

SECOND DIVISION

[G.R. No. 227216, July 04, 2018]

**YIALOS MANNING SERVICES, INC., OVERSEAS
SHIPMANAGEMENT S.A., RAUL VICENTE PEREZ, AND MINERVA
ALFONSO, PETITIONERS, VS. RAMIL G. BORJA, RESPONDENT.**

DECISION

CAGUIOA, J:

This Petition for Review on *Certiorari*^[1] (Petition) filed by Yialos Manning Services, Inc. (YMSI), Overseas Shipmanagement S.A. (OSSA), Raul Vicente Perez, and Minerva Alfonso, (collectively, petitioners), assails the Decision^[2] dated May 18, 2016 (Assailed Decision) and Resolution^[3] dated September 14, 2016 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 126554, which affirmed the Resolutions dated May 15, 2012^[4] and July 9, 2012^[5] of the National Labor Relations Commission^[6] (NLRC) granting permanent total disability benefits and attorney's fees to herein respondent Ramil G. Borja (Borja).

The Facts

The facts, as summarized by the CA, are as follows:

[Borja] was employed as oiler by YMSI, for and on behalf of its principal OSSA, for a period of nine (9) months. He boarded the vessel M/V Thetis on April 20, 2010. On November 9, 2010, after doing maintenance work and lifting a metal plate, he felt "pain in the buttocks radiating down the back of his leg." He was referred to a company physician in Taixing, China, who diagnosed him to have inter-vertebral protrusion. He was declared unfit to work for three (3) months and was advised for "temporary palliative care" or bed rest for one month. He was medically repatriated on November 25, 2010.

[Borja] reported to YMSF's office, and he was referred to Marine Medical Services in Metropolitan Medical Center (MMC) on November 27, 2010 and was diagnosed by Dr. Robert D. Lim to have "lumbar strain." He was advised to continue with his medication and to undergo physical therapy in a hospital nearer to his place of residence or at University of Perpetual Help - Dr. Jose Tamayo Medical Center (UPH-DJTMC) in Binan, Laguna, but he reported to Dr. Lim every month for re-evaluation. Respondent also underwent electromyograph (EMG) test at the UPH-DJTMC on January 27, 2011 with the following findings: "chronic bilateral L5-S1 radiculopathies probably secondary to a lumbar canal stenosis."

On April 15, 2011, Dr. William Chuasuan of MMC issued a disability rating "grade 11 - slight rigidity of 1/3 [loss of] motion or lifting power of the

trunk." [Borja], nevertheless, continued his therapy at UPH-DJTMC because he was still suffering from back pain. He then demanded for reimbursement of his medical expenses and for payment of total permanent disability, but YMSI denied the claims. Hence, private respondent filed a complaint for payment of salaries/wages for the unexpired portion of the contract, disability benefits and for moral and exemplary damages, as well as, attorney's fees against petitioners with the Labor Arbiter on July 7, 2011.

During the conciliation hearing, the parties agreed to refer private respondent for a third (3rd) medical opinion but private respondent allegedly backed out of the agreement.

On August 20, 2011, private respondent consulted Dr. Manuel C. Jacinto, Jr. at Sta. Teresita General Hospital, Quezon City, who diagnosed him with "chronic low back pain with L5-S1 radiculopathy (9 months)." He was advised for "continuous therapy and repeat MRI" and declared "physically unfit to return to work" or suffering from "total permanent disability."

x x x x

On February 9, 2012, Labor Arbiter Cheryl M. Ampil rendered a decision granting [Borja]'s claim for total permanent disability. The Labor Arbiter held that the test of determining permanent total disability is the inability to perform customary work for more than 120 days, which may be extended until 240 days at the option of the petitioner or the company-designated physician; that petitioners did not extend the period of [Borja]'s medical treatment, but his disability was assessed only on April 15, 2011 or 149 days after repatriation, hence, [Borja] is entitled to permanent total disability of US\$60,000.00 as well as to attorney's fees, because he was compelled to litigate and to incur expenses by reason of petitioner's failure to pay the disability benefits. x x x

x x x x

Petitioners appealed to the NLRC asserting that [Borja]'s disability is not determined by mere lapse of the number of days, but by medical findings, by law, and contracts; that the disability grading of the company designated physician is the standard in measuring the disability of a seafarer; that the POEA Standard Employment Contract does not embody a permanent unfitness clause that would entitle the seafarer to full disability; that the fact that complainant was constrained to litigate to protect his interest does not justify the award of attorney's fees in the absence of malice or bad faith, hence, petitioners prayed for the reversal of the decision and dismissal of the complaint.

The NLRC dismissed the appeal on May 15, 2012. It sustained [Borja]'s entitlement to total and permanent disability and attorney's fees. A motion for reconsideration was filed, but the NLRC denied the same on July 9, 2012.^[7]

Aggrieved, petitioners elevated the case to the CA via petition for *certiorari*.

The CA Decision

In the Assailed Decision, the CA dismissed the *certiorari* petition finding no grave abuse of discretion on the part of the NLRC. Citing *Kestrel Shipping Co. v. Munar*,^[8] the CA held that Borja's disability was considered total and permanent as he was still undergoing therapy even after the expiration of the 240-day period. There was no showing that he was able to resume sea duty or became employed after filing the complaint. Due to his medical condition, Borja was unable to engage in gainful employment for more than 240 days.

On the issue of attorney's fees, the CA affirmed the NLRC findings that Borja was entitled thereto as he was compelled to litigate due to petitioners' failure to satisfy his valid claim for permanent total disability benefits.

The Petition

Thus, petitioners elevated the case before the Court. Petitioners maintain that Borja is not entitled to total permanent disability benefits as his disability is only grade 11, as certified by the company-designated physician. The petitioners argue that the CA committed reversible error in holding that Borja was entitled to total permanent disability benefits merely because the medical certification was issued after the 120 days.

Borja filed his Comment^[9] on June 19, 2017, maintaining his entitlement to total permanent disability benefits and attorneys' fees.

Issue

Whether Borja is entitled to total permanent disability benefits.

The Court's Ruling

The Court is once again presented with the issue of seafarer's disability compensation when the medical pronouncements of the company-designated physician and the seafarer-appointed physician are conflicting.

There is no dispute as to whether Borja's condition is work-related. The pivotal issue for resolution is the degree of disability to determine the amount of benefits due to him. Borja claims that his disability is total and permanent, as certified by his appointed physician. On the other hand, petitioners claim that Borja's ailment is only "Grade 11" as diagnosed by the company-designated physician.

Borja's employment with petitioners is covered by the Philippine Overseas Employment Administration's Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships, commonly referred to as the POEA-SEC, which both parties signed on April 8, 2010.^[10] As a contract, the same is considered the law between the parties.^[11]

The last paragraph of Section 20(B)(3) of the POEA-SEC provides for the solution to this common dispute:

Section 20.

B. Compensation and Benefits for Injury or Illness

x x x x

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

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and seafarer. The third doctor's decision shall be final and binding on both parties.

Thus, in case there are conflicting findings as to the health condition of the seafarer, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding.

In *Marlow Navigation Philippines, Inc. v. Osias*,^[12] the Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

In view of this, the NLRC promulgated NLRC *En Banc* Resolution No. 008-14,^[13] which directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

The duty to signify the intention to resolve the conflict by referral to a third doctor is upon the seafarer as he is the one contesting the findings of the company-designated physician. In *Bahia Shipping Services, Inc. v. Constantino*,^[14] the Court held:

As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr. Lim's assessment of Constantino's health should stand. Thus, the CA's conclusion that Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.^[15]