

THIRD DIVISION

[G. R. No. 179177, July 23, 2009]

**CARLOS N. NISDA, PETITIONER, VS. SEA SERVE MARITIME
AGENCY AND KHALIFA A. ALGOSAIBI DIVING AND MARINE
SERVICES, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court is the *Decision*^[2] dated 27 September 2006 and *Resolution*^[3] 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*^[4] 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. Algosaibi Diving & Marine Services."

The present petition originated from a Complaint^[5] for the payment of "disability/medical benefits, sickness leave pay, reimbursement of medical and hospitalization expenses and attorney's fees"^[6] filed by petitioner Nisda against Nobel Ship Services, Inc. (Nobel), Annabel G. Guerrero^[7] (Guerrero), and Khalifa A. Algosaibi 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,^[8] 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 Algosaibi-21*. Petitioner Nisda's employment was to run for a period of "[six] 6 months - continuation of [three] 3 months remaining,"^[9] on board the *M/V Algosaibi-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*,^[10] which are the minimum requirements acceptable to the government for the employment of Filipino seafarers.

Petitioner Nisda joined the vessel *M/V Algosaibi-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 Algosaibi-21*, it appeared that petitioner Nisda and a representative of respondent ADAMS entered into a second contract of employment^[11] 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: US\$ One Thousand Six Hundred
Month
Fifty only

j) Effective Date of: 22 August 2001
Contract

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 Employee's right to an end-of-service award ("Service Indemnity") which shall be calculated from the date specified in Section 2 Para y).^[12]

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-Ta'afi Medical Services* complaining of "*pain of parascapular region of 6 months duration [with] paresthesia and numbness of both upper limbs.*"^[13] In a *Medical Report*^[14] 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.*"^[15]

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^[16] 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.^[17]

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

Normal Sinus Rhythm

LVH^[20] w/ strain and/or ischemia^[21]

In view of his ECG/EKG result, petitioner Nisda was referred, on 24 August 2002, by St. Magdalene Diagnostic Clinic, Inc. to St. Luke's Medical Center for a coronary angiogram.^[22] Said test was conducted on petitioner Nisda on 25 August 2002. The Coronary Angiogram Report^[23] 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*^[24] at the Makati Medical Center on 5 September 2002.^[25] On 6 September 2002, the Makati Heart Foundation provided respondent ADAMS the "hospital package"^[26] for petitioner Nisda's 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 Nisda's] 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.^[27]

The lack of response from respondent ADAMS and Nobel regarding petitioner Nisda's request for payment of disability benefits was deafening. Hence, petitioner Nisda was "forced" to engage the services of counsel. In a letter^[28] 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.

Despite the formal demand, respondent ADAMS and Nobel still failed to pay petitioner Nisda's claims. Consequently, petitioner Nisda instituted a Complaint^[29] 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,"^[30] with "severe coronary heart disease, etc."^[31]

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 Nisda's Complaint was pending before the NLRC, respondent