



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PNCC SKYWAY CORPORATION  
(PSC),

Petitioner,

- versus -

THE SECRETARY OF LABOR &  
EMPLOYMENT, PNCC SKYWAY  
TRAFFIC MANAGEMENT,  
and SECURITY DIVISION  
WORKERS ORGANIZATION,

Respondents.

G.R. No. 196110

Present:

CARPIO, J., Chairperson,  
PERALTA,  
DEL CASTILLO,\*  
MENDOZA, and  
LEONEN, JJ.

Promulgated:

06 FEB 2017

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DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45<sup>1</sup> of the Rules of Court seeking the reversal of the Decision<sup>2</sup> dated July 22, 2010 and Resolution<sup>3</sup> dated March 10, 2011 of the Court of Appeals in CA-G.R. SP No. 111200.

The facts are as follows:

Sometime in March 1977, the Philippine National Construction Corporation (PNCC) was awarded by the Toll Regulatory Board (TRB) with the franchise of constructing, operating and maintaining the north and south expressways, including the South Metro Manila Skyway (*Skyway*). On

\* Associate Justice Francis H. Jardeleza, no part; Associate Justice Mariano C. del Castillo designated Additional Member per Special Order No. 2416-J, dated January 4, 2017.

<sup>1</sup> *Rollo*, pp. 10-33.

<sup>2</sup> Penned by Associate Justice Garcia, R.R., with Associate Justices Carandang, R.D., and Barrios, M.M, concurring; *rollo*, pp. 40-52.

<sup>3</sup> *Id.* at 54-55.

December 15, 1998, it created petitioner PNCC Skyway Corporation (*PSC*) for the purpose of taking charge of its traffic safety, maintaining its facilities and collecting toll.

Eight years later, or on July 18, 2007, the Citra Metro Manila Tollway Corporation (*Citra*), a private investor under a build-and-transfer scheme, entered into an agreement with the TRB and the PNCC to transfer the operation of the Skyway from petitioner PSC to the Skyway O & M Corporation (*SOMCO*). The said transfer provided for a five-month transition period from July 2007 until the full turn-over of the Skyway at 10:00 p.m. of December 31, 2007 upon which petitioner PSC will close its operation.

On December 28, 2007, or three (3) days before the full transfer of the operation of the Skyway to SOMCO, petitioner PSC served termination letters to its employees, many of whom were members of private respondent PNCC Skyway Traffic Management and Security Division Worker's Organization (*Union*). According to the letter, PSC has no choice but to close its operations resulting in the termination of its employees effective January 31, 2008. However, the employees are entitled to receive separation pay amounting to 250% of the basic monthly pay for every year of service, among others things. Petitioner PSC, likewise, served a notice of termination to the Department of Labor and Employment (*DOLE*).

On that same day of December 28, 2007, private respondent Union, immediately upon receipt of the termination letters, filed a Notice of Strike before the DOLE alleging that the closure of the operation of PSC is tantamount to union-busting because it is a means of terminating employees who are members thereof. Furthermore, the notices of termination were served on its employees three (3) days before petitioner PSC ceases its operations, thereby violating the employees' right to due process. As a matter of fact, the employees were no longer allowed to work as of January 1, 2008. Private respondent Union, thus, prayed that petitioner PSC be held guilty of unfair labor practice and illegal dismissal. It, likewise, prayed for the reinstatement of all dismissed employees, along with the award of backwages, moral and exemplary damages, and attorney's fees.

For its defense, PSC denied that the closure of its operation was intended to remove employees who are members of private respondent Union. Instead, it claimed that it was done in good faith and in the exercise of management prerogative, considering that it was anchored on an agreement between the TRB, the PNCC and the private investor Citra. PSC likewise denied that it had violated the right to due process of its employees, considering that the notices of termination were served on December 28, 2007 while the termination was effective only on January 31, 2008. PSC



alleged that the Union was guilty of an illegal strike when it started a strike on the same day it filed a notice of strike on December 28, 2007.

On August 29, 2008, public respondent Secretary of Labor and Employment (*SOLE*), in its assailed Decision,<sup>4</sup> found that there was an authorized cause for the closure of the operation of PSC *albeit* it failed to comply with the procedural requirements set forth under Article 283 of the Labor Code. The dispositive portion of the Decision reads, as thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. HOLDING there was lawful cause to terminate the employees and deny their claims for reinstatement as there was valid cessation of PSC's operation.
2. DISMISSING the charges of unfair labor practice and union-busting for lack of basis.
3. DISMISSING the charge of illegal strike against the Union and its members for lack of basis.
4. HOLDING there was failure on the part of the PNCC Skyway Corporation to comply with the procedural notice requirements of Article 283 of the Labor Code.
5. DENYING the payment of moral and exemplary damages, and attorney's fees for lack of bases.

As it had previously offered, PSC is hereby ORDERED to pay the affected employees their separation pay in the amount of no less than 250% of their respective basic monthly pay per year of service, a gratuity pay of Php40,000 each employee, plus all their remaining benefits like 13<sup>th</sup> month pay, rice subsidy, cash conversion of vacation and sick leaves, and medical reimbursement.

Likewise, PSC is ordered to pay the amount of Php30,000 as indemnity to each dismissed employee covered by this case, who were not validly notified in writing of their termination on 31 December 2007 pursuant to Article 283 of the Labor Code.

SO ORDERED.

Both PSC and private respondent Union file their respective motions for partial reconsideration but was denied for lack of merit in a Resolution<sup>5</sup> dated August 26, 2009.

Thus, on October 30, 2009, before the Court of Appeals, PSC filed a Petition for *Certiorari*<sup>6</sup> alleging grave abuse of discretion amounting to lack

<sup>4</sup> *Id.* at. 57-79.

<sup>5</sup> *Id.* at 81-91.

<sup>6</sup> *Id.* at 135-149.

or excess of jurisdiction on the part of the SOLE when it additionally directed payment of an additional ₱30,000.00 to PSC's former employees pursuant to Article 283 of the Labor Code.

On July 22, 2010, in its disputed Decision,<sup>7</sup> the Court of Appeals dismissed PSC's petition. The appellate court held that the Secretary of Labor was correct in saying that the extension of the employee's employment in paper only and the payment of the employee's salaries for said period cannot substitute for the PSC's failure to comply with the due process requirements. Thus, the SOLE cannot be said to have acted capriciously or whimsically, in the exercise of his official duties.

Petitioner moved for reconsideration, but was denied in a Resolution<sup>8</sup> dated March 10, 2011. Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FINDINGS THAT PSC FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE ON NOTICE.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FAILURE TO CONSIDER THAT THE EMPLOYEES WERE PAID OF THEIR SALARIES AND BENEFITS FOR THE MONTH OF JANUARY 2008 WHICH IS CONSIDERED AS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE.

WHETHER THE AGABON AND SERRANO CASES ARE INAPPLICABLE IN THIS CASE.

In essence, the PSC insists that there was substantial compliance with the procedural requirements of Article 283 of the Labor Code considering that the alleged effectivity of the termination was made one (1) month from the notice of termination and that the affected employees were paid for the said month.

The petition lacks merit.

In *Montoya v. Transmed Manila Corporation/Mr. Ellena, et al.*,<sup>9</sup> the Court had the occasion to lay down the proper interpretation of the question

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *Supra* note 4.

<sup>9</sup> 613 Phil. 696 (2009).



of law that the Court must resolve in a Rule 45 petition, as in this case, assailing a CA decision on a Rule 65 petition, to wit:

x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?<sup>10</sup>

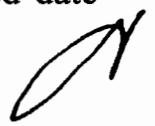
Thus, in the instant petition for review, we will examine the CA decision limited to whether it correctly determined the presence or absence of grave abuse of discretion in the SOLE decision before it, not on the basis of whether the SOLE decision on the merits of the case was correct. Moreso, in this case, where the SOLE and the Court of Appeals were unanimous in ruling that PSC's closure or cessation of business operations was due to the amendment of the STOA by CITRA, PNCC and the Republic of the Philippines (*ASTOA*), and not because of any alleged anti-union position. We find no reason to modify such finding. In any case, none of the parties raised the issue of either the legality of the dismissal or the validity of the closure of PSC's operation. Furthermore, it must be emphasized that this Court is not a trier of facts, a rule which applies with greater force in labor cases where the findings of fact of the quasi-judicial agencies are accorded respect and even finality, as long as they are supported by substantial evidence from which an independent evaluation of the facts may be made.

*Whether there was grave abuse of discretion on the part of the SOLE*

Upon review of the records, we agree with the appellate court's stance that public respondent SOLE committed no grave abuse of discretion in its resolution that while there was an authorized cause for the closure of PSC's operations and the subsequent termination of its employees, it however failed to comply with the procedural requirements set forth under Article 283 of the Labor Code, that is, by serving notices of termination upon the employees and the DOLE at least one (1) month before the intended date

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<sup>10</sup> *Montoya v. Transmed Manila Corporation, supra*, at 707.



thereof. The provision of Article 283 of the Labor Code is instructive on the notice requirement, 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 under taking 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 ( $\frac{1}{2}$ ) 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.

In sum, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

In the instant case, while both the SOLE and the appellate court found the closure of PSC's business operation to be *bona fide*, the required notices were, however, served on the employees and the DOLE only three (3) days before the closure of the company. PSC contends that it had substantially complied with the one (1) month notice requirement since the termination of its employees was made effective only on January 31, 2008, or more than one (1) month after it had given the notice of termination on December 28, 2007. It insists that they have in fact paid the affected employees for the said period covered by the supposed one-month notice. We disagree.

The required written notice under Article 283 of the Labor Code is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one (1) month before the date of effectivity to give them sufficient time to make the necessary arrangements.<sup>11</sup> The purpose of this requirement is to give employees time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the veracity of the alleged cause of

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<sup>11</sup> *Galaxie Steel Workers Union v. NLRC*, 535 Phil. 675, 685 (2006).



termination.<sup>12</sup> Thus, considering that the notices of termination were given merely three (3) days before the cessation of the PSC's operation, it defeats the very purpose of the required notice and the mandate of Article 283 of the Labor Code. Neither the payment of employees' salaries for the said one-month period<sup>13</sup> nor the employees' alleged actual knowledge of the ASTOA is sufficient to replace the formal and written notice required by the law.

Moreover, as early as July 2007, PSC already had knowledge of the eventual take-over by SOMCO of the Skyway by December 31, 2007. Thus, considering that PSC had ample time of more than five (5) months to serve the notice of termination to its employees, its failure to comply with the notice requirement under Article 283 of the Labor Code is inexcusable.

*Whether the PNCC Union is entitled to nominal damages for violation of their right to statutory procedural due process*

Indeed, while PSC had an authorized ground to terminate its employees by virtue of the closure of its business, its failure to comply with the proper procedure for termination renders it liable to pay the employees nominal damages for such omission. In *Business Services of the Future Today, Inc. v. Court of Appeals*,<sup>14</sup> which reiterated the ruling in *Agabon v. National Labor Relations Commission*, this Court held that where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process. Thus, PSC's violation of their employees' right to statutory procedural due process warrants the payment of indemnity in the form of nominal damages.

In *Jaka Food Processing Corp. v. Pacot*,<sup>15</sup> we fixed the nominal damages at ₱50,000.00 if the dismissal is due to an authorized cause under Article 283 of the Labor Code, but the employer failed to comply with the notice requirement. The reason is terminations under Article 283 of the Labor Code are initiated by the employer in the exercise of his management prerogative, thus, the sanction should be *stiffer*.

In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious

<sup>12</sup> *Mobilia Products, Inc. v. Demecillo, et al.*, 597 Phil. 621, 631 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> 516 Phil. 351, 359 (2006).

<sup>15</sup> 494 Phil. 115, 122 (2005).

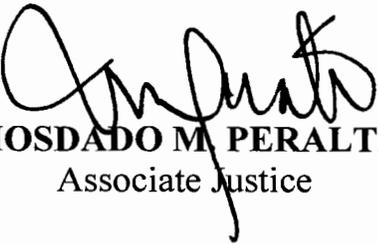


business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all.<sup>16</sup>

In the instant case, there was an authorized cause for termination considering that it was prompted by the cessation of PSC's operation which was done in good faith and due to circumstances beyond its control. It, likewise, appears that PSC had the intention to give its employees the benefits due them upon their termination as in fact many members of the Union, with the exclusion of some Union officers, have already claimed and accepted their separation pay and benefits.<sup>17</sup> Under the facts and circumstances attendant to the case, this Court finds the amount of ₱30,000.00 in nominal damages sufficient to vindicate each private respondent's right to due process.

**WHEREFORE** the instant petition is **DENIED**. The Decision dated July 22, 2010 of the Court of Appeals in CA-G.R. SP No. 111200 is hereby **AFFIRMED**. This case is hereby remanded to the DOLE for the purpose of computing the exact amount of award to each respondent pursuant to this Decision.

**SO ORDERED.**

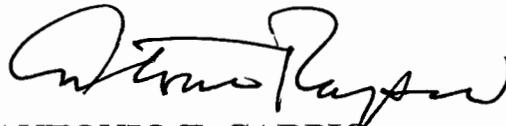
  
**DIOSDADO M. PERALTA**  
Associate Justice

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<sup>16</sup> 520 Phil. 522, 527-528 (2006).

<sup>17</sup> *CA rollo*, p. 32.

**WE CONCUR:**



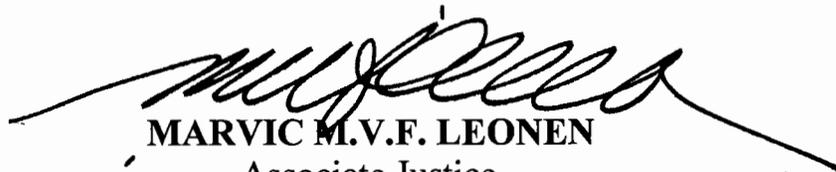
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

