521 Phil. 380

THIRD DIVISION

[G.R. NO. 165934, April 12, 2006]

UNITED PHILIPPINE LINES, INC. AND/OR HOLLAND AMERICA LINE, INC.,PETITIONERS, VS.FRANCISCO D. BESERIL, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Assailed in the present petition are the Court of Appeals August 31, 2004 Decision[1] and October 28, 2004 Resolution[2] reversing the decision of the National Labor Relations Commission (NLRC) dismissing respondent's claim for total disability benefits.

Francisco D. Beseril (respondent) was hired by petitioner United Philippine Lines, Inc. (UPL), a Philippine manning agency, for and in behalf of its principal Holland American Lines (HAL) in 1987. He had since then been continuously re-hired and even became a recipient of the Holland America Line - Westours Inc. 10 Years Service Award.[3]

On August 28, 1997, respondent was as usual rehired by UPL for its principal HAL as Assistant Cook for a period of 12 months and was assigned to the vessel M/S Rotterdam VI. The Contract of Employment[4] was duly verified and approved by Philippine Overseas Employment Administration (POEA).

As part of the usual pre-employment requirements, respondent was made to undergo physical and medical examinations. Based on the Medical Examination Report[5] dated August 26, 1997 issued by HAL's designated physician Dr. Renato P. Abaya (Dr. Abaya), respondent was found to be "fit" for work as seaman.

On October 31, 1997, respondent, in accordance with his employment contract, boarded M/S Rotterdam VI.

While on duty or on December 5, 1997, respondent complained of chest pains and difficulty in breathing. He was thus brought to the ship's infirmary and was thereafter brought ashore for immediate medical treatment.

Respondent was later confined at the Broward General Hospital in Fort Lauderdale, Florida where he underwent a triple heart by-pass.

Respondent was not able to rejoin his vessel of assignment, necessitating the hiring of another assistant cook to replace him.[6] On December 20, 1997, he was officially discharged from duty.

As respondent's condition was not yet stable for repatriation, he stayed for a while at the Holiday Inn, Florida until he was allowed to fly back to Manila on January 8, 1998.

Upon his arrival in Manila, respondent was referred to Clinica Manila under UPL's account where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998.[7]

Based on the Medical Certificate[8] dated September 22, 1998 issued by Dr. Ma. Victoria V. Tangco, Medical Consultant of Clinica Manila, respondent was recommended to be "fit to return to work."

Sometime in November 1998, as respondent wanted to revert to his old job, he again underwent a pre-employment medical examination with the American Outpatient Clinic. This time, he was found to be "unfit" per Physical Examination Report/Certificate[9] issued by Dr. Leticia C. Abesamis dated November 19, 1998.

On November 27, 1998, since the pre-employment screening doctors of UPL refused to give medical clearance to respondent, HAL's hotel and restaurant manager Diogenes Rosauro B. Jaurigue (Jaurigue), who was responsible for the recruitment of the hotel crew, sought instructions from HAL through telex regarding respondent's case. The telex message read:

> SUBJECT: ASST. COOK FRANCISCO BESERIL
> REHIRING OR DECLARATION OF DISABILITY
>
> WITH REFERENCE TO THE CREWMEMBERS ABOVE CAPTIONED WE WOULD LIKE TO ASK FOR A FINAL DISPOSITION ON THE EVENTUAL FATE OF MR. FRANCISCO BESERIL.
>
> CONSIDERING THAT HE HAS UNDERGONE HEART BYPASS SURGERY AND HAS HAD ALMOST ONE YEAR RECOVERY, THE SUBJECT DESIRES TO REVERT BACK TO HIS FORMER JOB ON BOARD YOUR VESSELS.
>
> **ALTHOUGH, THE SUBJECT MAY ACTUALLY PERFORM HIS FORMER DUTIES WITHOUT ANY PROBLEM, OUR-PRE-EMPLOYMENT SCREENING DOCTORS DO NOT WANT TO TAKE THE RISK IN CERTIFYING HIM FIT FOR SEA DUTY. THEY ADDED THAT SHOULD HAL AGREE TO RE-EMPLOY THE SUBJECT, IT WILL BE AT HAL'S RISK.**
>
> **IN VIEW OF THE FOREGOING, MAY WE KNOW WHETHER YOU ARE STILL ENGAGING THE SUBJECT OR PUTTING HIM ON PERMANENT DISABILITY.**
>
> x x x x[10] (Emphasis and underscoring supplied)

In a correspondence dated January 13, 1999, Dr. Carter Hill of HAL's Medical Department declared respondent "permanently unfit."[11]

UPL soon received by fax a letter[12] dated February 18, 1999 from respondent's

lawyer demanding compensation for total permanent disability. The pertinent portion of the letter read, quoted *verbatim:*

> Several months after his treatment and repatriation, Mr. Beseril was made to believe and expect that he would be rehired but up to now he cannot be reinstated to his former occupation. In fact, Mr. Francisco L. Beseril has already been considered and pronounced to be totally and permanently unfit to discharge his former sea based occupation and as a consequence thereof, the attending physician strongly suggested/recommended that Mr. Beseril retire permanently as a seaman.
>
> Under the POEA Standard Employment Contract and the CBA, our client is entitled to disability pay of no less than the full amount of Sixty Thousand US Dollars (USD60,000.00), for the total loss of his earning capacity.
>
> Therefore, a formal demand is hereby made upon your goodselves and your principal to pay our client in the amount of USD60,000.00 within ten (10) calendar days from your receipt of this letter.
>
> Should we not hear from you within the stated period, we shall commence legal actions against you and your principal without further notice to recover the full amount of USD60,000.00 plus moral damages, attorney's fees and costs of suit.
>
> We trust that you find this claim in order and look forward to an early settlement of the same.[13]

The letter was transmitted by fax to HAL which sent a reply by telex on the same day, the pertinent portion of which is quoted hereunder:

> IN MR. JARIGUE'S NOVEMBER 27 1998 CORRESPONDENCE REFERENCE NUMBER 08-98 HE WAS INQUIRING OF THE COMPANIES FINAL DECISION. IN CARTER HILL'S 1/13/99 CORRESPONDENCE HE DECLARED MR. BESERIL PERMANENTLY UNFIT NOT PERMANENTLY DISABLED. THIS DISTINCTION WOULD MEAN A PARTIAL DISABILITY NOT PERMANENT. PLEASE DETERMINE THE PARTIAL DISABILITY PERCENTAGE SO WE MAY FURTHER DISCUSS THE NEXT STEP.[14]

On March 19, 1999, UPL sent a letter[15] to respondent's counsel referring respondent for evaluation and determination of the degree of disability to its designated physician Dr. Abaya.

After reviewing respondent's medical records and physically examining him, Dr. Abaya sent a letter[16] dated April 6, 1999 to UPL's legal department, which was transmitted by telex to HAL, reading:

> I have examined Mr. Francisco Beseril and find him in relatively good health. I have consulted the people who supervised his cardiac rehabilitation and they have assured me based on their ECG and Treadmill findings that Mr. Beseril is in good health and fit for work.

> Mr. Beseril claims he cannot get a job because his physical examination shows that he has had a coronary bypass and that all employment opportunities are therefore closed to him. No employer wants to employ him with a possible "recurrence" of his coronary problems. (Underscoring supplied)

After respondent's medical records were sent to HAL, Dr. Hill sent the following message dated April 21, 1999 to UPL through Dr. Abaya:

> UPON REVIEW OF THE PACKET OF MEDICAL RECORDS YOU HAVE SENT TO US ON THE ABOVE MENTIONED CREWMEMBER, I HAVE THE FOLLOWING COMMENTS:
>
> HE IS FIT FOR SEA DUTY AS A COOK.
>
> I NOTE HE HAS LOST 10 KG AND HAS A NORMAL BP AND TREADMILL ON 9/98. PLEASE ENCOURAGE HIM TO STOP SMOKING, EXERCISE REGULARLY, AND TRY TO REACH HIS OPTIMAL WEIGHT. ADDITIONALLY, I NOTE HIS URINE IS SPILLING SUGAR, AND I SUSPECT A[N] ORAL HYPOGLYCEMIC IS INDICATED TO CONTROL HIS BLOOD SUGAR LEVELS. HIS SUGARS CAN BE MONITORED AT SEA DURING HIS NEXT CONTRACT TO ENSURE IMPROVEMENT. DON'T HESITATE TO CONTACT ME IF I CAN BE OF FURTHER ASSISTANCE.[17] (Underscoring supplied)

With HAL's decision that respondent was "fit for sea duty as a cook," the legal department of UPL, by its claim, spoke to him and that after explaining the consequences and implications of the options he had, he and his counsel agreed that he would serve again at HAL's vessels. Respondent, however, never showed up at HAL's office for re-employment.

On September 1, 1999, respondent filed a complaint[18] with the NLRC against UPL and HAL claiming disability benefits, loss of earning capacity, moral and exemplary damages and attorney's fees.

During the March 13, 2000 hearing before a Labor Arbiter, the parties agreed to submit the case for resolution on the basis of the pleadings.

By Decision[19] dated April 28, 2000, the Labor Arbiter awarded respondent total disability benefits in the amount of $60,000, ruling that "his disability ha[ving] lasted [for] more than 120 days is sufficient basis to declare him permanently disabled."

Before the NLRC to which UPL and HAL (hereafter petitioners) appealed, they raised the following arguments:

> 1. There was grave abuse of discretion in awarding permanent total disability of US$ 60,000.00 in favor of [respondent] despite the overwhelming evidence of the findings of fitness by the company appointed physician specifically engaged to do the said task pursuant to the POEA Standard Employment Contract.

2. It is a grave error to cite the cases of Loot vs. GSIS, 224 SCRA 59 in relation to Aquino vs. ECC, 201 SCRA 84 in deciding this case that involves a POEA Standard Employment Contract for Seafarers controversy.

3. The 120 days under Article 192 (c) (1) of the Labor Code should not be used as a reckoning point to establish disability under the POEA Standard Employment Contract.[20] (Underscoring supplied)

Finding petitioners' appeal meritorious, the NLRC, by Decision[21] dated August 30, 2002, "MODIFIED" the Labor Arbiter's decision by deleting the award of total disability benefit and ordering petitioners to deploy respondent to one of its foreign principals for the same position.

> In granting [respondent's] claim for total disability benefit, the Labor Arbiter gave merit to a report dated 27 November 1998 sent by Dax B. Jaurigue, respondent's Hotel and Restaurant Manager for the Holland America Line Crewing Department. In said report, Mr. Jaurigue stated that although complainant may actually perform his former duties without any problem, [petitioners'] pre-employment screening doctors do not want to take the risk in certifying him fit for sea duty an[d] that should [petitioner] HAL agree to employ the subject, it will be at HAL's risk. The Labor Arbiter also held that since complainant's disability lasted more than 120 days, the same is sufficient basis to declare him permanently disabled. We do not agree. Records show that [petitioners'] company designated physician, Dr. Renato Abaya physically examined [respondent] sometime in March 1999, several months after the report of Mr. Jarigue was done. In this connection, said Dr. Abaya issued a report dated 6 April 1999 stating that [respondent] was in good health and fit for work. Dr. Abaya also executed an affidavit wherein he attested that [respondent] is fit for sea duty as a cook. It is for this reason that [petitioners] were preparing to process [respondent's] new employment contract. [Respondent] never refuted the fact that [petitioners] offered to rehire him to his former position. He also did not deny that he refused to accept the offer of employment made by the [petitioners].
>
> We have likewise taken note that the illness of [respondent] required more than 120 days of treatment and rehabilitation. [Petitioners] contend they continued to shoulder the expenses for [respondent's] treatment and rehabilitation. This was admitted by [respondent] in his Rejoinder when he recognized the financial assistance extended to him by [petitioners]. In this connection, the Labor Arbiter held that since [respondent's] disability lasted more than 120 days, there is sufficient basis to declare him disabled citing Aquino vs. ECC (201 SCRA 84). We do not agree. The 120 days period referred to in the POEA Standard Employment Contract for Seafarers refers to the maximum liability that may be granted for sickness allowance. It is not a measure that could determine the employee's degree of disability. Moreover, [respondent's] employment is covered by the POEA Standard Employment Contract. The POEA benefits under said contract are separate and distinct from those benefits provided under the Employees Compensation Commission, the SSS or GSIS. The provisions thereof should be the law between the