

THIRTEENTH DIVISION

[CA-G.R. SP No. 136293, November 10, 2014]

**MAERSK-FILIPINAS CREWING, INC., A.P. MOLLER A/S,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(FOURTH DIVISION) AND EDGAR S. ALFEROS, RESPONDENTS.**

DECISION

LIBREA-LEAGOGO, J.:

Before this Court is a Petition for *Certiorari*^[1] dated 10 July 2014, with prayer for injunctive relief, assailing the Decision^[2] dated 30 April 2014 and Resolution^[3] dated 05 June 2014 of the National Labor Relations Commission (Fourth Division) in the case entitled "*Edgardo S. Alferos v. Maersk-Filipinas Crewing, Inc./AP Moller Maersk A/S/ Ms. Rosalia Caballero (President)*," docketed as *NLRC LAC No. OFW (M) 11-001107-13, NLRC NCR OFW Case No. (M)-04-06399-13*, which affirmed the Decision^[4] dated 16 September 2013 of Labor Arbiter Enrique L. Flores, Jr., and denied the Motion for Reconsideration for lack of merit, respectively.

Private respondent filed his Comment^[5] dated 16 September 2014, to which petitioners filed their Reply^[6] dated 24 September 2014. Thus, the third paragraph of the Resolution^[7] dated 25 July 2014 is reiterated, and the Petition is submitted for Decision.

FACTUAL ANTECEDENTS

On 29 April 2013, complainant Edgar S. Alferos filed a Complaint^[8] for disability benefits, sick wages, damages and attorney's fees against respondents Maersk-Filipinas Crewing, Inc., ("Maersk," for brevity), AP Moller Maersk A/S, and Ms. Rosalia Caballero.

In his Position Paper^[9] dated 05 July 2013, complainant alleged, *inter alia*, that: he had been employed with respondent Maersk, as Able Seaman without interruption since 1995; every time he would be redeployed for his new contract, he was subjected to a Pre-Employment Medical Examination ("PEME," for brevity) where he was always found to be fit for work; in his last employment contract, he was again hired as an Able Seaman with a basic monthly salary of US\$585.00 per month, for a period of six (6) months; his contract commenced on 10 May 2012 on board the vessel M/S Laura Maersk; while he has completed his contract with respondents, the same was mutually extended since there was no available person to take over his position on board the vessel; on 20 December 2012, while in the performance of his duty, he suddenly felt pain on his lower back and abdomen; he also experienced difficulty and pain when urinating; he reported his condition to his superior officer which later brought him to a hospital in Dubai at Dulsco Medical Clinic; he was medically examined, treated thereat, afterwards discharged and was allowed to

return to the vessel; despite the treatment in Dubai, his condition did not improve and even worsened; he was medically repatriated on 14 January 2013; upon arrival in Manila, he immediately reported to his local manning agency and the latter referred him to Metropolitan Medical Center ("MeMC," for brevity) and was treated as an out-patient; respondent presumed him to be fit to work even though he was not and assured him that he would be reemployed; to his dismay, respondent refused to reemploy him, for in truth, he was not fit to work; respondents literally abandoned him and stopped giving him his medical assistance; respondents themselves have diagnosed complainant to be unfit for work; in a Medical Evaluation of Super Care Medical Services ("Supercare," for brevity), respondents' company medical institution, he was found to be suffering from kidney stones; in the Assessment Notes as well as Medical Report of Supercare, it was stated that he is suffering from Benign Positional Vertigo and unfit for work as per Department of Health Standard; due to the stoppage of respondents' medical assistance to him, the latter sought the services of Dr. Jaime C. Balingit ("Dr. Balingit," for brevity), a urologist in St. Luke's Medical Center, and he was found to be suffering from nephrolithiasis as stated in his Examination Result dated 29 April 2013; Dr. Balingit referred him to Dr. Manuel C. Jacinto, Jr. ("Dr. Jacinto," for brevity) for further examination and treatment; complainant was found afflicted with several illnesses consisting of nephrolithiasis, diabetic nephropathy, osteoarthritis, lumbosacral spine radiculopathy, and Benign Positional Vertigo, contracted by him on board the vessel; he filed the instant case to recover his permanent disability compensation in accordance with his CBA, payment of sick wages for 120 days, moral and exemplary damages, attorney's fees and other benefits provided by law; under Section 32-A, par. 21 of the POEA-SEC, osteoarthritis is considered as an occupational disease; after he contracted the said disease, he became unfit as seafarer which entitled him to total permanent disability compensation in the sum of US\$60,000.00; there is a disputable presumption that his illness is work-related which respondents must overcome; the duties of seafarers on board the vessel are strenuous, stressful and extremely physical; seafarers like him are usually deprived of sleep as they spent sleepless nights in order to comply with their duties; they are likewise exposed to hazardous fumes, chemicals and substances that are stored on board the vessel and are likewise exposed to extreme hot or cold weather; his illnesses are compensable being work-related or work-aggravated; he has been unfit for work from the time that he was medically repatriated on 14 January 2013 up to this time; more than 120 days had elapsed since his repatriation, and as such he can be legally considered to have suffered from permanent total disability; the fact that he was not reemployed by respondents clearly shows that complainant is not fit for further seafaring services; and the act of respondents in unjustifiably withholding the payment of his permanent disability benefits as well as his sickness allowance is a clear indication that respondents acted in bad faith. Complainant prayed that respondents be jointly and severally held liable to pay him permanent disability compensation of US\$60,000.00; sick wages for 120 days in the sum of US\$2,340.00; Php300,000.00 as moral damages; Php300,000.00 as exemplary damages; and attorney's fees equivalent to 10% of the judgment award.

In their Position Paper^[10] dated 24 June 2013, respondents alleged, *inter alia*, that: the company-designated urologist Dr. Darwin Lim after continuous medication, extensive evaluation and monitoring found the complainant to be fit to work; the company-designated physician subjected him to several confirmatory and laboratory tests until the condition of prostatitis has been resolved; he was repatriated due to alleged dysuria with loin pain and back pain or difficulty in urinating; a urologist

would be the best person to diagnose and treat his condition; he has been under the care and supervision of urologist Dr. Darwin Lim since his repatriation in January 2013; for a period of roughly two (2) months, complainant has been under the care, close observation, monitoring and treatment of the company-designated physician until his fitness status was achieved on 05 March 2013; he was prescribed with appropriate medication, underwent CT Stonogram which showed normal kidney size with no evidence of radiopaque calculi or hydronephrosis, non-dilated ureters, unremarkable urinary bladder; when he has no more subjective complaints and repeat urinalysis showed normal results, it was only then that the specialist opined that he is already fit to work; the fact that he freely executed a Certificate of Fitness without coercion is but an indication of his unqualified declaration that he is already in good health; the company-designated physician issued a fitness declaration on 05 March 2013 or within 120 days from his initial consultation and treatment by the company-designated physician on 17 January 2013; there is no established link concerning his resolved prostatitis and his work on board the vessel; he did not perform tasks which would entail exposure to bacteria that could eventually get into the prostate from the urethra by backward flow of infected urine into the prostate ducts; the alleged condition of complainant is not listed as an occupational disease; the burden of proof to show work-relation is therefore placed upon the seafarer; with regard to his claim for sick wages, there is neither factual nor legal basis to grant this; Annex '11' with submarkings are pertinent vouchers evidencing payment of sick wages until 05 March 2013; he is not entitled to the payment of moral, exemplary damages and attorney's fees; and the Complaint should be dismissed for lack of merit.

Respondents filed a Reply^[11] dated 18 July 2013. Complainant also filed a Reply^[12] dated 12 August 2013. Respondents then filed a Rejoinder^[13] on 05 September 2013, while complainant filed his Rejoinder^[14] dated 04 September 2013.

Labor Arbiter Enrique L. Flores, Jr., rendered a Decision^[15] dated 16 September 2013, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents jointly and severally liable to pay: (1) the amount of US\$ 60,000.00 at its peso equivalent at the time of; (sic); (b) an (sic) ten percent (10%) of the total award as attorney's fees at its peso equivalent at the time of payment. Other claims are Dismissed.

SO ORDERED."^[16]

Respondents filed a Notice of Appeal with Memorandum of Appeal^[17] dated 08 November 2013, to which complainant filed his Comment/Opposition^[18] dated 21 November 2013.

On 30 April 2014, the NLRC (Fourth Division) promulgated the assailed Decision,^[19] the *fallo* of which reads:

"WHEREFORE, respondents' appeal is DISMISSED. Accordingly, the assailed DECISION is hereby **AFFIRMED.**

SO ORDERED."^[20]

Respondents filed a Motion for Reconsideration^[21] dated 13 May 2014(4), which was denied for lack of merit by the NLRC (Fourth Division) in the assailed Resolution^[22] dated 05 June 2014.

Hence, this Petition.

RULING

Petitioners raise the following grounds for allowance of their Petition, viz:

" The Honorable Public Respondent NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction due to the following:

- 1. In affirming the Labor Arbiter's judgment and awarding permanent total disability compensation to Private Respondent notwithstanding the categorical and well supported findings of the company-designated physician that Private Respondent is already fit to resume seafaring duties.*
- 2. In adjudging the Petitioners liable for payment of disability benefits for alleged ailments, which are neither work-related nor acquired during the term of the Private Respondent's employment with Petitioners.*
- 3. In affording more weight and consideration to the incredible, unfounded and untrustworthy medical certification of Private Respondent's doctor of choice, contrary to the express mandate of the 2010 POEA Contract that divergence of opinion between the company-designated physician and the seafarer's doctor must be resolved in accordance with a prescribed conflict-resolution procedure.*
- 4. In making tenuous and unreasonable inferences out of Private Respondent's act of voluntarily executing a Certificate of Fitness for Work.*
- 5. In holding the petitioners liable for payment of attorney's fees despite want of factual and legal justification."*^[23]

Petitioners contend, *inter alia*, that: there is no disability to speak of; after more than two (2) months of close and continuous monitoring, the company-designated physician issued a final medical certification declaring prostatitis as the final diagnosis and that private respondent is fit to work; at the time private respondent was declared fit, the company-designated physician noted that he no longer experienced symptoms such as dysuria, loin pain or back pain and the result of the

repeat urinalysis conducted already yielded normal results; the company-designated physician initially examined him on 16 January 2013 and the final medical assessment was issued on 05 March 2013; counting from 16 January 2013 up to 05 March 2013, only forty eight (48) days have elapsed, and the timely medical assessment has prevented his state of temporary disability from ripening into a permanent and total one; the conditions for which he claims disability compensation are neither work-related nor suffered during the term of the seafarer's employment; the symptoms that precipitated his repatriation were dysuria, loin pain and back pain, all of which were later on diagnosed as manifestations of prostatitis; the said condition was treated until he was declared fit to resume sea duties; the claim for compensation was on account of the alleged conditions of kidney stones/nephrolithiasis, vertigo, diabetic nephropathy, osteoarthritis, and lumbosacral spine radiculopathy; prostatitis is the swelling and inflammation of the prostate gland, while urolithiasis is the condition where urinary stones are formed anywhere in the urinary system; based on the 04 February 2013 progress report, the CT Stonogram showed normal size kidneys with no evidence of radiopaque calculi or hydronephrosis, non-dilated ureters and unremarkable urinary bladder; private respondent could not claim entitlement to permanent total disability benefits since the existence of kidney stones was ruled out in the course of his treatment; the company-designated physician confirmed that he is not suffering from urolithiasis or nephrolithiasis; what appears in private respondent's Agreement to Proceed with Further Evaluation and Management dated 19 March 2013 is "*Kidney Stones S/P medical treatment 2013*" which means that he has already undergone treatment for kidney stones; this is impossible because he has just undergone CT stonogram on 04 February 2013 and based on the results thereof, his kidneys were normal; as to the alleged Assessment Notes, where the finding of "*kidney stones s/p medication 2013*" appears, it states there that "*ff-up KUB*" which means that the KUB x-ray has not been performed and there is no basis yet for a final diagnosis of kidney stones; in the request for x-ray of lumbosacral spine, while it mentions nephrolithiasis, it is clearly stated that such was merely a provisional diagnosis; Dr. Jacinto has seen private respondent once and he could not have arrived at the various diagnoses on a single day without conducting a single diagnostic test; no disability benefits can arise from benign positional vertigo because it bears no work causation; his own evidence shows that he no longer experiences dizziness, nausea and vomiting, blurring of vision and headache which are symptoms of vertigo; Annex C of private respondent's Position Paper as to the 2nd opinion of otorhinolaryngology states that benign positional vertigo is not in acute attack and no further treatment is necessary; diabetes and its complication and nephropathy are not work-related; based on the nature of osteoarthritis, it is not work-related; osteoarthritis is a disease of the joint and he never complained of joint pains, as in fact he was referred to Dr. Jacinto due to muscle pain and not joint pain; as to how Dr. Jacinto arrived at the diagnosis of osteoarthritis remains a mystery; lumbosacral spine radiculopathy refers to nerve irritation caused by damage to the discs between the vertebrae and is not work-related; public respondent expressed doubts on the findings of the company-designated physician allegedly because there is no record that the underlying diseases that caused dysuria was ever looked into and medically addressed; public respondent laments that while the company-designated physician notes the appearance of blood in urine and the existence of right kidney calcification, the doctor immediately ruled out urolithiasis and confined his findings to prostatitis; public respondent's findings are untrue as the company-designated physician ordered the conduct of CT Stonogram which showed that private respondent's kidney has no stones and his urinary bladder unremarkable, thus the