Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARLOW NAVIGATION PHILIPPINES INC., MARLOW NAVIGATION CO. LTD./ CYPRUS, LIGAYA C. DELA CRUZ and ANTONIO GALVEZ, JR.,
Petitioners,

- versus -

BRAULIO A. OSIAS,
Respondent.

G.R. No. 215471

Present:

VELASCO, JR.,* *J.*,
BRION, *Acting Chairperson,***
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

23 NOV 2015

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 3, 2013 Decision[1] and the November 24, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 125554, which annulled and set aside the February 28, 2012 Decision[3] and the April 30, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in a case involving a claim for permanent and total disability benefits of a seafarer.

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* Per Special Order No. 2282, dated November 13, 2015.
** Per Special Order No. 2281, dated November 13, 2015.
1 Penned by Associate Justice Stephen C. Cruz with Associate Justice Magdangal M. De Leon and Associate Justice Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 58-70.
2 Id. at 72-73.
3 Penned by Presiding Commissioner Leonardo L. Leonida with Commissioner Dolores M. Peralta-Beley and Commissioner Mercedes R. Posada-Lacap, concurring; id. at 269-276.
4 Id. at 277-278.

The Facts

Marlow Navigation Philippines, Inc. *(Marlow Navigation)* is a domestic corporation and local manning agency. On the other hand, petitioner Braulio Osias *(Osias)* was a chief cook in the container vessel of Marlow Navigation for seven (7) years.

On September 23, 2009, Osias entered in a contract of employment[5] with Marlow Navigation. He was to work as a chief cook on board M/V OOCL MUMBAI for a period of nine (9) months and earn a basic monthly salary of US$698.00. Thereafter, Osias boarded the vessel and commenced his work.

On February 12, 2010, while working in the gallery and preparing breakfast, Osias fainted and hit his head and shoulder on the garbage bin. There were no injuries found on him, but he experienced shivers. When the ship arrived in Virginia, U.S.A., he was treated by Dr. Kevin P. Murray and was advised to return home.

Accordingly, Osias was medically repatriated. He arrived in the Philippines on February 15, 2010 and immediately reported to Marlow Navigation. He was referred to the company-designated physician, Dr. Michael Tom J. Arago *(Dr. Arago)* of the Manila Doctor's Hospital *(MDH)*. On February 16, 2010, an x-ray examination[6] revealed that Osias was suffering from "degenerative osteoarthropathy of both knees." He was advised to undergo 10 sessions of physical therapy at the MDH Department of Rehabilitation Medicine and was prescribed medicines for his condition.

On March 31, 2010, Dr. Arago issued a medical report[7] stating that Osias was diagnosed with "left shoulder contusion, lumbar strain and osteoarthritis, right and left knees." Osias was then required to undergo 10 more physical therapy sessions every Monday, Tuesday and Thursday, starting April 5, 2010. After four (4) physical therapy sessions, Osias suddenly failed to comply with his treatment without any previous notice.

On May 14, 2010, or more than a month after he last reported to the company-designated physician, Osias appeared for the continuation of his physical therapy. On even date, Dr. Arago issued another medical report[8]

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[5] Id. at 146.
[6] CA *rollo*, p. 41.
[7] *Rollo*, pp. 147-148.
[8] Id. at 149-150.

noting the prolonged absence of Osias. It was stated therein that Osias did not follow up his treatment because he went to La Union. Nevertheless, Dr. Arago continued Osias' therapy.

On July 14, 2010, Dr. Arago issued a final medical report[9] stating that Osias underwent physical capacity evaluation and that he was already "fit to return to work effective 13 July 2010." Further, a certification of fitness to work[10] was issued to Osias.

Unconvinced, Osias sought the medical opinion of Dr. Li-Ann Lara Orencia *(Dr. Orencia)*. In her medical certificate, dated September 14, 2010, Dr. Orencia opined that the osteoarthritis of Osias would prevent him from returning to his former work as chief cook.

Consequently, Osias filed a complaint for permanent and total disability benefits, moral and exemplary damages, and attorney's fees against Marlow Navigation, Marlow Navigation Co. Ltd., and its officers Ligaya Dela Cruz and Antonio Galvez, Jr. *(petitioners)* before the Labor Arbiter *(LA)*.

In his position paper,[11] Osias asserted that his incapacity to work for more than 120 days entitled him to permanent and total disability benefits. Conversely, in their position paper,[12] petitioners countered that Osias was not entitled to the said benefits because the company-designated physician found and certified that he was fit to return to work. Moreover, he himself caused the delay in his treatment.

The LA Ruling

In its Decision,[13] dated May 2, 2011, the LA ruled that Osias was not entitled to permanent and total disability benefits. The LA gave weight to the findings of the company-designated physician because the latter had the authority to proclaim whether a seafarer suffered from a permanent and total disability, based on an extensive medical treatment. Further, the LA found that Osias was remiss in his obligation to promptly report to the company-designated physician because he went to his province in La Union and dispensed with his treatment. The dispositive portion of the decision reads:

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[9] Id. at 154.
[10] Id. at 155.
[11] Id. at 156-168.
[12] Id. at 94-145.
[13] Penned by Labor Arbiter Quintin B. Cueto III; id. at 260-268.

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the claim for disability benefits.
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> All other claims are likewise denied for being bereft of merit.
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> SO ORDERED.[14]

Aggrieved, Osias appealed the case before the NLRC.

The NLRC Ruling

In its Decision, dated February 28, 2012, the NLRC denied the appeal of Osias. The commission was of the view that the evaluation of the company-designated physician gained precedence over that of the seafarer's personal doctor who issued a belated medical opinion solely based on the prior findings of the company-designated physician and without conducting her own examination of Osias. Also, the NLRC added that if Osias only complied with the schedule of the physical therapy, then he could have been declared fit to work in less than 120 days. The decretal portion of the decision states:

> WHEREFORE, the Decision of the Labor Arbiter dated May 2, 2011 is AFFIRMED and the instant appeal is DISMISSED for lack of merit.
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> SO ORDERED.[15]

Osias filed a motion for reconsideration, but the same was denied by the NLRC in its April 30, 2012 Resolution.

Undaunted, Osias filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed decision, dated December 3, 2013, the CA annulled and set aside the February 28, 2012 Decision and the April 30, 2012 Resolution of the NLRC. The CA found that from the time Osias was medically repatriated to the Philippines on February 16, 2010, it was only on July 14, 2010, or after a period of 147 days, that he was declared fit to work by the company-designated physician. As the said period was beyond the 120-day rule provided by law, the CA opined that he must be entitled to permanent

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[14] Id. at 268.
[15] Id. at 276.

and total disability benefits. The appellate court concluded that the medical examination conducted by the company-designated physician should not have extended beyond the 120-day period. The *fallo* of the decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED, and the assailed Decision dated February 28, 2012 and Resolution dated April 30, 2012 are hereby ANNULLED and SET ASIDE. Accordingly, respondents are ordered to jointly and severally pay petitioner Braulio Osias, the amount of US$60,000.00 representing his total disability benefits, plus attorney's fees of US$6,000.00, in Philippine currency, at the rate of exchange prevailing at the time of actual payment. All other claims are DISMISSED.
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> SO ORDERED.[16]

Petitioners moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated November 24, 2014.

Hence, this petition raising the following

ISSUES

I.

THE COURT OF APPEALS GLARINGLY FAILED TO TAKE INTO CONSIDERATION THAT THE DELAY IN THE ISSUANCE OF THE ASSESSMENT OR CERTIFICATION OF FITNESS TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN WAS DUE TO THE FAULT OF RESPONDENT. IN ANY EVENT, THE FACT THAT THE FITNESS TO WORK CERTIFICATION WAS ISSUED AFTER 147 DAYS FROM REPATRIATION OF RESPONDENT DOES NOT NECESSARILY RENDER HIM TOTALLY AND PERMANENTLY DISABLED. THE MERE LAPSE OF THE 120-DAY PERIOD OF INITIAL MEDICAL TREATMENT DOES NOT TANTAMOUNT TO PERMANENT DISABILITY BASED ON THE RECENT RULING OF THIS HONORABLE COURT.

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT UPHELD THE ASSESSMENT OF RESPONDENT'S OWN PERSONAL DOCTOR OVER THE CERTIFICATION OF FITNESS TO WORK ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN. BOTH THE LOWER LABOR TRIBUNALS CATEGORICALLY FOUND THAT THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN WAS A RESULT OF A MORE ELABORATE EXAMINATION AND TREATMENT. ON

[16] Id. at 69.

THE CONTRARY, THE ONE (1) DAY EXAMINATION OF RESPONDENT'S PERSONAL DOCTOR WAS NOT SUPPORTED BY ANY MEDICAL EXAMINATION AS IT WAS MERELY BASED ON WHAT THE RESPONDENT SEAFARER RELAYED REGARDING HIS TREATMENT WITH THE COMPANY DOCTOR AND HIS COMPLAINT OF PAIN DURING THE SAID 1-DAY CONSULTATION WITH HIS PERSONAL DOCTOR.

III.

THE AWARD OF ATTORNEY'S FEES IS IMPROPER IN THIS CASE CONSIDERING THAT THERE WAS NO BAD FAITH ON THE PART OF PETITIONERS.[17]

Petitioners argue that the 120-day rule only applies when a seafarer's treatment went beyond such period without any assessment from the company-designated physician or when the delay in the issuance of the assessment was not due to the fault of the seafarer; that the 120-day rule should not operate in this case as the extended treatment of 147 days was due to Osias' absence; that the 240-day period should be applied because not all diseases of seafarers could be treated within 120 days; and that the findings of the company-designated physician should prevail as the said findings were based on extensive analysis and treatment.

Petitioners further pray for the issuance of a temporary restraining order and/or writ of preliminary injunction claiming that Osias filed a motion for issuance of a writ of execution before the LA and that the execution of the CA decision would cause grave injustice to them.

In his Comment,[18] Osias countered that the medical findings of Dr. Orencia was more reliable than the findings of company doctor, Dr. Arago, because he was still not well; that at present, he could barely walk and had not been engaged in any gainful employment from the time he was medically repatriated; and that jurisprudence declared that neither the 120-day nor the 240-day period was a categorical determinant of total and permanent disability.

In their Reply,[19] petitioners averred that Osias did not refute that the delay in the issuance of the certificate of fitness to work was due to his fault; and that the said certificate issued by Dr. Arago, the company-designated physician, should overcome the one-day assessment of Dr. Orencia, Osias' own doctor.

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[17] Id. at 20-21
[18] Id. at 281-294.
[19] Id. at 296-309.

The Court's Ruling

The petition is meritorious.

Laws and jurisprudence relating to the 120-day and 240-day rule

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil.*[20] in this wise: "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."[21]

The present controversy involves the permanent and total disability claim of a specific type of laborer—a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

> ART. 192. Permanent Total Disability.
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> xxx
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> (c) The following disabilities shall be deemed total and permanent:
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> (1) Temporary total disability lasting continuously for **more than one hundred twenty days**, except as otherwise provided in the Rules; [emphasis supplied]

The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

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[20] 150-C Phil. 133 (1972).
[21] Id. at 139.

> 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 anytime 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 determined by the System.
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> [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)*[22] whose Section 20 (B) (3) states:

> 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**.
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> [Emphasis Supplied]

In *Crystal Shipping, Inc. v. Natividad,*[23] *(Crystal Shipping)* the Court ruled that "[p]ermanent disability is the 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."[24] Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The Court in *Vergara v. Hammonia Maritime Services, Inc.*[25] *(Vergara),* however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

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[22] Note that there is already a 2010 POEA-SEC. The present case, however, is still governed by the 2000 POEA-SEC as the employment contract was entered into before 2010.
[23] 510 Phil. 332 (2005).
[24] Id. at 340. The respondent therein was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment.
[25] 588 Phil. 895, 912 (2008).

> As these provisions operate, the 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 <u>because the seafarer requires further medical attention</u>, 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 permanent 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.
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> [Emphasis and Underscoring Supplied]

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel).*[26] In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping.* A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In *Kestrel,* however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara,* the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.*[27] stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

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[26] G.R. No. 198501, January 30, 2013, 689 SCRA 795.
[27] G.R. No. 210634, January 14, 2015.

Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo).*[28] Although the said case recognized the 240-day rule in *Vergara,* it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law**." *Carcedo* further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."[29]

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[30] *(Elburg),* it was affirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
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> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
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> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara,* which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to

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[28] G.R. No. 203804, April 15, 2015.
[29] Id., citing *Kestrel Shipping Co., Inc. v. Munar,* supra note 26, at 810.
[30] G.R. No. 211882 , July 29, 2015.

assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.
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> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.
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> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

The 240-day extended period applies in the present case

In its assailed decision, the CA explained that Osias was entitled to permanent and total disability because the medical treatment of the company-designated physician lasted for 147 days, or more than the 120-day period. Petitioners, on the other hand, contend that the delay in the medical treatment of Osias was due to his own fault and that the 120-day period must be extended to 240 days.

After a judicious scrutiny of the records, the Court finds that a sufficient justification exists to extend the period of medical treatment and assessment of the company-designated physician to 240 days.

It was enunciated in *Elburg* that a company-designated physician may have some justifiable ground to necessarily extend the 120-day period to 240 days. For instance, when the company-designated physician opined that a seafarer's illness or injury would require further medical treatment, then the 120-day period may be extended. As advanced by petitioners, there may be some illnesses that could not be completely addressed within a span of 120 days; thus, in such cases, an extended period of 240 days or 6 months of treatment would be reasonable.

In the case at bench, the sufficient justification to apply the 240-day extended period would be the uncooperativeness of Osias. Based on the evidence presented, it is clear that he did not fully comply with the prescribed medical therapy. In his medical report,[31] dated March 31, 2010, Dr. Arago, as company-designated physician, required Osias to undergo 10 sessions of physical therapy every Monday, Tuesday and Thursday, starting on April 5, 2010. After four (4) sessions, however, Osias failed to appear for the continuation of his physical therapy without any prior notice for his sudden non-attendance. It was only on May 14, 2010, or after more than a month, that Osias returned to see Dr. Arago after coming back from La Union. Osias neither denied nor attempted to justify his abrupt absence. His disregard of the doctor's orders was duly noted by Dr. Arago in his medical report,[32] dated May 14, 2010.

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[31] *Rollo*, pp. 147-148.
[32] Id. at 149-150.

The manifest non-compliance of Osias with the prescribed therapy by the company-designated physician demonstrates that he was uncooperative with the treatment. Osias utterly disregarded the limited amount of time the company-designated physician had to finalize his medical assessment by ignoring the scheduled therapy sessions. The LA correctly ruled that, by going to La Union, Osias capriciously and wittingly dispensed with the treatment of the company-designated physician.[33] Likewise, the NLRC observed that it would be unfair to award disability benefits to Osias due to the lapse of 120-day period because the extended period of the treatment was attributable to him.[34]

Thus, the Court agrees that the period for medical treatment and assessment was properly extended to 240 days. It was duly established that Dr. Arago issued his final medical report[35] and his certification[36] that Osias was fit to work on July 14, 2010, or after 147 days from the date of medical repatriation, which is well within the properly extended period of 240 days.

The medical assessment of the company-designated physician was not validly challenged

Given that the medical report of the company-designated physician was suitably issued within the extended 240-day period, then the same should be fully appreciated by the courts. The company-designated doctor found that Osias was physically fit to return to work after conducting an extensive treatment and diagnosis of the latter. Nonetheless, Section 20 (B) (3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment as follows:

> 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.

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

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[33] Id. at 266.
[34] Id. at 275.
[35] Id. at 154.
[36] Id. at 155.

In *Carcedo,* the Court held that "[t]o 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."[37]

In this case, Osias' doctor of choice, Dr. Orencia, issued a medical certificate which conflicted with the assessment of the company-designated physician. Dr. Orencia opined that the osteoarthritis of Osias prevented him from returning to his work. Osias, however, never signified his intention to resolve the disagreement with petitioners by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. *Ergo*, he is not entitled to permanent and total disability benefits.

WHEREFORE, the petition is **GRANTED.** The December 3, 2013 Decision and the November 24, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 125554 are **REVERSED** and **SET ASIDE.** The February 28, 2012 Decision and the April 30, 2012 Resolution of the National Labor Relations Commission are hereby **REINSTATED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[37] Supra note 28, citing *INC Shipmanagement, Inc. v. Rosales,* G.R. No. 195832, October 1, 2014, 737 SCRA 438, 452.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
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.

ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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