

CARNATION PHILIPPINES EMPLOYEES LABOR UNION-FFW, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND CARNATION PHILIPPINES, INC., RESPONDENTS.

G.R. No. 64397. October 11, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner Carnation Philippines Employees Labor Union - FFW filed a complaint with the Ministry of Labor and Employment against private respondent Carnation Philippines, Inc. for alleged violation of Section 7, Rule 1, Book III of the Rules Implementing Article 85 of the New Labor Code relating to the obligation of every employer to give his employees a 60-minute time-off period for their regular meals.

On September 8, 1980, Labor Arbiter Ricarte T. Soriano rendered a decision "dismissing the complaint with prejudice for lack of merit."

Petitioner appealed the decision to the National Labor Relations Commission which, in a resolution dated September 30, 1981, dismissed the appeal on the ground that "on the face of the subject appeal, it is manifestly evident that appellant failed to furnish a copy of its appeal on the appellee which is a fatal infirmity. Under Article 223 of the Labor Code, Section 9, Rule XIII, Book V of the Rules Implementing the Labor Code and Section 3, Rule IX of the NLRC Rules, appellant is mandated to furnish on the appellee a copy of its appeal."

The only question presented before Us for resolution is whether or not respondent NLRC committed a grave abuse of discretion in dismissing the appeal on the ground aforesated.

We find merit in this petition considering that the same question had been presented and resolved by this Court in the Case of *J. D. Magpayo Customs Brokerage Corp. vs. NLRC*, 118 SCRA 645, when We ruled that -

"x x x failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. We act on the petitions and simply required the petitioners to comply with the rule.

"Jurisprudential support is not absent to sustain Our action. In *Estrada vs. National Labor Relations Commission*, G.R. 57735, March 19, 1982, 112 SCRA 688, this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant had not furnished the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations."

ACCORDINGLY, the petition is granted and respondent National Labor Relations Commission is hereby ORDERED to give due course to petitioner's appeal.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Abad Santos, Plana, and Escolin, JJ., concur.

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