

## SECOND DIVISION

[ G.R. No. 231773, March 11, 2019 ]

### **CESAR C. PELAGIO, PETITIONER, VS. PHILIPPINE TRANSMARINE CARRIERS, INC., CARLOS SALINAS, AND NORWEGIAN CREW MANAGEMENT A/S, RESPONDENTS.**

#### **D E C I S I O N**

##### **PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> filed by petitioner Cesar C. Pelagio (Pelagio) assailing the Decision<sup>[2]</sup> dated January 16, 2017 and the Resolution<sup>[3]</sup> dated May 22, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 122771, which annulled and set aside the Decision<sup>[4]</sup> dated August 24, 2011 and the Resolution<sup>[5]</sup> dated October 4, 2011 of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No. M-05-000458-11, and accordingly, reinstated the Decision<sup>[6]</sup> dated April 29, 2011 of the Labor Arbiter (LA) awarding Pelagio the amount of US\$13,437.00 representing permanent partial disability benefits.

#### **The Facts**

Respondent Philippine Transmarine Carriers, Inc. (PTCI) for and on behalf of its foreign principal, Norwegian Crew Management A/S, hired Pelagio as a Motorman on board the vessel M/V Drive Mahone for a period of six (6) months, under a Philippine Overseas Employment Administration (POEA)-approved contract of employment<sup>[7]</sup> dated September 29, 2009 and a collective bargaining agreement<sup>[8]</sup> (CBA) between Norwegian Crew Management A/S and Associated Marine Officers' and Seamen's Union of the Philippines. After being declared fit for employment,<sup>[9]</sup> Pelagio boarded M/V Drive Mahone on November 3, 2009.<sup>[10]</sup>

Sometime in February 2010, Pelagio experienced difficulty in breathing and some pains on his nape, lower back, and joints while at work. Pelagio was then referred to a port doctor in Said, Egypt where he was diagnosed with "Myositis"<sup>[11]</sup> and declared unfit to work.<sup>[12]</sup> On March 2, 2010, Pelagio was repatriated back to the Philippines for further medical treatment, and thereafter, promptly sought the medical attention of the company-designated physician, Dr. Roberto Lim, at Metropolitan Medical Center.<sup>[13]</sup>

After a series of medical and laboratory examinations,<sup>[14]</sup> including chest x-ray, pulmonary function tests, electroencephalogram, and other related physical examinations, Pelagio was finally diagnosed with Carpal Tunnel Syndrome, Bilateral L5-S1 Radiculopathy, Mild Degenerative Changes, and Lumbosacral Spine<sup>[15]</sup> with an interim assessment of a Grade 11 disability rating - "slight loss of lifting power of

the trunk."<sup>[16]</sup>

On August 18, 2010, Pelagio sought a second opinion from a private orthopedic surgery physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who assessed him with a Grade 8 disability - moderate rigidity or two-thirds loss of motion or lifting power of the trunk - and declared him "permanently UNFIT TO WORK in any capacity at his previous occupation."<sup>[17]</sup>

Pelagio then sought to avail of permanent total disability benefits from respondents PTCI, Carlos Salinas, and Norwegian Crew Management A/S (respondents), to no avail. Hence, he filed a claim<sup>[18]</sup> for permanent total disability benefits, reimbursement of medical expenses, illness allowance, damages, and attorney's fees against petitioners before the Arbitration Branch of the NLRC, docketed as NLRC-NCR No. (M) 09-13299-10. Essentially, Pelagio contends that his inability to work for more than 120 days from repatriation entitles him to permanent total disability benefits.<sup>[19]</sup>

For their part,<sup>[20]</sup> respondents countered that Pelagio is not entitled to permanent total disability benefits, considering that the independent physician, Dr. Magtira, merely assessed him with a Grade 8 impediment. In this relation, respondents likewise claimed that on August 5, 2010, the company-designated physician assessed Pelagio with a Grade 11 disability - slight loss of lifting power of the trunk (August 5, 2010 Medical Report).<sup>[21]</sup> In view of the conflicting findings of the company-designated and the independent physicians, respondents suggested that they seek a third mutually-appointed doctor to comply with the provisions of the POEA Standard Employment Contract, but Pelagio refused. Finally, respondents averred that they offered Pelagio the amount of US\$13,437.00, the corresponding benefit to a Grade 11 impediment pursuant to the CBA, but he rejected such offer.<sup>[22]</sup>

### **The LA Ruling**

In a Decision<sup>[23]</sup> dated April 29, 2011, the LA found Pelagio to be suffering from a permanent partial disability, and accordingly, ordered respondents to jointly and solidarity pay him the amount of US\$13,437.00.<sup>[24]</sup> The LA ruled that Pelagio's mere inability to work for 120 days from his repatriation did not *ipso facto* mean that he is suffering from a permanent total disability, especially in view of the disability assessments given by both the company-designated and the independent physicians. On this note, the LA gave weight to the findings of the company-designated physician that Pelagio was suffering from a Grade 11 impediment, and thus, must only be awarded disability benefits corresponding thereto.<sup>[25]</sup>

Dissatisfied, Pelagio appealed to the NLRC.<sup>[26]</sup>

### **The NLRC Ruling**

In a Decision<sup>[27]</sup> dated August 24, 2011, the NLRC reversed and set aside the LA ruling, and accordingly, awarded Pelagio the amounts of US\$70,000.00 representing permanent total disability benefits and US\$7,000.00 as attorney's fees, or a total of

US\$77,000.00, at their peso equivalent at the time of actual payment.<sup>[28]</sup>

The NLRC found that in the absence of the purported August 5, 2010 Medical Report in the case records, there is nothing that would support respondents' claim that the company-designated physician indeed issued Pelagio a final disability rating of Grade 11. Thus, the NLRC deemed that there was no final assessment made on Pelagio. In view thereof, the NLRC ruled that Pelagio's disability went beyond 240 days without a declaration that he is fit to resume work or an assessment of disability rating, and as such, he is already entitled to permanent total disability benefits as stated under the CBA.<sup>[29]</sup>

Respondents filed a motion for reconsideration,<sup>[30]</sup> attaching thereto a copy of the August 5, 2010 Medical Report. However, the same was denied in a Resolution<sup>[31]</sup> dated October 4, 2011. Aggrieved, respondents filed a petition for *certiorari* before the CA.<sup>[32]</sup>

### **The CA Ruling**

In a Decision<sup>[33]</sup> dated January 16, 2017, the CA annulled the NLRC ruling and reinstated that of the LA. It opined that the company-designated physician indeed gave Pelagio a disability rating of Grade 11 within 240 days from his repatriation, as evinced by the July 27, 2010 Medical Report<sup>[34]</sup> which was later on affirmed by the August 5, 2010 Medical Report. Hence, the CA concluded that the company-designated physician's findings should prevail considering that he extensively examined and treated Pelagio's medical condition.<sup>[35]</sup>

Dissatisfied, Pelagio moved for reconsideration,<sup>[36]</sup> but was denied in a Resolution<sup>[37]</sup> dated May 22, 2017; hence, this petition.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA correctly reinstated the LA ruling which only deemed Pelagio to be suffering from a Grade 11 impediment, and must only receive permanent partial disability benefits corresponding thereto.

### **The Court's Ruling**

The petition is meritorious.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."<sup>[38]</sup>

"Case law states that grave abuse of discretion connotes a capricious and whimsical

exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."<sup>[39]</sup>

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."<sup>[40]</sup>

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC, as its finding that Pelagio is entitled to permanent and total disability benefits is in accord with the evidence on record, as well as settled legal principles of labor law.

In *Jebsens Maritime, Inc. v. Rapiz*,<sup>[41]</sup> the Court explained that a seafarer's failure to obtain any gainful employment for more than 120 days after his medical repatriation does not *ipso facto* deem his disability to be permanent and total as the company designated physician may be given an additional 120 days, or a total of 240 days from such repatriation, to give the seafarer further treatment, and thereafter, make a declaration as to the nature of the latter's disability.<sup>[42]</sup> It was then clarified, however, that for the company-designated physician to avail of the extended 240-day period, he must first perform some significant act to justify an extension (e.g., that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be **conclusively presumed** to be permanent and total.<sup>[43]</sup> Hence, it reiterated the guidelines that govern seafarers' claims for permanent and total disability benefits, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. **If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.**<sup>[44]</sup> (Emphasis and underscoring supplied)