



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 3, 2011 (Issue 2011/06)

Supreme Court reiterates 120 days rule; seafarer is deemed totally and permanently disabled as disability lasted for more than 120 days

Seaman was engaged as Second Assistant Engineer. Some four months after embarkation, the seaman experienced chest pains for which reason he was referred to a hospital in Mexico and was diagnosed with hypertensive crisis and high blood pressure. He was then repatriated and was placed under the care of the company-designated physician who diagnosed his illness as hypertension. Seaman was under treatment from 9 October 2001 to 25 April 2002 (199 days) and eventually was declared fit to work. Seaman questioned the findings of the company-designated doctor and obtained a second opinion from his personal doctor who diagnosed him with ischemic heart disease, hypertensive cardiovascular disease and congestive heart failure and declared him unfit to work in any capacity. On this basis, the seaman filed a claim for full disability benefits under a CBA, sick wages, damages and attorney's fees.

The Labor Arbiter denied the claim of the seaman for disability benefits as the CBA provision will not apply to him and will only apply to disabilities arising from an accident. The seaman is also not entitled to disability benefits under the POEA-SEC as he was declared fit to work by the company-designated doctor whose findings is more credible than that of seaman's personal doctor. However, an award of sick wages amounting to PHP21,581.39 was issued plus one month wage as penalty amounting to US\$809.00 for failure to re-deploy the seaman. On appeal, the NLRC modified the decision of the Labor Arbiter and deleted the award of sick wages as these were already paid. The penalty of one month wage was also deleted as the company had no obligation to re-deploy the seaman as he is a contractual employee.

Seaman elevated the matter to the Court of Appeals who dismissed the Petition by affirming the reasoning of the NLRC that he is not entitled to disability benefits because he was declared fit to work by the company-designated doctor. The Court of Appeals held that the findings of the company-designated doctor is more credible as they based their opinion over the course of the six months treating period as compared to the one day consultation made by the seaman with his doctor.

The seaman appealed the decision of the Court of Appeals to the Supreme Court arguing that since his disability lasted for more than 120 days, then he is considered totally and permanently disabled. The Supreme Court granted the Petition and awarded the seaman US\$60,000 disability benefits plus US\$6,000 attorney's fees. ***The Supreme Court ruled that since the certification of fitness issued by the company-designated physician came after 199 days, seaman is considered permanently and totally disabled. It does not matter that seaman was declared fit to work after 120 days. What matters is that the seaman's disability lasted for more than 120 days which would make his disability total and permanent in character and will entitle him to full disability benefits of US\$60,000 under the POEA-SEC.***

Carmelito Valenzona vs. Fair Shipping Corporation and/or Sejin Lines Company Limited, G.R. No. 176884; First Division, October 19, 2011, Associate Justice Mariano Del Castillo, Ponente (Attys. Florencio Aquino and Charles de la Cruz of Del Rosario & Del Rosario handled for vessel interests.

Author's Note: The case was ruled in favor of vessel interests in the Labor Arbiter, NLRC Commission and the Court of Appeals. The Supreme Court reversed the decision.

We will file a Motion for Reconsideration with a prayer that the same be referred to the Supreme Court En Banc (as a whole) for consideration so that the issue on the 120/240 days will be settled once and for all. This decision is by the First Division of the Supreme Court which has consistently upheld the 120 day rule. The

Third Division has two rulings extending the 120 days to 240 days. The entire three divisions of the Supreme Court should decide on whether it is 120 days or 240 days to be used in determining whether a seafarer is totally and permanently disabled.

For those unfamiliar with the 120 day issue, the Supreme Court has ruled on several occasions that a seafarer who is unable to work for more than 120 days is considered totally and permanently disabled. This was modified in some decisions by extending the “unable to work” rule to 240 days which is more acceptable than a 120 day rule.

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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 .

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