DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 2, 2015 (Issue 2015/07)

"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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NLRC issues Administrative Order to expedite restitution proceedings

The need for restitution arises when the judgment award in the decision of the NLRC has been executed/garnished by payment to the claimant but is eventually set aside or modified by the appellate courts. When this happens, there is a need to seek the return of what has been paid, or the excess thereof, to the employer. This is known as restitution proceedings.

While restitution proceedings had already been institutionalized in the NLRC Rules starting 2011, one of the problems that arose was the delay of the Labor Arbiters in resolving the requests for restitution to the employer. We have formally wrote the NLRC Chairman to bring this to his attention.

On 14 January 2015, the NLRC Chairman issued Administrative Order No. 01-04, Series of 2015 directing the Labor Arbiters that in motions for restitution, they are given 15 days from receipt thereof to resolve the same. The Labor Arbiter shall likewise issue the writ of restitution upon presentation of certified true copies of the appellate court's decision ordering the restitution and the Entry of Judgment which would show that said decision is already final and executory.

Supreme Court clarifies effectivity date of 120 days and 240 days rule; stressed importance of the third doctor provision in the contract

In the case of ***Noriel Montierro vs. Rickmers Marine Agency Phils., Inc.*** (G.R. No. 210634, January 14, 2015), the Supreme Court had the opportunity to discuss the applicability of the 120 days rule and the 240 days rule.

This is a case of a seafarer who was treated by the company-designated doctors for 213 days and was assessed with a grade "10" disability on 3 January 2011. However, prior to the final medical assessment being issued by the company-designated doctor, the seafarer already filed a complaint for permanent and total disability benefits on 3 December 2010 based on findings of his personal doctor that he is permanently and totally disabled.

Seafarer argued that based on the 120 days rule of the Supreme Court, he is already permanently and totally disabled as he was unable to perform work for more than 120 days. On the other hand, the employer argued that the company-designated doctor is given 240 days within which to treat the seafarer and the grade "10" disability was issued within the 240 days period.

120 days v. 240 days

The basis of the 120 days argument is the Supreme Court ruling in the 2005 case of Crystal Shipping Inc. v. Natividad. On the other hand, the basis of the 240 days argument is the decision of the Court in Vergara v. Hammonia Maritime Services, Inc. issued on 6 October 2008.

As such, the Court again reminded that if the complaint is filed prior to the issuance of the decision in the *Vergara Case*, it is the 120 days rule which will apply. However, if the complaint was filed from 6 October 2008 onwards, then it is the 240 days rule which should be applied.

In this case, the complaint of the seafarer was filed on 3 December 2010 which was after the decision in the Vergara Case was issued. Thus, the 240 days rule is applicable and seafarer was not yet considered permanently and totally disabled when the complaint was filed on 3 December 2010. The complaint was thus prematurely filed and cannot prosper.

Third doctor provision

The procedure is that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended as further treatment is needed, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them.

The procedure must be strictly followed; otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands. In this case, the seafarer preempted the procedure when he filed on 3 December 2010 a complaint for permanent disability benefits based on his chosen physician's assessment, which was made one month before the company-designated doctor issued the final disability grading on 3 January 2011, the 213th day of seafarer's treatment. As such, for failure of the seafarer to observe the procedure provided by the POEA Contract, the assessment of the company doctor should prevail.

Also, in the recent ruling of the Supreme Court in ***Daraug v KGJS Fleet Management Manila, Inc.*** (G.R. No. 211211, January 14, 2015), the Supreme Court also reiterated the above rule on the importance of following the procedure in the appointment of a third doctor.

In the *Daraug Case*, the seafarer was declared fit by the company-designated doctor on 21 December 2009. However, the seafarer filed a complaint for permanent and total disability benefits on 5 March 2010 and thereafter obtained a medical certificate from his personal doctor on 13 April 2010 for this purpose.

The Supreme Court again noted that the seafarer did not comply with the prescribed procedure in contesting the findings of the company-designated physician. Such constitutes a breach on the part of the seafarer to have the conflicting decisions of the doctors be referred to a third doctor for a binding opinion. As such, the findings of the company-designated physician must be upheld.

Further reason was given by the Supreme Court in denying the seafarer's claim in the *Daraug Case.*

The Supreme Court noted that at the time the seafarer filed his complaint for disability benefits on 5 March 2010, he was not yet armed with any medical certificate which would prove his disability. It was only on 13 April 2010 when the seafarer obtained the findings of his personal doctor on his alleged disability that the seafarer

has a cause of action against his employer.

As such, the Supreme Court noted that the claim was premature as the cause of action may arise only when the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion. Since the opinion of the seafarer's doctor-of-choice was not present at the time of the filing of the complaint, the same is considered as premature.

On a last note, the Supreme Court noted the evidence presented by the employer during the pendency of the case which showed that the seafarer was again gainfully employed on board ocean-going vessels for two employment contracts after he filed his complaint. This only sustains the argument of the employer that seafarer is indeed fit to work.

Noriel Montierro vs. Rickmers Marine Agency Phils., Inc.; G.R. No. 210634, January 14, 2015; First Division; Chief Justice Maria Lourdes Sereno, Ponente.

Rommel Daraug vs. KGJS Fleet Management Manila Inc., Kristian Gerhard Jebsen Skipspreder, Mr. Guy Domino A. Macapayag and/or M/V "Ibis Arrow"; G.R. No. 211211, January 14, 2015; Second Division; Associate Justice Jose Catral Mendoza, Ponente. (Attys. Ma. Gina Guinto and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).

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