

## SECOND DIVISION

[ G.R. No. 212764, September 09, 2015 ]

**HANSEATIC SHIPPING PHILIPPINES INC., REEDEREI HANS PETERSON & SOEHNE GMBH & CO. HG AND/OR ROSALINDA BAUMAN, PETITIONERS, VS. ARLES BALLON, RESPONDENT.**

### DECISION

#### **MENDOZA, J.:**

This petition for review on *certiorari* seeks to reverse and set aside the November 25, 2013 Decision<sup>[1]</sup> and the June 2, 2014 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 124237, affirming the January 6, 2012 Decision<sup>[3]</sup> of the National Labor Relations Commission (NLRC). The NLRC decision reversed and set aside the April 15, 2011 Decision<sup>[4]</sup> of the Labor Arbiter (LA), a case where the certification of the company-designated physician on the claimed disability of the seafarer was issued beyond the 120-day period.

#### **The Facts**

Petitioner Hanseatic Shipping Philippines, Inc. (*Hanseatic*), a domestic corporation and the manning agency of its foreign principal, petitioner Reederei Hans Peterson & Soehne GMBH & Co. HG. (*Reederei*), employed respondent Aries Ballon (*Ballon*), a seafarer by profession, sometime in November 2001. In his last employment with Hanseatic, Ballon signed a 6-month contract on May 25, 2010. After undergoing the required pre-employment medical examination (*PEME*), he was hired by Hanseatic as an Able Bodied (AB) Seaman, and on May 31, 2010, he embarked on "MV Westerems."

#### *Complainant Ballon's Position*

While on board the vessel, Ballon felt extreme pain in his right jaw which he complained to his second officer. While the ship was docked in Manila, he was referred to the company-designated physician of Shiphealth, Inc. (*Shiphealth*).<sup>[5]</sup> On July 12, 2010, he was diagnosed to have "Reactive Lymphadenopath" and was advised to come back for a check-up after two (2) weeks, when the vessel would be back in Manila.<sup>[6]</sup>

On July 23, 2010, when the vessel arrived at the Port of Kaohsiung in Taiwan, Ballon requested for a medical examination as the pain in his right jaw recurred and persisted. He was brought to Kaohsiung General Hospital where he was diagnosed by Dr. Chih-Msiu Lou to be suffering from "Right Temporo-Mandibular Joint Syndrome."<sup>[7]</sup> He was advised to take some medication. Thereafter, he boarded the ship again.

On July 26, 2010, Ballon disembarked from the ship in Manila. According to him, on the same day, he reported his medical condition to Hanseatic and the latter referred him to its company-designated physician at Shiphealth. In turn, the Shiphealth physician referred him to the Manila Doctors Hospital (MDH) where he was treated as an out-patient.<sup>[8]</sup>

On August 5, 2010, Ballon went to the Philippine General Hospital (PGH) where he was diagnosed by Dr. Roberto Pangan to have "Myofascial Pain Dysfunction probably stress related."<sup>[9]</sup>

On August 11, 2010, Dr. Anna Pamella Lagrosa-Elbo (**Dr. Elbo**) and Dr. Maria Gracia K. Gutay (**Dr. Gutay**), the company-designated physicians of Hanseatic, issued a letter of authorization/consultation.<sup>[10]</sup> They diagnosed Ballon to be suffering from "Myofascial Pain Dysfunction; Stress Related" and referred his case to Dr. Elmer dela Cruz of the MDH.

On August 27, 2010, Dr. Elbo and Dr. Gutay issued Medical Report No. 3<sup>[11]</sup> confirming the diagnosis of the PGH. On September 15, 2010, Dr. Elbo and Dr. Gutay issued Medical Report No. 4<sup>[12]</sup> recommending that Ballon undergo 10 sessions of physical therapy for his "Myofascial Pain Dysfunction." Meanwhile, a letter of authorization,<sup>[13]</sup> dated September 14, 2010, was issued by Dr. Elbo and Dr. Gutay referring Ballon to Dr. Arnel V. Malaya of the MDH for rehabilitation consult.

On September 29, 2010, Ballon underwent electrodiagnostic examination which revealed findings compatible to mild, chronic, active cervical radiculopathy involving the right C5-6 spinal roots. On October 16, 2010, he was diagnosed by Dr. Roland Dominic G. Jamora (Dr. Jamora), a neurologist, to be suffering from "Myelopathy R C5-6."<sup>[14]</sup>

Dr. Elbo and Dr. Gutay issued an undated final diagnosis<sup>[15]</sup> (undated final report) stating that Ballon had "Myofascial Pain Dysfunction probable Stress related s/p 10 sessions of Physical Therapy" and "Cervical Myelopathy, Right C5-C6 secondary to Disc Bulges C3-C4, C4-C5 and C5-C6." They considered him maximally medically improved and cleared to go back to work, but advised the intake of pain medications.

On November 8, 2010, Ballon signed the Certificate of Fitness for Work<sup>[16]</sup> which stated that he was holding Shiphealth and Hanseatic free from all liabilities. He, however, vehemently denied that he executed the same willingly and voluntarily.<sup>[17]</sup>

On November 18, 2010, Ballon filed a complaint<sup>[18]</sup> for permanent disability compensation, reimbursement of medical expenses and payment of sick wages, moral and exemplary damages before the LA against Hanseatic and its President, Rosalinda Bauman, and its foreign principal, Reederei (*petitioners*).

Subsequently, Ballon consulted another physician regarding his condition. On February 11, 2011, Dr. Manuel Jacinto, Jr. (Dr. Jacinto) diagnosed him to be suffering from C5-C6 Radiculopathy and Myofascial Pain Dysfunction. Dr. Jacinto gave a disability rating of Grade 1, adjudged him to be physically unfit to go back to

work and declared him to be suffering from total and permanent disability.<sup>[19]</sup>

On March 9, 2011, Dr. Elmer dela Cruz issued a medical certificate<sup>[20]</sup> clearing Ballon of any disability. On March 10, 2011, Dr. Jamora and Dr. Adrian Catbagan also issued separate medical certificates<sup>[21]</sup> stating that Ballon was cleared of his disability. These three doctors were previously consulted by him.

#### *Petitioners' Position*

Petitioners averred that Ballon himself requested that he be signed-off from the vessel. On July 13, 2010, while the vessel was docked in Manila, he completed his duty and was allowed to go ashore. While he was still on land, "MV Westerems" had to seek shelter due to an impending typhoon so he was instructed to immediately return on board. He, however, returned only on the next day. The master of the vessel required him to explain his delay in returning to the vessel.

In a hand-written letter,<sup>[22]</sup> dated July 16, 2010, Ballon justified his delay by stating that he saved the life of his nephew. He then asked the master of the vessel that he be repatriated to Manila. On July 19, 2010, the master of the vessel relayed the incident and Ballon's explanation to his superior.<sup>[23]</sup> Thereafter, on July 26, 2010, Ballon disembarked from the ship.

Petitioners insisted that it was only on August 11, 2010, or more than two weeks after his disembarkation, that Ballon sought medical consultation from their company-designated doctors because of jaw pain. After he was subjected to a thorough examination and extensive treatment, he was declared fit to work by the company-designated physicians.

#### *The LA Ruling*

On April 15, 2011, the LA dismissed the complaint and ruled that Ballon was not entitled to any disability benefits. The LA explained that there was no evidence that he immediately reported to the company-designated physician after he signed-off from the vessel on July 26, 2010. It was only on August 5, 2010 when he went to see a doctor at the PGH. Also, relying on his letter, the LA opined that he voluntarily requested for his termination and that he was not medically repatriated.

Anent Ballon's medical condition, the LA stated that although a medical certificate of Dr. Jacinto stated that he was physically unfit to go back to work, no laboratory report was submitted. Thus, the LA gave more credence to the company-designated physicians' findings that he was fit to go back to his duties.<sup>[24]</sup>

Aggrieved, Ballon elevated the case to the NLRC.

#### *The NLRC Ruling*

On January 6, 2012, the NLRC reversed and set aside the April 15, 2011 decision of the LA. It concluded that Ballon was entitled to the amount of US\$60,000.00 as permanent total disability benefits, US\$2,772.00 as sickness allowance, and attorney's fees equivalent to 10% of the monetary awards.

The NLRC opined that "[i]n his handwritten letter dated 16 July 2010, Ballon never mentioned that he wished to be signed off, much more pre-terminate his contract with the respondents. Although it may appear from the said letter that complainant requested to be repatriated and that such request was relayed by the vessel's Master to respondent principal, there is no evidence that such request was granted." [25] Moreover, Ballon continued to perform his duties as an AB seaman in the vessel and was even medically examined in Taiwan on July 23, 2010.

The NLRC did not give credence to the assertion of petitioners that Ballon only reported on August 11, 2010, or more than two weeks after his disembarkation. It found that Ballon reported to the company-designated physician on July 26, 2010, or on the day of his repatriation, otherwise, he would not have been examined by the company-designated physicians. Significantly, the NLRC also noticed that the report released by petitioners was Medical Report No. 3, which meant that he had reported to the company-designated physician at some other previous dates.

The NLRC did not seriously consider the undated final report of the company-designated physicians either. The report stated that Ballon was maximally improved but did not mention whether his cervical myelopathy in his right C5-C6 had healed. According to the NLRC, his other disorder, myofascial pain dysfunction, was stress-related. A perusal of his July 16, 2010 letter confirmed that he suffered stress as he was deprived of his privacy on board the ship and did not have his own cabin for resting. Thus, the NLRC held that the medical assessment of Dr. Jacinto as an independent physician, which gave Ballon a disability rating of Grade 1, prevailed over the *incomplete* medical assessment of the company-designated physicians. The NLRC disposed the case in this wise:

IN VIEW WHEREOF, the complainant's appeal is GRANTED. The assailed Decision is hereby REVERSED and SET ASIDE. Respondents Agency and Principal are ORDERED to pay, jointly and severally, the complainant the amount of US\$ 60,000.00 as permanent and total disability benefits, US\$2,772.00 (US\$693.00 x 4mos) as sickness allowance, and attorney's fees equivalent to ten percent (10%) of the said monetary awards all to be paid in their peso equivalent at the time of payment.

SO ORDERED. [26]

Petitioners filed a motion for reconsideration, but it was denied by the NLRC in a resolution, [27] dated March 19, 2012.

Unperturbed, petitioners filed a petition for *certiorari* before the CA, arguing that Ballon was able to work again as a seaman under another manning agency on December 24, 2011.

Meanwhile, on May 23, 2012, an entry of judgment was issued by the NLRC, declaring its January 6, 2012 decision final and executory. In light of the entry of judgment, Ballon filed a motion to issue writ of execution. [28] On September 5, 2012, a writ of execution<sup>28</sup> was issued and petitioners deposited the award of damages to the NLRC Cashier.

## *The CA Ruling*

On November 25, 2013, the CA issued the assailed decision *affirming* the January 6, 2012 NLRC decision. The appellate court stated that as early as July 9, 2010, Ballon was experiencing pain in his right jaw. Upon medical consultation with the company-designated physician on July 12, 2010, he was advised to have a medical check-up after two weeks at the next port in Manila. Accordingly, two weeks from July 12, 2010 would be July 26, 2010, which was the date of his repatriation. Thus, the CA did not believe petitioners' assertion that he belatedly reported to the company-designated physician on August 11, 2010.

The CA likewise doubted the undated final report of petitioners' company-designated physicians. While the report cleared Ballon to go back to work, it also showed that he was suffering from myofascial pain dysfunction and cervical myelopathy in his right C5-C6. According to the CA, even after he had signed the questionable certificate of fitness to work, he continued to feel pain. Correspondingly, the medical report of Dr. Jacinto, dated February 11, 2011, stated that his illnesses persisted.

The appellate court also held that Ballon's employment by another manning agency on December 24, 2011, did not erase the fact that he was not able to work as a seaman for more than a year. The law did not require that the illness should be incurable to be classified as a permanent and total disability.

The CA, thus, found that Ballon suffered from a permanent and total disability as he was unable to perform his customary work for more than 120 days. He was repatriated on July 26, 2010 and he reported to the company-designated physician on the same day; yet, it was only on March 2011, or seven months thereafter, when the doctors declared him fit to return to work. The decretal portion of the CA decision states:

WHEREFORE, premises considered, the petition is DENIED. The Assailed Decision and Resolution of the NLRC dated January 6, 2012 and March 19, 2012, respectively, are hereby AFFIRMED.

SO ORDERED.<sup>[29]</sup>

Petitioners moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated June 2, 2014.

Hence, this present petition.

## **ISSUES**

### **I.**

**WHETHER THE DECLARATION OF FITNESS TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN AND THE SUBSEQUENT HIRING OF BALLON AS A SEAFARER BY ANOTHER MANNING**