TENTH DIVISION

[CA-G.R. SP No. 127430, November 28, 2014]

TEEKAY SHIPPING PHILIPPINES, INC., TEEKAY SHIPPING LTD. AND CRISPIN ZAGALA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND RAFFY R. DIMAANO, RESPONDENTS.

DECISION

VELOSO, J.:

Before Us is a Petition for Certiorari,[1] filed under Rule 65 of the 1997 Rules on Civil Procedure, assailing the **Decision**[2] dated July 12, 2012 and **Resolution**[3] dated September 6, 2012 of the National Labor Relations Commission ("**NLRC**") in NLRC LAC No. OFW-M-000120-12 [NLRC NCR Case No. M-05-07444-11], entitled "*Raffy R. Dimaano, Complainant-Appellant -versus- Teekay Shipping Phils., Inc. and/or Teekay Shipping Limited and/or Crispin Zagala, Respondents-Appellees",* the dispositive portions of which read:

(1) **Decision dated July 12, 2012**:

> "**WHEREFORE**, the Complainant's appeal is **GRANTED**. The assailed Decision of the Labor Arbiter is **SET ASIDE**. Judgment is hereby rendered **ORDERING** the corporate respondents to pay, jointly and severally, the complainant the amount of US$60,000.00 representing his permanent total disability benefits as well as Attorney's fees equivalent to 10% of the monetary award or in their peso equivalents at the actual time of payment. Other claims are denied for lack of merit.
>
> **SO ORDERED**.[4] (emphasis supplied); and

(2) **Resolution dated September 6, 2012:**

> "**WHEREFORE**, in accordance to Section 15, Rule VII of the 2011 NLRC Rules of Procedure, let this Motion for Reconsideration be **DISMISSED** for lack of merit. No second motion of the same nature and substance shall be entertained.
>
> **SO ORDERED**."[5] (emphasis supplied)

The Facts

The antecedent facts of this case are those as narrated by Labor Arbiter Michelle P. Pagtalunan in her Decision dated November 28, 2011, *viz.*:

> "On August 3, 2010, complainant was contracted as an Ordinary Seaman by Teekay Shipping Philippines, Inc., for and in behalf of its principal Teekay Shipping Limited. On August 24, 2010, complainant joined his vessel MT Australian Spirit. On December 12, 2010, complainant complained of generalized abdominal pain and body weakness and was brought to Dr. G.B. Cross Memorial Hospital in Clarenville, Newfoundland, Canada. The Tomography Scan and Exploratory Laparotomy of complainant reveal that he was suffering from intestinal malrotation, a defect which involves the malformation of the intestinal tract. To alleviate the condition of complainant, a procedure called prophylactic appendectomy was conducted on complainant. On December 29, 2010, complainant's surgical staples were removed and he was subsequently repatriated to the Philippines. Upon repatriation, he was immediately referred by respondents to a Surgeon at the Metropolitan Medical Center for medical evaluation and treatment. As complainant's laboratory examinations showed that he had normal level of urea, nitrogen, sodium, potassium, chloride, calcium, with slightly elevated creatinine levels and, his urinalysis yielded normal results, he was advised to recuperate at home and continue his medications.
>
> Based on all the medical procedures conducted on complainant, respondents['] Surgeon who attended complainant stated that his intestinal malrotation is congenital and considered not work-related.
>
> On May 11, 2011, complainant filed this complaint."[6]

Resolving said complaint, Labor Arbiter Pagtalunan disposed it, *viz.*:

> "VIEWED FROM THE ATTENDANT CIRCUMSTANCES, the complaint at bench is DISMISSED for lack of merit.
>
> SO ORDERED."[7]

Aggrieved, private respondent appealed the decision to the NLRC.[8]

On July 12, 2012, the NLRC granted private respondent's appeal.

Unconvinced, the petitioners moved for the reconsideration of the NLRC's July 12, 2012 Decision.[9] However, the same was denied by the NLRC in its September 6, 2012 Resolution.

Hence, this petition.

Issues

In their petition, the petitioners argued that:

> "I. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN HOLDING THAT RESPONDENT IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS.
>
> A. RESPONDENT FAILED TO ADDUCE SUBSTANTIAL EVIDENCE TO SHOW THAT HIS CONDITION IS WORK-RELATED.
>
> B. PETITIONERS, THROUGH EXPERT MEDICAL OPINIONS AND MEDICAL SCIENCE, ESTABLISHED THAT RESPONDENT'S INTESTINAL MALROTATION IS CONGENITAL AND NOT WORK-RELATED.
>
> II. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT AWARDED ATTORNEY'S FEES TO RESPONDENT. "[10]

Such are the issues which We shall resolve in this petition.

Our Ruling

Grave abuse of discretion refers to a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[11]

Resolving now the **first issue**, the NLRC held:

> "After a careful review of the parties' allegations and documentary evidence as well as their arguments and comments on appeal, We find for the complainant.
>
> **Contrary to the findings of the Labor Arbiter, the complainant's intestinal malrotation has not been proven to be congenital in nature.** While the company doctors opined that it was congenital, **respondents have not adduced any evidence to support such a conclusion.** It should be noted that it was the respondents who claimed and affirmatively alleged that Dimaano's illness was not work related

because it was congenital in nature, i.e. existing at or dating from birth; hence, the *onus probandi* was upon the respondents to discharge. The party alleging a fact has the burden of proving it and mere allegation is not evidence. Absent any evidence, the company doctors' declaration that the seafarer's intestinal malrotation was congenital remained as a mere unsubstantiated allegation which was devoid of any probative value.

Anent the Labor Arbiter's ruling that the complainant was burdened to prove that there was a causal connection between the nature of his work and his intestinal malrotation, the same had no legal basis. The fourth paragraph of Section 20 (B) of the POEA SEC provides that:

> '*Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.*'

The presumption of work-relatedness initially works in favor of the disabled seafarer and its effect continues until it has been successfully rebutted by the other party. In ***The Estate of Posedio Ortega vs. The Court of Appeals and St. Vincent Shipping, Inc.***, the Supreme Court held that:

> '*x x x. An illness not otherwise listed in Section 32-A is disputably presumed work-related. This presumption works in favor of petitioner, because it then becomes incumbent upon respondents to dispute or overturn this presumption.' Underscoring Ours.*

However and as had been explained earlier, except for the unfounded declaration of their company doctors that Dimaano's illness was not work-related because it was congenital, no evidence whatsoever was adduced by the respondents to substantiate such a conclusion. Hence, the presumption that the seafarer's illness was work related stands. In ***Fil-Star Maritime Corporation vs. Hanziel Rosete***, the High Tribunal ruled that:

> '*The disputable presumption that a particular injury or illness that results in disability, or in some cases death, is work-related stands in the absence of contrary evidence. In the case at bench, the said presumption was not overturned by the petitioners. Although, the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability. Consequently, the Court concurs with the finding of the courts below that respondent's disability is compensable.' Underscoring Ours.*