

SPECIAL FOURTH DIVISION

[CA-G.R. SP. No. 131468, May 14, 2014]

NOEL M. GOPELA, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), CENTENNIAL TRANSMARINE, INC., NORTH SEATANKER MANAGEMENT BV, AND CATHY LEODINES, RESPONDENTS.

D E C I S I O N

TOLENTINO, A.G., J.:

In this petition for certiorari, the petitioner seeks the reversal and setting aside of the resolution dated January 28, 2013 and the resolution dated June 14, 2013 both of the public respondent National Labor Relations Commission.

The private respondents hired the petitioner as an Able Seaman. On October 14, 2012, the petitioner, during the term of his employment with the private respondents, suffered an accidental back injury after lifting heavy objects which radiated through his lower extremity, while on board the M/T Global Earth. Thus, the petitioner was referred to the accredited physician of the private respondents based in Setubal, Portugal for medical attention and examination. The petitioner was prescribed pain reliever but this did not improve his medical condition.

Consequently, the petitioner was repatriated. He has undergone post-employment medical examination and further medical treatment but his condition did not improve.

The petitioner was compelled to seek a second medical opinion from a certain Mr. Frederic Diyco, an orthopedic surgeon, due to the failure of the private respondents to issue the disability finding. After a meticulous examination and treatment of the petitioner, a medical certificate was issued by the said physician and he emphatically stated his opinion that the petitioner is permanently "NOT FIT TO WORK ON A SEA VESSEL."

The private respondents have denied any liability for the permanent medical unfitness of the petitioner on the ground of the latter's fraudulent misrepresentation. The private respondents contend that the petitioner concealed a very material information in connection with his medical history. They argue that the petitioner failed to disclose during his pre-employment medical examination a very material information relating to his lower back and spine that is why they asserted and reiterated that he should be disqualified from claiming any sort of compensation or benefits under the POEA Standard Contract or the CBA.

The petitioner asserted that in his pre-employment medical examination, he disclosed his previous surgery and all other matters asked in the said medical examination, and the private respondents were aware of his medical condition. The Metropolitan Medical Center is the company-designated hospital of the private respondents. The petitioner was admitted in the same medical facility when he had

his previous surgical operation, and therefore, they should not be allowed to present the defense of fraudulent misrepresentation. Because of this, they were fully aware of the medical condition of the applicant (petitioner). In fact, there is the Revised Guidelines For Medical Fitness Examinations For Seafarers providing Instruction to all accredited medical clinics that the Medical Examiner is required, among others, to keep full clinical notes and results of the pre-employment medical examination (PEME) in the record section of the clinic following a minimum record retention of three (3) years. (DOH Administrative Order No. 2077-0025, Series of July 27, 2007). How can the petitioner be said then to be guilty of fraudulent misrepresentation when he had disclosed all his previous ailments and surgery during the pre-employment medical examination conducted by the company-designated physician of the private respondents at the Metropolitan Medical Center, the same hospital where the petitioner was confined for his previous surgery? Thus, fraudulent misrepresentation cannot be committed by the petitioner in view of the fact that the private respondents have all the medical records on hand at the same hospital, the Metropolitan Medical Center.

The petitioner passed the pre-employment medical examination (PEME) dated July 22, 2010 and was declared FIT FOR SEA DUTY (WITHOUT RESTRICTION)" In the said PEME, his previous operation was disclosed by him and was subjected to treatment and rehabilitation by the company-designated physicians of the private respondents. He departed from the point of hire and embarked the vessel, MT. Global Earth, as an Able Seaman on July 26, 2010.

In view of the denial by the private respondents of the disability claim of the petitioner, the latter filed a complaint with the National Labor Relations commission on March 1, 2011 for permanent total disability benefits, damages, and attorney's fees. The parties failed to settle the case amicably before the Labor Arbiter despite the conferences, mediation, and conciliation. Thus, the Labor Arbiter required the parties to submit their respective position papers.

The Labor Arbiter promulgated her decision on November 11, 2011, the dispositive portion of which reads as follows:

"WHEREFORE, a Decision is hereby rendered ordering respondent jointly and severally to pay complainant total disability compensation in the amount of US\$89,100.00 or its peso equivalent at the time of actual payment plus 10% thereof as and by way of attorney's fees.

SO ORDERED." (Annex E of the Petition).

The private respondents, aggrieved by the said decision of the Labor Arbiter, filed their Memorandum of Appeal with the National Labor Relations Commission (NLRC) (Annex F of the Petition). The NLRC rendered its decision on July 27, 2012, the dispositive portion of which reads thus:

"WHEREFORE, the instant appeal is hereby **DISMISSED** for non-perfection.

SO ORDERED."(Annex G of the Petition).

A Motion For Reconsideration was filed by the private respondents with the NLRC, and on January 28, 2013, the NLRC issued its Resolution, dismissing the claims of the petitioner, the dispositive portion of which reads as follows: