

GREGORIO RODILLAS, PLAINTIFF-APPELLANT, VS. FARMACIA CENTRAL, INC., DEFENDANT-APPELLEE.*G.R. No. L-6908. December 22, 1954*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/36c1d7d6d44d/>**LABRADOR, J.:**

This is an appeal from a judgment of the Court of First Instance of Manila, dismissing an action for overtime pay for failure on plaintiff's part to prosecute the case. The appeal was brought directly to this Court. It is claimed that the dismissal deprived the plaintiff-appellant of his day in court, and constituted a grave abuse of discretion. The facts are of record and the questions raised exclusively of law.

The action is for the recovery of overtime pay, with attorney's fees as damages. The complaint alleges that plaintiff had rendered three hours of overtime service every day since his employment as driver, for which he claims corresponding overtime pay. The defendant-appellee denied the claim and demands damages in a counterclaim. Issues having been joined, attorney for plaintiff filed on May 6, 1953 an ex parte motion to set the case for immediate hearing. Pursuant to this motion, the court set it for hearing on May 19, 1953 at 1:00 o'clock P.M. When the case was called for hearing in accordance with this assignment, plaintiff appeared, but without the presence of his counsel. On that day, at about 11:00 o'clock in the morning, the court had received a telegram which reads as follows: "Please postpone Rodillas versus Farmacia late June busy continuation criminal trial Batangas. Atty Suanes." As counsel for defendant objected to the postponement prayed for in the telegram, and as plaintiff stated that he could not proceed with the trial, the court dismissed the case. Against this order, a motion for reconsideration was submitted, but the same was denied by the trial court.

In this Court, counsel for the plaintiff-appellant argues that since he had asked for the inclusion of the case in the trial court's calendar at its earliest convenience, as early as January, 1953, and that the case was barely seven months old, plaintiff can not be said to have failed to prosecute his case "for an unreasonable length of time."

We have held that failure of a plaintiff's attorney to be present at the trial constitutes a failure to prosecute, if the party is unwilling to proceed with the scheduled trial (Del Prado vs. Gonzales, et al.,[*] G.R. No. L-3933). In any case, counsel for plaintiff-appellant should have presented his motion for postponement at least three days in advance, in accordance with section 2, 3 and 4, Rule 26 of the Rules of Court. The petition for postponement came on the very day of the trial and is without notice to the adverse party. As plaintiff-appellant failed to comply with the rules, it can not be said that the trial court abused its discretion in denying the motion, or that plaintiff-appellant has been deprived of any right without due process of law.

The order appealed from is hereby affirmed, with costs against the plaintiff-appellant.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L. JJ., concur

[*] Promulgated on May 28, 1952.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.