

FIRST DIVISION

[G.R. No. 186289, June 29, 2010]

ORIENTAL SHIPMANAGEMENT CO., INC., PETITIONER, VS. ROMY B. BASTOL, RESPONDENT.

DECISION

VELASCO JR., J.:

The Case

In a Petition for Review^[1] on Certiorari under Rule 45 of the Rules of Court, petitioner Oriental Shipmanagement Co., Inc. (OSCI) assails the Decision^[2] dated August 12, 2008 and the Resolutions dated January 7, 2009^[3] and February 6, 2009^[4] of the Court of Appeals (CA) in CA-G.R. SP No. 100090, which annulled and set aside the July 31, 2006 Decision^[5] and May 30, 2007 Resolution of the National Labor Relations Commission (NLRC), and reinstated the January 28, 1999 Decision^[6] of the Labor Arbiter.

The Facts

OSCI is a domestic manning agency engaged in the recruitment and placement of Filipino seafarers abroad. Paterco Shipping Ltd. (PSL) is a foreign shipping company which owned and operated the vessel MV Felicita and a client of OSCI. Protection & Indemnity Club (PIC) was the insurer of PSL covering contingencies like illness claims and benefits of seamen. Pandiman Philippines, Inc. (PPI) is the local representative of PIC.

As agent of PSL, OSCI hired Romy B. Bastol (Bastol) as bosun on November 29, 1995 evidenced by a Contract of Employment.^[7] On December 5, 1995, Bastol was deployed on board the vessel MV Felicita.

The genesis of the instant case emerged when, on February 17, 1997, while on board the vessel, Bastol suffered chest pains and cold clammy perspiration. He was hospitalized in Algiers and found to be suffering from anterior myocardial infarction.^[8] In short, he had a heart attack. He was subsequently repatriated due to his illness on March 7, 1997.

Upon arrival here in the Philippines, on March 8, 1997, he was referred to the Jose L. Gutierrez Clinic in Malate, Manila for a follow-up examination where Dr. Achilles J. Peralta examined and found him to be suffering from "T/C Ischemic Heart Disease. Ant. Myocardial Infection." Dr. Peralta issued a Medical Report^[9] certifying that he was "Unfit for Sea Duty." In a follow-up medical examination on April 1, 1997, Dr. Peralta still found Bastol "Unfit for Sea Duty."^[10]

Thus, PPI referred Bastol for medical treatment to the Metropolitan Hospital under the care of company-designated physician Dr. Robert D. Lim, a Diplomate in Rehabilitation Medicine. On April 10, 1997, Bastol was confined and treated at said hospital until May 7, 1997. Dr. Lim certified that Bastol had "Coronary artery disease; S/P Ant. wall MI; Hypercholesterolemia; Hyperglycemia."^[11] Thereafter, Bastol had regular laboratory and medical examinations with the company-designated physician.

Unsatisfied with the treatment by Dr. Lim and seeking a second opinion, he went to Dr. Efren R. Vicaldo, a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center, who diagnosed him to be suffering from "Coronary Artery Disease and Extensive Anteriorseptal MI" with the corresponding remarks: "For Disability, Impediment Grade 1 (120%)."^[12]

Feeling abandoned and aggrieved with OSCI and PSL, Bastol, through counsel, sent a November 27, 1997 letter on December 2, 1997 to Capt. Rosendo C. Herrera, the President of OSCI, for a possible settlement of his claim for disability benefits.^[13] He attached the Medical Certificate issued by Dr. Vicaldo. His letter did not merit a response from OSCI.

Thus, Bastol was compelled to file a Complaint^[14] before the Labor Arbiter on May 8, 1988 for: (a) medical disability benefit (Grade 1) of USD 60,000; (b) illness allowance until he is deemed fit to work again; (c) medical benefits for the treatment of his ailment; (d) moral damages of PhP 100,000; and (e) attorney's fee of 10% of the total monetary award.

OSCI countered that Bastol is not entitled to his indemnity claims, among others, for disability benefits on account of non-compliance with the requirements of the 1994 revised Standard Employment Contract (SEC) by failing to properly submit himself for treatment and examination by the company-designated physician who is the only one authorized to set the degree of disability, i.e., disability grade. Submitting documentary evidence, OSCI maintained that Bastol submitted to the examination and treatment by the company-designated physician only on April 25, 1997,^[15] May 23, 1997,^[16] September 16, 1997,^[17] and October 28, 1997,^[18] but he voluntarily discontinued said treatment and did not show up for the follow-up examination on December 2, 1997. Thus, the company-designated physician was not given ample opportunity to properly treat Bastol's ailment and did not have sufficient chance to assess and determine his disability grade, if any.

On January 28, 1999, Labor Arbiter Mayor, Jr. rendered a Decision based on the parties' respective position papers^[19] and the documentary evidence presented in NLRC NCR OFW Case No. 98-05-0801, the decretal portion reading:

WHEREFORE, in view of all the foregoing, respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping Ltd. are hereby ordered to jointly and severally pay complainant the sum of US\$60,000.00 or its peso equivalent at the time of payment plus the sum equivalent to ten (10%) percent of the award or in the amount of US\$6,000.00 as and by way of attorney's fee.

SO ORDERED.^[20]

The Labor Arbiter saw no need to conduct formal hearings. He found that Bastol was healthy when deployed in December 1995 but subsequently contracted or suffered heart ailment during his period of employment with OSCI and PSL. He also found that Bastol did not show any appreciable improvement despite treatment by the company-designated physician, thus ruling that the fact that Dr. Lim had not issued a certification as to Bastol's condition did not negate his claim for disability indemnity, as the determination of the degree thereof by Dr. Vicaldo of the Philippine Heart Center sufficed.

OSCI immediately assailed the above Labor Arbiter decision before the NLRC.^[21] Subsequently, on July 30, 1999, the NLRC issued a Resolution^[22] in NLRC NCR CA No. 019238-99, vacating and setting aside the January 28, 1999 Decision of the Labor Arbiter and remanding the case back to the Labor Arbiter for further proceedings, the dispositive portion ordering, thus:

WHEREFORE, for the reasons [above discussed], the decision appealed from is hereby vacated and set aside and the records of this case Remanded to the Labor Arbiter of origin for conduct of further approximate proceedings and to terminate the same with dispatch.

SO ORDERED.^[23]

In remanding the case back to the Labor Arbiter, the NLRC ruled that Bastol should have presented himself before the Labor Arbiter for the latter to properly assess his condition, and that Dr. Lim and Dr. Vicaldo should be presented to determine with certainty the status of Bastol's heart ailment.

This prompted both parties to file their respective motions for reconsideration which were rejected by the NLRC through its Resolution^[24] of October 29, 1999. With the remand, Labor Arbiter Mayor, Jr. proceeded to hear the case. However, upon OSCI's motion for inhibition, Labor Arbiter Mayor, Jr. inhibited himself, and the case was raffled to Labor Arbiter Joel S. Lustria.

Subsequently, on May 10, 2001, the case was deemed submitted for decision. Thereafter, on July 25, 2001, OSCI filed before the Labor Arbiter a Motion to Dismiss for failure to prosecute for an unreasonable length of time and insufficiency of evidence. OSCI argued that through the July 30, 1999 Resolution, the NLRC found that Bastol failed to prove his causes of action, and despite numerous hearings conducted before the Labor Arbiter after the remand of the case, Bastol still failed to present further evidence.

On October 26, 2001, however, Bastol filed a Manifestation/ Compliance^[25] submitting the following documents: (1) Affidavit^[26] of Dr. Vicaldo executed on May 10, 2001; (2) Conforme^[27] for disability benefit settlement in the amount of USD 25,000; (3) Special Power of Attorney (SPA)^[28] executed by Bastol in favor of

Martin Jarmin, Jr. of OSCI; (4) Medical Disability Grading^[29] of Bastol issued by Dr. Lim, the company-designated physician, on June 26, 1997; and (5) Assessment and disability grading determined by Dr. H.R. Varwig,^[30] company-designated physician of PPI.

Bastol's manifestation and the documents he presented showed that prior to filing the instant case on May 8, 1998, Bastol, assisted by counsel, entered into a settlement with PPI through Mrs. Corazon C. Tabuena in the amount of USD 25,000 as disability indemnity. Said settlement was based on the suggested disability grading of Grade 50-60% issued by the company-designated physician Dr. Lim on June 26, 1997 and that of Dr. H. R. Varwig, company-designated physician of PPI, embodied in a letter dated August 7, 1997 sent to PPI with the assessment of Bastol's disability at Grade 6 according to the Department of Labor and Employment (DOLE) and the Philippine Overseas Employment Administration (POEA) Schedule of Disability or Impediment. Bastol, assisted by counsel, signed the settlement conforme with PPI on January 22, 1998. The settlement, however, did not materialize due to the cancellation of the coverage by PIC of PSL's vessel M/V Felicita.

Even after Bastol already filed the instant case on May 8, 1998, Jarmin, Jr. of OSCI instructed him to execute a SPA to authorize them to represent him (Bastol) in the auction sale of SPL's vessel M/V Felicita. Forthwith, Bastol executed an SPA in favor of Jarmin, Jr. on August 12, 1998. Unfortunately, Bastol was later informed by Jarmin, Jr. that the amount they recovered from the auction sale of PSL's vessel was not enough to cover his disability claim. Thus, with the collapse of the settlement agreement, Bastol was left with no option than to pursue the instant action. And in support of his medical finding of Grade 1 (120%) disability, Dr. Vicaldo executed an Affidavit on May 10, 2001.

OSCI vehemently objected^[31] to Bastol's Manifestation/Compliance and the documentary evidence appended thereto.

**The Ruling of Labor Arbiter Lustria in
Case No. NLRC NRC OFW Case No. 95-05-0501**

On January 31, 2003, Labor Arbiter Lustria rendered a Decision^[32] similar to that of Labor Arbiter Mayor, Jr. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, let a judgment be, as it is hereby rendered, ordering respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping, Ltd., to jointly and severally pay complainant Romy Bastol, the sum of US\$60,000.00 or its peso equivalent prevailing at the time of payment plus the sum equivalent to ten (10%) percent of the award, or in the amount of US\$6,000.00 or its peso equivalent prevailing at the time of payment, as and by way of attorney's fee.

SO ORDERED.^[33]

Labor Arbiter Lustria found that Bastol indeed suffered from a heart ailment for which he is pursuing disability indemnity which was duly proved by the concurring diagnosis of Dr. Peralta, Dr. Lim, Dr. Varwig and Dr. Vicaldo. He found that the settlement agreement with PPI was pursuant to the medical findings and assessments of both company-designated physicians, Dr. Lim and Dr. Varwig. Thus, the reiteration of the award of Labor Arbiter Mayor, Jr.

Aggrieved, OSCI promptly filed its Memorandum of Appeal^[34] before the NLRC.

The Ruling of the NLRC in NLR NCR CA No. 019238-99 (NLRC NCR OCW No. 98-05-0501)

On July 31, 2006, the NLRC First Division rendered its Decision reversing and setting aside Labor Arbiter Lustria's January 31, 2003 Decision and dismissed the instant case, the *fallo* reading:

WHEREFORE, the appeal is GRANTED. The Decision of Labor Arbiter Joel S. Lustria dated January 31, 2003 is hereby REVERSED AND SET ASIDE and a new one entered dismissing the complaint.

SO ORDERED.^[35]

In dismissing the case, the NLRC held that the sworn affidavit of Dr. Vicaldo and the manifestations of Bastol could not substitute for their presence and testimony, and that of Dr. Lim. It ruled that since not one clarificatory hearing was conducted, the sworn affidavit of Dr. Vicaldo is reduced to mere hearsay sans a cross-examination by OSCI. Moreover, it noted that the reliance by the LA on the certificates of Dr. Lim and Dr. Varwig is misplaced, for the disability ratings indicated therein do not appear to be final for they were merely suggested ones. Besides, it pointed out that the records show that Bastol was still under treatment and being re-evaluated by Dr. Lim when the purported certificate was issued by Dr. Lim on June 26, 1997. It concluded that the purpose for which the case was remanded had not been served and the true state of Bastol's health not adequately established. In fine, it ruled that even if Bastol's disability has been determined with certainty, still it will not serve to indemnify Bastol for his violation of the SEC when he prematurely sought the medical help of Dr. Vicaldo, emphasizing that the 1994 revised SEC is clear in that **it is only the company-designated physician who could declare the fitness of the seafarer to work; or establish the degree of his disability.**

Undaunted, Bastol went to the CA questioning the reversal of Labor Arbiter Lustria's Decision via a Petition^[36] for Certiorari under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 100090.

The Ruling of the Court of Appeals

On August 12, 2008, the appellate court rendered the assailed Decision reversing the July 31, 2006 Decision and May 30, 2007 Resolution of the NLRC, and reinstated