

**DEL MAR DOMESTIC ENTERPRISES AND MARIO CHAN, SR.,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
NESTOR HISPANO, LEXIETH LEGASPI, AMADO AGUSTIN, CANDIDO
AGUILLEN, EDEN MO...**

G.R. No. 108731. December 10, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An appeal from a decision of the labor arbiter must be filed within ten days from receipt. This is mandatory and jurisdictional. However, failure to allege the date of receipt of such decision in the appeal memorandum is not jurisdictional but only procedural. Business losses as a just cause for termination of employment must be serious, substantial and actual. Such alleged losses must be established by sufficient and convincing evidence, the burden lying heavily on the employer who knows fully well that such an action can greatly affect the lives and careers of his employees.

The Case

These are the legal principles used in resolving this special civil action for certiorari under Rule 65 of the Rules of Court, assailing the October 13, 1992 and January 11, 1993 Resolutions of the National Labor Relations Commission (Respondent Commission for brevity) in NLRC NCR 00-02-113-90 which modified the labor arbiter's decision and granted private respondents separation pay equivalent to one-half month's salary for every year of service.

Private Respondents Nestor Hispano, Lexieth Legaspi, Amado Agustin, Candido Aguillon, Eden Moraldec, Josephine Tumanlao, and Vilma Agustin filed a complaint for illegal dismissal, nonpayment of overtime pay, holiday pay, premium pay and separation pay against Petitioners Del Mar Enterprises and Mario Chan, Sr. Labor Arbiter Manuel P. Asuncion conducted conciliation proceedings, but no settlement was reached. After submission of position papers, the labor arbiter rendered a decision dated July 5, 1990, the dispositive portion of which reads:[1]

“WHEREFORE, the respondent Mario Chan is hereby ordered, to pay the herein complainant [Nestor Hispano], separation pay, for the services he rendered at the latter's chicharon repacking business at the equivalent of 1/2 month salary for every year of service, but, in no case, to go lower than one month salary. The amount of P1,500.00 advanced to the complainant may be deducted from the award.

The complaint of the other complainants are dismissed for lack of merit.”

On appeal, the Second Division of Respondent Commission,[2] in the Resolution dated October 13, 1992, modified the ruling of the labor arbiter by granting the plea of the other complainants. [3]

“IN VIEW OF THE FOREGOING, let the decision of the Labor Arbiter be, as it is hereby set aside and a new

one promulgated ordering respondents Del Mar Domestic Enterprises and/or Mario Chan Sr. to pay herein individual complainants their separation pay equivalent to one-half month's salary for every year of service. The separation pay of Nestor Hispano should cover the period 1970 up to December 29, 1985. However, the amount of P1,500.00 which was advanced to him by respondents as financial assistance should be deducted from his total award."

Respondent Commission denied reconsideration in the assailed minute Resolution dated January 11, 1993:[4]

"After due consideration of the Motion for Reconsideration filed by respondents-appellees on October 28, 1992 from the Resolution of October 13, 1992, the Commission (Second Division) RESOLVED to deny the same for lack of merit."

Hence, this petition.[5] On March 31, 1993, the First Division of this Court enjoined the execution of the challenged Resolution during the pendency of this petition and until further order from this Court.[6]

The Facts

Quoted hereunder is the recital of the facts found by Respondent Commission:[7]

"The complainants [herein private respondents] alleged to have worked with respondent company [herein petitioner] on the following dates:

Date Hired

Date Dismissed

a. Nestor Hispano

1970

1989

b. Lexieth Legaspi

1967

1987

c. Amado Agustin

1977

1987

d. Candido Aguillen

1973

1987

e. Eden Moraldec

1982

1987

f. Josephine Tumanlao

1981

1987

g. Vilma Agustin

1982

1987

Complainants were dismissed by the respondents during the strike in March, 1987 for alleged abandonment of work.

Complainants protested that they were only verbally informed that their services were no longer needed and that they were considered dismissed from work; and that pursuant to Section 2, Rule XIV, Book V of the Rules implementing the Labor Code, they were dismissed without due process. Accordingly, they claim[ed] they should be awarded moral and exemplary damages and attorney's fees and ordered reinstated without loss of seniority rights and benefits and with full backwages.

In defense, the [petitioners herein] averred that in gross violation of [its] CBA with Bayanihan Food Workers Labor Union, where the Union agreed not to strike against the company during the life or effectivity of the agreement, the Union staged a strike on March 3, 1987; and that the decision of Labor Arbiter Eduardo Magno, declaring the said strike illegal is pending [a]ppeal before the Commission.

[Petitioners] further claim[ed] that during the height of the strike, a fire of undetermined origin razed to the ground about 70% of the company's premises rendering the factory useless and inoperable; that complainants Lexieth Legaspi, Eden Moraldec, and Vilma Agustin were never employed by the respondents and that they have no record of employment with them; that complainants Amado Agustin, Candido Aguillen and Josephine Tumanlao are all union members and as per verification of the CBA, they were among the signatories thereof; and that although they were not present in the picket area, they sympathized with the strikes as they refused to report for work and gave financial and material contributions to the strikers.

As regards, complainant Nestor Hispano, [petitioners] alleged that he was a company guard; that he was rendered jobless by reason of the fire that gutted the company; that out of pity, he was taken in as [a] utility man at respondent Mario Chan's residence, where the latter has a small repacking business of [c]hicharon; that sometimes he was assigned to do some repacking of chicharon, sometimes as gardener and at other times assisted the regular houseboy.[8]

[Petitioner] Mario Chan also averred that upon advi[c]e of the Licensing Authority of the Quezon City Government, repacking at his residence was closed, as it was prohibited and in violation of the Subdivision Rules and Regulations; and that upon demand, Hispano was paid financial assistance of P1,500.00 as evidenced by his written request.

[Petitioners] maintain[ed] that complainants' failure to report for work since the inception of the illegal strike is a clear manifestation of abandonment of work, and that their filing of the instant complaint is barred by laches and prescription.

In disposing of the case, the Labor Arbiter resolved that all complainants lost their employment by reason of the fire and [were] not entitled to severance pay, except for complainant Hispano who continued to work with [Petitioner] Chan as utility man and who is entitled to separation benefits for his services therein, but ruled that the amount of P1,500.00 given him as financial assistance should be deducted therefrom."

Issue

The sole issue for resolution presented by petitioners[9] in their Memorandum[10] dated December 21, 1997, is as follows:

“Whether or not the public respondent gravely erred and committed grave abuse of discretion amounting to lack of jurisdiction in reversing the Decision a quo and consequently awarding and ordering payment of separation pay to herein private respondents.”

In the main, petitioners argue that public respondent committed grave abuse of discretion by (1) entertaining private respondents’ appeal despite their failure to specify the date they received the labor arbiter’s decision and (2) granting separation pay to private respondents despite their alleged abandonment of their employment and despite business losses suffered by petitioners.

The Court’s Ruling

The petition is not meritorious.

First Issue: Failure to Allege Material Date Is Not Jurisdictional

In their appeal before Respondent Commission, private respondents failed to allege the date when they received the challenged decision of the labor arbiter.[11] Thus, petitioners argue that:[12]

“1. The Appeal is fatally defective for it failed to allege the jurisdictional fact of when did (sic) appellant received copy of the questioned Decision. This requirement is mandatory under Section 5 of the NLRC Interim Rules on Appeal under R.A. 6715 x x x.

Thus, the [a]ppeal must be dismissed outright for it is not in conformity with the requisites necessary for the perfection of an [a]ppeal. In this jurisdiction, the rule is, once the Appeal is not perfected, the Decision x x x a quo becomes final and executory.” (Underscoring in the original.)

Respondent Commission ruled that such failure did “not constitute a fatal defect to warrant the dismissal of the appeal:”

“On the other hand, the respondents-appellees [herein petitioners] based their opposition to the appeal principally on the ground that the failure to allege in the appeal of complainants the date when they received [a] copy of the questioned Decision is mandatory under Section 5 of the NLRC Interim Rules on Appeal under R.A. 6715 and is a necessary requisite for the perfection of appeal.

x x x x x x x x

After careful perusal of the record, we find the appeal to be well taken.

While complainant’s appeal did not indicate the date when the decision a quo was received by appellants, the same does not constitute a fatal defect to warrant the dismissal of the appeal. x x x We will therefore, give due course to complainants’ appeal.”

We agree with the holding of Public Respondent NLRC. The only jurisdictional requisites for appeals under Article 223 of the Labor Code are (1) the perfection of the appeal within the reglementary period of ten days from receipt of an award, decision or order and (2) the posting of a cash or surety bond in appeals involving monetary awards. [13] Section 5 of the Revised Rules of the National Labor Relations Commission [14] -- which requires that an appeal specify (1) the grounds relied upon and the arguments in support thereof, (2) a statement of the date when the appellant received the decision or order, and (3) proof of service on the other party -- is merely a

rundown of the contents of the required appeal memorandum to be submitted by the appellant. These are not jurisdictional requirements.

Besides, the omitted datum is verifiable. The records of Respondent Commission reveal that the Notice of Decision/Award/Order dated July 5, 1990 of the labor arbiter was received by counsel for the private respondents on July 10, 1990. [15] Thus, private respondents' appeal was filed on July 20, 1990, [16] which was within the prescribed period. [17] Even petitioners did not contravene the Solicitor General's insistence that the appeal was actually filed within the ten-day reglementary period.

Furthermore, consideration of the appeal by the public respondent, notwithstanding the failure of the appellant to allege a material date in the appeal memorandum, is an innocuous mistake which caused no prejudice to the parties. The same constitutes, at most, a reversible error, which is not a proper subject of a special civil action for certiorari under Rule 65 of the Rules of Court. The disquisition in the recent case of *Flores vs. National Labor Relations Commission* [18] is apropos:

"It should be noted, in the first place, that the instant petition is a special civil action for certiorari under Rule 65 of the Revised Rules of Court. An extraordinary remedy, its use is available only and restrictively in truly exceptional cases—those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction. The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. xxxx."

In any event, our labor adjudication system, as held in *Lamsan Trading, Inc. vs. Leogardo, Jr.*, [19] rests on the norm that "rules of technicality must yield to the broader interest of substantial justice."

In *Kapisanang Manggagawang Pinagyakap vs. National Labor Relations Commission*, [20] the Court applied this norm when it overturned the dismissal of petitioner-employee's motion for reconsideration for failure to furnish respondent-company with a copy of the memorandum of appeal. The Court, through Mr. Chief Justice Claudio Teehankee, emphatically ruled that "where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight; x x x labor determinations x x x should be not only *secundum rationem* but also *secundum caritatem*." [21]

We repeat: the appeal was undisputedly filed within the ten-day reglementary period. That Respondent Commission gave due course to the appeal notwithstanding the failure of private respondents to allege the date of their receipt of the labor arbiter's decision does not constitute grave abuse of discretion. The failure to file the appeal within the prescribed period is jurisdictional. But the failure to state the date of receipt of the assailed decision is only a procedural lapse that is addressed to the sound discretion of the NLRC. Considering that the timeliness of the appeal could be verified from the records, the NLRC committed no grave abuse of discretion in overlooking this technical matter.

Second Issue: Liability for Separation Pay

Petitioners argue that private respondents are not entitled to separation pay because they abandoned their work when they refused to heed management's call for resumption of work and an end to the strike. Petitioners also contend that the labor arbiter's factual finding on this matter prevails over that of Respondent Commission.

No Intent to Sever Employment

The Court finds no factual or legal basis for the contention that private respondents abandoned their employment. Abandonment as a valid cause for termination requires a deliberate, unjustified refusal of the employee to resume

his employment. Failure to report for work or absence without valid or justifiable reason does not constitute abandonment if not coupled with a clear intention to sever the employer-employee relationship.[22] In this case, private respondents reported for work after the factory was burned, but petitioners informed them to wait for the resumption of operation. Hence, we cannot infer an intent on the part of private respondents to abandon their work. The observations of the solicitor general bolster the Court's conclusion:[23]

“Noteworthy is that when fire razed down petitioners' factory in March 1987, private respondents, who sought to return to work, were advised by petitioners to wait as business operations would be resumed. Private respondents' interest in going back to work negates the claim of abandonment. Their absence from work which was neither deliberate nor unjustified, cannot constitute abandonment of work as valid cause for termination of their services. (Dagupan Bus Company, Inc. v. NLRC, 191 SCRA 328 [1990]; Nueva Ecija I Electric Cooperative, Inc. v. Minister of Labor, 184 SCRA 25 [1990]; Atlas Consolidated Mining and Development Corporation v. NLRC, 190 SCRA 505 [1990])”

Serious Business Losses Not Proven

Petitioners strongly contend that “while the strike was in progress, the factory building of the petitioners was razed to the ground xxx which rendered the same inoperable and which rendered Petitioner Company out of business.” They insist that the labor arbiter's conclusion that private respondents were not entitled to separation pay by reason of the cessation of business operations caused by the fire should prevail over that of Respondent Commission. Petitioners specifically cite the labor arbiter's decision, viz.:

“The fire that [razed] the factory rendered the production inoperable. x x x The cessation of business operations in the respondent firm, by reason of the fire severed the employment relationship of the complainants, but in the process, the respondent employer is not under obligation to extend severance benefit.

After the fire, respondent, Mario Chan, opened another business, a small ‘chicharon’ repacking outfit inside his residence. Here, complainant, Nestor Hispano was taken in as a utility man. The operations had to stop, because, the authorities ordered its closure, since, such business endeavor is prohibited under the Subdivision rules and regulations. Appraised of the situation, the complainant, asked and was paid by respondent [C]han, P1,500.00 as separation pay.

In resume, all the complainants lost their employment by reason of the fire and not entitled to any severance pay. Complainant, Nestor Hispano, who worked for respondent, Mario Chan, in another business which was ordered stopped by the authorities, is entitled to separation benefit, from the time he was hired as utility man until the closure order. The amount of P1,500.00 which was advanced is deductible from the benefit due.” (Underscoring supplied.)

As earlier observed, Respondent Commission reversed this finding:

“Let it be noted that after fire gutted [petitioners'] factory in March 1987, there was no notice whatsoever that [petitioners] would close their business operation. As a matter of fact, when the complainant went to the factory premises, they were consistently informed that [petitioners] would resume its business operations and they were advised to wait. It was only when complainants filed the instant complaint for illegal dismissal when the [petitioners] raised the issue of closure of business operations.

In a similar case decided by the Supreme Court in the case of Cebu Stevedoring Co., Inc. vs. Regional Director, G.R. No. 54285, December 8, 1988, 168 SCRA 315, the [C]ourt ruled as follows:

“The employer's submission that it is suffering financial losses is untenable. It absorbed and employed for almost

six months, without any intimation of supposed financial distress, the majority of the employees of its predecessor. it never advised the dismissed employees of a company retrenchment program. The first time this supposed program was mentioned was when the employer tried to justify the dismissal of the employees before the labor arbiter. In a futile attempt to extricate itself from liability, it presented a so-called statement of operations which, however, remains uncorroborated and self-serving evidence.”

We therefore hold that respondents should pay herein individual complainants, separation pay equivalent to one-half months salary for every year of service.

x x x x x x x x

As regards the ruling of the labor [a]rbiter that the separation pay due to complainant Nestor Hispano should cover only the period 1987 when he was hired as utility man by respondent Mario Chan until the closure order, we find the same to be unjust because record shows that Hispano started working with respondents from 1970 up to December 29, 1989 when he was unceremoniously dismissed by respondents. He should therefore be entitled to separation pay equivalent to one-half month’s salary for every year of service from 1970 up to December 29, 1989.”

We cannot sustain petitioners’ contention. The alleged serious business losses sustained by petitioner-company from the fire were not substantiated by competent evidence. Financial statements audited by independent external auditors, as the Court previously ruled, constitute the normal method of proof of the profit and loss performance of a company.[24] Admittedly, the factory fire caused losses to petitioner-company. Petitioners, however, failed to show how such fire so affected the company’s financial health that it had to close shop. Not every loss incurred by a company justifies closure of business. To exempt an employer from the payment of separation pay, he or she must establish by sufficient and convincing evidence that the losses were serious, substantial and actual.[25] Clearly, petitioners failed to discharge this duty. Therefore, petitioners’ liability for separation pay under Article 283 of the Labor Code is beyond question.[26]

WHEREFORE, the petition is hereby DISMISSED. The assailed Resolutions are AFFIRMED. The temporary restraining order dated March 31, 1993 is hereby LIFTED. Costs against petitioners.
SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, p. 49.

[2] Composed of Presiding Commissioner Edna Bonto-Perez, ponente, and Comm. Rogelio I. Rayala, concurring. Comm. Domingo H. Zapanta was on leave.

[3] Rollo, p. 31.

[4] Ibid., p. 33.

[5] The case was deemed submitted for resolution upon receipt by the Court on February 27, 1996 of private respondents’ manifestation and motion praying that their comment be considered as their memorandum.

[6] Rollo, p. 79.

[7] Ibid., pp. 24-28.

[8] Petitioner-corporation was originally engaged in the manufacture of banana chips. Rollo, p. 9.

[9] Eufemio Law Offices.

[10] Rollo, p. 178.

[11] Ibid., pp. 50-57.

[12] Ibid., pp. 58-59.

[13] Appeal bond is required by the amendment in Sec. 12, R.A. 6715.

[14] Now Section 3, Rule VI of the New Rules of Procedure of the National Labor Relations Commission, effective October 9, 1990.

[15] NLRC Records, p. 34.

[16] NLRC Records, p. 70.

[17] The Labor Code provides:

“ART. 223. Appeal.—Decisions, awards, or orders of the Labor Arbiter or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders, or decisions. xxx.”

[18] 253 SCRA 494, 497, February 9, 1996, per Panganiban, J.

[19] 144 SCRA 571, 578, September 30, 1986, per Gutierrez, J.

[20] 152 SCRA 96, 101, July 16, 1987, per Teehankee, C.J.

[21] 152 SCRA 96, 101, July 16, 1987.

[22] *Balayan Colleges vs. National Labor Relations Commission*, 255 SCRA 1, 10, March 14, 1996, per Kapunan, J.

[23] Rollo, pp. 109-110.

[24] Saballa, Ibid., p. 709; and *Catatista vs. NLRC*, Ibid., p. 52.

[25] *Guerrero vs. National Labor Relations Commission*, 261 SCRA 301, 306-307, August 30, 1996, per Puno, J.

[26] “ART. 283. Closure of establishment and reduction of personnel.—The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.”

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