



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 13, 2012 (Issue 2012/17)

In this issue:

Supreme Court refers dispute to voluntary arbitration in accordance with provisions of the CBA

POEA clarifies rule on compensation in high risk zones and expands such high risk zones

Redesigned DelRosarioLaw Website

Supreme Court refers dispute to voluntary arbitration in accordance with provisions of the CBA

Seaman's employment is covered by an AMOSUP VELA CBA in addition to the provisions of the POEA Contract. The CBA contains a provision that in the event of dispute between a seafarer and the company, the same must be brought before the Grievance Resolution Committee. If the same still remains unresolved, the parties may refer the case to a Mandatory Arbitration Committee.

During the term of his employment, the seaman suffered an illness which necessitated his repatriation. A dispute ensued as to seaman's entitlement to disability benefits and for this reason, he initiated grievance proceedings before his union. As no settlement was produced during the grievance proceedings, the seaman filed a complaint before the NLRC. The company moved for the dismissal of the complaint on the ground of lack of jurisdiction as the dispute should have been referred to arbitration in accordance with the provision of the CBA. The Labor Arbiter denied the motion of the company. The company appealed the denial to the NLRC which denial was affirmed. On petition before the Court of Appeals, it was held that the Labor Arbiter had jurisdiction over the claim as it involved a money claim of a seafarer. In summary, the Court of Appeals held that the jurisdiction of voluntary arbitrators is limited to those disputes that do not fall within the Labor Arbiter's exclusive and original jurisdiction or even in cases where the Labor Arbiter has jurisdiction, the parties have agreed in unmistakable terms (through their CBA) to submit the case to voluntary arbitration.

The issue brought before the Supreme Court was the question of who had jurisdiction over the dispute – the Labor Arbiter under the Migrant Workers' Act or the voluntary arbitration mechanism as prescribed in the parties' CBA and the POEA Contract?

The Supreme Court held that the answer lies in the State's labor relations policy laid down in the Constitution and fleshed out in the enabling statute which is the Labor Code.

Section 3, Article XIII of the Constitution declares:

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.”

On the other hand the provisions of the Labor Code states:

“Art. 260. Grievance machinery and voluntary arbitration. The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.”

“Art. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article.”

“Art. 262. Jurisdiction over other labor disputes. The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.”

Further, Section 29 of the POEA Contract states:

“In cases of claims or disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators”

On the basis of the above provisions of the Constitution, the Labor Code and the POEA Contract, the Supreme Court held that the dispute should have been referred to the voluntary arbitration mechanism as found in the CBA. A reading of the CBA in its entirety would show that the parties unmistakably reflected their agreement to submit any unresolved dispute at the grievance resolution stage to mandatory voluntary arbitration. The Supreme Court upheld the jurisdiction of the voluntary arbitrator and or panel of voluntary arbitrators not only because of the clear language of the parties’ CBA but also in recognition of the State’s express preference for voluntary modes of dispute settlement, such as conciliation and arbitration as expressed in the Constitution, the law and the rules.

The Supreme Court referred the dispute to the Grievance Resolution Committee of the CBA and/or the Mandatory Arbitration Committee, if warranted.

Author’s Note: *The issue of who has jurisdiction in disputes where a CBA is involved was reported in our 25 July 2012 Philippine Shipping Update in the case of Estate of Nelson Dulay, represented by his wife Merridy Jane Dulay vs. Aboitiz Jepsen Maritime, Inc. and General Charterers, Inc.; G.R. No. 172642; Third Division, June 13, 2012. In said case, the Supreme Court held that if the parties are covered by a CBA, the dispute must be referred to voluntary arbitration in accordance with the provisions of the CBA, the Labor Code, the Omnibus Implementing Rules and Regulations of the Amended Migrant Workers’ Act and the POEA Contract.*

When the vessel interests’ petition was pending with the Supreme Court, we filed a manifestation informing them of the Dulay ruling which was duly noted and was even quoted with approval by the Supreme Court in ruling to grant the petition.

Ace Navigation Co., Inc., Vela International Marine Ltd., and/or Rodolfo Pamintuan v. Teodorico Fernandez assisted by Glenita Fernandez, G.R. No. 197309; Second Division; October 16, 2012; Associate Justice Arturo Brion, Ponente (Attys. Richard Sanchez and Florencio Aquino of Del Rosario & Del Rosario handled for vessel interests).

POEA clarifies rule on compensation in high risk zones and expands such high risk zones

In two separate board resolutions, the POEA had expanded what is considered as high risk zones and at the same time, clarified what is covered by double compensation benefits.

In Governing Board Resolution No. 12, Series of 2012, the POEA, in response to queries from the industry, clarified that Filipino seafarers transiting within what has been defined as high risk zones / areas are entitled to bonus compensation of 100% of their basic wage, overtime pay and leave pay. Also, the compensation is doubled in case of injury or death when the vessel he is serving on is attacked.

In Governing Board Resolution No. 13, Series of 2012, the POEA expanded what are considered to be high risk areas in

accordance with the circular released by the International Bargaining Forum dated 12 March 2012. The following coordinates are now included effective 22 October 2012:

“The territorial waters of Benin and Nigeria, including ports, terminals and road anchorages, the delta of the Niger River, other inland waterways and port facilities, except only when the vessel is attached securely to a berth or SBM facility in a guarded port area.”

Redesigned DelRosarioLaw Website

We are pleased to announce the launching of our re-designed website. Our website is aimed to better serve clients by providing them various information about the firm, relevant news, updates and articles of great interest. You may tour the website at www.delrosariolaw.com.

“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](https://twitter.com/delrosariopandi)



Facebook Page: [DelRosarioLaw](https://www.facebook.com/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 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