



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 30, 2009

This issue contains the following:

Notes: Various issuances of the POEA and the Department of Transportation and Communication

Crew Liabilities of Shipowners when vessel is laid up

Q & A on NLRC Garnishment / Execution

Notes

New POEA requirement: To monitor the effects of the global economic crises and its effect on employment of Filipino seafarers, each licensed manning agency is required to make a weekly report to the POEA on the status of their vessel enrolment and crew orders. This will enable the POEA to generate timely and adequate measures to address the crisis. (POEA Memo Circular 124-08 dated December 2, 2008).

The POEA will review its rules and regulations early this year and is soliciting comments from the manning industry. Such comments must be submitted no later than January 30, 2009. (POEA Memo Circular 002-09 dated January 7, 2009).

The review of the POEA Standard Employment Contract is still continuing. Several meetings are still to be held.

The Department of Transportation and Communication, Office for Transportation Security has issued on a Ship Security Advisory for Philippine registered vessels transiting the Gulf of Aden. The advisory is to ensure the security and safety of the vessel, her crew and cargo. Those with interest in Philippine registered vessels should read the advisory. (DOTC Ship Security Advisory No. 3 dated December 18, 2008)

56 Filipino seafarers are still held by pirates in the Gulf of Aden.

Crew Liabilities of Shipowners when vessel is laid up

What are the liabilities of ship owners when the vessel is laid up? Under Section 23 of the POEA Standard Employment Contract, the seafarer shall be entitled to receive the following:

1. Earned wages;
2. Repatriation at the ship owners' expense; and
3. One (1) month basic wage as termination pay UNLESS arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract in which case the seafarer shall be entitled to basic wages until the date of joining the other vessel.

Manning agents have no obligation to notify the POEA regarding termination of a seafarer's employment due to lay-up unless the lay-up will result in the delisting of the ship from the enrolled vessels of the manning agent.

Q & A on NLRC Garnishment / Execution

After the motion for reconsideration is denied by the NLRC Commission, the decision which is unfavourable to the employer becomes “final and executory”. This means that the employer must satisfy the judgment amount or face garnishment of his assets. However, the employer still has the right to file a petition for certiorari with the Court of Appeals to question the “final and executory” decision of the NLRC Commission. The below Q & A explains in simple terms the Philippine law on the issue.

What is execution and garnishment?

Execution is the process of putting into effect the final judgment of the NLRC. The process starts with a motion to issue a writ of execution and ends when the NLRC sheriff satisfies the writ thru garnishment.

Garnishment is the means of obtaining satisfaction of the final judgment by taking possession of the property or money of the losing party. If the manning agent is a party to the case, its money or property may be garnished.

When can the NLRC decision be executed?

The NLRC decision can be executed when the decision becomes final and executory. This generally happens when the motion for reconsideration on the decision of the NLRC Commission is resolved. The decision becomes final and executory after ten (10) calendar days from receipt of the resolution. (Section 14, Rule VII of the 2005 NLRC Revised Rules of Procedure)

How can execution of the NLRC decision be stopped?

Execution can generally be stopped by filing a petition for certiorari with the Court of Appeals. Said petition must ask for the issuance of a Temporary Restraining Order (TRO) or injunction to stop the NLRC from execution of the decision. The NLRC respects the TRO or injunction issued by the Court of Appeals.

If the NLRC decision is considered final and executory, why can the Court of Appeals still issue a TRO or injunction to stop execution?

The Court of Appeals can still stop the execution as another set of rules, the Rules of Court, recognizes that if a quasi-judicial agency such as the NLRC acted “without or in excess of its jurisdiction or acted with grave abuse of discretion”, the Court of Appeals is allowed to intervene. (Section 1, Rule 65 of the Rules of Court).

In fact, the NLRC itself recognizes that the NLRC final judgment may be elevated to the Court of Appeals via a Petition for Certiorari. (Section 10 Rule XI of the 2005 NLRC Revised Rules of Procedure)

Is it easy to obtain a TRO or injunction from the Court of Appeals?

It is not easy to obtain a TRO or injunction from the Court of Appeals. The Court of Appeals generally respects the decision of the lower tribunal, board or quasi-judicial agency such as the NLRC. The appeal must show that the NLRC acted “without or in excess of its jurisdiction or acted with grave abuse of discretion.”

Are there other ways of stopping execution?

Not really.

While it is possible to file an opposition to the Motion for Issuance of a Writ of Execution, the NLRC Rules state that said writ may be issued by the Labor Arbiter motu proprio or on his own without need of action by the winning party. The effect of such opposition is to delay the issuance of the writ and hopefully a TRO or injunction will be issued by the Court of Appeals.

While the NLRC Rules also allow a Motion to Quash the Writ of Execution before the NLRC Commission, the said motion generally becomes moot as the writ, once issued, is immediately executed by the NLRC court sheriff.

What is judicial courtesy and why is it no longer practiced by the NLRC?

It used to be that the NLRC does not execute a decision out of “judicial courtesy”. This means that out of respect for the higher court, the NLRC waits for the Court of Appeals decision before it executes. Unfortunately, this policy of “judicial courtesy” has been abandoned by the NLRC. The reason appears to be the fact that the Labor Code is clear that the NLRC decision is final and executory.

Assuming the decision is satisfied thru the execution process and the decision is reversed in the upper courts, can the employer ask for the return of the executed funds?

In theory, the answer is yes. However, the court process to collect the funds is quite lengthy (years) and there is no assurance that the funds still exist in the name of the employee.

What can be done to change the execution process?

Aside from changing the law, the NLRC can promulgate rules to make the process “more equitable” for the employer. Aside from “judicial courtesy”, the manning organizations have proposed the use of “escrow accounts” and/or use of “bonds” to guarantee the employee can collect in case the decision is upheld by the upper courts on appeal.

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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