Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 18, 2023**, *which reads as follows:*

"G.R. No. 223488 (*Ronnie S. Obenza v. Orient Lines Phils., Inc. and/or Orient Navigation Corporation*). – This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 18, 2015 and the Resolution[3] dated February 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 128915. The CA affirmed the Decision[4] dated June 29, 2012 and the Resolution[5] dated November 28, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW-M-03-000252-12, which reversed the Decision[6] dated November 28, 2011 of the Labor Arbiter (LA) in NLRC OFW Case No. (M) 03-03995-11.

The Antecedent Facts

On October 30, 2009, Orient Line Philippines, Inc., on behalf of its principal, Orient Navigation Corporation (respondents), hired petitioner Ronnie S. Obenza (Obenza) as a Second Assistant Engineer on board the M/V Maritime Sirinant for a period of nine months. Their employment contract was approved by the Philippine Overseas Employment Agency (POEA) and stipulated a basic monthly salary of US$936.00.[7]

Obenza was deployed on November 17, 2009 and proceeded to carry out his duties. On April 5, 2010, he claimed that he fell on his back and right shoulder while doing maintenance work cleaning the sea cooler generator.[8] He felt severe pain on his back and right shoulder and consulted with the ship's physician who put him on pain medications.[9]

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1 *Rollo*, pp. 3-28.
2 Id. at 34-43; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes, concurring.
3 Id. at 46-47; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Victoria Isabel A. Paredes, concurring.
4 Id. at 180-188; penned by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco, concurring.
5 Id. at 228-236.
6 Id. at 168-178; penned by Executive Labor Arbiter Fatima Jambaro-Franco.
7 Id. at 49.
8 Id. at 35.
9 Id. at 35-36.

When the ship docked at Qatar, Obenza had a check-up at a medical facility where he was diagnosed with "Sustained Traumatic Myalgia, Back and Per-arthritis, Right Shoulder."[10] He was given additional pain medication and advised to perform only light duties.[11]

On June 8, 2010, the ship arrived at California, United States of America. He still felt pain and was thus referred to the Overseas Medical Center for check-up and treatment. He was diagnosed with "Multiple Trauma at the Back and Shoulder" and recommended to be repatriated.[12]

Obenza was repatriated to the Philippines on June 13, 2010 and referred to the Metropolitan Medical Services.[13] After the tests conducted, it was determined that he sustained a "Partial Tear of the Supraspinatus; Associated Impingement from Prominent Acromio-Carvicular Joint; Partial Avulsion Paired Superior and Inferior Labra; Acute Bone Bruise."[14]

He thereafter underwent physical therapy at the Perpetual Succour Hospital in Lahug, Cebu, from June 16, 2010, to January 10, 2011.[15] However, he still felt pain despite months of therapy which constrained him to consult his own physician, Dr. Nicanor Escuting (Dr. Escutin). Dr. Escutin gave his medical opinion that the extent and nature of Obenza's injury was total and permanent, and was no longer fit to work as a seafarer.[16]

Respondents offered to pay Obenza disability benefits of US$14,256.00 but the latter refused. He claimed that he was entitled to the higher total and permanent disability benefits equivalent to US$118,000.00 pursuant to the All Japan Seamen's Union-Philippine Seafarer's Union International Mariners Management Association of Japan Collective Bargaining Agreement (CBA).[17] Respondents refused to pay this increased amount of disability benefits.

On March 9, 2011, Obenza filed the instant case seeking payment of total and permanent disability benefits under the CBA, moral and exemplary damages, and attorney's fees.[18] Respondents countered that Obenza suffered only partial disability and not total and permanent disability,[19] and that the CBA did not apply because it was not proven that the injuries resulted from an accident.[20]

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[10] Id. at 35.
[11] Id. at 35-36.
[12] Id. at 36.
[13] Id. at 182.
[14] Id. at 181.
[15] Id.
[16] Id. at 36.
[17] Id. at 129-160.
[18] Id. at 98-108.
[19] Id. at 116-118.
[20] Id. at 114-116.

The LA Ruling

The LA rendered its Decision[21] in favor of Obenza and granted him the total and permanent disability benefits under the CBA:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering respondents **Orient Line Philippines, Inc./Orient Navigation Corporation/ Macario Dela Pena** to jointly and severally pay complainant **Ronnie S. Obenza** the amount of **ONE HUNDRED THIRTY THOUSAND SIX HUNDRED EIGHTY US DOLLARS (US$130,680.00)** or its equivalent in Philippine Pesos at the prevailing rate of exchange at the time of actual payment representing his total permanent disability benefits and attorney's fees.
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[22] (Emphases in the original)

The LA concluded that Obenza's injuries were total and permanent as proven by the medical certificates adduced detailing the nature and extent of his disability.[23] He is entitled to the disability benefits in the CBA because the injuries were caused by an accident when he fell while doing maintenance work on the sea cool generator. This fact was supported by the pictures of his bruises which showed that these were not caused by an illness.[24]

Dissatisfied, respondents appealed the Decision to the NLRC.

The NLRC Ruling

The NLRC rendered its Decision[25] partially granting the appeal. It affirmed the finding that Obenza suffered total and permanent disabilities, but lowered the amount of disability benefits awarded:

> **WHEREFORE**, the decision of the Labor Arbiter is SET ASIDE. The respondents are ordered to jointly and severally pay the complainant total and permanent disability compensation in the amount of SIXTY THOUSAND U.S. DOLLARS (US$60,000.00) and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.
>
> **SO ORDERED**.[26] (Emphases in the original)

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[21] Id. at 168-178.
[22] Id. at 177-178.
[23] Id. at 176.
[24] Id. at 174.
[25] Id. at 180-187.
[26] Id. at 187.

It held that the higher disability benefits under the CBA cannot apply because Obenza did not present any proof that his injuries resulted from an accident. His sole allegations are insufficient to establish the fact that an accident happened. Hence, the CBA will not apply and his disability is compensable only pursuant to the POEA-SEC that only requires that the injury be work-related.[27]

Aggrieved, Obenza filed a Motion for Reconsideration seeking to reinstate the original LA Decision.[28] Respondents also filed a Partial Motion for Reconsideration[29] insisting that Obenza was not entitled to total and permanent disability benefits since his disability was only partial.

The NLRC issued a Resolution[30] granting only respondents' Partial Motion for Reconsideration. It affirmed that the CBA could not apply to Obenza's disability and lowered his disability rating from Grade 1, for total and permanent disability, to a Grade 8 disability:

> **WHEREFORE**, the Decision dated 29 June 2012 of this commission is hereby SET ASIDE and a new one is hereby rendered, **DECLARING** respondents local agency and respondent foreign principal, jointly and solidarily liable to pay complainant Ronnie S. Obienza:
>
> 1. Grade 8 Disability Benefits in the amount of US$16,795, computed at US$50,000 x 33.59% to be paid in Philippine currency at the prevailing exchange rate at the time of payment; and
>
> 2. 10% attorney's fees.
>
> SO ORDERED.[31] (Emphasis in the original)

It explained that the CBA cannot apply to Obenza's disability benefits because the M/V Sirinant was not listed among the vessels covered by it. Obenza also cannot claim that he was covered by the CBA as a member of the Philippine Seafarers Union because he did not present any evidence to prove this fact.[32]

Anent Obenza's disability rating, the NLRC observed that the parties failed to follow the proper procedure of referring the matter to a third-party physician in case of conflicting findings from the company-designated physician and seafarer's own physician. However, upon its review of the

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[27] Id. at 185-186.
[28] Id. at 189-203.
[29] Id. at 205-210.
[30] Id. at 228-236; penned by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco, concurring.
[31] Id. at 235-236.
[32] Id. at 229.

records, it deemed it proper to award him only Grade 8 disability benefits as the nearest to Obenza's case.[33]

Obenza filed a Petition for *Certiorari*[34] assailing the NLRC's Resolution, to which respondents filed a Comment.

The CA Ruling

The CA rendered its Decision[35] affirming the NLRC Decision and Resolution:

> **WHEREFORE**, the petition is **DISMISSED**. The Decision dated 29 June 2012 and the Resolution dated 28 November 2012 of the National Labor Relations Commission are **AFFIRMED**.
>
> **SO ORDERED**.[36] (Emphases in the original)

The dispositive portion of the CA Decision notably stated that it affirmed both the NLRC Decision and Resolution, which were ostensibly contradictory. However, a perusal of the body of the Decision readily shows its intent. Based on its discussion, it reversed the NLRC's Resolution and affirmed its Decision insofar as it ruled that (1) Obenza suffered from a total and permanent disability,[37] and (2) the CBA did not apply.[38] On the other hand, it affirmed the NLRC Resolution insofar as it ruled that the CBA did not apply for the additional grounds cited.

Respondents no longer questioned this Decision and is therefore bound by it. Obenza sought reconsideration but was denied by the CA for lack of merit.[39]

Hence, the instant petition.

Notably, the Court received the Notice of Death of Petitioner,[40] with attached Certificate of Death,[41] informing it of Obenza's passing on June 13, 2019 pending the resolution of this case. The Court issued a Resolution[42] dated February 17, 2021 granting his counsel's prayer to have his heirs substituted as parties to this case.

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[33] Id. at 233-234.
[34] Id. at 237-253.
[35] Id. at 34-43.
[36] Id. at 42.
[37] Id. at 39-41.
[38] Id. at 41-42.
[39] Id. at 46-47.
[40] Id. at 331-332.
[41] Id. at 336-337.
[42] Id. at 341.

The Parties' Arguments

Obenza in his petition mainly argued that he presented sufficient evidence to prove that his disability resulted from an accident. His evidence included pictures of his injuries, medical certificates, his handwritten narration/report, and Dr. Escutin's Disability Report.[43] He highlighted the Medical Certification dated September 6, 2010 issued by a company-designated physician that specifically mentioned his brief clinical history and how he "fell hitting the affected area on the ground while doing maintenance with the sea water cooler generator on April 5, 2010 on board the vessel."[44]

He further alleged that the cause was clearly an accident and not a result "from the performance of duty" because the injury could not be reasonably expected from his normal functions as a Second Assistant Engineer. The injury likewise could not be expected from the simple act of cleaning the sea water cooler generator.[45] Hence, his injury should be deemed the result of an accident and qualified under Sections 1-3, Article 22, of the CBA providing higher disability benefits.[46]

On the contrary, respondents in their Comment[47] reiterated that Obenza did not sufficiently prove that his injuries were the result of an accident.[48] Moreover, his disability cannot be considered total and permanent since the company-designated physician diagnosed him only with a Grade 8 disability on October 29, 2010, which was within the 240-period prescribed by law.[49]

Obenza filed a Reply[50] to respondents' Comment essentially reiterating his previous arguments.

The Ruling of the Court

After a judicious review, the petition is denied.

It is established that a seafarer's entitlement to disability benefits is governed by law, contract, and medical findings.[51] The pertinent provisions of law are Articles 191 to 193 of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees' Compensation.

Moreover, a seafarer's employment contract is subject to the POEA

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[43] Id. at 12-17.
[44] Id. at 14.
[45] Id. at 19-20.
[46] Id. at 25.
[47] Id. at 297-302.
[48] Id. at 298.
[49] Id. at 299.
[50] Id. at 311-322.
[51] *Ventis Maritime Corporation v. Cayabyab*, G.R. No. 239257, June 21, 2021.

Standard Employment Contract (POEA-SEC) which enumerates compensable work-related disabilities and diseases under Sections 32 and 32-A. In this case, the 2003 POEA-SEC is applicable. It is also subject to any collective bargaining agreements between the parties provided it is sufficiently proven.

Significantly, Article 192(C)(1) of the Labor Code defines a permanent and total disability as "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules." This exception refers to cases when the 120-day period can be extended, but not beyond 240 days, for injuries or sicknesses which require further medical attendance.[52]

Permanent disability is therefore defined as "the inability of a worker to perform his job for more than 120 days (or 240 days as the case may be), regardless of whether or not he loses the use of any part of his body."[53] Total disability, in turn, is "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."[54]

Obenza Suffered Total and Permanent Disability

It bears stressing that the LA, the NLRC in its affirmed Decision, and the CA all determined that Obenza suffered a total and permanent disability. This conclusion was adequately substantiated by the evidence on record and there are no compelling reasons for the Court to reverse it.

The LA correctly observed that at the time respondents' company-designated physician issued an alleged final disability assessment on October 29, 2010, Obenza was still in the middle of his prescribed physical therapy which lasted until January 10, 2011. It thus appeared that this assessment was issued simply to comply with the 120/240-day prescribed period under the law. However, it was not possible yet at the time to accurately determine the true extent of his incapacity.[55] On the contrary, the evidence submitted pertaining to his treatments showed that his disability was permanent since it rendered him incapable of performing his job for a period longer than the prescribed period of 120/240 days.

Obenza's disability is likewise considered total since it disabled and prevented him from ever performing his work as a seafarer. This was further

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[52] AMENDED RULES ON EMPLOYEES' COMPENSATION, Rule X, Section 2.
[53] *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 514 (2017).
[54] Id.
[55] *Rollo*, p. 176.

substantiated by Dr. Escutin's Disability Report[56] dated March 12, 2011 which stated its findings:

> FINAL DIAGNOSIS
> - TEAR, PARTIAL, SUPRASPINATUS TENDON, RIGHT
> - IMPINGEMENT SYNDROME, RIGHT SHOULDER
> - ROTATOR CUFF, TENDINITIS, RIGHT SHOULDER
>
> DISABILITY RATING:
>
> Based on the physical examination and supported by laboratory examination, he sustained injury on his right shoulder while working. He fell on his back and shoulder which cause[d] some injury on the internal structures of his right shoulder. It was only after two months that he was correctly diagnosed in California, USA that he was indeed injur[ed] on his right shoulder. In Manila, he was recommended to have physical therapy which he had in Cebu for almost 5 months. He was re-evaluated since there was no improvement in his condition and progressing in severity. He was recommended to undergo operation but [it] was not done. He has now weakness on his right upper extremity aside from the constant pain whenever he moves his right shoulder. He cannot lift objects on his right upper extremity. He sustained a tear on his Supraspinatous muscle which is one of the three muscles that moves the upper extremities in all of its direction. His condition is impairing his activity. **He is not physically capable to do the job of a seaman**. His shoulder muscles are already atrophied due to disuse which means he cannot lift heavy objects.
>
> **He is given a PERMANENT DISABILITY. He is UNFIT FOR SEADUTY in whatever capacity as a SEAMAN**.[57] (Emphases and underscoring supplied)

The CA concurred that Obenza suffered a total and permanent disability and explained as follows:

> The petitioner arrived in Manila on 11 June 2010. He was treated by the company-designated physician from 16 June 2010 until 11 January 2011, which is beyond 120 days. A Disability Report dated 12 March 2011 by the petitioner's physician / specialist shows that he is permanently disabled. It was only on 03 February 2011, or after the 240th day, that the petitioner filed his complaint.
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> x x x x
>
> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether 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. In disability compensation, it is not the injury which is compensated, but rather the

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[56] Id. at 96-97.
[57] Id. at 97.

incapacity to work resulting in the impairment of one's earning capacity.

> Since the petitioner is unable to perform his customary job for more than 120 days and his disability lasted for more than 120 days, **his disability is permanent and total**.[58] (Emphasis and underscoring supplied)

Based on the foregoing, We affirm that Obenza suffered a total and permanent disability arising from his work for which he is entitled to compensation.

The CBA does not Apply to Compute Obenza's Disability Benefits

It is fundamental that the person who asserts a critical fact has the burden to prove it. In labor cases, the employee claiming benefits under the law must establish his/her entitlement to it by substantial evidence.[59]

In this regard, the Court has ruled that for a CBA to be applied in determining an award of disability benefits, the seafarer has the burden to prove its existence and applicability to his/her case.[60] Jurisprudence is thus replete with cases when the CBA was not applied due to inadequate substantiation, leaving the Court to award disability benefits in accordance with the POEA-SEC.[61]

In *North Sea Marine Services Corp. v. Enriquez*,[62] the Court opted not to apply the CBA since there was no proof that it covered the employment contract. The CBA did not contain any specific details regarding the parties covered by it, the duration of its effectivity, and the signatures of the contracting parties. It was noted that the "[r]ecords are bereft of evidence showing that respondent's employment was covered by the supposed CBA or that petitioners had entered into any collective bargaining agreement with any union in which respondent was a member."[63]

It was similarly held in *Oscares v. Magsaysay Maritime Corp.*[64] that the CBA could not be applied since it was not shown that it covered the seafarer's employment contract.

In this case, We affirm that Obenza failed to prove that the CBA applied to his contract. It is first noted that the copy of the CBA attached to the instant petition was incomplete.[65] Nevertheless, the NLRC aptly observed

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[58] Id. at 39-41.
[59] *Ventis Maritime Corporation v. Cayabyab*, supra note 51.
[60] *Eyana v. Philippine Transmarine Carriers, Inc.*, 752 Phil. 232 (2015).
[61] *Ventis Maritime Corporation v. Cayabyab*, supra note 51.
[62] 816 Phil. 734 (2017).
[63] Id. at 743.
[64] G.R. No. 245858, December 2, 2020.
[65] *Rollo*, pp. 50-79.

that the CBA submitted by Obenza included an Annex 5 with the list of vessels covered by it, which notably did not state the MV Maritime Sirinant.[66] Moreover, there was no evidence presented to prove that Obenza was a member of the union which was a party to the CBA. We quote and concur with the NLRC's pertinent discussion as follows:

> On the **FIRST ISSUE**, complainant contended that the alleged CBA shall be applied in the present case; we find the contention not well taken.
>
> Cursory review of the alleged AMOSUP/ITF TCCC Collective Bargaining Agreement (CBA) reveals that the vessel "*MV Maritime Sirinant*" joined by the complainant is not among the vessels covered by the CBA. Specifically, Annex 5 of the alleged CBA which contains the List of Vessels covered does not include the vessel "*MV Maritime Sirinant*".
>
> Moreover, while complainant alleged that the CBA applies to him being a member of the union, however, he did not submit any proof of this fact.
>
> It is a basic rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In the given case, the *onus probandi* lies on the complainant who is duty bound to prove the veracity of the affirmative allegation set forth in his complaint. More importantly, complainant must present proof that the CBA includes the vessel joined by him; and further, he was a member of the Philippine Seafarers' Union (PSU)-ALU-TUCP-ITF.
>
> Sadly though, there is no evidence on record to prove these material facts. Complainant relied on the copy of the submitted on record which undoubtedly did not contain his vessel in the Lists of Vessel covered by the CBA.[67] (Emphasis in the original)

Obenza failed to explain and refute these critical findings. He merely alleged that the absence of the MV Maritime Sirinant from the list of vessels covered by the CBA did not mean it was excluded since the list did not state that it was an exclusive list. He also asserted that his failure to prove his membership in the union must not be taken against him since this was never put in issue and is deemed admitted.[68]

These arguments are bereft of merit because Obenza had the burden to prove that the CBA applied to his specific employment contract and disability claim. This cannot be deemed impliedly admitted since it is one of the contentious issues raised. He cannot evade his burden to prove this fact, especially in light of the circumstances cited by the NLRC which contradict the applicability of the CBA.

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[66] Id. at 77.
[67] Id. at 229-230.
[68] Id. at 251-252.

Regrettably, since there was insufficient evidence to prove the applicability of the CBA, it cannot be used as the basis to award disability benefits. It is likewise no longer necessary for the Court to delve further into the issue of whether or not the injury resulted from an accident to trigger the application of the CBA.

All told, since the CBA did not apply, the CA correctly affirmed the NLRC Decision that Obenza's total and permanent disability is compensable in accordance with the disability benefits under the governing 2003 POEA-SEC.[69] The NLRC Decision awarding him US$60,000.00 as total and permanent disability benefits, consistent with Sections 32 and 32-A of the 2003 POEA-SEC,[70] is therefore upheld.

The award of attorney's fees equivalent to ten percent (10%) of the total award is also affirmed since Obenza was constrained to litigate to protect his interests.[71]

The legal interest rate of six percent (6%) *per annum* is imposed on the total monetary awards from the finality of this Resolution until full payment.[72]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated June 18, 2015 and the Resolution dated February 4, 2016 of the Court of Appeals in CA-G.R. SP No. 128915 are hereby **AFFIRMED**. Respondents Orient Lines Phils. Inc. and Orient Navigation Corporation are **ORDERED** solidarily liable to **PAY** the heirs of petitioner Ronnie S. Obenza total and permanent disability compensation in the amount of Sixty Thousand U.S. Dollars (US$60,000.00), as well as attorney's fees equivalent to ten percent (10%) of the total monetary award.

All monetary awards shall earn interest of six percent (6%) *per annum* from its finality until full payment.

SO ORDERED."

By authority of the Court:

Misaeldcbatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 3/10/23

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[69] Id. at 42.
[70] Id. at 186.
[71] CIVIL CODE, Article 2208(2).
[72] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

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