



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BAHIA SHIPPING SERVICES, INC. and G.R. No. 180343
FRED OLSEN CRUISE LINES
LIMITED,

Petitioners,

- versus -

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
BERNABE, JJ.

Promulgated:

CRISANTE C. CONSTANTINO,
Respondent.

JUL 09 2014

Manila

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DECISION

BRION, J.:

We resolve this Petition for Review on *Certiorari*¹ assailing the February 26, 2007 decision² and September 28, 2007 resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 94260.

The Antecedents

On February 27, 2002, respondent Crisante C. Constantino (*Constantino*) entered into a nine-month contract of employment⁴ as *utility* (at a basic monthly salary of US\$261.00) with petitioners Bahia Shipping, Services, Inc. and its principal, Fred Olsen Cruise Lines, Limited (*petitioners*), for the vessel *M/S Braemar*. The contract had been verified and approved by the Philippine Overseas Employment Administration (*POEA*). Constantino boarded the vessel on March 26, 2002.

¹ *Rollo*, pp. 54-88; filed pursuant to Rule 45 of the Rules of Court.

² Id. at 34-48; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Rosmari D. Carandang.

³ Id. at 50-51.

⁴ Id. at 125.

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Sometime in April 2002 while at work onboard the vessel, Constantino complained of low back pain radiating to his right thigh after allegedly lifting several pieces of heavy luggage. The ship doctor gave him medications and advised him to rest. When the vessel arrived at the Barbados, he was referred to a shore-based physician, orthopedic surgeon Dr. Jerry A.W. Thorne, for examination and magnetic resonance imaging (*MRI*). The *MRI* revealed mild to moderate desiccation of Constantino's lumbar intervertebral disc at L3L4, L4L5 and L5S1. Dr. Thorne diagnosed Constantino to be suffering from an *acute exacerbation of a pre-existing lumbar disc syndrome* and declared him unfit to work for 10 days.⁵

On April 25, 2002, Constantino was repatriated and referred to petitioners' physician, Dr. Robert D. Lim (*Dr. Lim*) of the Metropolitan Hospital, who placed him under the care of an orthopedic surgeon. Constantino underwent an excision biopsy of a mass in his right flank and was subjected to medication, treatment, rehabilitation and therapy for several months starting early May 2002⁶ until October 2, 2002 when Dr. Lim issued a report⁷ on his medical condition, stating that "patient is now asymptomatic." The orthopedic surgeon opined that "patient is now fit to work."⁸ Accordingly, Dr. Lim pronounced Constantino fit to work as of October 2, 2002.⁹ On the same day, Constantino accepted and concurred with a Certificate of Fitness for Work.¹⁰

Despite these developments, Constantino engaged the services of a lawyer to claim disability compensation from the petitioners and, to explore a possible settlement with them.¹¹ On May 31, 2003, Constantino consulted a physician of his choice, Dr. Marciano Almeda (*Dr. Almeda*), an occupational medicine and orthopedics specialist. Dr. Almeda assessed Constantino to have suffered from **permanent partial disability with a Grade 11 impediment** under the POEA Standard Employment Contract (*POEA-SEC*) and declared him unfit for further sea duties.¹² The petitioners denied the claim, prompting Constantino to file on June 12, 2003 a complaint for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against them.

Constantino alleged before the labor arbiter that despite the treatment given to him by the company-designated physicians, his ailment had not improved. He claimed that his back pain continued. He argued that he had a valid claim for disability benefits as he had been assessed by his physician of choice to have suffered from permanent partial disability with a declaration

⁵ Id. at 295.

⁶ Id. at 126-136.

⁷ Id. at 137.

⁸ Id.

⁹ Id.

¹⁰ Id. at 138.

¹¹ Id. at 139; letter dated May 20, 2003 of Constantino's lawyer, Romulo P. Valmores.

¹² Id. at 319-321.

that he was unfit for sea duty. The certificate of fitness for work he executed, he emphasized, should have no effect on his claim because he only signed it after the petitioners assured him of re-deployment; since they failed to re-hire him, they cannot be released from any liability to him. He rejected Dr. Lim's medical report on his condition, particularly his **fit to work assessment**, as he considered it self-serving.

In defense, the petitioners argued that Constantino's claim should fail considering that immediately on his repatriation, he underwent regular and rigorous examination and was subjected to specialized treatments, tests and procedures, including surgery and therapy sessions, administered or supervised by its accredited doctors and specialists, at their expense. They stressed that for a period of almost six months, Constantino was seen by their doctors at least twelve (12) times, and on every occasion, the doctors issued a report on Constantino's medical condition, the particular treatment administered and medicines prescribed. Thus, when he executed the certificate of fitness for work on October 2, 2002, he is estopped, they argued, from questioning the findings of their accredited doctors.

The Compulsory Arbitration Rulings

On October 14, 2003, Labor Arbiter Veneranda C. Guerrero (*LA Guerrero*) rendered a decision¹³ dismissing the complaint for lack of merit. She held that Constantino is not entitled to disability benefits in view of the fit-to-work declaration by petitioners' coordinating physician Dr. Lim, after an exhaustive medical examination, treatment, surgical procedure and therapy sessions administered on Constantino for several months, as substantiated by the documents on record and corroborated by the certificate of fitness for work signed by Constantino.

LA Guerrero believed that except for their duty to provide him sickness wages during the period he was under treatment, the petitioners had complied with their obligations under the POEA-SEC with respect to the injury sustained by Constantino on board the vessel. LA Guerrero brushed off Constantino's allegation of bad faith against the petitioners for not re-deploying him as it was unsubstantiated and cannot overcome Dr. Lim's fit-to-work certification. LA Guerrero awarded Constantino sickness allowance for 120 days for failure of the petitioners to present proof that he had been paid. The labor arbiter likewise awarded him attorney's fees because he was compelled to file a complaint to enforce his rights.

Both parties appealed. Constantino insisted that he is entitled to permanent partial disability benefits based on Dr. Almeda's assessment of his medical condition arrived at with candidness and sincerity compared

¹³ Id. at 12-21.

with Dr. Lim's fit-to-work pronouncement which was issued so that petitioners could avoid liability. The petitioners, on the other hand, disputed the award to Constantino of sickness allowance and attorney's fees, presenting check vouchers as proof of payment¹⁴ of the allowance. Also, they argued that Constantino was not entitled to attorney's fees because he should not have filed the complaint in the first place.

In its October 28, 2005 resolution,¹⁵ the National Labor Relations Commission (NLRC), set aside the appealed decision and dismissed the complaint for lack of merit. It agreed with LA Guerrero's opinion that Dr. Lim's fit-to-work certification for Constantino should prevail over Dr. Almeda's medical report which merely interpreted the initial diagnosis of Dr. Lim. It set aside the sickness allowance award to Constantino in view of the proof of payment presented by the petitioners. Constantino moved for reconsideration, but the NLRC denied the motion, leaving him no option but to file a petition for *certiorari* with the CA, charging the NLRC with grave abuse of discretion for dismissing the complaint.

The CA Decision

In its decision under review,¹⁶ the CA partially granted the petition. It refused to give credit to the fit-to-work assessment issued to Constantino by Dr. Lim. The assessment, the CA stressed, was not based on Dr. Lim's own findings but on the opinion of an orthopedic surgeon (or other specialist) that Constantino was already fit to work, but whose medical report was not even shown by the petitioners. It dismissed Dr. Lim's medical report as "self-serving and biased in favor of the respondents," citing an earlier ruling of this Court¹⁷ in support of its opinion.

The CA found the medical report of Dr. Almeda, Constantino's chosen physician, more credible as it was based on his own personal assessment of Constantino's ailment and he is more qualified than Dr. Lim, who is not a specialist in orthopedics. Further, the appellate court noted that even after Constantino was declared fit to work, he was still unable to work and neither was it shown that he was re-deployed or efforts were made by the petitioners to have him re-deployed. Additionally, it believed that Constantino's failure to perform his work for 120 days is another indicator that Constantino suffered from permanent disability.

The CA held that it cannot rely on the certification of fitness for work signed by Constantino to absolve petitioners from liability as it was in the nature of a quitclaim where it was not even shown that he received anything

¹⁴ Id. at 260-263; for the period April 26, 2002 to August 27, 2002.

¹⁵ Id. at 117-122.

¹⁶ *Supra* note 2.

¹⁷ *Wallem Maritime Services, Inc. v. NLRC*, 376 Phil.738, 746 (1999).

in signing the document. The CA sustained the denial of sickness allowance because Constantino had already been paid. It likewise denied his claim for damages for lack of basis. But the appellate upheld the grant of attorney's fees to him considering that he was compelled to litigate to enforce his rights. The petitioners moved for, but failed to secure, a reconsideration of the CA decision.

The Petition

The petitioners are now before the Court to seek the reversal of the CA rulings on grounds that the court gravely erred when it set aside the NLRC's denial of Constantino's claim for disability benefits and awarded him permanent partial disability compensation, plus attorney's fees. They submit that the evidence on record supports their position that Constantino is not entitled to his claim and, for this reason, he is likewise not entitled to attorney's fees.

They bewail the CA's reliance on Dr. Almeda's conclusion that Constantino suffered from a permanent partial disability with a Grade 11 impediment when he examined him only once and without any indication that the doctor subjected Constantino to any treatment at all. The petitioners decry the appellate court's refusal to give any weight to the evidence they submitted consisting of (1) medical reports which chronicled the medical management of Constantino's condition undertaken by their accredited doctors and, (2) the certificate of fitness for work executed by Constantino himself. They are at a loss, they submit, how the CA could have arrived at its sweeping conclusions.

On the award of attorney's fees, the petitioners maintain that the CA decision in favor of Constantino is not a sufficient reason for the award. They argue that their refusal to pay disability compensation to Constantino was based on sound medical advice and the provisions of the POEA-SEC. They believe their refusal to grant Constantino's disability claim cannot be said to be in bad faith as to entitle him to attorney's fees.

The Case for Constantino

By way of his Comment¹⁸ and Memorandum,¹⁹ Constantino asks the Court that the petition be dismissed for lack of merit, contending that the CA correctly disregarded the fit-to-work declaration of Dr. Lim, the company-designated physician, because "he is not a specialist in the field of orthopedics and he is therefore not specially trained to examine and treat the respondent's injury;"²⁰ whereas, his chosen physician, Dr. Almeda, "is a

¹⁸ *Rollo*, pp. 535-550; filed April 15, 2008.

¹⁹ *Id.* at 575-592; filed on January 15, 2009.

²⁰ *Id.* at 542; Constantino's Comment, p. 8, par. 1.

specialist in occupational medicine and orthopedics and arthroscopic and ankle surgery x x x” and “is in a better position to examine and evaluate the injury of the respondent.”²¹ He adds that the company-designated physician does not have the exclusive authority to determine the disability of the seafarer as he is, “more often than not, bias (*sic*) in favor of their (*sic*) employer.”²²

Lastly, Constantino maintains that as he was unable to perform his customary work for more than five months or for more than 120 days (from April 25, 2002 when he was repatriated to October 2, 2002 when he was declared fit to work by Dr. Lim), he should be considered as suffering from permanent disability.

The Court’s Ruling

We find the petition meritorious.

First. The employment relationship between Constantino and the petitioners is governed by the POEA-SEC, otherwise known as the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels*.²³ Thus, when the seafarer enters into an individual contract with the employer, as Constantino did in February 2002,²⁴ the **terms and conditions of the contract must be in accordance with the POEA-SEC and shall be strictly and faithfully observed.**²⁵ It is customary therefore that the individual contract between the seafarer and the employer (such as the contract between Constantino and the petitioners) is verified and approved by the POEA. As had been declared by the Court in an earlier ruling, the POEA-SEC **is the law between the parties**, together with their CBA, if there any.²⁶

Under the POEA-SEC, it is the company-designated physician who declares the fitness to work of a seafarer who sustains a work-related injury/illness or the degree of the seafarer’s disability. Section 20 (B) 3 of the POEA-SEC provides:

Upon sign-off from the vessel for medical treatment, the seafarer shall be entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician but in no case

²¹ Id. at 543; Constantino’s Comment, p. 9, last paragraph.

²² Id. at 544; Constantino’s Comment, p. 10, par. 1, citing *supra* note 17.

²³ Department Order No. 4, s. of 2000.

²⁴ *Supra* note 4.

²⁵ Id., Condition 7.

²⁶ *Philippine Hammonia Ship Agency, Inc., v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA, 53, 65.

shall this period exceed one hundred twenty (120 days) (emphasis and underscoring ours).

We cannot fault VA Guerrero and the NLRC for dismissing the complaint as it was in accordance with the above-cited provision of the POEA-SEC. Dr. Lim, the company-designated physician, declared Constantino fit to work after almost six months of extensive examination, treatment and rehabilitation (therapy sessions) by the company-accredited specialists, including an orthopedic surgeon, upon his repatriation.

The CA rejected Dr. Lim's declaration, holding that it was not based on his own personal assessment but on the opinion of an orthopedic surgeon whose medical report was not even presented. It also questioned Dr. Lim's competence in making the declaration considering, as it observed, he is not a specialist in orthopedics. It gave more credence to the unfit-to-work assessment of Dr. Almeda, Constantino's physician of his choice, as he is more qualified to make the assessment since he specializes in occupational medicine and orthopedics.

We find the CA's conclusion flawed. It lost sight of the fact that Dr. Almeda examined Constantino **only once** (at most for several hours) and **he only interpreted the medical findings of the company-accredited doctors**. In short, he applied his expertise on existing medical findings of other physicians. It also totally disregarded the petitioners submission that its team of doctors examined and treated Constantino 12 times for a period of almost six months and, each time they treated him, they issued a report of Constantino's medical condition, the particular treatment administered and medicines prescribed, which eventually became the basis of Dr. Lim's fit-to-work declaration.

We thus find no merit on Constantino's objections on Dr. Lim's qualification or the lack of it when Dr. Lim declared him fit to work. Since Constantino failed to show any bad faith that attended the company doctors' medical reports, or that the reports were self-serving and were issued to allow the petitioners to avoid liability, we rule that the NLRC did not commit any grave abuse of discretion in its ruling; in short, the NLRC ruling is in accord with the facts and the law.

In *Philippine Hammonia*,²⁷ where we encountered a similar disability claim, we said: "*Dumadag cannot insist that the 'favorable' reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only for a day (or shorter) on four different dates x x x Moreover, we point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists.*"

²⁷

Id.

Under the circumstances, we cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians”²⁸ (underscoring ours).

Second. There is no dispute that under the POEA-SEC, Constantino **was not precluded from seeking a second opinion** on his medical condition or disability. The third paragraph of the Section 20 (B)3 of the POEA-SEC states that “**If a doctor appointed by the seafarer disagrees with the assessment (of the company-designated physician), a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor’s decision shall be final and binding on both parties**” (underscoring, emphasis and phrase in parentheses ours).

Constantino did consult on May 31, 2003²⁹ with Dr. Almeda whose assessment of his medical condition and disability disagreed with that of Dr. Lim. Dr. Almeda found Constantino unfit to work, although he gave him a POEA-SEC Grade 11 impediment equivalent to permanent partial disability as compared with the fit-to-work assessment of Dr. Lim who managed the petitioners’ medical team handling Constantino’s treatment and rehabilitation.

The disagreement should have been referred to a third doctor for final determination, jointly by Constantino and the petitioners. There was no such referral. To our mind, the non-referral cannot be blamed on the petitioners. Since Constantino consulted with Dr. Almeda *without informing the petitioners*, he should have actively requested that the disagreement between his doctor’s assessment and that of Dr. Lim be referred to a final and binding third opinion.

In the absence of any request from Constantino (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor’s findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr. Lim’s assessment of Constantino’s health should stand.³⁰ Thus, the CA’s conclusion that

²⁸ Id. at 65.

²⁹ *Supra* note 12.

³⁰ *Santiago v. Pacbasin Ship Management, Inc.*, G.R. No. 194677, April 18, 2012, 670 SCRA 271.

Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.

Third. In light of the above discussion, the Certificate of Fitness for Work executed by Constantino cannot be a quitclaim that should be looked upon with disfavor. It signified, as earlier pointed out, his concurrence with the Dr. Lim's fit-to-work declaration. Moreover, nothing in the records substantiates his submission that he signed the document only because the petitioners assured him of re-deployment or that he applied for re-deployment but was refused.

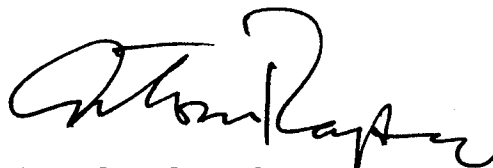
WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE** and the October 28, 2005 resolution of the National Labor Relations Commission is reinstated. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.



ARTURO D. BRION
Associate Justice

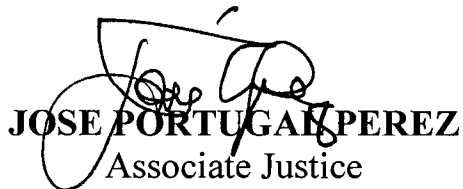
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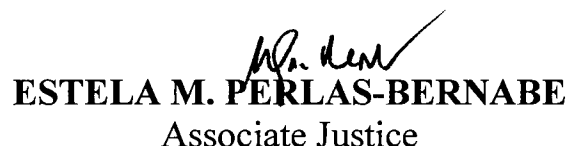
ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

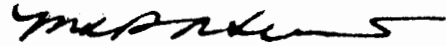
**ANTONIO T. CARPIO**

Associate Justice

Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice