

SC affirms ruling denying seafarer disability claim

THE Supreme Court (SC) affirmed an appeals court decision to deny a seafarer's permanent disability claim worth \$60,000, saying the claim was filed prematurely.

In a nine-page resolution made public on Jan. 6, the tribunal said Edward Caranto filed for permanent disability in 2014 before the treatment period for a swollen right foot ended.

"It was only after the filing of his complaint in court that he sought the opinion of his physician of choice," it said in the ruling.

The tribunal noted that even if the personal doctor deemed him unfit to return to duty, he did

not obtain an assessment from a company-approved doctor.

Under the Philippine Overseas Employment Agency's rules, an injured worker has a treatment period of 240 days if a company-approved physician fails to give an assessment of the injury sustained.

Only a physician chosen by the employer has the authority to determine if a worker sustained permanent disability during employment.

Seafarers may also consult their own physician for a second opinion, and a third in case of conflicting assessments between the two doctors.

Mr. Caranto sustained the injury after falling into a sewer while performing his duties.

He underwent surgery and multiple physical therapy sessions. An orthopedic specialist had deemed him unfit to return to sea duty.

The seafarer then filed a claim with the labor arbiter, which ordered Seacrest Maritime Management, Inc., his employer, to pay him \$60,000 in disability benefits and plus legal fees.

Seacrest appealed the decision to the National Labor Relations Commission, which affirmed the benefits.

However, the Court of Appeals reduced the amount awarded to

Mr. Caranto to P26,477, finding that he was only entitled to unpaid sickness allowance because he filed the claim before permanent disability could be determined.

"Clearly then, petitioner had no cause of action to support his claim for total and permanent disability," the SC said.

"So, even if his orthopedic specialist found petitioner unfit to return to sea duty, the lack of a previous assessment from the company-designated physician, coupled with petitioner's belated consultation with his choice of physician, denied him the right to seek a total disability claim with this court." — **John Victor D. Ordoñez**

Former Iligan mayor fined over breach of civil service rules

THE Supreme Court (SC) ruled that a former mayor of Iligan City violated civil service rules following a complaint filed by a city engineer that he ordered transferred.

In a 12-page decision, the SC Second Division found that former Iligan Mayor Lawrence Lluch-Cruz improperly put the city engineer on floating status.

"It bears emphasis that the argument of Robert L. Ong, that his reassignment to the city veterinarian's office placed him on floating status

because he was not given any work thereat has not been controverted," Senior Associate Justice Marvic M.V.F. Leonen said in the ruling.

Mr. Lluch-Cruz was ordered to pay a fine equivalent to four months' salary as mayor.

Under Civil Service Commission rules, workers are protected from "acts of cruelty, severity or excessive use of authority (that cause) injury." — **John Victor D. Ordoñez**

FULL STORY



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OPINION

Worker with special skills has poor attendance record

Nestor (not his real name) is a 31-year-old worker with a unique skill set that our organization needs. He has been with us for 10 years, having joined us straight from graduation. Unfortunately, he is habitually late and a frequent absentee who knows how to avoid being penalized for it. He knows the limit for maximum allowable absences and tardiness and takes care never to exceed it. When in the office, he produces the highest quality and exceeds the daily production target about 75% of the time. He is difficult to hire a replacement for given the special qualifications required for his position, which he learned from us. Technically, Nestor can't be disciplined but his poor attendance record is disrupting our operations. What's the cure? — **Golden Bridge.**

Nestor may be testing the waters. He knows he's indispensable because of his special skills and is exploring the limits of management. If he's already

receiving above-average pay and perks, I suspect he wants to take the fast track to promotion.

When you say he's a "worker," I assume he's not yet part of management. If that's the case, then a promotion may be in order as most people get promoted in three to five years after displaying consistent high performance. But you can't do that given his bad attendance record, which may have delayed his promotion.

I'd like to believe that Nestor likes the company culture and work atmosphere, which may not be present in some organizations he's looking to join in your industry or elsewhere. But he's at a disadvantage because of the 10-year service record without being promoted, which could be questioned by his prospective employer when he applies for a job.

We're speculating here. The best approach is to discover the circumstances behind Nestor's poor attendance record. Check the history of his absences in the past two or three years. Is there a

pattern? What are the reasons for his unscheduled leaves and tardiness? Is he an alcoholic or a closet drug addict? What are his hobbies? Does he frequent the casino or other places of ill repute?

The answers could suggest a cure.

NEXT STEP

Your next step would be to have an engagement dialogue with Nestor. Tell him that his less-than-stellar attendance record is disrupting company operations. Show him the monetary losses that your company must absorb whenever he's absent.

But you need to be diplomatic about it. It is helpful to soften the impact of your concerns.

Nestor may appear to be the most talented worker in your organization, but that should not be taken as license for him to disrupt operations. An engagement dialogue becomes more effective if you approach it with an open mind, whatever reasons Nestor may give. In other words, don't come out with guns blazing.

Remember that replacing Nestor will be difficult given his special skills. If he resigns, it will take some time before you can find and train a replace-

ment — the training alone could take years. In the dialogue, try asking him open-ended questions, starting with the standard Filipino icebreakers like:

Kumain ka na ba? (Have you eaten?) Would you like to have coffee? If the answer is in the affirmative, try again. If you're rejected, try other approaches like talking to him in the elevator, hallway, or common area. Create an opportunity to talk about a certain neutral subject.

An opening could eventually emerge for a casual, heart-to-heart talk. Once that happens, put him at ease with non-intimidating questions like "how are you doing?"

OTHER SOLUTIONS

One of the possibilities in dealing with an employee like Nestor is repeated failure to get your message across. He may feel beaten down to the point of becoming resentful and difficult to manage. If you think that is likely, you may resort to a corporate-wide solution applicable to all workers who are similarly situated.

One, offer a flextime work arrangement. This means allowing people to adopt a flexible

work schedule with a performance target to be completed no later than 6 p.m. every day. Depending on the complexity of each job, performance measurements must be done daily, subject to the condition that all workers be present during the core hours of 10 a.m. to 3 p.m.

Two, allow people to work from home. This saves the worker and management a lot. The worker will not need to endure daily commuting. The organization can save a lot of money in terms of utilities, maintenance, and security costs. Note that this may not apply to all kinds of work.

Last, be ready to discover and develop other talent. You don't have to have a full-blown business continuity plan, which identifies internal potential successors in case Nestor submits an irrevocable resignation. If and when he does, don't negotiate by offering a "merit" increase or promotion.

Chat your workplace questions to Rey Elbo on Facebook, LinkedIn and Twitter or e-mail to elbonomics@gmail.com or via <https://reyelbo.com>



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