DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 19, 2014 (Issue 2014/22)

"Del Rosario … 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

Supreme Court holds that doctor who actually treated the seafarer is more qualified to issue a final medical assessment

Seaman was engaged as Able Seaman for a period of 2½ months. During employment and while the seaman was drilling to attach an overboard safety equipment, a sudden swell caused some movement of the vessel. As a result, one of the crew fell directly on the seaman, inflicting injury on his right foot. Seaman was brought to a shore hospital where he was diagnosed with fractured ankle and his foot was placed in cast. Seaman was then repatriated to the Philippines for further examination and medical treatment on 23 December 2009.

Upon arrival in Manila, the seaman was referred by the company to their designated clinic where his cast was removed after a month. Seaman then underwent physical therapy until April 2010. On 14 May 2010, the company-designated doctor gave the seaman an interim disability of grade "8" based on the POEA Contract. Upon further rehabilitation, seaman's condition improved. On 27 July 2010, the company-designated doctor issued a final assessment of grade "11" disability - complete immobility of an ankle joint in normal position." Seaman disagreed with the disability assessment and consulted a physician of his own choice. In his Disability Report dated 2 October 2010, seaman's chosen doctor found him to be suffering from "partial permanent disability" but concluded that seaman is unfit for sea duty in whatever capacity.

Seaman filed a complaint with the NLRC claiming disability benefits, sick wages, damages, and attorney's fees. Seaman maintained that he is entitled to full disability benefits of US$80,000, while the company insisted that he is only entitled to US$12,551 based on the CBA and the disability assessment of the company-designated doctor.

The Labor Arbiter ruled that the seaman is entitled only to US$12,551 disability benefits as this was the assessment issued by the company-designated doctor. He did not give value to the findings of seaman's doctor as it did not show the manner by which examination was conducted and the findings was issued only 4 months after seaman stopped his medical consultations with the company-designated doctor, during which period he could have committed acts which might have aggravated his condition.

On appeal, the NLRC modified the Labor Arbiter's decision. The NLRC held that under the CBA, seaman is entitled to US$70,000 as permanent and total disability compensation, plus 10% of the judgment award as attorney's fees. Based on the findings of seaman's doctor, the NLRC ruled that a grade 1 disability rating is more appropriate considering the injury suffered by the seaman. Permanent disability means the inability of a worker to perform his job for more than 120 days. The NLRC noted that even after the lapse of seven months from the time seaman was repatriated for injuries sustained, he was still unable to resume his usual duties and responsibilities. Thus, seaman is considered to be totally and permanently unfit to perform his usual duties and responsibilities.

The Court of Appeals reinstated the decision of the Labor Arbiter and held that the findings of the company-designated doctor are more credible as it came only after 6 months of continuous medical treatment and examinations in stark contrast with how seaman's doctor came out with his opinion. The Court of Appeals further

held that the 120 days period may be extended to 240 days and during which period, the seaman may be assessed with a degree of disability or declared fit to work.

The Supreme Court sustained the award of grade “11” disability.

Company-designated doctor’s findings upheld

Section 20(B)(3) of the POEA-SEC (now Section 20 A 3 of the 2010 POEA-SEC) provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the Employer and the seafarer, and the third doctor’s decision shall be final and binding on both parties. In this case, there was no third doctor appointed by both parties whose decision would be binding on the parties. Hence, it is up to the labor tribunal and the courts to evaluate and weigh the merits of the medical reports of the company-designated doctor and the seafarer’s doctor.

More credence should be given to the findings of the company-designated doctor. Contrary to the ruling of the NLRC, seaman’s doctor did not categorically give petitioner a grade 1 disability rating which is equivalent to total and permanent disability. Seaman’s physician found him to be suffering from “partial permanent disability” and “is unfit for sea duty in whatever capacity as seaman.” Aside from this seemingly inconsistent assessment by seaman’s doctor, there was no evidence submitted of medical procedures, examinations or tests which would support his conclusion that seaman is unfit for sea duty in whatever capacity as a seaman.

In contrast, the company-designated doctor gave seaman a final disability grading under the POEA schedule of disabilities of “grade 11- complete immobility of an ankle joint in normal position,” only after seaman had undergone a series of medical tests and examinations, and physical therapy over a period of six months, during which the company-designated doctor issued periodic medical reports. As previously held by the Court, the doctor who have had personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer’s illness, is more qualified to assess the seafarer’s disability. Based on the Disability Report of seaman’s doctor, it appears that he only conducted a physical examination on the seaman before issuing his final diagnosis and disability rating. Clearly, the findings of the company-designated doctor, who, with his team of specialists which included an orthopedic surgeon and a physical therapist, periodically treated the seaman for months and monitored his condition, deserve greater evidentiary weight than the single medical report of seaman’s doctor, who appeared to have examined seaman only once.

240 days rule reiterated

The Supreme Court held that just because the seafarer is unable to perform his job and is undergoing medical treatment for more than 120 days does not automatically entitle the seafarer to total and permanent disability compensation. In this case, seaman's medical treatment lasted more than 120 days but less than 240 days, after which the company-designated doctor gave him a final disability grading under the POEA schedule of disabilities of "grade 11 - complete immobility of an ankle joint in normal position." Thus, before the maximum 240-day medical treatment period expired, petitioner was issued a final disability grade 11 which is merely equivalent to a permanent partial disability, since under Section 32 of the POEA-SEC, only those classified under grade 1 are considered total and permanent disability. Clearly, seaman is only entitled to permanent partial disability compensation, since his condition cannot be considered as permanent total disability.

Ricardo A. Dalusong versus Eagle Clarc Shipping Philippines, Inc., Norfield Offshore AS and/or Capt. Leopoldo T. Arcillar, and Court of Appeals; GR. No. 204233; Second Division; September 3, 2014; Supreme Court Senior Associate Justice Antonio T. Carpio, Ponente (Attys. Maricris Ferrer and Denise Cabanos of Del Rosario & Del Rosario handled for vessel interests).

“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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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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