

**EDUARDO ACOP, ROGER ALMEN-DAREZ, BIENVENIDO AMBRAY,
BENITO ARELLANO, WILLIAM ARMENDARES, HERMINIO ARREZA,
TEODORO ARREZA, PEREGRINO BANGUIS, MOISES BARENG,
HIPOLITO BONGGOT, RAM...**

G.R. No. 95478. December 19, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In this petition for certiorari under Rule 65 of the Rules of Court, the petitioners (86 security guards) assail:

1. the order dated June 11, 1990 of the National Labor Relations Commission, 5th Division, denying their petition for a writ of injunction to stop the Surigao Development Corporation (SUDECOR) from terminating their services on May 31, 1990. The NLRC held that the petition was moot and academic as their dismissal from the service of SUDECOR had become a *fait accompli* (Annex A, Petition); and
2. the order of August 24, 1990 denying their motion for reconsideration and remanding the records of the case to the Arbitration Branch for further proceedings (Annex B).

On October 11, 1988, the petitioners filed in the Department of Labor and Employment Regional Office XI a letter-complaint charging SUDECOR with violations of labor standards, by not paying them overtime pay, rest day pay, holiday pay, night differentials, daily camping allowance, not providing them with safety devices and housing, and by illegally dismissing some employees (NLRC Case No. RAB-11-04-00277-89).

On April 12, 1989, the Regional Director indorsed the case to the Regional Arbitration Branch of the NLRC because an issue arose as to whether the complainants (herein petitioners) were employees of SUDECOR.

On May 23, 1990, the petitioners, anticipating their mass dismissal at the end of that month, filed with the NLRC a telegraphic motion for issuance of a writ of preliminary injunction to stop the same. They followed it up on May 28, 1990 with a supplemental complaint and petition for preliminary injunction with prayer for the issuance of a temporary restraining order which was received by the NLRC on May 30, 1990.

As previously stated, both the telegraphic and formal petitions for injunction were not acted upon immediately by the NLRC. By the time it did on June 11, 1990, the petitioners had already been laid off from their jobs. The NLRC's minute resolution dated June 11, 1990 stated that:

"After due deliberation, the Commission resolves to dismiss the petition for injunction for being moot and academic, the action sought to be enjoined had already transpired on May 31, 1990.

"Meanwhile, the instant petition may be treated either as a complaint for illegal dismissal and/or unfair labor practice (ULP) and the same is remanded to the Regional Arbitration Branch for appropriate action." (Annex A, p. 37, Rollo.)

The petitioners received the resolution on June 14, 1990. They filed by registered mail on June 25, 1990 a motion

for reconsideration with the NLRC en banc which denied their motion for tardiness. The dispositive part of the NLRC resolution dated August 24, 1990, received by the petitioners on September 14, 1990, reads as follows:

"WHEREFORE, the challenged order is upheld and the appeal DISMISSED for lack of merit. The Motion for Reconsideration is DENIED for having been filed beyond the reglementary period. Let the record of the instant cases be immediately remanded to the Arbitration branch of origin for further proceedings. The Executive Labor Arbiter is directed to submit a report on the action taken within fifteen (15) days from receipt of the records of the cases." (pp. 52-53, Rollo.)

In their petition for certiorari in this Court, the petitioners bitterly assail the NLRC's delay in resolving their application for a temporary restraining order or writ of preliminary injunction. They allege that since their telegraphic motion was sent on May 23, 1990 and the supplemental motion was filed on May 28, 1990, the NLRC had enough time to issue a temporary restraining order to stop their wholesale dismissal on May 31, 1990.

The petitioners allege that the NLRC erred in holding that their motion for reconsideration was filed late because said pleading was in fact filed on the tenth day of the ten-day period for appeal not "three (3) days out of time." (p. 28, Rollo.)

The petition for certiorari has no merit. Even if the petitioners' computation of the appeal period were correct, the NLRC committed no grave abuse of discretion in denying their motion for reconsideration for, as a matter of fact, the injunctive relief prayed for could not be granted because the mass lay-offs which were sought to be enjoined, had already occurred. A writ of injunction cannot be issued against consummated acts (*Ramos vs. CA*, G.R. No. 80908, May 24, 1989; *Aragones vs. Subido*, 25 SCRA 95 [1968]; *Ramonte vs. Bonto*, 16 SCRA 257 [1960]).

The failure of the NLRC to act immediately on the application for injunction is not reviewable by this Court. In light of the explanation given by the Commission in its order of August 24, 1990, no grave abuse of discretion nor excess of jurisdiction is imputable to it.

"In passing it should be stated here and now that the regionalization of the Commission is by mandate of Republic Act 6715 which amended the Labor Code. Pursuant thereto, this Division of the Commission after months of preparation opened its doors in Cagayan de Oro City on May 17, 1990. At the time everything was in disarray. The records were not yet delivered by the shipping company at the warehouse. The Commissioners who are not from the place were still relocating their families. To top it all, the staffing pattern intended for the Division Office was not yet realized because of the lack of funding and the dearth of trained personnel. Altogether, the Commission could not be expected to perform miracles like acting on a telegraphic motion for the issuance of a temporary restraining order, which to grant the same on this basis is a procedural risk. The same is true with acting on a petition for injunction with a prayer for the issuance of a temporary restraining order to prevent the doing of an act which is threatened to be done on the day following the date of its filing." (p. 52, Rollo.)

In any event, the petitioners are not bereft of adequate remedies. In their action for illegal dismissal, (RAB-11-04-00277-89, "*Eduardo Acop, et al. vs. Surigao Development Corporation and Ret. Gen. Reynaldo G. Dilan, Vice-President for Field Operations and Administration*") which is still pending in the Arbitration Branch of the NLRC, they may prove the employer-employee relationship between themselves and SUDECOR (which the latter has denied) and ask for reinstatement with backwages.

WHEREFORE, the petition for certiorari is dismissed for lack of merit. Costs against the petitioners.

SO ORDERED.

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

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