Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** *which reads as follows:*

"G.R. No. 247566 – *(Christopher Q. Eusebio v. Aminta Crew Management, Inc.)*

We reverse.

Generally, this Court reviews only questions of law raised *via* petition for review on *certiorari* under Rule 45 of the Rules of Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction. The Court, however, permits the relaxation of this rule when the factual findings below are not uniform, as here.[1] Indeed, the variance between the factual findings of the Panel of Voluntary Arbitrators and the Court of Appeals allows us to resolve the factual issues anew.

Petitioner is entitled to total and permanent disability benefits

The employment of petitioner Christopher Q. Eusebio with respondent Aminta Crew Management, Inc. is primarily governed by the 2010 Philippine Overseas Employment Agency – Standard Employment Contract (POEA-SEC), Section 20(A) of which sets the procedure for disability claims of seafarers, thus:[2]

x x x x

- over – ten (10) pages ...

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1 *Reyes v. Global Beer Below Zero, Inc.*, 819 Phil. 483, 493 (2017).
2 *Chan v. Magsaysay Maritime Corp,* G.R. No. 239055, March 11, 2020.

SECTION 20. COMPENSATION AND BENEFITS. —

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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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 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.** (Emphasis supplied)
>
> x x x x

Further, Article 198 (c)(1), Chapter VI, Title II, Book IV of the Labor Code defines total and permanent disability, as follows:

> Art. 198. Permanent and total disability. -
>
> x x x x
>
> (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 for in the Rules[.]
>
> This definition is supplemented by Section 2(b) of Rule VII of the Amended Rules on Employees' Compensation (AREC):
>
> Sec. 2. Disability. – x x x.

> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> x x x x

Corollarily, Rule X of the Amended Rules on Employees' Compensation (AREC) reads:

> 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 any time 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.

Pastrana v. Bahia Shipping Services,[3] summarized the rules governing permanent and total disability claims, thus:

> 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;
>
> 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**;
>
> 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

[3] G.R. No. 227419, June 10, 2020.

> 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
>
> 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. (Emphases and underscoring supplied)

Verily, referral to a third doctor as provided in Section 20(A)(3) of the POEA-SEC is mandatory in case there are disagreements made by the company-designated physician and the seafarer's chosen physician as to the seafarer's medical condition. But before a seafarer could be compelled to initiate referral to a third doctor, there must first be a final and categorical assessment by the company-designated physician as to the seafarer's disability within the 120 or 240-day window. Otherwise, the seafarer shall be considered totally and permanently disabled by operation of law.[4]

a. The company-designated physician failed to issue a final and definite medical assessment within the prescribed periods

Petitioner was medically repatriated on August 3, 2015. Consequently, Marine Medical Services (MMS) in Cardinal Santos Medical Center, the company-designated physician, issued his alleged final Medical Assessment dated December 7, 2016 declaring petitioner fit for sea duties. The assessment, therefore, was issued only after the lapse of 126 days counting from petitioner's medical repatriation or six (6) days beyond the 120-day window. Respondent admitted as much in its position paper filed before the National Capital Region-Regional Conciliation and Mediation Board:

> x x x x
>
> 4) The complainant was categorically declared by the company designated doctor as fit to work effective 7 December 2016 **after only 126 days from his return** thus

[4] *Abundo v. Magsaysay Maritime Corporation, et al.*, G.R. No. 222348, November 20, 2019.

> the complainant is not entitled to any disability benefits[5] x x x (emphasis supplied)
>
> x x x x

Indubitably, MMS failed to issue a final medical assessment within the mandatory 120-day period. Respondent did not offer any explanation for the delayed issuance of the assessment, hence, the extended 240-day period for compliance does not come into play. On this ground alone, petitioner's disability should be deemed total and permanent by operation of law.

At any rate, even assuming for the sake of argument that the fit to work assessment of MMS was timely issued, the same could hardly be considered as the final and definite assessment required by our rules.

In ***Orient Hope, et al. v. Jara***,[6] the Court held that in order to be deemed a final and definite assessment, the medical conclusions should be based on (a) the symptoms and findings collated with medically acceptable diagnostic tools and methods, (b) reasonable professional inferences anchored on prevailing scientific findings expected to be known to the physician given his or her level of expertise, and (c) submitted medical findings or synopsis, supported by plain English annotations that will allow the Labor Arbiter and the National Labor Relations Commission to make the proper evaluation. A final, conclusive, and definite assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.[7]

Here, MMS issued a medical assessment dated December 7, 2016 declaring that petitioner is "*cleared orthopedic wise*" as of the date of its issuance. The Court is befuddled though as to how such medical assessment can be deemed final and definite when the findings itself includes the qualifier "orthopedic wise."

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[5] *Rollo*, p. 230.

[6] 832 Phil. 380, 400 (2018), citing *Monana v. MEC Global Shipmanagement and Manning Corp.*, 746 Phil. 736 (2014).

[7] *Macahilas v. BSM Crew Service, et al.*, G.R. No. 237130, July 1, 2020.

In ***Salas v. Transmed Medical Corp., et al.***,[8] the company-designated physician issued Medical Report dated May 4, 2015 which found petitioner Salas as cleared "orthopedic wise." The Court observed, however, that said report failed to state whether he was already fit to resume work or had been assessed with a certain disability grading. Hence, the Court ruled that the medical report failed to manifest a definite and final assessment. The failure of the company-designated physician to issue the required assessment within the prescribed period rendered the seafarer's disability as total and permanent by operation of law.

To stress, petitioner's supposed orthopedic recovery does not necessarily mean that he was totally healed. Though orthopedic surgery and physical therapy may have addressed his trigger finger condition, these measures did not treat his *Carpal Tunnel Syndrome*, which is a condition affecting the nerves.

Carpal Tunnel Syndrome causes numbness, tingling or weakness in the hand. The pain in the carpal tunnel is due to excess pressure in the wrist on the median nerve. Repeating the same hand and wrist motions or activities over a prolonged period of time may aggravate the tendons in the wrist, causing swelling that puts pressure on the nerve, as here.[9] Consequently, clearance on the orthopedic-side of petitioner's condition does not *ipso facto* mean full recovery. This was confirmed by the medical findings of petitioner's second doctor, Dr. Jose Rafael Resubal, an Orthopedic Specialist from Calamba Medical Center.

In any event, we are not inclined to accept the contents of the medical assessment dated December 7, 2016 as gospel truth. Its issuance appears malicious, to say the least, considering that the company-designated physician declared that "there was no significant relief of [petitioner's] pain" just the day before declaring petitioner fit to work. In other words, petitioner's condition remained unresolved.

More, the alleged final medical assessment was issued without exhausting all possible treatment options within the periods prescribed by law. To reiterate, petitioner was still complaining about his pain. Thus, respondent should have at least taken steps to ascertain its cause. It could have initiated further medical examinations in the exercise of due diligence. Yet, respondent focused on petitioner's orthopedic recovery and proceeded to clear him for sea duties.

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[8] G.R. No. 247221, June 15, 2020.

[9] *Phil. Transmarine Carriers, Inc., et al. v. Trinidad*, G.R. 211574, October 5, 2020.

Clearly, respondent was too close to the tree that it could not see the entire forest. The bigger picture was obscured by respondent's intent to hurriedly issue a fit to work certification. Regrettably though, such medical assessment came too late in the day. Worse, it could hardly be considered final and definite under prevailing rules.

b. The rule on third doctor referral finds no application in this case.

Respondent nevertheless argues that referral to a third doctor, in case there is variance between the medical assessment of the company-designated physician and seafarer's doctor, is mandatory. Thus, petitioner's refusal to refer his grievance to a third doctor should sustain its company-designated doctor's fit to work assessment.

But as stated, the third doctor referral does not come into play where the company-designated physician failed to issue a final and definite medical assessment within the 120 or 240-day period, as here. Under this condition, petitioner's disability is deemed total and permanent by operation of law. The opinion of a second doctor, let alone, a third one becomes wholly irrelevant here as petitioner is conclusively presumed to be suffering from a total and permanent disability.

In ***Salonga v. Solvang Philippines, Inc.***,[10] the Court ruled that failure of Dr. William Chuasuan, the company orthopedist, to issue a final disability assessment renders the inapplicability of the third doctor referral requirement. Thus, petitioner's disability became total and permanent by operation of law. So must it be.

Petitioner is entitled to attorney's fees.

The Court, too, reinstates the award of attorney's fees. Article 2208[11] of the New Civil Code states that attorney's fees may be awarded in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the employer's act or omission has compelled the employee to incur expenses to protect his or her interest, as here.

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[10] G.R. 229451, February 10, 2021.

[11] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
x x x x

Finally, the Court imposes legal interest at six percent (6%) per annum on the monetary awards from the date of finality of this resolution until full payment pursuant to ***Nacar v. Gallery Frames***.[12]

ACCORDINGLY, the petition is **GRANTED.** The Decision dated February 19, 2019 and Resolution dated May 30, 2019 of the Court of Appeals in CA-G.R. SP No. 155540 are **REVERSED and SET ASIDE**. The January 29, 2018 Decision of the Panel of Voluntary Arbitrators in AC-700-RCMB-NCR-126-06-04-2017 is **REINSTATED** with **MODIFICATION.**

Respondent **Aminta Crew Management, Inc.** is **ORDERED** to **PAY** petitioner **Christopher Q. Eusebio** total and permanent disability benefits in the amount of **USD98,848.00** plus ten percent (10%) attorney's fees. These monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
272-B

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12 See 716 Phil. 267 (2013).

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