman, such as private respondent, who is unable to perform his job for more than 120 days, suffers from total and permanent disability was as similarly declared by the Supreme Court in *Oriental Shipmanagement Co., Inc. vs. Romy B. Bastol* G.R. No. 186289 , June 29, 2010, to wit:

"It has been held that disability is intimately related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity. Total disability does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Thus, permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. his is the case of *Bastol*, aptly held by the CA.

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, we cited the consistent application of the definition of permanent disability under Sec. 2 (b), Rule VII of the Implementing Rules of Book V of the Labor Code as amended by PD 626, which provides:

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

We likewise noted in *Wallem Maritime Services, Inc.* that:

The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad*, in which it was reiterated that permanent disability means the inability of a worker to perform his job for more than 120 days. Also in *Philimare, Inc. v. Suganob*, notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the latter suffered permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months. Similarly, in *Micronesia Resources v. Cantomayor and United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*, the Court declared the seafarers therein to have suffered from a permanent disability after taking evidence into account that they had remained under treatment for more than 120 days, and were unable to work for the same period.

Moreover, we explained in *Wallem Maritime Services, Inc.* that the lapse of the 120-day threshold period is not the benchmark for considering a permanent disability due to injury or illness, 'rather, the true test of whether respondent suffered form a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days.'" (Emphasis and underlining were made in

the original)

Given all these, no cogent reason was therefore shown to justify any deviation from the following findings of the public respondent NLRC, which were pursuant to the facts and the law:

"Undisputed is the fact that he boarded the vessel on December 17, 2007 without any sign of medical illness; on September 12, 2008 which is the 9th of his 10 months contract, however, he was diagnosed with 'Hypertension, Diabetes Type II and Nephrolitiasis, left'. The medical prescription/notes which Complainant (private respondent) exhibited xxx to prove this fact were not contested by Respondents (petitioners). The other exhibit of Complainant was also not disputed by Respondents (petitioners). This is the unsigned 'History of Present Illness' of Complainant (private respondent) dated November 9, 2010, under the letter head of Sachly International Health Partners where the company designated physicians hold clinic xxx was also not disputed by Respondents (petitioners). It shows that it was while complainant was working on board the vessel that he was found sick.

Added to these is the fact that Respondents (petitioners) immediately placed complainant (private respondent) under the care of their physicians.

All these point to the conclusion that the illnesses are not only work related, they were also suffered during the term of the contract. With these two criteria met, the disability of Complainant (private respondent) arising from the illnesses he suffered is compensable.

The Labor Arbiter in his appealed decision did not err in ruling that the disability of Complainant (private respondent) is total and permanent."[32](Emphasis supplied)

Indeed, the rule is settled that the findings of the Labor Arbiter, when affirmed by the NLRC, are accorded due respect and even finality, and are binding upon the court[33] especially when supported by substantial evidence, as in this case.

Thus, after careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent NLRC was shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[34]

IN VIEW OF ALL THESE, the Petition is DENIED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-42

[2] Rollo, pp. 44-59

[3] Rollo, pp. 181-195

[4] Rollo, pp. 61-62

[5] Rollo, pp. 63-76

[6] Rollo, pp. 44-59

[7] Rollo, pp. 46-50

- [8] Rollo, p. 181
- [9] Rollo, p. 181
- [10] Rollo, pp. 181-195
- [11] Rollo, p. 195
- [12] Rollo, pp. 44-59
- [13] Rollo, p. 58
- [14] Rollo, pp. 63-76
- [15] Rollo, pp. 61-62
- [16] Rollo, pp. 3-42
- [17] Rollo, pp. 33-35
- [18] Rollo, p. 16-22
- [19] Rollo, pp. 16-20
- [20] Rollo, p. 117 and 133
- [21] Rollo, pp. 120 and 188
- [22] Rollo, p. 121
- [23] Government Service Insurance System vs. Lucita R. Villareal, G.R. NO. 170743, April 12, 2007
- [24] Rollo, pp. 181-195
- [25] Rollo, pp. 188-191
- [26] Rollo, pp 20-22
- [27] Rollo, pp. 112-118, 134-140, and 187-188
- [28] Rollo, p. 56
- [29] Rollo, pp. 55 and 117
- [30] Rollo, p. 140
- [31] Rollo, pp. 56-57
- [32] Rollo, pp. 54-56
- [33] La Union Cement Workers Union & Arnulfo Almoite vs. National Labor Relations Commission and Bacnotan Cement Corporation (now Holcim Philippines, Inc.), G.R. No. 174621, January 30, 2009
- [34] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.

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