CARLING B. CHAVEZ, EDDIE C. SAYSON, JR., SAMUEL S. DILANGGALEN, PAUL T. POLINAR, FELIPE ABORDO, ALANDO TANHAY, DIOSDADO B. UBA SR., LEONARDO L. LAMBUNGAN, JOEMEL V. MAGALLANES, ...

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Resolution[2] dated November 15, 2011 and Resolution[3] dated February 29, 2012 of the Eighth (8[th]) Division of the National Labor Relations Commission (NLRC) which dismissed the appeal filed by petitioners for having been filed beyond the reglementary period to file an appeal.

The Facts

The facts of the present controversy borne by the records are:

On April 15, 2011, Carling B. Chavez, Eddie C. Sayson, Jr., Samuel S. Dilanggalen, Paul T. Polinar, Felipe Abordo, Alando Tanhay, Diosdado B. Uba Sr., Leonardo L. Lambungan, Joemel V. Magallanes, Vincent M. Baliling, Edgardo C. Laguna, Fermin C. Inigo, Alejandro G. Redoblado, Jr., Ronald B. Tanudra, Cirilo G. Barrientos, Edgar L. Bualat, Ricky T. Gilbuena, Editha P. Bernal, Norman Roy Nasol, Vilma Alberto, Erlinda Amor, Rubyleen L. Optana, Julie Tomarong, Alejandro Redoblado, Sr., Alejandro Capin, Carlito Rios, Clifford Joy Secretaria, Rubi Bren, Oliver A. Sesbino, Sr., Lucielier T. Enciso, Bernardo M. Amandoron, Jr., Diosdado V. Uba, Jr., Rodelio Patagnan, Julius Palomar, Henry C. Bachinela, Jr., Arnold C. Sanchez, Lolita P. Albete, Ranil T. Solon, Edwin M. Tantuan, Rogelio Cadenas, Jr., Brayan G. Roberto, Salvador Ancla, Jr., Ariel D. Dayola, Napoleon R. Zacarias, Arvin Espanola, Darwin Llamera, Lucera Tebon, Jacqueline C. Mamburam, Mielchizidec M. Dejon, Romeo M. Caitor, Sr., Jonald C. Dantes, Warlito P. Dimana, Eduardo S. Gomez, Jr., Rogelio Ramos, Jonathan Salde, Leoncio B. Cortez, Jr., Marlon L. Lonquianas, Noli B. Sebidor, Juvelyn R. Colong, Mark Paul Macanas, Sim G. Aspirin, Crisostomo R. Dumapias, Jr., Dio John V. Uba, Gelbert R. Albete, Ramil G. Rabanes, Edwin D. Padlon, Johnny A. De La Pena, Alejandro Guyo, Jr., Christopher Dejeno, Jelmar Yapoc, Leonilo B. Hermosura, Jr., Archie D. Beloy, Nazaria B. Tormis, Japeth P. Tugar, Junald M. Ybanes, Eleodoro B. Bitangcor, Jr., Ruel Narisma, Erwin L. Nacua, Joela M. Dignos, Danilo T. Tayabas, Reman M. Astorga, Jr., Richard M. Cedino, Marilou Cordova, Menchie C. Milano, Ramel Gobal, Fortunato O. Guimalan, Rey F. Laquinta, Mariel Subrio, Ronald A. Del Castillo, Ireneo B. Suazo, Benjamin O. Lasquite, Paul B. Mabayag and Helen Labajo (petitioners, for brevity) filed a Complaint[4] before the NLRC Regional Arbitration Branch (RAB) No. XI, Davao City for Regularization with Money Claims against Filipinas Port Services, Inc. (private respondent, for brevity), a domestic corporation engaged in the business of arrastre and stevedoring services, with principal office at Km. 10, Sasa, Davao City and represented by its Manager, Jose H. Puentespina.

In their complaint, petitioners averred that they have been working at private respondent company for more than one (1) year and are actually doing tasks that are necessary and desirable in the usual business of private

respondent (i.e. checkers, winchmen, stevedores; forklift operators). They added that from the time private respondent engaged their services, they have not received sick leave benefits, maternity leave benefits, paternity leave benefits, holiday pay and overtime pay. They prayed, among others, that the RAB will declare them as regular employees of private respondent.

Preliminary mandatory conferences were scheduled and conducted on May 12, 2011, May 19, 2011, June 3, 2011 and June 24, 2011. Unfortunately, the parties failed to amicably settle the case. They were then directed to submit their respective position papers.

On September 23, 2011, the Labor Arbiter rendered a Decision in favor of respondents, dismissing petitioners' complaint for regularization and money claims for lack of legal basis. Petitioners were, instead, declared project employees.

On October 18, 2011, petitioners filed an Appeal before the NLRC.

On November 15, 2011, the NLRC issued a Resolution[5] dismissing the appeal filed by petitioners for having been filed out of time, the decretal portion of which reads:

> A cursory look at the memorandum on appeal, however, shows that the appeal was filed only on October 18, 2011 or a lapse of one (1) day from the ten (10) day reglementary period within which to file an appeal.
>
> WHEREFORE, the appeal is hereby DISMISSED for having been filed out of time.
>
> SO ORDERED.

On November 22, 2011, the RAB issued an Order[6] forwarding private respondent's "motion that this office shall issue the finality of the Decision" to the NLRC with a note that the Decision is final and executory for it was filed outside the ten (10) day period as provided by the Rules.

On January 4, 2012, petitioners filed a Motion for Reconsideration[7] before the NLRC praying that the Resolution dated November 15, 2011 be reconsidered and the case be decided based on the merits.

On February 29, 2012, the NLRC issued a Resolution[8] denying with finality the Motion for Reconsideration for lack of merit, the relevant portion of which reads:

> It is doctrinally entrenched that appeal is NOT a constitutional right, but a mere STATUTORY PRIVILEGE. In Santos v. Velarde, et al., the Supreme Court held that the NLRC must NOT be the first to disregard or violate specific provisions of the NLRC Rules. For rules exist for a purpose, i.e., to assist parties to obtain a just, speedy and inexpensive settlement of labor disputes. To disregard them in the guise of liberal construction would be to DEFEAT ITS PURPOSE; more so, that an utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.
>
> However, even if we disregard the procedural infirmity of the appeal, a judicious examination of the records still failed to provide us with sufficient ground to reverse or set aside the findings of the Labor Arbiter which were amply supported by substantial evidence on record. Well entrenched is the rule that when the conclusions of the labor arbiter is sufficiently corroborated by the evidence on record, appellate tribunals should respect the same since he is in a better position to assess and evaluate the credibility of the contending parties. We find no reason to depart from the rule.
>
> WHEREFORE, the motion for reconsideration is DENIED with finality for lack of merit.
>
> SO ORDERED.

Hence, this petition.

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Issues

Petitioners contend that respondent NLRC ERRED:

> (1) In dismissing their appeal for having been filed out of time;
>
> (2) In denying their Motion for Reconsideration dated January 24, 2012; and
>
> (3) In failing to give due course to their appeal as the Labor Arbiter's Judgment was based on misapprehension of facts.

The Court's Ruling

This Court finds the petition devoid of merit.

Petitioners aver that the NLRC gravely abused its discretion when it dismissed petitioners' appeal on a mere technicality although the appeal itself is meritorious. They, thus, plead for relaxation of the rule on the application of the reglementary periods of appeal and that the appeal be decided on the merits, not dismissed on a mere technicality.

We disagree.

Well-entrenched is the doctrine that an appeal is not a matter of right but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.[9]

Article 223 of the Labor Code,[10] the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, is explicit that the aggrieved party has 10 calendar days from receipt thereof to appeal to the Commission. Similarly, Section 1, Rule VI of the 2011 NLRC Rules of Procedure provides:

> RULE VI
> APPEALS
>
> SECTION 1. PERIODS OF APPEAL. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.
>
> No motion or request for extension of the period within which to perfect an appeal shall be allowed. [Emphasis supplied]

In the case at bar, the records show that petitioners, through counsel, received a copy of the assailed Decision of the Labor Arbiter on October 7, 2011; thus, pursuant to Article 223 of the Labor Code and Section 1, Rule VI of the 2011 NLRC Rules of Procedure, petitioners had only until October 17, 2011, the 10[th] calendar day from October 7, 2011, within which to appeal therefrom. As the appeal was filed only on October 18, 2011, clearly, petitioners' appeal was filed late. It is elementary in statutory construction that the word "shall" denotes the mandatory character of the rule.[11] Even in common parlance and in their ordinary signification, the words "shall," "must," "ought," or "should" are words of mandatory character.[12] Hence, no grave abuse of discretion can be imputed to public respondent NLRC since it was merely applying a clear provision of the law.

Case law has it that the perfection of an appeal within the statutory or reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Failure to do so renders the questioned decision final and

executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[13]

Let it be stressed that we are not oblivious of the various decisions of the Court allowing tardy appeals and the relaxation of procedural rules in judicious and highly exceptional cases. However, in this case, we adhere to the strict interpretation of the rule on reglementary period for perfecting an appeal because petitioners did not provide any justification for their tardiness. Absent exceptional circumstances, then we are inclined to follow the tenet that certain procedural precepts must remain inviolable.

But even if we brush aside procedural technicality, still there is no ostensible merit in petitioners' appeal. The issue of whether or not the "extra workers" hired by private respondent, an arrastre and stevedoring service company, are regular employees has already been laid to rest in the case of Pier 8 Arrastre & Stevedoring Services, Inc. v. Boclot, where the Supreme Court ruled:

> xxx xxx xxx
>
> Based on the circumstances of the instant case, this Court agrees. It takes judicial notice that it is an industry practice in port services to hire "reliever" stevedores in order to ensure smooth-flowing 24-hour stevedoring and arrastre operations in the port area. No doubt, serving as a stevedore, respondent performs tasks necessary or desirable to the usual business of petitioners. However, it should be deemed part of the nature of his work that he can only work as a stevedore in the absence of the employee regularly employed for the very same function. Bearing in mind that respondent performed services from September 1999 until June 2003 for a period of only 228.5 days in 36 months, or roughly an average of 6.34 days a month; while a regular stevedore working for petitioners, on the other hand, renders service for an average of 16 days a month, demonstrates that respondent's employment is subject to the availability of work, depending on the absences of the regular stevedores. Moreover, respondent does not contest that he was well aware that he would only be given work when there are absent or unavailable employees. Respondent also does not allege, nor is there any showing, that he was disallowed or prevented from offering his services to other cargo handlers in the other piers at the North Harbor other than petitioners. As aforestated, the situation of respondent is akin to that of a seasonal or project or term employee, albeit on a daily basis.

Hence, the Labor Arbiter is correct in declaring petitioners as project employees. Although in the foregoing case, the Supreme Court, in the end, found respondent therein to be a regular employee, it was on the basis of pertinent provisions under the Collective Bargaining Agreement (CBA) between the company and its workers. Here, since there is no CBA between petitioners and private respondent according the former the status of a regular employee, then they remain to be project employees. While it behooves the Court to accord protection to the working class, tilting the balance of justice in its favor whenever appropriate, it is not possible to resolve every dispute to further the cause of labor. In every case, justice is to be granted to the deserving and dispensed in the light of established facts and the applicable law and doctrine,[14] as here.

In the light of the foregoing, the assailed Resolutions can hardly be considered tainted with arbitrariness or unfairness that is the essence of grave abuse of discretion. For the remedy of petition for certiorari to prosper, the burden is on the party filing the petition to prove not merely reversible error, but grave abuse of discretion on the part of the public respondent.[15] Nothing in the records of this case supports petitioners' assertion that the NLRC, in dismissing petitioners' appeal for having been filed beyond the reglementary period, acted with grave abuse of discretion. While petitioners allege grave abuse of discretion on the part of the NLRC, they fall short in proving where the abuse existed. To emphasize, petitioners failed to cite any act or conduct of the NLRC to support their imputation of grave abuse of discretion amounting to lack or excess of jurisdiction. Absent a clear showing of grave abuse of discretion on the part of public respondent, the petition must perforce fail.

WHEREFORE, the instant petition is hereby DISMISSED, and the assailed Resolution dated November 15, 2011 and the Resolution dated February 29, 2012 of the National Labor Relations Commission (NLRC) are hereby AFFIRMED.

SO ORDERED.

Lloren, J., Ch., and [*1]Perez, JJ., concur.

[1*] Vice J. Santos per raffle dated February 11, 2015.

[2] Rollo at pp. 16-17.

[3] Rollo at pp. 18-20.

[4] Rollo at pp. 21-23.

[5] Rollo at pp. 16-17.

[6] Rollo at pp. 52-53.

[7] Rollo at 54-59.

[8] Rollo at pp. 39-40.

[9] Lepanto Consolidated Mining Corporation v. Belio Icao, G.R. No. 196047, January 15, 2014.

[10] Article 223. APPEAL. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. xxx

[11] Philippine National Bank v. The Sps. Angelito Perez And Jocelyn Perez, G.R. No. 187640, June 15, 2011.

[12] Agpalo, Statutory Construction, 1990 edition, p. 238.

[13] Bunagan v. Sentinel Watchman & Protective Agency, Inc., G.R. 144376. 533 Phil. 283 (2006).

[14] Norkis Free and Independent Workers Union v. Norkis Trading Company, Inc., G.R. No. 157098, June 30, 2005.

[15] Heirs of Lourdes Potenciano Padilla v. CA, 425 SCRA 426.

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