

## SECOND DIVISION

[ G.R. No. 183054, September 29, 2010 ]

**NFD INTERNATIONAL MANNING AGENTS, INC./BARBER SHIP MANAGEMENT LTD., PETITIONERS, VS. ESMERALDO C. ILLESCAS, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> of the Court of Appeals' Decision dated October 23, 2007 in CA-G.R. SP No. 97941, and its Resolution dated May 9, 2008 denying petitioners' motion for reconsideration. The Decision of the Court of Appeals nullified and set aside the decision of the National Labor Relations Commission (NLRC), and ordered petitioners to pay respondent the amount of US\$90,000.00 as disability benefit. The Resolution dated May 9, 2008 denied petitioners' motion for reconsideration and awarded respondent attorney's fees.

The facts are as follows:

On September 6, 2002, respondent Esmeraldo C. Illescas entered into a Contract of Employment with petitioner NFD International Manning Agents, Inc., acting for and in behalf of its foreign principal, co-petitioner Barber Ship Management, Ltd. Under the contract, respondent was employed as Third Officer of *M/V Shinrei* for a period of nine months, with a basic monthly salary of US\$854.00. The employment contract complied with the Philippine Overseas Employment Administration (POEA) Standard Contract for Seafarers, and the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels under Department Order No. 4, series of 2000.

After respondent passed the pre-employment medical examination, he boarded the vessel and started performing his job on October 6, 2002.

On May 16, 2003, when respondent had been on board the vessel for seven months, Captain Jaspal Singh and Chief Officer Maydeo Rajev ordered respondent to carry 25 fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. The next day, while carrying a heavy basketful of fire hydrant caps, respondent felt a sudden snap on his back, with pain that radiated down to the left side of his hips. He immediately informed the ship captain about his condition, and he was advised to take pain relievers. As the pain was initially tolerable, he continued with his work. After a few days, the pain became severe, and respondent had difficulty walking.

On May 27, 2003, when the vessel was in Japan, respondent was brought to the Higashiogishima Clinic. Respondent was diagnosed to be suffering from lumbago and sprain. The doctor gave respondent medication and advised him to wear a

corset, avoid lifting heavy objects and get further examination and treatment if the symptoms persisted.<sup>[2]</sup>

Despite the lighter work assigned to respondent, he continued to experience excruciating pain. On June 13, 2003, petitioner was referred to a doctor upon arrival of *M/V Shinrei* at the port of Hay Point, Australia. The doctor declared that respondent was unfit to work, and recommended that respondent return home for further management.<sup>[3]</sup>

On June 14, 2003, respondent was repatriated to the Philippines. On June 17, 2003, respondent was referred to the Alegre Medical Clinic under the care of Dr. Natalio G. Alegre II. Dr. Alegre advised respondent to undergo a lumbo-sacral x-ray, and later a Magnetic Resonance Imaging (MRI) of his lumbo-sacral spine. The MRI revealed multi-level disc dessication, broad-based central and left-sided posterior disc herniation, L4 L5, with severe canal stenosis.<sup>[4]</sup> Dr. Alegre recommended laminectomy and discectomy.<sup>[5]</sup>

On August 27, 2003, respondent underwent a laminectomy with discectomy at the St. Luke's Medical Center. He was discharged from the hospital on September 6, 2003. Thereafter, he underwent physical rehabilitation. Nevertheless, medical examinations showed that there was still restriction in respondent's truncal mobility and in the lifting power of his trunk.

As his condition did not improve, respondent sought the expertise of Dr. Marciano F. Almeda, Jr., a specialist in occupational medicine and orthopedics, at the Medical Center Muntinlupa for the assessment and evaluation of his health condition and/or disability. Dr. Almeda found that respondent sustained partial permanent disability with an impediment Grade of 11 (14.93%), described as "slight rigidity or one-third loss of motion or lifting power of the trunk" under the POEA Standard Contract for Seafarers.<sup>[6]</sup> Dr. Almeda declared that respondent was unfit to work at sea in any capacity as a seaman.<sup>[7]</sup>

On December 29, 2003, petitioners received a letter<sup>[8]</sup> dated December 16, 2003 from respondent's counsel, demanding the payment of disability benefit. The claim was referred to Pandiman Philippines, Inc., the local correspondent of the P&I Club with which petitioner Barber Ship Management Ltd. was affiliated. In the meantime, respondent filed a Complaint with the Arbitration Branch of the NLRC.

During the preliminary conferences in this case, the parties explored the possibility of settlement. In a letter<sup>[9]</sup> dated April 12, 2004, Pandiman Philippines, Inc, in behalf of petitioners, offered to pay respondent disability benefit in the amount of US\$16,795.00, corresponding to Grade 8 disability under the POEA Standard Contract for Seafarers. Respondent, through counsel, refused the offer on the ground that the injury sustained by him was caused by an accident, which was compensable in the amount of US\$90,000.00 under the Collective Bargaining Agreement (CBA), thus:

If a seafarer/officer, due to no fault of his own, suffers permanent disability ***as a result of an accident*** while serving on board or while

traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which, including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US\$70,000 for ratings and US\$90,000 for officers.<sup>[10]</sup>

Since the parties failed to arrive at an agreement, the NLRC directed them to file their Position Papers.

In his Position Paper,<sup>[11]</sup> respondent submitted that Section 20 (B.6) of the POEA Standard Contract for Seafarers provides:

x x x x

In case of permanent total or partial disability of a seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from the illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

However, respondent stated that he is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), which has a CBA with petitioners. Under the CBA, he is entitled to a higher disability benefit in the amount of US\$90,000.00, since his injury resulted from an accident while carrying a basketful of heavy fire hydrant caps on board the vessel.<sup>[12]</sup>

Respondent prayed that petitioners be ordered to pay him disability benefit in the amount of US\$90,000.00, illness allowance equivalent to 120 days, as well as moral and exemplary damages, and attorney's fees.

In their Position Paper,<sup>[13]</sup> petitioners countered that it is the POEA Standard Contract for Seafarers, and not the CBA, that governs this case. They stated that Black's Law Dictionary defined "accident" as an unusual, fortuitous, unexpected, unforeseen or unlooked for event. They argued that respondent's disability was not the result of an accident, as respondent was merely performing his normal duty of transporting fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. During the performance thereof, no unusual, unforeseen and unexpected event transpired as proved by the absence of any accident report. Moreover, respondent's Affidavit did not mention the occurrence of any accident which gave rise to his injury. Petitioners argued that, since no accident took place, the disability benefits under the CBA do not apply to this case.

Petitioners further averred that based on the assessment of its accredited-clinic, the Alegre Medical Clinic, respondent suffered from Grade 8 disability, described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." During the preliminary conference, they offered to pay respondent disability benefit

in the amount of US\$16,795.00 for the Grade 8 disability under Section 32 of the POEA Standard Contract for Seafarers.<sup>[14]</sup>

The main issue for resolution before the Labor Arbiter was whether the disability of complainant (respondent) was compensable under the provision of Article 13 of the CBA in the amount of US\$90,000.00.

On January 6, 2005, the Labor Arbiter rendered a Decision<sup>[15]</sup> finding respondent entitled to disability benefit under the CBA in the amount of US\$90,000.00 as 100% compensation; US\$3,456.00 (US\$864 x 4) as sickness allowance equivalent to 120 days; and US\$9,345.60 as attorney's fees, or a total of US\$102,801.60. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents NFD International Manning Agents, Inc. and Barber Ship Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of ONE HUNDRED TWO THOUSAND EIGHT HUNDRED ONE US DOLLARS & 60/100 (US\$102,801.60) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.

All other claims are DISMISSED for lack of merit.<sup>[16]</sup>

The Labor Arbiter held that the injury suffered by respondent was the result of an accident arising out of, and in the course of, his employment while carrying the heavy fire hydrant caps, and that his injury was unexpected and unforeseen by him.

Moreover, the Labor Arbiter stated that respondent was declared unfit to work by the physician who treated him in Australia, which was confirmed by Dr. Marciano Almeda, Jr. of the Medical Center in Muntinlupa when he declared complainant "unfit to work back at sea in any capacity as a Seaman." The Labor Arbiter also noted that both Dr. Natalio Alegre, the company physician, and Dr. Marciano Almeda, Jr., respondent's independent doctor, assessed respondent's disability as "partial and permanent disability." Hence, the Labor Arbiter held that respondent's disability was 100% compensable under the CBA in the amount of US\$90,000.00, and not merely under the Standard Crew Contract.

Petitioners appealed the Labor Arbiter's decision to the NLRC.

In a Decision<sup>[17]</sup> dated July 13, 2006, the NLRC modified the decision of the Labor Arbiter, as it awarded respondent disability benefit under Section 32

of the POEA Standard Contract for Seafarers.<sup>[18]</sup> The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the assailed decision is hereby modified by deleting the award of US\$102,801.60 and instead ordering respondent NFD International Manning Agents, Inc. and Barber Ship

Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of Sixteen Thousand Seven Hundred Ninety-Five US Dollars (US\$16,795.00) at the prevailing rate of exchange at the time of actual payment representing his disability benefit.<sup>[19]</sup>

The NLRC held that the injury sustained by respondent was not the result of an accident, although it arose out of his work. It stated that the task of carrying hydrant caps was not a fortuitous, unusual or unforeseen event, or a marine peril. According to the NLRC, back pains or chest-trunk-spine injuries are inherent in the job of carrying heavy objects, and the injury may occur over a period of time or on the spot depending upon the physical strength and posture of the workers.

The NLRC deleted the award for sickness allowance based on the letter dated June 9, 2004 of petitioner NFD International Manning Agents, Inc. to Pandiman Philippines, Inc. The letter stated that respondent's illness allowance from June 15, 2003 to October 14, 2003 (120 days) had already been processed and remitted to respondent's bank account. The NLRC held that the payment of the sickness allowance may be presumed, since respondent did not dispute the letter.

The NLRC also deleted the attorney's fees awarded to respondent on the ground that there was no unlawful withholding of payment of benefits in view of petitioners' compromise offer of US\$16,795.00, which was the amount of disability benefit awarded by the NLRC to respondent.

Respondent's motion for reconsideration<sup>[20]</sup> was denied by the NLRC for lack of merit in a Resolution<sup>[21]</sup> dated December 7, 2006.

Respondent filed a special civil action for *certiorari* with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that his injury was not the result of an accident on board the vessel; in not applying the pertinent provisions of the CBA; and in deleting the award of attorney's fees.

On October 23, 2007, the Court of Appeals rendered a Decision<sup>[22]</sup> in favor of respondent. The dispositive portion of the Decision states:

WHEREFORE, finding merit in the petition, We hereby GRANT the same. The assailed Decision and Resolution of the NLRC are NULLIFIED and SET ASIDE. Private respondents are ORDERED to pay petitioner the amount of US\$90,000.00 as disability benefits.<sup>[23]</sup>

The Court of Appeals, citing *Jarco Marketing v. Court of Appeals*,<sup>[24]</sup> held that respondent's disability resulted from an accident as the injury was unforeseen and happened without any fault on his part.

The appellate court declared that the Labor Arbiter correctly applied Article 13 of the CBA<sup>[25]</sup> in awarding respondent disability benefit in the amount of US\$90,000.00. It ruled that the NLRC acted with grave abuse of discretion amounting to lack or