



DEL ROSARIO PANDIPHIL Inc.

“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

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., August 18, 2014 (Issue 2014/13)

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POEA issues guidelines on Ebola Virus Disease

Due to the prevalence of the Ebola Virus Disease (EVD) in West Africa, the POEA Governing Board issued Resolution No. 14 Series of 2014 imposing a temporary suspension on the processing and deployment of newly-hired Overseas Filipino Workers to Guinea, Liberia and Sierra Leone. Pursuant to the aforesaid Governing Board Resolution, the POEA issued Memorandum Circular. No. 07, Series of 2014 dated 11 August 2014 stating the following guidelines for shipping principals / employers, licensed manning agencies and seafarers as follows:

1. As a precaution, all shipping principals/employers with ships operating or calling on ports of the affected countries shall provide seafarers with masks, gloves, and goggles as necessary to limit the chance of contamination.
2. Seafarers shall be disallowed from availing of any shore leave and crew change shall not be allowed in any of the ports of the affected countries.
3. It shall be the responsibility of the ship master or the designated ship medical officer to report any case involving crewmembers with symptoms of EVD (those who have fever, headache, intense weakness, joint and muscle pains, and sore throat) to their principal/employer who in turn are required to coordinate with the appropriate international marine medical providers to manage an EVD contamination on board. Every precaution should be exercised to ensure that the spread of EVD is prevented.
4. Principals/employers/manning agencies are requested to consider and disseminate, as a matter of urgency, the following information to their ships and hired seafarers prior to their deployment:
 - a. The Master must ensure that the crew are aware of the risks, how the virus can be spread and how to mitigate the risk;
 - b. The ISPS Code requirements on ensuring that unauthorized personnel are not allowed to board the ship should be strictly enforced throughout the duration of the ship's stay in port;
 - c. After departure, the crew should be aware of the symptoms and report any occurring symptoms immediately to the persons/authorities in charge of medical care onboard.

5. The POEA also requires principals, employers, and manning agencies to report any incident of EVD contamination on any of their ships. Reports should contain complete details of the crew affected and the actions taken by the company. They shall be submitted through e-mail to the Office of the POEA Administrator (admin_cacdac@poea.gov.ph) or to its Marketing Branch (marketing_poea@yahoo.com.ph), who in turn shall provide copies of the report to the Departments of Health and Foreign Affairs and the Overseas Workers' Welfare Administration.
6. Manning agencies are directed to include EVD in their Pre-Departure Orientation Seminars (PDOS) using the World Health Organization and Department of Health published information about the disease.
7. All concerned are directed to disseminate further advisories on EVD to alleviate fear among seafarers regarding the possible EVD contamination from the following agencies/organizations:
 - a. Department of Health (DOH) Ebola Advisory (Tagalog Version)
<http://www.healthpromo.doh.gov.ph/ebola-advisory-tagalog/>
 - b. World Health Organization Ebola Virus Disease Fact Sheet No. 103
<http://www.who.int/mediacentre/factsheets/fs103/en/>

Supreme Court rules that benefits under Section 20 of the POEA Contract are distinct and separate from each other and award of one does not bar entitlement to others

A seafarer suffered from hypertension and heart problems during the term of his employment which needed hospitalization in a foreign port. Thereafter, he was repatriated for further medical management and underwent coronary artery bypass surgery due to a "three vessel Coronary Artery Disease." The company paid for his medical expenses amounting to PHP1,928,841.27.

As there was no final medical assessment of fitness or degree of disability issued by the company-designated doctors, the seaman sought the opinion of his personal doctor who assessed him with a grade "1" disability and was declared "*unfit to resume work as seaman in any capacity*" and "*not expected to land a gainful employment given his medical background.*"

In view of said assessment, the seafarer filed a complaint with the Labor Arbiter for disability benefits sickwages, reimbursement of medical expenses and attorney's fees.

The Labor Arbiter awarded US\$68,886.40 to the seafarer broken down as full disability benefits of US\$60,000, sickwages of US\$2,624 and 10% of the total award as attorney's fees. However, the Labor Arbiter denied the claim for reimbursement of medical expenses.

On the other hand, the NLRC modified the decision of the Labor Arbiter. The NLRC noted that sickwages were already paid as well as the medical expenses for seafarer's treatment in the amount of PHP1,928,841.27. Since these expenses, in the total amount of P2,073,159.30, have already been paid, the NLRC ordered its deduction from the peso equivalent of the total monetary award of US\$68,886.40.

Meanwhile, seafarer died and he was substituted by his heirs in the claim.

The Court of Appeals affirmed the decision of the NLRC.

The Supreme Court modified the award.

Section 20 B of the POEA Contract (now Section 20 A under the 2010 POEA Contract) speaks of various obligations on the part of the company to provide to a seafarer who suffers a work-related injury or illness during the term of employment. They are the following:

- a. entitlement to medical treatment until the seafarer is declared fit or the degree of his disability is established.
- b. entitlement to sick wages equivalent of up to 120 days of the basic wage.

c. disability benefits whether permanent partial or permanent total in character.

The separate treatment of, and the distinct considerations in, these three kinds of liabilities under the POEA-SEC can only mean that the POEA-SEC intended to make the employer liable for each of these three kinds of liabilities. In other words, employers must: (1) pay the seafarer sickness allowance equivalent to his basic wage in addition to the medical treatment that they must provide the seafarer with at their cost; **and** (2) compensate the seafarer for his permanent total or partial disability as finally determined by the company-designated physician.

Significantly, too, while Section 20 of the POEA-SEC did not expressly state that the employer's liabilities are cumulative in nature – so as to hold the employer liable for the sickness allowance, medical expenses *and* disability benefits – it does not also state that the compensation and benefits are alternative or that the grant of one bars the grant of the others.

This being the case, the NLRC committed error when it deducted the payment of the medical treatment made by the company to the final benefits that the seafarer was entitled to under the POEA Contract. The medical expenses paid for by the company for the seaman's treatment is an obligation separate and distinct from their obligation to pay sickwages and eventually, disability benefits to the seafarer.

Author's Note: Under the current 2010 POEA Contract, it is specifically stated that the entitlement of the seafarer to sickwages is in addition to the liability of the company to provide medical treatment to the seafarer.

Further, explaining the distinction between entitlement to medical treatment, sickwages and disability benefits, ***the Supreme Court for the first time cited the new provision of the POEA Contract which states:***

“The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.”

As the determination of entitlement to disability benefits is not dependent on number of days under medical treatment or number of days of entitlement to sick wages, the Supreme Court held that without doubt, medical expenses, sickness allowance and disability benefits are separate and distinct from one another.

The Late Alberto B. Javier, as substituted by his surviving wife, Ma. Theresa M. Javier and children, Kladine M. Javier, Christie M. Javier, Jalyn M. Javier, Candy Grace M. Javier and Glizelda M. Javier vs. Philippine Transmarine Carriers, Inc. and/or Northern Marine Management, Ltd.; G.R. No. 204101; Second Division; July 2, 2014 ; Supreme Court Associate Justice Arturo D. Brion, Ponente.

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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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