

**Subject:** Philippine Shipping Update - December 4, 2015 (Issue 2015/23)



***DEL ROSARIO PANDIPHIL Inc.***

## Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 4, 2015 (Issue 2015/23)

*“Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners.” Asia-Pacific, The Legal 500, 2014, p. 494*

In this issue:

Seafarers Protection Act signed into law

Supreme Court declares seafarer’s dismissal illegal as reason for dismissal was not duly proven

### Seafarers Protection Act signed into law

On 26 November 2015, the President of the Republic of the Philippines signed into law Republic Act No. 10706 which is “*An Act Protecting Seafarers Against Ambulance Chasing and Imposition of Excessive Fees and Providing Penalties Therefor*” or simply called the **Seafarers Protection Act**.

The Act recognizes that seafarers, who have suffered disability or death, have fallen victims to an unfair scheme where unscrupulous individuals promise them huge monetary award in exchange for exorbitant fees.

The Act now prohibits any person to engage in ambulance chasing or the act of soliciting, personally or through an agent, from seafarers or their heirs, the pursuit of any claim against their employers for the purpose of recovery of monetary claim or benefit including legal interest arising from accident, illness or death, in exchange for an amount or fee which shall be retained or deducted from the monetary claim or benefit granted to or awarded to the seafarer or their heirs.

When a contract or arrangement is entered into between a seafarer and/or his heirs and a party representing them on the claim where such representative would be entitled to fees, such fees shall not exceed 10% of the compensation or benefit awarded to the seafarer or his heirs.

Any person who violates Section 3 of the Act (Prohibition on Ambulance Chasing) shall be punished by a fine not less than PHP50,000.00 but not more than PHP100,000.00 or imprisonment of not less than 1 year but not more than 2 years or both fine and imprisonment. The same penalties shall be imposed upon any person who shall be in collusion in the commission of the prohibited act..

The Act will take effect on 16 December 2015 although the Secretary of Labor and Employment, in coordination with the Maritime Industry Authority and the Philippine Overseas Employment Administration, were still tasked to promulgate the necessary rules and regulations for the effective implementation of the Act.

**Author's Note:** *Criminal liability is limited only to violation of "Ambulance Chasing". There is no criminal sanction if violation is based on Section 4 or the provision on "Imposition of Excessive Fees". However, in promoting the interest and welfare of the Filipino seafarers, the encouraging effects of the law may be summarized as follows: (a) the seafarer, as compared to the existing practice, cannot anymore be legally required to pay their lawyers of attorney's fees more than 10% of the total amount received, either by way of amicable settlement or an amount awarded by the labor courts; and (b) a limited amount to be paid as attorney's fees would mean additional amount of compensation to be received by the seafarers.*

## Supreme Court declares seafarer's dismissal illegal as reason for dismissal was not duly proven

Seafarer was engaged as Chief Cook. During employment, the Master of the vessel gave a notice of dismissal to the seafarer reasoning that because of his handicap of stiff right arm, he cannot perform his job well such as serving the meals, cleaning the kitchen, messrooms and stores. That this functions can only be done by him with the assistance of a Messman. On the basis of the dismissal letter, the seafarer was repatriated and after some time, filed a claim for illegal dismissal with the Labor Arbiter.

The Labor Arbiter granted the claim but this was set aside by the NLRC on appeal. Upon petition, the Court of Appeals reinstated the award of the Labor Arbiter and declared the dismissal to be illegal. Upon reaching the Supreme Court, the dismissal was affirmed to be illegal.

The Court explained that as a general concept, poor performance is tantamount to inefficiency and incompetence in the performance of official duties. An unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Poor or unsatisfactory performance of an employee does not necessarily mean that he is guilty of gross and habitual neglect of duties

To ascribe gross neglect, there must be lack of or failure to exercise slight care or diligence, or the total absence of care in the performance of duties. In other words, there is gross neglect when the employee exhibits thoughtless disregard of consequences without exerting effort to avoid them. On the other hand, habitual neglect involves repeated failure to perform duties for a certain period of time, depending upon the circumstances, and not mere failure to perform duties in a single or isolated instance.

The dismissal report against the seafarer did not describe the specific acts that would establish his alleged poor performance, or his want of even slight care in the performance of his official tasks as chief cook for a certain period of time; hence, even assuming that seafarer's performance was unsatisfactory, the company failed to show that his poor performance amounted to gross and habitual neglect of duties.

The Court likewise noted the failure of the Master to comply with the procedure in terminating the employment of a seafarer based on the POEA Contract as seafarer was not given a written notice stating the charges against him and an opportunity to defend himself.

Section 17 of the POEA Contract specifically provides that before an erring seafarer can be validly dismissed, he must be given by the Master of the vessel a written notice stating the charge or charges against him; and, the date, time and place for a formal investigation of such charge. Thereafter, an investigation or hearing, duly documented and entered in the ship's logbook, must be conducted to give the seaman the opportunity to explain or defend himself. If found guilty, the seaman shall be given a written notice of the penalty meted out against him with the specific reasons for the penalty so imposed. Such procedure may be dispensed with only if there is a clear and existing danger to the safety of the crew or the vessel which was not present in this case.

**Author's Note:** *Please note that in the recently issued amendments to the Implementing Rules and Regulations (IRR) of the Labor Code on Termination of Employment, the term "gross neglect" is now defined as the absence of that diligence that an ordinary prudent man would use in his or her own affairs. On the other hand, the term "habitual neglect" refers to the repeated failure to perform one's duties over a period of time depending on the circumstances. For said ground to be a valid cause for termination of employment, the IRR requires that there must be neglect of duty and that such neglect must be both gross and habitual in character.*

*INC ShipManagement, Inc., InterOrient Navigation Company Ltd., and Reynaldo Ramirez vs. Ranulfo Camporedondo, G.R. No. 199931, September 7, 2015, Second Division, Associate Justice Mariano Del Castillo, Ponente.*

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"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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