THIRD DIVISION

AMELIA J. DELOS SANTOS, **Petitioner,**	**G.R. No. 154185**
	Present:
- versus -	PANGANIBAN, *J., Chairman* SANDOVAL-GUTIERREZ, CORONA, CARPIO MORALES, and GARCIA, *JJ.*
	Promulgated:
JEBSEN MARITIME, INC., **Respondent.**	November 22, 2005

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D E C I S I O N

GARCIA, *J.*:

Petitioner Amelia J. Delos Santos seeks in this petition for review on *certiorari* under Rule 45 of the Rules of Court to nullify and set aside the decision and resolution dated 21 March 2002[1] and 03 July 2002[2], respectively, of the Court of Appeals in *CA-G.R. SP No. 62229.*

From the petition and its annexes, the respondents comment thereto, and the parties respective memoranda, the Court gathers the following factual antecedents:

On 10 August 1995, or thereabout, herein respondent Jebsen Maritime, Inc., for and in behalf of Aboitiz Shipping Co. (Aboitiz Shipping, for short), hired petitioners husband, Gil R. Delos Santos (hereinafter, Delos Santos) as third engineer of MV *Wild Iris*. The corresponding contract of employment, as approved by the Philippine Overseas Employment

Administration (POEA), was for a fixed period of one (1) month and for a specific undertaking of conducting said vessel to and from Japan. It quoted Delos Santos basic monthly salary and other monetary benefits in US currency. Under POEA rules, all employers and principals are required to adopt the POEA - standard employment contract (POEA-SEC) without prejudice to their adoption of terms and conditions over and above the minimum prescribed by that agency.[3]

On the vessels return to the Philippines a month after, Delos Santos remained on board, respondent having opted to retain his services while the vessel underwent repairs in Cebu. After its repair, MV *Wild Iris,* this time renamed/registered as MV *Super RoRo 100*, sailed within domestic waters, having been meanwhile issued by the Maritime Industry Authority a Certificate of Vessel Registry and a permit to engage in coastwise trade on the Manila-Cebu-Manila-Zamboanga-General Santos-Manila route.[4] During this period of employment, Delos Santos was paid by and received from respondent his salary in Philippine peso thru a payroll-deposit arrangement with the Philippine Commercial & Industrial Bank.[5]

Some five months into the vessels inter-island voyages, Delos Santos experienced episodes of chest pain, numbness and body weakness which eventually left him temporarily paralyzed. On 17 February 1996, he was brought to the *Manila Doctors Hospital* a duly accredited hospital of respondent - where he underwent a spinal column operation. Respondent shouldered all operation-related expenses, inclusive of his post operation confinement.

As narrated in the assailed decision of the Court of Appeals, the following events next transpired:

> 1. After his discharge from the Manila Doctors, Delos Santos was made to undergo physical therapy sessions at the same hospital, which compelled the Batangas-based Delos Santoses to rent a room near the hospital at P3,000.00 a month;
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> 2. Delos Santos underwent a second spinal operation at the non-accredited *Lourdes Hospital* at the cost of P119, 536.00; and
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> 3. After *Lourdes*, Delos Santos was confined in a clinic in San Juan, Batangas where P20,000.00 in hospitalization expenses was incurred.

It would appear that the spouses Delos Santos paid all the expenses attendant the second spinal operation as well as for the subsequent medical treatment. Petitioners demand for reimbursement of these expenses was rejected by respondent for the reason that all the sickness benefits of Delos Santos under the Social Security System (SSS) Law had already been paid.

Thus, on 25 January 1997, petitioner filed a complaint[6] with the Arbitration Branch of the National Labor Relations Commission (NLRC) against respondent and Aboitiz Shipping for recovery of disability benefits, and sick wage allowance and reimbursement of hospital and medical expenses. She also sought payment of moral damages and attorneys fees.

After due proceedings, the labor arbiter rendered, on 08 January 1999,[7] judgment finding for petitioner and ordering respondent and Aboitiz Shipping to jointly and severally pay the former the following:

> (1) P119,536.01, representing reimbursement of medical, surgical and hospital expenses;
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> (2) P9,000, representing reasonable cost of board and lodging;
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> (3) P500,000, representing moral damages;
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> (4) US$60,000, representing disability benefits corresponding to Total Permanent Disability;
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> (5) US$2,452, representing Sick Wage allowance;
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> (6) P62,853.60, representing attorneys fees; and,
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> (7) US$6,245.20, also representing attorneys fees.

On appeal, the NLRC, in a decision[8] dated 29 August 2000, modified that of the labor arbiter, as follows:

> WHEREFORE, the decision appealed from is MODIFIED to the extent that respondents Jebsen Maritime, Inc., and Aboitiz Shipping Company are hereby ordered jointly and severally liable to pay Gil delos Santos through Amelia

> delos Santos the Philippine peso equivalent at the time of actual payment of US DOLLARS SIXTY THOUSAND (US$60,000.00) and US DOLLARS TWO THOUSAND FOUR HUNDRD (*sic*) FIFTY TWO (US$2,452.00) representing total disability compensation benefits and sickness wages, and the amount of ONE HUNDRED THREE THOUSAND EGHT (*sic*) HUNDRED FOUR AND 87/100 PHILIPPINE PESOS (P103,804.87) representing reimbursement of surgical, medical and hospital expenses, plus the equivalent of five percent (5%) of the aggregate award as and for attorneys fees.
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> All other dispositions are SET ASIDE.
>
> SO ORDERED.

Like the labor arbiter, the NLRC predicated its ruling mainly on the theory that the POEA-approved contract of employment continued to govern Delos Santos employment when he contracted his illness. In specific terms, the NLRC states that the same contract was still effective when Delos Santos fell ill, thus entitling him to the payment of disability and like benefits provided in and required under the POEA-SEC.

Following the denial of its motion for reconsideration per NLRC Resolution[9] of 31 October 2000, respondent went to the Court of Appeals on a petition for *certiorari*, thereat docketed as *CA-G.R. No. 62229*, imputing on the NLRC grave abuse of discretion. In its petition, respondent scored the NLRC for, among other things, extending the application of the expired POEA-approved employment contract beyond the one-month limit stipulated therein.

On 21 March 2002, the Court of Appeals rendered judgment[10], modifying the NLRCs decision by deleting altogether the award of disability compensation benefits, sickness wages and attorneys fees, thus:

> WHEREFORE, premises considered, the instant petition for certiorari is hereby DENIED, finding no grave abuse of discretion on the part of the NLRC. The Decision of the National Labor Relations Commission (NLRC) dated August 29, 2000 and the Resolution of October 31, 2000 denying petitioners Motion for Reconsideration are hereby AFFIRMED with MODIFICATION, that the disability compensation benefits of US$60,000.00 and the sickness wages of US$2,452.00 are hereby deleted, without prejudice to claiming the same from the proper government agency. The award of attorneys fees is likewise deleted.

In time, petitioner moved for reconsideration, but the appellate court denied the motion per its resolution of 03 July 2002.[11]

Hence, petitioners present recourse on the grounds that the Court of Appeals seriously erred:[12]

I

IN DELETING THE AWARD OF US$60,000.00 REPRESENTING THE MAXIMUM DISABILITY BENEFITS APPLYING THE PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT.

(A) PRIOR TO HIS ACCIDENT, THE EMPLOYMENT CONTRACT OF SEAFARER DELOS SANTOS HAS NOT YET BEEN TERMINATED, IN RELATION TO SECTION 2, PARAGRAPHS (A) AND (B) AND SECTION 18 (A), POEA STANDARD EMPLOYMENT CONTRACT.

(B) THE CONTRACT OF EMPLOYMENT AT THE TIME OF SEAFARER DELOS SANTOS ACCIDENT HAS NOT YET EXPIRED BECAUSE IT WAS MUTUALLY EXTENDED BY THE PARTIES WHEN DELOS SANTOS WAS NOT SIGNED OFF AND REPATRIATED PRIOR TO SAID ACCIDENT.

II

IN CONCLUDING THAT NOTWITHSTANDING THE CONTINUATION OF DELOS SANTOS EMPLOYMENT ON BOARD THE SAME VESSEL AND UNDER THE SAME CONTRACT, IT IS THE PROVISIONS OF THE LABOR CODE, AS AMENDED, THAT SHALL GOVERN HIS EMPLOYMENT RELATIONS.

III

IN DELETING THE AWARD OF SICKNESS ALLOWANCE IN THE AMOUNT OF US$2,452.00.

(A) THERE IS NO BASIS IN THE DELETION OF THE AWARD OF SICKNESS ALOWANCE (*sic*) SINCE PAYMENT OF SOCIAL SECURITY SYSTEM SICK LEAVE BENEFIT IS INDEPENDENT, SEPARATE AND DISTINCT FROM THE SICKNESS ALLOWANCE PROVIDED FOR UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.

The petition is devoid of merit.

As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties.[13] An employment with a period is generally valid, unless the term was purposely intended to circumvent the employees right to his security of tenure.[14] Absent a covering specific agreement and unless otherwise provided by law, the terms and conditions of employment of all employees in the private sector shall be governed by the Labor Code[15] and such rules and regulations as may be issued by the Department of Labor and Employment and such agencies charged with the administration and enforcement of the Code.

The differing conclusions arrived at by the NLRC, finding for the herein petitioner, and the Court of Appeals, siding in part with the herein respondent, on Delos Santos entitlement to disability benefits and sickness allowance are veritably attributable to the question of applicability, under the premises, of the POEA-SEC. The principal issue to be resolved here, therefore, boils down to: which, between the POEA-SEC and the Labor Code, governs the employer-employee relationship between Delos Santos and respondent after MV *Wild Iris,* as later renamed *Super RoRo 100,*returned to the country from its one-month conduction voyage to and from Japan.

The Court of Appeals ruled against the governing applicability of the POEA-SEC and, on that basis, deleted the NLRCs award of US$60,000.00 and US$2,452.00 by way of disability benefits and sickness allowance, respectively. An excerpt of the appellate courts explanation:

> xxx Both parties do not dispute the existence of the POEA approved contract signed by the parties. The said contract is the law between the contracting parties and absent any showing that its provisions are wholly or in part contrary to law, morals, good policy, it shall be enforced to the letter by the contracting parties *(Metropolitan Bank and Trust Co. vs. Wong, G.R. No. 120859, June 26, 2001).* The contract in question is for a duration of one (1) month. Being a valid contract between Delos Santos and the [respondent], the provisions thereof, specifically with respect to the one (1) month period of employment has the force of law between them *(D.M. Consunji vs. NLRC, G.R. No. 116572, December 18, 2000).* Perforce, the said contract has already expired and is no longer in effect.
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> The fact that Delos Santos continued to work in the same vessel which sailed within Philippine waters does not mean that the POEA standard employment contract continues to be enforced between the parties. The

> employment of Delos Santos is within the Philippines, and not on a foreign shore. As correctly pointed out by [respondent], the provisions of the Labor Code shall govern their employer-employee relationship. xxx. (Words in bracket added.)

The Court agrees with the conclusion of the Court of Appeals for two (2) main reasons. First, we the start with something elementary, *i.e.*, POEA was created primarily to undertake a systematic program for overseas employment of Filipino workers and to protect their rights to fair and equitable employment practices.[16] And to ensure that overseas workers, including seafarers on board ocean-going vessels, are amply protected, the POEA is authorized to formulate employment standards in accordance with welfare objectives of the overseas employment program.[17] Given this consideration, the Court is at a loss to understand why the POEA-SEC should be made to continue to apply to domestic employment, as here, involving a Filipino seaman on board an inter-island vessel.

Just as basic as the first reason is the fact that Delos Santos POEA-approved employment contract was for a definite term of one (1) month only, doubtless fixed to coincide with the pre-determined one-month long Philippines-Japan-Philippines conduction-voyage run. After the lapse of the said period, his employment under the POEA-approved contract may be deemed as *functus oficio* and Delos Santos employment pursuant thereto considered automatically terminated, there being no mutually-agreed renewal or extension of the expired contract.[18] This is as it should be. For, as we have held in the landmark case of *Millares v. National Labor Relations Commission*:[19]

> From the foregoing cases, it is clear that seafarers are considered contractual employees. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 [of the Labor Code] whose employment has been fixed for a specific project or undertaking . . . We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers. (Underscoring and words in bracket added)

Petitioners posture, citing Section 2 (A)[20] in relation to Section 18[21] of the POEA-SEC about the POEA approved contract still

subsistingsince Delos Santos was never signed off from the vessel and repatriated to Manila, the point of hire, is untenable. With the view we have of things, Delos Santos is deemed to have been signed off when he acceded to a new employment arrangement offered by the respondent. A seaman need not physically disembarked from a vessel at the expiration of his employment contract to have such contract considered terminated. And the repatriation aspect of the contract assumes significance only where the vessel remains in a foreign port. For, repatriation presupposes a return to ones country of origin or citizenship.[22] In the case at bar, however, there can be quibbling that MV *Wild Iris* returned to the port of Cebu with Delos Santos on board. Parenthetically, while the parties are agreed that their underlying contract was executed in the country, the records do not indicate what city or province of the Philippines is the specific point of hire. While petitioner says it is Manila, she did not bother to attach to her petition a copy of the contract of employment in question.

Petitioner next submits, echoing the NLRCs holding, that the POEA-approved contract remained in full force and effect even after the expiry thereof owing to the interplay of the following circumstances: 1) Delos Santos, after such contract expiration, did not conclude another contract of employment with respondent, but was asked to remain and work on board the same vessel just the same; and 2) If the parties intended their employer-employee relationship to be under the aegis of a new contract, such intention should have been embodied in a new agreement.

Contract extension or continuation by mutual consent appears to be petitioners thesis.

We are not persuaded.

The fact that respondent retained Delos Santos and allowed him to remain on board the vessel cannot plausibly be interpreted, in context, as evidencing an intention on its part to continue with the POEA-SEC. In the practical viewpoint, there could have been no sense in consenting to renewal since the rationale for the execution of the POEA-approved contract had already been served and achieved.

At any rate, factors obtain arguing against the notion that respondent consented to contract extension under the same terms and conditions prevailing when the original contract expired. Stated a bit differently, there are compelling reasons to believe that respondent retained the services of the acceding Delos Santos, as the Court of Appeals aptly observed, but under domestic terms and conditions. We refer first to the reduced salary of Delos Santos payable in Philippine peso[23] which, significantly enough, he received without so much of a protest. As respondent stated in its *Comment,* without any controverting response from petitioner, Delos Santos, for the period ending October 31, 1995, was drawing a salary at the rate of ₱8,475.00 a month, whereas the compensation package stipulated under the POEA-approved contract provided for a US$613 basic monthly salary and a US$184 fixed monthly overtime pay. And secondly, MV *Super RoRo 100* was no longer engaged in foreign trading as it was no longer intended as an ocean-going ship. Accordingly, it does not make sense why a seafarer of goodwill or a manning agency of the same disposition would insist on being regulated by an overseas employment agency under its standard employment contract, which governs employment of Filipino seamen on board ocean-going vessels.[24]

Petitioners submission about the parties not having entered into another employment contract after the expiration of the POEA-approved employment contract, *ergo,* the extension of the expired agreement, is flawed by the logic holding it together. For, it presupposes that an agreement to do or to give does not bind, unless it is embodied in a written instrument. It is elementary, however, that, save in very rare instances where certain formal requisites go into its validity, a contract, to be valid and binding between the parties, need not be in writing. A contract is perfected when the contracting minds agree on the object and cause thereof.[25] And, as earlier discussed, several circumstantial *indicia* tended *to* prove that a new arrangement under domestic terms was agreed upon by the principal players to govern the employment of Delos Santos after the return of MV *Wild Iris* to the country to engage in coastwise trading.

Given the foregoing perspective, the disallowance under the decision subject of review of the petitioners claim for maximum disability benefits and sickness allowance is legally correct. As it were, Delos Santos right to

such benefits is predicated on the continued enforceability of POEA-SEC when he contracted his illness, which, needless to stress, was not the case. Likewise legally correct is the deletion of the award of attorneys fees, the NLRC having failed to explain petitioners entitlement thereto. As a matter of sound policy, an award of attorneys fee remains the exception rather than the rule. It must be stressed, as aptly observed by the appellate court, that it is necessary for the trial court, the NLRC in this case, to make express findings of facts and law that would bring the case within the exception. In fine, the factual, legal or equitable justification for the award must be set forth in the text of the decision.[26] The matter of attorneys fees cannot be touched once and only in the *fallo* of the decision, else, the award should be thrown out for being speculative and conjectural.[27] In the absence of a stipulation, attorneys fees are ordinarily not recoverable; otherwise a premium shall be placed on the right to litigate.[28] They are not awarded every time a party wins a suit.

WHEREFORE, the petition is **DENIED** and the assailed Decision and Resolution of the Court of Appeals **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

CANCIO C. GARCIA
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Associate Justice
Chairman

ANGELINA SANDOVAL-GUTIERREZ **RENATO C. CORONA**
Associate Justice Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

ARTEMIO V. PANGANIBAN
Associate Justice
Chairman, Third Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Delilah Vidallon Magtolis and Candido V. Rivera, concurring; Rollo, pp. 32-39.
[2] Rollo, p. 28.

[3] Poquiz, LABOR STANDARDS LAW, 2005 ed., p. 73, citing Rule II, Book V, Rules and Regulations Governing Overseas Employment.
[4] Respondents memorandum, pp. 18-19, Rollo, pp. 129-130.
[5] CA decision, Rollo, p. 33.
[6] CA Decision, p. 3, Rollo, p. 34.

[7] CA Decision, p. 4, Rollo, p. 35.
[8] CA Decision, pp. 1-2, Rollo, pp. 32-33.
[9] CA Rollo, pp. 56-57.
[10] See Note #1, *supra*.
[11] See Note #2, *supra*.
[12] Rollo, pp. 10-11.
[13] Art. 1306 of the Civil Code; *Lagunsad vs. Soto*, 92 SCRA 476 and other cases.
[14] *Brent School vs. Zamora*, 181 SCRA 702 [1990].
[15] PD No. 442, as amended.
[16] Art. 17, Labor Code of the Phil.
[17] Poquiz, LABOR STANDARDS LAW, 2005 ed., p. 73.
[18] (Sec. 2(B) of the POEA Standard Employment Contract provides that [A]ny extension of the contract of employment [between the employer and the seafarer] shall be subject to the mutual consent of both parties.
[19] 385 SCRA 306 [2002].
[20] Sec. 2 (A) The employment contract between the employer and the seafarer .shall be effective until the seafarers date of arrival at the point of hire upon the termination of his employment pursuant to Section of the Contract. .
[21] Sec. 18. The employment of the seafarer shall cease when the seafarer completes his period of contractual service . . . signs off from the vessel and arrives at the point of hire.
[22] Blacks Law Dictionary, 6th ed., p. 1299.
[23] CA decision, p. 2, Rollo, p. 33.
[24] *Millares vs. NLRC*, *supra*.
[25] *Metropolitan Development Authority v. JANCOM Environmental Corporation*, 375 SCRA 320 [2002]; citing *Bugatti v. Court of Appeals*, 343 SCRA 335 [2000]; *Romago Electric Co., Inc., v. Court of Appeals*, 333 SCRA 291 [2000]; and *Royal Lines, Inc. v. Court of Appeals,* 143 SCRA 608 [1986].
[26] *PAL vs. Miano*, 242 SCRA 235 [1995]; *Scott Consultants & Resource Development Corp. vs. CA* 242 SCRA 393 [1995].
[27] *DBP vs.CA*, 262 SCRA 245 [1996], citing *Mirasol vs. De la Cruz*, 84 SCRA 337 and other cases.
[28] *Firestone Tire & Rubber Co. vs. Ines Chaves*, 18 SCRA 356 [1966] and other cases.