

ELEVENTH DIVISION

[CA-G.R. SP NO. 138875, March 16, 2015]

MICHAEL JOHN MOLETA MALAGA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), BSM CREW SERVICE CENTRE PHILS. INC. AND/OR BERNHARD SCHULTE MANAGEMENT (CYPRUS) LTD. AND/OR MR. NARCISSUS L. DURAN, RESPONDENTS.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is a Petition for *Certiorari*^[1] dated 29 January 2015 under Rule 65 of the Rules of Court, assailing the Decision^[2] dated 09 October 2014 and Resolution^[3] dated 25 November 2014 of the National Labor Relations Commission (Fourth Division) in *NLRC LAC NO. OFW-M-07-000572-14; NLRC NCR (M)-02-01263-14*, which dismissed the appeal for lack of merit and affirmed the Decision^[4] dated 10 June 2014 of Labor Arbiter Beatriz T. De Guzman, and denied the Motion for Reconsideration, respectively.

Private respondents filed their Comment/Opposition^[5] dated 16 February 2015, to which petitioner filed his Reply^[6] dated 05 March 2015. Thus, the second paragraph of the Resolution^[7] dated 05 February 2015 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

On 06 February 2014, complainant Michael John Moleta Malaga filed a Complaint^[8] for disability benefits in the amount of US\$60,000.00, damages and attorneys fees against respondents BSM Crew Service Centre Phils., Inc. and/or Bernhard Schulte Shipmanagement (Cyprus) Ltd. and/or Narcissus L. Duran.

Complainant filed his Position Paper^[9] dated 28 April 2014. It was alleged, *inter alia*, that: he was employed as an oiler or motorman on board the vessel MT "Chem Ranger" under a POEA-approved contract dated 24 July 2012; he was employed by BSM Crew Service Centre Phils. Inc. for its principal Bernhard Schulte Shipmanagement for nine (9) months with a basic monthly salary of US\$545 per month; prior to his deployment, he underwent a Pre-Employment Medical Examination ("PEME," for brevity) and he was found fit to work; during the term of his POEA Contract with the respondents and while he was working on board the subject vessel, he suffered from Adjustment Disorder with Anxiety and Tract Infection; he was medically repatriated and arrived on 19 December 2012; at the Marine Medical Services, he was found to be suffering from Adjustment Disorder with Anxiety and Tract Infection; he was under treatment at the Marine Medical Services from 21 December 2012 to 02 May 2013 making him unable to work for

more than 120 days; he was also examined by an independent doctor who is an expert in the field, Dr. Alma M. Lucindo-Jimenez ("Dr. Jimenez," for brevity) of St. Luke's Medical Center; he continues to suffer from his illness, which is beyond the 120 days under the *Abante and Crystal Shipping* cases; his disability will not permit him to work again as a seafarer as he is now suffering from a permanent medical unfitness; and he is entitled to the maximum disability compensation of US\$60,000.00.

He averred that: he has sufficient cause of action against the respondents for disability benefits under the POEA Contract as all the requisites necessary to recover compensation are present; he usually worked in enclosed premises with no exhaust fans; he inhaled or absorbed chemicals coming from the oil or lubricants; per the Medical Certificate issued by Mariner's Clinic in Vancouver, he was diagnosed to have upper respiratory tract infection and urinary tract infection ("UTI," for brevity); what he suffered on board the vessel is work-related since he was fit and passed the PEME; while on board the vessel, he had cough with yellow sputum, recurring fever, and pain when urinating with blood in his urine; because of the pain, sickness and the feeling of helplessness, he suffered from Adjustment Disorder with Anxiety; he is permanently and fully disabled; because of his illness, he can no longer work as a seafarer; since 240 days had already lapsed without any certification issued by the company-designated physician, he can be declared as permanently and fully disabled; he is entitled to an award of moral damages because the respondents acted with bad faith, malice and wanton attitude towards him when they refused to pay him his disability benefits; he is also entitled to exemplary damages because the unjustified refusal of respondents to pay him his disability benefits is a gross violation of the POEA Standard Employment Contract; and since he was compelled to litigate, he is entitled to the award of attorney's fees. It was prayed that judgment be rendered ordering the respondents to pay him disability benefits in the amount of US\$60,000.00; moral damages in the amount of Php1,000,000.00; exemplary damages in the amount of Php200,000.00; and attorney's fees of 10% of the total monetary award.

On 28 April 2014, respondents filed their Position Paper.^[10] It was averred, *inter alia*, that: complainant was employed by BSM Crew Service Centre Philippines, Inc. for and in behalf of its principal Bernhard Schulte Ship Management to board the vessel Chem Ranger as a motorman under a 9-month POEA approved employment contract dated 24 July 2012; he joined the vessel on 26 July 2012 and was sent back home on 19 December 2012 after he complained of difficulty of sleeping while on board the subject vessel; upon his arrival in Manila, respondents referred complainant to the company-designated physician Dr. Mylene Cruz-Balbon ("Dr. Balbon," for brevity), for initial evaluation on 26 December 2012; it was opined that complainant might be suffering from T/C Adjustment Disorder with Anxiety, and T/C Urinary Tract Infection; he was referred to a urologist and thereafter underwent psychological test and neuropsychiatric evaluation; per Medical Report dated 02 May 2013 of the company-designated physician, complainant was cleared with regard to his kidney condition while as to his neurological condition, he needed to undergo repeat psychological test and if the result showed good response and the mental status examination is normal, he can be cleared with regard to his condition; Dr. Balbon noted in her Medical Report that UTI and glomerulonephritis are not work-related while psychiatric disorders are usually the result of multiple interacting and contributory factors; per Report dated 06 June 2013, the company-designated physician Dr. Roberto D. Lim opined that his final disability remains to be Grade 10

due to slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with his working capacity; and during his medical treatment, his sickness allowance and medical expenses were all paid by respondents for humanitarian reasons.

It was further alleged, *inter alia*, that: complainant is not entitled to full disability benefits under the POEA-SEC because he is not suffering from a Grade 1 disability; he was cleared as regard his UTI and the same is not work-related; complainant's PEME dated 11 July 2012 reveals that he ticked off the item "alcohol" and admitted consuming 3-4 bottles of beer per occasion; medical articles explained how alcohol triggers UTI; assuming that complainant indeed has UTI, it was his alcohol intake which aggravated the same and not his work as a seafarer; complainant was assessed, neuro-psychiatric wise, with a Grade 10 disability rating by the company-designated physician; his Adjustment Disorder with Anxiety is not classified under Grade 1 disability but falls under Grade 10 disability which provides for slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant; his disability can only be assessed by the company-designated physician; he is not entitled to damages and attorney's fees, there being no bad faith on the part of the respondents in denying his exorbitant claim for permanent disability benefits; and respondent Narcissus L. Duran should be dropped in this case as he was not the employer of complainant. It was prayed that the case be dismissed for utter lack of merit.

Complainant filed his Comment^[11] dated 12 May 201(4) to which respondents filed their Reply^[12] dated 12 May 2014. Complainant and respondents filed their respective Rejoinders^[13] dated 26 May 2014.

On 10 June 2014, Labor Arbiter Beatriz T. De Guzman rendered a Decision,^[14] the dispositive portion of which reads:

"WHEREFORE, premises considered, the complaint for permanent disability is dismissed for lack of merit. Herein named respondents BSM CREW SERVICE CENTRE PHILS., INC., BERNHARD SCHULTE SHIPMANAGEMENT (CYPRUA) LTD. And NARCISSUS L. DURAN are ordered to pay, jointly and severally, complainant MICHAEL JOHN MOLETA MALAGA the amount of US\$10,075, or its peso equivalent at the time of payment, representing his Grade 10 disability compensation benefit under the POEA Standard Employment Contract for Seafarers.

All other claims are dismissed for lack of merit.

SO ORDERED."^[15]

Complainant filed a Notice of Appeal with Memorandum of Appeal^[16] dated 27 June 2014, to which respondents filed their Comment and Opposition^[17] dated 01 July 2014. Complainant then filed his Reply^[18] dated 18 July 2014.

On 09 October 2014, the NLRC (Fourth Division) rendered its assailed Decision,^[19] the dispositive portion of which reads:

"IN VIEW WHEREOF, the complainant's appeal is **DISMISSED** for lack of merit. The appealed Decision of the Labor Arbiter is **AFFIRMED** in toto.

SO ORDERED."^[20]

Complainant filed a Motion for Reconsideration^[21] dated 24 October 2014, which was denied in the assailed Resolution^[22] dated 25 November 2014.

Hence, this Petition.

R U L I N G

Petitioner raises the following grounds for allowance of his Petition, viz:

"THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION BY DENYING PETITIONER'S CLAIM FOR FULL DISABILITY BENEFITS;

THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION BY NOT AWARDING DAMAGES AND ATTORNEY'S FEES."^[23]

Petitioner contends, *inter alia*, that: per the Medical Certificate issued by the Mariners Clinic located in Vancouver, he was diagnosed to have upper respiratory tract infection and UTI; he is entitled to permanent disability benefits for his illness is work-related, specially since he was fit and had passed the PEME; although his illness is not included under Section 32-A of the POEA Contract, it is still disputably presumed to be work-related; his work as an oiler can be presumed to have contributed to his ailment; if the injuries or disabilities with a disability grading from 2 to 14 will incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled; if a seafarer's illness prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled; and respondents grossly breached their contractual duty to pay him his disability benefits, hence, he is entitled to moral and exemplary damages, as well as attorney's fees.

Private respondents riposte, *inter alia*, that: petitioner failed to discharge his burden of proving that his illness is work-related; the company-designated physician made a categorical declaration that UTI and glomerulonephritis are not work-related while psychiatric disorders are usually the result of multiple interacting and contributory factors; as to petitioner's Adjustment Disorder with Anxiety, the company-designated physician gave a final disability rating of Grade 10 – due to slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the patient's working capacity; petitioner's personal doctor Dr. Jimenez also diagnosed his Post Traumatic Stress Disorder as partly resolved; petitioner's personal doctor did not categorically declare that he is now permanently unfit for sea duties; loss of earning capacity cannot be based on mere presumptions; and since no malice, bad faith or ill motive can be imputed against private respondents, petitioner is not entitled to damages and attorney's fees.

The Petition is bereft of merit.

[J]udicial review of decisions of the NLRC via petition for *certiorari* under Rule 65, as a general rule, is confined only to issues of lack or excess of jurisdiction and grave abuse of discretion on the part of the NLRC. (This Court) does not assess and weigh the sufficiency of evidence upon which the LA and the NLRC based their conclusions. The issue is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion in rendering the resolution, except if, the findings of the NLRC are not supported by substantial evidence.^[24] Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered 'grave,' the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act (at) all in contemplation of law.^[25]

The pivotal issue in this case is whether or not public respondent committed grave abuse of discretion in affirming the Labor Arbiter's Decision, which dismissed the Complaint for permanent disability benefits and ordered private respondents to pay petitioner the amount of US\$10,075.00 representing petitioner's Grade 10 disability compensation benefit under the POEA Standard Employment Contract for Seafarers, and in denying the Motion for Reconsideration.

We find in the negative.

The terms and conditions of a seafarer's employment, including claims for xxx disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein.^[26] The POEA-approved Contract of Employment^[27] of petitioner is dated 17 July 2012. Section 20 (A) (3) and (6) of the 2010 POEA Standard Employment Contract ("2010 POEA-SEC", for brevity) provides:

"SECTION 20. Compensation and Benefits. —

A. 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. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120*