

**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

**PCL SHIPPING PHILIPPINES,
INC. and U-MING MARINE
TRANSPORT CORPORATION,**
Petitioners,

G.R. No. 153031

Present:

- versus -

**PANGANIBAN, C.J.
YNARES-SANTIAGO,
(Working Chairperson)
AUSTRIA-MARTINEZ,
CALLEJO, SR. and
CHICO-NAZARIO, JJ.*

**NATIONAL LABOR
RELATIONS COMMISSION
and STEVE RUSEL,**
Respondents.

Promulgated:

December 14, 2006

X - - - - - X

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA) dated December 18, 2001 in CA-G.R. SP No. 59976, which affirmed the Decision of the National Labor Relations Commission (NLRC) dated March 22, 2000 in NLRC NCR CA No. 018120-99; and the Resolution of the CA dated April 10, 2002, denying petitioners' motion for reconsideration.^[2]

The facts of the case, as found by the CA, are as follows:

In April 1996, Rusel was employed as GP/AB seaman by manning agency, PCL Shipping Philippines, Inc. (PCL Shipping) for and in behalf of its foreign principal, U-Ming Marine Transport Corporation (U-Ming Marine). Rusel thereby joined the vessel MV Cemtex General (MV Cemtex) for the contract period of twelve (12) months with a basic monthly salary of US\$400.00, living allowance of US\$140.00, fixed overtime rate of US\$120.00 per month, vacation leave with pay of US\$40.00 per month and special allowance of US\$175.00.

On July 16, 1996, while Rusel was cleaning the vessel's kitchen, he slipped, and as a consequence thereof, he suffered a broken and/or sprained ankle on his left foot. A request for medical examination was flatly denied by the captain of the vessel. On August 13, 1996, feeling an unbearable pain in his ankle, Rusel jumped off the vessel using a life jacket and swam to shore. He was brought to a hospital where he was confined for eight (8) days.

On August 22, 1996, a vessel's agent fetched Rusel from the hospital and was required to board a plane bound for the Philippines.

On September 26, 1996, Rusel filed a complaint for illegal dismissal, non-payment of wages, overtime pay, claim for medical benefits, sick leave pay and damages against PCL Shipping and U-Ming Marine before the arbitration branch of the NLRC. In their answer, the latter alleged that Rusel deserted his employment by jumping off the vessel.

On July 21, 1998, the labor arbiter rendered his decision, the dispositive portion of which reads as follows:

Wherefore, above premises duly considered we find the respondent liable for unjust repatriation of the complainant.

Accordingly, the following award is hereby adjudged against the respondent:

1. The amount of \$2,625.00 or its peso equivalent at the time of payment representing three (3) months salary of the complainant due to his illegal dismissal.
2. The amount of \$1,600.00 or its peso equivalent, representing sick wage benefits.
3. The amount of \$550.00 or its peso equivalent, representing living allowance, overtime pay and special allowance for two (2) months.

4. The amount of \$641.66 or its peso equivalent, representing unpaid wages from August 11 to 22, 1996.

5. Attorney's fees equivalent to 10% of the total monetary award.

The rest of the claims are dismissed for lack of merit.

SO ORDERED.^[3]

Aggrieved by the Decision of the Labor Arbiter, herein petitioners appealed to the NLRC. In its Decision dated March 22, 2000, the NLRC affirmed the findings of the Labor Arbiter but modified the appealed Decision, disposing as follows:

WHEREFORE, premises considered, the assailed decision is as it is hereby ordered MODIFIED in that the amount representing three months salary of the complainant due to his illegal dismissal is reduced to US\$1,620.00. Further the award of sick wage benefit is deleted.

All other dispositions are AFFIRMED.

SO ORDERED.^[4]

Petitioners filed a Motion for Reconsideration but the NLRC denied the same in its Decision of May 3, 2000.^[5]

Petitioners filed a petition for *certiorari* with the CA.^[6] In its Decision dated December 18, 2001, the CA dismissed the petition and affirmed the NLRC Decision.^[7]

Petitioners filed a Motion for Reconsideration but it was denied by the CA in its Resolution dated April 10, 2002.^[8]

Hence, the instant petition with the following assignment of errors:

I. The Court of Appeals erred in ruling that private respondent was illegally dismissed from employment.

x x x x

II. Likewise, the Court of Appeals erred in not upholding petitioners' right to pre-terminate private respondent's employment.

x x x x

III. The private respondent is not entitled to other money claims, particularly as to the award of attorney's fees.^[9]

As to their first assigned error, petitioners contend that the CA erred in affirming the findings of the NLRC that Rusel's act of jumping ship does not establish any intent on his part to abandon his job and never return. Petitioners argue that Rusel's very act of jumping from the vessel and swimming to shore is evidence of highest degree that he has no intention of returning to his job. Petitioners further contend that if Rusel was indeed suffering from unbearable and unmitigated pain, it is unlikely that he is able to swim two (2) nautical miles, which is the distance between their ship and the shore, considering that he needed to use his limbs in swimming. Petitioners further assert that it is error on the part of the CA to disregard the entries contained in the logbook and in the Marine Note Protest evidencing Rusels' offense of desertion because while these pieces of evidence were belatedly presented, the settled rule is that additional evidence may be admitted on appeal in labor cases. Petitioners also contend that Rusel's act of desertion is a grave and serious offense and considering the nature and situs of employment as well as the nationality of the employer, the twin requirements of notice and hearing before an employee can be validly terminated may be dispensed with.

As to their second assigned error, petitioners contend that assuming, for the sake of argument, that Rusel is not guilty of desertion, they invoked the alternative defense that the termination of his employment was validly made pursuant to petitioners' right to exercise their prerogative to pre-terminate such employment in accordance with Section 19(C) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, which provision was incorporated in Rusel's Contract of Employment with petitioners. Petitioners assert that despite the fact that this issue was raised before the CA, the appellate court failed to resolve the same.

Anent the last assigned error, petitioners argue that it is error on the part of the CA to affirm the award of living allowance, overtime pay, vacation pay and

special allowance for two months because Rusel failed to submit substantial evidence to prove that he is entitled to these awards. Petitioners further argue that these money claims, particularly the claim for living allowance, should not be granted because they partake of the nature of earned benefits for services rendered by a seafarer. Petitioners also contend that the balance of Rusel's wages from August 11-22, 1996 should be applied for the payment of the costs of his repatriation, considering that under Section 19(E) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, when a seafarer is discharged for any just cause, the employer shall have the right to recover the costs of his replacement and repatriation from the seafarer's wages and other earnings. Lastly, petitioners argue that the award of attorney's fees should be deleted because there is nothing in the decision of the Labor Arbiter or the NLRC which states the reason why attorney's fees are being awarded.

In his Comment, private respondent contends that petitioners are raising issues of fact which have already been resolved by the Labor Arbiter, NLRC and the CA. Private respondent argues that, aside from the fact that the issues raised were already decided by three tribunals against petitioners' favor, it is a settled rule that only questions of law may be raised in a petition for review *oncertiorari* under Rule 45 of the Rules of Court. While there are exceptions to this rule, private respondent contends that the instant case does not fall under any of these exceptions. Private respondent asserts that petitioners failed to substantiate their claim that the former is guilty of desertion. Private respondent further contends that the right to due process is available to local and overseas workers alike, pursuant to the provisions of the Constitution on labor and equal protection as well as the declared policy contained in the Labor Code. Private respondent argues that petitioners' act of invoking the provisions of Section 19(C) of the POEA Contract as an alternative defense is misplaced and is inconsistent with their primary defense that private respondent was dismissed on the ground of desertion. As to the award of attorney's fees, private respondent contends that since petitioners' act compelled the former to incur expenses to protect his interest and enforce his lawful claims, and because petitioners acted in gross and evident bad faith in refusing to satisfy private respondent's lawful claims, it is only proper that attorney's fees be awarded in favor of the latter. Anent the other monetary awards, private respondent argues that these awards are all premised on the findings of the

Labor Arbiter, NLRC and the CA that private respondent's dismissal was improper and illegal.

The Court finds the petition without merit.

Anent the first assigned error, it is a settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised in this Court.^[10] Judicial review by this Court does not extend to a re-evaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.^[11] Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.^[12] Factual issues may be considered and resolved only when the findings of facts and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA.^[13] The reason for this is that the quasi-judicial agencies, like the Arbitration Board and the NLRC, have acquired a unique expertise because their jurisdiction are confined to specific matters.^[14] In the present case, the question of whether private respondent is guilty of desertion is factual. The Labor Arbiter, NLRC and the CA are unanimous in their findings that private respondent is not guilty of desertion and that he has been illegally terminated from his employment. After a review of the records of the instant case, this Court finds no cogent reason to depart from the findings of these tribunals.

Petitioners assert that the entries in the logbook of *MV Cemtex General*^[15] and in the Marine Note Protest^[16] which they submitted to the NLRC confirm the fact that private respondent abandoned the vessel in which he was assigned. However, the genuineness of the Marine Note Protest as well as the entries in the logbook are put in doubt because aside from the fact that they were presented only during petitioners' Motion for Reconsideration filed with the NLRC, both the Marine Note Protest and the entry in the logbook which were prepared by the officers of the vessel were neither notarized nor authenticated by the proper authorities. Moreover, a reading of these entries simply shows that private respondent was presumed to have deserted his post on the sole basis that he was found missing while the *MV Cemtex General* was anchored at the port of Takehara, Japan. Hence, without any corroborative evidence, these documents cannot be used as bases for concluding that private respondent was guilty of desertion.

Petitioners also question the findings and conclusion of the Labor Arbiter and the NLRC that what caused private respondent in jumping overboard was the unmitigated pain he was suffering which was compounded by the inattention of the vessel's captain to provide him with the necessary treatment inspite of the fact that the ship was moored for about two weeks at the anchorage of Takehara, Japan; and, that private respondent's act was a desperate move to protect himself and to seek relief for his physical suffering. Petitioners contend that the findings and conclusions of the Labor Arbiter and the NLRC which were affirmed by the CA are based on conjecture because there is no evidence to prove that, at the time he jumped ship, private respondent was really suffering from an ankle injury.

It is true that no substantial evidence was presented to prove that the cause of private respondent's confinement in a hospital in Takehara, Japan was his ankle injury. The Court may not rely on the letter marked as Annex "B" and attached to private respondent's Position Paper because it was unsigned and it was not established who executed the same.^[17] However, the result of the x-ray examination conducted by the LLN Medical Services, Inc. on August 26, 1996, right after private respondent was repatriated to the Philippines, clearly showed that there is a soft-tissue swelling around his ankle joint.^[18] This evidence is consistent with private respondent's claim that he was then suffering from an ankle injury which caused him to jump off the ship.

As to petitioners' contention that private respondent could not have traversed the distance between the ship and the shore if he was indeed suffering from unbearable pain by reason of his ankle injury, suffice it to say that private respondent is an able-bodied seaman and that with the full use of both his arms and the help of a life jacket, was able to reach the shore.

As correctly defined by petitioners, desertion, in maritime law is:

The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in maritime law, is meant, not a mere unauthorized absence from the ship, without leave, but an unauthorized absence from the ship **with an intention not to return to her service**; or as it is often expressed, *animo non revertendi*, that is, with an intention to desert.^[19] (emphasis supplied)

Hence, for a seaman to be considered as guilty of desertion, it is essential that there be evidence to prove that if he leaves the ship or vessel in which he had engaged to perform a voyage, he has the clear intention of abandoning his duty and of not returning to the ship or vessel. In the present case, however, petitioners failed to present clear and convincing proof to show that when private respondent jumped ship, he no longer had the intention of returning. The fact alone that he jumped off the ship where he was stationed, swam to shore and sought medical assistance for the injury he sustained is not a sufficient basis for petitioners to conclude that he had the intention of deserting his post. Settled is the rule that in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause.^[20] The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.^[21] In the present case, since petitioners failed to discharge their burden of proving that private respondent is guilty of desertion, the Court finds no reason to depart from the conclusion of the Labor Arbiter, NLRC and the CA that private respondent's dismissal is illegal.

In their second assigned error, petitioners cite Section 19(C) of POEA Memorandum Circular No. 055-96^[22] known as the Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels as their alternative basis in terminating the employment of private respondent. Said Section provides as follows:

Section 19. REPATRIATION

x x x x

- C. If the vessel arrives at a convenient port within a period of three months before the expiration of his contract, the master/ employer may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided, however, that this mode of termination may only be exercised by the master/employer if the original contract period of the seafarer is at least ten (10) months; provided, further, that the conditions for this mode of termination shall not apply to dismissal for cause.

The Court is not persuaded. POEA Memorandum Circular No. 055-96 took effect on January 1, 1997 while the contract of employment entered into by and

between private respondent and petitioners was executed on April 10, 1996. Hence, it is wrong for petitioners to cite this particular Memorandum because at the time of petitioners' and private respondent's execution of their contract of employment Memorandum Circular No. 055-96 was not yet effective.

What was in effect at the time private respondent's Contract of Employment was executed was POEA Memorandum Circular No. 41, Series of 1989. It is clearly provided under the second paragraph of private respondent's Contract of Employment that the terms and conditions provided under Memorandum Circular No. 41, Series of 1989 shall be strictly and faithfully observed. Hence, it is Memorandum Circular No. 41, Series of 1989 which governs private respondent's contract of employment.

Section H (6), Part I of Memorandum Circular No. 41, which has almost identical provisions with Section 19 (C) of Memorandum Circular No. 055-96, provides as follows:

SECTION H. TERMINATION OF EMPLOYMENT

X X X X

6. If the vessel arrives at a convenient port within a period of three (3) months before the expiration of the Contract, the master/employer may repatriate the seaman from such port provided that the seaman shall be paid all his earned wages. In addition, the seaman shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided, however, that this mode of termination may only be exercised by the master/employer if the original contract period of the seaman is at least ten (10) months; provided, further, that the conditions for this mode of termination shall not apply to dismissal for cause.

The Court agrees with private respondent's contention that petitioners' arguments are misplaced. Petitioners may not use the above-quoted provision as basis for terminating private respondent's employment because it is incongruent with their primary defense that the latter's dismissal from employment was for cause. Petitioners may not claim that they ended private respondent's services because he is guilty of desertion and at the same time argue that they exercised their option to prematurely terminate his employment, even without cause, simply because they have the right to do so under their contract. These grounds for

termination are inconsistent with each other such that the use of one necessarily negates resort to the other. Besides, it appears from the records that petitioners' alternative defense was pleaded merely as an afterthought because it was only in their appeal with the NLRC that they raised this defense. The only defense raised by petitioners in their Answer with Counterclaim filed with the office of the Labor Arbiter is that private respondent was dismissed from employment by reason of desertion.^[23] Under the Rules of Court,^[24] which is applicable in a suppletory character in labor cases before the Labor Arbiter or the NLRC pursuant to Section 3, Rule I of the New Rules of Procedure of the NLRC^[25], defenses which are not raised either in a motion to dismiss or in the answer are deemed waived.^[26]

Granting, for the sake of argument, that petitioners may use Section H (6), Part I of Memorandum Circular No. 41 or Section 19(C) of Memorandum Circular No. 055-96 as basis for terminating private respondent's employment, it is clear that one of the conditions before any of these provisions becomes applicable is when the vessel arrives at a convenient port within a period of three (3) months before the expiration of the contract of employment. In the present case, private respondent's contract was executed on April 10, 1996 for a duration of twelve months. He was deployed aboard *MV Cemtex General* on June 25, 1996 and repatriated to the Philippines on August 22, 1996. Hence, it is clear that petitioners did not meet this condition because private respondent's termination was not within a period of three months before the expiration of his contract of employment.

Moreover, the Court finds nothing in the records to show that petitioners complied with the other conditions enumerated therein, such as the payment of all of private respondent's earned wages together with his leave pay for the entire contract period as well as termination pay equivalent to his one month salary.

Petitioners admit that they did not inform private respondent in writing of the charges against him and that they failed to conduct a formal investigation to give him opportunity to air his side. However, petitioners contend that the twin requirements of notice and hearing applies strictly only when the employment is within the Philippines and that these need not be strictly observed in cases of international maritime or overseas employment.

The Court does not agree. The provisions of the Constitution as well as the Labor Code which afford protection to labor apply to Filipino employees whether working within the Philippines or abroad. Moreover, the principle of *lex loci contractus* (the law of the place where the contract is made) governs in this jurisdiction.^[27] In the present case, it is not disputed that the Contract of Employment entered into by and between petitioners and private respondent was executed here in the Philippines with the approval of the Philippine Overseas Employment Administration (POEA). Hence, the Labor Code together with its implementing rules and regulations and other laws affecting labor apply in this case.^[28] Accordingly, as to the requirement of notice and hearing in the case of a seafarer, the Court has already ruled in a number of cases that before a seaman can be dismissed and discharged from the vessel, it is required that he be given a written notice regarding the charges against him and that he be afforded a formal investigation where he could defend himself personally or through a representative.^[29] Hence, the employer should strictly comply with the twin requirements of notice and hearing without regard to the nature and situs of employment or the nationality of the employer. Petitioners failed to comply with these twin requirements.

Petitioners also contend that the wages of private respondent from August 11-22, 1996 were applied to the costs of his repatriation. Petitioners argue that the off-setting of the costs of his repatriation against his wages for the aforementioned period is allowed under the provisions of Section 19(E) of Memorandum Circular No. 055-96 which provides that when the seafarer is discharged for any just cause, the employer shall have the right to recover the costs of his replacement and repatriation from the seafarer's wages and other earnings.

The Court does not agree. Section 19(E) of Memorandum Circular No. 055-96 has its counterpart provision under Section H (2), Part II of Memorandum Circular No. 41, to wit:

SECTION H. REPATRIATION

X X X X

2. When the seaman is discharged for disciplinary reasons, the employer shall have the right to recover the costs of maintenance and repatriation from the seaman's balance of wages and other earnings.

x x x x

It is clear under the above-quoted provision that the employer shall have the right to recover the cost of repatriation from the seaman's wages and other earnings only if the concerned seaman is validly discharged for disciplinary measures. In the present case, since petitioners failed to prove that private respondent was validly terminated from employment on the ground of desertion, it only follows that they do not have the right to deduct the costs of private respondent's repatriation from his wages and other earnings.

Lastly, the Court is not persuaded by petitioners' contention that the private respondent is not entitled to his money claims representing his living allowance, overtime pay, vacation pay and special allowance as well as attorney's fees because he failed to present any proof to show that he is entitled to these awards.

However, the Court finds that the monetary award representing private respondent's three months salary as well as the award representing his living allowance, overtime pay, vacation pay and special allowance should be modified.

The Court finds no basis in the NLRC's act of including private respondent's living allowance as part of the three months salary to which he is entitled under Section 10 of Republic Act (RA) No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995." The pertinent provisions of the said Act provides:

Sec. 10. Money Claims –

x x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

X X X X

It is clear from the above-quoted provision that what is included in the computation of the amount due to the overseas worker are only his salaries. Allowances are excluded. In the present case, since private respondent received a basic monthly salary of US\$400.00, he is, therefore, entitled to receive a sum of US\$1200.00, representing three months of said salary.

As to the awards of living allowance, overtime pay, vacation pay and special allowance, it is clearly provided under private respondent's Contract of Employment that he is entitled to these benefits as follows: living allowance of US\$140.00/month; vacation leave with pay equivalent to US\$40.00/month; overtime rate of US\$120.00/month; and, special allowance of US\$175.00/month. ^[30]

With respect, however, to the award of overtime pay, the correct criterion in determining whether or not sailors are entitled to overtime pay is not whether they were on board and can not leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours. ^[31] In the present case, the Court finds that private respondent is not entitled to overtime pay because he failed to present any evidence to prove that he rendered service in excess of the regular eight working hours a day.

On the basis of the foregoing, the remaining benefits to which the private respondent is entitled is the living allowance of US\$140.00/month, which was removed in the computation of private respondent's salary, special allowance of US\$175.00/month and vacation leave with pay amounting to US\$40.00/month. Since private respondent rendered service for two months these benefits should be doubled, giving a total of US\$710.00.

As to the award of attorney's fees, this Court ruled in *Reyes v. Court of Appeals*,^[32] as follows:

X X X [T]here are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his

employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code, which provides:

Art. 111. *Attorney's fees.* – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered x x x

The afore-quoted Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.

In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code which states that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor] Code including its implementing rules and regulations, shall be resolved in favor of labor", and Article 1702 of the Civil Code which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer."^[33] (Emphasis supplied)

In the present case, it is true that the Labor Arbiter and the NLRC failed to state the reasons why attorney's fees are being awarded. However, it is clear that private respondent was illegally terminated from his employment and that his wages and other benefits were withheld from him without any valid and legal basis. As a consequence, he is compelled to file an action for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court finds that he is entitled to attorney's fees.

WHEREFORE, the petition is **PARTLY GRANTED.** The Court of Appeals' Decision dated December 18, 2001 and Resolution dated April 10,

2002 are **AFFIRMED** with **MODIFICATION** to the effect that the award of US\$1620.00 representing private respondent's three months salary is reduced to US\$1200.00. The award of US\$550.00 representing private respondent's living allowance, overtime pay, vacation pay and special allowance for two months is deleted and in lieu thereof, an award of US\$710.00 is granted representing private respondent's living allowance, special allowance and vacation leave with pay for the same period.

No costs.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ

Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO

Associate Justice

Working Chairperson

ROMEO J. CALLEJO, SR.

Associate Justice

MINITA V. CHICO-NAZARIO

Associate Justice

ATTESTATION

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 Court's Division.

CONSUELO YNARES-SANTIAGO

Associate Justice
Working Chairperson
First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Working Chairperson'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's Division.

REYNATO S. PUNO

Chief Justice

* Retired as of December 7, 2006.

[1] Penned by Justice Oswaldo D. Agcaoili and concurred in by Justices Jose L. Sabio, Jr. and Mariano C. Del Castillo.

[2] Id.

[3] CA *rollo*, pp. 109-110.

- [4] Original records, p. 138.
- [5] Id. at 174.
- [6] CA rollo, p. 2.
- [7] Id. at 108.
- [8] Id. at 151.
- [9] Rollo, pp. 17, 23 and 26.
- [10] *Lopez Sugar v. Franco*, G.R. No. 148195, May 16, 2005, 458 SCRA 515, 528.
- [11] *Gerlach v. Reuters Ltd., Phil.*, G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.
- [12] Id. at 545.
- [13] *Lopez Sugar v. Franco*, supra at 528.
- [14] *Cosmos Bottling Corp. v. National Labor Relations Commission*, 453 Phil. 151, 157 (2003).
- [15] OR, p. 155.
- [16] Id. at 156.
- [17] OR, p. 43.
- [18] Annex "C", OR, p. 43.
- [19] *Singa Ship Management Philippines, Inc. v. National Labor Relations Commission*, 342 Phil. 161, 169 (1997).
- [20] *Philippine Long Distance Telecommunication v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.
- [21] *Litton Mills, Inc. v. Sales*, G.R. No. 151400, September 1, 2004, 437 SCRA 488, 500.
- [22] This Circular was issued pursuant to Department Order No. 33, Series of 1996 of the Department of Labor and Employment revising POEA Memorandum Circular No. 41, Series of 1989.
- [23] OR, pp. 4-8.
- [24] Section 2, Rule 9 of the old Rules as amended by Section 1, Rule 9 of the present Rules of Court.
- [25] The same provision can be found in the 2005 Revised Rules of Procedure of the NLRC.
- [26] *Pondoc v. National Labor Relations Commission*, 331 Phil. 134, 145 (1996).
- [27] *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*, 359 Phil. 955, 968-969 (1998).
- [28] Id.
- [29] *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission*, 332 Phil. 340, 352 (1996); *Reta v. National Labor Relations Commission*, G.R. No. 112100, May 27, 1994, 232 SCRA 613, 617; *Seahorse Maritime Corporation v. National Labor Relations Commission*, G.R. No. 84712, May 15, 1989, 173 SCRA 390, 394.
- [30] OR, p. 42.
- [31] *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission*, supra at 353.
- [32] 456 Phil. 520, 539-540 (2003) citing *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*, 336 Phil. 705, 712 (1997)
- [33] Id. at 539-540.