SECOND DIVISION

[G.R. No. 214906, January 16, 2019]

ABOSTA SHIPMANAGEMENT CORP., CIDO SHIPPING COMPANY LTD., AND ALEX S. ESTABILLO, PETITIONERS, V. DANTE C. SEGUI, RESPONDENT.

D E C I S I O N

J. REYES, JR., J.:

This labor case is about a seaman's claim for a maximum benefit of permanent and total disability benefits, and attorney's fees.

The Facts of the Case

As narrated by Labor Arbiter (LA) Fatima Jambaro-Franco (LA Franco), the facts are the following:

> [Respondent Dante C. Segui] alleged that he was hired by the [petitioners Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo] as an able seaman on board the vessel M/V Grand Quest with a salary of US$564.00 per month; that his employment was covered by an ITF IBF JSU Collective Bargaining Agreement (CBA); that prior to his deployment, he underwent the required pre-employment medical examination (PEME) of which he was declared fit to work and thereafter, boarded the vessel on June 16, 2009; that during his employment, he would be on duty more than 12 hours a day resulting in extreme fatigue and exhaustion; that on October 26, 2010, while on duty, he felt cramps followed by a severe back pain; that he informed the master who advised him to rest; that the next day, he was unable to stand and remained in his cabin for the rest of the voyage; that when the vessel arrived in South Africa, he was admitted to a medical facility and he underwent an x-ray of his back and injection on his left knee; that the same procedure was taken in Colombia and again in Panama where he was diagnosed with a lumbar disc problem and was recommended repatriation; that on December 2, 2010, he arrived in Manila and was referred to the Manila Doctors Hospital where a CT Scan showed he was suffering from "Circumferential Disc Bulge at L4-L5 with Posteromedial Herniation of the Nucleus Pulposus as well as associated Spinal Canal and Neuroforaminal Narrowings as described; Lumbar Spondylosis" x x x; that on December 14, 2010, he underwent Laminotomy and Discectomy at Level L4-L5 and was confined for 3 weeks; that he continued with his therapy but his condition did not improve; that despite the treatment, [Segui's] pain and discomfort persisted, thus, he sought another treatment and opinion from an independent doctor in the person of Dr. Nicanor Escutin; that after a thorough examinations and test, concluded that the nature and extent of [Segui's] injury rendered him permanently

and totally unable to work as a seafarer, thus, [Segui] asked [petitioners] to pay his total and permanent disability; that [petitioners], however, refused. Hence, this complaint.

[Petitioners] Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo [Abosta, *et al.*] do not dispute the circumstances of [Segui's] engagement and subsequent deployment to his assigned vessel, as well as his repatriation on medical grounds, but deny liability for the claims and aver: that following [Segui's] repatriation on December 2, 2010 he was immediately referred to the company-designated physician; that [Segui] was diagnosed with Lumbar Disc Herniation and was referred to an orthopedic surgeon and physiatrist x x x; that [Segui] underwent foraminotomy and discectomy of [L4-L5] and tolerated the procedure well; that he was placed on therapy for healing and possible fitness to work x x x; that unknown to the [petitioners], [Segui] stopped attending his medical appointments and instituted his complaint; that during the mandatory conferences, [petitioners] prevailed upon [Segui] to continue his treatment for the final disability assessment; that [Segui] returned to the company[-]designated physician on May 17, 2011 to continue treatment and obtain his final assessment x x x; that finding that [Segui] had reached maximum medical cure, the company-designated-physician assessed [him] with Grade 8 disability-moderate rigidity or 2/3 loss of motion of lifting power of the trunk x x x; that [Segui] is only entitled to the compensation corresponding to the assessment made by the company-designated physician; that there is no basis to claim permanent total disability compensation; that [Segui] failed to prove his entitlement to full disability compensation; and that the findings of the company-designated physician are binding on [Segui].[1]

The LA's Decision

On February 2, 2012, LA Franco rendered a Decision in favor of Segui.[2] The LA held that Segui is entitled to maximum disability benefit after finding that he suffered from a work-related illness/injury while on board the vessel, and applying the terms and conditions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), which is incorporated in his employment contract. Section 20.B of POEA-SEC provides that the employer shall be liable for disability compensation for work-related illness/injury sustained during the term of the contract.[3]

The LA found that Segui underwent treatment and therapy under the company-designated physician for almost eight months, after which, he was determined to have reached maximum medical cure as of July 8, 2011. However, during his check-up on June 22, 2011, or less than two weeks up to the time he was declared to have reached maximum medical cure, Segui was still assessed to have poor lifting capacity. The medical certificate and assessment dated July 8, 2011, however, made no reference to this medical observation. The LA construed that the July 8, 2011 certification is intended to comply with the 120/240-day period under current jurisprudence.[4]

The LA explained that the entitlement to disability benefits of seamen on overseas work is governed not only by the medical findings but by law (the Labor Code and its Implementing Rules) and contract. A seafarer who is medically repatriated is considered on temporary total disability if he is unable to work for 120 days, during which time he receives sickness wages and is provided medical attention. After the lapse of 120 days and no declaration of fitness or permanent disability is made, the temporary total disability may be extended up to a maximum of 240 days subject to the employer's right to declare that a partial permanent or total permanent disability already exists. After 240 days and without a declaration of fitness/disability, the disability is deemed total and permanent. The LA ruled that between the declaration of the company-designated physician and respondent Segui's own physician, the latter's medical certificate clearly detailing the nature of his disability and extent of incapacity should prevail.[5]

The NLRC Decision

On appeal to the National Labor Relations Commission (NLRC), the commission affirmed the Decision of the LA on January 4, 2013.[6] The NLRC pronounced that since the International Transport Workers' Federation (ITF) Standard Agreement provides for higher disability compensation than the POEA-SEC, the former should prevail over the latter.[7]

The NLRC also ruled that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion, which can then be used by the labor tribunals in awarding disability claims.[8]

The NLRC elucidated on the following findings of fact:

> In the case at bar, records show that on July 8, 2011, the company-designated physician issued a medical report, indicating that [Segui] had "reached maximum medical cure;" and that the "final disability grading under the POEA schedule of disabilities is Grade 8 - moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" x x x. Inasmuch as [Segui] had already "reached maximum medical cure," it is indubitable that his disability of "moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" would remain, despite further medical treatment. Clearly, [Segui's] disability is already permanent.
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> Significantly, the company-designated physician never mentioned in his medical report of July 8, 2011 that as of said date, [Segui] was already fit to work as seafarer in any capacity. Therefore, the declaration of the company-designated attending physician in Panama on November 18, 2010, that [Segui] was "Unfit for duty" x x x still stands.
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> Notably, in his disability report dated June 4, 2011, the physician consulted by [Segui] already declared the latter's disability as permanent and that [Segui] is already "UNFIT TO WORK as a seaman in whatever capacity" x x x. Obviously, the findings of the company-designated physicians and [Segui's] appointed physician are the same in that, [Segui] is already permanently unfit for further sea service in any capacity.

> Indeed, from his repatriation on December 2, 2010, up to this writing, or a period of more than one and a half (1½) years, which is definitely more than 240 days, there is no showing in the records that [Segui] was able to earn wages as seafarer, or in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do. With [Segui's] permanent disability of "moderate rigidity or two thirds (2/3) loss of motion of lifting power of the trunk," it is without doubt that he would no longer be capable of performing the strenuous activities of a seafarer. Truly, no enterprising employer would ever employ, as seafarer, one who has lost two thirds (2/3) of the motion or lifting power of his trunk. Patently, [Segui] is already permanently and totally disabled from further working as a seafarer in any capacity.
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> In fact, even if the company-designated physician assessed [Segui's] disability at Grade 8 only, still, the latter is entitled to 100% compensation. This is in consonance with the provision of the ITF Standard Collective Agreement/CBA that "any Seafarer assessed at less than 50% disability under the attached Annex 4 but certified as permanently unfit for further sea service in any capacity by the Union's Doctor, shall also be entitled to 100% compensation." Undoubtedly then, [Segui] is entitled to total and permanent disability benefit or 100% compensation granted under the ITF Standard Collective Agreement/CBA. [9]

Abosta, *et al.* moved for reconsideration, which the NLRC denied in a Resolution dated March 26, 2013.[10]

The Court of Appeals Decision

Undaunted, Abosta, *et al.* elevated the case to the Court of Appeals (CA) through a petition for *certiorari* under Rule 65 of the Rules of Court, as amended. On July 31, 2014, the CA rendered a Decision dismissing the petition and affirming the NLRC's Decision.[11]

The CA resolved that the NLRC did not commit grave abuse of discretion in affirming the LA's award of permanent total disability benefits and maximum disability benefits to respondent Segui. The CA expounded that the disability is considered total if there is disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work, which a person of his mentality and attainments could do. It does not mean absolute helplessness. The disability is considered permanent if there is inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines entitlement to permanent disability benefits is the inability to work for more than 120 days.[12]

The CA's findings reveal that from the date of Segui's repatriation on December 2, 2010 up to his consultation with his physician of choice on June 4, 2011, more than 120 days have passed and the company-designated physician failed to give him a disability grading or declare him fit to work. The company-designated physician only gave him a disability grading when he had already reached a maximum medical cure and even then, Segui's condition had not improved. Although he was given a disability grading, the company-designated physician did not declare him fit for sea

duty in any capacity. Thus, the CA determined that the NLRC was correct in affirming the LA's Decision in declaring his disability as total and permanent, and awarding maximum disability benefits to Segui.[13]

Abosta, *et al.* moved for reconsideration, which the CA denied in a Resolution dated October 14, 2014.[14]

The Issues Presented

Unconvinced, petitioners Abosta, *et al.* filed a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, before the Court, raising the following grounds:

I.

> Whether the [CA] committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement.

II.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that disability compensation is determined not by the number of days of treatment but rather, by the disability grading issued by the company-designated physicians.

III.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that in the absence of evidence of bias, the findings of the company-designated physicians are entitled to great weight and respect.

IV.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that failure of a seafarer to refer the case to a third physician in the event of conflicting findings will result in the dismissal of the complaint.

V.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that attorney's fees may not be awarded where there is no evidence of bad faith on the part of the party being held liable for the same.[15]

In his Comment, Segui alleges, among other points, that since his injury is undoubtedly work-related as the same occurred while on board performing his duties and responsibilities, and he has been incapacitated for more than 120 days, he has the right to be compensated total and permanent disability benefits.[16] Segui also avers that in case of conflict between the medical findings of the company-designated physician and his physician, the doubt should be resolved in his favor applying the principle of social justice.[17]