

THIRD DIVISION

[G.R. No. 163838, September 25, 2008]

WALLEM MARITIME SERVICES, INC. AND WALLEM SHIP-MANAGEMENT HONGKONG, LIMITED, PETITIONERS, NATIONAL LABOR RELATIONS COMMISSION AND TIBURCIO D. DELA CRUZ, RESPONDENTS.

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 28, 2004 Court of Appeals (CA) Decision,^[1] which affirmed with modification the May 26, 2003 Decision^[2] and October 30, 2003 Resolution^[3] of the National Labor Relations Commission (NLRC) on the claim for disability benefits of Tiburcio D. dela Cruz (respondent) against Wallem Maritime Services, Inc. (WMSI) and Wallem Shipmanagement Hongkong Limited, (WSHL).

The material facts are of record.

Petitioner WMSI, acting as manning agent of petitioner WSHL, hired respondent as messman under an employment contract which provides:

- | | |
|--|--|
| 1.1. Duration of Contract: 91.2. Position: Messman
Months | |
| 1.3. Basic Monthly Salary: US\$407.00 | 1.4. Hours of Work: 44
Hours/Week |
| 1.5. Overtime: US\$226.2/mo. for 85 hrs. | 1.6. Vacation Leave with Pay -
US\$2.66/hr. |
| 1.7. Point of Hire MANILA | Excess Overtime -
US\$2.66/hr.
Seniority Pay -
US\$5.25/Month |

The terms and conditions of the Revised Employment contract [POEA-SEC] governing the employment of Filipino seafarers approved per Department Order No. 33 and Memorandum Circular No. 55, series of 1996, shall be strictly and faithfully observed.^[4]

Respondent was deployed on November 1, 1999^[5] to board his vessel *M/V Vanadis* at Fujairah, United Arab Emirates where his work as messman involved manually carrying and loading seastores/supplies.

Sometime in March 2000, respondent complained of pain on his left groin radiating to his lower back area. He was examined in Fujairah by petitioner's accredited physician, who issued a medical certificate that respondent was not fit to resume

sea duties.^[6] Thus, on March 22, 2000, respondent was repatriated to the Philippines where, from March 23, 2000 through November 22, 2000, he was examined and treated at the Metropolitan Hospital under Dr. Robert D. Lim and other physicians accredited with petitioners.

Petitioners paid for the costs of respondent's treatment.^[7] They also paid him sickness allowance equivalent to his monthly wage, but only for the period of 120 days or from March 23, 2000 to July 24, 2000.^[8]

On November 22, 2000, Dr. Lim issued the following medical report:

This is a follow-up report on Mr. Tiburcio dela Cruz diagnosed to have disc dessication, L3-4 and L4-L5 decompression laminectomy, L4-L5 on May 27, 2000.

Patient was initially seen here at Metropolitan Hospital on March 23, 2000.

He has been under the care of our orthopedic surgeon.

He is now asymptomatic.

Our orthopedic surgeon opines that patient is now fit to work.

He was pronounced fit to resume sea duties as of November 22, 2000.

Final diagnosis - Disc dessication, L3-L4 and L4-L5

- S/P Decompression Laminectomy, L4-L5.^[9] (Emphasis supplied)

Respondent signed a Certificate of Fitness for Work whereby he released petitioners from any liability for his injury.^[10]

On August 2, 2001, respondent filed with the NLRC Arbitration Branch (Labor Arbiter) a Complaint against petitioners for payment of permanent total disability benefits in the amount of US\$50,000.00.^[11] Claiming that the November 22, 2000 fit-to-work medical report issued by Dr. Lim was false, respondent argued that he was actually suffering from a total permanent disability as established by the following evidence: first, he was certified not fit to work by petitioners' accredit physician in Fujairah (Annex "C");^[12] and second, the Overseas Workers' Welfare Administration (OWWA) issued to him an Impediment Grade - Medical Evaluation Report (Annex "E"), which stated that he was suffering from an impediment grade six and that he was entitled to 50% disability benefits.^[13]

Petitioners disputed the factual basis of respondent's claim.^[14]

In a Decision dismissing the complaint, the Labor Arbiter (LA) held that Dr. Lim's medical report was conclusive, because the latter was the company-designated physician who actually examined and treated respondent for eight months.^[15] Dr.

Lim's findings could not be overturned by a contrary medical report issued by a doctor at OWWA who did not actually examine respondent but merely referred to earlier medical reports on the latter's condition prior to treatment.^[16] Neither can Dr. Lim's findings be outweighed by the medical report issued in Fujairah months before respondent underwent treatment in the Philippines.^[17]

Respondent appealed to the NLRC which issued a Decision dated May 26, 2003 reversing the LA Decision and partly granting respondent's claim, thus:

x x x To our mind, complainant-appellant submitted substantial and preponderant evidence to support his claim for disability pay taking into consideration the fact that it was the company physician in Fujairah, designated by respondent-appellee [herein petitioners] Wallem Shipmanagement Limited itself who declared respondent unfit for duty, ***which declaration held ground even after the lapse of the 120 days treatment period. We also considered the fact that complainant-appellant was never again summoned for sea duty by respondents-appellees, a fact which likewise reasonably lead to the conclusion that he is no longer fit for work.***

The only thing left is the determination of the rightful amount which complainant-appellant [herein respondent] shall be entitled to receive under the circumstances of the instant case. We cannot, however, award total or one hundred percent disability pay in favor of complainant [herein respondent] for lack of basis for such amount. Submitted by complainant-appellant [herein respondent] on record is an Impediment grade of Six (6) issued by the Overseas Worker's Welfare Administration (OWWA), an agency tasked to provide or facilitate welfare benefits for both seabased and landbased overseas Filipino workers.

x x x x

WHEREFORE, after extended and careful deliberations on both factual circumstances and legal conclusions herein considered, the assailed decision of the Labor Arbiter dated 14 September 2001 is hereby REVERSED and SET ASIDE. Respondents-appellees [herein petitioners] are ordered to pay complainant-appellant [herein respondent] his disability benefit in the amount of twenty-five thousand U.S. dollars (US\$25,000.00) or its Philippine peso equivalent at the time of actual payment plus attorney's fees of twenty-five percent (25%) of said amount or an aggregate sum of thirty-seven thousand five hundred U.S. Dollars (US\$37,500.00) or its equivalent in Philippine pesos at the time of actual payment.

SO ORDERED.^[18] (Emphasis supplied)

Petitioners filed a motion for reconsideration but the NLRC denied it.^[19]

Petitioners questioned the NLRC decision and resolution before the CA but the latter affirmed the same, albeit with modification, to wit:

WHEREFORE, the Decision dated May 26, 2003 rendered by the public respondent National Labor Relations Commission in NLRC CA No. 030814-02 (NLRC OFW (M) 2001-06-278-30) is hereby AFFIRMED with modification that the twenty-five (25%) percent attorney's fees is hereby DELETED.

SO ORDERED. [20]

Without first filing a motion for reconsideration from the CA Decision, petitioners sought its reversal by the Court on the following grounds:

5.1. The Honorable Court of Appeals gravely erred when it refused to correct or to reverse the palpably erroneous interpretation made by the National Labor Relations Commission of Section 20 [B]{3} of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels.

5.1.1. Section 20[B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels could not have been intended to force or to constrain shipowner's accredited doctors to either declare an ailing seafarer fit to resume sea duties or permanently disabled within a period of one hundred twenty (120) days. To interpret Section 20 [B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels as forcing or constraining ship-owners' accredited doctors to either declare an ailing seafarer fit to resume sea duties or permanently disabled within a period of only one hundred twenty (120) days would be to defeat the very purpose of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels which is to ensure that Filipino seafarers are able to obtain the best possible terms of employment.

5.2. Had the Honorable Court of Appeals, in the exercise of its jurisdiction over the subject petition for *certiorari* filed before it, chosen to correct or to reverse the palpably erroneous interpretation made by the National Labor Relations Commission of Section 20 [B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, it would have been left with no recourse but to affirm the Decision dated 22 October 2001 issued by the Hon. Labor Arbiter Napoleon M. Menese

5.2.1. The evidence adduced by the parties before the Hon. Labor Arbiter Napoleon M. Menese very plainly establishes the lack of merit of respondent's claim for disability compensation.

[21]

Petitioners' recourse is in vain.

The terms and conditions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) which the parties incorporated into their

employment contract grant respondent compensation and benefits should he suffer from an illness or injury, subject to the following conditions:

Section 20-B. *Compensation and Benefits for Injury or Illness.* - The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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. (Emphasis supplied)

The NLRC interpreted Section 20-B(3) to mean that if a seafarer is repatriated on the basis of a certification issued by a company-designated physician overseas that said seafarer is not fit to resume sea duties, such finding shall remain valid until the seafarer is declared fit to work by the company-designated physician in the Philippines; but if, after 120 days from the repatriation of the seafarer, no such fit-to-work declaration is made by the company-designated physician in the Philippines, the presumption will arise that the seafarer suffered from a permanent disability based on the earlier not-fit-to-work assessment made by the company-designated physician overseas. In the case of respondent, the NLRC ruled that the assessment by petitioners' accredited physician in Fujiarah that respondent was not fit to work held sway because Dr. Lim failed to overturn such finding within 120 days from respondent's repatriation.^[22]

The CA sustained this view of the NLRC.^[23]

In disputing the foregoing interpretation of the CA and the NLRC, petitioners argue