

## TWELFTH DIVISION

[ CA–G.R. SP No. 132345, March 27, 2014 ]

**BSM CREW SERVICE CENTRE PHILIPPINES, INC. AND/OR  
BERNHARD SCHULTE SHIPMANAGEMENT AND/OR NARCISSUS L.  
DURAN, PETITIONERS, VS. SPOUSES ROLANDO M. PINGOL AND  
SUSANA C. PINGOL AND NATIONAL LABOR RELATIONS  
COMMISSION (SIXTH DIVISION), RESPONDENTS.**

### DECISIONS

**DICDICAN, J.:**

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.<sup>[1]</sup>

Before us is a petition for Certiorari<sup>[2]</sup> with application for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by BSM Crew Service Centre Philippines, Inc. and/or Bernhard Schulte Shipmanagement and/or Narcissus L. Duran ("petitioners") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Decision<sup>[3]</sup> promulgated by the National Labor Relations Commission on June 28, 2013 in the case docketed as NLRC NCR Case No. OFW-M-04-06472-12 (NLRC LAC No. 02-000213-13). Likewise assailed is the Resolution<sup>[4]</sup> promulgated by the NLRC dated August 14, 2013 denying the Motion for Reconsideration thereof.

The material and relevant facts of the case, as culled from the record, are as follows:

The present petition stemmed from a Complaint for the payment of permanent disability benefits, attorney's fees and damages filed by Spouses Rolando M. Pingol and Susana C. Pingol ("private respondents spouses") against the herein petitioners which was docketed as NLRC NCR Case NO. OFW-M-04-06472-12.

Private respondent Rolando Pingol ("private respondent") started working as a Messman for petitioner BSM Crew Service Centre Philippines, Inc. in 1990 for its foreign principal Bernhard Schulte Shipmanagement. In August 2011, the herein private respondent was hired by the petitioners as Chief Cook on board the vessel Rebecca Schulte. They executed a Contract of Employment which was duly approved by the Philippine Overseas Employment Administration ("POEA"). The Contract of Employment stated the following terms and conditions with addendum, to wit:

"1.1 Duration of  
Contract

Nine (9) Months

"1. 2 Position	Chief Cook
"1.3 Basic Monthly Salary	US\$ 577.00/month
"1.4 Hours of Work	44 hours per week
"1.5 Bonus	US\$57.00/month"

Likewise, private respondent was a member of the Associated Marine Officers and Seaman's Union of the Philippines which has a Collective Bargaining Agreement with Bernhard Schulte Shipmanagement (IOM) Ltd.

As a requirement prior to being embarked on the aforementioned vessel, private respondent completed the mandatory prerequisite medical/physical examinations and passed them . Thus, on August 30, 2011, the private respondent commenced his employment with petitioners.

Sometime in December 2011, private respondent was noted to have been showing signs of mental instability. He refused to speak with anybody and he refused to move even inside his cabin. Private respondent was disoriented and had visual hallucinations. He was seen by the vessel's Master and was placed under close observation.

Subsequently, private respondent was seen by a physician and was advised to be brought to a medical facility for further treatment and evaluation. On December 21, 2011, private respondent was referred to a hospital in Ulsan, Korea and initial diagnosis was *R/O* Psychosis. The doctor advised that the private respondent be examined by a psychologist for proper diagnosis and treatment.

As synthesized in the NLRC Decision dated June 28, 2013, the following facts were established thereafter, thus:

"Upon recommendation of the examining physician, the Complainant was medically repatriated on December 26, 2011. He was promptly referred to the company-designated physician at the Metropolitan Medical Center where he was confined for several days. The attending physician's initial finding was that the Complainant was suffering from Adjustment Disorder with Anxiety and Depressed Mood. The Complainant underwent medical and psychological examinations thereafter. He exhibited at times of irritability and complains of sleep fragmentation with episodes of nightmares, blurring of vision and hearing impairment. In February 2012, the Complainant was noted to have recurrent flashbacks very irritable with violent tendencies that his admission for close monitoring was immediately recommended by the attending physician. He was given medications which somehow alleviated his depression although he complains of drowsiness and auditory hallucination. In a medical report dated March 29, 2013, the company-designated physician reported that the Complainant has been diagnosed to be suffering from Brief Psychotic Disorder; to consider Eustachian Tube Dysfunction. He was also given an Interim Assessment of Grade 6 or moderate brain functional disturbance

which limits the worker to the activities of daily living with some directed care or attendance.”

The herein private respondent was also referred to a Clinical Psychologist of the Veterans Memorial Medical Center who administered a series of tests upon which she based her evaluation that the private respondent has Psychiatric and Organic Disorder. After being unable to return to work, private respondent Rolando, represented by his wife, claimed for permanent disability benefits in accordance with the CBA, damages and attorney's fees against the herein petitioners by filing his Complaint before the Labor Arbiter in Quezon City.

After the parties failed to amicably settle their differences at the conciliation stage of the proceeding, the parties were directed by the Labor Arbiter to file their respective position papers which they did. Subsequently, on August 31, 2012 the Labor Arbiter promulgated a Decision<sup>[5]</sup>, the dispositive portion of which states:

“WHEREFORE, premises considered, judgment is entered FINDING respondents BSM CREW SERVICE CENTRE PHILIPPINES, INC. (Respondent/local agency), Bernhard Schulte Shipmanagement Ltd, (respondent/Principal Abroad), Narcissus L. Duran, Other respondent jointly and severally liable to seafarer ROLANDO M. PINGOL permanent and total disability benefits under the parties Collective Bargaining Agreement Ordering thus said named respondents in said joint and several capacities to pay complainant Rolando Pingol as represented by his wife and legal guardian in this case, Susana C. Pingol.

“All other claims are dismissed for lack of merit.

“SO ORDERED.”

Unsatisfied with the Labor Arbiter’s disposition, petitioners appealed from the former’s Decision to the NLRC. On June 28, 2013, the Sixth Division of the NLRC promulgated the herein assailed Decision which denied petitioners' appeal, to wit:

“**WHEREFORE**, there being no reversible error having been committed by the Labor Arbiter in rendering the assailed Decision dated August 31, 2012, the same is AFFIRMED and the appeal is DISMISSED for lack of merit.

“SO ORDERED.”

Petitioners then filed a Motion for Reconsideration of the said Decision of the NLRC. On August 14, 2013 the NLRC issued a Resolution denying petitioners’ Motion for Reconsideration.

Unperturbed, the herein petitioners filed the present petition before this Court raising the following acts of grave abuse of discretion purportedly committed by the NLRC, to wit:

#### I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT DISMISSING THE CASE DESPITE THE FACT THAT THE PRIVATE RESPONDENTS HAD NO CAUSE OF ACTION AGAINST THE PETITIONERS.

## II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RELIED ON THE WRONG COLLECTIVE BARGAINING AGREEMENT.

## III.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DISREGARDED THE DISABILITY GRADING ISSUED BY THE COMPANY-DESIGNATED PHYSICIANS.

Prefatorily, it is worthy to emphasize that the Standard Employment Contract (SEC) for seafarers was created by the Philippine Overseas Employment Administration (POEA) pursuant to its mandate under Executive Order (E.O.) No. 247 dated July 21, 1987 to 'secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith' and to 'promote and protect the well-being of Filipino workers overseas'. The entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.

Thus, deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

"SECTION 20. COMPENSATION AND BENEFITS -

"B. 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:

"xxx.

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

So, pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable: first, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

In the case at bench, petitioners claimed that the NLRC gravely abused its discretion when it failed to dismiss the private respondents' complaint for lack of cause of action. According to the petitioners, there was no finding of any disability, whether total or partial, from the company-designated physician at the time of the filing of the complaint.

Petitioners likewise argued that NLRC gravely abused its discretion and acted in arbitrary and whimsical manner when it disregarded the findings and disability grading issued by the company-designated physician.

We do not agree with the foregoing contentions advanced by the petitioners.

In the case at bench, there is no quibble that the herein private respondent is entitled to a permanent total disability. Indeed, in the case of *Seagull Maritime Corporation, et al. v. Dee and NLRC*,<sup>[6]</sup> the Supreme Court's ruling is instructive, to wit:

"Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These evidences will in turn be used to determine the benefits rightfully accruing to him.

"Besides, we have consistently ruled that disability is intimately related to one's earning capacity. The test to determine its gravity is the impairment or loss of one's capacity to earn and not its mere medical significance. *Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform*, or any kind of work which a person of his mentality and attainment can do. It does not mean state of absolute helplessness but *inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain* and without material injury or danger to life. In disability compensation, it is not the injury per se which is compensated but the incapacity to work.

"Although private respondent's injury was undeniably confined to his left foot only, we cannot close our eyes, as petitioners would like us to, to the inescapable impact of private respondent's injury on his capacity to work as a seaman. In their desire to escape liability from private respondent's rightful claim, petitioners denigrated the fact that even if private