DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., April 7, 2015 (Issue 2015/10)

"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497

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Supreme Court denies claim for death benefits for failure to show work-relation

Seafarer was engaged as Bosun for a period of 10 months. Prior to embarkation, he underwent a pre-employment medical examination (PEME) and was declared fit to work. During employment, seafarer experienced severe pain on his hips and both knees, and total body weakness. He was given medical attention where he was diagnosed with hypertension. He was repatriated thereafter and underwent medical treatment.

His medical history showed that seafarer had been suffering from diabetes mellitus and hypertension since the 1990s. The company-designated physician noted that the illness was pre-existing and not work-related. Thereafter, the seafarer died.

A claim for death benefits was filed by the widow who argued that seafarer's death is compensable under the POEA Standard Employment Contract as the illness which caused the death is work-related.

The Supreme Court denied the claim as the widow failed to prove work-relation of seafarer's illness. The Court found that the widow failed to present evidence to show how the work of the seafarer contributed to the development or aggravation of the illness. Also, the Court noted that the seafarer himself admitted that even prior to embarkation, he was already suffering from hypertension and diabetes mellitus.

As to the seafarer having died outside the term of employment, the Court said that while this in itself will not remove liability on the part of the employer to pay death benefits, it should be proven that the illness which caused the death is work-related. The widow was not able to do this.

Lastly, the Court likewise did not give credence to the argument of the widow that the illness was suffered

during employment considering that seafarer was cleared during his PEME. The Court held that PEMEs are not exploratory and are only meant to determine fitness of a seafarer to work. It is not to be relied upon to determine the true state of health of a seafarer.

Flor G. Dayo vs. Status Maritime Corporation, Et Al; G.R. No. 210660, January 21, 2015; Second Division; Associate Justice Marvic Leonen, Ponente. (Attys. Richard Sanchez and Denise Luis Cabanos of Del Rosario & Del Rosario handled for vessel interests).

Supreme Court: 120 days rule appears to be superseded by the 2010 POEA Standard Employment Contract

The Supreme Court issued an extended Minute resolution in the case of *Roger Ducay v. Sealanes Marine Services, Inc.* where it held that the findings of the company designated doctor should be sustained for failure of the seafarer to put into motion the appointment of a third doctor by presenting the opinion of his personal doctor.

Equally important, the Supreme Court debunked the argument of the seafarer that inability to work for more than 120 days is automatically considered as permanent and total disability. The Court held that the 120 day-rule appears to have been superseded by the 2010 POEA-SEC which states that disability shall be based solely on the disability gradings mentioned in the contract and not by number of days that a seafarer is under treatment or number of days sickness allowance is paid.

Author's Note: This is the second decision of the Supreme Court (first was Magsaysay Maritime Corp v. Simbajon) expressly recognizing the amendment made in the 2010 POEA-SEC that mere number of days are not indicative of determining disability but rather it is based on medical findings based on the POEA-SEC.

Roger Ducay v. Sealanes Marine Services, Inc., Arklow Shipping Netherland B.V. and Mr. Christopher Dumatol, G.R. No. 214170, November 17, 2014; Second Division (Attys. Aldrich Del Rosario and Joseph Rebano of Del Rosario & Del Rosario handled for vessel interests).

NLRC Rules amended to allow Petition to question issuance of writ of execution

The NLRC has recently amended Section 1, Rule XIII of the NLRC Rules of Procedure on the application of a Petition for Extraordinary Remedies.

Previously, the rule provides that what can be questioned through a Petition for Extraordinary Remedies is any **order or resolution** of the Labor Arbiter including those issued in execution proceedings. In the amendment, the petition is now also available to question a writ of execution issued by the Labor Arbiter as it now reads:

SECTION 1. VERIFIED PETITION. – A party aggrieved by any order or resolution of the Labor Arbiter, <u>including a writ of execution and others issued during execution proceedings</u>, may file a verified petition to annul or modify <u>the same</u>. The petition may be accompanied by an application for the issuance of a temporary restraining order and/or writ of preliminary or permanent injunction to enjoin the Labor Arbiter, or any person acting under his/her authority, to desist from enforcing said resolution, <u>order or writ</u>. (underlining represents the amendments)

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"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494

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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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Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario
Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines
Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740
24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com