



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., June 22, 2009

This issue contains the following:

Is mental illness compensable?

Miscellaneous Notes

Is mental illness compensable?

In determining whether mental illness is compensable, it is important that the particular facts and surrounding circumstances of each case is taken into consideration especially the incident which may have caused the mental illness.

In a Court of Appeals decision, *Tara Trading Shipmanagement, vs. NLRC* (CA GR-SP No. 10434, 29 October 2008), the Court ruled that an oiler's mental illness was not contracted as a result of or caused by the seafarer's work as on oiler on board the vessel. The seafarer himself claimed to have no significant stress at work and his symptoms were most likely triggered by his personal family problems. The Court of Appeals further ruled that brief psychotic disorder is not listed as an occupational disease in the contract.

In *Ortiz vs. NLRC* (CA GR-SP No. 105040, 13 March 2009), an oiler, while on board the vessel, received news that his wife and son (sired out of his common-law relationship with another woman) were not going along well with each other. Because of this, the seafarer got depressed and became sick. He was eventually repatriated and was referred to the company designated physician. He was diagnosed with brief psychotic disorder. He consulted another doctor (personal doctor) who diagnosed him to be suffering from schizophrenia, paranoid type. He subsequently filed a complaint before the NLRC.

The Labor Arbiter ruled that the seafarer is not entitled to compensation since his illness was a pre-existing condition and has no reasonable connection to his employment. The ruling was later affirmed by the NLRC Commission.

On Petition for Certiorari filed by the seafarer, the Court of Appeals ruled that the decisions of the Labor Arbiter and the NLRC Commission were correct. Based on the records, the seafarer failed to show convincing evidence that his illness was acquired during the term of his contract. The medical opinion of seafarer's physician noted that his illness was deeply rooted from his negative childhood environment, very unhappy marital life and overwhelming family problems. The seafarer's illness was caused by biological disturbances and psychological stress.

While Court of Appeals decisions have persuasive effect on judicial bodies like the NLRC, only Supreme Court decisions are considered binding jurisprudence.

In the only case concerning a seafarer's mental illness decided by the Supreme Court, *Cabuyoc vs. Inter-Orient Navigation Shipmanagement* (G.R. No. 166649, 24 November 2006), the Court ruled that a seafarer who had suffered "psychosis" and "schizophrenic form disorder" while on board the vessel is entitled to compensation considering that his illness/disability "were the direct results of the demands of his shipboard employment contract and the harsh and inhumane treatment of the officers on board the vessel." We speculate that the Court was somehow persuaded to believe the seafarer's detailed account of hostile treatment onboard and the emotional/mental trauma suffered in the hands of the ship's officers.

Miscellaneous Notes

FAME has issued FAME Advisory 001-2009 on Suggested Guidelines on Influenza A (H1N1) for Seafarers and Employees. For those interested, please email FAME at fame@fame.org.ph.

MARINA (Maritime Industry Authority) has issued two advisories: T

1. MARINA Advisory No. 2009-11, Series of 2009: Practical Measures to Survive as a Hostage in a Piracy Attack
2. MARINA Advisory No. 2009-12, Series of 2009: Best Management Practices to Deter Piracy in the Gulf of Aden and Off the Coast of Somalia

The advisories are based on the 86th Session of the IMO Maritime Safety Committee held in London from May 27 to June 5, 2009.

A Cruise Manning Forum attended by cruise principals, cruise manning agents and government was held in Manila May 20, 2009. Various issues involving the cruise industry (as opposed to the traditional crew industry) were discussed. One result was a commitment by government to draft a POEA Cruise Contract by August 2010. The participants agreed to hold the forum on a yearly basis.

The Omnibus Merchant Shipping Act which codifies all maritime laws, rules and regulations of the Philippines and is now subject of congressional hearings is now under review. The Act is a joint project of the Department of Transportation and Communication (DOTC) and the Norwegian Agency for Development Cooperation (NORAD). MARINA has given a deadline of July 13, 2009 for submission of comments. Comments may be submitted to your manning organization or direct to MARINA.

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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