



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 26, 2014 (Issue 2014/23)

“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

Supreme Court denies claim based on 3 day rule; seafarer did not report to the company doctor three working days after repatriation

Seafarer was hired as a galley boy for a period of 9 months. During employment, he felt a sudden pain in his chest that radiated to his back. Since then, he experienced incessant cough, nasal congestion, difficulty in breathing, physical weakness, chills and extreme apprehension. According to him, this condition persisted until the expiration of his contract. After serving his contract, he alleged that he reported to the company to inform them of the medical condition he experienced on-board. He alleged that the company merely advised him to consult his own doctor without giving him any doctor's referral. He did, however, sign a “Receipt and Release” where he acknowledged receipt of the full payment of his monetary entitlements under the employment contract and which stated among others that he has no more claim against the company and that he worked on-board the vessel under normal conditions and finished his contract in perfect health.

The seafarer consulted his own doctor who initially diagnosed him with community acquired pneumonia and bronchial asthma. Later on, seafarer's doctor issued a medical certificate indicating that he was diagnosed with Hypertension, Stage II, and Pulmonary Tuberculosis. He was given a grade 7 disability and declared him unfit to resume work as a seaman in any capacity, and that his illness was considered work-aggravated. On this basis, he filed a complaint for payment of permanent disability benefits.

On the other hand, the company refuted the claim considering that the seafarer did not suffer any medical condition during the term of employment and he was repatriated due to finished contract. The seafarer likewise executed a “Receipt and Release” wherein he acknowledged that he did not have any illness on-board and that he was released in good health.

The Labor Arbiter denied the claim considering that no evidence was presented to show that seafarer suffered a medical condition during his employment. In the same manner, the seafarer did not apply for any post-employment medical examination within three days from his repatriation – a requirement for claims for sickness and disability benefits. Instead, the complaint to recover benefits was only filed 15 months after his repatriation. The NLRC sustained the Labor Arbiter in denying the claim.

The Court of Appeals reversed the labor court and granted the claim of the seafarer. The Court of Appeals declared seafarer's illness, pulmonary tuberculosis, to be included in the list of occupational diseases. It found that seafarer was overworked and over-fatigued as a result of the long hours of work required by his duties and that he was exposed to daily rapid variations in temperature. Aside from physical strain, he was also subjected to emotional stress brought about by the separation from his family. The appellate court concluded that with his daily exposure to these factors which could weaken his immune system, it was not impossible that he contracted tuberculosis during the course of his employment. The Court of Appeals did not likewise give much weight to the “Receipt and Release” signed by the seafarer as it found its terms so unconscionable that the latter was shortchanged by a significant amount.

Upon petition with the Supreme Court, the claim was again denied and the decision of the labor court was reinstated.

3 days rule

The Supreme Court said that it is undisputed that on May 7, 2002, respondent's employment contract was completed. He arrived in Manila on May 9, 2002; the following day, or on May 10, 2002, he reported to the petitioner. Although he averred that he informed petitioner about the pain he experienced while on board the vessel, the company allegedly only advised him to consult a doctor but did not give any referral. The court was not persuaded by seafarer's contention.

The Court noted that seafarer's repatriation was not due to any medical reasons but because his employment contract had already expired. Other than his self-serving allegation that he experienced pain while on board, he was not able to substantiate the same. There was no showing that he reported his injury to his officers while on board the vessel; neither did he prove that he sought medical attention but was refused. Likewise, other than his bare and self-serving assertion that he informed the company about his pain, he presented no evidence or tangible proof that he indeed requested for medical attention, much more that he was rebuffed. On the contrary, the records showed that when he reported to the company immediately after his repatriation, he signed a "Receipt and Release" stating that he has not contracted or suffered any illness or injury from work and that he was discharged in good and perfect health. The Supreme Court was baffled why, if indeed seafarer needed medical services, he opted to consult several doctors other than the company-designated physician. He offered no explanation for this. The Court held that the rule on mandatory post-employment medical examination within three days from repatriation by a company-designated physician is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims. Thus, seafarer's non-compliance with the three-day rule on post-employment medical examination is fatal to his cause. As a consequence, his right to claim for compensation and disability benefits is forfeited.

Seafarer failed to show that his illness existed during the term of his contract.

The Court held that seafarer submitted no proof that his illness was contracted during the term of his contract with the company. As mentioned, seafarer's repatriation was due to completion/expiration of his contract and not because of any sickness. Other than his uncorroborated and self-serving assertion that he experienced chest pains while on board the vessel, there was absolutely no proof at all that he consulted a doctor while on board, or that he reported the same to his superiors so that he will be provided with medical assistance. On the contrary, upon repatriation, he signed a "Receipt and Release" wherein he acknowledged that he worked under normal conditions on board the vessel; that he did not contract or suffer any injury; and that he was discharged in good health. Seafarer never alleged that he was coerced into signing the "Receipt and Release" or that he did not understand the same. Thus, it was crucial that seafarer presented a concrete proof showing that he acquired or contracted the illness that resulted to his disability during the term of his employment contract. Proof of this circumstance was particularly crucial considering the absence of any evidence that he reported his illness while on board and after his repatriation.

Respondent failed to show that his illness is work-related.

The Court held that work-related illness is defined as any sickness resulting in disability or death due to an occupational disease listed under Section 32-A. There is no question that Pulmonary Tuberculosis is listed as an occupational disease under Section 32-A(18). However, for the disability caused by this occupational disease to be compensable, the POEA Contract provides conditions that must be satisfied:

SECTION 32-A OCCUPATIONAL DISEASES:

For an occupational disease and the resulting disability or death to be compensable, **ALL** of the following conditions must be satisfied:

1. The seafarer's work must involve the risks describe herein;
2. The disease was contracted as a result of the seafarer's exposure to the describe risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

The seafarer failed to comply with these conditions. While pulmonary tuberculosis is listed as an occupational disease, the court is not convinced that seafarer's pulmonary tuberculosis is work acquired or work-aggravated because if it were so, then at the outset, seafarer should have already been diagnosed with pulmonary tuberculosis when he sought medical help one month from his repatriation. Instead, seafarer's doctor diagnosed him with Community Acquired Pneumonia I and Bronchial Asthma – sicknesses which aside from being different from pulmonary tuberculosis, were not shown to have any relation thereto.

The Court further ruled that there is nothing on record that would establish the development of the illness as traceable to the employment. The Court could not take at face value seafarer's bare allegations that he suffered incessant cough, nasal congestion, difficulty of breathing, and that he experienced physical weakness and chills while on board. Plainly, the claim is unsubstantiated. The court cannot over-emphasize that self-serving and unsubstantiated declarations are insufficient to establish a case where the quantum of evidence required establishing as fact is substantial evidence.

Furthermore, while it is undisputed that seafarer's work as a Galley Boy/2nd Cook involved the risks provided in the POEA Contract (first condition), *i.e.*, overwork or fatigue and exposure to rapid variations in temperature, there was failure to prove that the tuberculosis was contracted as a result of his exposure to the said described risks (second condition). No evidence on record shows how seafarer's working conditions caused or aggravated his tuberculosis. On the contrary, seafarer himself acknowledged that he worked under normal conditions while on board the vessel.

Likewise, the third and fourth conditions were not satisfied. There was no credible evidence on record to prove that the tuberculosis was contracted within a period of exposure and under such other factors necessary to contract it. Neither is there substantial evidence presented to show that his working conditions activated the disease-causing organism that may be dormant in his system. There are so many possibilities how and when seafarer could have acquired pulmonary tuberculosis and this was not determined.

InterOrient Maritime Enterprises, Inc. vs. Victor M. Creer III; G.R. No. 181921, September 17, 2014; Second Division; Associate Justice Mariano Del Castillo, Ponente

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