TWELFTH DIVISION

[CA-G.R. SP No. 135417, March 18, 2015]

ARISH TAN ESPALDON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND MAERSK FILIPINAS CREWING, INC., MARIA ROUELLA BONIFACIO AND/OR A.P. MOLLER A/S, RESPONDENTS,

DECISION

MACALINO, J:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court[1], seeking to annul and set aside the 30 January 2014 Decision[2] ("Assailed Decision") and the 18 March 2014 Resolution[3] denying the Motion for Reconsideration, promulgated by the National Labor Relations Commission ("Public Respondent") in NLRC NCR Case No. 05-06882-13 [NLRC LAC No. 01-000090-14(9)(8)]. The dispositive portion[4] of the Assailed Decision reads:

> *"WHEREFORE, premises considered, respondents (sic.) appeal is PARTIALLY GRANTED. The Decision of the Labor-Arbiter is AFFIRMED with MODIFICATION in so far as the nature of complainant's disability is concerned.*
>
> *Respondents is hereby ORDERED to pay complainant a sum of USD $7, 465.00 equivalent to GRADE 11 disability*
>
> *SO ORDERED."*

FACTS OF THE CASE

Arish Tan Espaldon ("Petitioner"), is a seafarer by profession. On 14 May 2012, Petitioner contracted an employment contract[5] with Maersk Filipinas Crewing Inc., as represented by Maria Rouella Bonifacio with principal A.P. Moller A/S ("Private Respondents"), to work onboard vessel "NAKSKOV MAERSK" as an Able Seaman for six (6) months, working for 40 hours a week with a basic monthly salary of US $585.00.[6] After undergoing the mandatory pre-employment medical examination and was determined to be fit for sea duty, Petitioner was eventually deployed on 26 July 2012.[7]

On 23 December 2012, during the course of his employment, Petitioner figured in an accident resulting in a pro-lapsed invertebral disc.[8] During said date, while Petitioner was pulling a marine rope in order to secure a Yokuhama fender, he suddenly felt severe pain in his lower back and right lower hip. He was given first aid

treatment, some painkillers and was assigned light work.[9]

On 07 January 2013, two weeks after the incident and upon reaching the Port of Singapore, Petitioner was referred to the Maritime Medical Centre Pte in Singapore where he was diagnosed to be suffering from prolapsed intervertebral disc and thus not fit to work or travel.[10] Despite the recommendation given, Petitioner was asked to sign a discharge slip and was repatriated to the Philippines.

On 09 January 2013, he was referred by Private Respondents to Shiphealth, Inc. where he was recommended to further consult with an Orthopedic Spine Surgeon on 24 January 2013.[11] According to a radiology report on said date, Petitioner was found to have Degenerative Osseous Changes,[12] to which he was prescribed to undergo a series of therapy sessions.[13] On 24 April 2013, upon completion of 22 physical therapy sessions, Petitioner was given an Interim Disability Grading of Grade 11.[14] Being apprehensive about his condition which showed no signs of improvement, Petitoner sought a second opinion on 31 August 2013 from a private orthopedic surgeon, Dr. Nicanor F. Escutin ("Dr. Escutin"), who diagnosed him with Herniated Nucleous Pulposus and Nerve Radiculopathy.[15] The physician gave him a grade of permanent disability, thus declaring him unfit to be a seaman.

Before such consultation, on 08 May 2013, instituted a Complaint[16] before Labor-Arbiter Gaudencio P. Demaisip, Jr. for total permanent disability benefits,moral, and exemplary damages. Due to the failure to reach an amicable settlement, both parties were directed to file their Position Papers.[17]

Thereafter, on 28 November 2013, the Labor-Arbiter rendered a Decision[18] directing the Private Respondents to pay Petitioner disability benefits of US$60,000.00 as well as 10% attorney's fees. In the Decision, the Labor-Arbiter gave credence to the medical findings of Dr. Escutin as it does not suffer from inaccuracy or unreliability. The Labor-Arbiter added that Petitioner cannot be compelled to undergo spinal surgery, as recommended by Private Respondents' physicians, due to the possibility of a failure in the procedure that may cause the aggravation of the disability. Further, no medical findings can prove that such spinal surgery can restore the medical condition of the Petitioner. According to Dr. Escutin, although the surgery may reduce back pain and improve movements, the Petitioner may no longer perform the regular, usual, and strenuous activity of a seaman.

Aggrieved with the Decision of the Labor-Arbiter, Private Respondents elevated the case to the National Labor Relations Commission, Public Respondent, via a Memorandum of Appeal[19] dated 20 December 2013, assigning the following errors: (1) The Labor-Arbiter gravely abused his discretion in awarding Petitioner permanent and total disability considering that the latter is disqualified from receiving any benefits having abandoned the necessary medical procedure recommended by the company-designated physicians[20]; (2) the Labor-Arbiter grossly misinterpreted the assessment of Dr. Escutin as the latter also recommended spinal surgery similar to the company-designated physicians[21]; and (3) the Labor-Arbiter seriously erred in awarding attorney's fees as there was no showing of gross and evident bad faith on the part of the Private Respondents.[22]

Praying that the appeal be dismissed for utter paucity of merit and that the Decision of the Labor-Arbiter be affirmed *in toto*, Private Respondent filed an Answer/Comment to Respondents' Appeal[23] dated 30 January 2014.

RULING OF THE NLRC

On 30 January 2014, Public Respondent rendered a Decision[24] partially granting Private Respondents' appeal, thus reversing the Labor-Arbiter's Decision but affirming the same in so far as the nature of the Petitioner's disability is concerned.

In reversing the Decision of the Labor-Arbiter, the Public Respondent ruled in this wise:

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> *"In this case, respondents complied with the mandate of the POEA-SEC. Upon repatriation, complainant was referred to a company-designated physician for medical attention and examination. From 10 January 2013 until 24 April 2013, complainant was under the care of the company-designated physician, he underwent medical examination, medications, and therapy (pp. 41-46, record). However, complainant was not able to attain full recovery despite therapy and medications. Hence, he consulted an independent physician in the person of Dr. Escutin.*
>
> *XXX*
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> *Noteworthy, that after complainant's MRI of the Lumbosacral spine, he was advised by the company-designated physician to undergo spine surgery. Complainant refused surgery as according to him, he was asked to sign a waiver and there was no assurance whatsoever that he would be restored to his pre-injury medical condition. If such is the case, his basis for refusing to go on with the surgery is belied by his own physician. As stated by Dr. Escutin, 'the best remedy for complainant's illness is to remove the cartilage that is pressing on the nerve root.' Such is the purpose of the spine surgery which complainant refused to do despite repeated advise (sic.) from the company-designated physician.*
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> *Indeed, complainant cannot be compelled to undergo spine surgery. However, respondents cannot also be held liable for permanent total disability if the reason why the disability or illness progressed was due to complainant's own fault. The failure of complainant to attain full medical recovery is attributable to his own fault and not to the nature of his injury or illness. His continued refusal to undergo spine surgery is the reason that hampered his recovery.*
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> *Thus, given the foregoing, complainant, therefore, is not entitled to permanent total disability benefits. Nonetheless, complainant is entitled to the interim disability grading of GRADE 11 as assessed by the company-designated physician or a sum of US$ 7, 465.00.*
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> *XXX*

Subsequently, Petitioner filed a Motion for Reconsideration[25] on 28 February 2014. On 18 March 2014, a Resolution[26] was promulgated by Public Respondent denying the instant Motion for lack of merit.

This instant petition was filed on 22 May 2014 before this Court. In a Resolution[27] promulgated on 10 June 2014, the Private Respondents were directed to file their Comment on the Petition within ten (10) days from notice and thereafter, the Petitioner is given five (5) days from receipt of the Comment to file a Reply. The Private Respondents filed their Comment[28] on 30 June 2014, respectfully submitting that no reason exists for this Court to modify, much less reverse Public Respondent's Decision in so far as it found Petitioner to be merely entitled to a Grade 11 Disability benefit. Thereafter, Petitioners filed a Reply[29] on 09 July 2014, stating that Public Respondent completely ignored the fact that despite the lapse of 120 days, Private Respondents had unjustifiably and unreasonably reneged on its express contractual obligation to pay total permanent disability benefits.

In a Resolution dated 27 October 2014,[30] Private Respondents filed their Memorandum[31] before this Court on 20 November 2014, while Petitioner filed his Memorandum[32] on 21 November 2014. Finally, the case was submitted for decision pursuant to Resolution[33] on 18 February 2015.

THE ISSUES

In praying that the Decision and Resolution of the Public Respondent be overturned, Petitioner raises the following issue before this Court:

> **"A. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER AND DENYING PETITIONER'S CLAIM FOR TOTAL PERMANENT DISABILITY BENEFITS."**[34]

THE RULING OF THIS COURT

We resolve to deny the petition.

The Petitioner's argument that Private Respondents' company-designated physicians were unable to make a declaration or assessment as to his medical condition due to the lapse of the 120-day period required by law is highly misplaced.

It is worthy to note that Petitioner's argument that no assessment was made on his condition is patently erroneous as Private Respondents' physicians were able to evaluate Petitioner's medical condition on 24 April 2013, giving him a disability grading of 11.[35]

As to the 120-day and 240-day extension periods in declaring the condition of the seafarer, which is dependent on whether the latter is entitled to benefits, jurisprudence[36] is instructive:

"As these provisions operate, **the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition." (Emphasis Ours)

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Thus, the 120-day period required by law should be reckoned from the time the seafarer receives treatment from the company-designated physician, which is contrary to the assertion by Petitioner who reckoned the 120-day period from the date of his injury.[37] Records reveal that the company-designated physicians commenced the treatment on 10 January 2013[38] and were able assess Petitioner's medical condition on 24 April 2013. As the period from the time of treatment to the assessment of disability grading only totaled 104 days, it is clear that Private Respondents were well within the 120-day period given by law. Assuming *arguendo* that the period should be reckoned from the time of injury, on 23 December 2012, Private Respondents are still compliant with such requirement as only 112 days have lapsed from the time of the injury to the time of assessment. Moreover, Petitioner completely disregarded that Private Respondents have the freedom to extend such 120-day period to a maximum of 240 days for the sake of the accuracy of the disability assessment made on the seafarer.

In claiming compensation and benefits for injuries suffered during the term of employment, the seafarer is not deprived of the freedom to seek a second opinion from a different physician to contest the initial findings of the company-designated physician. Section 20(A)(3) of the 2010 POEA Memorandum Circular on the standard terms and conditions governing the employment of seafarers, however, provides for an arbitration mechanism should a second opinion be sought:

"SECTION 20. Compensation and Benefits. —

A. Compensation and Benefits for Injury or Illness

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

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