



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 17, 2013 (Issue 2013/07)

Supreme Court rules cancer of the tonsil not work-related; seafarer has burden to prove work-relation if illness is not listed as an occupational disease

During the employment of the seafarer, he experienced fever, sore throat and pain in his right ear. After series of examinations, he was repatriated for treatment. The company-designated doctor conducted tonsillectomy but later determined that seafarer is suffering from cancer of the tonsil. The company-designated doctor also gave an opinion that the illness is not work-related.

A complaint for permanent and total disability benefits was filed by the seafarer and he was awarded by the Labor Arbiter the amount of US\$60,000. The Labor Arbiter held that the illness is presumed to be work-related and it lasted for more than 120 days.

On appeal, the NLRC deleted the award of disability benefits because the presumption of work-relation of the illness was duly rebutted by the opinion of the company-designated doctor that seafarer's tonsil cancer is not work-related. However, the NLRC awarded sick wages to the seafarer equivalent to his 120 days salaries.

The ruling of the NLRC was affirmed by the Court of Appeals

Tonsil cancer not work-related

The Supreme Court ruled that seafarer's tonsil cancer is not work-related. ***Tonsil cancer is not included in the list of occupational diseases. Thus, seafarer carried the burden of showing by substantial evidence that his cancer developed or aggravated from work-related causes.*** The court noted that when seafarer was repatriated, the company-designated physician conducted the examination, diagnosis and treatment of the seafarer until the histopathology report showed that he had cancer of the tonsils. The company-designated physician issued a medical certification that seafarer's cancer was not work-related or aggravated.

Seafarer's remedy from findings of company physician

The Supreme Court ruled that in determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, the physician of the seafarer's choice. It is on this account that a seafarer is given an option by the POEA-SEC to seek a second opinion from his preferred physician. And the law anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute finality, as provided by Sec. 2 (B) (3) of the POEA-SEC.

In this case, the seafarer failed to seek a second opinion from a physician of his choice. He did not present any proof of work-relatedness other than his bare allegations. Thus, the court has no option but to declare that the company-designated physician's certification is the final determination that must prevail.

Sickness wages

The Supreme Court had the chance to pass upon the issue of a seafarer's entitlement to illness allowance. The Court noted that while it was eventually declared by the company-designated doctor that seafarer's tonsil cancer was not work-

related, this should not prejudice his right to illness allowance under the POEA Contract considering that he was medically repatriated and did not finish his contract. Further, at the time of seafarer's repatriation, his illness was not yet medically determined to be not work-related and as such, the disputable presumption of work-relation of the illness in the POEA Contract applies. As such, the seafarer is entitled to illness allowance pending the assessment of the company-designated doctor that the illness is not work-related.

Even if the medical opinion on non-work-relatedness was issued at an early stage, but the seafarer duly contests the opinion of the company-designated doctor by presenting a second opinion from the former's doctor, then he should still be entitled to illness allowance pending the determination of a third doctor as to work-relation of the illness. Nevertheless, such entitlement shall not exceed 120 days illness allowance.

Transocean Ship Management (Phils), Inc., Carlos Salinas, and General Marine Services Corp. vs. Inocencio Vedad / Inocencio Vedad vs. Transocean Ship Management (Phils), Inc., Carlos Salinas, and General Marine Services Corporation; G.R. No. 194490-91/ G.R. No. 194518 & 194524; Third Division; April 5, 2013; Associate Justice Presbitero Velasco, Ponente (Attys. Saben Loyola and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

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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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