

## THIRD DIVISION

[ G.R. No. 201580, September 21, 2020 ]

**ALCID C. BALBARINO (NOW DECEASED), SUBSTITUTED BY HIS SURVIVING SIBLINGS ALBERT, ANALIZA, AND ALLAN, ALL SURNAMED BALBARINO, PETITIONERS, VS. PACIFIC OCEAN MANNING, INC., AND WORLDWIDE CREW, INC., RESPONDENT.**

### DECISION

**GAERLAN, J.:**

*The Philippine Overseas Employment Administration-Securities and Exchange Commission (POEA-SEC) enumerates the liabilities of the employer in case the seafarer suffers a work-related illness or injury on-board the ocean-going vessel. It ensures a proper balance between two things – the proper compensation of a seafarer, and the protection of the employer against any unjustified payment.*

This resolves the Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioners Albert, Analiza, and Allan, all surnamed Balbarino, on behalf of Alcid C. Balbarino (Alcid), praying for the reversal of the September 22, 2011 Decision<sup>[2]</sup> and April 19, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 116751. The CA reversed the October 8, 2010 Decision<sup>[4]</sup> of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (NCMB) which awarded disability benefits, sickness allowance, reimbursement for medical expenses and attorney's fees in favor of Alcid.

### The Antecedents

On August 26, 2008, Alcid was re-hired by respondent Worldwide Crew, Inc. (Worldwide), through its local manning agent co-respondent Pacific Ocean Manning<sup>[5]</sup> as an able seaman on board the vessel M/V Coral Nettuno, a chemical/gas tanker. This was Alcid's fifth contract with respondents.

Under the terms of Alcid's POEA-approved Contract of Employment, the duration of his term shall last for nine months, with a monthly salary of US\$563.00.<sup>[6]</sup> His employment contract had an overriding Collective Bargaining Agreement (CBA) between Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and Worldwide.<sup>[7]</sup>

On October 1, 2008, Alcid was declared fit to work by the company-designated physician<sup>[8]</sup> and was deployed on-board the M/V Corral Nettuno.

On January 11, 2009, Alcid noticed a mass on his right thigh and soft swelling of about 7 cm in diameter and 2 cm thick on the right side of his forehead. He was referred to the surgical emergency ward of AZ Klina hospital. The physicians

suggested the removal of the tumor, which was postponed due to the imminent departure of the vessel.<sup>[9]</sup>

On February 2, 2009, a team of doctors in Belgium removed Alcid's tumor. He likewise underwent a CT scan which showed a clear bone defect of the skull. Imaging suggested a primary tumor or a metastasis of a remote tumor.<sup>[10]</sup> Further examinations showed multiple lung metastases, and swelling on his leg, which was suspected to be the primary tumor.<sup>[11]</sup>

After a combined examination of the biopsies on the forehead tumor and the mass in the leg, Alcid was diagnosed to be suffering from alveolar soft part sarcoma. He underwent further treatments and examinations on various dates in March 2009.<sup>[12]</sup>

On April 14, 2009, Alcid was repatriated and admitted at St. Luke's Hospital. He underwent various laboratory examinations including a CT scan on his whole chest and abdomen, as well as a bone scan.<sup>[13]</sup> The test results showed multiple pulmonary nodules as well a bone metastasis to his skull.<sup>[14]</sup>

On April 27, 2009, Dr. Natalia G. Alegre II (Dr. Alegre), company-designated physician, issued a Medical Report confirming that the biopsied mass on Alcid's right thigh showed soft tissue alveolar sarcoma. Dr. Alegre expounded that soft tissue alveolar sarcoma is "a highly vascular tumor that is muscular in origin. It represents less than 1% of soft tissue sarcomas of adults, and more frequently affect[s] females x x x. Metastases or spread are frequent occurring mainly in the lungs, bones and brain."<sup>[15]</sup> The cause of said illness is "genetic with translocation of x-genes in the G2 phase. It is a chromosomal abnormality and is therefore not work related."<sup>[16]</sup>

Respondents provided Alcid medical attention until May 11, 2009. Unfortunately, Alcid never recovered from his illness.<sup>[17]</sup>

On June 4, 2009, Alcid consulted an independent oncologist Dr. Jshade Lotus Peneyra (Dr. Peneyra). In her Medical Certificate, Dr. Peneyra confirmed that Alcid was suffering from alveolar soft part sarcoma with brain, lung and bone metastases. She related medical studies revealing that exposure to chemicals such as ethylene oxide have lead to a possible risk of developing malignant tumors in the breast, pancreas, stomach and hematolymphoid organs,<sup>[18]</sup> and that for Alcid, "there is limited evidence in humans for the carcinogenicity of ethylene oxide."<sup>[19]</sup>

Likewise, on September 17, 2009, Alcid consulted with Internist and Cardiologist Dr. Efren R. Vicaldo (Dr. Vicaldo), who diagnosed the former as suffering from alveolar soft part sarcoma with distant metastasis. Dr. Vicaldo gave a disability rating of Grade I (120%).<sup>[20]</sup> He declared Alcid unfit to resume work as a seaman in any capacity and regarded his work as aggravated/related to the disease.<sup>[21]</sup> He further noted that having this rare malignancy significantly shortens Alcid's life expectancy, who is no longer expected to land a gainful employment.<sup>[22]</sup>

On the basis thereof, Alcid sought the payment of disability benefits, sickness allowance and reimbursement of his medical expenses. However, respondents rejected his claims.

On June 15, 2009, Alcid initiated a grievance before the AMOSUP pursuant to the terms of the CBA. However, the parties failed to reach an amicable settlement during the mandatory conferences.<sup>[23]</sup>

Subsequently, Alcid filed a Notice to Arbitrate before the NCMB. On October 26, 2009, the parties executed a Submission Agreement.

Unfortunately, on October 3, 2010, Alcid succumbed to his illness.<sup>[24]</sup>

### **Ruling of the NCMB**

In a Decision<sup>[25]</sup> dated October 8, 2010, the NCMB awarded Alcid disability benefit under the CBA, sickness allowance, and reimbursement for medical expenses, with attorney's fees.

The NCMB held that sarcoma is disputably presumed to be work-related.<sup>[26]</sup> In Alcid's work as an able seaman, he was constantly exposed to various injurious and harmful chemicals. His work was strenuous and he had to contend with the harsh environment at the sea. The NCMB excused Alcid from the obligation of proving direct causation between his working conditions and his illness, acknowledging that the exact origin of sarcoma is unknown and that under the present state of science, the evidence to prove causation is "unavailable and impossible to comply with."<sup>[27]</sup> Hence, Alcid's "obligation to present such an impossible evidence must therefore, be deemed void."<sup>[28]</sup> This notwithstanding, Alcid is entitled to compensation on account of the provisions on social justice.<sup>[29]</sup>

The NCMB further noted that Alcid's condition constitutes a total and permanent disability. He was unable to work for more than 120 days and his disability went beyond 240 days.<sup>[30]</sup> Accordingly, the NCMB awarded permanent disability benefits under the CBA,<sup>[31]</sup> and sickness allowance equivalent to US\$2,252.00 (120 days or four months of Alcid's basic monthly salary of US\$563.00).<sup>[32]</sup> The NCMB further ordered the reimbursement of P255,733.87, which represents the additional medical expenses Alcid incurred.<sup>[33]</sup>

Finally, the NCMB awarded attorney's fees equivalent to 10% of the total monetary award considering that Alcid was compelled to hire the services of counsel to protect his rights and interests.<sup>[34]</sup>

The dispositive portion of the NCMB ruling reads:

**WHEREFORE**, premises considered, a decision is hereby rendered, **ORDERING** herein respondents Pacific Ocean Manning, Inc., and/or Worldwide Crew, In., to jointly and solidarily pay complainant Alcid C. Balbarino, the amount of EIGHTY-NINE THOUSAND ONE HUNDRED U.S. DOLLARS (US\$89,100.00), as disability benefits; TWO THOUSAND TWO HUNDRED FIFTY-TWO US DOLLARS (US\$2,252.00) as sickness allowance; and PhP 255,733.87 (divided by forty-three [PhP 43.00 per US Dollar] or FIVE THOUSAND NINE HUNDRED FORTY-SEVEN and 29/100 U.S. DOLLARS (US\$5,947.2993) as reimbursement for medical expenses; or a sub-total amount of USD\$97,299.2993, plus ten percent (10%) thereof as attorney's fees, or in the total amount of ONE HUNDRED SEVEN THOUSAND TWENTY-NINE and 23/100 U.S. DOLLARS

(US\$107,029.23), or its Peso equivalent converted at the prevailing rate of exchange at the time of actual payment.

All other claims of the complainant are hereby **DISMISSED** for lack of merit.

Likewise, respondents' counter-claims for damages and attorney's fees are **DENIED** for utter lack of merit.

**SO ORDERED.**<sup>[35]</sup> (Emphasis in the original)

Aggrieved, respondents filed a Petition for Review under Rule 43 of the Rules of Court with the CA.

### **Ruling of the CA**

On September 22, 2011, the CA rendered the assailed Decision<sup>[36]</sup> reversing the NCBM's judgment. The CA held that Alcid's illness is not work-related,<sup>[37]</sup> thus, he is not entitled to disability benefits under the POEA SEC or the CBA, sickness allowance and reimbursement of medical expenses.<sup>[38]</sup> Alveolar soft part sarcoma is not included among the occupational diseases in the POEA-SEC. Although it is disputably presumed to be work-related, Alcid failed to prove through substantial evidence that his condition was caused by, or aggravated by the nature of his work as an able seaman.<sup>[39]</sup>

In contrast, the company-designated physician confirmed that Alcid's condition is genetic and therefore, could not have been work-related.<sup>[40]</sup> This medical assessment effectively rebuts the disputable presumption. Under Section 20(B)(3) of the POEA-SEC and Articles 26.2 and 26.4 of the CBA, the disability rating shall be determined by the company-designated physician.<sup>[41]</sup> If the physician appointed by the seafarer disagrees with the findings of the company-designated physician, then the opinion of a third doctor shall serve as the final decision between them.<sup>[42]</sup> Alcid failed to comply with said procedure. Accordingly, the findings of the company-designated physician are entitled to more weight.<sup>[43]</sup> Added thereto, Alcid's chosen physicians merely conducted a cursory physical examination on him, whereas, the company-designated physician evaluated and closely monitored his condition over a period of time.<sup>[44]</sup>

Moreover, the CA opined that the NCMB erred in awarding disability benefits under Section 26.1 of the CBA. To be entitled thereto, the injury or illness must have been caused by an accident, which is not applicable to Alcid's case.<sup>[45]</sup>

Finally, Alcid is not entitled to attorney's fees since the respondents did not act with bad faith in denying his claim for disability compensation and benefits.<sup>[46]</sup>

The decretal portion of the CA ruling states:

**WHEREFORE**, premises considered, the appeal under consideration is **GRANTED** and the assailed Decision dated October 8, 2010 of the Office of the Panel of Voluntary Arbitrators of the NCMB is hereby **REVERSED and SET ASIDE**.

**SO ORDERED.**<sup>[47]</sup> (Emphasis in the original)

Undeterred, petitioners filed the instant Petition for Review on *Certiorari*<sup>[48]</sup> under Rule 45 of the Rules of Court.

### **Issue**

The pivotal issue raised in the instant case is whether or not Alcid is entitled to (i) disability benefits under the CBA or the POEA-SEC; (ii) sickness allowance; (iii) reimbursement of medical expenses; and (iv) attorney's fees.

Petitioners maintain that Alcid is entitled to disability benefits under the CBA, sickness allowance and reimbursement of his medical expenses. During his employment, he was exposed to carcinogens such as benzene, hydrocarbons, chemicals, crude oil, gasoline, lubricants and other harmful cleaning solutions. He likewise suffered from extreme weather conditions involving intense heat and freezing cold. His long period of exposure, which spanned over five terms, contributed to the development or aggravation of his illness.<sup>[49]</sup>

Moreover, petitioners claim that the CA erred in giving more credence to the findings of the company-designated physician, who is not an expert in the field of cancer.<sup>[50]</sup> On the other hand, Alcid's chosen physician, Dr. Peneyra, is an oncologist. In her Medical Abstract, she cited studies which showed that employees exposed to certain gases and chemicals developed sarcomas.<sup>[51]</sup>

Furthermore, petitioners aver that Alcid should not have been faulted for the failure to obtain the opinion a third doctor. He manifested his willingness to submit himself for examination by a third doctor,<sup>[52]</sup> which the respondents ignored.<sup>[53]</sup>

Alternatively, petitioners urge that if the CBA provision on disability does not apply, Alcid is at least entitled to full disability benefits under the POEA-SEC in the amount of US\$60,000.00.<sup>[54]</sup> After his repatriation, he was no longer able to work due to his illness. In fact, he even died because of it.<sup>[55]</sup> The inability of the seafarer to perform his customary work for more than 120 days constitutes total and permanent disability.<sup>[56]</sup>

Finally, Alcid is entitled to attorney's fees, as he was compelled to litigate to defend his rights and interests.<sup>[57]</sup>

On the other hand, the respondents counter that Alcid's illness is not work related. First, it is not included in the list of occupational diseases under the POEA-SEC.<sup>[58]</sup> Second, Alcid failed to prove a causal connection between his work and his illness.<sup>[59]</sup> The NCMB erred in excusing Alcid from the obligation of proving causation.<sup>[60]</sup> Third, the company-designated physician confirmed that Alcid's disease was caused by a genetic chromosomal abnormality.<sup>[61]</sup> Although contradicted by Alcid's doctors, their opinions are unworthy of credence as they did not conduct an extensive examination on Alcid.

Respondents aver that Alcid is not entitled to the maximum disability benefit under the CBA, which only covers permanent disabilities resulting from accidents.<sup>[62]</sup> Neither is he entitled to the full sickness allowance of US\$2,252.00, as he had already been paid US\$1,388.73.<sup>[63]</sup> At best, respondents may only be held liable for US\$863.27.<sup>[64]</sup>