



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 7, 2009

This issue contains the following:

Supreme Court denies disability claim as seafarer's hypertension had existed for three years and he did not submit himself to a post-medical examination within three days from his repatriation

Court of Appeals decisions on 240 days

Ban on deployment of Filipino seafarers to Somalia revised

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Seafarer (respondent) was hired as a chief cook under the old POEA Standard Employment Contract. While on-board the vessel for less than a month, he requested for medical attention due to chest pains and hypertension and was brought to a foreign hospital. He was suspected to have ischemic heart disease. He was also treated for abscess in his left thumb and was reported to have a history of hypertension for the past three years.

Prior to his disembarkation a little more than a month from the start of his contract, he made an irrevocable resignation addressed to the captain requesting that he would be allowed to disembark due to his poor health condition affecting his job on sea and that he will be liable for his repatriation and his replacement's transportation expenses. On his arrival in Manila, he set-off his pay with his repatriation expenses and the expenses of this replacement making a promissory note for the balance.

A year later, respondent filed a complaint for non-payment of 120-days sickness allowance and disability benefits, among others. He alleged that due to constant verbal abuse from the ship master, he allegedly suffered dizziness, chest pains, headaches and irregular sleep leading to hypertension and that he was forced to execute the request for disembarkation for fear that his health would worsen and that the medical findings in his PEME that he was fit to sail is binding upon petitioners and proof that his condition developed while on-board.

Vessel interests countered that hypertension cannot develop in a short span of time and that respondent committed misrepresentation as to his health condition.

The Labor Arbiter rendered decision in favor of the respondent awarding Grade 6 disability. The NLRC reversed the ruling of the Labor Arbiter and dismissed the complaint for lack of merit. The commission found respondent's resignation voluntary; hence, he cannot claim entitlement to the benefits under the POEA Contract.

The Court of Appeals reversed the decision of the NLRC in light of the observation that respondent's hypertension probably developed while on-board the vessel. The court held that **strict rules of evidence are not applicable in claims for compensation.**

The Supreme Court reversed the decision of the Court of Appeals and disallowed payment of disability benefits for the following reasons:

1. Seafarer was **not repatriated for health reasons** as he executed a resignation letter which was quite clear that he was resigning due to health reasons. His allegation that he was forced to execute such letter deserved no merit as “bare allegations of threat or force do not constitute substantial evidence to support a forced resignation”. Also, seafarer’s record showed that he had also resigned due to domestic reasons during his last contract.
2. Seafarer’s allegation that he developed ischemic heart disease while on board the vessel cannot prosper. **Such disease cannot develop in a little more than a month and the medical report stated that he had hypertension for more than three years.**
3. Further, his complaint was filed more than a year from his repatriation.
4. Also, the Court said that if respondent was indeed repatriated for medical reasons, he was required to submit himself to a mandatory post-medical employment examination by a company-designated physician within three (3) working days from arrival. Clearly, **respondent did not comply with this 3-day mandatory requirement for the purpose of post-employment medical examination.**

Virjen Shipping Corporation, Capt. Renato Morente & Odyssey Maritime Pte., Ltd., NLRC vs. Jesus B. Barraquio; G.R. No. 178127; Second Division; April 16, 2009; Supreme Court Associate Justice Conchita Carpio-Morales, Ponente.

(Attys. Florencio Aquino and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests)

Court of Appeals decisions on 240 days

The Court of Appeals is beginning to apply the Supreme Court rulings on 240 days. It should be recalled that the Supreme Court pronouncement in *Crystal Shipping* that a seafarer is considered permanently disabled if he is unable to work for more than 120 days has been extended to 240 days by the Vergara decision.

In *Malvar vs. NLRC*, the Court of Appeals upheld the new ruling on 240 days. The Court disregarded seafarer’s argument that his sickness went beyond 120 days and thus he should be considered permanently disabled. The Court ruled that the declaration of the company-designated physician of fitness to work was well within the extended 240 day period which is in accordance with the provisions of the Labor Code, its Implementing Rules and Regulations, and the POEA-SEC, and the medical findings.

In *Cortez vs. NLRC*, the Court of Appeals also upheld the new ruling on 240 days declaring a seafarer was permanently and totally disabled as his disability went beyond 240 days. Fortunately for vessel interests, the seafarer was only granted Grade 8 disability benefits of US\$16,795 and not the permanent disability of US\$120,000 under the CBA as seafarer’s own doctor gave a Grade 8 disability grading. The Court further reasoned that seafarer is not entitled to CBA benefits as his back pain was not a result of an accident as the facts of the case do not show an accident to have occurred.

Eusebio Malvar vs. NLRC, et.al., CA-G.R. SP N. 103811, Second Division, March 3, 2009, Associate Justice Portia Alino-Hormachuelos, Ponente

Eduardo Cortez vs. NLRC, et. al., CA-G.R. SP No. 105481, Eleventh Division, February 19, 2009, Associate Justice Celia Librea-Leagogo, Ponente

Ban on deployment of Filipino seafarers revised

The earlier pronouncement by the Philippines that banned Filipino seafarers on foreign vessels en route to Somalia has been revised to “require ship owners with Filipino crew to train them to handle piracy incidents and to pass only through secure waters in the Gulf of Aden.” It is expected that the POEA will issue guidelines / advisory on the revised policy. The manning industry is now being consulted by the government on any policy and this hopefully will ensure reasonable guidelines on the Philippine government’s policy on Somalia. We will monitor and send an update.

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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Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740/ 63 2 810 3632

24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com

