

DOMINGO RAMONES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CONSTELLATION MANPOWER RECRUITMENT, INC., RESPONDENTS.

G.R. NO. 94012. February 17, 1993

Ponente: NOCON, J.

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NOCON, J.:

"Opportunity knocks only once," it is said. Private respondent's counsel heard that knock and left posthaste for New York, USA, to assume his post as labor attache. Public respondent National Labor Relations Commission (NLRC) ruled that was excusable negligence and allowed private respondent to appeal an already final and executory Philippine Overseas Employment Administration (POEA) decision in favor of petitioner.[1] Needless to say, the NLRC reversed the POEA[2] and affirmed the same upon being asked to reconsider by petitioner.[3] Aggrieved at the unfortunate turn of events, petitioner asks Us to reinstate and uphold the POEA decision. We shall grant him his wish.

The Solicitor General has distilled the facts of the case as follows:

"Petitioner was recruited by private respondent to work as body builder for his foreign principal Marwan Establishment for Investment and Marketing (Marwan). Petitioner signed a two (2) year employment contract with Marwan from November 12, 1983 to November 1985, at the salary of US\$250.00, plus food allowance of US\$100.00 a month.

"On February 7, 1985, petitioner was given a thirty (30) day notice of termination of contract. The notice reads as follows:

"We have decided that after 30 days from date of this Memorandum your employment contract will be terminated. Contact immediately your direct manager, Mr. Orfan Al Sharbaji and clear your accounts with the company.

"It is hoped that within 30-day period, you will excel to perform in your jobs.

Note: This Memorandum is directed most particularly to those without any previous warning. We will act accordingly to those who has been previously warned.'

(p. 6, NLRC Decision)'

"About three days from February 7, 1985, the officials of Marwan confiscated petitioner's IQAMA, an identification card issued by the government of the Kingdom of Saudi Arabia to foreigners. Without an IQAMA, petitioner could not anymore get out from his barracks to visit his friends as he would be apprehended or imprisoned.

"On March 10, 1985, after he had signed a certificate of release, petitioner was paid the amount of SR3,959.05 as complete and final settlement of all compensation and rights he has under his Employment Contract dated October 20, 1983.

"On April 15, 1985, petitioner filed with the Philippine Overseas Employment Administration a complaint against private respondent for (1) illegal dismissal; (2) non-payment of salaries and overtime pay; and (3) illegal reduction of salaries and contract substitution.

"The POEA decided the case in favor of petitioner. The dispositive portion of the decision reads as follows:

'WHEREFORE, in view of all the foregoing, judgment is hereby rendered ordering respondent to pay complainant the sum of THREE THOUSAND SIX HUNDRED EIGHTY FOUR & 99/100 DOLLARS (US\$3,684.99) or its peso equivalent at the time of payment representing complainant's salaries for the unexpired portion of his contract and the cost of his air plane fare plus payment of the (10%) percent of the judgment amount by way of an as attorney's fees.

'All other monetary claims of complainant as well as the contract substitution charge is hereby ordered dismissed for lack of merit.

'SO ORDERED.'

(p. 9, Decision)

"Instead of filing an appeal within the reglementary period, private respondent filed a Motion for Relief from the Decision and/or Motion for Reconsideration dated November 16, 1986. Private respondent attributed its failure to interpose an appeal on time to the negligence of its counsel who was appointed Labor Attache in Washington D.C. Because of his appointment, private respondent's counsel allegedly left the country on November 19, 1986 without taking such action as may be necessary in the case and turning over the records to private respondent. The negligence of its counsel is allegedly excusable.

"Public respondent considered the omission of private respondent's counsel excusable. Thus, it treated private respondent's motion as appeal. Acting on the appeal, it set aside the decision of the Labor Arbiter and rendered judgment dismissing the complaint of petitioner.

"Hence, this petition."

Petitioner claims that the POEA decision had long become final and executory as there was no appeal interposed within the reglementary period. Private respondent's "Urgent Motion For Relief From Decision Dated November 6, 1986 And/Or Motion For Reconsideration" filed on December 5, 1986 should not have been given due course by the NLRC.

On the other hand, private respondent says that the reason that it could not file an appeal within the ten (10) day reglementary period was because its then counsel of record suddenly left on November 19, 1986 for New York, USA, to assume his post as labor attache. Public respondent NLRC declared this to be excusable negligence and considered private respondent's above stated Urgent Motion as an appeal. Private respondent says that its Urgent Motion for Relief was filed within the 60-day period after knowledge of the POEA decision and also within the 6-month period after the decision was rendered, applying Section 3 of Rule 38, Rules of Court in a suppletory manner.

A careful reading of private respondent's Urgent Motion for Relief, however, reveals that private respondent's excusable negligence is not that excusable, as follows:

"1. Nature of Proceedings.

"This motion is predicated on a relief from judgment of the Honorable Office dated November 6, 1986 on the ground that respondent failed to move for a reconsideration or appeal from the said decision on the ground that its counsel on record who was appointed June 20, 1985 left the country on November 19, 1986 for his assignment at New York and as a consequence the respondent will suffer from manifest prejudice and grave

injury and miscarriage of justice and which acts of counsel constitute excusable negligence and that the said decision is based on insufficient evidence and likewise contrary and unwarranted under the law and applicable jurisprudence. In fine, the respondent prays that the decision be set aside and that the complaint be dismissed.

"2. Grounds for excusable mistake.

"The Counsel of the respondent received the decision of the Honorable Office on November 14, 1986 as shown by the records. Said counsel was appointed as Legal Attache, but did not even take the necessary steps to move for a reconsideration of the said decision or appeal the said decision and said counsel suddenly left the country on November 29, 1986 without taking action or turning over the records of the case so that respondent can properly protect its interest considering that the decision is manifestly unjust and inequitable considering further that there is no evidence, substantive or otherwise to support it. The act of counsel in immediately leaving for his assignment abroad without taking the necessary steps to protect the interest of the respondent certainly constitute excusable negligence warranting relief from the decision under consideration.

"Last November 26, 1986, the respondent through its General Manager telephoned the office of counsel on record located at 1003 Victoria Building, 429 United Nations Avenue, Ermita, Manila and was told by the secretary of the office that said Atty. Antonio A. San Vicente is no longer in the Philippines and that he left on November 19, 1986; and when an inquiry was made by the General Manager, he was informed that said counsel did not move for a reconsideration of the decision or took an appeal to duly protect the interest of the respondent."[4]

It appears that private respondent's counsel de parte, Atty. Antonio A. San Vicente, was appointed as Labor Attache on June 20, 1985. As early as June 20, 1985, private respondent's general manager knew this. Atty. San Vicente's departure for abroad was just a matter of time. A prudent man would have taken steps to ensure that, if and when his counsel would leave for abroad to assume his duties as labor attache, any case that his counsel is handling would be handled by a collaborating counsel or by a new counsel. That private respondent's general manager did not take steps to safeguard its interest should not be taken against the petitioner.

But even, assuming arguendo, that Atty. San Vicente was appointed as labor attache on the day private respondent received the POEA decision that is on November 14, 1986, and left after five (5) days, or on November 19, 1986, he still had at the very least four (4) days - November 15, 16, 17 and 18 of 1986 -- to inform private respondent's general manager about said POEA decision. Unfortunately, for private respondent, Atty. San Vicente did not do so. Atty. San Vicente's negligence and dereliction of duty bind private respondent. It was grave abuse of discretion on the part of public respondent NLRC to rule that Atty. San Vicente's sudden departure for abroad was excusable negligence.

Even on the assumption that the "Urgent Motion For Relief And/Or Motion For Reconsideration" was seasonably filed and based on a valid ground, this particular pleading is unavailing as a remedy. It is true, that the Rules of Court could be applied in a suppletory manner and justify the filing of an Urgent Motion for Relief, but this procedure taken by private respondent was fatally flawed for the simple reason that the Labor Code has provided a specific procedure to be followed.[5] It provides for a ten (10) day period from receipt of the decision within which to appeal, which period is not only mandatory but also jurisdictional.[6]

The POEA decision was therefore final and executory and it was grave abuse of discretion on the part of the public respondent NLRC to reopen the case. It is hornbook doctrine that final and executory decisions cannot be amended, altered or modified. Said POEA decision is still the law of the case.

WHEREFORE, premises considered, the petition is hereby GRANTED. The public respondent's questioned Decision promulgated October 31, 1989 and the Resolution promulgated April 30, 1990 are hereby DECLARED NULL AND VOID ab initio. The POEA decision promulgated November 6, 1986 is hereby REINSTATED and

DECLARED as now final and executory.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Ramones vs. Constellation Manpower Recruitment, Inc., POEA Case No. (L)85-04-0255, penned by Tomas D. Achacoso, Administrator, November 6, 1986; Rollo, pp. 7-15.

[2] NLRC Decision on appealed POEA Case No. (L) 85--04-0255, October 31, 1989, Zapanta, Commissioner, ponente; Lucas, Presiding Commissioner, and Abella, Commissioner, concurring; Rollo, pp. 31-42.

[3] NLRC Resolution, April 30, 1990, Zapanta, Commissioner, ponente; Bonto-Perez, Presiding Commissioner, and Diokno, Commissioner, concurring; Rollo, pp. 46-47.

[4] Urgent Motion For Relief From Decision Dated November 6, 1986 And/Or Motion For Reconsideration, pp. 1-2; Rollo, pp. 16-17.

[5] "Section 2, Rule V, Book VI, POEA Rules and Regulations. Appeal. The aggrieved party may, within ten (10) calendar days from receipt of the decision, order or resolution, by filing with the Administration a Notice of Appeal and a Memorandum of Appeal, specifying the grounds relied upon. If no appeal is perfected during the said period, the decision, order or resolution shall be final and executory. A Motion for Reconsideration shall be treated as an appeal in accordance with this rule.

"An appeal filed out of time or which does not comply with the requirements for perfecting an appeal shall be denied. Any appeal taken on this denial shall automatically entitle the aggrieved party to a supersedeas bond equivalent to the amount of the award."

[6] Lucero vs. NLRC, 203 SCRA 218, 224 citing Narag vs. NLRC, 155 SCRA 199.

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