

YIALOS MANNING SERVICES, INC., OVERSEAS SHIPMANAGEMENT S.A., RAUL VICENTE PEREZ, AND MINERVA ALFONSO, PETITIONERS, VS. RAMIL G. BORJA, RESPONDENT.*G.R. No. 227216. July 04, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-227216/>**CAGUIOA, J:**

This Petition for Review on Certiorari[1] (Petition) filed by Yialos Manning Services, Inc. (YMSI), Overseas Shipmanagement S.A. (OSSA), Raul Vicente Perez, and Minerva Alfonso, (collectively, petitioners), assails the Decision[2] dated May 18, 2016 (Assailed Decision) and Resolution[3] dated September 14, 2016 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 126554, which affirmed the Resolutions dated May 15, 2012[4] and July 9, 2012[5] of the National Labor Relations Commission[6] (NLRC) granting permanent total disability benefits and attorney's fees to herein respondent Ramil G. Borja (Borja).

The Facts

The facts, as summarized by the CA, are as follows:

[Borja] was employed as oiler by YMSI, for and on behalf of its principal OSSA, for a period of nine (9) months. He boarded the vessel M/V Thetis on April 20, 2010. On November 9, 2010, after doing maintenance work and lifting a metal plate, he felt "pain in the buttocks radiating down the back of his leg." He was referred to a company physician in Taixing, China, who diagnosed him to have inter-vertebral protrusion. He was declared unfit to work for three (3) months and was advised for "temporary palliative care" or bed rest for one month. He was medically repatriated on November 25, 2010.

[Borja] reported to YMSI's office, and he was referred to Marine Medical Services in Metropolitan Medical Center (MMC) on November 27, 2010 and was diagnosed by Dr. Robert D. Lim to have "lumbar strain." He was advised to continue with his medication and to undergo physical therapy in a hospital nearer to his place of residence or at University of Perpetual Help - Dr. Jose Tamayo Medical Center (UPH-DJTMC) in Binan, Laguna, but he reported to Dr. Lim every month for re-evaluation. Respondent also underwent electromyograph (EMG) test at the UPH-DJTMC on January 27, 2011 with the following findings: "chronic bilateral L5-S1 radiculopathies probably secondary to a lumbar canal stenosis."

On April 15, 2011, Dr. William Chuasuan of MMC issued a disability rating "grade 11 - slight rigidity of 1/3 [loss of] motion or lifting power of the trunk." [Borja], nevertheless, continued his therapy at UPH-DJTMC because he was still suffering from back pain. He then demanded for reimbursement of his medical expenses and for payment of total permanent disability, but YMSI denied the claims. Hence, private respondent filed a complaint for payment of salaries/wages for the unexpired portion of the contract, disability benefits and for moral and exemplary damages, as well as, attorney's fees against petitioners with the Labor Arbiter on July 7, 2011.

During the conciliation hearing, the parties agreed to refer private respondent for a third (3rd) medical opinion but private respondent allegedly backed out of the agreement.

On August 20, 2011, private respondent consulted Dr. Manuel C. Jacinto, Jr. at Sta. Teresita General Hospital,

Quezon City, who diagnosed him with "chronic low back pain with L5-S1 radiculopathy (9 months)." He was advised for "continuous therapy and repeat MRI" and declared "physically unfit to return to work" or suffering from "total permanent disability."

x x x x

On February 9, 2012, Labor Arbiter Cheryl M. Ampil rendered a decision granting [Borja]'s claim for total permanent disability. The Labor Arbiter held that the test of determining permanent total disability is the inability to perform customary work for more than 120 days, which may be extended until 240 days at the option of the petitioner or the company-designated physician; that petitioners did not extend the period of [Borja]'s medical treatment, but his disability was assessed only on April 15, 2011 or 149 days after repatriation, hence, [Borja] is entitled to permanent total disability of US\$60,000.00 as well as to attorney's fees, because he was compelled to litigate and to incur expenses by reason of petitioner's failure to pay the disability benefits. x x x

x x x x

Petitioners appealed to the NLRC asserting that [Borja]'s disability is not determined by mere lapse of the number of days, but by medical findings, by law, and contracts; that the disability grading of the company designated physician is the standard in measuring the disability of a seafarer; that the POEA Standard Employment Contract does not embody a permanent unfitness clause that would entitle the seafarer to full disability; that the fact that complainant was constrained to litigate to protect his interest does not justify the award of attorney's fees in the absence of malice or bad faith, hence, petitioners prayed for the reversal of the decision and dismissal of the complaint.

The NLRC dismissed the appeal on May 15, 2012. It sustained [Borja]'s entitlement to total and permanent disability and attorney's fees. A motion for reconsideration was filed, but the NLRC denied the same on July 9, 2012.[7]

Aggrieved, petitioners elevated the case to the CA via petition for certiorari.

The CA Decision

In the Assailed Decision, the CA dismissed the certiorari petition finding no grave abuse of discretion on the part of the NLRC. Citing *Kestrel Shipping Co. v. Munar*,[8] the CA held that Borja's disability was considered total and permanent as he was still undergoing therapy even after the expiration of the 240-day period. There was no showing that he was able to resume sea duty or became employed after filing the complaint. Due to his medical condition, Borja was unable to engage in gainful employment for more than 240 days.

On the issue of attorney's fees, the CA affirmed the NLRC findings that Borja was entitled thereto as he was compelled to litigate due to petitioners' failure to satisfy his valid claim for permanent total disability benefits.

The Petition

Thus, petitioners elevated the case before the Court. Petitioners maintain that Borja is not entitled to total permanent disability benefits as his disability is only grade 11, as certified by the company-designated physician. The petitioners argue that the CA committed reversible error in holding that Borja was entitled to total permanent disability benefits merely because the medical certification was issued after the 120 days.

Borja filed his Comment[9] on June 19, 2017, maintaining his entitlement to total permanent disability benefits and attorneys' fees.

Issue

Whether Borja is entitled to total permanent disability benefits.

The Court's Ruling

The Court is once again presented with the issue of seafarer's disability compensation when the medical pronouncements of the company-designated physician and the seafarer-appointed physician are conflicting.

There is no dispute as to whether Borja's condition is work-related. The pivotal issue for resolution is the degree of disability to determine the amount of benefits due to him. Borja claims that his disability is total and permanent, as certified by his appointed physician. On the other hand, petitioners claim that Borja's ailment is only "Grade 11" as diagnosed by the company-designated physician.

Borja's employment with petitioners is covered by the Philippine Overseas Employment Administration's Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships, commonly referred to as the POEA-SEC, which both parties signed on April 8, 2010.[10] As a contract, the same is considered the law between the parties.[11]

The last paragraph of Section 20(B)(3) of the POEA-SEC provides for the solution to this common dispute:

Section 20.

B. Compensation and Benefits for Injury or Illness

x x x x

3. x x x 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 x x x.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and seafarer. The third doctor's decision shall be final and binding on both parties.

Thus, in case there are conflicting findings as to the health condition of the seafarer, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding.

In *Marlow Navigation Philippines, Inc. v. Osias*,^[12] the Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

In view of this, the NLRC promulgated NLRC En Banc Resolution No. 008-14,^[13] which directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

The duty to signify the intention to resolve the conflict by referral to a third doctor is upon the seafarer as he is the one contesting the findings of the company-designated physician. In *Bahia Shipping Services, Inc. v. Constantino*,^[14] the Court held:

As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr.

Lim's assessment of Constantino's health should stand. Thus, the CA's conclusion that Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.[15]

Thus, without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld. The Court ruled similarly in *Vergara v. Hammonia Maritime Services, Inc.*[16] (*Vergara*):

The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.

Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.[17] (*Emphasis supplied*)

In the Petition,[18] petitioners allege that the parties agreed during the mandatory conference before the Labor Arbiter to seek the opinion of a third doctor. However, this did not materialize because on the next scheduled conference, Borja refused to submit to a third doctor and demanded the payment of total permanent disability benefits. Thus, the conciliation proceedings were terminated, and the parties were directed to submit their position papers.

In his Comment[19] to the Petition, Borja did not deny this. However, he reasoned that he was not obliged to comply with the conflict-resolution procedure under Section 20 (B)(3) of the POEA-SEC because he is already considered totally and permanently disabled by operation of law because the company-designated physician did not declare him fit to work within the 120-day and 240-day periods.

Borja's contention is untenable. Under Section 32 of the POEA-SEC, only those illnesses or injuries classified as Grade 1 shall constitute total permanent disability. Thus, those from Grade 2 to Grade 14 are considered as partial permanent disability, subject to the schedule of rates also provided in the POEA-SEC. The lapse of the 120-day or 240-day period does not automatically entitle the seafarer to a total permanent disability. It is the company-designated physician who will certify him as either fit to work or classify his condition as partial or total permanent disability within the said periods.

The applicable procedure and periods have been clarified in the case of *Vergara*:

[T]he 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.[20] (*Emphasis supplied*)

In other words, the seafarer's condition is considered to be temporary total disability for the duration of his treatment which shall have an initial maximum period of 120 days. If the seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician

must make an assessment of the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's disability has become partial or total permanent.

Notably, the POEA-SEC itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. Section 20(B)(6) thereof provides:

In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphasis supplied)

However, if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises. In Vergara, the Court held:

[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.[21] (Emphasis and underscoring supplied)

In the present case, Borja arrived in the Philippines on November 25, 2010. He had continuous check-ups at Marine Medical Services of Metropolitan Medical Center (MMC). On March 11, 2011, he had a follow-up check-up where he was advised to continue physical therapy and medications. He was advised to return on April 1, 2011 for re-evaluation.[22] Thus, the 120-day period (ending on March 25, 2011) was justifiably-extended as Borja required further medical treatment. On April 15, 2011 the company-designated physician, Dr. William Chuasuan, Orthopedic Surgeon of MMC, issued a disability rating of "Grade 11 - slight rigidity of 1/3 loss of motion or lifting power of the trunk" after Borja's follow up check-up.[23] Thus, the company-designated physician's assessment was made within the allowed 240-day period. Based on the foregoing jurisprudence, therefore, such assessment must be upheld, in the absence of a contrary finding from a third doctor agreed upon by both parties.

On this note, the Court echoes its ruling in *INC Shipmanagement, Inc. v. Rosales*[24]:

It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.

In light of these distinctions, to confuse the concepts of permanent and total disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits.[25]

The rulings of the LA and the NLRC were seriously flawed because they were issued in complete disregard of the conflict-resolution procedure laid down in the POEA-SEC. This case could have been resolved at the conciliation stage with the referral of the matter to a third doctor whose findings would be binding on both parties. And, if the seafarer refused the referral to a third doctor, the complaint should have been dismissed because it is the company-designated physician's opinion that prevails. Significantly, the LA and NLRC decisions did not discuss the disregard of the procedure in obtaining a third opinion. In turn, in affirming the findings of the labor tribunals, the CA committed reversible error.

Thus, the Court is compelled to grant the Petition. In summary, in case there is a conflict between the medical findings of the company-designated physician and the seafarer-appointed physician as to the disability rating of the seafarer, the parties must comply with the conflict-resolution procedure mandated under the POEA-SEC. The seafarer must be the one to signify his intent to refer to a third doctor as he is the party contesting the findings of the company-designated physician. Without the opinion of the third doctor, the medical pronouncements of the company-designated physician prevail.

As certified by the company-designated physician, Borja's disability is Grade 11, "slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk." Accordingly, under the Schedule of Disability of Allowances in Section 32 of the POEA-SEC, the compensation for such disability rating is 14.93% of US\$50,000.00 or US\$7,465.00.

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Decision dated May 18, 2016 and Resolution dated September 14, 2016 of the Court of Appeals in CA-G.R. SP No. 126554 are SET ASIDE. The respondent is DECLARED to be entitled to, and petitioners Yialos Manning Services, Inc. and Overseas Shipmanagement S.A., are adjudged solidarity liable for, the amount of US\$7,465.00, or its peso equivalent. The respondent is hereby DIRECTED to return to the petitioners any amount received in excess thereof.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Peralta, Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.

[1] Rollo, pp. 25-62.

[2] Id. at 64-73. Penned by Associate Justice Myra V. Garcia Fernandez, with Associate Justices Rosmari D. Carandang and Mario V. Lopez concurring.

[3] Id. at 75-76.

[4] CA rollo, pp. 34-47. Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino concurring.

[5] Id. at 48-49.

[6] NLRC LAC No. 03-000281-12/NLRC OFW CASE No. (M) 07-10393-11.

[7] Rollo, pp. 65-68.

[8] 702 Phil. 717 (2013).

[9] Rollo, pp. 115-142.

[10] CA rollo, pp. 111-117.

[11] *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839 (2008).

[12] 773 Phil. 428 (2015).

[13] Directing Labor Arbiters to Give Parties 15 Days to Secure the Services of a Third Doctor and 30 Days for Doctor to Submit Reassessment, dated November 12, 2014.

[14] 738 Phil. 564 (2014).

[15] Id. at 576.

[16] 588 Phil. 895 (2008).

[17] Id. at 914.

[18] Rollo, pp. 30-31.

[19] Id. at 134-137.

[20] Supra note 16, at 912.

[21] Id. at 913.

[22] CA rollo, p. 86.

[23] Id. at 87.

[24] 744 Phil. 774 (2014).

[25] Id. at 786.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.