



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., September 14, 2011 (Issue 2011/05)

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Supreme Court upholds three day mandatory reporting requirement in the POEA-SEC

Dismissal of seafarer requires notice and reasonable time to explain

POEA Memorandum Circular 08/2011 on Submission of Deployment Reports

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## **Supreme Court upholds three day mandatory reporting requirement in POEA-SEC**

Seafarer was repatriated allegedly due to chest pains. He reported to his own physicians within two days from arrival. He did not report to the company-designated physician within three days as required by the POEA-SEC alleging that his manning agent failed to refer him to its company physician.

The Supreme Court ruled that the seafarer's claim cannot prosper. It is mandatory under his contract that he should be examined by a company-designated physician within three days from repatriation. Failure to comply without justifiable cause forfeits his right to claim for compensation and disability benefits under the POEA-SEC.

The Court explained it's ruling thus:

“The foregoing provision (provision on three day mandatory reporting requirement) has been interpreted to mean it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of

the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by the company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits under the POEA-SEC."

As to seafarer's allegation that his manning agent failed to refer him to the company-designated physician, the Court ruled that seafarer failed to present any evidence to prove justification for his inability to submit himself to post-employment medical examination by the company-designated physician. If a written notice is required of a seafarer who is physically incapacitated for purposes of compliance with said requirement, we fail to see why a more tangible proof should not likewise be expected of 'seafarer' who, after his arrival on 7 July 2003 appears to have been well enough to consult with (his own physicians) on 9 July 2003.

The Court explained that "indeed, self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence. Often described as more than a mere scintilla substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion even if other equally reasonable minds might conceivably opine otherwise."

The Court also ruled:

"We are well aware of the principle that, consistent with the purposes underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect. This exhortation cannot, however, be taken to sanction the award of disability benefits and sickness allowance based on flimsy evidence and/or even in the face of an unjustified non-compliance with the mandatory reporting requirement under the POEA-SEC. When the language of the contract is explicit and leaves no doubt as to the intention of its drafters, the rule is settled that courts may not read into it any other intention that would contradict its plain import. While we sympathize with (seafarer's) plight, we are, therefore, constrained to deny his claims for disability benefits and sickness allowance absent proof of compliance with the requirements set forth in Section 20 (B), paragraph (3) of the POEA-SEC."

*Coastal Safeway Marine Services Inc. vs. Elmer T. Esguerra; G.R. No. 18352; Second Division; August 10, 2011 ; Associate Justice Jose Portugal Perez, Ponente.*

## **Dismissal of seafarer requires notice and reasonable time to explain**

A radio officer filed a complaint for illegal dismissal. The 1998 case eventually reached the Supreme Court which ruled that the dismissal was proper as enough evidence was presented by the Master and other officers of the ship which showed "sowing intrigue and dissension on board the vessel"; "inefficiency and neglect of duty" and "insubordination or disobedience of the lawful orders of the shipmaster". Presented as evidence were letters of the Master, the Filipino Chief Officer and the Filipino 1<sup>st</sup> Assistant Engineer. The Court ruled that this evidence was not refuted and should therefore be admitted as sufficient support for the charges.

However, the Court awarded nominal damages of P30,000 (US\$700) as the Radio Officer was immediately dismissed without giving him reasonable time to explain his side and if necessary, to explain his side in writing. The Court ruled that "while this lapse in procedure cannot negate the existence of a valid cause for Flores' dismissal, the violation of his right to procedural due process warrants the payment of indemnity in the form of nominal damages."

*Abosta Shipmanagement Corporation vs. NLRC and Arnulfo Flores, G.R. No. 163252, Second Division, July 27, 2011, Associate Justice Arturo Brion, Ponente.*

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## **POEA Memorandum Circular 08/2011 dated July 20, 2011**

A reminder that all licensed manning agencies are required to submit a weekly deployment report before the close of office hours every Friday. Failure to comply shall cause the immediate suspension of the agency/ies documentary processing without prejudice to the filing of an administrative case for violation of POEA Rules and Regulations.

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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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