

## General Principles on dismissal of Filipino seafarers

By: Ruben Del Rosario, Del Rosario & Del Rosario, January 13, 2005

**Preliminary Statement.** The following article was first published in 1999. It provides guidelines on dismissal of seafarers. The article is still valid today with one modification. In the recent Supreme Court decision of Agabon vs. NLRC, G.R. No. 158693, November 17, 2004, the Court ruled that non-observance of due process does not mean that the dismissal is illegal. The dismissal can still be considered legal provided there was just cause for termination. The employer was just subjected to a fine for not following procedural due process. It is important to stress, however, that it is still a good practice to follow strictly the rules on procedural due process as non-compliance will influence the NLRC or the courts to rule against the employer. *Del Rosario & Del Rosario handles a number of illegal dismissal cases. For more information, please email [mail@delrosariolaw.com](mailto:mail@delrosariolaw.com)*

### Main Article.

There are two (2) elements that must be present before a dismissal of seafarer can be held valid. These are:

1. Just cause (substantive)
2. Due process (procedural)

Just causes are enumerated in Section 33 of the POEA Standard Employment Contract (Table of Offenses and Corresponding Administrative Penalties) and/or the relevant Collective Bargaining Agreement. The list is not exclusive as analogous acts may also constitute just causes. It is highly recommended that the acts/circumstances constituting just causes be entered in the vessels logbook which is the repository of the day to day transactions that transpires on board the ship. The Courts have fairly relied on the entries in the logbook because they were made by a person in the performance of a duty required by law (as in the case of a Master).

Procedural due process involves notice and investigation/hearing. This procedural aspect in effecting dismissal is essentially set out in Section 17 of the POEA Standard Employment Contract (Disciplinary Procedures) where the two-notice rule is provided.

The first written notice to be served on the seafarer should contain the grounds for the charges/infractions as well as the date, time and place for formal investigation of the charges.

There is no prescribed formality in conducting the investigation. What is essential is to give the alleged erring seafarer ample opportunity to explain or defend himself.

In any event, it is best to document the investigation proceedings in order to prepare for any eventuality. The measures suggested are as follows:

(a) Record or transcribe the proceedings and prepare minutes thereof. Have all persons who took part therein sign the minutes including the seafarer involved.

(b) Enter in the vessels logbook what transpired during the investigation including seafarer's summary of statements/defenses, witnesses presented, documents submitted, seafarer's admission, etc.

The second written notice is the notice of dismissal to be served on the erring seafarer stating the reasons thereto.

Please note that seafarer may contest the Master and/or employer's decision to dismiss him by filing an illegal termination case before the labor tribunal. As the burden of proof that the termination was valid rests on the employer and considering the difficulty in retrieving documents from a vessel and/or locating a crew to testify in the NLRC, it is good policy for the employer to gather the evidence in support of a prospective defense against an illegal termination claim.

The evidence needed for such purpose may vary depending on the circumstances of each case but based on experience; some of the useful documents are the following:

1. Vessel's logbook extracts
2. Master's or Incident report
3. Affidavit/statements of crewmembers/other witnesses attesting to the offenses committed by the seafarer
4. Minutes of investigation proceedings
5. First and second notices (as discussed above)
6. Performance rating reports
7. Company policy
8. Police and other authorities' report of the incident

As the authenticity and genuineness of these pieces of evidence may become an issue in the future, it is preferable that the same be authenticated or attested by the nearest Philippine Consulate or Labor Attaché.

While observance of procedural due process is imperative, it does admit of certain exceptions. One exception under the POEA contract is when observance of procedural due process will result in a clear and existing danger to the safety of the crew and vessel.

In conclusion, it is important to observe the substantive and procedural aspects of termination. This will give the employer a fair chance of defending itself should the seafarer decide to challenge the validity of his termination.