

FIFTH DIVISION

[CA-G.R. SP NO. 73150, July 14, 2006]

BARKO INTERNATIONAL, INC. AND GRANDALAN ENTERPRISES CORPORATION, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND SIXTO R. MAGTIRA, RESPONDENTS.

DECISION

BARRIOS, J.:

The petitioners Barko International, Inc. and Grandalan Enterprises Corporation (or the petitioners for brevity unless individualized as Barko and Grandalan respectively) are before Us on certiorari assailing the National Labor Relations Commission's (or NLRC) Resolution dated February 13, 2002 favorable to the respondent Sixto R. Magtira (or Magtira), and the Resolution of July 25, 2002 denying its reconsideration. These are the antecedents of the case:

Magtira was hired by the petitioners as 1st Engineer on board the ocean-going vessel M/N Sanko Spruce. Their employment contract stipulated that Magtira would work for a period of ten (10) months with a monthly salary of US\$948.00. His employment was also covered by a Collective Bargaining Agreement (or CBA) between his mother union All-Japan Seamen's Union - Associated Marine Officers and Seamen's Union of the Philippines (or JSU-AMOSUP) and his foreign principal represented by Barko. He departed from the Philippines on February 9, 1998 and embarked on the said vessel the next day.

Magtira alleged that on August 11, 1998, while the vessel was at the port of New Orleans, he had a mishap while conducting an inspection of the inside gears of the main engine crankshaft deflection. He slipped inside the crankshaft of cylinder #4 and in the process hit his lower back and buttocks. He felt a lacerating pain on his lumbar area but still finished the inspection, after which he took some pain relieving tablets and applied medicinal plaster on his lumbar area. But after two to three hours the pain recurred with numbness radiating to both his legs. His physical condition became worse whenever he would perform his work as engineer of the vessel. Thereafter the pain in his lumbar area became unbearable and excruciating so he requested for a medical check-up upon their arrival in the port of Kobe, Japan.

In the hospital at Kobe, Japan, Magtira's injury was diagnosed as *prolapsed intervertebral disc, causing acute lumbago and sciatica*. The physician's recommendation was for Magtira to get the necessary orthopedic treatment and to be allowed to disembark to take some rest and shore medical care because he was unfit for sea duty. On September 16, 1998, the ship master reported to Barko that Magtira complained of back pain while on board the vessel and during his service period and the physician's recommendation was for him to be repatriated. Hence, Magtira was repatriated to the Philippines on September 25, 1998.

From September 28 up to December 18, 1998, Magtira underwent medical evaluation and treatment under Dr. Robert Lim (or Dr. Lim) at the Marine Medical Services of the Metropolitan Hospital due to *Herniated disc L3-L4 and L4-L5 levels; S/P Laminectomy and Disectomy, L3-L4 and Posterolateral fusion*. Magtira claimed that after his treatment and operation at the Metropolitan Hospital until his discharge therefrom, no assessment of his impediment was made by Dr. Lim. He then asked Dr. Rimando Saguin (or Dr. Saguin) for an evaluation of his disability. On February 25, 1999, Dr. Saguin issued a medical certification stating that Magtira's partial permanent disability is assessed at Grade 8 (33.59% of US\$50,000.00).

On June 28, 1999, Magtira filed a case for *disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees* against the petitioners.

The petitioners came out with a certification from a company designated physician dated July 19, 1999 assessing Magtira's disability at Grade 11 (14.93% of US\$50,000.00).

Due to the disparity of the gradings submitted by both parties, the Labor Arbiter ordered Magtira to submit himself to a medical examination to be conducted by the Employees Compensation Commission (or ECC). The ECC physician came out with a finding that the disability of Magtira is partial but permanent with impediment rating of Grade 8.

Magtira claimed that he is entitled to total disability (Grade 1) compensation of US\$80,000.00 based on Article XXI of the JSU-AMOSUP CBA of which Barko is also a signatory.

In their traverse, the petitioners claimed that Magtira's disability is not Grade 1 and the determination of the amount of disability compensation must be made on the basis of the applicable provisions of the POEA Standard Employment Contract and not the JSU-AMOSUP CBA. They argued that the company physician assessed Magtira's disability at Grade 11 (14.93%) and based on Section 3 of the POEA contract, their contractual liability amounts to US\$7,465.00 or 14.93% of US\$50,000.00.

On November 16, 2000, the Labor Arbiter rendered a Decision in favor of Magtira, disposing that:

WHEREFORE, above premises duly considered, judgment is hereby rendered:

1. Ordering respondents BARKO INTERNATIONAL, INC., and GRANDALAN ENTERPRISES CORPORATION, jointly and severally, to pay complainant Sixto Magtira the amount of US\$80,000.00 as disability benefits, or its peso equivalent at the time of payment.
2. Ordering said respondent jointly and severally to pay complainant sickness allowance equivalent to his basic wage for a period of 120