

## SECOND DIVISION

[ G.R. No. 178397, October 20, 2010 ]

**PEÑAFRANCIA TOURS AND TRAVEL TRANSPORT, INC.,  
PETITIONER, VS. JOSELITO P. SARMIENTO AND RICARDO S.  
CATIMBANG, RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated August 31, 2006.

Since October 1993, until his alleged termination on October 30, 2002, respondent Joselito Sarmiento (Sarmiento) worked as a bus inspector of petitioner Peñafrancia Tours and Travel Transport, Inc. (petitioner), earning a daily wage of P198.00. In his complaint<sup>[3]</sup> for illegal dismissal filed on November 26, 2002, Sarmiento prayed for his reinstatement, and charged petitioner with underpayment of wages; non-payment of overtime, holiday pay, premium pay for holiday and rest day, service incentive leave pay, 13<sup>th</sup> month pay, and separation pay; unfair labor practice; damages; and attorney's fees. Meanwhile, respondent Ricardo Catimbang (Catimbang) also worked for petitioner as a bus inspector from February 1997 until his termination on October 30, 2002. He was also paid a daily wage of P198.00. He averred that petitioner was guilty of union-busting, and prayed for reinstatement with payment of full backwages, benefits, damages, and attorney's fees.<sup>[4]</sup>

Both Sarmiento and Catimbang (respondents) averred that they were required to work seven (7) days a week, and that they had no rest day and worked even during the holidays, except Good Friday, Christmas Eve, and New Year's Eve. Sometime in the first week of October 2002, they received notices of termination on the ground of petitioner's alleged irreversible business losses.

In the middle of October 2002, a meeting was called by petitioner's President and General Manager, Bonifacio Cu, wherein respondents were introduced to Alfredo Perez, the owner of ALPS Transportation, as the new owner of petitioner, having allegedly bought the same. On October 30, 2002, respondents received their last pay with a letter informing them that their application with the company had been held in abeyance. Sarmiento was paid P26,730.00 as separation pay and P4,686.00 as 13<sup>th</sup> month pay; while Catimbang was paid P17,820.00 as separation pay and P4,851.00 as 13<sup>th</sup> month pay. Respondents, however, learned that, several days after their termination, Bonifacio Cu continued to operate petitioner bus company.

Traversing the complaint, petitioner admitted that respondents were among its bus inspectors. It asseverated, however, that due to severe business losses, petitioner

made the painful decision to stop its operation and sell the business enterprise to the Perez family of ALPS Transportation. It alleged that due notice was given to the Department of Labor and Employment,<sup>[5]</sup> and that all its employees were duly notified<sup>[6]</sup> and were paid their corresponding separation pay, as well as their 13<sup>th</sup> month pay. The new owners maintained the business name of petitioner, and the management of petitioner was entrusted to the new owners in October 2002, with Edilberto Perez<sup>[7]</sup> as Vice-President for Finance and Operations. Subsequently, several memoranda were issued by Edilberto Perez in behalf of petitioner. Petitioner argued that the matter of rehiring respondents rested on the sound discretion of its new owners, and the latter could not be compelled to absorb petitioner's former employees since the same was not part of the deal. Petitioner alleged that respondents submitted their application for reemployment but, after evaluation, the new owners opted not to hire respondents.

While respondents' case for illegal dismissal was pending before the Labor Arbiter (LA), a notice<sup>[8]</sup> was issued by Edilberto Perez to all employees of petitioner, stating that, effective February 11, 2003, the management of the company shall revert to its former President, Bonifacio Cu. On February 28, 2003, Bonifacio Cu wrote Alfredo Perez relative to the latter's failure to comply with their agreement and the decision to rescind the sale involving petitioner.<sup>[9]</sup> Thereafter, sometime in March 2003, Bonifacio Cu entered into a transaction, denominated as a "*Deed of Sale with Assignment of Franchise (By Way of Dation in Payment)*," with Southern Comfort Bus Co., Inc. (SCBC), represented by its President and General Manager, Willy Deterala.<sup>[10]</sup>

On July 31, 2003, the LA rendered a Joint Decision,<sup>[11]</sup> the dispositive portion of which reads:

WHEREFORE, finding no substantial evidence to support the action of the complainants for illegal dismissal, the same is hereby ordered DISMISSED for lack of merit. Nonetheless, respondents PTTTI and Bonifacio L. Cu are hereby ordered to pay complainants with their established service incentive leave pay, equivalent to P2,750.00 each for three (3) years for 1999, 2000, and 2001.

All other claims are hereby DISMISSED for lack of merit.

SO ORDERED.

Aggrieved, respondents sought recourse from the National Labor Relations Commission (NLRC). On August 31, 2005, the NLRC rendered a decision<sup>[12]</sup> in favor of respondents, finding that no sale of the business actually took place. Thus:

WHEREFORE, as above-discussed, the appeal is given due course. Accordingly, the decision appealed from is REVERSED and SET ASIDE and a NEW ONE ENTERED ordering the respondents to reinstate Joselito P. Sarmiento and Ricardo Catimbang with full backwages. The amounts already received by complainants shall be deducted from the awards they

are entitled computed as follows:

Backwages from day after date of dismissal (Nov. 1, 2002)  
to cut off date (August 30, 2005)

a. Salary: P198/day x 26 days/mo. x 34months	=P175,032.00	
b. 13 <sup>th</sup> month pay P175,032 :- 12	= 14,586.00	
c. Service Incentive Leave Pay: P198 x 15 days	=	<u>2,970.00</u>
		P192,588.00
Joselito	-	P192,588.00
Sarmiento		
Less received	-	<u>31,416.00</u> (separation pay- P 26,730.00 13 <sup>th</sup> mo. pay - 4,686.00)
		P161,172.00
Ricardo	-	P192,588.00
Catimbang		
Less received	-	<u>22,671.00</u> (separation pay- P17,820.00 13 <sup>th</sup> mo. pay - 4,851.00)
		169,917.00
<b>TOTAL</b>		<b>P331, 089.00</b> =====

SO ORDERED.

Petitioner filed a motion for reconsideration, which the NLRC, however, denied in its Resolution<sup>[13]</sup> dated November 15, 2005. Undaunted, petitioner assailed the NLRC's ruling before the CA on *certiorari*.

On August 31, 2006, the CA ruled in favor of respondents. It held that petitioner failed to establish its allegation that it was suffering from business reverses. Likewise, the CA affirmed the NLRC's findings that petitioner did not actually sell its business to the Perez family and to SCBC. Accordingly, the CA disposed of the case in this wise:

WHEREFORE, premises considered, the instant PETITION FOR CERTIORARI is DISMISSED. Accordingly, petitioner Peñafrancia Tours and Travel Transport, Inc. is hereby ordered to reinstate private respondents Joselito Sarmiento and Ricardo S. Catimbang to their previous positions without loss of seniority rights and to pay their full backwages from the time their actual compensation was withheld from them up to the time of their actual reinstatement. The separation pay already received by private respondents Sarmiento and Catimbang shall

be deducted from the full backwages they are entitled to receive from petitioner PTTTI.

Let the entire record of the case be remanded to public respondent National Labor Relations Commission for the proper computation of backwages.

SO ORDERED.<sup>[14]</sup>

On September 26, 2006, petitioner filed a Motion for Reconsideration which the CA denied in its Resolution<sup>[15]</sup> dated May 21, 2007.

Hence, this petition based on the sole issue of whether respondents were legally terminated from employment by reason of the sale of the business enterprise and the consequent change or transfer of ownership/management.<sup>[16]</sup>

Petitioner claims that a change of ownership in a business concern is not proscribed; that it is a right of an employer, as management prerogative, to close his business and terminate the employment of his employees as a consequence of such closure; that an innocent transferee of the business has no liability to the employees for their continued employment; and that, based on its annual income tax return, it suffered financial losses. Relying on the LA's findings, petitioner avers that it sold the business in good faith, and that respondents, as a result of said sale, were paid all the monetary benefits due them. Moreover, petitioner manifests that there was no compelling reason at that time, like a dispute and/or rift existing among the parties, to warrant the termination of respondents' employment. It also claims that, while it had a perfected contract of sale with the Perez family, the same was not consummated, and that the Perez family did not pay the amount of P60 Million as agreed upon and as claimed by respondents.<sup>[17]</sup>

On the other hand, respondents argue that petitioner raised questions of fact that are beyond the province of a petition for review under Rule 45 - questions which were already passed upon by both the NLRC and the CA. Further, respondents aver that Bonifacio Cu continues to run the business of petitioner, particularly through his son, Bonifacio Bryan Cu, as Operations Manager, and his nephew, Antonio Cu, as Corporate Secretary; that petitioner continues to operate the business under the same name, franchises, routes, and circumstances as before the alleged sale; that while petitioner has the prerogative of closing its business, the same must not be tainted with bad faith; and that petitioner failed to establish that it was indeed under severe financial constraints, and that the respective sales to the Perez family and to SCBC were not at all fictitious.<sup>[18]</sup>

The petition is bereft of merit.

Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of the establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment, aims to prevent further financial drain upon an employer who can no longer pay his employees since business has already stopped.<sup>[19]</sup>