Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GENARO G. CALIMLIM, Petitioner, - versus - **WALLEM MARITIME SERVICES, INC., WALLEM GMBH & CO. KG and MR. REGINALDO OBEN,** Respondents.	**G. R. No. 220629** Present: CARPIO, *J.*, *Chairperson*, BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.* Promulgated: 23 NOV 2016

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DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 7, 2015 Decision[1] and the September 18, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA G.R. SP No. 135205, affirming the November 27, 2013 Resolution of the National Labor Relations Commission *(NLRC)*, which reversed the April 30, 2013 Decision of the Labor Arbiter *(LA)*.

The Antecedents:

Respondent Wallem Maritime Services, Inc., for and in behalf of its foreign principal, Wallem GMBH & Co. KG, represented by its President, Mr. Reginaldo Oben *(respondents)*, hired petitioner Genaro G. Calimlim (*Calimlim*) to work as Bosun on board the vessel, Johannes Wulff, for a period of nine (9) months, with a monthly basic salary of US$698.00, as

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[1] *Rollo*, pp. 39-53. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Melchor Quirino C. Sadang, concurring.
[2] Id. at 55-57.

provided under the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC)* commencing on June 21, 2010. Prior to deployment, Calimlim underwent the required Pre-employment Medical Examination *(PEME)* on June 18, 2010 and was declared fit for sea duty.[3]

On December 25, 2010, while doing his duties on board, Calimlim felt a severe pain in his stomach causing him to feel weak and go to the comfort room. While emptying his bowels, he noticed that there was fresh blood in his stool. As his stomach pain and bleeding persisted, he reported his condition to the Ship Captain who advised him to seek medical attention upon reaching the nearest port.[4]

When the vessel reached the port of Xingang, China, Calimlim was brought to the Xingang Hospital where he underwent several laboratory tests. The tests revealed that he was suffering from *Hemorrhage of the Upper Digestive Tract* and *Hypertension.* The doctor recommended that he should not be given any duty on board due to his sensitive health condition and should be confined in a hospital.[5] After seven days or on January 17, 2011, when the vessel reached the port of Indonesia, he was medically repatriated.

Upon arrival in Manila, Calimlim immediately reported to respondents. He was referred to the Manila Doctor's Hospital *(MDH)* for examination and treatment. He was confined at MDH for four (4) days and was treated as an out-patient after his discharge.

On July 5, 2012, Calimlim filed a complaint for permanent disability compensation and benefits, having been declared unfit for sea duty due to his illness.

On July 9, 2012, Calimlim consulted Dr. Manuel C. Jacinto, Jr. *(Dr. Jacinto),* a private physician, who diagnosed him to be suffering from "*Essential Hypertension with Hypertensive Cardiomyopathy; Upper Digestive Tract Enteritis; Neurodermatitis,*"[6] with the following remarks:

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> Disability: Total Permanent
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> Cause of Illness/Injury: Work-related/Work-aggravated[7]

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[3] Id. at 40.
[4] Id.
[5] Id. at 40-41.
[6] Id. at. 41.
[7] Id. at 16.

Ruling of the Labor Arbiter

In its April 30, 2013 Decision,[8] the LA ordered the respondents to pay Calimlim his total permanent disability benefits in the amount of US$100,569.32 as well as the balance of his sickness wages and attorney's fees. The LA gave more probative weight to the medical findings of Dr. Jacinto which was more thorough as it confirmed the diagnosis of the doctor in Xingang Hospital over the findings made by the company-designated physicians. The LA noted that the findings of the company-designated physicians were incomplete, covering only the medical issues pertaining to his abdominal pain, making no reference to the findings of Hypertension and Neurodermatitis. The LA concluded that based on the findings of Dr. Jacinto, the disability sustained by him was work-related and had prevented him from gaining subsequent employment, thus, entitling him for compensation from the respondents.[9]

Aggrieved, respondents appealed before the NLRC.

Ruling of the NLRC

The NLRC initially dismissed the petition for failure of respondents to comply with Section 6, Rule VI of the 2011 NLRC Rules of Procedure requiring an Indemnity Agreement to be signed by both respondents and the Bonding Company as only the respondents signed the same.

Respondents filed a motion for reconsideration.

In its November 27, 2013 Decision,[10] the NLRC granted the motion and *reversed* the LA's decision. The NLRC ruled that Calimlim failed to prove that he was suffering from essential hypertension which would qualify him for a total permanent disability benefit. The NLRC noted that he consulted his private physician only in July 2012 or seventeen (17) months from the time he was declared fit to work by the company-designated physician, and noted that the gap was so extensive that there might have been supervening events that could have caused or aggravated his condition. The fact that he filed his complaint on July 5, 2012 while his medical certification by Dr. Jacinto was issued on July 9, 2012 was not unnoticed by the NLRC. Accordingly, it concluded that at the time he filed his complaint he had no cause of action as he was not yet in possession of the contrary opinion of his private doctor.[11]

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[8] Copy was not attached to the petition.
[9] *Rollo*, pp. 41-42.
[10] Copy was not attached to the petition.
[11] *Rollo*, pp. 44-45.

His motion for reconsideration having been denied, Calimlim filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals

In its assailed May 7, 2015 decision, the CA denied the petition and affirmed the ruling of the NLRC. It held that Calimlim was not entitled to permanent disability benefit as he was declared by the company-designated physician to be fit to work 55 days from the date of repatriation, well within the 120 day period required by law. In questioning his diagnosis, the CA emphasized that although it was his prerogative to seek a second opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. His non-compliance with the said procedure, according to the CA, rendered the findings of the company-designated physician final and binding.

Calimlim moved for reconsideration but his motion was denied by the CA in its September 18, 2015 resolution.

Hence, this petition for review anchored on the following

GROUNDS:

1] THE CA ERRED WHEN IT DISMISSED THE PETITION AND DID NOT REINSTATE AND AFFIRM THE DECISION OF THE LABOR ARBITER;

2] THE PETITIONER WAS IN FACT RENDERED TOTALLY UNFIT FOR WORK AS HIS VARIOUS ILLNESSES WHICH ARE CONSIDERED WORK-RELATED AND WORK AGGRAVATED WERE NOT RESOLVED ANYMORE BY THE DOCTORS DESPITE BEING TREATED AND EXAMINED BY RESPONDENTS' COMPANY-DESIGNATED PHYSICIAN THAT LASTED ALREADY BEYOND THE MAXIMUM CURE PERIOD OF 120 DAYS AND THAT HIS BEING UNFIT FOR WORK IS CONTINUING UP TO 240 DAYS; AND

3] THE CA ERRED WHEN IT DID NOT REINSTATE THE DECISION OF THE LABOR ARBITER ALTHOUGH THE NLRC INITIALLY AFFIRMED THE SAME.[12]

The core issue for the Court's resolution is whether Calimlim is entitled to permanent disability benefits on account of his medical condition.

Calimlim insists that he is entitled to permanent disability benefits as he remained unfit to resume his seafaring duties. This unfitness to work, he

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[12] Id. at 17-18.

adds, is confirmed and supported by the medical findings of Dr. Jacinto. He argues that Dr. Jacinto's independent and fair medical assessment is more credible being reflective of his actual physical and medical condition as against the inaccurate biased declaration by the company-designated physician. He, thus, stresses that the LA acted correctly and judiciously in granting him full permanent disability compensation. He faults the CA in not rectifying the grave abuse of discretion committed by the NLRC in reversing the decision of the LA.

In their March 18, 2016 Comment,[13] respondents countered that Calimlim was declared "fit to work" by the company-designated physician. Hence, he is not entitled to the disability benefits under the POEA Contract. Respondents were of the view that the CA correctly gave more probative weight to the medical findings of the company-designated doctor considering that the latter accorded more extensive medical attention on him, as compared to the medical findings of his private doctor who did not possess personal knowledge of his true physical condition and who only provided an isolated medical examination to him. Respondents argued that the fit to work assessment of the company-designated physician should prevail as the option to refer him to a third doctor was not explored in this case.

The Court's Ruling

The petition is without merit.

Records disclose that Calimlim's employment is governed by the POEA approved employment contract commencing on June 21, 2010. This employment contract,[14] which is binding upon both parties, provides:

> Section 20. Compensation and Benefits.
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> A. Compensation and Benefits for Injury or Illness
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> The liabilities of the employer when the seaman suffers work-related injury or illness during the term of his contract are as follows:
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> 1. xxx
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> 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

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[13] Id. at 59-79.

[14] POEA Memorandum Circular No. 10, Series of 2010 (or the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships), October 26, 2010.

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 his 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 also be made on a regular basis, but not less than once a month.

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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 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.

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6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, 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. [Underscoring supplied]

Calimlim was Fit to Work

In this case, after receiving treatment in Xingang, China, at respondents' expense, Calimlim underwent blood transfusion and radioscopy. The said treatment proved effective as there was no recurrence of the dark-colored stools and his abdominal pain had already subsided as of

his February 16, 2011 consultation with the company-designated physician. Such positive results led to a declaration that he was fit to work and even to travel on February 17, 2011. As correctly opined by the CA, such declaration by the company-designated physician alone sufficed to rule that he was not entitled to any disability benefits. The LA, therefore, erred in ordering the payment of permanent disability benefits to him.

Calimlim's reliance on the alleged lapse of 120 days is misplaced.

A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.[15] It cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA.[16]

In the recent case of *Magsaysay Maritime Corporation v. Simbajon,*[17] the Court mentioned that an amendment to Section 20-A(6) of the POEA-SEC, contained in POEA Memorandum Circular No. 10, series of 2010, now "finally clarifies" that "[f]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor. "[18]

In several cases, the Court held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. In *Coastal Safeway Marine Services, Inc. v. Esguerra,*[19] the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Andrada v. Agemar Manning Agency, Inc.,*[20] the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an

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[15] *Millan v. Wallem Maritime Services, Inc.*, 698 Phil. 437, 442 (2012).
[16] *Splash Philippines, Inc. v. Ruizo*, 730 Phil. 162, 175 (2014).
[17] 738 Phil. 824, 849 (2014).
[18] *Scanmar Maritime Services, Incorporated v. Conag*, G.R. No. 212382, April 6, 2016.
[19] 671 Phil. 56 (2011).
[20] 698 Phil. 170 (2012).

extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x outlining the alleged findings and medical history x x x obtained after x x x [one examination]."[21]

Thus, the CA correctly gave due credence to the "fit to work" assessment of the company-designated physician having been issued after a thorough medical examination of Calimlim from the time he was repatriated until he was declared fit to work. It could not be faulted in disregarding the medical findings of Dr. Jacinto because he could not have been declared permanently and totally unfit for work after just a single consultation with his private doctor without any supporting progress report to show his unfitness to work. As found by the NLRC, there was nothing on record that would validate Dr. Jacinto's findings. No document substantiated his findings that he was suffering from essential hypertension that would qualify him for a total permanent disability benefit.[22] The award of permanent disability benefits by the LA was, therefore, improper.

It is well to note that Calimlim was declared fit to work within the 120 day period. It is undisputed that he complained of his condition and received treatment at Xingang Hospital on December 25, 2011. He continued to receive treatment after his repatriation in January 2011 until he was subsequently declared fit to work on February 17, 2011, well within the 120 day period required by law. Thus, his condition cannot be considered a permanent total disability that would entitle him to permanent disability benefit. His invocation of the 240-day rulings is misplaced. As correctly opined by the CA, the use of the extendible period of 240 days for the company-designated physician to make a declaration finds no application in his situation as his treatment took only 55 days or before the lapse of the 120-day period.

Accordingly, Calimlim's claim for full permanent disability on account of lost opportunity to obtain further sea employment cannot be given merit. There was no evidence that he re-applied for work as a seafarer and was found unfit as a result of his illness. His claim that he was unfit to return to work for more than 120 or 240 days was merely speculative. There is no evidence on record showing that he sought reemployment with the respondents either as a bosun or in whatever capacity.

Referral to a Third Doctor

At any rate, there was no referral to a third doctor. The rule is that when a seafarer sustains a work-related illness or injury while on board the

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[21] *Philman Marine Agency v. Cabanban, Inc.*, 715 Phil. 454, 476-477 (2013).
[22] *Rollo*, p. 44.

vessel, his 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. This procedure must be strictly followed, otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.[23]

Here, upon his repatriation back to the Philippines, Calimlim was referred to the company-designated physician on January 19, 2011. After receiving treatment, he was declared fit to work and to travel on February 17, 2011. Acting within his rights, he disagreed with the findings of the company-designated physician and sought the opinion of Dr. Jacinto who arrived at a contrary assessment.

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.[24]

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.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[23] *Montierro v. Rickmers Marine Agency Phil., Inc.*, G.R. No. 210634, January 14, 2015, 746 SCRA 287, citing *Vergara v. Hammonia Services, Inc.*, 588 Phil. 895, 914 (2008).
[24] *Rollo*, p. 51.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice