EUREKA PERSONNEL & MANAGEMENT SERVICES, INC., PETITIONER, VS. EDUARDO VALENCIA, RESPONDENT.

G.R. No. 159358. July 15, 2009

Ponente: BRION, J.

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BRION, J.:

We resolve the Rule 45 petition filed by Eureka Personnel and Management Services, Inc. (Eureka) to challenge the Court of Appeals (CA) decision[1] and resolution[2] in CA-G.R. SP No. 61553. The appellate court upheld the National Labor Relations Commission (NLRC)'s decision dismissing Eureka's appeal for having been filed out of time.[3]

FACTUAL ANTECEDENTS

Eureka, a local recruitment agency, hired respondent Eduardo Valencia (Valencia) as an electrical engineer for its principal, Haif Trading and Contracting Establishment of Saudi Arabia (principal or the company), under a one-year employment contract. According to Eureka, Valencia had to undergo a three-month probationary period under the contract.

On October 17, 1998, Eureka deployed Valencia to Saudi Arabia where he was given an orientation at the principal's head office and assigned to the Design Department. Eureka contends that Valencia's superiors and fellow electrical engineers found him to be incapable of doing shop drawings. As a result, the company transferred Valencia to the Technical Department. Since Valencia's performance remained unsatisfactory, the company terminated his employment for his failure to meet the required probationary standards.

On the other hand, Valencia claims that he passed the rigid interview Eureka conducted prior to his deployment. Valencia attributes the sudden termination of his employment to his December 30, 1998 complaint to the Administrative Manager that he was not being paid his monthly salary and food allowance. Valencia was allegedly told to wait as he was being transferred to another branch; instead, the company terminated his services and repatriated him on January 6, 1999.

When Valencia arrived in the Philippines, he filed a complaint against Eureka with the Overseas Workers Welfare Administration where Eureka failed to explain the cause of Valencia's early repatriation.

Subsequently, Valencia filed a complaint against Eureka with the NLRC. After hearing, the labor arbiter rendered a decision whose dispositive portion states:[4]

> IN LIGHT OF THE [SIC] ALL THE FOREGOING, the respondents are ordered to pay the complainant: 1) 3 months salary for the unexpired portions of the contract for the sum of US$2,340.00; 2) unpaid salary and food allowance for December 1998 in the sum of US$780.00 and SR$200.00 respectively; and 3) salary from 1-7 January 1999 in the amount of US$210.00.
>
> SO ORDERED.

Eureka claims that it received the labor arbiter's decision on November 22, 1999 and timely filed its notice of appeal on December 2, 1999. The NLRC, however, found that the labor arbiter's decision was served on Eureka on November 21, 1999 as shown by the registry return card, and, consequently, dismissed the appeal for having been filed out of time.

On February 18, 2000, Eureka moved for a reconsideration of the NLRC's decision, alleging that the Postmaster of the Malate Post Office would certify to the fact that the decision was actually delivered to Eureka on November 22, 1999, and not on November 21, 1999. Eureka attached a copy of the postmaster's certification to its supplemental motion for reconsideration filed on May 12, 2000. The certification reads:

> This is to certify that according to the record of this office Registered Letter No. 0559 sent by the National Labor Relations Commission - Quezon City processed on November 19, 1999 addressed to Eureka Personnel and Management Service, Inc. at 1913 L. Guinto St. Malate Manila was duly delivered on November 22, 1999.

The NLRC denied Eureka's motion for reconsideration on August 31, 2000.

Eureka brought the NLRC decision to the CA through a petition for certiorari[5] on the allegation that the NLRC committed grave abuse of discretion when it dismissed its appeal despite the postmaster's certification that Eureka presented.

The CA, in its March 28, 2003 decision, held that the NLRC did not abuse its discretion when it denied Eureka's appeal for having been filed out of time.[6] The CA found that the registry receipt [registry return card] is sufficient proof of the date of receipt of any notice served by the NLRC; thus, the NLRC was not obliged to accept the postmaster's certification that Eureka offered to prove that it received the labor arbiter's decision on November 22, 1999, and not on November 21, 1999. The CA also cited the Implementing Rules of the NLRC which specifically disallow any motion to extend the period to perfect the appeal; thus, "it is only right not to consider petitioner's supplemental motion for reconsideration." Lastly, the CA held that the case presented no exceptional reason for the CA to relax its procedural rules in Eureka's favor, nor even to change the findings of the labor arbiter. The CA also denied Eureka's Motion for Reconsideration in its August 7, 2003 Resolution.[7]

THE PETITION

Eureka now comes to this Court through this petition for review on certiorari[8] on the claim that the CA rulings in its March 28, 2003 decision and its August 7, 2003 resolution were legally incorrect.

Eureka contends that it filed a timely appeal with the NLRC on December 2, 1999, since it received the labor arbiter's decision on November 22, 1999, not on November 21, 1999, as found by the NLRC. Eureka relies on the certification issued by the Postmaster of Malate; unfortunately, the certification could not be issued in time to be attached to Eureka's motion for reconsideration of the NLRC's dismissal of its appeal; Eureka filed its motion on February 18, 2000, and could only present the Postmaster's certification on May 12, 2000, via a supplemental motion, because it took some time before the postal service could trace the mail matter.

Eureka further argues that the most competent authority to state when the labor arbiter's decision was served is the Malate Post Office - the office that processed the mail and served it on Eureka. Thus, the postmaster's certification should have been considered in determining the timeliness of Eureka's appeal. Eureka also asserts that the registry return card the NLRC relied upon is not even in the records of the NLRC. As between an inexistent registry return card and Eureka's postmaster's certification, Eureka posits that the NLRC and the CA should have given more credence to the latter.

Valencia, on the other hand, insists that Eureka's appeal was filed out of time, since it received the Labor Arbiter's decision on November 21, 1999 (evidenced by the registry return card found on page 60 of the NLRC records),

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but filed its appeal only on December 2, 1999 - i.e., after the lapse of the period to appeal. Valencia points out that the postmaster's certification submitted by Eureka appears to be of dubious origin, as it was neither under oath nor properly sealed. Even if the postmaster's certification was genuine, it could still not affect the case, as it was submitted after the period to file a motion for reconsideration had lapsed.

Valencia also underscores the fact that Eureka did not file the correct amount of the bond to perfect its appeal with the NLRC; it filed a supersedeas bond in the amount of only P35,000.00, when the total amount of the monetary award granted to Valencia is US$3,330.00, or the equivalent of P134,232.30,[9] plus SR$200.00.

THE COURT'S RULING

We deny the petition for lack of merit.

Preliminary Procedural Consideration:
The Petition is Fatally Incomplete

From the beginning, Eureka wholly relied on the certification allegedly issued by the Postmaster of the Malate Post Office.

We observe that despite the imputed importance of the Postmaster's certification to Eureka's claim, Eureka did not even bother to attach it to the pleadings filed before this Court, thereby preventing us from examining this document. We note, too, that although Eureka cited the contents of the Postmaster's certification in its Memorandum, it failed to name the Postmaster of the Malate Post Office who issued the certification. All these omissions render Eureka's petition dismissible, pursuant to Sections 4 and 5, Rule 45 of the Rules of Court. These sections provide:

> Sec. 4. Contents of petition.
>
> The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.
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> Sec. 5. Dismissal or denial of petition.
>
> The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. [Emphasis supplied.]

The rule is that the reviewing court should be able to determine the merits of the petition solely on the basis of the submissions by the parties without the use of the records of the court a quo. Otherwise, delay can result as the elevation of the records of lower tribunals to us takes time.[10] For this reason, compliance with the rule on the inclusion of material portions of the record is a critical requirement whose violation leads to the dismissal of the petition. In Eureka's case, the success of its petition largely depends on the Postmaster's certification; thus, its

failure to attach this material document to its petition or even to its memorandum is fatal to its cause. Without the certification, this Court is left to infer the question of the certification's authenticity, worth and validity solely from Eureka's allegations of its contents.

Through the certification, Eureka attempts to prove a positive assertion - i.e., that it received a copy of the Labor Arbiter's decision on November 22, 1999, and not on November 21, 1999 as stated in the registry return card on record. The basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it.[11] Since the Postmaster's certification is Eureka's only evidence to prove its claim, its absence leaves the Court with nothing to consider in weighing Eureka's assertion.

Timeliness of Appeal - a Question of Fact not Covered by a Rule 45 Review.

Eureka's petition essentially asks the Court to resolve whether its appeal with the NLRC was filed within the prescribed period. This issue is not a novel one as we have had occasion to rule on this same issue in Mangahas v. Court of Appeals[12] where we held that timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.

In a petition for review on certiorari, this Court is limited to the review of errors of law; we do not pass upon findings of facts under this mode of review unless the lower tribunal's decision is shown to be attended by grave abuse of discretion, as when they are shown to have been made arbitrarily or in disregard of the evidence on record.[13] This rule applies with great force in labor cases where the ruling tribunal - the NLRC - exercises specialized jurisdiction and has acknowledged expertise on labor matters; we generally accord the NLRC's findings not only respect but even finality, unless the exceptions mentioned above exist, or when a review of the findings of facts is rendered necessary and appropriate because the factual findings and conclusions of the labor arbiter, the NLRC and the CA (as the court essentially tasked with factual review) are in conflict with one another.[14]

In the present case, no conflict in the factual rulings exists; the CA affirmed the NLRC's conclusion that Eureka's appeal was filed out of time based on the registry return card, found in the NLRC records, that shows on its face the date November 21, 1999 as the date of receipt. We find no reason to disturb this factual finding as the registry return receipt is a document that speaks for itself as evidence of when the registered mail reached the recipient-addressee. As our discussion below will show, its evidentiary worth is more than a subsequent certification that counters what the registry return card plainly states.

Certification cannot overcome
presumption of regularity

Even if the postmaster's certification were to merit serious consideration by this Court, we cannot avoid the legal reality that the registry return card is considered as the official NLRC record evidencing service by mail.[15] This card carries the presumption that it was prepared in the course of official duties that have been regularly performed; in this sense, it is presumed to be accurate, unless proven otherwise,[16] and should be distinguished from a mere written record or note secured by a party to prove a self-serving point. This latter record or note, not being a regular record in the usual course of business, is open to easy fabrication and cannot be accepted and trusted at face value; as Valencia correctly noted, it was not even under oath nor under seal, aside from the fact that it does not mention the name of the Postmaster of the Malate Post Office. Thus, it does not carry the same level of evidentiary integrity that an official record enjoys, particularly when it seeks to impugn what the official record establishes.[17] As we stated in Mangahas v. Court of Appeals:[18]

> There is a presumption that official duties have been regularly performed. On this basis, we have ruled in previous cases that the Postmaster's certification is sufficient evidence of the fact of mailing. This presumption,

> however, is disputable. In this case, the Affidavit/Certification of the alleged Assistant Postmaster cannot give rise to such a presumption, for not only does it attest to an irregularity in the performance of official duties (i.e., mistake in stamping the date on the registered mail), it is essentially hearsay evidence.

In this case and in like manner, while a postmaster's certification is usually sufficient proof of mailing, its evidentiary value must be differentiated from the situation presently before us where the postmaster's certification is intended to prove that the post office had committed a mistake in placing the date of receipt on the registry return card. In other words, the Postmaster's certification is offered to overcome the presumption that the Malate Post Office regularly performed its official duties when the registry return card was filled up by the recipient of the labor arbiter's decision with November 21, 1999 as the date of receipt. We find it significant that both the petitioner and the postmaster's certification failed to show that the Malate Post Office committed an inadvertence in handling the registry return card so that a corrective certification from the Postmaster was necessary. In the absence of such justification for the certification, we are compelled to deny it of any evidentiary value for the purpose it was submitted.

In light of this conclusion, we find it unnecessary to discuss the validity of Eureka's appeal bond.

WHEREFORE, premises considered, we hereby DENY the petition and AFFIRM the Court of Appeals' Decision dated March 28, 2003, and Resolution of August 7, 2003, in CA-G.R. SP No. 61553. Costs against the petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, [*]Chico-Nazario, and [**]Leonardo-De Castro, JJ., concur.

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[*] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (deceased), dated March 28, 2003; rollo, pp. 26-31.

[2] Dated August 7, 2003; id., pp. 32-34.

[3] Dated January 31, 2000.

[4] Dated October 17, 1999.

[5] Under Rule 65 of the Rules of Court.

[6] Supra note 1.

[7] Supra note 2.

[8] Under Rule 45 of the Rules of Court, dated September 10, 2003; rollo, pp. 12-23.

[9] The currency exchange rate in October 1999 was at $=P40.31, Banko Sentral ng Pilipinas , last visited on March 18, 2009.

[10] B.E. San Diego v. Alzul, G.R. No. 169501, June 8, 2007, 524 SCRA 402.

[11]Republic v. Obrecido III, G.R. No. 154380, October 5, 2005, 427 SCRA 114; Noceda v. Court of Appeals,

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372 Phil. 383 (1999); Luxuria Homes Inc. v. Court of Appeals, 361 Phil. 989 (1999).

[12] G. R. No. 173375, September 25, 2008.

[13]Maya Farms Employees Organization v. National Labor Relations Commission, G.R. No. 106256, December 28, 1994, 239 SCRA 508; Bernaldez v. Francia, G.R. No. 143929, February 28, 2003, 398 SCRA 488.

[14] Gonzales v. National Labor Relations Commission, G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[15] Nyk-Fil Ship Management Inc. v. Talavera, G.R. No. 175894, November 14, 2008, citing Dela Cruz v. Ramiscal, 450 SCRA 449 (2005).

[16] Section 3(m), Rule 131 of the Rules of Court.

[17] Supra note 15.

[18] G. R. No. 173375, September 25, 2008.

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