



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 7, 2011 (Issue 2011/03)

This issue contains the following:

Liability for illegal dismissal is basic wages for unexpired portion of contract

Seafarer penalized for refusing to redeploy

Liability for illegal dismissal is basic wages for the unexpired portion of contract

Seafarer Yap was working on board the M/T Sea Scout when it was sold. He was allegedly told that he can ask for transfer to another vessel but no such transfer was made. Yap filed a complaint for illegal dismissal. Vessel interests argued that there was a valid dismissal as vessel was sold and there was no promise of transfer to other vessels.

Both the Labor Arbiter and the NLRC Commission sided with seafarer's arguments and ruled that there was illegal dismissal and granted the nine months wages remaining in his contract. On appeal, the Court of Appeals upheld the illegal dismissal but only granted three months wages as per Section 10 of Republic Act 8042 (Migrant Workers Act). The case was brought before the Supreme Court.

Under Section 10 of Republic Act 8042, the liability of the employer for illegal termination of the employment of an overseas worker is: *his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.* (Incidentally, this same provision was also incorporated in Republic Act 10022 known as the Amended Migrant Workers Act).

The Supreme Court upheld the ruling on illegal dismissal but ruled that seafarer should be paid his salaries for the unexpired

portion of the employment contract. Thus, seafarer should be paid his remaining nine months' salary and not just three months as ruled by the Court of Appeals.

The Supreme Court ruled that the aforesaid provision of "three months" violates the equal protection clause of the Constitution as it only applies to overseas workers with less than one year contracts and not to local workers with fixed term employment and also not to overseas workers with unexpired portion of one year or more in their contracts.

Claudio Yap vs. Thenamaris Ship's Management and Intermare Maritime Agencies Inc., G.R. No. 179532, Second Division, May 30, 2011, Associate Justice Antonio Eduardo Nachura, Ponente.

Seafarer penalized for refusing to deploy

As alleged by seafarer, he was disembarked on August 29, 2004 for transfer to another vessel. However, he was not paid his promised stand-by fee while awaiting his next assignment. After payment of a one-month stand-by fee, he again boarded another vessel but was disembarked after one month as his boarding was only for sea trial. He was again to be deployed on another vessel on November 30, 2004 but he refused in view of his previous terminations. His manning agent later found out that he boarded another vessel thru another manning agent on November 29, 2004.

Seafarer's manning agent filed for suspension from overseas deployment of subject seafarer. The POEA Administrator penalized seafarer with a one year suspension from deployment. On appeal, the Secretary of Labor reduced the penalty to six months suspension.

Seafarer filed an appeal with the Office of the President which dismissed the appeal for lack of jurisdiction.

The case went before the Supreme Court.

The Court held that based on settled jurisprudence, the proper remedy to question the decisions of the Secretary of Labor is via Petition for Certiorari under Rule 65 and not via an appeal to the Office of the President (OP). Appeals to the OP in labor cases have been eliminated except those involving national interest over which the President may assume jurisdiction

On the complaint of the manning agent, seafarer's refusal to board the vessel on November 30, 2004 constituted unjustified breach of his contract of employment. Disciplinary action is warranted for "unjust refusal to join ship after all employment and travel documents have been duly approved by the appropriate government agencies." Besides, the real reason seafarer refused to board the vessel was that he left the Philippines on November 29, 2004 to join another vessel thru another manning agency.

Miguel Dela Pena Barairo vs. Office of the President and MST Marine Services (Phils.), Inc.; G.R. No. 189314; Third Division; June 15, 2011 ; Associate Justice Conchita Carpio Morales, Ponente.

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from Asia-Pacific , The Legal 500, 2010-2011, p. 347*

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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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