

LINCOLN GERARD, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITERS JESUS ROMEO D. DUQUE AND QUINTIN C. MENDOZA, ACTING DEPUTY SHERIFF EUGENIO BARTOLOME, J...

G.R. No. 85295. July 23, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition for certiorari and prohibition with preliminary injunction and/or restraining order seeks to reverse the decision dated October 10, 1987 of respondent Labor Arbiter Jesus Romeo D. Duque declaring illegal the dismissal of respondent employee, Alfonso Balignasay, and ordering his reinstatement with backwages, as well as, the resolutions dated August 24, 1988 and September 26, 1988 of the National Labor Relations Commission dismissing the petition for certiorari with preliminary injunction and denying the motion for reconsideration.

Alfonso Balignasay was employed as a finisher-varnisher on March 17, 1981 in the petitioner's furniture factory. At the time of his dismissal on September 28, 1985, he was a sander receiving a daily wage of P37.00 plus an allowance of P17.00.

On October 8, 1985, Balignasay filed a complaint for illegal dismissal (NLRC Case No. 3299-85). The case was submitted for decision based on the position papers of the parties. On October 10, 1987, Labor Arbiter Jesus Romeo Duque rendered a decision, the dispositive portion of which reads:

"WHEREFORE, decision is hereby rendered declaring the respondent guilty of illegally suspending and dismissing the complainant and ordering it to reinstate complainant to his former position as sander without loss of seniority rights and other privileges as well as, pay complainant:

"a) full backwages from September 29, 1985 up to his actual reinstatement;

"b) the wages he lost for the period covering September 14 to 28, 1985 in the amount of P810.00; and

"c) attorney's fees in the amount of ten (10%) percent of the total monetary award herein." (p. 37-A, Rollo.)

A copy of the decision was received by petitioner's counsel on December 3, 1987.

On July 22, 1988, the private respondent filed a motion for execution, a copy of which was received by the petitioner on July 26, 1988. During the hearing on the motion for execution on August 3, 1988, petitioner, through counsel, was shown the computation of backwages amounting to P49,740.00 for September 29, 1985 up to July 29, 1988, lost wages of P810.00 for September 14, 1985 up to September 28, 1986, and attorney's fees of P5,055.00 equivalent to 10% of the monetary awards.

On August 1, 1988, petitioner, through its new counsel (Ambrosio Padilia, Mempin and Keyes Law Office), filed an unverified petition for relief from judgment in the NLRC, alleging that: (1) it was denied due process because it was not furnished a copy of the Labor Arbiter's decision, and that its former counsel (Chuanico & Oebanda Law

Office) failed to inform it about the decision; and (2) Balignasay was dismissed in accordance with the Labor Code and that the grant of backwages and attorney's fees to him was excessive and illegal as the grant of allowances should not exceed three (3) months. Private respondent opposed the petition for relief on the grounds that it was not verified and not accompanied by an affidavit of merits. The petitioner subsequently submitted the verification of its petition for relief but the petition was not acted upon by the Labor Arbiter.

On August 15, 1988, petitioner filed a petition for certiorari with a prayer for preliminary injunction in the NLRC, raising substantially the same issues as its petition for relief from judgment.

On August 23, 1988, the NLRC, in an En Banc Resolution, dismissed the petition for certiorari. The petitioner's motion for reconsideration was also denied.

On October 3, 1988, after the first alias writ of execution was returned unsatisfied, Balignasay asked for a second alias writ and a break-open-and-military-assistance order which the Labor Arbiter granted. Petitioner has come to this court alleging grave abuse of discretion by the public respondent.

The principal issues in this case are whether the respondent employee was illegally dismissed and whether petitioner was denied due process.

The petitioner denies that Balignasay was dismissed. It alleges that Balignasay absented himself, abandoned his job, and refused to work.

However, contrary to petitioner's claim that private respondent abandoned his job, the records of the case show that Balignasay was suspended by petitioner on September 14, 1985 and no reason was given why. When he tried to report for work on September 28, 1985, he was advised that he had been terminated. There had been no hearing or investigation of the cause of his dismissal. He was advised of his suspension and, subsequently, of his termination, without informing him of the cause thereof. Having been illegally dismissed, he is entitled to the payment of his backwages from the time his salary was withheld on September 29, 1985 up to July 29, 1988. The award of P5,055 as attorney's fees is in accordance with Article 111 of the Labor Code which provides that in case of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to 10% of the amount of wages recovered.

Equally without merit is the petitioner's contention that it was denied due process of law because the decision dated October 10, 1987 was served upon its former counsel who did not inform it about the adverse decision.

It has been a settled rule that when a party appears by counsel in an action in court or administrative body, all notices required to be given must be served to the counsel and not to the client, for the rule is that notice to the counsel is notice to the client (*Antonio vs. CA*, 153 SCRA 592). Records show that petitioner's former counsel, Chuanico and Oebanda Law offices did not withdraw its appearance, hence, service of a copy of the decision on the law firm was valid.

"An attorney seeking to withdraw must make an application to the court, for the relation does not terminate formally until there is a withdrawal of record; at least so far as the opposite party is concerned, the relation otherwise continues until the end of the litigation." (*Visitacion vs. Manit*, 27 SCRA 523.)

Considering that aside from its position paper, petitioner submitted an unverified petition for relief dated August 1, 1988, a petition for certiorari with preliminary injunction dated August 15, 1988, and a motion for reconsideration dated September 13, 1988, the petitioner may not complain of lack of due process. Its failure to seasonably move for reconsideration, or appeal the decision, because of the negligence of its counsel does not constitute a denial of due process. For the rule is that a client is bound by the negligence or failings of his counsel (*Republic vs. Arro*, 150 SCRA 626; *Ayllon vs. Sevilla*, 156 SCRA 257).

WHEREFORE, finding no grave abuse of discretion in the decision of the NLRC in NLRC Case No. 3299-85, the same is hereby affirmed except the award of backwages which shall be limited to a period of three (3) years. The petition for certiorari is dismissed for lack of merit, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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