

PHILIPPINE TRANSMARINE CARRIERS, INC. AND/OR ROYAL CARIBBEAN CRUISES LTD., PETITIONERS, VS. JOEL MENDOZA, RESPONDENT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is a petition for review under Rule 43, 1997 Rules of Civil Procedure, assailing the following Decision and Resolution of the Panel of Voluntary Arbitrators[1] in AC-305-NCMB-NCR-22-02-04-B entitled In re: Voluntary Arbitration case by and between Joel Mendoza and Philippine Transmarine Carriers, Inc. and/or Royal Caribbean Cruises, Ltd.:

(1)

Decision dated October 23, 2013[2] which ordered petitioners to pay, jointly and severally, respondent Joel Mendoza full permanent disability benefits in the amount of US\$85,000.00, "medical allowance/maintenance cure and payment" in the amount of US\$1,860.00, and attorney's fees equivalent to ten percent (10%) of the total monetary awards, and

(2)

Resolution dated December 23, 2013[3] which denied petitioners' motion for reconsideration of the Decision dated October 23, 2013.

THE ANTECEDENTS

On August 9, 2011, petitioner Philippine Transmarine Carrier, Inc. on behalf of its principal, petitioner Royal Caribbean Cruises Ltd., hired respondent Joel Mendoza as FM Cleaner (Day/Night Cleaner) for the cruise ship "Voyager of the Seas" for a period of eight (8) months, with a monthly minimum salary of US\$534.00.[4] Respondent was declared "fit for sea duty" after the pre-employment medical examination (PEME).[5] Prior thereto, respondent was employed as seafarer by Norwegian Cruise Line through its agent CF Sharp Philippines, but was medically repatriated for pulmonary embolism secondary to protein deficiency.[6]

Respondent was deployed on December 2, 2011.[7] At the cruise ship, he was assigned to maintain the cleanliness of the public male restrooms from Deck 11 to 14. On February 13, 2012, while cleaning the floor of the Optix Teen Club male restroom, respondent accidentally slipped and fell on the floor. While his fall impacted his rear end heavily, it was only the following day that he felt pain and discomfort on his back and bottom down to his legs. Respondent reported his condition to his supervisor on the third day as he could no longer sleep comfortably because the pain radiated to his back. Upon advise of his supervisor, respondent consulted the ship doctor and was given oral and intravenous drugs to relieve the pain. As the pain persisted, respondent requested that he be treated by a specialist.[8]

Initially, his request was denied.[9] Then, on February 28, 2012, he was referred to Mobay Hope Medial Centre in Falmouth, Jamaica. While the x-ray of the lumbar spine and and pelvis showed normal result, the orthopedic

surgeon recommended magnetic resonance imaging (MRI) scan on respondent's lumbosacral spine and (L) ischial tuberosity to confirm the initial diagnosis that the latter was suffering from "ruptured L4/L5 disc and tear of hamstring muscles from ischial tuberosity." [10]

Respondent was repatriated on March 2, 2012 and arrived in Manila on March 5, 2012. Within three (3) days, he reported to petitioner Philippine Transmarine Carriers, Inc. [11]

Petitioner Philippine Transmarine Carriers, Inc. referred respondent to the company-designated physicians at Shiphealth, Inc. for medical care and treatment. [12] Corollary thereto, respondent received from petitioners the amount of US\$5,228.10 [13] as medical allowance/maintenance and cure payments for the period March 3, 2012 to January 15, 2013.

On February 8, 2013, respondent filed with the National Conciliation and Mediation Board (NCMB) a complaint against petitioners [14] for payment of full permanent disability benefits, medical allowance/maintenance and cure payments, moral and exemplary damages, attorney's fees, litigation expenses and costs of suit. [15]

In the meantime, respondent consulted Dr. Renato P. Runas, a Fellow at the Philippine Orthopedic Association, Philippine College of Surgeons, and International College of Surgeons. An MRI of respondent's lumbar spine was conducted on April 19, 2013. [16] In a Medical Evaluation Report dated April 25, 2013, Dr. Runas concluded that respondent "is physically unfit for sea duty in whatever capacity with permanent disability." Thus:

"x x x x x x x x

At present, he is still experiencing moderate to severe pain at the lower back radiating to the left lower extremity. Pain is more pronounced when sitting and also aggravated by standing and walking. Low back pain is triggered by coughing and exertion. Trunk flexion and extension is limited because of pain. Paravertebral muscle tenderness is noted. Straight Leg Raising test is positive on the left. Deep tendon reflexes are normoactive. Motor Strength is 4/5 on the right lower extremity. He walks with antalgic gait.

Repeat MRI of the lumbar spine was done at BDM Center on April 11, 2013 which revealed the following: Posterior left paracentral disk protrusion, L4-5 with spinal canal stenosis, moderate bilateral neural foraminal narrowing, and left lateral recess narrowing. Concomitant ligamentum flavum buckling, L4-5, contributing to spinal canal narrowing; Posterior disk protrusion, L5-S1, indenting the thecal sac and slightly narrowing bilateral neural foramina; Beginning disk desiccation changes, L4-5 and L5-S1; Lumbar straightening may be due to muscle spasm.

Seaman Mendoza is incapacitated as a result of a back injury sustained onboard. The persistent moderate to severe low back pain prevents him from doing his previous activities. The low back pain and sciatica is not relieved by physical therapy. Partially relieved the pain and discomfort is noted after treatment but recurs after only a short period. Walking even for short distances triggers pain at the lower back and right leg and needs rest to relieve the condition. Heavy physical exertion and lifting of heavy provisions and other supplies and cargos onboard is no longer allowed because it will aggravate the low back condition and may also cause more severe disc herniation. Back rigidity limits his ability to bend, pick up and carry objects from the floor. Prolonged sitting, standing and walking worsen the discomfort. He has also difficulty going up the stairs. He has lost his preinjury capacity status. Further physical therapy may not afford much improvement. He needs a complete modification of lifestyle to avoid further injury. He is physically unfit for sea duty in whatever capacity with permanent disability." [17]

As the conciliation process at the NCMB failed, both parties selected the Panel of Voluntary Arbitrators to hear the case. [18] During the mandatory conferences, petitioners manifested that the company-designated physician had already assessed respondent's medical condition, but they failed to present said assessment. [19] Petitioners insisted that under the POEA Contract, respondent was not entitled to disability benefits, and if at all, was only

entitled to an amount corresponding to his disability grading.[20] For failure of the parties to amicably settle, the Panel of Voluntary Arbitrators required the submission of their respective position papers.

On October 23, 2013, the Panel of Voluntary Arbitrators rendered a Decision granting respondent's claim for full permanent disability compensation benefits, medical allowance/maintenance and cure payments and attorney's fees, but denied the claim for moral and exemplary damages. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering herein respondent PHILIPPINE TRANSMARINE CARRIERS, INC. and ROYAL CARIBBEAN CRUISES, LTD. to jointly and severally pay complainant, JOEL MENDOZA the amount of Eighty Five Thousand US Dollars (US\$85,000.00) as full permanent disability benefits provided by the Collective Bargaining Agreement, or its peso equivalent at the time of actual payment; One Thousand Eight Hundred Sixty US Dollars (US\$1,860.00) by way of medical allowance/maintenance cure and payment; and ten (10%) percent of the total monetary award as and by way of attorney's fees.

All the other claims are denied.

SO ORDERED."[21]

Petitioners moved for reconsideration[22] of the aforesaid Decision, but the same was denied by the Panel of Voluntary Arbitrators in a Resolution dated December 23, 2013.[23]

Thereupon, petitioners file the present petition which is premised on the grounds that:

1. THE AWARD OF US\$75,000.00 IS ANCHORED UPON THE PROVISIONS OF AN ALLEGED CBA. IT MUST BE NOTED THAT NO FAITHFUL REPRODUCTION OF THE CBA FOR THE VESSEL WAS EVER PRESENTED IN THE CASE AT BAR. HENCE, IT WAS ERRONEOUS FOR THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS TO USE THE PROVISIONS OF THE SAID CBA IN THE RESOLUTION OF THE CASE.

2. THE PANEL OF VOLUNTARY ARBITRATORS SERIOUSLY ERRED IN AWARDING FULL DISABILITY BENEFITS EQUIVALENT TO US\$75,000.00 AND MEDICAL ALLOWANCE SINCE RESPONDENT IS GUILTY OF FRAUDULENT CONCEALMENT.

A. THE RECORDS OF THE CASE AS WELL AS RESPONDENT'S OWN CATEGORICAL ADMISSION SHOWS THAT HE IS GUILTY OF CONCEALMENT.

B. THE PRESENTATION OF THE PEME DOCTOR TO REBUT THE SWORN AFFIDAVIT OF RESPONDENT IS UNNECESSARY IN THE CASE AT BAR. IT IS THEREFORE ERRONEOUS FOR THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS TO BELIEVE RESPONDENT'S ALLEGATION JUST BECAUSE THE PEME DOCTOR WAS NOT PRESENTED.

C. CONCEALMENT OF A PREVIOUS MEDICAL CONDITION BARS THE CLAIM FOR DISABILITY BENEFITS. IT IS IMMATERIAL IF THE MEDICAL CONDITION CONCEALED IS THE CAUSE OF THE CURRENT DISABILITY. THE ACT OF CONCEALMENT BY ITSELF FORFEITS A SEAFARER'S RIGHT TO DISABILITY BENEFITS.

3. THERE IS NO OBLIGATION IMPOSED BY LAW OR CONTRACT UPON PETITIONERS TO UNILATERALLY FURNISH RESPONDENT HIS MEDICAL ASSESSMENT. HENCE, IT IS IMPROPER FOR THE PANEL OF VOLUNTARY ARBITRATORS TO IMPOSE SUCH OBLIGATION AND RULE THAT SEAFARER IS ENTITLED TO FULL DISABILITY BENEFITS DUE TO SUCH FAILURE.

4. ASSUMING ARGUENDO THAT RESPONDENT IS ENTITLED TO DISABILITY BENEFITS, THE PANEL OF VOLUNTARY ARBITRATORS ERRED IN AWARDING FULL DISABILITY EQUIVALENT

TO US\$75,000.00. DISABILITIES SHOULD BE ASSESSED IN ACCORDANCE WITH THE SCHEDULE OF DISABILITY GRADING UNDER THE POEA CONTRACT.

5. THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS GRAVELY ABUSED HIS DISCRETION AND COMMITTED SERIOUS ERROR IN HOLDING PETITIONERS LIABLE FOR ATTORNEY'S FEES. PETITIONERS DID NOT ACT IN BAD FAITH TOWARD RESPONDENT AS TO JUSTIFY THE AWARD OF ATTORNEY'S FEES.[24]

THE ISSUE

Whether the Panel of Voluntary Arbitrators erred in awarding to respondent full permanent disability compensation benefits, medical allowance and attorney's fees.

THE COURT'S RULING

In holding that respondent was entitled to full permanent disability benefits in the amount of US\$85,000.00, the Panel of Voluntary Arbitrators noted that (i) respondent's testimony that he informed the doctor during the PEME that he suffered from pulmonary embolism was credible and uncontroverted by failure of petitioners to present the PEME doctor or his affidavit; (ii) even if respondent concealed his previous medical condition, the same was immaterial because he was repatriated for a totally unrelated illness and was declared fit for sea duty by a clinic that provided complete PEME for seafarers; (iii) respondent was deemed informed of the disability grading only on June 13, 2013, or more than a year from his medical repatriation, because the medical assessment dated August 20, 2012 was appended only to petitioners' Position Paper; (iv) while in the medical assessment dated August 20, 2012 respondent was declared "maximally improved," up to January 15, 2013, or more than 240 days from his medical repatriation, he was still receiving medical allowance/maintenance and cure payments; (v) respondent did not abandon his medical treatment; (vi) while the company-designated physicians and respondent's personal doctor differed as to the disability grading, their assessment of respondent's medical condition were the same; and, (vii) while the company-designated physician assessed respondent as entitled only to disability grading of 8, they were not certain if respondent's condition would be resolved.[25]

Petitioners fault the Panel of Voluntary Arbitrators in so ruling. Allegedly, (i) "respondent's own admission categorically shows that he is guilty of fraudulent concealment,"[26] but the Panel of Voluntary Arbitrators "relied on the latter's [respondent's] demeanor during the testimony and out rightly concluded that seafarer is not guilty of fraudulent concealment;"[27] (ii) the Panel of Voluntary Arbitrators erred in believing respondent's alleged disclosure to the PEME doctor of his medical condition just because said doctor failed to refute the same;[28] (iii) under the Amended POEA Contract and the CBA, "it is not required that the cause of disability is the illness or medical condition concealed [as] the fact of concealment itself bar any right to disability benefits;"[29] (iv) the Panel of Voluntary Arbitrators erred in holding that "the belated notification to respondent on 13 June 2013 means that he was disabled for more than 240 days"[30] since "there is no obligation imposed by law or contract upon petitioner to unilaterally furnish respondent his medical assessment;"[31] (v) assuming "that respondent is entitled to disabilities, the same should not exceed disability benefit corresponding to a disability grading of 8"[32] as "his disability must be assessed in accordance with the disability grading provided under the POEA Contract;"[33] and, (vi) "petitioners did not act in bad faith towards respondent as to justify the award of attorney's fees."[34]

The petition is bereft of merit.

It is basic that the entitlement of a seafarer on overseas employment to disability benefits is governed by the medical findings, by law and by the parties' contract.[35] The relevant legal provisions are Articles 191 to 193, Chapter VI (Disability Benefits), Labor Code, in relation to Section 2, Rule X, Amended Rules on Employees

Compensation (Rules and Regulations Implementing Title II, Book IV of the Labor Code).[36] The relevant contracts are the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (Amended POEA-SEC),[37] the Collective Bargaining Agreement (CBA), if any, and the employment agreement between the seafarer and his employer.[38]

As respondent was employed on August 9, 2011, deemed appended to his contract of employment is the Amended POEA-SEC. The POEA-SEC, which is a set of standard provisions set and implemented by the POEA, is considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels and deemed written in the seafarer's contract.[39]

Respondent is claiming full permanent disability benefits in connection with the back injury he sustained while cleaning the floor of the Optix Teen Club male restroom on board petitioners' cruise ship "Voyager of the Seas." Thus, the applicable provisions are (i) Section 20 (B) of the Amended POEA-SEC; (ii) Article 192 (c) (1), Chapter VI, Book IV, Labor Code in relation to Section 2 (b), Rule VII and Section 2, Rule X, Amended Rules on Employees Compensation; and, (iii) Article 28 of the Royal Caribbean CBA, to wit:

"Section 20 (B) of the Amended POEA-SEC:

"SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x

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:

- The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
- If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
- In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the

seafarer. 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.

- Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.
- In case a seafarer is disembarked from the ship for medical reason, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.
- 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 his 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.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days in which sickness allowance is paid.

- It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund)."

x x x

"Article 192 (c) (1), Chapter VI, Book IV, Labor Code:

Chapter VI

DISABILITY BENEFITS

x x x x x x x x

Art. 192. Permanent total disability. - x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x x x x x"

x x x

"Section 2 (b), Rule VII and Section 2, Rule 10, Amended Rules on Employees Compensation:

RULE VII

Benefits

x x x x x x x x

Sec. 2. Disability — x x x

(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.

x x x x x x x x

RULE X

Temporary Total Disability

x x x x x x x x

Sec. 2. Period of entitlement — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x"

x x x

"Article 28 of the Royal Caribbean CBA:

Article 28 – Disability

A)

If a Seafarer suffers a disabling permanent work related injury as a result of an accident from any cause, with the exception of injuries caused by a Seafarer's willful gross misconduct as specified in Annex 7, while in the employment of the Owners/Company, regardless of the fault, including accidents occurring whilst traveling to and from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his Sick Pay, be entitled to disability compensation at a percentage depending on the degree of permanent disability of up to USD one hundred-thousand (\$100,000) for Marine Officers and Hotel Groups A and C-3 personnel and up to USD eighty five thousand (\$85,000) for all others. x x x

x x x x x x x x

D)

The benefits under this Article include amounts payable to Filipino nationals under the POEA Rules and Regulations."[40]

It bears stressing that the conflict between Section 20 (B) (3) of the POEA-SEC, and Article 192 (c) (1), Labor Code in relation to Section 2, Rule X, Amended Rules on Employees Compensation pertaining to entitlement to disability benefits, was addressed by the Supreme Court in Vergara vs. Hammonia Maritime Services, Inc.,[41] wherein the fit-to-work declaration was made more than one hundred twenty (120) days after the petitioner was repatriated for medical reasons. The High Court held that a seafarer's temporary total disability only became permanent when he was declared as such by the company-designated physician within the period of 120 days or 240 days, depending on the need for further medical treatment, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or disability. Thus:

"In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:

x x x x x x x x

The rule referred to - Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code – states:

x x x x x x x x

These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

x x x x x x x x

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared 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 Standard Employment Contract and by applicable Philippine laws. If the 120 days 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 seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

x x x x x x x x

As we outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. x x x" (Underlining supplied)

From the foregoing, it is clear that if further medical treatment of a seafarer is required, (i) the initial treatment period of 120 days may be extended up to a maximum of 240 days,[42] and, (ii) the period within which to issue a declaration of fitness or disability may be extended up to a maximum of 240 days.

The obligation on the part of a company-designated physician to issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, cannot be over-emphasized. Under prevailing jurisprudence, if the company-designated physician "fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled." [43]

Thus, respondent was deemed totally and permanently disabled as he was repatriated on March 5, 2012[44] and he received a copy of the company-designated physician's 7[th] and Final Medical Report dated August 20, 2012[45] on June 13, 2013, when petitioners appended the same to their Position Paper, a period of more than 1 year from his medical repatriation. Moreover, under said medical assessment, respondent's medical condition was clearly unresolved. Said the company-designated physician:

" x x x x x x x x

With the refusal to undergo definitive management, continuation of rehabilitative treatment was advised by our medical specialists. However, duration of rehabilitation and time until resolution of symptoms were difficult to determine. x x x"[46] (Underlining supplied)

While said medical assessment, which was dated August 20, 2012, appeared to be issued within 168 days from respondent's repatriation for medical reason, the Court agrees with the Panel of Voluntary Arbitrators when they ruled that respondent "was only effectively served notice of the company-designated doctor's grade 8 disability assessment on June 13, 2013, when respondents [herein petitioners] filed their Position Paper" for the following reasons:

Firstly, as noted by the Panel of Voluntary Arbitrators, (i) the medical assessment was addressed to a certain

Tania Arroyo; (ii) the record was bereft of evidence or even allegation that respondent received a copy of said medical assessment or petitioners' even tried to serve it to him; and, (iii) petitioners were still paying medical allowance/maintenance and cure to respondent until January 15, 2013.[47]

Secondly, petitioners themselves admitted that they did not provided respondent with copy of said medical assessment. Petitioners in the present petition allege that "THERE IS NO OBLIGATION IMPOSED BY LAW OR CONTRACT UPON PETITIONERS TO UNILATERALLY FURNISH RESPONDENT HIS MEDICAL ASSESSMENT." [48]

While it is true that the law or contract does not require the employer to unilaterally furnish the seafarer with the medical assessment, jurisprudence requires the same. It bears stressing that a seafarer may pursue an action for permanent and total disability if "240 days had lapsed without any certification being issued by the company-designated physician." [49] Moreover, the document containing the company-designated physician's fit/unfit to work certification and/or assessment of the seafarer's disability is necessary if the seafarer intended to contest the same under Sec. 20 (B) of the Amended POEA-SEC.

Apropos is *Jebsen Maritime, Inc. vs. Babol*, [50] wherein the Supreme Court ruled that therein respondent's disability becomes permanent for failure of the company-designated physician to indicate in his medical report that the former was fit to work as seafarer despite his cancer. Said the Supreme Court:

"In this case, records reveal that the medical report issued by the company-designated oncologist was bereft of any certification that respondent remained fit to work as a seafarer despite his cancer. This is important since the certification is the document that contains the assessment of his disability which can be questioned in case of disagreement as provided for under Section 20 (B) (3) of the POEA-SEC.

In the absence of any certification, the law presumes that the employee remains in a state of temporary disability. Should no certification be issued within the 240 day maximum period, as in this case, the pertinent disability becomes permanent in nature.

Considering that respondent has suffered for more than the maximum period of 240 days in light of the uncompleted process of evaluation, and the fact that he has never been certified to work again or otherwise, the Court affirms his entitlement to the permanent total disability benefits awarded him by the CA, the NLRC and the LA.

In the same way that the seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, including the provisions governing the procedure for claiming disability benefit, the employer also has the duty to provide proof that the procedures were also complied with, including the issuance of the fit/unfit to work certification. Failure to do so will necessarily cast doubt on the true nature of the seafarer's condition.

When such doubts exist, the scales of justice must tilt in his favor."

While under Section 20 (E), [51] POEA-SEC), concealment of a seafarer of a past medical record bars his claim for a disability benefits, suffices it to state that "when there is doubt between the evidence submitted by the employer and that submitted by the employee, the scales of justice must be tilted in favor of the employee." [52]

In the present case, respondent testified under oath that he informed the doctor during the PEME that he suffered from pulmonary embolism. Thus, the Panel of Voluntary Arbitrators did not err in holding that petitioners should have presented before them the PEME doctor or his affidavit to controvert respondent's testimony, and their failure to do so, rendered as uncontroverted respondent's claim that he did not conceal his previous medical condition.

While petitioners allege before the Court that respondent admitted, among others, that during the conference on August 13, 2013 he ticked "no" box # 17 (shortness of breath) and box # 21 (chest pain),[53] record is bereft of any document showing that the latter indeed made such an admission.

In any event, even if respondent fraudulently concealed his medical condition, it bears emphasizing that (i) respondent was medically repatriated for an injury sustained while working onboard petitioners' cruise ship "Voyager of the Seas," and not for pulmonary embolism; (ii) respondent was declared "fit for sea duty" despite several "significant findings" were noted during the PEME;[54] and, (iii) there was no showing that respondent concealed that he was previously employed by Norwegian Cruise Line/CF Sharp Philippines. The Court notes that in *OSM Shipping Phil., Inc. vs. Dela Cruz*,[55] the Supreme Court ruled that as therein petitioner declared therein respondent as fit for sea duty, the latter's beneficiaries were entitled to disability benefits despite his failure to disclose his medical condition and previous employer under the beneficent provision of the contract.

Anent petitioners' contention that "respondent's present claim can only be governed by the POEA Contract"[56] as "it was grave error for the Panel of Voluntary Arbitrators to use the Collective Bargaining Agreement in resolving the present controversy"[57] since "respondent failed to substantiate his allegation on the existence of a CBA [and] x x x provide x x x a signed and faithful reproduction of the CBA for the vessel,"[58] it suffices to state that despite the fact that the copy of CBA appended to respondent's Position Paper was unsigned, respondent's receipts of benefits from petitioners in the form of medical allowance/maintenance and cure payments[59] were in accordance with Article 24 (B) and (C), Royal Caribbean CBA on Sick Pay and Maintenance.[60] Besides, having custody of actual copy of the Royal Caribbean CBA, petitioners' failure to present the same leads to the conclusion that what was appended by respondent to his Position Paper was the faithful reproduction of the applicable CBA.

Also devoid of merit is the contention that the Panel of Voluntary Arbitrators erred in awarding attorney's fees since "petitioners did not act in bad faith towards respondent as to justify the award of attorney's fees."[61] As held in *Fil-Pride Shipping Company, Inc. vs. Balasta*: [62]

"On the issue of attorney's fees, while petitioners have not been shown to act in gross and evident bad faith in refusing to satisfy respondent's demands, it is nonetheless true as a matter of law and it has been held in the past that where an employee is forced to litigate and incur expenses to protect his right 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.

Then again, squarely applicable in the present case is the settled doctrine that factual findings of administrative bodies are controlling when supported by substantial evidence.[63]

WHEREFORE, the petition is denied. Accordingly, the Panel of Voluntary Arbitrators' Decision dated October 23, 2013 and Resolution dated December 23, 2013 are affirmed.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] Composed of Arbitrators Atty. Jesus S. Silo (Chairman), Capt. Leonardo B. Saulog and Gregorio C. Biales, Jr.

[2] pp. 44-65, Rollo

[3] p. 67, Id.

[4] Contract of Employment, pp. 117, 182 and 402, Id.; Overseas Filipino Workers (OFW) Information, p. 216, Id.; private respondent's Position Paper, p. 192, Id.

[5] Medical Examination Record, pp. 183, 355 and 401, Id.

[6] pp. 125-132, Id.

[7] Overseas Filipino Workers (OFW) Information, p. 216, Id.

[8] Respondent's Position Paper, pp. 193-194, Id.

[9] Respondent's Position Paper, p. 194, Id.

[10] pp. 260-262, Id.; pp. 263 and 409, Id.

[11] Respondent's Position Paper, pp. 195-196, Id.

[12] Petitioners' Position Paper, p. 138, Id.

[13]

March 3, 2012 to March 15, 2012

US\$ 285.24, p. 264, Id.

March 16, 2012 to April 15, 2012

705.87, p. 265, Id.

April 16, 2012 to May 15, 2012

683.10, p. 266, Id.

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June 16, 2012 to July 15, 2012

640.02, p. 268, Id.

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372.00, p. 269, Id.

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372.00, p. 270, Id.

September 16, 2012 to October 15, 2012

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[14] Respondent's Position Paper, p. 197, Id.

[15] Respondent's Position Paper, p. 214, Id.

[16] p. 278, Id.

[17] pp. 279-280, Id.

[18] Submission Agreement, p. 119, Id.

[19] Respondent's Position Paper, p. 199, Id.

[20] Petitioners' Position Paper, p. 140, Id.

[21] p. 65, Id.

[22] pp. 68-109, Id.

[23] p. 67, Id.

[24] pp. 12-13, Id.

[25] pp. 52-63, Id.

[26] p. 15, Id.

[27] Id.

[28] pp. 19-20, Id.

[29] p. 23, Id.

[30] p. 27, Id.

[31] Id.

[32] p. 29, Id.

[33] Id.

[34] p. 34, Id.

[35] Philman Marine Agency, Inc. (now DOHLE-Philman Manning Agency, Inc.) vs. Cabanban, 702 SCRA 467, July 29, 2013

[36] C.F. Sharp Crew Management, Inc. vs. Taok, 677 SCRA 296, July 18, 2012

[37] Philippine Overseas Employment Agency Governing Board Resolution No. 9, and Memorandum Circular No. 10, both series of 2010; effective November 12, 2010

[38] C.F. Sharp Crew Management, Inc. vs. Taok, 677 SCRA 296, July 18, 2012

- [39] *Nisda vs. Sea Serve Maritime Agency*, 593 SCRA 668, July 23, 2009
- [40] p. 246, Rollo
- [41] 567 SCRA 610, October 6, 2008
- [42] *Pacific Ocean Manning, Inc. vs. Penales*, 680 SCRA 95, September 5, 2012
- [43] *United Philippines, Inc. vs. Sibug*, G.R. No. 201072, April 2, 2014, citing *Fil-Pride Shipping Company, Inc. vs. Balasta*, G.R. No. 193047, March 3, 2014
- [44] p. 196, Rollo
- [45] pp. 184-186 and 316-323, *Id.*
- [46] pp. 186 and 323, *Id.*
- [47] pp. 57-59, *Id.*
- [48] p. 12, *Id.*
- [49] *Millan vs. Wallem Maritime Services, Inc.*, 685 SCRA 225, November 12, 2012, cited in *United Philippines, Inc. vs. Sibug*, G.R. No. 201072, April 2, 2014
- [50] G.R. No. 204076, December 4, 2013
- [51] E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.
- [52] *Misamis Oriental II Electric Service Cooperative (MORESCO II) vs. Cagalawan*, 680 SCRA 127, September 5, 2012
- [53] p. 17, Rollo
- [54] Medical Examination Record, pp. 183, 355 and 401, *Id.*
- [55] 449 SCRA 525, January 28, 2005
- [56] p. 14, Rollo
- [57] p. 13, *Id.*
- [58] pp. 13-14, *Id.*
- [59] Crew Medical Leave Information Letter, pp. 275-277, *Id.*; pp. 264-274, *Id.*
- [60] pp. 240-241, *Id.*
- [61] p. 34, *Id.*
- [62] *Fil-Pride Shipping Company, Inc. vs. Balasta*, G.R. No. 193047, March 3, 2014
- [63] *Gonzales III vs. Office of the President of the Philippines*, 679 SCRA 614, September 4, 2012

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