**SUPREME COURT**
**SECOND DIVISION**

**ISMAEL V. SANTOS, ALFREDO G. ARCE and HILARIO M. PASTRANA,**
***Petitioners*,**

***-versus-***

**G.R. No. 141947**
**July 5, 2001**

**COURT OF APPEALS, PEPSI COLA PRODUCTS PHILS., INC., LUIS P. LORENZO, JR. and FREDERICK DAEL,**
***Respondents*.**
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## D E C I S I O N

**BELLOSILLO, *J.*:**

This Petition for Review seeks to annul the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 54853 dated 28 September 1999 which summarily dismissed petitioners' special civil action for certiorari for failing to execute properly the required verification and certification against forum shopping and to specify the material dates from which the timeliness of the petition may be determined.

Private respondent Pepsi Cola Products Phils., Inc. (PEPSI) is a domestic corporation engaged in the production, distribution and sale of beverages. At the time of their termination, petitioners Ismael

V. Santos and Alfredo G, Arce were employed by PEPSI as Complimentary Distribution Specialists (CDS) with a monthly salary of P7,500.00 and P10,000.00, respectively, while Hilario M. Pastrana was employed as Route Manager with a monthly salary of P7,500.00.

In a letter dated 26 December 1994,[2] PEPSI informed its employees that due to poor performance of its Metro Manila Sales Operations it would restructure and streamline certain physical and sales distribution systems to improve its warehousing efficiency. Certain positions, including that of petitioners, were declared redundant and abolished. Consequently, employees with affected positions were terminated.

On 15 January 1995 petitioners left their respective positions, accepted their separation pays and executed the corresponding releases and quitclaims. However, before the end of the year, petitioners learned that PEPSI created new positions called Account Development Managers (ADM) with substantially the same duties and responsibilities as the CDS. Aggrieved, on 15 April 1996, petitioners filed a complaint with the Labor Arbiter for illegal dismissal with a prayer for reinstatement, back wages, moral and exemplary damages and attorney's fees.

In their complaint, petitioners alleged that the creation of the new positions belied PEPSI's claim of redundancy. They further alleged that the qualifications for both the CDS and ADM positions were similar and that the employees hired for the latter positions were even less qualified than they were.[3] Likewise taking note of possible procedural errors, they claimed that while they were notified of their termination, PEPSI had not shown that the Department of Labor and Employment (DOLE) was also notified as mandated by Art. 283 of the Labor Code which states —

> ARTICLE 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

> worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. (Emphasis supplied).

PEPSI, on the other hand, maintained that termination due to redundancy was a management prerogative the wisdom and soundness of which were beyond the discretionary review of the courts. Thus, it had the right to manage its affairs and decide which position was no longer needed for its operations. It further maintained that the redundancy program was made in good faith and was not implemented to purposely force certain employees out of their employment. It also claimed that a close perusal of the job descriptions of both the CDS and ADM positions would show that the two (2) were very different in terms of the nature of their functions, areas of concerns, responsibilities and qualifications.[4]

On 18 June 1997, Labor Arbiter Romulus S. Protacio dismissed the complaint for lack of merit. Furthermore, he ruled that the one (1)-month written notice prior to termination required by Art. 283 was complied with.

On appeal, the National Labor Relations Commission (NLRC) affirmed the ruling of the Labor Arbiter. However, in its Decision[5] dated 5 March 1999 it found that the Establishment Termination Report was submitted to the DOLE only on 5 April 1995 or two (2) months after the termination had already taken place[6] and thus effectively reversing the finding of the Labor Arbiter that the required one (1)-month notice prior to termination was complied with. Nonetheless, the NLRC dismissed the appeal, citing International Hardware, Inc. vs. NLRC,[7] which held —

> if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-saving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment. (Emphasis supplied).

On 10 September 1999, petitioners filed a special civil action for certiorari with the Court of Appeals.[8] The Court of Appeals in the assailed Resolution dismissed the petition outright for failure to comply with a number of requirements mandated by Sec. 3, Rule 46, in relation to Sec. 1, Rule 65, of the 1997 Rules of Civil Procedure. Respondent appellate court found that the verification and certification against forum shopping were executed merely by petitioners' counsel and not by petitioners. The petition also failed to specify the dates of receipt of the NLRC Decision as well as the filing of the motion for reconsideration.[9] Under the aforecited Rules, failure of petitioners to comply with any of the requirements was sufficient ground for the dismissal of the petition.

Petitioners now present the sole issue of whether there was failure to comply with the requirements of the Rules in filing their petition for certiorari.

We find no manifest error on the part of the Court of Appeals; hence, we affirm.

It is true that insofar as verification is concerned, we have held that there is substantial compliance if the same is executed by an attorney, it being presumed that facts alleged by him are true to his knowledge and belief.[10] However, the same does not apply as regards the requirement of a certification against forum shopping. Section 3, Rule 46, of the 1997 Rules of Civil Procedure explicitly requires —

> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

It is clear from the above-quoted provision that the certification must be made by petitioner himself and not by counsel since it is petitioner who is in the best position to know whether he has previously commenced any similar action involving the same issues in any other tribunal or agency.[11]

Petitioners argue that while it may be true that they are in the best position on know whether they have commenced an action or not, this information may be divulged to their attorney and there is nothing anomalous or bizarre about this disclosure.[12] They further maintain that they executed a Special Power of Attorney specifically to authorize their counsel to execute the certification on their behalf.

We are aware of our ruling in BA Savings Bank vs. Sia[13] that a certification against forum shopping may be signed by an authorized lawyers who has personal knowledge of the facts required to be disclosed in such document. However, BA Savings Bank must be distinguished from the case at bar because in the former, the complainant was a corporation, and hence, a juridical person. Therefore, that case made an exception to the general rule that the certification must be made by the petitioner himself since a corporation can only act through natural persons. In fact, physical actions, e.g., signing and delivery of documents, may be performed on behalf of the corporate entity only by specifically authorized individuals. In the instant case, petitioners are all natural persons and there is no showing of any reasonable cause to justify their failure to personally sign the certification.[14] It is noteworthy that PEPSI in its Comment stated that it was petitioners themselves who executed the verification and certification requirements in all their previous pleadings. Counsel for petitioners argues that as a matter of policy, a Special Power of Attorney is executed to promptly and effectively meet any contingency relative to the handling of a case. This argument only weakens their position since it is clear that at the outset no justifiable reason yet existed for counsel to substitute petitioners in signing the certification. In fact, in the case of natural persons, this policy serves no legal purpose. Convenience cannot be made the basis for a circumvention of the Rules.

Neither are we convinced that the outright dismissal of the petition would defeat the administration of justice. Petitioners argue that

there are very important issues such as their livelihood and the well being and future of their families.[15] Every petition filed with a judicial tribunal is sure to affect, even tangentially, either the well being and future of petitioner himself or that of his family. Unfortunately, this does not warrant disregarding the Rules.

Moreover, the petition failed to indicate the material dates that would show the timeliness of the filing thereof with the Court of Appeals. There are three (3) essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or Resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial thereof was received. Petitioners failed to show the first and second dates, namely, the date of receipt of the impugned NLRC Decision as well as the date of filing of their motion for reconsideration. Petitioners counter by stating that in the body of the petition for certiorari filed in the Court of Appeals, it was explicitly stated that the NLRC Resolution dated 11 May 1999 was received by petitioners through counsel on 30 July 1999. They even reiterate this contention in their Reply.

The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed.[16] Therefore, that the petition for certiorari was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. It should not be assumed that in no event would the motion be filed later than fifteen (15) days. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.[17]

But even if these procedural lapses are dispensed with, the instant petition, on the merits, must still fail. Petitioners impute grave abuse

of discretion on the part of the NLRC for holding that the CDS and ADM positions were dissimilar, and for concluding that the redundancy program of PEPSI was undertaken in good faith and that the case of International Hardware vs. NLRC[18] was applicable.

This Court is not a trier of facts. The question of whether the duties and responsibilities of the CDS and ADM positions are similar is a question properly belonging to both the Labor Arbiter and the NLRC. In fact, the NLRC merely affirmed the finding of the Labor Arbiter on this point and further elaborated on the differences between the two (2). Thus it ruled —

> We cannot subscribe to the complainants' assertions that the positions have similar job descriptions. First, CDS report to a CD Manager, whereas the ADMs do not report to the CD Manager, leading us to believe that the organizational set-up of the sales department has been changed.

Second, CDS are field personnel who drive assigned vehicles and deliver stocks to "dealers" who, under the job description are those who sell and deliver the same stocks to smaller retail outlets in their assigned areas. The ADMs are not required to drive trucks and they do not physically deliver stocks to wholesale dealers. Instead, they help "dealers" market the stocks through retail. This conclusion is borne out by the fact (that) ADMs are tasked to ensure that the stocks are displayed in the best possible locations in the dealer's store, that they have more shelf space and that dealers participate in promotional activities in order to sell more products.

It is clear to us that while CDS are required to physically deliver, sell and collect payments for softdrinks, they do so not primarily to retail outlets but to wholesale dealers who have retail customers of their own. They are not required to assist the dealers they deliver to in selling the softdrinks more effectively whereas ADMs sell softdrinks to big retail outlets (groceries and malls who have shelves and display cases and who require coolers and other paraphernalia). They do not only sell but they have to effectively market the products or put them in the best and most advantageous light so that the dealers who sell the softdrinks retails can sell more softdrinks. The main thrust of the ADMs job is to ensure that the softdrinks products ordered from

them are marketed in a certain manner ("Pepsi-Way standards") in keeping with the promotional thrust of the company.

Factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect, even finality, and will not be disturbed for as long as such findings are supported by substantial evidence,[19] defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[20] In this case, there is no doubt that the findings of the NLRC are supported by substantial evidence. The job descriptions submitted by PEPSI are replete with information and is an adequate basis to compare and contrast the two (2) positions.

Therefore, the two (2) positions being different, it follows that the redundancy program instituted by PEPSI was undertaken in good faith. Petitioners have not established that the title Account Development Manager was created in order to maliciously terminate their employment. Nor have they shown that PEPSI had any ill motive against them. It is therefore apparent that the restructuring and streamlining of PEPSI's distribution and sales systems were an honest effort to make the company more efficient.

Redundancy exists when the service capability of the work force is in excess of what is reasonably needed to meet the demands of the enterprise.[21] A redundant position is one rendered superfluous by a number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service previously undertaken by the business.[22]

Based on the fact that PEPSI's Metro Manila Sales Operations were not meeting its sales targets,[23] and on the fact that new positions were subsequently created, it is evident that PEPSI wanted to restructure its organization in order to include more complex positions that would either absorb or render completely unnecessary the positions it had previously declared redundant. The soundness of this business judgment of PEPSI has been assailed by petitioners, arguing that it is more logical to implement new procedures in physical distribution, sales quotas, and other policies aimed at

improving the performance of the division rather than to reduce the number of employees and create new positions.[24]

This argument cannot be accepted. While it is true that management may not, under the guise of invoking its prerogative, ease out employees and defeat their constitutional right to security of tenure, the same must be respected if clearly undertaken in good faith and if no arbitrary or malicious action is shown.

Similarly, in Willshire File Co., Inc. vs. NLRC[25] petitioner company effected some changes in its organization by abolishing the position of Sales Manager and simply adding the duties previously discharged by it to the duties of the General Manager to whom the Sales Manager used to report. In that case, we held that the characterization of private respondent's services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of petitioner company. The wisdom or soundness of such characterization or decision is not subject to discretionary review on the part of the Labor Arbiter or of the NLRC so long as no violation of law or arbitrary and malicious action is indicated.

In the case at bar, no such violation or arbitrary action was established by petitioners. The subject matter being well beyond the discretionary review allowed by law, it behooves this Court to steer clear of the realm properly belonging to the business experts.

We agree with the NLRC in its application of International Hardware vs. NLRC that the mandated one (1) month notice prior to termination given to the worker and the DOLE is rendered unnecessary by the consent of the worker himself. Petitioners assail the voluntariness of their consent by stating that had they known of PEPSI's bad faith they would not have agreed to their termination, nor would they have signed the corresponding releases and quitclaims.[26] Having established private respondent's good faith in undertaking the assailed redundancy program, there is no need to rule on this contention.

Finally, in a last ditch effort to plead their case, petitioners would want us to believe that their termination was illegal since PEPSI did

not employ fair and reasonable criteria in implementing its redundancy program. This issue was not raised before the Labor Arbiter nor with the NLRC. As it would be offensive to the basic rules of fair play and justice to allow a party to raise a question which has not been passed upon by both administrative tribunals,[27] it is now too late to entertain it.

**WHEREFORE**, in the absence of any reversible error on the part of the Court of Appeals, the petition is **DENIED**. The assailed Resolution dated 28 September 1999 which summarily dismissed petitioners' special civil action for certiorari for non-compliance with Sec. 3, Rule 46, in relation to Sec. 1, Rule 65, of the 1997 Rules of Civil Procedure is **AFFIRMED**.

**SO ORDERED.**

**Mendoza, Buena and De Leon, Jr., *JJ.*, concur.**

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[1] Penned by Associate Justice Ramon A. Barcelona, concurred in by Associate Justices Demetrio G. Demetria and Mercedes Gozo-Dadole (Fourteenth Division).
[2] Rollo, p. 76.
[3] Id., pp. 26-27.
[4] Id., p. 27.
[5] Penned by Commissioner Victoriano R. Calaycay, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.
[6] Rollo, p. 42.
[7] G.R. No. 80770, 10 August 1989, 176 SCRA 256.
[8] In light of the ruling in St. Martin Funeral Homes vs. NLRC, G.R. No. 130866, 16 September 1998, 295 SCRA 494.
[9] Rollo, p. 22.
[10] See Guerra Enterprises Company, Inc. vs. CFI of Lanao del Sur, No. L-28310, 17 April 1970, 32 SCRA 314, citing Arambulo vs. Perez, 78 Phil 387 (1947) and Cajefe vs. Fernandez, 109 Phil 743 (1960).
[11] Far Eastern Shipping Company vs. Court of Appeals and Philippine Ports Authority, G.R. No. 130068, 1 October 1998, 297 SCRA 30.
[12] Rollo, p. 105.
[13] G.R. No. 131214, 27 January 2000.
[14] It was held in Valentin vs. Court of Appeals, G.R. No. 127393, 4 December 1998, 209 708 that: "The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. To merit the Court's consideration, petitioners here must show

reasonable cause for failure to personally sign the certification. The petitioners must convince the Court that the outright dismissal of the petition would defeat the administration of justice."

[15] Rollo, p. 9.

[16] Sec. 4, Rule 65, 1997 Rules of Civil Procedure. Under the amendment introduced by A.M. No. 00-2-03-SC which took effect 1 September 2000, or after the factual milieu of this case occurred, the sixty (60) day period shall be counted from notice of denial of a motion for reconsideration. Note that the instant case was initiated on 15 April 1996 with petitioners filing a complaint with the Labor Arbiter for illegal dismissal with prayer for reinstatement, backwages, moral and exemplary damages and attorney's fees (see Decision, p. 2, 3rd par.).

[17] Valentin Ortiz vs. Court of Appeals, G.R. No. 127393, 4 December 1998, 209 SCRA 708.

[18] Made unnecessary the one (1)-month notice to the worker and the DOLE prior to termination required by Art. 283 of the Labor Code.

[19] See Triple Eight Integrated Services, Inc. vs. NLRC, G.R. No. 129584, 3 December 1998, 299 SCRA 608; Prime Marine Services, Inc. vs. NLRC, G.R. No. 97945, 8 October 1998, 297 SCRA 394; Mercidar Fishing Corporation vs. NLRC, G.R. No. 112574, 8 October 1998, 297 SCRA 440; and, Habana vs. NLRC, G.R. No. 121486, 16 September 1998, 288 SCRA 537.

[20] Government Service Insurance System vs. Court of Appeals, G.R. No. 128523, 25 September 1998, 296 SCRA 514.

[21] Asian Alcohol Corporation vs. NLRC, G.R. No. 131108, 25 March 1999, 305 SCRA 416.

[22] Willshire File Co., Inc. vs. NLRC, G.R. No. 82249, 7 February 1991, 193 SCRA 665.

[23] Rollo, p. 76.

[24] Id., p. 13.

[25] G.R. No. 82249, 7 February 1991, 193 SCRA 665.

[26] Rollo, p. 10.

[27] Labor Congress of the Philippines vs. NLRC, G.R. No. 116839, 13 July 1998, 292 SCRA 469.