Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 17, 2020**, *which reads as follows:*

"**G.R. No. 238348 (*Felix T. Bautista v. Marlow Navigation Phils., Inc., Marlow Navigation Netherlands B.V., and Antonio M. Galvez*).** – Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated November 7, 2017 and the Resolution[3] dated March 27, 2018 of the Court of Appeals in CA-G.R. SP No. 142472, awarding partial disability benefits to petitioner Felix Bautista (Bautista) amounting to US$20,896.00.[4]

Facts of the Case

On April 10, 2013, Bautista began working as an able seafarer on board MV Veersedijk for Marlow Navigation Philippines, Inc. and its foreign principal, Marlow Navigation Netherlands B.V. (MARLOW). His employment contract is covered by a collective bargaining agreement (CBA).[5]

On January 7, 2014, Bautista injured his left hand after accidentally getting caught and pulled by a large rope during a mooring operation. He was then brought to a hospital in Valencia, Spain for immediate treatment, where he was recommended for medical repatriation.[6] On January 9, 2014, Bautista was repatriated to the Philippines.[7] The company-designated physicians ordered Bautista's x-ray test, which showed that he was suffering from a "fracture with lateral displacement at [the] base of the metacarpal bone of the second digit."[8]

Bautista underwent medical treatment and a series of physical therapy sessions with the company-designated physician. On the 104th day from

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1 *Rollo*, pp. 37-83.
2 Penned by Associate Justice Sesinando E. Villon, with Associate Justices Manuel M. Barrios and Ma. Luisa C. Quijano-Padilla, concurring; id. at 13-29.
3 Id. at 31-34.
4 Id. at 28-29.
5 Id. at 116.
6 Id. at 14.
7 Id. at 119.
8 Id. at 190.

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repatriation or on April 23, 2014, the company-designated physician issued an interim assessment at Grade 11.[9] While still undergoing medical therapy with the company-designated physicians, Bautista sought for a second opinion from another physician, where he was found "not fit for sea duty."[10]

On July 30, 2014 or the 202nd day from Bautista's repatriation, the company-designated physician issued a disability assessment at Grade 10.[11] It was estimated that Bautista would need to undergo another month of "aggressive" therapy.[12] On August 27, 2014, the company-designated physician stated that Bautista's conditions have reached the "maximum medical improvement."[13] Bautista was found to tolerate at least an eight-pound dumbbell exercised on his left upper extremities.[14]

Bautista then sought a second medical opinion from another physician.[15] In a medical report[16] dated October 18, 2014, Bautista was found by his physician as unfit to resume his duties as a seafarer.[17] Through the help of the labor union, Associated Marine Officer's and Seamen's Union of the Philippines, Bautista appeared before the National Conciliation and Mediation Board presenting the contradicting assessments of the company-designated physician and his physician. The parties agreed to secure the services of a third physician, where Bautista's condition was classified under Disability Grade 9.[18] The medical certificate of the third physician also stated that Bautista's condition is assessed at 80% disability under from the Disability of Arm, Shoulder & Hand (DASH) form. MARLOW refused to pay 80% disability benefits pursuant to the DASH form because it is only the patient's self-assessment of his ability to do certain activities, but MARLOW is amenable to payment of disability benefits at Grade 9 because it was issued following the disability grading in the Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC).[19]

In a Decision[20] dated August 25, 2015, the Panel of Voluntary Arbitrators (VA) awarded payment of permanent and total disability benefits to Bautista. The VA held that when MARLOW issued a Grade 10 assessment, such fact is an admission that the disability caused by the injury is already permanent. The VA held that disabilities with a disability grading from 2 to 14 are partial and permanent. The condition will be "under legal contemplation" permanent and total when the seafarer is incapacitated from performing his usual sea duties for a period of more than 120 or 240 days. It has not been

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9 Id. at 205.
10 Id. at 264.
11 Id. at 206.
12 Id. at 258.
13 Id. at 261.
14 Id.
15 Id. at 16.
16 Id. at 192-193.
17 Id. at 193.
18 Id. at 122.
19 Id. at 122-123.
20 Id. at 399-408.

shown that Bautista was able to resume his seafaring duties in said period. As a result, his disability was deemed permanent and total. He was awarded US$80,000.00 in accordance with the CBA. He was also awarded US$2,348.00 as sickness allowance. Although the company presented wages account receipts, the VA held that there was no way to identify if said documents were Bautista's pay during the medical treatment. Ten percent of the money award was also given to Bautista as attorney's fees. As to the assessment of the third physician, the VA held that the third physician did not conduct an independent and unbiased examination and evaluation of a seafarer's actual physical condition because the assessment was based on the patient's perception.[21]

Section 7, Rule VII of the Revised Guidelines on the Conduct of Voluntary Arbitration Proceedings of the NCMB prohibits the filing of a motion for reconsideration to the award or decision of the VA. For this reason, MARLOW filed a Petition for Review[22] under Rule 43 of the Rules of Court with the CA. In a Decision[23] dated November 7, 2017, the CA modified the VA's decision awarding partial disability benefits corresponding to the Grade 9 disability assessment issued by the third physician. Following Article 22.4.2[24] of the CBA, the third doctor's decision shall be final and binding on both parties. Thus, instead of US$80,000.00, Bautista is awarded US$20,896.00 in accordance with the Grade 9 disability rating under the CBA. The CA deleted the award of sickness allowance finding that MARLOW presented proof of payment to Bautista. The award of attorney's fees was also deleted because there was no proof of unlawful withholding from Bautista's wages. In fact, payment of sickness allowance and wages during Bautista's medical treatment was duly proven.[25]

On reconsideration, Bautista argues that MARLOW filed its Petition for Review beyond the reglementary period. Bautista argues that it has been settled that the award or decision of the VA shall be appealed with the CA within 10 days. Otherwise, the decision of the VA will be final and executory. Bautista points out that MARLOW, in its petition, manifests filing of its pleading five days after the 10-day reglementary period, without a reasonable explanation for the late filing.[26]

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21 Id. at 403-408.
22 Id. at 413-461.
23 Id. at 13-29.
24 Id. at 170.
Art. 22. LIFE/DISABILITY INSURANCE, WELFARE MUTUAL BENEFIT PLAN (WMBO)
x x x x
22.4.2. If a doctor appointed by the officer or rating and [Associated Marine Officer's and Seamen's Union of the Philippines] disagrees with the assessment, a third doctor may be agreed jointly between the COMPANY, the officer or rating and [Associated Marine Officer's and Seamen's Union of the Philippines]. The third doctor's decision shall be final and binding on both parties.
x x x x
25 *Rollo*, pp. 24-29.
26 Id. at 587-599.

In a Resolution[27] dated March 27, 2018, the CA held that judgements or final orders of the VA which are declared final are not exempt from judicial review when so warranted, as in this case. The CA found that the VA gravely abused their discretion, which warrants the exercise of the CA's appellate jurisdiction.[28] The CA also ordered Bautista to return the excess amount that he received from the execution of the arbitrators' decision.[29]

Bautista filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. He restates that MARLOW filed its Petition for Review with the CA beyond the reglementary period of 10 days. For failure of MARLOW to follow the rules, the decision of the VA already attained finality. Even if the petition for review filed with the CA was timely filed, the same should have still been dismissed on the merits. Contrary to the findings of the CA, Bautista's injury is permanent and total. His inability to substantially do all material acts to perform his occupation without serious discomfort or pain may be construed as total and permanent disability. Further, a comparison of the assessments issued by the company doctor, his physician, and the third physician consistently shows that he was suffering from weakness in grip. Clearly, there is an inability to perform his previous tasks. Disability grading is not the sole basis for determining the seafarer's rights in the event of work-related injury. The injuries or disabilities with a disability grading from 2 to 14, are considered partial and permanent. If one is incapacitated to perform his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.[30]

MARLOW, on the other hand, admits to the late filing of the petition with the CA, but argues that the rules regarding the reglementary period "should be harmonized in order not to cause injustice between the parties."[31] MARLOW argues that a decision can become final and executory and even fully executed prior to the filing of an available remedy provided under the rules. By way of example, MARLOW emphasizes that the decision of the National Labor Relations Commission becomes final and executory after 10 days. Yet, parties are sanctioned under Rule 65 of the Rules Court to file a petition for *certiorari* within 60 days from receipt of the decision, or final order. In the same way, the fact that the decision of the VA becomes final and executory within 10 days in accordance with the Labor Code, will not prevent a party to file an appeal under Rule 43 of the Rules of Court within 15 days after receipt of the decision or final order. Moreover, judicial review is warranted in this case because Bautista is not entitled to full disability benefits. The assessment of Grade 9 by the third physician was properly upheld by the CA. The POEA-SEC and the CBA explicitly provide that the findings of the third doctor, chosen by the parties, shall be final and binding.

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27 Id. at 31-34.
28 Id. at 32-33.
29 Id. at 33.
30 Id.
31 Id. at 663.

Bautista's incapacity to perform his usual sea duties for a period of more than 120 or 240 days has no bearing on the amount of benefits to which he is entitled. It is only after the lapse of the 240 days of treatment that a seafarer can be considered as permanently disabled, if the company-designated physician failed to make or issue an assessment or disability grading. Here, Bautista was issued a final disability assessment of Grade 10 on July 30, 2014 or 202 days from his repatriation, which is still within the 240-day period of medical treatment. Finally, MARLOW argues that it has sufficiently proven payment of accrued salaries, including sickness allowances to Bautista.[32]

Ruling of the Court

Article 262-A[33] (renumbered as Article 276) of the Labor Code provides that the award or decision of the VA or Panel of VA shall be final and executory after 10 calendar days from receipt of the copy of the award or decision by the parties. An appeal under Rule 43[34] of the Rules of Court may be filed to reverse or modify the VA's or panel of VA's decision or award. Section 4[35] of the same rule provides for a 15-day reglementary period for filing an appeal. In this case, Marlow argues that it had timely filed its Petition for Review with the VA within the 15-day period under Rule 43 of the Rules of Court.

We cannot agree.

The VA's decision or award must be appealed to the CA within 10 calendar days from receipt of the decision as provided in the Labor Code.[36] To settle the conflict between which period, under the Rules of Court or the Labor Code, to follow in filing an appeal to reverse or modify the voluntary arbitrator's decision or award, We ruled in the case of *NYK-FIL Ship Management, Incorporated v. Dabu*[37] that:

> Despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's decision must be appealed before the Court of Appeals within 10 calendar

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32 Id. at 640-666.

33 Art. 276. [262-A] Procedures. x xx The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

34 Sec. 1. Scope. This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, **and voluntary arbitrators authorized by law**. (Emphasis supplied)

35 Sec. 4. Period of appeal. The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication x x x

36 See *Philippine Electric Corporation (PHILEC) v. Court of Appeals*, 749 Phil. 686 (2014).

37 818 Phil. 214 (2017).

> days from receipt of the decision as provided in the Labor Code.
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> Appeal is a "statutory privilege," which may be exercised "only in the manner and in accordance with the provisions of the law." "Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional so that failure to do so rendered the decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal."
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> We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators. Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.
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> Furthermore, under Article VIII, Section 5(5) of the Constitution, this court "shall not diminish, increase, or modify substantive rights" in promulgating rules of procedure in courts. The 10-day period to appeal under the Labor Code being a substantive right, this period cannot be diminished, increased, or modified through the Rules of Court.
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> In *Shioji v. Harvey*, this court held that the "rules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law." Rules of Court are "subordinate to the statute." In case of conflict between the law and the Rules of Court, "the statute will prevail."
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> The rule, therefore, is that a Voluntary Arbitrator's award or decision shall be appealed before the Court of Appeals within 10 days from receipt of the award or decision. x x x[38] (Citations and emphasis omitted)

MARLOW, in its petition with the CA, stated that it received the VA's decision on September 21, 2015 and had 15 days from said date, or until October 6, 2015 to file its petition.[39] However, and as discussed above, what is governing is the reglementary period of 10 days under the Labor Code. Therefore, MARLOW only had until October 1, 2015 to file the Petition for Review under Rule 43 of the Rules of Court. On record, the Petition for Review filed with the CA was dated October 5, 2015.[40] Notably, appended to

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38 Id. at 221-222.
39 *Rollo*, p. 418.
40 Id. at 455.

the petition was an Affidavit of Service dated October 6, 2015 for the NCMB and counsel of Bautista.[41] As proof of service is required in filing a Petition for Review under Rule 43 of the Rules of Court.[42] We conclude that the petition was filed with the CA on October 6, 2015 in view of the appended proof of service or Affidavit of Service dated October 6, 2015. Clearly, the petition was filed beyond the 10-day reglementary period. MARLOW did not present any proof or allegation that would show otherwise. Hence, the Decision[43] dated August 25, 2015 of the Panel of VA has attained finality for failure of MARLOW to timely file its Petition for Review with the CA.

MARLOW argues that while the VA's decision becomes final and executory in 10 days, an appeal under Rule 43 of the Rules of Court can still be availed similar to a Petition for *Certiorari* under Rule 65. This is erroneous as the two remedies are entirely different in nature and cannot be likened with each other.

To reiterate, an appeal is a statutory privilege. "The perfection of an appeal **within the reglementary period is not only mandatory but also jurisdictional so that failure to do so rendered the decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal.**"[44]

A Petition for *Certiorari* under Rule 65, on the other hand, is an extraordinary remedy, a special civil action "adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction."[45] **It cannot be a substitute for an appeal under Rule 43, even if the latter petition cites grave abuse of discretion.**

As discussed, an appeal under Rule 43 of the Rules of Court is the proper recourse to reverse or modify the decision of the VA's decision or award. The reglementary period of 10 days provided under the Labor Code is mandatory and jurisdictional. Further, failure to observe the period will render the decision final and executory.

Since the timely perfection of an appeal is jurisdictional, the CA should have dismissed the Petition for Review under Rule 43 of the Rules of Court filed by MARLOW because it no longer had any appellate jurisdiction to alter or nullify the decision of the VA. The decision of the VA attained finality and the same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or

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41 Id. at 461.

42 Section 5. Rule 43. How appeal taken. – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. x x x

43 *Rollo*, pp. 398-408.

44 Supra note 35 at 709; emphasis supplied.

45 Id.

law, and whether made by the highest court of the land.[46] The doctrine of finality of judgment is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.[47] Corollary, other issues raised need not be discussed.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated November 7, 2017 and the Resolution dated March 27, 2018 of the Court of Appeals in C.A.-G.R. SP No. 142472 are hereby **SET ASIDE**. The Decision dated August 25, 2015 of the Panel of Voluntary Arbitrators is **REINSTATED**.

SO ORDERED."

Very truly yours,

Misael DC Battung
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Division Clerk of Court
GER
10/21/20

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46 *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers, Philippines, Inc.*, 502 Phil. 748, 758 (2005).

47 Id. at 755.