

**CELSO BONGAY, AVELINO QUIBE, AND JOSE MADRIDENOS,
PETITIONERS, VS. THE HONORABLE CONCHITA J. MARTINEZ,
LABOR ARBITER OF THE REGIONAL ARBITRATION BRANCH OF THE
NATIONAL LABOR REL...**

G.R. No. 77188. March 14, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Challenging the legality of the Order dated October 23, 1986 of public respondent Labor Arbiter and Officer-In-Charge Conchita J. Martinez of the National Labor Relations Commission (NLRC), Regional Arbitration Branch XI, at Davao City, staying the execution of the Decision dated October 10, 1985, rendered by Labor Arbiter Joaquin Tanodra in their favor, the petitioners come to us through this petition for mandamus and prohibition under Rule 65 of the Revised Rules of Court. The petitioners pray that the public respondent be prohibited from enforcing the questioned order of Martinez above stated and that she be compelled by mandamus to order immediately "the effectuation of the writ of execution" issued on August 29, 1986.

The uncontroverted facts of this case are as follows:

On October 10, 1985, a decision was rendered by Labor Arbiter Joaquin Tanodra of the Regional Arbitration Branch XI, Davao City, on the complaint for illegal dismissal, non-payment of emergency cost of living allowance (ECOLA), holiday pay, overtime pay, incentive leave pay, plus damages and attorney's fees, lodged by the petitioners against the private respondents. The decision, while ordering the reinstatement of the petitioners with full backwages from date of dismissal until actual reinstatement without loss of seniority rights and other privileges, denied the other money claims in the complaint for lack of satisfactory evidence. A copy of the decision was received by the private respondents on February 4, 1986. The reglementary period within which to appeal lapsed without the private respondents having done so, hence, the decision became final and executory.

On April 12, 1986, Labor Arbiter Jose Libron, acting on the motion for the issuance of a writ of execution filed on April 1, 1986 by the petitioners, issued an order directing the computation of the monetary award due under the decision. Accordingly, a Report of Examiner dated April 14, 1986 was submitted by Corporate Auditing Examiner of the Arbitration Branch Raymundo Rotante awarding the amount of P43,171.02 to each of the petitioners as his backwages, or a total amount of P129,513.06. The private respondents filed an opposition to the computation on the ground that it was vague and conjectural. They then prayed that the Examiner who undertook the computation be ordered to fully substantiate his findings and to proceed to the premises of the private respondents so that he (Examiner) may be able to find out the exact amount to be awarded to the petitioners; that they be furnished with the records of the case which allegedly served as the basis for the computation; and that Examiner Rotante be ordered to re-compute the amount due, as his report was contrary to the records of the private respondents who had in their hands documents allegedly showing that one of the petitioners had executed a quitclaim to the monetary award due him.

Finding merit on the private respondents' opposition, Labor Arbiter Libron ordered that another computation of the award due to the petitioners be made. On July 31, 1986, Corporate Auditing Examiner Evelina N. Hoy, who was assigned to undertake the re-computation, submitted her report which, while being more detailed, only served to confirm the correctness of the amount found in the first computation report of Rotante. The private respondents did not file any opposition to the second computation.

Thus, on August 29, 1986, Labor Arbiter Libron issued a writ of execution addressed to the Sheriff of the Regional Arbitration Branch XI, Davao City, directing the latter to accompany the petitioners to the private respondents' premises and have them reinstated, and to collect from the said private respondents the amount of P129,513.06 which should be turned over to the Arbitration Office for proper disposition. The Sheriff was further instructed that upon failure to collect the computed amount he should proceed to cause the satisfaction of the same out of the private respondents' properties not exempt from execution.

The private respondents, on September 9, 1986, filed a motion to quash the writ of execution. Labor Arbiter Antonio Villanueva initially acted favorably on the motion by issuing an order to hold in abeyance the implementation of the writ. However, upon a manifestation filed by the petitioners pointing out that the motion to quash was pro forma as the grounds raised therein were in truth grounds for an appeal which at that stage could no longer be entertained as the period to do so had long elapsed, Labor Arbiter Villanueva, on September 29, 1986, denied the private respondents' motion and vacated his previous order.

The private respondents filed a memorandum on appeal dated October 16, 1986 from the decision dated October 10, 1985 and from the order dated September 29, 1986. Simultaneous with the filing of the appeal, the private respondents likewise filed with the Regional Arbitration Office an Urgent Ex-parte Motion to Stay Execution. The petitioners moved to dismiss the appeal contending that the period thereof had already lapsed.

On October 23, 1986, the public respondent, Labor Arbiter and Officer-In-Charge Conchita Martinez, citing Section 2, Rule IX of the old Rules of the National Labor Relations Commission as basis, issued an order staying the execution of the decision dated October 10, 1985 (erroneously stated as October 31, 1985, and in the said order)[1] directing the private respondents to post a bond amounting to P129,513.06. She then elevated the entire records of the case to the Executive Director of the NLRC. The private respondents on their part posted the required bond on October 29, 1986.

It is the order dated October 23, 1986 of Labor Arbiter Conchita Martinez which is now the bone of controversy in this petition. The issues presented are -- whether or not the private respondents' appeal to the NLRC is seasonable, and, as an adjunct, whether or not the respondent Labor Arbiter erred and gravely abused her discretion in applying the provisions of Section 2, Rule IX of the old Rules of the NLRC.

The petitioners assert that the appeal interposed by the private respondents is out of time. As such, they claim that it is pro forma and the public respondent, Labor Arbiter Martinez, erred and gravely abused her discretion in applying the provisions of Section 2, Rule IX of the Rules of the National Labor Relations Commission. According to the petitioners, the execution of the decision which was rendered as early as October 10, 1985 could no longer be stayed even upon the posting by the private respondents of a bond to stay execution pending appeal. The stay of execution provided in Section 2, Rule IX could only be ordered by the respondent Labor Arbiter if the appeal interposed was timely and based on valid grounds, which is not so in this instance.

The private respondents contend otherwise. They maintain that their appeal to the NLRC was filed seasonably. They assert that even if they failed to appeal within the ten-day reglementary period provided by law, their failure was brought about by the negligence of their counsel's secretary to inform her employer of the receipt of a copy of the contested decision. This, according to the private respondents, constitutes excusable negligence. Nevertheless,

they alternatively argue, their payment of the required appeal fees perfected their appeal. And, they also claim that it is exclusively within the jurisdiction of the Commission to determine whether or not an appeal has been filed seasonably. Consequently, the private respondents insist that the public respondent Labor Arbiter Martinez acted well within the law in enjoining the execution of the contested decision.

The arguments of the private respondents are without merit. We agree with the petitioners. Their petition must be granted. The private respondents' appeal has been filed out of time. Hence, the public respondent gravely abused her discretion in applying the provision of Section 2, Rule IX of the Rules of the NLRC and issuing the assailed order of October 23, 1986.

As correctly synthesized by the Solicitor General in his Comment to the petition, which, incidentally, recommended that this petition be given due course, the decision rendered by Labor Arbiter Joaquin Tanodra as early as October 10, 1985 had long become final and executory. The private respondents failed to appeal therefrom within the ten-day reglementary period provided by the law. As a consequence thereof, the applicable provision of the Rules of the NLRC could not have been, as thought by Labor Arbiter Martinez, Section 2, of Rule IX of the NLRC Rules, which applies only where the appeal is timely perfected, but Section 1, Rule XIII which specifically enjoins a Labor Arbiter to issue a writ of execution ordering the proper authority to carry out the execution of a final decision. The issuance of the writ of execution, once the decision has become final and executory, is a ministerial duty of the Labor Arbiter.

The Labor Code is very explicit as to the period to appeal from a decision, award, or order of the Labor Arbiter to the National Labor Relations Commission. It is ten (10) days.

Art. 223. Appeal.- Decisions, awards, or orders of the Labor Arbiter or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders, or decisions. x x x.

Corollarily, it is now well-settled that this ten-day period means ten calendar days.[2] In this case, there is no showing that the private respondents filed their appeal within ten calendar days from their receipt of a copy of the decision on February 4, 1986. On the contrary, the private respondents themselves in their Motion to Quash Order of Writ of Execution concede that they failed to do so.[3]

As already stated, the reason advanced by the private respondents for their failure to interpose a timely appeal does not, however, constitute excusable neglect. But even assuming that what transpired could be forgiven as excusable negligence, the filing by the private respondents of an opposition to the first computation of Examiner Rotante instead of an outright appeal from the decision itself, may be deemed as a waiver of their right to appeal. The subsequent payment of the appeal fees under Section 2, Rule IX of the old NLRC Rules did not cure that defect. The October 10, 1987 decision remains final and executory.

The contention of the private respondents that the determination of whether or not their appeal was filed seasonably should be left to the Commission as the latter has exclusive jurisdiction to rule on the question, must likewise fail. That argument is belied by Section 5, Rule IX of the Rules of the NLRC which empowers not only the Commission but also the Labor Arbiter to impose reasonable penalties, including fines and censures, upon a party for filing a frivolous appeal. This implies that even when the appeal is still with the Labor Arbiter, and not yet transmitted to the Commission, the former may already find it frivolous and, there and then, terminate the appeal. Had it been as the private respondents claim, the Labor Arbiter would not have been given such power.

Parenthetically, while the private respondents may have been initially left with the right to appeal from the second computation of the monetary award due to the petitioners after the decision on the merits of the case has become

final, the right was waived by them when they failed to file a timely opposition thereto. It is notable that unlike in the first computation report when the private respondents submitted a timely opposition, they did not do so as regards the second computation. In fact, the only time when they caused a furor was when a writ of execution was already issued by Labor Arbiter Jose Libron. This delayed action of the private respondents does not speak well of their cause. Rather, it pictures a belated attempt to thwart the implementation of a valid writ of execution based on an unopposed computation of the amount of the award.

Lastly, we are not uncognizable of the fact that the appeal filed by the private respondents in the NLRC is still pending. However, since we find the facts on record substantially sufficient for us to rule that the appeal was filed late and is patently dilatory and would serve no other purpose except to delay and frustrate justice, and as has been aptly put, "justice delayed is not only justice denied, but justice despised and finally despaired of -- the germ of destruction of any government or order of society," we are thus constrained under the circumstances to order the NLRC to dismiss the appeal of the private respondents docketed as NLRC Case No. 1151-LR-XI-83.

WHEREFORE, the petition is GRANTED, the Order dated October 23, 1986 issued by Labor Arbiter and Officer-In-Charge Conchita J. Martinez is ANNULLED and SET ASIDE; the National Labor Relations Commission is ordered to DISMISS the appeal filed by the private respondents in NLRLC Case No. 1151-LR-XI-83; and the immediate execution of the Decision of Labor Arbiter, Joaquin A. Tanodra, dated October 10, 1985, is hereby ORDERED. Costs against the private respondents.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Annex "P"; Rollo, 55).

[2] *Vir-Jen Shipping & Marine Services vs. NLRC*, No. L-58011-12, July 20, 1982, 115 SCRA 347; *RJL Martinez Fishing Corporation vs. NLRC*, No. L-63550-51, January 31, 1984, 127 SCRA 454.

[3] Motion to Quash, par. 8, p. 2; Rollo, 28.

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