Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

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| **DOEHLE-PHILMAN MANNING AGENCY, INC., DOEHLE (IOM) LIMITED,[1] and CAPT. MANOLO T. GACUTAN,** | **G.R. No. 207507** |
| Petitioners, | Present: |
| | PERLAS-BERNABE, *S.A.J.*, *Chairperson*, |
| | GESMUNDO, |
| | LAZARO-JAVIER, |
| *- versus -* | LOPEZ, and |
| | ROSARIO, *JJ.* |
| **JOSE N. GATCHALIAN, JR.,** Respondent. | Promulgated: |
| | FEB 17 2021 |

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**D E C I S I O N**

**M. LOPEZ, *J.*:**

Before this Court is a Petition for Review on *Certiorari*[2] assailing the Decision[3] dated January 25, 2013 and Resolution[4] dated June 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 116313, which granted respondent Jose N. Gatchalian, Jr.'s (Jose) claim for disability benefits and sickness allowance.

*Antecedents*

Jose had been working as Chief Cook for Doehle-Philman Manning Agency, Inc. (Doehle-Philman), and its principal Doehle (IOM) Ltd. (Doehle) since 2002. On June 8, 2006, he signed a nine-month contract to serve as Chief

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1 Doehle-Philam and Doehle (IOM) Limited were also referred to as "Dohle-Philam" and "Dohle (IOM) Limited" in some parts of the *rollo*; see *rollo*, pp. 38, 44, 97, 160, and 203.

2 *Id.* at 3-40. Filed under Rule 45 of the Rules of Court.

3 *Id.* at 44-56; penned by Associate Justice Samuel H. Gaerlan (now a member of this Court), with the concurrence of Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

4 *Id.* at 58.

Cook onboard M/V Independent Endeavor,[5] and boarded the vessel on July 17, 2006.[6]

On December 4, 2006, Jose experienced intense and unbearable pain in his right knee. He reported to the ship captain that sometime in August 2006, he figured in an accident when his left foot slipped forward causing his right kneecap to hit the iron deck and took the full weight of his fall. When the vessel docked in Antwerp, Belgium, he was examined by Dr. R. Verbist and was referred to an orthopedic doctor at St. Vicentus Hospital. There, Dr. Greet Erven (Dr. Erven) examined Jose, assessed him with "TEAR MEDIAL MENUSCUS FRACTURED OSTEOFY," recommended operation on his knee, and declared him "unfit for duties on board." On December 6, 2006, following Dr. Erven's recommendation, Dr. R. Van Ceempoel operated on Jose for *partial meniscectomy partial medial and corpus librum right knee.* After his operation, Jose was medically repatriated on December 12, 2006. Upon arrival in the Philippines, the company-designated doctors subjected him to further evaluation, therapy, and operation.[7]

On December 15, 2006, the company-designated surgeon removed the skin sutures around the post arthroscopic surgery of Jose and scheduled him for post- surgery physical therapy sessions. By January 11, 2007, he completed four sessions of physical therapy. He was examined by an orthopedic specialist, who noted reduction of pain and mobility with improvement in stability, and recommended continuous treatment. On February 9, 2007, the orthopedic surgeon observed a marked improvement on the strength and stability of Jose's right knee.[8] Subsequently, on February 14, 2007, the company-designated doctor issued a final assessment that Jose was fit to work, with the following observations:

> Mr. Gatchalian reported to our clinic last February 12, 2007 for final evaluation. He has with him the final report from his physical therapist which stated that the patient's condition has remarkably improved. The strength of the right knee extensors and right knee flexors are both 5/5. Pain felt on the medial side of the knee decreased from 5/10 to 1/10 although minimal pain is still felt on the affected part, patient is now able to perform weight bearing activities without any difficulty. Patient was advised to maintain strengthening exercise of the right knee. Based on this, our physiatrist and orthopedic surgeon considered Mr. Gatchalian now fit to work.[9]

On February 11, 2009, after almost two years, Jose filed a complaint for total disability benefits, sickness allowance, damages, and attorney's fees against Doehle-Philman, Dochle and Captain Manolo Gacutan (collectively, petitioners). Jose anchored his claim on a medical certificate – dated May 18, 2009, issued by Dr. Angel Chua (Dr. Chua) of St. Lukes Medical Center –

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5 *Id.* at 45.
6 *Id.* at 6.
7 *Id.* at 46.
8 *Id.* at 46-47.
9 *Id.*

which diagnosed him with *Traumatic Arthritis*, and assessed him with *permanent partial disability*, to wit:

> This is to certify that Mr. Jose N. Gatchalian, Jr., 58 years old, male[,] is presently suffering from severe pain in the right knee because of traumatic arthritis of the right knee joint. Past history revealed that he underwent Arthroscopic Meniscectomy of the right knee after a knee injury on the ship sometime in December of 2006. But since then, despite operation, he cannot walk properly and always walk with an antalgic gait. Therefore, I recommend Permanent Partial Disability with diagnosis of Traumatic Arthritis right knee joint.[10]

On October 14, 2009, the Labor Arbiter (LA) dismissed Jose's complaint for lack of merit. The assessment made by the company-designated doctor was given more credence since he attended to Jose's condition and treatment from the time of repatriation until he was declared fit to work on February 14, 2007. On the other hand, Jose's independent physician saw him only once. Also, since Jose was timely declared fit to work after 60 days of treatment, Jose is no longer entitled to sickness allowance beyond that period. Nevertheless, the LA awarded ₱150,000.00 as financial assistance.[11]

Both parties appealed to the National Labor Relations Commission (NLRC).[12] On June 10, 2010, the NLRC affirmed the LA's Decision, with modification in that the award of financial assistance was deleted.[13] Jose sought reconsideration, but was denied.[14] Thus, he filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.

On January 25, 2013,[15] the CA granted the petition and ruled that Jose is entitled to permanent total disability benefits. Jose sustained his injury due to an accident on board the ship, and underwent meniscectomy. The CA gave credence to the diagnosis of Jose's doctor, that he is suffering from traumatic arthritis, and concluded that it is work related. As an effect of the operation, there was increased risk of developing wear and tear arthritis (post traumatic arthritis or osteoarthritis), which is an occupational disease.[16] Also, while it was recognized that the delay in the filing of the claim casts doubt on the link of his present condition and the injury he sustained while he was on the ship, petitioners' failure to employ him after he was declared fit to work is contrary to his supposed fitness to work. Jose was employed by petitioners from 2002

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[10] *Id.* at 47.

[11] *Id.* at 160-168; penned by Labor Arbiter Arthur L. Amansec.
The dispositive portion of the LA Decision states:
> **WHEREFORE**, the Complaint is **DISMISSED** for lack of merit but out of compassionate justice, the respondents are ordered to pay complainant ₱150,000.00 by way of financial assistance.
> **SO ORDERED**. *Id.* at 168. (Emphases in the original.)

[12] *Id.* at 203.

[13] *Id.* at 203-212; penned by Commissioner Mercedes R. Posada-Lacap, with the concurrence of Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.
The NLRC disposed as follows:
> **WHEREFORE**, premises considered the assailed decision is hereby **AFFIRMED with MODIFICATION**; the award of [₱]150,000.00 by way of financial assistance is **DELETED**.
> **SO ORDERED**. *Id.* at 212. (Emphases in the original.)

[14] *Id.* at 48. Resolution dated July 27, 2010.

[15] *Id.* at 44-56.

[16] *Id.* at 51-53.

until his repatriation in December 2006, yet he was not engaged by petitioners after he was declared fit to work.[17] Moreover, Jose is entitled to sickness allowance for the remainder of the 120-day period after he was declared fit to work.[18] The CA likewise granted attorney's fees, and disposed as follows:

> **WHEREFORE**, the petition is **GRANTED**. The assailed 10 June 2010 Decision and 27 July 2010 Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE.** [Doehle-Philman, Doehle and Gacutan] are held jointly and severally liable to pay [Jose] permanent and total disability benefits of US$60,000.00, sickwages, and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.
>
> **SO ORDERED**.[19] (Emphases in the original.)

Petitioners moved for reconsideration, but was denied.[20] Hence, this petition.[21] Petitioners essentially argue that the CA erred in disregarding the fit to work assessment made by the company-designated doctor, which is more credible than that made by Jose's independent physician. The assessment made by Jose's doctor is doubtful because Jose only consulted her after the lapse of almost two years,[22] which time can no longer be deemed reasonable. In addition, Jose failed to invoke the joint appointment of a third doctor. Petitioners also fault the CA in ruling that Jose's failure to work for a period of 120 days justified the award of permanent total disability benefits.[23] It was Jose who did not report back or reapply for employment, and it was not petitioners' fault that he was not rehired.[24] Considering the company-appointed physician's findings, petitioners maintain that Jose's condition is not compensable.[25]

For his part, Jose echoes the CA's ruling that he was not fit to work since he was not re-employed by the petitioners even after two years from the company doctors' fit to work assessment.[26]

In their reply, petitioners point out that the non-hiring of an employee does not establish the employee's disability.[27]

*Issue*

The sole issue for resolution of this Court is whether the CA erred in reversing the NLRC's finding that Jose was properly declared to be fit to work.

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[17] *Id.*
[18] *Id.* at 54.
[19] *Id.* at 55.
[20] *Id.* at 58. Resolution dated June 5, 2013.
[21] *Id.* at 3-40.
[22] *Id.* at 26-31.
[23] *Id.* at 14-17.
[24] *Id.* at 17-19.
[25] *Id.* at 20-26.
[26] *Id.* at 226.
[27] *Id.* at 248-250.

*Ruling*

The petition is meritorious.

The principle that this Court is not a trier of facts applies with greater force in labor cases.[28] The question of whether the seafarer was properly declared fit to work is one of fact, hence, is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*.[29] Also, we are aware that the CA undertook a Rule 65 review – not a review on appeal – of the NLRC decision challenged before it. This means that our task is only to examine whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC. There is no need to go over the evidence presented before the labor tribunals to ascertain if these were appreciated and weighed correctly.[30] However, by way of exception, when there is a conflict in the factual findings of the LA and NLRC as opposed to that of the CA, as in this case, it behooves the Court to review and re-evaluate the questioned findings in the exercise of its equity jurisdiction.[31] Here, both the LA and the NLRC gave credence to the fit to work assessment made by the company-designated doctor.[32] On the contrary, the CA rejected the fit-to-work assessment and reversed the labor tribunals' ruling on the ground that Jose has not been employed by petitioners despite being declared fit to work.[33]

We do not agree with the CA.

*There is no basis for Jose to claim total and permanent disability benefits from petitioners.*

A seafarer's entitlement to disability benefits is a matter governed not only by medical findings, but also by law and contract. The material statutory provisions are Article 197 to 199 of the Labor Code,[34] in relation to Section 2(a), Rule X of the Amended Rules on Employees' Compensation. By contract, the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the parties' collective bargaining agreement, if any, and the employment agreement between the seafarer and the employer are pertinent. Specifically, Section 20-B of the POEA-SEC[35] prescribes the mechanism and procedure on how the seafarer can legally

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28 *Maricalum Mining Corp. v. Florentino*, 836 Phil. 655, 678 (2018).
29 *Brown Madonna Press Inc. v. Casas*, 759 Phil. 479, 492 (2015).
30 *Maricalum Mining Corp. v. Florentino*, *supra*; See also *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.
31 *Lu v. Enopia*, 806 Phil. 725, 738 (2017).
32 *Rollo*, pp. 166-168; and 210-212.
33 *Id.* at 52-53.
34 Formerly Articles 191 to 193 of the Labor Code.
35 POEA Memorandum Circular No. 09, Series of 2000 applies in this case since Jose's last contract with the petitioner was entered into in 2005.
N.B. The POEA Memorandum Circular No. 10, Series of 2010 was issued amending for the purpose the 2000 POEA-SEC.

demand and claim disability benefits from the employer/manning agency for an injury or illness suffered while on board the vessel, to wit:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer **suffers work-related injury or illness during the term of his contract** are as follows:
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> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
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> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.
>
> However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.**
>
> 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.
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> 5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation[;] or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphases supplied.)

Time and again, we emphasize that the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three days from arrival for diagnosis and treatment. He is on temporary total disability for the duration of the treatment, but in no case to exceed 120 days, because he is totally unable to work. During which time, he shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally. If the 120-day initial period is exceeded and no 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 that a permanent or total disability already exists. The seaman may of course also be declared fit to work at any time the declaration is justified by his medical condition.[36] It is then settled that before a seafarer may claim permanent total disability benefits from his employer, it must first be established that the company designated physician failed to issue a declaration as to the seafarer's fitness to engage in sea-duty or disability grading within the 120-day or 240-day period reckoned from the time the seafarer reported to the company-designated physician.[37]

In this case, it is undisputed that the company-designated doctor arrived at the assessment that Jose was fit to work after he was subjected to examinations, operations, and therapy over the course of three months from his repatriation on December 2006 until February 2007. Thereafter, the company-appointed physician issued a final assessment that Jose was fit to work on February 14, 2007, which was well within the 120-day period prescribed by law. Given the timely fit-to-work assessment, there is no basis for Jose to claim total and permanent disability benefits from the petitioners.

*Jose is bound by the findings of the company-designated doctor.*

In this regard, it is the company-designated doctor's findings that should prevail as he is equipped with the proper discernment, knowledge, experience, and expertise on what constitutes total or partial disability. Having cared for the seafarer after repatriation, the company-designated physician's declaration serves as the basis for the seafarer's fitness to work, or degree of disability.[38] Here, the company-designated doctor's assessment was based on

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[36] *Philippine Transmarine Carriers, Inc. v. San Juan*, G.R. No. 207511, October 5, 2020, citing *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

[37] *Id.*, citing *Talaroc v. Arpaphil Shipping Corporation*, 817 Phil. 598, 612 (2017).

[38] *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774, 786 (2014).

examinations, operations, and therapy administered to Jose, as recommended by the physiatrist and orthopedic specialist who treated him. On the other hand, Jose only consulted his own physician after he had filed a complaint. Dr. Chua, Jose's independent doctor, arrived at her conclusion based on information provided by Jose on May 18, 2009, more than two years after he was declared fit to work. With the foregoing, it is clear that the assessment that Jose is fit to work is more reliable.

Notably, Jose disregarded the provision on the joint appointment of a third doctor. Under the POEA-SEC, a seafarer may contest the findings of the company-designated doctor by seeking a second opinion from a doctor of his choice. In the event of disagreement between the findings of the doctors, the parties shall jointly refer the matter to a third doctor, whose findings will be final and binding. This referral to a third doctor has been held by this Court to be a mandatory procedure because of the provision that it is the company-designated doctor whose assessment should prevail if there is no referral to a third doctor.[39] In *Marlow Navigation Philippines, Inc. v. Osias*,[40] the Court reiterated the mandatory character of the referral to the third doctor and the procedure that should be complied with:

> Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.
>
> In *Carcedo*, the Court held that "[t]o 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.[41]

Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor.[42] Jose, in this case, patently failed to comply with the procedure to contest the findings of the company-designated doctor. To recall, the company-designated doctor issued a final assessment that Jose was fit to work as early as February 14, 2007, within the 120-day period provided by law. However, it was only after almost two years, or on February 11, 2009, that he filed a complaint. Despite this protracted delay, there is no showing that Jose, before filing the complaint, complied with the procedure under the POEA-SEC. Jose's personal doctor, Dr. Chua examined him two months after he filed his complaint. **He did not**

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[39] *Id.* at 787.
[40] 773 Phil. 428 (2015).
[41] *Id.* at 446.
[42] *Dionio v. Trans-Global Maritime Agency, Inc.*, G.R. No 217362, November 19, 2018, 886 SCRA 47, 58.

**timely secure and disclose to petitioners, the contrary assessment of his doctor, and signify his intention to refer the dispute to a third doctor.** While it is the employer's duty to initiate the process for referral to a third doctor, this presupposes that the seafarer also complied with his correlative duty. Jose's failure to secure the opinion of a doctor of his choice before filing the complaint shows that he filed the complaint without any basis at all.

In *Belmonte, Jr. v. C.F. Sharp Crew Management, Inc.*,[43] (*Belmonte, Jr.*) which involved strikingly similar facts to this case, the seafarer, Catalino Belmonte, Jr. (Belmonte) contested the fit-to-work assessment made by the company-designated doctor almost two years after its issuance. There, Belmonte secured the opinion of a doctor of his choice two months after he filed a complaint. The Court held that Belmonte had no ground for a disability claim at the time he filed his complaint, since he did not have any sufficient evidentiary basis to support his allegation.

Similarly, in *Calimlim v. Wallem Maritime Services, Inc.*,[44] the Court ruled that the consultation with a second doctor by the complaining seafarer four days after he filed a complaint was a mere afterthought, thus:

> The Court notes, however, that Calimlim sought consultation of Dr. Jacinto only on July 9, 2012, more than sixteen (16) months after he was declared fit to work and interestingly four (4) days after he had filed the complaint on July 5, 2012. Thus, as aptly ruled by the NLRC, at the time he filed his complaint, he had no cause of action for a disability claim as he did not have any sufficient basis to support the same. The Court also agrees with the CA that seeking a second opinion was a mere afterthought on his part in order to receive a higher compensation.[45]

Likewise, in *TSM Shipping Phils., Inc. v. Patiño*[46] and *Pacific Ocean Manning, Inc. v. Solacito*,[47] the Court considered the complaint dismissible for lack of cause of action because the complainant only secured the opinion of a doctor of his choice after he filed a complaint. Simply stated, a seafarer seeking compensation for his disability cannot file his claim before seeking a second opinion.[48]

The reason for this requirement is simple. In *Ison v. Crewserve, Inc.*,[49] the Court recognized that the delay in the seafarer's examination by his or her doctor of choice adversely affects the reliability of the medical findings of his or her doctor, considering the seafarer's possible exposure to different factors in the interim period:

> Likewise[,] significant is the fact that it took petitioner more than a year before disputing the declaration of fitness to work by the company-designated physician. Petitioner filed a claim for disability benefit on the

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43 747 Phil. 643 (2014).
44 800 Phil. 830 (2016).
45 *Id.* at 844.
46 807 Phil. 666 (2017).
47 G.R. No. 217431, February 19, 2020.
48 *De Vera v. United Philippine Lines, Inc.*, G.R. No. 223246, June 26, 2019.
49 685 Phil. 704 (2012).

> basis of Dr. Vicaldo and Dr. Caja's medical certifications which were issued after five and 10 months, respectively, from the company-designated physician's declaration of fit to work. Unfortunately, apart from the reasons already stated, these certifications could not be given any credence as petitioner's health condition could have changed during the interim period due to different factors such as petitioner's poor compliance with his medications as in fact mentioned by Dr. Caja in the medical certificate she issued. As such, the said medical certifications cannot effectively controvert the fit to work assessment earlier made. x x x.[50]

In *Sarocam v. Interorient Maritime Ent., Inc.*,[51] the Court considered the lapse of seven or eight months between the time the seafarer was declared fit to work and when the seafarer's doctor of choice examined him to be significant and sufficient to render the seafarer's doctor's assessment to be unreliable.[52]

On account of Jose's failure to comply with the provisions of the POEA-SEC to properly contest the findings of the company-designated doctor and trigger the mechanism for the appointment of a third doctor, the Final Evaluation certificate issued by the company-designated doctor declaring Jose to be fit to work must be upheld. This is especially true in this case wherein the fit-to-work assessment issued by the company-designated doctor is supported by Jose's medical records.[53]

*Petitioners' non-reemployment of Jose does not refute the assessment that he was fit to work.*

Contrary to the finding of the CA, petitioners' failure to rehire Jose does not militate against the assessment that he is fit work. It should be noted that there is no showing that Jose sought employment with petitioners, or with any other employer but was turned down for not being fit to work. In any case, petitioners are not required to rehire Jose after the termination of his employment. Notably, under Section 18-B(1)[54] in relation to Section 20(B)(5)[55] of the 2000 POEA-SEC, the employment of the seafarer is terminated when he arrives at the point of hire when the seafarer is medically repatriated.

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[50] *Id.* at 719.

[51] 526 Phil. 448 (2006).

[52] *Id.* at 457.

[53] See *Abosta Shipmanagement Corp. v. Delos Reyes*, 833 Phil. 760, 770 (2018).

[54] Section 18-B (1) of the 2000 POEA-SEC provides:

> B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:
>
> 1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20(B)[5] of this Contract.

[55] Section 20-B(5) of the 2000 POEA-SEC provides:

> 5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

As in *Belmonte, Jr.*, the Court rejected the claim of the seafarer that his agency's failure to rehire him is proof of his disability, thus:

> Lastly, the Court finds Belmonte's assertion, that his non-hiring by the CFSCMI was the most convincing proof of his disability, without basis. It was not a matter of course for CFSCMI to re-hire him after the expiration of his contract. There is also no evidence on record showing that Belmonte sought reemployment with other manning agencies but was turned down due to his illness.
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> A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor." Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, awards for compensation cannot be made to rest on mere speculations and presumptions.[56] (Citations omitted.)

With the foregoing, Jose is bound by the fit-to-work assessment of the company-designated doctor. He is not entitled to disability benefits as well as sickness allowance after he was declared fit to work.

The Court is always keen to uphold the constitutional policy to provide full protection to labor and to apply with liberality in favor of the seafarers the provisions of the POEA-SEC. Nevertheless, these principles do not permit the Court to disregard the evidence on record and deviate from the letter and spirit of the law and applicable jurisprudence especially if the seafarer failed to substantiate his or her claim, thus:

> The Court is wary of the principle that provisions of the POEA-SEC must be applied with liberality in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect. However, on several occasions when disability claims anchored on such contract were based on flimsy grounds and unfounded allegations, the Court never hesitated to deny the same. Claims for compensation based on surmises cannot be allowed; liberal construction is not a license to disregard the evidence on record or to misapply the laws.
>
> However, We emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right. We should always be mindful 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.[57] (Citations omitted.)

**FOR THE STATED REASONS**, the Decision dated January 25, 2013 and Resolution dated June 5, 2013 of the Court of Appeals in *CA-G.R. SP No. 116313* are **REVERSED** and **SET ASIDE**. The Decision dated June 10, 2010 of the National Labor Relations Commission, affirming with modification the Decision dated October 14, 2009 of the Labor Arbiter, is **REINSTATED**.

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[56] 747 Phil. 643, 656 (2014).

[57] *C.F. Sharp Crew Management, Inc. v. Castillo*, 809 Phil. 180, 205 (2017).

**SO ORDERED.**

**MARIO V. LOPEZ**
*Associate Justice*

**WE CONCUR:**

**ESTELA M. PERLAS-BERNABE**
*Senior Associate Justice*
*Chairperson*

**ALEXANDER G. GESMUNDO**
*Associate Justice*

**AMY C. LAZARO-JAVIER**
*Associate Justice*

**RICARDO R. ROSARIO**
*Associate Justice*

## ATTESTATION

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.

**ESTELA M. PERLAS-BERNABE**
*Senior 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.

**DIOSDADO M. PERALTA**
*Chief Justice*