

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND RODOLFO YANGUAS, RESPONDENTS.

G.R. No. 60050, March 26, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the resolution of respondent National Labor Relations Commission (NLRC) dated January 20, 1982, which dismissed the petitioner's appeal on the ground that it was filed beyond the reglementary period.

Private respondent Rodolfo Yanguas started working with respondent Philippine Long Distance Telephone Company on January 22, 1951. He rose from the ranks until he reached the position of Cable Foreman SJG-2 sometime in July, 1972.

On September 20, 1980, private respondent Yanguas was informed that he would be placed under preventive suspension effective October 1, 1980, leading to dismissal, pending clearance from the Ministry of Labor and Employment for incompetence and inefficiency in the performance of assigned duties.

On September 23, 1980, petitioner company filed with the Ministry of Labor and Employment an application to terminate the services of private respondent on the above-mentioned grounds.

The facts and incidents which led the employer to file an application to terminate Yangua's employment are summarized in the Labor Arbiter's decision as follows:

"As Cable Foreman SJ-2, complainant herein had employees under his supervision. One of these PLDT employees was Vicente Rebong, who, along with other three co-workers were (sic) arrested and detained for qualified theft.

"After due investigation conducted by respondent Company, it was found out that Vicente Rebong was able to engage in the buying and selling of stolen PLDT communications materials and equipment by leaving his job and work assignments almost everyday.

"Respondent Company now alleges that complainant, instead of stopping Vicente Rebong and calling the latter's attention to these absences, he openly credited Vicente Rebong with full and complete attendance on those days when Rebong was, in truth, absent from his work assignment.

"Respondent further alleges that "by such gross and criminal negligence in the performance of his supervisory duties and functions, complainant, in effect, collaborated with Vicente Rebong in: (1) giving the latter the opportunity to buy and sell stolen company property and equipment during official work hours; and (2) falsifying the time records of Vicente Rebong by crediting him with full attendance in the latter's daily time report when the truth is Vicente Rebong was absent from his place of work assignment.

"Complainant Yanguas, on the other hand, maintains that the respondent has no legal and moral basis in

branding him as incompetent and inefficient in the performance of his assigned duties; that it is sufficient to consider the period he had worked with respondent P.L.D.T. and the performance of his duties as a Cable Foreman SJG- 2 for several years, in order to negate the claim of the respondent; and that the dismissal was anchored on some other motive or motives, particularly, avoidance of payment of retirements pay and/or other benefits to the complainant on the part of the respondent."

On October 15, 1980, the private respondent, in turn, filed with the Ministry of Labor and Employment, Regional Office No. IV a complaint against petitioner company for illegal dismissal and illegal suspension. This complaint also served as an opposition to the petitioner's application for clearance to terminate him.

On March 16, 1981 Labor Arbiter Mirasol Corleto rendered a decision finding "that the negligence of the complainant is not a sufficient cause of this dismissal and that such penalty of dismissal is too harsh and too severe". The Labor Arbiter further ruled that since Yanguas is no longer seeking reinstatement but only payment of his retirement benefits and considering that he had been with petitioner company for twenty nine (29) years and eight (8), and four (4) more months, and therefore, would have been eligible for optional retirement under company rules and policies, it is but fair and just that Yanguas be allowed to retire with retirement benefits. Under Article 6 of the Benefit Plan of the petitioner company, an employee who had completed twenty five (25) years of service, is entitled to benefits computed as provided in the plan.

Consequently, the Labor Arbiter issued the clearance for petitioner company to terminate the services of Yanguas but ordered the petitioner within ten (10) working days from receipt of the decision to pay the sum of Ninety Four Thousand Fifty Pesos (P94,050.00) retirement benefits to Rodolfo Yanguas.

On March 23, 1981, notice was served upon petitioner at its Makati Main Office by leaving a copy of the decision with the clerk at the corporation's receiving section who acknowledged receipt thereof. It was only on March 26, 1981 that petitioner company's counsel on record, Atty. Jesus F. Villarroya, received notice when the copy of the decision was given to the receiving clerk of the Legal Services Division of the petitioner company.

On April 10, 1981, the Philippine Long Distance Telephone Company appealed to the respondent NLRC only with respect to that portion of the decision awarding retirement benefits to the private respondent.

On January 20, 1982, the respondent NLRC dismissed the petitioner's appeal on the ground that it was filed beyond the reglementary period of appeal. The Commission ruled that the tenth working day within which to file the subject appeal fell on April 8, 1981 since the March 16, 1981 decision of the Labor Arbiter was received by the petitioner on March 23, 1981.

Petitioner assigns a lone error for the grant of this petition, alleging that:

"RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED PETITIONER'S APPEAL FOR ALLEGED FAILURE FILE THE SAID APPEAL WITHIN THE REGLEMENTARY PERIOD NOTWITHSTANDING THE FACT THE DECISION WHICH WAS CITED AS THE BASIS FOR THE DENIAL OF THE APPEAL WAS NOT PROPERLY SERVED ON THE PETITIONER."

The only issue is the timeliness of the appeal filed with the respondent National Labor Relations Commission. From what date should the ten (10) days period to appeal be computed.

Petitioner argues that the receipt of the decision on March 23, 1981, cannot form the basis for the computation of the period to appeal because the copy of the decision was served on the Philippine Long Distance Telephone Company itself, and not on its counsel on record, Atty. Jesus F. Villarroya. Petitioner submits that the decision of the Labor Arbiter was served only on March 26, 1981 thru the receiving clerk of the Legal Services Division

where the counsel works. Computed from March 26, 1981, the petitioner's ten (10) working days within which to perfect its appeal to the respondent Commission expired on April 13, 1981.

Respondents on the other hand argue that since the petitioner company received the said notice of the decision on March 23, 1981, and the petitioner's counsel works in the same building, the ten (10) day reglementary period for appeal started from March 23, 1981. Respondents submit that service of the notice of the decision of the Labor Arbiter with a copy of the decision addressed to "Atty Jesus F. Villarroya, counsel for respondent, 9th Floor PLDT Building, Makati, Metro Manila", at the petitioner's receiving section, at the ground floor of the said PLDT building was valid service for purposes of computing the period to appeal.

Section 2, Rule 13 of the Revised Rules of Court reads:

"SEC. 2. PAPERS TO BE FILED AND SERVED. - Every order required by its terms to be served, every pleading subsequent to the complaint, every writ-ten motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the Court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the himself is ordered by the Court." xxx. (Italics is supplied)

Under the above provision, it is clear that service of notice, pleadings, orders, and the like, should be made on the party, if not represented by counsel (*Elli v. Ditan*, 1 SCRA 503) and when a party is represented by counsel, notice should be made upon the counsel. Notice upon the party himself, is not considered in law unless service upon the party is ordered by the Court. The term "every written notice" includes notice of decisions or orders.' (*Jalover v. Ytoriaga*, 80 SCRA 100).

The notice of the decision dated March 20, 1981 signed by Virgel R. Velasco, Stenographic Reporter was served by the Bailiff upon petitioner Philippine Long Distance Telephone Company at the ground floor of its building on March 23, 1981. The bailiff's return dated March 24, 1981 reads:

PLDT MAKATI

Mar. 23. RECD.

and below the words "Mar. 23 RECD" is the signature of the receiving clerk. The said notice of decision clearly shows that the address of record of Atty. Villarroya, petitioner's counsel is "9th Floor PLDT Bldg., Makati, Metro Manila." (Annex A-1, Reply).

The bailiff, instead of serving the notice of the decision at the lawyer on the ninth floor which is clearly indicated in the notice of decision, left the notice at the ground floor of the petitioner's main building. We have held time and again that notices to counsel should properly be sent to the address of record in the absence of due notice to the court of change of address (*Phil. Suburban Dev. Corp. v. Court of Appeals*, 100 SCRA 109). Hence, practical considerations and the realities of the situation dictate that the service made by the bailiff on March 23, 1981 at the ground floor of the petitioner's building and not at the address of record of petitioner's counsel on record at the 9th floor of the PLDT building cannot be considered a valid service. It was only when the Legal Services Division actually received a copy of the decision on March 26, 1981 that a proper and valid service may be deemed to have been made. The notice of decision received by the Legal Services Division of petitioner company has the following markings:

LEGAL SERVICES DIVISION

RECEIVED

cpp 3/26/81

PLDTCo.

In *Alimpoos v. Court of Appeals*, (106 SCRA 159), we held:

"x x x under the circumstances therefore, reliance may be placed on the assertion of counsel that the offended party, Eliseo Alimpoos, had given him a copy of the ORDER only on April 4, 1966, which must be deemed as the date of notice to said counsel of the order."

The purpose of the rule is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case.

"x x x This rule is not a mere technical-ity, but one founded on considerations of fair play. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure. Furthermore, as the party directly served would have to communicate with its attorney and turn over to him the notice received, the net result would be to noticeably shorten the usable period for taking the proper steps required to protect the party's interests." (*J.M. Javier Logging Corporation v. Mardo*, 24 SCRA 776).

In modern multistoried buildings, there may be several hundred rooms with hundreds of different employees discharging different functions. A receiving clerk in a given mailing section may not know the difference between a notice to a lawyer and the thousands of other communications received by her either by mail or through personal or commercial messengers and may not act accordingly. Service upon a lawyer must be effected at the exact given address of the lawyer and not in the vicinity or at a general receiving section for an entire multi-storied building with many offices.

It is apparent therefore that respondent National Labor Relations Commission committed error in holding that the appeal was interposed beyond the reglementary period. The March 23, 1981 service cannot be deemed as notice in law to petitioner. The ten (10) working days within which to perfect an appeal should be computed from March 26, 1981.

WHEREFORE, the resolution of respondent National Labor Relations Commission dated March 16, 1981 is hereby set aside and the respondent Commission is ordered to give due course to the petitioner company's appeal in NLRC Case No. 10-8864-80. The temporary restraining order issued on April 14, 1982 enjoining the respondents from enforcing the resolution dated January 20, 1982 is made permanent. No costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Relova and De La Fuente, JJ., concur.

Teehankee, J., on leave.

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