

The Law on Termination of Filipino Seafarers

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Introduction. It is not uncommon for a dismissed seafarer to file a complaint before the National Labor Relations Commission (NLRC) alleging illegal dismissal and claiming salaries for the unexpired portion of the contract. It is thus important that employers of Filipino seafarers are aware of the various aspects of the law on termination of Filipino seafarers in order to ensure that the termination is legal.

There are two (2) elements that must be present before a dismissal of seafarer can be held valid. These are:

1. Just and valid cause
2. Procedural due process

Just and valid cause. Just causes are enumerated in Section 33 of the POEA Standard Employment Contract (Table of Offenses and Corresponding Administrative Penalties) and/ or the relevant Collective Bargaining Agreement. The list is not exclusive as analogous acts may also constitute just and valid causes. Some examples of just causes include drug- related offenses, smuggling, desertion, absence without leave, drunkenness, act of disobedience to lawful orders of the superior officer, pilferage or theft, incompetence and inefficiency, etc. It is highly recommended that employers be aware of the list of offenses and the administrative penalties that may be imposed as not all offenses are punishable by dismissal. It is best to be able to point out to specific violations in the contract with a corresponding penalty of dismissal in order to justify a termination.

Procedural due process. The procedure for effecting dismissal is stated in Section 17 of the POEA Standard Employment Contract. It requires observance of the two-notice rule in addition to investigation and hearing.

The **first written notice** to be served on the seafarer should contain the grounds for the charges/ infractions as well as the date, time and place for formal investigation of the charges.

There is no prescribed formality in conducting the investigation. What is essential is to give the alleged erring seafarer ample opportunity to explain or defend himself.

In any event, it is best to document the investigation proceedings. The measures suggested are as follows:

- (a) Record or transcribe the proceedings and prepare minutes thereof. Have all persons who took part therein sign the minutes including the seafarer involved.

(b) Enter in the vessel's logbook what transpired during the investigation including seafarer's summary of statements/defenses, witnesses presented, documents submitted, seafarer's admission, etc.

The **second written notice** is the notice of dismissal to be served on the erring seafarer stating the reasons thereto. A copy of the second written notice must be furnished the Philippine manning agent.

Complaint before the NLRC. Please note that the seafarer may contest the Master and/ or employer's decision to dismiss him by filing an illegal termination case before the NLRC. In such cases, the burden of proof rests with the employer. It is thus important that records be gathered and preserved. The manning agent is probably the best repository for such records as the case will be heard in the NLRC and the manning agent and its principal are named as respondents. Most of the difficulty in handling termination cases lies with gathering the evidence and getting the crew to testify. It is thus important to gather and preserve the evidence immediately after the termination.

Evidence. The evidence needed in a termination dispute varies depending on the circumstances of each case. Some of the useful documents are the following:

1. Vessel's logbook extracts
2. Master's or Incident report
3. Affidavit/statements of crewmembers/other witnesses attesting to the offenses committed by the seafarer
4. Minutes of investigation proceedings
5. First and second notices (as discussed above)
6. Performance rating reports
7. Company policy
8. Police and other authorities' report of the incident

It is preferable that the above documents be authenticated or attested by the nearest Philippine Consulate or Labor Attaché. However, if under the circumstances, such authentication is uneconomical, impractical or impossible, a copy of the Official Entry in the ship's logbook may suffice. As held in one case decided by the Supreme Court, the vessel's logbook is an official record and entries made by a person in the performance of a duty required by law are prima facie evidence of the facts stated therein. Hence, provided the copy of the logbook extracts bears the official seal of the vessel's Master, the same shall be admitted as evidence. In another case decided by the NLRC, the NLRC ruled that the logbook extracts together with statements from the Master and Chief Officer were sufficient to prove the seafarer's actions and demeanor. The Labor Code of the Philippines does provide that labor courts need not follow strictly rules of evidence prevalent in courts of law. In labor courts, every reasonable means to ascertain the facts in each case shall be used without regard to technicalities.

Exception to due process. While observance of procedural due process is imperative, it does admit of certain exceptions. One exception under the POEA contract is when observance of procedural due process will result in a clear and existing danger to the safety of the crew and vessel. In this instance, the seafarer may be dismissed without

procedural due process but the Master must send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents to support the dismissal.

Penalties. If procedural due process is not observed, that is, the two-notice rule is not followed, the dismissal is still considered legal provided there is just cause for dismissal (Agabon vs. NLRC, G.R. No. 158693, November 17, 2004). The penalty imposed by the courts or the NLRC on non-observance of procedural process is nominal damages. Such damages are usually reasonable. In the aforementioned Agabon case, the nominal damages awarded were P30,000 (US\$600). It is important to stress, however, that it is still a good practice to follow strictly the rules on procedural due process as non-compliance will influence the NLRC or the courts to rule against the employer.

If the NLRC finds that there was no just, valid or authorized cause for dismissal as defined by law or contract, the seafarer shall be entitled to his salaries for the unexpired portion of his employment contract (Marsaman Manning Agency vs. NLRC, G.R. No. 127195, August 25, 1999). Section 10 of the Overseas Workers and Overseas Filipinos Act of 1995 does provide for a penalty of three months for every year of service but the Supreme Court has declared said provision unconstitutional (Antonio Serrano vs. Gallant Maritime Services, et. al., G.R. No. 167614, En Banc, March 24, 2009). R.A. No. 10022 has “re-legislated” such 3 months salary limitation and may again be subject to further interpretation by the courts.

Grievance Procedure. A seafarer working on board the vessel who believes he has been aggrieved, that is, unjustly treated or subjected to an unfair consideration may initiate a complaint in accordance with the procedures enumerated in Section 16 of the POEA Standard Employment Contract:

1. The seafarer shall first approach the head of the department in which he is assigned to explain his grievance.
2. The seafarer shall make his grievance in writing and in an orderly manner and shall choose a time when his complaint or grievance can be properly heard.
3. The department head shall deal with the complaint or grievance and where solution is not possible at his level, refer the complaint or grievance to the Master who shall handle the case personally.
4. If no satisfactory result is achieved, the seafarer concerned may appeal to the management of the company or with a Philippine Overseas Labor Office or consular officer overseas. The Master shall afford such facilities necessary to enable the seaman to transmit his appeal.
5. If after observing the grievance procedure the Master finds that the seafarer violated the terms of his contract or has committed breach of discipline, the Master shall discipline the seafarer or, if warranted, terminate his employment.

6. The seafarer may also seek the assistance of the highest ranking Filipino seafarer on board.

When the grievance procedure is availed of by the seafarer, all actions or decisions must be properly documented for the protection and interest of both parties. The grievance procedure is without prejudice to the seafarer filing a complaint before the voluntary arbitrator, Philippine Overseas Employment Administration (POEA) or the NLRC on any unresolved complaint arising out of his shipboard employment.

Conclusion. Under Philippine law, any doubt in the interpretation of a dispute is to be resolved in favor of the seafarer. It is thus important to observe the substantive and procedural aspects of termination in order to remove any doubt on the legality of the termination. This will give the employer a fair chance of defending itself should the seafarer decide to challenge the validity of his termination.

Del Rosario & Del Rosario Law Offices handles a number of illegal dismissal cases. For more information, please email { [HYPERLINK "mailto:mail@delrosariolaw.com"](mailto:mail@delrosariolaw.com) }