

**OSCAR G. SAPITAN; ANDRES M. LADISLA; NICANIO E. PURA;
MARCILINO G. HAMTO; EFREN B. BELEN; OSCAR O. DOMALAON;
DELFIN D. PURA, SR.; ROGERIO G. OLIQUINO; LARY E. ESCARILLA;
ABELARD...**

G.R. No. 163775. October 19, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) dated August 14, 2003 in CA-G.R. SP No. 75535 entitled JB Line Bicol Express, Inc., Jose Baritua/Lao Huan Ling v. National Labor Relations Commission, et al.

The facts follow.

Petitioners filed a case against respondent JB Line Bicol Express, Inc. (JB Line) in the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Legazpi City, Albay for illegal dismissal, underpayment of salaries/wages, overtime pay, premium pay for the holiday and rest day, night shift differential, 13[th] month pay, separation pay and damages. In their complaint, they claimed that:

The respondent [JB Line] is a bus company operator plying the Bicol-Manila route. The [petitioners] are all employees of respondent [JB Line]. Most of [them] are drivers, conductors and mechanics while the rest are regular employees who assist in the conduct of the business of transportation of [respondent JB Line]. All the drivers and conductors who ply the Bicol-Manila route would render their services at night until morning when they reach the place of destination.

Most of the [petitioners] have been with the company for at least ten years. In fact[,] some of them have been with the company for more than twenty years. Most of them are members of the ABC [l]abor [u]nion and there is an existing [c]ollective [b]argaining [a]greement between the company and the said labor union. All of them were underpaid and most of them, particularly those who travel the Bicol-Manila-Bicol route were not given overtime and night differential pay.

Sometime beginning the year 2000, the company started constructively dismissing [petitioners]. This was done by not allowing [them] to perform their duties and function or simply by not admitting them to their work by stating that they should just return some other time. What the company would do is to inform the concerned employees that they should not [report to work] on that date and to return to another date as the bus they were supposed to drive is [not] serviceable. [Petitioners] would just be informed to return to a latter date but when they returned, another excuse will greet them for them not to perform their regular function. These same acts of the respondent [JB Line] hold true to all [petitioners].

Tired of being treated in the same manner and for failure on the part of [JB Line] to give them their work despite no cessation of operations and for non-payment of their salaries, wage adjustments and other benefits, [petitioners were] left with no recourse except to file the instant case to force respondent [JB Line] to reinstate

them in their jobs and [pay] their benefits.[2]

Respondent JB Line, represented by its owners, Lao Huan Ling and Jose Baritua, repudiated the allegations claiming that petitioners were not dismissed constructively from their jobs. Respondent JB Line claimed:

[Petitioners] are still regular employees of respondent [JB Line]. No record will show that letter of suspension were sent to them. Their claim for alleged... constructive dismissal is baseless considering the absence of any documentary evidence relative thereto and their failure to present testimonial evidence to prove that respondent [JB Line] violated the essential elements for constructive dismissal.

Their failure to work regularly was due to economic crises that necessitated the reduction of trips for drivers and conductors and shortened workdays for office personnel and maintenance crew. The measures taken by respondent [JB Line] to prevent losses and possible closure of the business [were] management prerogative and were not resorted to as a ploy to constructively dismissed [petitioners].

On the contrary, [petitioners] can resume duties anytime depending on the availability of buses and passengers...

As to [petitioners] Joue Balderama, Jesus Velarde, Edison Belen, Wilfredo Loscano, Marcelino Hamto,[3] Romeo Ermino, Eduardo Escurel, Benjamin Pura, Noel Hapin[4] and Albert Binaday[5], respondent [JB Line] asserts that these [petitioners] were separated and dismissed for just and valid causes...[A]s to [petitioner] Salvador Genetia, respondent [JB Line] contends that he suffered a stroke five (5) years ago and has already availed of his disability benefits...while [petitioner] Emilio Escandor has been legally terminated for cause.[6]

Although the labor arbiter (LA)[7] found that some of JB Line's employees were validly dismissed from their jobs, he nonetheless ruled that JB Line was liable for constructive dismissal. In a decision dated August 24, 2001, he ruled:

...[I]t can be deduced that because of the reduced number of trips and shortened workdays, [petitioners] would naturally suffer diminution in pay. One does not need to stretch his imagination to arrive at a conclusion that because at present, only two (2) buses are dispatched daily, almost all of the [petitioners] lost their jobs. With only two (2) buses presently dispatched, continuation of [petitioners'] employment with respondent [JB Line] is rendered impossible. There is constructive dismissal when [petitioners suffer] diminution in pay and/or continued employment is rendered impossible.[8]

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The normal consequences of constructive dismissal are reinstatement and payment of backwages. However, in this case ... the 1999 Collective Bargaining Agreement, signed by both parties, provide only for payment of separation pay to every employee whose service is terminated due to reduction in work force because of lack of work or financial difficulty, in an amount equivalent to twenty four (24) days for every year of service, computed based [on petitioners'] latest daily wage...[9]

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...As to [petitioners] Joue Balderama, Jesus Velarde, Edison Belen, Wilfredo Lascano, Marcelino Hamto, Romeo Ermino, Eduardo Escurel, Benjamin Pura, Noel Hapin...this Arbitration Branch believes and so holds that they were validly dismissed. Respondent [JB Line] presented substantial evidence which clearly support its contention that these [petitioners] either committed dishonesty, grave misconduct or went AWOL and subsequently abandoned their jobs...

...[T]he complaint and claim of [petitioner] Larry Escarilla[10] should also be denied because of prescription...[H]e filed his complaint after the lapse of more than five (5) years from the date of his dismissal. Under the [Labor Code]...“all money claims arising from the employer-employee relations accruing during the

effectivity of this Code shall be filed within three (3) years from the time that the cause of action accrued, otherwise they shall be forever barred.”[11]

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As to [petitioners] Salvador Genetia and Emilio Escandor, this Branch finds for [them]. Again, respondent [JB Line] miserably failed to substantiate its allegations that Salvador Genetia suffered stroke five (5) years ago, while [petitioner] Emilio Escandor had been terminated for cause...

Anent [petitioners'] claim for underpayment of wages, non-payment of 13th month pay and of night shift differential pay, this Arbitration Branch finds for [petitioners], there being no contrary evidence presented to controvert said claims...[12]

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[Petitioners]...Oscar O. Domalaon, Abelardo D. Mangampo, Armando Lladones, Alfredo Bonagua, Sosante Pantua,[13] Eligio Nicol, Edgar L. Bitancur, Emilio S. Escandor, Salvacion M. Hasta, Romeo O. Domalaon, Rustico Lagonoy, Serafin Dongaol, Rolando Gribialde,[14] Eddie Ginete, Salvador R. Genetia [and] Manuel Frejas should[,] however, be excluded in the award of night shift differential pay...[15]

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WHEREFORE, premises considered, judgment is hereby rendered declaring [petitioners[16]] to have been constructively dismissed by respondent [JB Line] and consequently, ordering the latter to pay complainants the total amount of NINE MILLION NINETY SEVEN THOUSAND SIX HUNDRED TWENTY FOUR PESOS (P9,097,624.00) representing [petitioners'] separation pay, wage differential, 13[th] month and night shift differential...

All other claims and charge[s] are DISMISSED finding no factual and legal basis therefor.

SO ORDERED.[17]

Respondent JB Line appealed the arbiter's decision (accompanied by a P200,000 supersedeas bond) to the NLRC. Finding that the bond posted was not equivalent to the monetary judgment, the NLRC ordered respondent JB Line to post an additional bond, otherwise, its appeal would be dismissed for non-perfection.[18] The latter failed, hence, the NLRC denied its appeal, saying:

To date...respondent [JB Line] failed to post an additional bond in the amount of P8,897,624.00 in blatant disregard of our Order.

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..[I]ndeed, for respondent [JB Line's] failure to comply with the mandatory requirements of a valid appeal, the decision of the Labor Arbiter dated August 24, 2001 has already attained finality.[19]

Respondent JB Line elevated the case to the CA via Rule 65 of the Rules of Court. In a resolution,[20] however, the CA dismissed the petition for failure to attach a secretary's certificate or board resolution authorizing Lao Huan Ling to sign the verification and certification of non-forum shopping for and on behalf of respondent JB Line. The co-owner, Jose Baritua, also did not execute a special power of attorney authorizing him (Lao Huan Ling) to sign the verification and certification.

On MR, however, the CA reinstated respondent JB Line's petition.[21] Subsequently, in its assailed decision of August 14, 2003, the CA set aside the LA and NLRC's decision and exonerated respondent JB Line from any liability. It held:

..[I]t is clear that the law does not award separation pay to employees when the closure is due to serious business losses. [Respondent JB Line] [has] the burden to prove that such losses actually exist.

In the case at bar, [respondent JB Line] convincingly discharged such burden. From the evidence presented by [it] consisting of financial statements audited by an independent auditor, it has been satisfactorily established that [respondent JB Line] indeed suffered serious business losses for the three preceding years to its closure. Hence, it is not legally obligated to grant separation pay to [petitioners].

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WHEREFORE, premises considered, the instant petition is hereby GRANTED. The assailed [o]rders issued by the NLRC as well as the decision of the Labor Arbiter...are SET ASIDE.

SO ORDERED.[22]

Petitioners moved for the reconsideration of the decision but it was denied. Thus, this appeal.

In their bid to reverse the CA decision, petitioners argue that the CA erred in (1) giving due course to respondent JB Line's petition despite the absence of a secretary's certificate or board resolution or special power of attorney authorizing Lao Huan Ling to sign the verification and the certification of non-forum shopping; (2) allowing the petition despite the fact that the LA's decision had already become final after respondent JB Line failed to post the required bond and (3) holding that they were not entitled to separation pay since respondent JB Line had ceased operations due to serious financial losses.

We find the petition meritorious.

LACK OF PROOF OF AUTHORITY TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

On the first issue, the appellate court should not have given due course to respondent JB Line's petition due to the improper verification and certification. Over time, we have emphasized the importance of complying with the procedural requirements of the Rules of Court. In *Hyung Hyung Park v. Eng Won Choi*,^[23] we said:

Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.

This Court has strictly been enforcing the requirement of verification and certification and enunciating that the obedience to the requirements of procedural rules is needed if fair results are to be expected therefrom. Utter disregard of the rules cannot just be rationalized by harking on the policy of liberal construction. While the requirement is not jurisdictional in nature, it does not make it less a rule...

In *Fuentebella and Rolling Hills Memorial Park, Inc. v. Castro*,^[24] we likewise declared that a certification without the proper authorization is defective and constitutes a valid cause for dismissal of the petition. We explained:

The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

This requirement is intended to apply to both natural and juridical persons as Supreme Court Circular No. 28-91^[25] and Section 5, Rule 7 of the Rules of Court do not make a distinction between natural and juridical persons. Where the petitioner is a corporation, the certification against forum shopping should be signed by its

duly authorized director or representative...[I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.

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A certification without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.

This holds true in the present case...the Administrative Manager of petitioner corporation, who signed the verification and certificate of non-forum shopping, initially failed to submit a secretary's certificate or a board resolution confirming her authority to sign on behalf of co-petitioner...

Although respondent JB Line claims that it substantially complied with the requirement, albeit belatedly (when it submitted a secretary's certificate to the CA), said certificate, however, was neither dated nor its signatory Lao Huan Ling authorized to sign the verification and the certification of non-forum shopping to be filed in the CA. The records disclose that Lao Huan Ling's authority was to represent respondent JB Line only before the LA and in the NLRC. While, as a rule, factual (and evidentiary) issues are beyond the province of our judicial review under Rule 45,[26] a discrepancy between the findings of the CA and those of the LA and NLRC (as in this case) excludes it from the purview of said rule.[27]

EFFECT OF FAILURE TO POST BOND WHERE THE JUDGMENT INVOLVES MONETARY AWARD

On the second assigned error, the records show that respondent JB Line clearly failed to post the bond required by the NLRC. Article 223 of the Labor Code provides:

ARTICLE 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders...

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In case of judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

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The perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but also jurisdictional.[28] For respondent JB Line's failure to comply with the rules on appeal, the LA's decision became final and executory. Nothing more can therefore be done to change the decision. Respondent JB Line had lost the privilege of seeking relief from the appellate court.

In one case,[29] we held:

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer, is clearly limned in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly clear that the lawmakers intended the posting of a cash or surety bond by the employer may be the exclusive means by which an employer's appeal maybe perfected.

In some cases,[30] the requirement to post a supersedeas bond for the perfection of an appeal was relaxed but this was justified by substantial compliance. In this case, however, no similar reason existed to excuse respondent JB Line from complying with the requirement. The bond posted by respondent JB Line was not even close to half of

the amount required by the NLRC.[31]

CLOSURE OF BUSINESS DUE TO SERIOUS FINANCIAL LOSSES

We likewise hold that the CA erred in ruling that petitioners[32] were no longer entitled to separation pay on the ground alone that respondent JB Line had ceased to operate due to serious losses.

The crucial point to consider is when petitioners' employment was put on hold until the filing of the case with the LA. At that time, respondent JB Line admitted that it was financially distressed but it never claimed it was closing down. In fact, in the proceedings before the LA and in the NLRC, it argued that it could not be liable for constructive dismissal since "petitioners (were) still (its) regular employees"[33] and could resume performing their duties depending on the availability of buses and passengers.[34]

Assuming such closure indeed took place, respondent JB Line was still not off the hook. Under the law, in case of closure of business due to serious financial losses, it is imperative for the employer to send a notice of closure to the employees and to the Department of Labor and Employment (DOLE).[35] Article 283 of the Labor Code, as amended, provides:

ARTICLE 283: Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a notice on the workers and the Ministry of Labor and Employment[36] at least one (1) month before the intended date thereof. xxx

The records are devoid of proof that respondent JB Line ever furnished the DOLE or petitioners with such notice.

Moreover, even if we were to grant that respondent JB Line was on the brink of closing down at that time, the reduction of petitioners' workload and/or the "floating" of their employment was still not warranted. Petitioners' plight had persisted for months which only meant that they were already constructively dismissed. In *International Hardware, Inc. v. NLRC*,[37] we declared that an employee is constructively dismissed when his working days are substantially cut for more than six months due to the employer's financial losses.

Lastly, the LA found that "because of the reduced number of trips and shortened workdays, petitioners naturally suffer(ed) diminution in pay." We agree with him that "there (was) constructive dismissal (because of the) diminution in pay and/or (the) continued employment (was) rendered impossible..."[38]

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. SP No. 75535 dated August 14, 2003 is hereby SET ASIDE. Accordingly, the decision of the labor arbiter dated August 24, 2001 is REINSTATED.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Azcuna, JJ., concur.
Garcia, J., no part.

* The Court of Appeals was also impleaded as a respondent but was deleted in the title pursuant to Rule 45, Section 4(a) of the Rules of Court.

[1] Penned by Associate Justice Eloy R. Bello, Jr. (retired), and concurred in by Associate Justices Amelita G. Tolentino and Arturo Brion (now Secretary of Labor) of the Sixteenth Division, Court of Appeals.

[2] Rollo, pp. 100-101.

- [3] Also referred to in the pleadings to be Marcilino Hamto.
- [4] Also referred to in the pleadings to be Hoel H. Hapin.
- [5] Not a petitioner in this case
- [6] Rollo, pp. 101-102.
- [7] Labor Arbiter Jose C. Del Valle.
- [8] LA Decision, rollo, p. 103.
- [9] Id., p. 104.
- [10] In the petition and other pleadings, Larry E. Escarilla was also referred to as Lary E. Escarilla.
- [11] LA Decision, rollo, pp. 105-106.
- [12] Id., p. 106.
- [13] Also referred to in the pleadings to be Susante Pantua.
- [14] Also referred to in the pleadings to be Rolando Grebialde.
- [15] Rollo, p. 107.
- [16] Except Joue Balderama, Jesus Velarde, Edison Belen, Wilfredo Lascano, Marcelino Hamto, Romeo Ermino, Eduardo Escurel, Benjamin Pura and Noel Hapin/Hoel H. Hapin who were found to have been dismissed for just cause, and Larry Escarilla/Lary E. Escarilla whose cause of action against respondent JB Line prescribed.
- [17] The LA attached in his decision a computation of respondent JB Line's liability to petitioners. Rollo, pp. 110-121.
- [18] NLRC Order dated May 30, 2002. Id., pp. 151-155.
- [19] Order dated November 27, 2002. Id., pp. 145-148. In January 2003, the NLRC Arbitration Branch set the case for a pre-execution conference where both parties attended. There, respondent JB Line manifested that the LA's computation of payment/award included those he held to have already been validly dismissed from service. Subsequently, the NLRC Arbitration Branch issued an order deleting the names of the dismissed employees and the corresponding monetary awards made to them.
- [20] Dated March 17, 2003 issued by Associate Justice Eloy R. Bello (retired) with the concurrence of Associate Justices Cancio S. Garcia (now a Supreme Court Justice) and Sergio L. Pestaño (retired), First Division of the Court of Appeals. Id., pp. 134-136.
- [21] CA Resolution dated July 30, 2003.
- [22] Supra at note 1. Rollo, pp. 30-36.
- [23] G.R. No. 165496, February 12, 2007.
- [24] G.R. No. 150865, June 30, 2006.
- [25] Additional Requisites for Petitions filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.
- [26] *Gerlach v. Reuters Limited., Inc.*, G.R. No. 148542, 17 January 2005, 448 SCRA 535; *Eastern Overseas*

Employment Center, Inc. v. Bea, G.R. No. 143023, 29 November 2005, 476 SCRA 384; Professional Academic Plans, Inc. v. Crisostomo, G.R. No. 148599, 14 March 2005, 453 SCRA 342.

[27] Almendrala v. Ngo, G.R. No. 142408, 30 September 2005, 471 SCRA 311.

[28] Quiambao v. NLRC, G.R. No. 91935, 4 March 1996, 254 SCRA 211; Aquino v. NLRC, G.R. No. 98108, 3 September 1993, 226 SCRA 76.

[29] Coral Point Development Corporation v. NLRC, 383 Phil. 456 (2000).

[30] Gensoli & Co. v. NLRC, G.R. No. 113051, 22 April 1998, 289 SCRA 407; Blancaflor v. CA, G.R. No. 101013, 2 February 1993, 218 SCRA 366.

[31] Respondent JB Line only posted a P200,000 bond vis-à-vis the P9,097,624 bond set by the NLRC.

[32] Except those found by the LA as validly dismissed from their jobs or whose cause of action prescribed. As to them, the LA decision had likewise attained finality. See note at 16.

[33] Supra at note 4.

[34] Id.

[35] See Sebuguero, et al. v. NLRC, G.R. No. 115394, 27 September 1995, 248 SCRA 532; Fuentes v. NLRC, G.R. No. 110017, 2 January 1997, 266 SCRA 24.

[36] Now DOLE.

[37] G.R. No. 80770, 10 August 1989, 176 SCRA 256.

[38] Supra.

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