

FIRST DIVISION

[G.R. No. 201806, August 14, 2017]

NORTH SEA MARINE SERVICES CORPORATION, MS. ROSALINDA CERDINA AND/OR CARNIVAL CRUISE LINES, PETITIONERS, VS. SANTIAGO S. ENRIQUEZ, RESPONDENT.

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the January 20, 2012 Decision^[2] and May 8, 2012 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 117050, which dismissed the Petition for *Certiorari* filed therewith and thus affirmed the June 25, 2010 Decision^[4] and September 20, 2010 Resolution^[5] of the National Labor Relation Commission (NLRC) ordering petitioners North Sea Marine Services Corporation, Ms. Rosalinda Cerdina, and Carnival Cruise Lines (collectively petitioners) to pay respondent Santiago S. Enriquez (respondent) US\$80,000.00 as permanent disability benefit, US\$576.00 as balance for sickness wages, and 10% thereof as attorney's fees.

Antecedent Facts

On February 27, 2008, petitioner North Sea Marine Services Corporation, for and on behalf of its foreign principal, petitioner Carnival Cruise Lines, entered into a Contract of Employment^[6] with respondent for a period of six months which commenced on April 27, 2008, as Assistant Plumber for the vessel *MS Carnival Triumph*.

On September 2, 2008, while in the performance of his duties, respondent experienced nape pains that radiated to his upper back. The ship doctor diagnosed him to be suffering from mechanical back pains and prescribed him with medicines.^[7] However, due to the worsening of his back pains, he was medically repatriated on October 5, 2008.

Upon arrival in Manila on October 7, 2008, respondent was immediately referred to the company-designated physician, Dr. John Rabago (Dr. Rabago), at the Cardinal Santos Medical Center. An orthopedic specialist recommended Magnetic Resonance Imaging (MRI) of respondent's cervical spine, which test revealed that he was suffering from *Cervical Spondylosis with Thickening of the Posterior Longitudinal Ligament from C2-3 to C5-6; Mild Disc Bulging from C3- 4 to T2-E; and Superimposed Left Paracentral Disc Protrusion at C5-6.*^[8] During his confinement at the Cardinal Santos Medical Center from October 28, 2008 to October 30, 2008, respondent underwent Anterior Disectomy, Spinal fusion C5-C6 Ciliac Bone Graft, and Anterior Plating.^[9] After his discharge from the hospital, respondent continuously reported to the orthopedic surgeon for medical treatment and

evaluation. On November 28, 2008, he was referred to a physiatrist to undergo physical therapy. [10]

In a Medical Report^[11] dated December 17, 2008, Dr. Rabago declared respondent fit to resume sea duties, with the conformity of both the orthopedic surgeon and the physiatrist. Respondent thereafter signed a Certificate of Fitness to Work,^[12] releasing petitioners from all liabilities.

On February 25, 2009, respondent consulted an independent orthopedic surgeon, Dr. Venancio P. Garduce, Jr. (Dr. Garduce), of the UP-PGH Medical Center, who certified his unfitness to work as a seaman with the following findings:

February 25, 2009

To whom it may concern

This is to certify that SANTIAGO S. ENRIQUEZ, 45 years old, male, has been seen & examined by the undersigned as outpatient. History reviewed and patient's physical examination reveal limitation of neck motion associated with tenderness on posterior aspect of the neck. He also has numbness of the (R) shoulder with muscle spasm. The (L) pelvic/iliac bone graft down is tender associated with numbness.

Considering all these findings, it would be impossible for him to work as seaman-plumber. Disability grade of three (3) is recommended.^[13]

Proceedings before the Labor Arbiter (LA)

On March 4, 2009, respondent filed a Complaint^[14] with the NLRC seeking to recover permanent disability compensation in the amount of US\$80,000.00 under the International Transport Workers' Federation Cruise Ship Collective Bargaining Agreement (ITF Cruise Ship CBA),^[15] balance of sick wages for two months, moral and exemplary damages, and attorney's fees. Respondent claimed that despite the lapse of 120 days and medical attention given to him by the company-designated physician, his condition did not improve, as attested by the medical findings of his own physician Dr. Garduce.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability benefit since he was declared fit to work by Dr. Rabago, as attested by both the orthopedic surgeon and physiatrist. Petitioners asserted that the fit-to work assessment of the company-designated physician deserved utmost credibility because it was rendered after extensive monitoring and treatment of respondent's condition by a team of specialists, and it contained a detailed explanation of the progress in respondent's condition. Petitioners also asserted that there was no proof that respondent's employment was covered by a CBA or that his injury was caused by an accident as to fall under the CBA provisions. Moreover, petitioners insisted that respondent had executed a Certificate of Fitness to Work, releasing petitioners from any obligation in relation to his employment.

In a Decision^[16] dated September 29, 2009, the Labor Arbiter denied respondent's claim for disability benefits. The Labor Arbiter found credence in Dr. Rabago's fit to work assessment, which was buttressed by the findings of the specialists, was arrived at after careful and accurate evaluation of respondent's condition, and well-substantiated by the medical records.

The Labor Arbiter disregarded the ITF Cruise Ship Model CBA presented by respondent for lack of proof that petitioners were parties to such agreement. Further, there was no evidence that respondent's illness resulted from an accident. The dispositive portion of the Decision read:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint for lack of merit.

However, in the interest of justice, this Arbitration Branch awards complainant US\$3,000.00 as financial assistance.

All other claims are likewise denied for want of any basis.

SO ORDERED.^[17]

Records show that only respondent appealed from the Decision of the Labor Arbiter. Petitioners did not appeal but instead filed an Opposition to Complainant's Request for Payment of Financial Assistance.^[18]

Proceedings before the National Labor Relations Commission

In a Decision^[19] dated June 25, 2010, the NLRC found respondent's appeal meritorious. The NLRC gave more weight to the medical certificate of Dr. Garduce which declared respondent unfit to resume sea duties since petitioners never redeployed him for work despite the company-designated physician's assessment of fitness to resume sea duties. The NLRC ruled that permanent and total disability did not mean a state of absolute helplessness but mere inability to perform usual tasks. The NLRC also held that the Certificate of Fitness is akin to a release or quitclaim, which did not constitute a bar for respondent to demand what was legally due him.

The NLRC found that respondent's injury was caused by an accident when his spinal column cracked while lifting some heavy pipes; it thus awarded him total and permanent disability benefits under the ITF Cruise Ship CBA. The dispositive portion of the Decision read:

WHEREFORE, premises considered, the assailed Decision rendered by Labor Arbiter Aliman D. Mangandog dated September 29, 2009 is hereby REVERSED and SET ASIDE and a NEW ONE ENTERED holding respondents liable to pay jointly and severally, complainant's claim for permanent disability benefits in the sum of US\$80,000.00 and US\$576.00 as balance for sickness wages, plus attorney's fees in the

sum equivalent to 10% of the total judgment award.

SO ORDERED. [20]

Petitioners filed a motion for reconsideration on the grounds that the NLRC erred in granting disability benefits under the alleged CBA and in awarding attorney's fees in the absence of a finding of bad faith. This motion was, however, denied by the NLRC in a Resolution^[21] dated September 20, 2010.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to enjoin the enforcement and execution of the NLRC judgment. In a Resolution^[22] dated March 2, 2011, the CA denied petitioners' prayer for a TRO.

The CA, in a Decision^[23] dated January 20, 2012, dismissed petitioners' Petition for *Certiorari* for lack of merit. The CA held that while it is the company designated physician who is tasked under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) to assess the condition of the seafarer, his medical report is not binding and may be disputed by a contrary opinion of another physician. The CA went on to affirm the NLRC's reliance on the medical assessment of Dr. Garduce as it was based not merely on respondent's physical examination but also after considering the medical findings of Dr. Rabago.

Petitioners sought reconsideration of this Decision but was denied by the CA in its Resolution^[24] dated May 8, 2012.

Issues

Hence, petitioners filed the instant Petition, arguing that:

- A. The Court of Appeals committed a serious error in law in affirming the award of US\$80,000.00 under the CBA. Respondent's employment has no overriding CBA.
- B. The Court of Appeals committed serious error in holding that Respondent is entitled to disability benefits. Respondent was declared FIT TO WORK by the company-designated physician. The findings of the company-designated physician should be given weight in accordance with the rulings of this Honorable Court in the cases of *Coastal Safeway Marine Services, Inc. v. Esguerra, G.R. No. 185352, 10 August 2011* and *Allen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, 18 April 2012*.