



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, November 15, 2007

This issue contains the following Court of Appeals decisions:

Seafarer with HIV Aids denied compensation; court ruled illness was pre-existing and was concealed by seafarer

Seafarer's death thru stabbing deemed not work-related

Fit to work declaration terminated seafarer's employment; subsequent death after more than a year no longer compensable

Seafarer with HIV Aids denied compensation; court ruled illness was pre-existing and concealed by seafarer

Seafarer was hired as first engineer under the New POEA Standard Employment Contract. He was repatriated due to active tuberculosis and HIV. Despite continued treatment, seafarer succumbed to death due to pneumonia as the immediate cause and AIDS as underlying cause. Seafarer's wife filed a claim for compensation benefits.

The Labor Arbiter denied the complaint for lack of merit. The Arbiter found that seafarer's illness was pre-existing and wilfully and deceitfully concealed from shipowner. The Labor Arbiter gave weight to the narration of a foreign nurse who stated that the deceased seafarer acknowledged his deceit and confessed that the reason why he did not divulge his illness is because he was not able to obtain any disability benefits from his previous employer.

On appeal to the NLRC Commission, the Commission reversed the decision of the Labor Arbiter. The Commission ruled that the HIV testing result by the National Reference Center for HIV Testing is not competent evidence to establish HIV as it did not identify the seafarer. Further, the commission noted that the deceased seafarer was found fit to work in his pre-employment medical examination.

On appeal to the Court of Appeals, the Court reversed the NLRC Commission and denied the claim for compensation benefits. The Court ruled that the deceased seafarer in fact knew that he was already HIV positive when he applied for work. Thus, **death arising from a pre-existing illness is not compensable.** The court further held that **"for the private respondents to claim that the issuance of a clean bill of health to a seafarer after a PEME means that his illness was acquired during the seafarer's employment is a non sequitor. While a PEME may reveal enough on whether a seafarer is fit for overseas employment, it may not be relied upon to inform the petitioner of a seafarer's true state of health.** The PEME could not have divulged seafarer's illness considering that the examinations were not exploratory. It was only after the late seafarer was subjected to a careful and thorough analysis of his blood count that his illness became known to the shipowner.

The court further held that death compensation cannot be awarded unless there is substantial evidence showing that: a) the cause of the seafarer's death was reasonably connected with his work; or b) the sickness for which he died is an accepted occupational disease; or c) his working conditions increased the risk of

contracting the disease for which he died. Furthermore, **the court ruled that seafarer failed to show a reasonable connection between seafarer's work as first engineer and the cause of his death; or the risk of contracting such illnesses was increased by the seafarer's working conditions.**

Leonis Navigation et. al. vs. NLRC, et. al., CA-GR SP No. 98719, October 17, 2007, Fourth Division, Court of Appeals Associate Justice Rodrigo Cosico, Ponente. (Attys. Florencio Aquino and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

Seafarer's death thru stabbing deemed not work-related

Seafarer was hired as a messboy under the New POEA Standard Employment Contract. His employment contract was cut short by his untimely death due to stab wounds to his chest as a result of a stabbing incident inflicted by his crewmember. Seafarer's heirs filed a complaint for payment of death benefits, moral and exemplary damages plus attorney's fees. Both the Labor Arbiter and the NLRC dismissed the complaint and ruled that the cause of death of the seafarer was unrelated to his duties, thus, not work-related.

The Court of Appeals dismissed the petition. The court said that seafarer's death was caused by a stab wound inflicted by his co-worker from a fight and it was the deceased seafarer who initiated and the first one to punch his opponent provoking the latter to fight back. Moreover, the court ruled that the death of the seafarer is attributable to his unlawful aggression and thus is not compensable.

Susan Mariano, et. al. vs. NLRC et. al., CA-GR SP No. 97038, October 9, 2007, Special Eighth Division, Court of Appeals Associate Justice Jose Sabio Jr., Ponente (Attys. Anna Lea Dy and Charles de la Cruz of Del Rosario & Del Rosario handled for vessel interests).

Fit to work declaration terminated seafarer's employment; subsequent death after more than a year no longer compensable

Seafarer was hired as master under the Old POEA Standard Employment Contract. He was diagnosed to have diabetes mellitus and was repatriated for further medical treatment. Seafarer was then declared fit to work and later on decided to go to his hometown. After a year, seafarer died. The cause of death was respiratory arrest, diabetes mellitus and myocardial infarction. Seafarer's wife filed claim for death benefits.

The Labor Arbiter ruled in favor of the seafarer holding that seafarer was still on active duty at the time of his illness and thus his illness is compensable. The NLRC reversed the decision and ruled in favour of the shipowner. The NLRC ruled that seafarer's death had occurred after more than a year and four months following the termination of his employment and thus his death is no longer compensable.

The Court of Appeals upheld the NLRC's ruling. The court ruled that seafarer's contract ended with his medical repatriation. He was then treated and declared fit to work. Despite being declared fit to work by the company-designated physician, the seafarer did not report back to work and instead chose to go home to the province to rest. By the seafarer's voluntary act of going home to the province to rest instead of reporting back to work, seafarer ceased to be connected with the shipowner. Further, the fact that seafarer was declared fit to work terminated any employment he had with shipowners.

Marietta Yangson vs. NLRC, et. al., CA-GR SP No. 82581, September 19, 2007, Second Division, Court of Appeals Associate Justice Lucas Bersamin, Ponente (Attys. Florencio Aquino and Charles de la Cruz of Del Rosario & Del Rosario handled for vessel interests)

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@delrosariolaw.com.

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