



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 11, 2013 (Issue 2013/10)

Supreme Court rules that seafarer who files claim against his employer is not entitled to disability benefits if he obtains subsequent employment with another company

Seafarer finished his contract as a cook on November 2001. He alleged that he immediately requested for medical assistance with the manning agents after repatriation and he was referred to a company-designated doctor. He was then diagnosed with high blood pressure and diabetes. The seafarer requested for compensation but this was denied. The seafarer then saw other doctors for treatment and was declared unfit to work and suffering from a grade “10” disability for which reason, he filed a claim for disability benefits.

On the other hand, the company refused compensation on the ground that the claim was filed 2 years and 10 months after the seafarer finished his contract and that he did not submit himself for post-employment medical examination within 3 days from repatriation.

The Labor Arbiter denied the complaint on the ground that the respondent failed to comply with the 3-day mandatory reporting requirement under the POEA Contract.

The NLRC set aside the decision of the Labor Arbiter and relied on the assessment of the seafarer’s physician and awarded partial disability benefits amounting to US\$10,075. Both parties moved for partial reconsideration as the seafarer wanted full disability benefits and the company was of the position that seafarer is not entitled to any. Both motions were denied. In the interim, it was discovered that the seafarer was engaged by another company on-board another ocean-going ship.

The company elevated the matter to the Court of Appeals but their petition was dismissed due to technicalities. The company then filed a petition with the Supreme Court which relaxed the rule on procedures in the interest of substantial justice.

The Supreme Court disallowed the claim for disability benefits based on the reasons below.

Seafarer finished his term of employment

The seafarer disembarked from the vessel due to finished contract and not for medical reasons. Aside from self-serving allegations, the seafarer did not present evidence which would show that he suffered an illness during employment. The Supreme Court also noted the fact that the seafarer failed to present medical reports coming from the company-designated doctor despite the fact that he claimed having consulted the former. Under the POEA Contract, a seafarer is entitled to copy of all medical certificates issued by the company-designated doctor and the absence of a medical report or certification of seafarer’s ailments from said doctor only signifies that his post-employment medical examination did not take place as claimed.

Seafarer was employed again after his employment with the company

The Supreme Court noted that the seafarer, after filing his complaint with the NLRC, obtained another employment with another company.

The Supreme Court held that the delay in the filing of the complaint casts grave suspicion on seafarer’s true

intentions against the company. It took him two years and 10 months to file the complaint since he disembarked from the vessel. As to why it took him that long a time to file the complaint, only the seafarer can answer, but one thing was clear: he obtained another employment as a seaman for three months (from March 1, 2004 to June 11, 2004), long after his employment with the company.

The Supreme Court further asked the following questions in reasoning out its decision:

“If the seafarer was able to secure an employment with another vessel after his disembarkation in November 2001, how can there be a case against the company, considering especially the lapse of time when the case was instituted? How could the seafarer be accepted for another ocean-going job if he had not been in good health? How could he be engaged as a seaman after his employment with the company if he was then already disabled? Surely, before he was deployed by the other company, he went through a pre-employment medical examination and was found fit to work and healthy; otherwise, he would not have been hired. Under the circumstances, his ailments resulting in his claimed disability could only have been contracted or aggravated during his engagement by his last employer or, at the very least, during the period after his contract of employment with the company expired.”

Author’s Note:

Aside from the fact that the seafarer finished his contract, the seafarer is also barred from claiming disability benefits considering he did not request for medical assistance or submitted himself to medical examination by the company-designated doctor within 3 days from repatriation in accordance with the provision of the POEA Contract.

Further, seafarer was again employed with another company after he filed his complaint. He must have been fit to work in order to be hired by this other company. It is thus important that when a case is pending before the NLRC, the case handlers should be aware of the possibility that a seafarer is already working on board another vessel. Such circumstances as non-appearance at the mandatory conferences; claim for an illness that is curable; and claim filed after the contract is finished and not due to medical repatriation are some signs that a claimant may already be working on another vessel and further investigation may be required.

Oriental Shipmanagement Co., Inc., Rosendo C. Herrera and Bennet Shipping AS Liberia vs. Rainerio N. Nazal; G.R. No. 177103; Second Division; June 3,2013; Associate Justice Arturo Brion, Ponente

“Del Rosario & Del Rosario has an excellent reputation for both contentious and non-contentious maritime work.” Asia-Pacific, the Legal 500, 2013, p. 413

“Few will dispute Del Rosario & Del Rosario’s position as the Philippines’ leading maritime law firm.” from Asia-Pacific, The Legal 500, 2012, p. 388

“This unparalleled shipping firm remains at the forefront of the market.” “They are in a league of their own.” “They are the runaway leaders in shipping.” Chambers Asia Pacific, 2012 p. 832

Social Networking Sites



Twitter ID: delrosariopandi



Facebook Page: DelRosarioLaw

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 & Del Rosario / Del Rosario Pandiphil, Inc.

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 mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosariolaw.com

