



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., September 9, 2011 (Issue 2011/04)

### **Significant Changes in the 2011 NLRC Rules of Procedure**

The NLRC has promulgated its 2011 Rules of Procedure which took effect on 7 August 2011. The last revision to the NLRC Rules was made in 2005. In line with requests from clients to highlight the significant changes in the 2011 Rules, we have prepared this article. The significant changes are as follows:

1. Service of Notices, Resolutions, Orders and Decisions by Private Courier (Section 4, Rule III)

Under the 2005 Rules, service of notices such as summons, notice of conference, resolutions, orders and decisions is made through the NLRC's messenger or sent by registered mail. Under the 2011 Rules, service can also be done by *private courier*.

2. Authority of the Labor Arbitration Associate to Conduct Conciliation and Mediation Conference (Section 8a, Rule V)

The 2005 Rules state that "the Labor Arbiter shall personally preside over and take full control of the proceedings". The 2011 Rules added that "(the Labor Arbiter) may be *assisted by the Labor Arbitration Associate* in the conduct (of the proceedings).

The above revision of the Rules appear to justify the current practice of having the "Labor Arbitration Associate" "preside" over the conciliation and mediation conferences instead of the Labor Arbiter.

3. Re-filing of a Dismissed Complaint Due to Non-Appearance of Complainant (Seafarer) (Section 10, Rule V)

Under both the 2005 and 2011 NLRC Rules, the Labor Arbiter can dismiss the complaint if the seafarer fails to appear, despite due notice, during the two (2) settings for mandatory conciliation and mediation conference. The dismissal however is without prejudice which means that the seafarer can re-file his complaint.

However, under the 2005 NLRC Rules, the seafarer cannot re-file the case after it has been dismissed for the 2<sup>nd</sup> time on the ground of non-appearance during the mandatory conferences.

This limitation of “2<sup>nd</sup> time” is not present under the 2011 NLRC Rules. It would appear that the seafarer can keep filing a new case despite dismissals of his previous cases due to non-appearance at the mandatory conferences.

#### 4. Failure to Attend Mandatory Conferences by Respondents (Manning Agents)

In case of non-appearance by the respondent (manning agent) during the first scheduled conference, the second conference as scheduled in the summons shall proceed. However, if the respondent (manning agent) still fails to appear at the second conference despite being duly served with summons, he/she shall be considered to have waived his/her right to file position paper.

The above was not in the 2005 NLRC Rules and is new in the 2011 NLRC Rules.

It is thus important to ensure attendance at the mandatory conferences.

#### 5. Remedy of the Respondents (Manning Agents) When Declared To Have Waived Their Right to File Position Paper (Section 20, Rule V)

In instances where a party is declared to have waived his/her right to file position paper, the 2011 NLRC Rules have provided a remedy. The 2011 NLRC Rules states: A party declared to have waived his/her right to file position paper may, at any time after notice thereof and before a case is submitted for decision, file a *motion under oath to set aside the order of waiver* upon proper showing that failure to appear during the hearings was due to justifiable and meritorious grounds. If said motion is granted, the manning agents can now file the necessary Position Paper.

#### 6. Limited Period to Conduct Hearing or Clarificatory Conference (Section 14a, Rule V)

The concept of hearing or clarificatory conference referred to in this rule is independent of and different from the mediation or conciliation hearing wherein the seafarer and the manning agents are encouraged to enter into an amicable settlement. The clarificatory hearing is conducted after the submission of the position papers

Briefly stated, a clarificatory hearing is rarely held and it is discretionary on the part of the Labor Arbiter. As the term connotes, its purpose is to ask the parties clarificatory questions to further elicit facts or information which will include obtaining relevant documentary evidence from any party or witness. .

The hearing or clarificatory conference shall be terminated within thirty (30) calendar days from the date of the initial clarificatory conference. *The period now is shorter as it was ninety (90) calendar days under the 2005 NLRC Rules.*

In any event, under both the 2005 and 2011 Rules, cases involving overseas Filipino workers (including seafarers) the mandatory conciliation and mediation conferences and clarificatory conferences must be terminated *within sixty (60) days* from the acquisition of jurisdiction by the Labor Arbiter over the person of the respondents.

#### 7. Procedure for Recovery of Amount Paid to the Seafarer During Execution Proceedings (Section 14, Rule XI)

By way of brief background, if the case is lost in the Labor Arbiter level, the manning agents/principals can file an appeal before the Commission level to assail the Labor Arbiter's decision. If the appeal is dismissed, the remedy of the manning agents is to file a Motion for Reconsideration. The denial of the motion will render the Labor Arbiter's decision final and executory. Consequently, at this stage, manning agents and their principals are required to pay the seafarer based on said final award.

In the meantime, the case can still continue because the manning agents has the remedy of elevating the matter to the Court of Appeals and eventually, to the Supreme Court.

In some cases, the Court of Appeals and/or the Supreme Court would either reverse (the seafarer is not entitled at all to his claim) or modify (the judgment award is reduced) the decision of the NLRC.

In case of reversal or modification by the Court of Appeals or Supreme Court of the Labor Arbiter's decision, the next recourse of the manning agents is to recover the amount it has previously paid to the seafarer.

The present 2011 NLRC Rules of Procedure explicitly provides for the steps on how to recover the said amount from the seafarer. Under the 2011 NLRC Rules the *Labor Arbiters of the NLRC can issue orders of restitution to enable the manning agents to recover the amount they previously paid to the claimants as a result of the reversed or modified decisions of the NLRC*. This provision was not present under the 2005 NLRC Rules.

#### 8. Extraordinary Remedy Available to the Manning Agents/Principals Other Than Appeal (Rule XII)

One of, if not, the most critical stage in NLRC proceedings is during execution of the judgment award. It is at this point that the seafarer can now collect from the manning agents or the bonding company the amount mentioned in the Labor Arbiter's decision.

The writ of execution is the basic document which would empower the NLRC Sheriff to collect the judgment award from manning agent which is the losing party. Under the 2005 NLRC Rules of Procedure, once the writ is issued, the manning agents are already helpless to stop the NLRC Sheriff from enforcing the judgment award unless of course, and this is very rare, the Court of Appeals issues a Temporary Restraining Order and/or Writ of Injunction.

*The 2011 NLRC Rules of Procedure provides for a specific remedy. It is not in the form of an appeal but a verified petition with the NLRC Commission the purpose of which is to annul or modify the order of the Labor Arbiter issuing the writ of execution.*

The immediate effect of the filing of the said verified Petition is that the NLRC Sheriff cannot, in the meantime, enforce the writ of execution or the NLRC Sheriff, in layman's term, cannot collect the amount stated in the decision

from the manning agents or from the bonding company.

Please note that the mere filing of the verified Petition will prevent the bank of either the manning agents or the bonding company from releasing the garnished amount to the seafarer within fifteen (15) calendar days from the filing of the Petition. Of course, the period can be longer if the NLRC issues a Temporary Restraining Order or Writ of Preliminary Injunction which has a lifetime of twenty (20) or sixty (60) days, respectively. It can also go beyond said period if the NLRC issues a final injunction.

However, the Temporary Restraining Order or the Writ of Preliminary Injunction only becomes effective upon posting by the manning agents of a cash bond, not surety bond, amounting to Php50,000.00 or a higher amount as may be required by the NLRC.

*Important Note: While the extraordinary remedy described above can be availed of during execution proceedings, Rule XII of the 2011 NLRC Rules can be availed of by "any party aggrieved by an order or resolution of the Labor Arbiter". It is thus not confined to just execution proceedings but on all orders or resolutions of the Labor Arbiter. For example, if the manning agent files a Motion to Dismiss on the ground that the seafarer has already been paid his disability benefits and it is denied by the Labor Arbiter, the manning agent can avail of the extraordinary remedy under Rule XII of the 2011 NLRC Rules.*

The above are the currently perceived significant changes but we are continually reviewing the 2011 NLRC Rules and will report on any other significant developments in subsequent updates.

-----  
*"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](mailto:ruben.delrosario@delrosario-pandiphil.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.

**Office Address:** 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines  
**Telephone:** 63 2 810 1791 \* **Fax:** 63 2 817 1740/ 63 2 810 3632  
**24/7 Emergency Mobile:** (63) (917) 830-8384; [mail@delrosario-pandiphil.com](mailto:mail@delrosario-pandiphil.com); [www.delrosario-pandiphil.com](http://www.delrosario-pandiphil.com)