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Shipping and the Law

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, August 22, 2006

Death due to fighting not compensable

Messman died as a result of a stab-wound inflicted by a bosun due to a fight while on board the vessel, 32 nautical miles northeast of Brisbane.

The widow filed a claim for death benefits.

Both the Labor Arbiter and the NLRC denied the claim.

"The Labor Arbiter correctly cited the applicable law which is Section 20-A of the POEA Standard Employment Contract (SEC) on Compensation and Benefits for Death. From the aforementioned provision it is clear that for death to be compensable, two conditions must concur: (1) the seafarer dies during the term of his employment contract; and, (2) the cause of the seafarer's death must be work-related.

"In the present case, it is not disputed that the first condition was satisfied. As to the second element, we find the death of Rolly Mirasol completely unrelated to his work as a messman, as correctly ruled by the Labor Arbiter. Too much has been said by both parties as to who started the fight or who is the unlawful aggressor in the fight that caused the death of the seafarer. To us the same is immaterial and irrelevant. For regardless of who has the valid arguments on the said issue what is apparent is that the fight between two workers which started from an argument over something that is not even related to their respected work caused the death of seafarer Mirasol. No amount of justification can convince us that the same is work-related as contemplated under Section 20-A of the Standard Employment Contract. While this Commission sincerely commiserates with complainants, it is clear that the death of seafarer Mirasol does not meet the criteria of compensability described earlier."

NLRC NCR CA NO. 040772-04, NLRC OFW CASE NO. (M) 03-07-1801-00, March 20, 2006, Commissioner Perlita B. Velasco, Ponente

Accident in CBA does not include illness

Seafarer suffered "retinal detachment" on his right eye. He claimed that said condition is due to an "accident" and not due to "illness" and is covered by the higher compensation levels under the JSU AMOSUP CBA. Further, claimant argued that illnesses are not specifically excluded from the CBA and therefore covered by it. The Court of Appeals ruled:

"A careful reading of the CBA clearly provides that it covers only permanent disability resulting from an accident, to wit:

"SECTION 1. A seafarer who **suffers permanent disability as a result of an accident**, regardless of fault, but excluding injuries caused by a seafarer's willful act, whilst in the employment of the Company x x x and whose ability to work is reduced as a result thereof, shall in addition to sick pay pay, be entitled to compensation.x x x^[1]

From the provision cited, it is clear that the use of the work "accident" is controlling in the instant case before us. Simply put, the aforementioned section specifies that in order for an employee suffering from permanent disability to receive compensation in addition to his sick pay, he must meet the following requirements: (1) that the **permanent disability resulted from an accident**; (2) that while it is not necessary to ascertain whose fault caused the accident, it must not result from the seafarer's willful act; (3) that the accident must have happened while the seafarer is employed with the company; and (4) that, as a result of the permanent disability resulting from the accident, the seafarer's ability to work is reduced. In the absence of any accident causing the permanent disability, a seafarer may not claim for benefits under Section 1 of the CBA. Considering that there is no doubt in this instance that the injury of the petitioner did not result from an accident, then the CBA provisions cannot be made to apply in his case. Furthermore, there is no merit in petitioner's statement that "if the CBA really intended not to compensate disabilities of the eye not caused by an accident, then the provisions in Appendix B are illogical and absurd."^[2] A cursory reading of Appendix B^[3] reveals that this is merely a compensation scale to determine the percentage of compensation of the different disabilities that may result from the seaman's employment. Said "compensation scale" cannot lend credence or support to petitioner's argument that disabilities **NOT** caused by accidents are within the purview of the CBA."

CA. G.R. SP NO. 75431, May 19, 2006, Justice Mariflor P. Punzalan Castillo, Ponente

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