

RRCG BUS COMPANY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), HON. GEOBEL A. BARTOLABAC, IN HIS CAPACITY AS LABOR ARBITER, AND ARNEL T. CAILLES, RESPONDE...

Ponente: DACUDAO, J.

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DACUDAO, J.:

Assailed in this petition for certiorari, as tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, are:

- (1) The Resolution[1] issued on January 6, 2006 by the National Labor Relations Commission (or NLRC), denying petitioner's motion for reconsideration of the Resolution dated October 18, 2005;
- (2) The NLRC's Resolution dated October 18, 2005[2] itself, which dismissed petitioner's appeal from the Orders dated April 29, 2004 and June 24, 2004 of Labor Arbiter Geobel A. Bartolabac;
- (3) The Decision[3] rendered on May 27, 2002 by the NLRC, reversing the ruling of Labor Arbiter Bartolabac that petitioner was not guilty of illegal dismissal;
- (4) Labor Arbiter Bartolabac's Order dated April 29, 2004[4] itself, directing the issuance of a writ of execution; and
- (5) The Order[5] itself issued on June 24, 2004 by Labor Arbiter Bartolabac, which corrected the computation made by the Computation & Examination Unit of the NLRC.

The material operative facts:

Before the NLRC-Arbitration Branch, private respondent Arnel Cailles and Wilson S. Villamin, as complainants, sued the petitioner RRCG Bus Company, Fidel Torres, and Anna Marie Torres as defendants, for illegal dismissal and money claims. Instituted on July 17, 1996, the case was thereat docketed as NLRC NCR Case No. 00-07-04478-96.

However, only private respondent Arnel Cailles remained as complainant therein because on December 6, 1996, the case was dismissed insofar as Wilson Villamin was concerned.[6]

The private respondent averred in his position paper that he was employed by the petitioner RRCG Bus Company as bus driver in April 1995; that, sometime in August 1995, he accidentally hit a jeepney, for which he was made to pay for the damage; that, a year later, on April 23, 1996, the bus assigned to him was hired for a field trip and while in that field trip, it suddenly stopped running; and that, since then, he was not allowed to drive by the said bus company, hence, the complaint.[7]

Petitioner countered in its position paper⁸ that, three of its employees, namely: the bus conductors Tirso M. Mendoza and Juan P. de Leon, and the chief mechanic Carlos V. Mina, executed affidavits uniformly declaring that private respondent was a reckless and negligent driver; and that there is no factual and legal basis to support

the claims of private respondent, especially so if the seriousness and extent of the damage that he inflicted upon the petitioner bus company would be considered.

In the decision dated September 26, 1998,[9] Labor Arbiter Bartolabac sustained petitioner's stance that private respondent had been reckless in driving the bus assigned to him, and that he was equally negligent in the maintenance thereof, hence, his dismissal was justified.

As to the money claims, the labor arbiter ordered the petitioner bus company to refund the P1,000.00 deposit for personal bond of private respondent.

The rest of the claims were dismissed.

Private respondent went up on appeal to the NLRC. This was docketed as NLRC NCR CA No. 019794-99.

But in its decision of May 27, 2002,[10] the NLRC overturned the labor arbiter's finding that the petitioner bus company was not guilty of illegal dismissal, the NLRC viewing the affidavits of petitioner's witnesses with suspicion. Thus:

"We reverse.

"Respondents filed a one (1) page Position Paper accompanied with three (3) affidavits which were adopted as forming part of the Position Paper. Respondents did not state in their Position Paper that they did not dismiss complainant. The second paragraph of their Position Paper state:

'From the foregoing affidavits of Tirso Mendoza, Juan de Leon and Carlos Mina, there is no factual or legal basis for the claims made by complainant, Arnel T. Cailles especially so if we consider the seriousness and extent of damages that Mr. Arnel T. Cailles has caused on respondent corporation arising from his recklessness and negligence.'

"The above-quoted statement of respondents conveys the idea that complainant was indeed dismissed from the service on account of his 'recklessness and negligence' as depicted in the three (3) affidavits mentioned above. But it is unclear which specific 'recklessness and negligence' led to the separation of complainant from his employment. It seemed that there were two (2) incidents. One which happened in August 1995 whereby the bus driven by complainant his a 'passenger type vehicle' as narrated in the affidavit of Juan P. de Leon. Although the windshield of the bus was damaged, the affidavit did not mention any damage to (the) passenger type vehicle, much less any injuries to its passenger. It did not mention at all whether there were passengers in the said passenger type vehicle. The second incident was the one narrated in the affidavits of Tirso M. Mendoza and Carlos Mina, referring to the incident where the bus driven by complainant conked out on the way to the EDSA Central Terminal coming from Binangonan, Rizal. This happened on April 26, 1996 where the cause of the engine trouble was the alleged failure of the complainant to put water in the radiator of the bus. The radiator was discovered dry when it was towed to the garage at Binangonan. Respondent allegedly spend P65,000.00 for the overhaul of the bus.

"There are clouds of doubt in these three (3) affidavits. The affidavit of Juan P. de Leon was executed on November 29, 1996 while the incident mentioned therein happened in August 1995. Complainant alleged that Juan P. de Leon was not the bus conductor when the incident happened but a certain Pedi Andal. Respondents did not dispute this allegation. And if Juan P. de Leon was not the bus conductor, how could he conclude that 'the accident was due to Mr. Cailles fault as he was driving recklessly at the time and was not observing proper road courtesy and was very hot headed that day.

"With respect to the August 26, 1996 incident, (although complainant alleged this happened on April 23, 1996) Tirso M. Mendoza, the bus conductor and Carlos V. Mina, the chief mechanic, alleged that the bus radiator was dry of water yet complainant also alleged that the mechanic who arrived at the site of incident saw that the bus

had sufficient water in the radiator and even engine oil and the reason why the bus stopped was that it was already too old. Respondents did not present any corroborative evidence such as the copy of the on-the-spot report or incident report of the chief mechanic or whoever, to attest to the real trouble of the engine. Complainant also alleged that Mr. Mina was assigned then at Baras terminal station so that he could not say whether or not water was put in the radiation before leaving from Binangonan.

“Now, for the first incident, complainant was clearly made to suffer the penalty by obligating him to pay for the broken windshield of the bus. He can not be made to suffer for the same offense.

“This leaves Us now to the second incident. Because of the last incident, complainant was stranded and was not able to drive the bus for two (2) days. He was given the ran-around when he asked to resume his work. After almost (3) months without assigning complainant any work, he filed the instant case for constructive dismissal.

“The Affidavits of Messrs. Mendoza and Mina were executed on November 20, 1996 while the incident occurred on April 26, 1996. The said affidavits alone can not stand because aside from being self-serving they are executed by the affiants who are still employees of respondent company and thus have possible bias against complainant.

“As regards due process, for lack of notice or communication from respondent, complainant had no inkling at all that he would be dismissed constructively on account of the incident on April 26, 1996. He was in limbo for three (3) months. “While We recognize the prerogative of employers to discipline and penalize their erring employees, they can only do so within the bounds of the law, particularly our labor laws.

“We are not however inclined to order the reinstatement of complainant because due to lapse of time the relationship between the herein litigants may have been marred with animosity and hostility brought about by this suit. The antipathy toward complainant had been demonstrated by respondent during the three (3) month periods that preceded the filing of his case.

“Complainant is entitled to backwages from the filing of this case until the date of this decision plus separation pay at the rate of one (1) month salary per every year of service thereof.

“As regards the monetary claim, except for the reimbursement of P1,000.00 deposit for personal bond, the other monetary claims would have to be denied for lack of clear basis.”

The NLRC thereupon dispositively decreed, to wit:

“WHEREFORE, premises considered, the assailed decision is hereby reversed. Respondents are adjudged guilty of constructive dismissal. Accordingly, respondents are ordered to pay complainant backwages from the filing of the complaint up to the date of this decision and separation pay at the rate of one (1) month salary for every year of service plus ten (10%) of the monetary award as attorney’s fees. In addition, respondents are ordered to pay P1,000.00 as reimbursement of deposit for personal bond.

“SO ORDERED.

“Quezon City, Philippines.

“ANGELINA A. GACUTAN

“Commissioner

“WE CONCUR:

“RAUL T. AQUINO

“Presiding Commissioner “VICTORIANO R. CALAYCAY

“Commissioner”

Private respondent filed a motion for partial reconsideration thereon, but the NLRC thumbed down the motion in a resolution dated November 29, 2002.[11]

No action was taken by petitioner in regard to the NLRC decision, however.

On January 8, 2003, private respondent filed a manifestation/motion for execution,[12] alleging that, since petitioner did not file a motion for reconsideration, the NLRC decision had become final and executory.

On June 10, 2003, an entry of judgment[13] was indeed issued by the NLRC, certifying that its Resolution dated November 29, 2002 became final and executory on February 10, 2003, and was accordingly recorded in the book of entries of judgments.

The case was thereafter remanded to the Arbitration Branch for the pre-execution conference, which was initially set on July 8, 2003.[14]

Because petitioner ignored the pre-execution conference, private respondent filed a second motion for execution dated September 11, 2003, attaching thereto the pertinent return card purportedly showing receipt by petitioner’s counsel of the NLRC decision on June 13, 2002.[15]

On September 15, 2003, Atty. Marcos L. Estrada, Jr. entered his appearance as petitioner’s new counsel.[16] This entry of appearance by the new counsel was effected notwithstanding the fact that no formal withdrawal of appearance was submitted by petitioner’s counsel of record, Atty. Benjamin Benito.

Subsequently, computation of the award was prepared, and copies thereof were served on the parties. Private respondent filed his comment thereon, while petitioner did not.[17]

On October 29, 2003, petitioner filed before the Labor Arbiter’s Office a manifestation/motion for reconsideration,[18] thereunder questioning the validity or propriety of the entry of judgment.

It is contended thereunder by the petitioner that there is no record of receipt by it and its former counsel of a copy of the NLRC decision; that, under Article 224 of the Labor Code of the Philippines, and conformably with the ruling in PNOCK Dockyard & Engineering Corp. v. NLRC,[19] both party and counsel must be served a copy of the decision; that, moreover, it is not bound by the gross neglect of its previous counsel in the handling of the case, adverting to *Amil v. Court of Appeals*:[20] that, indeed, after filing its position paper, its former counsel for some inexplicable reason, stopped taking further action on the case altogether, without formally withdrawing from the case, however; and that, in view of this, there can be no valid entry of judgment in this case.

On November 24, 2003, private respondent tendered an opposition thereto, with motion to strike out petitioner’s motion for reconsideration,[21] thereunder arguing that the case is already at its execution stage, hence, a motion for reconsideration is no longer allowed.

In his Order of April 29, 2004,[22] the labor arbiter directed the issuance of a writ of execution.

Petitioner appealed the said order to the NLRC.

In its appeal memorandum,[23] petitioner now maintained that the NLRC decision never attained finality and could not be the subject of execution, considering that it (petitioner) never received a copy thereof.

For his part, private respondent filed before the Labor Arbiter's Office a manifestation/motion for the correction of the computation of the aggregate sums awarded thereunder contending that the P1,000.00 deposit should be added to, not deducted from, the total award.[24]

In the Order dated June 24, 2004,[25] the labor arbiter granted private respondent's motion.

Petitioner went up to the NLRC to appeal the said order.

In its memorandum of appeal,[26] petitioner argued that the NLRC decision never became final and executory because, in a certification issued by the NLRC itself, there is no record that it ever received a copy of the same.

The document adverted to reads:

"This is to certify that as per the records of the case relative to NLRC NCR Case No. 00-07-04478-96/CA No. 019794-99 entitled, 'Arnel T. Cailles, et al. - vs. - RRCG Bus Company, et al.' there is no indication as to when the respondent company received a copy of the resolution of the Commission considering the absence of return cards.

"This certification is issued upon request of Atty. Marcos L. Estrada, Jr. for whatever legal purpose it may serve.

"Quezon City, Philippines, 30 June 2004.

"GILBERT T. DE UNGRIA

"Officer-in-Charge, ODEC"

Resisting the appeals, private respondent filed an urgent motion to strike-out variety of appeals,[27] thereunder contending that an order granting execution is not appealable; and that petitioner's dilatory maneuvers merely resulted in putting off the inevitable execution of the NLRC decision.

In its Resolution of October 18, 2005,[28] the NLRC dismissed the appeals. The NLRC's ruling:

"There is indeed no showing that the respondents and/or their former counsel received a copy of the Labor Arbiter's decision (Records, pp. 248-253) dated September 26, 1998. xxx. However, neither is there any showing that the complainant and/or his counsel received a copy of the same decision. Yet an appeal (Records, p. 257) therefrom was filed by the complainant. It is noteworthy that the respondent's counsel was furnished a copy of the complainant's appeal memorandum, as shown by Registry Receipt No. 12982 (Records, p. 269) dated April 19, 1999 issued by the Legaspi Village Post Office. A registry return card (Records, p. 330) shows that on June 13, 2002, the respondents former counsel received a copy of the decision (Records, pp. 309-318) subsequently promulgated by this Commission on May 27, 2002. xxx. The complainant maintained that a copy of this Commission's decision was served upon respondent RRCG Bus Co. at its given address by registered mail. In support thereof, he submitted a Certification (Records, p. 393) issued by the Pasig Central Post Office stating that the mail matter mailed to the above-stated respondent was returned to sender with the remark that the addressee had moved out.

"There is therefore no question that the respondents' former counsel – who never withdrew his appearance – received a copy of the decision promulgated by this Commission on May 27, 2002. Yet, no appeal therefrom was filed by the respondents. It is equally clear that the respondent's former counsel received a copy of the complainant's appeal memorandum challenging the Labor Arbiter's decision. Yet, he never claimed that he did not receive a copy of the Labor Arbiter's decision. Under these circumstances, it cannot be said that there was a denial of respondents' right to due process. It is settled that all notices which a party is entitled to receive must be coursed through his counsel of record (Holiday Inn Manila vs. NLRC, 226 SCRA 417; Curaza vs. NLRC, 354 SCRA 451).

“WHEREFORE, the respondents’ appeal is hereby DISMISSED for lack of merit.

“SO ORDERED.

“Quezon City, Philippines.”

Petitioner moved for reconsideration thereon,[29] now arguing that it never received a copy of the NLRC decision; and that, assuming that its former counsel indeed received a copy of the same, the said former counsel nevertheless did not take any action thereon; hence, it cannot be bound by that counsel’s gross negligence.

But in its Resolution of January 6, 2006,[30] the NLRC stood pat on its position.

Hence, the present recourse, with petitioner now imputing grave abuse of discretion against the NLRC:

I. IN DECLARING THAT ITS 27 MAY 2002 DECISION HAD BECOME FINAL AND EXECUTORY DESPITE THE UNDISPUTED FACT THAT NO SERVICE HAD BEEN MADE UPON THE PETITIONER, THEREBY, PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION SERIOUSLY, WHIMSICALLY AND GRAVELY ERRED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION.

II. IN TOTALLY DISREGARDING THE DECISION OF THE LABOR ARBITER BASED ON TESTIMONIAL AND DOCUMENTARY EVIDENCES MAKING A SEPARATE, BASELESS AND UNFOUNDED CONCLUSION, THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED AN ERROR OF JUDGMENT WARRANTING A REVERSAL THEREOF.

We believe that, we need only resolve the first issue, because the resolution of the second issue would be subsumed in the resolution of the first issue.

The petition will not prosper.

The remedy of a party aggrieved by a decision order or resolution of the NLRC is to timely file a motion for reconsideration with the NLRC as a pre-condition for any further or subsequent remedy. Under Section 14, Rule VII of the New Rules of Procedure of the NLRC,[31] the motion must be filed within ten (10) days from receipt of the NLRC order, resolution or decision.

The filing of a motion for reconsideration with the NLRC and the filing of such a motion on time are not mere technicalities of procedure. They are jurisdictional and mandatory requirements which must be strictly complied with.[32]

If the NLRC denies the motion for reconsideration, the aggrieved party must then seasonably institute before this Court a special civil action of certiorari under Rule 65 of the Revised Rules of Court, pursuant to the case law ruling in *St. Martin Funeral Home v. NLRC*. [33] Section 4 of the said Rule 65, as amended, states, amongst others, that the petition may be filed not later than sixty (60) days from notice of the denial of the motion for reconsideration.

Although the ten-day period for finality of the decision of the NLRC may already have lapsed as contemplated in Section 223 of the Labor Code, certiorari is still available for jurisdictional and due process considerations, if filed within the reglementary period under Rule 65 of the Revised Rules of Court.[34]

Correlatively, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that, “For the purpose of computing the period to appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record.” The High Tribunal declared in *Ginete v. Sunrise Manning Agency*, [35] that although the aforesaid rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, it did “not see any cogent reason why the same rule should not apply to petitions for certiorari filed with the Court of

Appeals from decisions of the NLRC.” In this case, the High Tribunal stressed that such a “procedure is in line with the established rule that notice to counsel is notice to party and, when a party is represented by counsel, notices should be made upon the counsel of record at his given address, to which notices of all kinds emanating from the court should be sent.” It added that “Section 7, of the NLRC Rules of Procedure provides that ‘Attorneys and other representatives of parties shall have the authority to bind their clients in all matters of procedure,’” a provision “similar to Section 23, Rule 138 of the Rules of Court;” and that, more importantly Section 2, Rule 13 of the 1997 Rules “analogously provides that, if any party has appeared by counsel, service upon him shall be made upon his counsel.”

In this case, the ten-day period within which to file a motion for reconsideration commenced to run on the day following June 13, 2002, the date of receipt of a copy of the NLRC decision by petitioner’s former counsel of record. But in this case, that period lapsed without petitioner ever filing with the NLRC a motion for reconsideration thereon. Hence, on that account, the NLRC decision attained a final and executory character.

We find unacceptable petitioner’s claim that its former counsel of record never received a copy of the NLRC decision. On record is the return card[36] covering the mailing of the copy of the said decision to petitioner’s former counsel of record: this contains the typewritten word “Decision.” The same return card also bears the date “06/13/02” which stands for June 13, 2002, and also bears a signature with the surname “Sabago.” Because the return card states that “a registered article must not be delivered to anyone but the addressee, or upon the addressee’s written order,” it must be presumed that the person who received the mail matter was the addressee, and that he was able to present a written authorization to receive the same, even as we can also assume that the said mail matter was duly received in the ordinary course of events.[37]

Fundamental is the rule that, unless the contrary is proved, official duty is presumed to have been regularly performed, and that judicial proceedings had been regularly conducted. This presumption of regularity covers quasi-judicial proceedings conducted before the Department of Labor & Employment, and includes the presumption of regularity in the service of summons and other processes and notices therein.[38]

In the case at bench, petitioner failed to overthrow or rebut this legal presumption with competent and cogent countervailing evidence. Hence, it must stand.

A bit misplaced, we believe, is petitioner’s reliance on *Amil*. [39] In said case, the petitioner therein was declared in default because of the failure of his former counsel to file, within the reglementary period, an answer to therein respondent’s petition for consolidation of ownership; and that, later, a judgment was rendered adverse to the petitioner therein. The said case had to do with a party who had been totally deprived of his day in court by reason of the gross negligence of his counsel. The situation here is quite different. In this case, the petitioner’s former counsel was far from being grossly negligent, for in fact he was able to obtain from the Labor Arbiter a favorable decision for his client.

Furthermore, petitioner here must take the blame for its own non-receipt of a copy of the NLRC decision. It transferred or relocated its office/s without notifying the NLRC. On record is a certification dated November 14, 2003[40] from the Pasig City Central Post Office which pertinently reads:

“This is to certify that as per record, Regltr. 0911 mailed on June 7, 2002 addressed to RRCG Bus Co., RM 1204 12th Floor, Jollibee Center Bldg., San Miguel Pasig City was returned to sender on June 14, 2002 by the postman assigned at that area with service notation of ‘RTS-Moved Out.’

Controlling this case is *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*, [41] where the High Tribunal declared:

“In short, petitioner wants to impress upon us that the starting point of reckoning for the filing of the motion for new trial should be 11 April 1996, and not 10 April 1996 as held by the Court of Appeals. Petitioner through counsel attributes its present woes to Atty. Alcaraz, its former counsel, who did not even have the courtesy of filing any formal withdrawal of appearance. Petitioner now begs that it be given the chance to present its case and enable this Court to fully determine the issues raised and thus abide by the principle laid down in *Aguilar v. Court of Appeals* that 'losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer.

“We deny the petition. Settled is the rule that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictional, and failure to perfect that appeal renders the challenged judgment final and executory. This is not an empty procedural rule but is grounded on fundamental considerations of public policy and sound practice. Record shows that petitioner's counsel received copy of the trial court's decision on 10 April 1996 but filed a motion for new trial one (1) day after the lapse of the fifteen-day prescriptive period. As such, the judgment of the lower court ipso facto became final when no appeal was perfected after the lapse of the reglementary period. This procedural caveat cannot be trifled with, not even by this Court.

“Petitioner's contention that the reckoning period for the filing of its appeal should be on 11 April 1996, the day when it was furnished copy of the decision, and not 10 April 1996, the date of receipt by its former counsel, is not correct. Service of notice to the counsel of record is, for all intents and purposes, notice to the client. Judicial conduct is guided by what appears on the record. In the absence therefore of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.”

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby is, DISMISSED. Costs shall be assessed against the petitioner.

SO ORDERED.

Carandang, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 25-26. Penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring

[2] *Id.*, pp. 27-29.

[3] *Id.*, pp. 30-39.

[4] *Id.*, pp. 40-44.

[5] *Id.*, pp. 45-46.

[6] See the Labor Arbiter's Decision dated September 26, 1998, p. 1; Rollo, p. 72.

[7] Refer to the Labor Arbiter's Decision dated September 26, 1998, p. 2; Rollo, p. 73.

[8] Rollo, p. 68.

[9] Rollo, pp. 72-74.

[10] *Supra*, note 3.

[11] See the Petition, p. 6; Rollo, p. 13.

[12] Rollo, pp. 134-136.

[13] *Id.*, p. 137.

[14] Refer to Private Respondent's Comments (On the Petition, Compliance, and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), p.3; Rollo, p. 121.

[15] *Ibid.*

[16] Rollo, p. 83.

[17] See Private Respondent's Comments (On the Petition, Compliance, and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), p.3; Rollo, p. 121.

[18] Rollo, pp. 75-82.

[19] G.R. No. 118223, June 26, 1998, 291 SCRA 231.

[20] G.R. No. 125272, October 7, 1999, 316 SCRA 317.

[21] *Id.*, pp. 138-143.

[22] *Supra*, note 4.

[23] Rollo, pp. 47-52.

[24] Refer to the Labor Arbiter's Order dated June 24, 2004, p. 1; Rollo, p. 45.

[25] *Supra*, note 5.

[26] Rollo, pp. 53-58.

[27] Rollo, pp. 152-161.

[28] *Supra*, note 2.

[29] Rollo, pp. 60-63.

[30] *Supra*, note 1.

[31] Promulgated on August 31, 1990 and took effect on October 9, 1990.

[32] *Lopez Dela Rosa Dev't. Corp. v. Court of Appeals*, G.R. No. 148470, April 29, 2005, 457 SCRA 614, 628.

[33] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[34] *St. Martin Funeral Home v. NLRC*, *supra*, note 33.

[35] G.R. No. 142023, June 21, 2001, 359 SCRA 404.

[36] Rollo, p. 147.

[37] See *Masagana Concrete Products v. NLRC*, G.R. No. 106916, September 3, 1999, 313 SCRA 576, 587.

[38] *Columbus Phil. Bus Corp. v. NLRC*, G.R. No. 114858 to 59, September 7, 2001, 364 SCRA 606, 618-619.

[39] *Supra*, note 20.

[40] Rollo, p. 163.

[41] G.R. No. 134888, December 1, 2000, 346 SCRA 691, 696-697.

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