



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., February 3, 2011

This issue contains the following:

Seafarer must prove allegations of illness on board the vessel in order to justify his disability claim

Miscellaneous News: Accredited Insurance Companies for AMWA; Brazilian Immigration Fines; Newly Appointed Government Officials

Seafarer must prove allegations of illness on board the vessel in order to justify his disability claim

On 16 October 2001, seafarer disembarked from the vessel due to expiration of contract. He was re-examined for his next deployment and was found physically fit. On 2 February 2002, while waiting for his reemployment, he felt pain and numbness in his left leg. He consulted an independent physician who diagnosed him to be suffering from critical limb ischemia. He underwent a series of medical procedures but his condition did not improve. He finally underwent a below-knee amputation of his left leg. He then demanded payment for permanent disability benefits alleging that he complained of throbbing pain on his left leg while on board the vessel but was ignored. He also alleged that he requested for medical check-up after his repatriation but was again ignored. He filed a complaint with the NLRC on 10 June 2004.

The Labor Arbiter rendered a decision in favor of the seafarer and ruled that seafarer's illness was work-related. The NLRC reversed the decision of the Labor Arbiter. The commission dismissed the complaint after finding that seafarer's claims were not supported by substantial evidence to prove that his illness was work-related.

The Court of Appeals affirmed the decision of the NLRC. The court ruled that seafarer's claim must fail as he was unable to present evidence that he had notified the ship captain nor the respondent about his alleged medical complaint while on board the vessel or after disembarkation.

On the other hand, vessel presented an affidavit of vessel's manning agent which attests to the fact that vessel did not receive any complaint from seafarer while on board the vessel or after disembarkation. This affidavit was never refuted by seafarer.

On appeal to the Supreme Court, the Court ruled that seafarer's allegation was a bare allegation and a mere conjecture as no evidence was presented. Moreover, the Court said that they have no compelling reason to deviate from the factual findings of the NLRC stating that petitioner has failed to establish that his illness was work-related. Hence, he is not entitled to claim permanent disability benefits. The Court held that **the factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on the (Supreme) Court.**

(In this case, the Supreme Court also ruled on the issue of prescription of seafarer's claims. The Court ruled that seafarer's claim has not prescribed as under the 2000 POEA Standard Employment Contract, the claim prescribes in three years to be reckoned from seafarer's disembarkation from the vessel. However, as discussed, the claim was denied even if the claim has not prescribed.)

Arnaldo Gabunas vs. Scanmar Maritime Services Inc., Mr. Vicente Brillantes and IUM Ship Management ; G.R. No. 188637 ; December 15,2010 ; Third Division; Associate Justice Maria Lourdes Sereno, Ponente (Attys. Jerome Pampolina and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

Miscellaneous News

Accredited Insurance Companies for the Amended Migrant Workers Act (AMWA)

As of this writing, the following are the accredited insurance companies:

1. Pioneer Insurance and Surety Corporation
2. Pioneer Life Insurance Corporation
3. Mafre Insular Insurance Corporation
4. Insular Life Assurance Company Ltd.
5. United Coconut Life Planters Assurance Corporation
6. Philippine Charter Insurance Corporation
7. Paramount Life & General Insurance Corporation

Suspension of Immigration Fines in Brazil

Immigration fines imposed by Brazilian authorities on seafarers from countries which are not signatories to ILO C108 or C185 (Seafarers Identification Document Convention 1958 / 2003) have been suspended. The Philippine Joint Manning Group have made strong representations to the concerned Philippine government authorities to immediately ratify the subject conventions.

Newly Appointed Government Officials

New appointees to the government affecting the manning industry include:

1. Philippine Overseas Employment Administration (POEA) -
ADMIN. CARLOS CAO, JR. (Appointed Administrator on 06 January 2011)
 2. Philippine Regulation Commission (PRC) -
COMR. JENNIFER J. MANALILI (Appointed Commissioner on 09 January 2011)
 3. Maritime Training Council (MTC) -
DIR. LIBERTY T. CASCO (Appointed Executive Director on 20 November 2010)
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"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 .

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