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SECOND DIVISION

[G.R. No. 225142, September 13, 2017]

NYK-FIL SHIP MANAGEMENT, INCORPORATED, PETITIONER, V. GENER G. DABU, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Amended Decision[1] dated March 3, 2016 and the Resolution[2] dated June 9, 2016 of the Court of Appeals in CA-G.R. SP No. 139266.

The antecedent facts are as follows:

Petitioner NYK-Fil Ship Management, Inc., a local manning agent acting for and in behalf of its foreign principal NYK Ship Management Pte. Ltd. Singapore, hired respondent Gener G. Dabu to work as oiler for nine months on board the vessel M/V Hojin with a monthly basic salary of US$584.00, among others.[3] Their contract of employment was covered by a Collective Bargaining Agreement known as "IBF JSU/AMOSUP-IMMAJ CBA which was effective from January 1, 2012 to December 31, 2014.[4] Respondent underwent a pre-employment medical examination (*PEME*) on March 25, 2013 where he disclosed that he has diabetes mellitus. The doctor who conducted the PEME noted that respondent has diabetes mellitus type 2, controlled with medications.[5]

On April 6, 2013, respondent embarked the vessel and discharged his duty as oiler. On April 8, 2013, he had palpitations, pains all over the body, numbness of hands and legs, lack of sleep and nervousness. On April 10, 2013, he consulted a doctor in Sri Lanka who found him with elevated blood sugar level and was suffering from diabetes mellitus, and declared him unfit for sea duty.[6] He was repatriated to Manila on April 12, 2013.[7] Upon his arrival, he was immediately referred to the company-designated physician at NGC Medical Specialist Clinic, Inc. who examined him. Respondent was asked to undergo a series of laboratory tests where the results showed that he has diabetes mellitus, poorly controlled. Respondent had undergone many follow up examinations with corresponding laboratory tests as he continued to complain of palpitations, pains all over his body with easy fatigability, and was prescribed medicines and eventually placed on insulin treatment.[8]

On July 18, 2013, the company-designated physician declared that respondent's diabetes mellitus is not work-related.[9] However, respondent's treatment was continued for a maximum period of 130 days. Respondent continued his follow-up consultations as he still complained of body pains and weakness and was prescribed medicines.[10] On August 22, 2013, the company-designated physician reiterated her findings that respondent's diabetes mellitus is not work-related.[11] Respondent

wrote letters to petitioner appealing for the continuation of his treatment since his sickness was work-related taking into account his 23 years of working in petitioner's various vessels.[12]

Respondent then consulted Dr. Efren R. Vicaldo of the Philippine Heart Center who found him suffering from diabetes mellitus, insulin requiring, Impediment Grade VII (41.80%) and declared him permanently unfit to resume work as a seaman in any capacity and his illness is considered work-aggravated/related.[13] He also consulted Dr. Czarina Sheherazade Mae A. Miguel, an Internal Medicine Specialist, whose finding was the same as with Dr. Vicaldo's.[14]

Respondent sought payment of disability benefits, damages and attorney's fees from petitioner, but was denied. He requested for a grievance proceedings in accordance with the CBA, however, the parties did not reach any settlement. He then filed a notice to arbitrate with the National Conciliation Mediation Board (*NCMB*), and the parties were required to submit their position papers.

On November 28, 2014, the NCMB-Panel of Voluntary Arbitrators (PVA) rendered a Decision, the decretal portion of which reads:

> WHEREFORE, ALL THE ABOVE CONSIDERED, a Decision is hereby rendered ORDERING the respondents, jointly and severally, to pay complainant the following amounts:
>
> > (1) Disability compensation in the amount of US$60,000.00 or its Peso equivalent at the time of payment plus 12% interest thereon;
> >
> > (2) Attorney's fees equivalent to ten percent (10%) of the total monetary award.
> >
> > All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[15]

Petitioner received a copy of the PVA decision on February 9, 2015 and filed with the CA a petition for review under Rule 43 of the Rules of Court on February 24, 2015 alleging that the PVA committed serious errors in rendering its decision and sought to enjoin the PVA from enforcing its decision. Respondent filed its Comment and petitioner filed its Reply. The parties also filed their respective memoranda.

On April 27, 2015, the NCMB-PVA issued a Writ of Execution directing the satisfaction of the judgment award of the PVA, which petitioner had complied without prejudice to the outcome of their petition for review.

On September 15, 2015, the CA issued its Decision,[16] the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED. The assailed Decision of the NCMB-PVA dated November 28, 2014 in AC-971-RCMB-NCR-MVA-020-03-03-2014 is REVERSED and SET ASIDE, and a new one entered DISMISSING respondent Dabu's complaint for lack of merit.[17]

Aggrieved, respondent filed a motion for reconsideration wherein he reiterated his argument raised in his memorandum that the petition should be dismissed for being filed out of time.

On March 3, 2016, the CA issued its Amended Decision, the dispositive portion of which reads:

> WHEREFORE, private respondent's motion for reconsideration is GRANTED. Accordingly, this Court's Decision dated September 15, 2015 is hereby RECALLED and SET ASIDE and a new one entered DISMISSING the petition for having been filed out of time.[18]

Petitioner moved for reconsideration, however, the CA denied the same in a Resolution dated June 9, 2016, the decretal portion of which states:

> WHEREFORE, petitioner's motion for reconsideration of the Amended Decision dated March 3, 2016 [is] DENIED for lack of merit.[19]

Hence, this petition for review on the following argument, to wit:

> The Honorable Court of Appeals committed SERIOUS, REVERSIBLE AND GROSS ERROR IN LAW AND IN FACT in rendering an amended judgment and dismissing the Petitioner's appeal on the ground that it was allegedly filed out of time.[20]

We find no merit in the petition.

Art. 262-A of the Labor Code provides:

> Art. 262-A. Procedures. x x x
>
> x x x x
>
> The award or decision of the Voluntary Arbitrator or Panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

and Section 6, Rule VII of the NCMB Procedural Guidelines in the conduct of voluntary arbitration proceedings provides:

> Section 6. *Finality of Award or Decisions*. - Awards or decisions of voluntary arbitrator become final and executory after ten (10) calendar days from receipt of copies of the award or decision by the parties.

Clearly, the decision of the voluntary arbitrator becomes final and executory after 10 days from receipt thereof. The proper remedy to reverse or modify a voluntary arbitrators' or panel of voluntary arbitrators' decision is to appeal the award or decision via a petition under Rule 43 of the 1997 Rules of Civil Procedure.[21] And under Section 4 of Rule 43, the period to appeal to the CA is 15 days from receipt of the decision. Notwithstanding, since Article 262-A of the Labor Code expressly provides that the award or decision of the voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the decision by the parties, the appeal of the VA decision to the CA must be filed within 10 days. In *Philippine Electric Corporation (PHILEC) v. Court of Appeals*,[22] We held:

It is true that Rule 43, Section 4 of the Rules of Court provides for a 15-day reglementary period for filing an appeal:

> Section 4. Period of appeal. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

The 15-day reglementary period has been upheld by this court in a long line of cases. In AMA Computer College-Santiago City, Inc. v. Nacino, Nippon Paint Employees Union-OLALIA v. Court of Appeals, Manila Midtown Hotel v. Borromeo, and Sevilla Trading Company v. Semana, this court denied petitioners' petitions for review on certiorari since petitioners failed to appeal the Voluntary Arbitrator's decision within the 15-day reglementary period under Rule 43. In these cases, the Court of Appeals had no jurisdiction to entertain the appeal assailing the Voluntary Arbitrator's decision.

Despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's decision must be appealed before the Court of Appeals within 10 calendar days from receipt of the decision as provided in the Labor Code.

Appeal is a "statutory privilege," which may be exercised "only in the manner and in accordance with the provisions of the law." "Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional so that failure to do so rendered the decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal."

We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators. Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.

Furthermore, under Article VIII, Section 5(5) of the Constitution, this court "shall not diminish, increase, or modify substantive