DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 30, 2015 (Issue 2015/16)

"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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Seafarer's medical report obtained months after being declared fit to work not given credence

Seafarer was repatriated due to lower back problems. He was diagnosed by the company-designated physician with a small central disc protrusion with annular fissure formation L5S1; disc annular bulge L4L5. After continuous treatment, seafarer was declared fit to work by the company-designated physician. However, after seven (7) months, seafarer consulted his own physician who declared him unfit to work with a disability grading of 8 (33.59%) for his injury. On this basis, he filed a complaint for payment of disability benefits.

The Labor Arbiter disregarded the fit to work findings of the company-designated doctor as the seafarer was still experiencing back pains despite treatment and awarded disability benefits.

The NLRC reversed the decision of the Labor Arbiter and held that the power and authority to assess and declare a seafarer's disability or fitness to work is vested solely on the company-designated physician. The Court of Appeals sustained the NLRC.

The case reached the Supreme Court which affirmed the dismissal of the complaint.

The Court initially noted that the medical findings of the seafarer's personal doctor came ***seven months*** after he was declared fit to work by the company-designated doctor. It is unknown as to what transpired between this seven month period and it was the seafarer's duty to enlighten the courts as to what transpired in these seven months. Not having performed this duty, this non-disclosure should be interpreted against the seafarer. The withholding of information as to what transpired during said period opens seafarer's claim to much speculation and conjecture which makes the grant of his claims for disability benefits untenable.

This is especially true considering that in the medical report of the seafarer's personal doctor, it was stated therein that he was suffering from neurologic deficit secondary to stroke. The statement indicates that the seafarer has an additional medical condition (stroke) which he never claimed to have suffered during his employment. Presumably, this stroke was incurred between the fit to work declaration of the company designated physician and the examination of his own chosen physician. Thus, the stroke not being work-related, it cannot be made the liability of the agency.

Most importantly, the seafarer's physician worded his assessment in such a way that it appears that seafarer was being declared unfit to work as a seafarer, not due to his back injury, but because of his neurologic deficit secondary to a stroke. Thus, the Court concluded that the seafarer's physician's report cannot be a suitable basis for awarding seafarer's disability claims.

Moreover, the Court said that it is obvious in the report of seafarer's chosen physician that he saw the seafarer only once while the company-designated physicians treated the seafarer several times, for a period of five (5) months. Further, the seafarer's chosen physician did not perform any diagnostic test or examination on the seafarer. The Court held that in cases of disability benefits claims, a doctor's assessment should not be taken at face value. Diagnostic tests and/or procedures as would adequately refute the findings of the company designated physician are necessary for the seafarer's claims to be sustained.

Lastly, the Court again reiterated that there is a dispute resolution procedure in the POEA Contract. If the seafarer's doctor's findings conflicts with the findings of the company-designated doctor, the parties must mutually appoint a third doctor. As such procedure was not followed, the findings of the company-designated physician should stand.

Normilito Cagatin vs. Magsaysay Maritime Corporation and C.S.C.S. International NV; G.R. No. 175795; July 8, 2015; Third Division ; Associate Justice Diosdado Peralta, Ponente . (Attys. Saben Loyola and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

NLRC issues circular on manner of execution of awards in overseas workers cases.

In Memorandum Circular 07-01, Series of 2015 dated 2 July 2015, the NLRC chairman clarified that execution of awards in overseas workers cases shall be governed by the procedure laid down in the Omnibus Implementing Rules & Regulations of the Amended Migrant Workers Act.

For purposes of clarity and uniformity, the circular states:

(1) After the conduct of pre-execution conference, the Labor Arbiter shall, motu proprio or upon motion, issue a writ of execution directing the Sheriff to serve the writ upon the recruitment/manning agency that has the obligation to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof.

(2) The Sheriff shall serve the writ of execution upon the recruitment/manning agency within three (3) days from receipt of the same.

(3) If no payment is made, either by the insurer or the recruitment/manning agency within the thirty (30) day period, or if the amount paid is insufficient to satisfy the amount adjudged or agreed upon, the performance bond or escrow deposit of the recruitment/manning agency with the POEA shall forthwith be garnished.

(4) In the event that the performance bond or escrow deposit is deficient, execution shall proceed in accordance with Section 9 (a), Rule XI of the 2011 NLRC Rules of Procedure, as amended.

It would appear from the above circular that the procedure now is for the Sheriff to provide the respondent first a copy of the writ of execution. Within 30 days, the respondent has to pay the judgment award, otherwise, the normal manner of execution (garnishment, levy) will proceed.

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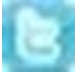
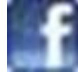
 Twitter ID: delrosariopandi  Facebook Page: DelRosarioLaw

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 and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com .

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