

SPECIAL SEVENTH DIVISION

[CA-G.R. SP NO. 120420, May 15, 2014]

**BSM CREW SERVICE CENTRE PHILS. INC. AND VORTZETZEN
BEREDEERUNGS-UND SCHIFFFAHRTKONTO AND MR. NARCISSUS
L. DURAN, PETITIONERS, V. NATIONAL LABOR RELATIONS
COMMISSION (THIRD DIVISION) AND REYNALDO L. ROUS,
RESPONDENTS.**

D E C I S I O N

TIJAM, J.:

The Case

This Petition for Certiorari (With Extremely Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) assails the twin Resolutions, dated March 22, 2011^[1] and May 17, 2011^[2] of the Public Respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000210-10 ordering Petitioners jointly and severally to pay Private Respondent permanent and total disability benefits, plus attorney's fees equivalent to ten (10%) percent of the monetary award.

The Facts

On April 24, 2009, a Complaint^[3] for payment of permanent and total disability benefits, sickness wages, damages and attorney's fees was filed by Private Respondent Reynaldo L. Rous with the Arbitration Branch of the NLRC against Petitioners BSM Crew Service Centre Phils. Inc. (BSM), Vortzetzen Beredeerungs-UND Schiffahrtkonto GMBH Co. KG and Narcissus L. Duran.

Private Respondent Reynaldo Rous alleged that since 2003, he was hired continuously as an Able Seaman by Petitioner BSM, a local manning agent of Petitioner Vortzetzen Beredeerungs-UND Schiffahrtkonto GMBH Co. KG. On June 4, 2008, he entered into a Contract of Employment^[4] with Petitioners as Able Seaman for a period of nine (9) months, commencing on July 17, 2008 on board the vessel "MV Angelica Schulte", with a basic monthly salary of US\$558.00, exclusive of overtime pay and other benefits.

Sometime in December 2008, while on board the vessel, Private Respondent noticed a mass in the lower portion of his pelvis and immediately informed his captain. He was referred for medical treatment in Seattle, USA and he was diagnosed with "Acute Lumbago/LUS Syndrome: Atheam Inguinal". On February 26, 2009, he disembarked from the vessel, and upon arrival in the Philippines, he was referred to the Metropolitan Medical Center, c/o Dr. Ricardo L. Dy (Dr. Dy). He was diagnosed to be suffering from "Trichilemmal Cyst, Right Pubic Area; S/P Excision of Cystic Mass, Right Pubic Area". He was confined for three (3) days in the said hospital and after which, he was treated as an outpatient. The company-designated physician

suddenly stopped the treatment and informed him that the subsequent medical treatment will be shouldered by him but he refused since he knew that all medications shall be at the expense of the company in accordance with existing laws.

In his previous employment contract with Petitioner BSM on board the vessel "Gaschem Ben Flor", he was afflicted with serious back pain in the spinal cord. He was given medical attendance in Germany and was advised to take a rest and pain reliever. Subsequently, he was declared fit to work by the company-designated physician and made to sign another employment contract.

While on board the vessel MV Angelica Schulte, he was repatriated to the Philippines due to the occurrence of a mass in his right lower pelvis and the recurring severe back pain. Notwithstanding his unfitness to resume sea duty as his medical, physical, mental and emotional condition were still deteriorating, Petitioners abandoned him by unjustifiably refusing and inexcusably neglecting to give him medical assistance. This prodded the filing of this complaint.^[5]

In their Position Paper,^[6] Petitioners claimed that on January 28, 2009, while on board the vessel, Private Respondent experienced discomfort due to a cyst/mass in his pelvic area. Upon examination, he was found to be suffering from "Abscess (groin)", hence, the doctor recommended "elective surgery" when Private Respondent goes off-duty. At the next port of call at Bellingham, Washington D.C., he was diagnosed with "Sebaceous apt abscess", and so, "surgery with dermatologist or general surgeon" was recommended. Upon arrival in the country, Private Respondent was referred to the company-designated physician Dr. Mylene Cruz-Balbon (Dr. Balbon) of the Marine Medical Services of the Metropolitan Medical Center. He was diagnosed with "Cystic Mass, Right Pubic Area"^[7].

During the physical examination, he was observed to be conscious, coherent, cooperative and not in cardio-respiratory distress. To determine the nature of the cyst, excision was recommended. On March 24, 2009, the procedure was conducted and the histopathology result dated April 1, 2009 showed that his Trichilemmal Cyst was benign. Said illness was found by Dr. Balbon^[8] to be not work-related. During the follow-up examination and treatment on April 13, 2009, it was noted that "post-op site on the right pubic area" was "healing well". On May 8, 2009, the company-designated physicians, Dr. Dy and Dr. Balbon, declared him fit to work since the wound had healed.

After due proceedings, the Labor Arbiter rendered a Decision,^[9] dated November 27, 2009, dismissing Private Respondent's complaint. She opined that Private Respondent was not suffering from any disability since his cyst was benign. She further stressed that the declaration of the company-designated physician that Private Respondent was fit to work as contained in the May 8, 2009 Medical Report prevails over the opinion of Dr. Rimando C. Saguin (Dr. Saguin), the private doctor of Private Respondent. The decretal portion of the decision states, to wit:

"WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.

All other claims are likewise denied for want of any basis.

SO ORDERED."^[10]

Undaunted, Private Respondent elevated the case on appeal to the NLRC, which in a Resolution^[11], dated September 14, 2010, affirmed the Labor Arbiter's decision. It opined that the company-designated physician's findings and declaration that Private Respondent's illness is not work-related was more credible than that of Dr. Saguin. It expounded that the company-designated physician is more competent to assess the true condition of the complainant as against the private doctor who examined the patient only once. Hence, the illness is not compensable. The NLRC disposed of the case, in this wise:

"WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The Decision appealed from is AFFIRMED.

SO ORDERED".^[12]

Private Respondent filed a motion for reconsideration of the NLRC decision. He averred that it was error not to consider the medical assessment of Dr. Saguin who found that he can no longer work as seafarer in any capacity because of his recurrent back problems arising from his "Trichilemmal Cyst". To support his claim for compensation, Private Respondent also submitted the assessment of Dr. Manuel C. Jacinto (Dr. Jacinto), an orthopedic specialist, who declared that he still experiences on and off pain on the right pubic area and was assessed to be physically unfit to resume his work. He asserted that since Dr. Jacinto's findings are reflective of his actual physical and mental condition, he is the most competent person to assess his true condition.

In a Resolution^[13], dated March 22, 2011, the NLRC reconsidered its earlier resolution and ordered Petitioners to pay, jointly and severally, Private Respondent, disability benefits in the amount of US\$89,100.00 as well as attorney's fees equivalent to ten percent (10%) of the monetary award. Giving credence to the latest medical opinion of Dr. Jacinto, the NLRC declared that Private Respondent would no longer be able to perform strenuous activities such as the rigorous duties of an able seaman. It expounded that the healing of the wound does not entail the restoration to normalcy of the ability to work. The trichilemmal cyst on his right pubic area, although healed, has an impact on his capacity to work as able seaman. His recovery from the aftermath of the surgical operation is not yet cleared. It was further opined that Petitioners' failure to summon Private Respondent for sea duty led to the conclusion that he is no longer fit to work. Even if operated on for the removal of the trichilemmal cyst, disability would still be permanent as no employer would readily hire him as able seaman if it is known that he is suffering from the illness. The NLRC further emphasized that there is serious doubt in the declaration of fitness to work by the company-designated physician since Dr. Jacinto corroborated the findings of Dr. Saguin. Thus, considering the Discovery Cruiseship CBA and Private Respondent's membership of the AMOSUP CBA, the NLRC awarded him US\$89,100.00 as disability benefit, as well as attorney's fees equivalent to ten percent (10%) of the monetary award, in this manner:

"WHEREFORE, the Motion for Reconsideration of the complainant-appellant is hereby **GRANTED** and the Decision of this Commission dated September 14, 2010 is hereby **MODIFIED**. The respondents BSM Crew Service Centre Phils., Inc./Vortzetzen Beredeerungs-UND Schiffahrtskonto/Narcissus L. Duran are jointly and severally ordered to pay complainant Reynaldo L. Rous his permanent and total disability

benefits in the sum of **US\$89,100.00** and ten percent (10%) attorney's fees.

The dismissal of the complaint (sick) for sick wage allowance and damages is AFFIRMED.

SO ORDERED".^[14]

Upon motion for reconsideration filed by Petitioners, the NLRC issued a Resolution, ^[15] dated May 17, 2011 reducing the amount of permanent and total disability benefits to US\$60,000.00 in accordance with the POEA-SEC and sustained the award of attorney's fees, in this manner:

"WHEREFORE, premises considered, the Motion for Reconsideration of respondents-appellees is **PARTLY GRANTED**. The permanent and total disability benefits of the complainant-appellant is reduced to **US\$60,000.00**.

All other dispositions in our assailed resolution **STANDS AFFIRMED**.

SO ORDERED".^[16]

Consequently, this Petition was filed imputing grave abuse of discretion to the NLRC, viz:

"I.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NEGLECTING TO APPLY THE INDISPENSABILITY OF WORK CAUSATION UNDER THE POEA SEC FOR COMPENSABILITY OF SEAFARER'S ILLNESS/INJURY.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FIT TO WORK ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN ON THE BASIS OF THE MEDICAL OPINION OF SEAFARER'S SECOND DOCTOR, WHICH WAS ISSUED MORE THAN A YEAR FROM THE ISSUANCE OF THE AFORESAID FITNESS DECLARATION.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN IGNORING THE UNDISPUTED FACT THAT THE SUBJECT FITNESS CERTIFICATION WAS ISSUED WITHIN THE 120 DAY LIMITATION.

IV.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING PRIVATE RESPONDENT'S ATTORNEY'S FEES DESPITE THE FACT THAT THE SEAFARER'S CLAIM WAS DENIED ON VALID, LEGAL AND JUST GROUNDS."^[17]

In support of the Petition, Petitioners alleged that Private Respondent failed to present evidence showing that his Trichilemmal Cyst, an unlisted condition under the

POEA-Standard Employment Contract, was caused or aggravated during his duty on board the vessel. They claimed that it was palpable error to consider the medical report of Dr. Jacinto, Private Respondent's personal doctor, that was belatedly issued and proffered as evidence. Petitioners averred that the fitness to work was issued on May 8, 2009 by Dr. Dy, the company-designated physician while Dr. Jacinto, the private doctor, issued the medical certificate only on October 7, 2010, or after one (1) year and five months. Hence, the medical report of Dr. Jacinto has no evidentiary value for Private Respondent's health may have drastically changed in the interregnum.

On October 6, 2011, Private Respondent filed a Manifestation^[18] alleging that since Petitioners have eventually settled the judgment award when they tendered with the NLRC the full amount thereof on September 6, 2011, the petition is rendered moot and academic.

In their Counter-Manifestation^[19], Petitioners averred that they only made a conditional settlement of the judgment award subject to the resolution of the instant Petition for Certiorari filed on July 11, 2011.

The Issues

The core issues for resolution are:

1. Whether Private Respondent is entitled to compensation for permanent and total disability benefit;
2. Whether he is entitled to attorney's fees; and
3. Whether the instant Petition was rendered moot by the conditional satisfaction of the judgment award.

The Court's Ruling

The petition is meritorious.

Basically, the POEA-SEC mandates that a claim for disability benefit for a work-related illness or injury be supported by a post employment medical report conducted by the company-designated physician, to wit:

“Section 20 (B). Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

xxx xxx xxx

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon**