DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., June 17, 2015 (Issue 2015/13)

"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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POEA Issuances on Yemen situation

Because of the worsening security situation in Yemen, the POEA has issued Advisory No. 04 -15 declaring a no crew change and no shore leave policy for all Filipino seafarers on Yemeni ports.

The POEA likewise issued Governing Board Resolution No. 05-15 on 26 May 2015 which declares Yemen as a war risk trading area and its ports under warlike operations which will have an effect on premium pay to Filipino seafarers under the following guidelines:

1. The payment of premium pay shall apply to all seafarers on ships calling on all ports of Yemen. In the case of ships calling on any of the ports in Yemen, seafarers shall receive a premium pay equivalent to 100% of the basic wage from the time the ship is berthed securely alongside up to the time the vessel departs its berth and the last line is let go for departure on passage.

2. For ships covered by a collective agreement that provides for premium pay which is the same as, or higher than, the premium pay for entry into Yemen mentioned above, no double application of premium pay shall be allowed; provided however, where a collective agreement provides a higher premium pay, such higher rate shall apply.

3. Seafarer shall be given the right to accept or decline to join the vessel if it trades exclusively in Yemen or when the vessel is expected to call on any Yemeni port.

4. Seafarers opting not to continue his service on board under the conditions provided in Paragraph 4 above, shall be entitled to free repatriation to his point of hire, termination pay equivalent to one month basic wage, earned wages and leave pay.

Supreme Court denies claim for disability benefits for failure of the seafarer to comply with the three day reportorial requirement.

In strengthening the three day reportorial requirement rule of the POEA-SEC, the Supreme Court again had the occasion to rule on this matter.

The seafarer was repatriated due to finished contract. After repatriation, the seafarer underwent debriefing with the manning agents where he stated in his form that "all ok during his contract including his health". Seafarer then re-applied for employment but failed his PEME. On this basis, the seafarer filed a claim for disability benefits.

The Supreme Court held that the POEA-SEC specifically declares that failure to comply with the mandatory reporting requirement shall result in the seafarer's forfeiture of right to claim benefits.

Reporting of the medical condition within three days from repatriation and undergoing a post-employment medical examination should always be complied with to determine whether the injury or illness is work-related.

Nicanor Ceriola (deceased) substituted by his heirs represented by Rowena Ceriola Francisco v. Naess Shipping Philippines, Inc., Miguel Oca and/or Kuwait Oil Tanker, G.R. No. 193101, April 20, 2015, First Division, Associate Justice Jose Portugal Perez, Ponente. (Attys. Florencio Aquino and Charles Dela Cruz handled for vessel interests)

Supreme Court denies seafarer's claim of "kidney ailment"; upholds company physician's findings of non-work-relation

A claim for disability benefits was filed by the seaman after he was diagnosed with uteropelvic junction obstruction – a kidney ailment. The claim was brought up despite the fact that the company-designated doctor issued an opinion that said condition is not work-related and that after seafarer's treatment, he was already declared fit to work.

The Court noted that seafarer's medical condition was not listed as an occupational disease in the POEA-SEC and as such, it is disputably presumed to be work-related. Considering that the company-designated physician declared the illness to be not work-related, and such opinion is duly backed up by medical studies that it is a congenital abnormality, the Court held that the presumption of work-relation was convincingly disputed.

On the assumption that the illness may be considered as work-related, the Court held that the claim should still fail as the company-designated doctor declared the seafarer fit to work already. Even the medical opinion of seafarer's doctor on unfitness cannot be given credence. The findings of fitness by the company-designated physician was upheld not only because of the governing law between the parties, but also by the time and resources spent and the effort exerted by said doctor in the examination, treatment and management (including surgical procedures) of seafarer's medical condition until he was declared fit to work. On the contrary, the personal doctor of the seafarer only conducted a one-time examination absent any extensive examination being conducted. Moreover, the seafarer failed to properly question the findings of the company-designated physician by initiating the appointment of a third doctor as e immediately filed the complaint.

Wilhelmsen-Smith Bell Manning/Wilhelmsen Ship Management Ltd./Fausto Preysler, Jr. v. Allan Suarez, G.R. No. 207328, April 20, 2015, Second Division, Associate Justice Arturo Brion (Attys. Ellaine Collado and Charles Dela Cruz 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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