Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPLASH PHILIPPINES, INC., LORENZO ESTRADA, TAIYO SANGYO TRADING and MARINE SERVICE, LTD. (TST PANAMA S.A.) and M/V HARUTAMOU, Petitioners,	**G.R. No. 193628**
	Present:
	CARPIO, *J.*, *Chairperson,*
	BRION,
- versus -	DEL CASTILLO,
	PEREZ, and
	REYES,* *JJ.*
	Promulgated:
RONULFO G. RUIZO, Respondent.	MAR 19 2014

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DECISION

BRION, *J.*:

For resolution is the petition for review on *certiorari*[1] assailing the decision[2] dated August 25, 2009 and the resolution[3] dated September 13, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 107013.

The Antecedents

The case commenced on May 26, 2006 when respondent Ronulfo Ruizo filed a complaint[4] for disability compensation, damages and attorney's fees against the petitioners, local manning agent Splash

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* Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1650 dated March 13, 2014.

1 *Rollo*, pp. 45-82.

2 Id. at 13-39; penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Arcangelita M. Romilla-Lontok and Sixto C. Marella, Jr.

3 Id. at 41-42.

4 Id. at 170-171.

Philippines, Inc. (*agency*), its President, Lorenzo Estrada, and its principal, Taiyo Sangyo Trading and Marine Service, Ltd. (TST Panama S.A. [*Taiyo*]).

On February 4, 2005, Ruizo entered into a nine-month contract of employment[5] (as chief cook) with the agency for Taiyo's vessel, the *M/V Harutamou*. On or about December 13, 2005, while on duty onboard the vessel, Ruizo experienced pain in his lumbar region and groin. He was referred to the Karratha Medical Centre in Dampier, Australia where he was diagnosed with "*Blocked Right Kidney by Stone Repeat U/S Showed No Improvement.*"[6]

On December 21, 2005, Ruizo was repatriated to the Philippines due to the completion of his contract. The agency referred him to the company-designated physician, Dr. Nicomedes Cruz, who diagnosed him to be suffering from *ureterolithiasis with hydronephrosis*, a kidney ailment. Dr. Cruz prescribed medication for him and recommended that he undergo a *KUV/IVP, CT stonogram without contrast* at the National Kidney Institute which he did, at the expense of the petitioners.

In the meantime, and while he was still undergoing treatment under the supervision of Dr. Cruz, Ruizo filed the present complaint based allegedly on a collective bargaining agreement (*CBA*) which his union, the Associated Marine Officers and Seamen's Union of the Philippines (*AMOSUP*), had with the petitioners. He prayed for maximum disability benefits since he was unable to work for more than 120 days without a disability assessment from Dr. Cruz.

As Ruizo's medical condition had not improved, Dr. Cruz further recommended that he undergo *extracorporeal shockwave lithotripsy* (*ESWL*). Ruizo was initially reluctant to submit to the procedure, but he finally agreed and underwent ESWL on January 19, 2007, again at the petitioners' expense. He reported to the company doctor for a follow-up on February 5, 2007, but failed to go back for a further ESWL which the company urologist believed was necessary as "[t]here is possibility of declaring the patient fit to work after treatment."[7]

On May 7, 2007, without informing Dr. Cruz or the agency, Ruizo consulted Dr. Efren Vicaldo, an internist, who diagnosed him to be suffering from *bilateral nephrolithiasis* and *essential hypertension* 1. Dr. Vicaldo

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5 Id. at 185; in accordance with the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*).

6 Id. at 186.

7 Id. at 225.

gave him a disability rating of *Impediment Grade VII* (41.8%).[8] Ruizo claimed that he did not report to the company doctor after February 5, 2007 because he was advised by the doctor that he would already be forwarding his assessment to the petitioners.

The Compulsory Arbitration Rulings

On June 29, 2007, Labor Arbiter (*LA*) Ermita T. Abrasaldo-Cuyuca rendered a decision[9] dismissing the complaint for lack of merit. LA Cuyuca rejected Ruizo's claim that his employment was covered by the AMOSUP/IMEC TCCC CBA for 2004 as the evidence he presented – a one-page excerpt from the purported agreement[10] – was insufficient to prove its existence since it does not bear the signatures of the parties, nor does it indicate whether it applies to the crew of *M/V Harutamou.*

On Ruizo's disability, LA Cuyuca held that the absence of a disability rating from the company doctor negated his claim for compensation and this was due to Ruizo's voluntary act of not undergoing further medical treatment with the petitioners. She ruled out Ruizo's assertion that his inability to work for more than 120 days entitled him to permanent total disability benefits relying, in support of her ruling, on the Resolution[11] dated February 12, 2007 of this Court's Special First Division in *Crystal Shipping, Inc. v. Natividad,*[12] which declared that the duration of the seafarer's treatment and the period that he is incapacitated to work do not have any bearing in the determination of whether he is entitled to maximum disability benefits.

Ruizo appealed. In its decision[13] of June 3, 2008, the National Labor Relations Commission (*NLRC*) denied the appeal for lack of merit. He moved for reconsideration, but the NLRC denied the motion. He then sought relief from the CA through a petition for *certiorari*, charging the NLRC with grave abuse of discretion in dismissing the complaint, although he was already permanently unfit for sea duty.

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8 Id. at 254.
9 Id. at 152-159.
10 Id. at 189.
11 Id. at 238-240.
12 510 Phil. 332 (2005).
13 *Rollo*, pp. 161-166.

The CA Decision

The CA granted the petition. It set aside the NLRC rulings and awarded Ruizo permanent total disability compensation under the CBA in the amount of US$100,000.00; moral and exemplary damages of ₱10,000.00 each; and ₱10,000.00 in attorney's fees. It however denied Ruizo's claim for sick wages of US$2,386.50 because it was raised for the first time on appeal.

The CA found credence in Ruizo's submission that his employment with the petitioners was covered by a CBA "as he was informed by private respondents' officers that he is being deployed to a vessel that is covered by a CBA as a reward for his good performance as Chief Cook for several years."[14]

Further, the CA sustained Ruizo's position that he is entitled to permanent total disability compensation because he was unable to work as chief cook for more than 120 days. It denied the petitioners' subsequent motion for reconsideration.[15]

The Petition

The petitioners now ask this Court to set aside the CA judgment, on the grounds that the CA committed a reversible error when it: (1) ruled that Ruizo's employment was covered by a verbal CBA; (2) held that since Ruizo was unable to work for more than 120 days, he is automatically entitled to permanent total disability benefits; and (3) awarded Ruizo moral and exemplary damages, as well as attorney's fees.

The petitioners bewail the CA's admission of the CBA that allegedly covered Ruizo's employment as basis for the award. They question the CBA's existence as it had not been reduced to writing; even if it does exist, Ruizo adduced no evidence that it applies to him (Ruizo would later on submit a copy of a CBA between AMOSUP and an unnamed employer).[16] They reiterate their submission to the CA (through their motion for reconsideration) that AMOSUP issued a certification[17] that *M/V Harutamou* "is/was not covered by any Collective Bargaining Agreement between AMOSUP and any foreign principal employer."

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14 Id. at 141.
15 *Supra* note 3.
16 *Rollo*, pp. 497-520; the space intended for the employer's name was left blank.
17 Id. at 485.

On their second assignment of error, the petitioners maintain that the "so called 120 Day Rule and the latter 240 Day Rule are not iron-clad rules that should apply to all cases."[18] They argue that the "[r]espondent is guilty of medical abandonment and as such, the 120 or 240 Day Rules should not apply to him."[19] The 120-day rule laid down in *Crystal Shipping*, they point out, had already been reversed, or at least modified, by this Court in its clarificatory Resolution[20] dated February 12, 2007 in the very same *Crystal Shipping* case. They stress, as the LA did, that in said Resolution, the Court clarified that the POEA-SEC (series of 1996) did not measure disability in terms of number of days but by gradings only. In *Crystal Shipping*, the Court said that since the seafarer's physician rated his disability as Grade 1, the same was necessarily total and permanent, regardless of the number of days he was disabled.

In any event, they continue, the CA erred when it applied the 120-day rule under the Labor Code in Ruizo's case, overlooking the fact that as a seafarer, Ruizo was a contractual employee whose terms of employment, including disability compensation claims, were governed by contract and not by the Labor Code as the Court declared in *NYK-FIL Ship Mgmt., Inc. &/or NYK Ship Mgmt. Hk., Ltd. v. NLRC.*[21] The petitioners add that more importantly, for abandoning his medical treatment under the supervision of the company-designated physician who was prevented from making a final assessment of his disability, Ruizo lost his entitlement to the maximum disability compensation and foreclosed the possibility of a recovery from his ailment.

The Case for Ruizo

In his comment (on the petition)[22] filed on May 4, 2012, Ruizo prays that the petition be denied for lack of merit, it being just a reiteration of the petitioners' arguments presented to, and which were already judiciously resolved by, the CA. He contends that the issues raised by the petitioners are factual and not subject to review by this Court. At any rate, he argues, since he was unable to work despite treatment by Dr. Cruz for more than 120 days, the CA committed no error when it declared that he was already unfit to work as a seafarer; thus, his entitlement to full disability compensation under the CBA.

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18 Id. at 60.
19 Ibid.
20 *Supra* note 11.
21 534 Phil. 725, 733 (2006).
22 *Rollo*, pp. 556-574.

The Court's Ruling

I. *The procedural question*

While the Court is not a trier of facts,[23] we deem it proper to inquire into the facts of the present dispute to determine if any grave abuse of discretion intervened when the CA reversed the NLRC's appreciation of evidence.[24] The labor tribunals found Ruizo to have abandoned his treatment with Dr. Cruz and, for this reason, they denied his claim for disability benefits, there being no assessment of his disability from Dr. Cruz. The CA, on the other hand, found that Ruizo was permanently and totally disabled because he was unable to work as a seafarer for more than 120 days and should be paid the corresponding disability benefits under the parties' CBA, the unsigned one-page excerpt of which (presented by Ruizo to the LA) it admitted in evidence, but which was considered by the LA and the NLRC to have no probative value.

II. *The merits of the case*

A. *The 120-day rule*

As in many other maritime compensation cases which reached the Court, the CA's award of permanent total disability benefits to Ruizo is anchored on the 120-day rule often invoked through the Court's pronouncement in *Crystal Shipping*. The CA declared: "***The true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as chief cook for more than 120 days***."[25]

The 120-day rule laid down in *Crystal Shipping* and other cases similarly resolved, however, had already been clarified or modified. In *Vergara v. Hammonia Maritime Services, Inc.*,[26] the Court declared:

> [T]he respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the

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23 *Lanuza v. Muñoz*, 473 Phil. 616, 627 (2004).
24 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 394.
25 *Rollo*, p. 32.
26 G.R. No. 172933, October 6, 2008, 567 SCRA 610, 631; underscore ours.

> application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.

Under the above Court pronouncement, it is clear that the degree of a seafarer's disability cannot be determined on the basis solely of the 120-day rule or in total disregard of the seafarer's employment contract (executed in accordance with the POEA-SEC), the parties' CBA if there is one, and Philippine law and rules in case of any unresolved dispute, claim or grievance arising out of or in connection with the POEA-SEC, as the Court explained in *Vergara.* ***Thus, in every maritime disability compensation claim, it is important to bear in mind that under Section 20(B)3 of the POEA-SEC, in the event a seafarer suffers a work-related injury or illness, the employer is liable only for the resulting disability that has been assessed or evaluated by the company-designated physician. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer whose decision shall be final and binding on both parties. Further, the parties' supposed CBA (the complete copy belatedly submitted by Ruizo to the CA[27]) contains an almost identical provision (as the POEA-SEC) in its Article 20.1.4.2***.[28]

Relatedly, there is one other POEA-SEC provision that is often overlooked or ignored, but which should be given due consideration in the determination of the seafarer's disability compensation, and this is found in Section 20(B)6 which states:

> **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**.[29]

In light of the above-cited provisions of the POEA-SEC **which is the law between the parties**,[30] we cannot find a basis for the award of permanent total disability benefits to Ruizo, except the much belabored 120-day rule. The rule, as earlier emphasized, had already been modified

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27 *Supra* note 16.

28 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 copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer. (*Rollo*, p. 142; underscore ours.)

29 Emphasis and underscore ours.

30 *Philippine Hammonia Ship Agency, Inc., etc., et al. v. Eulogio V. Dumadag,* G.R. No. 194362, June 26, 2013.

pursuant to the Court's pronouncement in *Vergara*. It cannot simply "be xxx applied as a general rule for all cases and in all contexts."[31] **In short, it cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. Thus, the CA ruled outside of legal contemplation and thus committed grave abuse of discretion.**

Significantly, Ruizo himself recognized the relevance of the POEA-SEC in his case when he acknowledged that under the contract, "a medically repatriated seafarer is subject for examination and treatment by the company designated physician for a period not exceeding 120 days. After which the company designated physician will make [an] assessment whether the seafarer had already become fit for work or not."[32] Ruizo, however, was not medically repatriated; **he went home for a finished contract**.[33] In any event, as we said in *Vergara*: "***a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period***[34] ***without a declaration of either fitness to work or the existence of a permanent disability***."[35]

Although the 240-day maximum treatment period under the rules had already expired, counted from his repatriation on December 21, 2005, it can be said that Ruizo and the petitioners agreed to have the treatment period extended as it was obvious that he still needed treatment. In fact, he agreed, after some trepidation, to be subjected to an ultrasound procedure (ESWL) in the effort of the petitioners to improve his condition; he was expected to return after February 5, 2007 to Dr. Cruz for a repeat ESWL, but he failed to do so. Clearly, under the circumstances, the 120-day rule had lost its relevance.

B. *Compliance with the POEA-SEC*

As earlier emphasized, under the POEA-SEC, the employer is liable for a seafarer's disability, resulting from a work-connected injury or illness, **only** after the degree of disability **has been established by the company-designated physician and, if the seafarer consulted with a physician of his choice whose assessment disagrees with that of the company-**

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31 *Vergara v. Hammonia Maritime Services, Inc., supra* note 26, at 631.
32 *Rollo*, pp. 558-559.
33 Id. at 153.
34 Amended Rules on Employees Compensation, Rule X, Section 2.
35 *Vergara v. Hammonia Maritime Services, Inc., supra* note 26, at 629; italics and emphasis ours.

designated physician, the disagreement must be referred to a third doctor for a final assessment.[36]

In the present dispute, no showing exists that the relevant POEA-SEC provisions had been observed or complied with. While Ruizo reported to Dr. Cruz upon his repatriation for examination and treatment, he cut short his sessions with the doctor and missed an important medical procedure (ESWL) which could have improved his health condition and his capability to work.[37] Ruizo's explanation that he did not return for further ESWL because Dr. Cruz told him that he would already be forwarding his assessment to the petitioners is belied by the doctor's report[38] to the agency dated March 19, 2007, stating that he did not return for further ESWL. The reason for Ruizo's failure to return and continue his treatment with Dr. Cruz was, as the LA aptly saw it, his awareness of the possibility that he could be declared fit to work after treatment. Thus, the LA said:

> **If there was persistence of right kidney stone and a schedule of repeat ultrasound then how can complainant rightfully claim that he is done with the consultation with the company doctor. This reveals that complainant is merely making excuses for his failure to report to the company doctor because, apparently, complainant is aware that there is a possibility that he may be declared fit to work after treatment. This Arbitration Branch notes that the instant complaint was filed on May 26, 2006 while complainant was still undergoing treatment and this suggests complainant's indifference to treatment and his determination to claim disability benefits from respondents. Unfortunately, disability benefits could not be awarded in the instant case because complainant's inability to work and persistence of his kidney ailment may be said to be attributable to his own willful refusal to undergo treatment**.[39]

Thus, the facts of the case show that the absence of a disability assessment by Dr. Cruz was not of the doctor's making, but was due to Ruizo's refusal to undergo further treatment. In the absence of any disability assessment from Dr. Cruz, Ruizo's claim for disability benefits must fail for his obvious failure to comply with the procedure under the POEA-SEC which he was duty bound to follow[40] as we emphasized in *Philippine Hammonia*.

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36 POEA-SEC, Section 20(B)3.

37 *Supra* note 6.

38 Ibid.

39 *Rollo*, pp. 156-157; emphasis and underscore ours.

40 SECTION 1. DUTIES of the POEA-SEC.

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B. Duties of the Seafarer:

to faithfully comply with and observe the terms and conditions of this contract. Violation of which shall be subject to disciplinary action pursuant to Section 33 of this contract[.] [underscore ours]

Ruizo's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of Dr. Cruz, he filed the present complaint on May 26, 2006. Moreover, after he failed to return for further ESWL and without informing the agency or Dr. Cruz, he consulted Dr. Vicaldo who examined him only for a day or on May 7, 2007, certified him unfit to work, and gave him a disability rating of *Impediment Grade VII (41.8%)*. This aspect of the case bolsters the LA's conclusion that Ruizo was merely making excuses for his failure to report to Dr. Cruz and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the petitioners. It also lends credence to the petitioners' submission that he abandoned his treatment under Dr. Cruz. Worse, it validates the LA's opinion that his inability to work and the persistence of his kidney ailment could be attributed to his own willful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.[41]

C. *Schedule of disability compensation*

Earlier, we called attention to a compensation system provided by the POEA-SEC which is often ignored or overlooked in maritime compensation cases. This system is found in Section 32 of the POEA-SEC which provides for a schedule of disability compensation, in conjunction with Section 20(B)6. To our mind, the reason why this compensation system is often ignored or disregarded is the fixation on the 120-day rule and the notion that an "unfit-to-work" or "inability-to-work" assessment should be awarded permanent total disability compensation even when the seafarer is given a disability grading in accordance with Section 32 of the POEA-SEC. In this case for instance, Ruizo was assessed by his physician, Dr. Vicaldo, with an Impediment Grade VII (41.8%), yet he was awarded by the CA full disability compensation of US$100,000.00 under a CBA whose existence is under serious question. A NOTE in Section 32 of the POEA-SEC declares that "***any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability***." Any other grading, therefore, constitutes only as temporary total disability.

Considering that the POEA-SEC embodies the terms and conditions governing the employment of Filipino seafarers onboard ocean-going

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41 SECTION 20. Compensation and Benefits

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D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer. [underscore ours]

vessels, it is about time that the schedule of disability compensation under Section 32 is seriously observed. A step towards this direction had already been taken by way of the Court's clarificatory Resolution[42] dated February 12, 2007 in *Crystal Shipping* where we declared that admittedly, the POEA-SEC (1996) ***does not measure disability in terms of number of days but by gradings only***.[43] Be this as it may, Ruizo would not still be entitled to the compensation corresponding to the grading given to him by Dr. Vicaldo because he abandoned his treatment with Dr. Cruz who, for his failure to return for further treatment, was not given the opportunity to issue a disability assessment, a mandatory requirement under the POEA-SEC or even under the supposed CBA between him and Taiyo.

D. *Is there an AMOSUP/IMEC TCCC CBA between the parties?*

The CA's conclusion shows that it disregarded evidence patently on record – Ruizo's employment was not covered by a CBA. In his comment[44] dated May 3, 2012, Ruizo stated that he obtained a copy of the CBA during his employment with the petitioners, yet he submitted before LA Cuyuca only a one-page unsigned copy of the CBA.[45] If he obtained a copy of the CBA while still in employment with the petitioners, how could he have submitted in evidence a one-page copy of the document? Further, while he later submitted a copy of the purported CBA,[46] it bore no indication of who his employer was as the space reserved for the employer was blank. Still further, the copy he submitted was for 2004; it already expired when he signed his POEA contract with the petitioners on February 4, 2005.[47] LA Cuyuca was correct when she declared that the one-page copy of the CBA Ruizo submitted was insufficient to prove its existence**. But more importantly, even if the CBA existed, it cannot be the basis of an award of disability benefits to Ruizo for reasons above discussed.**

All told, we find merit in the petition.

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42 *Supra* note 11.

43 The 2000 and 2010 series of the POEA-SEC contain the same disability compensation schedule as in the 1996 series.

44 *Rollo*, pp. 569-570.

45 *Supra* note 10.

46 *Supra* note 16.

47 *Rollo*, p. 323.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed decision and resolution of the Court of Appeals are **set aside**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice