



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 13, 2011 (Issue 2011/02)

This issue contains the following:

Seafarer must prove CBA in order to be entitled to its benefits

In case of missing seafarer, prescriptive period of three years to be counted from four year waiting period

Mandatory Reporting of Significant Incidents

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### **Seafarer must prove CBA in order to be entitled to its benefits**

Seafarer suffered a fracture on his left arm and was repatriated for medical treatment. He was advised to undergo bone grafting but he refused. He was thus given a Grade 11 disability or US\$7,645 based on the POEA contract.

He filed a complaint in the NLRC alleging that he was employed under an AMOSUP CBA which had a permanent medical unfitness clause which entitled him to full disability benefits of US\$80,000. He presented two doctor's certificates certifying to his unfitness to work.

Both the Labor Arbiter and the NLRC awarded full disability benefits of US\$80,000.

The Supreme Court ruled otherwise.

The Court held that there was no proof presented that seafarer was indeed entitled to benefits under a CBA. The Court opined:

1. The seafarer presented a Masterbulk CBA which was between Masterbulk and a Singapore Union. The CBA is not an AMOSUP CBA which was the basis of seafarer's complaint.
2. The CBA presented had missing pages and had no signature page. Some pages were signed and some were not signed.
3. The union membership card presented had expired.
4. The CBA presented had a provision for jurisdiction of disputes in an arbitration court in Singapore. Further, the Singapore Workmen's Compensation Act must be applied to the dispute. Such foreign law must be proven before the Court for it to be applied.

The Supreme Court awarded US\$7,645 as disability benefits based on the POEA contract.

*Wilfredo Antiquina vs. Magsaysay Maritime Corporation et. al., G.R. No. 168922, First Division, April 13, 2011, Associate Justice Teresita Leonardo-De Castro, Ponente.*

### **In case of missing seafarer, prescriptive period of three years to be counted from four year waiting period**

While the vessel was on the high seas, seafarer was discovered missing. A claim for death benefits was filed with the

NLRC on May 29, 2000 or almost six (6) years from the time he was discovered missing. The vessel interests argued that the claim has prescribed as it was filed more than the three year prescriptive period mandated by the Labor Code and the POEA contract.

The Supreme Court ruled that the claim has not prescribed. Under Article 391 of the Civil Code, a missing seafarer can be declared legally dead only after a four year waiting period. The three year prescriptive period must be counted from the end of the four year waiting period. Thus, the filing of the complaint in six years is within the prescriptive period (four year waiting period plus the three year prescriptive period.) (Vessel interests argued suicide but the Supreme Court disregarded such defense.)

*Imelda Pantollano vs. Korphil Shipmanagement, G.R. No. 169575, First Division, April 5, 2011, Associate Justice Mariano C. Del Castillo, Ponente*

## Mandatory Reporting of Significant Incidents

POEA Advisory No. 36, Series of 2011 dated 13 December 2010 reiterated the mandatory reporting of significant incidents affecting the employment and welfare of deployed workers, such as the following:

1. Death
2. Injury or Illness
3. Detention
4. Runaway
5. Missing
6. Desertion

The reports must be submitted to the Office of the Deputy Administrator for Welfare and Employment for monitoring and appropriate action as may be required.

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from Asia-Pacific, The Legal 500, 2010-2011, p. 347*

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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](mailto:ruben.delrosario@delrosario-pandiphil.com).

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