Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HANSEATIC SHIPPING PHILIPPINES INC., REEDEREI HANS PETERSON & SOEHNE GMBH & CO. HG AND/OR ROSALINDA BAUMAN,
Petitioners,

- versus -

ARLES BALLON,
Respondent.

G.R. No. 212764

Present:

CARPIO, *J., Chairperson,*
DEL CASTILLO,
MENDOZA,
LEONEN, and
JARDELEZA,* *JJ.*

Promulgated:

09 SEP 2015

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DECISION

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the November 25, 2013 Decision[1] and the June 2, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 124237, affirming the January 6, 2012 Decision[3] of the National Labor Relations Commission *(NLRC).* The NLRC decision reversed and set aside the April 15, 2011 Decision[4] of the Labor Arbiter *(LA)*, a case where the certification of the company-designated physician on the claimed disability of the seafarer was issued beyond the 120-day period.

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* Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2166, dated September 9, 2015.

[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justice Noel G. Tijam and Associate Justice Agnes Reyes Carpio, concurring; *rollo,* pp. 15-29.

[2] Id. at 31-32.

[3] Penned by Commissioner Angelo Ang Palaña with Presiding Commissioner Herminio Suelo and Commissioner Numeriano Villena, concurring; CA *rollo,* pp. 36-48.

[4] Penned by Labor Arbiter Fedriel Panganiban; id. at 54-68.

The Facts

Petitioner Hanseatic Shipping Philippines, Inc. *(Hanseatic),* a domestic corporation and the manning agency of its foreign principal, petitioner Reederei Hans Peterson & Soehne GMBH & Co. HG. *(Reederei),* employed respondent Arles Ballon *(Ballon),* a seafarer by profession, sometime in November 2001. In his last employment with Hanseatic, Ballon signed a 6-month contract on May 25, 2010. After undergoing the required pre-employment medical examination *(PEME),* he was hired by Hanseatic as an Able Bodied *(AB)* Seaman, and on May 31, 2010, he embarked on "MV Westerems."

Complainant Ballon's Position

While on board the vessel, Ballon felt extreme pain in his right jaw which he complained to his second officer. While the ship was docked in Manila, he was referred to the company-designated physician of Shiphealth, Inc. *(Shiphealth).*[5] On July 12, 2010, he was diagnosed to have "Reactive Lymphadenopath" and was advised to come back for a check-up after two (2) weeks, when the vessel would be back in Manila.[6]

On July 23, 2010, when the vessel arrived at the Port of Kaohsiung in Taiwan, Ballon requested for a medical examination as the pain in his right jaw recurred and persisted. He was brought to Kaohsiung General Hospital where he was diagnosed by Dr. Chih-Msiu Lou to be suffering from "Right Temporo-Mandibular Joint Syndrome."[7] He was advised to take some medication. Thereafter, he boarded the ship again.

On July 26, 2010, Ballon disembarked from the ship in Manila. According to him, on the same day, he reported his medical condition to Hanseatic and the latter referred him to its company-designated physician at Shiphealth. In turn, the Shiphealth physician referred him to the Manila Doctors Hospital *(MDH)* where he was treated as an out-patient.[8]

On August 5, 2010, Ballon went to the Philippine General Hospital *(PGH)* where he was diagnosed by Dr. Roberto Pangan to have "Myofascial Pain Dysfunction probably stress related."[9]

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[5] CA *rollo,* p. 85.
[6] Id. at 124.
[7] Id. at 125-126.
[8] Id. at 102.
[9] Id. at 127-129.

On August 11, 2010, Dr. Anna Pamella Lagrosa-Elbo *(Dr. Elbo)* and Dr. Maria Gracia K. Gutay *(Dr. Gutay),* the company-designated physicians of Hanseatic, issued a letter of authorization/consultation.[10] They diagnosed Ballon to be suffering from "Myofascial Pain Dysfunction; Stress Related" and referred his case to Dr. Elmer dela Cruz of the MDH.

On August 27, 2010, Dr. Elbo and Dr. Gutay issued Medical Report No. 3[11] confirming the diagnosis of the PGH. On September 15, 2010, Dr. Elbo and Dr. Gutay issued Medical Report No. 4[12] recommending that Ballon undergo 10 sessions of physical therapy for his "Myofascial Pain Dysfunction." Meanwhile, a letter of authorization,[13] dated September 14, 2010, was issued by Dr. Elbo and Dr. Gutay referring Ballon to Dr. Arnel V. Malaya of the MDH for rehabilitation consult.

On September 29, 2010, Ballon underwent electrodiagnostic examination which revealed findings compatible to mild, chronic, active cervical radiculopathy involving the right C5-6 spinal roots. On October 16, 2010, he was diagnosed by Dr. Roland Dominic G. Jamora *(Dr. Jamora),* a neurologist, to be suffering from "Myelopathy R C5-6."[14]

Dr. Elbo and Dr. Gutay issued an undated final diagnosis[15] *(undated final report)* stating that Ballon had "Myofascial Pain Dysfunction probable Stress related s/p 10 sessions of Physical Therapy" and "Cervical Myelopathy, Right C5-C6 secondary to Disc Bulges C3-C4, C4-C5 and C5-C6." They considered him maximally medically improved and cleared to go back to work, but advised the intake of pain medications.

On November 8, 2010, Ballon signed the Certificate of Fitness for Work[16] which stated that he was holding Shiphealth and Hanseatic free from all liabilities. He, however, vehemently denied that he executed the same willingly and voluntarily.[17]

On November 18, 2010, Ballon filed a complaint[18] for permanent disability compensation, reimbursement of medical expenses and payment of sick wages, moral and exemplary damages before the LA against Hanseatic and its President, Rosalinda Bauman, and its foreign principal, Reederei *(petitioners).*

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[10] Id. at 130.
[11] Id. at 95.
[12] Id. at 96.
[13] Id. at 131.
[14] Id. at 133-134.
[15] *Rollo,* p. 86.
[16] Id. at 87.
[17] CA *rollo,* p. 389.
[18] Id. at 379-380.

Subsequently, Ballon consulted another physician regarding his condition. On February 11, 2011, Dr. Manuel Jacinto, Jr. *(Dr. Jacinto)* diagnosed him to be suffering from C5-C6 Radiculopathy and Myofascial Pain Dysfunction. Dr. Jacinto gave a disability rating of Grade 1, adjudged him to be physically unfit to go back to work and declared him to be suffering from total and permanent disability.[19]

On March 9, 2011, Dr. Elmer dela Cruz issued a medical certificate[20] clearing Ballon of any disability. On March 10, 2011, Dr. Jamora and Dr. Adrian Catbagan also issued separate medical certificates[21] stating that Ballon was cleared of his disability. These three doctors were previously consulted by him.

Petitioners' Position

Petitioners averred that Ballon himself requested that he be signed-off from the vessel. On July 13, 2010, while the vessel was docked in Manila, he completed his duty and was allowed to go ashore. While he was still on land, "MV Westerems" had to seek shelter due to an impending typhoon so he was instructed to immediately return on board. He, however, returned only on the next day. The master of the vessel required him to explain his delay in returning to the vessel.

In a hand-written letter,[22] dated July 16, 2010, Ballon justified his delay by stating that he saved the life of his nephew. He then asked the master of the vessel that he be repatriated to Manila. On July 19, 2010, the master of the vessel relayed the incident and Ballon's explanation to his superior.[23] Thereafter, on July 26, 2010, Ballon disembarked from the ship.

Petitioners insisted that it was only on August 11, 2010, or more than two weeks after his disembarkation, that Ballon sought medical consultation from their company-designated doctors because of jaw pain. After he was subjected to a thorough examination and extensive treatment, he was declared fit to work by the company-designated physicians.

The LA Ruling

On April 15, 2011, the LA dismissed the complaint and ruled that Ballon was not entitled to any disability benefits. The LA explained that

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[19] Id. at 135.
[20] Id. at 260.
[21] Id. at 259, 261.
[22] *Rollo,* p. 82.
[23] Id. at 83.

there was no evidence that he immediately reported to the company-designated physician after he signed-off from the vessel on July 26, 2010. It was only on August 5, 2010 when he went to see a doctor at the PGH. Also, relying on his letter, the LA opined that he voluntarily requested for his termination and that he was not medically repatriated.

Anent Ballon's medical condition, the LA stated that although a medical certificate of Dr. Jacinto stated that he was physically unfit to go back to work, no laboratory report was submitted. Thus, the LA gave more credence to the company-designated physicians' findings that he was fit to go back to his duties.[24]

Aggrieved, Ballon elevated the case to the NLRC.

The NLRC Ruling

On January 6, 2012, the NLRC reversed and set aside the April 15, 2011 decision of the LA. It concluded that Ballon was entitled to the amount of US$60,000.00 as permanent total disability benefits, US$2,772.00 as sickness allowance, and attorney's fees equivalent to 10% of the monetary awards.

The NLRC opined that "[i]n his handwritten letter dated 16 July 2010, Ballon never mentioned that he wished to be signed off, much more pre-terminate his contract with the respondents. Although it may appear from the said letter that complainant requested to be repatriated and that such request was relayed by the vessel's Master to respondent principal, there is no evidence that such request was granted."[25] Moreover, Ballon continued to perform his duties as an AB seaman in the vessel and was even medically examined in Taiwan on July 23, 2010.

The NLRC did not give credence to the assertion of petitioners that Ballon only reported on August 11, 2010, or more than two weeks after his disembarkation. It found that Ballon reported to the company-designated physician on July 26, 2010, or on the day of his repatriation, otherwise, he would not have been examined by the company-designated physicians. Significantly, the NLRC also noticed that the report released by petitioners was Medical Report No. 3, which meant that he had reported to the company-designated physician at some other previous dates.

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[24] CA *rollo*, p. 68.
[25] Id. at 41.

The NLRC did not seriously consider the undated final report of the company-designated physicians either. The report stated that Ballon was maximally improved but did not mention whether his cervical myelopathy in his right C5-C6 had healed. According to the NLRC, his other disorder, myofascial pain dysfunction, was stress-related. A perusal of his July 16, 2010 letter confirmed that he suffered stress as he was deprived of his privacy on board the ship and did not have his own cabin for resting. Thus, the NLRC held that the medical assessment of Dr. Jacinto as an independent physician, which gave Ballon a disability rating of Grade 1, prevailed over the *incomplete* medical assessment of the company-designated physicians. The NLRC disposed the case in this wise:

> IN VIEW WHEREOF, the complainant's appeal is GRANTED. The assailed Decision is hereby REVERSED and SET ASIDE. Respondents Agency and Principal are ORDERED to pay, jointly and severally, the complainant the amount of US$ 60,000.00 as permanent and total disability benefits, US$2,772.00 (US$693.00 x 4mos) as sickness allowance, and attorney's fees equivalent to ten percent (10%) of the said monetary awards all to be paid in their peso equivalent at the time of payment.
>
> SO ORDERED.[26]

Petitioners filed a motion for reconsideration, but it was denied by the NLRC in a resolution,[27] dated March 19, 2012.

Unperturbed, petitioners filed a petition for *certiorari* before the CA, arguing that Ballon was able to work again as a seaman under another manning agency on December 24, 2011.

Meanwhile, on May 23, 2012, an entry of judgment was issued by the NLRC, declaring its January 6, 2012 decision final and executory. In light of the entry of judgment, Ballon filed a motion to issue writ of execution. On September 5, 2012, a writ of execution[28] was issued and petitioners deposited the award of damages to the NLRC Cashier.

The CA Ruling

On November 25, 2013, the CA issued the assailed decision *affirming* the January 6, 2012 NLRC decision. The appellate court stated that as early as July 9, 2010, Ballon was experiencing pain in his right jaw. Upon medical

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[26] Id. at 47.
[27] Id. at 50-53.
[28] Id. at 571.

consultation with the company-designated physician on July 12, 2010, he was advised to have a medical check-up after two weeks at the next port in Manila. Accordingly, two weeks from July 12, 2010 would be July 26, 2010, which was the date of his repatriation. Thus, the CA did not believe petitioners' assertion that he belatedly reported to the company-designated physician on August 11, 2010.

The CA likewise doubted the undated final report of petitioners' company-designated physicians. While the report cleared Ballon to go back to work, it also showed that he was suffering from myofascial pain dysfunction and cervical myelopathy in his right C5-C6. According to the CA, even after he had signed the questionable certificate of fitness to work, he continued to feel pain. Correspondingly, the medical report of Dr. Jacinto, dated February 11, 2011, stated that his illnesses persisted.

The appellate court also held that Ballon's employment by another manning agency on December 24, 2011, did not erase the fact that he was not able to work as a seaman for more than a year. The law did not require that the illness should be incurable to be classified as a permanent and total disability.

The CA, thus, found that Ballon suffered from a permanent and total disability as he was unable to perform his customary work for more than 120 days. He was repatriated on July 26, 2010 and he reported to the company-designated physician on the same day; yet, it was only on March 2011, or seven months thereafter, when the doctors declared him fit to return to work. The decretal portion of the CA decision states:

> WHEREFORE, premises considered, the petition is DENIED. The Assailed Decision and Resolution of the NLRC dated January 6, 2012 and March 19, 2012, respectively, are hereby AFFIRMED.
>
> SO ORDERED.[29]

Petitioners moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated June 2, 2014.

Hence, this present petition.

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[29] *Rollo*, p. 28.

ISSUES

I.

WHETHER THE DECLARATION OF FITNESS TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN AND THE SUBSEQUENT HIRING OF BALLON AS A SEAFARER BY ANOTHER MANNING AGENCY ARE OVERWHELMING PROOF THAT HE IS FIT TO WORK.

II.

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT BALLON IS ENTITLED TO THE MAXIMUM DISABILITY COMPENSATION ON THE BASIS OF THE 120-DAY PRESUMPTIVE DISABILITY RULE.

Petitioners argue that after the extensive treatment and close monitoring by the company-designated physicians, Ballon was found fit to work on November 8, 2010. Further, he was able to enter into a six-month employment contract with another manning agency, Alster International Shipping Services, Inc., on December 24, 2011. These circumstances indicate that he was fit to work for his duties as an AB seaman.

Petitioners aver that they followed the 120-day presumptive disability rule. From the time that Ballon was referred to Dr. Gutay, one of the company-designated physicians, until he was declared fit to work on November 8, 2010, only a period of 119 days had passed.

Moreover, petitioners submit that the 120-day presumptive disability rule had been modified by *Vergara v. Hammonia Maritime Services, Inc.*[30] *(Vergara)* which extended the same up to 240 days. It was also held therein that disabilities should not be measured in terms of days, but by gradings. In any case, petitioners contend that Ballon was declared fit to work and such declaration must be upheld.

In his Comment,[31] Ballon countered that the CA correctly awarded permanent and total disability benefits because he was unable to perform his customary work for more than 120 days. He enumerated several jurisprudence which held that the loss of the seafarer's capacity to obtain employment and income for more than 120 days necessitated the grant of permanent and total disability benefits.

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[30] 588 Phil. 895 (2008).
[31] Id. at 120-139.

In their Reply,[32] petitioners insisted that the 120-day presumptive disability rule should not have been applied because he was not medically repatriated. Also, upon his disembarkation and within 3-days therefrom, Ballon did not report to the company-designated physician and so failed to comply with the mandatory requirement for post-employment medical examination.

The Court's Ruling

The petition is bereft of merit.

Observance of the mandatory post-employment medical examination

Before a seafarer can claim permanent and total disability benefits, he must comply with certain requirements set forth by the 2000 Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC).* Section 20 (B) (3) of POEA-SEC provides:

> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
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> xxxx
>
> 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.
>
> 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 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.
>
> 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.
>
> xxxx
>
> [Underscoring Supplied]

[32] Id. at 149-154.

Notably, the post-employment medical examination has two (2) requisites: first, it is done by a company-designated physician, and second, within three (3) working days upon the seafarer's return.[33] The post-employment medical examination is obligatory in nature and may only be excused in a number of exceptional circumstances.[34]

In *Interorient Maritime Enterprises, Inc. v. Creer,*[35] the Court explained the *raison d'être* of the mandatory post-employment medical examination in this wise:

> The rationale for the rule is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[36]

In this case, petitioners argue that Ballon failed to conform to the mandatory post-employment medical examination because he only reported to the company-designated physician on August 11, 2015, or almost two weeks after his repatriation on July 26, 2010.

The records, however, belie petitioners' claim.

As observed by the CA, Ballon felt pain in his right jaw as early as July 9, 2010 while on board the vessel. On July 12, 2010, when the ship was in Manila, he was medically examined by the company-designated physician and was diagnosed with "Reactive Lymphadenopath." He was prescribed some medications and was advised to have a medical check-up after two weeks at the next port in Manila. Accordingly, two weeks from July 12, 2010 would be July 26, 2010, which was the date of his repatriation. Meanwhile, on July 23, 2010, while the vessel was docked in Taiwan, he was brought to Kaohsiung General Hospital where he was diagnosed by Dr. Chih-Msiu Lou to be suffering from "Right Temporo-Mandibular Joint Syndrome."[37]

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[33] *Ceriola v. Naess Shipping Philippines, Inc.,* G.R. No. 193101, April 20, 2015.
[34] Id., where the Court enumerated some of the exceptional circumstances where the post-employment medical examination was dispensed with.
[35] G.R. No. 181921, September 17, 2014, 735 SCRA 267.
[36] Id., citing *Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255.
[37] CA *rollo*, pp. 124-126.

These facts indubitably demonstrate that the pain experienced by Ballon was consistent and that he properly sought medical attention while on board the ship. He was repatriated on July 26, 2010 and he followed the earlier advice of the company-designated physician by reporting to them on the same day. Moreover, the CA correctly ruled that the letter, dated July 16, 2010, did not prove that he was voluntarily repatriated because petitioners never acted on that letter. As mentioned by the NLRC, the said letter even explained the cause of his stress on board the vessel, which was the lack of appropriate sleeping cabins.

The letter of authorization/consultation of the company-designated physicians, dated August 11, 2010, and the subsequent medical reports are not competent proofs that Ballon belatedly reported after his repatriation. As correctly held by the NLRC, if he had reported late then he would have been disallowed by petitioners to be entertained by their company-designated physicians. Likewise, Medical Report No. 3, which was the earliest dated medical report presented by petitioners, was obviously the third report from its company-designated physicians. Glaringly, petitioners could have had easily presented the first and second medical reports to refute Ballon's claim of timely medical examination, yet, they miserably failed to do so. Hence, the evidence offered by Ballon remains uncontroverted.

As Ballon was medically repatriated and was able to report to the company-designated physicians on the same day of his disembarkation, he is deemed to have complied with the mandatory post-employment medical examination rule.

The medical treatment exceeded 120 days without any justifiable reason

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[38]

The law that defines permanent and total disability of laborers is Article 192(c)(1) of the Labor Code, which provides:

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[38] *Maersk Filipinas Crewing, Inc. v. Mesina,* G.R. No. 200837, June 5, 2013, 697 SCRA 601, 619, citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

> ART. 192. Permanent Total Disability. xxx
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for **more than one hundred twenty days,** except as otherwise provided in the Rules;
>
> [Emphasis Supplied]

Accordingly, the rule referred to - Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code *(IRR)* - states:

> Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.
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> [Emphasis Supplied]

Petitioners claim that the *Vergara* case modified the 120 days guideline by extending the period of treatment of the seafarer to 240 days. Their contention, however, is inaccurate. In the recent case of *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[39] *(Elburg),* the Court synthesized the rules on the 120-day and 240-day extended periods for medical treatment on permanent and total disability as follows:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
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> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
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> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

[39] G.R. No. 211882, July 29, 2015.

> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[40]

Based on the foregoing, the general rule provides that the company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days. As an exception, however, the period may be extended to 240 days if there is a sufficient justification such as when the seafarer required further medical treatment or when the seafarer was uncooperative.

In the case at bench, petitioners assert that from the time that Ballon was examined by the company-designated physicians until he was declared fit to work on November 8, 2010, only a period of 119 days had lapsed.

The Court is not persuaded.

A cursory reading of the certification of fitness for work, dated November 8, 2010, reveals that it was executed by Ballon; that it does state the company-designated physician's recommendations or disability grading; and that it basically frees Hanseatic from all its liabilities and it may be pleaded as a bar to any action that may be taken by any government agency. In other words, as aptly held by the CA, the certificate of fitness for work is, in truth and in fact, a quitclaim.

In *Varorient Shipping Co., Inc. v. Flores,*[41] the Court ruled that the law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by the employees are, thus, commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the worker's legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity. Thus, it is never enough to assert that the parties have voluntarily entered into such a quitclaim. There are other requisites to be met, such as: (a) that there was no fraud or deceit on the part of any of the parties; (b) that the consideration of the quitclaim is credible and reasonable; and (c) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[42]

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[40] Id.
[41] 646 Phil. 570, (2010), citing *More Maritime Agencies, Inc. v. NLRC,* 366 Phil. 646, 653-654 (1999).
[42] Id. at 586.

The Court is of the view that the certificate of fitness for work in this case was a defective quitclaim because it was meant to conceal its true intent, which was to release petitioners from any liability arising from Ballon's claim. The execution cannot be tolerated as it amounts to a deceptive scheme to unconditionally absolve employers from every liability. Likewise, no consideration was provided for the questionable quitclaim.

Similarly, the undated medical report of the company-designated physician cannot be considered by the Court in determining petitioners' compliance with the 120-day period precisely because it is undated. The Court also agrees with the CA that the undated medical report was incomplete because it only discussed the treatment of Ballon's myofascial pain dysfunction, but not his cervical myelopathy in his right C5-C6. Moreover, while the undated medical report stated that he was maximally medically improved and cleared to go back to work, it still prescribed the intake of pain medications, suggesting that he was not yet completely healed.

Consequently, on February 11, 2011, Dr. Jacinto confirmed Ballon's unceasing disability and diagnosed him to be continuously suffering from C5-C6 radiculopathy and myofascial pain dysfunction. Notably, among the medical reports presented, it was only Dr. Jacinto's diagnosis which gave a definite grading on his disability. Dr. Jacinto opined that he had a disability Grade 1; that he was physically unfit to go back to work; and that he was suffering from total and permanent disability. Thus, the CA and the NLRC cannot be faulted for relying on the medical findings of Dr. Jacinto because it was the only reliable and complete report available in the present case.

The medical certificate by Dr. Elmer dela Cruz which stated that Ballon was cleared from his disability was only issued on March 9, 2011. This was followed by the medical certificates of Dr. Jamora and Dr. Adrian Catbagan, both issued on March 10, 2011. All these three doctors were consulted by Ballon. As suitably held by the CA, from the time of Ballon's medical repatriation on July 26, 2010 up to Dr. Elmer dela Cruz' issuance of his medical report on March 9, 2011, more than seven (7) months or a total of **226** days had passed. This is **clearly beyond the authorized 120-day period.** For more than 120 days, Ballon was incapacitated to perform his work as a seafarer, which consequently deprived him of his livelihood.

Petitioners cannot invoke either the exceptional 240-day period for medical treatment because they failed to provide a sufficient justification in extending the 120-day period. In fact, it was *only in their memorandum,*[43] filed with the CA, that petitioners raised the 240-day extended period for the first time. The burden of proof lies in the employer to establish that the company-designated physician had a reasonable justification to invoke the

[43] CA *rollo,* p. 547.

240-day period.[44] Yet, not an iota of evidence was presented by petitioners to rationalize the application of the said exceptional period.

It was written in *Elburg* that, "[c]ertainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance."

In the recent case of *Carcedo v. Maine Marine Philippines, Inc.*,[45] the Court proclaimed that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law.**" Should the company-designated physician fail to give his proper medical assessment and the seafarer's medical condition remains unresolved, then the seafarer shall be deemed totally and permanently disabled.[46]

Here, as the company-designated physicians failed to provide a proper medical assessment of Ballon's disability within the authorized 120-day period, then Ballon is deemed by law entitled to permanent and total disability benefits.

The re-employment of Ballon does not negate his permanent and total disability

For their final argument, petitioners contend that Ballon was later employed by Alster International Shipping Services, Inc. on December 24, 2011 depicting that he was indeed fit to work and perform his duties.

The argument is specious.

Permanent total disability means an employee is disabled to earn wages in the same or similar kind of work that he was trained for or accustomed to perform, or in any kind of work which a person of his mentality and attainment can do. It does not mean a state of absolute helplessness but merely the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability

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[44] *Interorient Maritime Enterprises, Inc. v. Creer*, supra note 35.
[45] G.R. No. 203804, April 15, 2015.
[46] Id. citing *Kestrel Shipping Co., Inc. V. Munar*, G.R. No. 198501, January 30, 2013, 689 SCRA 795, 810.

compensation, it is not just the injury which is compensated but the incapacity to work.[47] As ruled in *Micronesia Resources v. Cantomayor*:[48]

> **The possibility that petitioner could work** as a drummer **at sea again does not negate the claim for permanent total disability benefits.** In the same case of *Crystal Shipping, Inc.*, we held:
>
> > Petitioners tried to contest the above findings [of permanent total disability] by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.
>
> [Emphasis Supplied]

Based on the foregoing, the mere fact that a disabled seafarer subsequently acquired employment does not *ipso facto* negate the grant of permanent and total disability benefits. The facts and circumstances of each case must be scrutinized.

In the case at bench, Ballon was medically repatriated on July 26, 2010. Since then, he was unable to perform his regular employment due to his disability. He was incapacitated to accomplish his work as AB seaman. It was only on December 24, 2011, or one year and five months later, that Ballon was able to return to his duties as a seaman with another manning agency. As Ballon was evidently deprived of his means of livelihood for a protracted period of time due to this disability, the Court concludes that the grant of permanent and total disability benefits in favor of Ballon is definitely warranted.

WHEREFORE, the petition is **DENIED.** The November 25, 2013 Decision and the June 2, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124237 are hereby **AFFIRMED *in toto.***

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[47] *Eyana v. Philippine Transmarine Carriers, Inc.*, G.R. No. 193468, January 28, 2015.
[48] 552 Phil. 130, 145 (2007).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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

CERTIFICATION

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