



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 9, 2010

This issue contains the following:

Update on Amended Migrant Workers Act (Republic Act No.10022)

Supreme Court rules death not compensable as death occurred after expiration of employment contract

Supreme Court reiterates 120 day rule

Update on Amended Migrant Workers Act (Republic Act No. 10022)

The information received is that the IRR (Implementing Rules and Regulations) has been finalized and is being signed by the required signatories. It becomes effective 15 days after publication. The IRR did not tackle the “Compulsory Insurance Coverage” provisions of the amended law but left it up to the Office of the Insurance Commission in consultation with the concerned agencies / sectors to formulate the rules and regulations within 30 days from effectivity of the IRR. We will give an update once the IRR is published.

Supreme Court rules death not compensable as death occurred after expiration of employment contract

Seafarer worked as a motorman on succeeding contracts. While on board the vessel, he suffered from acute respiratory tract infection and developed a soft mass on the left side of his neck. Upon arrival in the Philippines on March 1998, the specimen excised from his neck lymph node was found negative for malignancy. On June 1998, he was found to be suffering from Hodgkin’s Lymphoma.

Seafarer then filed a complaint for payment of disability benefits, loss of earning capacity, moral and exemplary damages and attorney’s fees. During the pendency of the case, he died and was substituted by his widow. The claim for disability benefits was then converted into a claim for death benefits.

The Labor Arbiter dismissed the complaint on the ground that Hodgkin’s Lymphoma is not one of the occupational or compensable diseases. The NLRC Commission reversed the decision of the Labor Arbiter and awarded death compensation, minor child allowances, burial expenses and attorney’s fees.

The Court of Appeals affirmed the decision of the Commission. The court said that although seafarer died seventeen (17) months after his contract, his heirs could still claim death benefits because the cause of his death was the same illness for which he was repatriated.

Vessel interests averred that the complaint was filed one (1) year and five (5) months after seafarer’s arrival. They also contended that seafarer had already finished his contract and not because he had to undergo further medical treatment. As gleaned from the records, seafarer suffered from and was treated from acute respiratory tract infection and not from Hodgkin’s disease. Vessel interests’ also posited that seafarer is not entitled to the benefits because seafarer did not die during the term of his contract and the cause of his death was not contracted during the term of his contract.

The Supreme Court granted the petition. **The Court ruled that seafarer did not die while he was under the employ of the vessel interests. His contract of employment ceased when he arrived in the Philippines on March 1998, whereas he died on April 2000. Thus, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers. The Court reiterated that the death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits, but if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits. There was also no proof that seafarer's exposure to the motor fumes caused or aggravated his Hodgkin's disease.**

While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, the Court cannot allow **claims for compensation based on surmises**. When the evidence presented negates compensability, the Court has no choice but to deny the claim, lest the Court cause injustice to the employer.

Southeastern Shipping, Southeastern Shipping Group, Ltd. vs. Federico Navarra, Jr.,; G.R. No. 167678; First Division; June 22, 2010, Supreme Court Associate Justice Mariano Del Castillo, Ponente.

Supreme Court reiterates 120 day rule

The seafarer was repatriated to Manila due to heart ailment. He was treated by the company doctor for a period of 230 days. The company doctor eventually assessed the seafarer to be suffering from a disability grading of Grade 6. While undergoing treatment with the company doctor and after the lapse of 120 days from his repatriation, seafarer saw his own doctor who assessed him with a disability grading of Grade 1.

The Labor Arbiter awarded US\$60,000 based on a Grade 1 disability. The NLRC, however, reversed the decision and dismissed the complaint ruling that it is only the company physician who can determine seafarer's fitness or disability grading. The Court of Appeals, citing Remigio vs. NLRC, reversed the decision of the NLRC, and considered the seafarer to have suffered total and permanent disability because he could not pursue his usual work as a seaman for a period of more than 120 days.

The Supreme Court ruled that seafarer is entitled to Grade 1 total permanent disability or US\$60,000 as he was unable to work as a bosun for 120 days. Further, **the Court ruled that seafarer has the right, after 120 days, to seek medical treatment other than from the company-designated physician as said company physician failed to declare him fit to work or give an assessment of the degree of his permanent disability as required by the POEA Standard Employment Contract.**

(Author's Note: The 240 day Vergara and Cedol decisions were not discussed in the decision)

Oriental Shipmanagement Co. Inc. vs. Romy B, Bastol, G.R. No. 186289, First Division, June 29, 2010, Supreme Court Associate Justice Presbitero Velasco Jr.,

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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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