

SPECIAL ELEVENTH DIVISION

[CA-G.R. SP NO. 136852, November 18, 2014]

CF SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINES, INC., AND/OR JICKIE ILAGAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND JULIUS CAEZAR ARTIFICE, RESPONDENTS.

D E C I S I O N

DICDICAN, J.:

Before us is a petition *for Certiorari*^[2] with application for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by CF Sharp Crew Management, Inc., Norwegian Cruise Lines, Inc., and/or Jackie Ilagan ("petitioners") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Decision^[2] promulgated by the Sixth Division of the National Labor Relations Commission ("NLRC") dated April 29, 2014, in NLRC LAC (OFW-M) No. 01-000068-14 which affirmed the Decision^[3] rendered by Labor Arbiter Remedios Tirad-Capinig ("Labor Arbiter") on October 31, 2013. Likewise assailed in the instant petition is the Resolution^[4] promulgated by the NLRC on June 23, 2014 which denied the Motion for Reconsideration^[5] that the petitioners filed on May 16, 2014.

The material and relevant facts of the case, as culled from the record, are as follows:

The present petition stemmed from a Complaint^[6] for the payment of total permanent disability benefits, balance of sickness wages, reimbursement of medical and transportation expenses, moral and exemplary damages and attorney's fees filed by Julius Caesar Artifice ("private respondent) against herein petitioners with the Labor Arbiter in Quezon City which was docketed as NLRC-NCR-(M)NCR-05-7536-13.

On September 6, 2012, herein private respondent entered into a nine-month contract of employment with the petitioner manning agency for its foreign principal Norwegian Cruise Line, Ltd.

The private respondent was hired by the petitioners as an assistant cook aboard the vessel M/S Norwegian GEM (HOTEL). His employment contract that was duly approved by the Philippine Overseas Employment Administration ("POEA") stated the following terms and conditions, to wit:

"1.1 Duration of contract	9.00 months
"1.2 Position	ASST. COOK

"1.3 Basic	\$378.29 per month
"1.4 FOT	\$189.36 (40-56 Hours)
"1.5 GTD O/T Pay	165.69 per month for 60.62 Hours
"1.6 Vacation Pay	\$56.74 per month
"1.7 Monthly GTD Pay	0.00 per month (Inclusive compensation for unlimited hours of work)
"1.8 Monthly Incentive	\$0.00 per month
"1.9 GTD O/T Rate	\$2.73
"1.10 Hourly OT Rate	\$3.28 per hour in excess of GOT
"1.11 Seniority Pay	19.00 per month First Hire Date: September 25, 2011
"1.12 Total Monthly Pay to Seafarer	\$804.00 per month
"1.13 Union Fee	\$5.00 (Directly remitted to Union)
"1.14 Social Program Compensation	\$25.00 (Directly remitted to SSS and Philhealth)–Employer Share
"1.15 Special Monthly Incentive	\$0.00
"1.16 Additional Incentive	\$0.00
"1.17 Leave Days	4.50 (days)
"1.18 Point of Hire	Manila ^[7]

Additionally, the private respondent's employment contract was governed by NSU Collective Bargaining Agreement.

As a requirement prior to embarking on the aforementioned vessel, private respondent completed the mandatory pre-employment medical examination and he was determined by the petitioners' accredited medical clinics to be fit for sea duty. Thus, on October 27, 2012, the private respondent was deployed to perform his contracted duties.

While on board, the private respondent was tasked to clean and shine stainless steel cooking equipment and utensils which were used by the cruise ship to serve food. According to the private respondent, he was exposed to and suffocated by the foul and pungent smell of the chemicals that he used to clean said cooking wares.

Thereafter, the private respondent began to experience difficulty in breathing and nasal congestion which persisted throughout the day and during the nighttime. He also experienced throbbing pain in his lower back, which then affected his day to

day functions.

Consequently, as the private respondent continued to experience discomfort and could no longer perform his duties as an assistant cook, he was medically signed off from the vessel. Based on the Shoreside Referral Slip^[8] dated January 15, 2013, private respondent was diagnosed by the ship's physician with constipation, lower left quadrant (LLQ) pain and rectal bleeding. The private respondent was then repatriated to the Philippines and he arrived in the country on January 29, 2012.

Upon arrival in the Philippines, the private respondent was referred by the petitioners for initial medical examination which showed the following:

"Working Diagnosis:

- Bronchial Asthma, controlled
- Lower gastrointestinal bleeding probably secondary to internal hemorrhoids^[9]"

The private respondent was also subjected to series of medical examinations with the following test results: (1) MRI of the brain with unremarkable results, (2) Thoracolumbar MRI showing T6 vertebral body hyperintense focus likely representing vertebral hemangioma, (3) Bone Scintigraphy revealing non-specific osteoblastic lesions in the lateral left occipital bone and the midportions of both tibiae, considerations include trauma, (4) Endoscopy revealing mixed hemorrhoids, (5) MRI of the Cervical Spine showing Cervical Spondylosis, mild disc bulges at C3-4, C4-5 and C6-7, tiny central disc protrusion at C5-6 and reversed cervical lordosis, possibly from muscle spasm and (6) Cervical APL revealing suspicious fracture, spinous process of C3 vertebrae, cervical spondylosis, reversed cervical lordosis^[10].

However, after all the aforementioned examinations, the private respondent continued to experience pain on his lower back of body. The private respondent claimed that, despite the lapse of 120 days, the company doctors of the petitioners still failed to make a definite assessment as to his true condition. The private respondent then filed the complaint against the petitioners.

After the private respondent filed the complaint, he also consulted another physician, Dr. Nicanor F. Escutin, who is a specialist/orthopedic doctor. Accordingly, Dr. Escutin, through a medical certificate dated June 29, 2013, declared that the private respondent is unfit to be a seaman in whatever capacity and was given a permanent disability certification^[11].

After the parties failed to amicably settle their differences, the Labor Arbiter directed them to submit their respective position papers. Subsequently, on October 31, 2013, the Labor Arbiter rendered a Decision^[12] which granted private respondent's complaint. The dispositive portion of the Labor Arbiter's Decision, provides:

"WHEREFORE, premises considered, judgement is hereby rendered ORDERING Respondents **CF Sharp Crew Management, Inc.,** and Norwegian Cruise Lines, Inc., to pay **SOLIDARILY** the **COMPLAINANT**

as follows:

"(1) **Permanent
total disability** - US \$60,000;
benefits

"(2) **10%
Attorney's fees** -- US \$ 6,000

TOTAL AWARD US \$66,000

"Or the peso equivalent of both amounts at the time of actual payment.

"SO ORDERED."

Undaunted with the foregoing disposition by the Labor Arbiter, the petitioners appealed from the same to the NLRC. On April 29, 2014, the NLRC promulgated the assailed Decision^[13] which, in part, states:

"It is settled that the company-designated physician has to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. Should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally or permanently disabled.

"It must noted, however, that the period to declare complainants fitness or degree of disability may only be extended to 240 days if there is a need for further medical treatment and the company-designated physician declares so. In the instant case, the company-designated physician did not recommend further medical treatment regarding complainant's herniated disc. The company-designated physicians, in their final report dated July 3, 2013, gave a final assessment regarding the seafarer's mixed hemorrhoids, which they declared to be a non-work related. They failed to make a final assessment of complainant's other illness specifically, disc herniation, neither did they recommend further medical treatment with regard thereto. Hence, the 120 day period given to the company doctor to make an assessment of the seafarer's medical condition was not extended to 240 days. Consequently, the period to make the declaration lapsed without the company-designated physician making a pronouncement as to complainant's fitness of degree of disability with respect to his disc herniation and the seafarer's medical condition remained unresolved, thus he is deemed totally and permanently disabled."

" xxx.

"Herein complainant was repatriated on January 27, 2013 and consulted with the company-designated on January 30, 2013. On July 3, 2013 or 154 days after the first consultation, the company-designated physician cleared complainant as to his mixed hemorrhoids but no pronouncement was made with respect to his disc herniation. Thus, he is deemed totally

and permanently disabled as he was unable to perform his usual sea duties for a period of more than 120 days already and no further medical treatment has been prescribed.

"WHEREFORE, premises considered, the appeal is DENIED and the October 21, 2013 Decision is hereby AFFIRMED.

"SO ORDERED."

Herein petitioners sought for a reconsideration of the said Decision issued by the NLRC. On June 23, 2014, the NLRC promulgated a Resolution^[14] which denied herein petitioners' Motion for Reconsideration^[15].

Unsatisfied by the foregoing disquisition of the NLRC, petitioners filed the instant petition with this Court ascribing the following acts of grave abuse of discretion purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING THE AWARD OF DISABILITY BENEFITS DESPITE THE ABSENCE OF CAUSE OF ACTION WHEN THE INSTANT CLAIM WAS FILED.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING DISABILITY BENEFITS FOR A CONDITION NOT SUSTAINED WITHIN PRIVATE RESPONDENT'S TERM OF EMPLOYMENT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING ITS AWARD OF BENEFITS ON INABILITY TO WORK WHICH WAS HOWEVER WANTING IN FACTUAL OR LEGAL BASES.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING ATTORNEY'S FEES FOR THIS ARBITRARY, CAPRICIOUS AND WHIMSICAL CLAIM.

In sum, the primordial issue brought before this Court for resolution is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding herein petitioners to be liable for permanent disability to the private respondent.