



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NEW FILIPINO MARITIME
AGENCIES INC., ST. PAUL
MARITIME CORP., and
ANGELINA T. RIVERA,

Petitioners,

- versus -

G.R. No. 209201

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

MICHAEL D.
DESPABELADERAS,

Respondent.

Promulgated:

NOV 19 2014

[Signature]

X ----- X

DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 30, 2013 Decision¹ and the September 19, 2013 Resolution² of the Court of Appeals (CA), in CA G.R. SP. No. 120693, entitled “*Michael D. Despabeladeras v. National Labor Relations Commission (2nd Division), New Filipino Maritime Agencies Inc., St. Paul Maritime Corp., and Ms. Angelina T. Rivera*,” a case for disability compensation and other claims.

¹ Penned by Associate Justice Socorro B. Inting with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez, concurring. *Rollo*, pp. 65-76.

² *Id.* at 79-80.

The Facts

Respondent Michael D. Despabeladeras (*Michael*) was hired by petitioner New Filipino Maritime Agencies Inc., for and in behalf of its principal, St. Paul Maritime Corp. (*petitioners*), as Wiper to work on board the vessel M/V “ATHENS HIGHWAY” for a period of nine (9) months, with a basic monthly salary of US\$415.00.³

Prior to embarkation, Michael underwent the required Pre-Employment Medical Examination (*PEME*) and was declared “Fit for Sea Service” by the company doctor.

On April 26, 2009, Michael joined the assigned vessel.

On August 20, 2009, while going down the stairs of the vessel to get some tools to be used for dismantling the engine’s piston, Michael slipped and fractured his left hand.

A few days after the incident, Michael experienced severe pain and swelling in his left wrist. He was brought to the nearest hospital in Brunswick, Georgia, where he was diagnosed with “Ulna Styloid Fracture, Left Wrist.”⁴

On August 28, 2009,⁵ Michael was repatriated to the Philippines for better medical treatment and management. Upon arrival in Manila on August 31, 2009,⁶ he was referred to the company-designated physician, Dr. Nicomedes G. Cruz (*Dr. Cruz*). Later on, Dr. Cruz endorsed Michael to an orthopedic surgeon. Michael’s medical treatment was supervised by Dr. Cruz from August 2009 until February 10, 2010. Despite continuous treatment under the care of Dr. Cruz, Michael alleged that his medical condition did not improve. This prompted him to consult another physician, Dr. Rogelio C. Catapang, Jr. (*Dr. Catapang*), who declared him unfit to resume his duties as a seaman on January 16, 2010.⁷

³ Id. at 66.

⁴ Id.

⁵ Id.

⁶ Id. at 37.

⁷ Id. at 67.

Michael's check-up with the orthopedic surgeon on February 3, 2010 showed minimal pain on the left hand, but he was advised to continue with his medical therapy. Michael went back for his check-up on February 10, 2010, and he was asked to return for a follow-up check up on February 17, 2010. He failed to return on the said date.⁸ Instead, he demanded that he be paid disability benefits.

After his demand for payment of disability benefits was refused, Michael filed a complaint for disability compensation and other monetary claims before the National Labor Relations Commission (*NLRC*).

On September 9, 2010, the Labor Arbiter (*LA*) ruled in favor of Michael and awarded his claim for permanent total disability benefits under the CBA. The *LA* found Michael entitled to the award as he was unable to perform his customary job for more than 120 days due to the injury sustained while performing his duty on board petitioners' vessel. The *LA* concluded that Michael did not abandon medical treatment and could not be faulted for not returning to the company-designated physician who failed to assess him of rightful disability grading after treatment of more than five months. The *fallo* of the *LA* decision, docketed as *NLRC* Case No. (M) 01-00595-10, reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering Respondents to pay complainant the amount of US\$89,100.00 representing his permanent total disability benefit, plus 10% of the said amount as and by way of attorney's fees.

SO ORDERED.⁹

On appeal, the *NLRC* *reversed* the *LA* decision, reasoning out that there was no positive proof warranting the award of disability benefits because there was no assessment of any disability grading by Dr. Cruz. It did not give credence to the medical report of Dr. Catapang because it was issued after a single medical consultation and did not indicate the kind of examination conducted to accurately assess his medical condition. Moreover, the *NLRC* found that Michael did not complete his medical treatment in violation of the post-medical treatment provision in the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). The *NLRC* disposed:

⁸ Id. at 38.

⁹ Id. at 122.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed Decision dated September 9, 2010, is hereby **REVERSED** and **SET ASIDE** and a new one is being entered dismissing the complaint for lack of merit.

SO ORDERED.¹⁰

Michael filed a motion for reconsideration but it was denied by the NLRC. Thereafter, Michael filed a petition with the CA.

In its May 30, 2013 Decision, the CA reversed the NLRC and sustained the LA award of permanent total disability benefits. The CA applied the 120-day Presumptive Disability Rule. It took note of the fact that Michael had exceeded the period within which he was initially considered on temporary total disability. The CA brushed aside the conclusion of the NLRC that the award of disability benefits was unjustified in the absence of disability grading. It stated that the absence of any grading at the onset of Michael's disability or absence of any assessment by Dr. Cruz that he was still unfit to work was of no moment, as disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. The CA cited the case of *Palisoc v. Easways Marine, Inc.*,¹¹ where even in the absence of an official finding by the company-designated physician that the seafarer suffered a disability and was unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he was unable to work for more than 120 days. It added that what clearly determined the seafarer's entitlement to permanent disability benefits was his inability to work for more than 120 days. It emphasized that in *Valenzona v. Fair Shipping Corporation (Valenzona)*,¹² the seafarer's disability was still considered permanent and total despite declaration by the company-designated physician of the seafarer's fitness to work as such declaration was made belatedly, that is, more than 120 days after repatriation. The decretal portion of the CA decision reads:

WHEREFORE, in the light of the foregoing, the instant petition is **GRANTED**. The *Decision* dated 31 March 2011 of the National Labor Relations Commission (NLRC) and its Resolution dated 31 May 2011 are hereby **REVERSED** and **SET ASIDE**. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US\$ 89,100.00 or its peso equivalent at the time of actual payment; and b) attorney's fees of

¹⁰ Id. at 109.

¹¹ 559 Phil. 348 (2007).

¹² G.R. No. 176884, October 19, 2011, 659 SCRA 642.

ten percent (10%) of the total monetary award or its peso equivalent at the time of actual payment.

SO ORDERED.¹³

Petitioners moved for a reconsideration of the said decision, but their motion was denied by the CA in its Resolution, dated September 19, 2013.

Hence, petitioners filed this petition anchored on the following

ERRORS:

I.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN APPLYING THE 120 DAYS RULE DESPITE JURISPRUDENCE ABANDONING THE SAME.

II.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN DISREGARDING THE UNDISPUTED FACT THAT THE COMPANY-DESIGNATED PHYSICIAN WAS RESTRAINED FROM ISSUING ASSESSMENT DUE TO RESPONDENT'S MEDICAL ABANDONMENT.

III.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN DEVIATING FROM THE RULING OF THIS HONORABLE COURT IN C.F. SHARP CREW MANAGEMENT, INC. VS. TAOK.¹⁴

The sole issue to be resolved is whether Michael was entitled to disability benefits for failure to perform his pre-injury duties as seaman for more than 120 days.

Petitioners contend that the 120-day rule applied by the CA as basis for granting Michael's permanent total disability benefits was already abandoned and no longer controlling. In support of their position, petitioners cited the cases of *PHILASIA Shipping Agency Corporation, Inc. v. Tomacruz*,¹⁵ citing *Vergara v. Hammonia Maritime Services, Inc.(Vergara)*,¹⁶ and *Santiago v. Pacbasin Shipmanagement*,

¹³ Id. at 76.

¹⁴ *Rollo*, p. 39.

¹⁵ G.R. No. 181180, August 15, 2012, 678 SCRA 503.

¹⁶ *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895 (2008).

Inc.(Pacbasin),¹⁷ where it was clarified that the temporary total disability period of 120 days may be extended up to a maximum of 240 days. Thus, petitioners claim that the seafarer's cause of action arises only after the lapse of a maximum 240-day period.

Petitioners add that Michael's failure to complete his medical treatment with Dr. Cruz prevented the latter from issuing a final assessment of his disability, and thus, caused him to lose his right to be entitled to disability compensation. Petitioners relied on the case of *Magsaysay Maritime Corporation v. National Labor Relations Commission*,¹⁸ where it was held that abandonment by a seafarer of his medical treatment with the company-designated physician resulted in the denial of his disability claim.

There being no medical evidence to prove that he was suffering from disability, petitioners argued that Michael had no cause of action at the time he filed his complaint.

Petitioners assert that the award of attorney's fees was without basis. According to them, even if a claimant was compelled to litigate or to incur expenses to protect his rights, attorney's fees may still not be awarded in the absence of a clear showing of bad faith.

Respondent's Position

In his Comment,¹⁹ Michael counters that the 120-day period in *Valenzona*²⁰ applies to him. He asserts what determines a seafarer's permanent disability is his inability to resume his customary work for a period of 120 days, notwithstanding any fit-to-work declaration or impediment rating issued by the company-designated physician, as has been fortified in the recent cases of *Wallem Maritime Services, Inc. v. Tanawan (Wallem Maritime Services)*,²¹ and *Kestrel Shipping Co., Inc. v. Munar (Kestrel Shipping)*.²² Michael adds that petitioners' reliance on the *Vergara* and *Pacbasin* cases, among others, was misplaced.

Michael claims that his failure to return for treatment could not be considered an abandonment that would warrant the forfeiture of his right to disability claims. According to him, the failure of Dr. Cruz to render an assessment of his fitness to work or permanent disability within the period of

¹⁷ G.R. No. 194677, April 18, 2012, 670 SCRA 271.

¹⁸ G.R. No. 191903, June 19, 2013, 699 SCRA 197.

¹⁹ Dated January 30, 2014. *Rollo*, pp. 132-154.

²⁰ *Supra* note 13.

²¹ G.R. No. 160444, August 29, 2012, 679 SCRA 255.

²² G.R. No. 198501, January 30, 2013, 689 SCRA 795.

120 days with his medical condition remained unresolved, made him totally and permanently disabled. In his case, the 120th day fell on December 26, 2009, which he counted from the time he was repatriated on August 28, 2009. He explains that his failure to report to the company doctor on February 17, 2010, was already beyond the 120-day period. There is, therefore, no abandonment as he was already deemed permanently and totally disabled. He contends that it is the failure to observe the mandatory 3-day reporting requirement under Section 20-B of the POEA-SEC that can result to a forfeiture of the right to claim the said benefits.

Michael further argues that he is entitled to attorney's fees because petitioners refused in bad faith to acknowledge their accountability both under their contract and the law, compelling him to litigate.

Reply of Petitioners

Petitioners, in their Reply,²³ reiterate that the 120-day rule was already modified pursuant to the Court's pronouncement in *Vergara* that the rule should be applied depending on the circumstances of the case. In Michael's case, the 120-day rule lost its significance when he refused to undergo further treatment under Dr. Cruz, thereby violating the procedure under the POEA-SEC. Michael's claim for disability benefits must, therefore, fail.

The Court's Ruling

The Court finds merit in the petition.

The CA's conclusion that Michael was entitled to permanent total disability benefits on the basis of his inability to perform his sea duties for more than 120 days cannot be justified under the prevailing circumstances. The 120-day rule, as aptly posited by petitioners, has already been clarified in *Vergara* where it was declared that the 120-day rule could not simply be applied as a general rule for all cases and in all contexts. In other words, it cannot be used as a cure-all formula for all maritime compensation cases. Vergara's application depends on the circumstances of the case, especially the parties' compliance with their contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.²⁴

In this regard, the Court quotes with approval the ruling of the NLRC, thus:

²³ Dated April 30, 2014. *Rollo*, pp. 161-169.

²⁴ *Splash Philippines, Inc. v. Ruizo*, G.R. No. 193628, March 19, 2014.

Anent the period of medical treatment, We are not oblivious of the 120 days principle cited by the Labor Arbiter in the Decision; however, the particular circumstances of this case merit different approach.

The records firmly established that complainant was diagnosed of "Ulna Styloid Fracture," commonly known as wrist fracture and as a definitive medical treatment, he underwent physical therapy sessions. We are convincingly swayed that such injury requires medical treatment for a period more than 120 days. Thus, to our mind, the ruling in *Vergara vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*, G.R. No. 172933, October 6, 2008, extending the period of treatment to 240 days is more prudent and apropos in this case. Short-changing complainant's medical treatment to mere 120 days will be depriving him of realistic cure, which the POEA SEC envisioned in requiring mandatory post-employment medical examinations.²⁵ [Underscoring supplied]

In the recent case of *Magsaysay Maritime Corporation v. National Labor Relations Commission*,²⁶ the Court also referred to, and applied, the ruling in *Vergara*, viz:

xxx. The law in this jurisdiction must be determined in the context of the disagreement on [seafarer's] claim between the foreign employer, represented by the manning agency, and [the seafarer] whose employment relationship is governed by the POEA-SEC and supplemented by the parties' CBA. As explained in *Vergara*, under Section 31 of the POEA-SEC, in case of any unresolved dispute, claim or grievance arising out of or in connection with the contract, the matter shall be governed by Philippine laws, as well as international conventions, treaties and covenants where the Philippines is a signatory.

This signifies that the terms agreed upon by the parties pursuant to the POEA-SEC are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance. Article 192(3) of the Labor Code which deals with the period of disability states that:

²⁵ *Rollo*, pp. 108-109.

²⁶ *Supra* note 18.

The following disabilities shall be deemed total and permanent:

1. Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

The rule adverted to is Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which provides:

Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

The above provisions must be read together with Section 20(B)(3) of the POEA-SEC which states as follows:

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.

The Vergara ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus –

The seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. (Underscoring supplied)

As recited earlier, upon Michael's return to the country, he underwent medical treatment in accordance with the terms of the POEA SEC. Upon his repatriation on August 28, 2009, he was given medical attention supervised by Dr. Cruz, the company-designated physician. He was later on endorsed to an orthopedic surgeon. The company-designated specialist recommended that he continue with his physical therapy sessions. During his visit on February 10, 2010, he was required to return for a follow-up checkup on February 17, 2010. For unknown reasons, he failed to return on the said date.

It should be noted that on February 10, 2010 when Michael last visited the company-designated orthopedic surgeon, it had been 166 days since he was referred to the company-designated physician upon his repatriation on August 28, 2009. During this time, Michael was under *temporary total disability* inasmuch as the 240-day period provided under the aforecited Rules had not yet lapsed. The CA, therefore, erred when it ruled that Michael's disability was permanent and total.

The CA even cited one of the instances enumerated in the case of *C.F. Sharp Crew Management, Inc. v. Taok (C.F. Sharp Crew Management)*²⁷ when a seafarer may be allowed to pursue an action for permanent disability benefits. In the said case, the failure of the company-designated physician to issue a declaration as to a seafarer's fitness to engage in sea duty or disability even after the lapse of the 120-day period with no indication that further medical treatment would address his temporary total disability justified an extension of the period to 240 days. The citation, however, finds no application in this case, where the company-designated physician cannot be faulted for not issuing disability assessment or fit-to-work declaration. At that time, which was within the 240-day period, Michael was still undergoing treatment by the company doctors. The orthopedic surgeon noted that Michael's fracture was healing and there was greater probability of a fit for work declaration. After the lapse of 120 days, the treatment period was considered extended as Michael was advised to continue medical therapy to improve his condition to which he agreed. There was, thus, an indication that further therapy sessions would address his temporary disability. He was expected to return for his therapy session, but he failed to do so. Clearly, under the circumstances, the 240-day extension period was justified.

²⁷ G.R. No. 193679, July 18, 2012, 677 SCRA 296.

There being no assessment, Michael's condition cannot be considered a permanent total disability. Temporary total disability only becomes permanent when declared by the company physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or permanent disability.²⁸

Michael cannot validly invoke the cases of *Valenzona*, *Wallem Maritime Services* and *Kestrel Shipping* to support his claim for permanent total disability claims. A perusal of the said cases reveals that they relied on, and applied, *Crystal Shipping, Inc. v. Natividad (Crystal Shipping)*.²⁹ The Court had already resolved the seeming conflict between *Crystal Shipping* and *Vergara* in this wise:

x x x This declaration of permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.

Crystal Shipping was a case where the seafarer was completely unable to work for three years and was indisputably unfit for sea duty "due to respondent's need for regular medical check-up and treatment which would not be available if he were at sea." While the case was not clear on how the initial 120-day and the subsequent temporary total disability period operated, what appears clear is that the disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability was called for, fully in accordance with the operation of the period for entitlement that we described above.³⁰

Furthermore, in the case of *Kestrel Shipping*, when the seafarer filed his claim for total and permanent disability benefits, more than 120 days had gone by and the prevailing rule then was that enunciated by this Court in *Crystal Shipping*, that total and permanent disability referred to the seafarer's incapacity to perform his customary sea duties for more than 120 days. In *Kestrel Shipping*, the Court explained, thus:

²⁸ *Splash Philippines, Inc. v. Ruizo*, G.R. No. 193628, March 19, 2014, citing *Vergara v. Hammonia Maritime Services, Inc.*, supra note 16, at 913.

²⁹ 510 Phil. 332 (2005).

³⁰ *Santiago v. Pacbasin Shipmanagement*, supra note 17, at 282, citing *Vergara v. Hammonia Maritime Services, Inc.*, supra note 16, at 915-916.

This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on Crystal Shipping such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.

Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that *Vergara* should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.³¹

On the issue of abandonment, the Court agrees with petitioners' stance that Michael was indeed guilty of medical abandonment for his failure to complete his treatment even before the lapse of the 240 days period. Due to his willful discontinuance of medical treatment with Dr. Cruz, the latter could not declare him fit to work or assess his disability.

Michael's claim that requiring him to await the medical assessment of Dr. Cruz would mean that his fate would unduly rest in the hands of the company doctor does not persuade. Worthy of note is that the company-designated physician is mandated under the law to issue a medical assessment within 240 days from the seafarer's repatriation. It is, therefore, incorrect to conclude that a seafarer is at the mercy of the company doctor.

Thus, without any disability assessment from Dr. Cruz, Michael's claim for disability compensation cannot prosper. Section 20(D) of the POEA-SEC instructs that no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional **breach of his duties**. Michael was duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability grading. It is undisputed that Michael did not undergo further treatment. As held in *Splash Philippines*,

³¹ *Kestrel Shipping Co., Inc. v. Munar*, supra note 22, at 817-818.

Inc. v. Ruizo,³² under the POEA-SEC, such a refusal negated the payment of disability benefits.

Michael's breach of his duties under the POEA-SEC was aggravated by the fact he filed his complaint for permanent total disability benefits while he was under the care of the company-designated specialist and without waiting for the latter's assessment of his condition. Also, he consulted with Dr. Catapang, who was not a designated company physician, and who declared him permanently disabled to resume his sea duty. The facts of this case, however, show that while he was under the medical treatment of the company orthopedic surgeon, his condition had been gradually improving. In fact, as per medical report, dated February 3, 2010, his range of motion was full and his left hand had good hand grip.³³ Furthermore, based on the company-designated physician's medical opinion that had Michael appeared at the scheduled medical consultation, he would have been declared fit to work as a seafarer.

The following facts must be noted: that Michael filed his complaint while Dr. Cruz had not yet determined the nature and extent of his disability; that he was still undergoing therapy and his injury had not yet been fully addressed; and that the 240-day period had not yet lapsed. Considering these circumstances, petitioners correctly argued that the filing of Michael's complaint was *premature*. No cause of action for total and permanent disability benefits had yet accrued.

Michael filed his complaint on January 12, 2010 and that he was able to secure a medical certificate from Dr. Catapang on January 16, 2010.³⁴ Such medical certificate was useless and did not provide Michael with a cause of action to go after petitioners. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that there is already a certification by the company-designated physician as to his fitness or disability which he finds disagreeable. Under the same provision, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings.³⁵ In this case, to repeat, Michael deprived the company-designated physician to determine his fitness for sea duty when he chose not to appear for his scheduled check-up.

³² Supra note 24.

³³ *Rollo*, p. 107.

³⁴ Id. at 35.

³⁵ *C.F. Sharp Crew Management v. Taok*, supra note 27, at 316.

The failure of Michael to observe the procedure under the POEA SEC provided a sufficient ground for the denial of his claim for permanent total disability benefits. Considering, however, that he was still under treatment by the company doctors even after the lapse of 120 days but within the 240-day extended period allowed by the rules, he remained to be under temporary total disability and entitled to temporary total disability benefits under the same rules.³⁶

Stated differently, as Michael still needed medical treatment beyond the initial 120 days from his repatriation which lasted for 166 days, he is entitled under the rules³⁷ to the income benefit for temporary total disability during the extended period or for one hundred sixty-six (166) days. This is computed from Michael's repatriation on August 28, 2009 until February 10, 2010 when he last visited the company-designated orthopedic surgeon.

WHEREFORE, the petition is **GRANTED**. The assailed May 30, 2013 Decision and the September 19, 2013 Resolution of the Court of Appeals, in CA-G.R. SP No. 120693, awarding permanent total disability benefits to Michael D. Despabeladeras are **REVERSED** and **SET ASIDE**. Petitioners New Filipino Maritime Agencies Inc. and St. Paul Maritime Corporation are **ORDERED**, jointly and severally, to pay Michael D. Despabeladeras income benefit for one hundred sixty-six (166) days.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³⁶ *Magsaysay Maritime Corporation and/or Westfal-Larsen and Co. v. National Labor Relations Commission*, supra note 18 at 214.

³⁷ *Id.*, citing Rules and Regulations implementing Book IV of the Labor Code, Section 2, Rule X.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



MARVIC M.V.F. LEONEN

Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



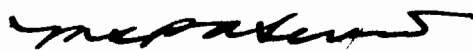
ANTONIO T. CARPIO

Associate Justice

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice