622 Phil. 772

FIRST DIVISION

[G.R. No. 182623, December 04, 2009]

DIONISIO M. MUSNIT, PETITIONER, VS. SEA STAR SHIPPING CORPORATION AND SEA STAR SHIPPING CORPORATION, LTD., RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Dionisio M. Musnit (petitioner) entered into a 3-month contract of employment with respondent Sea Star Shipping Corporation (Sea Star), a local manning agency acting for and in behalf of its co-respondent Sea Star Shipping Corporation, Ltd., as chief cook on board the vessel M/V Navajo Princess with a basic monthly salary of US$ 486.00.[1]

After undergoing a Pre-Employment Medical Examination conducted by a company-designated physician, petitioner was declared "fit for sea service"[2] and commenced working on October 30, 2001.

His contract, which was for three months, was extended by seven months.[3]

Before his contract expired, petitioner, sometime in August 2002, while on board the vessel, felt a throbbing pain in his chest and shortening of breath which made him feel as if he were about to fall. By his claim, he reported his condition to his officer who ignored it, however.[4] As the pain persisted, he resorted to pain relievers.[5]

Upon completion of his contract, petitioner was repatriated to the Philippines on October 31, 2002 following which he, again by his claim, immediately reported to Sea Star's office and informed it of his condition, but that he was never referred to a doctor for consultation.[6]

Seven months after his repatriation, petitioner sought re-employment with Sea Star. During his pre-employment medical examination on May 26, 2003 at the American Outpatient Clinic, petitioner was diagnosed with "error of refraction, hyperglycemia, cardiac dysrhythmia, and atrial fibrillation with rapid value response"[7] on account of which he was declared unfit for sea duties and was denied further deployment.

Petitioner underwent further medical examination at the Jose R. Reyes Medical Center in the course of which he was also diagnosed as having "osteoarthritis, hypertensive cardiovascular disease and acute upper respiratory infection."[8]

On June 9, 2004, petitioner sought a third opinion from Dr. Efren R. Vicaldo who declared him unfit to board ship and work as a seaman in any capacity.[9] Moreover, Dr. Vicaldo assessed his disability with an Impediment Grade IX and considered his

illness to be work-aggravated.[10]

Petitioner thereupon lodged a claim for disability benefits from Sea Star which denied the same, however, drawing him to file a complaint against it, docketed as NLRC-OFW Case No. (L) 04-06-01688-00, for Medical Reimbursement, Sickness Allowance, Permanent Disability Benefits, Compensatory Damages, Moral Damages, Exemplary Damages, and Attorney's fees.[11]

By Decision[12] of March 20, 2006, the Labor Arbiter dismissed the complaint for lack of merit,[13] finding that petitioner was "able to finish the term of his employment contract and accordingly repatriated due to `completion of contract.'" [14] Furthermore, the Arbiter found "no records or evidence or any report of any incident which would show that complainant suffered an illness or injury while on board the vessel"[15] to entitle him to disability benefits in accordance with Section 20(B) of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.[16]

The National Labor Relations Commission (NLRC), by Resolution[17] of August 28, 2006, dismissed petitioner's appeal, it finding no evidence to support his claim that he suffered the illness during the term of his contract,[18] and "there was nothing to back up his claim that he was repatriated for medical reasons."[19]

Petitioner's Motion for Reconsideration having been denied by the NLRC, he filed a Petition for *Certiorari*[20] before the Court of Appeals which, by Decision of December 26, 2007,[21] dismissed the same, it noting that the medical examination on May 26, 2003, which declared him "unfit to work," was made only *after* the completion of his contract and during his application for re-employment;[22] and that while petitioner claimed that his sickness was a result of his continuous employment, he failed to have himself checked by the company-designated doctor in accordance with the mandatory requirement for post-employment medical examination.[23]

Discrediting petitioner's claim that his complaints, while on board the vessel, were ignored, the Court of Appeals ruled:

> While it may be true that petitioner reported his illness to his officers, as alleged, said officers were not named. Thus, this fact belies his claim that his continuous service with the respondent company resulted to his sickness or that he incurred said illness during the term of contract.[24]

His Motion for Reconsideration having been denied[25] by Resolution of April 22, 2008,[26] petitioner filed this present Petition for Review on Certiorari.[27]

Petitioner argues that, among other things, his illness is reasonably work-related, relying primarily on the earlier assessment made by Dr. Vicaldo.[28] Enumerating the various hazards[29] to which a ship cook may be exposed, he goes on to argue that the term "work-related" entails merely a probability, not certainty, of exposure

to the risk of illness.[30] Petitioner thus claims entitlement to sickness allowance and to disability benefits under paragraphs 3 & 6, respectively, of Section 20(B) of the POEA Standard Employment Contract, contending that his affliction falls within the meaning of Occupational Diseases under Section 32-A paragraph 11[31] of the Standard Contract.

Respecting his failure to comply with the mandatory reportorial requirement under paragraph 3, Section 20(B) of the Standard Contract, petitioner advances that the same was due to respondents' refusal to extend him any medical assistance despite his information to them of his condition. Petitioner claims anyway that the requirement is not absolute, citing *Wallem Maritime Services, Inc. v. National Labor Relations Commission.*[32]

The petition fails.

Section 20 (B) of the POEA Standard Employment Contract reads:

> 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 within 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 x[33] (italics and underscoring supplied)

Section 20(B) provides for the liabilities of the employer only when the seafarer suffers from a **work-related** injury or illness **during the term of his employment.**[34]

Petitioner claims to have reported his illness to an officer once on board the vessel during the course of his employment.[35] The records are bereft, however, of any

documentary proof that he had indeed referred his illness to a nurse or doctor in order to avail of proper treatment. It thus becomes apparent that he was repatriated to the Philippines, not on account of any illness or injury, but in view of the completion of his contract.

But even assuming that petitioner was repatriated for medical reasons, he failed to submit himself to the company-designated doctor in accordance with the post-employment medical examination requirement under the above-quoted paragraph 3 of Section 20(B) of the POEA Standard Employment Contract. Failure to comply with this requirement which is a *sine qua non* bars the filing of claim for disability benefits.[36]

> All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.**[37] (emphasis and underscoring supplied)

Without any valid excuse, petitioner did not submit himself to a company-designated physician for medical examination within three days from his arrival in the Philippines. He submitted himself for medical examination to the company-designated physician only on May 26, 2003,[38] or seven months after his repatriation following the completion of his previous contract, only because he was procuring further employment from respondent Sea Star.[39]

Petitioner's claim that he immediately reported to Sea Star office upon disembarkation and informed it of his present condition was discredited by the Labor Arbiter, which was affirmed by the NLRC and the appellate court. Such factual determination is a statutory function of the NLRC.[40]

As for petitioner's invocation of the ruling in *Wallem Maritime Services, Inc. v. National Labor Relations Commission*[41] in support of his contention that the requirement of post-employment medical examinations within three days from return to the Philippines is not absolute,[42] the same is misplaced. *Wallem's* dictum reads:

> . . . [T]he seaman shall submit himself to a post-employment medical examination by the 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 within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory requirement shall result in his forfeiture of the right to claim the above benefits (underscoring supplied).
>
> Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA standard employment contract. But such requirement is not absolute and admits of