



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 20, 2012 (Issue 2012/04)

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Failure to show written resignation letter presumes there was dismissal of employment

Conflicting allegations were presented by the parties. The seafarers alleged that they were dismissed from employment. On the other hand, the company argues that the seafarers resigned from their employment due to dissatisfaction over the ship's operation. The company presented a telex message from their principal addressed to the local agent that the seafarers resigned.

In this case, the Supreme Court held that Article 285 of the Labor Code recognizes termination by the employee of the employment contract by "serving written notice on the employer at least one (1) month in advance." Given that provision, the law contemplates the requirement of a written notice of resignation. In the absence of a written resignation, it is safe to presume that the employer terminated the seafarers.

In this case, there was no written notice furnished to the seafarers regarding the cause of their dismissal. The principal furnished a written notice (telex) to the local agent claiming that the seafarers were repatriated because the latter voluntarily pre-terminated their contracts. This telex was given credibility and weight by the Labor Arbiter and NLRC in deciding that there was pre-termination of the employment contract "akin to resignation" and no illegal dismissal. However, as correctly ruled by the Court of Appeals, the telex message is "a biased and self-serving document that does not satisfy the requirement of substantial evidence." If, indeed, the seafarers voluntarily pre-terminated their

contracts, then they should have submitted their written resignations.

As such, the company was held to have illegally dismissed their seafarers and were made liable to pay the latter their salaries for the remainder of the unexpired portion of the employment contracts.

Author's Note: The Supreme Court computed payment to the seafarers of their salaries based on their basic wage only without including allowances.

Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. Vs. Nathaniel Doza, Napoleon De Gracia, Isidro Lata and Charlie Aprosta ; G.R. No. 175558 ; Second Division ; February 8,2012 ; Associate Justice Arturo Brion, Ponente

Failure to deploy seafarer will result into award of actual damages

In two recent cases, the Supreme Court had ruled that failure to deploy a seafarer with a valid POEA Contract would result in the payment of actual damages. Said the Court:

'The POEA Standard Employment Contract provides that employment shall commence "upon the actual departure of the seafarer from the airport or seaport in the port of hire." We adhere to the terms and conditions of the contract so as to credit the valid prior stipulations of the parties before the controversy started. Else, the obligatory force of every contract will be useless. Parties are bound not only to the fulfilment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.'

'Thus, even if by the standard contract employment commences only "upon actual departure of the seafarer", this does not mean that the seafarer has no remedy in case of non-deployment without any valid reason.'

'We rule that distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.'

The actual damages awarded by the Court is equivalent to the salaries of the seafarer had he been deployed by the company.

Author's Note: In *Bright Maritime Corporation (BMC)/ Desiree P. Tenorio vs. Ricardo B. Fantonial*, the Supreme Court computed the actual damages payable to the seafarer as his basic wages plus allowances. On the other hand, the Supreme Court in *Stolt-Nielsen Transportation Group, Inc. and Chung Gai Ship Management vs. Sulpicio Medequillo, Jr.* merely mentioned that the actual damages due to the seafarer is based on his salaries without specifically mentioning what the term "salaries" should be comprised of.

Bright Maritime Corporation (BMC)/ Desiree P. Tenorio vs. Ricardo B. Fantonial ; G.R. No. 165935; Third Division ; February 8, 2012.

Associate Justice Diosdado M. Peralta, Ponente

Stolt-Nielsen Transportation Group, Inc. and Chung Gai Ship Management vs. Sulpicio Medequillo, Jr. ; G.R. No. 177498 ; Second Division ; January 18, 2012. Associate Justice Jose Portugal Perez, Ponente

New Hires

Associate Lawyers

Jamella Anne Marie F. Joya, a 2006 Bachelor of Arts major in Political Science graduate of De La Salle University Manila and a 2011 graduate of San Beda College of Law, Mendiola, Manila.

Victor Paul E. Mallillin, a 2007 Bachelor of Arts, major in Political Science graduate of Ateneo de Manila University, Loyola Heights, Quezon City and a 2011 Juris Doctor graduate of Ateneo de Manila University School of Law, Rockwell Center, Makati City.

Strawberry Anne Aubrey B. Martin is a 2007 Bachelor of Arts, major in Philosophy graduate of Ateneo de Manila University, Loyola Heights, Quezon City and a 2011 Juris Doctor graduate of Ateneo de Manila University School of Law, Rockwell Center, Makati City.

Claims Assistants

Ruth Merian F. Manalo, registered nurse and a 2009 Bachelor of Science in Nursing graduate of Concordia College, Paco, Manila.

Grace G. Collantes, a 2009 Bachelor of Science in Business Administration , major in Financial Accounting graduate of Araullo University – Pinma Education Network, Cabanatuan City, Nueva Ecija.

Razelle N. Espana, a 2011 Bachelor in Political Science, major in International Relations graduate of Polytechnic University of the Philippines, Manila.

Kathleen M. Baliton, a 2010 Bachelor of Science in Electronics and Communication Engineering graduate of Laguna State Polytechnic University, San Pablo City, Laguna.

Janice B. Manasan, a 2011 A.B. Political Science graduate of De La Salle University – Dasmaringas, Dasmaringas City, Cavite.

Social Networking Sites



Twitter ID: delrosariopandi



Facebook Page: DelRosarioLaw

*"Del Rosario & Del Rosario remains the Philippines' leading firm for maritime law."
from Asia-Pacific , The Legal 500, 2010-2011, p. 347*

*"The Philippines' top shipping firm, Del Rosario & Del Rosario has a wealth of talent at its disposal."
from Asia-Pacific, The Legal 500, 2009-2010, p. 341*

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@delrosario-pandiphil.com .

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