

**AQUALINK MARITIME INC. AND WORLDER SHIPPING LTD.,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (4TH
DIVISION) AND ANDREI BORGONIA, RESPONDENTS.***G.R. No. 127979. March 11, 1998*

Ponente: DAVIDE, JR., J.

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In this special civil action for certiorari under Rule 65 of the Rules of Court, the petitioners assail the resolutions of 15 October 1996,[1] 20 November 1996,[2] and 28 January 1997[3] in NLRC Case No. V-003-96. The first dismissed petitioners' appeal from the decision of 19 July 1996 of Labor Arbiter Dominador A. Almirante in NLRC Case No. RAB-0006-96 (OCW) for having been filed "thirteen (13) days after they received the Labor Arbiter's Decision on July 30, 1996." The second denied petitioners' motion for reconsideration because the registry return receipt showed that the petitioners received a copy of the Labor Arbiter's decision on 30 July 1996 and not on 31 July 1996 as asserted by them. The third resolution denied petitioners' motion for the reconsideration of the resolution of 20 November 1996 on the ground that it partook of a second motion for reconsideration, which is not allowed under Rule VII, Section 14 of the NLRC New Rules of Procedure.

The petitioners contend that public respondent National Labor Relations Commission (NLRC) gravely abused its discretion in dismissing petitioners' appeal. They insist, just as they did in their motions for reconsideration before the NLRC, that they received a copy of the Labor Arbiter's decision on 31 July 1996 as evidenced by the certification dated 29 October 1996[4] issued by the Postmaster of the Central Post Office of Manila.

Only the Office of the Solicitor General (OSG) filed a Comment on the petition. It asserts that the NLRC acted correctly in dismissing the appeal of the petitioners, since the same was filed beyond the 10-day period provided for in Article 223 of the Labor Code. The petitioners received a copy of the Labor Arbiter's decision on 30 July 1996; hence, they had only until 9 August 1996 within which to appeal. The OSG further argues that even assuming that the petitioners received a copy of the Labor Arbiter's decision on 31 July 1996 as claimed by them, they had only until 10 August 1996 to file the appeal; and although that date was a Saturday, it was still a business day. Hence, the appeal should have been, at the latest, filed on that date per *Olacao v. NLRC*. [5]

After the filing by the petitioners of a Reply to the OSG's Comment, we gave due course to the petition and resolved to decide it even without the Comment of the private respondent.

The sole issue in this petition is the timeliness of the petitioners' appeal from the Labor Arbiter's decision.

We are convinced that the petitioners received a copy of the Labor Arbiter's decision on 31 July 1996 as evidenced by the certification of the Postmaster of Manila Central Post Office, which has stood un rebutted before the NLRC. It must be stressed that the registry return receipt,[6] which was NLRC's basis for its finding that the petitioners received a copy of the Labor Arbiter's decision on 30 July 1996, does not indubitably show that the registered letter subject thereof was received on 30 July 1996. The figure after 3 on the line Date is unclear; it may be read as 0 or 1. Whatever doubt that may be reached thereon was resolved in favor of 31 July 1996 by the

unrebutted certification of the Postmaster.

Accordingly, the petitioners had ten calendar days from 31 July 1996, or until 10 August 1996, within which to appeal from the decision pursuant to Article 223 of the Labor Code. Fortunately for the petitioners, 10 August 1996 was a Saturday. Section 1, Rule VI, of the New Rules of Procedure of the NLRC pertinently provides:

Section 1. Periods of Appeal.... If the 10[th] ... day ... falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day. (As amended on Nov. 7, 1991).

The next working day after 10 August 1996 was 12 August 1996, the date the petitioners filed their Notice of Appeal with Memorandum of Appeal.[7] Unquestionably their appeal was filed on time. Public respondent NLRC, therefore, committed grave abuse of discretion in dismissing the appeal and in subsequently denying the first motion for reconsideration despite unrebutted proof that the petitioners received a copy of the Labor Arbiter's decision on 31 July 1996.

WHEREFORE, the instant petition is GRANTED. The challenged resolution of 15 October 1996 and 20 November 1996 of public respondent National Labor Relations Commission in NLRC Case No. V-0003-96 are SET ASIDE. The said Commission is hereby DIRECTED to resolve on the merits, with reasonable dispatch, petitioners' appeal from the decision of 19 July 1996 of the Labor Arbiter in NLRC Case No. RAB-0006-96 (OCW); and for that purpose, the records of this case should be immediately remanded to the Commission.

No pronouncements as to costs.

SO ORDERED.

Bellosillo, Vitug, Panganiban and Quisumbing, JJ., concur

[1] Annex "A" of Petition, Rollo, 22-23.

[2] Annex "A-1," Petition, Rollo, 24-25.

[3] Annex "A-2," Petition, Rollo, 26-27.

[4] Annex "B" of Petition, Rollo, 85. The certification reads:

TO WHOM IT MAY CONCERN:

This is to certify that per record on file Registered Letter No. RC-245 (with Delivery No. 7038) posted at Cebu Capitol Post Office addressed to Atty. Valentin M. Panaguiton at 2/F Champ. Bldg., Bonifacio Drive, Post Area, Manila was duly delivered to and received by Gerardo D. Atoy, Representative on July 31, 1996.

[5] 177 SCRA 38 [1989], citing *SM Agri and General Machineries v. NLRC*, 169 SCRA 20 [1989].

[6] Annex "D" of Petition, Rollo, 86.

[7] Annex "B" of Petition, Rollo, 30-46.

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