

**THE UNIVERSITY OF NUEVA CACERES, PETITIONER, VS. THE HON. RUBEN D. TORRES, IN HIS CAPACITY AS THE SECRETARY OF LABOR AND EMPLOYMENT, THE UNIVERSITY OF NUEVA CACERES TEACHERS ALL...**

*G.R. No. 92234. August 30, 1990*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.:**

The sole issue presented in the instant petition for certiorari filed by the University of Nueva Caceres is whether or not the Secretary of Labor and Employment committed grave abuse of discretion in dismissing its appeal on the ground of late filing. The merit of the appeal is not in issue here.

The following facts are undisputed:

On August 8, 1989, the respondent University of Nueva Caceres Teachers Alliance filed a petition for certification election with the Department of Labor and Employment, Region V, Legaspi City, which was docketed as Med-Arbitration Case No. R05-81-A89. Petitioner was named respondent therein. Before the case was heard, or on August 21, 1989, the respondent University of Nueva Caceres Faculty and Employees Federation (hereinafter referred to as FEDERATION) filed a petition for intervention and this was given due course by Med-Arbiter Pedro M. Caño.

After conducting several pre-election conferences, Med-Arbiter Pedro M. Caño issued an order dated December 14, 1989, with the following dispositive portion:

"WHEREFORE, premises considered, an order is hereby issued as follows:

1. That a certification election be held within twenty (20) days from receipt hereof;
2. That it be held in the premises of respondent-employer duly supervised by the representation Officer(s) designated by the office;
3. That only those in the herein attached list of qualified voters shall be allowed to participate and vote during the election;
4. That the contending parties shall be the petitioner (UNC Concerned Teachers Alliance), the intervenor (UNC Faculty and Employees Federation) and NO union."<sup>[1]</sup>

A copy of the above-written order of Med-Arbiter Caño was received by petitioner on December 21, 1989.

Not satisfied therewith, petitioner decided to file an appeal and sent its Memorandum on Appeal by registered mail on January 2, 1990. The FEDERATION for its part, also filed an appeal.

On February 9, 1990, public respondent Secretary of Labor and Employment Torres issued a joint resolution denying the appeals of both petitioner and the FEDERATION. The appeal of petitioner was denied for having

been filed out of time.[2]

Petitioner filed a motion for reconsideration alleging therein that its appeal was correctly and timely filed on January 2, 1990, it being the last day of the calendar period within which it could file its appeal.

As another pre-election conference was set to be called, petitioner filed the instant petition stating that it had no other plain and speedy remedy in the course of law.

From the facts of this case, it is obvious that respondent Secretary Torres committed grave abuse of discretion in denying the appeal of petitioner for HAVING BEEN FILED OUT OF TIME.

Rule V, Book V of the Omnibus Rules Implementing the Labor Code provides for the procedure by which a petition for certification election may be filed. The period of appeal is provided for in Section 9 of the same Rule, to wit:

"Sec. 9. Period of appeal. - The appeal shall be filed within ten (10) calendar days from receipt of the order by the appellant. Any opposition thereto may be filed within ten (10) calendar days from receipt of the appeal. The Regional Director shall within five (5) calendar days forward the entire records of the case to the Office of the Secretary." [3]

Section 28, Chapter 7, Book I of the Administrative Code of 1987 on the other hand gives us the rule in cases where the day or last day for doing an act required or permitted by law falls on a holiday, thus:

"Sec. 28 - Pretermission of Holiday - Where the day or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day." [4]

Applying the above-written rules to the case at bar, We hold that the appeal of petitioner was not filed out of time. As earlier stated, petitioner received its copy of the order of Med-Arbiter Caño on December 21, 1989. Counting ten days from petitioner's receipt, the last day for filing the appeal fell on December 31, a Sunday. Since the following day was a legal holiday (New Year's Day), petitioner could validly file its appeal on January 2, the next business day and this was what petitioner actually did.

In the case of *SM Agri and General Machineries vs. NLRC*, [5] this Court had the opportunity to rule on a case where the Legal Holiday coincided with the 10th or last day to appeal. This Court held therein that where the 10th day of the 10-day period fixed by law to appeal falls on a Sunday or a Legal Holiday, the appeal can be filed on the next business day. In such case, this Court continued, the supposedly last day to appeal will not be deemed the last day because it happens to be a Sunday or Legal Holiday and instead, the act can be done on the next business day following that Sunday or Legal Holiday. [6]

WHEREFORE and in view of the foregoing, the instant petition is hereby granted. The resolution of respondent Secretary Torres dated February 9, 1990 is ordered set aside as far as petitioner University is concerned. Respondent Secretary Torres is also ordered to give due course to petitioner's appeal.

### **SO ORDERED.**

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

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[1] Page 18, Rollo.

[2] Page 57, Rollo.

[3] Section 9, Rule V, Book V, Omnibus Rules Implementing the Labor Code.

[4] Reproduced from Section 31, Article VIII of the Revised Administrative Code.

**[5] 169 SCRA 20 (1989).**

[6] Supra at 26.

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