



**DEL ROSARIO & DEL ROSARIO**

## Shipping and the Law

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, May 10, 2006

### **Supreme Court rules that seafarer who is unable to work for more than 120 days is entitled to US\$60,000**

**Introduction:** The Philippine Labor Code states that a disability lasting continuously for more than one hundred twenty days is considered total and permanent disability. Is this labor law principle of 120 days applicable to seafarers?

In the Crystal Shipping case decided on October 20, 2005 and reiterated in the Remigio case of April 12, 2006, the Philippine Supreme Court has ruled that seafarers are subject to the Labor Code concept of permanent disability. Thus, those who are unable to perform their customary work for more than 120 days are deemed totally and permanently disabled. The seafarers in these two cases were awarded US\$60,000 in permanent disability benefits.

**Author's Note:** Vessel interests have always argued that this labor law principle of 120 days is not applicable to seafarers' claims as seafarers' claims are based on the POEA Standard Employment Contract. The principle of 120 days refers to employee benefits provided by the Philippine Social Security System (SSS) which has different rules than that of the POEA Contract. SSS pays a monthly pension of five years provided the employee is not gainfully employed and is unable to recover from his permanent disability. Further, said employee must be examined by a doctor at least once a year. The POEA Standard Employment Contract provides for treatment until "maximum cure" which may take more than 120 days and it is the company doctor that declares the disability grading depending on a schedule of disability. In fact, Section 20(3) of the POEA contract states that the benefits under said contract are separate and distinct from the Social Security System.

### **Permanent disability is the inability of a worker to perform his job for more than 120 days**

Seafarer was employed under the old POEA Standard Employment Contract. He was diagnosed with "swelling neck and lymphatic glands right side in neck" and was repatriated on August 18, 1998. He underwent a total thyroidectomy with radial neck dissection and also radioactive iodine therapy. The company doctor gave him a disability grading of Grade 9. He sought the opinion of his own doctor who declared him totally and permanently disabled with a grading of Grade 1.

Both the Labor Arbiter and the NLRC awarded total disability benefits of US\$60,000.

The Supreme Court, through Justice Quisumbing, affirmed the ruling thus:

**"Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than**

120 days, due to his medical treatment. This clearly shows his disability was permanent."

"Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. **In disability compensation, it is the not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.**"

**"Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years.** It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. **What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.** An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work."

**Crystal Shipping, Inc. and/or A/S Stein Line Bergen vs. Deo P. Natividad, G.R. No. 154798, October 20, 2005, First Division, Justice Leonardo A. Quisumbing, Ponente**

### **A total disability is considered permanent if it lasts continuously for more than 120 days**

Seafarer was employed as a musician (drummer) under the old POEA contract. On March 16, 1998, seafarer suffered chest pains and eventually had a triple coronary artery bypass in New Orleans. After repatriation, he filed a claim for permanent total disability benefits.

Manning agent referred seafarer to their company doctor who wrote "he may go back to sea duty as a piano player or guitar player after 8-10 more months".

The Labor Arbiter did not award disability benefits as no medical report showing a Grade 1 disability was submitted and the fact that seafarer can go back to work after 8-10 months showed he was not disabled. The NLRC affirmed the decision adding that seafarer's habit of smoking two packs a day is a willful act that contributed to his disability. The Court of Appeals likewise did not award disability benefits as there was not enough evidence submitted to show that seafarer was actually unable to work as a musician.

The Supreme Court reversed the decision.

**The Court said that the Labor Code concept of permanent total disability must be applied to the facts of the case. In the recent case of Crystal Shipping Inc. vs. Natividad, "permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Seafarer was declared unfit to work as a drummer for at least 8-10 months. This in itself already constitutes permanent total disability.**

The Court further ruled:

"Indeed, playing drums per se requires physical exertion, speed and endurance. It demands the performance of hitting strokes and repetitive movements that petitioner, having undergone a triple coronary bypass, has become incapacitated to do. The possibility that petitioner could work as a drummer at sea again does not negate the claim for permanent total disability benefits. ...what is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability."

"We do not agree that petitioner's admission that he was a heavy smoker is enough ground to disqualify him from entitlement to disability compensation...we have held that a worker brings with him possible infirmities in the course of his employment and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability..."

**Bernardo Remigio vs. National Labor Relations Commission, C.F. Sharp Crew Mgt., Inc. & New Commodore Cruise Line, Inc., G.R. No. 159887, April 12, 2006, Second Division, Justice Reynato Puno, Ponente**

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