

TENTH DIVISION

[CA-G.R. SP No. 122242, November 27, 2014]

88 ACES MARITIME SERVICES, INC. AND/OR OFFSHORE SPECIALTY FABRICATORS AND/OR JANET A. JOCSON, DB WILLIAM KALLOP, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND BIENVENIDO O. MOSQUEDA, RESPONDENTS.

DECISION

VELOSO, J.:

The Case

Assailed by 88 Aces Maritime Services, Inc. and/or Offshore Specialty Fabricators and/or Janet A. Jocson, DB William Kallop ("**88 Aces, et al.**") in this petition for certiorari filed under Rule 65 of the Rules of Court, are the **Resolutions** dated **June 29, 2011**^[1] and **August 25, 2011**^[2] of the National Labor Relations Commission ("**NLRC**") which it rendered in NLRC LAC (OFW-M) No. 04-000343-11 (NLRC NCR Case No. OFW 05-06663-10), entitled "*Bienvenido Mosqueda, Jr., Complainant-Appellant, -vs.- Benhur Shipping Corp./88 Aces Maritime Services, Inc., Offshore Specialty Fabricators, Mr. Edgar B. Bruselas/Ms. Janet A. Jocson, & 'DB William Kallop', Respondents-Appellees*", the dispositive portions of which read:

1) Resolution dated June 29, 2011:

"WHEREFORE, premises considered, the Decision of Labor Arbiter Eduardo J. Carpio dated December 28, 2010 is hereby modified and respondents-appellees are hereby ordered to pay jointly and severally complainant-appellant the following:

1. Permanent disability Compensation in accordance with the POEA Standard Employment Contract in the sum of US\$60,000.00; and
2. Attorney's fees in the sum equivalent to 10% of the judgment award.

SO ORDERED."^[3]

2) Resolution dated August 25, 2011:

"WHEREFORE, premises considered, the instant Motion for Reconsideration is, as it is hereby **DENIED**. The resolution dated June

29, 2011 **STANDS UNDISTURBED.**

No further motion of similar nature shall be entertained.

SO ORDERED."^[4] (emphasis supplied)

The Facts

In their petition, 88 Aces, et al. narrated the antecedent facts of the case, viz.:

"Private respondent signed a 4 month POEA approved Contract of Employment as Welder with Benhur Shipping Corporation, hereinafter referred to as Benhur for brevity under the following terms and conditions:

Duration	of 4 months
Contract:	
Position:	Welder
Basic	Monthly US\$1,670.45
Salary:	
Hours of Work:	48 Hours per week
Overtime:	US\$1,670.45
Vacation leave	w/30 days upon completion of contract
pay:	
Point of Hire:	Manila, Philippines

Copy of private respondent's Contract of Employment is attached to the Petitioner's Position Paper as Annex '1'.

On 3 November 2008, seafarer embarked on the vessel DB William Kallop and assumed his duties as Welder. (Annex '2' of the Position Paper)

Sometime in December 2008, the seafarer complained of blurring vision after a foreign body allegedly penetrated his left eye while he was working on a welding machine on board the vessel. (Please see Medical Report dated 20 January 2009 attached as Annex '3' of the Position Paper)

The seafarer consulted a physician in Homa, Louisiana where he was told to have 'foreign body, left eye'. He was then advised to follow up in his home country for further evaluation and management.

On 16 January 2009, seafarer disembarked from the vessel and repatriated to the Philippines. (relevant pages of the seafarer's Seaman's book are attached as Annex '2' of the Position Paper)

Upon arrival in the Philippines, he was seen by the company doctors at Physicians Diagnostic Services Center, Inc. where he was given a diagnosis of 'Left eye injury secondary to foreign body'. Copy of the medical report dated 19 January 2009 is attached to the Position Paper as Annex '3' of the Position Paper.

Thereafter, the seafarer was referred to the company doctors at Marine Medical Services of the Metropolitan Medical Center under the care and supervision of Dr. Robert Lim. Dr. Lim promptly organized a team of specialists for the management of the seafarer's medical condition.

The seafarer underwent a battery of medical examinations, extensive treatments and operations, and successive follow up/check up by the team of specialists. Copies of the pertinent medical reports are attached to the Position Paper as Annexes '3' to '3-S' of the Position Paper.

On 19 May 2009, the company doctor issued a medical report which categorically stated that the seafarer was 'under the care of a Retinal Specialist', the same report likewise noted an interim assessment of Grade 12, slight residuals of disorder. Copy of the medical report dated 19 May 2009 is attached to the Position Paper as Annex '3-L' of the Position Paper.

Ultimately, after further treatment including Pars Plana Vitrectomy, Air Fluid Exchange, Endolaser and Silicon Oil Injection, Left eye, the company doctor assessed the seafarer with **Grade 7 Disability for blindness of one eye.**

Seafarer was given a final diagnosed [sic] with 'Proliferative Vitreoretinopathy with Retinal Detachment, Left Eye; S/P Pars Plana Vitrectomy, Air Fluid Exchange, Endolaser and Silicon Oil Injection, Left eye.

In the interim, the principal of then respondent Benhur, Off Shore Specialty Fabricators transferred changed their agent to herein petitioners. As such, the petitioners assumed responsibility for any claims by virtue of an Affidavit of Assumption of Responsibility, a copy of which is attached [as] Annex 'A' of the private respondent's Position Paper.

Pursuant to the findings of the company doctor, the petitioners offered the seafarer US\$20,900 equivalent to Grade 7, which he rejected."^[5]
(emphasis Ours)

On May 20, 2010, the private respondent filed a complaint with the NLRC's NCR Regional Arbitration Branch against Benhur Shipping Corporation ("**Benhur**"), Offshore Specialty Fabricators, and Mr. Edgar B. Bruselas for disability compensation in accordance with the Jones Act of USA; Balance of Sick Wages; Moral and Exemplary Damages; attorney's fees; and other benefits under the law.^[6]

On May 25, 2010, summons was served on Benhur Shipping Corp. and Edgar

Bruselas.^[7]

On June 29, 2010, private respondent filed an Amended Complaint.^[8]

On July 8, 2010, Benhur Shipping Corporation and Edgardo Bruselas, through counsel "Emelito A. Licerio", filed a Motion to Dismiss private respondent's Complaint, explaining in part:

"3. Sometime in November 2008, BENHUR processed and deployed the complainant to the vessel DB William Kallop as Welder with a basic monthly salary of US\$1,670.45 for a period of four (4) months. Attached is the photocopy of the Contract of Employment executed between the complainant and BENHUR marked as **Annex 'A'**.

4. Sometime in December 2008, 88 ACES MARITIME SERVICES, INC., another duly licensed local manning agency in the Philippines with offices at Unit 1193 Lyra Building, 1191 Quezon Avenue, Quezon City, requested for the enrolment of DB William Kallop under its foreign principal, OFFSHORE SPECIALTY FABRICATORS, INC. Respondent BENHUR through its President, EDGAR BRUSELAS interposed no objection thereto on condition that 88 ACES MARITIME SERVICES, INC., issue the standard requirements of Overseas Employment Administration (hereafter, POEA) in such kind of situation. Subsequently, respondent 88 ACES MARITIME SERVICES, INC. through its President/Managing Director, CARMENCITA A. SARREAL[,] issued the standard Affidavit of Assumption of Responsibility dated 04 December 2008. A photocopy of the letter of BENHUR to POEA dated 04 December 2008 is attached herewith as **Annex 'B'** while a photocopy of the Assumption of Responsibility is attached herewith as **Annex 'C'**.

5. By and large, 88 ACES MARITIME SERVICES, INC. through CARMENCITA SARREAL[,] relieved and absolved **BENHUR** of full and complete responsibility towards the herein complainant. Pertinently, the affidavit of assumption of responsibility reads:

'3. That as agent of the above principal in the Philippines, our company is willing to assume full and complete responsibility for all contractual obligations to its seafarers originally recruited and processed by BENHUR SHIPPING CORPORATION for the vessel DB WILLIAM KALLOP.'

6. The complainant was repatriated to the Philippines on 18 January 2009 after allegedly sustaining an eye injury on 25 December 2008 while on board. Upon his arrival in the Philippines, the complainant reported DIRECTLY to 88 ACES MARITIME SERVICES, INC./OFFSHORE immediately upon his arrival in Manila which referred the complainant to their company-designated clinic at the Metropolitan Medical Center where he was attended to by Dr. Tan and Dr. Antonio Sai (Par. 8,

Affidavit/Complaint) and to the University of Santo Tomas for Ophthalmic Ultrasound (Par. 9, *id.*). The fact that complainant reported to 88 ACES/OFFSHORE upon his repatriation and not to BENHUR only proved that even complainant knew BENHUR has no more contractual responsibility towards him and that the same has been fully assumed by 88 ACES MARITIME SERVICES, INC. and its principal OFFSHORE;

7. It is well worth to note that the assumption of responsibility is a practice sanctioned and legalized under the POEA Rules and Regulations Governing Overseas Employment particularly Section 7 and Section 8, Rule II, Part III. Hence, it is valid and effective between and among the herein parties including the complainant himself. The complainant knew about this assumption as may be gleaned from his act of reporting to 88 ACES/OFFSHORE immediately upon his repatriation;

8. Clearly, the complainant has no more cause of action against said respondents. But complainant is now left without any remedy. He only has to direct his claims against the real party in interest. He must now direct his complaint against 88 ACES MARITIME SERVICES, INC. and OFFSHORE SPECIALTY FABRICATORS, INC.”^[9]

Served with copies of the motion to dismiss were “Atty. R.C. Carrera”, counsel for private respondent, and “Del Rosario & Del Rosario”, counsel for 88 Aces, et al.^[10]

On July 15, 2010, Labor Arbiter Eduardo J. Carpio issued Summons against petitioner “88 Aces Maritime Svcs., Inc.”^[11] The same was served on petitioner on September 1, 2010.^[12]

On December 28, 2010, *i.e.* after the parties submitted their position papers on the case, Labor Arbiter Carpio rendered his decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, decision is hereby rendered ordering the dismissal of complainant's claim for payment of full disability benefits. The disability assessment of Grade 7 issued by the company-designated physician is hereby upheld. Respondents 88 Aces Maritime Services, Inc. and Offshore Specialty Fabricators are hereby ordered to pay complainant, jointly and solidarily, the amount of US\$20,900.00 or its peso equivalent at the time of payment representing complainant's disability benefits for a Grade 7 assessment as per Section 32 of the POEA-Standard Employment Contract.

All other claims are dismissed for lack of basis.

SO ORDERED.”^[13]