

Thursday 6<sup>th</sup> May 2004

Supreme Court of Belize  
At Belize City

Action No. 19/2003

Coram: Sam Lungole Awich J

In open Court

Present: Mr. N. Dujon for the Plaintiff, Hilario Cortez Sr.

Mr. Bradley: The claim does not exactly spell out the period for claim. I refer to O74 r 10 Defendant who relies on Statute of Limitation will give notice. If claim stretches beyond 6 yrs then I shall ask time to file. Notice of the def or notice be waved.

Mr. Dujon: I have no objection if my learned friend had requested he could have provided. We shall not take point as o notice of the intended defence. We now can supply the period in evidence.

Court: Notice waved, defendant may raise defence under Limitation of Actions Act.

Plaintiff may lead evidence.

PW1: Hilario Castillo: Sworn and states:

My address in New Area Benque Vejio El Carmen. In Dec 1991 I got employment at tortilla factory of Mr. Perfecto Cortez. Mr. Perfecto Cortez employed me. He paid me. He is in Court; the man who is grey.

My job was serving and selling and everything. At beginning my hours of work were 5 am to 3 to 3:30 in the afternoon from Sunday to Sunday. Then it changed to 6 am to some time in the afternoon. It was for 7 days a week. On 27.4.2002 I left the employment. My wages were \$110 weekly. I started with \$60 a week. I used to get a raise of \$10 every year. That is how it came to \$110 per week.

My arrangement was made for overtime. Did you get paid for overtime? No.

No sir. Afterwards I talked to him about overtime.

Court:When was this afterwards?

PW1: I spoke to him several times and I spoke to Labour Department.

He would give me a little and ask me to give him a chance to see how the business was going. Every year I gave him a chance. No overtime was paid.

I gave him notice that in a month I would be leaving his employment. I pursued my overtime claim through labour office. I discussed with Mr. Lopez. I received some payment through Labour Department. The Department said I could only claim for 6 yrs.

Money paid to me was \$1,165 through the Labour Department. I used to go to Labour and collect over a period of time. My claim was for \$10,500 and some

change.

The son of Mr. Cortez wanted to take over the payment. I refused telling him I worked for his father not for him.

I did not receive further payment and I took legal action. I have not contacted Mr. Cortez.

The last six years for which I claim were from 2002 going down - I left 27.4.2002. The sum \$10,500 is for the 6 years.

Crossexamination by Mr. Bradley.

Q Where did you work?

A At Benque Viejo Town. No sorry I used to work at San Ignacio Town. I worked for 10 years. Yes in all those 10 years in San Ignacio.

Q Where did you live December 1991 - April 2002?

A Benque is 8 miles from San Ignacio

Q At what time were you expected to report at work?

A I am in Benque when he would take me to San Ignacio that was the first year. Mr. P. Cortez would take me.

Q Were you the only one?

A No sir. It was myself and a helper.

Q For 5 years every morning you would be taken to work?

A Yes sir. I used to reach Mr. Cortez's home about 5 in the morning. Yes helper also reached Mr. Cortez's home at 5 am. Yes he would then transport to Cayo. In the last 6 years he used to pay for the taxi to Cayo. Once we

arrived I used to grind the masa, light the machine and start to make tortilla.

I would work until I filled the box of tortilla. Some days it took longer.

Sometimes I had breakfast for 5 minutes, ran errands, cut papers for tortilla and clean up the machine. I would start all over again to make the tortilla.

The second batch of tortilla would start from about 8:30 am.

Q How many boxes did you fill a day?

A I can't say- two or more some would hold fill- people would be buying. We would grind about 6 to 7 buckets of corn - would be about 10 boxes of tortilla, maybe less. I was also the one who served (sold) the tortilla. I would break for about 15 or 20 minutes maybe.

Q You took break for breakfast - did you have any other break?

A No, sir. First break would be about 7:30 in the morning. I would end about 3 to 3:30 sometimes later. All depended on the days work. No break between 8:30am to 3:30 pm.

Q did you eat?

A Sometimes, but right between work.

Q How would you get home?

A Mr. Cortez used to pick me up and take me home, at first.

Q Who supervised you?

A Mr. Cortez

Q Why pick you up?

A From the mill. No I was not supervised all day. I was not supervises. I was employed to handle tortilla making. Sometime in 5 yrs later I had to go with taxi he would pay for.

Q You understand the work supervise?

A Yes, he used to check and take his money. No there was no one to look at my work. The first 7 yrs I was not supervised. Last 3 yrs he brought his

daughter in law to work with me. We worked together.

Q Is it not true that for the last 3 yrs she was running the factory?

A Not to my knowledge.

Q Prior to arrival of daughter you were in charge of day to day running?

A Myself and helper.

Q For the 10 yrs did you ever ask for overtime?

A I asked for raise in pay.

Q Did you ask for overtime?

A Sometimes yes.

Q When specifically?

A I usually asked in January.

Q Why January?

A Because it was beginning of the year.

Q Who did you ask?

A Mr. Cortex. He always said lets see how the business will go, give me a chance. Always the same thing.

Q When did you first go to Labour?

A I visited Labour Department about 3 months before I stopped work. Yes would like about January 2002.

Q Did you consult with any person at Labour before going to the office?

A No just Labour. Sometimes we used to grab tortilla and eat with butter or cheese but within work.

Q For the entire period?

A Mostly

Q Did you ever cook own food at work?

A A little. Sometimes they opened a chicken place. We used to get and cook. This was about the last year.

Q During the ten yrs did you ever confront employer that you were being treated unfairly?

A Yes. During the last 3 yrs.

Q When?

A I can't remember the last 3 yrs.

Q Why did you wait for 10 yrs before going to Labour?

A Because for the past 7 yrs I was treated good.

Q Then for the last 3 yrs why did you not go to Labour?

A I did not want to leave the job. I was scared I would not find another job.

Q Why did you not bring it up with Labour in January 2002 when you went to Labour.

A First I wanted to consult with Labour who sent me to talk to Mr. Cortez.

And I went to him he accepted.

Q When did he accept?

A I can't remember the specific day.

Q Was it in January 2002 when you spoke to labour?

A Yes sir.

Q How did you know?

A Because I went and talked to him personally. I gave him the sum. He told me he would pay through Labour so he accepted it.

Q This was January 2002.

A Yes.

Q You wrote a letter in March 2002?

A Yes to Mr. P. Cortez. Yes I remember the letter.

Q If you had met with Labour and Mr. Perfecto had agreed that he owed you, why was that not included in the letter? That was after the letter - that he agreed. You changed your story?

A I agree I may have been confused. It was after the letter that he agreed to pay.

Q Before this letter you had consulted with Labour?

A Yes.

Q At that time you were unhappy with you job?

A Not quite unhappy, not getting on well with some persons at work. Yes I said I became unhappy in the last 3 yrs yes kind of discontented. Yes I consulted with Labour and they told me certain things were due to me.

Q Why did you not ask Mr. Cortez in March 2002, you did not ask for overtime?

A I don't know why?

Q It was because you knew you were not entitled to overtime?

A No sir I didn't know about that. Yes I recall what I asked for. I asked for severance pay.

Q Read about finding replacement with the next 5 months I intend to train him.

A Yes.

Q Read other portions. Are those words of a discontinued worker?

A Well, I didn't want to claim overtime but I had to do it.

Q Why?

A Because I deserved and I had worked for it.

Q Was January 2002 you first visit to Labour in your life?

A Yes.

Q Where did you work prior to Mr. Cortez employment?

A On cruise ship. Yes I work at Corozal. At Glory shop. Also at Stann Creek part-time. No not for Hamat.

Q You had in fact taken previous employers to Labour?

A One time.

Q Who did you take to Labour?

A Mr. Glory in Corozal. That was a long way back when I was 16 yrs old.

Q So you were aware that if dissatisfied you could take employer to Labour?

A Yes.

Q You always had transport to and back from work?

A Yes.

Q On holidays you were paid holiday pay?

A Yes that is true.

Q That for the 10 yrs you never approached that you were dissatisfied?

A Yes, I approached him for raise in pay.

Q IN the 10 yrs you never brought up the subject of working too many hrs?

A Because he always promised he would raise my pay but he never did.

Q So you never brought up the subject of hrs overtime?

A No.

Q You were picked up after 6 am every morning?

A Yes, after Cortez stopped take me, I used taxi and I would leave my house at 6 in the morning. That was me and the helper. That was when we used to meet at Mr. Cortez house. After that taxi picked me up from my home.

Q You did not start work until 7 pm?

A It was 15 minutes to work.

Q Your first task was to fill up box?

A First to grind the massa then fill the box and make tortilla.

Q After the first box was filled you had a break?

A 15 minutes.

Q I put to you not for 15 minutes?

A No I don't agree.

Q Your break was from when box was filled until t was sold empty?



A No.

Q You were free to go whenever you wanted?

A No.

Q There were employees from San Ignacio they also left until the box was sold empty?

A Yes, they would leave the work site.

Q You chose not to leave the work site?

A I did not chose. No break never ended when first box of tortilla was sold.

Q Before 1997 after arrival of daughter in law, you used to cook your meal?

A No that time I used not to cook. I used to buy butter or cheese and eat with it.

Q There were only two boxes to be filled in a day?

A Yes.

Q After the 2<sup>nd</sup> box was sold your work day ended?

A No.

Q You stayed because you wanted free ride home?

A No.

Q You knew your rights and could have filed complaint long before January 2002?

A Could be.

Q You never filed complaint because you knew fully well that terms of employment were within the law?

A ----

Q You never worked more than 5 hrs a day?

A Lie.

Q Everyday your job was completed at 1pm?

A Lie. After 1pm I had to clean the m and finish about 3-3:30- pm.

Q This suit is driven by greed?

A No.

Court: Court adjourn until 2:30 pm. Today 6.5.2004.

Court: At 2:40 pm

PW1 takes stand -re-sworn

PW1 for re-examination

Q You said your holidays were always paid?

A I mean 2 wks vacation every year.

Q Were there moments when there would be rush for tortilla?

A Yes in the morning 6:30 - 7:30 and lunch time. Yes, then I clean up after breakfast. Then we would do for taco people. We do not stop from making tortilla we do it all through. We make also for people who sell taco and for Lunch time. Lunch goes until 1:00 pm. On average we would stop making tortilla about 1:00 - 1:30 pm. Yes repeating cleaning up would be in the afternoon. Yes includes cleaning the machine. We start to clean machine ½ hr after stopping to use, machine would be hot. WE start clean about 2 pm and go on until 3:00 -3:30 pm.

PWR: Calbert Barber: Sworn and states:

I am a labour officer presently attached to Labour Department in San Pedro. In 2002 I was stationed at San Ignacio.

Q I received complaint from Hilario Castillo with respect to work done at tortilla factory of Mr. Perfecto Cortez.

What was the essence of complaint?

A Essentially, that this services had been terminated and he was quarelling with his benefits. We have a complaint form. I made notes on it. I have the form - I tender.

Mr. Bradley - No objection.

Court:Form dated 20.5.2002 is taken as exhibit P(CB) 5. I also made notes in my diary. I use it to do calculation and take general information that need not go into the form.

Mr. Dujon: I ask for leave for witness to refresh his mind.

The overtime would arise if he worked more than 9 hrs. After 9 hrs a day they each over time- or over 45 hrs per week or over 6 days a week.

Q Even if someone works less than 9 hrs, if he works on the 7<sup>th</sup> day a week that becomes overtime?

A Yes.

Q Did you made a determination for overtime?

A I calculated that he worked approximately 13 hrs per week overtime.

In absence of agreement we were minimum wages \$2.25 per hr to dtermine hours. For 45 hrs he week he would earn \$101.25 per week. His 13 hrs overtime at 1 ½ time the regular rate gave him \$34.88 per week. This would argue him total of \$145.13 per week.

Castillo unfound we he was paid \$110.00 per week. Therefore \$35.13 per week was outstanding.

I informed him he had right to claim up to 6 yrs. Each rear a person earns 2 wks per year for 6 yrs which came to 300 wks. The pay for 300 - \$10,539.

I contacted Mr. Cortez by telephone I asked for Cortez Sr. I invited him to office. I informed me he was ill at the time. I informed him o the visit by Mr. C. to Larbour Department & I told him about the overtime.

Mr. Perfecto Cortez agreed on the payment and requested to make payment of &75 per week to Mr. Castillo who was informed and agreed.

Money was collected from the tortilla shop at St. Labour Department gave voucher & Mr. Cortez signed whenever he collected payment. That was recorded on the Labour Department and Form dated. Payments were collected until Nov 2002. On my last visit Mr. Cortez Jr. requested renegotiation of the payment. Mr. Cortez was informed Labour Department that he would take the case to Court.

If the person worked 7 days instead of 6 days overtime would be paid for the total hrs worked the 7<sup>th</sup> day. The rate is 1 ½ times the regular rate.

Crossexamination by the Bradley:

Q How did you arrive at 13 hrs?

A Mr. C. informed me he worked from 6:30 am to 3 pm 7 days a week that gave me approximately 58 hrs per week. 45 hours is maximum per week so  $(58-45) = 13$ .

Q Was this a case of overtime by days worked per week?

A When calculate we first look at No. of hrs worked per day then no. of hrs worked per week then no of days worked per week. If any of the 3 fixed period of regular time exceeded, we use the excess hrs as over time earned. Hrs worked in total number of hrs worker is available to the employer.

Q When employer transport employee does your definition include time for transporting?

That depends on agreement between employer and employee.

Yes I am aware of S: 13 and that no power to contract out of provisions of the Act.

Q When employee is given time to eat or rest does time count?

A Lunch break is not included in calculation.

Q Are other breaks included?

A Depends on agreement, but generally if out of kindness employer gives 15 minutes or 30 minutes to employee we believe worker is still available to employer.

If employer tells employee "You can leave and come back - should not be included in calculation.

If employer describes to have his work place work on premises is that calculated.

If he takes the break it will not be included in calculation.

Q How did you arrive at 58 hrs in the week?

A 8 ½ per day for 7 days in the week. The 9 hrs is per day. The excess is not included. I took at hours in the week.

If you work for more than 9 hrs, automatically earn excess day.

If he works more than 6 days in the week that becomes excess.

Q What category did this case fall- when 45 hrs per week was exceed then overtime.

A The 2.25 was minimum wage.

Q When did it come into effect?

A Can't give exact answer - sometime the –

Q What were the period of 6 years you applied?

A From date of termination 27.4.2002 gone back to 6 yrs - yes would be 27.4.1996.

Q When were you first approached by plaintiff?

A On 28.5.2002 I have it in my diary and also recorded on the complaint form. No I did not know him prior.

Q Did he consult with you in January, 2002.

A I cannot recall. I will have to check my diary. Many of our consultation are done by phone. We try to record have on diary. Sometimes we do not. I got date of termination 27.4.2002 was given by Mr. Castillo. I use the word termination whenever contract ends for any reason or the other.

Q Do you interpret it as fired?

A No I don't. Contract can be terminated by employer or employee.

Q Had you met Perfecto Cortez before today?

A Never.

Q You have never discussed with him face to face?

A No. Negotiations were done over telephone.

Q Have you ever given Perfecto Cortez Sr. anything in writing about this case eg b/down.

A No I haven't except for balance owing when money was collected.

Q When a claim for money is made for money by labourer what investigation is normally made.

A Normally we contact employer, inform him and obtain his evidence in regard to the claim. At times inspection is conducted at place of work.

Q In this case - discussion with Mr. Perfecto Cortez on telephone. Yes I invited him to present evidence.

A No not in writing.

Q Did you visit the work site?

A No I did not find it necessary because I had an agreement with the employer.

Because not noted, I assume I conducted Perfecto Cortez on same date  
20.5.2002 date of complaint.

Q Did you interview any other employees to corroborate the complaint?

A I did not find it necessary.

Q Is there anywhere in record to show when employer agreed to the  
employee's claim.

A On claim form 20.5.02.

Q That is date of the form not of the agreement.

A If that I noted - no.

Re-examination - Mr. Dujon: none.

Court adjourn. That's the plaintiff case.

Mr. Bradley:

Case adjourned to 22.6.2004 at 9:00 am.

27/5/04

Supreme Court of Belize

At Belize City

Action 19/2003

Coram: Sam Lungole Awich in open Court

Present: Mr. N. Dujon for the plaintiff

Mr. Leo Bradley Jr. for the defendant

Court: Mr. Dujon you are very late the Court and Mr. Bradley Jr. has been waiting for you.

You should take note.

Mr. Dujon: Appreciated

Mr. Bradley: Defence proceeds I call Mr. Perfecto Cortez.

PW1 PERFECTO CORTEZ Sr. sworn and states:

My name is Perfecto Cortez. I live at Benque Viejo. I am businessman presently own a tortilla factory in San Ignacio. I know Mr. Hilario Castillo. I had him in my employment in tortilla factory. I employed minimum of 2 persons. Each is notified before employment of the task at work, time and wages. I informed Mr. Castillo. On engagement verbally, not written. He was informed about condition of employment. What he was supposed to do; the time of employment and of course wages.



Castillo was required to do everything necessary in making tortilla. He was to start work between 6:45 to 7 pm. He had an hour lunch break between - after an hour to 1 ½ ; someone can have breakfast or lunch or anything he wanted to do would resume 9:30 to 9:45 am for work. We would stop balancing 12 to 12:30 pm. From 12:30 to 1:30 was cleaning days operation. Done by minimum of 2 persons. The agreement with Castillo was to pay him \$90 for 6 days and \$20 for Sunday or public holidays. He agreed. I worked on the minimum required by Labour Law.

Q Are you familiar with wages regulation Order SI 22 of 1993?

A Yes.

(b) read - in respect of shop Asst.... 1.75 per hour.

Mr. Castillo worked for me for about 10 yrs. No I have never been approached by Mr. Castillo for overtime. On no occasion.

Q Do you know Albert Baba?

A No, I do not know.

Q Did you ever receive anything in writing from Castillo claiming overtime pay?

A Never.

Q Did you ever receive in writing anything regarding Mr. Castillo?

A In writing, no never.

Q Were you ever made aware by Labour Department of any claim made by Castillo?

A No. Yes, I know Elba Cortez she is in charge of the mill. She makes her own decision. This started in 1997. She worked for me.

CROSS EXAMINATION:

Q You were aware that there was a claim made by Castillo to Labour Department?

A He Mr. Castillo approached me for overtime - He showed me a sum of money but not time worked. How he worked it out I did not understand.

Q What did you do?

A I told him you may go to Labour Department. Go anywhere.

Q You were contacted by Labour Department?

A Maybe - lets say see.

Q Were you contacted by Labour Department?

A Could be, yes.

Q About overtime of Mr. Castillo?

A Could be yes. I told Labour Department to go to San Ignacio. I was not at the mill. My daughter-in-law Mrs Cortex was there, she knew what to do, she had all authority to do it. Yes she worked for me. She supervise. She is the one who runs the place.

Q What is your role in the operation?

A Not more than that. They are my family. They run it they have full operation. I have nothing to do with it. I have left the operation. It still has my name because I started it.

Q Do you agree that decision were in consultation with them?

A No. Yes I am consulted. NO I do not share in profit because no profit is made. Yes Mr. Castillo started to work prior to Ms Cortez involvement.

Q So she would have been aware of all?

A Both of them would know, and if I passed decision it went down. Prior to

Cortez I used to take them and bring them back to Benque. When I was away sometimes decision was made by her or Mr. Castillo. If I wanted report of business one of them could give me the report.

Q Before Elba there was Mr. Castillo and some other person?

A Yes.

Q Who was looking after the person?

A The two of them. In the every who bought the money, any of them, there was no fight over it.

Q When there was change you would allow the person to handle money?

A Could be; because I usually collected them from Benque.

Q When Mr. E. Cortez came in did anything change?

A She was authorised to do everything; to buy collect the money. Then the money the profit would be split between the family in law 2 sons and daughter-in-law.

Q For how long?

A They run the business for the past 5 years. I am not in the business physically. Yes, I pay the tax. It is my name still in the business. I pay the tax.

Q Are you aware that out of Castillo pay, several sums were taken to defray certain amounts?

A Yes something like that they told me something like that.

Q Did your daughter-in-law tell you labour had been there?

A After they had paid she told me. I told her just read out what you are paying for, please consult the labour inspector.

Q You are saying although you owned the business you had very little idea about what went on?

A Yes something like that.

Q So you do not know about whether the claim was right or not?

A I would know because I know the operation. No, I do not know what they paid.

Q If court finds they once they have to pay although you run the business?

A They will have to pay. When I took Castillo and the other I would leave Benque between 6 to 6:30 am. Everything would have been prepared the day before. The capacity would be about 80 lbs. Prepared in the morning because customers would want tortilla in the morning. Breakfast would be from about 7 to 8:30 am. We has really and prepare again. Breakfast in San Ignacio would be between 7 to 9.

Q How long would it take the machine?

A About 15 minutes- there would be 5 minutes cleaning. Everything would have been prepared the day before. Baking would take about an hour.

Q If you arrived 6:30, by 7 o'clock would you have any tortilla ready?

A Yes, let's say about 30 lbs.

Q If you start 6:30 the majority of tortilla would come out after the peak period of breakfast?

A No, only a little would remain to be sold after breakfast.

Q What time did you leave Benque?

A 6 to 6:30 am.

Q If you started 6:30 you would run late?

A No, not necessarily. Because we do a little. The customers started buying tortilla about 7 and no peak time would not have passed. We would produce tortilla by 7:10 am.

Q What is peak period for lunch?

A 11:30 to 12 noon.

Q Peak extends until when?

A The very most 12:30 pm.

Q So you produce until 12:30?

A Yes, production is on.

Q What takes place after that?

A We clean the place. Clean parts of the mill. Then we go home.

Q Cleaning takes place when people are buying?

A Yes, tortilla would be in cooler. At most cleaning took 30 minutes. If tortilla still remained took it and sold in Benque.

Q I would take the 2 workers nothing else, may be cooked corn - already cooked in Benque. Or corn flour. By 1 to 1:30 the place was closed they could go home.

Q You produced them up?

A At time, most of the time. There are two ways to make tortilla. We throw flour in machine and water. Machine mixed and became dough. Would take about 3 minutes. Then gets to another machine that bakes. Yes takes bits of dough and puts in the machine.

Q What time does it take from taking flour to tortilla?

A Took about 15 minutes, depends on organization - Yes took 10 minutes to clean but between 2 persons. In the morning water is there flour is there, everything is ready. There are two machines. The one that makes the dough had been cleaned.

Q Is the process different on Sunday?

A Much so. The sales are slow on Sundays. Machines cleaned the evening before. Not cleaned again after the first batch, only the flour surrounding is clean. We clean the machines after we finished the days work.

Q I suggest machines are cleaned after first batch?

A Not so. If you work the machines then you know.

- Q Shown exhibit P(CB) 5 the amounts 150, 150, 100 ... paid by your business to reduce amounts paid by your business to reduce amounts owed to Mr. Castillo you agree?
- A Yes.
- Q I suggest it was paid because you agree with Labour Department on what was owed to Castillo.
- A They gave the amount to be paid. They did not give the time for which it was due. Mr. Castillo had already resigned he wrote a letter. He did not say there was any overtime.
- Q There was no break given to the workers?
- A They were entitled to an hour. Yes, if someone came and wanted tortilla that time he could be attended to.
- Q That could have been Mr. Castillo?
- A Could have been any of the two. One goes out one stays. I did not know how they arranged it.
- Q What was the arrangement when you worked there?
- A When I worked there I was personally there. Someone would be there to secure. One would go out and the other would remain.
- Q There would be time when Castillo would not have lunch time. No, no, no, he would take his time.
- Q Are you saying that if he was there and customers came and he served that was his lunch time?
- A No that would not be his lunch time. His lunch time would be when he went out.

Re-examination

Q You said you told your daughter-in-law to consult Labour Department, what was the result?

A She told me Labour Department did not give information.

Q Did Labour Department ever give you information?

A Never.

Q What time did it take to make a tortilla?

A One tortilla takes about 30 seconds.

Q Can cleaning be done when machine is hot?

A Can be done. It is the parts that are cleaned once heat is out, the whole can be cleaned.

Q After peak time how long did it take to clean machine?

A 30 minutes or an hour. Yes after cleaning the business is closed. They could go home. My daughter-in-law may not close because she waits for kids from school.

DW2 ERISELDA CORTEZ sworn and states:

My address is Benque. I work ay tortilla factory at San Ignacio, since 1997. I know Hilario Castillo. We worked together. I was the person in charge. I would arrive 6:10 am. At 6:30 we would start working to make tortilla. At 8 and we would stop. A box would be filled, about 50 lbs. We would then go and have breakfast. We had a store there. I mean Hilario and I.

Since we had to cook we used to take eggs, plantain & beef. We used to take breakfast slowly. Sometimes we took 1 ½ hrs. No he was not obliged to stay there. Was there because he did not stay there? He used to say he had no other place to go. That was the reason. I had a store he said” After breakfast he would

say he would smoke to wait for his food to settle. We would start again at 10 am goes on until 12:30 pm. I used to estimate about 15 to 20 lbs. Then we would wash the machines.

By 1:30 we had nothing else to do, he could leave. He did not want to go. He would take cigarette and smoke. He would remain there sitting resting and smoking. Yes I knew Albert Baba. One day he arrived to tell me that we owed "Haimie". Yes Haime is Mr. Castillo. I asked him "for what". He told me for extra hours. He was upset. He yelled at me. Said that if we did not pay he would take me to court. The Labour investigator yelled at me. No he did not say anything else. I decided to pay because I was frightened.

Q Were ou asked about any terms of employment of Mr. Castillo?

A No.

Q Did you ask what you were being charged for?

A He only told me he would take me to court if I did not pay. Yes I paid every week. My husband Perfecto Cortez went to Labour Office. I was the person who paid Mr. Castillo every Saturday. He worked Monday to Saturdays. I used to pay him \$90. If he worked on Sundays he was paid \$20. I was in charge from 1997 until Castillo left. I was never approached about overtime.

Court:Case adjourned to 2pm.

Court:2:30 pm. DW2 not in court regarded as stood down. Next witness as DW3.

He will be Mr. Luis Lisbey.

DW2: Luis Lisbey sworn and states

I live at Benque Viejo. I am a conductor on a bus. I know Perfecto Cortez Sr. I worked for him years ago at San Ignacio in his factory - a corn tortilla factory. We



started to work about 7 October in the morning. We finish about 9:00 -9:30 am. We did not work until about 10:30. Then we worked again and shutdown the machine about 12:30 pm the latest. We then went to the cleaning. Took us about 45 minutes to one hour. We finished about 1 to 1:30 the latest. We went home after work. That was about it. From 9:30 to 10:30 we went out. If we wanted to go out and buy something we did. If we wanted to stick around we would. I did not work the whole week but he paid us for the whole \$10.00. On holiday he paid us extra.

Never approached Mr. Cortez about overtime. Our working time was a few hours so I did not have overtime to claim. I say by 1:30 latest because I had friends, relatives at school. I would go to swim with them at 2pm. It was easy to clean. We got bucket of water and sponge and wiped out. We had to "out" the gas so that machine cooled by itself.

9:30 to 10:30 I used to go and shop. I took ½ lb of tortilla then went and bought sausage and soft drink and ate and return to work. At the end of the day as soon as we cleaned machine we went home. Even if tortilla remained we took it to Benque that was it.

#### CROSS EXAMINATION

Q What did you mean by you had to open the machine then it cool by itself?

A You turned off the gas so that it cooled.

Q You turned off at 1:30 it would have been on since 7:30, how long would it

take to cool so as to clean.

A Machine did not have to cool to clean. We only clean the part for tortilla -  
masher. The part we cleaned was hot but not that hot.

Q No risk of burning?

A No sir.

Q None whatsoever?

A No sir.

Q I suggest you had to wait for it to cool.

A I never tried that. Not like that.

Q When did you work at the factory?

A About 2 years I don't remember when. That was years ago. Maybe 1995 -  
98 something like that. The factory still work.

Q After that time you had no further contact with the factory?

A No sir.

#### RE-EXAMINATION

Mr. Bradley: No re-examination.

DW2

Recalled again after having been stood down. Resworn.

Interpreter sworn

DW2

Q When you began the operation at the tortilla factory did you get instruction  
from your father in-law as to system to be used?

A Yes.

Q Did you change the system in any way?

A Yes I did some changes. When we started - with Mario we started to work

at 6:10 am.

Q Was that the only change?

A Yes.

Q No others in the routine?

A No.

Q You said you took break at 8am?

A Yes.

Q And that would last until 10am?

A Yes.

Q Your father-in-law said the time was 8:30 until 10:30 was he wrong?

A No. When I started to work there was 8:30.

Q Your father-in-law said break was 8:30 am to 10:30 am.

A That was when they worked with him.

Q I had asked you about changes and you said only one?

A In the hours yes, but he was no longer there.

Q So why did you tell court you did not change?

A I changed because we had to wake up earlier.

Q What is your level of education?

A I withdraw.

Q You were asked if you had changed and you said no. Why now?

A Because for me it was not a change.

Q Between 8 and 10 did you close the shop?

A No. I am the one who sold the tortilla.

Q You are the one who received the money?

A Yes.

Q Who wrapped the tortilla?

A Me.

Q Did both of you go to the kitchen where they cooled?

A After a while I would go and we both cooked.

Q Did you take turn?

A No.

Q Why?

A Because we had meal together.

Q Did he fix your meal?

A No.

Q How much later did you follow him to the kitchen?

A I would follow 5 to 15 minutes later.

Q So would there be time when you would be eating and he would go to sell?

A No. I was the one in charge. I would not make him handle money. I started work there in 1997.

Q Who else was involved?

A My husband.

Q Brother-in-law?

A Only my brother-in-law.

Q You paid the money because you were frightened?

A I paid because I was afraid I would be taken to Court.

Q Do you remember when Mr. Baba frightened you?

A I don't remember.

Q Did you discuss this matter with your family?

A No. When my husband came I told him that then he asked why was he charging that when Castillo did not work. Then Baba started to shout saying if we did not pay we would be taken to Court and we would pay more.

Q How many times did you Baba come?

A I don't remember. There were receipts.

Q Did you inform your father-in-law about that?

A No.

Q True?

A True.

Q Do you know whether he was aware?

A I told him nothing.

Q According to P(CB)5 you made payments from June 2002 until September 2002?

A This is when I paid.

Q Is it your evidence that from June to September you were frightened?

A Yes.