

## THIRD DIVISION

[ G.R. No. 201834, June 01, 2016 ]

**ANDRES L. DIZON, PETITIONER, VS. NAESS SHIPPING  
PHILIPPINES, INC. AND DOLE UK (LTD.), RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a petition for review on *certiorari* filed by petitioner Andres L. Dizon assailing the Decision<sup>[1]</sup> dated February 28, 2012 and Resolution<sup>[2]</sup> dated May 9, 2012 of the Court of Appeals (CA) which affirmed the Decision<sup>[3]</sup> and Resolution dated October 30, 2009 and February 26, 2010, respectively, of the National Labor Relations Commission (NLRC) which declared respondents Naess Shipping Phils. Inc. and DOLE UK (Ltd.) not liable to pay petitioner the amount of US\$66,000.00 for disability benefits and medical expenses.

The antecedents are:

Since 1976, respondents Naess Shipping Phils. Inc. and DOLE UK (Ltd.) hired petitioner Andres L. Dizon as cook for its various vessels until the termination of his contract in 2007.<sup>[4]</sup>

On March 6, 2006, Dizon was hired as Chief Cook and boarded DOLE COLOMBIA under the following terms and conditions:<sup>[5]</sup>

Contract	: 9 months
Duration	
Position	: Chief Cook
Basic	
monthly	: US\$670.00
salary	
Hours of	: 44 hours/week
work	
Overtime	: US\$373.00 GOT in excess of 85 hours
	US\$4.3 8/hour
	US\$5.01/hour in excess of 90 hours
Vacation	
leave	: 9 days/month
with pay	
Point of	: Manila
hire	

Dizon disembarked after completing his contract on February 14, 2007. He then went on a vacation, and was called for another employment contract after a month.

<sup>[6]</sup>

When he underwent pre-employment medical examination in March 2007, he was declared unfit for sea duties due to uncontrolled hypertension and coronary artery disease as certified by the doctors of the Marine Medical and Laboratory Clinic (MMLC).[7] He was referred to undergo stress test and electrocardiogram (ECG). He then went to PMP Diagnostic Center Inc. for diagnostic tests.[8] It was also recommended that he undergo Angioplasty.[9] His treadmill stress test showed that he had Abnormal Stress Echocardiography.[10] The result of his treadmill stress test stated:

Abnormal Stress Fxhocardiography at 10.2 MFTS with evidence of stress-inducible ischemic myocardium at risk involving the left anterior descending and right coronary artery territories.[11]

Unconvinced with the doctor's declaration of unfitness, Dizon went to the Seamen's Hospital and submitted himself for another examination.[12]

The result indicated that he was fit for sea duty.[13] He returned to MMLC and requested for a re-examination, but the same was denied.[14]

In November 2008, Dizon filed a complaint before the Department of Labor and Employment, but subsequently withdrew the same.[15]

On January 6, 2009, Dizon filed a complaint against respondents for payment of total and permanent disability benefits, sickness allowance, reimbursement of medical, hospital and transportation expenses, moral damages, attorney's fees and interest before the Labor Arbiter (LA).[16]

Claiming that he is entitled to permanent total disability benefit, Dizon alleged that he incurred his illness while on board the respondents' vessel.[17] He claimed that his working conditions on board were characterized by stress, heavy work load, and over fatigue.[18] He averred that Dr. Marie T. Magno re-evaluated his actual medical condition on February 16, 2009 and declared him unfit to resume his work as seafarer since his heart condition is unable to tolerate moderate to severe exertions.[19]

Dizon asserted that he disclosed his hypertension prior to his last contract in 2006, but was certified fit for duty for the nine-month employment contract.[20]

For their part, respondents disavowed liability for Dizon's illness maintaining that he finished and completed his contract on board their vessel *Dole Colombia* without any incident, and that his sickness was not work-related.[21] They rejected the redeployment of Dizon since he was declared unfit for sea duty in his pre-employment medical examination. Respondents claimed that they were only exercising their freedom to choose which employees to hire.[22]

In a Decision[23] dated May 29, 2009, the LA ruled that Dizon is entitled to full disability benefits. The LA held that it can be logically concluded that Dizon's illness arose during the period of his employment since less than a month transpired between his repatriation and the pre-employment medical examination.[24] This

disposition finds support from the undisputed fact that Dizon had been continuously employed by respondents for 30 years while performing similar duties under the same working conditions.<sup>[25]</sup> The LA found that the respondents failed to adduce evidence to overcome the presumption of compensability in favor of the seafarer. The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering Naess Shipping Phils. Inc. and/or DOLE UK (Ltd.). jointly and severally, to pay complainant Andres L. Dizon the Philippine peso equivalent at the time of actual payment of US DOLLARS SIXTY THOUSAND DOLLARS (US\$60,000.00) representing permanent total disability benefits, plus ten percent (10%) thereof as and for attorney's fees or the aggregate amount of US DOLLARS SIXTY SIX THOUSAND (US\$66,000.00).

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[26]</sup>

On appeal, the NLRC reversed and set aside the decision of LA for finding that Dizon did not comply with the mandatory post-employment medical examination within three working days upon arrival.<sup>[27]</sup> The NLRC held that Dizon failed to prove through substantial evidence that his working conditions increased the risk of contracting coronary artery disease. The *fallo* of the decision reads:

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision of the Labor Arbiter declaring Nacss Shipping Phils. Inc. and/or DOLE UK (Ltd.) jointly and severally liable to pay Andres L. Dizon US Dollars Sixty Six Thousand Pesos (US\$66,000.00) is **REVERSED** and **SET ASIDE**. However, for humanitarian considerations, taking into account complainant's unblemished record of thirty (30) years of service to respondents, the latter are hereby directed to pay Fifty Thousand Pesos (P50,000.00) financial assistance to complainant.

**SO ORDERED.**<sup>[28]</sup>

Aggrieved, Dizon assailed the NLRC's reversal of the LA's decision before the CA through a petition for *certiorari*. The CA denied the petition and affirmed the decision of the NLRC. The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, the petition is DENIED. The October 30, 2009 Decision and the February 26, 2010 Resolution of the Public Respondent National Labor Relations Commission are **AFFIRMED**.

**SO ORDERED.**<sup>[29]</sup>

Upon denial of his motion for reconsideration, Dizon filed before this Court the present petition raising the following issues:

- I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN RULING THAT PETITIONER IS NOT ENTITLED TO DISABILITY BENEFITS FOR FAILURE TO REPORT WITHIN 72

HOURS FROM HIS REPATRIATION.

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS QUESTION OF LAW IN RULING THAT THE ILLNESS OF THE PETITIONER IS NOT WORK RELATED DESPITE NOT HAVING FACTUAL NOR MEDICAL BASIS.

III. THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AMOUNTING TO GRAVE ABUSE OF DISCRETION IN NOT AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.

Simply, the issue to be resolved is whether the petitioner is entitled to disability benefits.

We answer in the negative and deny the instant petition.

Dizon asseverates that his right to claim total and permanent disability benefits is not forfeited when he failed to submit himself to a post-employment medical examination before the company-designated doctor within three working days upon his arrival because such failure to comply would only forfeit his claims for the 120 days sickness allowance.<sup>[30]</sup>

Settled is the rule that the entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.<sup>[31]</sup>

Section 20(B), paragraph 3 of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*) reads:<sup>[32]</sup>

Section 20-B. *Compensation and Benefits for Injury or Illness.*—

The liabilities of the employer when the seafarer suffers **work-related** injury or illness during the term of his contract are as follows:

x x x x

3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.

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 except when he is physically incapacitated to do so**, in which case a written notice to the agency with the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**

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

x x x

The law specifically declares that failure to comply with the mandatory reporting requirement shall result in the seafarer's forfeiture of his right to claim benefits thereunder.<sup>[33]</sup> In *Coastal Safeway Marine Services, Inc. v. Esguerra*,<sup>[34]</sup> this Court expounded on the mandatory reporting requirement provided under the POEA-SEC and the consequence for failure of the seaman to comply with the requirement, viz.:

The foregoing provision has been interpreted to mean that it is the **company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the hitter's employment.** Conccdedly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.**<sup>[35]</sup>

Moreover, that the three-day post employment medical examination is mandatory brooks no argument, as held in *Interorient Maritime Enterprises, Inc. v. Creer*:<sup>[36]</sup>

The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that **reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult.** To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.<sup>[37]</sup>

In the past, this Court repeatedly denied the payment of disability benefits to seamen who failed to comply with the mandatory reporting and examination requirement.<sup>[38]</sup> Thus, the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to