

**GELMART INDUSTRIES PHILIPPINES, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND NATIONAL UNION
OF GARMENTS, TEXTILES, CORDAGE AND ALLIED WORKERS OF
THE PHILIPPINES...**

G.R. No. 53824. June 29, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

In the present Petition for Certiorari with prayer for preliminary injunction, petitioner seeks to set aside the decision dated 22 April 1980 of public respondent National Labor Relations Commission ("NLRC") in NLRC Case No. RB-IV-13275-77 which had modified the decision of the Labor Arbiter dated 13 September 1978, by awarding backwages to sixty-three (63) employees and former employees of petitioner.

Petitioner is an export-oriented, labor-intensive enterprise employing about 8,000 workers. On 1 August 1977, petitioner's workers, who are members of private respondent National Union of Garments, Textiles, Cordage and Allied Workers of the Philippines ("Gatcord") staged a walk-out in protest against alleged persistent refusal of petitioner Gelmart Industries Philippines, Inc. ("Gelmart") to give effect to a wage increase clause embodied in a subsisting Collective Bargaining Agreement and to implement P.D. No. 1123 which had mandated an additional emergency per capita allowance of P60.00 per month. At that time, Gelmart had a pending application for exemption from coverage of P.D. No. 1123.

The following day, on 2 August 1977, the then Undersecretary of Labor issued a return-to-work order directing all striking workers "to report for work within 48 hours or face the danger of losing [their] employment status," and at the same time, ordered petitioner to pay the wage increase stipulated in the Collective Bargaining Agreement. The matter of additional emergency allowance was held in abeyance pending approval or disapproval of petitioner's application for exemption from the coverage of P.D. No. 1123. All the strikers, except 334, reported back for work.

On 4 August 1977, the Secretary of Labor denied petitioner's application for exemption from P.D. No. 1123. Accordingly, petitioner made the payments required under that statute.

Petitioner Gelmart then applied for clearance from the Department of Labor and Employment to terminate the services of the 334 workers who had failed to report back for work and, in the meantime, placed those workers under preventive suspension. In an order dated 5 October 1977, the Department of Labor and Employment, through its Regional Office No. 4, approved the preventive suspension of the 334 workers except those who were subsequently re-admitted by petitioner. In the same order, the issue of termination of the services of the 334 workers was referred to the Executive Labor Arbiter for compulsory arbitration.

The Executive Labor Arbiter, in a decision dated 13 September 1978, declared the walk-out held by private respondent Gatcord as an illegal strike and granted petitioner's application to terminate the services of the strikers

who did not return to work. However, of the 334 workers sought to be terminated, sixty-three (63) were ordered reinstated without backwages since they had not participated in the unlawful strike, having been "absent before and during the [strike] for justifiable causes, as for example illness or validated absences." [1]

On 13 October 1978, private respondent Gatcord brought an appeal to the NLRC, questioning the decision of the Executive Labor Arbiter for not having awarded backwages to the sixty-three (63) workers who were ordered reinstated, and for not having ordered the reinstatement with backwages of Teresita Razon, Wenefreda Binas and Aurea Sedillo.

In a decision dated 22 April 1980, public respondent NLRC modified the decision of the Executive Labor Arbiter by awarding to the sixty-three (63) workers "full backwages from the time of their preventive suspension up to the time of their actual reinstatement and without loss of seniority rights and other benefits and privileges —," [2] The NLRC also ordered the reinstatement with backwages of Razon, Binas and Sedillo.

In the present Petition, Gelmart assails the decision of the NLRC for having entertained Gatcord's appeal although such appeal had not been filed seasonably.

It appears from the record that Gatcord, through counsel, received a copy of the decision dated 13 September 1978 of the Executive Labor Arbiter on 25 September 1978. Gatcord's Appeal-Memorandum to the NLRC was filed on 13 October 1978 or eighteen (18) days after receipt of the Executive Labor Arbiter's decision. It is claimed by petitioner Gelmart that Gatcord's appeal to the NLRC was filed out of time. It is acknowledged by the Solicitor General, acting as counsel for public respondent NLRC, that private respondent Gatcord's appeal was filed "four (4) days beyond the reglementary period often (10) working days prescribed in Section 7, Rule XIII, Book V of the Implementing Rules and Regulations of the Labor Code." [3] It is accordingly contended by petitioner Gelmart that the decision of the Executive Labor Arbiter had become final and executory, that the NLRC did not acquire jurisdiction over Gatcord's appeal and that public respondent NLRC had acted without or in excess of jurisdiction in giving Gatcord's appeal due course.

It is, upon the other hand, contended both by private respondent Gatcord and public respondent NLRC through the Solicitor General that petitioner Gelmart is estopped from assailing the decision of the NLRC on the ground that Gatcord's appeal to the NLRC had been filed out of time. It is stressed that petitioner had notice or must be deemed to have had notice of the appeal, since petitioner Gelmart received a copy of the Appeal-Memorandum of Gatcord and had failed to object seasonably to the consideration of the appeal either in a motion to dismiss or in an opposition to Gatcord's Appeal-Memorandum.

From 13 October 1978, the date of petitioner's receipt of a copy of the Appeal-Memorandum up to 22 April 1980, the date of the rendition of the NLRC's decision, or a period of about one-and-a-half (1-1/2) years, nothing was done by petitioner to impugn the jurisdiction of the NLRC to consider Gatcord's appeal and to act thereon. We note moreover that petitioner Gelmart failed to file a motion for reconsideration of the decision of the NLRC, a copy of which had been received by petitioner on 7 May 1980. Instead of filing a motion for reconsideration, Gelmart opted to come directly to this Court on certiorari on 2 June 1980. We agree with the Solicitor General that under these circumstances, petitioner Gelmart is estopped from assailing before this Court the decision of public respondent NLRC. [4] We believe it would be inequitable to permit petitioner Gelmart, after being notified of the filing of Gatcord's appeal, albeit four (4) days beyond the reglementary period, and having for 1-1/2 years declined or failed to question that appeal before the NLRC, to assail that decision before this Court and here to claim lack of jurisdiction on the part of the NLRC on the ground of tardiness of the appeal.

It is true that petitioner Gelmart denies having received a copy of Gatcord's Appeal-Memorandum. Both public and private respondents, however, expressly state that petitioner Gelmart was in fact furnished a copy of the

Appeal-Memorandum. The Appeal-Memorandum itself manifests that a copy thereof had been furnished to:

"Atty. Armando V. Ampil
Counsel for Respondent Gelmart
Industries Phils., Inc,
Kilometer 15, South Superhighway
Paranaque, Metro Manila."

At the right side of Atty. Ampil's name, there appears a partially illegible signature (apparently an acknowledgment signature) and the following date: "10/13/78." Petitioner Gelmart seeks to make much of the fact that its copy of the Appeal-Memorandum was sent not to the office address of Atty. Armando V. Ampil, petitioner Gelmart's counsel (where prior pleadings on the same case had been sent by Gatcord's counsel), but rather to the address of petitioner itself. Private respondent Gatcord, however, pleads that this was done inadvertently, presumably because of the tardiness in the filing of the Appeal-Memorandum with the NLRC. Petitioner Gelmart has not successfully overcome the presumptions, to the benefit of which private respondent Gatcord and its counsel are entitled, that a person is innocent of wrong doing (such as, deliberately withholding a copy of a pleading and then falsely pretending that such copy had been furnished to an opposing party), that the ordinary course of business (including the business of litigation) has been followed and that the law has been obeyed.[5]

We do not believe that a contrary result is required by Section 2 of Rule 13 of the Revised Rules of Court which provides that "every pleading subsequent to the complaint" shall be served upon a party through his counsel, unless service upon the party himself is ordered by the court. In the first place, we note that petitioner's copy of the Appeal-Memorandum was in fact addressed to petitioner Gelmart's counsel, Atty. Armando V. Ampil. The fact that such copy was in effect sent "care of Gelmart Industries Phils., Inc. does not invalidate the service of the Appeal-Memorandum. For it must be presumed that petitioner Gelmart (a multinational corporation not inexperienced in the requirements of litigation) would, in the regular course of business and taking ordinary care of its concerns,[6] send forthwith the Appeal-Memorandum received by it to its counsel for study and appropriate action. In the second place, the technical rules of procedure and evidence are not binding in proceedings before Labor Arbiters and the NLRC.[7]

We turn to the merits of the NLRC decision. Because the failure of the sixty-three (63) private respondents to report for work before and during the strike was found by the Executive Labor Arbiter himself to have been "for justifiable causes, like illness or validated absences," the NLRC held that the sixty-three (63) private respondents were entitled not just to reinstatement but also to backwages from the time of their preventive suspension and until actual reinstatement. It appears clear that under these circumstances, there was in effect, as to the sixty-three (63) private respondents, no lawful basis for such preventive suspension and that petitioner itself had effectively prevented the sixty-three (63) private respondents from working. We must, of course, hasten to add that we exclude from this consideration the seventeen (17) out of the sixty-three (63) private respondents who, despite repeated notices, failed and refused to report for work and who must, therefore, be deemed to have abandoned their right to reinstatement and backwages. The forty-six (46) other private respondents were reinstated by petitioner Gelmart immediately after receipt of the Executive Labor Arbiter's decision; these forty-six (46) are entitled to backwages.

The Court, therefore, considers that petitioner has failed to show any grave abuse of discretion or any act without or in excess of jurisdiction on the part of public respondent NLRC in rendering its decision dated 22 April 1980.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED for lack of merit. The Temporary Restraining Order dated 30 June 1980 issued by this Court is hereby LIFTED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Decision of the Labor Arbiter, Rollo, p. 54.

[2] Decision of the National Labor Relations Commission, Rollo, p. 65.

[3] Rollo, pp. 151 -152. Section 7, Rule XIII, Book V of the Implementing Rules of the Labor Code provides that the ten (10) day period specified under Article 223 refers to working days. In *Fabula v. NLRC*, 101 SCRA '85 (1980), the Court by adopting the position of the Solicitor General that the appeal period referred to ten (10) working days, in effect upheld such construction and manner of computation. However, in *Vir-jen Shipping and Marine Services, Inc. v. NLRC*, 115 SCRA 367 (1982), the Court held that the shortened period of 10 days fixed by Article 223 contemplates calendar days and not working days."

[4] *Tijam, et al. v. Sibunghanoy, et al.*, 23 SCRA 29 (1968); *Rodriguez v. Court of Appeals, et al.*, 29 SCRA 419 (1969).

[5] Rule 131, Section 5 (a), (q) and (ff), Revised Rules of Court.

[6] Rule 131, Section 5 (d), *id.*

[7] Section 221, Labor Code.

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