

SPECIAL SECOND DIVISION

[CA-G.R. SP No. 124787, May 06, 2014]

**RUDY C. BATCHENETCHA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, ALL OCEANS MARITIME AGENCY, INC.
AND/OR MR. RICHARD T. VELOSO AND/OR THOME SHIP
MANAGEMENT PTE., LTD., RESPONDENTS.**

D E C I S I O N

GAERLAN, S.H., J.:

This is a Petition for Certiorari^[1] filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Decision^[2] dated 31 January 2012 of public respondent National Labor Relations Commission (NLRC), Fourth Division, in NLRC LAC No. OFW-M-05-000459-11, and its Resolution^[3] dated 12 March 2012. The assailed Decision, which was rendered by the public respondent NLRC in the exercise of its appellate jurisdiction, affirmed the Decision^[4] dated 30 March 2011 of Labor Arbiter Jose G. De Vera that dismissed the complaint of herein petitioner, docketed as NLRC-NCR Case No. (M)08-11685-10, while assailed Resolution denied petitioner's Motion for Reconsideration^[5] dated 20 February 2012 from public respondent's assailed Decision.

FACTS

This case stemmed from a labor complaint^[6] for disability benefits, medical reimbursement, illness allowance, damages and attorney's fees filed by petitioner Rudy C. Batchenetcha against private respondents All Oceans Maritime Agency, Inc. ("Agency") and Thome Ship Management Pte., Ltd. ("Thome Ship").

Petitioner avers that he is a seafarer by profession and, since 1982, has been employed by private respondent Agency for and in behalf of Thome Ship.

On 20 August 2008, he entered into a new Contract of Employment^[7] with private respondents as an Able Seaman on board Thome Ship's M/V Pacific Navigator, with a basic salary of US\$596.00. After being declared fit to work during his routine pre-employment medical examination, petitioner commenced his duties and responsibilities as Able Seaman, which included the following, to wit:

- a. Watch standers and may be required to supervise day work of junior rating;
- b. Stands watch at bow or on wing of bridge to look for obstructions in path of the vessel;
- c. Measures the depth of water in shallow or unfamiliar waters, using lead line, and telephones or shouts information to the bridge;

- d. Steers ship by automatic/remote control or manual control and/or uses emergency steering apparatus to steer vessel as directed by navigating officer, chief mate or ship's captain;
- e. Breaks out rigs, overhauls and stows cargo handling gears, stationary rigging, and running gears;
- f. Overhauls lifeboats, winch and falls;
- g. Paints and chips rusts on deck and superstructure of ship;
- h. Maybe concerned only with one phase of duties such as:
 - 1) maintenance of ship's gears and decks or watch duties;
 - 2) and may be known as skilled deckhand on various repairs and maintenance works on deck;
 - 3) performs other deck works as required by superior officers.

Petitioner claims that the foregoing duties involve performance of strenuous manual works such as lifting, carrying, pulling, pushing or moving materials and provisions. He had to contend with the arduous and frequent overtime works, which caused him strain and fatigue. He further alleges that in his line of work, he was constantly prone to inhalation of and direct contact to injurious and harmful chemicals. He was likewise exposed to varying temperatures of extreme hot and cold, when the vessel crosses ocean and geographical boundaries on harsh weather conditions, and he had to constantly adjust to different timezones. All these factors allegedly contributed to the physical and mental stress he had to endure while working on board a moving vessel. Finally, he avers that his separation from his family during the entire period of his employment contract allegedly causes him emotional stress.

Sometime in October 2008, petitioner experienced pain on his elbows, thumb and right ankle. He also developed scaly rashes starting from his face. He also suffered fever. When petitioner was admitted in Bay Hospital in South Africa, he was treated for Reactive or Infective Arthritis and Hypertension.^[8]

Due to his condition, he was repatriated on 28 October 2008. Upon his arrival, he was examined by the company-designated physician Dr. Agnes E. Gorospe, who is an oncologist at the Seamen's Hospital. In a Medical Certification^[9] dated 11 November 2008, Dr. Gorospe initially diagnosed petitioner to be suffering from Polyarthrititis Uncertain Etiology R/O Disorder, and thus, advised petitioner as follows: *"For rheumatology consult at St. Luke's Medical Center."*

On 13 November 2008, petitioner underwent a Whole Body Bone Scan, which revealed the following findings: *"Abnormal, nonspecific activity in the right femur. Metastatic disease to bone cannot be excluded. CT scan correlation and follow-up study suggested."*^[10]

In petitioner's Medical Certification^[11] dated 2 December 2008, he was diagnosed with Psoriatic Arthritis. Dr. Gorospe noted the following remarks: *"Carry out all*

recommendations of rheumatology service. Rheumatology to give clearance to go back to work."

Thereafter, in a Medical Certification^[12] dated 13 January 2009, which petitioner points out to be unsigned, he was declared "*Fit to Work*" by Dr. Gorospe.

According to petitioner, due to the compelling need for him to go back to work and with a promise of deployment from private respondents, he was constrained to sign a Certificate of Fitness to Work.^[13] The promise of deployment did not come true, however, despite his insistent pleas. Moreover, he allegedly continued to feel the symptoms of his illness, the fit to work certification notwithstanding. Because of his condition, he supposedly was unable to employ himself anew as a seaman.

On 14 May 2009, petitioner then consulted Dr. Efren R. Vicaldo, an internist and cardiologist at the Philippine Heart Center, who diagnosed him with Hypertensive cardiovascular disease; Psoriatic arthritis; Impediment Grade VII (41.80%). Dr. Vicaldo certified petitioner as "*unfit to resume work as seaman in any capacity*".^[14]

On 16 May 2009, petitioner likewise consulted Dr. Charito F. Cruz-Bermudez, an internist and rheumatologist at St. Luke's Hospital, who similarly diagnosed petitioner with Psoriasis; Psoriatic Arthritis; Hypertension (BP 150/80), and thus, declared petitioner as "*NOT physically fit for work*".^[15]

On 18 August 2010, petitioner filed his labor complaint against private respondents.

On 6 December 2010, during the pendency of the case before the labor arbiter, petitioner visited another internist and rheumatologist, Dr. Clemente M. Amante, who again diagnosed petitioner of having Hypertension, Essential, Moderate to Severe; Psoriatic Arthritis; Psoriasis Scalp. Dr. Amante also declared petitioner as "*no longer fit to work as a seaman due to his medical condition*".^[16]

For their part, private respondents allege that after petitioner was declared "Fit to Work"^[17] by his attending physician at the Seamen's Hospital, on 13 January 2009, petitioner himself acknowledged the same when he subsequently signed a Certificate of Fitness to Work^[18] dated 26 February 2009. In that Certificate, petitioner supposedly confirmed that he "*most willingly and voluntarily signed the same with full knowledge of his rights under the law*." Private respondents further allege that nothing was heard of petitioner since then and until he filed a complaint at the Associated Marine Officers' and Seamen's Union of the Philippines (AMUSUP) and later, the National Conciliation and Mediation Board (NCMB) and finally, before the Labor Arbiter.

On 30 March 2011, Labor Arbiter De Vera rendered a Decision^[19] finding that petitioner is not entitled to his claim for permanent and total disability benefits, and accordingly, dismissed the complaint for lack of merit, viz:

"WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED."

Petitioner seasonably filed an Appeal^[20] before the public respondent NLRC.

On 31 January 2012, public respondent NLRC rendered the assailed Decision^[21] affirming decision of the Labor Arbiter. Petitioner then filed a Motion for Reconsideration^[22] dated 20 February 2012, but was denied in the assailed Resolution^[23] dated 12 March 2012 for lack of merit.

Thus, petitioner filed the instant Petition on the following grounds:^[24]

GROUND

I.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN UPHOLDING THE UNSIGNED AND PREMATURE CERTIFICATION OF FIT TO WORK ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN;

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN NOT FINDING THAT PETITIONER IS SUFFERING FROM PERMANENT TOTAL DISABILITY.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN NOT GRANTING (SIC) THE PETITIONER'S CLAIM FOR FULL DISABILITY BENEFITS UNDER THE CBA AND ATTORNEY'S FEES.

THE COURT'S RULING

The Petition is impressed with merit.

This case, once again, presents the question of whether it is the fit-to-work assessment of the company-designated physician, on one hand, or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work, on the other hand, that should prevail in a maritime disability claim.

Section 20 (B), paragraph (3) of the 2000 Philippine Overseas Employment Administration - Standard Employment Contract for Seafarers (POEA-SEC) provides:

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

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with

the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. This does not mean, however, that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.^[25]

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.^[26]

Accordingly, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him.^[27]

After a careful evaluation of the records, the Court finds sufficient ground to suspect the fit-to-work declaration of Dr. Gorospe in the Medical Certification^[28] dated 13 January 2009. It will be recalled that in an earlier Medical Certification dated 2 December 2008, Dr. Gorospe herself noted: *"Carry out all recommendations of rheumatology service. Rheumatology to give clearance to go back to work."* Therefrom, it ought to be self-evident that the company-designated physician acknowledged that the determination of petitioner's capacity to resume work, in the light of his illness, rests upon the expert assessment of a rheumatologist. However, Dr. Gorospe prematurely issued the fit-to-work declaration without the necessary clearance of the proper specialist. To Our mind, such a flaw discredits company-designated physician's finding. Accordingly, the consideration of the prognosis of petitioner's independent physicians, two of whom are internists-rheumatologists, is warranted in this case.

In this regard, We note that while it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. This is because resort to a third doctor remains a mere directory not a mandatory provision as can be gleaned from the tenor of Section 20 (B) (3), POEA-SEC itself.^[29]

This brings Us to resolve whether petitioner's illness is compensable.