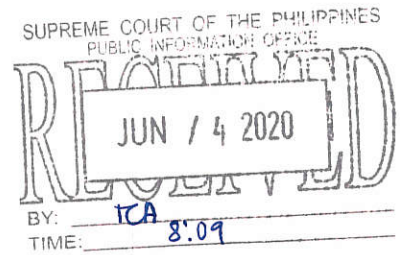




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila



SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **05 February 2020** which reads as follows:

“G.R. No. 249450 (*Robinson M. Go v. TSM Shipping Philippines, Inc. and Capt. Jones Tulod*). – The Court resolves to **GRANT** Robinson M. Go’s (petitioner) motion for extension<sup>1</sup> of thirty (30) days from the reglementary period within which to file a petition for review on *certiorari*.

Before this Court is a Petition for Review on *Certiorari*<sup>2</sup> under Rule 45 of the Rules of Court assailing the February 13, 2019 Decision<sup>3</sup> and the September 18, 2019 Resolution<sup>4</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 148816. The assailed Decision and Resolution annulled and set aside the September 15, 2016 Decision<sup>5</sup> and the November 17, 2016 Resolution<sup>6</sup> of the Panel of Arbitrators of the National Conciliation and Mediation Board (NCMB) granting petitioner’s claim for total and permanent disability benefits.

On June 15, 2015, petitioner signed a six-month employment contract with TSM Shipping Philippines, Inc. and Captain Jones T. Tulod as its President (respondents), to work as a messman on board M/V Nord Gainer with a monthly basic salary of US\$450.00. Prior to signing the contract, petitioner underwent the routine Pre-Employment Medical Examination (PEME) and was issued a certificate<sup>7</sup> declaring him “fit for duty” on September 1, 2014. Petitioner went on board his ship of

<sup>1</sup> *Rollo*, pp. 3-4.

<sup>2</sup> *Id.* at 10-22.

<sup>3</sup> *Id.* at 26-36; penned by Associate Justice Samuel H. Gaerlan (now a member of the Court), with Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez, concurring.

<sup>4</sup> *Id.* at 37-38.

<sup>5</sup> *Id.* at 46-59.

<sup>6</sup> *Id.* at 90-91.

<sup>7</sup> *Id.* at 105.

bjo

assignment, Nord Gainer USA, on June 30, 2015. As a messman, he was tasked to do mess hall services as well as assist the chief cook and clean the galley, mess hall, and officers' cabin.<sup>8</sup>

Petitioner was working on board for four months already when the unfortunate accident happened. On November 15, 2015, while walking from the galley to the crew mess hall during an inclement weather condition, petitioner twisted his left ankle. About twenty-four (24) hours after the accident, the ship's medical officer examined his condition. The medical officer found petitioner's left foot swollen with blue and violet appearance around the ankle. Thus, the medical officer bandaged petitioner's swollen foot and gave him a paracetamol to relieve the pain.<sup>9</sup>

On November 17, 2015, petitioner disembarked in San Jose, Guatemala for initial treatment. There, he was diagnosed to be unfit for duty for the next 2-3 weeks and was recommended for repatriation. Petitioner was medically repatriated to the Philippines on November 18, 2015 for management of his injuries. He arrived in Manila that same day and immediately reported to the respondent manning agency for post-employment medical examination and for referral to the company-designated physician. Petitioner was then referred to St. Luke's Medical Center for physical therapy.<sup>10</sup>

In his position paper,<sup>11</sup> petitioner alleged that respondents cancelled his last 2 sessions of therapy. Petitioner then nursed his injury at home for a number of months. However, his injury was getting worse that on April 10, 2016, he went to Sta. Teresita General Hospital in Quezon City where he was attended to by Dr. Manuel C. Jacinto, Jr. On May 19, 2016, the doctor issued a medical certificate with the assessment that petitioner is permanently disabled. Thus, petitioner demanded from the respondents the payment of his disability benefits and balance of his sickness allowance. However, the respondents ignored his demands.<sup>12</sup>

On the other hand, respondents asserted that they have given petitioner immediate care. From the airport, they accompanied him to St. Luke's Medical Center in Taguig where he received initial medical attention. The x-ray results of petitioner's left ankle and foot revealed

---

<sup>8</sup> *Id.* at 47.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 92-102.

<sup>12</sup> *Id.* at 47-48.

10/20



acute ligamentous injury and undisplaced medial malleolar fracture. The attending doctor prescribed petitioner with analgesics and subsequently discharged him. On November 23, 2015, the respondents referred petitioner to ShiptoShore Medical Assist under the care of the company-designated physician and an Orthopedic specialist. On December 2, 2015, the attending doctor removed petitioner's cast and advised him to undergo physical therapy sessions. However, as he was still experiencing pain, the attending doctor advised him to continue physical therapy for four 4 more sessions. In his last therapy session on April 1, 2016, the attending doctor declared petitioner as "fit for condition referred as per POEA Contract." However, petitioner did not sign the Certificate of Fitness for Work; his left ankle was still in pain and cited it as the reason in his refusal to sign the certificate.<sup>13</sup>

On April 04, 2016, petitioner filed a claim for full disability benefits, damages, and attorney's fees before the NCMB. This was done before he could be furnished a copy of his final medical report dated April 6, 2016.<sup>14</sup>

#### *Ruling of the NCMB*

In the Decision dated September 15, 2016,<sup>15</sup> the Arbitration Panel of the NCMB composed of Raul T. Aquino and Jesus S. Silo as chairman and member, respectively, awarded permanent total disability benefits to petitioner; while Gregorio S. Sialsa, another member, dissented. The dispositive portion of the Decision reads:

Evidently, from the time complainant was medically repatriated up to the present, he was not deployed by the respondent to resume his work as a seaman nor was offered a new contract of employment. The fact that he was not re-employed is an eloquent proof of permanent disability. Undeniably, with complainant [sic] medical condition, he is entitled to permanent total disability, which under the POEA-SEC is compensable in the amount of US\$60,000.<sup>16</sup>

x x x x.

WHEREFORE, premises considered, judgment is hereby rendered directing respondents TSM Shipping Lines, Dampskibsselskabet Norden AS and Capt. Jones Tulod to pay jointly and severally complainant Robinson M. Go permanent total disability benefits in the amount of SIXTY THOUSAND (US\$60,000.00)

<sup>13</sup> *Id.* at 48-49.

<sup>14</sup> *Id.* at 49.

<sup>15</sup> *Id.* at 46-59.

<sup>16</sup> *Id.* at 58.

DOLLAR and attorney's fee equivalent to ten (10%) percent of the total judgment award in the total amount of SIXTY SIX [sic] THOUSAND (US\$60,000.00) DOLLAR or its peso equivalent at the time of actual payment.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>17</sup>

Respondents moved for reconsideration, but the NCMB denied it in its Resolution<sup>18</sup> dated November 17, 2016.

Aggrieved, respondents elevated the case to the CA via a petition for review under Rule 43 of the Rules of Court.

#### *Ruling of the Court of Appeals*

In the Decision<sup>19</sup> dated February 13, 2019, the CA resolved to grant respondents' petition for review. The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, this petition for review is hereby GRANTED. The assailed Decision dated September 15, 2016, and Resolution dated November 17, 2016 of the Panel of Arbitrators of the National Conciliation and Mediation Board (NCMB) are hereby ANNULLED and SET ASIDE.<sup>20</sup>

Dismayed with the reversal, petitioner moved for reconsideration,<sup>21</sup> but the CA, in its Resolution<sup>22</sup> dated September 18, 2019, denied petitioner's motion for reconsideration.

Hence, this petition.

#### *Issue*

The issue for resolution is whether the petitioner is entitled to total and permanent disability benefits.

#### *Our Ruling*

---

<sup>17</sup> *Id.* at 58-59.

<sup>18</sup> *Id.* at 90-91.

<sup>19</sup> *Id.* at 26-36.

<sup>20</sup> *Id.* at 35.

<sup>21</sup> *Id.* at 37-38.

<sup>22</sup> *Id.* at 7-8.



The petition is meritorious.

It is well-settled that the company-designated physician is expected to arrive at a definite assessment of the fitness of the seafarer to work or to determine the degree of his disability within a period of 120 or 240 days from repatriation, as the case may be. If after the lapse of the 120 or 240 day period, the seafarer remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability, the seafarer is deemed totally and permanently disabled.<sup>23</sup>

Contrary to the judgment of the CA, it is undisputed that there was no definite statement issued by the company-designated physician that the petitioner is already fit to work as a seaman. It must be stressed, that the note "fit for the condition referred as per POEA Contract" is not equivalent to "Fitness to work again as a seafarer" which is required by law. In fact, even the CA noted in the assailed Decision that there was no specific declaration as to the fitness of the petitioner, *viz*:

In the case at bar, there was a declaration that herein respondent's injury was healed. *Although not specifically stating that respondent is physically fit for sea duty*, it was clear that the medical condition was already resolved as there was a discharge from medical treatment as of April 1, 2016.<sup>24</sup> (Italics ours.)

As the law requires, the company-designated physician must make a declaration as to the fitness or unfitness of petitioner.<sup>25</sup> There being no such declaration made despite the lapse of the 120-day period, then it follows that petitioner, by operation of law, is deemed totally and permanently disabled.

We quote with approval the findings of the NCMB:

It needs no further elaboration on the nature of work a Messman does on board a vessel. His work demands him to be physically fit, his movement demands alert dispositions to cater to the demands of his job. A person with limited movement cannot function well to address the requisites of the position. He should have excellent physical condition unhindered by any impairment. Indeed, no employer on his right mind would hire an applicant knowing his limited capacity, more so, his foot deficiency which would limit his alertness and capacity to carry on with

<sup>23</sup> See *Magsaysay Maritime Corp. v. Cruz*, G.R. No. 204769, June 6, 2016, 792 SCRA 344.

<sup>24</sup> *Rollo*, p. 34.

<sup>25</sup> *APQ Shipmanagement Co., Ltd. v. Caseñas*, 735 Phil. 300, 320 (2014).

strenuous activities, with utmost speed and efficiency.<sup>26</sup>

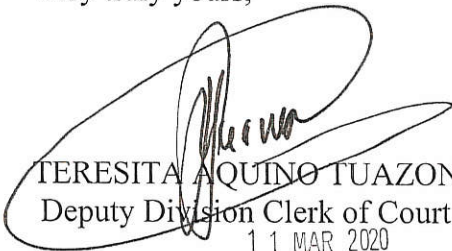
Besides, the Court has consistently ruled that disability is intimately related to one's earning capacity.<sup>27</sup> Evidently, from the time petitioner was medically repatriated up to the present, respondents did not deploy petitioner to resume his work as a seaman or offered him a new contract of employment. The Court agrees with the NCMB that respondents' failure to redeploy the petitioner despite the note "fit for the condition referred as per POEA Contract" is a clear indication of his total and permanent disability.

Anent the award of attorney's fees, it is clear that petitioner was compelled to litigate due to respondents' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to 10% of the total award at the time of actual payment.<sup>28</sup>

**WHEREFORE**, the petition is **GRANTED**. The Decision of the Court of Appeals dated February 13, 2019 and its Resolution dated September 18, 2019 are **REVERSED** and **SET ASIDE**. The Decision dated September 15, 2016 and the Resolution dated November 17, 2016 of the Panel of Arbitrators of the National Conciliation and Mediation Board are hereby **REINSTATED** with **MODIFICATION** imposing legal interest of 6% per annum on the total monetary award from the finality of the Resolution until full payment.

**SO ORDERED.**" (HERNANDO, J., on official leave.)

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court  
11 MAR 2020

<sup>26</sup> *Rollo*, pp. 57-58.

<sup>27</sup> *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 672 (2007)

<sup>28</sup> *Alpha Ship Management Corp. v. Calo*, 724 Phil. 106, 126-127 (2014).

ATTY. DANTE L. ACORDA (reg)  
Counsel for Petitioner  
c/o MANORCO Maritime Consultancy  
4<sup>th</sup> Floor, Feadco Building, 416 Marquina St.  
cor. Dasmariñas St., Binondo, Manila

NOLASCO & ASSOCIATES LAW OFFICES (reg)  
Counsel for Respondents  
Room 425/101 Padilla-Delos Reyes Bldg.  
232 Juan Luna St., 1006 Binondo, Manila

NATIONAL CONCILIATION & MEDIATION BOARD (reg)  
Office of the Panel of Voluntary Arbitrators  
Ground Floor, DOLE Executive Building  
1002 Intramuros, Manila  
(AC-974-RCMB-NCR-MVA-102-06-06-2016)

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. SP No. 148816

*Please notify the Court of any change in your address.*  
GR249450. 2/05/2020(133)URES 16/10