

## SECOND DIVISION

[ G.R. No. 220629, November 23, 2016 ]

**GENARO G. CALIMLIM, PETITIONER, VS. WALLEM MARITIME SERVICES, INC., WALLEM GMBH & CO. KG AND MR. REGINALDO OBEN, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 7, 2015 Decision<sup>[1]</sup> and the September 18, 2015 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA G.R. SP No. 135205, affirming the November 27, 2013 Resolution of the National Labor Relations Commission (NLRC), which reversed the April 30, 2013 Decision of the Labor Arbiter (LA).

*The Antecedents:*

Respondent Wallem Maritime Services, Inc., for and in behalf of its foreign principal, Wallem GMBH & Co. KG, represented by its President, Mr. Reginaldo Oben (*respondents*), hired petitioner Genaro G. Calimlim (*Calimlim*) to work as Bosun on board the vessel, Johannes Wulff, for a period of nine (9) months, with a monthly basic salary of US\$698.00, as provided under the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*) commencing on June 21, 2010. Prior to deployment, Calimlim underwent the required Pre-employment Medical Examination (*PEME*) on June 18, 2010 and was declared fit for sea duty.<sup>[3]</sup>

On December 25, 2010, while doing his duties on board, Calimlim felt a severe pain in his stomach causing him to feel weak and go to the comfort room. While emptying his bowels, he noticed that there was fresh blood in his stool. As his stomach pain and bleeding persisted, he reported his condition to the Ship Captain who advised him to seek medical attention upon reaching the nearest port.<sup>[4]</sup>

When the vessel reached the port of Xingang, China, Calimlim was brought to the Xingang Hospital where he underwent several laboratory tests. The tests revealed that he was suffering from *Hemorrhage of the Upper Digestive Tract and Hypertension*. The doctor recommended that he should not be given any duty on board due to his sensitive health condition and should be confined in a hospital.<sup>[5]</sup> After seven days or on January 17, 2011, when the vessel reached the port of Indonesia, he was medically repatriated.

Upon arrival in Manila, Calimlim immediately reported to respondents. He was referred to the Manila Doctor's Hospital (*MDH*) for examination and treatment. He was confined at MDH for four (4) days and was treated as an out-patient after his discharge.

On July 5, 2012, Calimlim filed a complaint for permanent disability compensation and benefits, having been declared unfit for sea duty due to his illness.

On July 9, 2012, Calimlim consulted Dr. Manuel C. Jacinto, Jr. (*Dr. Jacinto*), a private physician, who diagnosed him to be suffering from "*Essential Hypertension with Hypertensive Cardiomyopathy, Upper Digestive Tract Enteritis; Neurodermatitis*,"<sup>[6]</sup> with the following remarks:

x x x

Disability: Total Permanent

Cause of Illness/Injury: Work-related/Work-aggravated<sup>[7]</sup>

#### *Ruling of the Labor Arbiter*

In its April 30, 2013 Decision,<sup>[8]</sup> the LA ordered the respondents to pay Calimlim his total permanent disability benefits in the amount of US\$100,569.32 as well as the balance of his sickness wages and attorney's fees. The LA gave more probative weight to the medical findings of Dr. Jacinto which was more thorough as it confirmed the diagnosis of the doctor in Xingang Hospital over the findings made by the company-designated physicians. The LA noted that the findings of the company-designated physicians were incomplete, covering only the medical issues pertaining to his abdominal pain, making no reference to the findings of Hypertension and Neurodermatitis. The LA concluded that based on the findings of Dr. Jacinto, the disability sustained by him was work-related and had prevented him from gaining subsequent employment, thus, entitling him for compensation from the respondents.<sup>[9]</sup>

Aggrieved, respondents appealed before the NLRC.

#### *Ruling of the NLRC*

The NLRC initially dismissed the petition for failure of respondents to comply with Section 6, Rule VI of the 2011 NLRC Rules of Procedure requiring an Indemnity Agreement to be signed by both respondents and the Bonding Company as only the respondents signed the same.

Respondents filed a motion for reconsideration.

In its November 27, 2013 Decision,<sup>[10]</sup> the NLRC granted the motion and *reversed* the LA's decision. The NLRC ruled that Calimlim failed to prove that he was suffering from essential hypertension which would qualify him for a total permanent disability benefit. The NLRC noted that he consulted his private physician only in July 2012 or seventeen (17) months from the time he was declared fit to work by the company-designated physician, and noted that the gap was so extensive that there might have been supervening events that could have caused or aggravated his condition. The fact that he filed his complaint on July 5, 2012 while his medical certification by Dr. Jacinto was issued on July 9, 2012 was not unnoticed by the NLRC. Accordingly, it concluded that at the time he filed his complaint he had no cause of action as he was not yet in possession of the contrary opinion of his private doctor.<sup>[11]</sup>

His motion for reconsideration having been denied, Calimlim filed a petition for *certiorari* before the CA.

### *Ruling of the Court of Appeals*

In its assailed May 7, 2015 decision, the CA denied the petition and affirmed the ruling of the NLRC. It held that Calimlim was not entitled to permanent disability benefit as he was declared by the company-designated physician to be fit to work 55 days from the date of repatriation, well within the 120 day period required by law. In questioning his diagnosis, the CA emphasized that although it was his prerogative to seek a second opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. His non-compliance with the said procedure, according to the CA, rendered the findings of the company--designated physician final and binding.

Calimlim moved for reconsideration but his motion was denied by the CA in its September 18, 2015 resolution.

Hence, this petition for review anchored on the following

### **GROUND:**

**1] THE CA ERRED WHEN IT DISMISSED THE PETITION AND DID NOT REINSTATE AND AFFIRM THE DECISION OF THE LABOR ARBITER;**

**2] THE PETITIONER WAS IN FACT RENDERED TOTALLY UNFIT FOR WORK AS HIS VARIOUS ILLNESSES WHICH ARE CONSIDERED WORK-RELATED AND WORK AGGRAVATED WERE NOT RESOLVED ANYMORE BY THE DOCTORS DESPITE BEING TREATED AND EXAMINED BY RESPONDENTS' COMPANY-DESIGNATED PHYSICIAN THAT LASTED ALREADY BEYOND THE MAXIMUM CURE PERIOD OF 120 DAYS AND THAT HIS BEING UNFIT FOR WORK IS CONTINUING UP TO 240 DAYS; AND**

**3] THE CA ERRED WHEN IT DID NOT REINSTATE THE DECISION OF THE LABOR ARBITER ALTHOUGH THE NLRC INITIALLY AFFIRMED THE SAME.<sup>[12]</sup>**

The core issue for the Court's resolution is whether Calimlim is entitled to permanent disability benefits on account of his medical condition.

Calimlim insists that he is entitled to permanent disability benefits as he remained unfit to resume his seafaring duties. This unfitness to work, he adds, is confirmed and supported by the medical findings of Dr. Jacinto. He argues that Dr. Jacinto's independent and fair medical assessment is more credible being reflective of his actual physical and medical condition as against the inaccurate biased declaration by the company-designated physician. He, thus, stresses that the LA acted correctly and judiciously in granting him full permanent disability compensation. He faults the CA in not rectifying the grave abuse of discretion: committed by the NLRC in reversing the decision of the LA.

In their March 18, 2016 Comment,<sup>[13]</sup> respondents countered that Calimlim was declared "fit to work" by the company-designated physician. Hence, he is not entitled to the disability benefits under the POEA Contract. Respondents were of the view that the CA correctly gave more probative weight to the medical findings of the company-designated doctor considering that the latter accorded more extensive medical attention on him, as compared to the medical findings of his private doctor who did not possess personal knowledge of his true physical condition and who only provided an isolated medical examination to him. Respondents argued that the fit to work assessment of the company-designated physician should prevail as the option to refer him to a third doctor was not explored in this case.

### **The Court's Ruling**

The petition is without merit.

Records disclose that Calimlim's employment is governed by the POEA approved employment contract commencing on June 21, 2010. This employment contract,<sup>[14]</sup> which is binding upon both parties, provides:

#### **Section 20. Compensation and Benefits.**

##### **A. Compensation and Benefits for Injury or Illness**

The liabilities of the employer when the seaman suffers work-related injury or illness during the term of his contract are as follows:

1. x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of his disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall also be made on a regular basis, but not less than once a month.

x x x x

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