



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 2, 2016 (Issue 2016/03)

“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

In this issue:

Medical abandonment of seafarer paves way for denial of claim

Firm News

Medical Abandonment by seafarer paves way for denial of claim

Seafarer complained of neck and lower back pain during his employment. He also noticed numbness and weakness of his left hand. Coinciding with his end of contract, complainant was repatriated and upon arrival in the Philippines, he was referred to the company-designated physician for examination. Seafarer was diagnosed of cervical radiculopathy, thoracic and lumbar spondylosis, as well as carpal tunnel syndrome of the left trigger finger and third digit of his right hand. He underwent carpal tunnel surgery and physical therapy sessions for his cervical and lumbar condition.

While the treatment was on-going, a claim for disability benefits was initiated by the seafarer with his union. The company-designated doctor opined that had the seafarer continued with his treatment, there is a good chance that he would be declared fit to work.

Eventually, the seafarer brought the matter to voluntary arbitration where he presented the medical opinion of his doctor stating that he is incapable of returning to sea duties because of his medical condition. The company questioned the claim considering that the claim was premature as it was filed when the seafarer was undergoing treatment.

The voluntary arbitrators were one in their decision to award maximum disability benefits to the seafarer reasoning that a cause of action existed when the company refused to pay disability benefits. Likewise, then company-designated doctor failed to assess the seafarer with a disability beyond 120 days.

Upon petition before the Supreme Court, the claim was dismissed.

Claim is premature

The Court held that clearly, the complaint was premature. Seafarer has no cause of action yet at the time of its filing as the company-designated doctor has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed. Moreover, he has no basis for claiming permanent and total disability benefits because he has not yet consulted his doctor-of-choice.

Medical abandonment

Not only did seafarer prematurely file his complaint, he reneged on his duties to continue his treatment as necessary to improve his condition. In his report, the company-designated doctor opined that had the seafarer continued his treatment there is a good chance that he would be declared fit to work. However, seafarer did not report back to his clinic.

The Court cannot blame the company for holding that seafarer abandoned his treatment as he failed to reasonably explain his failure to report to the company-designated physician for almost 2 months. The only clear circumstance that transpired within said 2 months is that he already filed his Complaint.

Under Section 20(D) of the POEA-SEC, no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties. Seafarer was duty-bound to comply with his medical treatment sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment for 2 months without any explanation proves that he neglected his corresponding duty to continue his medical treatment. Consequently, seafarer's inability to regularly return for his treatment caused the regress of his condition as opined by the company-designated doctor.

Indeed, seafarer did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from seafarer's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.

Wallem Maritime Services, Inc., Reginaldo Oben and Wallem Shipmanagement Ltd. vs. Edwinito Quillao, G.R. No. 202885, January 20, 2016; Second Division, Associate Justice Mariano Del Castillo, ponente (Attys. Florencio Aquino and Maricris Ferrer of Del Rosario & Del Rosario handled for vessel interests)

Firm News

The Firm is pleased to announce the promotion of Maricris Ferrer to Senior Associate. Maricris or “Cindy” received her Juris Doctor Degree from the Ateneo De Manila University School of Law and her Bachelor of Arts in Political Science from the University of the Philippines Diliman. She has been handling crew claims disputes as well as corporate matters.

"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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"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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