

## FOURTEENTH DIVISION

[ CA – G.R. SP NO. 127456, March 03, 2014 ]

**ROBERTO M. DONGON, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND BW GYRON CREW, INC.,  
RESPONDENTS.**

### D E C I S I O N

**GALAPATE-LAGUILLES, J:**

This *Petition for Certiorari*<sup>[1]</sup> filed under Rule 65 of the Rules of Court impugns the *Resolution*<sup>[2]</sup> dated 29 June 2012 of public respondent National Labor Relations Commission (NLRC for brevity) which affirmed on appeal the Labor Arbiter's *Decision*<sup>[3]</sup> dated 28 February 2012 denying for lack of merit petitioner Roberto M. Dongon's claim for disability benefits and other monetary claims. Likewise assailed is the *Resolution*<sup>[4]</sup> dated 31 August 2012 denying the *Motion for Reconsideration*<sup>[5]</sup> thereof.

The facts are simple.

On 2 October 2009, Dongon signed an 8-month contract for ship deployment aboard the vessel M/V "Scelveringhe" with the Gyron Crew, Inc., a manning agency acting for and in behalf of its foreign principal, Gyrom Shipping Ltd.<sup>[6]</sup> He was designated as an Able Seaman with a monthly basic salary of USD583.00.<sup>[7]</sup> On 24 October 2009, Dongon departed the Philippines and boarded the cargo vessel Scelveringhe the following day. He immediately performed his duties in accordance with his job description as Able Seaman.<sup>[8]</sup>

On 29 May 2010, Dongon was repatriated and arrived in the Philippines on 30 May 2010.<sup>[9]</sup>

On 2 June 2010, Dongon applied with private respondent for re-engagement as an Able Seaman. As a standard procedure, Dongon submitted himself to a Pre-Employment Medical Examination (PEME) which yielded, however, the following recommendation:

The above mentioned candidate is

UNFIT TO WORK.

Dx. of Adrenocortical Ca, 2010.<sup>[10]</sup>

On 7 September 2010, Dongon filed before the Arbitration Branch of the NLRC a *Complaint*,<sup>[11]</sup> docketed as NLRC NCR Case No. (M)09-12579-10, for disability benefits, sickness allowance, refund of medical expenses, moral damages and attorney's fees against private respondent. Mediation failed, thus parties were ordered to submit their respective position papers.<sup>[12]</sup>

In his *Position Paper*,<sup>[13]</sup> Dongon claimed that sometime in the first week of May 2010, while carrying heavy painting materials in the Engine Room of the vessel, he felt dizzy and experienced shortness of breath. He felt off-balance and fell on the floor, his chest landing first followed by his abdomen. According to Dongon, he then experienced terrible chest and abdominal pains which radiated all over his body and numbness on the left side of his body. His fellow crew member allegedly reported the incident to his Supervisor, who, on the other hand, also reported the incident to the ship's Medical Officer. The latter gave him (Dongon) several analgesics which afforded no relief. He was then confined at the ship's clinic.<sup>[14]</sup>

At nighttime, Dongon claimed that he experienced fever, headaches, tremors on the left upper and lower extremities of his body and had difficulty in sleeping. This notwithstanding, on 8 May 2010, he was requested to perform his duties as Able Seaman. After two (2) days, Dongon experienced numbness and tenderness of his abdomen and chest, and he also vomited. He fell in the Engine Room and was sent to the vessel's clinic. He was observed for three (3) days and the medical officer decided that he be sent to a doctor.<sup>[15]</sup>

On 19 May 2010, Dongon was allegedly diagnosed to be suffering from Upper Abdominal Enhancing Mass. Unfortunately, he was not issued a medical report. As the pain persisted, Dongon was advised to be repatriated for further examinations in the Philippines.<sup>[16]</sup>

Dongon continued that a day after his arrival in the Philippines or on 31 May 2010, he allegedly reported to private respondent for a medical referral. However, to his dismay, he was denied medical assistance by private respondent since his injury/illness was not work-related.<sup>[17]</sup> Thus, Dongon was constrained to have on various dates medical examinations with two (2) doctors, namely: Dr. Donald S. Camero (Dr. Camero) of the Cavite Asthazone Clinic; and Dr. Eduardo M. Yu (Dr. Yu), an internist at the Mary Chiles General Hospital. In their separate medical certificates,<sup>[18]</sup> both doctors diagnosed Dongon to be suffering from "Hypertension and Adrenocortical Carcinoma Stage II (T2NOMO). Moreover, both doctors noted that the said physical findings "has been noted with POEA **Grade 1 for Severe Residuals of Impairment of Intra-abdominal organs** which requires regular aid and attendance that will unable worker to seek any gainful employment." They concluded that Dongon was permanently unfit for sea duty and that his illnesses are "work-related since exposed to toxic and hazardous materials."

Despite his condition, private respondent allegedly continued to deny Dongon medical assistance. Hence, the filing of the Complaint.<sup>[19]</sup>

On the other hand, private respondent countered in its Position Paper<sup>[20]</sup> that Dongon was able to finish his contract on 30 May 2010. On 2 June 2010, he expressed his intention to rejoin MV Scelveringhe, thus he underwent the required

PEME and signed his supposed fourth employment contract with private respondent. Dongon's Ultrasound Report, however, showed that he had hepatic mass.<sup>[21]</sup>

Private respondent further contended that on 5 June 2010, Dongon underwent CT-Guided aspiration biopsy for his suprarenal mass at the Manila Doctor's Hospital and he was diagnosed by Dr. Jose M. Carnate, Jr. to be suffering from Adrenocortical Carcinoma. Dongon then underwent surgery at the Philippine General Hospital (PGH) for excision of adrenal gland tumor. On 19 August 2010, Dr. Wenceslao S. Lauderer of Galenus Clinic issued a medical report that Dongon was "Unfit for Work, Dx of Adrenocortical Ca 2010."<sup>[22]</sup>

On 20 August 2010, by mutual consent of the parties, they decided to cancel Dongon's employment contract.<sup>[23]</sup> This was reported to the POEA on 23 August 2010.<sup>[24]</sup>

Private respondent thus posited that Dongon was not entitled to disability compensation because he did not contract his illness during the period of his employment.<sup>[25]</sup> It insisted that Dongon's illness was not listed as an occupational disease in the Table of Occupational Diseases embodied in Section 32-A of the Standard Contract and his (Dongon's) working conditions could not have increased the risk of contracting the disease.

On 28 February 2012, the Labor Arbiter rendered a Decision<sup>[26]</sup> dismissing the Complaint of Dongon for lack of merit holding that Dongon's affliction was not contracted during the effectivity of his contract.

Aggrieved, Dongon appealed to the NLRC but he was likewise unsuccessful in obtaining a favorable judgment. The NLRC sustained the dismissal of his Complaint in the Resolution<sup>[27]</sup> dated 29 June 2012 with the following ratiocination:

x x x

The records indubitably establish that under his latest employment contract, complainant was to work on board respondents' vessel for eight months. He joined the vessel in October 2009 and arrived in the Philippines in May 2010. When complainant disembarked on May 29, 2010 and arrived at the point of hire on May 30, 2010, he did so for no other reason but for completion of his contract, and not because he was medically repatriated. Complainant's engagement was thus terminated upon his sign-off. Consequently, when he was later diagnosed with Adrenocortical Carcinoma, his services with respondent had already been terminated.

Complainant's allegation that he suffered the illness on board is specious. His claim that he felt dizzy, was short of breath and experienced terrible chest and abdominal pains and numbness of the left side of his body just before his disembarked was uncorroborated. It is self-serving at best.

There is no record of any report of any incident which would show that complainant suffered these medical complaints during his employment. Complainant's statement cannot be regarded as substantial evidence. Allegation is not proof. It is an established doctrine that mere allegation cannot serve as evidence. x x x

Moreover, the Master of the vessel himself, Roel Den Herder, issued a statement on December 30, 2010 categorically stating that there were no incidents of whatever nature prior to complainant's signing off and that the latter was never ill onboard (sic) the vessel nor received any medical attention since October 25, 2000 until he signed off on May 29, 2010.

The new employment contract which he signed prior to his PEME cannot also be the source of his claim. Complainant has not been deployed yet and has not commenced employment and there is no employer-employee relations as of yet. And as complainant conceded, the contract was cancelled by mutual consent. There is, thus, no effective contract subsisting between the parties.

Neither are we convinced that complainant's Adrenocortical Carcinoma is work-related. It cannot be denied that it is not listed as a compensable occupational disease in the POEA-SEC. Thus, there is a need to prove the causal relation between the illness and seafarer's work. The claimant must be able to submit proof as would constitute a reasonable basis for concluding either that the seafarer's working conditions caused the ailment or that such working conditions had aggravated the risk of contracting the ailment. Unfortunately, complainant failed to show this. He merely alleged that he was exposed to extreme physical and physiological stresses at work and that his exposure to chemicals, solvents, pesticides and other toxic agents contribute to the development of the illness. But barely alleging that the nature of his job on board is contributory if not the primary cause of the development of the illness is not proof of work-relation. Awards of compensation cannot rest on speculations or presumptions.<sup>[28]</sup> x x x (Citations omitted)

Dongon sought reconsideration of the adverse ruling but the NLRC likewise denied the same per Resolution<sup>[29]</sup> dated 31 August 2012. Hence, Dongon resorted to the present recourse raising the following issues:

(1) Is the petitioner entitled to disability benefits; illness allowances; and refund of medical expenses? (2) Is the petitioner entitled to moral damages and attorney's fees?<sup>[30]</sup>

*The Petition lacks merit.*

It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.<sup>[31]</sup>

In the case at bench, the NLRC, in affirming the Decision of the Labor Arbiter, unerringly denied Dongon's entreaty for payment of disability compensation and other benefits.

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers.<sup>[32]</sup> The issue of whether Dongon is entitled to disability benefits should then be resolved in the light of Section 20 (B), paragraph 6, of the 2000 Amended Standard Terms and Conditions which reads:

#### SECTION 20. COMPENSATION AND BENEFITS. —

xxx xxx xxx

##### B. 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:

xxx xxx xxx

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

For disability to be compensable under **Section 20 (B) of the 2000 POEA-SEC**, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or