

TWELFTH DIVISION

[CA-G.R. SP. No. 112919, May 20, 2014]

INTERNATIONAL SHIP CREW MANAGEMENT, INC., VICTORIO VELONZA, AND ISHIMA PTE. LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND ERNESTO A. CARDOZA, RESPONDENTS.

D E C I S I O N

ELBINIAS, J.:

For disposition is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision^[2] dated August 28, 2009 of the National Labor Relations Commission ("public respondent NLRC" or "NLRC" for brevity), which set aside and reversed the Labor Arbiter's Decision^[3] dated March 10, 2009 in NLRC NCR Case No. OFW (M) 08-11138-08. The Petition also questions public respondent NLRC's Resolution^[4] dated November 5, 2009, which denied petitioners' eventual Motion for Reconsideration.^[5]

The antecedent facts are as follows:

Private respondent Ernesto A. Cardoza ("private respondent Cardoza" or "private respondent" for brevity) was hired as Chief Cook of the vessel M/T High Presence by petitioner International Ship Crew Management Phils., Inc. and by petitioner Victorio Velonza, for and in behalf of the foreign principal petitioner Ishima PTE. LTD ("petitioners" for brevity).^[6]

The salient facts are continued in public respondent NLRC's Decision^[7] of August 28, 2009, as follows:

"A Contract of Employment was executed between the parties on 06 August 2007, patterned in accordance with the *P.O.E.A. Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels* (POEA Contract for brevity) and the same was for a period of nine (9) months and monthly salary of US\$590.00. xxx

Prior to the commencement of his employment on board the vessel, he (*private respondent here*) was subjected to an extensive Pre-employment Medical Examination (PEME) and after passing the mandatory medi[c]al examinations, the company-designated physicians (Drs. Jennifer P. Santos and Marcel Joseph I. Alcaraz) certified him as '*fit to work*' on 19 July 2007. He was given a cardiac clearance even with significant findings of '*Left Atrial Abnormality*' based on the ECG Report. Previously (August 25, 2003 and September 22, 2004), he was also given medical clearance as '*fit for sea service*'. As noted by the company-

designated physician, appellant was a seafarer since 1978 or almost three (3) decades already.

On 05 October 2007, he (*private respondent*) departed from Manila and **commenced his job xxx on 07 October 2007.** Being a Chief Cook, **his duties and responsibilities involve strenuous physical activities.** xxx.

On 05 March 2008, he suffered pain on his 4th toe of right foot which totally swelled on 13 March 2008 that he can no longer walk [thus] hindering his working capacity. The pain persisted even with pain reliever given by the 2nd Mate. In a convenient port at Gleneagles Maritime Medical Center in Singapore, he was seen by a physician on 15 March 2008 and his attending physician issued an initial diagnosis of '*abscess right 4th toe with cellulites right foot; uncontrolled diabetes mellitus; and hypertension*'. Thus, he was declared 'unfit to sail' due to elevated blood pressure of 210/100mmHg xxx."^[8] (*Italics was made in the original, emphasis supplied*)

Due to his illness, private respondent Cardoza was repatriated to the Philippines on March 16, 2008. Private respondent Cardoza immediately^[9] reported to petitioners' office and was referred by petitioners to their company designated physician at the Metropolitan Medical Center in Manila.^[10]

The rest of the facts are continued in public respondent NLRC's Decision^[11] of August 28, 2009, to wit:

"The company physician confirmed and diagnosed complainant (private respondent) suffering from '*Infected Wound, 4th digit, Right Foot; Hypertension; Diabetes Mellitus, Type II*'. Thereafter, he (*private respondent*) was subjected to an **extensive medical treatment to control his Diabetes Mellitus and Hypertension with continuous medical check-up and medication.**

Complainant (*private respondent*) xxx continued medical treatment under the authority of the company designated physician Dr. Lamberto H. Garcia, Sr. wherein he was subjected to several medical check-ups on May 22, 2008, June 16 and July 10, 2008 [and] was advised to continue indefinitely his medication and to avail of maximum rest period under the work contract.

Lastly, on (*sic*) the medical progress report dated 17 July 2008 of the **company-designated physician Dr. Lamberto H. Garcia, Sr.** noted the following **elevated blood pressure of his patient:**

'Date:	Blood
	pressure
April	
26,	150/70
2008	
May	160/100
3,	

2008
 May
 17, 150/90
 2008
 May
 24, 210/100
 2008
 June
 7, 180/100
 2008
 June
 14, 170/80
 2008
 June
 28, 170/100
 2008
 July
 5, 190/100
 2008
 July
 12, 170/100
 2008
 July
 17, 220/130
 2008

Not satisfied with the findings and assessments of the company-designated physician, **complainant (*private respondent*) sought further consultation, treatment, and second expert medical opinion in the name of Dr. Antonio C. Pascual and after careful evaluation and analysis, the said physician issued a Medical Certificate dated 13 September 2008 stating that his patient is 'medically unfit for work as a seaman' and he advised his patient to have regular check-up and medications in order to avoid further medical complications, which **assessment is equivalent to permanent total disability** xxx."**

^[12] (*Italics was made in the original; emphasis supplied*)

As a result of all these, private respondent Cardoza requested from petitioners the payment of his Disability Benefits, which request however, was refused by petitioners. Afterwards, private respondent filed before the Labor Arbiter, a Complaint^[13] for "Medical Expenses [and] Other Causes of Action"^[14] against petitioners.^[15]

On March 10, 2009, the Labor Arbiter rendered a Decision^[16] dismissing private respondent Cardoza's Complaint.^[17]

However, upon private respondent Cardoza's appeal^[18], public respondent NLRC rendered the assailed Decision^[19] of August 28, 2009, which set aside and reversed the Labor Arbiter's Decision^[20] of March 10, 2009. Public respondent NLRC ordered petitioners to pay, jointly and severally, private respondent Cardoza his Disability

Benefits, as well as Attorney's Fees. The dispositive portion of public respondent NLRC's Decision^[21] read as follows:

"WHEREFORE, premises considered, the assailed Decision dated 10 March 2009 of the Labor Arbiter Gaudencio P. Demaisip is hereby REVERSED and SET ASIDE and in lieu thereof, a new one is entered ordering respondents-appellees International Ship Crew Management Phils., Inc., Victorio Velonza, and Ishima PTE. Ltd., to pay jointly and severally, complainant-appellant Ernesto A. Cardoza, the sum of SIXTY THOUSAND US DOLLARS (US\$60,000.00) representing the permanent total disability benefits and ten percent (10%) as attorney's fees.

SO ORDERED."^[22]

After petitioners' Motion for Reconsideration^[23] was denied by public respondent NLRC in its assailed Resolution^[24] dated November 5, 2009, petitioners filed the Petition for Certiorari^[25] at bench, praying as follows:

"WHEREFORE, petitioners International Ship Crew Management, Inc., Victorio Velonza, and Ishima Pte. Ltd. respectfully pray as follows:

A. upon the filing of this Petition for Certiorari and conditioned upon the posting of a bond in such amount as the Honorable Court may fix, a temporary restraining order and/or writ of preliminary injunction be issued directing the National Labor Relations Commission, its officers, employees, and/or other persons acting for and on its behalf to desist during the pendency of this instant Petition for Certiorari from enforcing public respondent's Decision in NLRC LAC No. 06-000347-09 (NLRC Case No. OFW[M]-08-11138-08) entitled 'Ernesto A. Cardoza v. International Ship Crew Management, Inc., and/or Victorio Velonza, and Ishima Pte. Ltd.';

B. the instant Petition for Certiorari be given due course; and,

C. after due consideration of all relevant issues, judgment be rendered reversing and setting aside the Decision promulgated on 28 August 2009 and the Resolution promulgated on 5 November 2009 by public respondent in NLRC LAC No. 06-000347-09 (NLRC Case No. OFW[M]-08-11138-08) entitled 'Ernesto A. Cardoza v. International Ship Crew Management, Inc., and/or Victorio Velonza, and Ishima Pte. Ltd.' for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioners further pray for such other relief as may be deemed just and equitable."^[26] (*Emphasis was made in the original*)

Petitioners raised the following grounds:

"GROUNDS IN SUPPORT
OF THE PETITION

5.1. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO TOTAL PERMANENT DISABILITY COMPENSATION.

5.1.1. PRIVATE RESPONDENT WAS FOUND TO BE FIT TO WORK BY PETITIONER SHIP-OWNER'S ACCREDITED DOCTORS.

5.1.2. PRIVATE RESPONDENT FAILED TO COMPLY WITH THE ARBITRATION MECHANISM PLAINLY SET FORTH IN THE POEA STANDARD CONTRACT.

5.1.3. PRIVATE RESPONDENT'S SUBJECT MEDICAL CONDITION CANNOT BE CONSIDERED AS TOTAL PERMANENT DISABILITY UNDER THE POEA STANDARD CONTRACT.

5.1.4. PRIVATE RESPONDENT'S SUBJECT MEDICAL CONDITION IS NOT COMPENSABLE UNDER THE POEA STANDARD CONTRACT.

5.1.5. PRIVATE RESPONDENT IS DISQUALIFIED FROM CLAIMING PERMANENT DISABILITY COMPENSATION FOR DELIBERATELY CONCEALING HIS PRE-EXISTING MEDICAL CONDITION.

5.2. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO THE AWARD OF ATTORNEY'S FEES FOR HAVING BEEN COMPELLED TO LITIGATE."^[27]

Contrary to petitioners' *assigned ground 5.1.1.*, petitioners' company-designated physician improperly found private respondent to have been "fit to work".

Petitioners had argued as follows:

"6.3. Petitioners maintain that **the findings of petitioner ship-owner's accredited doctors that private respondent is fit to work should have even heeded and accorded evidentiary weight.**

xxx

6.6. In this case, petitioners provided unstinting support for private respondent's medical treatment from Gleaneagles Medical Centre in Singapore to the OCW Medical Clinic and Metropolitan Medical Center in Manila and until the Chong Hua Hospital in Cebu, where he was declared fit to work by 15 July 2008 by petitioner ship-owner's accredited doctor, Dr. Garcia.

6.7. In this regard, and more importantly, it bears stressing that **the conclusion reached by petitioner ship-owner's accredited doctor**