JUN 21 2016

Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

PNCC SKYWAY CORPORATION, Petitioner,	**G.R. No. 213299**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PERLAS-BERNABE, and CAGUIOA, *JJ.*
THE SECRETARY OF LABOR AND EMPLOYMENT and PNCC SKYWAY CORPORATION EMPLOYEES UNION, Respondents.	Promulgated: APR 19 2016

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 30, 2013 and the Resolution[3] dated June 11, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 111201, which affirmed the Decision[4] dated August 29, 2008 and the Resolution[5] dated August 26, 2009 of the Secretary of the Department of Labor and Employment (DOLE) holding petitioner PNCC Skyway Corporation (PSC) liable for ₱30,000.00 as indemnity to each of its terminated employees, for failure to comply with the thirty (30)-day notice requirement under Article 298 (formerly, Article 283) of the Labor Code, as amended.[6]

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1 *Rollo*, pp. 11-24.

2 Id. at 32-44. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Priscilla J. Baltazar-Padilla and Ramon A. Cruz concurring.

3 Id. at 46-47. Penned by Associate Justice Ramon A. Cruz with Associate Justices Magdangal M. De Leon and Priscilla J. Baltazar-Padilla concurring.

4 Not attached to the *rollo*.

5 Not attached to the *rollo*.

6 As amended and renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL

The Facts

In October 1977, the Republic of the Philippines, through the Toll Regulatory Board (TRB), and the Philippine National Construction Corporation[7] (PNCC) entered into a Toll Operation Agreement (TOA)[8] for the latter's operation and maintenance of the South Metro Manila Skyway (Skyway).[9]

On November 27, 1995, a Supplemental TOA (STOA)[10] was executed by the TRB, PNCC, and Citra Metro Manila Tollways Corporation (CITRA), whereby CITRA, as an incoming investor, agreed, under a build-and-transfer scheme,[11] to finance, design, and construct the Skyway.[12] However, PNCC retained the right to operate and maintain the toll facilities,[13] and for such purpose, undertook to incorporate a subsidiary company that would assume its rights and obligations under the STOA:

> 6.16. Operator's Subsidiary Company
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> > Subject to all relevant existing laws, rules, and regulations, [PNCC] shall incorporate a subsidiary company (the "Subsidiary Company") at least 6 months prior to the Partial Operation Date. [PNCC] shall be the sole stockholder of the Subsidiary Company. The powers and functions of the Subsidiary Company shall only be to undertake and perform the obligations of [PNCC] under this Agreement, including without limitation Operation and Maintenance.[14]

Thus, on December 15, 1998, PSC was incorporated as a subsidiary of PNCC to operate the Skyway on PNCC's behalf. As such, it was tasked to maintain the toll facilities, ensure traffic safety, and collect toll fees at the Skyway.[15]

On July 18, 2007, the TRB, PNCC, and CITRA entered into an Amended STOA (ASTOA).[16] Under the ASTOA, the operation and management of the Skyway would be transferred from PSC to a new Replacement Operator, which turned out to be the Skyway O & M Corporation (SOMCO).[17] A transition period of 5 ½ months was provided

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DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011.

7 Formerly "Construction and Development Corporation of the Philippines."

8 *Rollo,* pp. 48-61.

9 See id. at 33.

10 Id. at 66-134.

11 Id. at 33.

12 Id. at 71.

13 Id. at 33.

14 Id. at 101.

15 Id. at 33.

16 Id. at 135-183.

17 See id. at 33 and 180.

commencing on the date of signing of the ASTOA **until December 31, 2007, during which period, PSC continued to operate the Skyway**.[18]

In line with the above-mentioned transfer, PSC, on December 28, 2007, issued termination letters to its employees and filed a notice of closure with the DOLE - National Capital Region, advising them that it shall cease to operate and maintain the Skyway, and that **the services of the employees would be consequently terminated effective January 31, 2008**.[19] In this regard, PSC offered its employees a separation package consisting of 250% of their basic monthly salary for every year of service, gratuity pay of ₱40,000.00 each, together with all other remaining benefits such as 13th month pay, rice subsidy, cash conversion of leave credits, and medical reimbursement.[20]

On the same date, the PSC Employees Union (PSCEU) filed a Notice of Strike on the ground of unfair labor practice resulting in union busting and dismissal of workers. On December 31, 2007, the DOLE Secretary intervened and assumed jurisdiction over the labor incident.[21]

The DOLE Secretary's Ruling

In a Decision[22] dated August 29, 2008, the DOLE Secretary dismissed the charges of unfair labor practice and union busting, as well as the counter-charges of illegal strike, but ordered PSC to pay its terminated employees ₱30,000.00 each as indemnity after finding that the notices of their dismissal were invalid.[23]

The DOLE Secretary held that while there was a valid and sufficient legal basis for PSC's closure – as it was a mere consequence of the termination of its contract to operate and maintain the Skyway in view of the amendment of the STOA – PSC, nonetheless, failed to comply with the thirty (30)-day procedural notice requirement in terminating its employees, as provided under Article 283 (now, Article 298) of the Labor Code.[24] It was observed that while PSC stated in the notices of termination to the employees (as well as in the notice to the DOLE) that the dismissal of the employees would take effect on January 31, 2008, it admitted that it actually ceased to operate and maintain the Skyway upon its turnover to SOMCO on December 31, 2007.[25] As such, PSC fixed the termination date at January 31, 2008 only to make it appear that it was complying with the one-month notice requirement. Thus, citing the case of *Agabon v. National Labor Relations*

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18 Id. at 33.
19 Id. at 34.
20 Id.
21 Id.
22 Not attached to the *rollo*. See id. at 34-35.
23 See id. at 38.
24 See id. at 35-36.
25 Id. at 36.

Commission (*Agabon*),[26] the DOLE Secretary ordered PSC to pay each of its terminated employees ₱30,000.00 as indemnity.[27]

On September 12, 2008, PSC filed a Motion for Partial Reconsideration and Clarification,[28] while the PSCEU filed a Motion for Reconsideration,[29] which were both denied in a Resolution[30] dated August 26, 2009.[31] Dissatisfied, PSC elevated the case to the Court of Appeals (CA) through a petition for *certiorari*.[32]

The CA Ruling

In a Decision[33] dated September 30, 2013, the CA affirmed[34] the DOLE Secretary's ruling after observing that PSC held inconsistent and conflicting positions with regard to the date of termination of its employees' services.[35]

The CA pointed out that in the Establishment Termination Report submitted to the DOLE, PSC stated that it shall close or shut down its operations effective January 31, 2008. However, in its Position Paper submitted to the DOLE, PSC stated that it "ceased to operate and maintain the [Skyway] upon its turnover to SOMCO effective December 31, 2007."[36] According to the CA, the apparent inconsistency as to the date of effectivity of the dismissal of the PSC employees must be resolved in favor of the employees who must then be deemed to have been terminated on December 31, 2007, consistent with Article 4[37] of the Labor Code which states that all doubts shall be resolved in favor of labor.[38]

The CA further held that it is of no moment that the PSC employees were paid their salaries and benefits for the whole month of January 2008 since they were already out of service as of December 31, 2007, explaining too that this defeated the purpose behind the thirty (30)-day notice requirement, which is to give the employees time to prepare for the eventual loss of their employment.[39]

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26 485 Phil. 248 (2004).
27 *Rollo*, pp. 36-38.
28 Not attached to the *rollo*.
29 Not attached to the *rollo*.
30 Not attached to the *rollo*.
31 *Rollo*, p. 39.
32 Id. at 250-263.
33 Id. at 32-44.
34 Id. at 43.
35 See id. at 40-41.
36 Id. at 41.
37 ART. 4. Construction in Favor of Labor. – All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.
38 See *rollo*, pp. 40-41.
39 See id. at 41-42.

Anent PSC's argument that the PSCEU had been informed as early as September 2007 of the impending takeover of the operation of the Skyway by a new operator, the CA cited *Smart Communications, Inc. v. Astorga*[40] (*Smart Communications, Inc.*) and thereby, ruled that "actual knowledge of the reorganization cannot replace the formal and written notice required by law."[41]

The CA denied PSC's motion for reconsideration[42] in a Resolution[43] dated June 11, 2014; hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the CA erred in affirming the DOLE Secretary's ruling that PSC failed to comply with the 30-day notice requirement under Article 298 (formerly, Article 283) of the Labor Code, as amended.

The Court's Ruling

The petition is meritorious.

Closure of business is an authorized cause for termination of employment. Article 298 (formerly, Article 283) of the Labor Code, as amended, reads:

> ART. 298. 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. x x x. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (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. (Emphases supplied)

In this relation, jurisprudence provides that "[t]he determination to cease operations is a prerogative of management which the State does not usually interfere with, as no business or undertaking must be required to

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40 566 Phil. 422 (2008)
41 See *rollo*, pp. 42-43.
42 Not attached to the *rollo*.
43 *Rollo*, pp. 46-47.

continue operating simply because it has to maintain its workers in employment, and such act would be tantamount to a taking of property without due process of law. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of circumventing the rights of employees under the law or a valid agreement, such exercise will be upheld."[44]

Procedurally, Article 298 (formerly, Article 283) of the Labor Code, as amended provides for three (3) requirements to properly effectuate termination on the ground of closure or cessation of business operations. These are: (*a*) service of a written notice to the employees and to the DOLE at least one (1) month before the intended date of termination; (*b*) the cessation of business must be *bona fide* in character; and (*c*) payment to the employees of termination pay amounting to one (1) month pay or at least one-half month pay for every year of service, whichever is higher.[45]

Case law has settled that an employer who terminates an employee for a valid cause but does so through invalid procedure is liable to pay the latter nominal damages.[46] In *Agabon*, the Court pronounced that where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual.[47] However, the employer should indemnify the employee for the violation of his statutory rights. Thus, in *Agabon*, the employer was ordered to pay the employee nominal damages in the amount of ₱30,000.00.[48] Proceeding from the same *ratio*, the Court modified *Agabon* in the case of *Jaka Food Processing Corporation v. Pacot*[49] (*Jaka*) where it created a distinction between procedurally defective dismissals due to a just cause, on the one hand, and those due to an authorized cause, on the other. In *Jaka*, it was explained that if the dismissal is based on a just cause under Article 282 (now, Article 297) of the Labor Code but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; if the dismissal is based on an authorized cause under Article 283 (now, Article 298) of the Labor Code but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative. Hence, in *Jaka*, where the employee was dismissed for an authorized cause of retrenchment – as contradistinguished from the employee in *Agabon* who was dismissed for a just cause of neglect of duty – the Court ordered the employer to pay the employee nominal damages at the higher amount of ₱50,000.00.[50]

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44 *Espina v. CA*, 548 Phil. 255, 274 (2007).
45 *Industrial Timber Corporation v. Ababon*, 515 Phil. 805, 819 (2006).
46 *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 540 (2013).
47 *Agabon v. National Labor Relations Commission*, supra note 26, at 287.
48 See id. at 291.
49 See 494 Phil. 114, 119-121 (2005).
50 *Abbott Laboratories, Philippines v. Alcaraz*, supra note 46, at 540-541.

The sole issue in this case is whether or not PSC properly complied with the thirty (30)-day prior notice rule, which is the first prong of the termination procedure under Article 298 (formerly Article 283) of the Labor Code, as amended. The Court rules in the affirmative; hence, there is no basis to award any indemnity in favor of PSC's terminated employees.

As admitted by both parties, the PSC employees and the DOLE were notified on December 28, 2007 that PSC intended to cease operations on January 31, 2008. The PSC employees and the DOLE were, therefore, notified **34 days ahead** of the impending closure of PSC. Clearly, the mere fact that PSC turned over the operation and management of the Skyway to SOMCO and ceased business operations on December 31, 2007, **should not be taken to mean that the PSC employees were *ipso facto* terminated on the same date**. The employees were notified that despite the cessation of its operations on December 31, 2007 – which, as a consequence thereof, would result in the needlessness of their services – **the effective date of their termination from employment would be on January 31, 2008**:

> Pursuant to the amended Supplemental Toll Operations Agreement entered into on July 18, 2007 by and among the Republic of the Philippines thru the Toll Regulatory Board, Philippine National Construction Corporation and Citra Metro Manila Tollways Corporation, a new Operation and Maintenance Company (OMCO) has been nominated to replace the PNCC Skyway Corporation (PSC). **As a consequence thereof, PSC shall then cease to operate and maintain the South Metro Manila Skyway upon its turn over to the new OMCO which may happen not earlier than December 31, 2007.** It is unfortunate therefore that all PSC employees shall be separated from service but shall be given a generous separation package more than what the law provides.
>
> In this regard please be advised that your employment with PNCC Skyway Corporation will be **terminated effective January 31, 2008**. In consideration thereof, you will accordingly receive the following separation package:
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> x x x x[51] (Emphases and underscoring supplied)

That the effectivity of the PSC employees' termination is on January 31, 2008, and not on December 31, 2007, is lucidly evinced by the unrefuted fact that they were still paid their salaries and benefits for the whole month of January 2008.[52] Surely, it would go against the stream of practical business logic to retain employees on payroll a month after they had already been terminated.

On top of that, it deserves mentioning that PSC undisputedly paid its dismissed employees separation pay in amounts more than that required by law. As the records show, PSC's separation package to its employees was a

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[51] See letter dated December 27, 2007; *rollo*, p. 197.

[52] See id. at 19-20 and 41.

generous one consisting of no less than 250% of the basic monthly pay per year of service, a gratuity pay of ₱40,000.00, rice subsidy, cash conversion of vacation and sick leaves and medical reimbursement.[53] On the other hand, the legally-mandated rate for separation pay provided under Article 298 (formerly, Article 283) of the Labor Code, as amended, in cases such as the present, is equivalent to "one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher."

Ultimately, it was within PSC's prerogative and discretion as employer to retain the services of its employees for one month after the turn-over date to SOMCO and to continue paying their salaries and benefits corresponding to that period even when there is no more work to be done, if only "to ensure a smooth transition and gradual phasing in of the new operator, which had yet to familiarize itself with the business."[54]

Case law teaches that an employer may opt not to require the dismissed employees to report for work during the 30-day notice period.

In *Associated Labor Unions – VIMCONTU v. National Labor Relations Commission,*[55] the Court held that there was "more than substantial compliance" with the notice requirement where a written notice to the employees on August 5, 1983 had informed them that their services would cease at the end of that month but that they would nevertheless be paid their salaries and benefits for five days, from September 1 to 5, 1983, even if they rendered no service for the period.[56]

Similarly, in *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. CA,*[57] the Court dismissed the union employees' argument that there was non-compliance with the one-month notice because they were no longer allowed to report for work effective immediately upon receipt of the notice of termination, ruling therein that the payment of salaries from December 9, 1999 to February 29, 2000 although the employees did not render service for the period is, by analogy, "more than substantial compliance with the law."[58]

To clarify, the case of *Smart Communications, Inc.*, which was cited by the CA in holding that the actual knowledge by the PSCEU of the impending takeover cannot replace the formal written notice required by law, is inapplicable to this case. In *Smart Communications, Inc.*, the employee received the notice of her dismissal only two (2) weeks before its effectivity date although it was issued by the employer at least thirty (30) days prior to

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53 See id. at 17 and 197.
54 Id. at 19.
55 G.R. Nos. 74841 and 75667, December 20, 1991, 204 SCRA 913.
56 See id. at 921-922.
57 521 Phil. 606 (2006).
58 See id. at 623-627.

the intended date of her dismissal. Given that the employee was evidently shortchanged of the mandated period of notice, the Court ruled that actual knowledge could not replace the formal written notice required by law.[59]

In contrast, PSC complied with the mandated thirty (30)-day notice requirement. Although PSC informed its employees that it would be turning over its operations to SOMCO not earlier than December 31, 2007, they were duly notified that the effective date of their termination was set on January 31, 2008. In light of valid business reasons, *i.e.*, the transfer of operations to SOMCO pursuant to the ASTOA, PSC asked its employees not to report for work beginning December 31, 2007 but were still retained on payroll until January 31, 2008. Evidently, their employment with PSC did not cease by the sole reason that they were told not to render any service.

In addition, since the employees were not reporting for work although retained on payroll, they had, in fact, more free time to look for job opportunities elsewhere after December 31, 2007 up until January 31, 2008. As aptly observed by PSC:

> Indeed, instead of reporting in their office and wasting time doing nothing in view of the cessation of PSC's business operation, the concerned employees can and actually devoted one month to look for another employment with pay.[60]

This meets the purpose of the notice requirement as enunciated in, among others, the case of *G.J.T Rebuilders Machine Shop v. Ambos*:[61]

> Notice of the eventual closure of establishment is a "personal right of the employee to be personally informed of his [or her] proposed dismissal as well as the reasons therefor." **The reason for this requirement is to "give the employee some time to prepare for the eventual loss of his [or her] job."**[62] (Emphasis supplied)

All told, considering that PSC had complied with Article 298 (formerly, Article 283) of the Labor Code, as amended, the indemnity award in favor of the terminated employees was grossly improper and must therefore be nullified. In this respect, the DOLE Secretary gravely abused its discretion and the CA erred in ruling otherwise. When a lower court or tribunal patently violates the Constitution, the law, or existing jurisprudence, grave abuse of discretion is committed,[63] as in this case.

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59 See *Smart Communications, Inc. v. Astorga*, supra note 40, at 440.
60 *Rollo*, p. 18.
61 See G.R. No. 174184, January 28, 2015.
62 See id.
63 See *Carpio-Morales v. CA*, G.R. Nos. 217126-27, November 10, 2015.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 30, 2013 and the Resolution dated June 11, 2014 of the Court of Appeals in CA-G.R. SP No. 111201 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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