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G.R. No. 253480 — TEODORO B. BUNAYOG, Petitioner, **v. FOSCON SHIPMANAGEMENT, INC., /GREEN MARITIME CO., LTD., /EVELYN M. DEFENSOR,** Respondents.

Promulgated:

April 25, 2023

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

This Court should not hesitate to look further into other disciplines when interpreting our laws, especially in cases where the factual situations are not fully contemplated by existing doctrines. Other fields of study may provide greater context to the issues and may even enrich our discussions on various legal topics.

Law and economics are not mutually exclusive fields of study. Applying economic principles to explain purely legal principles in labor relations may provide this Court with basis to fully resolve lingering labor issues.

I explain further.

Petitioner was engaged as a chief cook onboard respondents' vessel M/T Morning Breeze for nine months. While onboard the vessel, petitioner experienced cough, fever, and difficulty breathing. He was diagnosed with left lung pneumonia and declared by the doctor onboard as unfit for sea duty. Upon repatriation, he was referred to the company-designated physician. The company-designated physician found him to be suffering from "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left"[1] and received treatment for about a month. After treatment, the company-designated physician declared him fit to work.[2]

Petitioner sought a second opinion with a physician of his own choosing. His chosen physician declared him unfit for sea duty due to pleural effusion.[3] He sent a letter to respondents informing them of his

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1 *Ponencia*, p. 2.
2 *Id.*
3 *Id.*

physician's findings and his willingness to undergo another medical examination with a third doctor. Respondents, however, did not respond to this request. Thus, petitioner filed a complaint for total and permanent disability in the amount of USD 60,000.00.[4]

The standing rule is that upon repatriation, the seafarer shall undergo medical evaluation by the company-designated physician who shall assess the seafarer's fitness, or unfitness, for return to sea duty. Should the seafarer disagree with the company-designated physician's findings, they are free to seek medical evaluation with a physician of their own choosing. If there is a conflict between the findings of the two physicians, then the seafarer may request for a third doctor.

The mandatory referral to a third doctor in case of conflicting claims is already settled in our jurisprudence:

> In the settlement of this conflict, we need not provide a lengthy discussion as we have resolved this matter in *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, citing Section 20 (B)(3) of the POEA-SEC:
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> > If a doctor appointed by the seafarer disagrees with the assessment, a third doctor *may be agreed jointly* between the [e]mployer and the seafarer. *The third doctor's decision shall be final and binding on both parties.*
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> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp.*, *Santiago v. Pacbasin Shipmanagement*, Inc., *Andrada v. Agemar Manning Agency*, and *Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[5] (Emphasis in the original, citations omitted)

Referral to a third doctor is, thus, mandatory when "(1) there is a valid and timely assessment made by the company-designated physician; and (2) the seafarer's appointed doctor refuted such assessment."[6]

Here, the *ponencia* states that if the seafarer fails to signify their intent to refer the conflicting medical findings to a third doctor, the company-designated physician's findings shall be final and binding, unless the

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4 *Id.* at 2–3.

5 *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774, 786–787 (2014) [Per J. Brion, Second Division].

6 *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 446 (2015) [Per J. Leonen, Second Division].

company-designated physician's findings are clearly biased in favor of the company, and is lacking in scientific basis or unsupported by the seafarer's medical records.[7] In this instance, the tribunals will consider the inherent merits of the findings of both the company-designated physician and the seafarer's physician.

In this case, however, the seafarer signified his intent to refer the matter to a third doctor, and it is the company which refused to comply.

In *Benhur Shipping Corporation v. Riego*,[8] this Court held that the seafarer's submission a letter-request for referral to a third doctor indicating the medical assessment of the seafarer's fitness to work or disability rating is sufficient to set in motion the process for choosing the third doctor.

The *ponencia* states that this requirement in *Benhur* would not be enough, and would be prone to abuse, finding instead that the letter-request must be accompanied by the medical report or medical abstract.[9] The *ponencia* does, however, acknowledge that in previous cases, should the employer refuse to grant or even act on such request, their non-compliance to a POEA-SEC mandated rule is even "rewarded," thus, the need to balance the obligations of the employer with the rights of the seafarer under the POEA-SEC.[10] The *ponencia* concludes, therefore, that the conflicting findings of the company-designated physician and the seafarer's physician of choice should be examined by this Court based on their inherent merits and the totality of the evidence.[11]

While it is true that the absence of a third doctor's assessment would make the company-designated physician's findings binding, it is equally true that it is the *company* that carries the burden of securing the third doctor, not the seafarer. In case of conflict, the seafarer's only duty is to seek a third opinion:

> *To definitively clarify how a conflict situation should be handled*, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.[12] (Emphasis in the original)

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7 *Ponencia*, pp. 7–9.
8 G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].
9 *Ponencia*, p. 10.
10 *Id.* at 15.
11 *Id.* at 21.
12 *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774, 788 (2014) [Per J. Brion, Second Division].

Our existing doctrines presuppose that the seafarer unreasonably refuses to submit themselves to examination by a third doctor. Thus, this unreasonable refusal is looked upon by the courts with suspicion, considering that the seafarer, if they validly believe themselves to be medically incapable of continuing their duties, would not hesitate to submit themselves to further medical evaluation.

As correctly observed by the *ponencia*, the mere refusal of the employer to agree on the mandatory referral to a third doctor worked to the seafarer's prejudice. If this were to become this Court's settled ruling on the matter, the company could just refuse any request for referral to a third doctor, knowing that labor tribunals will always rule in their favor. This, in turn, switches the burden of providing for the third doctor to the seafarer, who must now bear the cost of their own work-related disability.

Viewed from a different lens, the issue in this is the determination of which among the parties, the seafarer or the company, should bear the burden of the absence to comply with the mandatory referral to a third doctor. Otherwise stated, the problem is the determination of who between the parties should bear the burden of the costs.

Noted economist Ronald Coase illustrated this problem by giving the example of a cattle-raiser moving their herd next door to a farm. Without any form of fencing between the two properties, increasing the herd would cause straying cattle to eat the neighboring farm's crops. Supposing that one steer causes one ton of crop loss per year, the cattle-raiser would have to take into account the additional cost of crop damage when increasing the herd. Thus, the cattle-raiser would not increase the size of the herd unless the value of the additional meat produced by the herd is greater than the additional costs it would entail. If the cattle-herder puts up a fence between the properties, the marginal cost due to liability of crop loss would be zero, assuming that the yield from the meat the herd produces would be greater than the cost of fencing.[13]

However, if the annual cost of fencing is PHP 9 and the market price of the crop loss is PHP 1 per ton, it may be cheaper for the cattle-raiser not to fence the properties, but to instead pay for the damaged crops. The farmer would sell less of his crops in the open market, but his profits for a given production would remain the same, since the cattle-raiser would be paying the market price for any damaged crops.[14]

Assuming that the cost of cultivating the land is PHP 10 and the value of selling the crops is PHP 12, the profit to the farmer would be PHP 2. If the cattle-raiser causes crop loss of PHP 1, the net gain of the farmer from

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13 *See* R.H. Coase, *The Problem of Social Cost*, 3 JOURNAL OF LAW AND ECONOMICS 1, 3 (1960).

14 *Id.* at 3–4.

cultivating the crops remains at PHP 2, since the farmer obtains PHP 11 from the sale of crops and PHP 1 from the cattle-raiser for the crop loss. If the cattle-raiser increases the herd, the crop loss also increases, but the cattle-raiser has to ensure that the profits from additional meat production of the increased herd would be enough to cover the additional costs for crop loss. Even if the additional cost for the damage is PHP 3, the farmer's net gain from the cultivation of the land is still PHP 2, since the value of cultivating the land remains at PHP 12 and the costs of cultivating it remains at PHP 10. Only the cattle-raiser bears the increased cost of the damaged crops.[15]

Coase explains that if the cost of the undamaged crops is less than the total costs of cultivating the land, it may be more profitable for the cattle-raiser and the farmer to strike a bargain for a part of the land to remain uncultivated. If the cattle-raiser bargains with the farmer not to cultivate the land for PHP 2, both parties would in a mutually satisfactory position, with none of the parties being better off than the other.[16]

Coase, however, explains that this would raise another possibility. If, for example, the cattle-raiser did not move next door to the farm, and the value of the farm's crops is PHP 10 but the cost of cultivation is PHP 11, the farmer might not cultivate the land at all. If the farmer does cultivate it and the cattle-raiser moves next door, once the herd destroys all the crops, the cattle-raiser would have to pay the farmer PHP 10. The farmer loses PHP 1 but the cattle-raiser loses PHP 10. The cattle-raiser could decide that it would be less expensive to pay PHP 9 for the annual cost of fencing. However, increasing the herd would also entail a more expensive fence. In that situation, both parties would be bearing the costs.[17]

To optimize the allocation of resources in cattle-raising, the costs of the reduction of the value of crop production is taken into account in computing the additional costs for increasing the herd, which is, in turn, weighed against the value of the meat that the herd would produce. Since the cattle-raiser bears the cost of the damage to the crops, the desirable situation, that is, the optimal economic result, would be for the cattle-raiser to pay the farmer not to cultivate the land.[18]

In economics, this increase of the herd by the cattle-raiser and corresponding damage to the crops are referred to as *externalities*, or "unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost."[19] Externalities in a transaction must be accounted for to achieve the optimal allocation of resources.

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15 *Id.*
16 *Id.* at 4.
17 *Id.* at 5.
18 *Id.* at 6.
19 *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, 856 Phil. 423, 448 (2019) [Per J. Leonen, Third Division], *citing* 1 ROBERT COOTER, LAW AND ECONOMICS 44 (4th ed., 2003).

Otherwise stated, the party which bears the cost of damage must be the party with the capacity to bear it.

Optimum allocative distribution of resources presupposes that both parties are able to bargain on equal footing. The one who causes the damage should bear the cost of the damage. In this case, however, the seafarer is already at an economically disadvantaged position. The externalities between the parties, such as the seafarer's work-related disability, are not taken into account in this case, and thus, the company escapes the cost of the damage.

In a prior case, this Court has already explained that the law steps in to equalize the allocation of resources between the company and the seafarer:

> Law and economics can provide the policy justification of our existing jurisprudence. The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. In economics, these are referred to as "externalities," which are unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost.
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> In employing seafarers, the manning agency and the shipping company, which have control over the ship, bear the burden of complying with safety regulations. When externalities such as occupational hazards are not accounted for, they escape the burden of shouldering the cost of keeping the vessel safe for their seafarers.
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> Imposing a liability induces the employers and the injured seafarers to be burdened with the cost of the harm when they fail to take precautions. This process of "internalization" means the consequences and costs are accounted for and are attributed to the party who causes the harm. Thus, the occupational hazards are internalized through a claim of damages paid by the employer. Seafarers are compensated for the injuries they suffered.
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> Here, the law intervenes to achieve allocative efficiency between the parties. Allocative efficiency means that both parties reach a mutually beneficial agreement. In a strict economic sense, allocative efficiency concerns the satisfaction of individual preferences where an optimal market is producing goods that consumers are willing to pay. A choice or policy increases allocative efficiency only if it makes an individual better off and no one worse off. Hence, allocative efficiency compels the law to help the parties achieve their goals as fully as possible.[20]

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[20] *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, 856 Phil. 423, 448 (2019) [Per J. Leonen, Third Division], *citing* 1 ROBERT COOTER, LAW AND ECONOMICS 44 (4th ed., 2003); *Toquero v. Crossworld Marine Services, Inc.*, 855 Phil. 106, (2019) [Per J. Leonen, Third Division]; and Robert D. Cooter, *Economic Theories of Legal Liability*, 5 THE JOURNAL OF ECONOMIC PERSPECTIVES 11, 16 (1991).

The allocative efficiency in this case is not optimal since it leaves the seafarer worse off, even though the externality is caused by the company.

While it is correct that the labor tribunals should assess the inherent merits of both the company-designated physician's findings and the seafarer's physician's findings in case of conflict, it is also equally true that the seafarer would not have the same resources that the company does. The company is in a position to retain physicians of caliber, and would be able to afford subjecting the seafarer to repeat medical evaluation. The seafarer, on the other hand, may only be able to afford a one-time medical examination with a physician of a lesser caliber.

The unfortunate consequence of this works to place the evidence of both the seafarer and the employer at equal footing, weighing both medical assessments as if they were equal. In this situation, the company-designated physician's findings would always appear to be more credible, since this would be the same physician that would be able to examine the seafarer repeatedly from the time of their repatriation until the end of their treatment.

For this situation to be achieve optimal allocative efficiency, the courts must balance the allocation of resources between the parties. The first phase of the externality is internalized when, in conflicting medical assessments, the contract between the parties requires the mandatory referral to a third doctor. In order to fully realize this internalization, the party who refuses to submit to the mandatory referral must bear the cost of the damage.

Thus, consistent with prevailing doctrines, when the seafarer unreasonably refuses to submit to the mandatory referral, the company-designated physician's findings should be binding on the parties. The employer should be given a reasonable period of time within which to act on the request for referral to a third doctor, just as the seafarer should be given a reasonable period of time within which to attach a substantial medical abstract to their request for referral to a third doctor. However, when it is the employer that unreasonably refuses the seafarer's request for a third doctor, the medical evaluation that must prevail is the assessment grounded on scientific basis, that is, based on the actual medical records of the seafarer.

This is in line with the constitutional bias for the greater protection of labor:

> ARTICLE II
> Declaration of Principles and State Policies
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> SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

The Labor Code, as amended, further affirms this preferential treatment of labor in declaring that all doubts in the implementation and interpretation of labor laws must be resolved in favor of labor.[21] I see no complication in favoring the seafarer when their medical condition has sufficient medical basis, since any damage the company will bear, that is, the cost of total and permanent disability benefits, has already been accounted for when the parties entered into the employment contract.

Here, the company's unjustified refusal to submit to engage a third doctor despite a written request should have been taken against it. However, it is unfortunate that the medical assessment of the seafarer's chosen doctor is lacking in scientific basis. When weighed against the findings of the company-designated doctor, the findings of the company-doctor would prevail.

ACCORDINGLY, I vote to **DISMISS** the Petition.

MARVIC M.V.F. LEONEN
Senior Associate Justice

[21] LABOR CODE, Chapter I, art. 4.