

SILLIMAN UNIVERSITY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ISAGANI LEPITEN, ET. AL., RESPONDENTS.

G.R. No. 92789, September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for certiorari of the Resolution of the National Labor Relations Commission, NLRC for brevity, dated February 15, 1990, dismissing petitioner's partial appeal from the Decision of the Labor Arbiter, both of which petitioner seeks to annul, insofar as the award of moral damages in the amount of P20,000.00 as well as for attorney's fees in the amount equivalent to ten (10%) of the total monetary award.

The undisputed facts of the case are as follows:

Private respondents are faculty members of the College of Engineering of petitioner University. Sometime in 1981, negotiations started between the engineering faculty members led by Engineer Isagani Lepiten and the School Administration regarding a standardized salary system known as the Faculty Salary Administration Scheme, FSAS for brevity.

The Engineering faculty of which private respondents are members reacted negatively to the FSAS, claiming that it would operate against them.

On July 1982, Isagani Lepiten, then Officer In Charge of the College of Engineering, wrote a letter to Dr. Angel Alcala, then Vice-President for Academic Affairs of petitioner, proposing a special formula for the engineering faculty.[1]

On that same day Dr. Luz Auserjo, writing in behalf of Dr. Alcala, agreed to the formula proposed by Lepiten, and such was made effective beginning June 1, 1982, up to May 31, 1987.[2]

On June 1, 1987, without the knowledge of Isagani Lepiten and the other members of the group in that department, petitioner University unilaterally repudiated the aforesaid scheme to the prejudice of the private respondents.

A complaint for unfair labor practice, breach of contract and damages was filed by the engineering faculty members led by Lepiten.

It is the position of petitioner University that since a new collective bargaining agreement (CBA) took effect on June 1, 1987 between the faculty union and respondent, said CBA governs the relationship between the University and the faculty.

Thereafter, a Decision[3] was rendered by the Labor Arbiter, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered, ordering respondent

Silliman University to pay the complainants their salaries in accordance with the salary rate provided in Annex "A" and the differentials in salary based on said Annex "A"; moral damages in the amount of P20,000.00 and attorney's fees equivalent to 10% of the total award within ten (10) days from receipt of this decision to be deposited in this office for appropriate action. Other claims of the complainants as well as respondent are denied for lack of merit.

SO ORDERED."

From the aforesaid decision, petitioner posed its partial appeal before the National Labor Relations Commission, questioning the propriety of the award of damages and attorney's fees.

The National Labor Relations Commission however, affirmed[4] the assailed decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, this appeal is DISMISSED for lack of merit and the decision appealed from is hereby AFFIRMED."[5]

Hence, this petition.

We vote to dismiss the instant petition.

The appeal taken by herein petitioner before the NLRC is time-barred, as it was filed beyond the reglementary period. It lapsed into finality.

This was noted by the National Labor Relations Commission in its questioned Resolution but instead of dismissing the appeal, chose instead to dispose of the case on its merits.[6]

Petitioners received a copy of the Decision of the Labor Arbiter on March 2, 1989[7] but the appeal from said Decision was filed March 15, 1989, well beyond the ten (10) calendar days prescribed under Section 223 of the Labor Code, which reads:

"Article 223. Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.

As held repeatedly by this Court:

"The requirement that appeal must be perfected within the period prescribed by law is not only mandatory but jurisdictional and failure to perfect an appeal has the effect of rendering the judgment final and executory"[8]

Petitioner's counsel, Atty. Teodoro Cortes, who is likewise the Dean of the College of Law as well as the Vice-President on Academic Affairs (VPAA), claims that service of the NLRC Decision was not complete upon receipt by his office messenger and assistant clerk. It is only completed upon actual receipt by him of said decision, since service was made by registered mail, and under Section 8 of Rule 13 of the Revised Rules of Court

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"x x x . Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

Such contention cannot be given merit. The Court has ruled:

"Service by registered mail is complete upon actual receipt by the attorney, his employee or messenger in his office."[9]

At any rate, records will show that Zosimo Lopez is a university messenger whose duty among others is to go daily to the Dumaguete Post Office to take delivery of all mail matters addressed to or at Silliman University while Shirley Gepulani is a student office clerk or assistant of Atty. Cortes working in his VPAA office. They actually received a copy of the NLRC decision on March 2, 1989 as shown by a certification^[10] of the City Postmaster of the Dumaguete Post Office, which reads:

"This is to certify that, according to the records of this Office, a certain registered mail no. 489 posted on February 27, 1989 by the Department of Labor and Employment, Dumaguete City, and addressed to Atty. Teodoro Cortes of Silliman University, Dumaguete City, was delivered to and received by Mr. Zosimo R. Lopez, authorized agent of said University on March 2, 1989 and that per information furnished by said Zosimo Lopez, the same mail was delivered by him to Shirley D. Gepulani, Student Assistant/VPAA/VPEP, also on March 2, 1989."

As held in the case of *Enriquez vs. Bautista*^[11] –

"An attorney who does not stay in one place permanently owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record."

Hence, there is no reason for the petitioner's legal counsel to deny receipt of the decision on March 2, 1989. To hold on to the view of petitioner's legal counsel would result in gross disregard of our rules on procedure.

This should not be allowed to happen. The rules should not bend to the uncertain wishes and dictates of one party. They were promulgated for an orderly administration of justice. To do otherwise, would result in chaos and disorder.

Clearly, the National Labor Relations Commission had no jurisdiction to act upon the appeal considering that the same was filed out of time.

Inasmuch as the decision of the Labor Arbiter has long become final and executory, We cannot but dismiss the instant petition. Likewise the award of damages and payment of attorney's fees, which is the subject of this appeal, has become final and executory.

WHEREFORE, the petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Melo, JJ., concur.

[1] Rollo, p. 163.

[2] Rollo, p. 164.

[3] Rollo, pp. 23-31.

[4] Rollo, pp. 18-22.

[5] *Id.*, at p. 22.

[6] Rollo, p. 18, Resolution, NLRC, promulgated February 15, 1990.

[7] Rollo, p. 52.

[8] *Chong Guan Trading vs. NLRC*, G.R. No. 81471, 172 SCRA 831, (1989).

[9] Mata vs. Rita Legarda, No. L-18941, 7 SCRA 227, (1963).

[10] Rollo, p. 52.

[11] No. L-1443, 79 Phil. 220, (1947).

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