



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

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Update on the Amended Migrant Workers Act (AMWA – Republic Act No. 10022)

The following circulars and resolutions are still being awaited:

1. POEA Governing Board Resolution and the corresponding Memorandum Circular on the guidelines for compliance on the compulsory insurance requirements of the Migrant Workers Act.
2. POEA Governing Board Resolution and the corresponding Memorandum Circular covering the amended POEA Standard Employment Contract

The circulars are expected to specify the requirements needed to comply with the compulsory insurance requirements of the Amended Migrant Workers Act. The circulars are expected to be issued anytime soon and said circulars will specify the effectivity dates for its compliance. It is expected that sufficient time will be afforded for the industry stakeholders to comply with the circulars.

The author is closely monitoring developments and will give subsequent updates as needed.

Supreme Court defines “accident” as found in CBAs; rules injury while in the performance of a duty is not an accident

Respondent (Seafarer) was employed as a third officer. While on board the vessel, he felt a sudden snap on his back, while carrying a heavy basketful of hydrant caps. He immediately informed the ship captain about his condition but the pain became severe and respondent had difficulty in walking. He was brought to a foreign clinic and was diagnosed to be suffering from lumbago and sprain. The foreign doctor advised him to avoid lifting objects and get further treatment. Respondent was then repatriated to undergo further medical treatment. He underwent a laminectomy with discectomy at the St. Luke’s Medical Center and a series of physical rehabilitation. As his condition did not improve, respondent consulted a private physician who declared that respondent sustained partial permanent disability with an impediment Grade of 11 under the POEA Contract. He was further declared unfit to work at sea in any capacity as a seaman. Respondent demanded payment of disability benefit. Petitioners (vessel interests) offered to pay respondent disability benefit in the amount of US\$16,795.00, corresponding to Grade 8 disability under the POEA Contract. However, respondent refused to accept the offer on the ground that the injury sustained by him was caused by an accident, which was compensable in the amount of US\$90,000.00 under the CBA.

The Labor Arbiter awarded US\$90,000. On appeal, the NLRC Commission awarded US\$16,795. This was reversed by the Court of Appeals which awarded US\$90,000.

The Supreme Court had to decide two issues:

1. Is the “sudden snap of the back” considered an accident which entitles seafarer-respondent to US\$90,000?
2. How much compensation should be awarded the seafarer?

ACCIDENT

On the first issue of accident, the Court held that the snap on the back of respondent was not an accident, but an injury sustained by the respondent from carrying the heavy basketful of fire hydrant caps, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, it is common knowledge that carrying heavy objects can cause back injury. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term “accident”.

The Court ruled thus:

Was respondent's disability the result of an accident?

Black's Law Dictionary³⁴ defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."

The Philippine Law Dictionary³⁵ defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."

"Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:

[A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.

The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events."

The Court holds that the snap on the back of respondent was not an accident, but an injury sustained by respondent from carrying the heavy basketful of fire hydrant caps, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above.

COMPENSATION

The Court however held that although, the disability of respondent was not caused by an accident, his disability is still compensable under Article 13 of the Collective Bargaining Agreement (CBA) which states:

A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.

The Court found merit in the reasons stated by the respondent's private physician for declaring the latter unfit to work in any capacity as a seaman. As gleaned from the medical report, although respondent had post-surgery, he is still continues to have back pains. He is also unable to tolerate prolonged standing and walking. He therefore cannot withstand the demands of his previous work at sea. Even surgery can never stop the pathological process nor restore the back of its previous state. Resuming his usual work, which includes increased loading, twisting, or bending and extension of the back, will further expose the respondent

to dangers of enhancing his discomfort even more. Therefore, respondent is entitled to disability benefit in the amount of US\$90,000.00 under the CBA.

The Court gave credence to seafarer's private physician (who is a specialist in occupational medicine and orthopedics) as opposed to the company-designated physician and quoted respondent's physician's report:

“Surgery can never stop the pathological process nor restore the back to its previous state. Similar poor results have been found with repeated attempts at surgical intervention for the relief of chronic low back pain. If long term relief is desired, continued mechanical stress of postural or occupational type must be avoided. Resuming his usual work, which includes increased loading, twisting, or bending and extension of the back, will further expose Mr. Illescas to dangers of enhancing his discomfort even more.

It is for this reason that I find him UNFIT to work back at sea in any capacity as a Seaman. “

NFD International Manning Agents, Inc. / Barber Ship Management, Ltd. vs. Esmeraldo Illescas; G.R. No. 183054; Second Division; September 29, 2010, Supreme Court Associate Justice Diosdado Peralta, Ponente.

*“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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