



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 7, 2015 (Issue 2015/14)

“Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines” from Asia-Pacific, The Legal 500, 2014, p. 497

Supreme Court rules that failure of the company-designated doctor to issue a final assessment within 240 days would entitle the seafarer to full disability benefits.

The seafarer was wounded on his right big toe because of his safety shoes. This became worse when he slid on the deck and bumped his right foot. He was recommended by a shore doctor to be repatriated for further treatment.

Upon repatriation, the company-designated physician noted the toe was infected with gangrene and after a series of tests needed to amputate the toes up to the medial aspect. For the loss of the big toe, the company-designated doctor issued an interim disability of 8% under the applicable CBA. Such assessment was issued before the lapse of 120 days of treatment. Unfortunately, the amputated stump became infected which again necessitated medical treatment which led to the amputation of the first metatarsal bone. The wound eventually healed. No further medical assessment was issued by the company-designated doctor.

Seafarer then filed a complaint with the Labor Arbiter claiming full disability benefits under the CBA as he alleged that he was already permanently unfit to work based on the findings of his personal doctor. The Labor Arbiter awarded US\$11,800 which is the equivalent of the 8% disability under the CBA considering that this was the assessment of the company-designated doctor.

On appeal, the NLRC awarded the seaman with US\$148,500 full disability benefits under the CBA relying on the medical findings of the seaman’s personal doctor that he is permanently and totally disabled and unfit to work as a seafarer. The Court of Appeals did not agree with the NLRC and instead, reinstated the decision of the Labor Arbiter

When the case reached the Supreme Court, it was held that seafarer is entitled to full disability benefits under the provisions of the CBA.

The Court noted that while the company-designated doctor issued an assessment of 8% disability to the seafarer prior to the lapse of the 120 days, this can only be considered as an interim assessment as further medical treatment was still conducted. The doctor should have issued a final assessment within the 240 days timeframe and failure to do so would consider the disability as permanent and total which would entitle the seafarer to maximum disability benefits. Moreover, there was no certification from the company-designated doctor which would state that seafarer is fit to work which would only lend credence to the fact that seafarer is permanently unfit.

Author’s Note: The above case was decided based on the 2000 POEA-SEC. Under the 2010 POEA-SEC, disability should not be determined by the number of days a seafarer is under treatment but rather, by the Schedule of Disability Allowance found in Section 32 therein. Unfortunately, some labor courts still apply the

240 day rule in disputes involving the 2010 POEA-SEC.

Dario Carcedo (substituted by his wife Priscilla Dela Cruz Salcedo) v. Maine Marine Philippines, Inc., and/or Misuga Kajun Co., Ltd. and/or Ma. Corazon Geuse-Songcuya, G.R. No. 203804, April 15, 2015, Third Division, Senior Associate justice Antonio Carpio, Ponente (Attys. Aldrich Del Rosario and Joseph Reban handled for vessel interests)

"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497

"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494

"Offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market." Chambers Asia Pacific, 2014 p. 949

Social Networking Sites



Twitter ID: delrosariopandi



Facebook Page: DelRosarioLaw

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosariopandiphil.com.

This publication is sent from time to time to clients and friends. To unsubscribe, reply to this email and put "[unsubscribe](#)" in the subject.

Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740

24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com