

THIRD DIVISION

[G.R. No. 231748, July 08, 2020]

RICHARD LAWRENCE DAZ TOLIONGCO, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, ANGLO-EASTERN CREW MANAGEMENT PHILIPPINES, INC., ANGLO-EASTERN (ANTWERP) NV, GREGORIO B. SIALSA, ALL CORPORATE OFFICERS AND DIRECTORS AND M/V MINERAL WATER, RESPONDENTS,

DECISION

LEONEN, J.:

This case involves a seafarer who was sexually harassed during the course of his employment on board the M/V Mineral Water. After the incident, petitioner Richard Lawrence Daz Toliongco (Toliongco) opted for voluntary repatriation. He failed to comply with the three-day reportorial requirement. However, a week after his repatriation, he filed a complaint before the Overseas Workers Welfare Administration.^[1] Several months later, he filed a complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees"^[2] claiming that he is rendered permanently and totally disabled due to his post-traumatic stress disorder caused by his unfortunate experience onboard the vessel.

For this Court's resolution is a Petition for Review on Certiorari with Motion to Allow Petitioner to Litigate as an Indigent or a Pauper Litigant assailing the Decision^[3] and Resolution^[4] of the Court of Appeals, Manila in CA-G.R. SP. No. 143146.

On October 30, 2013, respondent Anglo-Eastern Crew Management Philippines (Anglo-Eastern Crew), Inc. employed Toliongco as a Messman on behalf of its foreign principal, Anglo Eastern (ANTWERP), NV.^[5] Toliongco's employment contract provided:

That the seafarer shall be employed on board under the following terms and conditions:

- | | |
|------------------------------|---|
| 1.1 Duration of Contract | 7 MONTHS |
| 1.2 Position | Position: Messman |
| 1.3 Basic Monthly Salary: | US\$604.00 |
| 1.4 Hours of Work: | 44 hrs/wk |
| 1.5 Overtime: | US\$ 450.00 OT after
103 hrs/mo. US\$
4.36/hr |
| 1.6 Vacation Leave with Pay: | US\$91.00 |

Comp leave holidays- US\$34.91
1.7 Point of Hire: MANILA, PHILIPPINES
1.8 Collective Bargaining Belgium
Agreement, if any:

The herein terms and conditions in accordance with Governing Board Resolution No.09 and Memorandum Circular No. 10, series of 2010, shall be strictly and faithfully observed.^[6]

On February 23, 2014, Toliongco was deployed aboard the vessel M/V Mineral Water.^[7]

On the night of June 27, 2014, Toliongco claimed he was cleaning the galley of the ship when he felt the urge to relieve himself. He was on his way to the water closet when he met Chief Officer Korolenko Oleksiy (CO Oleksiy). Toliongco asked CO Oleksiy "if he wanted his dinner served right away,"^[8] to which CO Oleksiy replied "Ok, Ok, Thank you."^[9]

Toliongco served dinner to CO Oleksiy and continued to clean the galley. When he returned, Toliongco noticed that CO Oleskiy had not eaten his fruits. Toliongco handed CO Oleksiy the uneaten fruits but he was instructed to follow CO Oleksiy to his room. When both of them had entered the room, CO Oleksiy "removed all of his clothes and lay on his bed."^[10] Toliongco was about to leave but CO Oleksiy called out to him, and as Toliongco approached, "the CO suddenly grabbed his left arm."^[11]

According to Toliongco, CO Oleksiy "demanded that [Toliongco] masturbate and suck his manhood."^[12] He claimed CO Oleksiy "repeatedly forced [Toliongco's] hand unto [CO Oleksiy's] penis."^[13] However, Toliongco resisted and left CO Oleksiy's room.^[14]

Toliongco then went to the smoking room where he saw Able Seaman Desiderio Paner (Paner). He told Paner what happened and requested that Paner accompany him while cleaning the galley.^[15]

Toliongco was about to finish cleaning the galley when Paner told him that CO Oleksiy was waiting for him in the ship's office.^[16] Toliongco "asked Paner to accompany him"^[17] but the latter suggested that he should "just run or shout if the situation became precarious."^[18] Paner also promised "to follow [Toliongco] if he did not come back soon."^[19]

Toliongco "was made to enter the cabin first."^[20] Upon entering, he averred that CO Oleksiy locked the door, grabbed and embraced him, then dragged him to the bed.^[21] Toliongco resisted and managed to escape. After this, he told Paner^[22] as well as Chief Cook Edenjarlou Eseo (Eseo) what happened "and requested permission to call his parents."^[23]

The following day, Toliongco filed a Complaint for "Physical Abuse and Sexual Abuse

under Alcohol Intake"[24] against Oleksiy before the Captain. Paner and Eseo corroborated the complaint through their written testimonies.[25] All these incidents were entered in the Deck Log Book.[26]

Toliongco claimed that when CO Oleksiy learned about the complaint, he threatened to kill him. Out of fear, Toliongco requested for a reliever. On July 12, 2014, he was repatriated to the Philippines.[27]

Toliongco averred that "[u]pon arrival, he was examined by the company physicians who found that he was sexually harassed and physically abused by CO Korolenko Oleksiy." [28]

Months later or on November 24, 2014 Toliongco consulted Dr. Randy Dellosa (Dr. Dellosa), a clinical psychologist, who diagnosed him with Post Traumatic Stress Disorder (PTSD).[29] The finding was based on the following:

- The patient directly experienced the threat of sexual violence and death;
- recurrent, intrusive, and distressing memories of the traumatic incident;
- persistent avoidance of the distressing memories;
- persistent anger;
- problem with concentration; and
- sleep disturbance ever since the said incident happened.[30]

Dr. Dellosa's diagnosis was verified by Dr. Li-Ann Lara-Orencia who also concluded that Toliongco cannot return to his job as a seafarer.[31]

Due to his illness, Toliongco requested for compensation from Anglo-Eastern Crew. However, his request remained unheeded.[32]

On March 2, 2015, Toliongco filed a labor complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees" against Anglo-Eastern Crew, ANTWERP and Gregorio Sialsa.[33] He also prayed for "payment of the unexpired portion of his contract. . . and legal interest." [34] Toliongco claimed that he suffered from PTSD because he was sexually harassed.[35] Allegedly, "his illness [was] analogous to the traumatic head injuries under Section 32 of the POEA Standard Employment Contract (POEA-SEC)" which reads:

6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work.[36]

He asserted that he suffered an occupational disease while employed aboard the vessel and is now "totally and permanently disabled" due to his "mental instability." [37] Thus, he was hindered from returning to his previous job as a seafarer.[38]

Meanwhile, respondent Anglo-Eastern claimed that Toliongco was not illegally

dismissed as he was actually the one who asked for the early termination of his employment contract.^[39] They also insisted that Toliongco cannot claim disability benefits because:

(1) he was not repatriated on a medical ground; (2) he did not comply with the mandatory requirement for post-employment medical examination within three days from his arrival; and (3) there is no declaration from the company-designated physician as to his fitness for sea duty.^[40]

While the Labor Arbiter found that Toliongco was constructively dismissed and forced to repatriate himself due to "the hostile environment brought about by. . . [the] filing of the complaint,"^[41] it concluded that Toliongco cannot claim disability benefits because he failed to report within three (3) days from his arrival and the medical evidence he submitted was not enough to guarantee his claim.^[42]

There are no compelling reasons to accord the exceptional clause 'physically incapacitated to do so' a liberal reading. Hence, since complainant's failure to observe his reportorial duty is by reason of alleged mental or psychological condition, it cannot be equated with physical incapacity. Moreover, complainant offered no explanation as to why he did not notify his manning agent by some other means. For these two reasons, his disability compensation — assuming he was entitled thereto — is deemed forfeited.^[43]

Nevertheless, the Labor Arbiter directed respondents to pay Toliongco "moral damages for the mental torture that he endured and exemplary damages to dissuade such incident from further occurring."^[44] Attorney's fees were also awarded as Toliongco was constrained to avail the services of a lawyer:^[45]

Regardless, complainant was certainly wronged. His resistance to the repeated demands of his CO to masturbate him and suck his penis led to his complaint. In turn, his complaint was met with violent reaction by his superior. It will not escape the attention of this Office that his allegation that he was threatened with death was never really contested by the respondents. In short, his work environment became a hostile, offensive and intimidating environment because he resisted his superior's demand for sexual favor. What was done to him was clear sexual harassment.^[46]

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, evidence and law considered, judgment is hereby rendered holding the respondents liable for the constructive dismissal of the complainant. Accordingly, they are hereby **ORDERED** to solidarily pay the latter as follows:

Salaries for the unexpired portion of the contract	Php	54,384.16
Moral Damages	Php	20,000.00
Exemplary Damages	Php	10,000.00

SO ORDERED [47]

On appeal, the National Labor Relations Commission affirmed the Labor Arbiter's ruling with modification. [48]

It agreed that Toliongco cannot be given any disability benefit even if he was constructively dismissed. [49] It found that:

While complainant submitted the medical reports of his self-appointed doctors, the same failed to show the causal connection between the nature of his employment as the vessel's messman and his PTSD, or that the risk of contracting his illness was increased by his working conditions. Not even his own doctors made a finding or declaration that his illness is work-related/aggravated or that he is permanently incapacitated to perform his job as messman as a result of his having been molested and threatened by his own superior officer. There is likewise no disability grading issued by his own physicians. [50]

However, it deleted the awards for moral and exemplary damages and instead granted financial assistance "as a measure of social and compassionate justice." [51] The dispositive portion of its decision provided:

WHEREFORE, premises considered, the assailed Decision is **AFFIRMED** with modification. Respondents are hereby ordered to solidarity pay complainant his salary for the unexpired portion of his contract computed as follows:

1) Unexpired portion (in USD)

$$\begin{array}{l} 7/13/14-9/22/14 \\ \$604.00 \times 2.30 = \$1,389.20 \end{array}$$

They are likewise ordered to give financial assistance in the amount Php 30,000.00 plus 10% attorney's fees of the total amount awarded.

The award[s] for moral and exemplary damages are hereby deleted for lack of merit.

SO ORDERED. [52]

On September 30, 2015, the National Labor Relations Commission denied Toliongco's Motion for Reconsideration for lack of merit. [53]

This prompted Toliongco to file a Petition for Certiorari under Rule 65 before the Court of Appeals claiming that the National Labor Relations Commission committed grave abuse of discretion in issuing the assailed decision. He insisted that his PTSD was a work-related illness incurred while aboard the vessel. Citing the Revised Pre-Employment Medical Exam Standards for Seafarers, he claimed that his mental state "permanently and totally incapacitated him" from doing his job. For this