

FIRST DIVISION

[CA-G.R. SP NO. 126535, May 26, 2014]

**MARLOW NAVIGATION PHILS., INC., MARCREW SCHIFFAHRTS
GMBH AND/OR EILEEN R. MORALES, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND CRISTITUTO
G. GONJORAN, JR., RESPONDENTS.**

D E C I S I O N

BARRIOS, M. M., J.:

This Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assails, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Decision dated 15 June 2012^[1] of the National Labor Relations Commission. The dispositive portion reads:

x x x

WHEREFORE, premises considered, the instant appeal is *DISMISSED* for lack of merit. The Decision appealed from is *AFFIRMED*.

SO ORDERED.

x x x

Also assailed is the Resolution^[2] dated 27 July 2012 denying petitioner's Motion for Reconsideration.

The Antecedents

On 19 April 2010, petitioner Marlow Navigation Phils., Inc. hired private respondent as Second (2nd) Engineer on board the vessel "M/V Elena" for a period of eight (8) months. Having been issued a clean bill of health, private respondent embarked on the vessel on 21 April 2010.

Sometime in November 2010, while private respondent was lifting a large chain block that he used to transport a shaft generator, he suddenly felt excruciating pain on his back and right leg. He reported this to the ship captain and days later, he was examined at Haiphong, Vietnam where private respondent was diagnosed to have a "slacken ligament" and advised against heavy work.^[3] As a consequence, private respondent was repatriated to the Philippines on 11 November 2010 for further medical treatment. He was initially referred by petitioners to Davao Doctor's Hospital where the MRI conducted on him revealed: a) compression fracture of L5; b) central disc protrusion with disc generation L4-L5; and c) left paracentral disc protrusion.^[4] On 18 November 2010, private respondent was admitted at Manila Doctor's Hospital where he was examined and advised by company physician, Dr. Joy Ellen Buena Barrameda, to undergo physical therapy and rehabilitation. Therein, he was diagnosed with Lumbar Disc Disease. Private respondent underwent physical

therapy treatment from 24 November 2010 to 26 April 2011, but he continued to suffer pain and numbness on the left lower extremity.

On 14 April 2011, Dr. Barrameda assessed private respondent's disability at Grade 8, moderate rigidity or 2/3 loss of motion or lifting power of the trunk.^[5] On 26 April 2011, the company-designated physiotherapist, Jasmin Pagaduan, issued a discharge note indicating therein that private respondent had not fully recovered from his injury.^[6]

Despite medical treatment, his condition showed minimal improvement. On 29 June 2011, still wearing a back brace, he sought medical help from an independent orthopedic surgeon, Dr. Rogelio Catapang, Jr., who gave the findings that "there is tenderness along the spinous process and para spinal muscles of the lumbar spine. Trunk motion is limited by pain in all directions with limited range of motion, with radiating pain to right leg. Muscle strength is 5/5 on both lower extremities. Numbness is felt on the buttocks to the lower extremity especially on the lateral side right. Deep tendon reflexes are normoactive. Straight leg raising test is noted on the right." It was observed that private respondent has difficulty in bending to pick up things and in climbing or descending stairs, and thus, has lost his pre injury capacity as a seaman. Hence, Dr. Catapang assessed private respondent as "permanently unfit in any capacity for further sea duties as a seaman".^[7]

Thereafter, as private respondent believed that he is entitled to full disability benefits, he sought financial assistance with petitioners, but this was refused. Petitioners wanted to compensate him only for Grade 8 disability benefits per assessment by the company-designated physician. Despite a series of conferences, the parties failed to reach settlement as to the degree of disability, and hence, private respondent eventually filed a complaint seeking permanent disability benefits against petitioners.

On 31 January 2012, the Labor Arbiter rendered a decision awarding private respondent permanent total disability benefits. Unsatisfied with the ruling, petitioners appealed to public respondent NLRC. Petitioners insist that private respondent was suffering from a partial disability and entitled only to a Grade 8 disability compensation.^[8]

As heretofore stated, public respondent dismissed the appeal and affirmed the award. Petitioners moved for reconsideration, but the same was denied. Hence, this instant petition for certiorari by petitioner arguing that:

I

THE 120 DAY RULE IS NOT APPLICABLE TO DISABILITY CLAIMS UNDER THE POEA CONTRACT. THE CASE OF CARMELITO VALENZONA VS. FAIR SHIPPING CORPORATION IS NOT AT ALL SQUARES WITH THE PRESENT CLAIM FOR DISABILITY BENEFITS. HENCE, WHEN PUBLIC RESPONDENT RELIED ON THE SAID DOCTRINE AND JURISPRUDENCE IN THE RESOLUTION OF THE CASE, GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION HAS BEEN COMMITTED.

II

THE FINDINGS OF PRIVATE RESPONDENT'S PERSONAL DOCTOR, IN THE PERSON OF DR. ROGELIO CATAPANG, CANNOT BE GIVEN CREDENCE AS ITS ISSUANCE LACKS ACCURACY, PRECISION AND WAS ISSUED AFTER A ONE DAY EXAMINATION. HENCE, PUBLIC RESPONDENT COMMITTED GRAVE ERROR WHEN THE SAME WAS UPHELD.

A. DR. CATAPANG'S FINDING (sic) OF UNFITNESS TO WORK WAS (sic) ISSUED ON THE FIRST DAY OF CONSULTATION.

B. DR. CATAPANG'S FINDINGS OF UNFITNESS TO WORK WAS (sic) BASED ON A MERE PHYSICAL EXAMINATION.

C. DR. CATAPANG'S FINDING (sic) OF UNFITNESS TO WORK WAS (sic) BASED ON AN MRI OF THE LUMBAR SPINE BEFORE THE SEAFARER UNDERWENT TREATMENT WITH THE COMPANY DOCTORS.

D. THE FINDINGS OF THE COMPANY DOCTORS WHICH WAS (sic) THE RESULT OF MONTHS OF TREATMENT AND REHABILITATION SHOULD NOT OUTWEIGH THE FINDINGS OF DR. CATAPANG WHOSE ASSESSMENT WAS BASED ON A ONE DAY PHYSICAL EXAMINATION.

III

DISABILITY BENEFITS UNDER THE POEA CONTRACT ARE BASED ON DISABILITY GRADING. A FINDING OF DISABILITY DOES NOT AUTOMATICALLY EQUATE TO FULL DISABILITY BENEFITS. A FINDING OF THE CORRESPONDING GRADING SHOULD FIRST BE MADE IN ORDER TO DETERMINE THE PROPER AMOUNT OF DISABILITY BENEFITS. HENCE, WHEN PUBLIC RESPONDENT AWARDED FULL DISABILITY WITHOUT MAKING REFERENCE TO THE SCHEDULE OF DISABILITY BENEFITS UNDER THE POEA CONTRACT, IT IS MANIFEST THAT THERE IS A (sic) GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

IV

PRIVATE RESPONDENT HAS THE DUTY TO PROVE WORK RELATION EVEN IF THERE EXISTS A PRESUMPTION OF WORK RELATION IN HIS FAVOR.

V

PRIVATE RESPONDENT IS BURDENED WITH THE DUTY TO PROVE THAT HIS MEDICAL CONDITION IS WORK RELATED. HE MUST SUBMIT MEDICAL EVIDENCE TO PROVE THE SAME AND MUST NOT MERELY RELY ON CONJECTURES AND BLAND (sic) ALLEGATIONS. IN THE CASE AT BAR, PRIVATE RESPONDENT CLEARLY FAILED TO PRESENT ANY EVIDENCE TO PROVE WORK RELATION.

VI