

COCA COLA BOTTLERS PHILS., INC., NATALE J. DICOSMO, STEVE HEATH, MARY CHUA, ALBERTO FAJARDO, JESS BANGSIL, LITO GARCIA, NOEL ROXAS, CHITO ENRIQUEZ, FREDERICK KERULF, ARMANDO CAN...

G.R. NO. 144180. January 30, 2006

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144180/>

CHICO-NAZARIO, J.:

Before Us is a petition for review on certiorari questioning the Resolution[1] of the Court of Appeals dated 25 April 2000 which dismissed petitioners' original action of certiorari filed therein. Being questioned as well is the Resolution[2] dated 12 July 2000 which dismissed petitioners' motion for reconsideration.

The present controversy finds its genesis in an illegal dismissal case filed by herein respondents against petitioners, the facts of which are narrated by the Labor Arbiter in his Decision dated 26 November 1998, viz:

Complainants aver that they have been under the employ of respondent company for more than ten (10) to thirteen (13) years as follows:

NAME DATE HIRED

DATE DISMISSED

1. Rodolfo G. Cabalo June 6, 1983 June 16, 1996
2. Juanito E. Gerona May 15, 1983
Oct. 2, 1996
3. Luis T. Ocampo May 1, 1984 July 10, 1996
4. Mario Nilo Mecua July 30, 1985
Dec. 16, 1995

as route helper, cargadors or pahinantes, accompanying the salesmen/drivers in their deliveries to sari-sari stores, restaurants, groceries, supermarkets that they were all under the supervision and control of respondent Company which provided them with the tools, equipment and other working material; that they worked exclusively at the plants, sales offices, delivery truck and/or respondent Company's premises.

Respondent Company maintains that being one of the largest softdrink manufacturer in the country, it employs a sizeable workforce all over the country; that due to the fluctuating and variable conditions in the market, e.g., unusually high volume of work and unexpected shortages in manpower complement, the Company at times is constrained to augment its workforce so as to cope with operational needs; that in order to meet its fluctuating operational needs, the Company engages the services of workers apart from its regular workforce for its different plants; that the engagement of such services is necessarily on a temporary basis due to the temporary nature of the operational needs of the Company lasting for a limited period; that if, for example, the Company

anticipates or actually experiences an unusually high volume of work or an unexpected shortage of manpower in any of its plants or sales offices arising from variable economic factors, it engages the services of outside workers to temporarily complement its regular workforce in the said plants or sales offices; that as part of its adaptive operational measures, the Company engaged the services of workers on a temporary basis for a limited period of five (5) months; that pursuant to the workers' arrangement with the Company, their services were automatically terminated upon the expiration of the five-month period agreed upon by the parties. Hence, the said workers' employment with the Company ceased thereafter; that complainants have now filed the present Complaint claiming that they worked in the Company and should, therefore, have achieved regular employment status in the Company; that however, other than their self-serving assertions, there is no document on record that will support complainants' alleged service periods with the Company.[3]

The case before the Labor Arbiter was decided in favor of herein petitioners for lack of evidence as to the existence of an employer-employee relationship. The dispositive portion of the decision reads:

WHEREFORE, complainants having failed to establish their claimed employer-employee relationship with the respondent corporation by CLEAR and CONVINCING competent evidence, the Complaint is hereby ordered DISMISSED.[4]

On appeal to the National Labor Relations Commission (NLRC) by the respondents, the NLRC declared that any decision it will render on the matter will border on prematurity as "there is dearth of evidence on both sides of the fence to allow this forum to judiciously decide the case meritoriously." [5] It added that "(t)he issue of employer-employee relationship has not been fully threshed out in the proceedings a quo," [6] thus, under the circumstances, it was "left with no option except to remand this case to the Labor Arbiter a quo for further proceedings with the sole objective of fully threshing out the issue of employer-employee relationship." [7] The dispositive portion of the NLRC decision states:

PREMISES CONSIDERED, the appealed decision is hereby SET ASIDE and the records of this case is hereby REMANDED to the Arbitration Branch of origin for further proceedings to thresh out the issue of employer-employee relationship. In this regard, exhaustive efforts should be exerted to serve summons on Lipercon Services, Inc., being co-respondent.[8]

Petitioners moved for reconsideration of the aforequoted decision which motion was denied by the NLRC on 29 December 1999.[9]

Aggrieved, petitioners sought relief before the Court of Appeals via a petition for certiorari dated 26 March 2000. In a Resolution dated 25 April 2000, the Seventh Division of the Court of Appeals dismissed the petition. It held:

For failure to comply with Sec. 11, Rule 13 of the 1997 Rules of Civil Procedure and for failure to attach certified true copy of the assailed NLRC Resolution dated December 29, 1999 as required under Sec. 1, Rule 65 of the Rules of Court, the petition is DISMISSED.[10]

Petitioners' motion for reconsideration was denied on 12 July 2000, the Court of Appeals holding that:

Petitioners contend that they faithfully complied with Section 1, Rule 65 of the Rules of Court which requires the petition to be accompanied by a certified true copy of the judgment, order or resolution subject thereof. However, a review of the records indubitably shows that this requirement had not been complied with regarding the assailed NLRC Resolution dated December 29, 1999 which was neither a certified true copy nor a duplicate original thereof, but a mere photocopy.

WHEREFORE, there being no cogent reason or basis to reconsider Our previous Resolution, the Motion for Reconsideration is hereby DENIED.[11]

Petitioners are now before us on petition for review, assigning as errors the following:

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE C.A. PETITION NOTWITHSTANDING THE FACTS THAT:

- PETITIONERS REQUESTED FOR CERTIFIED TRUE COPIES OF THE 30 SEPTEMBER 1999 DECISION AND 29 DECEMBER 1999 RESOLUTION BOTH ISSUED BY THE NLRC BUT ONLY CERTIFIED XEROX COPIES WERE GIVEN

- PETITIONERS REQUESTED THE HONORABLE COURT OF APPEALS TO FURNISH THEM WITH CERTIFIED TRUE COPIES OF THE QUESTIONED FIRST AND SECOND RESOLUTIONS BUT LIKE THE NLRC, THE HONORABLE COURT OF APPEALS ONLY GAVE CERTIFIED XEROX COPIES.

II.

THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN THAT IT ISSUED THE FIRST AND SECOND RESOLUTIONS IN VIOLATION OF THE RULE ON LIBERAL CONSTRUCTION OF THE RULES OF COURT

On The First Issue:

The Court of Appeals based its denial of the petition on Section 1, Rule 65 of the Rules of Court which provides that any petition filed under Rule 65 should be accompanied by a certified true copy of the judgment, order or resolution subject thereof and that, in this particular case, the petition was not so accompanied by a certified true copy of the NLRC resolution dated 29 December 1999 but only by a "mere photocopy."

The problem presented is not novel. In fact, it is a fairly recurrent one in petitions for certiorari of NLRC decisions as it seems to be the practice of the NLRC to issue certified "xerox copies" only instead of certified "true copies." [12] We have, however, put an end to this issue in *Quintano v. NLRC* [13] when we declared that there is no substantial distinction between a photocopy or a "Xerox copy" and a "true copy" for as long as the photocopy is certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative and that the same is a faithful reproduction of the original. We held therein:

The submission of the duplicate original or certified true copy of judgment, order, resolution or ruling subject of a petition for certiorari is essential to determine whether the court, body or tribunal, which rendered the same, indeed, committed grave abuse of discretion. The provision states that either a legible duplicate original or certified true copy thereof shall be submitted. If what is submitted is a copy, then it is required that the same is certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative. The purpose for this requirement is not difficult to see. It is to assure that such copy is a faithful reproduction of the judgment, order, resolution or ruling subject of the petition.

x x x x

Indeed, for all intents and purposes, a "certified Xerox copy" is no different from a "certified true copy" of the original document. The operative word in the term "certified true copy" under Section 3, Rule 46 of the Rules of Court is "certified". The word means "made certain." It comes from the Latin word *certificare* – meaning, to make certain. Thus, as long as the copy of the assailed judgment, order, resolution or ruling submitted to the court has been certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative and that the same is a faithful reproduction thereof, then the requirement of the law has been complied with. It is presumed that, before making the certification, the authorized representative had compared the Xerox copy with the original and found the same a faithful reproduction thereof. [14]

A perusal of the attached NLRC Decision easily discloses that it is not a "mere photocopy" but is, in fact, a

certified photocopy of said decision. Each page of the decision has been certified by the NLRC Third Division's Deputy Clerk of Court, Atty. Catalino R. Laderas, who is undoubtedly a proper officer to make the said certification.[15] Moreover, there seems to be no question that the attached copy of the NLRC decision is a faithful reproduction thereof.

The Court of Appeals, however, zeroed in on the copy of the NLRC Resolution denying petitioners' motion for reconsideration. As correctly pointed out by it, said copy is neither a certified true copy nor a certified photocopy of the NLRC resolution but seems to be a mere photocopy of the duplicate original copy sent to petitioners' counsel.

On The Second Issue:

The petition filed before the Court of Appeals did not contain an explanation as to why service upon the Office of the Solicitor General (OSG) and Atty. Omar M.C. Alam, counsel for respondents, was not made personally, albeit an affidavit of service by registered mail was attached thereto. The failure to make such written explanation, in violation of Section 11, Rule 13 of the 1997 Rules of Court, was the second ground for the dismissal of the petition.

Section 11, Rule 13 states:

SEC. 11. Priorities in modes of service and filing. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

The requirement for personal service is mandatory such that Section 11, Rule 13 gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done.[16] In the seminal case of *Solar Team Entertainment, Inc. v. Judge Ricafort*,[17] we stressed that strictest compliance with Section 11 of Rule 13 is mandated beginning one (1) month from the promulgation of said decision; i.e. one month from 05 August 1998.

The subject petition was filed on 26 March 2000. Petitioners explain, however, that their omission was due to inadvertence and was not a product of any malevolent scheme to prejudice respondents in any way. Thus, the evil sought to be avoided by the requirement of an explanation – to curb the practice of delaying the receipt of a pleading by a party through the simple expedient of serving the same by mail – was not present. Petitioners thus pray for a liberal construction of the provision in question following Section 6, Rule 1 of the Rules of Court.[18]

We are not persuaded.

In *Solar*,[19] as reiterated in the recent case of *Ello v. Court of Appeals*,[20] we explained that the court's discretionary power to consider a pleading or paper as not filed for violation of Section 11, Rule 13 must be exercised properly and reasonably, taking into account the following factors: (1) the practicability of personal service; (2) the importance of the subject matter of the case or the issues involved therein; and (3) the prima facie merit of the pleading sought to be expunged for violation of Section 11.

We find that the Court of Appeals did not err in dismissing the petition for failure to observe the requirement of a written explanation why service was not made personally to the OSG and to Atty. Omar M.C. Alam, counsel for respondents.

First, it cannot be said that serving the petition on the OSG and Atty. Alam through personal service was not practical nor realistic under the circumstances. We note that the office of petitioners' counsel, the firm of Bocobo

Rondain Mendiola Cruz and Formoso, is in Pasig City while that of the OSG is in Makati City and that of Atty. Alam is in Quezon City. Considering that the law firm has for its client one of the biggest corporations in the country, it is safe to presume – precisely because of the absence of an explanation why service was not made personally – that the Pasig firm has in its employ enough people to effect personal service. Moreover, the NLRC Resolution denying petitioners' motion for reconsideration was received by their counsel on 10 February 2000.[21] Petitioners, therefore, had until 11 April 2000 within which to file their petition for certiorari. From the records of the case, the petition was filed as early as 29 March 2000. Thus, petitioners had all the time in the world to serve their petition upon the OSG and respondents' counsel by personal service and their failure to do so becomes inexcusable under the circumstances.

We have also considered the fact that the issue presented before the Court of Appeals is not one of first impression nor is it of such importance as to justify the relaxation of the rules of court on the ground of inadvertence. Likewise, from a reading of the petition, it does not appear that petitioners have a prima facie case. It is to be recalled that the sole issue presented by the Court of Appeals is whether or not the NLRC, under the facts of the case, gravely abused its discretion in vacating and setting aside the decision of the Labor Arbiter and remanding the case to the arbitral branch of origin for further proceedings. In *Sevillana v. I.T. (International) Corp.*, [22] we had already enunciated that the NLRC is not precluded by the rules to allow the parties to submit additional evidence to prove their respective claims even on appeal or to order the remand of the case to the administrative agency concerned for further study and investigation upon such issues.

IN SUM, we stress that petitioners' claim of inadvertence as their reason for their failure to provide a written explanation why service of their petition was not made personally cannot and does not justify its omission. Such inadvertence does not constitute excusable negligence especially since said rule had already been in effect for three years before petitioners filed their petition before the Court of Appeals.[23] That petitioners blithely expect this Court to turn a blind eye to their procedural blunder underscores their utter disregard of the requirement in Section 11, Rule 13. Verily, such disregard of the rule cannot justly be rationalized by harking on the policy of liberal construction and substantial compliance.[24] To paraphrase Solar, if any controversy regarding a violation of Section 11 of Rule 13 were to be indiscriminately resolved under Section 6 of Rule 1 or *Alonso v. Villamor* [25] and other analogous cases, then Section 11 would become meaningless and its sound purpose negated.[26]

WHEREFORE, premises considered, the instant petition is DENIED. The Resolutions of the Court of Appeals dated 25 April 2000 and 12 July 2000, respectively, are AFFIRMED. With costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Corona Ibay Somera and Elvi John S. Asuncion concurring (CA rollo, p. 79).

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Eugenio S. Labitoria and Elvi John S. Asuncion concurring (Id. at 90).

[3] Records, pp. 96-98.

[4] Id. at 101 (Emphasis in original).

[5] Id. at 236.

[6] Id.

[7]Id.

[8] Id.

[9] The resolution was received by petitioners on 10 February 2000 (Id. at 260-261).

[10] Rollo, p. 105.

[11] Id. at 107.

[12] See for example *NYK International Knitwear Corporation Philippines v. NLRC*, 445 Phil. 654 (2003).

[13] G.R. No. 144517, 13 December 2004, 446 SCRA 193, 202-203.

[14] Id.

[15] Id.

[16]*Ello v. Court of Appeals*, G.R. No. 141255, 21 June 2005, 460 SCRA 406, 415, citing *Solar Team Entertainment, Inc. v. Ricafort*, 355 Phil. 404 (1998).

[17] 355 Phil. 404 (1998).

[18] Section 6, Rule 1. Construction. – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[19] *Solar Team Entertainment, Inc. v. Ricafort*, 355 Phil. 404 (1998).

[20]Supra note 16.

[21] CA rollo, p. 76.

[22] G.R. No. 99047, 16 April 2001, 356 SCRA 451, 465.

[23]*MC Engineering, Inc. v. NLRC*, 412 Phil. 619 (2001).

[24] Id.

[25] 16 Phil. 315, 321 (1910), wherein this Court, through Justice Moreland, declared that "xxx 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." In the 2001 case *MC Engineering, Inc. v. NLRC*, however, we exasperatedly declared that the doctrine laid down in *Alonso v. Villamor* has been much abused by lawyers and litigants.

[26] *Solar Team Entertainment, Inc. v. Ricafort*, supra note 16, p. 669; See also *MC Engineering, Inc. v. NLRC*, supra note 23, pp. 192-193.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.