Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

# NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated* **October 1, 2019** *which reads as follows:*

"**G.R. No. 213099 (*ERNESTO N. GALLANO, JR., Petitioner, v. JEBSENS MARITIME INC., HAPAG-LLOYD AKTIENGESELLSCHAFT and/or MR. ENRIQUE ABOITIZ, Respondents.*)** – Herein petitioner appeals the Decision[1] and Resolution[2] respectively promulgated by the Court of Appeals (CA) on April 15, 2014 and June 19, 2014, whereby the CA reversed and set aside the March 7, 2012 Decision and April 27, 2012 Resolution of the National Labor Relations Commission (NLRC).

The CA summarized the facts as follows:

> Ernesto N. Gallano, Jr. ("PRIVATE RESPONDENT") was hired by Jebsens Maritime, Inc. for and in behalf of its principal Hapag-Lloyd Aktiengesellschaft ("PETITIONERS") on April 16, 2008 as "Oiler" on board the vessel "MV Kyoto Express" for a contract period of nine (9) months with a basic monthly salary of US$594.00 exclusive of overtime and other benefits. On June 18, 2008, private respondent boarded petitioners' vessel and commenced his work as an Oiler.
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> Sometime on February 20, 2009, private respondent accidentally injured himself while he was securing the purifier. He felt a sudden crack and extreme pain in his right shoulder. He then reported his condition to the second mate and he was given topical medication as a temporary relief. Thereafter, he was referred for medical examination and treatment at Busan Adventist Hospital.

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[1] *Rollo,* pp. 32-42; penned by Associate Justice Socorro B. Inting, with the concurrence of Associate Justice Jose C. Reyes, Jr. and Associate Justice Mario V. Lopez.
[2] Id. at 44-45.

Based on the MRI result, private respondent suffered "Tear of the Subscapularis Tendon and Labrum of the Right Shoulder" and the attending doctor advised him to undergo surgical management.

When the vessel reached the Port of Dalian in China, on February 28, 2009, private respondent was medically repatriated. Upon his arrival in the Philippines on March 3, 2009, he immediately reported to his employer and was referred to a team of specialists headed by Dr. Robert Lim of Metropolitan Medical Center – Marine Medical Services. Thereat, private respondent was extensively and thoroughly examined to determine the proper treatment for his shoulder ailment. The result of the MRI showed "Subscapularis Tendon and Labral Tear, Right Shoulder". Thus, private respondent was advised to undergo rehabilitation and physical therapy.

On March 18, 2009, private respondent underwent Arthroscopic Debridement with repair Slap Tear, Right Shoulder. Following a series of physical therapy sessions and rehabilitation, on August 6, 2009, private respondent was declared fit to work. In this regard, private respondent contended that the petitioners requested him not to pursue his claims for permanent disability compensation before the NLRC[,] as he would allegedly be redeployed for another contract. Thus, private respondent moved for the dismissal of the complaint which he filed sometime in October 2009. In an Order dated November 4, 2009, Labor Arbiter Arthur Amansec granted private respondent's motion and dismissed the complaint without prejudice.

However, due to private respondent's deteriorating physical condition, he was not redeployed. Hence, he re-filed his claim for total disability benefits, transportation expenses, damages and attorney's fees against the petitioners.

Private respondent likewise sought a second medical opinion from Dr. Manuel C. Jacinto, Jr., an Orthopedic Surgeon, to determine his actual disability condition. The findings of Dr. Jacinto revealed that private respondent has "Subscapularis Tendon and Labral Tear Right Shoulder" and that he is still experiencing pain and episodes of numbness. Thus, private respondent was declared unfit to go back to work and was given a Total Permanent Disability assessment.

In their defense, petitioners claimed that after a month of rehabilitation and two (2) months of physical therapy following the arthroscopic debridement of private respondent's shoulder, the latter has fully recovered and therefore, was declared ready to go back to work. The petitioners further averred that private respondent signed a Certificate of Fitness for Work and was paid in full his sickness allowance. They insisted that the filing of the instant case was a mere afterthought.[3]

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[3] Id. at 33-34.

The Labor Arbiter rendered a Decision dated July 29, 2011 in favor of herein petitioner, disposing as follows:

> **WHEREFORE**, a Decision is hereby rendered ordering Respondent Jebsens Maritime, Inc. and Hapag-Lloyd Aktiengesellschaft to jointly and severally pay complainant, Ernesto N. Gallano, Jr., the amount of **US$89,100.00** as total permanent disability benefit plus 10% thereof as and by way of attorney's fees.
>
> **SO ORDERED.**[4]

The NLRC affirmed the decision of the Labor Arbiter.[5] Consequently, the respondents conditionally deposited the judgment award in compliance with the decision.

## CA Decision

On appeal, the CA reversed the NLRC and explained in this manner:

> As can be recalled, the company-designated physicians examined and treated private respondent from the time he was repatriated up to his recovery and subsequent assessment as fit for work on August 6, 2009, or before the expiration of the maximum 240-day medical treatment provided by law. The only time conflict arose was when despite the fit to work declaration, petitioners failed to deploy private respondent for another contract as promised to him. This was what prompted private respondent to seek second medical opinion, on which he based his demand for full disability benefits against petitioners.
>
> It bears stressing that seafarers are contractual employees whose rights and obligations are governed primarily by the POEA Standard Employment Contract for Filipino Seamen, the Rules and Regulations Governing Overseas Employment, and, more importantly, by Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995. Once the seafarer's employment is terminated either by completion of contract or repatriation due to a medical reason or any other authorized cause under the POEA Standard Employment Contract (SEC), the employer is under no obligation to re-contract the seafarer. In the instant case, there is absolutely no evidence nor any allegation that private respondent even applied for redeployment with herein petitioners after he has been declared fit to work.
>
> On the other hand, We note that private respondent did not question the findings of the company-designated physician and the

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4 Id. at 35.
5 Id.

latter's recommendation that he is already fit to go back to work. He questioned the company-designated physician's competency and the correctness of his findings only when he refiled his complaint for disability benefits against the petitioners. He consulted an independent physician, Dr. Jacinto, only in October 2010, long after he had been examined by the company-designated physician. Unfortunately, the findings of private respondent's doctor do not deserve any credence as against the fit to work assessment made by the company-designated physician. The assessment of his personal doctor could not have been that reliable considering that he was examined more than a year after he was declared fit to work. Clearly, the independent physician did not have the chance to closely monitor herein private respondent's condition. In contrast, petitioners dutifully complied with their obligations by providing the private respondent with extensive medical examination and paying his sickness allowance. The extensive medical attention extended by the company-designated physician from the time private respondent was repatriated on February 28, 2009 until he was declared fit to work on August 6, 2009 enabled him to acquire familiarity, if not detailed knowledge, of the latter's medical condition. It has been held that the doctor who has had personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seaman's illness, is more qualified to assess the seaman's disability. Thus, the medical certificate issued by private respondent's personal doctor cannot effectively controvert the fit to work assessment earlier made by Dr. Pascualito Gutay.

x x x x

As such, We are convinced that the company-designated physician's assessment of private respondent's medical condition is more accurate than that of the subsequent doctor's second medical opinion, which was not supported by sufficient evidence to warrant consideration.

Likewise significant is the fact the private respondent signed a Certificate of Fitness for Work right after the assessment of the company-designated physician. In executing the said document, private respondent thus impliedly admitted the correctness of the assessment of the company-designated physician, and acknowledged that he could no longer claim for disability benefits. While the labor tribunals may be correct in stating that the Certificate of Fitness signed by private respondent is similar to quitclaims which are frowned upon for being contrary to public policy, this Court has, likewise, recognized legitimate waivers that represent a voluntary and reasonable settlement of a worker's claim which should be respected as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking. Contrary to private respondent's contention, the fact that the petitioners paid in full his sickness allowance while under

> the care of petitioners' physicians is reasonable enough to sustain the validity of the Certificate of Fitness for Work signed by him.[6]
>
> x x x x
>
> **WHEREFORE**, the petition is **GRANTED**. The Decision dated March 7, 2012 and Resolution dated April 27, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC NO. 11-000957-11 OFW are hereby **REVERSED** and **SET ASIDE**. Accordingly, private respondent's complaint before the Labor Arbiter is **DISMISSED** for lack of merit. The amount of US$98,010.00 deposited before the NLRC as a conditional satisfaction of the judgment is ordered returned to the petitioners.
>
> **SO ORDERED.**

Hence, this appeal, whereby the petitioner argues that the decision of the LA and the NLRC should have been accorded great respect and even finality by the CA based on the principle of primary jurisdiction;[7] that the CA should not have reviewed the factual matters of the case considering that the appellate court is not a trial court and did not conduct any *trial de novo;*[8] and that the CA erred in lending credence to the inaccurate and biased medical findings of the company-designated physician.[9]

## Ruling

We affirm the CA.

The petitioner's reliance on the doctrine of primary jurisdiction is misplaced. In *Guy v. Ignacio,*[10] we explained that:

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the

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6 Id. at 38-42.
7 Id. at 13.
8 Id. at 15.
9 Id. at 19.
10 G.R. Nos. 167824 & 168622, July 2, 2010, 622 SCRA 678, 692, citing *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

> resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

In addition, the rule on the conclusiveness of factual findings of administrative agencies, such as the labor arbiter and the NLRC, is not without exception. It is settled that factual findings of administrative agencies must be supported by substantial evidence in the record of the case. Thus:

> The factual findings of administrative agencies are generally held to be binding and even final as long as they are supported by substantial evidence in the record of the case. This is especially true in this case where the Labor Arbiter, the NLRC and the Court of Appeals are in full agreement as to the facts. No rule is more settled than that this Court is not a trier of facts. Absent any showing that the administrative body acted without jurisdiction or in excess of its jurisdiction, the findings of facts shall not be disturbed.[11]

Thusly, We cannot fault the CA for having a different appreciation of the facts of the case; and by giving credence to the medical findings of the company-designated physician rather than that of the petitioner's. In *Magsaysay Maritime Corporation v. Simbajon,*[12] We emphasized the need of the opinion of a third physician in case the findings of the company-designated physician and the seafarer's opinion contradict each other. Thus:

> The glaring disparity between the findings of the petitioners' designated physicians and Dr. Vicaldo calls for the intervention of a third independent doctor, agreed upon by petitioners and Simbajon. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors. After being informed of Dr. Vicaldo's unfit-to-work findings, Simbajon proceeded to file his complaint for disability benefits with the LA. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination. Dr. Vicaldo, too, is a medical practitioner not unknown to this Court, as he has issued certifications in several disability claims that proved unsuccessful.[13]

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[11] *Pasamba v. National Labor Relations Commission,* G.R. No. 168421, June 8, 2007, 524 SCRA 350, 358.
[12] G.R. No. 203472, July 9, 2014, 729 SCRA 631.
[13] Id. at 646.

We have also explained in *Magsaysay* that the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits[14] because his or her employer could not have been aware of the seafarer's decision to obtain a second physician's opinion.[15] We even declared in *Tradephil Shipping Agencies, Inc. v. Dela Cruz*[16] that referral to a third doctor is mandatory, *viz.*:

> The Court has held that non-referral to a third physician, whose findings shall be considered as final and binding, constitutes a breach of the POEA-SEC. The referral to a third doctor is a mandatory procedure which necessitates from 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."

Notable herein that the petitioner failed to initiate the referral to a third doctor. As such, the Court concurs with the CA that the opinion of the company-designated physician should prevail. The assessment of the company-designated physician which was arrived at after several months of treatment and medical evaluation, is more reliable than the assessment made by the seafarer's personal doctor.[17]

On another note, the Court takes judicial notice of the fact that the respondents deposited the amount of US$98,010.00 before the NLRC in compliance with the writ of execution. The petitioner averred that the payment was in the nature of a compromise agreement between him and the respondents which effectively abandoned the respondent's appeal before the CA. However, in *Quiro-Quiro v. Balagtas*,[18] we already ruled that the payment of monetary award is not equivalent to a compromise agreement, to wit:

> Respondent's offer to pay the sum of P452,730.34 representing the monetary award of the NLRC is not in the nature of a compromise agreement, which effectively puts an end to this controversy. According to respondent, the underlying reason for the offer of payment was petitioner's motion for the issuance of the writ of execution, leaving respondent without any recourse but to pay. In other words, such payment was in compliance with the writ of execution issued by the NLRC.

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14 Id. at 647.

15 Id. at 647, citing *Philippine Hammonia Ship Agency Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53.

16 G.R. No. 210307, February 22, 2017, 818 SCRA 476, 495.

17 Id. at 495-496.

18 G.R. No. 209921, January 13, 2016, 780 SCRA 628, 639-640.

> Section 14, Rule VII of the NLRC Rules of Procedure provides that "the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof . . . ." Section 1, Rule XI of the same NLRC Rules provides that "a writ of execution may be issued *motu proprio* or on motion, upon a decision or order that has become final and executory." The execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court. Since the Court of Appeals did not issue any temporary restraining order or writ of injunction against the NLRC decision, such judgment became final and executory after ten calendar days from its receipt by counsel or party. Consequently, petitioner moved for the issuance of the writ of execution. As pointed out by respondent, the issuance of the writ of execution and notice of garnishment forced respondent to pay the monetary award of the NLRC to avoid its bank account being frozen and to prevent the cessation of its operations.
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> Clearly, there is no intent on the part of respondent to enter into a compromise agreement to put an end to this dispute. Otherwise, respondent could have simply filed a motion to withdraw its petition before the Court of Appeals, specifically manifesting the execution by the parties of a compromise agreement. On the contrary, respondent pursued its appeal before the Court of Appeals and vigorously opposed the petition in this Court. (Citations omitted)

Hence, the payment of the judgment award was neither a compromise nor abandonment of the action because the respondents merely complied with the requirement set by the NLRC Rules of Procedure.

The records herein bear that the petitioner already received the amount deposited pending appeal before the CA.[19] Restitution is thus proper considering that the petitioner is not entitled to the award. Section 18, Rule XI of the *2011 NLRC Rules of Procedure* provides as follows:

> **RESTITUTION**. — Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court with finality and restitution is so ordered, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal.

Every labor case brought before the NLRC carries the dismal truth that awards given to an employee are at risk of being returned on

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[19] *Rollo*, p. 55.

appeal. As such, a more judicious action on the NLRC is invited since it ought to be sensitive to the reality that it is difficult for the employer to recover what has been executed and garnished pending appeal. It should also be emphasized that the rights of the employers are equally protected by law. Thus, an equitable decision for both the employer and the employee must always be pronounced before the labor tribunals.

**WHEREFORE,** the Court **DENIES** the petition for review for being unmeritorious and **AFFIRMS** the April 15, 2014 Decision and June 19, 2014 Resolution by the Court of Appeals in CA-G.R. SP No. 125479.

The respondents' manifestation (with leave of court), stating that in further support to their comment on petition for review on certiorari, a newly discovered information was found in support that petitioner is not entitled to his claim for disability compensation for reasons stated therein; The respondents' second manifestation (with leave of court), stating that petitioner is currently deployed and employed overseas as seafarer and is not entitled to his claim to full disability compensation for reasons stated therein; and the petitioner's comment and opposition to manifestation reiterating his stand that he is already permanently unfit for work for reasons stated therein, are all **NOTED**. ***Carandang, J.,*** *on official leave.*

**SO ORDERED**."

Very truly yours,

**LIBRADA C. BUENA**
Division Clerk of Court
**132, 347, & 370-A**

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