

**THIRD DIVISION**

**CARLOS N. NISDA,**  
Petitioner,

**G. R. No. 179177**

Present:

- versus -

YNARES-SANTIAGO, *J.*,  
Chairperson,  
CHICO-NAZARIO,  
VELASCO, JR.,  
NACHURA, and  
PERALTA, *JJ.*

**SEA SERVE MARITIME  
AGENCY and KHALIFA A.  
ALGOSAIBI DIVING AND  
MARINE SERVICES,**  
Respondents.

Promulgated:

July 23, 2009

X ----- X

**DECISION**

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court is the *Decision*<sup>[2]</sup> dated 27 September 2006 and *Resolution*<sup>[3]</sup> dated 10 August 2007 of the Court of Appeals in CA-G.R. SP No. 87562, entitled Carlos N. Nisda versus National Labor Relations Commission, Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving & Marine Services.

In its challenged Decision, the Court of Appeals dismissed the Petition of Carlos N. Nisda (petitioner Nisda) in CA-G.R. SP No. 87562 and, accordingly, affirmed the *Decision*<sup>[4]</sup> dated 14 May 2004 of the National Labor Relations Commission (NLRC) in NLRC CA No. 37922-03 (NLRC OFW Case No. [M]03-01-0159-00), entitled Carlos N. Nisda versus Nobel Ship Services, Inc., Sea Serve Maritime Agency and Khalifa A.

## Algozaibi Diving & Marine Services.

The present petition originated from a Complaint<sup>[5]</sup> for the payment of disability/medical benefits, sickness leave pay, reimbursement of medical and hospitalization expenses and attorneys fees<sup>[6]</sup> filed by petitioner Nisda against Nobel Ship Services, Inc. (Nobel), Annabel G. Guerrero<sup>[7]</sup> (Guerrero), and Khalifa A. Algozaibi Diving & Marine Services Company (respondent ADAMS).

Nobel is a corporation organized and existing under Philippine Laws. It used to be the representative in the Philippines and manning agent of respondent ADAMS, a foreign company based in the Kingdom of Saudi Arabia and engaged in maritime commerce.

In a contract of employment,<sup>[8]</sup> denominated as the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC), dated 7 August 2001, petitioner Nisda was hired by ADAMS, through its manning agent, Nobel, as Tugboat Master on *M/V Algozaibi-21*. Petitioner Nisda's employment was to run for a period of [six] 6 months continuation of [three] 3 months remaining,<sup>[9]</sup> on board the *M/V Algozaibi-21*, under the following terms and conditions approved by the POEA:

- 1.1 Duration of Contract: 6 MONTHS Continuation of 3 Months remaining
- 1.2 Position: MASTER (TUG)
- 1.3 Basic Monthly Salary: USD1,437.00
- 1.4 Hours of Work: 48 HOURS/WEEK
- 1.5 Overtime: FOT 431 (MAX.O.T. 105 HRS/MONTHS)
- 1.6 Vacation Leave with Pay: USD120.00
- 1.7 Point of Hire: QUEZON CITY, PHILIPPINES

Deemed incorporated in petitioner Nisda's POEA-SEC is a set of standard provisions established and implemented by the POEA, called the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*,<sup>[10]</sup> which are the minimum requirements acceptable to the government for the employment of Filipino seafarers.

Petitioner Nisda joined the vessel *M/V Algozaibi-21* on 22 August 2001 at the port of Rastanura, Kingdom of Saudi Arabia.

On 30 August 2001, while on board the vessel *M/V Algosai-21*, it appeared that petitioner Nisda and a representative of respondent ADAMS entered into a second contract of employment<sup>[11]</sup> with the following terms and conditions:

Section 2

a) Employee name : Carlos N. Nisda

x x x x

g) Job Title : Master

h) Basic Salary per Month : US\$ One Thousand Six Hundred Fifty only

j) Effective Date of Contract : 22 August 2001

k) Duration of Contract : 448 days

l) Last Day of Contract : 12 November 2002

x x x x

q) Vacation Entitlement : 28 days for 84 days work

r) Vacation Pay : 1/9th of base pay earned since contract start/previous

x x x x

y) Indemnity Start Date : 22 August 2001

The aforementioned contract contained a stipulation stating:

Section 10

It is mutually agreed that this contract cancels and supersedes all agreements, contracts and commitments prior to the date hereof (if any) and that after the execution of this contract neither party shall have any Right, Privilege or Benefit other than as mentioned above, except for the Employees right to an end-of-service award (Service Indemnity) which shall be calculated from the date specified in Section 2 Para y).<sup>[12]</sup>

The abovequoted contract of employment was neither processed nor sanctioned by

the POEA.

Petitioner Nisda disembarked from *M/V Algosaibi-21* at the port of Rastanura, Kingdom of Saudi Arabia, on 12 November 2001, and was repatriated to the Philippines for a month-long paid vacation.

On 9 December 2001, petitioner Nisda again left the Philippines for Gizan, Kingdom of Saudi Arabia, in order to embark on the vessel *M/V Algosaibi-22*. His embarkation was made in fulfillment of his contractual obligation pursuant to the 7 August 2001 POEA-SEC he signed with respondent Algosaibi. According to the pertinent pages of his Seaman's Book, petitioner Nisda's latest deployment lasted until 7 March 2002, the day he again disembarked from the vessel *M/V Algosaibi-22* at the port of Gizan, Kingdom of Saudi Arabia, only to embark the very next day, 8 March 2002, on another vessel, *M/V Algosaibi-42*, this time, at the port of Tanjib, Kingdom of Saudi Arabia.

On 5 May 2002, petitioner Nisda was brought to the *Dar Al-Taafi Medical Services* complaining of *pain of parascapular region of 6 months duration [with] paresthesia and numbness of both upper limbs.*<sup>[13]</sup> In a *Medical Report*<sup>[14]</sup> issued by one Dr. Hossam A. Abubeih, an Orthopedist, petitioner Nisda was diagnosed to be suffering from Myositis of Parascapular (indistinct symbol) [with] Paresthesia on upper limbs. When examined, petitioner Nisda's blood pressure turned out to be 160/100 mm/Hg; thus, he was advised to follow-up for BP taking regularly.<sup>[15]</sup>

According to petitioner Nisda, on account of the illness he suffered while on board *M/V Algosaibi-42*, he signed off and disembarked from said vessel at the port of Rastanura, Kingdom of Saudi Arabia, on 17 July 2002, and was repatriated to his point of hire, *i.e.*, Quezon City, Philippines. Within three days from his arrival in the Philippines, petitioner Nisda claimed to have presented himself at the office of Nobel for the requisite post-employment medical examination, in compliance with the reportorial requirement under Sec. 20(B) of his POEA-SEC. However, petitioner Nisda was allegedly asked to return a week after for the necessary physical examination at the St. Magdalene Diagnostic Clinic, Inc., the accredited medical service provider of Nobel.

In the meantime, petitioner Nisda went home to Miagao, Iloilo, on 18 July 2002. Only a day after arriving in Miagao, Iloilo, petitioner Nisda complained of difficulty in

breathing and chest pains radiating to the back, the same condition for which he was brought to the clinic in Saudi Arabia in May 2002. Petitioner Nisda went to see a Dr. Geraldine Monteclaro Torrefiel, an internist who specialized in allergy, asthma and immunology. In a Certification<sup>[16]</sup> dated 19 July 2002, Dr. Torrefiel confirmed that she saw petitioner Nisda on even date and reported that

[B]ecause of chest pain which radiates to the back associated with exertional dyspnea. I therefore recommend him to see a cardiologist for a complete cardiac evaluation and management.<sup>[17]</sup>

On 22 July 2002, petitioner Nisda went back to Nobel and was sent to St. Magdalene Diagnostic Clinic, Inc. An electrocardiograph<sup>[18]</sup> (ECG or EKG) of petitioner Nidas heart was done at the said clinic, and the test result<sup>[19]</sup> revealed that he had

Normal Sinus Rhythm

LVH<sup>[20]</sup> w/ strain and/or ischemia<sup>[21]</sup>

In view of his ECG/EKG result, petitioner Nisda was referred, on 24 August 2002, by St. Magdalene Diagnostic Clinic, Inc. to St. Lukes Medical Center for a coronary angiogram.<sup>[22]</sup> Said test was conducted on petitioner Nisda on 25 August 2002. The Coronary Angiogram Report<sup>[23]</sup> contained the following details

*IMPRESSION: Severe Three Vessel Coronary Artery Disease  
LV Diastolic Dysfunction*

Based on the foregoing Coronary Angiogram Report, cardiologists impressed upon petitioner Nisda the necessity of a bypass operation. Hence, absent further ado, in view of the seriousness of his condition, petitioner Nisda underwent a *triple* [coronary artery] *bypass surgery*<sup>[24]</sup> at the Makati Medical Center on 5 September 2002.<sup>[25]</sup> On 6 September 2002, the Makati Heart Foundation provided respondent ADAMS the hospital package<sup>[26]</sup> for petitioner Nidas bypass operation. It would appear from the record that there was no response from respondent ADAMS.

A couple of months thereafter, petitioner Nisda obtained a medical certificate from a certain Dr. Levi Rejuso, an internist who specialized in neurology, declaring that

Upon review of [petitioner Nisdas] history and as per recommendation by his cardiologist (sic) he is refrained (sic) from doing stressful activities. In this regard (sic) he can no longer perform his duties as a Ship Master and is categorized with grade I disability.<sup>[27]</sup>

The lack of response from respondent ADAMS and Nobel regarding petitioner Nisdas request for payment of disability benefits was deafening. Hence, petitioner Nisda was forced to engage the services of counsel. In a letter<sup>[28]</sup> dated 4 November 2002, a formal demand was made against the foreign employer, respondent ADAMS, and its local manning agent, Nobel, for the payment of the following:

1. the amount of US\$60,000.00 as his disability benefit under the POEA Contract;
2. the amount of US\$6,600.00 as illness as allowance for 120 days, and;
3. reimbursement of medical, hospital, surgery and medicine expenses in the amount of P675,000.00.

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Despite the formal demand, respondent ADAMS and Nobel still failed to pay petitioner Nisdas claims. Consequently, petitioner Nisda instituted a Complaint<sup>[29]</sup> against respondent ADAMS, Nobel, and Guerrero, with the NLRC on 16 January 2003, alleging that while under contract on board and on vacation pay [he] was medically ill,<sup>[30]</sup> with severe coronary heart disease, *etc.*<sup>[31]</sup>

Petitioner Nisda anchored his claim for disability benefit on Section (Sec.) 20(B), paragraph 6 of his POEA-SEC, which, as earlier mentioned, incorporated the *2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, and thus provides:

#### SECTION 20. COMPENSATION AND BENEFITS

x x x x

#### B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

X X X X

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Petitioner Nisda claimed that the abovequoted provision entitled him to claim disability benefits or compensation from his foreign employer, respondent ADAMS, and its local manning agent, Nobel, since his illness was supposedly contracted during the term of his POEA-SEC. Likewise, petitioner Nisda prayed for the award of moral and exemplary damages due to the supposed deliberate and wanton refusal of respondent ADAMS and Nobel to pay his monetary claims.

While petitioner Nidas Complaint was pending before the NLRC, respondent ADAMS remitted on 16 March 2003 to the Makati Medical Center and Makati Heart Foundation the amounts of Four Thousand Three Hundred Eighty-Nine Dollars and Forty Cents (US\$4,389.40) and Five Thousand Nine Hundred Ninety-Seven Dollars and Thirty-Three Cents (US\$5,997.33), respectively, representing medical and/or hospital expenses, including professional fees of the attending physicians, arising from petitioner Nidas bypass operation.

Nobel and Guerrero rebutted petitioner Nidas Complaint before the NLRC, averring that [t]he illness benefits being claimed by the complainant are not compensable under the POEA Standard Contract as they occurred after the expiration of the complainants employment contract;<sup>[32]</sup> that [t]he foreign principal already remitted the payment for the medical expenses of the complainant;<sup>[33]</sup> and that Guerrero was not personally liable for the complainants alleged claims.<sup>[34]</sup>

On 12 May 2003, Nobel and Guerrero filed a *Motion to Implead*<sup>[35]</sup> herein respondent Sea Serve Maritime Agency (respondent Sea Serve) on the ground that respondent ADAMS had already transferred its accreditation to the former as evidenced by the *Affidavit of Assumption of Responsibility*<sup>[36]</sup> executed by one Josephine A. Jocson

(Jocson), Managing Director of respondent Sea Serve on 5 May 2003. In said Affidavit, affiant Jocson deposed and stated, *inter alia*, that

3. That as agent in the Philippines of the above principal in the Philippines (sic) our company assumes full and complete responsibility for all contractual obligations to the seafarers originally recruited and processed by Nobel Shipping Inc. for the vessel(s) MV Algozaibi 1, 2, 22, 23, 24, 25, 26 & MV Midnight Arrow; Algozaibi 21
4. That in case of our failure to effect all contractual obligations of the principal to its seafarers, DOLE/POEA shall impose the necessary penalties in accordance with its Rules and Regulations, including but not limited to suspension/cancellation of our license/authority as well as confiscation of bonus.

In a Decision [\[37\]](#) dated 23 July 2003, Labor Arbiter Fatima Jambaro-Franco found petitioner Nisdas Complaint meritorious. The decretal part of said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, ordering the respondents Nobel Ship Services, Inc./Annabel Guerrero/Khalifa A. Algozaibi Diving & Marine Services Company to jointly and severally pay complainant Carlos N. Nisda the amount of Seventy Three Thousand Two Hundred Sixty US Dollars (US\$73,260.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness allowance and attorneys fees.

All other claims are DISMISSED for lack of merit.

The Labor Arbiter found that there was no doubt that petitioner Nisdas heart condition was contracted during his 15 long years of employment with respondent ADAMS. Factors of said employment, *i.e.*, 12-hour work days and the different weather conditions he was exposed to, predisposed said seafarer to heart disease. In ruling that petitioner Nisda suffered from a permanent disability with a Grade 1 disability or impediment rating, the Labor Arbiter relied on the Certification [\[38\]](#) issued by Dr. Levi Rejuso, a neurologist which states:

This is to certify that Mr. Carlos N. Nisda, 60/M came in today for his check-up. Upon review of his history and as per recommendation by his cardiologist (sic) he is refrained (sic) from doing stressful activities. In this regard (sic) he can no longer perform his duties as a Ship Master and is categorized with grade I disability.

Ephraim B. Cortez (Atty. Cortez), counsel of respondent ADAMS, Nobel, and



Guerrero, withdrew his appearance as counsel for said parties on 18 August 2003.

Petitioner Nisda moved, on 4 September 2003, for the issuance of a writ of execution based on the allegation that respondent ADAMS, Nobel, and Guerrero failed to appeal to the NLRC the 23 July 2003 Decision of the Labor Arbiter.

Petitioner Nisda next filed, on 22 September 2003, a *Manifestation*<sup>[39]</sup> calling the attention of the Labor Arbiter to the fact that the dispositive portion of the decision by pure inadvertence alone, did not mention the resolved merits in the body of the decision itself adjudging Sea Serve Maritime Agency with joint and several liability with the rest of the Respondents to Complainants monetary awards.<sup>[40]</sup>

Acting on petitioner Nisdas Manifestation, the Labor Arbiter issued an Order dated 30 September 2003, amending the *fallo* of the 23 July 2003 Decision to add the name of respondent Sea Serve to the list of those jointly and severally liable for petitioner Nisdas money claims.

Atty. Cortez filed another notice, on 29 September 2003, which reiterated his withdrawal as counsel of record for respondent ADAMS, Nobel, and Guerrero.

On 10 October 2003, respondent Sea Serve received a copy of the 30 September 2003 *Order* of the Labor Arbiter amending the dispositive portion of her 23 July 2003 Decision. Apparently, it was only on said date that respondent Sea Serve learned of the adverse decision rendered against it and its foreign principal, respondent ADAMS. Alarmed, on 14 October 2003, Atty. Jedrek C. Ng (Atty. Ng), counsel of respondents Sea Serve and ADAMS, personally went to the office of the Labor Arbiter Fatima Jambaro-Franco to verify the records of the case x x x [and] discovered that through mistake, the respondent-appellant [Sea Serve] was not furnished a copy of the *Decision* x x x.<sup>[41]</sup>

On 20 October 2003, six days after obtaining a copy of the 23 July 2003 *Decision* of the Labor Arbiter, respondents Sea Serve and ADAMS filed their *Memorandum of Appeal* before the NLRC. They maintained that petitioner Nisdas heart ailment was diagnosed long after his 7 August 2001 POEA-SEC expired on 21 September 2002, so he was no longer entitled to disability benefits under said contract. Petitioner Nisda likewise could not claim any benefits under his 30 August 2001 employment contract, which he signed directly with

respondent ADAMS, and which had no force and effect in this jurisdiction absent the prior approval of the POEA.

Petitioner Nisda later on filed a *Motion for Immediate Remand for Execution*<sup>[42]</sup> on the argument that the joint appeal filed by respondents Sea Serve and ADAMS was deemed not perfected for lack of the requisite appeal bond. He cited the 3 November 2003 *Memorandum*<sup>[43]</sup> issued by then NLRC Chairperson Roy Seeres stating that the Acropolis Central Guaranty Corporation, the surety company that posted the appeal bond for respondents Sea Serve and ADAMS, was not authorized to transact business in courts all over the Philippines.

The Third Division of the NLRC promulgated its *Decision*<sup>[44]</sup> on 14 May 2004, ruling in favor of respondents Sea Serve and ADAMS, thereby reversing the Labor Arbiters Decision dated 23 July 2003. The dispositive portion of the subject Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:  
a) dismissing the instant complaint against respondent-appellant Sea Serve Maritime Agency; b) denying the claims of complainant Carlos N. Nisda for disability benefits; and  
c) upholding respondent Khalifa A. Algosaibi Diving Marine Services payment of the amounts of US\$4,389.40 and US\$5,997.33, to the Makati Medical Center and Makati Heart Foundation, respectively, as payment for the hospital expenses of complainant.

The NLRC gave due course to the joint appeal filed by respondents Sea Serve and ADAMS, since there was substantial compliance with the rules on appeal, to wit:

In the case at bar, the surety bond issued by Acropolis Central Guarantee Corporation was posted on October 17, 2003, or prior to the issuance of the Memorandum dated November 3, 2003, issued by the NLRC Chairman depriving Acropolis of its accreditation. Respondents cannot be faulted for this unexpected and supervening development, and to pin the blame on them would be tantamount to putting a premium on technicalities and deprive them of procedural due process. Besides, the issue has since become moot and academic, inasmuch as respondents-appellants have complied and transferred its surety bond to a duly authorized bonding company, i.e., South Sea Surety & Guarantee Insurance Co., Inc.<sup>[45]</sup>

Anent the substantive matter of the appeal, the NLRC initially ruled that respondent Sea Serve could not be held liable with respondent ADAMS for the claim of petitioner

Nisda, inasmuch as the execution of the employment contract, illness, operation and the filing of the instant case all occurred before respondent Sea Serve was impleaded in the case.<sup>[46]</sup> Nonetheless, the foregoing pronouncement was deemed *functus officio* when the NLRC eventually reversed the ruling of the Labor Arbiter and dismissed petitioner Nisdas claim for payment of disability benefits on the ground that his POEA-SEC had long expired when his illness arose. The NLRC, referring to Secs. 2(B) and 20(B) of the POEA-SEC, which incorporated the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, ratiocinated that:

It necessarily follows that in order for an employer to be held liable to the seafarer on account of the latter's illness, the cause thereof must arise during the term of a duly approved POEA contract, which obviously did not happen in the case at bar. In addition, complainant violated the Rules and Regulations of the POEA by entering into a contract exceeding 12 months. He even deceived respondent Nobel by deliberately executing another contract without its consent and sans any approval from the POEA. In his 15 years of working overseas, he cannot feign ignorance of that basic requirement. Thus, for not coming to court with clean hands and in order to prevent complainant from profiting from his own deception, basic rules of fair play dictate that we deny complainant's claim for disability and other medical benefits.<sup>[47]</sup>

Petitioner Nisdas subsequent Motion for Reconsideration was denied by the NLRC for lack of merit in a *Resolution* dated 26 September 2004.

Undaunted, petitioner Nisda filed an original action for *certiorari* before the Court of Appeals imputing grave abuse of discretion, amounting to lack or excess of jurisdiction, to the NLRC for reversing the 23 July 2003 Decision of the Labor Arbiter.

In a Decision rendered on 27 September 2006, the Court of Appeals dismissed petitioner Nisdas Petition for *Certiorari* for lack of merit. The appellate court affirmed the challenged 14 May 2004 *Decision* and 26 September 2004 *Resolution* of the NLRC, reasoning thus:

It appears that on May 5, 2002, as certified by the Dar Al Taafi Medical Services Co., Ltd. in Saudi Arabia, the petitioner sought medical attention from the said institution due to a complaint of pain of parascapular region of 6 months duration with parasthesia and numbness of both upper limbs. [Petitioner Nisda] was diagnosed of having Myositis of Parascapular with Paresthesia on upper limbs. He was thus advised to check his blood pressure regularly. He was repatriated on July 17, 2002. Thereafter, his heart ailment was discovered, then he underwent an open heart surgery. Subsequently, he filed the monetary claims against the respondents.

[Petitioner Nisda] based his claims under Section 20(B) of the Standard Terms and Conditions Governing Seafarers On-Board Ocean Going Vessels, most commonly known as the POEA-SEC (Standard Employment Contract). This section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract. Primarily, for an injury or illness to be duly compensated under the POEA-SEC, there must be a showing that such injury or illness occurred or was suffered during the effectivity of the employment contract. The same is true with respect to any disability caused by either injury or illness. [\[48\]](#)

Hence, the Court of Appeals concluded that:

[Petitioner Nisda] is claiming compensation for an illness suffered beyond the effectivity and enforceability of the POEA approved contract. While he was allegedly repatriated due to an illness on July 17, 2002, his POEA approved contract apparently expired on May 22, 2002. He cannot insist (sic) that his illness commenced on May 5, 2002 when he once sought medical treatment in Saudi Arabia because he has not shown any evidence to prove that there is a correlation between Myositis of Parascapular with Paresthesia on upper limbs and his heart ailment.

Neither can the petitioner invoke the existence of the second contract to hold the respondents liable to his claims pursuant to the provisions of POEA-SEC. The said contract was executed in violation of the POEA Rules and Regulations. x x x. [\[49\]](#)

And the NLRC decreed as follows:

WHEREFORE, the petition is DISMISSED for lack of merit. Accordingly, the assailed decision and resolution dated May 14, 2004 and September 20, 2004, respectively, of the public respondent are hereby AFFIRMED. No pronouncement as to costs. [\[50\]](#)

Petitioner Nisda's Motion for Reconsideration was denied by the Court of Appeals in a *Resolution* dated 10 August 2007.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

The present Petition is premised on the twin arguments that the Court of Appeals erred in (1) affirming the Decision dated 14 May 2004 of the NLRC, which reversed and set aside the supposedly final and executory Decision dated 23 July 2003 of the Labor Arbiter granting disability benefits to petitioner Nisda; and (2) ruling that petitioner Nisda developed his illness beyond the effectivity of his POEA-sanctioned first contract (the

POEA-SEC) dated 7 August 2001; and even though within the duration of his second POEA-unsanctioned employment contract dated 30 August 2001, his illness was not compensable.

Petitioner Nisda is fundamentally assailing the finding of both the Court of Appeals and the NLRC that the evidence on record does not support petitioner Nisda's entitlement to disability benefits. This clearly involves a factual inquiry, the determination of which is not the statutory function of this Court. As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the [Court of Appeals], are generally conclusive on this Court.<sup>[51]</sup>

In exceptional cases, however, we may be constrained to delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties, or where the Labor Arbiter and the NLRC came up with conflicting positions.<sup>[52]</sup> The case at bar constitutes one of these exceptional cases.

The first error imputed by petitioner Nisda to the Court of Appeals essentially concerns the issue of jurisdiction, *i.e.*, whether or not the NLRC and Court of Appeals had jurisdiction to alter, modify or reverse the 23 July 2003 Decision of the Labor Arbiter that had, allegedly, already attained finality. Petitioner Nisda asserts that the Labor Arbiters Decision dated 23 July 2003 was already final and executory, since respondents Sea Serve and ADAMS (1) filed their appeal with the NLRC beyond the ten-day reglementary period provided by the NLRC Rules of Procedure; and (2) failed to perfect their appeal before the NLRC because they were not able to post the requisite appeal bond.

We are not persuaded. After a careful review of the records of the case, we see no reason to disturb the finding of the NLRC and the Court of Appeals that the joint appeal filed by respondents Sea Serve and ADAMS was duly filed and perfected in compliance with the NLRC Rules of Procedure.

In the first place, nowhere in the records of the present petition is it shown that,

indeed, respondents Sea Serve and ADAMS were notified of the adverse 23 July 2003 Decision of the Labor Arbiter. It must be remembered that, by virtue of the *Affidavit of Assumption of Responsibility* dated 5 May 2003, respondent Sea Serve assumed full and complete responsibility for all contractual obligations to the seafarers originally recruited and processed by Nobel Shipping Inc. for the vessel(s) *MV Algosai* 1, 2, 22, 23, 24, 25, 26 & *MV Midnight Arrow*; *Algosai* 21.<sup>[53]</sup> Said affidavit was made pursuant to Sec. 6, Rule I,<sup>[54]</sup> Book III,<sup>[55]</sup> of the 1991 POEA Rules and Regulation Governing Overseas Employment, *viz*:

Section 6. *Transfer of Accreditation.* - The accreditation of a principal or a project may be transferred to another agency provided that transfer shall not involve any diminution of wages and benefits of workers.

The transferee agency in these instances shall comply with the requirements for accreditation and shall assume full and complete responsibility to all contractual obligations of the principals to its workers originally recruited and processed by the former agency. Prior to the transfer of accreditation, the Administration shall notify the previous agency and principal of such application.

Let it be made clear that there is no issue as to the assumption by respondent Sea Serve of any accountability that may arise or may have arisen from the employment contracts previously instituted and processed by Nobel for respondent ADAMS; or the relief of Nobel from its contractual obligations to the Filipino overseas workers whose employment contracts it processed for respondent ADAMS. The transferee agency, respondent Sea Serve, had assumed long ago from Nobel, the full and complete responsibility of the contractual obligations of the principal, respondent ADAMS, including the alleged liability to petitioner Nisda that is subject of the case at bar. That being the case, therefore, it was imperative upon the Labor Arbiter to have notified respondents Sea Serve and ADAMS of the adverse decision taken against them. Unfortunately, the Labor Arbiter failed to take into account the import of aforementioned transfer of accreditation. This omission is obvious from the face of the Notice<sup>[56]</sup> dated 1 August 2003, attached to the Labor Arbiters *Decision* dated 23 July 2003, which informed merely petitioner Nisda and his counsel, Nobel, Guerrero and their counsel.

In as much as respondents Sea Serve and ADAMS were left in the dark, so to speak, how can they be expected to question something that they have no knowledge of? It is indisputable that service of the decision of the labor arbiter should be made on parties or

their counsel, and the reglementary period for filing an appeal shall be reckoned from the date of such service. Not until respondents Sea Serve and ADAMS were served notice of the 23 July 2003 Decision of the Labor Arbiter, the reglementary period for them to appeal the same to the NLRC had not yet commenced. The 10-day reglementary period to appeal to the NLRC only started to run on 14 October 2003, when Atty. Ng, counsel for respondents Sea Serve and ADAMS, was able to personally secure a copy of the Labor Arbiters Decision dated 23 July 2003. Therefore, the Joint Appeal Memorandum, filed by respondents Sea Serve and ADAMS on 20 October 2003, just six days after receiving notice and copy of the appealed Decision of the Labor Arbiter, was not filed belatedly.

And secondly, as for petitioner Nisdas contention of non-perfection of the appeal of respondents Sea Serve and ADAMS for failure of the latter two to post the appeal bond, the Court of Appeals succinctly addressed the same as follows:

It is not disputed that the respondents Memorandum of Appeal had already been perfected, with the filing of the requisite appeal bond within the 10-day mandatory period, when the Memorandum of the NLRC concerning the disaccreditation of Acropolis Central Guaranty Corporation, which has the effect of rendering the appeals with bond posted by the said company not perfected, was released. But, just like what the NLRC Chair stated in his letter dated February 10, 2004, the said Memorandum should be applied prospectively. [\[57\]](#)

Notwithstanding the foregoing, we are of the view that the second, more critical, error imputed by petitioner Nisda against the Court of Appeals, concerning the denial of his right to disability benefits, must be sustained given the factual milieu of the present case. Sifting through the evidence on record, we are ineluctably convinced that the conclusion of the NLRC and the appellate court, that petitioner Nisdas heart condition is non-compensable, rests on rather shaky foundation.

In his Petition, petitioner Nisda points out that [he] was certified by the *Dar al Taafi* Medical Services Co. Ltd. [o]n May 5, 2002 which was within the term or duration of his contract of his POEA approved contract of employment that was then set to expire on May 2, 2002 with a medical complaint of pain in his parascapular region of 6 months duration already way unto his consummated employment service of his contract of employment with paresthesia and numbness of both upper limbs. [\[58\]](#) He insists further that, [t]his very medical certification by itself of the Saudi Hospital substantiates the causative circumstance leading to petitioners permanent total disability of heart ailment x x x. [\[59\]](#)

Respondents Sea Serve and ADAMS oppose petitioner Nisdas claims by arguing that petitioner Nisda cannot base his claim for disability benefits under Sec. 20(B) of his 7 August 2001 POEA-SEC, because [t]his section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract.<sup>[60]</sup> Since [p]etitioner filed disability claims for injuries suffered after the expiration of the first contract [*i.e.*, the 7 August 2001 POEA-SEC],<sup>[61]</sup> the NLRC correctly ruled that it cannot acquire jurisdiction over claims arising out of contracts without the necessary approval of the POEA [*i.e.*, the subsequent 30 August 2001 employment contract].<sup>[62]</sup>

Taking into consideration the arguments of the parties, the provisions of petitioner Nisdas POEA-SEC, as well as the law and jurisprudence on the matter, we rule that petitioner Nisda is entitled to disability benefits.

As with all other kinds of worker, the terms and conditions of a seafarers employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarers contract is a set of standard provisions set and implemented by the POEA, called the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. Thus, the issue of whether petitioner Nisda can legally demand and claim disability benefits from respondents Sea Serve and ADAMS for an illness suffered is best addressed by the provisions of his POEA-SEC, which incorporated the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*. When petitioner Nisda was employed on 7 August 2001, it was the *2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*<sup>[63]</sup> (hereinafter referred to simply as *Amended Standard Terms and Conditions* for brevity) that applied and were deemed written in or appended to his POEA-SEC.

Sec. 20(B), paragraph 6, of the *2000 Amended Standard Terms and Conditions* provides:

SECTION 20. COMPENSATION AND BENEFITS

X X X X



## B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract** are as follows:

x x x x

6. In case of **permanent total or partial disability of the seafarer caused by either injury or illness** the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphasis supplied.)

Pursuant to the afore-quoted provision, two elements must concur for an injury or illness to be compensable. *First*, that the injury or illness must be work related; and *second*, that the work-related injury or illness must have existed during the term of the seafarers employment contract.

The *2000 POEA Amended Standard Terms and Conditions* defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," that is

### SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- 1) The seafarers work must involve the risks described herein;
- 2) The disease was contracted as a result of the seafarers exposure to the described risks;
- 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- 4) There was no notorious negligence on the part of the seafarer.

Sec. 32-A(11) of the *2000 POEA Amended Standard Terms and Conditions* explicitly considers Cardio-Vascular Disease as an occupational disease if the same was

contracted under working conditions that involve any of the following risks

- a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
- b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.
- c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

Consequently, for Cardio-Vascular Disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.

In the present case, petitioner Nisda was diagnosed to be suffering from a Cardio-Vascular Disease, specifically, a **Coronary Artery Disease**, only shortly after disembarking from *M/V Algoaibi-42* and arriving in the Philippines. Petitioner Nisda's disease was serious enough to necessitate a Triple Bypass Operation on his heart.

Petitioner Nisda's Coronary Artery Disease was diagnosed only after numerous tests and evaluations conducted, owing to his consistent and persistent physical complaints. His medical history was well-documented. On 5 May 2002, petitioner Nisda was brought to the *Dar Al-Taafi Medical Services*, a clinic in Saudi Arabia, for **pain of parascapular region of 6 months duration [with] paresthesia and numbness of both upper limbs.**<sup>[64]</sup> Petitioner Nisda then had blood pressure of 160/100 mm/Hg. Dr. Hossam A. Abubeih, an Orthopedist at the clinic, initially diagnosed petitioner Nisda as having *Myositis* of the parascapular region with paresthesia on the upper limbs. On 19 July 2002, only two days after being repatriated to the Philippines, Dr. Torrefiel attended to petitioner Nisda in Iloilo when the latter suffered from **chest pain which radiates to the back associated with exertional dyspnea.**<sup>[65]</sup> Dr. Torrefiel advised petitioner Nisda to undergo complete cardiac evaluation. In view of Dr. Torrefiel's advice, St. Magdalene Diagnostic Clinic, Inc., the accredited health service provider of respondent Nobel, conducted on 22 July 2002 an ECG/EKG of petitioner Nisda's heart, revealing that the left ventricle thereof was

experiencing a strain and/or ischemia. A barrage of cardio-vascular tests followed thereafter, including the Coronary Angiogram, to fully assess the condition of petitioner Nidas heart. The Coronary Angiogram irrefutably exposed petitioner Nidas **Severe Three Vessel Coronary Artery Disease and Left Ventricle Diastolic Dysfunction.** [66]

According to the National Heart Lung and Blood Institutes of the National Institutes of Health, [67] the primary medical research agency of the United States of America, [68] *coronary artery disease* is a condition in which plaque builds up inside the coronary arteries. These arteries supply the heart muscle with oxygen-rich blood. When the coronary arteries are narrowed or blocked, oxygen-rich blood cannot reach the heart muscle. This can cause **angina**, a feeling of pain in the chest area or discomfort that occurs when not enough oxygen-rich blood is flowing to an area of the heart muscle. It may also feel like pressure or squeezing in the chest which can be felt in the shoulders, arms, neck, jaw, or back. Generally, the pain tends to get worse with activity and go away with rest. Or a **heart attack**, which can occur when blood flow to an area of the heart muscle is completely blocked. When oxygen-rich blood is prevented from reaching a specific area of the heart muscle, the tissue of the affected area can die. Another common symptom of the disease is **shortness of breath**, due to fluid build up in the lungs in the event of heart failure or when the heart cannot pump enough blood throughout the body.

The severity of these symptoms varies. The symptoms may get more severe as the buildup of plaque continues to narrow the coronary arteries. Some people who have coronary artery disease, however, have no signs or symptoms, and the disease may be left undiagnosed until a person shows signs and symptoms of a heart attack, heart failure, or arrhythmia. [69]

We observe that the physical discomforts of petitioner Nisda, for which he sought medical attention as early as 5 May 2002 when he was brought to the clinic in Saudi Arabia, bear the hallmarks of coronary artery disease. Such disease does not develop overnight. The plaque in the coronary arteries would have taken months, if not years, to build up, making it highly probable that petitioner Nisda already had the disease during the life of his POEA-SEC, although it went undiagnosed because he had yet to experience the symptoms.

In *Seagull Shipmanagement and Transport, Inc. v. National Labor Relations*

*Commission*,<sup>[70]</sup> we awarded benefits to the heirs of the seafarer therein who worked as a radioman on board a vessel; and who, after ten months from his latest deployment, suffered from bouts of coughing and shortness of breath, necessitating open heart surgery. We found in said case that the seafarers work exposed him to different climates and unpredictable weather, which could trigger a heart attack or heart failure. We likewise ruled in said case that the seafarer had served the contract for a significantly long amount of time, and that his employment had contributed, even to a small degree, to the development and exacerbation of his disease.

In the instant case, records<sup>[71]</sup> reveal that petitioner Nisda had been deployed by respondent ADAMS numerous times in a span of 15 years, under several employment contracts. Petitioner Nisda was first hired and deployed by respondent ADAMS as a Tug Boat Master in 1987. He was immediately hired and deployed again by respondent ADAMS after the expiration of each employment contract. Through the years, petitioner Nisda worked for respondent ADAMS essentially under the same or closely similar conditions, *i.e.*, 48-hour work weeks with a maximum of 105 hours of overtime.

If we found in *Seagull Shipmanagement* that the different climates and unpredictable weather, as well as the stress of the job, had a correlation with the heart disease of a seafarer working as a radioman on a vessel, then what more in the heart disease of a seafarer serving as a ship master, a position involving more strain and pressure? A Tug (boat) Master is primarily tasked to operate tug boats, a powerful marine vessel that meets large ships out at sea and attach a line to guide/steer the same into and out of berths.<sup>[72]</sup> In operating such a powerful vessel, a Tug Master requires not just a thorough knowledge of the port environment in which he is operating, but a high level of skill as well. In fact, in the case at bar, respondent ADAMS recognized how grueling petitioner Nidas job was, according the latter a month of paid vacation every three months of straight service. Thus, more than a reasonable connection between the nature of petitioner Nidas job and his Coronary Artery Disease has been established. Petitioner Nisda was able to sufficiently prove, by substantial evidence, that his Coronary Artery Disease was work-related, given the arduous nature of his job that caused his disease or, at least, aggravated any pre-existing condition he might have had. Respondents Sea Serve and ADAMS, on the other hand, utterly failed to refute the said connection.

Respondents Sea Serve and ADAMS cannot rely on the seemingly imprecise

Medical Report issued by the *Dar Al Taafi*, which stated that petitioner Nisda was suffering from Myositis, or a non-specific inflammation of the muscles of the parascapular region or chest area.<sup>[73]</sup> We note that petitioner Nisda was then only attended to by an Orthopedist, a surgeon whose area of expertise is the skeletal system composed of the bones and muscles. Petitioner Nisda was not seen by a cardiologist in Saudi Arabia even though his blood pressure was high, high enough that he was advised to regularly monitor the same.

It is also of no moment that petitioner Nisda passed his pre-employment medical examination before he was hired and deployed by respondent ADAMS as a seafarer. It has been accepted that pre-employment medical examinations are usually not exploratory in nature.<sup>[74]</sup> The same is not intended to be a totally in-depth and thorough examination of an applicants medical condition. It merely determines whether one is fit to work at sea or fit for sea service; it does not describe the real state of health of an applicant. While a [pre-employment medical examination] may reveal enough for the [foreign employer] to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarers true state of health. The [pre-employment medical examination] could not have divulged respondents illness considering that the examinations were not exploratory.<sup>[75]</sup>

As a defense against any liability, respondents Sea Serve and ADAMS incessantly posit that petitioner Nisdas POEA-SEC had already expired when the latter was repatriated to the Philippines on 17 July 2002 and subsequently diagnosed with Coronary Artery Disease.

We disagree.

To be sure, the duration of petitioner Nisdas POEA-SEC was 6 MONTHS Continuation of 3 months,<sup>[76]</sup> or nine months entirely. Petitioner Nisda signed his POEA-SEC on 7 August 2001; but per Sec. 2(A) of the same, it was to commence only on 22 August 2001, the date of petitioner Nisdas actual departure from the airport in the point of hire, which was Quezon City, carrying with him his POEA-approved employment contract.<sup>[77]</sup> The period of nine months, counted from 22 August 2001, expired on 21 May 2002.

However, Sec. 2(A) of the POEA-SEC also provides that the POEA-SEC shall be effective until the seafarers date of arrival at the point of hire upon termination of the employment contract, pursuant to Sec. 18 of the same contract. Sec. 18 states

#### SECTION 18. TERMINATION OF EMPLOYMENT

- A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs-off from the vessel and arrives at the point of hire.

Record of the present case reveals that petitioner Nisda signed off and disembarked from *M/V Algozaibi-42*, and was repatriated to the Philippines, only on 17 July 2002. Hence, it was only on said date that petitioner Nidas POEA-SEC actually concluded.

We cannot subscribe to the assertion of respondents Sea Serve and ADAMS that from 21 May 2002 until his repatriation on 17 July 2002, petitioner Nisda was already toiling under the provisions of the second employment contract he signed with respondent ADAMS without the endorsement of the POEA.

In *Placewell International Services Corporation v. Camote*,<sup>[78]</sup> we held that the subsequently executed side agreement of an overseas contract worker with the foreign employer is void, simply because it is against our existing laws, morals and public policy. The subsequent agreement cannot supersede the terms of the standard employment contract approved by the POEA. Republic Act No. 8042, commonly known as the Migrant Workers Act of 1995, expressly prohibits the substitution or alteration, to the prejudice of the worker, of employment contracts already approved and verified by the Department of Labor and Employment (DOLE) from the time of the actual signing thereof by the parties up to and including the period of the expiration of the same, without the approval of DOLE.<sup>[79]</sup> Since the second employment contract petitioner Nisda signed with respondent ADAMS was void for not having been sanctioned by the POEA, then petitioner Nidas employment with respondent ADAMS was still governed by his POEA-SEC until his repatriation to the Philippines on 17 July 2002.

That petitioner Nisda was diagnosed with heart disease only on 19 July 2002, already two days after his return to the Philippines, is of no adverse significance to his claim. Sec. 20(B)(3) of the *2000 POEA Amended Standard Terms and Conditions* requires

that a seafarer, signing off from the vessel for medical treatment, must submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, *viz*:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

3. Upon sign-off from the vessel for medical treatment, x x x.

x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return x x x.

The post-employment medical examination is clearly meant to verify the medical condition for which the seafarer signed off from the vessel. In the case at bar, petitioner Nidas post-employment medical examination revealed a far more serious medical condition, Coronary Heart Disease, than what he was first diagnosed with in Saudi Arabia. And, as we previously established herein, it is highly improbable that petitioner Nida developed said disease only within the few days from his arrival in the Philippines. The far more reasonable and logical conclusion is that he already had the disease while still on board the vessel of respondent ADAMS and well within the life of his POEA-SEC.

Moreover, well worth considering is the riposte to the query: If respondent ADAMS truly considered that petitioner Nida contracted his Coronary Artery Disease way after the effectivity of the latters POEA-SEC, then why did it remit the amounts of US\$4,389.40 and US\$5,997.33 to the Makati Medical Center and Makati Heart Foundation, respectively, as payment for the expenses incurred for a former employees triple bypass operation?

Any dispute as to petitioner Nidas state of health could have easily been resolved had respondents Sea Serve and ADAMS stayed true to the provisions of the *2000 Amended Standard Terms and Conditions*, particularly Sec. 20(B)(3), which allows the following option:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness

allowance x x x until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician x x x.

x x x x

**If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctors decision shall be final and binding on both parties.** (Emphasis supplied.)

Without the opinion of a doctor for respondents Sea Serve and ADAMS, or one they could have jointly chosen with petitioner Nisda, we are constrained to make a ruling based on the evidence already submitted by the parties and made part of the records of this case, including the medical certifications petitioner Nisda obtained from his attending physicians.

Undoubtedly then, under his POEA-SEC, which incorporated the *2000 POEA Amended Standard Terms and Conditions*, petitioner Nisda has a right to receive disability benefit and sickness allowance for 120 days, on account of his Coronary Heart Disease, which qualifies as a total and permanent disability with Grade I Impediment. The computation of the monetary award as stated in the decision of the labor arbiter, however, must be modified in that the sickness allowance for 120 days should be based merely on petitioner Nisdas basic salary of US\$1,437.00 per month under his POEA-SEC, multiplied by 4 months for a total of US\$5,748.00. With regard to his disability benefit classified as Grade I Impediment, he should receive 120% of US\$50,000.00 as dictated by the 2000 POEA *Amended Standard Terms and Conditions*, specifically Secs. 20(B)(3)<sup>[80]</sup> and 20(B)(6)<sup>[81]</sup> *vis--vis* Secs. 32<sup>[82]</sup> and 32-A.<sup>[83]</sup> The 10% attorney's fee that was awarded by the Labor Arbiter shall also be maintained, but must reflect the modified amount of the sickness allowance and disability benefit and to be deducted from the winning amount due.<sup>[84]</sup>

All told, the evidence, including medical documentation, presented by petitioner Nisda, substantially proved that a reasonable connection existed between the work he performed for respondent ADAMS and the development and exacerbation of his Coronary Artery Disease, hence, making it an occupational disease, as described and compensated for by Sec. 32-A of the *2000 POEA Amended Standard Terms and Conditions*. Consequently, it was erroneous for the NLRC and the Court of Appeals to deny petitioner Nisdas claims for disability benefits under Sec. 20(B), paragraph 6 of the *2000 POEA Amended Standard Terms and Conditions*.



**WHEREFORE**, premises considered, the instant Petition is **GRANTED**. The assailed Decision dated 27 September 2006 and Resolution 10 August 2006 of the Court of Appeals in CA-G.R. SP No. 87562 are **REVERSED** and **SET ASIDE**. The Decision dated 23 July 2003 of the Labor Arbiter, as amended by the Order dated 30 September 2003, in NLRC OFW Case No. (M) 03-01-0159-00 is **AFFIRMED** with **MODIFICATION**. Respondents Sea Serve Maritime Agency and Khalifa A. Algozaibi Diving and Marine Services are hereby ordered to jointly and severally pay petitioner Carlos N. Nisda the amount of US\$65,748.00 representing his disability pay amounting to US\$60,000.00 and sickness allowance of US\$5,748.00. The 10% attorney's fee is that was awarded by the Labor Arbiter shall be maintained but must reflect the modified amount of the monetary award and is to be deducted from the same.

**SO ORDERED.**

**MINITA V. CHICO-NAZARIO**  
Associate Justice

WE CONCUR:

**CONSUELO YNARES-SANTIAGO**  
Associate Justice  
Chairperson

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

**ANTONIO EDUARDO B. NACHURA**  
Associate Justice

**DIOSDADO M. PERALTA**  
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 Courts Division.

**CONSUELO YNARES-SANTIAGO**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairmans 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 Courts Division.

**REYNATO S. PUNO**  
Chief Justice

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[1] *Rollo*, pp. 8-57.

[2] Penned by Court of Appeals Associate Justice Amelita G. Tolentino with Associate Justices Portia Alio-Hormachuelos and Arcangelita Romilla-Lontok concurring; *rollo*, pp. 59-74.

[3] *Id.* at 76-77.

- [4] Id. at 267-280.
- [5] Id. at 104.
- [6] Id.
- [7] Vice-President for Finance, Nobel Ship Services, Inc.
- [8] *Rollo*, p. 148.
- [9] Id.
- [10] As amended by POEA Department Order No. 4 and Memorandum Circular No. 9, both Series of 2000.
- [11] *Rollo*, p. 152.
- [12] Id.
- [13] Medical Report (CA *rollo*, p. 112).
- [14] Id.
- [15] Id.
- [16] *Rollo*, p. 156.
- [17] Id.
- [18] A test that records the electrical activity of the heart.
- [19] *Rollo*, p. 157.
- [20] Left Ventricle of the Heart.
- [21] Reduced blood flow to an organ, usually due to a constricted or blocked artery.
- [22] An x-ray test used to detect and diagnose diseases of the blood vessels, such as weakening of the vessel walls and the narrowing or blocking of vessels, and to examine the chambers of the heart. definition of coronary angiogram.
- [23] *Rollo*, p. 160.
- [24] A coronary artery bypass surgery is a type of heart surgery where blood is rerouted around clogged arteries to improve blood flow and oxygen to the heart.
- [25] *Rollo*, pp. 167-168.
- [26] Id. at 166.
- [27] Id. at 173.
- [28] Id. at 174-175.
- [29] Id. at 104.
- [30] Id.
- [31] Id.
- [32] Respondents Position Paper, p. 2; *rollo*, p. 177.
- [33] Id at 180.
- [34] Id.
- [35] Id. at 190-191.
- [36] Id. at 192.
- [37] Id. at 197-205.
- [38] Id. at 173.
- [39] Id. at 208-209.
- [40] Id.
- [41] Memorandum of Appeal of respondents Sea Serve and ADAMS (Footnote No. 1); *rollo*, p. 214.
- [42] Id. at 238-239.

- [43] Id. at 240.
- [44] Pinned by Commissioner Ernesto C. Verceles with Commissioners Lourdes C. Javier and Tito F. Genilo concurring; Annex U of the Petition; id. at 267-280.
- [45] *Rollo*, pp. 272-273.
- [46] NLRC Decision, p. 9; id. at 275.
- [47] *Rollo*, pp. 278-279.
- [48] Id. at 70-71.
- [49] Id. at 71.
- [50] Id. at 73.
- [51] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, 11 November 2005, 474 SCRA 656, 664.
- [52] *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 61 (1998).
- [53] See note 36.
- [54] ACCREDITATION OF PRINCIPALS AND REGISTRATION OF PROJECTS BY LANDBASED AGENCIES/CONTRACTORS.
- [55] PLACEMENT BY THE PRIVATE SECTOR.
- [56] CA *rollo* p. 255.
- [57] *Rollo*, p. 68.
- [58] Petition, p. 41; id. at 48.
- [59] Id.
- [60] Comment to the Petition filed by respondents Sea Serve and ADAMS, p. 12; id. at 453.
- [61] Id. at 449.
- [62] Id.
- [63] As amended by POEA Department Order No. 4 and POEA Memorandum Circular No. 9, both Series of 2000.
- [64] *Rollo*, p. 156.
- [65] Id. at 156.
- [66] Id. at 160.
- [67] [http://www.nhlbi.nih.gov/health/dci/Diseases/Cad/CAD\\_LivingWith.html](http://www.nhlbi.nih.gov/health/dci/Diseases/Cad/CAD_LivingWith.html) visited on 1 July 2009.
- [68] <http://www.nih.gov/about/NIHOverview.html> visited on 1 July 2009.
- [69] An abnormal heart rhythm [ineffective and uncoordinated contractions of the heart muscle and may cause a slow, rapid or irregular pulse] caused by a disruption of the normal functioning of the hearts electrical conduction system.
- [70] 388 Phil. 906 (2000).
- [71] CA *rollo*, pp. 83-102.
- [72] <http://www.careersatsea.com.au/careers/towage-salvage/tug-master.htm> visited on 10 July 2009.
- [73] <http://www.hopkinsmedicine.org/myositis/myositis/> visited on 1 July 2009.
- [74] *The Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, 30 April 2008, 553 SCRA 649, 660.
- [75] *NYK-FIL Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, 27 September 2006, 503 SCRA 595, 609.
- [76] *Rollo*, p. 148.
- [77] SECTION 2. COMMENCEMENT/DURATION OF CONTRACT  
A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract x x x.
- [78] G.R. No. 169973, 26 June 2006, 492 SCRA 761.
- [79] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, G.R. No. 156029, 14 November 2008, citing

*Placewell International Services Corporation v. Camote, id.*

[80] SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctors decision shall be final and binding on both parties.

[81] SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

[82] SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

[83] OCCUPATIONAL DISEASES

[84] Sec. 11, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code.