SECOND DIVISION

G.R. No. 181921 – INTERORIENT MARITIME ENTERPRISES, INC., *petitioner*, v. **VICTOR M. CREER, III,** *respondent.* SEP 17 2014

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CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. I, however, wish to express some reservations regarding the present sweeping scope of the mandatory three-day rule within which a seafarer must submit to medical examination prior to being able to succeed in a claim for disability benefits and medical reimbursements.

Compliance with the mandatory three-day post-employment medical examination requirement (three-day rule) is provided under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). Since Victor M. Creer III was hired by InterOrient on April 4, 2001,[1] the 2000 POEA-SEC applies to him. Section 20(B) of the 2000 POEA-SEC states:

> SECTION 20. COMPENSATION AND BENEFITS
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> . . . .
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
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> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> . . . .
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> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
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> *For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three-working days upon his return except*

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[1] Ponencia, p. 2.

> *when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.*
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> If a doctor appointed by the seafarer disagrees with the assessment, 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. (Emphasis supplied)

I acknowledge that the current doctrine is well-articulated in the ponencia, thus:

> For a seaman's claim for disability to prosper, it is mandatory that within three days from his repatriation, he is examined by a company-designated physician. Non-compliance with this mandatory requirement results in the forfeiture of the right to claim for compensation and disability benefits.
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> . . . .
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> It must be stressed that his repatriation was not due to any medical reasons but because his employment contract had already expired.
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> . . . .
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> *In fine, we hold that Victor's non-compliance with the three-day rule on post-employment medical examination is fatal to his cause.* As a consequence, his right to claim for compensation and disability benefits is forfeited. On this score alone, his Complaint could have been dismissed outright.[2] (Emphasis supplied)

This is consistent with past cases.

For instance, *Jebsens Maritime, Inc. v. Undag*[3] involved a seafarer who was repatriated after the completion of his four-month contract. He embarked in March 2003 and disembarked in July 2003. He consulted a personal physician two months after his repatriation.[4] This court denied his claim for failure to comply with the three-day rule, explaining that:

> Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.[5]

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2 Id. at 8–9.
3 G.R. No. 191491, December 14, 2011, 662 SCRA 670 [Per J. Mendoza, Third Division].
4 Id. at 673.
5 Id. at 680.

This court further stated in *Jebsens* that:

> Respondent claims that the 3-day mandatory rule is not applicable as it is only for those who were repatriated for medical reasons. This could only mean that he had no medical reason then. In his pleadings, he claimed that sometime in July 2003, he showed manifestations of a heart disease as he suddenly felt chest pains, shortness of breath and fatigability. He, however, failed to disclose when exactly in July 2003 that he felt those manifestations whether before or after his repatriation on July 18, 2003. *If it was before the said date, he should have submitted himself to a medical examination three days after repatriation.*[6] (Emphasis supplied, citation omitted)

However, I am of the view that there is basis to revisit the scope of such a doctrine.

First, current doctrine assumes that seafarers will make claims only on the basis of breaches of contractual obligations.

The Philippine Overseas Employment Administration or POEA regulations require certain provisions to be put in the employment contract. Necessarily, it prescribes a procedure that finds a balance of interest in both the amount and the process for recovery of compensation as a result of occupational hazards suffered by the seafarer. The cause of action in such recovery is based on contract inclusive of both statutory and regulatory provisions impliedly included in it.

While this may be the theory pursued in practice, substantive law still allows recovery of damages for injuries suffered by the seafarer as a result of a tortious violation on the part of the employer. This may be on the basis of the provisions of the Civil Code as well as special laws. These special laws may relate, among others, to environmental regulations and requirements to ensure the reduction of risks to occupational hazards both for the seafarer and the public in general. In such cases, the process for recovery should not be constrained by contract.

Second, even as a basis for contractual breach, the exceptions provided in the Philippine Overseas Employment Administration regulations and current jurisprudence do not contemplate situations that may result in an unreasonable denial of the constitutional protection to labor.

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[6] Id. at 681.

The current exception is provided in the same section, Section 20(B), of the POEA contract. Thus, in *Wallem Maritime Services, Inc. v. NLRC and Inductivo,*[7] this court held that:

> Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA standard employment contract. *But such requirement is not absolute and admits of an exception, i.e., when the seaman is physically incapacitated from complying with the requirement.* Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination, assuming that he was still capable of submitting himself to such examination at that time. It is quite understandable that his immediate desire was to be with his family in Nueva Ecija whom he knew would take care of him. Surely, under the circumstances, we cannot deny him, or his surviving heirs after his death, the right to claim benefits under the law.[8] (Emphasis supplied)

Also, in *Crew and Ship Management International, Inc. v. Soria,*[9] the seafarer, Zosimo Soria, failed to comply with the three-day rule. However, this court relaxed this rule since Zosimo had a physical infirmity.[10]

The other exception to the three-day rule is not patent from the POEA regulations but exists in doctrine. This is when the employer refuses to refer the seafarer to a company-designated physician.

In *Interorient Maritime Enterprises, Inc. v. Leonora S. Remo*,[11] this court held:

> . . . What if the seafarer reported to his employer but despite his request for a post-employment medical examination, the employer, who is mandated to provide this service under POEA Memorandum Circular No. 055-96, did not do so? Would the absence of a post-employment medical examination be taken against the seafarer?
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> Both parties in this case admitted that Lutero was confined in a hospital in Dubai for almost one week due to atrial fibrillation and congestive heart failure. Undeniably, Lutero suffered a heart ailment while under the employ of petitioners. This fact is duly established. *Respondent has also consistently asserted that 2-3 days immediately after*

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7 376 Phil. 738 (1999) [Per J. Bellosillo, Second Division].
At that time, the POEA-SEC provided that: ". . . the seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory requirement shall result in his forfeiture of the right to claim the above benefits." 376 Phil. 748 (1999).

8 Id. at 748.

9 G.R. No. 175491, December 10, 2012, 687 SCRA 491 [Per J. Mendoza, Third Division].

10 Id. at 503.

11 G.R. No. 181112, June 29, 2010, 622 SCRA 237 [Per J. Nachura, Second Division].

> *his repatriation on April 19, 1999, Lutero reported to the office of Interorient, requesting the required post-employment medical examination. However, it appears that, instead of heeding Lutero's request, Interorient conveniently prioritized the execution of the Acknowledgment and Undertaking which were purportedly notarized on April 20, 1999, thus leaving Lutero in the cold.* In their pleadings, petitioners never traversed this assertion and did not meet this issue head-on. *This self-serving act of petitioners should not be condoned at the expense of our seafarers. Therefore, the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of petitioners.*[12] (Emphasis supplied)

I believe that the state of our exceptions even for a contractual obligation on the part of the employer is not sufficient.

A physician does not test for all possible disease and injuries when a seafarer presents himself or herself for examination. The examination is limited to general standard operating procedures to test for the usual diseases expanded by the physician's hypothesis of diseases or injuries as a result of a presentation of symptoms from the patient. In many cases, diseases or the consequences of injuries that may have been suffered by the seafarer will not be apparent to one's self. There are diseases whose gestation periods are greater than three days.

Thus, it is possible that the repatriated seafarer will opt not to submit to post-employment medical examination for the simple reason that no symptom may be apparent at that time. In my view, the legal and contractual limitation of the exception to the mandatory post-employment examination to instances where the seafarer is "*physically incapacitated to do so*"[13] will be contrary to the constitutional requirement for protection to labor and the priority that the state should grant to health.

I concur in the result in this case because it does not appear that a) Victor grounded his cause of action on tort and b) he was suffering from the kind of disease he allegedly contracted on the occasion of his employment which symptoms could not have manifested within the mandatory three-day post-employment medical examination period.

Victor was also unable to prove that his illness was contracted during the term of his employment. He did not show that the natural course of the illness resulted in the permanent disability he claims. He did not support his allegation that he felt chest pains while on board.[14] Further, findings of the

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12 Id. at 247.
13 *See* Section 20(B) of the 2000 POEA-SEC.
14 Ponencia, p. 10.

physician he consulted did not overcome the difficulties of showing that the illness is work-related or work-aggravated considering the lapse of more than a year from his post-employment.

Some may argue that the relaxation of the three-day rule will reduce the competitiveness of Filipino seafarers. I do not believe so. The competitiveness of our seafarers is attributed to their skills, creativity, and resiliency. Competitiveness has very little to do with the mandatory three-day post-employment medical examination period.

ACCORDINGLY, I join the ponencia and vote to GRANT the petition.

MARVIC M.V.F. LEONEN
Associate Justice