

## THIRD DIVISION

[ G.R. No. 117945, November 13, 1996 ]

**NILO B. CALIGUIA, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, PEPSI-COLA DISTRIBUTORS OF THE  
PHILS., INC., AND PEPSI-COLA PRODUCTS PHILS., INC.,  
RESPONDENTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

His motion for reconsideration having been denied, petitioner Nilo B. Caliguia filed this petition for *certiorari* under Rule 65 of the Rules of Court to annul the decision of 31 August 1994 of the National Labor Relations Commission (NLRC) in NLRC NCR 003983-92<sup>[1]</sup> which modified the decision of 25 June 1992 of the Labor Arbiter in an illegal dismissal case, NLRC NCR No. 00-07-02863-88,<sup>[2]</sup> filed against private respondents Pepsi-Cola Distributors of the Philippines, Inc. (PCD) and Pepsi-Cola Products Philippines, Inc. (PCPPI).

The original complaint<sup>[3]</sup> in NLRC NCR No. 00-07-2863-88 was filed by petitioner on 12 July 1988 against herein private respondent PCD. Hearings thereon were thereafter had.

On 14 September 1989, the petitioner filed an Urgent Manifestation and Motion<sup>[4]</sup> and a Motion to Admit Amended Complaint.<sup>[5]</sup> In the former, he alleged that during the pendency of the case PCD "surrendered and transferred all its assets to a new group called Pepsi-Cola Products Philippines, Inc. [PCPPI], effective July 24, 1989," and that as "part of the take-over of the assets, business and operations" of PCD by PCPPI, all the employees of (PCD) were absorbed by (PCPPI) and were paid" (a) separation pay; (b) unused sick leave; (c) accrued sick leave; (d) unused vacation leave; (e) accumulated sick leave; (f) accrued vacation leave; and (g) pro-rated 13th month pay. Thus, in view of this supervening event, the petitioner asserted that it became imperative that PCPPI be impleaded as an additional party respondent as successor-in-interest of PCD. In the motion to admit amended complaint, which was submitted as the Amended Complaint, the petitioner impleaded PCPPI in the caption as an additional party respondent, reiterated the allegations in his urgent manifestation and motion, and manifested that he reproduced therein as integral part thereof all other allegations in the complaint.

Thereafter, counsel for PCD also appeared for PCPPI.

On 25 June 1992, Labor Arbiter Ramon Valentin C. Reyes handed down a decision<sup>[6]</sup> in favor of the petitioner and declaring his dismissal by PCD illegal; ordering the respondents (PCD and PCPPI) to immediately reinstate the petitioner to his former position without loss of seniority rights and other benefits granted him by law or

under the existing collective bargaining agreement (CBA) and to pay the petitioner back wages for three years (from the date of dismissal to 16 May 1991) in the total amount of P119,516.32 and attorney's fees in a sum equal to 10% of the total award, or P11,951.63. No award for actual, moral, and exemplary damages was made for "lack of factual and legal basis."

The decision summarized the factual antecedents as follows:

Nilo Caliguia alleged in his amended complaint that he was employed by respondents since July 1981 up to and until June 30, 1988. Sometime on February 3, 1988, complainant Caliguia prepared and submitted [a] written report relative to the questionable items brought out by a certain Timoteo F. Talaue, as Sales Engineer of Raymac Enterprises. On May 18, 1988, said Engineer executed a statement implicating the complainant as to the alleged pilferage of electrical parts. On May 25, 1988, he received a request for appearance at the security office of respondents to testify in an administrative investigation to be conducted by a certain Ruben P. Agno. On May 31, 1988, he was placed under preventive suspension. On June 30, 1988, he was terminated from the service.

Complainant, Caliguia charge[d] the respondent for [sic] illegal dismissal and damages.

Respondents' defense could be summarized thru its notice of termination. Thus, as against complainant Caliguia:

The security [of] tenure of your employment with PCD-Muntinlupa Plant was breached by your being implicated in the pilferage of electrical parts. On account of your position as company guard you have facilitated the commission of the offense, act [sic] of which, was committed with abuse of confidence or obvious ungratefulness.

During the hearing of the case, you were represented by counsel of your choice, and was furnished with all pertinent papers and/or documents relevant to the case.

PREMISES CONSIDERED, you are hereby terminated from service with prejudice, effective at the close of business hours, 30 June 1988.

As the principal arguments of all parties revolve on the illegal dismissal charge, the issues are therefore narrowed down to the compliance of basic requirements before an employee may be legally terminated. Did respondents in terminating complainant satisfy both the [sic] substantive and procedural due process?

In ruling for the petitioner, the Labor Arbiter found that while the petitioner was terminated on 30 June 1988, the administrative investigation was supposed to be continued on 1 July 1988 at 2:00 p.m., thus resulting in a violation of procedural due process. As regards substantive due process, the Labor Arbiter held that an examination of the evidence revealed that the inventory report dated 17 January 1987 reflected the loss of a magnetic contractor, not the circuit breaker allegedly pilfered; the respondents' lone witness was unsure as to the exact date of the

alleged pilferage; it took more than a year for the respondents to denounce what it perceived was a transgression of its rules; and if indeed pilferage had been committed, it could only have been accomplished with the direct participation of Talaue, thus the respondents' exoneration of Talaue showed bias. On the other hand, the petitioner received a commendation dated 12 August 1986 from Lt. Ruben P. Agno, the Security and Safety Manager.

On 4 August 1992, the petitioner filed a motion for the issuance of a writ of execution.<sup>[7]</sup>

On 14 August 1992, PCD filed a motion to reconsider<sup>[8]</sup> the decision. It questioned the order of reinstatement and the computation of back wages alleging that PCD had ceased to operate and do business after 25 July 1989 when PCPPI took over as the local franchisee of Pepsi-Cola International. Accordingly, reinstatement by PCD had become impossible and that the computation of back wages should only be up to 25 July 1989. The petitioner opposed,<sup>[9]</sup> contending that it was precisely PCPPI's take-over which prompted him to make proper demand upon and seek leave to file an amended complaint impleading the new owner, PCPPI, as a party respondent. More importantly, the Agreement between PCD and PCPPI, as evidenced by two letters from PCD and PCPPI to PCD employees,<sup>[10]</sup> was that PCPPI would absorb all the employees of PCD; in fact, PCD even paid their employees termination pay.

On 7 October 1992, PCD filed a motion to admit supersedeas bond.<sup>[11]</sup>

On 31 August 1994 the NLRC rendered a decision<sup>[12]</sup> in NLRC NCR CA 003983-92, affirming the finding of the Labor Arbiter of illegal dismissal and declaring that the petitioner was entitled to back wages and reinstatement. However, it agreed with PCD that it had ceased business operations on 25 July 1989, hence the petitioner's reinstatement was impossible and that back wages should only be from the date he was allegedly dismissed (30 June 1988 to 25 July 1989).

On 30 September 1994, the petitioner filed a motion to reconsider<sup>[13]</sup> the NLRC decision. He contended that there was no actual cessation of operations of PCD, but merely a transfer of ownership from PCD to PCPPI. In fact, all rank-and-file, staff, and managerial employees of PCD were absorbed and re-employed as regular employees by PCPPI and were likewise paid their corresponding separation benefits; thus, to allow PCPPI to treat the petitioner otherwise would constitute discrimination. Further, PCPPI was duly represented by counsel in the proceedings below.

In its resolution of 13 October 1994,<sup>[14]</sup> the NLRC denied the motion for reconsideration for lack of merit.

The petitioner then filed this special civil action for certiorari on 3 January 1995. He alleges that the NLRC erred in: (a) modifying the decision rendered by the Labor Arbiter despite the fact that the said decision is supported by substantial evidence, law, and jurisprudence; (b) not granting full back wages to the petitioner; (c) not granting full back wages from 25 June 1992 up to the present; and (d) in not adjudging the respondents liable for actual, moral, and exemplary damages. In arguing for his reinstatement by PCPPI and payment of separation benefits by PCD,

the petitioner contests the NLRC's finding that PCD ceased business operations on 25 July 1989 and reiterates his earlier arguments. Further, the petitioner asserts his right to full back wages (not merely up to 25 July 1989) and then takes the NLRC to task for having failed to act upon his motion for execution pending appeal. Finally, he contends that the NLRC erred in not adjudging PCD liable for actual, moral, and exemplary damages.

In their comment, respondents PCD and PCPPI allege that they are two different entities with each having been separately incorporated. PCD's corporate existence was only up to 25 July 1989, the date of its dissolution, which was also the date when PCPPI took over as the bottlers of the Pepsi products, a fact that, they assert, the petitioner admitted by his claim that the other employees of PCD were retired by PCPPI. They further assert that the "petitioner had never presented any evidence that all the former employees of PCD were hired by PCPPI (which is erroneous). All he did was to make our allegation to this effect to which proof was never presented"; and that the decision of the Labor Arbiter never touched upon this issue, it "merely stated that the petitioner should be reinstated and paid his corresponding back wages up to the time it was issued without giving any reason for this nor stating on what basis this was made"; it does not even state "that PCPPI should also be held liable."

In its Comment filed on 15 September 1995, the Office of the Solicitor General joins cause with the petitioner and bats for the reinstatement of the decision of the Labor Arbiter of 25 June 1992 citing in support thereof *Pepsi-Cola Bottling Co. vs. National Labor Relations Commission*<sup>[15]</sup> and lays stress on PCPPI's failure to deny its liability after having been impleaded in the Amended Complaint, the said failure having had the effect of an admission.

We resolved to give due course to the petition and required the parties to submit their respective memoranda, which the parties did with the Office of the Solicitor General merely adopting its Comment as its memorandum.

While the petitioner's Memorandum merely rehashes his earlier arguments, the respondents stress that a reading of PCD's 25 July 1989 letter to its employees shows that PCD ceased to exist on 24 July 1989, thus the employer-employee relationship was severed on the said date and separation benefits were paid by PCD. For this reason, PCPPI was going to offer PCD's employees new employment, it being immaterial that there was no actual cessation of operations or distribution of the Pepsi product itself. Further, PCPPI's offer was merely an invitation to the employees existing at the time it made its offer, the said offer not constituting notice that PCD's employees were going to continue as PCPPI employees, but merely an offer to start anew with a new company. The respondents refute the applicability of the *Pepsi-Cola Bottling Co. vs. National Labor Relations Commission* (hereinafter *Bottling Case*) cited by the Office of the Solicitor General, as the decision therein was reached due to the absence of evidence showing that PCPPI was free from any liabilities incurred by PCD, while in this case, the two letters referred to by the petitioner showed otherwise. The act of offering employment should then not be construed to mean that PCPPI absorbed the liabilities of PCD. As regards the issue of damages, the respondents call the Court's attention to the fact that the petitioner did not appeal the Labor Arbiter's decision, thus that aspect of the decision became final as far as the petitioner was concerned.

Except as to the claim for damages, the petition must be granted.

The issue of PCPPI's assumption of liability for PCD's alleged acts has been previously settled by this Court more than once.

In the *Bottling Case*,<sup>[16]</sup> this Court ruled:

With respect to the third issue, PCPPI claims that the public respondent committed grave abuse of discretion in holding it liable for the reinstatement of the private respondent considering that PCPPI is an entirely separate and distinct entity from the PCD.

On the ground of serious business losses, PCD alleged that it ceased to operate on July 24, 1989 and PCPPI, a company separate and distinct from PCD acquired the franchise to sell the Pepsi-Cola products.

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 softdrinks 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.

In *Pepsi-Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission*,<sup>[17]</sup> this Court, citing the Bottling Case, ruled:

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. v. NLRC*. In said case, the purchasing corporation 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 execution of the decision in an illegal dismissal 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