

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**CBL TRANSIT, INC.,
*Petitioner,***

-versus-

**G.R. No. 128425
March 11, 2004**

**NATIONAL LABOR RELATIONS
COMMISSION, HON. LABOR ARBITER
MANUEL R. CADAY, BERNARDO
BERNALES, ALESEO CURADA,
WILLIAM BORROMEO, AUGUSTO
SORILLA, TERESITA CURADA,
GERONIMO ENCIO, ROBERTO
MERLIN, PACITA ESPINOSA,
VENERACION TEANO, JOSE
BARCEBAL, TERESITA GAN &
MARGARITA MARQUEZ,**

Respondents.

X-----X

DECISION

CORONA, J.:

Petitioner CBL Transit, Inc. comes to us through the instant Petition for Certiorari,^[1] assailing the resolutions^[2] dated August 22, 1996,^[3] and February 27, 1997^[4] of the National Labor Relations Commission

(NLRC).^[5] The assailed resolution dated August 22, 1996 affirmed the order dated February 19, 1996 of labor arbiter Manuel Caday, mandating the petitioner to deposit with the NLRC's cashier the amount of ₱782,107.30 representing private respondents' separation pay as computed by Ricardo Atienza, acting chief of the Research and Information Unit, NLRC. On the other hand, the resolution dated February 27, 1997 denied petitioner's subsequent motion for reconsideration.

The pertinent facts follow.

Private respondents were regular employees hired as drivers and conductors/conductresses by petitioner CBL Transit, Inc./California Bus Line, Inc. However, despite their regular employment status, they were not given work assignments beginning December 1990. They also averred that CBL Transit, Inc. and California Bus Lines, Inc. were, in reality, a single enterprise owned and operated by one and the same family. A complaint for illegal dismissal was filed by herein respondents at the Department of Labor and Employment (DOLE), NLRC, National Capital Region.

On the other hand, petitioner CBL Transit, Inc. categorically denied the allegations of the private respondents. It claimed that the termination of private respondents was a consequence of its closure of operations due to bankruptcy.

In his decision dated December 9, 1991, labor arbiter Cresencio R. Iniego found petitioner guilty of illegal dismissal. He opined that the failure of petitioner to give work assignments to private respondents was only a ploy to terminate their services because the majority of them were active union members. Consequently, petitioner and its directors/stockholders were ordered to pay private respondents separation pay equivalent to one-month salary for every year of service.

On appeal, the NLRC upheld the decision of the labor arbiter. It rejected petitioner's claim that it was forced to close shop due to bankruptcy. Neither did it give credence to the contention that CBL Transit, Inc. was an entity different from California Bus Lines, Inc. However, it discharged petitioner's directors/stockholders from

liability, making petitioner CBL Transit, Inc./California Bus Lines, Inc. solely liable for the award of separation pay in favor of private respondents.

Petitioner filed a petition for *certiorari* before this Court. However, in a resolution dated September 12, 1994, we dismissed the petition and ordered the reinstatement of private respondents with backwages up to the time of their actual reinstatement, or separation pay in the amount of one month for every year of service in case reinstatement was not feasible.

To enforce the Court's resolution, labor arbiter Iniego directed Atienza of the Research and Information Unit to call for a conference with the parties in order to determine the individual money claims of private respondents.

Subsequently, Mr. Atienza submitted a report dated May 30, 1995 consisting of the computation of private respondents' respective monetary awards.^[6] Petitioner filed its comment and moved to be furnished with the formula and figures which served as basis for the computation of the award.^[7] On October 4, 1995, a new report was prepared by Atienza adjusting the backwages and separation pay due the private respondents in the total amount of P782,107.30. Since the actual payrolls were not available, the computation, per agreement of both parties, was based on the monthly average earnings of the individual private respondents appearing on their Social Security System (SSS) forms for the years 1988, 1989 and 1990. The total award was broken down as follows:

1. Bernardo Bernales	P 88,877.55
2. Jose Barcebal	60,657.15
3. William Borromeo	66,392.80
4. Alicito Curada	118,234.70
5. Teresita Curada	60,894.65
6. Geronimo Encio	76,062.40
7. Teresita Gan	54,315.00
8. Roberto Merlin	114,286.10
9. Augusto Sorilla	85,658.10
10. Veneracion Teano	<u>56,728.85</u>
Total	P782,107.30

Unconvinced, petitioner again filed its comment, this time submitting its own formula and pertinent figures.

To reconcile the differences in the computations, conferences were held on January 18, 1996 and February 1, 1996. While both parties agreed to use the SSS contributions of each private respondent as basis for the computations, their differences lay in the method used in arriving at the correct average monthly contributions of said private respondents.

As the matter remained unsettled, both parties agreed to meet again on February 2, 1996. This time, however, petitioner's accountant failed to appear and instead filed a manifestation and motion assailing the computation and authority of Ricardo Atienza.

In an order dated February 19, 1996, labor arbiter Manuel R. Caday affirmed the authority of Atienza and sustained his assailed computation:

In this said pleading filed by respondent, it alleged that the computation made by the Acting Chief, Research and Information Unit of this Office, was not based on what was agreed upon by the parties, and is favorable to the complainants. The truth of the matter is that, during the conference set on January 18, 1996, both the company accountant and the accountant of this office both based their computation on the agreed SSS contribution, but the discrepancy arising therefrom lies in the method used in arriving at the correct average. This is the reason why another conference for the third time was set to thresh out the differences or to finalize the computation, but respondent's accountant failed to appear despite being notified in open court. Let it be remembered that the Acting Chief, Research and Information Unit is the authorized government accountant, which is a neutral third party, and cannot extend favor to anyone. The Acting Chief, Research and Information Unit computed the award thru the Order issued to him by Hon. Labor Arbiter Cresencio Iniego and finding his computation to be in order, the same is hereby approved.

WHEREFORE, premises considered, respondent is hereby ordered to deposit the amount of ₱782,107.30, as computed by the Acting Chief Research and Information Unit of this Office, to the cashier of this office within ten (10) days from receipt hereof, otherwise upon failure to comply with the same, the necessary Writ of Execution will be issued.

Petitioner appealed to the NLRC but the appeal was dismissed for lack of merit. The motion for reconsideration was likewise denied.

Hence, this petition.

Petitioner contends that the NLRC gravely abused its discretion when it altered the final decision of this Court by changing “CBL Transit Inc.” to “CBL Transit, Inc./California Bus Lines, Inc.” Petitioner insists that California Bus Lines, Inc. is a different corporation and was never a party in this case.

We note that the instant petition is a clear attempt by petitioner to re-litigate issues already passed upon and definitively resolved by this Court in G.R. No. 11294. The following excerpt of our Resolution dated September 12, 1994^[8] needs no further elaboration:

Before this Court, petitioner claims that the NLRC committed grave abuse of discretion in: (1) holding that private respondents are entitled to separation pay; (ii) disregarding the evidence adduced by petitioner to show that it had ceased operations because of bankruptcy; and (iii) finding that CBL Transit, Inc., is the same as California Bus Lines, Inc.

Deliberating on the instant Petition for Certiorari and the separate comments filed by private respondents and public respondent through the Solicitor General, the Court considers that petitioner has failed to show any grave abuse of discretion on the part of respondent NLRC in rendering the questioned decision of 9 December 1991 and its resolution of 29 October 1993.

There is no dispute that the cessation of operations of an

establishment due to serious business losses is a just cause for terminating the services of employees. In such a situation, it would be unfair, and useless, to hold an employer who is bankrupt, liable for separation pay. However, the law is clear that the burden of proving that the termination was for a valid or authorized cause rests on the employer (Article 277, Labor Code). In other words, the fact of serious business reverses or financial losses and the consequent closure of the establishment must be sufficiently shown by the employer (Balasbas vs. National Labor Relations Commission, 212 SCRA 803 [1992]).

The NLRC held that nothing in the records of the case supported petitioner's allegation that it had gone bankrupt and ceased to operate since 31 January 1991.

We agree that petitioner has failed to discharge the burden of proof resting on it. Simply asserting a state of insolvency is not enough to show serious financial losses. The petitioners did not even bother to give notice to the DOLE and to its employees that it was closing its business due to serious financial reverses as required by Article 283 of the Labor Code.

We went on to state that:

The assertion of petitioner that it is distinct from California Bus Lines Transit, must be disregarded. This Court is not a trier of facts. Besides, the claim that CBL Transit, Incorporated and California Bus Lines, Inc., are not one and the same, is of no moment; either way, the conclusion that petitioner is guilty of illegal dismissal for the termination of private respondents from employment without cause, would still stand. (underscoring ours)

Equally devoid of merit is the petitioner's contention that the NLRC acted with grave abuse of discretion when it sustained the labor arbiter's order dated February 19, 1996 awarding backwages and separation pay of ₱782,107.30 to private respondents. It should be pointed out that, *due to the unavailability of the actual payrolls, the parties themselves agreed on the basis for the computation of the respective award of backwages and separation pay — the monthly*

average earnings of the individual private respondents appearing on their SSS forms for the years 1988, 1989, and 1990. The only difference was in the manner of computation thereof. This issue is definitely a question of fact, the determination of which is the statutory function of the NLRC. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.^[9] We find no basis for deviating from the aforestated doctrine without any clear showing that the findings of the labor arbiter, as affirmed by public respondent NLRC, are bereft of sufficient substantiation. In justifying the validity of the computation made by the Research and Information Unit, the labor arbiter ruled that:

The difference between the computation submitted by the Research and Information Unit of this Office and the one submitted by respondent lies on the method or formula used in arriving at the correct average monthly earnings of each individual complainant. The respondent, to arrive at the average monthly earnings, divided the total earnings of each individual complainant for the three (3) years period, including the months that the complainants did render services. The method used by the respondent (petitioner in this case) is not correct. The number of months by which the complainants did render services, or were on leave of absence would not be included in the divisor to arrive at the correct average monthly earnings of each individual complainant. If we were to follow the method used by respondent, it would be unfair to the complainants who did not render services or on leave of absence, because their average monthly earnings become smaller and therefore their computed backwages and separation are understated. During the scheduled conference on February 1, 1996, parties agreed to set the conference on the following day, i.e. February 2, 1996 in order to thresh out the differences or to finalize the computation. But despite due notice, respondent failed to appear and instead filed "Ex Parte Manifestation and Motion" dated February 9, 1996.

In its resolution dated August 22, 1996,^[10] the NLRC, through Presiding Commissioner Raul T. Aquino, explained that, as the government's accountant in labor cases, its Research and Information Unit was responsible for computing monetary awards in accordance with official guidelines.

Petitioner submitted itself to the jurisdiction of the Research and Information Unit of the NLRC. Through its authorized accountant, petitioner agreed that the computation of backwages and separation pay should be based on the monthly average earnings of the individual private respondents appearing on their SSS forms for 1988-1990, considering that the payrolls were no longer available. It cannot now be allowed to question the latter's jurisdiction. This Court has time and again frowned on the practice of a party's submitting his case for decision and then accepting the verdict only if favorable, while attacking it for lack of jurisdiction if it is not. The principle of estoppel applies here. The petitioner is barred from raising the question of jurisdiction for the first time in this petition before us when it failed to invoke it in the early stages of the proceedings. (*Prudential Bank and Trust Company vs. Reyes*, 352 SCRA 316 [2001]).

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED** for lack of merit and the resolutions of the public respondent NLRC dated August 22, 1996 and February 27, 1997 are **AFFIRMED IN TOTO**. No costs.

SO ORDERED.

Vitug, J., (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Under Rule 65 of the 1997 Revised Rules of Court.

[2] Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Rogelio I. Rayala.

[3] Rollo, pp. 27-35.

[4] Rollo, pp. 43-50.

[5] Second Division.

[6] Original Records, pp. 383-384.

[7] Original Records, pp. 389-391.

[8] Rollo, pp. 421-423.

[9] Progressive Development Corp. vs. NLRC, 344 SCRA 512, 516 [2000].

[10] Rollo, pp. 31.

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