DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., June 29, 2016 (Issue 2016/08)

"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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Seaman's own statements used against him; findings of company-designated physician upheld

Seaman was engaged as Bosun. According to him, his work entails a lot of heavy lifting and occasionally, he would skid and fall while at work on deck. During employment, he experienced numbness in his hip and back. He was given medicines which afforded temporary relief but as the days went on, the pain became intense which necessitated his confinement in a hospital. He was then repatriated and was referred to the company-designated doctor who diagnosed him with *Mild Lumbar Levoconvex Scoliosis and Spondylosis; Right S1 Nerve Root Compression"* with an incidental finding of *"Gall Bladder Polyposis* v. *Cholesterolosis.*

For more than 3 months, the seaman was treated until he was declared fit to work. He then signed a "Certificate of Fitness for Work" which according to the seaman was a requisite for him to obtain his sick wages. He alleged that his condition deteriorated which prompted him to file a claim for disability benefits. He also consulted his chosen doctor who assessed him to be unfit to go back to work because of his condition.

The Labor Arbiter ruled in favor of the seaman and awarded full disability benefits giving credence to the findings of seaman's chosen doctor and his appearance during the conferences. The Certificate of Fitness for Work signed by the seaman was also invalidated as it was considered an invalid waiver.

On appeal, the NLRC dismissed the claim of the seaman and upheld the findings of the company-designated doctor that seaman is already fit to work. On the other hand, the Court of Appeals reinstated the decision of the Labor Arbiter awarding disability benefits. When the case reached the Supreme Court, the claim was dismissed.

Seaman did not have a cause of action at the time of the filing of the complaint

The Court narrated the events prior to seaman's filing of a complaint with the Labor Arbiter.

One week prior to filing his complaint, the seaman wrote a letter to the company expressing his intention to be

rehired and stating that after being declared fit to work, he went home to his province. He told them that during his vacation he was able to engage in a lot of activities such as walking around his neighborhood four times a week, swimming two times a week, weightlifting three times a week, driving his car on Saturdays for one hour, riding his motorbike five times a week, playing basketball every Sunday, and fishing and doing some house repairs when he had the time.

Interestingly, nine days after his letter, seaman filed his complaint with the Labor Arbiter for disability benefits, presumably after he was told that he would not be rehired, although the reasons for his rejection are nowhere stated. It is not alleged that before he filed his complaint, he first sought payment of total disability benefits from the company. In fact, it was only 3 months after seaman was declared fit to work by the company-designated doctors did seaman obtain an assessment of unfitness to work from a doctor of his choice. **Thus, when he filed his complaint for disability benefits, he clearly had as yet no medical evidence whatsoever to support his claim of permanent and total disability**.

Seaman failed to comply with the third doctor procedure in the POEA-SEC

The Court held that even granting that the afterthought consultation with his doctor of choice could be given due consideration, under Section 20-B(3) of the POEA-SEC, **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** Not only did seaman fail to seasonably obtain an opinion from his own doctor before filing his complaint, thereby permitting the company no opportunity to evaluate his doctor's assessment, but he also made it impossible for the parties to jointly seek the opinion of a third doctor precisely because the company had not known about the second opinion in the first place. Three months passed before seaman sought to dispute the company-designated physicians' assessment, and during this interval other things could have happened to cause or aggravate his injury. In particular, the Court noted that, after he collected his sick wage, seaman spent two months in his home province and engaged in various physical activities.

The findings of the company-designated doctor are more credible

The Court noted that there are inherent defects in the medical report issued by seaman's doctor to conclude that it was not the result of an honest, *bona fide* treatment of the seaman, but rather one issued out of a short one-time visit. It noted that said doctor issued a pro-forma medical certificate, with the blanks filled in his own hand. The doctor certified that seaman's condition "did not improve despite medicine," yet nowhere did he specify what medications, therapy or treatments he had prescribed in arriving at his unfit-to-work assessment, nor when and how many times he had treated seaman. No laboratory and diagnostic tests and procedures, if any, were presented which could have enabled him to diagnose him as suffering from lumbar hernia or *"Herniated Nucleus Pulposus, 'L5-S1, Right"* as the cause of his permanent disability. There is no proof of hospital confinement, laboratory or diagnostic results, treatments and medical prescriptions shown which could have helped the company-designated physicians in re-evaluating their assessment of seaman's fitness. When seaman's doctor said that seaman's symptoms were aggravated due to his work which entails carrying heavy loads, he obviously relied merely on seaman's account about what allegedly happened to him aboard ship nine months earlier.

No showing that condition is a serious spinal injury which may result to permanent disability

The Court noted that both the Labor Arbiter and the Court of Appeals found the seaman to have suffered serious spinal injuries for him to be considered as permanently and totally disabled on the basis alone of a diagnosis of *"Mild Lumbar Levoconvex Scoliosis* [left curvature of the spinal column in the lower back, L1 to L5] *and Spondylosis; Right* S1 *Nerve Root Compression,"*. The Court held that there is nothing which would show that the condition could have been the result of strain or an accident while seaman was aboard the ship, not to mention that it was only a "mild" case. The company-designated doctor noted that seaman was free from pain and had regained full range of trunk movement. For 95 days, seaman underwent therapy and medication, and the final test to see if his low back pain had an underlying herniated disk (slipped disc) was negative.

Apparently, then, seaman's back pain had been duly addressed. He himself was able to attest that back home, when he was on vacation, he was able to engage in various normal physical routines.

Concerning the Labor Arbiter's observation of seaman's alleged deteriorated physical and medical condition, and therefore his unfitness to return to work, let it suffice that the Labor Arbiter's own opinion as to the physical appearance of the seaman is of no relevance in this case, as it must be stated that he is not trained or authorized to make a determination of unfitness to work from the mere appearance of the seaman at the arbitral proceedings.

Scanmar Maritime Services, Inc., Crown Shipmanagement, Inc., Louis Dreyfus Armateurs and MT Ile De Brehat and/or Mr. Edgard Canoza vs. Emilio Conag, G.R. Nos. 212382, April 6, 2016; Third Division, Associate Justice Bienvenido Reyes, ponente (Attys. Charles Dela Cruz and Maricris Ferrer of DelRosarioLaw handled for vessel interests)

Firm News

Partners Joseph Rebano and Denise Cabanos recently visited several Clubs and Members and insurance companies in Japan from 7 – 17 June 2016. Over their 10 days stay in Japan, they visited Tokyo, Kobe, Osaka, Imabari, Matsuyama and Fukuoka where they conducted seminars and spoke on various issues such as Filipino crew claims, procedures in the NLRC and voluntary arbitration as well as the new law, The Seafarer's Protection Act.

Many thanks to all for their wonderful hospitality, attendance and participation.

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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 .

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