



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 11, 2012 (Issue 2012/01)

In this issue:

Promotions

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Denise has been with the firm for eleven years. He has previously worked in government prior to joining the firm. He has extensive experience in wet matters and is a member of the firm's emergency response team tasked to conduct on-site investigation and act on major casualties including vessel arrest. In addition to wet and dry maritime work, he is also in charge of most of the immigration applications and criminal litigation matters of the firm. He is an alumni of the San Beda College of Law and graduated B.S. in Economics from the University of Santo Tomas. He attended the University of Southampton, School of Law's Maritime Law Short Course in Singapore.

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On this basis, the seafarer filed a claim for full disability benefits under the CBA in the amount of US\$105,000 which was denied by the company as the illness is not listed as an occupational disease. The Labor Arbiter granted the claim of US\$105,000 based on the CBA. On appeal by the company, the NLRC reduced the award to US\$20,900 based on the grade "7" disability of the seafarer's doctor. A Petition was filed by the seafarer with the Court of Appeals where the latter reinstated the award of the Labor Arbiter.

Upon reaching the Supreme Court, it was held:

Seafarer is entitled to US\$60,000 under the POEA Contract.

There is a disability considering that the illness has now caused the loss of one bodily function.

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"Although central retinal vein occlusion is not listed as one of the occupational diseases under Section 32-A of the 2000 Amended Terms of POEA-SEC. Section 20 (B) paragraph 4 states that those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related. The disputable presumption that a particular injury or illness that results in disability, or in some cases death, is work-related stands in the absence of contrary evidence. Thus, said presumption was not overturned by the petitioners. Although, the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability."

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120 days already even though the company-designated doctor assessed him with a partial permanent disability and seafarer's doctor assessed a grade "7" disability. The Court, in applying the concept of permanent disability under the Labor Code held that "a total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days. What is crucial is whether the employee suffers from disability could still perform his work, notwithstanding the disability he incurred. Evidently, respondent was not able to return to his job as a seafarer after his left eye was declared legally blind. Records show that petitioners did not give him a new overseas assignment after his disability. This shows that his disability effectively barred his chances to be deployed abroad as an officer of an ocean-going vessel. Therefore, it is fitting that respondent be entitled to permanent total disability benefits considering that he would be able to resume his position as a maritime officer and the probability that he would be hired by other maritime employers would be close to impossible. Indeed, a sight-impaired maritime applicant cannot stand in the same footing as his healthy co-applicant.

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NOTE: The reasoning of the Supreme Court in interpreting the disputable presumption clause of the POEA Contract appears to contradict their reasoning in the recent case of Quizora v. Denholm Crew Management Phils., Inc. (Philippine Shipping Update Issue 2011/08; 16 December 2011) where it was held that despite the disputable presumption clause in the POEA Contract, the seafarer must still present evidence even though illness is disputably presumed to be work-related.

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Seafarers' Identity Document Convention ratified by Philippine Government

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Said convention provides that any seafarer who holds a valid seafarer's identity document shall be admitted to the territory for which the Convention is in force when entry is requested for temporary shore leave, joining his ship or transferring to another ship, passing in transit to join his ship in another

country, for repatriation, or any other purpose approved by the authorities of the member concerned.

According to the Joint Manning Group, the industry welcomes this new development as the convention facilitates the activities of the Filipino seafarers including the undertaking of shore leave without the required visa and without any unnecessary inspection and interrogation as to the identity of the seafarers.

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