



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 21, 2010

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Supreme Court rejects benefits as seafarer failed to submit to medical examination within three days from repatriation

A seafarer must submit himself to a post employment medical examination by the company designated physician within three working days from repatriation. Under the POEA contract, failure to do so shall result in his forfeiture of the right to claim benefits. Justice Conchita Carpio-Morales dismissed seafarer's complaint for reporting to the company physician seven months after his repatriation.

In this case, seafarer/petitioner was hired as chief cook for a 3-month contract of employment. While on board the vessel, he felt a throbbing pain in his chest and shortening of breath. Upon completion of his contract, he was repatriated and immediately reported to vessel interests/respondents his condition but that he was never referred to a doctor for consultation. Seven months after, petitioner sought re-employment and during his PEME he was diagnosed with error of refraction, hyperglycemia, cardiac dysrhythmia and atrial fibrillation with rapid value response. He was declared unfit for sea duties and was denied further deployment. Petitioner sought the opinion of a private doctor and was assessed with an Impediment Grade IX and that his illness was work-aggravated. He then filed a complaint for payment of permanent disability benefits, medical reimbursement, sickness allowance, compensatory damages, moral damages, exemplary damages and attorney's fees.

The Labor Arbiter, the NLRC and the Court of Appeals dismissed seafarer's complaint. Both the Labor Arbiter and the NLRC discredited seafarer's allegation that he reported his medical condition to the manning agent.

The Supreme Court denied the petition. The Court ruled that petitioner was repatriated not on account of any illness or injury, but due to completion of contract. The records are bereft of any documentary proof that he had referred his illness to a nurse or doctor in order to avail of proper treatment regarding his condition. But even assuming that petitioner was repatriated for medical reasons, the Court said that petitioner failed to submit himself to the company-designated physician for medical examination within three days from his arrival. Petitioner submitted himself for medical examination to the company-designated physician only seven months after his repatriation following the completion of his employment contract. Thus, failure to comply with this requirement bars the filing of any claim for disability benefits.

Dionisio Musnit vs. Sea Star Shipping Corporation and Sea Star Shipping Corporation, Ltd. ; G.R. No. 182623; First Division; December 4, 2009 ; Supreme Court Associate Justice Conchita Carpio Morales, Ponente.

Supreme Court reiterates 120 day rule in two recent decisions

In *Abante vs. KJGS Fleet Management Manila* (December 4, 2009) and in *Iloreta vs. Philippine Transmarine Carriers, Inc.* (December 4, 2009), Supreme Court Associate Justice Conchita Carpio Morales reiterated the 120 day rule in *Crystal Shipping* that a seafarer is deemed permanently disabled if he is unable to work for more than 120 days.

In both these two cases, Justice Carpio-Morales awarded compensation as seafarer failed to work for more than 120 days. However, the two decisions never discussed the 240 day rule in the *Vergara* decision.

It is the author's opinion that the two recent decisions do not alter the *Vergara* decision as said decision was never discussed in these two recent decisions. The author however reiterates its recommendation that an interim assessment be made by the company physician prior to the expiration of the 120 days as it would appear there are those who are still not familiar or who do not subscribe to the *Vergara* decision.

Leopoldo Abante vs. KJGS Fleet Management Manila and/or Guy Macapayag, Kristian Gerhard Jebsens Skipsrenderi A/S; G.R. No. 182430; First Division; December 4, 2009; Supreme Court Associate Justice Conchita Carpio-Morales, Ponente

Joelson Iloreta vs. Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K. Ltd.; G.R. No. 183908; First Division; December 4, 2009 ; Supreme Court Associate Justice Conchita Carpio Morales, Ponente.

Update on Proposed Migrant Workers Act

Almost fifteen (15) years after the passage of the present Migrant Workers Act in 1995, the Philippine lawmakers have introduced amendments to the existing law aimed at further alleviating the plight of the Filipino migrant workers.

However, there were three major areas of concern as it affected the seafaring industry. These are: (1) designation of clinics where the seafarers will undergo health examination; (2) designation of training institution where the seafarers will undergo training and seminars; and (3) insurance. The seafaring industry through the Joint Manning Group held consultation with the lawmakers which paved the way for the incorporation of "curative" amendments in the proposed law.

The proposed law as finalized by the Bicameral Conference Committee has already been adopted by both Houses of Congress and is expected to be transmitted to the Office of the President of the Philippines anytime soon for signature.

(Author's Note: A more detailed report will be made in a subsequent edition of this update when the law is passed).

Piracy training required for deployment in Gulf of Aden

POEA Resolution No. 09, series of 2009 declared that deployment of Filipino seafarers on board vessels transiting the Gulf of Aden (GOA) shall be allowed only under certain conditions. Among others, shipowners through manning agents shall "provide training to their crew on how to avoid, react, and cope with piracy and other related incidents".

In this regard, the POEA through Memorandum Circular No. 12, series of 2009 prescribed additional requirements for processing of seafarers transiting the GOA among which is a Certificate of compliance to the Pre-Departure Orientation Seminar which has an Anti-Piracy Training Component consisting of the following:

"a. Shore-based training to improve knowledge and skills on how to carry out risk assessment; understanding piracy threats and current patterns; how to conduct the physical preparation of the vessel; conduct during transit to the high risk zone; actions on encountering pirates;

b. On-board exercises and drills on implementing anti-piracy strategy."

On 8 January 2010, a Tripartite Summit to address piracy issues was held in AMOSUP Seamen's Center, Manila participated in by representatives of government (DOLE/POEA), employers, seafarer's unions and international organizations. One of the resolutions adopted in the summit was that "manning agencies shall provide, pursuant to the guidelines of the POEA and at no cost to the seafarers, an anti-piracy awareness training seminar for departing seafarers effective February 01, 2010".

POEA issues guidelines on the computation of benefits due to seafarers on board vessels transiting the Gulf of Aden

As a background, on 7 October 2008, the POEA issued Board Resolution No. 04, Series of 2008 which in substance provides that the seafarer, while sailing within the declared high-risk zone, shall receive double the amount of his basic wage, overtime pay, and leave pay. The seafarer shall also be entitled to a double amount of compensation and benefits in case of death, injury or illness while sailing within the high risk zone.

One issue that came up after the issuance of the said resolution is the conflicting positions of the manning agents and their principals on how to compute the wages if the sailing time for transiting the declared high-risk zone consists of a fraction of a day, *i.e.* whether the fraction will be treated as one whole day or will the wages be multiplied by the actual number of sailing hours. The POEA through its Administrator issued Memorandum Circular No. 14, Series 2009 to resolve the seemingly conflicting positions through the following guidelines, to wit:

1. The entitlement to double wage, compensation and benefits shall commence as soon as the vessel enters the declared high-risk zone as defined under Governing Board Resolution No. 6 series of 2009. The compensation and benefits provided shall be limited to the duration of the vessel's transit through the high-risk zone.
2. In the computation of the daily rate of the basic pay, guaranteed or fixed overtime and leave pay, the monthly figures shall be divided by 30 days. The resulting amount (quotient) is the daily rate. This will then be multiplied by two (2) to arrive at the doubled daily rate of the compensation due the seafarer.
3. In the case of seafarers whose overtime pay is based on an hourly rate, the computation of the daily rate shall be based on a regular working hours of eight (8) hours in every 24 hours, midnight to midnight, Monday to Sunday, in accordance with Section 10B of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.
4. Any fraction of the day shall be considered as one day for purposes of computing the daily rate.

It is worth-mentioning that pursuant to Memorandum Circular No. 12, Series of 2009, the principals/employers, through their manning agencies are required to submit a written report to Department of Labor and Employment and Department of Foreign Affairs on any incident of piracy involving their enrolled vessels, immediately after the occurrence of the incident. The report must contain a description of the incident, actions taken and lessons learned.

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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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