

Del Rosario Pandiphil Inc.

Shipping and the Law

Various Decisions on Filipino Crew Claims

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, July 15, 2005

Thyroid cancer ruled not work-related

Seafarer was repatriated due to thyroid cancer. He filed a claim for disability benefits. The Court of Appeals dismissed the complaint ruling that thyroid cancer is not work-related and thus not compensable. Under the (new) POEA contract, the illness is not listed under Section 32 of the contract and any illness not listed is disputably presumed work-related. Therefore, the seafarer must submit proof as would constitute a reasonable basis for concluding either that the conditions of his employment caused the ailment or that his working conditions caused the ailment or that such working conditions had aggravated the risk of contracting his ailment. Seafarer's bare assertions of "unusual strain of his work" is not proof to substantiate work-relation. Further, no evidence was presented that seafarer's employment aggravated his illness. The Court of Appeals upheld the findings of the Labor Arbiter and the NLRC.

Apolinario M. Corpuz vs. NLRC, et.al., CA-G.R. SP No. 84665, February 21, 2005, (Justice Enriquez Jr., Seventh Division, Court of Appeals)

Not rehiring seafarer after repatriation is management prerogative

Seafarer was repatriated due to back pains which were diagnosed as acute lumbar disc disease. After treatment, he signed a Certificate of Fitness to Work. He reapplied with manning agent but was not rehired. He then filed a claim for total and permanent disability benefits. The Court of Appeals ruled that seafarer was not entitled to disability benefits. Seafarer did not present evidence that his back pain was total and permanent. Also, the doctor's certification of illness must be given credence as a doctor would not normally make such certification of fitness. Further, non-rehiring of seafarer is a management prerogative. The Staff Evaluation Report of manning agent showed seafarer's poor performance and lack of basic and technical knowledge corresponding to his position as Fourth Engineer of the said vessel. Absent bad faith, the Court is bound to respect manning agent's decision.

Elpidio B. Cariaga vs. NLRC, et.al., CA-G.R. SP No. 75284, January 28, 2005, (Justice Dimaampao, Fourteenth Division, Court of Appeals)

Prescriptive period for death benefits of missing seafarer is three years

Seafarer was reported missing at sea on August 2, 1994. After his disappearance, the crew reported that his conduct was strange after they left Singapore. Seafarer was never found and his wife and children filed a claim for death benefits. The claim was filed on May 29, 2000 or some six years from his disappearance. The NLRC ruled that death benefits should be paid as under the Civil Code a missing person at sea is presumed dead only four years from his disappearance. The three year prescriptive period under the Labor Code should be counted after the four year period provided in the Civil Code. The Court of Appeals reversed the decision of the NLRC. The Court of Appeals ruled that the action has prescribed. The cause of action arose when the seafarer went missing. Under the Labor Code, the action for death benefits must be filed three years from that date of August 2, 1994. The Civil Code is not applicable as the four year period under the Civil Code is only for the purpose of settling the estate of a missing person. A money claim for death benefits under an employment contract is governed by the Labor Code which provides for a three year prescriptive period. The claim was dismissed by the Court of Appeals.

Korphil Shipmanagement vs. NLRC, et.al., CA-G.R.S.P. No. 78759, June 30, 2005 (Presiding Justice Brawner, First Division, Court of Appeals)

Drunkenness is ground for dismissal

The Third Officer of the MV Henry Oldendorff was dismissed for drunkenness. The Court of Appeals ruled that the Master's Report and the written apology of the seafarer on his drunkenness is substantial evidence warranting dismissal. The Third Officer held sensitive duties and his action displayed an absence of discipline which posed a clear and existing danger to the safety of the vessel and the crew.

Marcelino Catanyag vs. German Marine Agencies, et. al., NLRC NCR CA No. 039359-04, NLRC NCR OFW-M_03-05-1276-00, March 31, 2005 (Comm. Gacutan, Second Division, NLRC)