



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 26, 2014 (Issue 2014/05)

### **Contract not impliedly renewed if seafarer not disembarked after expiration of the original contract; seafarer continues his service until vessel's arrival at a convenient port**

Is there implied renewal of the original contract if the seafarer is not disembarked when his contract of employment expires? This is the question answered by this case.

Seafarer's contract with the company was for a period of 9 months. Based on the duration of the employment contract, he was supposed to be employed from 29 January 2000 – 25 October 2000. However, as the vessel was at sea, he was only repatriated on 14 November 2000.

It was the position of the seafarer that since he was allowed to stay with the vessel for more than 20 days after the expiration of his contract, the contract was impliedly renewed for another 9 months. As such, when he was repatriated on 14 November 2000, he was illegally dismissed.

The Labor Arbiter ruled in favor of the seafarer and held that there was implied renewal of the contract since the seafarer was allowed to stay after the termination of his contract. The Labor Arbiter awarded salary for the unexpired portion of his impliedly renewed contract. The NLRC affirmed the decision of the Labor Arbiter.

The Court of Appeals set aside the decision of the NLRC. The court ruled that there was no implied renewal of contract and the twenty (20) days extension was due to the fact that the ship was still at sea.

The Supreme Court affirmed the Court of Appeals and held that although seafarer's employment contract with the company ended on 25 October 2000 and he disembarked only on 14 November 2000 or barely 20 days after the expiration of his employment contract, such late disembarkation was not without valid reason. The company could not have disembarked the seafarer on the date of the termination of his employment contract, because the vessel was still in the middle of the sea.

Clearly, it was impossible for the seafarer to safely disembark immediately upon the expiration of his contract, since he must disembark at a convenient port. Thus, seafarer's stay in the vessel for another 20 days should not be interpreted as an implied extension of his contract. A seafarer need not physically disembark from a vessel at the expiration of his employment contract to have such contract considered terminated.

It is a settled rule that seafarers are considered contractual employees. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. Thus, when seafarer's contract ended on 25 October 2000, his employment is deemed automatically terminated, there being no mutually-agreed renewal or extension of the expired contract.

However, seafarer is entitled to be paid his wages for the more than 20 days he stayed on-board after the expiration of his contract until the vessel's arrival at a convenient port.

**Author's Note:** The seafarer's claim in this case originally included one for disability benefits and retirement pay. The claim for retirement pay was denied by the Labor Arbiter as the seafarer is a contractual employee and not a regular employee. However, the Labor Arbiter awarded partial disability benefits to the seafarer. Eventually, the award of disability benefits was deleted by the NLRC in their decision.

The Supreme Court in this case determined that the seafarer is entitled to wages after the expiration of his contract until he arrives in the convenient port for his repatriation. The basis of the Supreme Court is Section 19 of the POEA Contract which states:

"REPATRIATION. A. If the vessel is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on board until the vessel's arrival at a convenient port and/or after arrival of the replacement crew, provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract."

The author humbly disagrees with the Supreme Court and is of the opinion that the seafarer should have been entitled to wages until his arrival at the point of hire based on Section 6 of the POEA Contract which states:

"The seafarer shall be paid his monthly wages not later than 15 days of the succeeding month from the date of commencement of the contract until the date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract."

*Antonio Unica vs. Anscor Swire Ship Management Corporation ; G.R. No. 184318; Third Division; February 12, 2014 ; Supreme Court Associate Justice Diosdado Peralta, Ponente (Attys. Catherine Mangahas and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).*

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