

**LUIS M. RIVERA, PETITIONER, VS. PARENTS-TEACHERS
COMMUNITY ASSOCIATION-FLORENCIO UROT MEMORIAL
NATIONAL HIGH SCHOOL, ESTER YASE, ALL MEMBERS OF THE
BOARD, RESPONDENTS.**

G.R. No. 181532. June 29, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Luis M. Rivera (petitioner), who was hired by respondent Parents- Teachers Community Association as school guard at the Florencio Urot Memorial National High School in Cebu City, filed on April 27, 2005 a complaint for illegal dismissal.

For failure to file his position paper, the Labor Arbiter dismissed petitioner's complaint without prejudice.

Petitioner subsequently re-filed his complaint which was again, by Order of April 30, 2005, dismissed, this time with prejudice, also for failure to file his position paper.

Petitioner thereupon filed a Motion to Recall Order of Dismissal which the Labor Arbiter, by Order of November 16, 2005, treated as an appeal, the motion being a prohibited pleading, and accordingly elevated the case to the National Labor Relations Commission (NLRC).

By Resolution of May 30, 2006, the NLRC dismissed the appeal for non-compliance with the requirements for the perfection of an appeal, particularly the payment of the appeal fee. Petitioner filed a Motion for Reconsideration with which it submitted an official receipt dated December 5, 2005 showing payment of the appeal fee. The NLRC denied the motion, however, by Resolution of August 31, 2006, noting that petitioner's counsel received copy of the November 16, 2005 Order of the Labor Arbiter on November 22, 2005, hence, petitioner had only until December 2, 2005 to perfect the appeal.

Petitioner filed a Motion for Reconsideration of the NLRC August 31, 2006 Resolution which was, by Resolution of November 26, 2006, denied, the NLRC holding that a second motion for reconsideration is not allowed under the Rules.

On petitioner's appeal to the Court of Appeals, the appellate court denied the same as having been filed out of time. It explained that petitioner's filing of the second motion for reconsideration of the NLRC August 31, 2006 Resolution did not toll the running of the reglementary period for filing an appeal, hence, petitioner, who received a copy of such Resolution on November 22, 2006, had until November 19, 2006 to appeal, but filed his appeal only on February 19, 2007.

Petitioner's motion for reconsideration of the appellate court's denial of his appeal was denied by Resolution[1] of October 26, 2007, hence, the present petition.

Petitioner pleads for the relaxation of the Rules in the interest of substantial justice and consistent with the "view"

that the Court should decide labor cases in favor of the working man. He posits that his case falls under the exception to the rule that the negligence of counsel binds the client.

The petition fails.

Petitioner's problems stemmed from his counsel's failure to file position paper before the Labor Arbiter not just once but twice. His situation was compounded when he filed a motion to recall order of dismissal, a prohibited pleading, albeit gratuitously glossed over by the Labor Arbiter which treated it as an appeal; and when he belatedly paid the appeal fee.

Not having learned his lesson, petitioner's counsel filed a motion for reconsideration of the NLRC dismissal of his appeal, which is also prohibited, instead of interposing an appeal before the Court of Appeals. Said motion for reconsideration not having tolled the running of the reglementary period for the filing of a petition for certiorari under Rule 65, petitioner's petition before the appellate court was filed out of time - three months late.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

[1] CA rollo, pp. 115-116. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Francisco P. Acosta and Stephen C. Cruz.

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