



DEL ROSARIO PANDIPHIL Inc.

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NLRC Chairman issues Administrative Order which states that failure to attend the two mandatory conferences shall result in a waiver to file position paper

The NLRC Chairman issued Administrative Order No. 09-06 Series of 2012 dated August 28, 2012 which basically states that the failure of the respondents (vessel interests) to attend the two scheduled mandatory conferences despite being duly served with summons shall be considered as a waiver on the right to file position paper. In effect, the Labor Arbiter will decide the case without the respondents position paper.

However, the respondent is still entitled to receive copy of the complainant's position paper and further pleadings and a written directive to this effect must be issued by the Labor Arbiter to be included in the Order terminating the mandatory conferences.

This Administrative Order of the NLRC Chairman highlights the importance for respondents in an NLRC case to attend the mandatory conferences. ***Failure to appear during the scheduled two conferences mentioned in the summons would prejudice the right of the respondent to present its arguments and evidence against the claim as it would no longer be allowed to file position paper.***

The manning agents are forewarned that once they received summons, they must attend the mandatory conferences even if they will still refer the matter to their principals. They can also refer the matter to the Club correspondents even while waiting for instructions from their principals just to ensure that there is no waiver of the right to file position paper.

For good order, the NLRC Rules states:

Section 10, Rule V of the 2011 NLRC Rules of Procedure states:

SECTION 10. NON-APPEARANCE OF PARTIES. - The non-appearance of the complainant or petitioner during the two (2) settings for mandatory conciliation and mediation conference scheduled in the summons, despite due notice thereof, shall be a ground for the dismissal of the case without prejudice.

In case of non-appearance by the respondent during the first scheduled conference, the second conference as scheduled in the summons shall proceed. If the respondent still fails to appear at the second conference despite

being duly served with summons, he/she shall be considered to have waived his/her right to file position paper. The Labor Arbiter shall immediately terminate the mandatory conciliation and mediation conference and direct the complainant or petitioner to file a verified position paper and submit evidence in support of his/her causes of action and thereupon render his/her decision on the basis of the evidence on record (emphasis supplied).

Seafarer has duty to prove work-relation; mere contracting of the illness during employment is not enough without proof of work-relation

An able-bodied seafarer was repatriated due to tumor of right lower jaw and secondary cystic infection. The company-designated physician declared that seafarer had a serious case of impacted wisdom tooth (ameloblastoma) and that his illness is not work-related. Due to the finding of non-work-relation, seafarer filed a complaint for permanent disability benefits.

The Labor Arbiter dismissed the complaint. The Labor Arbiter did not find any evidence to show that seafarer's illness was in any way connected to his work as an able bodied seafarer.

The NLRC reversed the decision of the Labor Arbiter and awarded US\$60,000.00 disability benefits. The NLRC ruled that considering seafarer fell ill during his term of employment, and with illnesses not listed in Section 32 of the

POEA SEC being disputably presumed as work-related, the burden of proving that seafarer's ameloblastoma was not work-related rested with the company.

The Court of Appeals reinstated the decision of the Labor Arbiter. The Supreme Court denied seafarer's claim.

Seafarer has the duty to prove work-relation

The Court held that the disputable presumption of work-relation of an illness in the POEA SEC did not dispense with the required burden of proof imposed on the seafarer to prove that his illness is work-related. It remained incumbent upon the seafarer to discharge the required quantum of proof of compensability. Awards of compensation cannot rest entirely on bare assertions and presumptions. *Thus, seafarer must present evidence to prove that his illness is work-related.*

Disputably presumed work-related illness must be proven since the listed occupational diseases also require four conditions to be compensable

Under Section 32-A of the POEA SEC the general requirements for compensability of occupational diseases are the following: a) the seafarer's work must involve the risks described; b) the disease was contracted as a result of the seafarer's exposure to the describe risks; c) the disease was contracted within a period of exposure and under such other factors necessary to contract it; d) there was no notorious negligence on the part of the seafarer. Thus, a seafarer suffering from an occupational disease would have to satisfy these four (4) conditions before his or her disease may be compensable.

Further, the Court noted that the POEA SEC's *Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases* and *List of Occupational Diseases* easily reveals that the enumerated injuries, diseases and/or illnesses are of a serious and grave nature.

Thus, if an illness is listed as an occupational disease, it must satisfy the four conditions stated in the contract. However, in this particular case, the seafarer just states that the illness is disputably presumed work-related and argues that he must be paid compensation without presenting evidence to support work-relation. If the Court is to allow seafarer to be compensated, it would result in an absurd situation wherein a listed occupational disease (which the court noted to be a listing of serious and grave injuries and illnesses) must satisfy four conditions to be compensable, whereas a non-listed occupational disease (even if not serious and grave in nature), which is only disputably presumed work-related need not satisfy the four conditions. This the Court cannot allow. The seafarer must show proof that his illness is work-related.

The illness must be proven to be work-related; mere contracting of the illness during the term of employment not enough

The Court ruled that it is not enough that the illness was contracted during the term of employment or that said illness has rendered him permanently disabled. The seafarer must demonstrate that his work as such involved risks and within a period of exposure that resulted in his contraction of the disease.

PEME is not exploratory

The Court ruled that it is of no moment that the seafarer was cleared during his PEME. As previously ruled, a PEME is not exploratory in nature. It is not indicative of a seafarer's complete and whole medical condition which renders the subsequent contraction of illnesses by the seafarer as work-related.

Damaso Casomo vs. Career Phils. Shipmanagement, Inc., and/or Columbia Ship Management, Ltd.; G.R. No. 191606; August 16, 2012; Second Division, Associate Justice Jose Portugal Perez, Ponente (Attys. Catherine Mangahas and Charles Jay Dela Cruz of DelRosarioLaw handled for vessel interests).

"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

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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.

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