

TEODORO B. BUNAYOG, PETITIONER, VS. FOSCON SHIPMANAGEMENT, INC., /GREEN MARITIME CO., LTD., /EVELYN M. DEFENSOR, RESPONDENTS.*G.R. No. 253480. April 25, 2023*

Ponente: GAERLAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-253480/>**GAERLAN, J.:**

For the Court's consideration is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Teodoro B. Bunayog (petitioner) seeking to assail the Court of Appeals (CA) Decision[2] dated February 21, 2020 and the Resolution[3] dated September 16, 2020 in CA-G.R. SP No. 154603, which affirmed the National Labor Relations Commission's (NLRC) Decision[4] dated September 29, 2017 which, in tum, dismissed the petitioner's complaint for total and permanent disability benefits, transportation expenses and attorney' s fees.

The Antecedents

Petitioner was engaged by Foscon Shipmanagement, Inc., (Foscon) on behalf of its foreign principal, Green Maritime Co., Ltd. (Green), (collectively, respondents) as a chief cook onboard the vessel MIT Morning Breeze for a period of nine months. On July 31, 2016, while on board the vessel, petitioner experienced cough, fever and difficulty in breathing. On August 2, 2016, petitioner was brought to a clinic in Japan where he was diagnosed with left lung pneumonia. He was declared by the doctor to be unfit for sea duty. Thus, he was repatriated to the Philippines on August 4, 2016 and referred immediately to a company-designated physician. After evaluation, petitioner was diagnosed to be suffering from pneumonia with recurrent pleural effusion, left s/p thoracentesis, left. Petitioner's treatment lasted until September 28, 2016. On such date, one of the company-designated physicians, Dr. Percival P. Pangilinan, declared petitioner fit to work.[5]

Petitioner, thereafter, consulted a physician of his choice, Dr. Noel C. Gaurano (Dr. Gaurano), who declared him unfit for sea duty due to his pleural effusion.[6]

On November 10, 2016, petitioner sent a letter to respondent Evelyn M. Defensor (Evelyn), president of Foscon, informing her of the findings of his doctor and of his willingness to undergo another medical examination to confirm his permanent disability. No response, however, was made on the part of respondents.[7]

Subsequently, petitioner filed a complaint for total and permanent disability benefits, among others. Petitioner averred that he is entitled to a total and permanent disability benefit in the amount of US\$60,000.00, since he can no longer perform his tasks as a chief cook.[8]

In response, respondents averred that petitioner is not entitled to any disability compensation considering that the company-designated physician had already declared him fit to work; and that as between the findings of the company-designated physician and the petitioner's physician of choice, the former's findings should prevail since petitioner's doctor examined him only once.[9]

The Labor Arbiter Ruling

In a Decision[10] dated June 30, 2017, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA gave credence to the findings of the company-designated physician over that of petitioner's physician of choice. The LA ratiocinated that petitioner's doctor based his conclusion that petitioner was no longer fit to work based on popular observation and findings of patient's responses to treatment, not on a specific study of petitioner's condition and responses to medical treatment.[11] Meanwhile, the company-designated physician's declaration of petitioner's fitness to work was founded on petitioner's specific responses to the step-by-step medical interventions administered on his condition. Accordingly, there was no reason to set aside the findings of the company-designated physician.[12] The LA, thus, disposed of the case in this wise:

WHEREFORE, premises considered, the instant case is hereby Dismissed for lack of merit.

SO ORDERED.[13]

Aggrieved, petitioner filed a Notice of Appeal and Memorandum of Appeal[14] with the NLRC.

The NLRC Ruling

On September 29, 2017, the NLRC issued a Decision[15] affirming the findings of the LA. Similar to the conclusion of the LA, the NLRC gave no probative value to the assessment made by petitioner's physician of choice.[16] The NLRC likewise ruled that despite respondents' failure to seek a third doctor after petitioner signified its intent to undergo another examination to confirm his condition, it does not necessarily redound to the benefit of petitioner, that is, his physician's assessment should be binding. The NLRC ratiocinated that "the appointment of a third doctor requires mutual agreement of the employer and the seafarer, and in case the parties failed to agree on a third doctor, the seafarer can initiate a complaint before the [LA] or NLRC, and the case will be resolved based on its merit." [17] The fallo of the NLRC Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Labor Arbiter's Decision dated June 30, 2017 in NLRC NCR Case No. (M) 12-15998-16 is hereby AFFIRMED.

SO ORDERED.[18]

Undaunted, petitioner filed a petition for review with the CA assailing the NLRC Decision.

The CA Ruling

The CA, in the assailed Decision[19] dated February 21, 2020, dismissed the petition and affirmed the findings of the LA and the NLRC. The CA disregarded the assessment made by petitioner's physician considering that the physician did not require petitioner to undergo medical tests; nor was the assessment based on petitioner's response after a specific treatment was administered to him.[20] The CA, thus, concluded:

WHEREFORE, the Amended Petition for Ce1tiorari is DENIED for lack of merit. The 29 September 2017 Decision and 29 November 2017 Resolution of the National Labor Relations Commission in NLRC LAC No. 08-000519-17 (NLRC NCR Case No. (M)12-15998-16) are hereby AFFIRMED.

SO ORDERED.[21]

Petitioner, thereafter, moved for reconsideration. It was, however, denied in a Resolution[22] dated September 16, 2020.

Hence, the instant petition wherein petitioner raises the following issues:

Issue

I.

THE [CA] GRAVELY ERRED IN NOT AWARDING [PETITIONER] TOTAL AND PERMANENT DISABILITY BENEFITS;

II.

THE [CA] GRAVELY ERRED IN NOT AWARDING ATTORNEY'S FEES AND MORAL DAMAGES.[23]

The Court's Ruling

The petition is bereft of merit.

At the outset, entitlement to disability benefits by a seafarer is a matter governed, not only by medical findings but also, by law and by contract. The material statutory provisions are Articles 197-199 (formerly Articles 191 to 193) under Chapter VI (Disability Benefits), Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Memorandum Circular No. 10, Series of 2010, Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC) also known as the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean- Going Ships (the governing POEA-SEC at the time petitioner was employed by respondents in 2016), and the parties' Collective Bargaining Agreement, bind the seafarer and his employer to each other.[24]

Section 20(A), paragraph 3 of the 2010 POEA-SEC reads in part:

3. x 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 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. (Emphasis supplied)

This provision requires that, after medical repatriation, the company- designated physician must assess the seafarer's fitness to work or the degree of his disability. If the seafarer disagrees with the findings of the company- designated physician, the seafarer may choose his own doctor to dispute such findings. If the findings of the company-designated physician and the seafarer's doctor of choice are conflicting, the matter is then referred to a third doctor, whose findings shall be binding on both parties.[25]

This provision clearly gives the parties the opportunity to settle, without the aid of the labor tribunals and/or the courts, the conflicting medical findings of the company-designated physician and the seafarer's physician of choice through the findings of a third doctor, mutually agreed upon by the parties.

The rationale for this rule is laid out in the case of *Transocean Ship Management (Phils.), Inc. v. Vedad*,[26] thus:

x x x it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the

possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20(B)(3) of the POEA-SEC quoted above.[27]

Referral to a third doctor is mandatory, and failure of the seafarer to comply therewith is tantamount to a breach of the POEA-SEC

In a plethora of cases, it was held that referral to a third doctor is mandatory in disability claims such that should the seafarer fail to comply therewith, he or she would be in breach of the POEA-SEC, and, as a consequence, the assessment of the company-designated physician shall be final and binding.[28]

In the case of *INC Navigation Co. Philippines, Inc. v. Rosales*,[29] it was made clear that:

This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases .among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp.*, *Santiago v. Pacbasin Shipmanagement, Inc.*, *Andrada v. Agemar Manning Agency*, and *Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[30] (Emphasis supplied; citations omitted)

It is, therefore, settled that in cases where the seafarer fails to signify his or her intent to refer the conflicting medical findings to a third doctor, the company-designated physician's findings shall be final and binding. However, there is an exception to this rule.

In *Dionio v. Trans-Global Maritime Agency, Inc.*[31] (*Dionio*), We stressed that when the company-designated physician's medical conclusion is found to have been issued with a clear bias in favor of the employer, i.e., lacking in scientific basis, or unsupported by the medical records of the seafarer, the inherent merits of the respective medical findings shall be considered by the tribunals or court, to wit:

Thus, while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer.

Indeed, the rule that the company-designated doctor's findings shall prevail in case of non-referral of the case to a third doctor is not a hard-and- fast rule as labor tribunals and the courts are not bound by the medical findings of the company-doctor. Instead, the inherent merits of the respective medical findings shall be considered.[32]

In this case, upon his repatriation on August 4, 2016, petitioner was immediately referred to a company-designated physician. After evaluation, he was diagnosed to be suffering from "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left." Petitioner, from his repatriation on August 6, 2016 to September 28, 2016, underwent a series of medical treatments. On September 28, 2016, he was declared by the company-designated physician fit to work.[33]

Petitioner, thereafter, consulted his physician of choice, Dr. Gaurano, who declared him unfit for sea duty.[34]

On November 10, 2016, petitioner, through counsel, sent a letter to Evelyn, president of Foscon, informing her

that he consulted an independent doctor, who found that he was already unfit to resume his work as a seaman. Petitioner likewise signified his willingness to undergo another test or examination to confirm his present disability.[35]

From the established facts, it is clear that petitioner complied with the procedural requirements set forth above. After consulting his own physician, who, contrary to the findings of the company-designated physician, declared him unfit for sea duty, he signified his intention to undergo another test or examination to confirm his present condition. Simply, he informed respondents of his willingness to seek a third doctor. Interestingly, respondents failed to respond to the letter. Thus, petitioner was obliged to file a complaint for disability benefits.

Moreover, it is also settled that once the seafarer notifies his or her employer that he or she intends to refer the conflict to a third doctor, the burden shifts to the employer to complete the process of referral to a third doctor so that, once and for all, the medical assessment of the seafarer will be put to rest.[36]

However, what if the employer refuses to complete the third doctor referral process or ignores the request or demand of the seafarer, such as in the instant case?

Before answering this, We first need to determine what should be the contents or attachments of the written request or demand of the seafarer for a third doctor referral before the employer is obligated to put the process in motion.

The seafarer must signify his intent to refer the conflicting medical findings to a third doctor through writing and attach a copy of the medical report or abstract of his physician, or at the very least indicate its contents therein, to be considered valid

In *Benhur Shipping Corp. v. Riego*[37] (*Benhur*), We ruled that the written request or demand to refer the conflicting medical findings to a third doctor does not need to be accompanied by the medical report or opinion of the seafarer's physician of choice. A mere "statement regarding the seafarer's fitness to work OR the disability rating," is sufficient.[38] The reason for such pronouncement is that:

x x x it was neither stated nor required therein that when the seafarer sends a request for a referral to a third doctor to the employer, the seafarer must mandatorily attach the medical report of his own medical doctor to such request. Notably, it is not the employer who will assess the medical report of the seafarer's chosen physician; rather, it will be the labor tribunals where the complaint for disability benefits is filed that would assess the medical report.[39]

We, however, need to further clarify the *Benhur* ruling on this particular issue.

Benhur dismissed the fact that it was the third doctor, mutually agreed upon by the parties, who would first make an assessment not only on the medical findings of the company-designated physician but also that of the seafarer's physician of choice. Without the medical report or medical abstract on the seafarer's condition, how could the third doctor make an exhaustive assessment of the seafarer's condition and arrive at a final and binding medical conclusion?

Furthermore, without attaching to the written request or demand, or even indicating therein the contents of the medical report or the medical abstract of the seafarer's condition, how could the employer know whether the seafarer was indeed examined by his doctor of choice and that his claim of a contrary finding by his purported doctor has basis? Needless to state, it is not far-fetched that the seafarer may just indicate in his written request or

demand that his doctor of choice found him unfit for sea duty, which is contrary to the findings of the company-designated physician, just to put the third doctor referral process in motion even though the seafarer was actually not subjected to a medical examination by a doctor of his choice.

Thus, to avoid being abused by the seafarer, there should be a safeguard. Attaching the medical report or medical abstract, or at the very least, indicating in the written request or demand the contents thereof would serve as a deterrent from such abuse. This will further discourage seafarers from simply submitting doubtful, incomplete, and unsupported contrary assessments from his/her doctor of choice. The seafarer would also be compelled to undergo a comprehensive medical examination and treatment in order for his/her doctor to arrive at an exhaustive medical report or abstract.

Finally, it is settled that the company-designated physicians must furnish their assessment to the seafarer concerned; that is to say that the seafarer must be fully and properly informed of his/her medical condition, including inter alia, the results of his/her medical examinations, the treatments extended to him/her, the diagnosis, and prognosis, if needed. [40] Just as the seafarer must be fully informed of the company-designated physician's findings, the employer, in this case, the respondents, has the similar right to be sufficiently informed by the seafarer of the contrary findings of his/her doctor. Hence, the need to attach to the written request or demand the medical report or abstract of the seafarer's doctor.

We, therefore, hold and so rule that only by attaching to the written request or demand the medical report or the medical abstract of his physician or indicating therein the contents thereof, may a seafarer be deemed to have duly and fully disclosed to the employer the contrary assessment of his/her own doctor.

Corollarily, when a seafarer signifies his/her intent to refer the case to a third doctor through a written request or demand, without attaching the required medical report or medical abstract from his/her physician, or at the very least, indicating therein the contents of the medical report, the employer has the option to refuse, or even ignore the written request or demand, without violating the pertinent provision of the POEA-SEC.

In such a case, the tribunals and the courts must follow the general rule that the company-designated doctor's assessment should prevail. However, as held in *Dionio*, when the company-designated physician's findings lack scientific and medical basis, the tribunals and courts may still consider the inherent merits of the respective medical findings of the company-designated physician and the seafarer's doctor of choice.

On the other hand, when a seafarer's written request or demand is accompanied by the medical report or medical abstract of his physician of choice, the employer has no other option but to initiate the third doctor referral process. Simply put, the employer is required to make and send a written reply to the written request or demand acceding thereto and putting into motion the procedure for the referral to a third doctor.

In addition, We deem it necessary to give the employer a certain period, i.e., 10 days upon receipt of the seafarer's written request or demand, to serve a written reply to the seafarer in response to the written request or demand for the immediate resolution of the conflicting assessment of their respective doctors. Although the Labor Code and the POEA-SEC do not expressly grant the Court the power to impose such period, there is a need to prescribe a period to reply to the written request or demand as it is not only reasonable and practical but also in line with the conflict-resolution mechanism under Section 20(A)(3) of the POEA-SEC, which allows the parties to settle disability claims voluntarily at the parties' level more speedily and without delay.

Furthermore, if the employer agrees to refer the seafarer's condition to a third doctor, the parties should be given a specific period to complete the third doctor referral procedure. We are thus, inclined to adopt the directive of the NLRC En Banc to its LAs as enunciated in NLRC En Banc Resolution No. 008-14,[41] to wit:

x x x The Commission, in line with its mission to resolve labor disputes involving Seafarers in the fairest, quickest, least expensive and most effective way possible, 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.[42]

Accordingly, after an affirmative response from the employer, the parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment.

In this case, records show that after undergoing a medical examination conducted by his physician of choice (Dr. Gaurano), petitioner, through counsel, sent a written request[43] to respondents signifying his intention to undergo another test or examination to confirm his present condition. He also attached to the letter the medical report[44] of Dr. Gaurano, where he was found to be unfit for sea duty. By doing so, petitioner duly and fully disclosed to respondents the contrary assessment of his own doctor and tendered his willingness to refer the contradicting medical findings to a third doctor. It is clear, therefore, that petitioner made a valid written request. Notwithstanding, respondents failed to even respond to petitioner's request for a third doctor referral.

We now ask again the question, what happens when the seafarer tenders a valid request to refer the conflicting findings of the company-designated physician and his physician of choice to a third doctor, and the employer refuses to accede to such request?

In such a case, the seafarer acquires the right to validly insist on an assessment different from that made by the company-designated physician and file a complaint against the employer. This was Our pronouncement in the case of *Maersk-Filipinas Crewing, Inc. v. Alferos*,[45] viz.:

The need for the evaluation of the respondent's condition by the third physician arose after his physician declared him unfit for seafaring duties. He could not initiate his claim for disability solely on that basis. He should have instead set in motion the process of submitting himself to the assessment by the third physician by first serving the notice of his intent to do so on the petitioners. There was no other way to validate his claim but this. Without the notice of intent to refer his case to the third physician, the petitioners could not themselves initiate the referral. Moreover, such third physician, because he would resolve the conflict between the assessments, must be jointly chosen by the parties thereafter. Unless the respondent served the notice of his intent, he could not then validly insist on an assessment different from that made by the company-designated physician. This outcome, which accorded with the procedure expressly set in the POEA-SEC, was unavoidable for him, for, as well explained in *Hernandez v. Magsaysay Maritime Corporation*:

Under Section 20 (A) (3) of the 2010 POEA-SEC, "[i]f 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." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it. [46] (Emphasis supplied, underlining and citations omitted)

Upon the filing of the complaint, however, the parties are given another opportunity to refer the seafarer's condition to a third doctor, whose findings shall be final and binding between the parties.

NLRC En Banc Resolution No. 008-14
requires all LAs, during mandatory
conference, to give the parties a

chance to secure the services of a third doctor

The NLRC En Banc issued Resolution No. 008-14 wherein it directs all LAs, during mandatory conference, to give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.[47]

In this case, upon the filing of the complaint, and during the mandatory conference, the records do not show whether the LA required the parties to institute the third doctor referral procedure. Even if there was such a directive from the LA, it would seem that the parties still failed to refer petitioner's condition to a third doctor which led to a full-blown hearing before the LA.

We, however, deem it necessary to further lay down rules in case where there is a directive from the LA to refer the seafarer's condition to a third doctor, but one of the parties refuses to give heed to such directive. Thus, if the seafarer refuses to comply with the directive of the LA, such refusal should be taken against him/her.

On the other hand, if it is the employer who, despite the LA's directive, refuses to refer the seafarer's condition to a third doctor, such refusal, as well as the employer's failure to respond to the seafarer's valid written request or demand for a third doctor referral should be taken against the employer.

The employer's failure to respond to the seafarer's valid request to refer the conflicting medical findings to a third doctor is a violation of the POEA-SEC

The Court, in *Reyes v. Jebsens Maritime, Inc.*[48] (*Reyes*), ruled that in case the employer refuses or ignores the written request or demand of the seafarer for a third doctor referral, the findings of the company-designated physician cannot be automatically deemed conclusive and binding. Instead, the court or tribunals must weigh the inherent merits of the medical findings presented by both sides.[49]

Then came *Benhur*. *Benhur* followed the ruling in *Reyes*. Similar to the *Reyes* case, the employer in *Benhur* refused to initiate referral to third doctor despite an adequate and valid request from the seafarer. The Court then concluded that:

Indeed, when the employer fails to act on the seafarer's valid request for referral to a third doctor, the tribunals and courts are empowered to conduct its own assessment to resolve the conflicting medical opinions of the company-designated physician and the seafarer's chosen physician based on the totality of evidence. The employer simply cannot invoke the conclusiveness of the company-designated physician's medical opinion vis-a-vis the seafarer's chosen physician's medical opinion when it is because the employer's own inaction and neglect that the medical assessment was not referred to a third doctor.[50] (Emphasis supplied)

In the more recent case of *Ledesma v. CF Sharp Crew Management, Inc.*[51] (*Ledesma*), the Court applied the ruling in *Reyes* and *Benhur*. In that case, the employer again failed to respond despite receipt of the seafarer's demand letter to refer the conflicting medical claims to a third doctor. The Court was, thus, constrained to resolve the conflicting findings as to the seafarer's fitness to resume sea duty, as stated in the final assessment of the company-designated physician and the medical certificate of the seafarer's physician of choice.[52]

It is evident from the decisions of *Reyes*, *Benhur*, and *Ledesma*, that the employer's non-compliance with the conflict-resolution procedure, as mandated by the POEA-SEC, merely gives the tribunals and the courts the power to weigh the conflicting medical assessments of the employer's physician and that of the seafarer. In other words, the rulings in *Reyes*, *Benhur*, and *Ledesma* do not impose sanctions on employers who fail and/or refuse to

acquiesce to a valid request for referral to a third doctor by a seafarer. Instead, the employers, who deviate from such mandatory rule are "rewarded."

To recall, in such a case, instead of imposing sanctions on the employer, the tribunal and the courts will just conduct their own assessment to resolve the conflicting medical claims of the parties based on the findings of the parties' respective doctors. Since, more often than not, the employers are in a better position to defend the medical assessment of their physicians before the tribunals and the courts, the tribunals and courts often favor the findings of the employer's doctors. Simply, despite non-compliance with the mandatory rule, the company-designated physician's findings are upheld and the employers are rewarded. The prevailing jurisprudence clearly encourages employers to simply ignore or deny the seafarer's request which will then leave the hapless seafarer with no other option but to institute a complaint against the employer.

This should not be countenanced. This obvious and unfair situation needs to be rectified. There is, likewise, a need to balance the rights and obligations of the seafarer and the employer under the POEA-SEC. This was the essence of the Dissenting Opinion of the Honorable Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) in *Benhur*.

In his Dissenting Opinion, Justice Caguioa explains:

x x x when the non-compliance with the conflict resolution mechanism is due to the fault of the seafarer, the medical assessment of the company-designated physician is deemed conclusive and binding. However, when the failure to comply is due to the fault of the employer, the medical findings of the seafarer's doctor shall be conclusive and binding against the employer. The courts are obliged to uphold the conclusive and binding findings unless the same are tainted with bias or not supported by medical records or lack scientific basis, in which case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence.[53]

Simply put, Justice Caguioa opines in *Benhur* that because the employer failed to initiate the referral of the physicians' conflicting findings to a third doctor, the employer violated the POEA-SEC; as a consequence, the findings of the seafarer's physician should be upheld and be binding between the parties unless the same are tainted with bias, not supported by medical records, or lack scientific basis. In such a case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence.

Justice Caguioa's Dissenting Opinion in *Benhur* is clearly more in line with justice, equity, and the general standard of fairness. It is more consistent with the Court's constitutional mandate to afford full protection to labor. Needless to state, it gives true meaning and wisdom to the provision of the POEA-SEC.

Moreover, Justice Caguioa's position in his Dissenting Opinion would discourage and even forbid employers from ignoring and refusing to acquiesce to the seafarer's valid request to refer the conflicting medical findings to a third doctor. In other words, in order not to incentivize the employer for its failure to respond or assent to the seafarer's valid request for a third doctor referral, the findings of the seafarer's physician of choice should be considered final and binding. An exception to this rule is when the seafarer's physician's findings "are tainted with bias or not supported by medical records or lack scientific basis, in which case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence." [54]

In the present case, to recall, after consulting his own physician, petitioner was declared unfit for sea duty. He signified his intention to undergo another test or examination to confirm his present condition, and attached to his letter to respondents the medical report of Dr. Gaurano. There is, therefore, a valid request on his part to refer the conflicting medical assessments to a third doctor. Interestingly, respondents failed to respond to the letter for reasons unknown. Respondents, therefore, violated the POEA-SEC, specifically Section 20(A), paragraph 3

thereof.

Following the immediately preceding discussion, the medical findings of Dr. Gaurano, petitioner's physician of choice, should be affirmed and be made final and binding between petitioner and respondents. However, after a careful review of the medical report of Dr. Gaurano, We find it bereft of scientific and medical basis.

Dr. Gaurano's medical report on petitioner's condition lacks scientific and medical basis

We cite in verbatim the medical report of Dr. Gaurano, viz.:

NOEL C. GAURANO, MD

Internal Medicine . Adult Pulmonology

I. General Information

This is a case of Mr. Teodoro B. Bunayog, 41 y/o male, single, from, Mati, Davao Oriental, works as a chief cook for MT Morning Breeze. He has no hypertension, no diabetes, non- asthmatic, non -smoker, and was repatriated to the Philippines due to difficulty in breathing.

II. History of present illness

His condition apparently started about 3 weeks prior to his repatriation as on and off cough accompanied by undocumented fever, chest pain aggravated by deep breathing. He tried observing his symptoms initially but when he started to experience difficulty of breathing and worsening of the other symptoms, he sought consult at a nearby hospital in Japan and was subsequently admitted.

While in a hospital in Japan, it was found out that he has pneumonia but he was eventually repatriated for further work-up and treatment. He was confined at Cardinal Santos where it was found out that he has pleural effusion over his left hemithorax. This was aspirated percutaneously which provided relief of his symptoms. He was later discharged, improved.

III. Pertinent Ancillary Procedures

Chest Ultrasound (Aug. 8, 2016)
Pleural Effusion, Left (1,679 cc
Normal sonogram of the Right Chest.

Chest xray (Aug. 6, 2016)

Pleural effusion, left, no evidence of pneumothorax, partial clearing of the streaky infiltrates in the right paracardiac area, Heart size cannot be properly assessed, aorta is tortuous and calcified. The rest of the study is unchanged.

IV. Justification of Disability

A pleural effusion is an abnormal collection of fluid in the pleural space resulting from excess fluid production or decreased absorption or both.

The normal pleural space contains approximately 1 mL of fluid, representing the balance between (1) hydrostatic and oncotic forces in the visceral and parietal pleural vessels and (2) extensive lymphatic drainage. Pleural effusions result from disruption of this balance.

Pleural effusion is an indicator of an underlying disease process that may be pulmonary or nonpulmonary in origin and may be acute or chronic.

The clinical manifestations of pleural effusion are variable and often are related to the underlying disease process. The most commonly associated symptoms are progressive dyspnea, cough, and pleuritic chest pain, fever and even weight loss.

Imaging techniques to document the presence of pleural effusion include: Chest radiography, ultrasound and Chest CT scans. Once a pleural effusion is identified on imaging, a fluid sample is usually taken to determine the pleural effusion's character and seriousness. In a procedure called thoracentesis, a doctor inserts a needle and a catheter between the ribs, into the pleural space. A small amount of fluid is withdrawn for testing; a large amount can be removed simultaneously to relieve symptoms. The collected fluid is sent to the laboratory for analysis.

There are many causes of pleural effusions. The following is a list of some of the major causes:

Congestive heart failure Pulmonary Embolism

Kidney failure Hypoalbuminemia

Infection Cirrhosis

Malignancy Trauma

One of the more common causes of pleural effusion due to an infection is Tuberculosis. Pulmonary Tuberculosis statistics according to World Health Organization (WHO) the estimated prevalence of pleural effusion is 320 cases per 100,000 people in third world countries. According to the Department of Health (DOH) the Philippines currently have 250,000 cases of Tuberculosis, as of the year 2010. Pleural effusion accounts to approximately 38% of patients with tuberculosis.

Mr. Bunayog, developed pleural effusion while on board the ship. This was eventually drained out when he went for treatment at Cardinal Santos Medical Center. He is presently still undergoing medical treatment.

Although most cases like that of Mr. Bunayog respond to treatment, radiographic findings such as residual fibrosis, pleural thickening/ reaction, loculated pleural effusions do not usually resolve even in time. The extent and degree of involvement of the lungs determines physical activity and disability.

Mr. Teodoro Bunayog therefore is UNFIT for sea duty.

Sgd.

NOEL C. GAURANO

Lic. No. 70148[55]

The medical certificate of Dr. Gaurano shows that his declaration of petitioner's unfitness for sea duty lacks scientific and medical basis. Dr. Gaurano merely defined what pleural effusion is and how it is detected, and explained the causes for such disease and the treatment therefor. He then concluded that petitioner was unfit for sea duty, without any further explanation.

While Dr. Gaurano enumerated the tests that petitioner underwent while he was under treatment by the company-designated physician, he neither discussed the results of these tests nor correlated such results to his finding that petitioner was already unfit to work as a seafarer. Furthermore, while Dr. Gaurano mentioned that petitioner was still under treatment, he failed to expound on such observation. Was petitioner still under medication? Was he having a hard time to breathe? Clearly, Dr. Gaurano's medical report is vague and inconclusive. Indubitably, Dr. Gaurano's conclusion is without any scientific and medical basis. As such, following Justice Caguioa's dissent in *Benhur*, We are not precluded to review the conflicting findings of respondents' designated physician and petitioner's doctor based on their inherent merit and the totality of the

evidence.

Based on the inherent merits of the conflicting medical findings of the company-designated physician and petitioner's doctor and the totality of evidence, the findings of the company-designated physician are more credible

To stress, the records lack competent showing of the extent of the medical treatment that the independent doctor gave to the petitioner. Dr. Gaurano in his undated medical certificate,[56] did not require him to undergo any medical examination prior to issuing the medical certificate declaring him unfit to work. Otherwise stated, his conclusion was based on popular observation and findings of petitioner's responses to treatment, not on a specific study of petitioner's condition and responses to medical treatment.

In contrast, the company-designated physician's extensive medical treatment that enabled him to make a final diagnosis of petitioner's health condition was amply demonstrated. This is summarized by the CA, viz.:

x x x x

Thus, on 6 August 2016, petitioner was referred to a pulmonologist, admitted to the hospital for close monitoring and further work-ups, underwent laboratory exams, chest x-ray, ultrasound, administered with intravenous fluids and medication, and started nebulization.

On 9 August 2016, petitioner underwent thoracentesis and the fluid obtained from his lung cavity was sent to the laboratory for cell block and cytology.

On 11 August 2016, a repeat chest ultrasound was done on petitioner. The company-designated physician noted that on said date, petitioner had no difficulty in breathing.

On 14 August 2016, petitioner had a repeat ultrasound done. On 16 August 2016, he had a repeat thoracentesis and a tuberculosis gene xpelt was done. The company-designated physician opined that no mycobacterium tuberculosis was detected. The cytology report of pleural fluid showed chronic inflammatory pattern but it was negative for atypical cells.

On 18 August 2016, he underwent repeat chest ultrasound. Thereafter, the company-designated physician opined that petitioner had no more cough and difficulty of breathing. Thus, he was discharged from the hospital on 19 August 2016.

On 1 September 2016, the company-designated physician opined that after petitioner repeated his chest ultrasound and xray, there was an interval decrease in the left-sided pleural effusion. He was advised to undergo repeat chest ultrasound after 1 month.

On 22 September 2016, petitioner had a repeat chest ultrasound which showed decrease in the amount of pleural effusion on the left, measuring 159cc from the previous 367cc. However, he was not seen by a pulmonologist on that day because he arrived past the clinic hours. He was advised to come back on 26 September 2016.

On 28 September 2016, after petitioner was seen by a pulmonologist and underwent a repeat ultrasound, the company-designated physician opined that petitioner was cleared from a pulmonary standpoint. As such, he was declared fit to work on that day. The final diagnosis was - "Pneumonia with Recurrent Pleural Effusion, Left - Resolved S/P Thoracentesis, Left.

x x x x[57] (Citations omitted)

Corollarily, between the findings of the company-designated physician and that of the petitioner's doctor We lend more credence to the findings of the company-designated physician considering that it was done in the regular performance of his duties as company physician and it was he who consistently examined and treated petitioner's health condition. We cannot simply brush aside the findings and certification issued as a consequence thereof in the absence of solid proof that it was made with grave abuse of authority on the part of the company-designated physician.

From all the foregoing, respondents' failure to respond to petitioner's valid written request or demand signifying his intention to refer the conflicting medical findings to a third doctor, should be taken against them. We could have confirmed as final and binding Dr. Gaurano's medical findings if not for its lack of medical and scientific basis. This leaves Us nothing but to review the conflicting findings of respondents' designated physician and petitioner's doctor, and decide the case based on their inherent merits and the totality of evidence. This, as above discussed proved to be favorable to respondents.

Guidelines in case the seafarer requests for a third doctor referral

As things are, We deem it necessary to lay down rules that would serve as guidelines for future cases.

First, a seafarer who receives a contrary medical finding from his or her doctor must send to the employer, within a reasonable period of time, a written request or demand to refer the conflicting medical findings of the company-designated physician and the seafarer's doctor of choice to a third doctor, to be mutually agreed upon by the parties, and whose findings shall be final and binding between the parties.

Second, the written request must be accompanied by, or at the very least, must indicate the contents of the medical report or medical abstract from his or her doctor, to be considered a valid request. Otherwise, the written request shall be considered invalid and as if none had been requested.

Third, in case where there was no request for a third doctor referral from the seafarer or there was such a request but is deemed invalid, the employer may opt to ignore the request or demand or refuse to assent, either verbal or written, to such request or demand without violating the pertinent provision of the POEA-SEC. Accordingly, if a complaint is subsequently filed by the seafarer against the employer before the labor tribunal, and the parties, after a directive from the LA pursuant to NLRC En Banc Resolution No. 008-14,[58]fail to secure the services of a third doctor, the labor tribunals shall hold the findings of the company-designated physician final and binding, unless the same is found to be biased, i.e., lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings shall be considered by the tribunals or court.[59]

If, however, the parties were able to secure the services of a third doctor during mandatory conference, the latter's assessment of the seafarer's medical condition should be considered final and binding.

Fourth, in case of a valid written request from the seafarer for a third doctor referral, the employer must, within 10 days from receipt of the written request or demand, send a written reply stating that the procedure shall be initiated by the employer. After a positive response from the employer, the parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment. The assessment of the third doctor shall be final and binding.

In case, however, where the parties fail to mutually agree as to the third doctor who will make a reassessment, a complaint for disability benefits may be filed by the seafarer against the employer. The labor tribunals shall then consider and peruse the inherent merits of the respective medical findings of the parties doctors before making a

conclusion as to the condition of the seafarer.

Fifth, if, however, the employer ignores the written request or demand of the seafarer, or sends a written reply to the seafarer refusing to initiate the referral to a third doctor procedure, or sends a written reply giving its assent to the request beyond 10 days from receipt of the written request or demand of the seafarer, the employer is considered in violation of the POEA-SEC. The seafarer may now institute a complaint against his or her employer.

Sixth, upon the filing of the complaint and during the mandatory conference, the LA shall give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.

Seventh, if the services of a third doctor were not secured on account of the employer's refusal to give heed to the LA's request or due to the failure of the parties to mutually agree as to the third doctor who will make a reassessment, the labor tribunals should make conclusive between the parties the findings of the seafarer's physician of choice, unless the same is clearly biased i.e., lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings and the totality of evidence shall be considered by the labor tribunals or courts. This is in conjunction with Our earlier ruling that the employer's failure to respond to the seafarer's valid request or demand for a third doctor referral should be taken against the employer.

If, however, the failure to refer the seafarer's condition to a third doctor after directive from the LA was due to the fault of the seafarer, that is, the seafarer refuses to comply therewith, then the labor tribunals and the courts should make conclusive between the parties the findings of the company-designated physician, subject to the exception in *Dionio*.

Eight, if, despite the employer's failure to respond to the seafarer's valid request or demand to refer his or her condition to a third doctor, the parties, during mandatory conference, were able to secure the services of a third doctor, and the latter was able to make a reassessment on the seafarer's condition, the third doctor's findings should be final and binding between the parties. In such a case, the employer's refusal to respond to the seafarer's valid request for a third doctor referral should be considered immaterial.

On a final note, consistent with the purpose underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably, and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be carried into effect. Said exhortation, however, cannot be taken to sanction award of disability benefits anchored on flimsy evidence.^[60] As exhaustively explained, there is nothing on record that would justify a compensation on top of the monetary aid and assistance already extended to petitioner by respondents.

Furthermore, while it is settled that social legislations, such as the Labor Code, should be liberally construed in favor of those who are in most need- the laborers,^[61] the labor tribunals and the courts are still called upon to decide the matter objectively, taking into account the respective rights and obligations of the parties, the totality of evidence the parties were able to proffer during the proceedings, as well as the prevailing jurisprudence pertinent to the case. This was Our pronouncement in the case of *Raza v. Daikoku Electronics Phils., Inc.*,^[62] viz.:

While the Court remains invariably committed towards social justice and the protection of the working class from exploitation and unfair treatment, it, nevertheless, recognizes that management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. The aim is always to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, on the other. Indeed, the Court should be ever mindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and

existing jurisprudence.[63]

All told, We find no reason to overturn the decisions of the LA, NLRC and CA in favor of respondents.

WHEREFORE, in view of the foregoing premises, the instant petition is DISMISSED. The Court of Appeals Decision dated February 21, 2020 and the Resolution dated September 16, 2020 in CA-G.R. SP No. 154603, are AFFIRMED in toto.

SO ORDERED.

Caguioa, Inting, Zalameda, M. Lopez, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Gesmundo, C.J., see separate concurring opinion.

Leonen, SAJ., see separate opinion concurring.

Hernando and Rosario, JJ., on leave.

Lazaro-Javier, J., Please see concurrence.

* On leave.

[1] Rollo, pp. 8-25.

[2] Id. at 27-35; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Zenaida T. Galapate-Laguilles and Perpetua Susana T. Atal-Paño concurring.

[3] Id. at 37-38.

[4] Id. at 54-65; penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro, concurring.

[5] Id. at 27-28.

[6] Id. at 28-29.

[7] Id. at 29.

[8] Id.

[9] Id.

[10] CA rollo, pp. 116-118; penned by Labor Arbiter Zosima C. Lameyra.

[11] Id. at 117.

[12] Id. at I I 8.

[13] Id.

[14] Id. at 119-136.

[15] Rollo, pp. 54-65.

[16] Id. at 62-63.

[17] Id. at 64.

[18] Id. at 65.

[19] Id. at 27-35.

[20] Id. at 34.

[21] Id. at 34-35.

[22] Id. at 37-38.

[23] Id. at 14.

[24] OSG Shipmanagement Manila, Inc. v. De Jesus, G.R. No. 207344, November 18, 2020.

[25] Pacific Ocean Manning, Inc. v. Solacito, 871 Phil. 236, 250-251 (2020).

[26] 707 Phil. 194 (2013).

[27] Id. at 207.

[28] Ranoa v. Anglo-Eastern Crew Mgmt. Phils., Inc., 867 Phil. 108, 123-124 (2019) citing, Dohle Philman Manning Agency, Inc. v. Doble, 819 Phil. 500, 514(2017).

[29] 744 Phil. 774 (2014).

[30] Id. at 787.

[31] 843 Phil. 409 (2018).

[32] Id. at 420-421.

[33] Rollo, p. 28.

[34] CA rollo, pp. 56-58.

[35] Id. at 59.

[36] Benhur Shipping Corp. v. Riego, G.R. No. 229179, March 29, 2022.

[37] Id.

[38] Id.

[39] Id.

[40] Reyes v. Magsaysay Mitsui Osk Marine, Inc., G.R. No. 209756, June 14, 2021.

[41] November 12, 2014.

[42] Id.

[43] CA rollo, p. 59.

[44] Id. at 56-58.

[45] 850 Phil. 1075 (2019).

[46] Id. at 1085-1086.

[47] NLRC En Banc Resolution No. 008-14, November 12, 2014.

[48] G.R. No. 230502, February 15, 2022.

[49] Id.

[50] Supra note 36.

[51] G.R. No. 241067, October 5, 2022.

[52] Id.

[53] See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Benhur Shipping Corp. v. Riego*, supra note 37.

[54] Id.

[55] CA rollo, pp. 56-58.

[56] Id.

[57] Rollo, pp. 33-34.

[58] The Labor Arbiter shall 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.

[59] *Dionio v. Trans-Global Maritime Agency, Inc.*, supra note 31 at 421.

[60] *Coastal Safeway Marine Services, Inc. Esguerra*, 671 Phil. 56, 70 (2011).

[61] *Salabe v. Social Security Commission*, G.R. No. 223018, August 27, 2020.

[62] 765 Phil. 61(2015).

[63] Id. at 87.

SEPARATE CONCURRING OPINION

GESMUNDO, C.J.:

I respectfully write this Opinion to impart my views on the exception established in the ponencia regarding the binding and conclusive nature of the findings of either the seafarer's physician of choice or the employer's physician of choice, depending on the origin of the failure to secure the services of a third doctor, in compensation claims.

The ponencia provides that the findings of either the seafarer's physician of choice or the employer's physician of choice, depending on the source of the failure to secure the services of a third doctor, shall be final and binding unless the same are tainted with bias, unsupported by medical records, or lack scientific basis, in which case the tribunals and courts may consider the inherent merits of the respective medical findings and the totality of the evidence in deciding the case.[1]

To my mind, it is imperative to accentuate that this exception arises from the burden of proof concerning the degree of disability in compensation claims.

A summary of the case and the ponencia's ruling

The instant petition arose from a complaint for total and permanent disability benefits, among others, filed by Teodoro B. Bunayog (petitioner) against Foscon Shipmanagement, Inc. (Foscon), Green Maritime Co., Ltd. (Green), and Evelyn M. Defensor (Evelyn; collectively, respondents). Foscon, on behalf of its foreign principal,

Green, engaged petitioner as a chief cook onboard the vessel MIT Morning Breeze for a period of nine months. "On July 31, 2016, while onboard the vessel, petitioner experienced cough, fever and difficulty in breathing." [2] He was diagnosed in Japan with left lung pneumonia and declared unfit for sea duty. Thus, he was repatriated to the Philippines on August 4, 2016, and immediately referred to a company-designated physician. After evaluation, petitioner was diagnosed with "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left." [3] Petitioner was treated until September 28, 2016, when one of the company-designated physicians declared him fit to work. Petitioner then consulted his physician of choice, who declared him unfit for sea duty due to his pleural effusion. [4]

On November 10, 2016, petitioner sent a letter to Evelyn, the President of Foscon, informing her of the findings of his doctor and expressing his willingness to undergo further medical examination to confirm his permanent disability. Respondents did not respond to his letter. Thus, petitioner filed a complaint for total and permanent disability benefits. [5]

The ponencia affirmed the Court of Appeals' February 21, 2020 Decision and September 16, 2020 Resolution and dismissed petitioner's complaint for lack of merit. [6]

The ponencia lays down guidelines to govern cases where the seafarer requests for referral to a third doctor. [7]

First, the seafarer must request, within a reasonable period of time, for referral to a third doctor if he receives a contrary medical finding from his or her own doctor. This third doctor shall be mutually agreed upon by the parties, whose findings shall be final and binding between them. [8]

Second, for such request to be considered valid, it must be in writing and must indicate the contents of the medical report or medical abstract from the seafarer's doctor. [9]

Third, if there is no request or such request is deemed invalid, the employer may ignore or refuse the request or demand without violating the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), otherwise known as the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships. [10] Nonetheless, if a complaint is subsequently filed by the seafarer against the employer, the Labor Arbiter (LA), pursuant to National Labor Relations Commission (NLRC) En Banc Resolution No. 008-14, shall direct the parties to secure the services of a third doctor within 15 days, who in turn will have 30 days to submit a reassessment. If the parties fail to secure the services of a third doctor despite such directive, the labor tribunals shall hold the medical assessment of the company-designated physician final and binding unless the same is found to be biased, "i.e., lacking in scientific basis or unsupported by medical records of the seafarer." [11] In such case, the tribunals or courts shall consider the inherent merits of the respective medical findings of the physicians. If the parties were able to secure the services of a third doctor during mandatory conference, the latter's reassessment of the seafarer's medical condition shall be final and binding. [12]

Fourth, in case of a valid request for referral, the employer shall have 10 days upon receipt of the written request to serve a written reply stating that the procedure shall be initiated by the employer. The parties shall then have 15 days to secure the services of a third doctor, who in turn will have 30 days to submit an assessment. The assessment of the third doctor shall be final and binding. [13] However, where the parties fail to mutually agree as to the third doctor, the seafarer may file a complaint for disability benefits against the employer and the labor tribunals shall consider the inherent merits of the respective medical findings of the parties' respective doctors in making a declaration as to the condition of the seafarer. [14]

Fifth, when the employer fails to respond to a valid request for referral to a third doctor within the 10-day period,

the seafarer may institute a complaint against the employer. During the preliminary conference, the LA shall give the parties 15 days to secure the services of a third doctor, who will have 30 days to submit a reassessment. If a third doctor is not secured due to the employer's refusal to heed the LA's request or due to the failure of the parties to mutually agree as to a third doctor, the findings of the seafarer's physician of choice shall be final and binding. An exception to this is when the medical evaluation of the seafarer's physician is tainted with bias, not supported by medical records, or lack scientific basis, in which case the courts may decide on the basis of the totality of evidence. On the other hand, if the failure to secure a third doctor despite the LA's directive lies with the seafarer, the findings of the company-designated physician shall be conclusive between the parties, subject to the same exception stated previously. Nonetheless, if the services of a third doctor is secured during the mandatory conference, the employer's failure to respond to a valid request for referral to a third doctor is immaterial and the third doctor's findings shall be final and binding between the parties.[15]

Applying the same to the present case, the ponencia found that petitioner made a valid request for referral to a third doctor. However, respondents did not respond to the same. Nonetheless, the ponencia did not make final and binding the findings of petitioner's physician. It found the same to be bereft of scientific and medical basis as it was vague and inconclusive. Meanwhile, the ponencia declared as credible the findings of the company-designated physician since the latter conducted extensive medical treatment on petitioner which enabled said physician to make a final diagnosis of petitioner's health condition. This is in contrast with petitioner's physician, who only based his conclusion on popular observation and findings on petitioner's responses to treatments without requiring petitioner to undergo any medical examination. Thus, the ponencia affirmed the dismissal of the complaint.[16]

I concur with the ponencia and issue this Opinion to strengthen the rationale behind allowing the tribunals and courts to review the inherent merits of the findings of either the seafarer's physician of choice or the employer's physician of choice despite the general rule that such is conclusive and binding on the parties depending on the source of the failure to secure the services of a third doctor.

The exception provided for in the guidelines of the ponencia reflects the burden of proof as to the degree of disability in compensation claims.

The right of the seafarer to receive disability benefits is determined by the employment contract, and deemed incorporated therein are the standard provisions set out in the POEA-SEC. The pertinent provision is found in Section 20(A) thereof:

Section 20. Compensation and Benefits. -

A. 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:

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 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. (Emphasis supplied)

A plain reading of the foregoing provision readily reveals that it is the findings of the company-designated physician as to the degree of disability which is relevant for the purpose of the grant of disability benefits. However, the seafarer is given an opportunity to contradict the same when a doctor of his or her choice disagrees with the assessment of the company-designated physician, in which case resort to a third doctor may be made. In short, Sec. 20(A) lays down the process for the seafarer to contradict the company-designated physician's assessment - through referral to a third doctor, whose findings shall be binding on both parties.

Thus, the Court has consistently held that referral to a third doctor is mandatory:

Based on the above-cited provision, 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 Carcedo, the Court held that "[t]o definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties."

x x x Absent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. Ergo, he is not entitled to permanent and total disability benefits.[17]

To properly contradict the company-designated physician's assessment, the seafarer must request for referral to a third doctor, who shall be mutually agreed upon by the parties and whose findings shall be binding between them.

Consequently, two instances may arise from this directive. The first instance is where the seafarer fails to make a valid request for referral while the second instance is where the employer fails to respond to a valid request for referral. In both instances, NLRC En Banc Resolution No. 008-14 mandates all LAs to give the parties in complaints for disability benefits of seafarers a period of 15 days to secure the services of a third doctor and an additional period of 30 days for the third doctor submit his or her reassessment. NLRC En Banc Resolution No. 008-14 exemplifies the State policy to abide by the process provided for in Sec. 20(A).

In the first instance where the seafarer fails to make a valid request for referral and the parties do not secure the services of a third doctor despite the directive of the LA, the findings of the company-designated physician shall be final and binding unless the same are found to be biased, lacking in scientific basis, or unsupported by the seafarer's medical records. In such case, the inherent merits of the respective medical findings of each doctor shall be considered by the tribunals or courts.

On the other hand, in the second instance where the employer fails to respond to a valid request for referral and the parties do not secure the services of a third doctor despite the LA's directive, the findings of the seafarer's physician shall be final and binding subject to the same exception stated above. In case such exception is availing, the tribunals or courts may consider the inherent merits of the respective medical findings of each doctor.

The exception referenced in the ponencia is based on the case of *Dionio v. Trans-Global Maritime Agency, Inc.*[18] (*Dionio*). Said case provides that "while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer. x x x Instead, the inherent merits of the respective medical findings shall be considered." [19]

To my mind, the rationale behind this exception and the thrust to allow the tribunals or courts to consider the inherent merits of the respective medical findings of the physicians of the seafarer and employer lies in the burden of proof on the degree of disability in compensation claims.

It is well-established that "x x x whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence." [20] Thus, the employee bears the burden of proof as to the degree of disability in compensation claims. In short, the employee must prove, by substantial evidence, that the assessment of the company-designated physician in relation to the degree of disability is incorrect.

At the end of the day, the exception rests on the premise that the inherent merits of the respective medical findings of each doctor would show the employee being entitled to his or her claim - in effect, that the latter has discharged his or her burden of proof.

It must be emphasized that neither the failure of the seafarer to make a valid request for referral to a third doctor nor the failure of the employer to respond to a valid request for referral results in a shift of the burden of proof from the employee to the employer. The burden of proof never shifts, as distinguished from the burden of evidence.

The 2019 Revised Rules on Evidence [21] defines burden of proof and burden of evidence in Sec. 1 of Rule 131, viz.:

Section 1. Burden of proof and burden of evidence. - Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. Burden of proof never shifts.

Burden of evidence is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a prima facie case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case. (Emphases supplied)

While strict application of the rules of evidence is not applicable to labor cases, [22] I respectfully submit that the evidentiary concepts of burden of proof and burden of evidence are well-entrenched in Our legal system, such that their codification in the 2019 Revised Rules of Evidence merely reflects prevailing legal understanding on the matter. In addition, the Court has consistently applied the quantum of proof of substantial evidence in labor compensation claims: "[w]hether it is the employer or the seafarer, the quantum of proof necessary to discharge their respective burdens is substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise." [23]

In fact, a true example of this is the Court's ruling in the 2014 case of *Agile Maritime Resources, Inc. v. Siador*, [24] which involved a complaint for death benefits under the POEA-SEC. In resolving the issues in said case, the Court applied the rules on evidence as to burden of proof and burden of evidence.

To reiterate, the burden of proof never shifts. Only the burden of evidence may shift, depending on the exigencies of the case. Thus, whether or not the employer responds to the seafarer's valid request for referral to a third doctor

does not detract from the fact that the seafarer bears the burden of proof to establish the degree of disability. The seafarer must discharge this burden no matter what. Accordingly, while the failure of the employer to respond to a valid request for referral may lead to the application of the general rule that the findings of the seafarer's doctor of choice shall be final and binding, this general rule is subject to the exception established in *Dionio*. This is consistent with the burden of proof of the seafarer to establish his or her entitlement to disability benefits.

In fine, the exception in the ponencia - that the medical evaluation of either the seafarer's or employer's doctor of choice lacks scientific basis or is unsupported by the medical records of the seafarer - requires the tribunals and courts to weigh, in all instances, the evidence presented by the parties. This is because such exception may only be applied after the tribunals and courts have determined the presence of such circumstances. In short, such determination requires an assessment of the totality of evidence. The guidelines require the tribunals and courts to assess and weigh the totality of evidence.

To my mind, this conclusion is reflective of the underlying thread in all compensation claims where the degree of disability is at issue - whether such degree of disability has been established by substantial evidence.

Application to the present case

Applying the foregoing, I concur with the esteemed ponente that the medical conclusion arrived at by the company-designated physician is more credible and accurate than that of petitioner's physician. As noted by the ponencia, the records do not show the extent of the medical treatment that petitioner had received from his doctor of choice. Said doctor did not require petitioner to undergo any medical examination prior to issuing the medical certificate which declared him unfit for sea duty. He also did not treat petitioner. Petitioner's doctor merely based his conclusion on popular observation and the findings on petitioner's responses to treatment.[25]

In comparison, the company-designated physician conducted extensive medical treatment on petitioner which enabled him to make a reliable final diagnosis of petitioner's health condition. It must be noted that the company-designated physician examined petitioner's condition no less than five times. During that period, petitioner underwent several tests, including five chest ultrasounds on different dates. After the fifth and last ultrasound, the company-designated physician opined that petitioner was cleared from a pulmonary standpoint. Hence, the final diagnosis of "Pneumonia with Recurrent Pleural Effusion, Left - Resolved SIP Thoracentesis, Left" and petitioner was declared fit to work.[26]

Based on the foregoing, I agree that the findings of the company-designated physician are more credible and carry more weight than that of the seafarer's chosen doctor.[27] Simply, petitioner failed to discharge his burden of proof to establish, by substantial evidence, that he suffered an illness warranting the award of permanent and total disability benefits.

WHEREFORE, I vote to DISMISS the petition.

[1] Ponencia, pp. 20-22.

[2] *Id.* at 2.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] Id. at 22.

[7] Id. at 20-22.

[8] Id. at 20.

[9] Id. at 9, 20.

[10] POEA Memorandum Circular No. 10, Series of 2010.

[11] Ponencia, p. 20.

[12] Id.

[13] Id. at 20-21.

[14] Id. at 21.

[15] Id. at 21-22.

[16] Id. at 15-20.

[17] *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 446 (2015).

[18] 843 Phil. 409(2018).

[19] Id. at 420-421.

[20] *Malicdem v. Asia Bulk Transport Phil., Inc.*, G.R. No. 224753, June 19, 2019.

[21] A.M. No. 19-08-15-SC (Resolution), August 10, 2019.

[22] Article 227. (221) Technical rules not binding and prior resort to amicable settlement.- In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015)

[23] *Agile Maritime Resources, Inc. v. Siador*, 744 Phil. 693, 707(2014).

[24] *Supra*.

[25] Ponencia, pp. 15-18.

[26] Id. at 18-20.

[27] Id. at 19.

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

This Court should not hesitate to look further into other disciplines when interpreting our laws, especially in cases where the factual situations are not fully contemplated by existing doctrines. Other fields of study may provide greater context to the issues and may even enrich our discussions on various legal topics.

Law and economics are not mutually exclusive fields of study. Applying economic principles to explain purely legal principles in labor relations may provide this Court with basis to fully resolve lingering labor issues.

I explain further.

Petitioner was engaged as a chief cook onboard respondents' vessel MIT Morning Breeze for nine months. While onboard the vessel, petitioner experienced cough, fever, and difficulty breathing. He was diagnosed with left lung pneumonia and declared by the doctor onboard as unfit for sea duty. Upon repatriation, he was referred to the company-designated physician. The company-designated physician found him to be suffering from "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left"[1] and received treatment for about a month. After treatment, the company-designated physician declared him fit to work.[2]

Petitioner sought a second opinion with a physician of his own choosing. His chosen physician declared him unfit for sea duty due to pleural effusion.[3] He sent a letter to respondents informing them of his physician's findings and his willingness to undergo another medical examination with a third doctor. Respondents, however, did not respond to this request. Thus, petitioner filed a complaint for total and permanent disability in the amount of USD 60,000.00.[4]

The standing rule is that upon repatriation, the seafarer shall undergo medical evaluation by the company-designated physician who shall assess the seafarer's fitness, or unfitness, for return to sea duty. Should the seafarer disagree with the company-designated physician's findings, they are free to seek medical evaluation with a physician of their own choosing. If there is a conflict between the findings of the two physicians, then the seafarer may request for a third doctor.

The mandatory referral to a third doctor in case of conflicting claims is already settled in our jurisprudence:

In the settlement of this conflict, we need not provide a lengthy discussion as we have resolved this matter in *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, citing Section 20 (8)(3) of the POEA-SEC:

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

This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp.*, *Santiago v. Pacbasin Shipmanagement, Inc.*, *Andrada v. Agemar Manning Agency*, and *Moscmgkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point the matter of referral pursuant to the provision of the POEA- SEC is a settled ruling.[5] (Emphasis in the original, citations omitted)

Referral to J. third doctor is, thus, mandatory when "(1) there is a valid and timely assessment made by the company-designated physician; and (2) the seafarer's appointed doctor refuted such assessment." [6]

Here, the ponencia states that if the seafarer fails to signify their intent to refer the conflicting medical findings to a third doctor, the company -designated physician's findings shall be final and binding, unless the company-designated physician's findings are clearly biased in favor of the company, and is lacking in scientific basis or unsupported by the seafarer's medical records.[7] In this instance, the tribunals will consider the inherent merits of the findings of both the company-designated physician and the seafarer's physician.

In this case, however, the seafarer signified his intent to refer the matter to a third doctor, and it is the company which refused to comply.

In *Benhur Shipping Corporation v. Riego*,[8] this Court held that the seafarer's submission a letter-request for referral to a third doctor indicating the medical assessment of the seafarer's fitness to work or disability rating is sufficient to set in motion the process for choosing the third doctor.

The ponencia states that this requirement in *Benhur* would not be enough, and would be prone to abuse, finding instead that the letter-request must be accompanied by the medical report or medical abstract.[9] The ponencia does, however, acknowledge that in previous cases, should the employer refuse to grant or even act on such request, their non-compliance to a POEA-SEC mandated rule is even "rewarded," thus, the need to balance the obligations of the employer with the rights of the seafarer under the POEA-SEC.[10] The ponencia concludes, therefore, that the conflicting findings of the company-designated physician and the seafarer's physician of choice should be examined by this Court based on their inherent merits and the totality of the evidence.[11]

While it is true that the absence of a third doctor's assessment would make the company-designated physician's findings binding, it is equally true that it is the company that carries the burden of securing the third doctor, not the seafarer. In case of conflict, the seafarer's only duty is to seek a third opinion:

To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.[12] (Emphasis in the original)

Our existing doctrines presuppose that the seafarer unreasonably refuses to submit themselves to examination by a third doctor. Thus, this unreasonable refusal is looked upon by the courts with suspicion, considering that the seafarer, if they validly believe themselves to be medically incapable of continuing their duties, would not hesitate to submit themselves to further medical evaluation.

As correctly observed by the ponencia, the mere refusal of the employer to agree on the mandatory referral to a third doctor worked to the seafarer's prejudice. If this were to become this Court's settled ruling on the matter, the company could just refuse any request for referral to a third doctor, knowing that labor tribunals will always rule in their favor. This, in turn, switches the burden of providing for the third doctor to the seafarer, who must now bear the cost of their own work-related disability.

Viewed from a different lens, the issue in this is the determination of which among the parties, the seafarer or the company, should bear the burden of the absence to comply with the mandatory referral to a third doctor. Otherwise stated, the problem is the determination of who between the parties should bear the burden of the costs.

Noted economist Ronald Coase illustrated this problem by giving the example of a cattle-raiser moving their herd next door to a farm. Without any form of fencing between the two properties, increasing the herd would cause straying cattle to eat the neighboring farm's crops. Supposing that one steer causes one ton of crop loss per year,

the cattle-raiser would have to take into account the additional cost of crop damage when increasing the herd. Thus, the cattle-raiser would not increase the size of the herd unless the value of the additional meat produced by the herd is greater than the additional costs it would entail. If the cattle-herder puts up a fence between the properties, the marginal cost due to liability of crop loss would be zero, assuming that the yield from the meat the herd produces would be greater than the cost of fencing.[13]

However, if the annual cost of fencing is PHP 9 and the market price of the crop loss is PHP 1 per ton, it may be cheaper for the cattle-raiser not to fence the properties, but to instead pay for the damaged crops. The farmer would sell less of his crops in the open market, but his profits for a given production would remain the same, since the cattle-raiser would be paying the market price for any damaged crops.[14]

Assuming that the cost of cultivating the land is PHP 10 and the value of selling the crops is PHP 12, the profit to the farmer would be PHP 2. If the cattle-raiser causes crop loss of PHP 1, the net gain of the farmer from cultivating the crops remains at PHP 2, since the farmer obtains PHP 11 from the sale of crops and PHP 1 from the cattle-raiser for the crop loss. If the cattle-raiser increases the herd, the crop loss also increases, but the cattle-raiser has to ensure that the profits from additional meat production of the increased herd would be enough to cover the additional costs for crop loss. Even if the additional cost for the damage is PHP 3, the farmer's net gain from the cultivation of the land is still PHP 2, since the value of cultivating the land remains at PHP 12 and the costs of cultivating it remains at PHP 10. Only the cattle-raiser bears the increased cost of the damaged crops.[15]

Coase explains that if the cost of the undamaged crops is less than the total costs of cultivating the land, it may be more profitable for the cattle-raiser and the farmer to strike a bargain for a part of the land to remain uncultivated. If the cattle-raiser bargains with the farmer not to cultivate the land for PHP 2, both parties would be in a mutually satisfactory position, with none of the parties being better off than the other.[16]

Coase, however, explains that this would raise another possibility. If, for example, the cattle-raiser did not move next door to the farm, and the value of the farm's crops is PHP 10 but the cost of cultivation is PHP 11, the farmer might not cultivate the land at all. If the farmer does cultivate it and the cattle-raiser moves next door, once the herd destroys all the crops, the cattle-raiser would have to pay the farmer PHP 10. The farmer loses PHP 1 but the cattle-raiser loses PHP 10. The cattle-raiser could decide that it would be less expensive to pay PHP 9 for the annual cost of fencing. However, increasing the herd would also entail a more expensive fence. In that situation, both parties would be bearing the costs.[17]

To optimize the allocation of resources in cattle-raising, the costs of the reduction of the value of crop production is taken into account in computing the additional costs for increasing the herd, which is, in turn, weighed against the value of the meat that the herd would produce. Since the cattle-raiser bears the cost of the damage to the crops, the desirable situation, that is, the optimal economic result, would be for the cattle-raiser to pay the farmer not to cultivate the land.[18]

In economics, this increase of the herd by the cattle-raiser and corresponding damage to the crops are referred to as externalities, or "unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost." [19] Externalities in a transaction must be accounted for to achieve the optimal allocation of resources.

Otherwise stated, the party which bears the cost of damage must be the party with the capacity to bear it.

Optimum allocative distribution of resources presupposes that both parties are able to bargain on equal footing. The one who causes the damage should bear the cost of the damage. In this case, however, the seafarer is already

at an economically disadvantaged position. The externalities between the parties, such as the seafarer's work-related disability, are not taken into account in this case, and thus, the company escapes the cost of the damage.

In a prior case, this Court has already explained that the law steps in to equalize the allocation of resources between the company and the seafarer:

Law and economics can provide the policy justification of our existing jurisprudence. The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. In economics, these are referred to as "externalities," which are unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost.

In employing seafarers, the manning agency and the shipping company, which have control over the ship, bear the burden of complying with safety regulations. When externalities such as occupational hazards are not accounted for, they escape the burden of shouldering the cost of keeping the vessel safe for their seafarers.

Imposing a liability induces the employers and the injured seafarers to be burdened with the cost of the harm when they fail to take precautions. This process of "internalization" means the consequences and costs are accounted for and are attributed to the party who causes the harm. Thus, the occupational hazards are internalized through a claim of damages paid by the employer. Seafarers are compensated for the injuries they suffered.

Here, the law intervenes to achieve allocative efficiency between the parties. Allocative efficiency means that both parties reach a mutually beneficial agreement. In a strict economic sense, allocative efficiency concerns the satisfaction of individual preferences where an optimal market is producing goods that consumers are willing to pay. A choice or policy increases allocative efficiency only if it makes an individual better off and no one worse off. Hence, allocative efficiency compels the law to help the parties achieve their goals as fully as possible.[20]

The allocative efficiency in this case is not optimal since it leaves the seafarer worse off, even though the externality is caused by the company.

While it is correct that the labor tribunals should assess the inherent merits of both the company-designated physician's findings and the seafarer's physician's findings in case of conflict, it is also equally true that the seafarer would not have the same resources that the company does. The company is in a position to retain physicians of caliber, and would be able to afford subjecting the seafarer to repeat medical evaluation. The seafarer, on the other hand, may only be able to afford a one-time medical examination with a physician of a lesser caliber.

The unfortunate consequence of this works to place the evidence of both the seafarer and the employer at equal footing, weighing both medical assessments as if they were equal. In this situation, the company-designated physician's findings would always appear to be more credible, since this would be the same physician that would be able to examine the seafarer repeatedly from the time of their repatriation until the end of their treatment.

For this situation to be achieve optimal allocative efficiency, the courts must balance the allocation of resources between the parties. The first phase of the externality is internalized when, in conflicting medical assessments, the contract between the parties requires the mandatory referral to a third doctor. In order to fully realize this internalization, the party who refuses to submit to the mandatory referral must bear the cost of the damage.

Thus, consistent with prevailing doctrines, when the seafarer unreasonably refuses to submit to the mandatory referral, the company-designated physician's findings should be binding on the parties. The employer should be

given a reasonable period of time within which to act on the request for referral to a third doctor, just as the seafarer should be given a reasonable period of time within which to attach a substantial medical abstract to their request for referral to a third doctor. However, when it is the employer that unreasonably refuses the seafarer's request for a third doctor, the medical evaluation that must prevail is the assessment grounded on scientific basis, that is, based on the actual medical records of the seafarer.

This is in line with the constitutional bias for the greater protection of labor:

ARTICLE II

Declaration of Principles and State Policies

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

The Labor Code, as amended, further affirms this preferential treatment of labor in declaring that all doubts in the implementation and interpretation of labor laws must be resolved in favor of labor.^[21] I see no complication in favoring the seafarer when their medical condition has sufficient medical basis, since any damage the company will bear, that is, the cost of total and permanent disability benefits, has already been accounted for when the parties entered into the employment contract.

Here, the company's unjustified refusal to submit to engage a third doctor despite a written request should have been taken against it. However, it is unfortunate that the medical assessment of the seafarer's chosen doctor is lacking in scientific basis. When weighed against the findings of the company-designated doctor, the findings of the company-doctor would prevail.

ACCORDINGLY, I vote to DISMISS the Petition.

[1] Ponencia, p.

[2] Id.

[3] Id.

[4] Id. at 2-3.

[5] INC Shipmanagement, Inc. v. Rosales, 744 Phil. 774, 766-787 (2014) [Per J. Brion, Second Division].

[6] Marlow Navigator Philippines, Inc. v. Osias, 773 Phil. 428, 446 (2015) (Per J. Leonen, Second Division).

[7] Ponencia, pp. 7-9.

[8] G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].

[9] Ponencia, p. 10.

[10] Id. at 15.

[11] Id. at 21.

[12] INC Shipmanagement, Inc. v. Rosales, 744 Phil. 774, 788(2014) [Per J. Brion, Second Division].

[13] See R.H. Coase, The Problem of Social Cost, 3 JOURNAL OF LAW AND ECONOMICS 13 (1960).

[14] Id. at 3-4.

[15] Id.

[16] Id. at 4.

[17] Id. at 5.

[18] Id. at 6.

[19] *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, 856 Phil. 423, 448 (2019) [Per J. Leonen, Third Division], citing *I ROBERT COOTER, LAW AND ECONOMICS* 44 (4th ed., 2003).

[20] *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, 856 Phil. 423, 448 (2019) [Per J. Leonen, Third Division], citing *I ROBERT COOTER, LAW AND ECONOMICS* 44 (4th ed., 2003); *Toquerv v. Crossworld Marine Services, Inc.*, 855 Phil. 106, (2019) [Per J. Leonen, Third Division]; and Robert D. Cooter, *Economic Theories of Legal Liability*, 5 *THE JOURNAL OF ECONOMIC PERSPECTIVES* 11, 16 (1991).

[21] LABOR CODE, Chapter I, art. 4.

CONCURRENCE

LAZARO-JAVIER, J.:

The ponencia dismissed the present Petition for its alleged failure to prove that petitioner is already unfit to resume his work as chief cook for sea-based employment. The ponencia weighed the conflicting medical evidence on record though respondent, as petitioner's seafaring agency, had failed to act on his valid request for referral to a third doctor.

At the outset, the ponencia sharply departs from *Benhur Shipping Corporation v. Riego*,^[1] penned by no less than our esteemed Chief Justice Alexander G. Gesmundo. There, the Court ruled against the company when it inexplicably failed to refer to a third doctor the conflicting findings of its designated doctor and the seafarer's doctor of choice. The Court, through Chief Justice Gesmundo, pronounced that the referral to a third doctor is a mandatory procedure under Section 20(A)(3) of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), viz.:

Petitioners argue that while respondent sent a letter of request for a referral to a third doctor, the said letter did not include the medical opinion from respondent's physician, Dr. Magtira. They claim that even in the NLRC, respondent failed to bring his own doctor's report. Thus, petitioners conclude that respondent had no intention to be referred to a third doctor from the very beginning. and that the letter of request without his doctor's medical report, was merely an empty compliance.

The argument is unavailing.

Sec. 20(A)(3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment. The said provision states that:

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.

On the other hand, in *Carcedo v. Maine Marine Philippines, Inc.*^[2] (*Carcedo*), the Court stated that:

To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third

doctor commonly agreed between the parties.

Verily, it is the duty of the seafarer to notify his employer that he or she intends to refer the conflict to a third doctor. Once notified, the burden shifts to the employer to complete the process of referral to a third doctor so that, once and for all, the medical assessment of the seafarer will be put to rest.

x x x x

Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation. In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.

x x x x

Pursuant to Carcedo, when the letter-request for referral to a third doctor indicates the seafarer's fitness to work or the disability rating according to his own physician, then the seafarer is deemed to have duly and fully disclosed the contrary assessment of his own doctor, and the seafarer can signify his intention to resolve the conflict through referral of the conflicting assessments to a third doctor whose ruling, under the PO EA-SEC, shall be final and binding on the parties.

x x x x

The Court finds that the June 11, 2014 and June 25, 2014 Letter- requests of respondent to petitioners were sufficient compliance with Sec. 20(A) (3) of the POEA-SEC. Both letters stated that the chosen medical expert of respondent stated that he was permanently unfit, referring to the seafarer's fitness to work. The June 25, 2014 Letter even expressly stated that the medical opinions of the respective doctors (the company-designated physician and respondent's chosen doctor) differ. As a result, both letters requested that a third medical opinion be considered. These letter-requests of respondent to petitioners constitute as sufficient notification to proceed with the process of referral to the third doctor.

As stated in Carcedo, upon notification, the employer carries the burden of initiating the process for referral to a third doctor commonly agreed on between the parties. However, in this case, upon receipt of the letter-requests from respondent for referral to a third doctor, petitioners did absolutely nothing. Petitioners simply ignored said letters despite the fact that these documents expressly stated that respondent was declared permanently unfit by his chosen physician, referring to his fitness to work, and that the medical opinions of their respective doctors differ.

x x x x

... Here, respondent, as a seafarer, was completely prudent and compliant by sending the letter-requests to petitioners for a referral to a third doctor. In such rare fashion, respondent indeed paid attention to his obligations under the POEA-SEC by requesting referral to a third doctor before filing a complaint for disability benefits before the LA. He recognized the mandatory procedure regarding the referral to a third doctor in case of conflict between the medical opinions of the company-designated physician and his physician of choice. He even sent two letter-requests to petitioners consistently requesting referral to a third doctor. This shows the utmost good faith of respondent in complying with the POEA-SEC.

Regrettably, petitioners did not reciprocate respondent's good faith- compliance. Instead, they displayed indifference to the prescribed mandatory rules of the POEA-SEC. They tried to rationalize their inaction by

providing an afterthought excuse that the letter-requests should have contained the medical report of respondent's chosen physician, when the POEA-SEC does not even mandate such requirement. Accordingly, petitioners' obliviousness to the mandatory procedure of referral to a third doctor must be taken against them. (Emphases supplied, citations omitted)

To repeat, Riego ordained that referral to the third doctor is a mandatory procedure under Section 20(A)(3) of the POEA-SEC once the required notification by the seafarer is satisfied. Here the requirements for a referral to a third doctor were all complied with by Bunayog, thus:

- a. Examined by a Company-designated Physician. After he was medically repatriated to the Philippines. He was examined by respondent's designated physician who found him fit to resume his sea-based work as chief cook.
- b. Examined by a Second Doctor of his choice. He sought a second doctor's opinion who concluded that he was unfit to work.
- c. He notified the company of the adverse finding, requested and agreed to the designation of a Third Doctor. Pursuant to Section 20(A) (3) of the 2010 POEA-SEC, he requested respondent to agree to an examination by a third doctor.

As it was, however, respondent did not reply to nor act in any way on this request. Consequently, applying Riego, in the words of Chief Justice Gesmundo "petitioner's obliviousness to the mandatory procedure of referral to a third doctor must be taken against them."

Jurisprudence provides that failure of a seafarer to initiate referral often warrants the dismissal of the seafarer's claim for disability benefits as this requirement is mandatory. Conversely, the company's failure to heed the seafarer's request for referral to a third doctor should have an adverse consequence on the company who should be deemed to have agreed to the findings and disability rating of the seafarer's doctor of choice

Riego likewise keenly noted that jurisprudence, in general, decreed the dismissal of the seafarer's disability claims for their failure to initiate a referral to a third doctor:

Notably, a review of recent jurisprudence show that most seafarer- disability cases filed before the Court are often dismissed because of the failure of the seafarer to initiate referral to a third doctor, which is a mandatory requirement. In *Philippine Transmarine Carriers, Inc. v. San Juan*, the Court held that the seafarer was duty-bound to actively request that the disagreement between his physician's findings and that of the findings of the company-designated physician be referred to a final and binding third opinion. Failure to request or refer the conflicting findings to third doctor led to the dismissal of the seafarer's claim for disability benefits. Similarly, in *Idul v. Alster Int'l Shipping Services, Inc.*, it was held that the seafarer must actively or expressly request for the referral to a third doctor, which is a mandatory procedure. Failure to comply therewith is considered a breach of the POEA-SEC and renders the assessment by the company- designated physician binding on the parties.[3]

It follows, therefore, that once initiated, referral to a third doctor becomes mandatory, otherwise it shall be taken against the company, in which case, the findings of the seafarer's doctor become conclusive. This is consistent with our duty as avowed guardians of the rights of OFWs, our modern-day Filipino heroes. Otherwise, we fail to afford full protection to labor which our fundamental law so solemnly requires under Section 3,4 Article XIII on Social Justice and Human Rights of the Constitution.

Section 20(A)(3), POEA-SEC was
mandated for a reason and it was
not to incentivize a care-free attitude

I agree with the ponencia that the Court has the power "to conduct its own assessment to resolve the conflicting medical opinions of the company- designated physician and the seafarer's chosen physician based on the totality of evidence." [5] But in examining the parties' respective medical evidence, We should not lose sight of respondent's refusal to reply to or in any manner act on petitioner's request for a third doctor's medical assessment. We cannot leave the seafaring agency free to do what it pleases with the seafarer's request. We must not incentivize this care-free attitude towards an otherwise speedier and more efficient process of resolving the issues between them.

In this regard, I respectfully submit that a seafaring agency which totally ignores a legitimate request from a seafarer for a third doctor's examination and opinion must somehow be penalized for its indifference. The most effective way is to render conclusive the medical findings of the seafarer's doctor, and based thereon, draw the corresponding disability rating.

Thus, I humbly suggest that totally ignoring a seafarer's request for a third doctor's assessment or denying it without any reasonable ground should result in adverse consequence to the seafaring agency. The labor tribunals and the Court of Appeals should be alerted to applying the disputable presumption that "that evidence willfully suppressed would be adverse if produced."

I therefore CONCUR only in the result.

[1] *Benhur Shipping Corp. v. Riego*, G.R. No. 229179, March 29, 2022 [Per J.. Gesmundo, First Division].

[2] *Id.*, citing *Carcedu v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division].

[3] *Id.*

[4] Const., art. XI II, sec. 3 - The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[5] Supra note I.

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