

GERONIMO SADOL, PETITIONER, VS. PILIPINAS KAO, INC., REQUITO VEGA, BELEN GOMEZ, ARTURO GOMEZ & NLRC SECOND DIVISION, RESPONDENTS.

G.R. No. 87530. June 13, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue posed in this case is whether or not a party who failed to appeal from a decision of the labor arbiter to the National Labor Relations Commission (NLRC) within the ten (10) day reglementary period can still participate in a separate appeal timely interposed by the adverse party by filing a motion for reconsideration of a decision of the NLRC on such appeal.

Petitioner was recruited as a laborer by private respondents Requito Vega, Antonio Gomez and Belen Gomez, who are the owners of Vega & Co., a private recruitment agency, with assignment at respondent Pilipinas Kao, Inc. (PKI for brevity), particularly at the Pit Burning area. Sometime on April 16, 1984, he was allegedly summarily dismissed. Hence, on July 24, 1986, he filed a complaint for reinstatement and backwages with Region X of the Department of Labor and Employment in Cagayan de Oro City.

On November 13, 1986, the labor arbiter ordered all parties to submit their position papers. Only petitioner complied. On December 17, 1986, petitioner filed an urgent motion that the failure of respondents to file their position papers is a waiver and so judgment should be rendered in favor of petitioner. Similar motions were filed by petitioner on January 23, 1987 and May 15, 1987.

On June 26, 1987, the labor arbiter rendered a decision ordering private respondents to jointly and solidarily pay petitioner his separation pay computed at one month for every year of service within the reglementary period. Petitioner appealed to the NLRC. Said respondents also appealed but it was filed out of time.

On August 26, 1988, the Second Division of the NLRC promulgated a decision modifying the appealed decision in that respondent PKI was ordered to reinstate petitioner to his former position without loss of seniority rights and other accrued benefits and with full backwages from the time of dismissal up to his actual reinstatement, and in case reinstatement is impossible, payment of full backwages and separation pay of one (1) month salary for every year of service. The appeal of respondent PKI was dismissed for having been filed out of time.

The PKI allegedly received a copy of the decision of the NLRC only on September 13, 1988. A motion for reconsideration of said decision dated September 22, 1988 was filed by said respondent and a similar motion was filed by Samahang Kabuhayan ng Barangay Luz Banzon (SKLB for brevity) to which an opposition was filed by petitioner.

On September 30, 1988, a resolution was promulgated by the same division of the NLRC, setting aside its decision and dismissing the case for lack of merit. A motion for reconsideration thereof filed by petitioner who besides questioning its findings of acts raised the issue that said respondent's appeal having been filed out of time

its motion for reconsideration of the decision should not have been entertained as it raised issues for the first on appeal which were not raised before the labor arbiter. This motion was denied on November 27, 1988.

Hence, the herein petition for certiorari wherein petitioner recites the following assignment of errors:

“I

THE HONORABLE COMMISSION, SECOND DIVISION, SERIOUSLY ERRED IN FINDING THAT RESPONDENTS REQUITO VEGA, ARTURO GOMEZ AND BELEN GOMEZ IS A LAWFUL INDEPENDENT LABOR CONTRACTOR;

II

THE HONORABLE COMMISSION, SECOND DIVISION, SERIOUSLY ERRED IN FINDING IN ITS RESOLUTION THAT COMPLAINANT-APPELLANT VOLUNTARILY ABANDONED HIS JOB;

III

THE HONORABLE COMMISSION, SECOND DIVISION, SERIOUSLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING DUE COURSE AND/OR ENTERTAINING THE MOTION FOR RECONSIDERATION FILED BY RESPONDENTS?APPELLANTS AND REVERSING ITS OWN DECISION/ RESOLUTION DATED AUGUST 26, 1988;

IV

THE HONORABLE COMMISSION, SECOND DIVISION, SERIOUSLY ERRED IN FAILING TO GIVE DUE CONSIDERATION OF COMPLAINANT-APPELLANT’S OPPOSITION TO MOTION FOR RECONSIDERATION DATED SEPTEMBER 27, 1988.[1]

The third and fourth assignment of errors shall first be resolved.

There is no question that private respondents failed to file a timely appeal from the decision of the labor arbiter while the petitioner was able to interpose his appeal within the reglementary period. It is also an accepted postulate that issues not raised in the lower court or the labor arbiter may not be raised for the first time on appeal.

Note is taken of the fact that even the Solicitor General refused to represent the NLRC in this proceeding as it shares the view of petitioner that the decision of the labor arbiter having become final by the failure to respondent PKI to appeal on time the NLRC may no longer amend, modify, much less set aside the same.[2]

This posture is correct insofar as respondent PKI is concerned. However, as petitioner had filed a timely appeal the NLRC had jurisdiction to give due course to his appeal and render the decision of August 28, 1988, a copy of which was furnished respondents. Having lost the right to appeal can respondent PKI file a motion for reconsideration of said decision? The Court resolves the question in the affirmative. The rules of technicality must yield to the broader interest of justice. It is only by giving due course to the motion for reconsideration that was timely filed that the NLRC may be able to equitably evaluate the conflicting versions of facts presented by the parties.

In the now questioned resolution of the NLRC dated September 30, 1988, the following findings and conclusions were made:

“Respondent SKLB assails the finding of this Commission that it is engaged in labor-only contracting. In support thereof, respondent submitted a Clearance Certificate issued by the Department of Labor and Employment, Regional Office No. 10 situated in Cagayan de Oro City, certifying to its being cleared for

issuance of a permit as a labor contractor. It also submitted payrolls showing that it indeed operated as such independent labor contractor in accordance with Article 106 of the Labor Code.

Attached to respondent SKLB's motion likewise is the joint affidavit of one Mario T. Ecarnum and Benito U. Ecarnum who jointly stated that they were neighbors and co-workers of the complainant in the pit burning area, in a work contracted by aforesaid respondent with respondent Pilipinas Kao, Inc.; that complainant abandoned his work starting April 19, 1984 when he went to Manila to apply for work abroad and it was only about eight (8) months later that he returned when he failed to secure an overseas employment; that complainant's prolonged absence was without prior permission or leave of absence.

Respondent SKLB further contends that it meets all requirements set by law and jurisprudence pertaining to an independent labor contractor, citing the case of *Vda. de Eustaquio vs. Workmen's Compensation Commission*, 97 SCRA 255, thus:

'An independent contractor is one who, in rendering services, exercise an independent employment or occupation and represents the will of his employer only as to the results of his work; and who is engaged to perform a certain service to another according to his own manner and methods, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result of the work.'

To further buttress respondent SKLB's claim of being an independent labor contractor and employer of complainant, it submitted a copy of a Memorandum dated April 21, 1984 sent to complainant requiring the latter to report to its office immediately otherwise he would be deemed to have abandoned his work.

It does strike Us as odd that if indeed complainant was dismissed sometime in April 1984 it took him almost three (3) years before filing the instant case for illegal dismissal. This circumstance adds a significant dimension to respondent's position that indeed complainant abandoned his job to look for greener pastures and it was only when he failed to find such opportunity that he came back to demand that he be allowed to resume the employment which he unceremoniously abandoned.

All the foregoing undisputed circumstances, taken together, preponderate in favor of respondent SKLB's claim of being a lawful independent labor contractor which employed complainant who unjustifiably abandoned his employment.

WHEREFORE, the decision sought to be reconsidered is hereby SET ASIDE and a new one entered, dismissing the case for lack of merit."^[3]

The factual findings of the NLRC are conclusive on this Court because the same appear to be supported by substantial evidence.

WHEREFORE, the petition is DISMISSED for lack of merit. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Griño-Aquino, J., on leave.

[1] Pages 4 to 5, Rollo.

[2] Pages 124 to 132, Rollo.

[3] Pages 54 to 56, Rollo.

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