



# **DEL ROSARIO PANDIPHIL Inc.**

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 23, 2012 (Issue 2012/15)

### **Supreme Court disallows full disability benefits as seafarer's actions prevented company physician from determining his true medical condition; case referred back to the labor arbiter to determine disability grade**

Seaman sustained a fracture on his left arm on August 2000. He was treated and then repatriated for further medical treatment. During treatment, seaman did not regularly attend his scheduled medical treatment sessions. On 2 October 2000 or 32 days from his injury, and while still undergoing treatment, seaman filed a complaint for disability benefits and compensation. Seaman continued his treatment until 26 January 2001 or 148 days from his injury. When treatment was stopped, no final assessment on fitness or degree of disability has been issued by the company-designated physician.

The Labor Arbiter awarded US\$16,795.00 corresponding to a grade "8" disability based on her own examination of the Schedule of Disability in the POEA Contract. The Labor Arbiter held that there is no dispute that seaman's injury was work-related and that his treatment went beyond 120 days. Seaman appealed asking for full disability benefits of US\$60,000.

The NLRC agreed with the Labor Arbiter that seaman is considered disabled. However, the NLRC remanded the case to the Labor Arbiter as the disability grading should be further threshed out by a doctor who would be in a better position to determine the actual medical condition of the seaman. Seaman filed a Petition with the Court of Appeals.

The Court of Appeals awarded US\$60,000.00 disability benefits as the total and permanent disability of the seaman had been established.

The case was brought before the Supreme Court.

At issue before the Court is whether seafarer is entitled to disability benefits considering that seafarer was not declared fit to work by the company physician and also, was not given a disability grading within the period allowed by law.

The Court ruled that seafarer was not entitled to full disability benefits but remanded the case to the Labor Arbiter for the proper determination of disability benefits.

#### **240 days reiterated**

The Court reasoned that seafarer is not entitled to full disability benefits as seafarer's treatment lasted only 148 days. While this might have exceeded 120 days, this was well within the 240-day maximum period for the company-designated physician to either declare seaman fit to work or assign an impediment grade to his disability at that time. It is worthy to note as well that when seaman filed a complaint before the Labor Arbiter on 2 October 2000, not only was he remiss in regularly attending his scheduled treatment sessions, but only 32 days had passed from the time of his injury.

***The Court further noted that under POEA SEC, the seafarer has the duty to faithfully comply with and observe the terms and conditions of the contract, including the provisions governing the procedure for claiming disability benefits.***

***When the seaman filed his complaint and refused to undergo further medical treatment, he prevented the company-designated physician from fully determining his fitness to work within the time allowed by the POEA***

**SEC and by law.**

**Referred back to the Labor Arbiter of the case**

The Court remanded the case to the Labor Arbiter for determination of the amount of disability benefits. The seafarer is entitled to disability benefits as the Labor Arbiter, the NLRC and the Court of Appeals have already determined that seafarer is suffering from a disability. Such determination is now binding on vessel interests and the Court. The only question to be resolved is the amount of benefits that the seafarer is entitled to and as such, the case must be remanded back to the Labor Arbiter. The Court held that the disability of the seaman at the time of his last treatment would be the basis of the benefits.

**Author's Note:** *In C.F. Sharp Crew Management v. Taok (13 August 2012), the Supreme Court dismissed a claim for disability benefits on the ground that at the time the complaint was filed, the seaman had still no cause of action. In said case, the complaint was filed before 120 days. We believe that the Supreme Court should have also dismissed the claim for disability benefits considering that when the complaint here was filed, seaman was only under treatment for 32 days.*

*Pacific Ocean Manning, Inc. and Celtic Pacific Ship Management Co., Ltd. Vs. Benjamin Penales ; G.R. No. 162809; First Division, September 5, 2012; Associate Justice Teresita Leonardo-De Castro, Ponente*

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