JOSEFINA CADA, PETITIONER, VS. TIME SAVER LAUNDRY/LESLIE PEREZ, RESPONDENTS.

G.R. No. 181480. January 30, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45[1] of the Revised Rules of Court filed by petitioner Josefina Cada assailing the Decision[2] of the Court of Appeals dated 17 December 2007 in CA-G.R. SP No. 94616, which declared the Resolutions dated 30 November 2004[3] and 28 February 2006 of the National Labor Relations Commission (NLRC)[4] as null and void on the ground of lack of proper service of summons on respondent Leslie Perez (Perez). In its Resolution dated 30 November 2004, the NLRC affirmed[5] the Decision[6] dated 16 March 2004 of the Labor Arbiter in NLRC-NCR Case No. 05-06071-03 in finding that petitioner Josefina Cada was illegally dismissed by respondents Perez and Time Saver Laundry (TSL).

The Petition at bar stemmed from a Complaint[7] dated 21 May 2003 filed before the NLRC by petitioner against respondents for illegal dismissal, underpayment of salary, nonpayment of overtime pay, holiday pay, premium pay for holiday and rest day pay, service incentive leave pay, 13[th] month pay, ECOLA, separation pay and attorney's fees. The Complaint was docketed as NLRC-NCR Case No. 05-06071-03.

Respondent TSL is a sole proprietorship engaged in the laundry business. Respondent Perez is the owner/proprietor of TSL.[8]

Petitioner alleged that she was employed by the respondents on 28 September 2002 as Presser, receiving a salary of P220.00 per day. She worked for 12 hours a day, from 9:00 a.m. to 9:00 p.m., but she was not paid overtime pay. She also did not receive holiday pay, premium pay for holidays and rest days, 5 days service incentive leave pay (SILP), and 13[th] month pay. While she was working on 7 May 2003, the management called her attention for quarreling with her co-employee. Without giving her an opportunity to explain and defend her side, petitioner was sent home and prevented to work further, compelling her to file the Complaint for illegal dismissal against respondents.

Respondents failed to appear for the entire proceedings before the Labor Arbiter. The Labor Arbiter heard the case ex parte directing the petitioner to file her position paper.[9] On the basis of the petitioner's position paper, the case was submitted for decision.

In its Decision dated 16 March 2004, the Labor Arbiter ruled:

> WHEREFORE, finding complainant to have been illegally dismissed, she is entitled to payment of separation pay in lieu of reinstatement as aforestated and backwages. Accordingly, respondents Time Saver Laundry and Leslie Perez are hereby ordered to pay complainant the following:
>
> - P 7,280.00 - separation pay
>
> - P80,563.17 - backwages from May 7, 2003 to date of this decision which will further be computed until

finality of this decision

- P 5,670.00 - salary differentials from September 28, 2002 to May 7, 2003

- P 5,670.60 - ECOLA

- P29,534.38 - overtime pay

P128,718.75 - TOTAL

- P12,871.88 - 10% of the total award as and by way of attorney's fees.

P141,590.63 - TOTAL MONETARY AWARD

All other claims are ordered DISMISSED for lack of merit.[10]

On 21 June 2004, respondents appealed to the NLRC[11] essentially arguing that they were denied due process on the ground of improper service of summons and that the monetary award in favor of petitioner was without basis. Respondents' appeal was docketed as CA No. 040723-04.

The NLRC issued its Resolution dated 30 November 2004, sustaining the finding of the Labor Arbiter that petitioner was illegally dismissed:

> Conclusively of first impression, [herein petitioner] filed her verified complaint on May 21, 2003, alleging among others, the fact of her dismissal on May 7, 2003. Thereafter, [petitioner] submitted her verified Position Paper which takes the place of her direct testimonies which substantiate her claim for illegal dismissal, stating with particularity the facts attending her illegal dismissal as follows:
> "x x x. On May 7, 2003, while working, her attention was called to the Office by Management and accused her of quarreling with an employee of the Company. From there, and without giving her an opportunity to explain and defend her side, was sent home and prevented to work further. x x x" (Complainant's Position Paper, p. 1, Record, p. 13)

In this jurisdiction, it is the unwavering rule that the "onus probandi" to show that the dismissal of an employee from service is for cause and due process rests upon the shoulders of the employer. Failure to discharge this burden, the dismissal is tainted with illegality.

At bar, [herein respondents] failed to discharge this burden. A mere denial that they did not dismiss the [petitioner] is not a sufficient measure of the required proof to belie or controvert the latter's assertion that she was dismissed from service, much less, illegally; more so, when [petitioner] satisfactorily narrated the ultimate facts attending her dismissal.

In fine, for want of just or authorized cause and in the absence of due process, the dismissal of [petitioner] from service is therefore tainted with illegality.[12]

The NLRC did not give credence to respondents' argument that they were denied due process:

The issue interposed by the [respondents] that their right to due process was denied in the discernment of the present dispute is now rendered moot and academic as We give (sic) them the opportunity to explain and be heard through the judicious resolution of the substantive merits of this case:

> "The party who has had ample opportunity to present its side of the controversy not only before the Labor Arbiter but also the NLRC on appeal, it cannot interpose lack of due process for what the fundamental law abhors is simply the absolute absence of opportunity to be heard." (CMP Federal Security Agency, Inc. vs. NLRC, 303 SCRA 99).[13]

The NLRC then determined the monetary awards to which petitioner would be entitled to:

> Finding the dismissal of [petitioner] as illegal, she is entitled, under Art. 279 of the Labor Code, to reinstatement and full backwages. However, considering that reinstatement would not be in the interest of the parties as there is now of ruptured and strained relationship exists between them, it is more appropriate to award separation pay, in lieu of reinstatement.
>
> In the absence of proof of payment on the [petitioner's] money claims as these were not substantially belied nor controverted by [respondents], the awards for salary differential, overtime pay, SILP and 13[th] month pay are hereby affirmed.
>
> The claim for attorney's fees is granted based on salary differential, overtime pay and ECOLA pursuant to Article 111 of the Labor Code.
>
> All other claims, for lack of factual or legal basis, are DISMISSED.[14]

In the end, the NLRC decreed:

> WHEREFORE, the assailed decision of 16 March 2004 with modification on the award of attorney's fee is AFFIRMED.[15]

Respondents filed a Motion for Reconsideration of the 30 November 2004 Resolution of the NLRC.[16] They followed this up with a Supplemental Motion for Reconsideration which only reiterated the arguments presented in their appeal.[17]

In a Resolution dated 28 February 2006, the NLRC denied respondents' Motion and Supplemental Motion for Reconsideration.[18]

Thereafter, respondents filed with the Court of Appeals a Petition for Certiorari under Rule 65[19] of the Revised Rules of Court, docketed as CA-G.R. SP No. 94616.

In its Decision dated 17 December 2007, the Court of Appeals held that respondent Perez was indeed denied due process based on the following ratiocination:

> As above-quoted, service of summons in cases before the Labor Arbiters shall be served on the parties personally or by registered mail, provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court. In this case, since [herein respondent] Leslie Perez is the sole proprietor of Time Saver Laundry, service of summons must be made to her personally or by registered mail. The bailiff chose to serve the summons personally upon [respondent Perez]. However, said service of summons was invalid as it was not personally received by [respondent Perez] herself. The records show that the summons was received by one Alfredo Perez on June 7, 2003. It appears that Alfredo Perez is a co-employee of [herein petitioner]. x x x.
>
> x x x x
>
> Considering that there was no proper service of summons upon [respondent Perez], the Labor Arbiter did not acquire jurisdiction over his (sic) person. Perforce, the proceedings conducted and the decision rendered is nugatory and without effect.
>
> x x x x
>
> The lack of proper service of summons clearly deprived [respondent Perez] of her right to due process of law. She should have been afforded her day before the labor arbiter. She was deprived of her right to be heard and to present evidence which are essential ingredients of due process of law. While it is true that the Labor Arbiters and the NLRC are not bound by technical rules of evidence and procedure, such should not be

> interpreted so as to dispense with the fundamental and essential right of every person to due process of law.[20]

The dispositive portion of the assailed Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent, the instant petition is GRANTED. The assailed Resolutions dated November 30, 2004 and February 28, 2006, respectively, of public respondent NLRC are hereby declared NULL and VOID.[21]

Aggrieved, petitioner comes before us[22] with the following assignment of errors:

> - THE COURT OF APPEALS DECIDED THE CASE ON QUESTION OF LAW AND SUBSTANCE DETERMINABLE BY THE HONORABLE SUPREME COURT
>
> - THE COURT OF APPEALS IN DECIDING, HAS DEPARTED FROM THE USUAL AND ACCEPTED JUDICIAL PROCEEDINGS DEROGATORY TO THE RIGHTS OF PETITIONER.[23]

We determine that the fundamental issue for our resolution in the present Petition is whether there had been improper service of summons upon respondent Perez which renders the judgment by the NLRC against her null and void.

We rule in the negative.

The NLRC Rules governing the issuance and service of summons provide[24]:

> Sec. 3. Issuance of Summons. Within two (2) days from receipt of a case, the Labor Arbiter shall issue the required summons, attaching thereto a copy of the complaint/petition and supporting documents, if any. The summons, together with a copy of the complaint, shall specify the date, time and place of the conciliation and mediation conference in two (2) settings.
>
> Section 6. SERVICE OF NOTICES AND RESOLUTIONS. a) Notices or summonses and copies of orders shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail; provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as maybe practicable, which shall be considered substantial compliance with Article 224(a) of the Labor Code, as amended.[25] (Emphasis supplied.)
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> Sec. 6. Proof and completeness of service. - The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.[26]
>
> Sec. 5. x x x
>
> (b) The bailiff or officer serving the notice, order, resolution or decision shall submit his return within two (2) days from the date of service thereof, stating legibly in his return, his name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail, the bailiff or officer shall write in the return, the names of persons served and the date of mailing of the resolution or decision. If no service was effected, the serving officer shall state the reason therefor in the return.

Based on the foregoing rules, notices or summonses shall be served on the parties to the case personally. The same rule allows under special circumstances, that service of summons may be effected in accordance with the provisions of the Rules of Court.

Pertinent provisions of the Rules of Court regarding service of summons read:

> RULE 14
>
> SUMMONS
>
> Sec. 6. Service in person on defendant. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it by tendering it to him.
>
> Sec. 7. Substituted service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the proceding section, service may be affected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

As borne by the records, summons and notices were served on respondents under the circumstances described below:

> 1) Summons to respondents dated 27 May 2003, received by Alfredo Perez, employee of TSL and uncle of respondent Perez, on 7 June 2003 as shown by the bailiff's return dated 10 June 2003[27];
>
> 2) Notice of Hearing set on 10 July 2003, received for the respondents by Beth Diapolet, Cashier at respondent TSL, on 1 July 2003. During the hearing, only the petitioner and her counsel appeared, respondents failed to appear[28];
>
> 3) Notice of Hearing set on 31 July 2003, received for the respondents by Beth Diapolet, Cashier at respondent TSL, on 26 July 2003 as shown by bailiff's return dated 28 July 2003. Petitioner and counsel appeared but the respondents did not appear. During this hearing, the Labor Arbiter required the parties to file their position paper[29];
>
> 4) Notice of Hearing set on 20 August 2003, received for the respondents by Vivian Bon, Supervisor at respondent TSL, on 13 August 2003 as shown by the bailiff's return dated 15 August 2003.[30] Only the petitioner appeared and filed her position paper. The Labor Arbiter set the case for hearing anew on 18 September 2003;
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> 5) Notice of hearing and to file position paper set on 18 September 2003 with a warning that upon failure to appear on this date, the case will proceed ex parte. This notice was received for the respondents by Beth Diapolet, cashier at respondent TSL on 15 September 2003 as shown by the bailiff's return dated 17 September 2003.[31] Again, respondents did not appear before the Labor Arbiter or file their position paper on the date indicated in the notice; and
>
> 6) Notice of Hearing set on 9 October 2003 with a second "Warning." This was received for the respondents by "Benjie,"[32] delivery boy at respondent TSL, on 3 October 2003 as shown by the bailiff's return dated 6 October 2003.[33]

Following the explicit language of the NLRC Rules, service of summons on respondent Perez should be made personally. But was personal service of summons practicable? Conversely, was substituted service of summons justified? Obviously, in this case, personal service of summons was not practicable. By respondent Perez's own admission, she was out of town during the entire proceedings before the Labor Arbiter.[34] Given this admission, she would be unable to personally receive the summons and later the notices from the Labor Arbiter. Thus, even if the bailiff would return at some other time to personally serve the summons on respondent Perez, it would still

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yield the same result. To proceed with personal service of summons on respondent Perez who unequivocally admits that she was out of town during the entire proceedings before the Labor Arbiter would not only be impractical and futile - it would be absurd.[35] While we are not unmindful of the NLRC rules which state that service of summons should be made personally, considering the circumstances in the instant case, we find that service of summons at TSL, respondent Perez's place of business,[36] amounts to substantial compliance with the Rules.[37] In the fairly recent case of Scenarios v. Vinluan,[38] service of summons by registered mail at therein petitioners' place of business was considered valid. This Court declared in the said case that technical rules of procedure are not strictly applied in quasi-judicial proceedings; only substantial compliance is required. That the summons was served in the premises of therein petitioners' office was enough to convince the court that the service of said processes was completed and resultantly, the requirement of notice has been served.[39]

In quasi-judicial proceedings before the NLRC and its arbitration branch, procedural rules governing service of summons are not strictly construed. Substantial compliance thereof is sufficient. The constitutional requirement of due process with respect to service of summons only exacts that the service of summons be such as may reasonably be expected to give the notice desired.[40] Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered, the traditional notion of fair play is satisfied, due process is served.[41]

To apply the technical rules on service of summons would be to overturn the bias of the Constitution and the laws in favor of labor. In labor cases, punctilious adherence to stringent technical rules maybe relaxed in the interest of the working man; it should not defeat the complete and equitable resolution of the rights and obligations of the parties. This Court is ever mindful of the underlying spirit and intention of the Labor Code to ascertain the facts of each case speedily and objectively without resort to technical rules.[42]In Columbus Philippines Bus Corporation v. National Labor Relations Commission,[43] we expounded on the presumption of regularity in the service of summons and other notices, to wit:

> [U]nless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted. This presumption of the regularity of the quasi-judicial proceedings before DOLE includes the presumption of regularity of service of summons and other notices. x x x.

Moreover, it is a legal presumption, based on wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial (and quasi-judicial) tribunal are regular and valid, and that judicial (quasi-judicial) acts and duties have been and will be duly and properly performed.[44] The burden of proving the irregularity in official conduct, if any, is on the part of respondents who, in this case, clearly failed to discharge the same.

It has not escaped our attention the respondents' denial of receipt of the notices from the Labor Arbiter, yet they were able to receive a copy of the Labor Arbiter's decision and file a timely appeal with the NLRC.

Indeed, respondents were able to seek the reconsideration of the adverse decision of the Labor Arbiter when they seasonably filed their appeal before the NLRC. A party who has availed himself of the opportunity to present his position cannot claim to have been denied due process. Despite such opportunity, respondents failed to convincingly establish that their defense is meritorious.[45]

We must emphasize that even though respondents did not participate in the proceedings before the Labor Arbiter, they were eventually able to argue their case on appeal before the NLRC. In their appeal, respondents had the opportunity to substantiate with evidence their claim that they did not receive the summons and notices from the Labor Arbiter, and that petitioner was not illegally dismissed. Article 223[46] of the Labor Code allows an appeal from a decision of the Labor Arbiter "if serious errors in the findings of facts are raised which would cause grave

or irreparable injury to the appellant." The NLRC, in the exercise of its appellate powers, is authorized to correct, amend or waive any error, defect or irregularity in substance or in form. This Court had previously allowed evidence to be submitted on appeal, emphasizing that, in labor cases, technical rules of evidence are not binding. The NLRC in fact went over the arguments of respondents but it remained unconvinced.

Necessarily, respondents' contention that they were denied due process because of improper service of summons and notices is devoid of merit. The essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.[47] A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy.

Equally without merit is respondents' assertion that they were not afforded due process when the Labor Arbiter rendered his decision based only on the evidence adduced by petitioner. The authority of the Labor Arbiter to render judgment based solely on the evidence adduced by a complainant is explicitly sanctioned by Section 2, Rule V of the Revised Rules of Procedure of the NLRC, which provides:

> Section 2 of Rule V:
>
> Sec. 2. x x x.
>
> x x x x
>
> In case of non-appearance of the respondent/s during the first conference, a second conference shall proceed. Non-appearance of the respondent during the second conference shall immediately terminate the mandatory conciliation/mediation conference. The complainant shall thereupon be allowed to file his position paper as well as submit evidence in support of his cause or causes of action after which, the Labor Arbiter shall render his decision on the basis of the evidence on record.[48] (Emphasis supplied.)

Undoubtedly, respondents were afforded ample opportunity to be heard. Despite any purported procedural flaw that may have marred the proceedings before the Labor Arbiter, it should be deemed rectified in the subsequent proceedings in the NLRC, to the Court of Appeals, and before this Court.

Wherefore, premises considered, the instant Petition is Granted. The Decision dated 17 December 2007 of the Court of Appeals in CA-G.R. SP No. 94616 is reversed and set aside; and the NLRC Resolutions dated 30 November 2004 and 28 February 2006 in CA No. 040723-04, affirming with modification the Decision dated 16 March 2004 of the Labor Arbiter in NLRC-NCR Case No. 05-06071-03, are reinstated. Costs against respondents.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga[*], Nachura, and Peralta, JJ., concur.

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[*] Associate Justice Dante O. Tinga was designated to sit as additional member replacing Associate Justice Consuelo Ynares-Santiago per Raffle dated 21 January 2009.

[1] Appeal by certiorari to the Supreme Court

[2] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Hakim S. Abdulwahid and Mariflor P.Punzalan Castillo, concurring; rollo, pp. 30-39.

[3] Rollo, p. 22.

[4] Docketed as CA No. 040723-04.

[5] With modification only as to the award of attorneys fees.

[6] Rollo, pp. 15-20.

[7] Records, p. 2.

[8] Id. at 49.

[9] Id. at 9.

[10] Rollo, p. 20.

[11] Records, p. 48.

[12] Rollo, pp. 25-26.

[13] Id. at 26.

[14] Id. at 26-27.

[15] Id. at 27.

[16] Records, p. 249.

[17] Id. at 284.

[18] Id. at 293.

[19] Certiorari, Prohibition and Mandamus.

[20] Rollo, pp. 35-38.

[21] Id. at 38.

[22] Petitioner did not file a Motion for Reconsideration of the decision of the Court of Appeals.

[23] Rollo, p. 56.

[24] NLRC Resolution No. 01-02, series of 2002, Amending Certain Provisions of the New Rules of Procedure of the National Labor Relations Commission.

[25] Id.

[26] The New Rules of Procedure of the National Labor Relations Commission, Rule III.

[27] Records, p. 4.

[28] Id. at 5.

[29] Id. at 10.

[30] Id. at 12.

[31] Id. at 23.

[32] No last name.

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[33] Records, p. 25.

[34] Id. at 68.

[35] See Montefalcon v. Vasquez, G.R. No. 165016, 17 June 2008, 554 SCRA 513, 524.

[36] Scenarios v. Vinluan, G.R. No. 173283, 17 September 2008.

[37] Air Materiel Wing Savings and Loan Association, Inc. v. Manay, G.R. No. 175338, 9 October 2007, 535 SCRA 356, 372.

[38] Supra note 36.

[39] Pabon v. National Labor Relations Commission, 357 Phil. 7, 14 (1998).

[40] See Masagana Concrete Products v. National Labor Relations Commission, 372 Phil. 459, 474-475 (1999), citing Toyota Cubao, Inc. v. Court of Appeals, 346 Phil. 181, 187-188 (1997).

[41] Oaminal v. Castillo, 459 Phil. 542, 553 (2003).

[42] Pison-Arceo v. National Labor Relations Commission, 344 Phil. 723, 732 (1997).

[43] 417 Phil. 81, 96 (2001).

[44] Forever Security & General Services v. Flores, G.R. No. 147961, 7 September 2007, 532 SCRA 454, 467.

[45] Masagana Concrete Products v. National Labor Relations Commission, supra note 40.

[46] Art. 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through Fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission, in the amount equivalent to the monetary award in the judgment appealed from.

[47] Audion Electric Co., Inc. v. National Labor Relations Commission, 367 Phil. 620, 633 (1999).

[48] NLRC Resolution No. 01-02, series of 2002, Amending Certain Provisions of the New Rules of Procedure of the National Labor Relations Commission.

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