Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BSM CREW SERVICE CENTRE PHILIPPINES, INC., Petitioner,	**G.R. No. 240518**
	Present:
- versus -	CAGUIOA, *J., Acting Chairperson,* HERNANDO,* CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
ROY JASON P. JONES, Respondent.	Promulgated: DEC 09 2020

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DECISION

CAGUIOA, *J.:*

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 assailing the Decision[2] dated March 20, 2018 and Resolution[3] dated June 27, 2018, both of the Court of Appeals (CA) in CA-G.R. No. 150904. The CA affirmed the Decision[4] dated December 8, 2016 of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (PVA-NCMB) which awarded total and permanent disability benefits to respondent Roy Jason P. Jones (Jones).

Facts

On November 5, 2014, petitioner BSM Crew Service Centre Philippines, Inc. (BSM) hired Jones as Messman on board the vessel Al

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* Designated as additional member per Raffle dated November 23, 2020 vice Chief Justice Diosdado M. Peralta.

1 *Rollo*, pp. 32-72, excluding Annexes.

2 Id. at 74-89. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Ma. Luisa Quijano-Padilla and Jhosep Y. Lopez concurring.

3 Id. at 116.

4 CA *rollo*, pp. 45-56. Signed by Chairperson MVA Jaime B. Montealegre and Panel Members MVA Gregorio C. Biares, Jr. and MVA Jose S. Capuno, Jr.

Gattara under a nine-month contract covered by a Collective Bargaining Agreement (CBA).[5]

In February 2015, while loading food provisions on board the vessel, Jones felt a sudden snap in his back followed by pain which radiated to his lower extremities.[6] When his pain did not subside, he was medically repatriated on March 17, 2015, and immediately referred to the company-designated physician.[7] He underwent tests and a rehabilitation program, which included injection of epidural steroid for pain management. On July 1, 2015, Jones undertook a functional capacity evaluation where the company-designated physician certified that Jones is "pain free with full range of motion."[8] Jones signed a certificate declaring that he was "cleared to return to work."[9]

According to Jones, he reported to BSM for re-employment but he was not re-engaged. In 2016, as his back pain recurred, he consulted another doctor, Dr. Francis Pimentel, who concluded, in a Medical Report[10] dated March 6, 2016, that he was "not fit for work with permanent disability" because his "facet joint hypertrophy has encroached on the exiting nerve root."[11] Jones likewise consulted another physician, Dr. Rogelio Catapang, Jr., who likewise found him to be unfit for sea duty.[12]

The parties then underwent grievance proceedings before the Associated Marine Officers and Seamen's Union of the Philippines but no settlement was reached.[13] Conciliation proceeding were likewise commenced before the NCMB, but this also failed.[14] After conciliation proceedings proved futile, the case was sent to voluntary arbitration before the PVA-NCMB.[15]

In a Decision dated December 8, 2016, the PVA-NCMB ordered BSM to pay Jones permanent total disability compensation amounting to US$96,909.00, sickness allowance totaling US$1,928.00, and attorney's fees.[16]

BSM filed a motion for reconsideration, which was partly granted in a Resolution[17] dated April 27, 2017. The PVA-NCMB deleted the award of sickness allowance as the same had already been paid.[18]

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5 *Rollo*, p. 75.
6 Id.
7 Id. at 76.
8 Id.; CA *rollo*, p. 50.
9 Id.
10 CA *rollo*, pp. 192-193.
11 *Rollo*, p. 76.
12 Id.
13 Id. at 76-77.
14 Id. at 77.
15 Id.
16 Id.; CA *rollo*, p. 55.
17 CA *rollo*, pp. 57-58.
18 Id.

BSM then filed a petition for review under Rule 43 before the CA.

CA Decision

In a Decision dated March 20, 2018, the CA dismissed the petition and affirmed the PVA-NCMB's findings. The CA relied on the findings of Jones's doctors that he was totally and permanently disabled and ruled that the company-designated physicians merely downplayed his illness.[19] Likewise, the CA dismissed BSM's argument that the PVA-NCMB Decision was void as the Chairman of the panel had already died when it was promulgated.[20] The dispositive portion of the CA Decision states:

> **WHEREFORE**, the petition is dismissed and the assailed Decision dated December 8, 2016 and Resolution dated April 27, 2017 of the PVA-NCMB are affirmed.
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> **SO ORDERED.**[21]

BSM filed a motion for reconsideration but this was denied. Hence, this Petition. In due course, Jones filed his Comment[22] and, in turn, BSM filed its Reply.[23]

Issues

BSM raised the following issues:

a. whether the PVA-NCMB Decision was promulgated properly; and

b. whether the CA was correct in affirming the findings of the PVA-NCMB which awarded permanent and total disability benefits to Jones following the CBA.

The Court's Ruling

The Petition lacks merit.

The PVA-NCMB Decision was properly promulgated.

As a general rule, only questions of law may be reviewed by this Court in a petition for review on *certiorari* under Rule 45.[24] In fact, "[a]

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19 Id. at 87.
20 Id. at 80.
21 Id. at 89.
22 Id. at 135-154.
23 Id. at 170-185.
24 *Philippine Transmarine Carriers, Inc. v. Tallafer*, G.R. No. 219923, June 5, 2017 (Unsigned Resolution).

question that invites a review of the factual findings of the lower tribunals is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition, except in cases where there was serious misappreciation of facts on the part of the lower courts."[25]

Here, BSM failed to show any reason to depart from the factual findings of the CA as regards the issue on the promulgation of the PVA-NCMB Decision.

According to BSM, the chairman of the PVA-NCMB and *ponente* of its assailed decision, Jaime B. Montealegre, had passed away on December 12, 2016 and that the Decision although dated December 8, 2016 was only promulgated on January 6, 2017. For BSM, such decision is "questionable," considering the Court's ruling in *Consolidated Bank & Trust Corporation (Solidbank) v. Intermediate Appellate Court*[26] that a *ponencia* proven to have been promulgated after the death of the *ponente*, although dated before such death, must be set aside. This is because the *ponente* in a collegiate court should remain a member thereof at the time his *ponencia* is promulgated since, at any time before that, he has the privilege of changing his opinion for the consideration of his colleagues.[27]

The CA dismissed this argument because BSM failed to submit any evidence proving the fact and date of death of the *ponente* and that it occurred before the promulgation of the PVA-NCMB Decision. The CA ruled as follows:

> Petitioners fault the PVA-NCMB in so ruling. Allegedly, "the Decision and Resolution of the Honorable Panel of Voluntary Arbitrators is defective" because "the Chairman of the Panel passed away" on or "about 12 December 2016," and was thus "already deceased" when the "decision was promulgated on 6 January 2017."
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> Records bear that the assailed Decision dated December 8, 2016 was signed by all three (3) members of the PVA-NCMB. Apart from their bare allegation, petitioners failed to present evidence that the Chairman of the PVA-NCMB died on December 12, 2016. Moreover, petitioners failed to disprove the presumption of regularity in the performance of official functions by the PVA-NCMB. Thus, the Decision dated December 8, 2016 cannot be said to be the decision of another person.[28]

The Court affirms the CA. There is no basis for BSM's claim that the PVA-NCMB Decision dated December 8, 2016 was promulgated on January 6, 2017 because that was the date the NCMB received a copy of the Decision. It failed to show any rule that the date of receipt by the NCMB of

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25 Id.
26 G.R. Nos. 73777-78, September 12, 1990, 189 SCRA 433.
27 *Rollo*, pp. 49-55.
28 Id. at 80.

the Decision of the PVA is considered the date of the promulgation of the decision.

What is clear from the records is that the PVA-NCMB Decision was dated and signed on December 8, 2016 by the three members of the PVA-NCMB. Thus, even if the *ponente* died on December 12, 2016, the fact remains that the members of the panel signed the Decision on December 8, 2016. BSM failed to present any evidence to controvert this. The CA was therefore correct in ruling that the PVA-NCMB Decision was properly promulgated.

Jones is entitled to total and permanent disability benefits.

As to the CA and the PVA-NCMB's finding that Jones is entitled to total and permanent disability benefits, the Court affirms the same but on a different basis.

As the CA found, Jones was cleared to return to work by the company-designated physicians on July 1, 2015, and he even signed a certificate to this effect.[29]

It appears, however, that just about eight months after having been cleared to return to work, Jones experienced low back pain such that on March 6, 2016, his own doctor found that:

> "x x x x
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> The patient presented here has been suffering from continuous low back pain that was not responsive to physical therapy and epidural steroid injection. The explanation is because the facet joint hypertrophy has encroached on the exiting nerve root. The encroachment will not be resolved by steroid injection nor physical therapy. For the encroachment to be resolved it has to be removed surgically. With his present medical condition, he will not be able to perform activities requiring bending, lifting and prolonged standing. All these activities are required at his work as a seafarer. He is not fit for work with permanent disability."[30]

The other Medical Report[31] dated March 14, 2016 of Jones's other doctor stated the following:

> ***Mr. Jones*** is still experiencing on and off pain secondary to a facet [problem] as diagnosed by MRI studies of the lumbar spine. The lumbar spine has either five bones, or vertebrae, which are described as L1 to L5. These vertebrae span from the waist to the [top] of the hips. The stiffness with associated pain may be due either to intra-articular adhesions following a fracture involving the facet joints, or to extra-articular

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29 Id. at 84.
30 Id. at 84-85.
31 CA *rollo*, pp. 194-196.

> adhesions following traumatic edema with organization of the serofibrinous exudates into adhesions. The persistence of stiffness is sometimes an early symptom of traumatic arthritis. Interruption of the continuity of the articular cartilage by the fracture line alone is sufficient to initiate arthritic changes, seen chiefly in those patients who make constant demands at work (e.g. manual labor). The condition is then a sequel to raised pressure on the articular surfaces and continued stresses on the ligaments.
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> The lumbar region of the spine is prone to damage and injury for several reasons. The lumbar region supports the majority of the body's weight. The lower spine can be easily strained and injured during heavy lifting, particularly when inappropriate techniques are utilized. It is common for this area of the body to receive direct trauma resulting from falls, car accidents and participation in sporting activities. The articular surfaces endure significant wear and tear over time, making them susceptible to weakening and breakdown.
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> In addition to age-related degeneration, there is also degenerative changes noted in the lumbar spine; seen in the x-ray findings of the lumbar spine; other risk factors for developing low back pain include an occupation that requires heavy lifting, a history of back injuries, lack of exercise and carrying excess body weight. Most patients who are diagnosed with low back pain find that the condition resolves on its own or with conservative treatment administered over the course of a few weeks or months. A period of rest, pain relievers, anti-inflammatory medications (epidural injection) and physical therapy to help ease any discomfort; in some cases, the symptoms might persist or worsen, an indication for open back surgery, such as a spinal fusion.
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> ***Mr. Jones's*** work demands are heavy; as a seafarer, he may be called on to use emergency, lifesaving, damage control, and safety equipment. He must perform all operations connected with the launching of lifesaving equipment. He is also expected to be able to operate deck machinery, such as the windlass or winches while mooring or unmooring, and to operate cargo gear or other tasks directed by his superiors. These are activities which may require lifting heavy equipments (*sic*) or objects. ***Mr. Jones*** states that he cannot perform these activities. These are restrictions placed on the patient's activities to prevent further injuries from occurring; he is UNFIT for further sea duties.[32]

The PVA-NCMB and the CA ruled that Jones's referral to his doctor of choice eight months after being declared fit to work is still part of the dispute resolution mechanism under Section 20(A) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). Unfortunately, this is erroneous.

Section 20(A) of the POEA-SEC finds no application to Jones's claim for disability benefits because his illness manifested after the term of his employment contract. As the Court held in *Ventis Maritime Corporation v. Salenga*[33] (*Ventis*): "Section 20(A) applies only if the seafarer suffers from

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32 Id. at 195-196.

33 G.R. No. 238578, June 8, 2020.

an illness or injury **during the term of his contract**, *i.e.*, while he is employed."[34]

Here, it is undisputed that on July 1, 2015, Jones was already cleared to return to work and he even signed a certificate acknowledging this. Jones himself admitted to reporting to BSM for re-employment but he was not re-employed.[35] Therefore, his claim for disability benefits because of his illness is no longer covered by Section 20(A) of the POEA-SEC. That said, Jones may still claim for disability benefits but following a different set of rules and procedures not covered by Section 20(A).

In claims for disability benefits for illnesses that manifest after a seafarer's employment, the procedure to be followed was outlined in *Ventis*, as follows:

> In instances where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer.
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> For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows:
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> 1. The seafarer's work must involve the risks described therein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.
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> As to the second type of illness — one that is **not listed as an occupational disease in Section 32-A** — *Magsaysay Maritime Services v. Laurel* instructs that the seafarer may still claim provided that he suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, *at the very least, aggravation of any pre-existing condition he might have had.*" Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his work; his illness was contracted as a result of his exposure to the risks; the disease

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34 Id. at 7. Emphasis and underscoring in the original.

35 CA *rollo*, p. 183.

> was contracted within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent.[36] (Emphasis and underscoring in the original; citations omitted)

Applying *Ventis*, because Jones's low back pain is not listed in Section 32-A of the POEA-SEC, he should prove that there is reasonable linkage between his low back pain and his work. He should prove the risk involved in his work, his illness was a result of his exposure to the risks, the disease was contracted within a period of exposure and under such other factors necessary to contract it, and he was not notoriously negligent.

Here, Jones, in his Affidavit[37] dated June 30, 2016, stated that his work as a Messman included considerable use of his back:

> - As messman, I am the "all-around man" of the vessel. I worked as the coffee man, assistant cook, pantry man, waiter, dishwasher, bedroom steward, and porter. I also perform any of the following duties: setting tables, serving food, or waiting on tables. Part of my job is also to clean the dishes and equipment, prepare coffee and beverages, make beds and clean quarters of officers;
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> - I performed physical activities that require considerable use of my back. I performed strenuous tasks such as standing for long periods of time, climbing, lifting, pulling, pushing, balancing, walking, stooping, squatting, and/or moving equipment, materials, and provisions on board the ship[.][38]

The March 6, 2016 Report of his doctor stated that his low back pain was not responsive to physical therapy and epidural steroid injection. As quoted above, the doctor found that the facet joint hypertrophy has encroached on the exiting nerve root and that the encroachment will not be resolved by steroid injection nor physical therapy and surgery was required to resolve it.

Further, the March 14, 2016 Medical Report states risk factors for developing low back pain including an occupation that requires heavy lifting, a history of back injuries, lack of exercise and carrying excess body weight.

The Court finds that Jones was able to prove through substantial evidence that he was suffering from low back pain and that this was reasonably linked to his work.

Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion even if other equally reasonable minds might conceivably opine otherwise.[39]

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36 *Ventis Maritime Corporation v. Salenga*, supra note 31, at 11-12.
37 CA *rollo*, pp. 182-184.
38 Id. at 182.
39 *Beltran v. AMA Computer College-Biñan*, G.R. No. 223795, April 3, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65309>.

The foregoing convinces the Court that the nature of Jones's work as a Messman or an "all-around man" exposed him to the risk of developing low back pain as he was required to perform physical activities that required considerable use of his back. His doctors also confirm that such activities exposed him to the risk of developing low back pain and given his undisputed low back pain, he would no longer be able to perform activities that require the lifting of heavy equipment. Finally, there is nothing on record to show that Jones was notoriously negligent. Given this, Jones is entitled to total and permanent disability benefits.

The Court also affirms the CA's findings that the CBA is applicable as it is supported by substantial evidence. The CA ruled as follows:

> There is likewise no merit in [BSM's] claim that the CBA is not applicable because [Jones] did not suffer a work-related illness and his injury was not brought about by an accident. Notably, the parties' CBA contains a "Permanent Medical Unfitness" clause which does not classify whether the permanent disability was due to a work-related illness or accident. Thus:
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> > "A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, as follows: US$161,514.00 for senior officers, US$129,212.00 for junior officers and US$96,909 for ratings (effective 2015); x x x"[40]

The Court likewise affirms the award of attorney's fees as Jones was indeed compelled to litigate due to BSM's failure to satisfy his valid claim.

Consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,[41] interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary award. Further, following *Guagua National Colleges v. Court of Appeals*,[42] decisions of the PVA-NCMB are immediately final and executory albeit subject to judicial review. Accordingly, interest shall be reckoned from the finality of the Decision and Resolution of the PVA-NCMB until the full satisfaction of all monetary awards.

WHEREFORE, premises considered, the Petition is **DENIED**. The monetary awards in the PVA-NCMB Decision dated December 8, 2016 and Resolution dated April 27, 2017 are **AFFIRMED** with **MODIFICATION** that, if still unpaid, interest shall accrue at the rate of six percent (6%) *per annum* from the finality of the PVA-NCMB Decision and Resolution until full payment.

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40 *Rollo*, p. 88.
41 G.R. No. 189871, August 13, 2013, 703 SCRA 439.
42 G.R. No. 188492, August 28, 2018, 878 SCRA 362.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, First 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.

DIOSDADO M. PERALTA
Chief Justice