

FOURH DIVISION

[CA-G.R. SP NO. 75724, September 19, 2006]

NYK-FIL SHIP MANAGEMENT, INC. AND/OR NYK SHIP MANAGEMENT (HONGKONG) LTD., PETITIONERS, VS. ANDRE TEJIDO ROJO AND THE HON. BISHOP TEODORO BUHAIN, IN HIS CAPACITY AS VOLUNTARY ARBITRATOR, RESPONDENTS.

D E C I S I O N

BARRIOS, J.:

Petitioners NYK-FIL Ship Management Inc. and / or NYK Ship Management (HK) Ltd. (or NYK-FIL for brevity) in this petition for certiorari asks that the Decision dated December 27, 2002 of Voluntary Arbitrator Bishop Teodoro Buhain, be reversed and set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The controversy before Us is rooted on the complaint for disability benefits filed by the respondent Andre Tejido Rojo (or Rojo) against NYK-FIL, the uncontroverted facts of which are as presented in the assailed decision as follows:

Complainant was contracted by Respondent NYK-FIL MANAGEMENT INC., a domestic corporation, on behalf of NYK-SHIP MANAGEMENT (HK) Ltd., a foreign corporation not doing business in the Philippines, as an oiler on May 1999 under terms and conditions of a Contract of Employment x x x approved by the POEA.

Complainant departed from the Philippines for his assigned ship, SS DOHA, on or about 31 May 1999 to serve his contract on board.

On or about the latter half of October 1999, within the terms of his contract and while serving on board for roughly less than five (5) months, Complainant complained of urinary discomfort and flank pain, for which Complainant sought and was provided by Respondent with medical attention. He was referred to Marmedic Services Ltd., at Ise Bay in Japan, where he was diagnosed as having "Prostatitis" (inflammation of the prostate gland) and first stage of "Hernia of Intervertebral Disc." He was prescribed appropriate medication and instructed to limit himself to light duties for fourteen (14) days xxx. He was also made to undergo laboratory examinations with results being faxed after his vessel left port. Said results appeared normal in all respects, but the attending physician cautioned that "he needed examination closely with enlargement of the prostate at hospital xxx.

Thus, Complainant was repatriated from the next convenient port on the 25th of November 1999, and as soon as practicable after his arrival in the

Philippines, he was referred to the Company's designated physicians at the Metropolitan Hospital for further evaluation and management. He was referred to both an orthopedic surgeon and a urologist for his conditions, and the diagnosis abroad was confirmed with an impression of "r/o lob back strain" "r/o herniated disc. lumbosacral area" and "prostatitis." xxx

Complainant was prescribed medication; made to undergo several diagnostic procedures, including EMG-NCV studies, MRI of the lumbosacral spine and started on regular monitoring checks-ups. He was also started on physical therapy. His MRI showed "small broad disc herniation at L5-S1 level" xxx.

Complainant was thereafter made to undergo repeated EMC-NCV studies, which showed normal findings xxx. By the 29th February 2000, he was noted to have improvement with less pain in his lumbosacral area. xxx. In the meantime, his prostatitis appear to have been cured by 22nd March 2000, while he continued to complain of back pain, and was thus continued on therapy xxx.

Complainant again underwent repeat EMC-NCV studies on the 5th of April 2000, and the same showed "S1 radiculopathy, bilateral, incomplete with acute denervation changes." Thus, his attending orthopedic surgeon recommended that he undergo laminectomy and discectomy as management for his condition xxx.

Complainant was admitted for the suggested procedures on the 3rd of May 2000. He underwent the procedures on the 4th of May 2000, and he tolerated the same well. He was thereafter fitted with a chair back brace and continued on therapy post-operatively. He was discharged on 16th of May 2000 xxx.

By the 22nd of May 2000, his wound was observed dry, and his stitches were removed. He was instructed to maintain use of his lumbar brace, and was allowed to go home to Iloilo but to continue rehabilitation there xxx. His attending physician opined at the time that "he will be fit to resume sea duties in 3-4 months barring unforeseen events."

By the 2nd of August 2000, Complainant continued to complain of lumbosacral pains, notwithstanding the fact that his repeat EMG-NCV studies showed negative findings xxx. Thereafter, as early as September 2000, his attending orthopedic surgeon pronounced that "he should be able to go back to work if he so desires" xxx.

Complainant's attending orthopedic surgeon confirmed his earlier diagnosis of Complainant's fitness by the 19th of October 2000, on the basis of his latest EMG-NCV findings which "showed normal findings compared to pre-operative findings which was abnormal" xxx. For the sake of prudence, repeat EMG-NCV studies were again done on the 6th of November 2000, which showed essentially normal results xxx. On this basis, he was declared fit to work xxx, but he refused to acknowledge the same and did not sign his certificate of fitness for work.

While undergoing treatment at the expenses of Respondent, Complainant filed the instant Complaint on or about September 2000, in which he sought to recover Grade 1 disability compensation of US\$60,000.00, plus unquantified compensation for "loss of earning capacity," "reimbursement of medical expenses," moral and exemplary damages, and attorney's fees. (pp. 44-46, rollo)

Finding that the suit involves the interpretation of the claim of disability benefits in the Collective Bargaining Agreement, the Labor Arbiter pronounced in his Order dated December 6, 2001 that he has no jurisdiction to resolve the complaint. He then ordered for the records of the case to be forwarded to the National Conciliation and Mediation Board (NCMB). The parties mutually chose the respondent Bishop Teodoro Buhain to serve as the Voluntary Arbitrator.

In settling the controversy, the Voluntary Arbitrator in his decision declared that:

Under the circumstances, therefore, Complainant should be entitled to compensation for total disability pay only amounting to US DOLLARS SIXTY THOUSAND (US\$60,000.00) or its equivalent in Philippine Pesos at the time of payment is due to the Complainant and must be paid by the Respondent. Other damages prayed for are denied for lack of merit for such award. (p. 48, rollo)

As recourse NYK-FIL filed this petition for certiorari raising as the errors for the consideration of this Court the following:

I CONTRARY TO THE EVIDENCE AND DOCUMENTS PRESENTED IN THE PROCEEDINGS A QUO, THE PUBLIC RESPONDENT VOLUNTARY ARBITRATOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT RESPONDENT ROJO WAS SUFFERING FROM DISABILITY AND IS THUS ENTITLED TO DISABILITY BENEFITS.

II THE PUBLIC RESPONDENT VOLUNTARY ARBITRATOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE MISAPPLIED THE PROVISIONS OF THE POEA STANDARD CONTRACT OF EMPLOYMENT AS WELL AS THE COLLECTIVE BARGAINING AGREEMENT, AND IN HOLDING THAT THE PROVISIONS OF THE LABOR CODE FIND APPLICATION IN THE INSTANT CASE. (p. 19, rollo)

NYK-FIL contends that contrary to the findings of the Voluntary Arbitrator, Rojo is not entitled to disability benefits. This is because the company-designated physician made no findings that Rojo was suffering from any disability, permanent or temporary, total or partial. While Rojo underwent several treatments, this was because he claimed he was experiencing lumbosacral pains. But this notwithstanding, he was declared fit to work. NYK-FIL argues that the award of the Voluntary Arbitrator of the disability benefit is an error because the basis was merely the persistent pain claimed by Rojo but which is unsubstantiated and should not be the basis for the grant of disability benefits.

NYK-FIL states too that the Voluntary Arbitrator erred when it applied the provisions