



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 1, 2008

This issue contains the following:

Supreme Court denies manning organizations motion on “120 day” Remigio case

Dismissal of seafarer require notice of specific charges

Dismissal of waiter on board cruise ship for “one instance of late for work” held illegal

Supreme Court denies manning organizations motion on “120 day” Remigio case

After almost two years of waiting for the Supreme Court to decide on the manning organizations’ intervention in the “120 day” Remigio case, the Supreme Court issued a Minute Resolution denying the said motion for reconsideration-in-intervention. The “Minute Resolution” did not discuss the merits of the case but merely denied the same for “lack of merit”.

The manning organizations had hoped that the Court will review the merits of the case and thoroughly discuss the issue in their resolution.

Some hope remains in that the denial is not “with FINALITY”. Thus, the manning organizations intend to file a Motion for Reconsideration.

In the meantime, while awaiting the final outcome of the intervention, FAME has issued a circular recommending to their members the following:

- 1. Strict monitoring of sick and injured crewmembers under medical management. Ensure that treating doctors will issue assessment before 120 days.*
- 2. Be extra cautious with malingerers*
- 3. Do not settle a claim for the sole reason that the medical treatment exceeded 120 days. If crewmembers threaten to file the claim before the NLRC, take up the challenge and mount your defense. Overtime, we can use this to strengthen our position in challenging the 120 days ruling.*

Dismissal of seafarer require notice of specific charges

In *Dante de la Cruz vs. Maersk Filipinas Crewing* (G.R. No. 172038, April 14, 2008), the Supreme Court held that a third engineer was illegally dismissed as the log book entries used in evidence were “too general and vague”. The Court held that the vessel should have indicated the grounds for the threatened termination and the specific acts or omissions illustrating the same along with the date and appropriate time of their occurrence.

It is important that sufficient documentation is presented before the Court as to the various infractions committed by a seafarer to warrant a dismissal. The two notice rule should also be observed, that is, a first notice as to the grounds for the charges with a date time and place for a formal investigation of the charges giving an opportunity for the seafarer to explain his side and a second notice stating the grounds for termination with a copy furnished to the Philippine agent.

Dismissal of waiter on board cruise ship for “one instance of late for work” held illegal

In *Bahia Shipping vs. Reynaldo Chua* (G.R. No. 162195., April 8, 2008) the Court held that the ultimate punishment of termination of a waiter for being late one and half hours is not commensurate to the penalty committed. Rather, a suspension for one or two weeks would have been sufficient.

While the vessel argued that the tardiness was habitual, the Court noted that there was no evidence to support this argument. In termination cases, it is important that evidence is submitted on the various infractions of a seafarer. Otherwise, the Philippine Courts will rule in favor of the seafarer.

In determining the award for illegal dismissal, the Court awarded the unexpired portion of the contract but based the computation on the basic wage which does not include the guaranteed overtime pay. The Court held that the waiter could not have rendered overtime work as he was already repatriated.

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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