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G.R. No. 253480 – (TEODORO B. BUNAYOG v. FOSCON SHIPMANAGEMENT, INC., / GREEN MARITIME CO. LTD., / EVELYN M. DEFENSOR).

Promulgated:

April 25, 2023

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CONCURRENCE

LAZARO-JAVIER, *J.*:

The *ponencia* dismissed the present Petition for its alleged failure to prove that petitioner is already unfit to resume his work as chief cook for sea-based employment. The *ponencia* weighed the conflicting medical evidence on record though respondent, as petitioner's seafaring agency, had failed to act on his valid request for referral to a third doctor.

At the outset, the *ponencia* sharply departs from *Benhur Shipping Corporation v. Riego*,[1] penned by no less than our esteemed Chief Justice Alexander G. Gesmundo. There, the Court ruled against the company when it *inexplicably failed to refer to a third doctor* the conflicting findings of its designated doctor and the seafarer's doctor of choice. The Court, through Chief Justice Gesmundo, pronounced that the *referral to a third doctor is a mandatory procedure under Section 20(A)(3) of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC)*, *viz.*:

> Petitioners argue that while **respondent sent a letter of request for a referral to a third doctor**, the said **letter did not include the medical opinion** from respondent's physician, Dr. Magtira. They claim that even in the NLRC, respondent failed to bring his own doctor's report. Thus, **petitioners conclude that respondent had no intention to be referred to a third doctor** from the very beginning. and that the letter of request without his doctor's medical report, was merely an empty compliance.
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> **The argument is unavailing.**

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[1] *Benhur Shipping Corp. v. Riego*, G.R. No. 229179, March 29, 2022 [Per J. Gesmundo, First Division].

Sec. 20(A)(3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment. The said provision states that:

> **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.**

On the other hand, in *Carcedo v. Maine Marine Philippines, Inc.*[2] (Carcedo), the Court stated that:

> **To 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.

Verily, it is the duty of the seafarer to notify his employer that he or she intends to refer the conflict to a third doctor. **Once notified, 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.**

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Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation. In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.

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Pursuant to Carcedo, when the letter-request for referral to a third doctor indicates the seafarer's fitness to work or the disability rating according to his own physician, then the seafarer is deemed to have duly and fully disclosed the contrary assessment of his own doctor, and the seafarer can signify his intention to resolve the conflict through referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties.

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[2] *Id.*, citing *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division].

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The Court finds that the June 11, 2014 and June 25, 2014 Letter-requests of respondent to petitioners were sufficient compliance with Sec. 20(A) (3) of the POEA-SEC. Both letters stated that the chosen medical expert of respondent stated that he was permanently unfit, referring to the seafarer's fitness to work. The June 25, 2014 Letter even expressly stated that the medical opinions of the respective doctors (the company-designated physician and respondent's chosen doctor) differ. As a result, both letters requested that a third medical opinion be considered. These letter-requests of respondent to petitioners constitute as sufficient notification to proceed with the process of referral to the third doctor.

As stated in Carcedo, upon notification, the employer carries the burden of initiating the process for referral to a third doctor commonly agreed on between the parties. However, in this case, upon receipt of the letter-requests from respondent for referral to a third doctor, petitioners did absolutely nothing. **Petitioners simply ignored said letters despite the fact that these documents expressly stated that respondent was declared permanently unfit by his chosen physician, referring to his fitness to work, and that the medical opinions of their respective doctors differ.**

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. . . Here, respondent, as a seafarer, was completely prudent and compliant by sending the letter-requests to petitioners for a referral to a third doctor. **In such rare fashion, respondent indeed paid attention to his obligations under the POEA-SEC by requesting referral to a third doctor before filing a complaint for disability benefits before the LA. He recognized the mandatory procedure regarding the referral to a third doctor in case of conflict between the medical opinions of the company-designated physician and his physician of choice. He even sent two letter-requests to petitioners consistently requesting referral to a third doctor.** This shows the **utmost good faith** of respondent in complying with the POEA-SEC.

Regrettably, petitioners did not reciprocate respondent's good faith-compliance. **Instead, they displayed indifference to the prescribed mandatory rules of the POEA-SEC.** They tried to rationalize their inaction by providing an afterthought excuse that the letter-requests should have contained the medical report of respondent's chosen physician, when the POEA-SEC does not even mandate such requirement. **Accordingly, petitioners' obliviousness to the mandatory procedure of referral to a third doctor must be taken against them.** (Emphases supplied, citations omitted)

To repeat, *Riego* ordained that *referral to the third doctor is a mandatory procedure under Section 20(A)(3) of the POEA-SEC* once the required notification by the seafarer is satisfied. Here, the requirements for a referral to a third doctor were all complied with by Bunayog, thus:

a. **Examined by a Company-designated Physician.** After he was medically repatriated to the Philippines. He was examined by respondent's designated physician who found him fit to resume his sea-based work as chief cook.

b. **Examined by a Second Doctor of his choice.** He sought a second doctor's opinion who concluded that he was unfit to work.

c. **He notified the company of the adverse finding, requested and agreed to the designation of a Third Doctor.** Pursuant to Section 20(A) (3) of the 2010 POEA-SEC, he requested respondent to agree to an examination by a third doctor.

As it was, however, respondent did not reply to nor act in any way on this request. Consequently, applying *Riego,* in the words of Chief Justice Gesmundo *"petitioner's obliviousness to the mandatory procedure of referral to a third doctor must be taken against them."*

Jurisprudence provides that failure of a seafarer to initiate referral often warrants the dismissal of the seafarer's claim for disability benefits as this requirement is mandatory. Conversely, the company's failure to heed the seafarer's request for referral to a third doctor should have an adverse consequence on the company who should be deemed to have agreed to the findings and disability rating of the seafarer's doctor of choice

Riego likewise keenly noted that jurisprudence, in general, decreed the dismissal of the seafarer's disability claims for their failure to initiate a referral to a third doctor:

> Notably, a review of recent jurisprudence show that **most seafarer-disability cases filed before the Court are often dismissed because of the failure of the seafarer to initiate referral to a third doctor, which is a mandatory requirement.** In *Philippine Transmarine Carriers, Inc. v. San Juan*, the Court held that the seafarer was duty-bound to actively request that the disagreement between his physician's findings and that of the findings of the company-designated physician be referred to a final and binding third opinion. Failure to request or refer the conflicting findings to third doctor led to the dismissal of the seafarer's claim for disability benefits. Similarly, in *Idul v. Alster Int'l Shipping Services, Inc.*, it was held

> that the seafarer must actively or expressly request for the referral to a third doctor, which is a mandatory procedure. Failure to comply therewith is considered a breach of the POEA renders the assessment by the company-designated physician binding on the parties.[3]

It follows, therefore, that once initiated, referral to a third doctor becomes mandatory, otherwise it shall be taken against the company, in which case, the findings of the seafarer's doctor become conclusive. *This is consistent with our duty as avowed guardians of the rights of OFWs, our modern-day Filipino heroes.* Otherwise, we fail to afford full protection to labor which our fundamental law so solemnly requires under Section 3,[4] Article XIII on Social Justice and Human Rights of the Constitution.

Section 20(A)(3), POEA-SEC was mandated for a reason and it was not to incentivize a care-free attitude

I agree with the *ponencia* that the Court has the power "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."[5] But in examining the parties' respective medical evidence, We should not lose sight of respondent's refusal to reply to or in any manner act on petitioner's request for a third doctor's medical assessment. *We cannot leave the seafaring agency free to do what it pleases with the seafarer's request. We must not incentivize this care-free attitude towards an otherwise speedier and more efficient process of resolving the issues between them.*

In this regard, I respectfully submit that a seafaring agency which totally ignores a legitimate request from a seafarer for a third doctor's examination and opinion must somehow be penalized for its indifference. The most effective way is to render conclusive the medical findings of the seafarer's doctor, and based thereon, draw the corresponding disability rating.

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3 *Id.*

4 Const., art. XIII, sec. 3 – The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

5 *Supra* note 1.

Thus, I humbly suggest that totally ignoring a seafarer's request for a third doctor's assessment or denying it without any reasonable ground should result in adverse consequence to the seafaring agency. The labor tribunals and the Court of Appeals should be alerted to applying the disputable presumption that "*that evidence willfully suppressed would be adverse if produced.*"

I therefore **CONCUR** only in the result.

AMY C. LAZARO-JAVIER