THIRTEENTH DIVISION

[CA-G.R. SP NO. 91511, August 31, 2006]

C.F. SHARP MANAGEMENT, INC. AND/OR ARTURO V. ROCHA AND GLOBAL MARINE SYSTEMS, INC. PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MAURO C. BRUAL, JR., RESPONDENTS.

D E C I S I O N

REYES, JR., J., J.:

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul, reverse, and/or set aside the Resolutions of public respondent National Labor Relations Commission (NLRC), dated February 28, 2005 (*Rollo, pp. 30-36*) and June 30, 2005 (*Rollo, pp. 37-38*), respectively, in NLRC OFW (M) 03-11-2802-00/CA NO. 040369-04, entitled "*Mauro C. Brual, Jr., Complainant-Appellee vs. C.F. Sharp Management Inc. and/or Arturo V. Rocha/Global Systems Inc., Respondents-Appellants.*"

The facts are as follows:

Petitioner C.F. Sharp Management, Inc. ("**CF Sharp**" for brevity) is a domestic corporation engaged in the manning of vessels, while petitioner Arturo V. Rocha is the president thereof. On the other hand, petitioner Global Marine Systems, Inc. ("**Global**" for brevity) is a foreign corporation not registered in the Philippines and is the foreign principal of CF Sharp.

Private respondent Mauro C. Brual, Jr. was a seaman by profession and was hired by petitioner Global, through its local manning agent, petitioner CF Sharp for employment on board vessel C/S Cable Installer. The term of his employment was that he shall assume the position of Able Seaman (AB) for a contractual period of nine (9) months with a monthly salary of US$562.00 plus additional non-salary benefits of US$313.00 overtime pay for the first 85 hours, US$3.68 per hour of overtime in excess of the first 85 hours, and vacation leave with pay of eight (8) days per month. As stated above, private respondent was hired through the services of petitioner CF Sharp acting in its capacity as the duly accredited agent for the said vessel and for petitioner Global (*Rollo, p. 54*).

After having been found fit to work under a pre-employment medical examination (*Rollo, p. 55*), private respondent left the Philippines on January 30, 2002 and joined his vessel of assignment in due course. Private respondent served his contract satisfactorily, continuously, and without incident until September 6, 2002 when private respondent, with still two (2) more months in his contract, was repatriated to the Philippines.

Private respondent's version was that he was repatriated because of his hearing

ailment which he complained of to his master, and that there being only two (2) months left in his contract, his master allowed him to go on leave and return to Manila. Upon the other hand, petitioners' version was that the master of the vessel decided, with private respondent's concurrence, that the latter would be repatriated even if he still had about two (2) more months in his contract, since the vessel was laid up at a convenient port.

After arriving in Manila, private respondent came to the office of petitioner CF Sharp to claim his unpaid remunerations.

Private respondent alleges that at the same time, he also complained of his hearing ailment but that he was made to believe by the company physician that his pain and deafness was just an aftermath of his voyage and will soon subside after consuming his two (2)-month vacation. Petitioners claim otherwise. According to petitioners, when private respondent claimed his unpaid remunerations which were duly paid to him, he did not complain of any illness or symptoms thereof, and that since that visit in September 2002, petitioner CF Sharp did not hear from private respondent again until in March 2003 when the latter came to the former's office for a new deployment.

Private respondent was thereafter accepted for a new deployment since his prior performance was satisfactory. He was then sent for pre-employment medical examination for this new deployment. However, the company physicians detected a sharp hearing acuity drop beyond 2000Hz. in both of private respondent's ears which rendered him "unfit" for any position which involves watch-keeping duties (*Rollo, p. 56*). Since the position of Able Seaman (AB) requires watch-keeping functions, private respondent was not deployed to his former position.

On November 4, 2003, private respondent filed a complaint before the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) in Quezon City for payment of disability and/or medical benefits, moral and exemplary damages, and attorney's fees (*Rollo, pp. 40-41*), which case was docketed as OFW-03-11-2802-00. Due to the failure of the parties to arrive at an amicable settlement during the preliminary conference, they were consequently directed to file their respective position papers (*Rollo, pp. 42-53; 57-60; 64-71; 72-77; 93-101; 112-114*).

On April 26, 2004, a Decision was rendered by the Labor Arbiter ordering petitioners to jointly and severally pay private respondent permanent total disability benefits in the maximum amount of US$60,000.00 plus accrued sickness benefits, all in the aggregate amount of US$62,594.40 or its Peso equivalent at the time of payment, and 10% attorney's fees (*Rollo, pp. 115-120*). Pertinent portions of the said Decision are as follows:

> "From the asseverations of the parties above, the issue that comes into fore for resolution is whether or not complainant is entitled to medical and disability benefits as well as for moral and exemplary damages.
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> This Office had examined thoroughly and judiciously the allegations and arguments in the pleadings of the parties, as well as the annexes appended thereto and finds the submission of the complaint impressed with merit. In whatever angle we look at the issue, what emerges is that

complainant's ailment resulting to his loss of his hearing senses or deafness was contracted during his last employment as Second Engineer on board the vessel 'C/S Cable Installer.' Surely, it is a work connected injury or ailment. It is not even remote to conclude that the same commenced during the preceding employment with the respondents on board the same vessel, and manifested only on September 6, 2002 which is fifty four (54) days short of the POEA approved nine (9) months contract. He stayed and worked at the site above the vessel's huge engine that emitted the terrible sounds that defected his hearings, separated only by the floor between. Finally, it convincingly appears that his work on board the vessel is the only occupation he knows, and that he had not worked in any gainful activity after disembarkation but remains idle and waiting for available vessel of respondents, and when this came, he applied for re-employment and was subjected to the usual pre-medical examination and it was here that he was found disqualified to work as seaman because of loss of his hearing senses, a condition which the Supreme Court defined and clarified as permanent total disability, thus:

> 'x x x Disability should not be understood more on its medical significance but on the loss of hearing capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work or similar nature that (he) was trained or accustomed to perform, or any kind of work which a person of (his) mentality and attainment could do. It does not mean absolute helplessness.' (PTC vs. NLRC, G.R. No. 123691, February 28, 2001).

Truly, we can surmise that the possible obstacle that precludes complainant's entitlement to disability benefit is his failure to report formally to the local respondent within three (3) days from disembarkation his health condition. This, he tried to do but he was enveigled and swayed by respondents to believe that his ailment disability was nothing more than a hangover and would subside after a vacation which he did promptly, coupled with his overwhelming desire to be with his love(d) ones.

In our opinion, denial of disability benefits to the complainant would not only be harsh and unchristian but contrary to the basic policy of the law that in case of doubt in the interpretation of the law and rules and the evidence of complainant and employer, the same should be tilted in favor of labor and to a greater number of employees (Article 4 Labor Code of the Philippines; Nicario vs. NLRC, et al., G.R. No. 125340, September 17, 1998). It may not be remiss to state furthermore, as pointed out by the complainant that instead of imposing upon the poor disembarked employee the duty to report to a post-employment medical examination, it should be the employer who should as a statutory duty cause the examination without which the failure should be at the employer's risk.

xxx xxx xxx"

Unsatisfied, petitioners appealed the above-quoted Decision by filing a Memorandum on Appeal (*Rollo, pp. 122-140*) and posting the requisite bond (*Rollo, pp. 141-155*),

which appeal was docketed as NLRC CA No. 040369-04. On February 28, 2005, public respondent NLRC rendered the assailed Resolution (*Rollo, pp. 30-36*) affirming therein the Decision of the Labor Arbiter *in toto*. In this assailed Resolution, public respondent NLRC ruled:

> "In our review of the records, we find the errors being assigned to be unsubstantiated by any evidence. Instead, the records clearly reveal that: (a) On September 6, 2002, while on board respondent's vessel "C/S CABLE INSTALLER" and during the voyage, complainant felt an unusual pain his left ear and by reason of which, he was allowed by the master to disembark and spend the two (2) remaining months of his contract on leave; (b) that in most of the time that he was hired by respondents his situs or place of work was at the spot above the vessel's huge engine producing terrible noise separated only by the floor; (c) that promptly after disembarkation, he went to the local respondents to claim his unpaid remunerations and at the same time to submit to a post medical examination for his worsening condition but was made to believe by the company physician that his pain and deafness was just an aftermath of his voyage which will soon subside after consuming his 2-month vacation which he did, relying on such opinion; and (d) that because of this assurance, he did not mind anymore his deafness, joined his loved ones and waited for the next opportunity to board a vessel; and (e) that when he came to respondent's yard to apply, he discovered at the pre-employment medical examination that he was suffering from deafness and making him unfit to work any activity of a seafarer.
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> It likewise appears on record as uncontroverted that during the 2-month period and months before he applied for new deployment, he was idle and did not have any work to do; and that his last employment was covered by three (3) contracts with respondents and the totality of his contract hires with respondents ranged to about 130 months from 1988 in about fifteen (15) separate and distinct contracts.
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> All the above surely point to the fact that complainant's state of deafness constitutes a work-connected permanent total disability that merits the maximum payment under the pertinent provision of the POEA Standard Contract.
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> The other defense of respondents is that complainant failed to submit to a post-medical examination after disembarkation as required by Section 20 (B)(3) of the standard contract, and therefore, whatever benefits that accrued to him is deemed forfeited. This we think should not be the consequence. Complainant, as a layman and given the circumstances in which he was in after disembarkation, certainly could not be faulted more than the respondents because when he was examined by the company physician he was made to believe that the deafness was just an after effect of his voyage.
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> Moreover, we have to point out, that the appealed decision is supported by substantial evidence, particularly 'that amount of relevant evidence which a reasonable mind accepts as adequate to justify a conclusion' (Section 5, Rule 133, Rules of Court, Enrique Bairos vs. NLRC, et al. G.R.