PHILIPPINE TRANSMARINE CARRIERS, INC., GLOBAL NAVIGATION, LTD., PETITIONERS, VS. SILVINO A. NAZAM, RESPONDENT.

G.R. No. 190804. October 11, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Seafarer Silvino Nazam (respondent) was hired by petitioner Philippine Transmarine Carriers, Inc. (Transmarine) on behalf of its principal-co-petitioner Global Navigation, Ltd. for the position of Bosun under a 9-month contract,[1] with a salary of US$535 per month.

Respondent was deployed on August 26, 2004 at Ulsan, South Korea on board the vessel M/V Maersk Durban, but was repatriated to the Philippines twenty three days later or on September 18, 2004, pursuant to his handwritten letter[2] dated September 16, 2004 requesting that he be relieved. The letter stated, quoted verbatim:

> SEPT 16 2004
>
> TO MASTER: T.H. GEMULLA
> MAERSK DURBAN
>
> RELIEV [sic] REQUEST
>
> I AM BOSUN SILVINO A. NAZAM REQUEST MY
> RELIEVE BECAUSE OF PERSONAL REASONS
>
> (SGD)
>
> _____
> BOSUN SILVINO A. NAZAM

On October 5, 2004, respondent filed with the National Labor Relations Commission (NLRC) a complaint[3] for payment of disability benefits, sickness allowance, damages, and attorney's fees, alleging that the hostile working conditions at the vessel exposed him to humiliation and verbal and mental abuse from the Chief Officer and Master, causing him to suffer hypertension and depression.

Respondent further alleged that he was made to sign blank documents by the Master of the vessel; he was ousted from his post as Bosun; his request for medical assistance on reaching the port of Yokohama, Japan was not granted; and his request for post-employment medical examination upon repatriation was denied by petitioner Transmarine.

Three weeks after filing his complaint or on October 27, 2004, respondent consulted with an independent physician, Dr. Jesus Alberto Q. Poblete (Dr. Poblete), who diagnosed[4] him to be suffering from "Major Depression with Psychotic Features R/O Traumatic Disorder."

Dr. Raymond Rosales (Dr. Rosales) of the Metropolitan Hospital who examined respondent on March 19, 2005 diagnosed him too to be suffering from Depressive Disorder and issued a Medical Certification[5] that respondent

was "unfit for sea duty."

Petitioners maintained in its Position Paper[6] that respondent's repatriation was due to his letter-request to be relieved from work; and that respondent's alleged hypertension could not have been acquired during his brief stay on board the vessel.

By Decision[7] of August 29, 2006, Labor Arbiter Ramon Valentin C. Reyes found for respondent and directed petitioners to pay him permanent total disability benefits amounting to US$60,000; sickness allowance of US$2,140; and moral and exemplary damages of P50,000 each and 10% of the total award by way of attorney's fees.

In finding for respondent, the arbiter held that since respondent's pre-medical employment records showed that he was fit for sea duty, he could only have acquired the illnesses complained of during his duty at the vessel. The Arbiter added that while "major depression" is not listed as an occupational disease respondent had proven that it was work-related and the risk of contracting it was increased by the working conditions aboard the vessel.

On appeal, the NLRC set aside the Labor Arbiter's Decision by Decision[8] of January 31, 2008 and dismissed respondent's complaint, noting that respondent indeed made a request to be relieved; that respondent failed to undergo the mandatory post-employment medical examination; that respondent failed to show that his repatriation was due to a work-related illness; and that depression is not an occupational disease, hence, not compensable.

The NLRC further noted that respondent sought medical assistance only a month after his repatriation, and the certification issued by Dr. Poblete did not include a disability assessment. Respondent's motion for reconsideration was denied by Resolution[9] of April 25, 2008, hence, he appealed to the Court of Appeals.

By Decision[10] of September 30, 2009, the appellate court reversed the decision of the NLRC and reinstated that of the Labor Arbiter, holding that respondent's depression which rendered him unfit to work was a direct result of the demands of his shipboard employment and the harsh and inhumane treatment of the vessel's officers towards him.

Petitioners' motion for reconsideration was denied by the appellate court by Resolution[11] dated December 17, 2009, hence, the present petition for review on certiorari.

The petition is meritorious.

For an injury or illness to be duly compensated under the terms of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), there must be a showing that the injury or illness and the ensuing disability occurred during the effectivity of the employment contract. Additionally, Section 20(B) of the POEA-SEC, paragraph (3) requires:

> x x x x
>
> 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. (emphasis and underscoring supplied)

Respondent was thus required to undergo post-employment medical examination by a company-designated

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physician within three working days from arrival. He failed to comply with the requirement, however, without explanation or justification therefor. Hence, he forfeited his right to claim disability benefits.

Respondent's claim of having reported to petitioner Transmarine's office within three days from his arrival in the Philippines remains just that. As duly observed by the NLRC, respondent merely consulted a private practitioner more than one month after his arrival - three weeks after he had already filed his complaint for disability benefits; and he secured a medical certification that he was unfit for sea duty from another private physician only on March, 2005 or six months after his arrival.

Technicality aside, for a disease to be compensable Section 32-A of the POEA-SEC requires proof of the existence of the following conditions:

> SECTION 32-A OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> - The seafarer's work must involve the risks described herein;
>
> - The disease was contracted as a result of the seafarer's exposure to the describe risks;
>
> - The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
>
> - There was no notorious negligence on the part of the seafarer. (emphasis supplied)

Specifically with respect to mental diseases, for the same to be compensable, the POEA-SEC requires that it must be due to traumatic injury to the head[12] which did not occur in this case. While disability should be understood less on its medical significance but more on the loss of earning capacity, the appellate court's sweeping observations that "the hostile working environment and the emotional turmoil suffered by [herein] respondent from his employers caused him mental and emotional stress that led to severe mental disorder and rendered him permanently unable to perform any work," and that "his working condition increased the risk of sustaining" the illness complained of do not lie.

By respondent's claim, he became depressed due to the frequent verbal abuse he received from his German superiors within less than one month that he was on board the vessel. Aside from a "To whom it may concern" handwritten letter of respondent[13] attached to his Position Paper filed before the arbiter detailing the alleged instances of verbal abuse, which letter bears the alleged signatures of some of respondent's colleagues, respondent failed to proffer concrete proof that, if indeed he was subjected to abuse, it directly resulted in his depression.

WHEREFORE, the petition is GRANTED. The Court of Appeals Decision dated September 30, 2009 and the Resolution dated December 17, 2009 are REVERSED AND SET ASIDE and the National Labor Relations Commission Decision dated January 31, 2008 and Resolution dated April 25, 2008 dismissing respondent's complaint are REINSTATED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Annex "C" of Petition, rollo, p. 91.

[2] NLRC records, p, 36.

[3] Id. at 2.

[4] Id. at 63.

[5] Id. at 80.

[6] Id. at 16-32.

[7] Id. at 92-123.

[8] Id. at 443-449; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and (now Associate Justice of the Court of Appeals) Angelita A. Gacutan.

[9] Id. at 477- 479. Ibid.

[10] Id. at 76-87; penned by Associate Justice Juan Q. Enriquez and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[11] Rollo, pp. 89-90.

[12] SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

HEAD

Traumatic head injuries that result to:

- Apperture unfilled with bone not over three (3) inches without brain injury Gr.9

- Apperture unfilled with bone over three (3) inches without brain injury Gr.3

- Severe paralysis of both upper or lower extremities or one upper and one lower extremity Gr.1

- Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities. Gr.6

- Slight paralysis affecting one extremity producing slight difficulty with self-care activities Gr.10

- Severe mental disorder or Severe Complex Cerebral function disturbance or worker permanently unable to perform any work . . . . . Gr.

- Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance Gr.6

- Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant Gr.10

- Incurable imbecility Gr.1

(emphasis supplied)

[13] NLRC records, p. 61.

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