



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 27, 2015 (Issue 2015/09)

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The heirs alleged that seafarer suffered emotional strain when the company refused the pre-termination of his contract to go home and be with his family. The seafarer soon became ill and experienced chest pains and palpitations. He was seen by a shore physician and was diagnosed with muscoskeletal pain and emotional trauma/illness. Despite this, the seafarer was not repatriated. Unfortunately, the seafarer was found hanging due to apparent suicide on 13 January 2009.

The company denied the allegations of the heirs and alleged that seafarer was hired by them for the first time. His employment contract was for a period of 4-6 months. However, prior to the end of the contract, the seafarer committed suicide by hanging in the store room of the vessel. This report was confirmed by the Certification of the Philippine Consulate General at Dubai, and the accompanying documents, namely: Medico Legal Report issued by the Ministry of Justice of the United Arab Emirates and the Death Certificate issued by the Ministry of Health of the United Arab Emirates.

The Labor Arbiter ruled in favor of the heirs and awarded US\$71,500 as death benefits for failure of the company to prove by substantial evidence that the deceased seaman committed suicide as it relied on the inconclusive report of the medico-legal consultant. This ruling was set aside by the NLRC as it was found that suicide was duly established.

On petition before the Court of Appeals, death benefits were again awarded although modified to deduct the amounts already given by the company to the heirs.

When the case reached the Supreme Court, the complaint was dismissed.

The Court reviewed the evidence presented by the parties and came into the conclusion that the seafarer committed suicide.

The Investigation Report, log book extracts and Master's Report submitted by company, all strongly point out that seafarer died because he committed suicide. The Investigation Report completely detailed the events that happened prior to seafarer's death, *i.e.*, from the last person who corresponded with him when he was still alive, the circumstances leading to the day he was discovered dead, to the person who discovered him dead. Based on the investigation, it appears that seafarer was cheerful during the first two months. However, he, thereafter, kept to himself after telling people that his family is facing problems in the Philippines and that he already informed the company to look for his replacement. The result of the above investigation is even bolstered by the Medical Report issued by the shore doctor who diagnosed the seafarer with musculoskeletal pain and emotional trauma due to family problems, when the latter complained of chest pains and palpitations

Also, both the Medico-Legal Report and Death Certificate indicate that the actual cause of death of the seafarer is "suicidal asphyxia due to hanging." The Medico-Legal Report issued by the United Arab Emirates, Ministry of Justice would infer that there was no foul play regarding seafarer's suicide considering that an external examination of his body shows no violence or resistance or any external injuries. In fact, the post-mortem examination conclusively established that the true cause of death was suicidal asphyxia due to hanging.

All told, taking the Medico-Legal Report and the Death Certificate, together with the Investigation Report, log book extracts, and Master's Report, the Court found that the company was able to substantially prove that seafarer's death was attributable to his deliberate act of killing himself by committing suicide which is not compensable under the POEA-SEC.

Author's Note: In this case, the Supreme Court held that the NLRC may receive evidence submitted for the first time on appeal on the ground that it may ascertain facts objectively and speedily without regard to technicalities of law in the interest of substantial justice. The submission of additional evidence before the NLRC is not prohibited by its procedure considering that rules of evidence prevailing in courts of law or equity are not controlling in labor cases. The NLRC and Labor Arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal.

This issue arose considering that it was only during the appellate proceedings before the NLRC that the company was able to submit as evidence the Investigation Report, log book extracts and Master's Report to prove that seafarer died due to suicide through a Supplemental Memorandum on Appeal (**Remarks:** This case was only transferred to Del Rosario & Del Rosario Law Offices for handling after the unfavorable decision of the Labor Arbitrer was issued and the appeal to the NLRC was already filed by the company).

The author reminds that under the present setting, the heirs of the seafarer would have been entitled to US\$10,000 death benefits in view of the no fault, no contest provision in the Amended Migrant Workers Act which provision was incorporated in the POEA-SEC.

Unicol Management Services, Inc., Link Marine PTE, LTD and/or Victoriano B. Tirol III vs. Delia Malipot, in behalf of Glicerio Malipot; G.R. No. 206562, February 10, 2015; Third Division; Associate Justice Diosdado M. Peralta, Ponente. (Attys. Ma. Gina Guinto and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).

Other Supreme Court Decisions

In *Eyana v Philippine Transmarine Carriers, Inc., et.al.* (G.R. No. 193468, January 28, 2015), the Supreme Court reiterated that the "120 days rule" on disability is applicable if the complaint of the seafarer was filed before 6 October 2008. If the complaint is filed on 6 October 2008 onwards, the rule that will be followed will be the "240 days rule" on disability.

While *CF Sharp Crew Management, Inc., and Reederei Claus Peter Offen vs. Clemente M. Perez* (G.R. No. 194885, January 26, 2015) involved a case applying the 1996 POEA Contract, it is significant considering that the Supreme Court had again interpreted the term "accident" under the collective bargaining agreement (CBA). The Court ruled that an "accident" is an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious

occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen. In this case, the Court ruled that a claim based on psychotic disorder cannot be considered as an accident which will make the provisions of the CBA on disability benefits applicable.

In **Veritas Maritime Corporation vs. Ramon Gepanaga** (G.R. No. 206285, February 4, 2015), the Court again extensively discussed the effect of non-compliance with procedure of having conflicting assessments of doctors settled based on the POEA Contract by the appointment of a third doctor.

The Court in denying the claim of the seafarer held that he should have properly contested the fit to work findings of the company-designated doctor before filing a complaint with the NLRC by presenting a contrary opinion from his chosen doctor. However, instead of doing this, the seafarer immediately filed a complaint and worse, only presented the findings of his chosen doctor more than two months after. As such, the findings of the company-designated doctor were sustained on the ground of seafarer's non-compliance with the procedure prescribed by the POEA Contract.

The Court also noted that at the time the seafarer filed his complaint, he had no cause of action because at that time, he was not armed with any medical certificate which would prove his alleged disability.

The Supreme Court through a minute Resolution in the case of **Postrero v. EIBurg Shipmanagement Phils., Inc., et.al.** (G.R. No. 215536, February 4, 2015), also reiterated the above rule on the necessity for the appointment of a third doctor.

(Del Rosario & Del Rosario handled the CF Sharp, Veritas and Postrero cases)

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