

PAN AMERICANWORLD AIRWAYS, INC., PETITIONER VS. TOMAS M. ESPIRITU AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-35401. January 20, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This is a petition for certiorari to review and reverse the orders of the Court of Appeals dated June 21, 1972, and August 4, 1972, dismissing petitioner's appeal for failure of the record on appeal to show on its face that it was filed on time.

Here are the facts of this case:

(1) On March 3, 1967, several cargoes arrived in the Manila International Airport (MIA) by plane from Hongkong for transshipment to Guam. Among the transit cargoes that arrived were two trunks consigned to a certain party in Agana, Guam. These two trunks were manifested but were not deposited inside the bodega of herein petitioner; instead they were alleged to have been left outside petitioner's bodega from where they disappeared.

Because of the disappearance of these two trunks, together with the merchandise contained therein, the Customs Patrol Division of the Manila International Airport conducted an investigation. One of the persons investigated was the herein private respondent, Tomas M. Espiritu, who was then the Mail/Cargo Service Supervisor of petitioner Pan American World Airways, Inc. (PAN AM for short).

As a result of the investigation and upon the recommendation of the Customs Police Division, certain persons, the private respondent herein among them, were criminally charged by the Bureau of Customs with violation of the Tariff and Customs Code on more than sixty counts. Meantime, the then MIA Collector of Customs, Salvador Mascardo, in an official order barred the herein private respondent from entering restricted areas at the Manila International Airport under the jurisdiction of the Airport Customshouse and prohibited him from transacting business with the Airport Customshouse in his capacity as representative of the PAN AM. Because of this inhibition herein petitioner suspended private respondent from office.

For lack of sufficient evidence, the criminal complaint against herein private respondent was dismissed on December 27, 1968, by the City Fiscal of Pasay City, which conducted the preliminary investigation of the charges, but on the advise of the MIA Collector of Customs, who claimed that he was morally convinced that respondent was involved in the irregularities imputed against him and, therefore, would not lift the order of exclusion, petitioner PAN AM terminated the services of Tomas M. Espiritu;[1]

(2) On April 10, 1969, still smarting under the actions taken against him, private respondent filed an action for damages, with petition for preliminary mandatory injunction, with the Court of First Instance of Manila against petitioner PAN AM and Airport Collector of Customs Salvador T. Mascardo, docketed as Civil Case No. 76207;[2]

(3) On April 30, 1970, the aforementioned Court of First Instance of Manila rendered its decision on said Civil Case No. 76207, declaring illegal and without effect the debarment order of Airport Collector of Customs

Salvador T. Mascardo dated May 24, 1967, for being violative of Section 711 of the Tariff & Customs Code, and ordering petitioner PAN AM to reinstate respondent immediately to the position from which he was previously suspended and subsequently removed, with payment of his back salaries from the date of his suspension until actually reinstated;[3]

(4) Petitioner PAN AM appealed the adverse judgment against it to respondent Court of Appeals, the same being docketed as Case CA-G.R. No. 48456-R;[4]

(5) On April 21, 1972, private respondent filed a motion to dismiss the appeal;[5]

(6) After an exchange of pleadings, respondent Court of Appeals issued a resolution dated June 21, 1972, to wit:

"* * * the Court RESOLVED to DISMISS the appeal for failure of the record on appeal to show on its face that it was filed on time."[6]

(7) On July 10, 1972, petitioner filed a motion for reconsideration of the aforementioned Resolution of June 21, 1972, and cited the following events or facts to show that the notice of appeal, appeal bond and record on appeal were filed on time and, hence, the said Resolution of June 21, 1972, should be reconsidered and set aside, to wit:[7]

a) The decision of the trial court appealed from was received by defendant PAN AM on May 16, 1970;

b) On June 9, 1970, PAN AM filed its motion for reconsideration;

c) On July 13, 1970, the lower court issued an Order denying the motion for reconsideration filed by PAN AM, the same being received by the latter on July 16, 1970;

d) On July 21, 1970, defendant filed its Notice of Appeal with Appeal Bond;

e) On July 22, 1970, defendant filed its record on appeal;

f) On Oct. 8, 1970, the trial court issued an order requiring defendant PAN AM to amend its record on appeal within ten days from receipt of notice. Copy of said Order was received by PAN AM on Oct. 10, 1970;

g) On Oct. 20, 1970, the amended record on appeal was filed. The date of filing being shown in the petitory portion of the same;

(8) On January 18, 1971, the trial court issued an order requiring the herein petitioner to further amend its amended record on appeal so as to include therein the "Opposition to Issuance of a Writ of Preliminary Mandatory Injunction" filed by Salvador T. Mascardo; the prayer for the issuance of the writ of injunction is contained in a Manifestation of the herein private respondent which he filed on Jan. 13, 1971;[8]

(9) Before receiving this order of January 18, 1971, or on February 3, 1971, petitioner submitted to the trial court the necessary pleading which was required of him in further amendment to its amended record on appeal per the aforecited order of January 18, 1971;[9]

(1) The record on appeal as thus further amended, now considered as approved, together with such other pertinent papers as required, was transmitted to respondent Court of Appeals on April 12, 1971;[10]

(11) On April 21, 1972, private respondent filed a motion to dismiss the appeal;[11]

(12) By a resolution dated June 21, 1972, respondent Court of Appeals dismissed petitioner's appeal;[12]

(13) On July 10, 1972, petitioner filed a motion with respondent Court of Appeals for a reconsideration of the aforecited resolution of June 21, 1972;[13]

(14) On August 4, 1972, respondent Court of Appeals denied the motion for reconsideration;[14]

(15) On August 23, 1972, the herein petitioner filed the present petition with this Court.

Petitioner PAN AM, in its Brief, cited three assignment of errors allegedly committed by the respondent Court of Appeals, namely:

1st assignment of error:

The lower court erred and/or abused its discretion in holding that the order approving the record on appeal is part of the "record on appeal" proper which is referred to in Sec. 6 of Rule 41 and Sec. 1, Rule 50 of the Rules of Court;

2nd assignment of error:

The lower court erred in not holding that when a record on appeal proper contains facts which show that the appeal was perfected on time but the order of approval casts doubts as to the timeliness of such record on appeal, the appellate court should consider evidence aliunde as to the timeliness of the appeal;

3rd assignment of error:

The Court of Appeals erred in not holding that the filing of the motion to dismiss after a delay of more than one year after the transmittal of the record on appeal to the Court of Appeals constitutes laches on the part of private respondent.[15]

On the other hand, private respondent, answering the 1st assignment of error alluded to by petitioner PAN AM argued:

"* * * the already amended record on appeal heretofore filed, although submitted seasonably had to be amended further and it is only by complying with such further amendment could the amended record be approved. Therefore, it is not correct for PAN AM to claim, as it claims by such contention, that the amended record on appeal it had submitted on 20 October 1970 to the trial court for approval although filed within the time fixed, was not a complete amended record on appeal * * * it is incumbent upon PAN AM to show on the face of the further amended record on appeal the date when it received notice of said order of January 18, 1971 and also the date when it complied with the directive." [16]

With respect to the 2nd assignment of error, respondent says:

"Anent the claim of petitioner PAN AM that it could present: evidence aliunde to show the timely perfection of its appeal * * * it is important to remember that the appellate jurisdiction of respondent Court of Appeals is limited only first to find out from the record on appeal if the appeal was perfected as fixed by the rules and if such is not the case, that is, that the record on appeal on its face does not show that the appeal has been perfected on time, to dismiss the same." [17]

Refuting the 3rd assignment of error, private respondent says:

"* * * there is no similarity between the Sibonghanoy case (cited by petitioner to sustain its argument on this point) and the present case and the ruling therein, that is, the Sibonghanoy case, cannot apply to the present case * * *. It took that length of time — almost 20 years — to finally decide it because of the delaying tactics of the surety company, which, taking advantage of the insubstantial technicality by swaying from one position to another in its effort to escape liability, it adopted various theories opposite to one another. Here, the delay of raising the issue of lack of jurisdiction on appeal by private respondent is a little over one year only and he, unlike the surety company in the Sibonghanoy case, has not swayed from one position to another * * Finally, the matter involved in this case being a matter of jurisdiction of the appellate court, it could be raised anytime * * [18]

A closer scrutiny of the facts of this case will reveal that the only relevant issue which this Court should address itself to is this: Was petitioner's controverted appeal perfected in accordance with the language and spirit of the law?

Private respondent Tomas M. Espiritu made much of an issue, and anchored his case for the dismissal of the appeal, on the alleged defect of appellant's now petitioner's twice-amended record on appeal in that it did not show on its face that the same was perfected seasonably by "***" showing the date when it received notice of said order of January 18, 1971 and also the date when it complied with the directive of said order."

To appreciate the issue involved, a review of salient events and facts related to, and revolving around, the appeal becomes imperative. These are to wit:

1. June 15, 1970 was the last day for perfecting the appeal of the herein petitioner, PAN AM, the notice of the contested decision of the trial court having been received by PAN AM on May 16, 1970;
2. The 30-day period for perfecting the appeal was suspended on June 9, 1970 when defendant PAN AM filed a motion for reconsideration of the decision. This left only six (6) days for perfecting an appeal;
3. On July 16, 1970, the order of the trial court denying petitioner's motion for reconsideration of the former's decision was received by said petitioner. From this date the running of the period for appeal started again, with July 22, 1970, as the last day for appeal and for the judgment to become final and executory;
4. On July 21, 1970, or just one day before the last day for perfecting its appeal, petitioner filed the notice of appeal and appeal bond;
5. The next day or on July 22, 1970, petitioner filed its record on appeal with the trial Court;
6. On October 10, 1970 petitioner PAN AM received the order of the trial court, dated Oct. 8, 1970, requiring the said airline to amend its record on appeal within ten (10) days from receipt of the order;
7. On October 20, 1970, or exactly nine (9) days from receipt of said order of Oct. 8, 1970, the amended record on appeal was filed by the herein petitioner;
8. On January 18, 1971, the trial court issued another order directing the herein petitioner to further amend the amended record on appeal by including therein the pleading denominated as "Opposition to Issuance of a Writ of Preliminary Injunction" filed by MIA Collector of Customs Salvador T. Mascardo against the petition of the herein private respondent dated January 13, 1971. This order declared that the amended record on appeal, when further amended, shall be considered approved, and directed the clerk of the trial court to forward the same, along with the evidence, to the Court of Appeals within the reglementary period. This order of January 18, 1971, was received by herein petitioner PAN AM on February 6, 1971;
9. Having been apprised of this order of January 18, 1971, even before the same had actually been received by it, petitioner PAN AM, on February 3, 1971, filed with the trial court the pleading or paper required in its order of January 18, 1971;
10. On April 12, 1971, the amended record on appeal as further amended, with the inclusion of the previously mentioned document "Opposition to Issuance of a Writ of Preliminary Mandatory Injunction", was transmitted by the Clerk of Court, along with other evidence and pertinent papers, to the Court of Appeals, the same having been considered as approved in accordance with the tenor and directive of the order of January 18, 1971;
11. On April 21, 1972, or precisely 1 year, 2 months and 18 days after the herein petitioner had submitted the document required of him by the order of the trial court of January 18, 1971, the herein private respondent filed a motion to dismiss the appeal on the ground that the record on appeal did not show the date when the

petitioner herein received the order of January 18, 1971, in order to determine whether or not the appeal had been perfected on time;

12. By a Resolution dated January 21, 1972, the respondent Court of Appeals dismissed the herein petitioner's appeal on the same ground cited by private respondent in his motion to dismiss.

From the facts just enumerated it is clear that petitioner PAN AM filed its appeal within the 30-day period prescribed by law. As to whether the filing of the document or pleading directed by the order of the trial court on January 18, 1971, constitutes the performance required of the defendant-appellant "to further amend the amended record on appeal," it appears to Us that that was exactly what the trial court directed defendant-appellant to perform.

The precise wordings of said order of January 18, 1971 read thusly:

"Acting on the written manifestation filed by the plaintiff stating therein his objection to the amended Record on Appeal, and finding the same well taken, it is hereby ordered that defendant Pan American World Airways, Inc. further amend its amended Record on Appeal so as to include therein the "Opposition to the Issuance of a Writ of Preliminary Mandatory Injunction" dated April 24, 1969 and filed by defendant Salvador T. Mascardo, and after compliance therewith, the amended Record on Appeal as further amended should be considered approved. The Clerk of Court is directed to forward the same together with evidence, testimonial and documentary, to the Court of Appeals within the reglementary period." [19]

Private respondent Tomas M. Espiritu claimed that " * * * Since there is no showing that the amendment ordered had been complied with, it is apparent that the appeal was not perfected on time." [20] On the other hand, as seen earlier, although defendant-appellant PAN AM had official notice of the order of January 18, 1971, only on February 6, 1971, it had actually submitted said document to the trial court earlier, i.e., on February 3, 1971. The Clerk of Court, upon receipt of the document for inclusion in the amended record on appeal, considered the amended record on appeal as having been further amended pursuant to the directive in the aforementioned order and so forwarded the same, with the evidence, to the Court of Appeals.

All these acts appear to Us to be clear indication and proof that there had been compliance with the January 18, 1971, order of the trial court, otherwise the said Clerk of Court would not have forwarded the record on appeal to the appellate court as that would have been in contravention of the order of the court and the provision of Section 11, Rule 41, of the Rules of Court.

As to whether petitioner PAN AM had, in its record on appeal, shown on the face thereof that the appeal was perfected on time, the truth or fact of which is hotly contested by the herein private respondent, there is a showing that defendant-appellant PAN AM had substantially complied with the provision of the law on the matter when it stated on page 12 of its record on appeal the following:

" * * * Copy of this Order was received by defendant Pan American. World Airways, Inc. on October 10, 1970.

AND NOW, within the lime allowed by law, defendant files this date, October 20, 1970 with this Honorable Court this amended record on appeal and prays that it be approved and transmitted to the Court of Appeals * "

* "

Likewise, to further show that there was substantial compliance with Section 6 of Rule 41, the record on appeal included the order of January 18, 1971, of the trial court which, for all purposes, was the order of approval of the amended record on appeal as further amended in accordance with said court order.

Although it is true that paragraph (a), Section 1, Rule 50, of the Rules of Court provides that failure of the record on appeal to show on its face that the appeal was perfected on time is a ground for dismissal of the appeal, this

Court has, however, relaxed its rigid interpretation of this rule when It believed that a straight-jacket application will do more injustice. As had been aptly observed by this Tribunal, a litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits * * * * Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserved scant consideration from courts * * * *"[21]

Again in more recent cases, We have ruled, as a renewed manifestation of this Court's departure from the old rigid and almost doctrinaire interpretation of this procedural law, that "* * * *". The Company took adequate steps to comply with the rules on perfecting an appeal and the "lapse" in the literal observance of the rule that the record on appeal should show on its face that the appeal was perfected on time may be overlooked without doing violence to the rules and to the rights of the adverse party * * * *. The plain truth cannot be ignored that Atlas perfected its appeal within the reglementary period and to Us this is what decisively matters. The rules should not be interpreted "to sacrifice the substantial right of the appellant in the sophisticated altar of technicalities with impairment of the sacred principles of justice." [22]

Since private respondent Espiritu had not manifested any objection to the order of January 18, 1971, this Court, pursuant to Section 7 of Rule 41, appreciates the contention that said private respondent had no legal ground to object to the final approval of said record on appeal and its transmittal to respondent Court of Appeals in accordance with said court order. Any objection later interposed thereto, through a motion to dismiss, on pure technicality, is not entitled to much credence and weight. Besides, this Tribunal stands pat on its rulings in earlier cases that, as in the case at bar, the express findings of the Judge of the lower court and the certification of the clerk of court as to the time of filing of the petition will prevail over the statements in the printed record on appeal. [23] The order for the herein petitioner to further amend his amended record on appeal by the inclusion therein of a specified document which was substantially complied with, and the official transmittal of said finally-approved record on appeal together with other pertinent papers to the Court of Appeals by the clerk of the trial court, are acts which must prevail over what are printed or not in the record on appeal.

One other matter which tills Court had considered with extreme care in the case at bar is the merit of the appeal. We have consistently held that when the petition for appeal is meritorious, the "element of rigidity should not be affixed to procedural precepts and made to cover the matter * * * *Considering the merits of the case, to dismiss petitioner's appeal would not serve the end of justice. [24]

We have thoroughly examined the records of this case particularly its background, and We are convinced that the appeal of herein petitioner, PAN AM, is not dilatory, involving as it does certain basic principles in the relationship between an employer and employee which should be accorded every opportunity to be ventilated and resolved finally.

Private respondent Tomas M. Espiritu then employed as Mail/Cargo Supervisor of the herein petitioner PAN AM had been accused, together with others, of violation of the Tariff and Customs Code by the Customs Police of the Manila International Airport. The charges against him resulted in an order issued by the then MIA Collector of Customs Salvador T. Mascardo, barring said Tomas M. Espiritu from entering restricted areas at the Manila International Airport and prohibited him from transacting business with the airport Customshouse in his capacity as representative of PAN AM. In consequence of this debarment and prohibition, the employer PAN AM first suspended him from office, and finally, separated him from the service. Although eventually cleared of the criminal charges, private respondent Tomas M. Espiritu had not been reinstated in his position by petitioner PAN AM in view of the report submitted by the MIA Customs Police regarding private respondent's alleged

participation and involvement in certain smuggling activities at the MIA in his capacity as Mail/Cargo Supervisor of PAN AM. Although the charges arising from these reported activities could not be proven beyond reasonable doubt in court, it is believed, however, that ertswhile supervisor of PAN AM was deeply involved in such activities. This was the burden of the report submitted to herein petitioner PAN AM. In short, petitioner PAN AM said that it had lost its trust and confidence in its ertswhile Mail/Cargo Supervisor and, therefore, would not accept him back.

We have held that there are certain justifications for the dismissal of an employee from the service and one of these is the loss of trust and confidence in the employee by the employer.[25]

It is very apparent, from the records of this case, that the dismissal of private respondent Tomas M. Espiritu from the employ of the herein petitioner was and still is, the principal issue raised by the former. We took note of the fact that the criminal charges filed against him in connection with the disappearance of two trunks, among the transit cargoes of a plane from Hongkong for deposit in the warehouse of PAN AM under the direct charge of respondent Tomas M. Espiritu, were dismissed by the City Fiscal of Pasay City for insufficiency of evidence. As a result of this dismissal, the herein private respondent demanded his reinstatement to his old position, the payment of his back wages and the award of damages.

We have time and again declared that an acquittal in a criminal case arising out of the same charges in an administrative case, based on reasonable doubt, does not affect in any way the employee's previous dismissal since conviction in a criminal case is not indispensable to warrant the dismissal of an employee.[26] We are of the opinion that in fairness to all concerned, the appeal of the herein petitioner should be given due course. The foregoing are the circumstances that supervened in this case and compel this Court to say that the herein petitioner's appeal is not without merit and the petitioner is entitled to a day in court.

Wherefore, We hold that the appeal of herein petitioner Pan American World Airways, Inc. in CA-G.R. No. 48456-R was perfected on time. The Resolutions of respondent Court of Appeals dated June 22, 1972, and August 4, 1972, are hereby reversed and set aside and that the appeal of herein petitioner Pan American World Airways, Inc. shall be reinstated and given due course. So ordered.

Teehankee, J., (Chairman), Makasiar, Muñoz Palma and Martin, JJ., concur.

[1] Reply Brief for Petitioner, pp. 1-5; Rollo, p. 66.

[2] Brief for Respondents, p. 8; Rollo, p. 60.

[3] Ibid, pp. 9-10.

[4] Petition of PAN AM, p. 2; Rollo, p. 2.

[5] Supra.

[6] Annex "C", Petition of PAN AM, Rollo, p. 19.

[7] Annex "D", Ibid, Rollo, pp. 21-22.

[8] Brief for Petitioner, pp. 3-4.

[9] Supra.

[10] Supra.

[11] Supra.

[12] Supra.

[13] Supra.

[14] Supra.

[15] Brief for Petitioner, pp. a-b; Rollo, p. 58.

[16] Brief for the Respondents, p. 15; p. 60.

[17] Ibid, p. 22.

[18] Ibid, pp. 25-26.

[19] Record on Appeal, p. 307.

[20] Petition, p. 4, Rollo, p. 4.

[21] *Alonso vs. Villamor, et al.*, 16 Phil. 315.

[22] *Atlas Timber Company, et al. vs. First Western Bank & Trust Co.*, G.R. No. L-27534, May 29, 1975, citing *International Tobacco Co., Inc. vs. Yatco*, 55 O.G. No. 5, 811; *Alonso vs. Villamor*, 16 Phil. 315; *Villanueva, et al. vs. Court of Appeals, et al.*, G.R. No. L-29719, Nov. 28, 1975.

[23] *Garchitorena vs. Sotelo*, 74 Phil. 25; *Anuran vs. Aquino*, 38 Phil. 29; *Banco Español Filipino vs. Palanca*, 37 Phil. 921.

[24] *B.E. Berkenkotter vs. Court of Appeals and Isidro Climaco*, G.R. No. L-36629, Sept. 28, 1973, SCRA, Sept. 1973, p. 213, citing *Carillo vs. Allied Workers Ass'n.*, 24 SCRA 566.

[25] *Manila Trading & Co., vs. Zulucta*, 48 O.G. Supp. 183; *The Management, El Hogar Filipino Building Ass'n., et al.*, G.R. No. L-9740, March 30, 1960; *Manila Trading & Supply Co., vs. Manila Trading Laborers Ass'n.*, 40 O.G. 4874.

[26] *Gatmaitan vs. Manila Railroad Company*, G.R. No. L.19892, Sept. 25, 1967, 21 SCRA 191.

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