



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., June 3, 2016 (Issue 2016/06)

*"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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### **Claim for disability benefits denied due to failure to comply with 3 day rule**

At the forefront of this case is the 3 day rule found under the POEA Standard Employment Contract.

Seafarer was engaged as fitter. During employment, seafarer experienced severe pain in his ears which he allegedly reported to his superiors but was not minded. Eventually, seafarer was repatriated. A week after, he allegedly sought medical consultation with the Seamen's Hospital, which diagnosed him with severe hearing loss. Later, another doctor diagnosed him to be "Permanent Medical Unfitness with a Disability Grade 1" due to a "profound hearing loss."

On the basis of the medical findings, seafarer filed an action against his employers claiming disability benefits, moral and exemplary damages, legal interest, and attorney's fees which was heard before the National Conciliation and Mediation Board and submitted to a Panel of Voluntary Arbitrators (PVAs).

The PVAs granted the claim for disability benefits reasoning that the employer was not able to refute the findings of seafarer's personal doctor that seafarer is permanently unfit to work.

The PVAs award of disability benefits was overturned by the Court of Appeals and the Supreme Court.

In affirming the Court of Appeals, the Supreme Court held that the seafarer arrived in the Philippines on 23 March 2010. On 29 March 2010, he underwent an Audiogram at the Seamen's Hospital. On 27 April 2010, seafarer's doctor diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" based on the Audiogram.

It is a settled rule that for a seaman's disability claim to prosper, it is mandatory that within three days from repatriation, he is examined by a company-designated physician. His failure to do so will result to the forfeiture of his right to claim for compensation and disability benefits. The seafarer failed to comply with this requirement. He also failed to show that he was physically incapacitated to be medically examined by a company-designated physician that would have justified his non-compliance with the mandatory three-day period.

The seafarer submitted an Audiogram to support his claim for disability benefits. The Audiogram, taken six days after his arrival, did not indicate that it was taken by a company-designated physician. It did not indicate that it

came from Seamen's Hospital. It was not signed, and it did not contain an interpretation of the graph. It was simply a printout from the audiometer. Seaman's doctor, who issued a medical certificate diagnosing Ricasata with severe hearing loss, was not a company-designated physician. She specializes in Family and Occupational Medicine and is not an EENT. Her medical certificate was based only on the Audiogram. Yet, she declared the seafarer to be suffering from "Permanent Medical Unfitness with a Disability Grade 1" without giving him additional medical examinations and procedures.

In view of the above, the claim for disability benefits was denied.

*Edren Ricasata vs. Cargo Safeway, Inc. and Evergreen Marine Corporation (Taiwan) Ltd., G.R. Nos. 208896-97, April 6, 2016; Second Division, Senior Associate Justice Antonio Carpio, ponente (Attys. Charles Dela Cruz and Denise Cabanos handled for vessel interests)*

## **Firm News**

Partner Denise Cabanos and Del Rosario Pandiphil in-house medical coordinator, Dr. Edgardo Del Rosario were guest speakers for the Bulk Carrier Advanced Workshop of Thome Shipmanagement PTE Ltd. last 2 June 2016. Denise spoke on legal/commercial disputes arising from cargo claims and contaminations while Edgardo spoke on injuries/illnesses of a crew on board the vessel.

Many thanks to Thome Shipmanagement PTE Ltd. for the gracious invitation and congratulations for the successful staging of your seminar.

Managing Associate Pedrito Faytaren, Jr. was a guest speaker at the 22<sup>nd</sup> Crew Management & Review Seminar of Star Management Associates and Foscon Shipmanagement, Inc. conducted last 19-20 May 2016. His topic was on recent developments in crew claims jurisprudence and the Seafarers Protection Act.

Many thanks to Star Management Associates and Foscon Shipmanagement for the gracious invitation and congratulations for the successful staging of your seminar.

## **Employee News**

The Firm welcomes Ma. Kristine Gay M. Cengca as its newest Junior Associate. Kristine is a 2009 Bachelor of Science in Political Science graduate from the University of the Philippines, Manila and a 2015 Juris Doctor, College of Law graduate from the University of the Philippines, Diliman. She was previously employed by Del Rosario Pandiphil as Junior Claims Executive from 2009 to 2013 prior to taking up law and passing the recent bar examinations.

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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

"Offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market." Chambers Asia Pacific, 2014 p. 949

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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](mailto:ruben.delrosario@delrosario-pandiphil.com).

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