

Procedural steps relevant to enforcement of the NLRC's "FINAL & EXECUTORY" decision (Garnishment)

This is the third and final in a series of Bulletins that are being published with the aim of providing Members with an understanding of:

- 1) the legal system in the Philippines in general;
- 2) the standing of the National Labor Relations Commission (NLRC), which is a stand alone "Court of Expertise in Labor Law";
- 3) "Garnishment" – the enforcement of the NLRC Commissioner's "final and executory" decision.

Below is an overview of the procedural steps relevant to enforcement of the National Labor Relations Commission's (NLRC) "Final and Executory" decision (also known as Garnishment), by seafarers (normally the Complainant) and their Counsel.

Upon receipt of an unfavourable decision issued by the NLRC Commissioner, which is subsequently upheld or modified (and remains unfavourable) following the filing of a Motion for Reconsideration, the Complainant can proceed to enforce the "final & executory" decision, in line with the provisions of the Labor Code, since its enactment in 1974.

Whilst there are a few known cases of Garnishment based on the provisions of the Labor Code prior to 2005, the NLRC had generally recognised the concept of "Judicial Courtesy", where a lower court respects the standing of a higher court, when a case is elevated. However, one seafarer's Counsel challenged the concept of "Judicial Courtesy", by filing a case before the Philippine Ombudsman (prosecutorial arm of the Anti-graft Court) to compel the Labor Arbiter concerned to issue a Writ of Execution based on the provisions of the Labor Code. As a consequence, the then NLRC Chairman rescinded the practice of "Judicial Courtesy" and the NLRC's Revised Rules of Procedure 2005 now follow the Labor Code in stating that the NLRC Commissioner's decision is "final and executory after 10 calendar days from receipt thereof by the parties". In addition, Rule 65, Section 7 of the Rules of Court (Philippine law) was amended in December 2007 to similarly reflect the provisions of the Labor Code and the NLRC's Revised Rules of Procedure 2005.

Enforcement of the NLRC Commissioner's "final and executory" decision is, of course, subject to the Court of Appeals not looking upon the Respondent's Petition for Certiorari, with Prayer for the Urgent Issuance of a Writ of Preliminary Injunction or Temporary Restraining Order (TRO) favourably OR

within 10 calendar days, in line with the NLRC Rules of Procedure and the NLRC's Manual on Execution of Judgement. It also needs to be clearly understood that unless the Court of Appeals issues a Writ of Preliminary Injunction or TRO in a timely manner, then the case is "**FINAL** and executory" as a Labor claim, but survives before the Court of Appeals as a Civil claim, under judicial review.

The process outlined in this Bulletin assumes that enforcement will proceed against a Manning Agent's bank account(s), which is the most common approach. However, the NLRC Sheriff, in satisfying the enforcement of the award, can look to the Respondent's property; the Manning Agents Performance Bond and, of course, the Supersedeas Bond that may be in place (but which rarely satisfies the full amount of the award). The Bond is usually supported by a Club LOU (counter-security), the wording of which requires the Association to place the local Insurance Company who have posted the Bond in funds "not exceeding the amount of Pesos X, **once a Writ of Execution is served.....** as long as at the time of your payment you have not received any injunction order from any judicial / quasi-judicial / official body / tribunal / commission."

- **ENTRY OF JUDGEMENT**

After the employer / Member (normally the Respondents) receive notice and a copy of the NLRC Commissioner's Resolution, the Complainant can file a Motion for the Issuance of Entry of Judgement, with the NLRC. Notwithstanding, the NLRC Commissioner's decision becomes "final & executory" after a period of 10 calendar days following receipt of the NLRC's Resolution.

- **WRIT OF EXECUTION**

Once the "Entry of Judgement" has been granted, or upon the passing of 10 calendar days, the NLRC Commissioner's decision becomes "final and executory", which then paves the way for enforcement of the decision against the employer / Member, which will result in the Complainant filing a Motion for the Issuance of Writ of Execution, with the NLRC.

- **WRIT OF EXECUTION / NOTICE OF GARNISHMENT**

Once the Writ of Execution is issued, the NLRC Sheriff, in possession of the Writ of Execution and Notice of Garnishment, will proceed

personally to the bank where the NLRC Sheriff has grounds to believe that the Manning Agent maintains an account.

The NLRC Sheriff will then serve the Writ of Execution and Notice of Garnishment, specifically requiring the bank to reply within 5 days to the NLRC with advice as to whether the Manning Agent has a **cash deposit**, or any movable properties deposited, such as **stocks certificates, trust certificates, gold bars or other assets**, maintained with them. The bank, in compliance with the Notice of Garnishment, is bound to reply to the NLRC as to whether the Manning Agent has a cash deposit or other properties on deposit with them, sufficient to satisfy, in full or part, the NLRC Commissioner's decision.

NB: Once a Writ of Execution is issued, it is vitally important that the Member remits to their Manning Agent sufficient funds to satisfy the NLRC Commissioner's decision in full. The Manning Agent will then deposit these funds in their Pesos Account (the NLRC Sheriff can not touch foreign currency), which will ensure that once enforcement progresses, it will be these funds that are "ring fenced", ensuring the Manning Agent's business activities are not adversely effected.

- **MOTION TO RELEASE**

Once the Manning Agent's bank has responded, the Complainant is required to file a Motion to Release with the NLRC.

- **ORDER OF RELEASE**

In granting the Motion to Release, the NLRC will issue an Order of Release, which will then be enforced upon the bank, who will have no legal recourse, but to comply with the Order and issue a Manager's Check (Cheque) in satisfaction of the NLRC Commissioner's decision, payable to the Cashier of the NLRC.

- **ORDER RELEASING THE FUNDS MADE PAYABLE TO THE CASHIER OF THE NLRC**

Finally, the Complainant will have to obtain an Order Releasing the garnished funds from the NLRC, which, once granted, will result in the NLRC Cashier releasing the amount deposited with them to the Complainant.

- **COSTS**

It should be noted that in requiring the Complainant to enforce the NLRC Commissioner's decision in this manner (which can in most instances be paid voluntarily and without prejudice to a Member's Petition for Certiorari), the Member's legal costs will amount to between USD 700 – USD 1,250 approx., but potentially more, dependant upon the nature of the case and the number of pre-execution hearings that may take place.

In addition, the NLRC Sheriff will be entitled to a fee, which broadly speaking is about 1% of the amount enforced against the Respondents.

Obviously the benefit of making the Complainant enforce the NLRC Commissioner's decision, is that it provides the Court of Appeals with more time (not necessarily sufficient time), to give consideration to the Petition for Certiorari filed, accompanied by the Urgent request for the Issuance of a Writ of Preliminary Injunction and / or Temporary Restraining Order (TRO), assuming this has been filed in a timely manner.

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