

ROMAN P. AQUINO, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION & ROBLETT INDUSTRIAL CONSTRUCTION, INC., RESPONDENTS.

G.R. No. 98108. September 03, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to annul the March 26, 1991 Resolution of the National Labor Relations Commission (NLRC), which set aside its February 18, 1991 Resolution that dismissed the appeal of private respondent. The assailed resolution also directed petitioner to file his answer to the private respondent's memorandum on appeal (Rollo, pp. 101-104).

It appears that petitioner filed before the Labor Arbiter a complaint for illegal dismissal against private respondent (NCR-2-396-87). He alleged that he was removed from the payroll in January 1987 and was not paid his salary. Private respondent answered that petitioner had abandoned his work after he was held accountable for advances amounting to P48,921.94.

On May 30, 1990, the Labor Arbiter rendered a decision, finding petitioner's dismissal as illegal. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered in this case, declaring respondent Roblett Industrial Construction, Inc. guilty of illegal dismissal and ordering it to reinstate complainant Roman P. Aquino to his former or equivalent position, with full backwages. It is therefore ordered to pay complainant his backwages for three (3) years, without any deduction or qualification in the amount of Eighty Thousand Eight Hundred Twenty Pesos (P80,820.00)" (Rollo, p. 17).

The counsel for private respondent received a copy of the above decision on June 13, 1990. The last day to appeal therefore was on June 23, 1990, which fell on a Saturday. The counsel, however, filed the appeal on Monday, June 25, 1990, two days beyond the reglementary period. On July 4, 1990, petitioner filed a motion to dismiss the appeal and for the issuance of a writ of execution based on the following grounds:

- (1) The period to appeal had already lapsed; and
- (2) Private respondent did not post the surety or cash bond required by Section 223 of the Labor Code, as amended by R.A. No. 6715.

Finding that the Labor Arbiter did not abuse his discretion in rendering his decision and that private respondent failed to file a cash or surety bond to perfect its appeal, the NLRC dismissed the appeal in a Resolution dated February 18, 1991. However, upon motion of private respondent, the NLRC set aside the aforementioned resolution in its March 26, 1991 Resolution.

The March 26 Resolution of the NLRC justified the reversal of its February 18 Resolution on the following

grounds:

(1) The memorandum of appeal could not be filed on June 23, 1990, because the NLRC has no office on Saturdays. Hence, the filing of the memorandum of appeal on July 25, 1990 was timely; and

(2) When the appeal was filed on July 25, 1990, the Rules implementing R.A. No. 6715 on the requirement of an appeal bond to perfect an appeal, had not been promulgated. While the Interim Rules promulgated by the old NLRC required the filing of appeal bonds, the new NLRC created under R.A. No. 6715 was authorized to promulgate the implementing rules and therefore it was not bound to follow said Interim Rules.

On April 22, 1990, petitioner, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of NLRC, filed the instant petition for certiorari under Rule 65 of the Revised Rules of Court. The NLRC, aside from justifying its reversal of the February 18 Resolution, questioned the propriety of the filing of the petition for certiorari.

The procedural issues to be resolved are:

Whether the special civil action for certiorari can be availed of: (1) to review an interlocutory order; (2) without first filing a motion for reconsideration in the NLRC; and (3) when there exists a plain, speedy and adequate remedy, that of filing an answer to the memorandum on appeal.

The substantive issues to be resolved are:

(1) Whether or not a memorandum on appeal due on a Saturday can be filed timely on the following Monday; and

(2) Whether or not the filing of a bond to perfect an appeal, under Art. 223 of the Labor Code as amended by R.A. No. 6715, was required for appeals before the adoption of the NLRC Rules implementing said amendatory law.

On the procedural issues raised, we hold that where an interlocutory order was allegedly issued with grave abuse of discretion amounting to lack or excess of jurisdiction, such order may be questioned before this Court on a petition for certiorari under Rule 65 of the Revised Rules of Court. To delay the review of the order until the appeal from the decision of the main case, would not afford the party adversely affected by the said order a speedy, plain and adequate remedy (*Mendoza v. Court of Appeals*, 201 SCRA 343 [1991]).

Regarding the failure of petitioner to file a motion for reconsideration before the NLRC, such failure may be excused where the order sought to be reviewed is a patent nullity (*Saldana v. Court of Appeals*, 190 SCRA 396 [1990]).

The governing law on the question of the timeliness of the appeal of private respondent is Article 223 of the Labor Code, which states that an appeal from the decision of the Labor Arbiter must be made within ten calendar days from receipt of such decisions. Said provision of the Labor Code, however, is silent with regard to cases when the ten-day reglementary period within which to perfect an appeal falls on a Saturday, which is not a holiday.

On January 9, 1989, in *SM Agri and General Machineries v. National Labor Relations Commission*, 169 SCRA 20 [1989], the Court held that where the tenth day to appeal to the NLRC falls on a Saturday, which is not a holiday, the appeal must be perfected on that day and not on the next succeeding business day. The Court noted that Saturday is ordinarily a business day.

On April 18, 1989, this Court reversed *SM Agri and General Machineries* in *Pacaña v. National Labor Relations Commission*, 172 SCRA 473 [1989], wherein it held that when the reglementary period of ten calendar days prescribed by Article 223 of the Labor Code falls on a Saturday and the offices of the NLRC are closed, the appeal is seasonably filed on the following Monday, being the first day the appeal can be filed after the lapse of

the reglementary period. Pacaña was followed in *Veterans Philippine Scout Security Agency v. National Labor Relations Commission*, 174 SCRA 347 [1989], which held that: "[w]hen the deadline for the filing of an appeal falls on a Saturday, Sunday or holiday, and the government office concerned is closed on such a day, the appeal may be filed on the next working day. In this case, the next working day was Monday, May 25, 1986. The parties had until May 25, 1986 to bring an appeal to the National Labor Relations Commission."

On August 5, 1991, in *Imperial Victory Shipping Agency v. National Labor Relations Commission*, 200 SCRA 178 (1991), the Court mentioned that as held in *SM Agri and General Machineries*, Saturday, unless legally declared a holiday, is considered a business day and therefore, if the last day to appeal falls on a Saturday, the act must be done on that day. Again, on October 28, 1991, in *Lucero v. National Labor Relations Commission*, 203 SCRA 218 [1991], the Court cited *SM Agri and General Machineries* as holding that Saturday is a business day.

On January 14, 1992, the NLRC amended its Rules of Procedure to conform with the decision of this Court in *Pacaña*. As amended, Section 1, Rule VI of the Rules of Procedure of the NLRC now specifies that if the tenth day to perfect an appeal from the decision of the Labor Arbiter to the NLRC falls on a Saturday, the appeal shall be made on the next working day.

To remove any doubts that may possibly arise as a result of the obiter dictum in the cases decided after *Pacaña*, we hereby reiterate the *Pacaña* ruling and uphold the amendment to Section 1 of Rule VII of the Rules of Procedure of the NLRC enforced on January 14, 1992 on the principle that the law does not require the performance of an impossible act (*impossibilum nulla obligatio est*).

We hold that the filing of the appeal by private respondent on June 25, 1990 was timely.

However, while the appeal to the NLRC was filed on time, it must be dismissed for failure of the appellant to file the cash or surety bond required under Article 223 of the Labor Code.

The decision of the Labor Arbiter in this case included a monetary award, i.e., award for 3-year back wages amounting to P80,820.00. Therefore, to perfect its appeal before the NLRC, private respondent should have posted a cash or surety bond equivalent to the money judgment in accordance with Article 223 of the Labor Code. In justification of the non-posting of the bond, both respondents argued that the NLRC issued the rules implementing R.A. No. 6715 only on August 31, 1990, which took effect on October 9, 1990. They claimed that the requirement of R.A. No. 6715 on the filing of a bond was not yet in force when private respondent filed its appeal on June 25, 1990. The NLRC further alleged that it was not bound to follow the Interim Rules promulgated by its predecessor because it was the one created under R.A. No. 6715 and authorized to promulgate the implementing rules.

We agree with the Solicitor General that the provisions of Article 223 of the Labor Code, as amended by R.A. No. 6715, requiring the posting of cash or surety bond in appeals from decisions of Labor Arbiter granting monetary awards, are self-executing and do not need any administrative rules to implement them.

The appeal made by private respondent, not having been perfected on time for failure to file the appeal bond, the decision of the Labor Arbiter became final and executory (*Filcon Manufacturing Corporation v. NLRC*, 199 SCRA 814 [1991]).

WHEREFORE, the petition is GRANTED. The March 26, 1991 Resolution of the NLRC complained of is REVERSED and its February 18, 1992 Resolution is REINSTATED, with costs, against private respondent.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Bellosillo, JJ., concur.

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