Republic of the Philippines
Supreme Court
Baguio City

EN BANC

TEODORO B. BUNAYOG,
Petitioner,

- versus -

FOSCON SHIPMANAGEMENT, INC., /GREEN MARITIME CO., LTD., /EVELYN M. DEFENSOR,
Respondents.

G.R. No. 253480

Present:

GESMUNDO, *Chief Justice*,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,*
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., *and*
SINGH, *JJ.*

Promulgated:
April 25, 2023

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DECISION

GAERLAN, *J.*:

For the Court's consideration is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Teodoro B. Bunayog (petitioner) seeking to assail the Court of Appeals (CA) Decision[2] dated February 21, 2020

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* On leave.
1 *Rollo*, pp. 8-25.
2 Id. at 27-35; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Zenaida T. Galapate-Laguilles and Perpetua Susana T. Atal-Paño concurring.

and the Resolution[3] dated September 16, 2020 in CA-G.R. SP No. 154603, which affirmed the National Labor Relations Commission's (NLRC) Decision[4] dated September 29, 2017 which, in turn, dismissed the petitioner's complaint for total and permanent disability benefits, transportation expenses and attorney's fees.

The Antecedents

Petitioner was engaged by Foscon Shipmanagement, Inc., (Foscon) on behalf of its foreign principal, Green Maritime Co., Ltd. (Green), (collectively, respondents) as a chief cook onboard the vessel M/T Morning Breeze for a period of nine months. On July 31, 2016, while on board the vessel, petitioner experienced cough, fever and difficulty in breathing. On August 2, 2016, petitioner was brought to a clinic in Japan where he was diagnosed with left lung pneumonia. He was declared by the doctor to be unfit for sea duty. Thus, he was repatriated to the Philippines on August 4, 2016 and referred immediately to a company-designated physician. After evaluation, petitioner was diagnosed to be suffering from pneumonia with recurrent pleural effusion, left s/p thoracentesis, left. Petitioner's treatment lasted until September 28, 2016. On such date, one of the company-designated physicians, Dr. Percival P. Pangilinan, declared petitioner fit to work.[5]

Petitioner, thereafter, consulted a physician of his choice, Dr. Noel C. Gaurano (Dr. Gaurano), who declared him unfit for sea duty due to his pleural effusion.[6]

On November 10, 2016, petitioner sent a letter to respondent Evelyn M. Defensor (Evelyn), president of Foscon, informing her of the findings of his doctor and of his willingness to undergo another medical examination to confirm his permanent disability. No response, however, was made on the part of respondents.[7]

Subsequently, petitioner filed a complaint for total and permanent disability benefits, among others. Petitioner averred that he is entitled to a total and permanent disability benefit in the amount of US$60,000.00, since he can no longer perform his tasks as a chief cook.[8]

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3 Id. at 37-38.
4 Id. at 54-65; penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro, concurring.
5 Id. at 27-28.
6 Id. at 28-29.
7 Id. at 29.
8 Id.

In response, respondents averred that petitioner is not entitled to any disability compensation considering that the company-designated physician had already declared him fit to work; and that as between the findings of the company-designated physician and the petitioner's physician of choice, the former's findings should prevail since petitioner's doctor examined him only once.[9]

The Labor Arbiter Ruling

In a Decision[10] dated June 30, 2017, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA gave credence to the findings of the company-designated physician over that of petitioner's physician of choice. The LA ratiocinated that petitioner's doctor based his conclusion that petitioner was no longer fit to work based on popular observation and findings of patient's responses to treatment, not on a specific study of petitioner's condition and responses to medical treatment. [11] Meanwhile, the company-designated physician's declaration of petitioner's fitness to work was founded on petitioner's specific responses to the step-by-step medical interventions administered on his condition. Accordingly, there was no reason to set aside the findings of the company-designated physician.[12] The LA, thus, disposed of the case in this wise:

> WHEREFORE, premises considered, the instant case is hereby Dismissed for lack of merit.
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> SO ORDERED.[13]

Aggrieved, petitioner filed a Notice of Appeal and Memorandum of Appeal[14] with the NLRC.

The NLRC Ruling

On September 29, 2017, the NLRC issued a Decision[15] affirming the findings of the LA. Similar to the conclusion of the LA, the NLRC gave no probative value to the assessment made by petitioner's physician of choice.[16] The NLRC likewise ruled that despite respondents' failure to seek a third doctor after petitioner signified its intent to undergo another examination to confirm

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9 Id.
10 CA *rollo*, pp. 116-118; penned by Labor Arbiter Zosima C. Lameyra.
11 Id. at 117.
12 Id. at 118.
13 Id.
14 Id. at 119-136.
15 *Rollo*, pp. 54-65.
16 Id. at 62-63.

his condition, it does not necessarily redound to the benefit of petitioner, that is, his physician's assessment should be binding. The NLRC ratiocinated that "the appointment of a third doctor requires mutual agreement of the employer and the seafarer, and in case the parties failed to agree on a third doctor, the seafarer can initiate a complaint before the [LA] or NLRC, and the case will be resolved based on its merit."[17] The *fallo* of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed Labor Arbiter's Decision dated June 30, 2017 in NLRC NCR Case No. (M) 12-15998-16 is hereby **AFFIRMED.**
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> **SO ORDERED.**[18]

Undaunted, petitioner filed a petition for review with the CA assailing the NLRC Decision.

The CA Ruling

The CA, in the assailed Decision[19] dated February 21, 2020, dismissed the petition and affirmed the findings of the LA and the NLRC. The CA disregarded the assessment made by petitioner's physician considering that the physician did not require petitioner to undergo medical tests; nor was the assessment based on petitioner's response after a specific treatment was administered to him.[20] The CA, thus, concluded:

> **WHEREFORE**, the Amended Petition for Certiorari is ***DENIED*** for lack of merit. The 29 September 2017 Decision and 29 November 2017 Resolution of the National Labor Relations Commission in NLRC LAC No. 08-000519-17 (NLRC NCR Case No. (M)12-15998-16) are hereby ***AFFIRMED***.
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> **SO ORDERED.**[21]

Petitioner, thereafter, moved for reconsideration. It was, however, denied in a Resolution[22] dated September 16, 2020.

Hence, the instant petition wherein petitioner raises the following issues:

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17 Id. at 64.
18 Id. at 65.
19 Id. at 27-35.
20 Id. at 34.
21 Id. at 34-35.
22 Id. at 37-38.

Issue

I.
THE [CA] GRAVELY ERRED IN NOT AWARDING [PETITIONER] TOTAL AND PERMANENT DISABILITY BENEFITS;

II.
THE [CA] GRAVELY ERRED IN NOT AWARDING ATTORNEY'S FEES AND MORAL DAMAGES.[23]

The Court's Ruling

The petition is bereft of merit.

At the outset, entitlement to disability benefits by a seafarer is a matter governed, not only by medical findings but also, by law and by contract. The material statutory provisions are Articles 197-199 (formerly Articles 191 to 193) under Chapter VI (Disability Benefits), Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Memorandum Circular No. 10, Series of 2010, Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC) also known as the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships (the governing POEA-SEC at the time petitioner was employed by respondents in 2016), and the parties' Collective Bargaining Agreement, bind the seafarer and his employer to each other.[24]

Section 20(A), paragraph 3 of the 2010 POEA-SEC reads in part:

3. x x x x

> 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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23 Id. at 14.

24 *OSG Shipmanagement Manila, Inc. v. De Jesus*, G.R. No. 207344, November 18, 2020.

> **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. (Emphasis supplied)

This provision requires that, after medical repatriation, the company-designated physician must assess the seafarer's fitness to work or the degree of his disability. If the seafarer disagrees with the findings of the company-designated physician, the seafarer may choose his own doctor to dispute such findings. If the findings of the company-designated physician and the seafarer's doctor of choice are conflicting, the matter is then referred to a third doctor, whose findings shall be binding on both parties.[25]

This provision clearly gives the parties the opportunity to settle, without the aid of the labor tribunals and/or the courts, the conflicting medical findings of the company-designated physician and the seafarer's physician of choice through the findings of a third doctor, mutually agreed upon by the parties.

The rationale for this rule is laid out in the case of *Transocean Ship Management (Phils.), Inc. v. Vedad*,[26] thus:

> x x x it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20(B)(3) of the POEA-SEC quoted above.[27]

Referral to a third doctor is mandatory, and failure of the seafarer to comply therewith is tantamount to a breach of the POEA-SEC

In a plethora of cases, it was held that referral to a third doctor is mandatory in disability claims such that should the seafarer fail to comply therewith, he or she would be in breach of the POEA-SEC, and, as a consequence, the assessment of the company-designated physician shall be final and binding.[28]

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25 *Pacific Ocean Manning, Inc. v. Solacito*, 871 Phil. 236, 250-251 (2020).
26 707 Phil. 194 (2013).
27 Id. at 207.
28 *Ranoa v. Anglo-Eastern Crew Mgnt. Phils., Inc.*, 867 Phil. 108, 123-124 (2019) citing, *Dohle Philman Manning Agency, Inc. v. Doble*, 819 Phil. 500, 514 (2017).

In the case of *INC Navigation Co. Philippines, Inc. v. Rosales*,[29] it was made clear that:

> This referral to a third doctor has been held by this Court to be a mandatory procedure **as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor** who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp., Santiago v. Pacbasin Shipmanagement, Inc., Andrada v. Agemar Manning Agency,* and *Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[30] (Emphasis supplied; citations omitted)

It is, therefore, settled that in cases where the seafarer fails to signify his or her intent to refer the conflicting medical findings to a third doctor, the company-designated physician's findings shall be final and binding. However, there is an exception to this rule.

In *Dionio v. Trans-Global Maritime Agency, Inc.*[31] (*Dionio*), We stressed that when the company-designated physician's medical conclusion is found to have been issued with a clear bias in favor of the employer, *i.e.*, lacking in scientific basis, or unsupported by the medical records of the seafarer, the inherent merits of the respective medical findings shall be considered by the tribunals or court, to wit:

> Thus, while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer.
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> Indeed, the rule that the company-designated doctor's findings shall prevail in case of non-referral of the case to a third doctor is not a hard-and-fast rule as labor tribunals and the courts are not bound by the medical findings of the company-doctor. Instead, the inherent merits of the respective medical findings shall be considered.[32]

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29 744 Phil. 774 (2014).
30 Id. at 787.
31 843 Phil. 409 (2018).
32 Id. at 420-421.

In this case, upon his repatriation on August 4, 2016, petitioner was immediately referred to a company-designated physician. After evaluation, he was diagnosed to be suffering from "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left." Petitioner, from his repatriation on August 6, 2016 to September 28, 2016, underwent a series of medical treatments. On September 28, 2016, he was declared by the company-designated physician fit to work.[33]

Petitioner, thereafter, consulted his physician of choice, Dr. Gaurano, who declared him unfit for sea duty.[34]

On November 10, 2016, petitioner, through counsel, sent a letter to Evelyn, president of Foscon, informing her that he consulted an independent doctor, who found that he was already unfit to resume his work as a seaman. Petitioner likewise signified his willingness to undergo another test or examination to confirm his present disability.[35]

From the established facts, it is clear that petitioner complied with the procedural requirements set forth above. After consulting his own physician, who, contrary to the findings of the company-designated physician, declared him unfit for sea duty, he signified his intention to undergo another test or examination to confirm his present condition. Simply, he informed respondents of his willingness to seek a third doctor. Interestingly, respondents failed to respond to the letter. Thus, petitioner was obliged to file a complaint for disability benefits.

Moreover, it is also settled that once the seafarer notifies his or her employer that he or she intends to refer the conflict to a third doctor, the burden shifts to the employer to complete the process of referral to a third doctor so that, once and for all, the medical assessment of the seafarer will be put to rest.[36]

However, what if the employer refuses to complete the third doctor referral process or ignores the request or demand of the seafarer, such as in the instant case?

Before answering this, We first need to determine what should be the contents or attachments of the written request or demand of the seafarer for a third doctor referral before the employer is obligated to put the process in

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33 *Rollo*, p. 28.
34 CA *rollo*, pp. 56-58.
35 Id. at 59.
36 *Benhur Shipping Corp. v. Riego*, G.R. No. 229179, March 29, 2022.

motion.

The seafarer must signify his intent to refer the conflicting medical findings to a third doctor through writing and attach a copy of the medical report or abstract of his physician, or at the very least indicate its contents therein, to be considered valid

In *Benhur Shipping Corp. v. Riego*[37] (*Benhur*), We ruled that the written request or demand to refer the conflicting medical findings to a third doctor does not need to be accompanied by the medical report or opinion of the seafarer's physician of choice. A mere "statement regarding the seafarer's fitness to work **OR** the disability rating," is sufficient.[38] The reason for such pronouncement is that:

> x x x it was neither stated nor required therein that when the seafarer sends a request for a referral to a third doctor to the employer, the seafarer must mandatorily attach the medical report of his own medical doctor to such request. Notably, it is not the employer who will assess the medical report of the seafarer's chosen physician; rather, it will be the labor tribunals where the complaint for disability benefits is filed that would assess the medical report.[39]

We, however, need to further clarify the *Benhur* ruling on this particular issue.

Benhur dismissed the fact that it was the third doctor, mutually agreed upon by the parties, who would first make an assessment not only on the medical findings of the company-designated physician but also that of the seafarer's physician of choice. Without the medical report or medical abstract on the seafarer's condition, how could the third doctor make an exhaustive assessment of the seafarer's condition and arrive at a final and binding medical conclusion?

Furthermore, without attaching to the written request or demand, or even indicating therein the contents of the medical report or the medical abstract of the seafarer's condition, how could the employer know whether the seafarer was indeed examined by his doctor of choice and that his claim of a contrary finding by his purported doctor has basis? Needless to state, it is not far-fetched that the seafarer may just indicate in his written request or

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37 Id.
38 Id.
39 Id.

demand that his doctor of choice found him unfit for sea duty, which is contrary to the findings of the company-designated physician, just to put the third doctor referral process in motion even though the seafarer was actually not subjected to a medical examination by a doctor of his choice.

Thus, to avoid being abused by the seafarer, there should be a safeguard. Attaching the medical report or medical abstract, or at the very least, indicating in the written request or demand the contents thereof would serve as a deterrent from such abuse. This will further discourage seafarers from simply submitting doubtful, incomplete, and unsupported contrary assessments from his/her doctor of choice. The seafarer would also be compelled to undergo a comprehensive medical examination and treatment in order for his/her doctor to arrive at an exhaustive medical report or abstract.

Finally, it is settled that the company-designated physicians must furnish their assessment to the seafarer concerned; that is to say that the seafarer must be fully and properly informed of his/her medical condition, including inter alia, the results of his/her medical examinations, the treatments extended to him/her, the diagnosis, and prognosis, if needed.[40] Just as the seafarer must be fully informed of the company-designated physician's findings, the employer, in this case, the respondents, has the similar right to be sufficiently informed by the seafarer of the contrary findings of his/her doctor. Hence, the need to attach to the written request or demand the medical report or abstract of the seafarer's doctor.

We, therefore, hold and so rule that only by attaching to the written request or demand the medical report or the medical abstract of his physician or indicating therein the contents thereof, may a seafarer be deemed to have duly and fully disclosed to the employer the contrary assessment of his/her own doctor.

Corollarily, when a seafarer signifies his/her intent to refer the case to a third doctor through a written request or demand, without attaching the required medical report or medical abstract from his/her physician, or at the very least, indicating therein the contents of the medical report, the employer has the option to refuse, or even ignore the written request or demand, without violating the pertinent provision of the POEA-SEC.

In such a case, the tribunals and the courts must follow the general rule that the company-designated doctor's assessment should prevail. However, as held in *Dionio*, when the company-designated physician's findings lack scientific and medical basis, the tribunals and courts may still consider the

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40 *Reyes v. Magsaysay Mitsui Osk Marine, Inc.*, G.R. No, 209756, June 14, 2021.

inherent merits of the respective medical findings of the company-designated physician and the seafarer's doctor of choice.

On the other hand, when a seafarer's written request or demand is accompanied by the medical report or medical abstract of his physician of choice, the employer has no other option but to initiate the third doctor referral process. Simply put, the employer is required to make and send a written reply to the written request or demand acceding thereto and putting into motion the procedure for the referral to a third doctor.

In addition, We deem it necessary to give the employer a certain period, *i.e.*, 10 days upon receipt of the seafarer's written request or demand, to serve a written reply to the seafarer in response to the written request or demand for the immediate resolution of the conflicting assessment of their respective doctors. Although the Labor Code and the POEA-SEC do not expressly grant the Court the power to impose such period, there is a need to prescribe a period to reply to the written request or demand as it is not only reasonable and practical but also in line with the conflict-resolution mechanism under Section 20(A)(3) of the POEA-SEC, which allows the parties to settle disability claims voluntarily at the parties' level more speedily and without delay.

Furthermore, if the employer agrees to refer the seafarer's condition to a third doctor, the parties should be given a specific period to complete the third doctor referral procedure. We are thus, inclined to adopt the directive of the NLRC *En Banc* to its LAs as enunciated in NLRC *En Banc* Resolution No. 008-14,[41] to wit:

> x x x The Commission, in line with its mission to resolve labor disputes involving Seafarers in the fairest, quickest, least expensive and most effective way possible, directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.[42]

Accordingly, after an affirmative response from the employer, the parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment.

In this case, records show that after undergoing a medical examination conducted by his physician of choice (Dr. Gaurano), petitioner, through

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41 November 12, 2014.
42 Id.

counsel, sent a written request[43] to respondents signifying his intention to undergo another test or examination to confirm his present condition. He also attached to the letter the medical report[44] of Dr. Gaurano, where he was found to be unfit for sea duty. By doing so, petitioner duly and fully disclosed to respondents the contrary assessment of his own doctor and tendered his willingness to refer the contradicting medical findings to a third doctor. It is clear, therefore, that petitioner made a valid written request. Notwithstanding, respondents failed to even respond to petitioner's request for a third doctor referral.

We now ask again the question, what happens when the seafarer tenders a valid request to refer the conflicting findings of the company-designated physician and his physician of choice to a third doctor, and the employer refuses to accede to such request?

In such a case, the seafarer acquires the right to validly insist on an assessment different from that made by the company-designated physician and file a complaint against the employer. This was Our pronouncement in the case of *Maersk-Filipinas Crewing, Inc. v. Alferos*,[45] *viz.*:

> The need for the evaluation of the respondent's condition by the third physician arose after his physician declared him unfit for seafaring duties. **He could not initiate his claim for disability solely on that basis. He should have instead set in motion the process of submitting himself to the assessment by the third physician by first serving the notice of his intent to do so on the petitioners. There was no other way to validate his claim but this. Without the notice of intent to refer his case to the third physician, the petitioners could not themselves initiate the referral.** Moreover, such third physician, because he would resolve the conflict between the assessments, must be jointly chosen by the parties thereafter. **Unless the respondent served the notice of his intent, he could not then validly insist on an assessment different from that made by the company-designated physician.** This outcome, which accorded with the procedure expressly set in the POEA-SEC, was unavoidable for him, for, as well explained in *Hernandez v. Magsaysay Maritime Corporation*:
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> > Under Section 20 (A) (3) of the 2010 POEA-SEC, "[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." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-

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43 CA *rollo*, p. 59.
44 Id. at 56-58.
45 850 Phil. 1075 (2019).

> day or 240-day period. **The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician.** 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.[46] (Emphasis supplied, underlining and citations omitted)

Upon the filing of the complaint, however, the parties are given another opportunity to refer the seafarer's condition to a third doctor, whose findings shall be final and binding between the parties.

NLRC En Banc Resolution No. 008-14 requires all LAs, during mandatory conference, to give the parties a chance to secure the services of a third doctor

The NLRC *En Banc* issued Resolution No. 008-14 wherein it directs all LAs, during mandatory conference, to give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.[47]

In this case, upon the filing of the complaint, and during the mandatory conference, the records do not show whether the LA required the parties to institute the third doctor referral procedure. Even if there was such a directive from the LA, it would seem that the parties still failed to refer petitioner's condition to a third doctor which led to a full-blown hearing before the LA.

We, however, deem it necessary to further lay down rules in case where there is a directive from the LA to refer the seafarer's condition to a third doctor, but one of the parties refuses to give heed to such directive. Thus, if the seafarer refuses to comply with the directive of the LA, such refusal should be taken against him/her.

On the other hand, if it is the employer who, despite the LA's directive, refuses to refer the seafarer's condition to a third doctor, such refusal, as well as the employer's failure to respond to the seafarer's valid written request or demand for a third doctor referral should be taken against the employer.

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46 Id. at 1085-1086.

47 NLRC *En Banc* Resolution No. 008-14, November 12, 2014.

The employer's failure to respond to the seafarer's valid request to refer the conflicting medical findings to a third doctor is a violation of the POEA-SEC

The Court, in *Reyes v. Jebsens Maritime, Inc.*[48] (*Reyes*), ruled that in case the employer refuses or ignores the written request or demand of the seafarer for a third doctor referral, the findings of the company-designated physician cannot be automatically deemed conclusive and binding. Instead, the court or tribunals must weigh the inherent merits of the medical findings presented by both sides.[49]

Then came *Benhur*. *Benhur* followed the ruling in *Reyes*. Similar to the *Reyes* case, the employer in *Benhur* refused to initiate referral to third doctor despite an adequate and valid request from the seafarer. The Court then concluded that:

> Indeed, when the employer fails to act on the seafarer's valid request for referral to a third doctor, **the tribunals and courts are empowered to conduct its own assessment to resolve the conflicting medical opinions of the company-designated physician and the seafarer's chosen physician based on the totality of evidence.** The employer simply cannot invoke the conclusiveness of the company-designated physician's medical opinion *vis-à-vis* the seafarer's chosen physician's medical opinion when it is because the employer's own inaction and neglect that the medical assessment was not referred to a third doctor.[50] (Emphasis supplied)

In the more recent case of *Ledesma v. C.F. Sharp Crew Management, Inc.*[51] (*Ledesma*), the Court applied the ruling in *Reyes* and *Benhur*. In that case, the employer again failed to respond despite receipt of the seafarer's demand letter to refer the conflicting medical claims to a third doctor. The Court was, thus, constrained to resolve the conflicting findings as to the seafarer's fitness to resume sea duty, as stated in the final assessment of the company-designated physician and the medical certificate of the seafarer's physician of choice.[52]

It is evident from the decisions of *Reyes*, *Benhur*, and *Ledesma*, that the employer's non-compliance with the conflict-resolution procedure, as mandated by the POEA-SEC, merely gives the tribunals and the courts the power to weigh the conflicting medical assessments of the employer's physician and that of the seafarer. In other words, the rulings in *Reyes*, *Benhur*,

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48 G.R. No. 230502, February 15, 2022.
49 Id.
50 Supra note 36.
51 G.R. No. 241067, October 5, 2022.
52 Id.

and *Ledesma* do not impose sanctions on employers who fail and/or refuse to acquiesce to a valid request for referral to a third doctor by a seafarer. Instead, the employers, who deviate from such mandatory rule are "rewarded."

To recall, in such a case, instead of imposing sanctions on the employer, the tribunal and the courts will just conduct their own assessment to resolve the conflicting medical claims of the parties based on the findings of the parties' respective doctors. Since, more often than not, the employers are in a better position to defend the medical assessment of their physicians before the tribunals and the courts, the tribunals and courts often favor the findings of the employer's doctors. Simply, despite non-compliance with the mandatory rule, the company-designated physician's findings are upheld and the employers are rewarded. The prevailing jurisprudence clearly encourages employers to simply ignore or deny the seafarer's request which will then leave the hapless seafarer with no other option but to institute a complaint against the employer.

This should not be countenanced. This obvious and unfair situation needs to be rectified. There is, likewise, a need to balance the rights and obligations of the seafarer and the employer under the POEA-SEC. This was the essence of the Dissenting Opinion of the Honorable Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) in *Benhur*.

In his Dissenting Opinion, Justice Caguioa explains:

> x x x when the non-compliance with the conflict resolution mechanism is due to the fault of the seafarer, the medical assessment of the company-designated physician is deemed conclusive and binding. However, when the failure to comply is due to the fault of the employer, the medical findings of the seafarer's doctor shall be conclusive and binding against the employer. The courts are obliged to uphold the conclusive and binding findings unless the same are tainted with bias or not supported by medical records or lack scientific basis, in which case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence.[53]

Simply put, Justice Caguioa opines in *Benhur* that because the employer failed to initiate the referral of the physicians' conflicting findings to a third doctor, the employer violated the POEA-SEC; as a consequence, the findings of the seafarer's physician should be upheld and be binding between the parties unless the same are tainted with bias, not supported by medical records, or lack scientific basis. In such a case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence.

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[53] See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Benhur Shipping Corp. v. Riego*, supra note 37.

Justice Caguioa's Dissenting Opinion in *Benhur* is clearly more in line with justice, equity, and the general standard of fairness. It is more consistent with the Court's constitutional mandate to afford full protection to labor. Needless to state, it gives true meaning and wisdom to the provision of the POEA-SEC.

Moreover, Justice Caguioa's position in his Dissenting Opinion would discourage and even forbid employers from ignoring and refusing to acquiesce to the seafarer's valid request to refer the conflicting medical findings to a third doctor. In other words, in order not to incentivize the employer for its failure to respond or assent to the seafarer's valid request for a third doctor referral, the findings of the seafarer's physician of choice should be considered final and binding. An exception to this rule is when the seafarer's physician's findings "are tainted with bias or not supported by medical records or lack scientific basis, in which case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence."[54]

In the present case, to recall, after consulting his own physician, petitioner was declared unfit for sea duty. He signified his intention to undergo another test or examination to confirm his present condition, and attached to his letter to respondents the medical report of Dr. Gaurano. There is, therefore, a valid request on his part to refer the conflicting medical assessments to a third doctor. Interestingly, respondents failed to respond to the letter for reasons unknown. Respondents, therefore, violated the POEA-SEC, specifically Section 20(A), paragraph 3 thereof.

Following the immediately preceding discussion, the medical findings of Dr. Gaurano, petitioner's physician of choice, should be affirmed and be made final and binding between petitioner and respondents. However, after a careful review of the medical report of Dr. Gaurano, We find it bereft of scientific and medical basis.

Dr. Gaurano's medical report on petitioner's condition lacks scientific and medical basis

We cite in verbatim the medical report of Dr. Gaurano, *viz.*:

NOEL C. GAURANO, MD
Internal Medicine • Adult Pulmonology

I. General Information

This is a case of Mr. Teodoro B. Bunayog, 41 y/o male, single, from,

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54 Id.

Mati, Davao Oriental, works as a chief cook for MT Morning Breeze. He has no hypertension, no diabetes, non- asthmatic, non -smoker, and was repatriated to the Philippines due to difficulty in breathing.

II. History of present illness

His condition apparently started about 3 weeks prior to his repatriation as on and off cough accompanied by undocumented fever, chest pain aggravated by deep breathing. He tried observing his symptoms initially but when he started to experience difficulty of breathing and worsening of the other symptoms, he sought consult at a nearby hospital in Japan and was subsequently admitted.

While in a hospital in Japan, it was found out that he has pneumonia but he was eventually repatriated for further work-up and treatment. He was confined at Cardinal Santos where it was found out that he has pleural effusion over his left hemithorax. This was aspirated percutaneously which provided relief of his symptoms. He was later discharged, improved.

III. Pertinent Ancillary Procedures

Chest Ultrasound (Aug. 8, 2016)
Pleural Effusion, Left (1,679 cc
Normal sonogram of the Right Chest.

Chest xray (Aug. 6, 2016)

Pleural effusion, left, no evidence of pneumothorax, partial clearing of the streaky infiltrates in the right paracardiac area, Heart size cannot be properly assessed, aorta is tortuous and calcified. The rest of the study is unchanged.

IV. Justification of Disability

A pleural effusion is an abnormal collection of fluid in the pleural space resulting from excess fluid production or decreased absorption or both.

The normal pleural space contains approximately 1 mL of fluid, representing the balance between (1) hydrostatic and oncotic forces in the visceral and parietal pleural vessels and (2) extensive lymphatic drainage. Pleural effusions result from disruption of this balance.

Pleural effusion is an indicator of an underlying disease process that may be pulmonary or nonpulmonary in origin and may be acute or chronic.

The clinical manifestations of pleural effusion are variable and often are related to the underlying disease process. The most commonly associated symptoms are progressive dyspnea, cough, and pleuritic chest pain, fever and even weight loss.

Imaging techniques to document the presence of pleural effusion include: Chest radiography, ultrasound and Chest CT scans. Once a pleural effusion is identified on imaging, a fluid sample is usually taken to determine the pleural effusion's character and seriousness. In a procedure called thoracentesis, a doctor inserts a needle and a catheter between the ribs, into the pleural space. A small amount of fluid is withdrawn for testing; a large amount can be removed simultaneously to relieve symptoms. The collected fluid is sent to the laboratory for analysis.

There are many causes of pleural effusions. The following is a list of some of the major causes:

Congestive heart failure	Pulmonary Embolism
Kidney failure	Hypoalbuminemia
Infection	Cirrhosis
Malignancy	Trauma

One of the more common causes of pleural effusion due to an infection is Tuberculosis. Pulmonary Tuberculosis statistics according to World Health Organization (WHO) the estimated prevalence of pleural effusion is 320 cases per 100,000 people in third world countries. According to the Department of Health (DOH) the Philippines currently have 250,000 cases of Tuberculosis, as of the year 2010. Pleural effusion accounts to approximately 38% of patients with tuberculosis.

Mr. Bunayog, developed pleural effusion while on board the ship. This was eventually drained out when he went for treatment at Cardinal Santos Medical Center. He is presently still undergoing medical treatment.

Although most cases like that of Mr. Bunayog respond to treatment, radiographic findings such as residual fibrosis, pleural thickening/ reaction, loculated pleural effusions do not usually resolve even in time. The extent and degree of involvement of the lungs determines physical activity and disability.

Mr. Teodoro Bunayog therefore is UNFIT for sea duty.

Sgd.
NOEL C. GAURANO
Lic. No. 70148[55]

The medical certificate of Dr. Gaurano shows that his declaration of petitioner's unfitness for sea duty lacks scientific and medical basis. Dr. Gaurano merely defined what pleural effusion is and how it is detected, and explained the causes for such disease and the treatment therefor. He then concluded that petitioner was unfit for sea duty, without any further explanation.

While Dr. Gaurano enumerated the tests that petitioner underwent while

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55 CA *rollo*, pp. 56-58.

he was under treatment by the company-designated physician, he neither discussed the results of these tests nor correlated such results to his finding that petitioner was already unfit to work as a seafarer. Furthermore, while Dr. Gaurano mentioned that petitioner was still under treatment, he failed to expound on such observation. Was petitioner still under medication? Was he having a hard time to breathe? Clearly, Dr. Gaurano's medical report is vague and inconclusive. Indubitably, Dr. Gaurano's conclusion is without any scientific and medical basis. As such, following Justice Caguioa's dissent in *Benhur*, We are not precluded to review the conflicting findings of respondents' designated physician and petitioner's doctor based on their inherent merit and the totality of the evidence.

Based on the inherent merits of the conflicting medical findings of the company-designated physician and petitioner's doctor and the totality of evidence, the findings of the company-designated physician are more credible

To stress, the records lack competent showing of the extent of the medical treatment that the independent doctor gave to the petitioner. Dr. Gaurano in his undated medical certificate,[56] did not require him to undergo any medical examination prior to issuing the medical certificate declaring him unfit to work. Otherwise stated, his conclusion was based on popular observation and findings of petitioner's responses to treatment, not on a specific study of petitioner's condition and responses to medical treatment.

In contrast, the company-designated physician's extensive medical treatment that enabled him to make a final diagnosis of petitioner's health condition was amply demonstrated. This is summarized by the CA, *viz.*:

> x x x x
>
> Thus, on 6 August 2016, petitioner was referred to a pulmonologist, admitted to the hospital for close monitoring and further work-ups, underwent laboratory exams, chest x-ray, ultrasound, administered with intravenous fluids and medication, and started nebulization.
>
> On 9 August 2016, petitioner underwent thoracentesis and the fluid obtained from his lung cavity was sent to the laboratory for cell block and cytology.
>
> On 11 August 2016, a repeat chest ultrasound was done on petitioner. The company-designated physician noted that on said date, petitioner had no difficulty in breathing.

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56 Id.

> On 14 August 2016, petitioner had a repeat ultrasound done.
>
> On 16 August 2016, he had a repeat thoracentesis and a tuberculosis gene xpert was done. The company-designated physician opined that no mycobacterium tuberculosis was detected. The cytology report of pleural fluid showed chronic inflammatory pattern but it was negative for atypical cells.
>
> On 18 August 2018, he underwent repeat chest ultrasound. Thereafter, the company-designated physician opined that petitioner had no more cough and difficulty of breathing. Thus, he was discharged from the hospital on 19 August 2016.
>
> On 1 September 2016, the company-designated physician opined that after petitioner repeated his chest ultrasound and xray, there was an interval decrease in the left-sided pleural effusion. He was advised to undergo repeat chest ultrasound after 1 month.
>
> On 22 September 2016, petitioner had a repeat chest ultrasound which showed decrease in the amount of pleural effusion on the left, measuring 159cc from the previous 367cc. However, he was not seen by a pulmonologist on that day because he arrived past the clinic hours. He was advised to come back on 26 September 2016.
>
> On 28 September 2016, after petitioner was seen by a pulmonologist and underwent a repeat ultrasound, the company-designated physician opined that petitioner was cleared from a pulmonary standpoint. As such, he was declared fit to work on that day. The final diagnosis was - "Pneumonia with Recurrent Pleural Effusion, Left – Resolved S/P Thoracentesis, Left.
>
> x x x x[57] (Citations omitted)

Corollarily, between the findings of the company-designated physician and that of the petitioner's doctor, We lend more credence to the findings of the company-designated physician considering that it was done in the regular performance of his duties as company physician and it was he who consistently examined and treated petitioner's health condition. We cannot simply brush aside the findings and certification issued as a consequence thereof in the absence of solid proof that it was made with grave abuse of authority on the part of the company-designated physician.

From all the foregoing, respondents' failure to respond to petitioner's valid written request or demand signifying his intention to refer the conflicting medical findings to a third doctor, should be taken against them. We could have confirmed as final and binding Dr. Gaurano's medical findings if not for its lack of medical and scientific basis. This leaves Us nothing but to review the conflicting findings of respondents' designated physician and petitioner's doctor, and decide the case based on their inherent merits and the totality of evidence. This, as above discussed, proved to be favorable to respondents.

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57 *Rollo*, pp. 33-34.

Guidelines in case the seafarer requests for a third doctor referral

As things are, We deem it necessary to lay down rules that would serve as guidelines for future cases.

First, a seafarer who receives a contrary medical finding from his or her doctor must send to the employer, within a reasonable period of time, a written request or demand to refer the conflicting medical findings of the company-designated physician and the seafarer's doctor of choice to a third doctor, to be mutually agreed upon by the parties, and whose findings shall be final and binding between the parties.

Second, the written request must be accompanied by, or at the very least, must indicate the contents of the medical report or medical abstract from his or her doctor, to be considered a valid request. Otherwise, the written request shall be considered invalid and as if none had been requested.

Third, in case where there was no request for a third doctor referral from the seafarer or there was such a request but is deemed invalid, the employer may opt to ignore the request or demand or refuse to assent, either verbal or written, to such request or demand without violating the pertinent provision of the POEA-SEC. Accordingly, if a complaint is subsequently filed by the seafarer against the employer before the labor tribunal, and the parties, after a directive from the LA pursuant to NLRC *En Banc* Resolution No. 008-14,[58] fail to secure the services of a third doctor, the labor tribunals shall hold the findings of the company-designated physician final and binding, unless the same is found to be biased, *i.e.*, lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings shall be considered by the tribunals or court.[59]

If, however, the parties were able to secure the services of a third doctor during mandatory conference, the latter's assessment of the seafarer's medical condition should be considered final and binding.

Fourth, in case of a valid written request from the seafarer for a third doctor referral, the employer must, within 10 days from receipt of the written request or demand, send a written reply stating that the procedure shall be initiated by the employer. After a positive response from the employer, the

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58 The Labor Arbiter shall give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

59 *Dionio v. Trans-Global Maritime Agency, Inc.*, supra note 31 at 421.

parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment. The assessment of the third doctor shall be final and binding.

In case, however, where the parties fail to mutually agree as to the third doctor who will make a reassessment, a complaint for disability benefits may be filed by the seafarer against the employer. The labor tribunals shall then consider and peruse the inherent merits of the respective medical findings of the parties' doctors before making a conclusion as to the condition of the seafarer.

Fifth, if, however, the employer ignores the written request or demand of the seafarer, or sends a written reply to the seafarer refusing to initiate the referral to a third doctor procedure, or sends a written reply giving its assent to the request beyond 10 days from receipt of the written request or demand of the seafarer, the employer is considered in violation of the POEA-SEC. The seafarer may now institute a complaint against his or her employer.

Sixth, upon the filing of the complaint and during the mandatory conference, the LA shall give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.

Seventh, if the services of a third doctor were not secured on account of the employer's refusal to give heed to the LA's request or due to the failure of the parties to mutually agree as to the third doctor who will make a reassessment, the labor tribunals should make conclusive between the parties the findings of the seafarer's physician of choice, unless the same is clearly biased *i.e.*, lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings and the totality of evidence shall be considered by the labor tribunals or courts. This is in conjunction with Our earlier ruling that the employer's failure to respond to the seafarer's valid request or demand for a third doctor referral should be taken against the employer.

If, however, the failure to refer the seafarer's condition to a third doctor after directive from the LA was due to the fault of the seafarer, that is, the seafarer refuses to comply therewith, then the labor tribunals and the courts should make conclusive between the parties the findings of the company-designated physician, subject to the exception in *Dionio*.

Eight, if, despite the employer's failure to respond to the seafarer's valid request or demand to refer his or her condition to a third doctor, the parties,

during mandatory conference, were able to secure the services of a third doctor, and the latter was able to make a reassessment on the seafarer's condition, the third doctor's findings should be final and binding between the parties. In such a case, the employer's refusal to respond to the seafarer's valid request for a third doctor referral should be considered immaterial.

On a final note, consistent with the purpose underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably, and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be carried into effect. Said exhortation, however, cannot be taken to sanction award of disability benefits anchored on flimsy evidence.[60] As exhaustively explained, there is nothing on record that would justify a compensation on top of the monetary aid and assistance already extended to petitioner by respondents.

Furthermore, while it is settled that social legislations, such as the Labor Code, should be liberally construed in favor of those who are in most need—the laborers,[61] the labor tribunals and the courts are still called upon to decide the matter objectively, taking into account the respective rights and obligations of the parties, the totality of evidence the parties were able to proffer during the proceedings, as well as the prevailing jurisprudence pertinent to the case. This was Our pronouncement in the case of *Raza v. Daikoku Electronics Phils., Inc.*,[62] *viz.*:

> While the Court remains invariably committed towards social justice and the protection of the working class from exploitation and unfair treatment, it, nevertheless, recognizes that management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. The aim is always to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, on the other. Indeed, the Court should be ever mindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[63]

All told, We find no reason to overturn the decisions of the LA, NLRC and CA in favor of respondents.

WHEREFORE, in view of the foregoing premises, the instant petition is **DISMISSED**. The Court of Appeals Decision dated February 21, 2020 and the Resolution dated September 16, 2020 in CA-G.R. SP No. 154603, are **AFFIRMED in *toto***.

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60 *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 70 (2011).
61 *Salabe v. Social Security Commission*, G.R. No. 223018, August 27, 2020.
62 765 Phil. 61 (2015).
63 Id. at 87.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

See separate concurring opinion

ALEXANDER G. GESMUNDO
Chief Justice

See separate opinion concurring

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Pls. see concurrence

(On leave)
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

(On leave)
RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice