



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., September 10, 2012 (Issue 2012/11)

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NLRC Chairman issues memorandum requiring presence of complainant during the mandatory conciliation and mediation conference

Reports have reached the NLRC Chairman that lawyers file and sign complaints by virtue of a Special Power of Attorney (SPA) without the complainant personally appearing before the Commission. Said practice is being utilized by unscrupulous individuals to circumvent the rule that the complaint must be signed under oath by the complainant with a declaration of non-forum shopping.

In view of this, the NLRC Chairman issued a Memorandum on 6 August 2012 directing all Labor Arbiters to require the presence of complainant during the mandatory conciliation and mediation conference. If the complainant appears, he/she will be made to sign and verify the complaint. If the complainant fails to appear, the complaint will be dismissed on a without prejudice basis unless the physical presence of the complainant is impossible. In which case, a medical certificate issued by a government doctor shall be submitted stating the reason for complainant's inability to personally attend to the case. If the complainant is out of the country, any valid document evidencing his departure may be submitted such as a certification from the Department of Foreign Affairs, Bureau of Immigration and Deportation or the POEA.

Supreme Court rules seafarer has no cause of action as NLRC complaint filed while still undergoing treatment; also holds that claim for sick wages deemed abandoned upon filing of complaint

Brief Summary: Seafarer had a heart ailment and was repatriated. While being treated and prior to the end of 120 days, seafarer filed a complaint before the NLRC claiming total and permanent disability. The Supreme Court dismissed the complaint for lack of a cause of action. At the time of the filing of the complaint, seafarer had no cause of action as he was still being treated and it was still undetermined whether he would be declared fit or permanently disabled by the company doctor. As to payment of sickness wages, the Court held that seafarer should be paid sickness wages only up to the time of the filing of his complaint. Sick wages is meant to aid the seafarer while he is being treated. As he already filed a complaint for total and permanent disability benefits (and thus no longer to be treated), he is deemed to have abandoned his claim for sick wages.

Facts: Seaman was hired as a cook and boarded the vessel on 8 January 2006. He complained of pain in his left parasternal area, dizziness, difficulty in breathing and shortness of breath prompting the ship physician to bring him to a foreign hospital for consultation on 27 July 2006. He was diagnosed with atrial fibrillation and was advised to take an anti-coagulant and anti-arrhythmic drug for 4 weeks. On 5 August 2006, seaman was repatriated for further medical treatment with the company-designated doctor. He was diagnosed with cardiomyopathy, ischemic vs. dilated; S/P coronary angiography by the company-designated physician and was advised to continue taking his medications. He was then asked to return on October 18, 2006 for re-evaluation. However, seaman did not submit himself to further examination. Instead, he filed a complaint for payment for total and permanent disability benefits on 19 September 2006.

The Labor Arbiter dismissed the complaint but awarded US\$1,584.00 as sickness wages plus 10% attorney's fees. The Labor Arbiter ruled that seaman had no cause of action for payment of total and permanent disability at the time he filed his complaint as there was still no assessment or declaration that the seafarer is disabled as he was still undergoing medical treatment with the company-designated physician. Hence, there was still no finding of liability on the part of company.

The Labor Arbiter also held that seaman's atrial fibrillation is not work-related since it is not listed as an occupational disease under the POEA Contract.

Seaman appealed to the NLRC and presented 2 medical certificates to support his claims for payment of permanent and total disability benefits. The NLRC dismissed the appeal and reasoned that the complaint for disability benefits was filed barely a month after his repatriation when he was still undergoing medical treatment and evaluation by the company-designated physician. Thus, there was still no finding as to whether or not his ailment is work-related and whether or not he is suffering from any disability.

The Court of Appeals reversed the decision of the NLRC and awarded US\$60,000.00 disability benefits to the seaman. It was ruled that seaman's illness is compensable since it is a listed occupational disease falling under cardio-vascular diseases. Since seaman was asymptomatic prior to employment and he manifested signs of his illness while under the vessel's employ, the causal relationship between his work and his illness is presumed pursuant to the POEA-SEC.

The Supreme Court ruled that seaman is not entitled to disability benefits because of lack of cause of action.

120/240 days explained again

The Supreme Court held that based on Article 192 (c)(1) of the Labor Code a seafarer is considered in legal contemplation as totally and permanently disabled if his treatment exceeds 120 days without determination of fitness or degree of disability. However, this must be harmonized with Section 2, Rule X of the Amended Rules on Employee Compensation as clarified in *Vergara v Hammonia Maritime Services, Inc.* where it was held:

“As these provisions operate, the seafarer upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the

120 days initial period in exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended to a maximum 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course be declared fit to work at any time such declaration is justified by his medical condition.”

As such, if the employer’s failure to make a declaration on the fitness or disability of the seafarer is because of the latter’s need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days.

When does the cause of action of the seafarer arise in claims for permanent and total disability compensation in relation to the 120/240 days rule

The Court discussed the instances when the cause of action of a seafarer for disability benefits arises. It held that based on *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer’s cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if:

- a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
- b) 240 days had lapsed without any certification being issued by the company-designated physician;
- c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
- d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
- e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
- f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
- g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
- h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

Claim for permanent and total disability benefits filed before 120 days disallowed

The Court held that when the seaman filed his complaint on 19 September 2006 for total and permanent disability benefits, he was still considered to be only totally and partially disabled. The company was still attempting to address his medical condition which the law considered as temporary. The company designated doctors were still in the process of determining whether he is still permanently disabled or still capable of performing his usual duties.

None of the enumerated instances when an action for total and permanent disability benefits may be instituted is present. As previously stated the 120-day period for him to be considered in legal contemplation as totally and permanently disabled under Article 192(c) (1) of the Labor Code had not yet lapsed and the company-designated physician has not yet made any declaration as to his fitness or disability. Thus, in legal contemplation, seaman was still considered to be totally yet temporarily disabled at the time he filed his complaint. Being in a state of temporary total disability, respondent cannot claim total and permanent disability benefits as he is only entitled to: a) sickness wages under Section 20-B(3) of the POEA-SEC; b) repatriation with the employer shouldering the full costs thereof under Section 20-B(5); and c) medical treatment including board and lodging with the full costs thereof borne by the employer. Thus, seaman cannot be considered as having acquired a cause of action for total and permanent disability benefits.

The medical certificates presented by the seaman after the filing of the complaint to prove he is totally and permanently disabled are of no use and will not give him that cause of action he sorely lacked at the time he filed his complaint.

The procedure to contest the findings of the company-designated doctor

The Court held that under the POEA-SEC, it is the company designated doctor who is entrusted with the task of assessing a seafarer's disability although the seafarer has the right to seek the opinion of other doctors. But the right to seek the opinion of another doctor is on the presumption that the company-designated physician had already issued a certification to his fitness or disability and he finds this disagreeable. Here, the seaman did not follow the procedure as he presented the medical certificates of his personal doctors only on appeal. Further, the seaman prevented the company-designated doctor from determining his fitness or unfitness for sea duty when he no longer returned for re-evaluation. As such, the findings of his personal doctor cannot be given weight for his failure to follow the correct procedure.

Filing of complaint for total and permanent disability benefits is abandonment of entitlement to further sickness wages

The Court held that a seafarer is entitled to sickness wages during the period he is deemed to be temporarily and totally disabled. The objective of this is to aid the seafarer while his disability prevents him from performing his usual duties.

The Court further held that a temporary total disability may last for a period of 120 to 240 days depending on the need for further medical treatment. However, the seafarer is not automatically entitled to 120 to 240 days' worth of sickness wages. If the company-designated doctor determines that the seafarer is already fit for sea duty, the employer's obligation to pay sickness wages ceases and he is entitled to reinstatement to his former position. On the other hand, if the company designated doctor declares that the seafarer is already permanently disabled, then the employer's obligation to pay sickness wages likewise ceases as the obligation to pay the corresponding disability benefits arises.

While both the Labor Arbiter and the NLRC ruled that the seafarer is entitled to sickness wages equivalent to 120 days, the Court held that this is erroneous. They should have not lost sight of the fact that the seafarer took a position. Although erroneous, that he was no longer temporarily disabled when he filed a complaint for permanent and total disability benefits. Alternatively, the claim that the company should not be paying the seafarer sickness wages but the benefits corresponding to total and permanent disability necessarily implies from the seafarer's choice of remedy at the time within which he made that choice: while the company-designated physician was still in the process of determining his fitness or unfitness for sea duty and within the 120 day period. Apart from considering the seafarer as having abandoned his claim for sickness wages for the period after he filed his complaint, there is an inherent inconsistency between his claim for total and permanent disability benefits and sickness wages for the period that he claimed to be totally and permanently disabled.

CF Sharp Crew Management, Inc., Norwegian Cruise Lines and Norwegian Sun, and/or Arturo Rocha vs. Joel Taok; G.R. No. 193679; Second Division, August 13, 2012; (Attys. Maricris Ferrer and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

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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