

SAMUEL CASAS LIM, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND VICTORIA R. CALSADO, RESPONDENTS.

G.R. No. 79907. March 16, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

These two cases have been consolidated because they relate to the same factual antecedents and the same private respondent. The issues are:

1. In G.R. No. 79975, whether or not the private respondent was an employee of the petitioner and, if so, had been illegally dismissed; and corollarily, whether or not the NLRC had jurisdiction over their dispute.
2. In G.R. No. 79907, whether or not the petitioner could be held solidarily liable with Sweet Lines, Inc. to the private respondent.

The record shows that private respondent Victoria Calsado was hired by Sweet Lines, Inc. on March 5, 1981, as Senior Branch Officer of its International Accounts Department for a fixed salary and a stipulated 5% commission on sales production. On December 1, 1983, after tendering her resignation to accept another offer of employment, she was persuaded to remain with an offer of her promotion to Manager of the Department with corresponding increase in compensation, which she accepted. She was also allowed to buy a second-hand Colt Lancer pursuant to a liberal car plan under which one-half of the cost was to be paid by the company and the other half was to be deducted from her salary. Relations began to sour later, however, when she repeatedly asked for payment of her commissions, which had accumulated and were long overdue. She also complained of the inordinate demands on her time even when she was sick and in the hospital. Finally, on July 16, 1985, she was served with a letter from Samuel Casas Lim, the other petitioner, informing her that her "employment with Sweet Lines" would terminate on August 5, 1985. Efforts were also taken by Sweet Lines to forcibly take the car from her, culminating in an action for replevin against her in the regional trial court of Manila.

On August 14, 1985, Calsado filed a complaint against both petitioners for illegal dismissal, illegal deduction, and unpaid wages and commissions plus moral and exemplary damages, among other claims.[1] There followed an extended hearing where she testified on the details of her employment, emphasizing her unsatisfactory treatment by the management of Sweet Lines and especially the termination of her services without the required notice and hearing and without valid cause. She also presented four other witnesses to corroborate her charges.

The respondents' defenses were based mainly on the claim that Calsado was not an employee of Sweet Lines but an independent contractor and that therefore their dispute with her came under the jurisdiction of the civil courts and not of the Labor Arbiter.[2] On this matter the private respondent pointedly comments:

At this point, private respondent would like to underscore the fact that while private respondent in the proceedings before the Labor Arbiter presented five witnesses including herself, all of whom were

cross-examined by petitioners, and numerous documents which were marked as Exhs. "A" to "GG-8d" and 858 receipts and bills, all of which were duly identified and testified to by private respondent and her witnesses and examined by petitioners, petitioners failed to present any single evidence, testimonial or documentary, to controvert private respondent's evidence. All that they presented were their unsubstantiated pleadings not one of which was under oath, not even their position paper which, under the NLRC rules (Sec. 2, Rule 7, Revised Rules of the NLRC), have to be verified.[3]

On December 29, 1986, decision was rendered against the two petitioners by the Labor Arbiter,[4] who held them liable in solidum to the complainant for the following amounts:

- (a) Separation pay equivalent to one month pay for every year of service based on her latest basic salary of P2,500.00 plus allowance of P500.00, or a total monthly pay of P3,000.00;
- (b) Backwages based on her last monthly pay rate of P3,000.00 to be computed from the time of her dismissal to the actual payment of her separation pay;
- (c) Proportionate 13th month pay for the year 1985;
- (d) Sales commission in the sum of P432,656.68;
- (e) Moral damages of P100,000.00;
- (f) Exemplary damages of P10,000.00; and
- (g) Attorney's fees of P10,000.00 plus 25% of the total monetary awards in favor of the complainant.

The decision was appealed to the National Labor Relations Commission and affirmed in toto except as to the attorney's fees, which were reduced to 10% of the total award.[5] Both Sweet Lines and Lim then came to us in separate petitions to raise the above-stated issues. On October 14, 1987, we issued a temporary restraining order against the enforcement of the decision of the public respondent dated September 11, 1987.[6] The petitions were consolidated on December 7, 1987, and given due course on May 16, 1987, with the parties being required to submit their respective memoranda.

On the first question, we hold that the employe-employer relations between Calsado and Sweet Lines have been sufficiently established. The following documents submitted by the former and not controverted by the latter should belie the claim that Calsado was only an independent contractor over whom Sweet Lines had no control.

1. Certification issued by Sweet Lines, Inc. dated May 21, 1984, stating that private respondent "is employed with this company since March 5, 1982 up to the present, presently designated as International Accounts Manager of the Sweet Lines, Inc., Manila Branch." (Exh. "W")
2. Termination letter issued by Samuel Casas Lim to private respondent reading: "Your employment with Sweet Lines, Inc. will cease effective August 15, 1985. In connection with the foregoing, you are entitled to (1) separation pay equivalent to one half month for every year of service x x x; (2) The computed money value of unused vacation leave x x x; (3) Thirteenth month pay x x x;" (Exh. "V")
3. Notice of private respondent's promotion effective December 1, 1982 from Senior Branch Officer to Manager, International Accounts, with an increase in basic salary from P1,250 to P2,500 a month; (Exh. "D")
4. Computation of her salary, allowance and 13th month pay differentials on account of her promotion, prepared and approved by the proper officials of petitioner Sweet Lines, Inc. whose signatures appear thereon; (Exh. "E")
5. Certification dated September 6, 1983 issued by the petitioner company, subscribed and sworn to before a notary public declaring that private respondent was then an Account Executive of Sweet Lines, Inc.; (Exh. "E")

6. Certification, notarized on January 10, 1985, by Atty. Gregorio Francisco, counsel for petitioner company, that private respondent "is a bona fide employee of Sweet Lines, Inc. and presently holding the position of Manager, International Account." (Exh. "Y")

7. Approved application for sick leave of private respondent for 15 days from March 7, 1985 to April 3, 1985. (Exh. "I")

There is in the above exhibits a consistent and categorical recognition of Calsado as an employee of petitioner Sweet Lines. Indeed, its notarized certification that Calsado was its bona fide employee is irrefutable. The petitioner cannot now argue that the grant to her of the 13th month pay and even the differential pay was a mere accommodation like the car plan (which, for that matter, is a benefit usually extended only to employees). If it is true that Sweet Lines had no control over her and left her free to determine her work schedule, there would have been no reason at all for its approval of her application for sick leave from March 7, 1985 to April 3, 1985. The termination letter itself, which was signed by the other petitioner as Vice President of Sweet Lines, said she was "entitled" to certain payments as a result of the cessation of her "employment with Sweet Lines, Inc."

Sweet Lines has also failed to substantiate its allegation that Calsado was an independent contractor, as it should have, with evidence showing inter alia that she had the financial resources and other means or equipment to operate as such. One must prove what one alleges, but Sweet Lines confined itself to mere denials.

At any rate, the determination of the existence of employee-employer relations is a factual finding which this Court will not disturb or reverse in the absence of a showing of grave abuse of discretion. We do not see such justification here. On the contrary, the ascertainment of the employment status of the private respondent was made on the basis of the criteria consistently employed by the Court in the determination of the employee-employer relationship.[7] We find from the record that all these tests have been satisfied.

Such relationship having been established, the third issue is automatically resolved and requires not much elaboration. Suffice it only to stress that the damages claimed by private respondent as a result of her illegal dismissal and the violation of the terms and conditions of her employment also come within the jurisdiction of the Labor Arbiter as a contrary rule would result in the splitting of actions and the consequent multiplication of suits. So we recently affirmed in *Limquiaco v. Ramolete*[8] and more positively in *National Union of Bank Employees v. Lazaro*,[9] where we declared:

As we stated, the damages (allegedly) suffered by the petitioners only form part of the civil component of the injury arising from the unfair labor practice. Under Article 247 of the Code, "the civil aspects of all cases involving unfair labor practices which may include claims for damages and other affirmative relief, shall be under the jurisdiction of the labor arbiters."

On the fourth issue, we agree with petitioner Lim that he cannot be held personally liable with Sweet Lines for merely having signed the letter informing Calsado of her separation. There is no evidence that he acted with malice or bad faith. The letter, in fact, informed her not only of her separation but also of the benefits due her as a result of the termination of her services.

It is true that Lim has raised this matter rather tardily and also that he belongs to a closed corporation controlled by the members of one family only. But these circumstances should not be allowed to operate against him if he is to be accorded substantial justice in the resolution of the private respondent's claim. As we said in *Ortigas vs. Lufthansa German Airlines*,[10] the Court is "clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that its consideration is necessary in arriving at a just decision of the case." As for the second charge, the mere fact that Lim is part of the family corporation does not mean that all its acts are imputable to him directly and personally. His acts were official acts, done in his capacity as Vice

President of Sweet Lines and on its behalf. There is no showing that he acted without or in excess of his authority or was motivated by personal ill-will toward Calsado. The applicable decision is *Sunio v. NLRC*,^[11] where it was held:

Petitioner Sunio was impleaded in the Complaint in his capacity as General Manager of petitioner corporation. There appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents. His act, therefore, was within the scope of his authority and was a corporate act.

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. Petitioner Sunio, therefore, should not have been made personally answerable for the payment of private respondents' back salaries.

The case of *Ransom v. NLRC*^[12] is not in point because there the debtor corporation actually ceased operations after the decision of the Court of Industrial Relations was promulgated against it, making it necessary to enforce it against its former president. Sweet Lines is still existing and able to satisfy the judgment in favor of the private respondent

The Solicitor General, invoking equity rather than law, observes that making Lim solidarily liable with Sweet Lines will ensure payment of Calsado's claim. But this precaution, even assuming it to be valid, is really unnecessary. In fact, as a condition for the issuance of our temporary restraining order of October 14, 1987, Sweet Lines posted as required a bond in the amount of P850,000.00, which should cover the amounts awarded to the private respondent.^[13]

We especially uphold the award of moral and exemplary damages in view of the acts of harassment and bad faith testified to by the private respondent and not refuted by Sweet Lines. Her treatment during her employment, the delays in the payment of her commissions, the pressures exerted upon her even when she was sick in the hospital, the suggestion of one of the company officers that she discuss her complaints with him alone in a private place, her arbitrary separation, the questionable attempts to get the vehicle from her after her dismissal, among other aggravations, clearly demonstrate the validity of the private respondent's complaints.

Finally, we hold that the contention of Sweet Lines that separation pay and back wages are inconsistent with each other is not well-taken. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Back wages represent compensation that should have been earned but were not collected because of the unjust dismissal. The bases for computing the two are different, the first being usually the length of the employee's service and the second the actual period when he was unlawfully prevented from working.

We have ordered the payment of both in proper cases^[14] as otherwise the employee might be deprived of benefits justly due him. Thus, if an employee who has worked only one year is sustained by the labor court after three years from his unjust dismissal, granting him separation pay only would entitle him to only one month salary. There is no reason why he should not also be paid three years back wages corresponding to the period when he could not return to his work or could not find employment elsewhere.

WHEREFORE, subject to the modification that the award of back wages shall be limited to only three years, in accordance with existing policy, G.R. No. 79975 is DISMISSED, with costs against the petitioner. G.R. No. 79907 is GRANTED and petitioner Samuel Casas Lim is hereby absolved of liability in his personal capacity. The temporary restraining order dated October 14, 1987, is LIFTED. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 29, (Annex "A" of Petition), G.R. No. 79975.

[2] Ibid., p. 110.

[3] Id., p. 342, Private Respondent's Memorandum, p. 6.

[4] Nestor C. Lim.

[5] Rollo, p. 148. G.R. No. 79975.

[6] Ibid., p. 151.

[7] To determine whether an employer-employee relationship exists, the following elements are generally considered: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished as held in *Bautista v. Inciong*, 158 SCRA 665; *Broadway Motors, Inc. v. NLRC*, 156 SCRA 522; *Besa v. Trajano*, 146 SCRA 501; *Rosario Brothers, Inc. v. Ople*, 131 SCRA 72; *Shipside, Inc. v. NLRC*, 118 SCRA 99; *Mafinco Trading Corp. v. Ople*, 70 SCRA 139.

[8] 156 SCRA 162.

[9] 157 SCRA 123.

[10] 64 SCRA 610, *Perez vs. Court of Appeals*, 127 SCRA 636; *Ernesto vs. Court of Appeals*, 131 SCRA 347; *Asiatic Integrated Corporation v. Alikpala*, 67 SCRA 60.

[11] 127 SCRA 390.

[12] 142 SCRA 269.

[13] Rollo, p. 162, G.R. No. 79975.

[14] *City Trust Finance Corp. v. NLRC*, 157 SCRA 87; *Santos v. NLRC*, 154 SCRA 166; *Metro Drug v. NLRC*, et al., 143 SCRA 132; *Luzon Brokerage v. Luzon Labor Union* 7 SCRA 116.

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