



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 26, 2008

3 NLRC Commission decisions “clarify” 120 day ruling; total disability must be determined by “gradings” and not by the “number of days”

The NLRC Commission in three decisions have adopted the Crystal Shipping Resolution of February 12, 2007. Said resolution ruled that disability is not measured “in terms of number of days but by gradings only”.

The NLRC saw fit to follow the above clarificatory resolution of the Supreme Court instead of the Supreme Court’s other decisions on the 120 day issue.

However, it should be noted that below NLRC decisions are not considered “judicial precedents” under Philippine law. Only Supreme Court decisions are considered “judicial precedents” meaning that other courts and tribunals are only bound to follow Supreme Court decisions and are not bound to follow NLRC decisions.

Dado vs. Magsaysay

In **Dado vs. Magsaysay**, an able seaman was repatriated with malaria and was treated for 11 months. The company doctor assessed seafarer’s disability at Grade 12 but his own physician assessed him at Grade 1 disability. He argued that he should be awarded Grade 1 disability not only because of his physician’s assessment but also he was ill for more than 120 days.

The NLRC Commission ruled that in two Supreme Court decisions, German Marine Agencies vs. NLRC and Sarocam vs. Inter Orient Maritime Enterprises, the Court upheld the findings and assessment of the company-designated physicians as this is the doctor who monitored and supervised seafarer’s medical condition.

As to the 120 days argument, the NLRC ruled:

“Moreover, contrary to complainant’s claim, the Supreme Court, in *Crystal Shipping, Inc. et.al. vs. Deo P. Natividad* recognized that the POEA Standard Employment Contract “*does not measure disability in terms of number of days but by grading only*”. Hence, *the fact that the complainant was incapacitated for more than 120 days did not ipso facto entitle him to the maximum disability compensation* considering further that during the entire period, the respondents had complied with the continuing obligation to provide medical assistance.”

Richard Dado vs. Magsaysay Maritime Corporation and/or Eduardo Manese, First Division, NLRC-CA No. 049217-06, March 31, 2008, Ponente: Commissioner Perlita Velasco, Members: Chairman Gerardo Nograles and Commissioner Romeo Go. (Attys. Charles de la Cruz and Agnes Lucero of Del Rosario & Del Rosario handled for vessel interests)

Cuevas vs. Hanseatic

In **Cuevas vs. Hanseatic**, wiper was medically repatriated due to neck mass secondary to tuberculosis. He was treated and declared fit to work by the company physician before 120 days. He filed a claim for disability benefits two years later submitting in evidence his own doctor's findings of pulmonary tuberculosis. He agreed to be examined by a third doctor who found no tuberculosis. He then anchored his claim on the fact that he was ill for more than 120 days.

His claim was denied by the NLRC Commission. The NLRC ruled that his treatment of his illness was less than 120 days. The NLRC further held:

"Moreso, we are mindful of the fact that the Amended POEA Standard Employment Contract classifies disability benefits on the basis of the disability gradings issued by medical experts. **It was never the intention of the Amended POEA Contract to award full disability benefits corresponding to a grade 1 disability grading because a seafarer has been unfit to work for more than 120 days.**

Furthermore, appellant failed to take note that the Supreme Court has issued a clarificatory resolution dated February 22, 2007 in the case of Crystal Shipping vs. Natividad stating among others that the disability benefits are measured not in terms of the numbers of days a seafarer is rendered incapable to work but in accordance with the disability gradings given by medical experts".

Virgil Cuevas vs. Hanseatic Shipping Phils., Inc., et al., Second Division, NLRC-CA No. 051877-07 – (CA No. 051877-07), March 25, 2008, Ponente: Commissioner Raul Aquino, Members: Commisioners Victoriano Calaycay and Angelita Gacutan. (Attys. Herbert Tria and Hansel Tillmann of Del Rosario & Del Rosario handled for vessel interests)

Calo vs. Alpha Shipmanagement Corporation

In Calo vs. Alpha, Chief Cook was diagnosed with kidney stones and underwent treatment with the company physician. He however stopped reporting for treatment and instead filed a complaint in the NLRC alleging that his own physician had diagnosed him with Grade 10 (20.15%) disability. He eventually agreed to report to the company physician and he was declared fit to work.

The Labor Arbiter awarded full disability benefits noting that seafarer was under treatment and medication for more than 120 days.

The NLRC reversed the decision citing the Supreme Court rulings that it is the company physician that must determine disability of the seafarer. Further, kidney stones are an ailment that can be resolved. Also, the NLRC held:

"Equally relevant is the ruling of the Supreme Court, in Crystal Shipping Inc. el al vs. Deo P. Natividad where the Court recognized that **the POEA Standard Employment Contract does not measure disability in terms of number of days but by gradings only.** Hence, the fact that the complainant-appellee was purportedly incapacitated for more than 120 days did not ipso facto entitle him to the maximum period, particularly if we consider that for the entire period the respondents-appellants had continuously accorded complainant-appellee the required treatment to address the medical issues.

Eleosis Calo vs. Alpha ShipManagement Corp., Junel Chan, et al. First Division, NLRC-CA No. 052858-07, March 31, 2008, Ponente: Commissioner Perlita Velasco, Members: Chairman Gerardo Nograles and Commissioner Romeo Go. (Attys. Charles de la Cruz and Agnes Lucero of Del Rosario & Del Rosario handled for vessel interests)

Author's Note: The above three cases are pending motions for reconsideration in the NLRC Commission.

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.

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

Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

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

24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com

