



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., February 4, 2015 (Issue 2015/05)

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In this issue:

NLRC issues Memorandum on appointment of a third doctor

Court rules: Management prerogative does not justify failure to deploy a seafarer with a signed employment contract

NLRC issues Memorandum on appointment of a third doctor

The NLRC has issued a Memorandum dated 14 January 2015 re: Third Doctor on Disability Claims of Seafarers. The memorandum cites the non-availment by the employers and the seafarers of the services of a third doctor in case of conflicting assessment on the disability claims of the seafarers.

Pursuant to said memorandum, the Labor Arbiters are directed, during the mandatory conferences, to give the parties 15 days within which to secure the services of a third doctor. If a third doctor is appointed by the parties, said doctor will have 30 days within which to submit his final medical assessment.

If the parties are unable to appoint a third doctor within the period stated, the Labor Arbiter is directed to state in the minutes the reason for such failure and furnish a copy of the same to the Research, Information and Publication Division of the NLRC.

Court rules: Management prerogative does not justify failure to deploy a seafarer with a signed employment contract

Seafarer signed an employment contract with the company on behalf of its foreign principal. The seafarer was engaged as Bosun with an employment period of nine months with a monthly salary of US\$566.00.

Upon reporting to the company, the seafarer was informed that his deployment had been postponed due to shifting demands of the employer. However, it later on became apparent that the foreign principal decided to promote another seafarer on-board the vessel as Bosun instead of hiring him. As such, he was requested to

wait for a vacancy to occur. After three months since the contract was signed, the seafarer filed a complaint for damages with the NLRC for the company's failure to deploy him.

The company denied liability and argued that the management had the prerogative on the selection of its employees and whom to hire. This management prerogative was validly exercised when they chose to promote another seafarer on-board as Bosun rather than hire the complaining seafarer.

The Supreme Court held that management prerogative is respected by the courts as long as the same is exercised in the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees. The exercise of management prerogative is likewise limited by existing laws and the principle of equity and substantial justice.

The Court explained that the contract was already perfected on the date of its execution. Naturally, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, a breach of which may give rise to a cause of action against the erring party.

There was an apparent violation of the contract at the time that the foreign principal decided to promote another person after they had previously signed the seafarer in a contract for the same position. The vacancy for the position of Bosun ceased to exist upon the execution of the contract between the seafarer and the company. Clearly, there was no vacancy when the foreign principal changed its mind by promoting another seafarer, since the position of Bosun had already been filled up by the employment of the seafarer.

Under the principle of equity and substantial justice, change of mind was not a valid reason for the non-deployment of the seafarer. He lost the opportunity to apply for other positions in other agencies when he signed the contract of employment with the company. Simply put, that contract was binding on the parties and may not later be disowned simply because of a change of mind of either one of them.

For this reason, the Supreme Court held that the company committed a breach of contract and should be held liable to compensate the seafarer for actual damages equivalent to his nine months' salary under the employment contract.

Abosta Ship Management and/or Artemio Corbilla vs. Wilhelm Hilario ; GR. No. 195792; First Division; November 24, 2014; Chief Justice Maria Lourdes Sereno, Ponente

"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

"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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