

## SECOND DIVISION

[ G.R. No. 209098, November 14, 2016 ]

**JUAN B. HERNANDEZ, PETITIONER, V. CROSSWORLD MARINE SERVICES, INC., MYKONOS SHIPPING CO., LTD., AND ELEAZAR DIAZ, RESPONDENTS.**

### DECISION

#### **DEL CASTILLO, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> are the November 29, 2012 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R SP No. 124685 which set aside the February 23, 2012 Decision<sup>[3]</sup> and March 16, 2012 Resolution<sup>[4]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M)-11-000995-11 and dismissed herein petitioner's Complaint<sup>[5]</sup> in NLRC-NCR Case No. (M) 04-05732-11. Also assailed herein is the CA's September 3, 2013 Resolution<sup>[6]</sup> denying reconsideration of its assailed Decision.

#### ***Factual Antecedents***

The Labor Arbiter, NLRC, and CA adopt an identical narrative of the salient facts.

Petitioner Juan B. Hernandez has been working continuously for respondents Mykonos Shipping Co., Ltd. (Mykonos), Crossworld Marine Services, Inc. (Crossworld), and Eleazar Diaz (Diaz) - Crossworld's President/Chief Executive Officer - since November 14, 2005, under different employment contracts covering the latter's several oceangoing vessels.

On October 7, 2008, petitioner was once more engaged by respondents to work as Chief Cook aboard the vessel M/V Nikomarin. This latest employment was for a period of nine months, with a monthly salary of US\$587.00, plus fixed overtime pay, food allowance, leave pay, and long service bonus. When his contract expired, petitioner's service was extended for an additional five months. Thereafter, he was repatriated on December 19, 2009.

With a view to serving respondents anew under a new contract, petitioner was made to undergo a pre-employment medical examination on March 22, 2010, and he was found to be suffering from hypertension and diabetes mellitus. He was declared fit for duty and required to take maintenance medication. However, respondents deferred his employment on account of his state of health.

In 2011, petitioner consulted two separate physicians who turned out the same diagnosis: that he was suffering from hypertension, stage 2, and type 2 diabetes mellitus, and was therefore unfit for sea duty in whatever capacity as seaman.

Petitioner demanded compensation by way of disability benefits and medical expenses from respondents, but the latter refused to pay.

### ***Ruling of the Labor Arbiter***

On April 8, 2011, petitioner filed a claim for disability benefits, medical expenses, allowances, damages, and attorney's fees against respondents before the Labor Arbiter, which was docketed as NLRC-NCR Case No. (M) 04-05732-11.

On August 31, 2011, Labor Arbiter Jose G. De Vera issued his Decision<sup>[7]</sup> in the case, which decreed as follows:

There are formidable grounds why said complainant's claims must fail.

First, the complainant was repatriated not on medical grounds but on account of the completion of his employment contract. x x x

Second, it cannot be denied that before complainant was deployed and joined his vessel on October 17, 2008, he was already afflicted with hypertension and diabetes mellitus as found during his pre-employment medical examination. As a matter of fact, complainant admitted that upon joining the vessel in France, he had with him various maintenance drugs for his hypertension and diabetes mellitus. This necessarily indicates that complainant's medical condition of hypertension and diabetes mellitus were pre-existing and contracted during his employment on board the vessel from October 17, 2008 until he finished his contract and eventually repatriated on December 19, 2009. Moreover, there is no record that while on board the vessel for the entire period of his employment, he was treated on board the vessel and/or confined in a clinic or hospital in the foreign ports. In short, there is no proof of any aggravation of his ailments.

Third, the complainant was repatriated not on medical grounds but precisely on account of completion of his employment contract. Hence, there was no reason for him to submit to post-employment medical examination within three (3) days from date of his arrival on December 19, 2009. In fact, there is no record that complainant had reported to the respondents Crossworld for the mandatory post-employment medical examination preparatory to further treatment and management of his ailments as contemplated under Section 20 [B] paragraph 3 of the POEA Standard Employment Contract. If there was any medical examination conducted thereafter, it was not for purposes of the complainant's claim for disability benefit and medical expenses, but precisely for purposes of his aborted next employment contract sometime in March 2010.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.<sup>[8]</sup>

### ***Ruling of the National Labor Relations Commission***

Petitioner appealed before the NLRC, where the case was docketed as NLRC LAC (OFW-M) 11-000995-11.

On February 23, 2012, the NLRC rendered its Decision granting the appeal, thus setting aside the Labor Arbiter's August 31, 2011 Decision and awarding petitioner's

claims, as follows:

Complainant claims that as Chief Cook, his duties include the provisioning of the ship, food preparation and budgeting, cleaning of dining, kitchen, galley and food compartment and work areas; carrying of ship provisions, and cleaning the heavy cooking utensils used by the vessel's cooks; likewise, he is constantly exposed to the different climates, unpredictable weather and the perils of the sea

In general, diabetes mellitus is a group of metabolic diseases which a person has high blood sugar, either because the body does not produce enough insulin, or because cells do not respond to the insulin that is produced.

'What are its risk factors?'

'Stress, both physical and mental, can send the blood sugar out of wreck. x x x Both physical and emotional stress can prompt an increase in these hormones, resulting in an increase in blood sugars.'

Day in and day out, with the continuous discharge by complainant of his duties, the increase in his blood sugar becomes inevitable, thus aggravating his controlled diabetes mellitus.

xxxx

Upon the other hand, high blood pressure is an ailment that is work connected and is listed as a compensable ailment.

xxxx

Section 20, paragraph (B) sub paragraph 4 of the POEA-SEC provides that those illnesses not listed in Section 32 of this contract are disputably presumed work related.

xxxx

Undeniably therefore, there is work connection between the complainant's aggravation of his illness and his work.

Capital is being made by respondents, and concurred in by the Labor Arbiter, over the alleged non-reporting for post employment medical examination within three (3) days from his arrival.

On the other hand, complainant claims 'that he reported his condition to respondents, but the latter refused to provide him with his needed medical assistance and attention. He was just told to go home to his province and rest. Complainant then went home to his province and had his condition checked by a local doctor.

In *Interiorient Maritime Enterprises, Inc. vs. Leonora Remo*,<sup>[9]</sup> it was ruled that where the absence of a post-employment medical examination was not due to seafarer's fault but to the inadvertence or deliberate refusal of petitioners, this cannot defeat respondent's claim.'

In a change of heart, and after realizing their folly, respondents ordered complainant to undergo a medical examination by the company doctor on March 22, 2010 again preparatory to the signing of a new employment contract.

Under the circumstances, We have no other recourse but to re-echo the Supreme Court ruling that should doubt exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

In this regard, We have noted that the claims of the parties (complainant and respondents) were orally made.

As the records show, the next employment contract was no longer consummated because of the hypertension and diabetes mellitus. In fact, complainant was never redeployed by respondents.

In *Lloreta vs. Philippine Transmarine Carriers, Inc., et al.*, the Court held that there is permanent disability where a worker fails to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, while 'total disability means that disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.'

Under Section 32 of the POEA-SEC, an impediment grade 1 is equivalent to 120% of US\$50,000.00 or US\$60,000.00.

Further medical expenses in the sum of P3,221.00<sup>[10]</sup> were incurred by complainant as shown by the receipts attached to the records.

As complainant was assisted by a counsel de parte, attorney's fees equivalent to 10% of the money awards.

WHEREFORE, the judgment on appeal is REVERSED and SET ASIDE and a NEW ONE entered ordering the respondents, to pay in solidum, in peso equivalent at the time of payment, the following amounts:

1. US\$60,000.00 as disability benefit;
2. P3,721.00 as reimbursement of medical expenses; and
3. 10% of the amounts awarded as attorney's fees.

SO ORDERED.<sup>[11]</sup>

Respondents moved to reconsider, but the NLRC stood its ground.

### ***Ruling of the Court of Appeals***

In a Petition for *Certiorari*<sup>[12]</sup> filed with the CA and docketed therein as CAG.R. SP No. 124685, respondents sought to set aside the above NLRC Decision and thus

reinstate that of the Labor Arbiter's, arguing mainly that petitioner's illness is not compensable, and consequently, he is not entitled to his other money claims.

Meanwhile, on July 17, 2012, respondents paid petitioner the amount of the judgment award - or the sum of P2,702,766.00. In return, petitioner was made to sign a Conditional Satisfaction of Judgment (All Without Prejudice to the Pending Petition for *Certiorari* in the Court of Appeals),<sup>[13]</sup> Receipt of Payment,<sup>[14]</sup> and Affidavit<sup>[15]</sup> - which were duly filed with the NLRC and CA. The Conditional Satisfaction of Judgment states, in part:

1. x x x. **That payment is hereby made to complainant only to prevent imminent execution that this Honorable Office and the complainant are undertaking.**

2. xxxx

3. That by virtue of said conditional payment of the judgment award x x x, herein complainant will no longer pursue the execution proceedings he initiated by virtue of the judgment x x x.

4. That this Conditional Satisfaction of Judgment is without prejudice to herein respondents' Petition for Certiorari pending with the Court of Appeals docketed as **CA GR SP No. 124685** x x x; and this Conditional Satisfaction of Judgment is being made only to prevent imminent execution being undertaken by this Honorable office and complainant.

**5. That Complainant understands that in case of reversal and/or modification x x x by the Court of Appeals and/or the Supreme Court, he shall return whatever is due and owing to shipowners/manning agents without need of further demand.**<sup>[16]</sup>  
(Emphasis in the original)

On the other hand, the Affidavit essentially states:

3. x x x. **That I understand this . payment is being made by the shipowners/manning agents to me only to prevent further execution proceedings that I have initiated with the National Labor Relations Commission (NLRC);**

4. That I understand that the conditional payment of the judgment award is without prejudice to the shipowners/manning agents' Petition for *Certiorari* pending with the Court of Appeals docketed as **CA GR SP No. 124685** x x x;

5. That I understand that the payment of the judgment award x x x includes all my past, present and future expenses and claims, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim;

6. That I have no further claims whatsoever in any theory of law against the Owners of **MV 'NIKOMARIN'** because of the payment made to me. That I certify and warrant that I will not file any complaint or prosecute