



## **DEL ROSARIO & DEL ROSARIO**

### **Shipping and the Law**

#### **Various NLRC decisions**

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, February 1, 2006

**Summary:** Three decisions are covered in this article. First is the NLRC decision which dismissed a claim for loss of earning capacity. Seafarer had been paid US\$80,000 for permanent disability but still filed a claim of US\$555,829.48 alleging vessel's negligence. The NLRC dismissed the complaint as said claim for damages is tantamount to double recovery and is not provided for under the contract. Second, is a claim for disability by seafarer who refused to undergo surgery to cure his back pain. The NLRC allowed a lower disability claim and ruled that seafarer's refusal to undergo surgery was justified. Third, is a Court of Appeals ruling that the voluntary arbitration clause in both the CBA and the POEA contract is valid. Labor Arbiters do not have jurisdiction on seafarers claims where the seafarer is a member of a union like AMOSUP.

#### **Seafarer's refusal to undergo surgery held justified**

Seafarer claimed for disability benefits due to injury resulting in LUMBAR DISC SCIATICA. Vessel however argued that based on the company physician's recommendation, seafarer can be cured by surgery. Vessel refused to pay disability benefits. Seafarer obtained the opinion of another doctor who opined a disability grading of 6 (50%) or US\$35,000.

The Labor Arbiter awarded Grade 1 disability benefits of US\$70,000. On appeal, the NLRC reduced the award to US\$35,000.

Seafarer should be granted disability benefits as there is no dispute that he suffered injury during the course of employment. Seafarer's doctor assessment of 50% was not disputed by the company doctor and was done after medical tests. Such assessment must therefore stand.

On the issue of seafarer's refusal to undergo surgery, the NLRC held: "the same should not be counted against him. For one, there is no absolute guarantee that complainant's condition will improve after the surgery as can be gleaned from the report of the company physician" which stated "barring unforeseen circumstances (seafarer will be able to go to his previous work in 4-6 months)." There was no assurance that seafarer can be cured completely as the company doctor qualified his report with the phrase "barring unforeseen circumstances."

**Dechaves vs. Magsaysay Maritime, et. al., NLRC NCR CA NO. 036613-03 (NLRC NCR-01-10-2051-00), June 30, 2005**

#### **Court of Appeals upholds jurisdiction of voluntary arbitrator over that of labor arbiter**

Seafarer filed a claim for disability benefits. Vessel filed a Motion to Dismiss alleging lack of jurisdiction as the CBA and the POEA Contract.

The Labor Arbiter dismissed the Motion to Dismiss. Vessel appealed to the NLRC Commission which reversed the Labor Arbiter and dismissed the complaint for

lack of jurisdiction.

On Petition for Certiorari to the Court of Appeals, the appellate court sustained the NLRC Commission on two grounds:

1. The AMOSUP CBA states that disputes from the referred to a grievance committee and any unresolved grievance must be

referred to a voluntary arbitration committee. The CBA is the contract between the parties and is respected by law.

2. The POEA contract provides for referral to voluntary arbitration.

Seafarer's complaint was dismissed for lack of jurisdiction.

**Poneles vs. NLRC, et. al., CA-G.R. SP No. 87840, December 7, 2005**

---

Ruben T. Del Rosario is managing partner of Del Rosario & Del Rosario. He is former president of the Maritime Law Association of the Philippines and is currently president of the Philippine Maritime Voluntary Arbitrators Association. Del Rosario is correspondent of several P & I Clubs.

For complete copy of the decision or for further information, please call 63 2 810 1791 or fax 63 2 817 1740 or email [ruben.delrosario@delrosariolaw.com](mailto:ruben.delrosario@delrosariolaw.com)

This article is sent from time to time to clients and friends. To unsubscribe, reply to this email and put "[unsubscribe](#)" in the subject.

This publication is only intended to summarize general points of interest in the material discussed herein. It is not intended to be exhaustive, accurate or to be legal advice with respect to the matters discussed.

---

**Del Rosario & Del Rosario / Del Rosario Pandiphil, Inc.**

**Office Address:** 15th Floor, Pacific Star Building Makati Ave., cor. Sen. Gil Puyat Ave. 1200 Makati City, Philippines

**Telephone:** 63 2 810 1791 \* **Fax:** 63 2 817 1740/ 63 2 810 3632

**24/7 mobile:** (63) (917) 830-8384; [mail@delrosariolaw.com](mailto:mail@delrosariolaw.com); [www.delrosariolaw.com](http://www.delrosariolaw.com)

