

## **FOURH DIVISION**

**[ CA-G.R. SP NO. 75891, August 29, 2006 ]**

**BALIWAG NAVIGATION, INC. AND / OR JOSEFINA SHIPPING CORPORATION, S.A., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND RENATO M. MORELOS, RESPONDENTS.**

### **D E C I S I O N**

**BARRIOS, J.:**

The petitioners Baliwag Navigation, Inc. and / or Josefina Shipping Corporation, S.A. (hereafter the petitioners for brevity) are before Us on certiorari assailing the National Labor Relations Commission's (or NLRC) Decision dated September 30, 2002 favorable to the respondent Renato M. Morelos (or Morelos), and Resolution of December 27, 2002 denying its reconsideration.

Morelos was hired by the petitioners as Third Engineer on board the ocean-going vessel MV CSK Unity. Their employment contract stipulated that Morelos was to work for a period of ten (10) months with a monthly salary of US\$800.00. On February 18, 1998 he departed from the Philippines to board the petitioners' vessel.

Sometime in October 1998 and during the tenure of his employment, Morelos started to complain of coughing, chest pain and recurrent fever. When the vessel arrived at the port of Japan, Morelos was referred to the Kasuga Hospital where he was initially diagnosed to have pulmonary tuberculosis. After a series of tests performed on him, he was referred to the Kashima Hospital for isolation and treatment. There the initial findings were confirmed and Morelos was immediately confined and underwent medical treatment for pulmonary tuberculosis and diabetes from November 13, 1998 up to June 19, 1999. On June 16, 1999 he had been declared fit for air travel because of his improved condition, and on June 19, 1999 Morelos was repatriated to the Philippines. On his arrival in the country, he proceeded to the company designated physicians at the Metropolitan Hospital for medical evaluation and treatment.

According to Morelos, 120 days have passed since he signed off from the vessel but he was not yet paid his sickness allowance and the company designated physician has not made any assessment of his disability. Hence, he filed a case for disability benefit, sickness allowance, damages and attorney's fees against the petitioners. He claimed that based on the assessment made by the ECC, his condition falls under Grade 1 impediment.

For their part, the petitioners claimed that as soon as Morelos arrived in the country he was immediately referred to the company designated physician. He was given the appropriate medication and subjected to regular monitoring and examination, and in August 1999 his attending physicians opined that with his cooperation there

is no reason why he will not soon be cleared for work. The petitioners further contended that they continued to provide Morelos with appropriate medication and care at their expense.

They also claimed that sometime in October 2000, after the filing of the case, Morelos was assessed disabled with an impediment rating of Grade 7. On the basis of such assessment, they offered to pay Morelos the corresponding disability compensation of US \$20,900.00, but their offer was rejected. Consequently, Morelos sought an evaluation of his disability from the ECC where he was given an assessment of Grade 3. Not satisfied with this, he secured another assessment from the same ECC physician and this time his disability was assessed as falling under Grade 1 impediment.

On November 29, 2001, the Labor Arbiter rendered a Decision in favor of Morelos, disposing that:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering respondents Baliwag Navigation Inc. and Josefina Shipping Corporation, S.A. jointly and severally to pay complainant Renato M. Morelos the sum of US\$3,200.00 as sickness allowance and the sum of US\$60,000.00 representing his disability benefits, all to be paid in Philippine Currency prevailing at the time of payment;
2. To pay further the sum ten of percent (sic) (10%) of the total monetary award due complainant as attorney's fees.

All other claims of complainant are dismissed for lack of basis.

SO ORDERED. (pp. 113-114, rollo)

This was upheld by the NLRC except for the award of sickness allowance which was deleted. The decretal portion of this reads:

WHEREFORE, the decision dated 29 November 2001 is MODIFIED. The award representing sickness allowance in the amount of US\$3,200.00 is DELETED. The award representing 10% attorney's fees shall be based on award representing disability benefits.

The other findings are AFFIRMED. (p. 37, rollo)

A motion for reconsideration was filed by the petitioners but this too was denied by the NLRC.

Claiming that the NLRC committed errors with grave abuse of discretion, the petitioners contend that:

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THE DISABILITY ASSESSMENT WHICH THE NLRC INSISTS ON RELYING UPON CANNOT SERVE AS A BASIS FOR THE AWARD GIVEN IN FAVOR OF SEAMAN MORELOS, CONSIDERING THAT SAID ASSESSMENT WAS DONE BY A PHYSICIAN OTHER THAN THE COMPANY DESIGNATED PHYSICIAN WHO IS SOLELY AUTHORIZED TO CONDUCT SUCH DISABILITY