

Submissions to the International Commission on Shipping (ICONS), July 2000

By: SILAW –Sea and Land based Workers' Alliance

- MMOA- Merchant Marine Overseas Association
- MARINO- Mariners Association for Regional and International Networking Organization
- AOS- Apostleship of the Sea
- Seamen's Mission Center
- United Methodist Church-Philippine Maritime Ministry
- SWAPI – Seamen's Wives Association of the Philippines
- KAKAMMPI – an organization of Families of overseas contract workers
- Kanlungan – an institute supporting women overseas contract workers
- Institute for Occupational Health, Safety and Development
- LEARN – an institute providing education program for Filipino workers and blacklisted seafarers

This submission should be read in conjunction with the enclosed Philippine Overseas Employment Administration's Standard Employment Contract (POEA-SEC), Memorandum Circular Series of 1996 and Department of Labor's (DOLE) Department Order No.05 Series of 2000. These documents will be sent by post.

SILAW c/o KAKAMMPI, 70-A Matahimik St., Teachers' Vill. Diliman, Quezon City, Philippines,
Telephone no. 63-2-435 4584, e-mail Kakammpi@skyinet.net

New POEA Standard Employment Contract for Filipino seafarers, a travesty of workers rights.

The Philippine government through the Philippine Overseas Employment Administration (POEA) , has betrayed the Filipino seafarers. In the guise of "maintaining the Philippine global comparative advantage in shipmanning" the Estrada government has replaced the existing POEA Standard Employment Contract (SEC) with a watered down and highly regressive contract.

The new POEA-SEC that was signed by Department of Labor and Employment Secretary Bienvenido Laguesma as Department Order No 04 Series of 2000, contains major changes that violates fundamental human and labor rights of the Filipino seafarers.

1. Delimiting liability of employers to work related injury, illness or death.

Under the old POEA-SEC, ship owners and employers are liable for illness, injury or death of the seafarer during the term of his contract. (Old POEA-SEC, sec. 20 A and B) The new POEA-SEC greatly diminished this liability by limiting it to "**work related injury or illness during the term of his contract**" (New POEA SEC, sec. 20, B,[1]) and "**work related death, during the term of his contract**" (New POEA SEC, sec. 20, A,[1])

This is a clear violation of Philippine laws and jurisprudence and of existing international labor laws. The old POEA-SEC covers all sickness and injuries during the contract. This was reiterated by the Philippine Supreme Court in the case of *More Maritime Agencies vs. NLRC*, G.R. no. 124927, May 18, 1999 where it ruled that:

"Moreover, even granting for the sake of argument that the sickness is not work related, still the complainant is entitled to disability benefits because the Standard Contract for seamen approved by the POEA does not qualify whether the sickness is work related or not."

The liability of employers for non-work-related sickness, injury or death is an existing benefit that cannot be derogated under the Labor Law concept of non-diminution of existing benefits. This was expressed by the Supreme Court in the case of *Davao Fruits Corp. vs. NLRC* G.R. No. 85073, August 24, 1993 where it was held that:

" A company practice favorable to the employees had indeed been established and the payments made pursuant thereto, ripened into benefits enjoyed by them.

And any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued, or eliminated by the employer, by virtue of Section 10 of the Rules and Regulations Implementing P.D. No. 851, and Art. 100 of the Labor Code of the Philippines which prohibit the diminution or elimination by the employer of the employees existing benefits (Tiangco vs. Leogardo, 122 SCRA 27, 1983.)"

2. IMPOSING A BLANKET QUIT CLAIM AND RELEASE.

A nasty rider to the new POEA SEC is a blanket and all-encompassing quit claim that provided in Section 20 G thereof that "

"x x x payment for injury, illness, incapacity, disability or death of the seafarer under the contract shall cover all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country."

Even before this new POEA SEC was signed into effect, a lot of manning agencies and P&I Club representatives in the Philippines have been forcing Filipino seafarers to sign a blanket quitclaim on their contractual payments, on the pain of not paying their contractual entitlements, if they refuse sign the quitclaim.

This is violative of the human rights of seafarers to seek redress of grievance on the appropriate courts and forum that will have jurisdiction over his case.

Under the International Declaration of Human Rights, the open access to any court all over the world by any person is guaranteed under the following provisions:

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Under the International Convention on Civil and Political Rights, 23 March 1976 of the United Nations, these rights are also enshrined in detail, to wit:

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law .XXX

The above articles of the international human rights declaration and the International Convention of Civil and Political Rights assure that anyone has the right of access to appropriate courts or tribunals to redress any violation of his fundamental rights. When a seafarer due to tortuous acts, fault or negligence of the employer, dies or is injured, he has the full human rights of access to the courts all over the world that may acquire jurisdiction over his case. Over and above the minimum contractual entitlement of the seafarer based on the POEA-SEC, as a human being, irrespective of any employer-employee relation, the seafarer still has other causes of action based on tortuous acts, fault, or negligence of the ship owners if the death or injury is attributable to these factors.

Under the above provision of the new POEA SEC, however, any seafarer who does incur injury, or is afflicted by an illness or who dies, will be barred from claiming his full entitlement as a person from the competent courts and tribunals of the world, once he or his heirs have received the contractual entitlement. It is like a blanket quit claim and release that covers even tort, negligence or fault, (quasi-delict) even when the benefit received is only for the minimum contractual entitlement. By paying the contractual entitlement only, the ship owners, P and I Clubs, and manning agents are all released from all other claims by the seafarer.

This is an obvious surrender of the Philippine government to the pressure of Manning Agencies and ship owners to legalize what is clearly an illegal acts of ship owners' representatives to limit the right of workers to redress wrongful acts against them.

Quit claims and general release, such as the one provided in the new POEA-SEC, have long been frowned upon even in Philippine laws and jurisprudence. In a long line of established jurisprudence, the Philippine Supreme Court has ruled that quit claims and/or complete releases are against public policy and therefore null and void. In the 1998 case of Anino et al vs. NLRC, G.R. No. 123226, May 21, 1998, the policy laid down in the landmark case of AFP Mutual Benefit Association Inc vs AFP-MBAI-EU (97 SCRA 715 was reiterated thus:

"In labor jurisprudence, it is well established that quitclaims and/or complete releases executed by the employees do not stop them from pursuing their claims arising from unfair labor practice of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. X X X

The act of the Department of Labor and Employment and of the POEA of putting this general quit claim and release as part of the contract is repugnant to public policy and to the internationally recognized human rights of seafarers as human beings to have access to the courts that may acquire jurisdiction over his case, for the entire gamut of his entitlements as a person.

3. THE SEAFARER IS NOW DUTY BOUND TO KNOW AND DISCLOSE FULLY HIS MEDICAL CONDITION AND HISTORY OR LOSE HIS JOB AND BENEFITS.

Another highly objectionable provision that was added in the new contract is Section 20, E., which imposes an unreasonable task on the seafarer. Under pain of losing all his compensation, benefits, even his employment, the seafarer is duty bound to know and fully disclose his past and present medical condition before any contract.

Section 20, E provides that:

" A seafarer who knowingly conceals and does not disclose past medical conditions, disability and history in the pre-employment medical examination constitutes fraudulent

misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions."

The voluntary submission of a seafarer to the company- designated physician at the PRE-EMPLOYMENT MEDICAL EXAMINATION is sufficient disclosure of his medical condition. It is the duty and competence of the company doctor that shall determine the fitness or unfitness of the applicant to work. The seafarer cannot be expected to have the expertise of a medical doctor in knowing and disclosing his medical condition, which is a highly technical field of study. This provision imposes a duty on the seafarer that is beyond his competence and presumes that he has committed **fraudulent misrepresentation** if he fails to perform said duty.

The presumption of **fraudulent misrepresentation** unless he performs the act of disclosure of past medical condition, disability and history is tantamount to a BILL OF ATTAINDER. This is the repugnant legal practice of the dark ages in presuming that a party is guilty unless he proves his innocence, which has long been expunged, from the laws and jurisprudence of civilized nations, from the time of the Magna Carta. Thus a seafarer is presumed guilty and liable for **administrative and legal sanctions**, which could include criminal liability, **unless** he can prove that his non-disclosure of his past medical condition, disability or history was excusable or justified or was done unknowingly or in good faith.

Furthermore, the duty of full disclosure of past medical condition covers everything, even medical conditions, which have no bearing on the seafarers' fitness to work at sea. Under ILO Maritime Convention No. 73 Concerning the Medical Examination of Seafarers,(August 17, 1955) the duty imposed on the seafarer is confined to producing **"a certificate attesting to his fitness for the work for which he is to be employed at sea signed by a medical practitioner"**(Article 3, [1])

The said ILO Convention states that the medical certificate shall attest **"Article 3, (b) that he is not suffering from any disease likely to be aggravated by or to render him unfit for , service at sea or likely to endanger the health of other persons on board."**

The said ILO Convention does not require full disclosure of past condition but a limited certificate referring to his "fitness for the work" and that he will not "endanger the health of other persons on board." It is thus the duty of the medical practitioner to conduct the proper tests

and ask the relevant questions that within his expertise would reveal the fitness or unfitness of the seafarer for work.

This provision, together with the above cited Sec. 20 A and B diminishing existing benefits and the general release and quit claim provision in Sec 20, G, reveal that the new POEA SEC is clearly a travesty of workers rights. It violates the mandate of the POEA to: **Sec. 3 (I) Secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith (Exec. Order No. 247, July 24, 1987)**. It is a worsening of the already watered down POEA contract and a violation of the public policy enshrined in the Philippine Constitution mandating: in Section 3, Article XIII that

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

Instead of affording full protection to labor, the DOLE and the POEA are clearly protecting the ship owners, manning agents and the P and I club from possible claims by seafarers. Who shall defend the seafarers now?

The member organizations of SILAW would like to expose this travesty. The Philippine government is all too willing to send Filipino seafarers at the mercy of ship owners, at the expense of seafarers' lives and the future of their children and families. It is a clear signal from the government that they are only concern with receiving the dollar remittances of Filipino seafarers and leaving them unprotected to the vultures of the open seas. At the minimum, the government should revert to the 1996 POEA-SEC, and then consider the above submission, which have been provided to them during the several months of lobbying by SILAW organizations.