

SECOND DIVISION

[G.R. No. 218167, November 07, 2018]

HENRY R. ESPOSO, PETITIONER, VS. EPSILON MARITIME SERVICES, INC., W-MARINE INC. AND MR. ELPIDIO C. JAMORA, RESPONDENTS.

DECISION

CAGUIOA, J:

This Petition for Review on *Certiorari*^[1] (Petition) assails the Decision^[2] dated January 22, 2015 and Resolution^[3] dated May 12, 2015, both of the Court of Appeals (CA) Special Seventh (7th) Division, in CA-G.R. SP No. 136385, which set aside the Decision^[4] dated March 28, 2014 and Resolution^[5] dated May 22, 2014, both of the National Labor Relations Commission (NLRC), and reinstated the Decision^[6] dated January 16, 2014 of the Labor Arbiter (LA) dismissing the complaint^[7] filed by Petitioner Henry Esposo (Esposo) against respondents.

The Facts

The following facts are settled:

Esposo had been continuously hired by respondent Epsilon Maritime Services, Inc. (Epsilon), for and in behalf of its foreign principal, respondent W-Marine, Inc. (W-Marine) as Chief Engineer since September 8, 2011. He was last hired on October 25, 2012 under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment (Contract) for six (6) months with the following terms and conditions:

- | | | |
|-----|--------------------------|--------------------------|
| 1.1 | Duration of Contract: | 6 Months |
| 1.2 | Position: | CHIEF ENGINEER |
| 1.3 | Basic Monthly Salary: | USD 2,550.00 Per Month |
| 1.4 | Hours of Work: | 44 Hours Per Week |
| 1.5 | Overtime: | USD 1,170.00 Per Month |
| 1.6 | Vacation Leave with Pay: | USD 765.00 Per Month |
| 1.7 | Point of Hire: | Makati City, Philippines |

Prior to this, Esposo underwent a Pre-Employment Medical Examination (PEME) on October 19, 2012 and on October 25, 2012, wherein he was declared fit to work albeit with the recommendation, "Hypertension Controlled with medication."^[8] On November 22, 2012, Esposo boarded the vessel M/V W-ACE (vessel).^[9] On June 20, 2013, he returned to the Philippines after his contract expired. On October 2, 2013,

he filed the present complaint for payment of disability benefits with the LA.^[10]

Esposito and respondents differ in their version of the events that gave rise to this case, as follows:

According to Esposito, sometime in the last week of April 2013, while in the performance of his duties onboard the vessel, he felt uncomfortable and experienced severe chest pains, dizziness, difficulty of breathing, severe headache and persistent perspiration. He reported the matter to the Master of the vessel but was advised to just wait for his repatriation since his contract was then about to end. His discomfort continued and he was repatriated on June 20, 2013. The following day, he reported to Epsilon for his post-employment medical examination. However, Epsilon merely informed him to take a rest and to wait for their call.^[11]

Due to his deteriorating condition, Esposito was not able to wait for Epsilon's call and instead sought medical examination and treatment from an independent physician – Dr. Romeo J. Santos (Dr. Santos) of the Philippine Heart Center.^[12] In a Medical Certificate^[13] dated June 22, 2013, Esposito was diagnosed with Coronary Heart Disease with a recommendation that he undergo further tests. Subsequently, a Medical Certificate dated November 7, 2013 was issued finding Esposito to be suffering from "S/P ACBG-4vessel" and declaring him unfit to work from October 1, 2013 – December 31, 2013.^[14]

Esposito claims that Epsilon never communicated with him nor provided him with the necessary medical attention or financial assistance. Hence, he was compelled to shoulder all expenses for his examinations, medications and hospitalization. Thus, alleging that his health condition did not improve despite the lapse of more than one hundred twenty (120) days and having been found unfit for seafaring duties in any capacity by his independent physician, Esposito filed the present complaint, against respondents, for disability benefits, permanent disability compensation in accordance with his Collective Bargaining Agreement (CBA), sickness allowance for 130 days, reimbursement of medical and hospitalization expenses especially the cost of his coronary artery by-pass, moral and exemplary damages and attorney's fees and other benefits provided by law and his CBA.^[15]

On the other hand, respondents aver that during the entire stay of Esposito on board the vessel, he never complained of, suffered from, nor requested for, medical assistance for any health concerns except for one incident on December 17, 2012 involving "skin burn" as reflected in the vessel logbook. Towards the expiration of his contract, Esposito executed a Resignation Report^[16] dated April 29, 2013, requesting to be repatriated due to the impending expiration of his contract on May 21, 2013.^[17]

After completion of his contract, Esposito signed off from the vessel and arrived in Manila on June 20, 2013. Without submitting himself for mandatory post-employment medical examination within three (3) days from his arrival in the Philippines, Esposito filed the present complaint.

Ruling of the LA

In a Decision dated January 16, 2014, the LA dismissed Esposito's complaint for lack of merit, disposing of the case in the following manner:

WHEREFORE, premises considered, the above-entitled complaint for permanent disability benefits is hereby **DISMISSED** for lack of merit.

SO ORDERED.^[18]

The LA held that Esposito failed to substantiate his allegation that he reported to Epsilon for post-employment medical examination by a company-designated physician within three (3) working days upon his return to the Philippines, as required under the POEA Standard Employment Contract (SEC). On the contrary, from the records, Esposito had no reason to seek post-employment medical examination as he was not medically repatriated; rather, his contract was terminated without any issues, much less medical problem. Moreover, he failed to prove that he experienced physical discomfort while on board the vessel and that he reported the same to the Master of the vessel. The medical logbook presented by respondents show that Esposito reported a single instance of skin burn on December 17, 2012. This, according to the LA, substantiates the version of respondents that Esposito never suffered from a medical condition while on board the vessel.^[19]

On February 19, 2015,^[20] Esposito filed a *Memorandum of Appeal* with the NLRC.

Ruling of the NLRC

In a Decision dated March 28, 2014, the NLRC reversed and set aside the appealed decision of the LA and ordered respondents to pay Esposito disability benefits corresponding to total and permanent disability under the 2010 POEA-SEC in the amount of US\$60,000.00, sickness allowance and attorney's fees, disposing of the case as follows:

WHEREFORE, premises considered, the appeal is hereby declared with merit and the appealed decision **REVERSED** and **SET ASIDE**; Respondents are hereby ordered to pay Complainant the following in Philippine Peso at the rate of exchange prevailing at the time of payment:

1. disability benefits	-	US\$60,000.00
2. 130 days sick wage (<u>US\$2,550.00</u> X 130 days)	-	<u>11,050.00</u>
30		
Sub-total	-	US\$71,050.00
3. 10% attorney's fees which is due to Complainant himself only	-	<u>7,105.00</u>
TOTAL	-	US\$ 78,155.00 VVVVVVVVVVVV

SO ORDERED.^[21]

The NLRC ruled that Esposito's submission within 72 hours from repatriation for medical examination, albeit to a private physician, as proven by his Medical Certificate dated June 22, 2013, confirms his claims that he suffered his illness while on board the vessel and that with respondents having failed to provide him with the proper medical care within the required period, he was forced to seek medical treatment from a private physician.^[22] According to the NLRC, it cannot be otherwise because his illness could not have been acquired by him between the date of his repatriation on June 20, 2013 to the date that he was issued a medical certification on June 22, 2013.^[23]

Further, as Esposito was declared unfit to work until December 31, 2013 in his Medical Certificate dated November 7, 2013, he was unable to return to work for more than 120 days from his repatriation, hence entitled to total and permanent disability benefits under Section 20-A of the POEA-SEC.^[24]

Anent his claims for permanent disability benefits under the CBA, the NLRC ruled that Esposito failed to prove his entitlement to the same as his permanent disability was not a result of an accident.^[25] Esposito is, however, entitled to sickness allowance for 130 days pursuant to Article 23 of the CBA.^[26] Finally, Esposito is entitled to attorney's fees in its extraordinary concept, that is as indemnity damage to be paid by the losing party to the winning party because the latter had to hire a lawyer to protect his interest.^[27]

Respondents filed a Motion for Reconsideration, which was, however, denied for lack of merit in a Resolution of the NLRC dated May 22, 2014.^[28] This prompted respondents to file a Petition for *Certiorari* before the CA.

Meanwhile, after the issuance of the Entry of Judgment respondent opposed the issuance of a Writ of Execution on the ground of newly-discovered evidence: a printed copy of a POEA-certified Overseas Filipino Worker (OFW) Information^[29] showing that Esposito was processed for deployment by the POEA on February 10, 2014 or within 240 days from his repatriation on June 20, 2014. Allegedly, respondents learned that Esposito had served as Chief Engineer subsequent to the filing of his Complaint with the LA, hence negating his claim of total and permanent disability.^[30] Nevertheless, the NLRC issued the Writ of Execution dated October 10, 2014.^[31]

Subsequently, respondents filed a Satisfaction of Judgment with Urgent Motion to Lift Garnishment^[32] informing the NLRC that, in order to avert the adverse effect of the Notice of Garnishment served to their depository bank on their business operations, respondents voluntarily deposited the judgment award with the Cashier of the NLRC on November 3, 2014^[33] and that such satisfaction was acknowledged by Esposito in the latter's Urgent Ex-parte Motion to Issue an Order of Release (Directing the NLRC Cashier to Release the Judgment Award)^[34] filed before the

NLRC on November 5, 2014. As such, respondents prayed that the NLRC terminate the present case without prejudice to the pending Petitions for *Certiorari* and Extraordinary Remedies filed by respondents, and accordingly lift the garnishment issued by the Sheriff.^[35]

Ruling of the CA

In the assailed Decision, the CA granted respondents' Petition for *Certiorari*, set aside the decision of the NLRC and accordingly reinstated the Decision of the LA which dismissed Esposito's complaint. The CA disposed of the case in this wise:

WHEREFORE, with the foregoing disquisition, the Petition for *Certiorari* dated July 22, 2014 is hereby **GRANTED** and the Decision dated March 28, 2014 and Resolution dated May 22, 2014 of the National Labor Relations Commission are hereby **SET ASIDE**. Accordingly, the Decision dated January 16, 2014 of the Labor Arbiter which dismissed private respondent Henry Esposito's Complaint for permanent total disability benefits and other money claims is hereby **REINSTATED**.

SO ORDERED.^[36]

According to the CA, while the POEA-SEC considers heart disease as occupational, Esposito failed to present any evidence of the mandatory conditions that his heart disease was known to have been present during employment and that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work. The fact that he was repatriated for a finished contract and not for medical reasons undermined, if not negated, his claim of illness on board the vessel.^[37] Moreover, even if his illness is to be considered work-related, his claim for disability benefits must still fail as he failed to comply with the mandatory post-employment medical examination by a company-designated physician within three (3) days from his repatriation.^[38]

Esposito filed a Motion for Reconsideration on February 13, 2015^[39] which was denied in the assailed Resolution dated May 12, 2015.^[40]

Refusing to concede and after filing a *Motion for an Extension of Time to File Petition Under Rule 45*,^[41] Esposito filed the present *Petition* on June 29, 2015, raising the following **issues**:

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THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT REVERSED AND SET ASIDE THE JUDICIOUS AND MERITORIOUS DECISION OF THE HONORABLE NLRC ALTHOUGH THE SAME IS ALREADY FINAL AND EXECUTORY AND IT IS JUDICIOUS AND MERITORIOUS AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARGUMENTS AND IT IS