

## **SPECIAL TWENTY-SECOND DIVISION**

**[ CA-G.R. SP NO. 05491-MIN, June 27, 2014 ]**

**REYNA SHIPPING SERVICES, INC., PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND RADNIER A. BOOC  
RESPONDENTS.**

### **D E C I S I O N**

**INTING, J.:**

Before Us is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the December 28, 2012 Decision<sup>[1]</sup> and the March 27, 2013 Resolution<sup>[2]</sup> of the National Labor Relations Commission 8<sup>th</sup> Division, Cagayan de Oro City, finding for the private respondent and denying the petitioner's motion for reconsideration, respectively. The dispositive portion of the December 28, 2012 Decision affirmed in the March 27, 2013 Resolution states:

"WHEREFORE, foregoing premises considered, the appeal is PARTIALLY GRANTED and the appealed decision is SET ASIDE and VACATED. In lieu thereof, a new judgment is rendered ordering respondent Reyna Shipping Services, Inc. and Norbulk Manning Services, Ltd., through their responsible officers, to jointly and severally pay complainant Radnier A. Booc the following:

1. P39,715.16 representing reimbursement for his medical expenses;
2. US\$3,224 or its equivalent Philippine currency at the time of payment representing his sickness allowance;
3. US\$60,000.00 or its equivalent Philippine currency at the time of payment representing his permanent total disability benefit; and
4. Attorney's fees equivalent to ten percent (10%) of the total amount of the awarded benefits.

SO ORDERED."

The facts of the case are as follows:

Private respondent Radnier A. Booc was hired by herein petitioner Reyna Shipping Services, Inc. sometime in April 2011 for a 12-month contract as a fitter assigned to MV Alcantara Carrier.

While on board the vessel, the private respondent allegedly had two (2) accidents on separate occasions. The first was on August 12, 2011 when while trying to remove a lube oil cooler cover, he twisted his body and felt a snap on his lower back; and the second, on August 15, 2011 while standing, he accidentally fell on a

checked plate bar and landed on his buttocks. Private respondent sustained back injuries as a result of the aforementioned incidents which prompted him to request their vessel master Capt. Balan to allow him for a medical consultation. Per Doctor's Requisition Form dated August 18, 2011, the private respondent was diagnosed with traumatic arthritis and was recommended to disembark to get medical attention and rest for two (2) weeks.<sup>[3]</sup> On the same day, the private respondent underwent a lumbar exam where he was found to have bony spurs along the lateral margins of the lumbar spine.<sup>[4]</sup> On August 19, 2011, the MRI of his lumbar spine came out with the impression: "*disc degeneration and diffuse disc bulge, L4-5 and L5-S1, resulting to minimal central canal and bilateral foraminal stenosis at the same levels.*"<sup>[5]</sup>

Meanwhile, Capt. Balan, in an email dated August 20, 2011, advised the petitioner that the private respondent has felt back pains since their arrival while performing his daily maintenance work job and thus will be sent to a doctor for medical check-up. The letter was received by the incoming vessel master Capt. Tampus who was to take over Capt. Balan.

On his follow-up consultation on August 22, 2011, the private respondent was urged to undergo physiotherapy three times a week for two weeks.<sup>[6]</sup>

In the meantime, the vessel was scheduled to leave port on August 24, 2011. The private respondent, fearing that any additional physical strain would aggravate his state, requested that he be left behind for treatment. The petitioner allegedly ignored his plea and disregarded the doctor's instructions. The private respondent failed to embark and the ship sailed without him.

On September 30, 2011, the private respondent continued to feel the same pain as before and the physician attributed this on his failure to take his medications. Hence, the private respondent was again subjected to an additional two (2) weeks of Physical Therapy and encouraged to take his medications.<sup>[7]</sup>

Thereafter, the private respondent's condition worsened. Per October 17, 2011 medical certificate,<sup>[8]</sup> he was already diagnosed with spinal radiculopathies, T/C fatty liver and was advised to see a gastroenterologist for work up of gastritis.

With inadequate finances, and knowing that his medical treatments would be compromised, the private respondent filed an action for monetary claims against the petitioner for underpayment of his salaries, overtime pay, disability benefits, and refund of medical expenses, damages, and attorney's fees.

On the other hand, the petitioner presents a different account of events asseverating that the private respondent never informed Capt. Balan of the accidents that may have caused his back pains. The information was only reported when Capt. Tampus took over as master of the vessel. Since he was not present during the alleged unfateful incidents, he requested one of his men and the private respondent to make an incident/accident report. However, despite repeated demands, the private respondent was unable to submit the report which was a condition precedent for the reimbursement of his medical expenses and other refundable costs. Worse, on August 24, 2011, the private respondent failed to board the vessel. Capt. Tampus had no recourse but to leave port without the private respondent. This led the petitioner to file a complaint against the private respondent

before the POEA Adjudication Office for unjustified breach of employment contract, desertion and insubordination.

The Labor Arbiter dismissed the private respondent's complaint finding that the latter's submission of the accident report is incumbent for the petitioner to process his medical claims and his stubborn refusal to do so cannot be countenanced.<sup>[9]</sup>

Aggrieved, the private respondent appealed to the NLRC contending that the accident report is not a condition precedent to a medical assistance; and that he is now totally and permanently disabled with his limited physical movements which would prevent him from getting deployed as a fitter again.<sup>[10]</sup>

In answer to the private respondent's appeal, the petitioner maintains that it is the private respondent's duty and obligation to submit the accident report; that his refusal proved the petitioner's suspicions that the illness was not acquired during his employment with them; and that the illness must have been existing prior to his employment and was due to his age or wear and tear and not by the supposed accident. The petitioner likewise doubts that there was indeed an accident since no witnesses were presented by the private respondent.

Further, the petitioner avers that the private respondent's doctor's requisition is fabricated because as it appears, the doctor saw the private respondent as unfit for duty; however, upon clarification by the physician per letter dated January 25, 2012, he did not check the box indicating that the private respondent was unfit for duty since a traumatic arthritis will not justify such finding as the illness can be relieved by medication. Thus, the private respondent was just advised to disembark to undergo further work up.<sup>[11]</sup>

Furthermore, the petitioner adds that private respondent should not be allowed to raise as an issue his alleged permanent disability since this was not raised before the arbiter but was only brought up for the first time in the private respondent's position paper. Even if it will be given consideration, the private respondent's claims cannot hold water because there was no showing that he could no longer perform his job for more than 120 days and the physician's recommendation for him to merely disembark to get medical attention and rest for two (2) weeks belie the allegation of total and permanent disabilities. Moreover, there was no medical opinion of the company designated physician as to the private respondent's claimed disability which is necessary for him to be entitled to such claims.

The petitioner also denied that the private respondent requested that he be allowed to stay in Davao for his treatment. On the contrary, the private respondent purportedly left the vessel without permission abandoning his post. The medical findings suggest that the private respondent disembark to have himself examined on shore and rest for two (2) weeks. This, however, means that he should rest on board and not anywhere else.<sup>[12]</sup>

The NLRC rendered the impugned Decision finding: that the conditions for the compensability of the private respondent's disability namely: 1.) that the injury/illness was suffered during the term of the contract; and 2.) that it was reasonably connected/ related to the sea farer's work, were met as the private respondent's injury occurred during his employment with the petitioner; that while

there was no direct evidence that there was an accident which caused his back pains, it can be reasonably supposed that his illness could have probably been caused in the course of performing his work which involved heavy lifting and crouching, hence putting physical strain on his torso and back; that actual proof of the cause is not necessary to justify compensability but only probability and substantial proof; that the accident report is not material because the private respondent is not suing for the injuries caused by the accident but for the illness he suffered arising from the performance of his work; that the private respondent is entitled to a free medical treatment until he is declared fit to work; that the doctor's recommendation was for him to rest for two (2) weeks which was the reason for his failure to report to work and board the vessel; that the petitioner was duly notified of the private respondent's ordeal, hence the latter had substantially complied with the mandatory reporting to entitle him to his sickness allowance and claims for total and permanent disability; and that as per medical record, he is no longer fit to perform his usual work or any work of similar nature, and the failure to have himself examined by a company designated doctor is not his fault as it was the petitioner which neglected to refer him to a company designated doctor.

The petitioner's motion for reconsideration was denied.

Hence, this petition with a prayer for writ of preliminary injunction imputing grave abuse of discretion by the public respondent NLRC. The petitioner avers that NLRC could not ascertain that the alleged accident caused the private respondent's back pains; that the private respondent already had this illness even before he was employed with them, hence his refusal to make an accident report despite repeated demands to avoid discovery by the company physician thus, he should not be entitled to the total and permanent disability benefits; that aside from the fact that the private respondent failed to have himself checked before the company doctor, there was also no proof that he could no longer perform his job for more than 120 days; and that the Doctor's Requisition Form is fake as the physician denied that he diagnosed the private respondent as unfit for duty.

The writ for preliminary injunction was granted per May 2, 2014 Resolution.<sup>[13]</sup>

#### Our Ruling.

Petition is partly with merit.

The special civil action for certiorari under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[14]</sup> Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.<sup>[15]</sup>

Was the NLRC guilty of arbitrariness in holding the petitioner liable for the private respondent's medical reimbursement, sickness allowance, and disability benefits?

#### I. Medical Reimbursement.

Section 20 of the amended standard terms and conditions governing overseas employment of Filipino seafarers (2000 POEA-SEC) provides that the employer shall be liable when the seafarer suffers work-related injury or illness during the term of

his contract and if the seafarer requires medical treatment in a foreign port, the employer shall be liable for the full cost of such medical or hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated. 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.

Two (2) elements must concur for an injury or illness of a seafarer to be compensable. First, the injury 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.<sup>[16]</sup> A work-related injury or illness are defined as those resulting in disability or death arising out of and in the course of employment or any sickness resulting to disability or death as a result of an occupational disease listed under Section 32 of the 2000 POEA-SEC with the conditions therein satisfied.<sup>[17]</sup>

Here, the private respondent was diagnosed with having traumatic arthritis which occurs following an injury, excessive movement or physical trauma and caused by among others, sports injury, car accident, blunt force trauma, fall, injury at work, fracture or overuse and these result to damage to the articular cartilage resulting in pain, swelling and tenderness.<sup>[18]</sup> There is not a cure for this but it is possible to minimize the pain and other symptoms of this condition.<sup>[19]</sup> It is important to seek immediate help for traumatic arthritis as any delay thereof can lead to prolonged problems such as osteoarthritis.<sup>[20]</sup> In his succeeding lumbar examinations, the private respondent was diagnosed with disc degeneration, disc bulge, foraminal stenosis and spinal radiculopathies aside from having a fatty liver.

A degenerative disc disease (DDD) in the lumbar spine or lower back refers to a syndrome in which a compromised disc causes low back pain.<sup>[21]</sup> Although there is a genetic component to individuals who suffer from DDD, the true cause is probably multifactorial. It could be from simple wear and tear, or may have a traumatic cause.<sup>[22]</sup> A bulging disc is attributed to several factors including poor posture, a sudden unexpected load to the intervertebral discs which can occur in traumatic situations which may happen due to the nature of the sudden force exerted through the body at the time of the impact, poor lifting techniques such as bending forward and pulling with one's back.<sup>[23]</sup> Other factor is environmental in nature such as excessive abdominal fat, poor core stability, poor lower limb strength and nature of occupation.<sup>[24]</sup> Lumbar Foraminal Stenosis is caused by a number of different spinal issues such as degenerative disc disease, bone spurs, herniated disc, bulging disc and osteoarthritis.<sup>[25]</sup> Radiculopathy is a pinched nerve in the spine that occurs when surrounding bones, cartilage, muscle, or tendons deteriorate or are injured. The trauma causes these tissues to change position so they exert extra pressure on the nerve roots in the spinal cord.<sup>[26]</sup>

From the foregoing, it cannot be denied that the pain and injuries suffered by the private respondent are work-related. As a fitter, his duties included the lifting of heavy objects or equipment and working in confined spaces in a crouching position that would unavoidably put physical strain on his lower back. Following such line of work, it is not therefore, beyond the bounds of probability for the private respondent to contract trauma on his spine upon which his diagnosis were founded. Granting