

SEVENTH DIVISION

[CA-G.R. SP NO. 87791, September 11, 2006]

SEVENTH DIVISION ANGELICO M. CABRAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, TSM SHIPPING (PHILS.) INC., MR. ALFONSO DEL CASTILLO, SILVER CRUISES LTD., AND/OR NORTH SEA MARINE SERVICES CORPORATION, RESPONDENTS.

D E C I S I O N

BERSAMIN, L. P., J.:

On *certiorari*, the petitioner hereby seeks to nullify the decision dated March 31, 2004 rendered by the National Labor Relations Commission's (NLRC) in OFW Case 02-01-0303-00 (CA No. 036242-03) entitled *Angelico M. Cabral v. TSM Shipping (Phils.) Inc./ Alfonso R. Del Castillo*,¹ which set aside the decision rendered by the Labor Arbiter on April 30, 2003;² and the resolution dated September 17, 2004, which denied the petitioner's motion for reconsideration,³ claiming that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The antecedents follow.

The petitioner was employed as assistant plumber for a period of 9 months at 44 hours/week by respondent TSM Shipping (Phils), Inc. for and in behalf of its principal Silver Sea Cruises Ltd.. Under the terms of the contract of employment, he was given a basic monthly salary of \$601.00; overtime pay of \$334.00/month; 85 hours/month; \$3.94/hour and vacation leave with pay at \$160.00/month at 8 days/month.

Prior to his deployment, and as required by existing laws, he underwent a pre-employment medical examination (PEME) and was thereby found fit for work by his physician. On April 24, 2004, he boarded the vessel MV SILVER CLOUD where he was assigned.

In July 2001, he sustained an injury to his left collar bone after lifting heavy objects while on board the vessel. He was immediately attended to by the ship's physician and was later examined and treated in London and Portugal hospitals. On September 21, 2001, he was repatriated for further medical treatment.

Upon repatriation, he was referred by his employer to the company-designated physician, Dr. Robert Lim, at the Marine Medical Services, Metropolitan Hospital, who diagnosed him to be suffering from "fracture, left clavicle with osteomyelitis" and recommended him to undergo physical therapy. Dr. Lim also referred him to an orthopedic surgeon.

On March 8, 2002, following months of treatment and therapy, he was declared by Dr. Lim to be fit for sea duty.

Believing, however, that he was entitled to the payment of permanent disability benefits, the petitioner lodged in the NLRC a claim for disability compensation benefits against his employer.

The mandatory conferences failed to have the parties reach an amicable settlement. Hence, the parties filed their respective position papers and other necessary submissions.

On February 20, 2003, the petitioner filed a *motion to appoint a third doctor*. The private respondent opposed the motion.

The case was thereafter submitted for resolution.

On April 30, 2003, Labor Arbiter Fedriel S. Panganiban rendered his decision, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering respondents North Sea Marine Services Corporation and its principal Silver Sea Cruises Ltd. to pay complainant the sum of TWELVE THOUSAND NINETY US DOLLARS (US\$12,090.00) or its peso equivalent at the time of payment, representing complainant's disability benefit plus ten (10%) thereof by way of and/as attorney's fees.

The case filed against TSM Shipping (PHILS.) Inc. and Mr. Alfonso R. Del Castillo is dismissed.

All other claims are likewise dismissed for lack of merit.

SO ORDERED.⁴

Dissatisfied, the private respondents appealed to the NLRC, raising the following issues:

1. Whether or not the Honorable Labor Arbiter gravely abused his discretion and committed serious errors in ruling that the respondents-appellants are liable to complainant-appellee for the payment of disability compensation in the amount of US\$12,090.00 considering the facts and circumstances peculiar to this case.

1.1 Whether or not the Honorable Labor Arbiter gravely abused his discretion when he ruled that complainant-appellee is entitled to disability compensation in the amount of US\$12,090.00 despite the fit to work declaration by the company-designated physician. Whether or not the Honorable Labor Arbiter gravely abused his discretion when he awarded disability benefits based on the findings of so-called "independent doctors" and

2. Whether or not the Honorable Labor Arbiter gravely abused his

discretion and committed serious error in holding herein respondents-appellants liable for attorney's fees.⁵

On March 31, 2004, the NLRC rendered its assailed judgment, reversing the Labor Arbiter, to wit:

WHEREFORE, premises considered, the assailed decision is hereby, SET ASIDE and a new one is hereby entered dismissing the complaint for lack of merit. Respondent should however give complainant priority in the hiring of employees for overseas employment in accordance with his qualification.

SO ORDERED.⁶

Aggrieved, the petitioner moved for reconsideration but on September 17, 2004, the NLRC denied the motion.⁷

Hence, the petitioner commenced this special civil action, contending that:

I

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS REVERSIBLE ERROR IN SETTING ASIDE THE RULING OF THE LABOR ARBITER IN FAVOR OF THE PETITIONER

II

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS REVERSIBLE ERROR IN NOT GIVING WEIGHT TO OPINION OF THE PRIVATE DOCTORS WHO EXAMINED THE PETITIONER.⁸

Herein, we are confronted with conflicting rulings of the Labor Arbiter and the NLRC. We are thus constrained to re-examine the facts of the case to inquire unto the correctness of the evaluation of the evidence and thus be enabled to determine whether respondent NLRC had committed any grave abuse of discretion in its appreciation of the evidence.

The Labor Arbiter compelled payment of permanent disability benefits because he gave credence to the medical assessment of the petitioner's private physicians. The Labor Arbiter explained:

The company designated physician does not have the sole authority to determine the disability grade of seafarers. He likewise does not have blanket authority to declare a seafarer fit to work or not, as his diagnosis or determination is usually self serving and biased in favor of the company or manning agent. Thus, as ruled in *Wallem Maritime Services vs. NLRC*, 318 SCRA 623, the Supreme Court held that:

xxx we agree with private respondent that opinions of petitioner's doctors to this effect should not be given evidentiary weight as they are palpably self-serving and biased in favor of petitioners, and certainly cannot be considered independent.

We give credence to the medical assessment made by the private doctors consulted by the complainant especially that of Dr. Antonio A. Pobre of the St. Luke's Hospital dated February 25 and 26, 2002 (Annex G of Complainant's Position Paper). The certification given by Dr. Pobre states that the complainant should seek partial permanent disability for the period of healing is undetermined. Likewise, he was diagnosed to have:

1. OSTEOMYELITIS, LEFT STERNO-CLAVICULAR JUNCTION
2. OLD FRACTURE AT THE PROXIMAL END OF THE LEFT CLAVICLE.
3. IMPINGEMENT SYNDROME, RIGHT SHOULDER

More revealing and convincing is the Medical Certificate issued by Dr. Gilbert R. Beltran, an Orthopaedic and Trauma Surgeon, when he attested that

Based on the clinical course and present physical findings the patient is 'unfit to work'. I am recommending a partial disability with POEA Schedule of disability Grading of 10 (20.15%) that is not permitting arm to be raised above a level with the shoulder and/or irreducible fracture or faulty union of the collarbone. Period of healing remains undetermined. xxx (Annex A, Complainant's Motion to Submit case for resolution)

Almost identical medical findings were arrived at by Dr. Pobre and Dr. Beltran in that the complainant is not fit to work and the period of healing of complainant's injury remains undetermined. Moreover, if respondents are really convinced that the findings of the company designated physician are not biased in their favor, they should have agreed to the complainant's voluntary request to submit himself for examination of an independent or a 3rd Doctor, to determine once and for all, the real score on complainant's disability.⁹

On the other hand, the NLRC found that the Labor Arbiter abused his discretion in ruling that the petitioner was unfit to work based on the certification of his private doctors. In arriving at its decision, the NLRC applied Section B (3) of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract which expressly provides that the company designated physician is required to certify to the fitness of the injured seafarer or determine the degree of his disability after undergoing medical treatment. The NLRC ratiocinated as follows:

xxx Obviously, the certification is required from him because he was the one who treated and managed the health condition of the seaman that gives him the authority to assess and evaluate the physical condition of the seafarer. It is quite harsh and unfair to conclude that the certification of fitness to work issued by the company designated physician is self-serving and biased in favor of respondent. To discredit the certification of fitness to work issued by him is to doubt the authority given him as company physician.¹⁰