

DIONES BELZA, PETITIONER, VS. DANILO T. CANONERO, ANTONIO N. ESQUIVEL AND CEZAR I. BELZA, RESPONDENTS.

G.R. No. 192479. January 27, 2014

Ponente: ABAD, J.

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ABAD, J.:

Petitioner DNB Electronics & Communication Services (DNB) is the business name of petitioner Diones N. Belza. Consequently, any reference made below to DNB includes Belza as well.

DNB hired respondent Danilo T. Canonero in 1996, respondent Antonio N. Esquivel in 2001, and respondent Cezar I. Belza in 1998 as technicians assigned to repair and maintain its clients' electronic and communications equipment. Respondent technicians were particularly assigned at the Makati Medical Center, one of its clients.

In 2005, however, DNB lost in the bidding for the services it was rendering to the medical center. As a consequence, DNB terminated respondent technicians from employment without giving them new assignments or paying them separation pays. On August 4, 2006 these technicians filed a complaint against DNB for constructive illegal dismissal and non-payment of separation pay.

On December 28, 2006, following DNB's failure to file its position paper in the case despite notice, the Labor Arbiter rendered a Decision holding it liable for illegal dismissal and ordering it to pay respondent technicians "backwages from the time they were dismissed up to the filing of the complaint" plus separation pay of one month salary for every year of service, all totaling P490,109.63.

DNB appealed but on April 18, 2007 the National Labor Relations Commission (NLRC) dismissed the same as a non-perfected appeal given that DNB did not accompany its memorandum of appeal with the required certification of non-forum shopping.

On April 30, 2007 DNB filed, through new counsel, Atty. J. Antonio Z. Carpio, a motion for reconsideration of the NLRC's dismissal order with a belated certification of non-forum shopping. A few days later or on May 4, 2007 the original counsel of record, Atty. Aventino B. Claveria, filed for DNB a separate motion for reconsideration of the same order.

On July 3, 2007 the NLRC issued a Resolution a) ignoring the motion for reconsideration that Atty. Carpio filed for DNB considering that Atty. Claveria, the counsel of record, had not yet withdrawn from the case; and b) denying the motion for reconsideration that the latter counsel filed for lack of merit. This prompted DNB to appeal to the Court of Appeals (CA) in CA-G.R. SP 100501.

On November 26, 2009 the CA rendered a Decision, dismissing DNB's petition and affirming the Decision of the NLRC. On May 19, 2010 the CA denied DNB's motion for reconsideration, hence, the present petition for review.

Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in failing to hold that the NLRC committed grave abuse of discretion in ignoring the motion for reconsideration that Atty. Carpio filed for it and instead acting on the motion for reconsideration that Atty. Claveria, its former counsel of record, filed; and
2. Whether or not the CA erred in failing to hold that the NLRC gravely abused its discretion in dismissing its appeal on the ground that its memorandum of appeal was not accompanied by a certification of non-forum shopping.

Rulings of the Court

The CA held that the NLRC correctly ignored Atty. Carpio's motion for reconsideration and instead acted on the one that Atty. Claveria filed since the latter had not yet properly withdrawn from the case in accordance with Section 26, Rule 138 of the Rules of Court which provides:

Section 26. Change of Attorneys.— An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court place of the former one, and written notice of the change shall be given to the adverse party.

A client may at any time dismiss his attorney or substitute another in his place x x x.

The CA ruled that since Atty. Claveria did not file a notice of withdrawal of appearance that bears his client's written consent, Atty. Claveria cannot be regarded as having withdrawn from the case. Actually, however, this is not a case of improper withdrawal of counsel, which requires the client's consent or a court's permission after hearing for counsel to retire. Rather, it is a case of the client substituting his former counsel with a new one. This is the effect since DNB insists that the NLRC should have acted on Atty. Carpio's motion for reconsideration rather than on the one that Atty. Claveria filed also on its behalf.

A client has of course the right to dismiss and replace his counsel of record as provided in the second paragraph of Section 26 above. But this assumes that such client has given counsel a notice of dismissal so the latter could immediately cease to represent him. Indeed, it would have been more prudent for newly hired counsel to refrain from entering his appearance in the case until he has ascertained that the previous counsel has been dismissed from it. As it happened, apparently unaware that Atty. Carpio had already filed a motion for reconsideration of the NLRC Order dismissing DNB's appeal, Atty. Claveria filed still another motion for reconsideration on its behalf. He had no inkling that his client had decided to replace him.

Clearly, the fault in this case did not lie with the NLRC but with DNB which failed in its duty to inform Atty. Claveria of his dismissal. And, since DNB had no right to file two motions for reconsideration, the NLRC would have been well within its right to altogether disregard both motions. Instead, however, it chose the more lenient option of acting on the one filed by the original counsel of record who had not withdrawn from the case or been properly substituted. This action cannot be regarded as constituting grave abuse of discretion.

DNB points out that the CA erred in not ruling that the NLRC gravely abused its discretion when it dismissed DNB's appeal from the Labor Arbiter's Decision on the ground that no certification of non-forum shopping accompanied its memorandum of appeal. But grave abuse of discretion connotes utter absence of any basis for the NLRC ruling which is not the case here. Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC specifically requires the submission of such certification of non-forum shopping in appeals to the NLRC. Thus:

Section 4. Requisites for Perfection of Appeal. a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period of perfecting an appeal.

x x x x

The fact that DNB had not actually engaged in forum shopping is not an excuse for its failure to comply with the requirement, an omission that allowed the period for perfecting the appeal to run inexorably.[1] The NLRC was, therefore, justified in dismissing DNB's appeal.

DNB points out that the requirement of certification of non-forum shopping has no meaning in relation to its appeal from the Decision of the Labor Arbiter to the NLRC since such a certification is required under Section 5, Rule 7 of the Rules of Court only in initiatory pleadings and since it was respondent technicians, not DNB, who initiated the labor case with their complaint. But insisting on such requirement even on appeal is a prerogative of the NLRC under its rule making power considering the great volume of appeals filed with it from all over the country. In *Maricalum Mining Corp. v. National Labor Relations Commission*, [2] the Court held that substantial compliance with the requirement may be allowed when justified under the circumstances but the Court finds no grave abuse of discretion on NLRC's part when it found no such justification in this case.

WHEREFORE, the Court DENIES the petition of DNB Electronics & Communication Services and Diones N. Belza and AFFIRMS the Court of Appeals Decision in CA-G.R. SP 100501 dated November 26, 2009 and Resolution dated May 19, 2010.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Leonen, JJ., concur.

[1] *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 213 (1999).

[2] 358 Phil. 864 (1998).

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