UNITED PHILIPPINE LINES, INC. AND/OR HOLLAND AMERICA LINE, INC.,PETITIONERS, VS.FRANCISCO D. BESERIL, RESPONDENT.

G.R. NO. 165934. April 12, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed in the present petition are the Court of Appeals August 31, 2004 Decision[1] and October 28, 2004 Resolution[2] reversing the decision of the National Labor Relations Commission (NLRC) dismissing respondent's claim for total disability benefits.

Francisco D. Beseril (respondent) was hired by petitioner United Philippine Lines, Inc. (UPL), a Philippine manning agency, for and in behalf of its principal Holland American Lines (HAL) in 1987. He had since then been continuously re-hired and even became a recipient of the Holland America Line - Westours Inc. 10 Years Service Award.[3]

On August 28, 1997, respondent was as usual rehired by UPL for its principal HAL as Assistant Cook for a period of 12 months and was assigned to the vessel M/S Rotterdam VI. The Contract of Employment[4] was duly verified and approved by Philippine Overseas Employment Administration (POEA).

As part of the usual pre-employment requirements, respondent was made to undergo physical and medical examinations. Based on the Medical Examination Report[5] dated August 26, 1997 issued by HAL's designated physician Dr. Renato P. Abaya (Dr. Abaya), respondent was found to be "fit" for work as seaman.

On October 31, 1997, respondent, in accordance with his employment contract, boarded M/S Rotterdam VI.

While on duty or on December 5, 1997, respondent complained of chest pains and difficulty in breathing. He was thus brought to the ship's infirmary and was thereafter brought ashore for immediate medical treatment.

Respondent was later confined at the Broward General Hospital in Fort Lauderdale, Florida where he underwent a triple heart by-pass.

Respondent was not able to rejoin his vessel of assignment, necessitating the hiring of another assistant cook to replace him.[6] On December 20, 1997, he was officially discharged from duty.

As respondent's condition was not yet stable for repatriation, he stayed for a while at the Holiday Inn, Florida until he was allowed to fly back to Manila on January 8, 1998.

Upon his arrival in Manila, respondent was referred to Clinica Manila under UPL's account where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998.[7]

Based on the Medical Certificate[8] dated September 22, 1998 issued by Dr. Ma. Victoria V. Tangco, Medical Consultant of Clinica Manila, respondent was recommended to be "fit to return to work."

Sometime in November 1998, as respondent wanted to revert to his old job, he again underwent a

pre-employment medical examination with the American Outpatient Clinic. This time, he was found to be "unfit" per Physical Examination Report/Certificate[9] issued by Dr. Leticia C. Abesamis dated November 19, 1998.

On November 27, 1998, since the pre-employment screening doctors of UPL refused to give medical clearance to respondent, HAL's hotel and restaurant manager Diogenes Rosauro B. Jaurigue (Jaurigue), who was responsible for the recruitment of the hotel crew, sought instructions from HAL through telex regarding respondent's case. The telex message read:

> SUBJECT: ASST. COOK FRANCISCO BESERIL
> REHIRING OR DECLARATION OF DISABILITY
>
> WITH REFERENCE TO THE CREWMEMBERS ABOVE CAPTIONED WE WOULD LIKE TO ASK FOR A FINAL DISPOSITION ON THE EVENTUAL FATE OF MR. FRANCISCO BESERIL.
>
> CONSIDERING THAT HE HAS UNDERGONE HEART BYPASS SURGERY AND HAS HAD ALMOST ONE YEAR RECOVERY, THE SUBJECT DESIRES TO REVERT BACK TO HIS FORMER JOB ON BOARD YOUR VESSELS.
>
> ALTHOUGH, THE SUBJECT MAY ACTUALLY PERFORM HIS FORMER DUTIES WITHOUT ANY PROBLEM, OUR-PRE-EMPLOYMENT SCREENING DOCTORS DO NOT WANT TO TAKE THE RISK IN CERTIFYING HIM FIT FOR SEA DUTY. THEY ADDED THAT SHOULD HAL AGREE TO RE-EMPLOY THE SUBJECT, IT WILL BE AT HAL'S RISK.
>
> IN VIEW OF THE FOREGOING, MAY WE KNOW WHETHER YOU ARE STILL ENGAGING THE SUBJECT OR PUTTING HIM ON PERMANENT DISABILITY.
>
> x x x x[10] (Emphasis and underscoring supplied)

In a correspondence dated January 13, 1999, Dr. Carter Hill of HAL's Medical Department declared respondent "permanently unfit."[11]

UPL soon received by fax a letter[12] dated February 18, 1999 from respondent's lawyer demanding compensation for total permanent disability. The pertinent portion of the letter read, quoted verbatim:

> Several months after his treatment and repatriation, Mr. Beseril was made to believe and expect that he would be rehired but up to now he cannot be reinstated to his former occupation. In fact, Mr. Francisco L. Beseril has already been considered and pronounced to be totally and permanently unfit to discharge his former sea based occupation and as a consequence thereof, the attending physician strongly suggested/recommended that Mr. Beseril retire permanently as a seaman.
>
> Under the POEA Standard Employment Contract and the CBA, our client is entitled to disability pay of no less than the full amount of Sixty Thousand US Dollars (USD60,000.00), for the total loss of his earning capacity.
>
> Therefore, a formal demand is hereby made upon your goodselves and your principal to pay our client in the amount of USD60,000.00 within ten (10) calendar days from your receipt of this letter.
>
> Should we not hear from you within the stated period, we shall commence legal actions against you and your principal without further notice to recover the full amount of USD60,000.00 plus moral damages, attorney's fees and costs of suit.
>
> We trust that you find this claim in order and look forward to an early settlement of the same.[13]

The letter was transmitted by fax to HAL which sent a reply by telex on the same day, the pertinent portion of which is quoted hereunder:

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> IN MR. JARIGUE'S NOVEMBER 27 1998 CORRESPONDENCE REFERENCE NUMBER 08-98 HE WAS INQUIRING OF THE COMPANIES FINAL DECISION. IN CARTER HILL'S 1/13/99 CORRESPONDENCE HE DECLARED MR. BESERIL PERMANENTLY UNFIT NOT PERMANENTLY DISABLED. THIS DISTINCTION WOULD MEAN A PARTIAL DISABILITY NOT PERMANENT. PLEASE DETERMINE THE PARTIAL DISABILITY PERCENTAGE SO WE MAY FURTHER DISCUSS THE NEXT STEP.[14]

On March 19, 1999, UPL sent a letter[15] to respondent's counsel referring respondent for evaluation and determination of the degree of disability to its designated physician Dr. Abaya.

After reviewing respondent's medical records and physically examining him, Dr. Abaya sent a letter[16] dated April 6, 1999 to UPL's legal department, which was transmitted by telex to HAL, reading:

> I have examined Mr. Francisco Beseril and find him in relatively good health. I have consulted the people who supervised his cardiac rehabilitation and they have assured me based on their ECG and Treadmill findings that Mr. Beseril is in good health and fit for work.
>
> Mr. Beseril claims he cannot get a job because his physical examination shows that he has had a coronary bypass and that all employment opportunities are therefore closed to him. No employer wants to employ him with a possible "recurrence" of his coronary problems. (Underscoring supplied)

After respondent's medical records were sent to HAL, Dr. Hill sent the following message dated April 21, 1999 to UPL through Dr. Abaya:

> UPON REVIEW OF THE PACKET OF MEDICAL RECORDS YOU HAVE SENT TO US ON THE ABOVE MENTIONED CREWMEMBER, I HAVE THE FOLLOWING COMMENTS:
>
> HE IS FIT FOR SEA DUTY AS A COOK.
>
> I NOTE HE HAS LOST 10 KG AND HAS A NORMAL BP AND TREADMILL ON 9/98. PLEASE ENCOURAGE HIM TO STOP SMOKING, EXERCISE REGULARLY, AND TRY TO REACH HIS OPTIMAL WEIGHT. ADDITIONALLY, I NOTE HIS URINE IS SPILLING SUGAR, AND I SUSPECT A[N] ORAL HYPOGLYCEMIC IS INDICATED TO CONTROL HIS BLOOD SUGAR LEVELS. HIS SUGARS CAN BE MONITORED AT SEA DURING HIS NEXT CONTRACT TO ENSURE IMPROVEMENT. DON'T HESITATE TO CONTACT ME IF I CAN BE OF FURTHER ASSISTANCE.[17] (Underscoring supplied)

With HAL's decision that respondent was "fit for sea duty as a cook," the legal department of UPL, by its claim, spoke to him and that after explaining the consequences and implications of the options he had, he and his counsel agreed that he would serve again at HAL's vessels. Respondent, however, never showed up at HAL's office for re-employment.

On September 1, 1999, respondent filed a complaint[18] with the NLRC against UPL and HAL claiming disability benefits, loss of earning capacity, moral and exemplary damages and attorney's fees.

During the March 13, 2000 hearing before a Labor Arbiter, the parties agreed to submit the case for resolution on the basis of the pleadings.

By Decision[19] dated April 28, 2000, the Labor Arbiter awarded respondent total disability benefits in the amount of $60,000, ruling that "his disability ha[ving] lasted [for] more than 120 days is sufficient basis to declare him permanently disabled."

Before the NLRC to which UPL and HAL (hereafter petitioners) appealed, they raised the following arguments:

- There was grave abuse of discretion in awarding permanent total disability of US$ 60,000.00 in favor of [respondent] despite the overwhelming evidence of the findings of fitness by the company appointed physician specifically engaged to do the said task pursuant to the POEA Standard Employment Contract.

- It is a grave error to cite the cases of Loot vs. GSIS, 224 SCRA 59 in relation to Aquino vs. ECC, 201 SCRA 84 in deciding this case that involves a POEA Standard Employment Contract for Seafarers controversy.

- The 120 days under Article 192 (c) (1) of the Labor Code should not be used as a reckoning point to establish disability under the POEA Standard Employment Contract.[20] (Underscoring supplied)

Finding petitioners' appeal meritorious, the NLRC, by Decision[21] dated August 30, 2002, "MODIFIED" the Labor Arbiter's decision by deleting the award of total disability benefit and ordering petitioners to deploy respondent to one of its foreign principals for the same position.

In granting [respondent's] claim for total disability benefit, the Labor Arbiter gave merit to a report dated 27 November 1998 sent by Dax B. Jaurigue, respondent's Hotel and Restaurant Manager for the Holland America Line Crewing Department. In said report, Mr. Jaurigue stated that although complainant may actually perform his former duties without any problem, [petitioners'] pre-employment screening doctors do not want to take the risk in certifying him fit for sea duty an[d] that should [petitioner] HAL agree to employ the subject, it will be at HAL's risk. The Labor Arbiter also held that since complainant's disability lasted more than 120 days, the same is sufficient basis to declare him permanently disabled. We do not agree. Records show that [petitioners'] company designated physician, Dr. Renato Abaya physically examined [respondent] sometime in March 1999, several months after the report of Mr. Jarigue was done. In this connection, said Dr. Abaya issued a report dated 6 April 1999 stating that [respondent] was in good health and fit for work. Dr. Abaya also executed an affidavit wherein he attested that [respondent] is fit for sea duty as a cook. It is for this reason that [petitioners] were preparing to process [respondent's] new employment contract. [Respondent] never refuted the fact that [petitioners] offered to rehire him to his former position. He also did not deny that he refused to accept the offer of employment made by the [petitioners].

We have likewise taken note that the illness of [respondent] required more than 120 days of treatment and rehabilitation. [Petitioners] contend they continued to shoulder the expenses for [respondent's] treatment and rehabilitation. This was admitted by [respondent] in his Rejoinder when he recognized the financial assistance extended to him by [petitioners]. In this connection, the Labor Arbiter held that since [respondent's] disability lasted more than 120 days, there is sufficient basis to declare him disabled citing Aquino vs. ECC (201 SCRA 84). We do not agree. The 120 days period referred to in the POEA Standard Employment Contract for Seafarers refers to the maximum liability that may be granted for sickness allowance. It is not a measure that could determine the employee's degree of disability. Moreover, [respondent's] employment is covered by the POEA Standard Employment Contract. The POEA benefits under said contract are separate and distinct from those benefits provided under the Employees Compensation Commission, the SSS or GSIS. The provisions thereof should be the law between the contracting parties.

The foregoing circumstances being considered, [respondent] was found to have been cured or recovered from his illness as determined by the company designated physician as he was declared fit to work for the same job he held prior to his illness. The job was offered to complainant by respondents which is proof that he did not lose his earning capacity.

Accordingly, we deem it proper to delete the award of total disability benefit. However, [respondent] is not left holding an empty bag. In this connection, [petitioners] are directed to deploy [respondent] within a reasonable period to one of its foreign principal for the same position he held prior to his illness.

WHEREFORE, the decision dated 28 April 2000 is MODIFIED. The award of total disability benefit in the amount of US$60,000.00 is deleted. [Petitioners] are ordered to deploy [respondent] to one of its foreign principal[s] for the same position.[22] (Emphasis and underscoring supplied)

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Respondent moved to reconsider the decision of the NLRC but the same was denied by Resolution[23] dated October 30, 2002.

In his petition for certiorari[24] before the Court of Appeals, respondent raised the following issues:

> [1.] WHETHER OR NOT A FIFTY THREE (53) YEAR OLD SEAFARER WHO HAD UNDERGONE A TRIPLE BY-PASS OPERATION CAN BE CONSIDERED AS ONCE AGAIN FIT TO WORK ON BOARD AN OCEAN GOING VESSEL, JUST BECAUSE THE COMPANY DESIGNATED PHYSICIAN SAY SO[.]
>
> [2.] DOES AN OFFER TO WORK ON BOARD AN OCEAN GOING VESSEL TO A FIFTY THREE (53) YEAR OLD SEAFARER WHO SUFFERED AND UNDERGONE TRIPLE BY-PASS OPERATION ABSOLVE THE EMPLOYER'S LIABILITY FOR DISABILITY COMPENSATION[?][25]

By Decision[26] dated August 31, 2004, the appellate court reversed that of the NLRC, ratiocinating as follows:

> While the Doctors Renato Abaya and Carter Hill thereafter certified that [respondent] is physically fit to work again, We note that this occurred only after [respondent] had already filed a claim for permanent disability. We cannot but agree with the [respondent] that with the proliferation of obviously biased company doctors whose loyalty rest completely upon the company they serve, their findings cannot be taken as gospel truth.
>
> In Wallem Maritime Services v. NLRC, [the] High Tribunal had this to say:
>
> "x x x (The) opinions of petitioner's doctors to this effect should not be given evidentiary weight as they are palpably self-serving and biased in favor of petitioners, and certainly could not be considered independent."
>
> Under Bureau Circular No. 5, Series of 1990, issued by the Department of Health to medical clinics and hospitals accredited to conduct medical examination of overseas contract workers and seafarers, those with ECG findings like myocardial ischemia, [infarction], 2nd and 3rd degree AV Block and other grave manifestation xxx and other illnesses which render the worker unemployable should be classified as Class D or unemployable.
>
> The circular leaves Us no choice but to conclude that [respondent] is no longer employable considering the kind of ailment he suffered and continues to suffer. We give judicial notice to the fact that no one fully recovers from a massive heart attack, and a person who has had a heart condition and has already suffered a heart attack is in danger of another attack anytime and absent any warning. [Respondent] therefore cannot be blamed if he is more cautious about his health and has become loathe to be deployed again. It should be remembered that [respondent] here is already 53 years old and has undergone a triple bypass operation during the term of his contract. His medical condition renders him unemployable as cook in a seafaring vessel. It is also important to note that such ailment may have been, in all probability, contracted during his employment with [petitioner]. And being such, he should not have been issued a work certification by company designated. His disability persists up to this very day and there is no showing that by some miracle, he has fully recovered from his ailment.
>
> In Wallem Maritime Services, Inc. v. NLRC, the Supreme Court had occasion to rule:"The POEA Standard Employment Contract is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must, therefore, be construed and applied fairly, reasonably and liberally in favor or for the benefit of the seamen and their dependents. Only then can its beneficent provisions can be fully carried into effect."

It is meet to point out that the Standard Employment Contract is not a limitation but a guaranteed protection to overseas contract workers.

4. That having been said, We find and so hold that there is no necessity for petitioner to seek the opinion of a third doctor pursuant to his employment contract, as it is very clear that it is not possible for [respondent] to go back to

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work. We take judicial knowledge of the fact that a cook's job is not exactly a walk in the park. A cook is exposed to constant heat and smoke, and the job may entail laborious manual tasks. In the case at bench, there is no disputing that [respondent] suffered a massive heart attack while pushing a rack of glass. What makes the job all the more difficult is that it is conducted in a moving ship, which makes for increased work-related stress. All these factors may exacerbate [respondent's] heart condition and expose him to the possibility of another attack. [Respondent's] refusal to go back to work and instead claim permanent disability benefits could not thus be considered unreasonable and impelled by nothing but greed but rather, justified by [respondent's] health considerations and a natural desire of every person to preserve his life for as long as possible. For being human, [respondent] should not be penalized.[27] (Emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration having been denied,[28] the present petition was filed faulting the appellate court in

> A.
>
> x x x FINDING THAT RESPONDENT'S PETITION FOR CERTIORARI WAS SUFFICIENT IN FORM AND SUBSTANCE IN COMPLIANCE WITH SECTION 1, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.
>
> B.
>
> . . . AWARDING PERMANENT DISABILITY BENEFITS TO RESPONDENT IN LIGHT OF THE PROVISIONS OF THE POEA STANDARD CONTRACT.
>
> C.
>
> . . . APPLYING THE "THIRD DOCTOR CLAUSE" OF THE POEA STANDARD CONTRACT.
>
> D.
>
> . . . FINDING THAT THE "RELEASE AND QUITCLAIM" EXECUTED AND SIGNED BY RESPONDENT IS NOT PROOF THAT THE LATTER HAS RECEIVED ALL BENEFITS TO WHICH HE IS ENTITLED.[29]

Petitioners argue that, among other things, the provisions on disability benefits operate only upon certification by the company-designated physician that the claiming seafarer is indeed disabled, hence, respondent is not eligible for an award of disability benefits as "he was certified fit for sea duty after the conduct of the last medical examination," and the finding of the American Outpatient Clinic during his pre-employment medical examination that respondent was unfit for sea duty, which finding was concurred in by Dr. Hill of HAL, was merely "initial."

Petitioners go on to argue that the significance of the findings of the company-designated physician cannot just be disregarded by an all-encompassing statement motivated by the excessive compassion for seafarers, for the POEA Standard Contract clearly provides that it is solely the company-designated physician who shall determine the fitness or degree of disability or injury of a seafarer for purposes of employment; and if respondent did not agree with the findings of the company-designated physician, he could have sought an opinion of a physician to rebut it.

The petition is bereft of merit.

Section 20 B, paragraph 3 of the POEA Standard Employment Contract reads:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
> 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.[30] (Emphasis supplied)

Contrary to petitioners' argument, the findings of the company-designated physician were not disregarded. As gathered from the records of the case, two company-designated physicians, Dr. Abesamis of the American Outpatient Clinic and HAL's Dr. Hill, found respondent to be unfit for sea duty. It was on the basis of such finding that respondent anchored his claim for disability benefits. There was no reason for respondent to seek the opinion of another physician because he was not contesting Doctors Abesamis and Hill's identical finding.

Petitioners' allegation that the diagnosis of respondent being "unfit" was merely "initial" fails. In HAL's correspondence with ULP on March 16, 1999, it reiterated its declaration that respondent was "permanently unfit" and even asked ULP to determine the partial disability percentage, it positing that permanent unfitness is different from permanent disability.

Notatu dignum is the correct observation of the appellate court in its above-quoted portion of its decision that it was only after respondent had filed a claim for permanent disability that Doctors Abaya and Hill declared him fit for sea duty.

But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body.[31] It is undisputed that from the time respondent suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.

That respondent was found to be "fit to return to work" by Clinica Manila (where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation does not matter. Crystal Shipping Inc., v. Natividad[32] teaches:

> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work. (Underscoring supplied)

WHEREFORE, the petition is DENIED.

Costs against petitioners.

SO ORDERED

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

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[1] Penned by Justice Romeo A. Brawner and concurred in by Justices Mariano C. del Castillo and Magdangal M. de Leon, Court of Appeals (CA) rollo, pp. 330-337.

[2] CA rollo, p. 378.

[3] National Labor Relations Commission (NLRC) records, p. 28.

[4] Id. at 5.

[5] Id. at 29.

[6] Id. at 30.

[7] Id. at 32-37.

[8] Id. at 37.

[9] Id. at 38.

[10] Id. at 85.

[11] Id. at 90.

[12] Id. at 86-87.

[13] Id. at 87.

[14] Id. at 90.

[15] Id. at 91.

[16] Id. at 92.

[17] Id. at 99.

[18] Id. at 3.

[19] Id. at 141-146.

[20] Id. at 154.

[21] Id. at 310-316.

[22] Id. at 314-316.

[23] Id. at 342-343.

[24] CA rollo, pp. 2-23.

[25] Id. at 9.

[26] Id. at 330-337.

[27] Id. at 334-336. (Citation omitted)

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[28] Id. at 378.

[29] Rollo, pp. 19-20.

[30] CA rollo, p. 228.

[31] Crystal Shipping Inc., v. Natividad. G.R. No. 154798, October 20, 2005 citing Gov't. Service Insurance System v. Cadiz, 453 Phil. 384, 389-390 (2003).

[32] Ibid.

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