REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **February 22, 2023** *which reads as follows*:

"G.R. No. 252652 (LEAH BAGUNAS ARADO, Petitioner **v. BAHIA SHIPPING SERVICES, INC., CARNIVAL CRUISE LINES, and/or ELIZABETH B. MOYA,** Respondents). – The present Petition[1] before this Court assails the Decision[2] dated November 22, 2019 and the Resolution[3] dated June 10, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 161420, which reversed the rulings of the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC) and dismissed the Complaint[4] for disability benefits.

Antecedents

On February 13, 2018, Bahia Shipping Services, Inc. (Bahia Shipping), for and on behalf of its principal Carnival Cruise Lines (collectively, respondents), engaged Leah Bagunas Arado (Arado) as a Security Officer on board M/S Carnival Magic.[5] Under Arado's Contract of Employment,[6] approved by the Philippine Overseas Employment Administration (POEA), Arado was to be paid a basic monthly salary of USD 753.45 per month, overtime pay of USD 240.46/105 hours per month, for the duration of eight months and with no collective bargaining agreement.[7] Before deployment, Arado underwent the requisite preemployment medical examination and was found to be fit for work by respondents' medical clinics.[8]

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1 *Rollo*, pp. 3–30.
2 *Id.* at 33–51. Penned by Associate Justice Rafael Antonio M. Santos, with the concurrence of Associate Justices Manuel M. Barrios and Germano Francisco D. Legaspi.
3 *Id.* at 53–56.
4 Not attached to the *rollo*.
5 *Rollo*, pp. 11 and 34.
6 *Id.* at 57.
7 *Id.*
8 *Id.* at 58–59.

On March 30, 2018, at around 2:00 in the morning, Arado figured in an accident while patrolling the ship's deck. The strong winds and rough waters caused the vessel to sway, and when Arado pushed the heavy screen door from the open deck, the door suddenly swung back and caught her left hand and fingers. Her left hand was stuck until a crew member released the door.[9]

Arado was then brought to the ship clinic and was provided emergency treatment by Dr. Raju Rahul (Dr. Rahul). Dr. Rahul diagnosed Arado to be suffering from "fracture [of] proximal phalanx with left middle finger laceration"[10] and recommended that Arado be discharged from the vessel and medically disembarked.[11]

Subsequently, Arado was repatriated. On April 3, 2018, she reported to Bahia Shipping for her post-employment medical examination. She was referred to the Marine Medical Services of the Cardinal Santos Medical Care where she underwent a series of checkups, surgery, and treatment from April to August 2018.[12]

On July 27, 2018, before the expiration of the 120th day period, the company-designated physician assessed the condition of Arado. The range of motion of her left hand was not complete and the grip strength of her left hand was not at par with the right hand so she was asked to continue rehabilitation. Further, Arado was required to come back on August 10, 2018 for re-evaluation and functional assessment.[13] The contents of the medical certificates state:

> She was seen by the Orthopedic Surgeon and Physiatrist.
>
> Metacarpophalangeal and proximal interphalangeal joints are normal and distal interphalangeal joint is limited at 0° – 45° (normal value = 0° – 90°); left grip strength has increased from 18 [kilogram-Force (kgF)] to 20 kgF compared to the right at 38 kgF.
>
> She was advised to continue her rehabilitation.
>
> She is to come back on August 10, 2018 for re-evaluation.
>
> x x x x
>
> Ms. Arado is now 15 weeks out since her surgery and 10 weeks out since her removal of implants. The left index has full range of motion. She has no pain when making a full fist and has a strong grip already.
>
> **Please continue physical therapy. For Functional Assessment on next follow-up on August 10, 2018.**[14] (Emphasis supplied)

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9 *Id.* at 12 and 34.
10 *Id.* at 66.
11 *Id.* at 12, 34, and 60–66.
12 *Id.* at 12–13, 34, and 68–71.
13 *Id.* at 44.
14 *Id.*

On August 3, 2018, Marine Medical Services issued two Certifications[15] attesting to the dates when Arado had her checkups[16] and rehabilitation sessions.[17]

On August 10, 2018, Marine Medical Services issued its final medical assessment with diagnosis from its specialists[18] as follows:

> She was seen by the Orthopedic Surgeon and Physiatrist.
>
> Functional Assessment done showed based on her job description onboard as Security Officer (which requires walking, checking of tickets and passenger lines, leading luggage onto x-ray machine) and her objective evaluation (adequate grip strength, functional range of motion of digits, able to complete 6 rounds of climbing up and down the stairs), she has normal functional abilities.
>
> The specialist opines that patient is **now cleared from orthopedic and rehabilitation standpoint** effective as of August 10, 2018.
>
> **Enclosed are the comments of the specialists.**[19] (Emphasis supplied)

A categorical "fit to work" statement by Dr. Rodolfo P. Bergonio, Orthopedic Surgeon Specialist, was attached to the final assessment,[20] to wit:

> She has acceptable range of motion of the index finger and grip strength is now full and functional.
>
> She passed her Functional Assessment today.
>
> Cleared from Orthopedic standpoint.
>
> **Fit to work as Security Officer**.[21] (Emphasis supplied)

Likewise, Dr. Maetrix Ocon's medical report, which cleared Arado from rehabilitation, was included.[22]

Nonetheless, on September 13, 2018, Arado filed her Complaint for permanent and total disability benefits before the LA.[23] Arado alleged that the company doctor issued the assessment beyond the 120-day period as required by law.[24]

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15 *Id.* at 68–69.

16 Arado's check-ups were conducted on April 3, 4, 6, 17, May 2, 11, 18, 28, 30. June 14, 29, and July 13, 27, 2018; *id.* at 68.

17 Arado's rehabilitation sessions were conducted on June 2, 5, 7, 13, 15, 18, 21, 23, 28, and July 2, 7, 10, 12, 17, 19, 26, 31, 2018; *id.* at 69.

18 *Id.* at 40-41.

19 *Id.* at 41.

20 *Id.*

21 *Id.*

22 *Id.* at 42.

23 *Id.* at 88.

24 *Id.* at 14, 16-17, and 34-35.

Subsequently, on September 19, 2018, Arado sought the opinion of her personal doctor, Dr. Nicanor Escutin (Dr. Escutin). Dr. Escutin gave Arado a permanent disability rating and declared Arado to be "UNFIT TO BE A SECURITY SEA WOMAN in whatever capacity,"[25] *viz.*:

> DISABILITY EVALUATION:
>
> x x x x
>
> She is still unable to flex/extend her two fingers due to ankylosis. Her job as security officer requires that all her hands are capable of doing moving and able to do all the activities of helping and guiding the passenger of a cruise ship. Since she cannot use fully her left hand, she not (sic) physically healthy to do all her duties properly.
>
> She is UNFIT TO BE A SECURITY SEA WOMAN in whatever capacity.
>
> [S]he is given a PERMANENT DISABILITY.[26]

The parties' respective position papers were submitted for the decision of the LA.[27]

Ruling of the LA

In a Decision[28] dated January 7, 2019, the LA granted Arado's claim for permanent and total disability benefits. The LA ruled that the medical condition of Arado has absolutely rendered her incapable of work as a seafarer but the company-designated doctor has not issued any declaration that Arado was already "fit to work." Rather, the company-designated doctor merely gave a declaration that Arado was "[c]leared from Orthopedic standpoint." In essence, it is not an "absolute fitness to work" which emphasizes the seafarer's inability to be employed on board ocean going vessels.[29] Thus:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Bahia Shipping Services, Inc. and/or Carnival Cruise Line and/or Elizabeth B. Moya the following:
>
> 1. Total and Permanent Disability benefits in the amount of [USD] 60,000.00;
> 2. [USD] 3,013.80 as sickness wages[; and]
> 3. 10% Attorney's fees of the total award.
>
> SO ORDERED.[30]

Respondents appealed to the NLRC, arguing that the company issued a categorical fit-to-work assessment. Further, Arado had no cause of action

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25 *Id.* at 73.
26 *Id.*
27 *Id.* at 17.
28 Not attached to the *rollo*.
29 *Rollo*, pp. 35–36.
30 *Id.* at 89.

because she did not move for the referral of her medical condition to a third doctor.[31]

Ruling of the NLRC

On appeal, the NLRC affirmed the ruling of the LA. In its Resolution[32] dated February 15, 2019, the NLRC ruled that Arado had suffered a work-related injury and was under the care of the company-designated physician for more than 120 days. However, the medical assessment by the company-designated physician was not a categorical fit-to-work assessment for Arado. Further, Arado's failure to refer her medical condition to a third doctor was not fatal to her cause due to the absence of the required categorical assessment of the company-designated doctor.[33] Thus:

> WHEREFORE, premised on all the foregoing considerations, the Decision appealed from is hereby AFFIRMED in its entirety and the respondents' appeal DISMISSED for utter lack of merit.
>
> SO ORDERED.[34]

Aggrieved, respondents sought reconsideration but was denied by the NLRC in its Resolution[35] dated March 25, 2019. Respondents then filed a Petition for *Certiorari*[36] before the CA.[37]

Ruling of the CA

In a Decision[38] dated November 22, 2019, the CA reversed the findings of the LA and the NLRC which both found that the fit-to-work certification issued to Arado was ambiguous and did not contain a definitive declaration of fitness to work, and which was issued beyond the 120th day period. On the contrary, the CA ruled that: (1) the August 10, 2018 medical assessment was final and definite because it contained an express reference to the comments of the specialists who categorically declared that Arado is "[f]it to work as Security Officer"; (2) Further, the CA held that the final medical assessment was valid even if it was issued on the 130th day from Arado's repatriation. The extension of the 120-day period was justified since Arado underwent a series of rehabilitation sessions and had to be reevaluated; (3) Finally, Arado had no cause of action when she filed a Complaint before the LA on September 13, 2018 because her act of consulting a physician of her choice on September 19, 2018, after she had filed a Complaint before the LA, was a mere afterthought.[39] Thus:

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31 *Id.* at 35.
32 Not attached to the *rollo*.
33 *Id.* at 36–37.
34 *Id.* at 34.
35 Not attached to the *rollo*.
36 Not attached to the *rollo*.
37 *Rollo*, p. 37.
38 *Id.* at 33–51.
39 *Id.* at 43–50.

> WHEREFORE, the Petition for *Certiorari* is GRANTED. The twin Resolutions, dated 15 February 2019 and 25 March 2019, of the National Labor Relations Commission's Third Division in NLRC LAC No. 02-000101-19 are hereby VACATED and SET ASIDE, and a new one is rendered dismissing private respondent's complaint for the grant of total and permanent disability benefits for lack of merit. However, petitioners are directed to pay private respondent sickness allowance in the amount of USD 3,013.80, with legal interest thereon at the rate of six per centum (6%) per annum until fully paid.
>
> SO ORDERED.[40]

Arado filed a Motion for Reconsideration[41] but was denied by the CA in its Resolution[42] dated June 10, 2020.

Hence, this Petition.[43] Arado argues that the CA erred in disregarding the findings of the LA and NLRC; that the company-designated physician issued the medical assessment beyond the 120-day period; that the medical assessment was not categorical; that she is entitled to permanent and total disability benefits; and that the third doctor opinion is not mandatory under the law.[44]

The Court's Ruling

The Petition is unmeritorious.

The Court agrees with the CA that the company-designated physician issued a final and definite medical assessment declaring Arado to be fit to work, and that there is justification for issuing the medical assessment beyond the 120-day period but within the 240-day period as required by law and jurisprudence.

The Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (POEA-SEC)[45] provides that the seafarer's disability shall be based solely on the disability gradings provided under Section 32 of the POEA-SEC, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.[46]

In *Benhur Shipping Corporation v. Riego*,[47] the Court has reiterated the rules governing a seafarer's claims for total and permanent disability benefits as follows:

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40 *Id.* at 50.
41 Not attached to the *rollo*.
42 *Rollo*, pp. 53–56.
43 *Id.* at 3–30.
44 *Id.* at 14–19.
45 See POEA Memorandum Circular No. 010-10 dated October 26, 2010.
46 See Section 20(A)(6) of the POEA-SEC.
47 G.R. No. 229179, March 29, 2022, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68182> [Per C.J. Gesmundo, First Division].

> 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 justificatiou (*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
>
> 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.[48] (Emphasis supplied)

Clearly, the company-designated physician is bound to issue a final medical assessment within 120 days from the time the seafarer had reported to them, unless there is a sufficient justification to extend the period to 240 days. The employer bears the burden to prove that the company-designated physician has sufficient justification to extend the period.

Pursuant to jurisprudence, the Court has recognized that the seafarer's undergoing treatment and evaluation by the company-designated physician constitutes a sufficient justification to extend the 120-day period.[49]

Particularly in *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*,[50] the Court has ruled that "the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total" if further treatment necessitated the extension for the issuance of the medical assessment, *viz.*:

> As such, the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same. **In this case, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed.** The company-designated physicians did not sit idly by and wait for the lapse of the said period. Buenaventura's further need of treatment necessitated the extension for the issuance of the medical assessment.[51] (Emphasis supplied)

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48 *Id.*, citing *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362–363 (2015) [Per J. Mendoza, Second Division].

49 *Tradephil Shipping Agencies, Inc. v. Dela Cruz*, 806 Phil. 338, 353 (2017) [Per J. Mendoza; Second Division].

50 823 Phil. 245 (2018) [Per J. Martires, Third Division].

51 *Id.* at 260.

Similarly in this case, the company-designated physician issued the final medical assessment only on August 10, 2018, or the 129th day from April 3, 2018, the date when Arado reported to Bahia Shipping for post-employment medical examination. However, on July 27, 2018, or within the 120-day period, the company-designated physician had issued two Certifications advising Arado to continue with her rehabilitation and to return on August 10, 2018 for functional reassessment. Verily, the extension of the initial 120-day period was justified since Arado had to undergo continuous physical therapy and reevaluation before the final medical assessment may be issued.[52]

Furthermore, the Court considers the medical assessment dated August 10, 2018 to be final. A final assessment is one which states either the fitness of the seafarer to work or the seafarer's exact disability rating, and which should no longer require any further action on the part of the company-designated physician.[53] Here, Arado's final medical assessment with its attachments clearly indicated that she was "[f]it to work as Security Officer" and cleared from rehabilitation. This is consistent with her previous medical assessments that her condition was already improving.[54]

Notably, it is significant to point out that Arado's Complaint before the LA should have been dismissed for failure to state a cause of action. In *Doehle-Philman Manning Agency, Inc. v. Gatchalian, Jr.*,[55] the Court had already clarified that a seafarer's failure to secure the opinion of a doctor of their choice before filing the complaint shows that they filed the complaint without any basis at all:

> Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor. Jose, in this case, patently failed to comply with the procedure to contest the findings of the company-designated doctor. To recall, the company-designated doctor issued a final assessment that Jose was fit to work as early as February 14, 2007, within the120-day period provided by law. However, it was only after almost two years, or on February 11, 2009, that he filed a complaint. Despite this protracted delay, there is no showing that Jose, before filing the complaint, complied with the procedure under the POEA-SEC. Jose's personal doctor, Dr. Chua examined him two months after he filed his complaint. He did not timely secure and disclose to petitioners, the contrary assessment of his doctor, and signify his intention to refer the dispute to a third doctor. While it is the employer's duty to initiate the process for referral to a third doctor, this presupposes that the seafarer also complied with his correlative duty. Jose's failure to secure the opinion of a doctor of his choice before filing the complaint shows that he filed the complaint without any basis at all.[56]

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52 *Rollo*, pp. 40-45.

53 *Corcoro, Jr. v. Magsaysay Mol Marine, Inc.*, G.R. No. 226779, August 24, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66856> [Per J. Carandang, Third Division].

54 *Rollo*, pp. 41–42.

55 *Doehle-Philman Manning Agency, Inc. v. Gatchalian, Jr.*, G.R. No. 207507, February 17, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67190> [Per J. Lopez, Second Division].

56 *Id.*

Further, in *Calimlim v. Wallem Maritime Services, Inc.*[57] (*Calimlim*), the Court has held that the seafarer must strictly comply with the following procedure: when a seafarer sustains a work-related illness or injury while on board the vessel, his/her fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them. Otherwise, the assessment of the company-designated physician stands.[58]

In *Calimlim*, the seafarer consulted his personal doctor only four days after he filed his complaint before the LA. The Court ruled that at the time the employee filed his complaint, he had no cause of action for a disability claim as he did not have any sufficient basis. Even granting that his consultation with his physician of choice could be given due consideration, the disagreement between the findings of the company-designated physician and his physician of choice was never referred to a third doctor chosen by both him and respondents as specified under Section 20(A)(3) of the POEA-SEC. The Court upheld the findings of the company-designated physician, to wit:

> The Court notes, however, that Calimlim sought consultation of Dr. Jacinto only on July 9, 2012, more than sixteen (16) months after he was declared fit to work and interestingly **four (4) days after he had filed the complaint on July 5, 2012. Thus, as aptly ruled by the NLRC, at the time he filed his complaint, he had no cause of action for a disability claim as he did not have any sufficient basis to support the same.** The Court also agrees with the CA that seeking a second opinion was a mere afterthought on his part in order to receive a higher compensation.
>
> **Granting that Calimlim's afterthought consultation with Dr. Jacinto could be given due consideration, the disagreement between the findings of the company-designated physician and Dr. Jacinto was never referred to a third doctor chosen by both him and the respondents as specified under Section 20(A)(3) of the Amended POEA Contract.**
>
> Indeed, for failure of Calimlim to observe the procedure provided in the said POEA Contract, the determination of the company-designated physician that he was fit to work and travel should and must be upheld.[59] (Emphasis supplied)

Similarly in this case, after having been furnished with the medical assessment of the company-designated physician, Arado consulted her physician of choice only six days after filing a Complaint for permanent and total disability benefits before the LA. Arado did not consult her own doctor prior to the filing of the Complaint, she did not inform the agency of the contradictory findings of her physician, and so, a third doctor could not be appointed to make a final determination of her condition. Indeed, on both

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[57] 800 Phil. 830 (2016) [Per J. Mendoza, Second Division].
[58] *Id.* at 843.
[59] *Id.* at 844.

substantive and procedural grounds, Arado's claim must fail. Verily, Arado seriously disregarded the procedure under Section 20(A)(3) of the POEA-SEC. In the absence of a third doctor, the opinion of the company-designated doctor stands.[60]

FOR THESE REASONS, the Petition is **DENIED.** The Decision dated November 22, 2019 and the Resolution dated June 10, 2020 of the Court of Appeals in CA-G.R. SP No. 161420 are **AFFIRMED.**

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court 11/22
22 NOV 2023

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[60] *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 445–446 (2015) [Per J. Mendoza, Second Division]; and *Philippine Hammonia Shipping Agency, Inc. v. Dumadag*, 712 Phil. 507, 521 (2013) [Per J. Brion, Second Division].