Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 7, 2022**, *which reads as follows:*

"**G.R. No. 229449 (*NYK-FIL Ship Management, Inc. vs. Ebuen S. Perez*).** – This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated July 22, 2016 and the Resolution[3] dated January 16, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 136843. The CA denied the petition of NYK-FIL Ship Management, Inc. (NYK-FIL) and affirmed with modification, by deleting the attorney's fees, the Decision[4] dated July 31, 2014 of the National Conciliation and Mediation Board (NCMB)/Panel of Voluntary Arbitrators, that ordered NYK-FIL to pay Ebuen S. Perez (Perez) disability benefit in the sum of USD 120,000.00, or its equivalent in peso, plus ten percent (10%) of the said amount as attorney's fees; and to pay as sickness pay the sum of USD 4,489.33 less PhP 135,176.33 plus ten percent (10%) of the yielded amount after deduction as attorney's fees.[5]

The case emanated from a complaint filed by Perez against NYK-FIL before the NCMB seeking payment of sickness allowance, medical reimbursement, disability benefits, and an award of attorney's fees.[6]

Perez was hired by International Cruise Services, Ltd., through its local agent, NYK-FIL, as repair personnel on the vessel *MV Crystal Symphony*.[7] Based on the Contract of Employment[8] dated March 26, 2013, he was assigned to work on the vessel for 10 months, with a basic monthly salary of USD 586.00 for 40 hours of work in a week; overtime pay of USD

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1 *Rollo*, pp. 3-44.
2 Id. at 60-75. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court), and concurred in by Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz.
3 Id. at 78-79.
4 Id. at 342-353. Penned by Chairman of Voluntary Arbitrators (VA) Angel A. Ancheta, and concurred in by VA Romeo P. Cruz, Jr. VA Leonardo B. Saulog rendered a Dissenting Opinion dated July 29, 2014; id. at 354-361.
5 Id. at 60.
6 Id. at 343.
7 Id. at 345.
8 Id. at 126.

450.00 per month for 103 hours, USD 4.37 per month for 103 hours; subsistence allowance of USD 54.00 per month; vacation leave pay of eight days per month: USD 176.00 per month; and cruise compensation of USD 232.00 per month.[9]

On June 29, 2013, Perez, after lifting the heavy wooden cover of a winch machine, felt a snap at his lower back and experienced severe acute lower back pain.[10]

On July 3, 2013, he was brought to a hospital in Turkey for evaluation, treatment, and an MRI scan. A certain Dr. Temizakan treated him and issued a Medical Evaluation in a non-English language that mentioned "L5-S1 disk sinyal ve yukseklikleri azalmistir."[11]

On July 6, 2013, *MV Crystal Symphony*'s Ship Board doctor, a certain Dr. Paul Codron, issued a Crew Referral Status Report regarding Perez. It stated that "He has no history of back injury but has work-related back strain" and that "An MRI demonstrated an L5/S1 invertebral disc herniation."[12]

On July 6, 2013, Perez was repatriated. He was thereafter referred to an orthopedic surgeon, who had him undergo physical therapy. Perez claimed that no improvement was noted and that he was made to undergo spinal surgery.[13]

On November 9, 2013, he was admitted to Manila Doctors Hospital where he underwent Laminotomy, Foraminotomy, and Discectomy, L4-5 and L5-S1.[14]

On November 28, 2013, he was discharged and underwent physiotherapy and rehabilitation."[15]

NYK-FIL presented evidence that Perez underwent treatment at NGC Medical Specialist Clinic, Inc. (NGC) several times. The latest medical report (23rd medical report) indicated that Perez was under treatment by NGC for 192 days.[16]

NYK-FIL also presented evidence that based on the 19th medical report of Dr. Nicomedes Cruz (Dr. Cruz), Perez underwent his 143rd treatment at NGC and that on November 28, 2013, Perez was for discharge from Manila Doctors Hospital. The findings indicated: "Lumbar spondylosis

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9 Id. at 345.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id. at 346.

with disc protrusion L5-S1, disc bulges L3-L4 and L4-L5 S/P Laminotomy, Left Faceotomy, Discectomy, L4-I5 and L5-S1."[17]

On December 3, 2013, NGC wrote to a certain Jennifer Mangilit-Magsino (Magsino), Claims Handler - Personal Injury Division of Pandiman Phils., indicating the following:

> 1. The prognosis is fair to guarded.
> 2. The estimated length of further treatment is 60 days. He underwent surgery last November 10, 2013.
> 3. The **interim disability grading** based on the POEA schedule of disability grading is Grade 8 – Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk.
> 4. There is a possibility that further treatment will improve his condition.
> 5. His condition at present will not render him permanently unfit to work as seafarer.[18]

From December 3, 2013 to January 16, 2014, Perez continued his treatment.[19]

On January 13, 2014, the 23rd medical report issued by Dr. Cruz indicated that "[t]here is residual pain on his lumbosacral region. The trunk mobility is limited due to pain. The operative wound is healed. There is no weakness on his lower extremities. SLR is negative and there is no neurologic deficit on/his lower extremities. He is unable to tolerate longer distance ambulation, prolonged sitting and standing. He ambulates without any assistive device." The diagnosis remained as follows: "Lumbar spondylosis with disc protrusion L5-S1, disc bulges L3-L4 and L4-L5 S/P Laminotomy, Left Faceotomy, Discectomy, L4-5 and L5-S1."[20]

On January 27, 2014, Perez obtained a second opinion from his chosen doctor, a certain Dr. Renato P. Runas, an alleged Fellow of the Philippine Orthopedic Association, Philippine College of Surgeons and International College of Surgeons.[21] It is notable that this transpired a day before the issuance of the final medical assessment by the company doctor.

Dr. Runas issued the following report:

> At present, Seaman Perez is still having pain on the lower back which he claims to be persistent and refractory to medications and physiotherapy. Pain is associated with numbness at the lower back and gluteal area to right lower extremity with ant-crawling sensation at the thigh and leg. Low back pain is triggered during coughing and sneezing. He cannot tolerate prolonged walking and standing because of pain. Pain is very severe in the morning and he has a very hard time standing up.

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17 Id.
18 Id.
19 Id.
20 Id.
21 Id.

> On physical examination, forward and backward trunk motion is limited because of pain. There is paraspinal muscle tenderness and spasm. SLR is positive on the right. Tight hamstring muscle is also noted on the right lower extremity. He has difficulty standing from a sitting position. He is ambulatory with a slight limp and walks with a slow pace.
>
> Seaman Perez is incapacitated due to persistent moderate to severe low back pain despite the spinal surgery. He is unable to carry and lift heavy objects due to back stiffness which makes it difficult for him to bend, pick up and carry objects from the floor. Prolonged sitting and standing worsen the discomfort. He has difficulty going up and down the stairs. His capacity to work is greatly reduced and is no longer capable to return to his previous job. He is unfit for sea duty in whatever capacity with a permanent disability since he can no longer perform his work which he is previously engaged in.[22]

On January 28, 2014, Dr. Cruz wrote to Magsino, stating:

> "This is in response to your inquiry regarding the above patient:
>
> 1. Prognosis is guarded.
> 2. He has already reached maximum medical cure.
> 3. The **final disability grading** based on the POEA schedule of disability grading is Grade 8 – Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk.
> 4. Further treatment will not improve his condition.
> 5. His condition is most likely an illness and degenerative in nature."[23]

On February 5, 2014, Dr. Cruz again wrote to Magsino to give his assessment regarding Perez. This stated that "[h]e is not permanently unfit to work as a seafarer."[24]

By March 19, 2014, Perez filed a complaint against NYK-FIL before the NCMB. He sought payment of sickness allowance, medical reimbursement, disability benefits, and an award of attorney's fees.[25] Perez undertook this step instead of submitting himself to a third doctor, jointly nominated with NYK-FIL, for final evaluation.[26]

In a Decision[27] dated July 31, 2014, the NCMB ruled in favor of Perez. It held that the assessment of Dr. Runas—that Seafarer Perez is permanently and totally disabled to perform his duties as a seafarer—is more credible because the assessment of Dr. Cruz was not definite that Seafarer Perez would be fit to resume work.[28] It also held that Perez is covered by the Collective Bargaining Agreement (CBA) between International Cruise

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[22] Id. at 346-347.
[23] Id. at 347.
[24] Id.
[25] Id. at 343.
[26] Id. at 346-347.
[27] Id. at 342-353
[28] Id. at 349.

Services, Ltd. and Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP) pursuant to Article 25, which states:

> A seafarer whose ability to perform his/her specific duties on board and whose degree of disability is assessed to be 50% or more shall, for the purpose of this Article, be regarded as permanently unfit for further sea service and shall therefore be entitled to 100% disability compensation. [29]

According to the NCMB, this provision does not limit inability to perform duties to accidents or occupational illnesses.[30] Further, it held that Perez is entitled to an award of sickness allowance pursuant to Article 22 of the same CBA, which provides:

> Article 22 1. Seafarers who during their Probationary Period and Seafarers on Fixed Term Employment Contracts who are discharged owing to sickness or injury, shall be entitled to medical treatment, maintenance, see Schedule of Cash Benefits, Annex 6 and their Monthly Salary; Monthly Total Guaranteed Pay or Monthly Guaranteed Sick wages as applicable, including earned Merit Pay at the Company's expense while he/she remains sick or injured up to a maximum of one hundred and thirty days after he/she has been signed off and been repatriated, provided satisfactory medical certificates in the English language are submitted approximately every fourteen (14) days from a physician acceptable to the Company, its agents, or the Protection and Indemnity Club. Depending upon the severity of the condition, medical reports can be requested more frequently.
>
> The Company will, if necessary, at the end of the one hundred and thirty (130) days, continue to pay for medical treatment and Maintenance until the Seafarer reaches Maximum Medical Cure.[31]

The dispositive portion of the NCMB Decision states:

> **WHEREFORE**, premises considered Judgment is hereby rendered finding respondent NYK-FIL SHIPMANAGEMENT, INC. jointly and solidarily liable to pay complainant Seaman Perez the amount of ONE HUNDRED TWENTY THOUSAND US DOLLARS (USD120,000.00) and ten percent (10%) of the total award or its peso equivalent converted at the time of payment as disability benefit and Attorney's Fees.
>
> In addition, Respondent is ordered to pay complainant the amount of USD4,489.33 less PHP135,176.33 as computed plus ten percent (10%) Attorney's Fees as his sickness pay under the CBA.
>
> **SO ORDERED**.[32]

Voluntary Arbitrator Leonardo B. Saulog penned his Dissenting Opinion[33] dated July 29, 2014. This differed from the Decision because it

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[29] Id.
[30] Id.
[31] Id.
[32] Id. at 353.

held that all the requisites[34] in Article 25 of the CBA must be complied with so that Perez could recover his claim for permanent total disability. However, since there was non-compliance with the requisite of a mandatory appointment of a third doctor whose findings shall be binding on all parties, Perez's claim under the CBA must be denied.[35] Hence, Perez is entitled to the amount of disability benefit only to the extent of the Grade 8 rating given by the company doctor.[36]

Aggrieved, NYK-FIL filed a Petition for Review[37] before the Court of Appeals.

The CA, in its Decision[38] dated July 22, 2016, denied the petition. The dispositive portion of the CA decision reads:

> **WHEREFORE,** the assailed Decision dated July 31, 2014 of the public respondent NCMB/Panel of Voluntary Arbitrators in NCMB-NCR-NTA-AC-940-02-03-2014 is hereby **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees is deleted.
>
> Petitioner's prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order is **DENIED** for having been rendered moot.
>
> **SO ORDERED.**[39]

NYK-FIL moved for reconsideration which was denied by the CA in its Resolution[40] dated January 16, 2017, for lack of merit.

Hence, this petition.

NYK-FIL posits that the CA committed serious and reversible error of law and fact in affirming the grant of permanent total disability benefits in favor of Perez based on an inapplicable and superseded CBA.[41] As basis for his claim, Perez presented the CBA entitled "Agreement for Senior Deck and Engine Officers and Key Personnel between International Cruise Management Agency AS for and in behalf of International Cruise Services

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33 Id. at 354-361.

34 The requisites of compensability under the CBA are the following:
1. Disabling permanent injury mentioned in an agreed medical report as a result of (a) accident or (b) occupational illness;
2. Occurrence during the effectivity of employment of a seafarer;
3. Reference to a medical report chosen by the Company and/or the seafarer with the condition that if there is disagreement as to the findings, the Union and/or the ITF shall appoint a third doctor whose findings shall be binding on all parties;
4. Issuance of a degree of permanent disability upon which the amount to be awarded is to be computed on.; id. at 357.

35 Id. at 359.

36 Id. at 361.

37 Id. at 362-411.

38 Id. at 60-75.

39 Id. at 75.

40 Id. at 78-79.

41 Id. at 16.

Limited (Company) and All Japan Seamen's Union Norwegian Seafarer's Union Norwegian Maritime Officers' Association Norwegian Union of Marine Engineers Effective July 1, 2011" (2011 CBA).[42] This CBA had already ceased to exist as of April 1, 2012, or long before Perez joined his vessel of employment.[43]

NYK-FIL asserts that it made an unintentional mistake when it presented as evidence a CBA, entitled "Agreement for Hotel/Catering officers and other Personnel between International Cruise Management Agency AS for and in behalf of International Cruise Services Limited (Company) and All Japan Seamen's Union Norwegian Seafarer's Union Associated Marine Officers' and Seamen's Union of the Philippines Effective April 1, 2013 (2012 CBA), that did NOT apply to the employment of Perez.[44] Since the position of Perez was that of a repair [personnel], he falls under the category of Key Personnel under the Deck Department.[45]

It is notable that NYK-FIL was only able to present the correct evidence during the appeal before the CA.[46] Even then, NYK-FIL believes that there was basis for the CA to rule on which between the contending CBAs must apply to Perez since this was a new issue related to an assigned error. Therefore, the CA should have held that the 2012 CBA is binding and should be used as basis for Perez's claim for compensation.[47]

NYK-FIL further asserts that Perez's condition is not work-related.[48] Spondylosis, as an incident of aging, does not arise from the duties being performed by Perez on board the vessel.[49] Moreover, the illness is not one of the occupational diseases provided for in Section 32-A of the Philippine Overseas Employment Administration (POEA) Contract. Even if Perez argues that his illness is disputably presumed to be work-related, NYK-FIL has discharged its burden of overcoming the disputable presumption through the presentation of the medical assessments stating that the illness of Perez is degenerative.[50]

Assuming that it is indeed work-related, the proper medical assessment of the company doctor was that Perez was suffering only from Grade 8 disability, which is considered in law as merely permanent partial disability.[51] The mere lapse of 120 days is not the proper gauge in ascertaining the extent of disability of a seafarer.[52] If so, the CA erred when it considered the disability assessment of the company doctor as merely an

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42 Id. at 17.
43 Id. at 20.
44 Id. at 17.
45 Id. at 18.
46 Id. at 18.
47 Id. at 20.
48 Id. at 37.
49 Id. at 38.
50 Id. at 41.
51 Id. at 21.
52 Id. at 25.

interim finding even when the medical certificate dated February 5, 2014 issued by Dr. Cruz stated that his assessment is the final disability grading.[53]

NYK-FIL also assails the ruling of the CA confirming the judgment of the NCMB-PVA that Perez is entitled to permanent total disability benefit in spite of Perez's failure to observe the mandatory procedure in disputing and overturning the medical assessment of the company doctor.[54] Perez obtained a second opinion from his chosen doctor on January 27, 2014, a day before the issuance of the final medical assessment by the company doctor. Thereafter, he lodged a complaint for disability compensation instead of submitting himself to a third doctor, jointly nominated with NYK-FIL, for final evaluation.[55]

Last, NYK-FIL contends that the CA erred in awarding sickness benefit in spite of the evidence that NYK-FIL had already satisfied the obligation to pay sickness allowance to Perez for 130 days.

On May 29, 2018, Perez filed his Comment/Opposition[56] (Re: Petition for Review on Certiorari).

Perez argues that the CA was correct in upholding the Decision of the NCMB-PVA. First, he states that the CA correctly ruled that "the new CBA deserves scant consideration because NYK-FIL itself averred that such CBA was presented for the first time on appeal."[57] Second, Perez states that NYK-FIL's own evidence, in the form of the ship doctor's assessment that Perez had "work-related" back strain, disprove that the condition is merely due to aging.[58] Third, the CA's finding of fact that the disability assessment of the company doctor was merely interim was based on evidence that there were further treatments even after the assessment made on January 17, 2014.[59] Fourth, Perez asserts that the case of *Sunit vs. OSM Maritime Services, Inc.*[60] (*Sunit*) was enough basis to conclude that since there was no mutual appointment of a third doctor, NYK-FIL cannot point to the lack of a third doctor as the sole reason why the company doctor's assessment must be upheld.[61]

As to the award of sickness pay, Perez avers that the NCMB's award of USD 4,489.33 was based on Article 22 of the CBA, which provides:

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53 Id. at 29.
54 Id. at 34.
55 Id. at 36.
56 Id. at 599-618.
57 Id. at 606.
58 Id. at 614.
59 Id. at 607-608.
60 806 Phil. 505, 517 (2017).
61 *Rollo*, p. 612.

> The Company will, if necessary, at the end of one hundred thirty days (130) continue to pay for medical treatment and maintenance until the seafarer reaches maximum medical cure.[62]

Hence, the computation was for 130 days multiplied by a daily pay of USD 19.5333 (with a subtotal of USD 2,539.33) and 130 days multiplied by a maintenance pay of USD 15.00 (with a subtotal of USD1,950), for a total of USD 4,489.33 reduced by PhP 135,176.33, which was the partial peso payment of NYK-FIL.[63]

On June 25, 2019, NYK-FIL filed its Reply[64] (to the Respondent's Comment/Opposition).

In its Reply, NYK-FIL refutes the arguments of Perez. First, while NYK-FIL admitted that it made a mistake when it attached an incorrect copy of the CBA, it nevertheless said that the issue about the correct CBA was raised prior to appeal.[65] Second, NYK-FIL asserts that the ship doctor's assessment that Perez had work-related back strain was only a suspicion or a working diagnosis. Eventually, after months of treatment and evaluation, Dr. Cruz, the company doctor, said that the condition of Perez was degenerative in nature.[66] Third, NYK-FIL clarifies that the company doctor's assessment given on January 28, 2014 was the final assessment because Perez had reached his maximum medical care and that further treatment will not improve his condition.[67] Furthermore, there was no evidence showing that Perez had undergone treatment after January 28, 2014.[68] Since January 28, 2014 falls on the 204th day, the medical report was suitably issued within the extended 240-day period and must be appreciated by the court as a final assessment of Perez's permanent partial disability at Grade 8.[69] Lastly, NYK-FIL argues that Perez misconstrued the SC's ruling in *Sunit*. The Court held that:

> [T]he language of the POEA-SEC is clear in that both the seafarer and the employer must mutually agree to seek the opinion of a third doctor. In the event of disagreement on the services of the third doctor, the seafarer has the right to institute a complaint with the LA or NLRC." [70]

NYK-FIL counters that the seafarer acquires the right to initiate a complaint only after the parties have explored the third doctor referral but the procedure was not pursued because of disagreement.[71]

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62 Id. at 616.
63 Id. at 617.
64 Id. at 649-678.
65 Id. at 658.
66 Id. at 670-671.
67 Id. at 661.
68 Id.
69 Id. at 662.
70 Id. at 667.
71 Id.

In this case, the parties did not arrive at a point where they explored the referral to a third doctor because the second opinion was not disclosed to NYK-FIL.[72] Perez obtained the certification from Dr. Runas on January 27, 2014, or a day before the company doctor issued its final disability grade.[73]

The sole issue for resolution is: Was the CA correct in upholding the Panel of Arbitrators' ruling that Perez is entitled to disability benefit on the ground that the medical assessment of the company doctor was merely interim and that there was noncompliance with the procedure of mandatory referral to a third doctor?

Stated simply: Is Perez entitled to permanent total disability benefits?

We rule in the negative.

We focus the discussion on these two points:

(a) Is the January 28, 2014 medical assessment of the company doctor complete, final, and definite; and made within the 120/240-day period within which a declaration of disability should be made?

(b) Is the referral to a third doctor mandatory?

As to the first point, We rule that there was a complete, final, and definite medical assessment on Perez's disability declared by the company doctor within the 120/240-day period.

The Court held in *Talaroc vs. Arpaphil Shipping Corporation*[74] that:

> If the company-designated physical 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 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.[75]

Perez's incident aboard *MV Crystal Symphony* occurred on June 29, 2013. By July 6, 2013, he was repatriated to the Philippines. On November 9, 2013, he underwent surgery. An interim disability rating was given on December 3, 2013 while he underwent treatment from December 3, 2013 to January 16, 2014. This is sufficient justification for the 120 day-period to be extended to 240 days.

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72 Id.
73 Id. at 668.
74 817 Phil. 598 (2017).
75 Id. at 611-612.

On January 28, 2014, the company doctor, Dr. Cruz, issued, among others, a statement regarding Perez that: "The **final disability grading** based on the POEA schedule of disability grading is Grade 8 – Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk."[76]

Therefore, the ruling of the CA that it was interim in nature was speculative and contrary to the evidence presented by NYK-FIL.

As to the second point, We rule that a referral to a third doctor is mandatory. Failure to follow this procedure as set out in the CBA and the POEA-SEC is a breach of these agreements and results in the application of the disability rating of the company doctor.

The Court has held in *Philippine Transmarine Carriers, Inc. v. San Juan,*[77] citing *Marlow Navigation Philippines, Inc. v. Osias,*[78] that:

> [T]he referral to a third doctor is mandatory when: (1) there was a valid and timely assessment by the company-designated physician; (2) the appointed doctor of the seafarer refuted such assessment."

On January 28, 2014, Dr. Cruz, issued that: "The **final disability grading** based on the POEA schedule of disability grading is Grade 8 – Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." This was reiterated in his letter dated February 5, 2014, where he wrote: "He is not permanently unfit to work as a seafarer."[79]

On the other hand, Perez obtained a second opinion from his chosen doctor on January 27, 2014, a day before the issuance of the final medical assessment by the company doctor.

By March 19, 2014, Perez filed a complaint against NYK-FIL before the NCMB instead of submitting himself to a third doctor, jointly nominated with NYK-FIL, for final evaluation.[80] Therefore, there was no compliance with the mandatory referral to a third doctor, a procedure that is stated in Article 25 of the CBA and Section 20 of the POEA Standard Employment Contract (POEA-SEC).

This Court held that such is a mandatory procedure in the case of *INC Navigation Co., Philippines vs. Rosales*,[81] which states that:

> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other

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[76] *Rollo*, p. 199.
[77] G.R. No. 207511, October 5, 2020.
[78] 773 Phil. 428, 446 (2015).
[79] *Rollo*, p. 347.
[80] Id. at 36.
[81] 744 Phil. 774 (2014).

> words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia vs. Dumadag*, *Ayungo vs. Beamko Ship Management Corp.*, *Santiago vs. Pacbasin Ship Management, Inc.*, *Andrada v. Agemar Manning Agency*, and *Masangkay vs. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[82]

The effect of Perez's failure to adhere to the mandatory referral provision is that the medical assessment of the company doctor should prevail.

In sum, the petition of NYK-FIL is partially granted. While the CA correctly ruled that Perez is entitled to both disability benefit and sickness allowance, he is only entitled to compensation to the extent of the disability rating based on the POEA Schedule of Disability Grading given by the company doctor. The assessment of Perez's personal doctor of permanent and total disability cannot be upheld because there was no referral to a third doctor, which is a mandatory procedure set out in Article 25 of the CBA and Section 20 of the POEA-SEC.

WHEREFORE, the present Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated July 22, 2016 and the Resolution dated January 16, 2017 of the Court of Appeals in CA-G.R. SP No. 136843 are **MODIFIED.**

NYK-FIL Ship Management, Inc. is jointly and solidarily liable to pay respondent Ebuen S. Perez the amount of USD 36,000.00, or its peso equivalent at the time of payment, as compensation to the extent of the Grade 8 [Moderate rigidity or two-thirds (2/3) loss of motion of lifting power of the trunk] (or 33.59%) final disability grading based on the Philippine Overseas Employment Administration Schedule of Disability Grading given by the company doctor, in relation to Article 25 of the Collective Bargaining Agreement.

In addition, NYK-FIL Ship Management, Inc. is ordered to pay Ebuen S. Perez the amount of USD 4,489.33, or its peso equivalent at the time of payment, less PhP 135,176.33 as computed, as his sickness pay under the Collective Bargaining Agreement."

All monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until fully satisfied.

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[82] Id. at 787.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
105-II
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