Department of Labor and Employment
National Labor Relations Commission
RESEARCH, INFORMATION & PUBLICATION DIVISION
Quezon City

No. VI **N L R C L A W R E P O R T** **June 2013**

RETIREMENT BENEFITS

Ocampo vs. COA
G.R. No. 188716, June 10, 2013
J. Jose P. Perez

Facts:

On March 1, 1996, petitioner retired from the NEA, after more than 17 years of service. Petitioner availed of the lump sum payment with a net gratuity of P358,917.01. Three days thereafter, on March 4, 1996, under Letter of Appointment dated February 16, 1996, petitioner assumed office as Board Member of the ERB. On June 30, 1998, upon expiration of her term, petitioner retired under E.O. 172, in relation to R.A. 1568. Petitioner availed of the five year lump sum benefit and the corresponding monthly pension to be paid out for the remainder of her life. This first gratuity lump sum payment based on sixty (60) months or five (5) years advance salary was immediately received by petitioner after her retirement. Likewise, petitioner began to receive her monthly pension. On August 25, 1998, petitioner was again appointed, this time as Chairman of ERB with a term of four (4) years. On August 15, 2001, the ERB was abolished and replaced by the ERC as a consequence of the enactment of R.A. 9136. For the second time, petitioner sought retirement under E.O. 172. Upon release by the DBM of the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA), Chairperson of the ERC approved the payment thereof to petitioner. However, on post-audit of the transaction with petitioner as payee, the State Auditor, issued Notice of Suspension (NS): (1) suspending payment of the amount of P1,452,613.71 covering petitioner's second retirement gratuity computed on a pro-rata basis equivalent to only two years, eleven months, and twenty days; and (2) requiring submission by the ERC of "legal basis for [the payment of] retirement gratuity twice under the same law (EO 172). Petitioner posits that she should be separately paid retirement benefits for her respective terms as Board Member and Chairperson of the ERB. In other words, petitioner claims two (2) lump sum payments, and payment thereafter of two (2) monthly pensions. On the other hand, the COA argues that: (1) the phrase "for every year of service" limits the payment of the lump sum to the employee's length of service and does not automatically entitle an employee to a lump sum gratuity of five years; (2) Petitioner is not entitled to two (2) lump sum benefit of five years for each term as it would run counter to the "common-sense principle" laid down in jurisprudence; (3) payment to petitioner of two retirement benefits under E.O. 172 for both her retirements, albeit under different positions and offices, is unconstitutional as it violates the provision against additional or double compensation; and (4) ultimately, petitioner should have received only a prorated amount on her retirement gratuity based on her two years and four months as ERB Board Member, and two years, eleven months and twenty days as ERB Chairperson.

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Issues:

(a) Is petitioner entitled to recover two (2) sets of retirement benefits under R.A. 1568, as amended?

(b) How much petitioner is entitled to receive as retirement benefits under the same law?

Ruling:

(a) No. At the outset, it must be clarified that the claim of petitioner for two (2) sets of retirement benefits under R.A. 1568 is not, strictly speaking, a claim for double compensation prohibited under the first paragraph of Section 8, Article IX-B of the Constitution. Claims for double retirement benefits fall under the prohibition against the receipt of double compensation when they are based on exactly the same services and on the same creditable period ***(Santos v. Court of Appeals, 399 Phil. 298, 307-308 [2000])***. This is not, however, the case herein. In this case, petitioner is *not* claiming two (2) sets of retirement benefits for one and the same creditable period. Rather, petitioner is claiming a set of retirement benefits for each of her two (2) retirements from the ERB. In other words, each set of retirement benefits claimed by petitioner is based on distinct creditable periods *i.e.,* one for her term as member of the ERB and another for her term as chairman of the same agency. What petitioner is merely claiming, therefore, is that she is entitled to two (2) sets of retirement benefits for her two (2) retirements from the ERB under R.A. 1568, as amended.

Hence, in order to resolve her claim, what is only required is an interpretation of R.A. 1568, as amended. As can be seen from the discussion above, the success of petitioner's claim actually depends on the existence of a provision in R.A. 1568 that allows her to recover two (2) set of retirement benefits as a consequence of her two (2) retirements from the ERB. Petitioner hinges her claim for two (2) sets of retirement benefits solely on the provisions of R.A. 1568 as amended by R.A. 3595. There is nothing in R.A. 1568 as amended by R.A. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, R.A. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies. In fact, the contingency of multiple retirements from the same covered agency could not have been contemplated by the law. This can be confirm if consideration is to be made that R.A. 1568 is a law that, first and foremost, was intended to cover the retirement benefits of the chairmen and members of the COA (formerly the Office of the Auditor General) and of the COMELEC and that it has been the consistent policy of the State, indeed since the 1935 Constitution, to prohibit any appointment of more than one term in the said constitutional bodies. Hence, R.A. 1568, as it was passed and in its present form, cannot be said to have sanctioned the payment of more than one set of retirement benefits to a retiree as a consequence of multiple retirements in one agency. The mere circumstance that members and chairmen of the ERB may be appointed to serve therein for more than one term (but not for two consecutive terms) does not mean that they would be entitled a set of retirement benefits under R.A. 1568 for each of their completed term. Section 1 of E.O. 172 merely extends to members and chairmen of the ERB *similar* retirement benefits that retiring members and chairmen of the COA and COMELEC are entitled to under the law. *Similar* does not mean greater. Since R.A. 1568, as amended by R.A. 3595 clearly does not justify the payment of more than one gratuity and one annuity to a qualified retiree, petitioner cannot claim two (2) sets of retirement benefits under the same law.

(b) Section 1 of R.A. 1568 grants two (2) types of retirement benefits to a qualified retiree, *i.e.*, a *gratuity* or a lump sum payment and an *annuity* or monthly pension, *viz*:

"Section 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term or office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of this term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual

salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation." (Emphasis supplied).

Applying the above provision, petitioner may recover one gratuity in an amount equivalent to her last annual salary *multiplied* by her actual years of service in the ERB but not to exceed five (5) years. In addition, petitioner is entitled to receive only one annuity equivalent to the amount of her last monthly salary. While petitioner is entitled to receive only one set of retirement benefits under R.A. 1568, as amended, despite her two (2) retirements, the Court believe that her subsequent stint as Chairman of the ERB and her consequent *second retirement* necessitated an adjustment of the retirement benefits she is entitled to under the law. This is because R.A. 1568, as amended, reckons the amount of gratuity on the retiree's last annual salary and actual years of service not exceeding five (5) years, and it bases the amount of annuity on the retiree's last monthly salary. Hence, for purposes of computing her gratuity, petitioner's last annual salary shall be that which she was receiving at the time of her *second retirement* and her actual years of service shall be the sum of her years of service both as ERB member and chairman, but not to exceed five (5) years. On the other hand, for purposes of computing her annuity, petitioner's last monthly salary shall be that which she was receiving monthly as of the date of her *second retirement.*

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SEPARATION PAY; NOMINAL DAMAGES

Unilever Philippines, Inc. vs. Rivera
G.R. No. 201701, June 03, 2013
J. Jose C. Mendoza

Facts:

Respondent was employed by petitioner as its Area Activation Executive for Area 9. Petitioner enforces a strict policy that every trade activity must be accompanied by a Trade Development Program *(TDP)* and that the allocated budget for a specific activity must be used for such activity only. Sometime in 2007, petitioner's internal auditor conducted a random audit and found out that there were fictitious billings and fabricated receipts amounting to P11,200,000.00. It was also discovered that some funds were diverted from the original intended projects. Upon further verification, the fund deviations were upon the instruction of respondent. On July 16, 2007, petitioner issued a show-cause notice to respondent asking her to explain the following charges, to wit: (a) Conversion and Misappropriation of Resources; (b) Breach of Fiduciary Trust; (c) Policy Breaches; and (d) Integrity Issues. Responding through an email, dated July 16, 2007, respondent admitted the fund diversions, but explained that such actions were mere resourceful utilization of budget because of the difficulty of procuring funds from the head office. She insisted that the diverted funds were all utilized in the company's promotional ventures in her area of coverage. Through a letter, dated August 23, 2007, petitioner found respondent guilty of serious breach of the company's Code of Business Principles compelling it to sever their professional relations. In a letter, dated September 20, 2007, respondent asked for reconsideration and requested petitioner to allow her to receive retirement benefits having served the company for fourteen (14) years already. Petitioner denied her request, reasoning that the forfeiture of retirement benefits was a legal consequence of her dismissal from work. Thus, respondent filed a complaint for Illegal Dismissal and other monetary claims. The LA dismissed her complaint for lack of merit and denied her claim for retirement benefits. On appeal, the NLRC partially granted respondent's prayer, and ruled that although respondent was legally dismissed from the service for a just cause, petitioner was guilty of violating the twin notice requirement in labor

cases. Thus, petitioner was ordered to pay her P30,000.00 as nominal damages, retirement benefits and separation pay.

Issues:

(a) Is respondent, a validly dismissed employee, entitled to an award of separation pay?
(b) Is respondent entitled to nominal damages?

Ruling:

(a) No. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay ***(Tirazona v. Philippine Eds Techno-Service, Inc. [PWT, Inc.], G.R. No. 169712, January 20, 2009)***. Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides: *"Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice."*

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee ***(Yrasuegui v. PAL, G.R. No. 168081, October 17, 2008)***. The leading case of ***Philippine Long Distance Telephone Co. vs. NLRC, 247 Phil. 641 (1998)*** is instructive on this point: *"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution. The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best, it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character."*

In the subsequent case of ***Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. National Labor Relations Commission, G.R. Nos. 158786 & 158789, October 19, 2007,*** it was further elucidated that "in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the

dismissed employee." In ***Reno Foods, Inc, v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan, G.R. No. 164016, March 15, 2010***, the Court wrote that "separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause" ***(Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa [NLM]-Katipunan, G.R. No. 164016, March 15, 2010)***.

In this case, respondent was dismissed from work because she intentionally circumvented a strict company policy, manipulated another entity to carry out her instructions without the company's knowledge and approval, and directed the diversion of funds, which she even admitted doing under the guise of shortening the laborious process of securing funds for promotional activities from the head office. These transgressions were serious offenses that warranted her dismissal from employment and proved that her termination from work was for a just cause. Hence, she is not entitled to a separation pay.

More importantly, respondent did not appeal the March 31, 2009 ruling of the NLRC disallowing the award of separation pay to her. It was petitioner who elevated the case to the CA. It is axiomatic that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief ***(Corinthian Gardens Association, Inc. v. Tanjangco, G.R. No. 160795, June 27, 2008)***. Due process prevents the grant of additional awards to parties who did not appeal ***(Aklan College, Inc. v. Enero, G.R. No. 178309, January 27, 2009)***. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed ***(Corinthian Gardens Association, supra.)***. It was, therefore, erroneous for the CA to grant an affirmative relief to Rivera who did not ask for it.

(b) Yes. Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states: *"Section 2. Standard of due process: requirements of notice. — In all cases of termination of employment, the following standards of due process shall be substantially observed: I. For termination of employment based on just causes as defined in Article 282 of the Code: (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination. In case of termination, the foregoing notices shall be served on the employee's last known address."*

King of Kings Transport, Inc. v. Mamac, 553 Phil. 108 (2007) detailed the steps on how procedural due process can be satisfactorily complied with. Thus: *"To clarify, the following should be considered in terminating the services of employees: (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees; (2) After serving the first notice, the employers should schedule*

and conduct a hearing or conference wherein the employees will be given the opportunity to: (a) explain and clarify their defenses to the charge against them; (b) present evidence in support of their defenses; and (c) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement; and (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (a) all circumstances involving the charge against the employees have been considered; and (b) grounds have been established to justify the severance of their employment."

In this case, petitioner was not direct and specific in its first notice to respondent. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages.

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DISABILITY BENEFITS

Oriental Shipmanagement Co., Inc., et. al. vs. Nazal
G.R. No. 177103, June 03, 2013
J. Arturo D. Brion

Facts:

On November 15, 2000, respondent entered into a 12-month contract of employment as cook with Oriental Shipmanagement Co., Inc. (*agency*) for its principal, Bennet Shipping SA Liberia (collectively, *petitioners*). He was to receive US$500.00 plus other benefits. He had two earlier contracts with the petitioners – from January 25, 1999 to September 14, 1999 and from February 12, 2000 to August 2000. Respondent boarded the vessel *M/V Rover* on November 22, 2000 and finished his contract on November 24, 2001. Allegedly after his arrival in Manila, he reported to one Colorado of the agency about his health condition and work experience on board *M/V Rover*. He claimed that the agency referred him to a company-designated physician who found him to be suffering from high blood pressure and diabetes. He then asked for compensation and medical assistance, but the agency denied his request. The agency allegedly advised him not to work again. On May 18, 2002, respondent consulted Dr. Nazal, an internal medicine and diabetes specialist, of Clinica Nazal. Almost a year after, or on May 3, 2003, he underwent a medical examination at Clinica Nazal, which included a random blood sugar test. His blood sugar registered at 339. On September 8, 2004, more than a year later, Dr. Nazal certified respondent to be unfit to work as a seaman. Claiming that his condition was getting worse, respondent went to the Philippine Heart Center on September 29, 2004 and underwent medical examination and treatment under the care of Dr. Vicaldo, an internistcardiologist. Dr. Vicaldo diagnosed respondent's condition as: **hypertension, uncontrolled; diabetes mellitus, uncontrolled; impediment grade X (20.15 %)**; and unfit to resume work as a seaman in any capacity. Thereafter, respondent demanded permanent total disability compensation from the petitioners, contending that his ailments developed during his employment with the petitioners and while he was performing his duties. The agency, for itself and for its principal, argued that respondent's claim is barred by *laches* as it was filed at least two years and ten (10) months late; even if it were otherwise, it still cannot prosper because of respondent's failure to submit himself to a post employment medical examination by a company-designated physician within three working days upon his disembarkation. This resulted, it added, in the forfeiture of his right to claim disability benefits. The LA dismissed the complaint of the respondent. On appeal, the NLRC reversed the LA, and awarded partial disability benefits. The NLRC declared that contrary to LA's conclusion, respondent presented substantial

proof that his ailments had been contracted during his employment with the petitioners. The NLRC relied on Dr. Vicaldo's disability rating of Grade X (20.15%) pursuant to the POEA-SEC.

Issue:

Are the agency and its principal liable to respondent by way of temporary or partial total disability benefits?

Ruling:

No. *First*, respondent disembarked from the vessel *M/V Rover* for a "finished contract," not for medical reasons. This notwithstanding, he claims that immediately after his disembarkation, he reported to Colorado about his health condition and work experience on board the vessel. He further claimed that Colorado referred him to a company-designated physician who found him afflicted with high blood pressure and diabetes. Thereupon, he asked for compensation and medical assistance, but the agency denied his request and allegedly advised him not to work again. Except for his bare allegations, nothing on record supports respondent's claim that he contracted his supposed ailments on board the vessel. As the LA aptly observed, if indeed a company-designated physician examined respondent, why did the physician not issue a medical report confirming respondent's supposed ailments? And why did respondent not ask for a certification of the physician's findings if he really intended to ask for disability compensation from the petitioners? Under the standard employment contract, the employer is under obligation to furnish the seafarer, upon request, a copy of all pertinent medical reports or any records at no cost to the seafarer. The absence of a medical report or certification of respondent's ailments and disability only signifies that his post employment medical examination did not take place as claimed. The absence of a medical report does not mean that respondent was not examined by the company-designated physician as the medical reports are normally in the custody of the manning agency and not with the seaman. In ***UST Faculty Union v. University of Santo Tomas, G.R. No. 180892, April 7, 2009,*** the Court declared: "*a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process*."

Second, while the Court ruled out *laches* as a bar to respondent's claim, the inordinate delay in the institution of the complaint casts a grave suspicion on respondent's true intentions against the petitioners. It took him two years and 10 months to file the complaint (on September 16, 2004) since he disembarked from the vessel *M/V Rover* on November 24, 2001. Why it took him that long a time to file the complaint only respondent can answer, but one thing is clear: he obtained another employment as a seaman for three months (from March 1, 2004 to June 11, 2004), long after his employment with the petitioners. He was deployed by manning agent *Crossocean* on board the vessel. Respondent admitted as much when he submitted in evidence before the LA photocopies of the visa section of his passport showing a departure on March 1, 2004 and an arrival on June 11, 2004. If respondent was able to secure an employment as a seaman with another vessel after his disembarkation in November 2001, how can there be a case against the petitioners, considering especially the lapse of time when the case was instituted? How could respondent be accepted for another ocean-going job if he had not been in good health? How could he be engaged as a seaman after his employment with the petitioners if he was then already disabled? Surely, before he was deployed by *Crossocean*, he went through a pre-employment medical examination and was found fit to work and healthy; otherwise, he would not have been hired. Under the circumstances, his ailments resulting in his claimed disability could only have been contracted or aggravated during his engagement by his last employer or, at the very least, during the period after his contract of employment with the petitioners expired.

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NON-DIMINUTION OF BENEFITS

Philippine Journalists, Inc. vs. Journal Employees Union (JEU), et. al.
G.R. No. 192601, June 03, 2013
J. Lucas P. Bersamin

Facts:

Respondents Pulido and Alfante filed a complaint for illegal dismissal and other monetary claims. Petitioner denied liabilities as far as respondents' monetary claims are concerned. With respect to the alleged non-adjustment of longevity pay and burial aid, petitioner pointed out that it complies with the provisions of the CBA and that both respondents have not claimed for the burial aid. Petitioner maintained that under Section 4, Article XIII of the CBA, funeral and bereavement aid should be granted upon the death of a legal dependent of a regular employee; that consistent with the definition provided by the Social Security System (SSS), the term *legal dependent* referred to the spouse and children of a married regular employee, and to the parents and siblings, 18 years old and below, of a single regular employee; that the CBA considered the term *dependents* to have the same meaning as *beneficiaries*, as provided in Section 5, Article XIII of the CBA on the payment of death benefits; that its earlier granting of claims for funeral and bereavement aid without regard to the foregoing definition of the *legal dependents* of married or single regular employees did not ripen into a company policy whose unilateral withdrawal would constitute a violation of Article 100 of the *Labor Code*, the law disallowing the non-diminution of benefits; that it had approved only four claims from 1999 to 2003 based on its mistaken interpretation of the term *legal dependents*, but later corrected the same in 2000; that the grant of funeral and bereavement aid for the death of an employee's legal dependent, regardless of the employee's civil status, did not occur over a long period of time, was not consistent and deliberate, and was partly due to its mistake in appreciating a doubtful question of law; and that its denial of subsequent claims did not amount to a violation of the law against the non-diminution of benefits. In their comment, respondents countered that the CBA was a bilateral contractual agreement that could not be unilaterally changed by any party during its lifetime; and that the grant of burial benefits had already become a company practice favorable to the employees, and could not anymore be reduced, diminished, discontinued or eliminated by petitioner.

Issue:

Is the denial of respondents' claims for funeral and bereavement aid granted under Section 4, Article XIII of their CBA constitutes diminution of benefits in violation of Article 100 of the Labor Code?

Ruling:

Yes. The nature and force of a CBA are delineated in ***Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda, G.R. No. 145561, June 15, 2005***, thuswise:

"A collective bargaining agreement (or CBA) refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law."

Accordingly, the stipulations, clauses, terms and conditions of the CBA, being the law between the parties, must be complied with by them ***(TSPIC Corporation v. TSPIC Employees Union, G.R. No. 163419, February 13, 2008)***. The literal meaning of the stipulations of the CBA, as with every other contract, control if they are clear and leave no doubt upon the intention of the contracting parties.

Here, a conflict has arisen regarding the interpretation of the term *legal dependent* in connection with the grant of funeral and bereavement aid to a regular employee under Section 4, Article XIII of the CBA, which stipulates as follows:

"SECTION 4. Funeral/Bereavement Aid. The COMPANY agrees to grant a funeral/bereavement aid in the following instances:
a. Death of a regular employee in line of duty – P50,000
b. Death of a regular employee not in line of duty – P40,000
c. ***Death of legal dependent of a regular employee – P15,000."***

Petitioner insists that notwithstanding the silence of the CBA, the term *legal dependent* should follow the definition of it under R.A. 8282 (*Social Security Law*), so that in the case of a married regular employee, his or her legal dependents include only his or her spouse and children, and in the case of a single regular employee, his or her legal dependents include only his or her parents and siblings, 18 years old and below; and that the term *dependents* has the same meaning as *beneficiaries* as used in Section 5, Article XIII of the CBA.

The Court, however, did not agree with petitioner's insistence. Social legislations contemporaneous with the execution of the CBA have given a meaning to the term *legal dependent*. First of all, Section 8(*e*) of the *Social Security Law* provides that a dependent shall be the following, namely: (*a*) the legal spouse entitled by law to receive support from the member; (*b*) the legitimate, legitimated, or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached 21 of age, or, if over 21 years of age, is congenitally or while still a minor has been permanently incapacitated and incapable of self support, physically or mentally; and (*c*) the parent who is receiving regular support from the member. Secondly, Section 4(*f*) of R.A. No. 7875, as amended by R.A. No. 9241, enumerates who are the legal dependents, to wit: (*a*) the legitimate spouse who is not a member; (*b*) the unmarried and unemployed legitimate, legitimated, illegitimate, acknowledged children as appearing in the birth certificate; legally adopted or step-children below 21 years of age; (*c*) children who are 21 years old and order but suffering from congenital disability, either physical or mental, or any disability acquired that renders them totally dependent on the member of our support; and (*d*) the parents who are 60 years old or older whose monthly income is below an amount to be determined by the Philippine Health Insurance Corporation in accordance with the guiding principles set forth in Article I of R.A. No. 7875. And, thirdly, Section 2(*f*) of Presidential Decree No. 1146, as amended by R.A. No. 8291, states that dependents shall include: (*a*) the legitimate spouse dependent for support upon the member or pensioner; (*b*) the legitimate, legitimated, legally adopted child, including the illegitimate child, who is unmarried, not gainfully employed, not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect acquired prior to age of majority; and (*c*) the parents dependent upon the member for support.

It is clear from these statutory definitions of *dependent* that the civil status of the employee as either married or single is not the controlling consideration in order that a person may qualify as the employee's legal dependent. What is rather decidedly controlling is the fact that the spouse, child, or parent is actually dependent for support upon the employee. Indeed, the Court has adopted this understanding of the term *dependent* in ***Social Security System v. De Los Santos, G.R. No. 164790, August 29, 2008***, *viz*:

Social Security System v. Aguas is instructive in determining the extent of the required "dependency" under the SS Law. In *Aguas*, the Court ruled that although a husband and wife are obliged to support each other, whether one is actually dependent for support upon the other cannot be presumed from the fact of marriage alone. Further, *Aguas* pointed out that a wife who left her family until her husband died and

lived with other men, was **not** dependent upon her husband for support, financial or otherwise, during the entire period.

Said the Court: "In a parallel case involving a claim for benefits under the GSIS law, the Court defined a *dependent* as "one who derives his or her main support from another. Meaning, relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else." It should be noted that the GSIS law likewise defines a *dependent spouse* as "the legitimate spouse dependent for support upon the member or pensioner." In that case, the Court found it obvious that a wife who abandoned the family for more than 17 years until her husband died, and lived with other men, was not dependent on her husband for support, financial or otherwise, during that entire period. Hence, the Court denied her claim for death benefits.

The obvious conclusion then is that a wife who is already separated *de facto* from her husband cannot be said to be "dependent for support" upon the husband, absent any showing to the contrary. Conversely, if it is proved that the husband and wife were still living together at the time of his death, it would be safe to presume that she was dependent on the husband for support, unless it is shown that she is capable of providing for herself.

Considering that existing laws always form part of any contract, and are deemed incorporated in each and every contract ***(Sulo sa Nayon, Inc. v. Nayong Pilipino Foundation, G.R. No. 170923, January 20, 2009)***, the definition of *legal dependents* under the aforecited social legislations applies herein in the absence of a contrary or different definition mutually intended and adopted by the parties in the CBA. Accordingly, the concurrence of a legitimate spouse does not disqualify a child or a parent of the employee from being a legal dependent provided substantial evidence is adduced to prove the actual dependency of the child or parent on the support of the employee.

In this regard, the differentiation among the legal dependents is significant only in the event the CBA has prescribed a hierarchy among them for the granting of a benefit; hence, the use of the terms *primary beneficiaries* and *secondary beneficiaries* for that purpose. But considering that Section 4, Article XIII of the CBA has not included that differentiation, petitioner had no basis to deny the claim for funeral and bereavement aid of Alfante for the death of his parent whose death and fact of legal dependency on him could be substantially proved. Pursuant to Article 100 of the *Labor Code*, petitioner as the employer could not reduce, diminish, discontinue or eliminate any benefit and supplement being enjoyed by or granted to its employees. This prohibition against the diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection ***(Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union, G.R. No. 185665, February 8, 2012)***. The application of the prohibition against the diminution of benefits presupposes that a company practice, policy or tradition favorable to the employees has been clearly established; and that the payments made by the employer pursuant to the practice, policy, or tradition have ripened into benefits enjoyed by them ***(Boncodin v. National Power Corporation Employees Consolidated Union, G.R. No. 162716, September 27, 2006)***. To be considered as a practice, policy or tradition, however, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate ***(Metropolitan Bank and Trust Company v. NLRC, G.R. No. 152928, June 18, 2009)***. It is relevant to mention that the Court have not yet settled on the specific minimum number of years as the length of time sufficient to ripen the practice, policy or tradition into a benefit that the employer cannot unilaterally withdraw ***(Sevilla Trading Company v. Semana, G.R. No. 152456, April 28, 2004)***. It is further worthy to note that petitioner granted claims for funeral and bereavement aid as early as 1999, then issued a memorandum in 2000 to correct its erroneous interpretation of *legal dependent* under Section 4, Article XIII of the CBA. This notwithstanding, the 2001-2004 CBA still contained the same provision granting funeral or bereavement aid in case of the death of a legal dependent of a regular employee without differentiating the legal dependents according to

the employee's civil status as married or single. The continuity in the grant of the funeral and bereavement aid to regular employees for the death of their legal dependents has undoubtedly ripened into a company policy. With that, the denial of Alfante's qualified claim for such benefit pursuant to Section 4, Article XIII of the CBA violated the law prohibiting the diminution of benefits.

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DISABILITY BENEFITS

Maersk Filipinas Crewing Inc., et. al. vs. Mesina
G.R. No. 200837, June 05, 2013
J. Bienvenido L. Reyes

Facts:

On March 29, 2005, respondent was employed by petitioners as a steward on board the vessel "Sealand Innovator" for a period of nine (9) Months. The respondent boarded the vessel on May 3, 2005 after having been declared 'fit for sea duties' in his Pre-Employment Medical Examination. As a steward, the respondent's functions involved kitchen related services, cleaning accommodation spaces and performing laundry services, as may be required. Thus, while on board he cooked and served three meals everyday for sixty (60) persons. He also washed a cabin-load of dirty laundry all by himself using strong detergent and fabric conditioner. He was further ordered by the vessel's captain to wash-paint the decks from second to fourth deck using special soap and chemicals. Sometime in June 2005, respondent started to feel unusual itchiness all over his body followed by the appearance of small spots on his skin. He initially deferred seeking medical attention but when the itching became unbearable in October 2005, he requested for a thorough medical check-up. He was subjected to medical check-up on board. After considering the extent of the rashes on his upper torso and the fact that he is engaged in food preparation and service, he was medically repatriated on October 7, 2005. Upon arrival in the Philippines, respondent was referred to petitioners' company-designated physician, Dr. Alegre, before whom he reported for treatment twice a week for eight (8) months. Respondent also underwent phototherapy for not less than twenty (20) sessions. During all these times, petitioners shouldered the medical expenses of the respondent and paid him sick wage benefits. In a letter dated June 23, 2006 to petitioners, Dr. Alegre declared the respondent to be afflicted with psoriasis, an auto-immune ailment that is not work-related. Based on Dr. Alegre's finding that psoriasis is not work-related, petitioners discontinued paying the respondent's benefits. Aggrieved, the respondent sought the assistance of his union, which submitted him for diagnosis to Dr. Fugoso, a dermatologist at the Seaman's Hospital. In a handwritten certification dated February 13, 2007, Dr. Fugoso confirmed that the respondent is suffering from *Psoriasis Vulgaris*, a disease aggravated by work but is not contagious. In another handwritten certification dated February 20, 2007, Dr. Fugoso certified that respondent is at present disabled and diagnosed with Psoriasis Vulgaris (a recurring non-contagious papulosquamous disease aggravated by stress drug intake alcohol etc.). His skin condition has occupied 80% of his body which will need a longer time to control. Respondent claimed that his illness is compensable because it manifested during his employment aboard the petitioners' vessel. He further averred that it was triggered by his exposure to strong detergent soap and chemicals which he used in washing the dishes, laundry and ship decks. Upon the other hand, petitioners denied liability on the basis of Dr. Alegre's declaration that it is not a work-related ailment and psoriasis is not an occupational disease under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Seafarers (POEA-SEC).

Issue:

Is respondent entitled to permanent total disability benefits?

Ruling:

Yes. At the onset, it is well to note that in resolving disputes on disability benefits, the fundamental consideration has been that the POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, its provisions must be construed and applied fairly, reasonably and liberally in their favor because only then can its beneficent provisions be fully carried into effect ***(Seagull Maritime Corp. v. Dee, 548 Phil. 660, 671-672 [2007])***. Under Section 20.1.4.1 of the parties' AMOSUP/IMEC CBA for 2004, the respondent shall be entitled to compensation if he suffers permanent disability as a result of a work-related illness while serving on board. The provision further states that the determination of whether an illness is work-related shall be made in accordance with Philippine laws on employees' compensation. The 2000 POEA-SEC defines "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

In interpreting the said definition, the Court has held that for disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted ***(Magsaysay Maritime Corporation v. NLRC, G.R. No. 186180, March 22, 2010)***. The Court has likewise ruled that the list of illnesses/diseases in Section 32-A does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. This is in view of Section 20(B)(4) of the POEA-SEC which states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."

Concomitant with such presumption is the burden placed upon the claimant to present substantial evidence that his working conditions caused or at least increased the risk of contracting the disease ***(Aya-ay v. Arpaphil Shipping Corp., 516 Phil. 628, 639-640 [2006])***. Substantial evidence consists of such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. Only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of a non-occupational disease ***(GSIS v. Besitan, G.R. No. 178901, November 23, 2011)***.

Equally relevant to the resolution of the claim are the following provisions of the POEA-SEC, *viz*:

"SECTION 20. COMPENSATION AND BENEFITS (B) COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. 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. 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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but

the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

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 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."

In determining the work-causation of a seafarer's illness, the diagnosis of the company-designated physician bears vital significance. After all, it is before him that the seafarer must initially report to upon medical repatriation pursuant to above terms. Nevertheless, the company physician's assessment does not evince irrefutable and conclusive weight in assessing the compensability of an illness as the seafarer has the right to seek a second opinion from his preferred physician ***(Coastal Safeway Marine Services, Inc. v. Esguerra, G.R. No. 185352, August 10, 2011)***. The conflicting findings of the company's doctor and the seafarer's physician often stir suits for disability compensation. As an extrajudicial measure of settling their differences, the POEA-SEC gives the parties the option of agreeing jointly on a third doctor whose assessment shall break the impasse and shall be the final and binding diagnosis.

While it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. This is because resort to a third doctor remains a mere directory not a mandatory provision as can be gleaned from the tenor of Section 20(B)(3), POEA-SEC itself. Further, the right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims ***(HFS Philippines, Inc. v. Pilar, G.R. No. 168716, April 16, 2009)***. Hence, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him.

Psoriasis comes from the Greek word "*psora*" which means itch. It is a common disfiguring and stigmatising skin disease associated with profound impaired quality of life. People with psoriasis typically have sharply demarcated erythematous plaques covered by silvery white scales, which most commonly appear on the elbows, knees, scalp, umbilicus, and lumbar area. Chronic plaque psoriasis (*psoriasis vulgaris*) is the most common type of the disease which manifests thru plaques of varying degrees of scaling, thickening and inflammation in the skin. The plaques are typically oval-shaped, of variable size and clearly distinct from adjacent normal skin. As a result of the chronic, incurable nature of psoriasis, associated morbidity is significant. Patients in primary care and hospital settings have similar reductions in quality of life specifically in the functional, psychological and social dimensions. Symptoms specifically related to the skin (*i.e.*, chronic itch, bleeding, scaling, nail involvement), problems related to treatments (mess, odor, inconvenience, time), arthritis, and the effect of living with a highly visible, disfiguring skin disease (difficulties with relationships, difficulties with securing employment, and poor self-esteem) all contribute to morbidity. About one in four patients experience major psychological distress, and the extent to which they feel socially stigmatised and excluded is significant. Current available treatments for the disease are reasonably effective as short-term therapy. Extended disease control is, however, difficult to achieve as the safety profile of most therapeutic agents limit their long-term use. Until now, the exact cause of psoriasis remains a mystery. But several family studies have provided compelling evidence of a genetic predisposition to psoriasis, although the inheritance pattern is still unclear. Other environmental factors such as climate changes, physical trauma, infections of the upper respiratory tract, drugs, and stress may also trigger its onset or development.

After a circumspect evaluation of the conflicting medical certifications of Drs. Alegre and Fugoso, the Court finds that serious doubts pervade in the former. While both doctors gave a brief description of

psoriasis, it was only Dr. Fugoso who categorically stated a factor that triggered the activity of the respondent's disease – stress, drug or alcohol intake, etc. Dr. Alegre immediately concluded that it is not work-related on the basis merely of the absence of psoriasis in the schedule of compensable diseases in Sections 32 and 32-A of the POEA SEC. Dr. Alegre failed to consider the varied factors the respondent could have been exposed to while on board the vessel. At best, his certification was merely concerned with the examination of the respondent for purposes of diagnosis and treatment and not with the determination of his fitness to resume his work as a seafarer in stark contrast with the certification issued by Dr. Fugoso which categorically declared the respondent as "disabled." The certification of Dr. Alegre is, thus, inconclusive for purposes of determining the compensability of psoriasis under the POEA-SEC. Moreover, Dr. Alegre's specialization is General Surgery while Dr. Fugoso is a dermatologist, or one with specialized knowledge and expertise in skin conditions and diseases like psoriasis. Based on these observations, it is the Court's considered view that Dr. Fugoso's certification deserves greater weight. It remains undisputed that the respondent used strong detergent, fabric conditioner, special soap and chemicals in performing his duties as a steward. Stress and climate changes likewise permeate his working environment as with that of any other seafarer. These factors, taken together with Dr. Fugoso's certification, confirm the existence of a reasonable connection between the nature of respondent's work and the onset of his psoriasis. At any rate, even in the absence of an official finding by the company-designated physician or the respondent's own physician, he is deemed to have suffered permanent total disability pursuant to the following guidelines in ***Fil-Star Maritime Corporation v. Rosete, G.R. No. 192686, November 23, 2011***, thus:

"Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not 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. A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days."

It is undisputed that from the time the respondent was medically repatriated on October 7, 2005 he was unable to work for more than 120 days. In fact, Dr. Alegre's certification was issued only after 259 days with the respondent needing further medical treatments thus rendering him unable to pursue his customary work. Despite the declaration in the medical reports that psoriasis is not contagious, no profit-minded employer will hire him considering the repulsive physical manifestation of the disease, it's chronic nature, lack of long-term cure and the vulnerability of the patient to cardiovascular diseases and some cancers. Its inevitable impact to the respondent's chances of being hired and capacity to continue working as a seaman cannot be ignored. His permanent disability thus effectively became total in nature entitling him to permanent total disability benefits.

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PETITION FOR CERTIORARI

Philippine Transmarine Carriers, Inc. vs. Legaspi
G.R. No. 202791, June 10, 2013
J. Jose C. Mendoza

Facts:

Respondent was employed as Utility Pastry on board the vessel under the employment of petitioner. Respondent's employment was covered by a CBA wherein it was agreed that the company shall pay a maximum disability compensation of up to US$60,000.00 only. While on board the vessel, respondent suffered "Cardiac Arrest S/P ICD Insertation." On November 14, 2008, respondent was repatriated to receive further medical treatment and examination. On May 23, 2009, the company-designated physician assessed his condition to be Disability Grade 2. Not satisfied, respondent filed a complaint for full and permanent disability compensation against petitioner. The LA ruled in favor of respondent. On appeal, the NLRC affirmed the LA. On September 5, 2010, the NLRC issued the Entry of Judgment stating that its resolution affirming the LA decision had become final and executory. On October 22, 2010, during the hearing on the motion for execution before the NLRC, petitioner agreed to pay respondent US$81,320.00. The terms and conditions of said payment were embodied in the Receipt of Judgment Award with Undertaking, wherein respondent acknowledged receipt of the said amount and undertook to return it to petitioner in the event the latter's petition for *certiorari* would be granted, without prejudice to respondent's right to appeal. It was also agreed upon that the remaining balance would be given on the next scheduled conference. On November 8, 2010, petitioner timely filed a petition for *certiorari* with the CA. In the meantime, on March 2, 2011, the LA issued a writ of execution which noted petitioner's payment of the amount of US$81,320.00. On March 16, 2011, in compliance with the said writ, petitioner tendered to the NLRC Cashier the additional amounts of US$8,132.00 as attorney's fees and P3,042.95 as execution fee. In its Order, dated March 31, 2011, the LA ordered the release of the aforementioned amounts to respondent. Unaware of (a) the September 5, 2010 entry of judgment of the NLRC, (b) the October 22, 2010 payment of US$81,320.00, and (c) the writ of execution issued by the LA, the CA rendered its Decision, dated June 29, 2011. The CA *partially granted* the petition for *certiorari* and modified the assailed resolutions of the NLRC, awarding only US$60,000.00 pursuant to the CBA. Petitioner then filed its Manifestation with Motion to Amend the Dispositive Portion, submitting to the CA the writ of execution issued by the LA in support of its motion. Petitioner contended that since it had already paid the total amount of US$89,452.00, it was entitled to the return of the excess payment in the amount of US$29,452.00. In its assailed January 5, 2012 Resolution, the CA denied the motion and ruled that the petition should have been dismissed for being moot and academic not only because the assailed decision of the NLRC had become final and executory on September 5, 2010, but also because the said judgment had been satisfied on October 22, 2010, even before the filing of the petition for *certiorari* on November 8, 2010. In so ruling, the CA cited the pronouncement in ***Career Philippines Ship Management v. Geronimo Madjus, G.R. No. 186158, November 22, 2010***, where it was stated that the satisfaction of the monetary award rendered the petition for *certiorari* moot.

Issue:

Should the petition for certiorari be dismissed for being moot and academic on the ground that the assailed decision of the NLRC had become final and executory and that the said judgment had been satisfied even before the filing of the said petition?

Ruling:

No. Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period. In ***St. Martin Funeral Home v. NLRC, G.R. No. 130866, September 16, 1998***, however, it was ruled that judicial

review of decisions of the NLRC may be sought *via* a petition for *certiorari* before the CA under Rule 65 of the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Hence, in cases where a petition for *certiorari* is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC.

Accordingly, in this case, although the petition for *certiorari* was not filed within the 10-day period, petitioner timely filed it before the CA within the 60-day reglementary period under Rule 65. It has, thus, been held that the CA's review of the decisions or resolutions of the NLRC under Rule 65, particularly those which have already been executed, does not affect their statutory finality, considering that Section 4, Rule XI of the 2011 NLRC Rules of Procedure, provides that a petition for certiorari filed with the CA shall not stay the execution of the assailed decision unless a restraining order is issued. In *Leonis Navigation*, it was further written:

"The CA, therefore, could grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision or resolution never became final and executory."

Notably, in *Career Philippines*, believing that the execution of the LA Decision was imminent after its petition for injunctive relief was denied, the employer filed before the LA a pleading embodying a conditional satisfaction of judgment before the CA and, accordingly, paid the employee the monetary award in the LA decision. In the said pleading, the employer stated that the conditional satisfaction of the judgment award was without prejudice to its pending appeal before the CA and that it was being made only to prevent the imminent execution. The CA later dismissed the employer's petition for being moot and academic, noting that the decision of the LA had attained finality with the satisfaction of the judgment award. The Court affirmed the ruling of the CA, interpreting the "conditional settlement" to be tantamount to an amicable settlement of the case resulting in the mootness of the petition for *certiorari*, considering (i) that the employee could no longer pursue other claims, and (ii) that the employer could not have been compelled to immediately pay because it had filed an appeal bond to ensure payment to the employee. Stated differently, the Court ruled against the employer because the conditional satisfaction of judgment signed by the parties was highly prejudicial to the employee. The agreement stated that the payment of the monetary award was without prejudice to the right of the employer to file a petition for *certiorari* and appeal, while the employee agreed that she would no longer file any complaint or prosecute any suit of action against the employer after receiving the payment.

In contrast, in *Leonis Navigation*, after the NLRC resolution awarding disability benefits became final and executory, the employer paid the monetary award to the employee. The CA dismissed the employer's petition for *certiorari*, ruling that the final and executor decisions or resolutions of the NLRC rendered appeals to superior courts moot and academic. The Court disagreed with the CA and held that final and executed decisions of the NLRC did not prevent the CA from reviewing the same under Rule 65 of the Rules of Court. It was further ruled that the employee was estopped from claiming that the case was closed and terminated, considering that the employee's Acknowledgment Receipt stated that such was without prejudice to the final outcome of the petition for *certiorari* pending before the CA.

In the present case, the Receipt of the Judgment Award with Undertaking was fair to both the employer and the employee. As in *Leonis Navigation*, the said agreement stipulated that respondent should return the amount to petitioner if the petition for *certiorar*i would be granted but *without prejudice to respondent's right to appeal*. The agreement, thus, provided available remedies to both parties. It is clear that petitioner paid respondent subject to the terms and conditions stated in the Receipt of the Judgment Award with Undertaking. Both parties signed the agreement. Respondent neither refuted the agreement nor claimed that he was forced to sign it against his will. Therefore, the petition for *certiorari* was not rendered moot despite petitioner's satisfaction of the judgment award, as the respondent had obliged himself to return the payment if the petition would be granted.

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FORUM SHOPPING

Kapisanang Pangkaunlaran ng Kababaihang Potrero, Inc.
vs. Barreno, et. al.
G.R. No. 175900, June 10, 2013
J. Estela Perlas-Bernabe

Facts:

On September 20, 2001, respondents filed a Complaint before the DOLE-NCR for underpayment of wages, non-payment of labor standard benefits against petitioner. During its pendency, however, the respondents were terminated from employment. Thus, a complaint for illegal dismissal with prayer for reinstatement and payment of their money claims before the NLRC. Petitioners averred that respondents committed forum shopping when they filed the NLRC CASE during the pendency of the DOLE CASE. Respondents likewise denied having committed forum shopping, explaining that the DOLE CASE referred only to money claims and that it had already been withdrawn while the NLRC CASE involves the complaint for illegal dismissal with money claims. The LA found no forum shopping, but on appeal, the NLRC reversed the LA, and ruled that respondents are guilty of forum shopping in filing the same complaint against petitioners in two (2) *fora*, namely the DOLE and the NLRC. The CA affirmed the NLRC, but declared that the ends of justice would be better served if respondents would be given the opportunity to be heard on their complaint for illegal dismissal. Accordingly, the CA ordered the remand of the case to the NLRC for further proceedings.

Issue:

Is the order of reinstatement and remand of the NLRC CASE to the NLRC despite its finding of forum shopping proper?

Ruling:

Yes. At the outset, the Court finds that contrary to the findings of both the NLRC and the CA, respondents are not guilty of forum shopping. Thus, considering that the NLRC did not resolve the appeal on the merits but instead dismissed the case based on a finding of forum shopping, the Court concurs in the result arrived at by the CA in remanding the cases for illegal dismissal to the NLRC for resolution of the appeal.

Forum shopping exists "when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court" ***(Coca-Cola Bottlers, Inc. v. Social Security Commission, G.R. No. 159323, July 31, 2008)***. What is truly important to consider in determining

whether it exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by different *fora* upon the same issues ***(Municipality of Taguig v. CA, G.R. No. 142619, September 13, 2005)***. Applying the foregoing principles to the case at bar, respondents did not commit forum shopping. Clearly, there is no identity of causes of action between the cases pending with the DOLE and the NLRC. The DOLE CASE involved violations of labor standard provisions where an employer-employee relationship exists. On the other hand, the NLRC CASE questioned the propriety of respondents' dismissal. No less than the Labor Code provides for these two (2) separate remedies for distinct causes of action. More importantly, at the time the DOLE CASE was initiated, respondents' only, cause of action was petitioners' violation of labor standard laws which falls within the jurisdiction of the DOLE. It was only after the same was filed that respondents were dismissed from employment, prompting the filing of the NLRC CASE, which is within the mantle of the NLRC's jurisdiction. Under the foregoing circumstances, respondents had no choice but to avail of different *fora*. Nevertheless, records reveal that respondents withdrew the DOLE CASE after they had instituted the NLRC CASE. Pertinent on this point is the Court's pronouncement in ***Consolidated Broadcasting System v. Oberio, G.R. No. 168424, June 8, 2007***, to wit:

Under Article 217 of the Labor Code, termination cases fall under the jurisdiction of Labor Arbiters. Whereas, Article 128 of the same Code vests the Secretary of Labor or his duly authorized representatives with the power to inspect the employer's records to determine and compel compliance with labor standard laws. The exercise of the said power by the Secretary or his duly authorized representatives is exclusive to cases where [the] employer-employee relationship still exits. Thus, in cases where the complaint for violation of labor standard laws preceded the termination of the employee and the filing of the illegal dismissal case, it would not be in consonance with justice to charge the complainants with engaging in forum shopping when the remedy available to them at the time their causes of action arose was to file separate cases before different fora. x x x (Emphasis and underscoring supplied)

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REVOCATION OF CERTIFICATE OF INCORPORATION: RELEASES, WAIVERS, QUITCLAIMS; LABOR-ONLY CONTRACTING: SOLIDARY LIABILITY

Vigilla, et. al. vs. Philippine College of Criminology, Inc.
G.R. No. 200094, June 10, 2013
J. Jose C. Mendoza

Facts:

PCCr is a non-stock educational institution, while the petitioners were janitors, janitresses and supervisor under the supervision and control of the PCCr's Senior Vice President for Administration. The petitioners, however, were made to understand, upon application with respondent school, that they were under MBMSI, a corporation engaged in providing janitorial services to clients. PCCr's Senior Vice President for Administration is also the President and General Manager of MBMSI. Sometime in 2008, PCCr discovered that the Certificate of Incorporation of MBMSI had been revoked as of July 2, 2003. On March 16, 2009, PCCr, through its President, citing the revocation, terminated the school's relationship with MBMSI, resulting in the dismissal of the employees or maintenance personnel under MBMSI. In September, 2009, the dismissed employees filed their respective complaints for illegal dismissal and monetary benefits against MBMSI and PCCr. In their complaints, they alleged that it was the school, not MBMSI, which was their real employer because (a) MBMSI's certification had been revoked; (b) PCCr had direct control over MBMSI's operations; (c) there was no contract between MBMSI and PCCr; and

(d) the selection and hiring of employees were undertaken by PCCr. On the other hand, PCCr contended that (a) PCCr could not have illegally dismissed the complainants because it was not their direct employer; (b) MBMSI was the one who had complete and direct control over the complainants; and (c) PCCr had a contractual agreement with MBMSI, thus, making the latter their direct employer. On September 11, 2009, PCCr submitted several documents before the LA, including releases, waivers and quitclaims in favor of MBMSI executed by the petitioners to prove that they were employees of MBMSI and not PCCr. Petitioners further argue that MBMSI had no legal personality to incur civil liabilities as it did not exist as a corporation on account of the fact that its Certificate of Incorporation had been revoked on July 2, 2003.

Issues:

(a) Were the executed releases, waivers and quitclaims valid and binding notwithstanding the revocation of MBMSI's Certificate of Incorporation?

(b) Is MBMSI solidarily liable with PCCr? Assume in the affirmative, will the releases, waivers and quitclaims in favor of MBMSI redound to the benefit of PCCr?

Ruling:

(a) Yes. The executed releases, waivers and quitclaims are valid and binding notwithstanding the revocation of MBMSI's Certificate of Incorporation. The revocation does not result in the termination of its liabilities. Section 122 of the Corporation Code provides for a three-year winding up period for a corporation whose charter is annulled by forfeiture or otherwise to continue as a body corporate for the purpose, among others, of settling and closing its affairs. Even if said documents were executed in 2009, six (6) years after MBMSI's dissolution in 2003, the same are still valid and binding upon the parties and the dissolution will not terminate the liabilities incurred by the dissolved corporation pursuant to Sections 122 and 145 of the Corporation Code. In the case of ***Premiere Development Bank v. Flores, G.R. No. 175339, December 16, 2008,*** the Court held that a corporation is allowed to settle and close its affairs even after the winding up period of three (3) years. The Court wrote:

"As early as 1939, this Court held that, although the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences, there is no time limit within which the trustees must complete a liquidation placed in their hands. What is provided in Section 122 of the Corporation Code is that the conveyance to the trustees must be made within the three-year period. But it may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The trustees to whom the corporate assets have been conveyed pursuant to the authority of Section 122 may sue and be sued as such in all matters connected with the liquidation.

Furthermore, Section 145 of the Corporation Code clearly provides that "no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation." Even if no trustee is appointed or designated during the three-year period of the liquidation of the corporation, the Court has held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication."

(b) Yes. The releases, waivers and quitclaims executed by petitioners in favor of MBMSI redounded to the benefit of PCCr pursuant to Article 1217 of the New Civil Code. The reason is that MBMSI is solidarily liable with the respondents for the valid claims of petitioners pursuant to Article 109 of the Labor Code. As correctly pointed out by the respondents, the basis of the solidary liability of the principal with those engaged in labor-only contracting is the last paragraph of Article 106 of the Labor Code, which in part provides: *"In such cases [labor-only contracting], the person or intermediary shall*

be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

Section 19 of D.O. No. 18-02 issued by the DOLE, which was still in effect at the time of the promulgation of the subject decision and resolution, interprets Article 106 of the Labor Code in this wise:

"Section 19. Solidary liability. The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor- Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor. [Emphases supplied]."

The DOLE recognized anew this solidary liability of the principal employer and the labor-only contractor when it issued D.O. No. 18-A, series of 2011, which is the latest set of rules implementing Articles 106-109 of the Labor Code. Section 27 thereof reads:

"Section 27. Effects of finding of labor-only contracting and/or violation of Sections 7, 8 or 9 of the Rules. A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter's employees, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.

A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended. (Emphasis supplied.)"

These legislative rules and regulations designed to implement a primary legislation have the force and effect of law. A rule is binding on the courts so long as the procedure fixed for its promulgation is followed and its scope is within the statutory authority granted by the legislature. Jurisprudence is also replete with pronouncements that a job-only contractor is solidarily liable with the employer. One of these is the case of *Philippine Bank of Communications v. NLRC* where the Court explained the legal effects of a job-only contracting, to wit:

"Under the general rule set out in the first and second paragraphs of Article 106, an employer who enters into a contract with a contractor for the performance of work for the employer, does not thereby create an employer-employees relationship between himself and the employees of the contractor. Thus, the employees of the contractor remain the contractor's employees and his alone. Nonetheless when a contractor fails to pay the wages of his employees in accordance with the Labor Code, the employer who contracted out the job to the contractor becomes jointly and severally liable with his contractor to the employees of the latter "to the extent of the work performed under the contract" as such employer were the employer of the contractor's employees. The law itself, in other words, establishes an employer-employee relationship between the employer and the job contractor's employees for a limited purpose, i.e., in order to ensure that the latter get paid the wages due to them.

A similar situation obtains where there is "labor only" contracting. The "labor-only" contractor-i.e "the person or intermediary" - is considered "merely as an agent of the employer." The employer is made by the statute responsible to the employees of the "labor only" contractor as if such employees had been directly employed by the employer. Thus, where "labor-only" contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner

of the project) and the employees of the "labor only" contractor, this time for a comprehensive purpose: "employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code." The law in effect holds both the employer and the "labor-only" contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code. [Emphasis supplied]."

The case of *San Miguel Corporation v. MAERC Integrated Services, Inc.* also recognized this solidary liability between a labor-only contractor and the employer. In the said case, this Court gave the distinctions between solidary liability in legitimate job contracting and in labor-only contracting, to wit:

"In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees. On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees."

Recently, the Court reiterated this solidary liability of labor-only contractor in the case of ***7K Corporation v. NLRC, 537 Phil. 664 (2006)*** where it was ruled that the principal employer is solidarily liable with the labor-only contractor for the rightful claims of the employees.

Considering that MBMSI, as the labor-only contractor, is solidarily liable with the respondents, as the principal employer, then the respondents' solidary liability was already expunged by virtue of the releases, waivers and quitclaims executed by each of the petitioners in favor of MBMSI pursuant to Article 1217 of the Civil Code which provides that *"payment made by one of the solidary debtors extinguishes the obligation."* The Court has constantly applied the Civil Code provisions on solidary liability, specifically Articles 1217 and 1222, to labor cases. In ***Varorient Shipping Co., Inc. v. NLRC, 564 Phil. 119 (2007)*** the Court held:

"The POEA Rules holds her, as a corporate officer, solidarily liable with the local licensed manning agency. Her liability is inseparable from those of Varorient and Lagoa. If anyone of them is held liable then all of them would be liable for the same obligation. Each of the solidary debtors, insofar as the creditor/s is/are concerned, is the debtor of the entire amount; it is only with respect to his co-debtors that he/she is liable to the extent of his/her share in the obligation. Such being the case, the Civil Code allows each solidary debtor, in actions filed by the creditor/s, to avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertaining to his share [citing Section 1222 of the Civil Code]. He may also avail of those defenses personally belonging to his co-debtors, but only to the extent of their share in the debt. Thus, Varorient may set up all the defenses pertaining to Colarina and Lagoa; whereas Colarina and Lagoa are liable only to the extent to which Varorient may be found liable by the court. x x x x

If Varorient were to be found liable and made to pay pursuant thereto, the entire obligation would already be extinguished [citing Article 1217 of the Civil Code] even if no attempt was made to enforce the judgment against Colarina. Because there existed a common cause of action against the three solidary obligors, as the acts and omissions imputed against them are one and the same, an ultimate finding that Varorient was not liable would, under these circumstances, logically imply a similar exoneration from liability for Colarina and Lagoa, whether or not they interposed any defense."

In light of these conclusions, the Court holds that the releases, waivers and quitclaims executed by petitioners in favor of MBMSI redounded to the respondents' benefit. The liabilities of the respondents to petitioners are now deemed extinguished. The Court cannot allow petitioners to reap the benefits given to them by MBMSI in exchange for the releases, waivers and quitclaims and, again, claim the same benefits from PCCr. While it is the duty of the courts to prevent the exploitation of employees, it also behooves the courts to protect the sanctity of contracts that do not contravene the law. The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

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DISABILITY BENEFITS

Magsaysay Maritime Corporation vs. NLRC and Capoy
G.R. No. 191903, June 19, 2013
J. Arturo D. Brion

Facts:

Petitioner hired private respondent Capoy as Fitter on board the vessel *M/S Star Geiranger* for nine months. Sometime in July 2005, while he was at work, Capoy allegedly fell down a ladder from a height of about two meters. He claimed that he immediately felt numbness in his fingertips that gradually extended to his hands and elbows. Despite the incident, he continued performing his work. On August 15, 2005, while climbing a flight of stairs, he again fell from a height of one meter. He claimed that he could not tightly hold to the railings of the stairs due to the numbness of his fingers and that he felt electricity-like sensation in his body, legs and hands. After being first examined by Dr. Raudzus in Vancouver, Canada, Capoy was referred to Dr. Tai, also in Vancouver. Dr. Tai assessed Capoy to be suffering from C-spine disease with bilateral sensory symptoms and upper neuron disorder. Dr. Tai expressed concern that Capoy had a central cord problem requiring an urgent *MRI*. He found Capoy unfit to work and advised him not to return to work until the examination was complete. Subsequently, Capoy was referred to Dr. Clement of the CML Health Care, still in Vancouver, for further examination. Dr. Clement's "impression" of Capoy's condition substantially confirmed Dr. Tai's assessment. On August 31, 2005, Capoy was medically repatriated. The following day, he reported to the company-designated physician, Dr. Salvador of SHIP. Dr. Salvador required him to undergo physical and neurological examinations. Dr. Salvador initially diagnosed Capoy's condition as "spinal stenosis, cervical." On September 16, 2005, Capoy underwent an MRI. On September 20, 2005, Dr. Salvador reported that the orthopedic surgeon who examined the MRI results recommended that Capoy undergo a multilevel laminectomy, C3 to C6 spine, to relieve him of his pain. Capoy was hesitant to submit to a laminectomy, suggesting that he would just undergo physiotherapy, but he eventually agreed to the procedure which took place on October 24, 2005. His post-surgery condition was diagnosed as Herniated Nucleous Pulpusos C3-C4; Chronic bilateral C6 Radiculopathies; S/P Laminoplasty of the C3-C5. He was seen and evaluated by SHIP'S specialists and was cleared for discharge. He remained under the care of the specialists for therapy sessions which continued until March 17, 2006. He was to return on April 6, 2006 for re evaluation by the orthopedic surgeon. In the interim (*i.e.,* on January 19, 2006 or while still undergoing treatment by the

company doctors), Capoy filed a complaint for disability benefits against the petitioner. He argued that after the lapse of 120 days without being declared fit to work, he was entitled to permanent total disability benefits in accordance with the CBA his union, the *AMOSUP*, had with his employer. On the other hand, petitioners denied liability and argued that Capoy was not entitled to permanent disability benefits as his claim was premature since no disability assessment has yet been made by the company-designated physician. Before the complaint could be resolved (or on April 28, 2006), Capoy had himself examined by a physician of his choice, Dr. Sabado, who declared him "unfit to any kind of work permanently". The LA ruled in favor of Capoy for permanent total disability, which was affirmed by the NLRC and the CA.

Issue:

Is Capoy entitled to permanent total disability benefits?

Ruling:

No. Although Capoy sustained a work-related injury, the CA & NLRC did not properly appreciate that Capoy is not entitled to permanent total disability compensation based on the applicable contract, rules and laws. *First*, there was no assessment of the extent of Capoy's disability by the company-designated physician, as required by Section 20(B)(3) of the POEA-SEC, which provides:

"Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

x x x x

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."

Considering that Capoy was still undergoing medical treatment, particularly through therapy sessions under the care of the company-designated specialists, Dr. Salvador (the lead company doctor) cannot be faulted for not issuing an assessment of Capoy's disability or fitness for work at that time. In fact, as Dr. Salvador's progress report of March 17, 2006 showed that Capoy was expected to return on April 6, 2006 for reevaluation by the orthopedic surgeon. This aspect of the POEA-SEC and Capoy's compliance totally escaped the labor tribunals and the CA.

Second, the conclusions of the LA, the NLRC and the CA that Capoy is entitled to permanent total disability benefits because his disability lasted for more than 120 days, without need for an assessment from Dr. Salvador, must be viewed in the context of the established facts and the applicable Philippine law. The law in this jurisdiction must be determined in the context of the disagreement on Capoy's claim between the foreign employer, represented by the manning agency, and Capoy whose employment relationship is governed by the POEA-SEC and supplemented by the parties' CBA. As explained in ***Vergara v. Hammonia Maritime Services, Inc., G.R. No. 172933, October 6, 2008***, under Section 31 of the POEA-SEC, in case of any unresolved dispute, claim or grievance arising out of or in connection with the contract, the matter shall be governed by Philippine laws, as well as international conventions, treaties and covenants where the Philippines is a signatory. This signifies that the terms agreed upon by the parties pursuant to the POEA-SEC are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance. Article 192(3) of the Labor Code which deals with the period of disability states that:

"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."

The rule adverted to is Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which provides:

"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 detemined by the System."

The above provisions must be read together with Section 20(B)(3) of the POEA-SEC which states as follows:

"Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days."

The *Vergara* ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus:

"[T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition."

As applied to Capoy's situation based on the records, the Court could not see how the award of permanent total disability compensation in his favor can be justified. As pointed out, Capoy reported to the company-designated physician, Dr. Salvador, the day after his repatriation on August 31, 2005. Dr. Salvador's initial diagnosis of Capoy's condition confirmed the findings of the doctors who examined and treated Capoy in Vancouver. Thereafter, he went through specialized medical procedures — an MRI, as suggested by Dr. Tai of Vancouver, and a laminectomy, as recommended by the company orthopedic surgeon who examined the MRI results. As part of his intensive treatment, he was subjected to continuous therapy sessions before and after his operation. The therapy sessions appeared to be yielding positive results. Dr. Salvador's progress report of January l2, 2006 showed that Capoy's vital signs were improving and that the orthopedic surgeon observed that he was responding well to therapy, as evidenced by the improved sensation of both his lower extremities. The surgeon recommended that Capoy continue the therapy sessions. But, for reasons known only to him, Capoy became noncompliant to therapy, as reported by the company doctor, which is why there was slow progress in his condition, although the

repeat EMG-NCV procedure showed that his nerve injury was healing; thus, he was cleared from the physiatrist standpoint. He failed to return on April 6, 2006 for re-evaluation by the orthopedic surgeon. As matters stood on March 17, 2006, when Dr. Salvador issued her last progress report, 197 days from Capoy's repatriation on August 31, 2005, Capoy was legally under temporary total disability since the 240-day period under Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code had not yet lapsed. The LA, the NLRC and the CA, therefore, grossly misappreciated the facts and the applicable law when they ruled that because Capoy was unable to perform his work as a fitter for more than 120 days, he became entitled to permanent total disability benefits. The CA cited in support of its challenged ruling Dr. Salvador's failure to make a disability assessment or a fit-to-work declaration for Capoy after 197 days from his repatriation. This is a misappreciation of the underlying reason for the absence of Dr. Salvador's assessment. There was no assessment yet because Capoy was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period provided under the above-cited rule. To reiterate, Capoy was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment. The Court cannot, under these circumstances, blame the petitioners for claiming that Capoy abandoned his treatment. Worse, he could even be dealing with the company doctors in bad faith while he was still undergoing treatment. For instance, he never offered any explanation for his failure to report to the orthopedic surgeon. The reason for this could be that he was just going through the motions of undergoing treatment with the company doctors. This is supported by the fact that while he still had schedules with the company doctors and without waiting for Dr. Salvador's assessment of his condition, he filed a claim for permanent total disability benefits on January 19, 2006. Even before his claim could be resolved, he had himself examined by Dr. Sabado who declared him "[u]nfit to any kind of work permanently." Dr. Sabado's declaration would not alter the fact that Capoy's claim for permanent total disability benefits was premature. Considering that Capoy was still under treatment by the company doctors even after the lapse of 120 days but within the 240-day extended period allowed by the rules, he was under temporary total disability and entitled to temporary total disability benefits under the same rules.

Moreover, with respect to Capoy's failure to comply with the procedure under the POEASEC *vis-a-vis* Dr. Sabado's certification, the Court ruled following the pronouncement in ***C.F. Sharp Crew Management, Inc. v. Taok, G.R. No. 193679, July 18, 2012***, thus:

"Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable. Under the same provision, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disablity and there is a procedure to contest his findings. It is patent from the records that Taok submitted these medical certificates during the pendency of his appeal before the NLRC. More importantly, Taok prevented the company-designated physician from determining his fitness or unfitness for sea duty when he did not return on October 18, 2006 for re-evaluation. Thus, Taok's attempt to convince this Court to put weight on the findings of his doctors-of choice will not prosper given his failure to comply with the procedure prescribed by the POEA-SEC."

Very obviously, Capoy's case suffers from the same infirmities committed by Taok in the cited case, when he presented Dr. Sabado's certification to the LA without going through the procedure under the POEA-SEC. Capoy, needless to say, prevented Dr. Salvador from determining his fitness or unfitness for sea duty when he did not return on April 6, 2006 for re-evaluation. In light of these considerations, Capoy's claim for permanent total disabilty benefits must necessarily fail. However, since it is undisputed that Capoy still needed medical treatment beyond the initial 120 days from his repatriation - it lasted for 197 days as found by the CA - he is entitled, under the rules, to the income benefit for temporary total disability during the extended period or for one hundred ninety-seven (197) days.

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DISABILITY ASSESSMENT

Philippine Hammonia Ship Agency, Inc. vs. Dumadag
G.R. No. 194362, June 26, 2013
J. Arturo D. Brion

Facts:

Petitioner hired respondent Dumadag for four months as Able Bodied Seaman for the vessel *Al Hamra*, pursuant to the POEA-SEC. Before he boarded the vessel, Dumadag underwent a pre-employment medical examination and was declared fit to work. Sometime in May 2007, while on board the vessel, Dumadag complained of difficulty in sleeping and changes in his body temperature. On May 18, 2007, a physician at the Honmoku Hospital in Yokohama, Japan examined him. He also underwent ultra-sonographic, blood and ECG examinations and was found to be normal and "fit for duty," but was advised to have bed rest for two to three days. Thereafter, Dumadag complained of muscle stiffness in his entire body. On June 20, 2007, he was again subjected to blood tests, urinalysis and uric laboratory procedures in Japan. He was found "fit for light duty for 5-7 days." On July 19, 2007, his contract completed, Dumadag returned to the Philippines. Allegedly, upon his request, the agency referred him to the company-designated physician, Dr. Dacanay of the *MMC*, for medical examination. At the MMC, Dumadag underwent baseline laboratory tests revealing "normal complete blood count, creatinine, sodium, potassium, calcium and elevated creatinine kinase." He was also subjected to thyroid function tests that likewise showed normal results. Further, he underwent psychological tests and treatment. He was assessed on August 6, 2007 to have "Adjustment Disorder with Mixed Anxiety and Depressed Mood," "Hypercreatinine Phospokinase," and "right Carpal Tunnel Syndrome." He was subsequently declared "fit to resume sea duties as of November 6, 2007" by the company-designated specialist. The petitioners shouldered Dumadag's medical expenses with the company- designated physician. Dumadag was not rehired by the petitioners. He claimed that he applied for employment with other manning agencies, but was unsuccessful. On December 5, 2007, Dumadag consulted Dr. Diyco, an orthopedic surgeon at the Philippine Orthopedic Center, who certified that he was suffering from Carpal Tunnel Syndrome of the right wrist. Dr. Diyco gave him a temporary partial disability assessment. On January 8, 2008, Dumadag saw Dr. Rogacion, specializing in family medicine and psychiatry. Dr. Rogacion evaluated him to be suffering from minor depression. On March 8, 2008, Dumadag again sought medical advice from Dr. Domingo, a family health and acupuncture physician. Dr. Domingo found him to be still suffering from adjustment disorder, with mixed anxiety and in a depressed mood, hypercreatinine phospokinase and carpal tunnel syndrome. He assessed Dumadag to be "unfit to work." Further, or on April 13, 2008, Dumadag consulted Dr. Escutin, an orthopedic surgeon, who certified that he had generalized muscular weakness and that "he cannot perform nor function fully all his previous activities." Dr. Escutin declared Dumadag unfit for sea duty in whatever capacity and gave him a permanent total disability assessment. After his consultations with the four physicians, Dumadag filed a claim for permanent total disability benefits. The LA ruled in favor of Dumadag for permanent total disability, which was affirmed by the NLRC and the CA. Petitioners posits that it is the company-designated physician who determined the seafarer's degree of disability or his fitness to work. On the other hand, Dumadag argues that the opinion of the company doctor is not binding and cannot be the sole basis of whether he is entitled to disability benefits or not, especially considering that the opinions of company physicians are generally self-serving and biased in favor of the company. Further, he maintains that the mere fact that there is no "third opinion" from a doctor appointed by the parties does not automatically mean that the opinion of the company doctor will prevail over that of his chosen physicians. He insists that in case of discrepancy between the certification of the company-designated physician and that of the seaman's doctor, the finding favorable to the seaman should be followed.

Issue:

Whose disability assessment should prevail in a maritime disability claim – the fit-to-work assessment of the company-designated physician or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work? How are the conflicting assessments to be resolved?

Ruling:

In ***Vergara v. Hammonia Maritime Services, Inc., G.R. No. 172933, October 6, 2008***, the Court said: "the DOLE, through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seaman."

In this case, Dumadag and the petitioners entered into a contract in accordance with the POEA-SEC. They also had a CBA. Dumadag's claim for disability compensation could have been resolved bilaterally had the parties observed the procedure laid down in the POEA-SEC and in their CBA. Section 20(B)(3) of the POEA-SEC provides:

"Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

x x x x

*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.***"**

On the other hand, the CBA between the Associated Marine Officers' and Seamen's Union of the Philippines and Dumadag's employer, the Dorchester Marine Ltd., states:

"The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties."

The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In ***Magsaysay Maritime Corp. v. Velasquez, G.R. No. 179802, November 14, 2008,*** the Court said: "The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued her fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.

Verily, the filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The

petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits. The Court found the rulings of the labor authorities seriously flawed as they were rendered in total disregard of the law between the parties – the POEA-SEC and the CBA – on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.

As earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a third doctor as was his duty. He offered no reason that could have prevented him from following the procedure. Before he filed his complaint, or between July 19, 2007, when he came home *upon completion of his contract*, and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. The Court, therefore, found it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion. Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. The Court stress in this respect that they have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 – whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in ***Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division), G.R. No. 186180, March 22, 2010*** and similar other cases, or sustained the opinion of the seafarer's chosen physician as in ***HFS Philippines, Inc. v. Pilar, G.R. No. 168716, April 16, 20090***, cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to the Court, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In ***Santiago v. Pacbasin Ship Management, Inc., G.R. No. 194677, April 18, 2012***, the Court declared: *"[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."*

On a different plane, Dumadag cannot insist that the "favorable" reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only a day (or shorter) on four different dates between December 5, 2007 and April 13, 2008. Moreover, the Court point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists. Under the circumstances, the Court cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians.

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ABANDONMENT

Concrete Solutions, Inc. vs. Cabusas
G.R. No. 177812, June 19, 2013
J. Diosdado M. Peralta

To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To be a valid cause for dismissal for abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.

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Fianza vs. NLRC and Binga Hydroelectric Plant, Inc.
G.R. No. 163061, June 26, 2013
CJ. Maria Lourdes P. A. Sereno

Abandonment as a fact and a defense can only be claimed as a ground for dismissal if the employer follows the procedure set by law. In line with the burden of proof set by law, the employer who alleges abandonment "has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning."

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PROBATIONARY EMPLOYEE

UNIVAC Development, Inc. vs. Soriano
G.R. No. 182072, June 19, 2013
J. Diosdado M. Peralta

Indeed, the power of the employer to terminate a probationary employee is subject to three limitations, namely: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no unlawful discrimination in the dismissal. In this case, not only did petitioner fail to show that respondent was apprised of the standards for regularization but it was likewise not shown how these standards had been applied in his case. Pursuant to well-settled doctrine, petitioner's failure to specify the reasonable standards by which respondent's alleged poor performance was evaluated as well as to prove that such standards were made known to him at the start of his employment, makes respondent a regular employee. In other words, because of this omission on the part of petitioner, respondent is deemed to have been hired from day one as a regular employee.

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LOSS OF TRUST AND CONFIDENCE

Century Iron Works, Inc. vs. Banas
G.R. No. 184116, June 19, 2013
J. Arturo D. Brion

Loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) *employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees.* Examples of rank-and-file employees who may be dismissed for loss of confidence are cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property. Thus, in this case, the phrasing of the petitioners' second assignment of error is inaccurate because a rank-and-file employee who is routinely charged with the care and custody of the employer's money or property may be dismissed on the ground of loss of confidence.

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Manila Jockey Club, Inc. vs. Trajano
G.R. No. 160982, June 26, 2013
J. Lucas P. Bersamin

Specifically, loss of the employer's trust and confidence is a just cause under Article 282 (c), a provision that ideally applies only to cases involving an employee occupying a position of trust and confidence, or to a situation where the employee has been routinely charged with the care and custody of the employer's money or property. But the loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and confidence founded on clearly established facts. "A breach is willful," according to ***AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007***, "if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer." An ordinary breach is not enough. Moreover, the loss of trust and confidence must be related to the employee's performance of duties. In this case, as a selling teller, respondent held a position of trust and confidence. The nature of her employment required her to handle and keep in custody the tickets issued and the bets made in her assigned selling station. The bets were funds belonging to her employer. Although the act complained of – the unauthorized cancellation of the ticket (i.e., unauthorized because it was done without the consent of the bettor) – was related to her work as a selling teller, petitioner did not establish that the cancellation of the ticket was intentional, knowing and purposeful on her part in order for her to have breached the trust and confidence reposed in her by petitioner, instead of being only out of an honest mistake.

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