



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **18 January 2021** which reads as follows:*

“G.R. No. 252777 (Orlando A. Ortega v. Grieg Philippines, Incorporated and/or Grieg Star AS). – The Court resolves to:

(1) **GRANT** petitioner’s first motion for extension of time to file petition for review on *certiorari*; and

(2) **DENY** the petition.

Ortega’s knee injury was not work-related.

Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but also by Philippine law and by the contract between the parties. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment, Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and the parties’ Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.¹

Here, Orlando A. Ortega’s (Ortega) contract was covered by the NIS-AMOSUP Ratings 2014 CBA where disability compensation is provided under Article 12 which states:

¹ *OSG Shipmanagement Manila, Inc. v. Pellazar*, 740 Phil. 638, 648 (2014).

If a seafarer **due to no fault of his own, suffers an occupational injury as a result of an accident** or an occupational disease **while serving on board** or while travelling to or from the vessel on Company's business or due to marine peril, and as a result his ability to work is permanently reduced, partially or totally, and never to be declared fit, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be [the] maximum: x x x² (Emphasis supplied)

Ortega insisted that he is entitled to permanent disability benefits because his injury was sustained due to an accident on board the vessel while in the performance of his duty as deck fitter.

We are not persuaded. Other than his bare allegations, Ortega had not offered any proof that he met an accident on board the vessel. As found by the Court of Appeals, there was no accident report or any medical report issued indicating that he figured in an accident. He did not disclose the supposed accident to the doctor who initially examined him overseas. He also did not disclose any accident when he was examined in the Philippines by the company-designated physician. He merely complained of pain on his left knee but left out any information on his alleged accident while on board.

For the first time, after several months following Ortega's repatriation, he disclosed his supposed accident to his own doctor. All he had was a story which he failed to substantiate. In *Torillos v. Eastgate Maritime Corp.*,³ the Court dismissed the claim of injury due to accident without presenting any proof of its occurrence, thus:

Torillos based his claim for total and permanent disability benefits under the CBA. **He maintained that his disability was caused by an accident that happened on board the vessel while performing his duties as chief cook.**

We are not convinced as there was no evidence to show that Torillos met an accident on board the vessel that caused his injury. **There was no accident report or any medical report issued indicating that Torillos figured in an accident while on board.** Moreover, **the Medical Report dated December 16, 2011 issued by the physician who attended Torillos in Newcastle, England did not mention that his injury was caused by an accident on board** but instead noted that the primary cause of the injury was: "Pain occurred at his right leg up to his pelvis during standing for a long period of time." **Hence, Torillos' claim that he met an accident on board was based on pure allegations. It is basic that Torillos must prove his own assertions and his failure to discharge the burden of proving that he was covered by the CBA militates against his entitlement to any of its benefits.** (Emphases supplied)

² *Rollo*, p. 357.

³ G.R. Nos. 215904 & 216165, January 10, 2019

It is established that he who alleges a fact has the burden of proving it.⁴ In this case, Ortega failed to prove his allegation of accident. Hence, he cannot claim compensation based on the CBA for his injury was not proven to have been caused by an accident on board.

As the CBA cannot be the basis of Ortega's claim, the POEA-SEC shall apply to determine his entitlement to disability benefits.

Referral to a third doctor is mandatory.

Section 20(B) (3) of the POEA-SEC provides for the procedure in assessing a seafarer's disability, *viz.*:

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.**

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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. (Emphases supplied)

The Court of Appeals correctly ruled that Ortega, however, failed to comply with this procedure. Here, there were conflicting assessments: the company-designated physician concluded that Ortega was fit to work while his own doctor found him to be permanently disabled. But instead of referring the assessments to a third doctor for conflict resolution, Ortega immediately claimed for payment of disability benefits contrary to the requirement of Section 20(B) (3) of POEA-SEC. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.⁵ As referral to a third doctor is a mandatory procedure, the failure to abide thereby is a breach of the POEA-SEC and has the effect of consolidating the finding of the company-designated physician as final and binding as in this case.⁶

⁴ *William G. Kwong Management, Inc. v. Diamond Homeowners & Residents Association*, G.R. No. 211353, June 10, 2019.

⁵ *Multinational Ship Management, Inc. v. Briones*, G.R. No. 239793, January 27, 2020.

⁶ *Dohle Philman Manning Agency, Inc. v. Doble*, 819 Phil. 500, 514 (2017).

Thus, the Court of Appeals was correct to sustain the findings of fit-to-work by the company-designated physician. While he alleged that his treatment was not yet complete, the medical reports do not bear any recommendation of further treatment necessary for Ortega. What is clear from the reports is that he was treated and later declared fit to return to work.

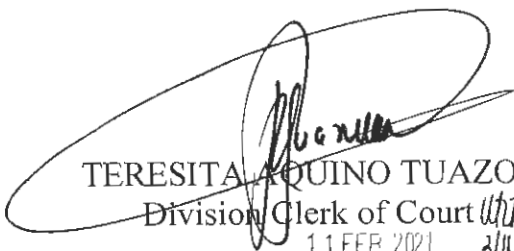
Notably too, the certification of fit-to-work was issued on 107th day since his return which is prior to the 120-day period. Thus, Ortega cannot be entitled to a disability benefit since he was already fit to resume work. His bare allegation that Grieg Philippines, Inc. (Grieg PH) refused to deploy him was uncorroborated as he did not present any evidence of such refusal to give him any assignment due to his knee condition.

But all is not lost for Ortega. The Court has awarded financial assistance due to humanitarian considerations through the principle of social and compassionate justice for the working class. The amount awarded is essentially subject to the sound discretion of the Court.⁷ Verily, we affirm the Court of Appeals' award of USD20,000.00 as financial assistance to Ortega in the interest of equity and compassionate justice and his long years of service for Grieg PH.

ACCORDINGLY, the Decision dated June 7, 2019 and Resolution dated June 17, 2020 in CA-G.R. SP No. 153783 are **AFFIRMED** with **MODIFICATION**. Orlando A. Ortega is **ORDERED** to **RETURN** to Grieg Philippines, Inc. the amount of USD99,000.00 less USD20,000.00.

SO ORDERED." (Rosario, *J.*, additional member per S.O. No. 2797 dated November 5, 2020, on official leave; Lopez, *J.*, no part due to prior action in the Court of Appeals; Zalameda, *J.*, designated additional member per Raffle dated December 14, 2020)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
11 FEB 2021 2/11

⁷ *Heirs of Pajares v. North Sea Marine Services Corp.*, G.R. No. 244437, September 14, 2020.

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*with copy of CA Decision dated 7 June 2019
Please notify the Court of any change in your address.
GR252777. 01/18/2021(10)URES *1/21*