

FIFTH DIVISION

[CA-G.R. SP NO. 131589, November 28, 2014]

**STOLT-NIELSEN PHILIPPINES, INC. and JANE SY, Petitioners, vs.
NATIONAL LABOR RELATIONS COMMISSION and ANDRES M.
SUCK, Respondents.**

DECISION

BARZA, J.:

Assailed in this petition for certiorari under Rule 65 is the Resolution^[1] of the public respondent National Labor Relations Commission (NLRC) dated 27 March 2013, in OFW (M) 03-03742-12 (LAC No. 01-000093-13), which affirmed the Decision^[2] of the Labor Arbiter dated 29 November 2012, granting to private respondent Andres M. Suck his permanent total disability and benevolent fund. The NLRC Resolution^[3] dated 25 June 2013 denying reconsideration filed by petitioners is likewise being assailed.

The facts as summarized by the Labor Arbiter are, as follows:

"It appears from the record that on May 31, 2011, complainant was hired by the respondent local manning agency, acting for and in behalf of the respondent principal, to work as Chief Cook on board the vessel 'Stolt Fulmar' for a period of nine (9) months with a basic monthly salary of US\$792.00. After passing the required pre-employment medical examination, complainant departed from the Philippines to join the vessel of his assignment. Complainant's employment is covered by an overriding collective bargaining agreement.

Complainant claims that he was employed by respondent Stolt for thirty (30) contracts for the span of 30 years, that is, from 1981 up to his last contract of employment entered into on May 31, 2011; that on October 6, 2011, while the vessel was at the port of Rotterdam, Netherlands, he collapsed while lying on his bed and lost consciousness; that upon recovery of his consciousness, he vomited and was admitted at the hospital from October 7 to 8, 2011; that upon discharge, he was again sent back to his assigned vessel where he again performed his duties and functions as chief cook.

Complainant further claims that on October 25, 2011, he was medically repatriated; that upon arrival in Manila on October 26, 2011, he was brought to the company physician, Dr. Fidel C. Chua and was referred to a psychiatrist, Dr. Raymond L. Rosales; that after tests conducted and examinations made, Dr. Rosales in his follow-up report dated January 20, 2012 diagnosed complainant to be suffering from Anxiety Disorder and

recommended complainant for disability; that Dr. Chua became angry upon presentation to him of the follow-up report made by Dr. Rosales and even questioned asked (sic) complainant why he wanted to go on disability; that complainant was complainant (sic) was asked by Dr. Chua to set an appointment with Dr. Rosales as the former was determined to have complainant declared fit for employment; that Dr. Rosales was surprised to see complainant considering he was already recommended for disability; that sometime in February 2012, complainant was asked by Dr. Chua to sign a form which he later came to know as a declaration of fitness to work. Further, complainant alleges that sometime in February 2012, complainant was informed by respondent Stolt's Crewing Officer that his employment was put on hold that he would not be hired; that he was also advised to sign a prepared letter, which later turned out to be an application for retirement, for the release of his benevolent fund; x x x; that a follow-up check with Dr. Rosales confirmed that is (sic) suffering from Generalized Anxiety Disorder; that Dr. Rosales made a recommendation for his disability and was advised to continue his medication; that complainant consulted Dr. J.M. Castillo-Carcereny, a renowned psychiatrist, for a second opinion; that complainant was found by Dr. Castillo-Carcereny to be suffering from severe Generalized Anxiety Disorder which is severe in character; that complainant was advised not to return to work due to the severity of his disability and considering that the somatic manifestations of his illness are triggered with the exposure to the demands of past employment, causing symptoms to increase in severity; that despite such findings, respondents refused to grant complainant his disability benefits under the CBA. Finally, complainant claims respondents also refused to release to (sic) his Benevolent Fund and his service bonus.

Respondents on the other hand claim that on October 07, 2011, complainant complained of stomach pain and as part of the standard procedure onboard the vessel, he was sent to a doctor in Rotterdam, Amsterdam for treatment; that complainant was found to have epigastric pain DD gastritis and was given medication; that complainant was thereafter declared fit for duty and fit to travel by the attending doctor; that the Master of the vessel deemed it better if he can be sent home early to take vacation and rest; that on October 25, 201 (sic), complainant left his vessel; that apart from his epigastric pain DD gastritis, complainant never had any other medical complaint nor was there any record of other medical complaints while he was working onboard his vessel from June 4 to October 25, 2011; that upon arrival in the country, complainant was referred to the respondents' company designated doctor, Dr. Fidel Chua of Trans-Global Health System Inc; that laboratory results ruled out medical possibilities of Transient Global Brain Ischemia and abnormal thyroid function hence complainant was only given medication for anxiety disorder; that on February 20, 2012, complainant was found asymptomatic of any illness including gastritis and anxiety disorder and thus was given neuropsychiatric clearance; that complainant signed a Certificate of Fitness to Work dated 21 February 2012; that after complainant was declared and certified as completely cured and fit to work, complainant Suck was referred back to Dr. Fidel Chua on February 27, 2012 for PEME and further asked to return for

other required laboratory examinations; that complainant instead of reporting for further examinations, filed this instant case; that during the mandatory conference of the case, complainant clearly stated that he was asking for disability Grade 12 equivalent to US\$7,759.00.

In his Reply, complainant belies respondents' allegation that he allegedly complained of stomach pain and was sent to Rotterdam, Amsterdam for treatment and was sent home by the Master of the vessel of Stolt Fulmar for an early vacation. Instead he maintains that per his medical report, he was admitted to Rotterdam because he collapsed on his bed while the vessel was in Rotterdam and vomited upon recovery of his consciousness. Complainant further claims that the email sent by J. Allot (j.allot@stolt.com) dated October 14, 2011, addressed to respondents' crewing officer shows that he was repatriated upon request of the respondents' principal for health reasons and for further medical check up and not upon instruction of the Master of vessel for him to go on early vacation which respondents are again insinuating. Complainant further maintains that he is entitled to his claim against herein respondents. Respondents on the (sic) hand maintained that complainant is not entitled to such claim."^[4]

In the decision dated 29 November 2012, the Labor Arbiter held that the permanency of Suck's injury/illness is not disputed, and his General Anxiety Disorder is compensable. The CBA entered into between AMOSUP and petitioners covers all Filipino crew members on board Stolt Tankers Fleet Vessels. Section 11.2.1 of the CBA covers work-related illness or injury suffered by the seafarer while in the employ of Stolt, and seafarers who became permanently disabled as a result of work-related illness or injury while in the employment of the company shall be entitled to disability compensation. Suck has been a seafarer for 30 years and been assigned by Stolt to various vessels. His GAD was acquired during the course of his employment with Stolt.

The Labor Arbiter also struck down the statements made by Dr. Chua that Dr. Rosales could not have recommended Suck's disability. Dr. Rosales is a renowned doctor specializing in neurology and psychiatry, who could not have recommended the permanent disability of complainant without properly assessing his health condition. As further held, when Dr. Chua referred the case of Suck to Dr. Rosales, the former certainly could have trusted the qualifications and abilities of Dr. Rosales to render a correct medical opinion in having referred Suck for examination and treatment, not to mention the fact that Dr. Rosales was already appraised by Dr. Chua of said parameter set under the POEA Contract for Seafarers after Dr. Rosales issued his follow-up report dated 20 January 2012 recommending Suck for disability. The Labor Arbiter found as illogical and absurd the assertion that it was Suck who asked Dr. Rosales to declare him permanently disabled for sea duty. Citing jurisprudence where findings of the independent physicians were given more credence than those of the company-designated physicians, the Labor Arbiter held that between the comprehensive psychiatric evaluation made by Dr. Carcereny and the declaration in the affidavits made by Dr. Chua and Dr. Rosales, wherein the latter doctor disclaimed having declared Suck's disability, Dr. Carcereny's evaluation is more credible.

As for Suck's entitlement to the benevolent funds, having been declared to be totally and permanently disabled, the Labor Arbiter granted the same, pursuant to Article 14.3 of the CBA and the Members Booklet which provides that seafarers are entitled to disability benefits when his disability lasted for more than 120 days and that it is the company (Stolt) who approves the disability claim and advise the administrator of said approval. Attorney's fees equivalent to ten (10%) of the total award was also awarded by the Labor Arbiter.

The dispositive portion of the Labor Arbiter's decision reads:

"WHEREFORE, a decision is hereby rendered ordering respondents to pay complainant his permanent total disability in the amount of US\$89,100.00 and benevolent fund benefit as of December 21, 2006 in the sum of US\$7,490.47, in its peso equivalent at the time of payment, plus 10% of the total award as attorney's fees. Other claims are denied.

SO ORDERED.

On appeal by the petitioners, the NLRC upheld the Labor Arbiter. Reconsideration sought by the petitioners was denied.

Hence, this petition on the following grounds:

A

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE ARBITER'S ERRONEOUS FINDING THAT THE ILLNESS OF PRIVATE RESPONDENT:

(A) WAS ACQUIRED DURING HIS PERIOD OF EMPLOYMENT; AND

(B) IS A WORK-RELATED ILLNESS AS DEFINED UNDER THE POEA CONTRACT.

B

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE ARBITER'S ERRONEOUS FINDING THAT THE ILLNESS HAS BECOME PERMANENT AFTER THE LAPSE OF 120 DAYS FROM INITIAL TREATMENT.

C

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF SEAMAN'S DISABILITY BENEFIT TO PRIVATE RESPONDENT BASED ON THE FINDINGS OF THE SEAMAN'S OWN PRIVATE DOCTOR WHEN;

(A) THE PRIVATE DOCTOR'S FINDINGS IS INCONCLUSIVE OF WHETHER THE ILLNES IS WORK-RELATED OR NOT;

(B) THE POEA CONTRACT, AS WELL AS THE COLLECTIVE BARGAINING AGREEMENT AND EXISTING JURISPRUDENCE, UPHELD THE AUTHORITY OF THE COMPANY-DESIGNATED DOCTOR TO MAKE SUCH DETERMINATION OF WORK-RELATED ILLNESS, AND

(C) THE PROPER PROCEDURE IS TO APPOINT A THIRD DOCTOR TO RESOLVE THE CONFLICT BETWEEN THE COMPANY DOCTOR AND THE SEAMAN'S PRIVATE DOCTOR.

D

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE AWARD OF BENEVOLENT FUNDS AND DAMAGES TO PRIVATE RESPONDENT WITHOUT LEGAL BASIS.

In his Comment^[5], private respondent contends that no grave abuse of discretion has been committed by the NLRC. As posited, the findings of the NLRC in affirming the decision of the Labor Arbiter declaring Suck entitled to disability and benevolent fund benefits are well-supported with overwhelming evidence. Suck's disability, in this case, has been declared twice by the company-designated physician. Also, from 27 October 2011 until his last consultation with Dr. Rosales, more than 120 days has lapsed. The Members Booklet on disability also provides that disability benefit is paid if the disability lasted for more than 120 days.

It is also posited that aside from the presumption on work-related character of the injury or illness suffered by the seafarer during the term of the contract, Suck has established with overwhelming evidence the work-related character of his illness at the time that Suck was repatriated to the Philippines for further medical check-up, he was then under a contract with the petitioners and assigned to the vessel Stolt Fulmar. The company-designated physician, Dr. Rosales recommended Suck for disability finding him suffering from GAD, which finding was confirmed by the comprehensive psychological evaluation of Dr. Carcereny whose evaluation of Suck was never disputed. Further, Suck argues that causative circumstances had been shown in this case leading to his disability during the term of his employment and in line with his work as a seafarer with the petitioners. Further, in defending his decision to seek a second opinion from an independent specialist, Suck argues that case law has allowed adopting the findings favorable to the claimant and that whatever medical report that the company-designated physician may issue will not be conclusive as the same may be disputed by promptly consulting a physician of his own choice.

Suck also finds the certificate of fitness to work as void, and intended to defraud him and deny him of his disability benefits as it is more of a waiver than a certificate. He was the one who signed it and not either Dr. Rosales or Dr. Chua.

If, as petitioner would like to impress, that Suck has been found to be asymptomatic of GAD and was found fit for duty, Suck argues that he should have been hired again. He points out that from the time that he was medically repatriated on 25