

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**PEPSI COLA DISTRIBUTORS OF THE  
PHILIPPINES, INC.,**

*Petitioner,*

*-versus-*

**G.R. No. 100686**

**August 15, 1995**

**NATIONAL LABOR RELATIONS  
COMMISSION, 5<sup>th</sup> Division, Cagayan de  
Oro City, HON. AMADO M. SOLAMO,  
Labor Arbiter, Sub-Regional  
Arbitration Branch No. X, Butuan City,  
and TERTULIANO P. YUTE,**

*Respondents.*

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**DECISION**

**ROMERO, J.:**

In this Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Preliminary Injunction, petitioner Pepsi Cola Distributors of the Philippines, Inc. seeks to set aside the Resolution<sup>[1]</sup> of the National Labor Relations Commission (Fifth Division), Cagayan de Oro City, dated April 24, 1991 and the entry of judgment<sup>[2]</sup> made on June 10, 1991 when said Resolution became

final and executory on May 20, 1991. The dispositive portion of said Resolution<sup>[3]</sup> reads as follows:

“WHEREFORE, premises considered, the appealed decision is hereby modified directing respondent PCD and PCPPI to reinstate complainant Tertuliano P. Yute to his former position without loss of seniority rights with full backwages from July 25, 1989 to his actual reinstatement and to pay complainant an amount equivalent to ten (10%) percent of the monetary award for and as attorney’s fees.

However, if reinstatement is no longer possible, respondent is hereby directed. to pay complainant his separation pay of one (1) month for every year of service.

Complainant’s claim for moral damages is dismissed for his failure to show fraud or bad faith on the part of respondent.

SO ORDERED.”

The case stemmed from the following facts:

Tertuliano P. Yute, private respondent herein, started working with Pepsi Cola Bottling, Company of the Philippines (PCBCP for short) in Butuan City as a contractual maintenance electrician sometime in 1979 and when Pepsi Cola Distributors of the Philippines, Inc. (PCD) took over the bottling company’s manufacturing operations in 1981, he was absorbed as a regular employee.

On December 15, 1988,. petitioner PCD terminated private respondent’s employment on the grounds of alleged abandonment of work and/or absence without leave.

On January 3, 1989, private respondent filed before the Sub-Regional Arbitration Branch No. X of the NLRC in Butuan City a complaint for illegal dismissal, moral and exemplary damages, and attorney’s fees against PCD.<sup>[4]</sup>

After efforts for amicable settlement of the case proved futile, the parties were required to file their respective position papers.

On May 22, 1989, Labor Arbiter Amado M. Solamo rendered a Decision<sup>[5]</sup> which declared as illegal the dismissal of private respondent and ordered petitioner PCD to reinstate him with full backwages from the time he was illegally dismissed up to the time of his actual reinstatement without loss of seniority rights and privileges; to pay private respondent attorney's fees equivalent to 10% of the total monetary award. All other claims of private respondent were dismissed by the Labor Arbiter for lack of merit.

PCD appealed the Labor Arbiter decision to the National Labor Relations Commission (Fifth Division), Cagayan de Oro City. In the meanwhile, PCD reinstated private respondent and included him in the payroll effective on May 22, 1989.

On July 25, 1989, or 33 days after he was included in the payroll, PCD stopped payment of private respondent's salary on the ground that it allegedly sold its business interest to Pepsi Cola Products Philippines, Inc. (PCPPI for short) effective July 24, 1989.

On September 7, 1989, the NLRC, upon motion of private respondent and other employees<sup>[6]</sup> similarly situated, issued a Writ of Execution<sup>[7]</sup> ordering PCD to pay their salaries from July 25, 1989 up to September 30, 1989.

On November 17, 1989, PCPPI filed in the case a manifestation/motion praying that the change in ownership of the company be taken cognizance of by the NLRC, stating thus:

- “1. PCPPI is now the owner, manufacturer and operator of the properties and assets of the respondent Pepsi-Cola Distributors of the Philippines, Inc. (PCD) located in Butuan Plant;
2. PCPPI has a legal personality separate and distinct from PCD, although PCPPI assumed the business and had offered employment to regular employees of good standing as of July 24, 1989, the fact remains that PCPPI is not a party respondent to this case nor is PCPPI an alter-ego, agent or representative of respondent PCD. Attached

hereto as Annex A' is a copy of the Certificate of Registration of PCPPI to attest to the foregoing allegation;

3. PCPPI, despite not being a party to the case has or will bear the wrath of this Honorable Office('s) writs of execution appurtenant to the above-cited cases without being afforded procedural and substantive due process. The doctrine that writs of execution cannot be issued against a person not a party to the case or compromise is well-settled (Bobis vs. Provincial Sheriff of Camarines Norte, 120 SCRA 85). Furthermore, the power of the court to issue execution of judgment extends only to properties unquestionably owned by the respondent against whom judgment is sought to be satisfied (Vda. de Soyma vs. Court of Appeals, 121 SCRA 650).
4. The takeover of PCPPI from PCD is a supervening fact that would substantially alter or modify the issues subject of litigation and the liabilities or obligations of the parties;
5. Reinstatement or payroll hire can no longer be had since the complainants have not been offered employment nor were they regular employees of the company at the time of the takeover by PCPPI from PCD.”

On November 29, 1989, private respondent filed another Motion for Execution<sup>[8]</sup> praying that another Writ of Execution be issued considering that the previous one issued on September 7, 1989 was not executed.

In a resolution dated August 17, 1990, the NLRC dismissed the appeal of PCD on the ground that the same was filed out of time thereby affirming the Labor Arbiter's decision.

Petitioner filed a motion for reconsideration of the order of August 17, 1990 contending that it was error to hold that the appeal was filed on June 14, 1989 instead of June 9, 1989 when said appeal was filed by registered mail; that it was error not to pass upon the merits of the appeal on the mistaken belief that it was filed out of time.

On April 24, 1991, the NLRC, acting on the motion for reconsideration, resolved the case on the merits by modifying the appealed decision of the Labor Arbiter whereby PCD and PCPPI were both ordered to reinstate private respondent Tertualiano P. Yute to his former position without loss of seniority rights and with full backwages from July 25, 1989 to his actual reinstatement and to pay him an amount equivalent to ten (10%) percent of the monetary award for and as attorney's fees; however, if reinstatement is no longer possible, PCD is directed to pay complainant his separation pay of one (1) month for every year of service; private respondent's claim for moral damages is dismissed for his failure to show fraud or bad faith on the part of PCD.<sup>[9]</sup>

The aforesaid Resolution having become final and executory on May 20, 1991, the NLRC recorded the same in its book of entries of judgments on June 10, 1991.

Arguing that the NLRC (Fifth Division) Resolution of April 24, 1991 was issued with grave abuse of discretion and that the entry of judgment made on June 10, 1991 caused serious injustice to petitioner PCD because its previous counsel willfully and maliciously did not inform them of the receipt of the resolution the period to file a motion for PCD filed the instant petition on and instead allowed reconsideration to lapse, July 18, 1991.

On January 14, 1992, or after the petition was given due counsel<sup>[10]</sup> on December 11, 1991, petitioner PCD filed an Urgent Motion for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order<sup>[11]</sup> alleging that by filing a motion for issuance of writ of execution dated July 1, 1991, private respondent is attempting to execute the questioned resolution, and if said motion is granted, it would render moot and academic the instant petition.

On January 20, 1992, a Temporary Restraining Order<sup>[12]</sup> was issued by this Court and petitioner PCD was required to post a cash bond or surety bond in an amount equivalent to the award of the NLRC. On March 14, 1992, petitioner PCD submitted to the Court a Supersedeas Bond<sup>[13]</sup> in the amount of P73,926.00.

Briefly, this case involves a maintenance electrician, an employee of petitioner PCD, who was dismissed from his employment on December 15, 1988 on the alleged ground of abandonment and/or absence without leave, but as a result of a favorable decision in an illegal dismissal case he filed against his employer, he was later reinstated and included in the payroll from May 22, 1989 pending PDC's appeal with the NLRC, only to be dismissed again on July 24, 1989 on the alleged ground that his employer, PCD, sold its business interest to, PCPPI which, however, denied liability on the ground that it is a new entity separate and distinct from PCD.

It is the contention of petitioner PCD that the dismissal of private respondent on December 15, 1988 was premised on a just cause after affording him due process because as early as the first two years (1979-80) of his employment, he was twice reprimanded for being absent without permission; that when he was required to explain his absence from November 22, 1988 to December 15, 1988 without permission and to report for work, he failed to appear before the administrative committee on December 12, 1988 despite personal service of notice which he refused to sign; that despite receipt by his sister who refused to sign the notice resetting the hearing on December 14, 1988, private respondent failed to appear, thus compelling the committee to, terminate his employment effective December 15, 1988 based on the evidence presented.

While petitioner asserts that the second dismissal of private respondent on July 24, 1989 was due to closure of PCD as a result of business losses, it however argues that public respondent NLRC gravely abused its discretion when it assumed jurisdiction and ruled on the validity of the second dismissal. Petitioner maintains that its right to due process of law was violated considering that there was no formal complaint as regards the second dismissal and no hearing was ever conducted to enable petitioner. PCD to present evidence on an issue which is separate and distinct from the first dismissal. Corollary to the argument on violation of its right to due process of law, petitioner PCD further contends that Pepsi Cola Products Philippines, Inc. (PCPPI), a corporation separate and distinct from PCDPI, should not be held liable for reinstatement with backwages of private respondent since it is not a party to this case.

The Court finds that private respondent was accorded due process before he was dismissed on December 15, 1988. The Court has consistently held that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard.<sup>[14]</sup> In the instant case, prior to his dismissal on December 15, 1988, private respondent was twice notified about the hearing. to be conducted by the administrative committee created to look into his case, but he refused to sign the notice and to attend the scheduled hearings on December 12, 1988 which was, reset to December 14, 1988. In *Stronghold Insurance Co., Inc. vs. Court of Appeals*, 15 the Court states, thus:

“The circumstance that the chance to be heard is not availed of does not disparage that opportunity and deprive the person of the right to due process. Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It should be obvious that if he opts to be silent where he has a right to speak, he cannot later be heard to complain that he was unduly silenced.”

Besides, the requirements of due process of law are deemed to have been satisfied where the parties, as in the instant case, are given the opportunity to submit position papers.<sup>[16]</sup>

While the dismissal of private respondent by petitioner was not tainted with violation of his right to due process of law, the Court, however, finds the penalty of dismissal from his employment too harsh and disproportionate for an infraction which, under the attendant circumstances, appears to be excusable. Private respondent, at this stage, had just recovered from the complained stomach ache which, in accordance with the company physician's diagnosis, required him to rest for 25 days.

As found by the Labor Arbiter, private respondent's absences in 1979 and 1980 for which he was twice reprimanded were incurred during his employment with the Pepsi Cola Bottling Company of the Philippines, Inc. (PCBCPI), petitioner's predecessor-in-interest. When the business interests of PCBCPI were taken over by petitioner PCD in 1481 and private respondent was absorbed as regular employee by the PCD, his previous absences were thus obliterated

from his records by such a change of employment status from contractual to regular. Clearly then, his dismissal on December 15, 1988 was principally predicated on his absences from work from November 22, 1988 to December 15, 1988. The Labor Arbiter meticulously examined the circumstances regarding private respondent's absence from work for 23 days, thus:

“On 21 November 1988 while he was working, he suffered stomach ache and for that matter he was accompanied by his supervisor, Pedrito Pilapil, to the company nurse and he was given needed medicines. Later, upon the agreement of the complainant and his immediate supervisor the former went on one (1) day vacation leave, and left the respondent plant and he immediately proceeded to their company physician, Teodoro BP. Vesagas, MD, FICS, FPCS, at M.J. Santos Hospital, Butuan City for further treatment and the herein complainant was advised to rest for 25 days per medical certificate issued by company's physician (Annex C-Complainant's Position Paper). Thereafter, he went to Magallanes, Agusan del Norte to take the necessary rest. Later on 9 December 1988 he collected his 13th month pay as he went also for check-up from the company's physician and asked for a medical certificate. On that day, he met his immediate supervisor and informed (him about) his illness and presented his medical certificate.

However, on 16 December 1988 while complainant reported back for work, he was informed by his supervisor that his services was (sic) already terminated effective 15 December 1988 for alleged absence without leave (AWOL) as there was already an administrative investigation conducted by management for the said AWOL.”

These facts which were alleged in private respondent's position paper, were not controverted by petitioner correctly observed by the Labor Arbiter, private respondent should have been given a warning first, then a reprimand or even suspension but certainly, not outright dismissal from employment. While public respondent NLRC found that private respondent committed a minor procedural infraction when he went on sick leave from November 22, 1988 to December 16, 1988 without officially informing management or his immediate

supervisor, the same cannot reasonably justify the penalty of outright dismissal from his employment, considering that he filed a one-day vacation leave on the first day of his sickness, not foreseeing that the company's physician would later advise him to rest for 25 days. On December 9, 1988 he presented his medical certificate to his immediate supervisor. In view of private respondent's fault in this regard, public respondent NLRC correctly ruled that he is not entitled to backwages from December 15, 1988 when he was first dismissed from the service, to May 21, 1989, a day before he was reinstated in the payroll of petitioner PCD. The Court is in accord with said NLRC ruling.

The Court cannot, however, sustain petitioner PCD's subsequent act of dismissing private respondent for the second time by removing his name from the payroll of July 25, 1989 after reinstating him 63 days earlier, or on May 22, 1989 on the ground that it has already sold its business interests to Pepsi Cola Products Philippines, Inc. (PCPPI). The contention that the second dismissal of private respondent presents an issue separate and distinct from the issue of the earlier dismissal on December 15, 1988 is nothing but an attempt of PCD to evade liability for illegally dismissing private respondent and to shield the purchasing corporation, PCPPI, from the said liability. It must be noted that the issue of whether or not Pepsi Cola Products Philippines, Inc. (PCPPI) is liable for the illegal acts of its predecessor-in-interest, PCD, as in the instant case, has already been settled in the case of Pepsi Cola Bottling Co. vs. NLRC.<sup>[17]</sup> In said case, the purchasing corporation of claimed that it is a corporation separate and distinct from Pepsi Cola Bottling Company (PBC) or Pepsi Cola Distributors, Inc. (PCD).; hence, it is not the proper party to which the writ of case filed against its predecessor-in-interest, PBC should be served; and that reinstatement is no longer possible since PCD closed down its business on July 24, 1989 and the new franchise holder, PCPPI, is a new entity. In rejecting the aforementioned arguments of PCDPI, the Court ruled:

“Pepsi-Cola Distributors of the Philippines may have ceased business operations and Pepsi-Cola Products Philippines, Inc. may be a new company but it does not necessarily follow that no one may now be held liable for illegal acts committed by the earlier firm. The complaint was filed when PCD was still in

existence. Pepsi-Cola never stopped doing business in the Philippines. The same soft drinks products sold in 1988 when the complaint was initiated continue to be sold now. The sale of products, purchases of materials, payment of obligations, and other business acts did not stop at the time PCD bowed out and PCPPI came into being. There is no evidence presented showing that PCPPI, as the new entity or purchasing company is free from any liabilities incurred by the former corporation.”<sup>[18]</sup>

There is thus no grave abuse of discretion on the part of public respondent NLRC when it ordered PCD and PCPPI to reinstate private respondent to his former position without loss of seniority rights, with full backwages from July 25, 1989 to his actual reinstatement, and to pay him 10% of the monetary award as attorney’s fees. However if reinstatement is no longer possible considering the supervening facts and circumstances of the case, coupled with the strained relationship between petitioner and private respondent as a result of their adversarial positions against each other in this case, more particularly petitioners PCD and PCPPI which consistently refused to reinstate him, private respondent should be awarded separation pay as an alternative to reinstatement.

**WHEREFORE**, in view of the foregoing, the Resolution of the National Labor Relations Commission (Fifth Division), Cagayan de Oro City 1991 is hereby **AFFIRMED**. The Temporary Restraining Order issued on January 20, 1992 is **LIFTED**. Costs against petitioner.

**SO ORDERED.**

**Feliciano, Melo and Vitug, JJ., concur.**

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[1] Annex “A,” Petition, Rollo, pp. 20-33.

[2] Annex “B,” Petition, Rollo, p. 34.

[3] The Resolution was penned by Commissioner Oscar N. Abella and concurred in by Commissioner Leon G. Gonzaga, Jr. Presiding Commissioner Musib M. Buat filed a separate concurring and dissenting opinion, stating that the order of reinstatement with backwages had no factual and legal basis, stressing that PCPPI, not being a party to the case, would be denied its right to due process.

- [4] Annex “C,” Petition, “Rollo, p. 35.
- [5] Annex “F” Petition, Rollo, p. 103-111.
- [6] Reynaldo B. Alfante (NLRC Case No. SRAB-10-02-00022-89) and Sheldon Calonzo (NLRC Case No. SRAB-10-02-OC23-89).
- [7] Annex “H,” Petition, Rollo, pp. 122-125.
- [8] Annex “I,” Petition, Rollo, p. 125-126.
- [9] Rollo, pp. 20, 30.
- [10] Rollo, p. 199.
- [11] Rollo, pp. 200-205.
- [12] Rollo, pp. 206-208
- [13] Rollo, pp. 259-260.
- [14] GT. Printers vs. NLRC, G. R. No. 100749, April 24, 1992, 208 SCRA 321.
- [15] G.R. No. 88050, January 30, 1992, 205 SCRA 605, 610.
- [16] Lawrence vs. NLRC, G.R. No. 87421, February 4, 1992, 205 SCRA 737, citing Odin Security Agency vs. De la Serna, G.R. 87439, February 21, 1990, 182 SCRA 472, 479.
- [17] G.R. No. 101900, June 23, 1992, 210 SCRA 277.
- [18] Ibid., at pp. 287-288.