

EASTRIDGE GOLF CLUB, INC., PETITIONER, VS. EASTRIDGE GOLF CLUB, INC., LABOR UNION-SUPER, REPRESENTED BY LORENZO M. ESTEBAN, UNION PRESIDENT AND 13 OTHERS SIMILARLY SITUATED, NAM...

G.R. No. 166760. August 22, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Review on Certiorari under Rule 45 of the Rules of Court of petitioner Eastridge Golf Club, Inc. from the October 13, 2004 Decision[1] of the Court of Appeals (CA) which ordered the reinstatement of the individual respondents; and the January 19, 2005 Resolution[2] of the CA which denied petitioner's motion for reconsideration.

The relevant facts are of record.

Petitioner employed respondents as kitchen staff in its Food and Beverage (F&B) Department. Effective October 1, 1999, petitioner terminated the employment of respondents on the ground that the operations of the F&B Department had been turned over to concessionaire Mother's Choice Meat Shop & Food Services.[3] Petitioner filed with the Department of Labor and Employment (DOLE) an Establishment Termination Report,[4] stating that it laid off the respondents due to company reorganization/downsizing and transfer of operations to a concessionaire.

Respondents filed with the National Labor Relations Commission (NLRC), Regional Arbitration Branch, a complaint for illegal dismissal, unfair labor practice and payment of 13[th] month pay. They claimed that their dismissal was not based on any of the causes allowed by law, and that it was effected without due process.[5]

Petitioner denied respondents' claims, pointing out that several months before their dismissal, it issued various office memoranda[6] informing respondents that, to minimize company losses, the management decided to bid out a part of its operations, specifically the F&B Department, to a concessionaire.[7] The partial cessation of operations was bonafide, as shown by such evidence as:

- Agreement (Food & Beverages Concessionaire), dated October 1, 1999, between Eastridge Golf Club, Inc. and Mother's Choice Meat Shop & Food Services (Annex "10");[8]
- Certificate of Registration of Business Name, dated January 26, 2000, issued by the Department of Trade and Industry to Bilibiran Food Services (Annex "11");[9] and
- Mayor's Permit dated February 8, 2000 issued to Food Services/Bilibiran (Annex "11-A").[10]

Petitioner further explained that the transfer of operations was not intended to displace its workers. In fact, a procedure was adopted by which the old F&B staff, such as respondents, could be rehired by the concessionaire. Several F&B staff were in fact rehired, as shown in Annexes "6"[11] and "7"[12] of its Position Paper. However,

respondents failed to comply with the rehiring procedure; hence, they were considered resigned when the concessionaire took over operations on October 1, 1999.[13]

To controvert petitioner's claim that the partial cessation of operations was bona fide, respondents filed a Motion to Re-open Case[14] in which they presented documentary evidence that there was no real transfer of operations, for even after October 1, 1999, petitioner remained the real employer of all the F&B staff. Their documentary evidence consists of the following:[15]

- Payslips for the periods October 1-15, 1999 (Annex "A");[16] January 16-31, 2000 (Annex "A-1");[17] and May 1-15, 2000 (Annex "A-2") [18] issued by petitioner to various employees, including those listed in Annex "6" and Annex "7";
- Monthly Payroll Register (Annexes "C" to "C-1") [19] issued by petitioner for the entire F&B Department for the period April 16-30, 2000;
- ME-5 Philippine Health Insurance Corporation Contribution Payment Return (Annex "D") [20] issued by petitioner, through its Chief Accountant Nestor Rubis, showing payment of contributions for the period February 2000, in the total amount of P16,375.00, for all its employees, including those listed in Annex "6" and Annex "7";
- RF-1 Employer Quarterly Remittance Report (Annexes "K" to "K-8") [21] submitted by petitioner through its Chief Accountant Nestor Rubis, indicating remittance of premium contributions, in the total amount of P16,375.00, of the individual employees listed therein, including employees listed in Annex "6" and Annex "7"; and
- R-5 Social Security System Contribution Payment Return (Annex "E"), [22] showing payment by petitioner for March 2000.

In a Decision dated March 22, 2002, the Labor Arbiter (LA) held:

WHEREFORE, judgment is hereby rendered in favor of the complainants, holding that no sufficient ground to validly considered [sic] them resigned from their job and holding illegal their dismissal from the service by reason therefor. Accordingly, respondent company is ordered to reinstate them to their former position without loss of seniority rights and with full backwages, as shown in the attached computation hereof which is adopted as our own and forming part of the decision as Annex "A". Further, holding respondent company guilty of unfair labor practice act under par. c, Article 248 of the Labor Code, as amended and thereby ordered to pay each of the complainant and the union the amount of P5,000.00 as and for damages.

The other claims are dismissed for lack of merit.

SO ORDERED.[23]

On appeal, the NLRC, in a Decision dated May 21, 2003, reversed the LA, thus:

WHEREFORE, the appeal is hereby GRANTED and the decision appealed from is SET ASIDE and this complaint DISMISSED for lack of merit. Respondents, however, are ordered jointly and severally, to pay each complainant of one (1) month salary for every year of service.

SO ORDERED.[24]

After their motion for reconsideration was denied by the NLRC,[25] respondents filed with the CA a Petition for Certiorari[26], which the appellate court granted in the October 13, 2004 Decision assailed herein, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed NLRC decision and resolution

dated May 21, 2003 and July 21, 2003, respectively, are hereby REVERSED and SET ASIDE. The decision of the Labor Arbiter dated March 22, 2002 is hereby REINSTATED.

SO ORDERED.[27]

Petitioner's motion for reconsideration was denied by the CA in its January 19, 2005 Resolution.[28]

Hence, petitioner's recourse to this Court, assailing the CA Decision and Resolution on the sole ground that these were rendered contrary to existing law and jurisprudence.[29]

Petitioner's recourse must fail.

The LA held the dismissal of respondents illegal in the light of evidence that petitioner did not actually cease the operation of its F&B Department:

By their own declaration/admission, respondent [petitioner] company had not closed operation but merely transferred management of its Food and Beverages Operations temporarily thru a concessionaire for alleged low income generation and increasing operation expenses x x x.

x x x x

It is well to note that respondents Food and Beverages Department continues to exist after complainants [respondents] were dismissed as evidenced by the pay slip of complainants' [respondents'] co-employees x x x and SSS premium payments by respondent [petitioner] company to complainants' co-employees at the Food & Beverages Department x x x as well as the respondent [petitioner] company payroll xxx where complainants' [respondents'] co-employees are included x x x.[30]

The LA further held that even if it were true that petitioner ceased operation of its F&B Department, the same would not have warranted the dismissal of respondents because petitioner had not shown evidence that it was incurring financial losses. To quote the LA:

Respondent alleged that the reason for the implementation of the above-scheme was brought about by financial constraint -- "low income generation and increasing operational expenses" x x x.

As correctly put forth by the complainants, allegation of losses, must be established beyond cavil xxx. In our case, respondent had not at all presented documentary evidence in support of their losses.[31]

Contradicting the LA, the NLRC held that the evidence of respondents do not prove that petitioner acted in a malicious or arbitrary manner when it relinquished its F&B operations.[32] The NLRC further held that the LA erred in requiring petitioner to prove that it ceased its F&B operations because of financial losses. No such requirement is imposed by Article 283 because petitioner's "decision, as authorized by the Board of Directors, to transfer the operation and Management of the F&B business to a concessionaire was a valid exercise of management prerogative `to prevent losses' x x x. The employer's act of terminating the services of the affected employee is authorized before the anticipated losses are actually sustained or realized, for it is not the intention of the lawmakers to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized." [33]

The CA discarded the view of the NLRC and reverted to the position of the LA, thus:

Retrenchment is one of the ways of terminating the employment to preserve the viability of the business. However, the employer bears the burden of proving his allegation of economic and business reverses with clear and satisfactory evidence. Requirements for valid retrenchment must be proved by clear and convincing evidence. In this case, the Club [petitioner] allegedly decided to get a concessionaire to avoid losses and further increase in its overhead expenses. However, it had not presented documentary evidence in support of its

alleged losses.

On the other hand, the Union [respondents] presented evidence sufficient to prove that the Club's [petitioner's] Food and Beverage Department continues to exist even after their dismissal like the Club's Philippine Health Insurance Corporation Employees Quarterly Remittance Report dated April 2, 2000 showing the names of the employees allegedly absorbed by the concessionaire x x x.[34]

It is evident that the CA and LA differ in their factual assessment and legal conclusion from those of the NLRC on three planes: first, on the cause of the termination of the employment of respondents; second, on the legal requirements for the validity of the termination of respondents; and third, on petitioner's compliance with these requirements. Their differing views compelled the Court to scrutinize the records to satisfy itself on which view was more in accord with the facts and the law of the case.[35]

Petitioner argues that it has sufficient business autonomy to close its F&B operations, and that it need not justify its decision by presenting evidence that it has been incurring financial losses.[36]

Article 283 of the Labor Code allows various modes of termination of employment, to wit:

Art. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment of any employee due to the 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 written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Only the last two modes are relevant here, i.e.: retrenchment to prevent losses and closure or cessation of operation of the establishment or undertaking.

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation.[37] It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements,[38] namely:

- That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor,[39] that such losses are substantial and not merely flimsy[40] and actual or reasonably imminent; [41] and that retrenchment is the only effective measure to prevent such imminent losses; [42]
- That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment;[43] and
- That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.[44]

The employer must prove compliance with all the foregoing requirements.[45]

Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages.[46] However, were the retrenchment undertaken by the employer in bona fide, the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages,[47] the reasonable rate of which the Court En Banc has set at P50,000.00[48] for each employee.

Closure or cessation of business is the complete or partial[49] cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin[50] or promote the business interest of the employer.[51]

Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune. Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not.[52]

In the case under review, the cause invoked by petitioner in terminating the employment of respondents is not retrenchment but cessation of a single aspect of its business undertaking, i.e., the F&B Department. This is evident in the notices of termination it sent to respondents where petitioner indicated that it had withdrawn from the direct operation of the F&B Department and had transferred the management thereof to the concessionaire.[53] Also, in the various office memoranda it posted, petitioner explained that the underlying reason for the cessation of its F&B undertaking was that the economic depression had affected its sales and operations and resulted in increased overhead expenses and decreased incomes.[54]

Cessation of its F&B operations being the cause invoked by petitioner to terminate the employment of respondents, it need not present evidence of financial losses to justify such business decision. Thus, the Court agrees with petitioner that the CA erred when it declared that, for lack of evidence of financial losses, petitioner's cessation of its F&B operations was not a valid cause to terminate the employment of respondents.

But petitioner is not out of the woods yet.

The decision to close business is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is bona fide, i.e., its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/cessation of business not due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher.[55]

It should be borne in mind that where the closure of business is found to be in bad faith, the dismissal of the employees shall be declared illegal and the employer held liable for their reinstatement and payment of full backwages,[56] unless reinstatement is no longer feasible in which case the employer shall be liable for full backwages as well as separation pay at the rate of one month salary for every year of service, with a fraction of at least six months being considered as one year.[57]

If the closure of business due to serious business losses or financial reverses is shown to be in good faith, the resultant dismissal of the employees shall be upheld, with no separation benefits due them.[58] If the closure of business is not due to serious business losses or financial reverses but it is shown to be in good faith, the resultant dismissal of the employees will still be upheld but the latter shall be entitled to separation pay at the rate of ½

month pay for every year of service or one month pay, whichever is higher.[59]

Both the CA and the LA found that the cessation of petitioner's F&B operations was a mere subterfuge in view of evidence that the latter continued to act as the real employer by paying for the salaries and insurance contributions of the employees of the F&B Department even after the concessionaire allegedly took over its operations. The NLRC saw otherwise, holding that the said evidence did not establish that the cessation of petitioner's F&B operations was in bad faith.

Petitioner insists that the documentary evidence presented by respondents hardly establish that it remained the employer of the F&B staff even after the turn over of its operations to the concessionaire. Said evidence was even controverted by the quitclaims and release forms executed by the individual respondents which show that petitioner had paid separation benefits to those employees absorbed by the concessionaire,[60] Petitioner reasons out that if it had not given up its F&B operations, it would not have paid those employees separation benefits. [61]

Petitioner fails to persuade the Court.

In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*,[62] the corporation shut down its operations allegedly due to financial losses and paid its workers separation benefits. Yet, barely one month after the shutdown, the corporation resumed operations. In light of such evidence of resumption of operations, the Court held that the earlier shutdown of the corporation was in bad faith.

With a similar outcome was the closure of the brokerage department of the corporation in *Danzas Intercontinental, Inc. v. Daguman*. [63] In view of evidence consisting of a mere letter written by the corporation to its clientele that its brokerage department was still operating but with a new staff, the Court declared the earlier closure of the corporation's brokerage department not bona fide and ordered the reinstatement of its former staff, despite the latter having signed quitclaims and release forms acknowledging payment of separation benefits.

The closure of a high school department in *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union*[64] was likewise annulled upon evidence that barely one year after the announced closure, the school reopened its high school department. The Court found the closure of the high school in bad faith notwithstanding payment to the affected teachers of separation benefits.

In *Capitol Medical Center, Inc. v. Meris*[65] the hospital justified the closure of a unit and the dismissal of its head doctor by claiming that there was a dwindling demand for the unit's services. However, upon examination of the records, the Court found that service demand had in fact been rising, thus negating the very reason proffered by the hospital in closing down the unit. On that score, the Court declared the action of the hospital in bad faith.

The evidence presented by respondents overwhelmingly shows that petitioner did not cease its F&B operations but merely simulated its transfer to the concessionaire. The payslips alone, the authenticity of which petitioner did not dispute,[66] bear the name of petitioner's Eastridge Golf Club, Food and Beverage Department.[67] The payroll register for the Food and Beverage Department is verified correct by petitioner's Chief Accountant, Nestor Rubis.[68] The Philhealth and Social Security System (SSS) remittance documents are likewise certified correct by the same Chief Accountant.[69] These pieces of documentary evidence convincingly, even conclusively, establish that petitioner remained the employer of the F&B staff even after the October 1, 1999 alleged take-over by the concessionaire.

Even petitioner's own evidence adds weight to respondents' evidence. The quitclaims and release forms which petitioner required respondents to sign at the time of the alleged cessation of petitioner's F&B operations all bear the signature of its Chief Accountant. It was that same Chief Accountant who certified and verified as correct the payroll register and Philhealth/SSS remittance documents issued many months after the alleged cessation of the

F&B operations.

Moreover, the documents which petitioner attached to prove that the concessionaire took over the F&B operations are of doubtful veracity. For one, the October 1, 1999 Agreement (Food & Beverages Concessionaire) with Mother's Choice Meat Shop & Food Services is not notarized,[70] which is an unusual omission by a business entity such as petitioner. It is also curious that the Certificate of Registration of Business Name as well as the Mayor's Permit are all in the name of Bilibiran Food Services, not Mother's Choice Meat Shop & Food Services.[71]

There is no doubt, therefore, that the CA was correct in ruling that the cessation of petitioner's F&B operations and transfer to the concessionaire were a mere subterfuge, and that the dismissal of respondents by reason thereof was illegal.

Finally, it is noted that in reinstating the decision of the LA, the CA in effect affirmed the finding of unfair labor practice. In its petition and memorandum, petitioner offered no argument in refutation of the said finding, except for its claim that the cessation of its F&B operation was justified, which claim has been revealed to be spurious. The Court must therefore also sustain the judgment of the CA on the existence of unfair labor practice.

WHEREFORE, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Eliezer R. delos Santos and concurred in by Associate Justices Delilah Vidallon-Magtolis and Arturo Brion (now a member of the Supreme Court), rollo, p. 9.

[2] Id. at 36.

[3] CA rollo, pp. 66-77.

[4] Id. at 78.

[5] Id. at 44.

[6] Id. at 60-65.

[7] Position Paper, id at 55-58.

[8] Id. at 79.

[9] Id. at 83.

[10] CA rollo, p. 84.

[11] Id. at 64

[12] Id. at 67.

[13] Id.

[14] Id. at 684.

[15] Id. at 109.

[16] Id. at 687.

[17] Id. at 688.

[18] Id. at 689.

[19] Id. at 694-695.

[20] Id. at 175.

[21] CA rollo, pp. 117-124.

[22] Id. at 127.

[23] Id. at 25.

[24] Id. at 39.

[25] Id. at 42.

[26] Id. at 2.

[27] Rollo, p. 15.

[28] Id. at p. 36.

[29] Petition for Review, id. at 46.

[30] LA Decision, CA rollo, pp. 22 and 24.

[31] CA, rollo, p. 23.

[32] NLRC Decision, rollo, pp. 35-36.

[33] Id. at 35.

[34] CA Decision, rollo, p. 14.

[35] *Cajucom VII v. TPI Philippines Cement Corporation*, G.R. No. 149090, February 11, 2005, 451 SCRA 70, 78; *Asufrin, Jr. v. San Miguel Corporation*, G.R. No. 156658, March 10, 2004, 425 SCRA 270.

[36] Petition, rollo, pp. 48-50.

[37] *Tanjuan v. Philippine Postal Savings Bank, Inc.*, G.R. No. 155278, September 16, 2003, 411 SCRA 168, citing *Sebuguero v. National Labor Relations Commission*, G.R. No. 115394, September 27, 1995, 248 SCRA 532, 542, which in turn cites *LVN Pictures Employees and Workers Association v. LVN Pictures*, 146 Phil. 153 (1970), *LVN Pictures Employees and Worker Association* derived the definition of the term from the rulings of the Court in *Phil. American Embroideries, Inc. v. Embroidery & Garment Workers Union*, No. L-20143, January 27, 1969, 26 SCRA 634, 643; *Northern Luzon Transportation Co. v. Commissioner on Internal Revenue*, 73 Phil. 41 (1941); *Union of Philippine Education Employees v. Philippine Education Co.*, L-7161, 97 Phil. 954 (1955); and *Gregorio Araneta Employees Union v. Roldan*, 97 Phil. 304 (1955).

[38] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008; *EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496.

[39] *TPI Philippines Cement Corporation v. Cajucom VII*, G.R. No. 149138, February 28, 2006, 483 SCRA 494;

De la Salle University v. De la Salle University Employees Association, G.R. No. 110072, April 12, 2000, 330 SCRA 368.

[40] PT&T v. National Labor Relations Commission, G.R. No. 147002, April 15, 2005, 456 SCRA 264.

[41] Blucor Minerals Corporation v. Amarilla, G.R. No. 161217, May 4, 2005, 458 SCRA 37, 45.

[42] EMCO Plywood Corporation, *supra*, note 38, citing Saballa v. National Labor Relations Commission, 329 Phil. 511, 526-527 (1996); and Lopez Sugar Corporation v. Federation of Free Workers, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187.

[43] TPI Philippine Cement Corporation, *supra* note 39.

[44] EMCO Plywood Corporation v. Abelgas, *supra* note 38.

[45] Composite Enterprises, Inc. v. Caparoso, G.R. No. 159919, August 8, 2007, 529 SCRA 470.

[46] F.F. Marine Corporation v. National Labor Relations Commission, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 173; Philippine Carpet Employees Association v. Sto. Tomas, G.R. No. 168719, February 22, 2006, 483 SCRA 128; Cabalen Management Co., Inc. v. Quiambao, G.R. No. 169494, March 14, 2007, 518 SCRA 342.

[47] PT&T v. Court of Appeals, *supra* note 40.

[48] Jaka Food Processing Corporation v. Pacot, G.R. No. 151378, March 28, 2005, 454 SCRA 119. See also DAP Corporation v. Court of Appeals, G.R. No. 165811, December 14, 2005, 477 SCRA 792.

[49] Espina v. Court of Appeals, G.R. No. 164582, March 28, 2007.

[50] Cama v. Joni's Food Services, Inc., G.R. No. 153021, March 10, 2004, 425 SCRA 259.

[51] Angeles v. Polytex Design, Inc., G.R. No. 1576273, October 15, 2007, 536 SCRA 159.

[52] Alabang Country Club, Inc. v. National Labor Relations Commission, G.R. No. 157611, August 9, 2005, 466 SCRA 329; J.A.T General Services v. National Labor Relations Commission, G.R. No. 148430, January 26, 2004, 421 SCRA 78.

[53] CA rollo, pp. 66-77.

[54] *Id.* at 60-64.

[55] Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering, 460 Phil. 583 (2003).

[56] Stanley Garments Specialists v. Gomez, G.R. No. 154818, August 11, 2005, 466 SCRA 535; Danzas Intercontinental, Inc. v. Daguman, G.R. No. 154368, April 15, 2005; Raycor Air Control Systems, Inc. v. San Pedro, G.R. No. 158132, July 4, 2007, 526 SCRA 429.

[57] Capitol Medical Center, Inc. v. Meris, G.R. No. 155098, September 16, 2005, 470 SCRA 125.

[58] Galaxie Steel Workers Union v. National Labor Relations Commission, G.R. No. 165757, October 17, 2006; Cama v. Joni's Food Services, Inc., *supra* at 49; Business Services of the Future Today, Inc. v. Court of Appeals, G.R. No. 157133, January 30, 2006.

[59] Angeles v. Polytex Design, Inc., *supra* at 50; Pilar Espina v. Court of Appeals, G.R. No. 164582, March 28, 2007; J.A.T General Services v. National Labor Relations Commission, G.R. No. 148340, January 26, 2007. See also Kasapian ng Malayang Manggagawa sa Coca-Cola (Kasama-CCO)-CFW Local 245 v. Court of Appeals,

G.R. No. 159828, April 19, 2006 and TPI Philippines Cement Corporation v. Cajucom, G.R. No. 149138, February 28, 2006.

[60] Petition, rollo, p. 48.

[61] Memorandum for Petitioner, rollo, pp. 394-396.

[62] G.R. No. 156292, January 11, 2005.

[63] G.R. No. 154368, April 15, 2005.

[64] G.R. No. 167892, October 27, 2006.

[65] Supra at 47.

[66] Memorandum for Petitioner, rollo, p. 394.

[67] Annexes "A" and "A-3", CA rollo, pp. 687, 690.

[68] Annex "C," id. at 693.

[69] Annex "D," id at 175.

[70] CA rollo, p. 79.

[71] Id. at 83-84.

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