

ERNESTO ANDAYA, JUAN POTOT, RAYMUNDO YAMSON, SOTERO BERDIN, ALBERTO BACAY, ACHILLES ALDA, JOSE TUNANCAO, RAMON CABALDA, WENCESLAO QUILANTANG, ALFREDO PABLO, VICENTE MILLAMA, ELM...

G.R. Nos. 73726-28. August 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition* for certiorari to annul and set aside the decision of the National Labor Relations Commission affirming the granting of the clearance to dismiss herein petitioners in NLRC Cases Nos. 7-929, 7-1062 and 7-1120.

It appears on record that herein petitioners are employees of General Milling Corporation (GMC) and members of Associated Labor Unions - VINCONTU (ALU). GMC had a Collective Bargaining Agreement (CBA) with ALU for a term of three (3) years from August 19, 1973 up to August 18, 1976. The CBA contained a union security clause or closed shop provision requiring union membership in good standing as a condition for employment.

On June 20, 1976, while the CBA was in effect and within sixty (60) days prior to the expiration of the CBA or within the so called "freedom period", petitioners gave their written consent to the petition for certification election filed by ILAW at Buklod ng Manggagawa (IBM) a newly-organized local union, with petitioner Ernesto Andaya as President, Juan Potot and Jose Tumacao as members of the Board of Directors, Archilles Alda as Treasurer, and Raymundo Yamson, Sotero Berdin and Alberto Bacay as members. As officers and members of IBM the aforementioned petitioners actively campaigned for ALU members to resign and join IBM.

For the aforesaid acts of the seven petitioners they were charged with committing acts inimical to the interest of ALU. Investigation ensued in the absence of the seven petitioners as they failed to appear despite notice, after which they were found guilty and expelled from ALU in accordance with Section 10 of Article III of its Constitution and by-laws.

On July 13, 1976, ALU advised GMC of the expulsion of the seven petitioners and requested, pursuant to the CBA, the termination of their employment. On July 15, 1976 the seven petitioners received notice of termination from the plant manager of GMC. On July 22, 1976, GMC and ALU filed a joint application for clearance to dismiss the seven petitioners. Said application was docketed as NLRC Case No. 264 (NLRC No. 7-929). On August 3, 1976 the Regional Director of the Department of Labor issued the clearance and the seven petitioners were dismissed from employment.

Questioning the legality of their dismissal, the seven petitioners filed a complaint for illegal dismissal and unfair labor practice. The case was docketed as NLRC Case No. 7-1062.

After hearing, Labor Arbiter Pelagio A. Carpio rendered in NLRC Cases Nos. 7-929 & 7-1062 a consolidated decision dated June 30, 1977, the dispositive portion of which provides, viz:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered, ordering the General Milling Corporation to reinstate the herein individual respondents namely: Juan Potot, Raymundo Yamson, Sotero Berden, Achilles Alda and Jose Tunacao and Ernesto Andaya, to their former positions without loss of seniority rights with full backwages from the time of their dismissal on August 4, 1976 computed on the basis of their latest salary, until actually reinstated to be shouldered jointly and severally by the General Milling Corporation and the Associated Labor Unions-Vincontu.

SO ORDERED." (pp. 67-68, Rollo)

Both GMC and ALU elevated the above decision to the NLRC which on March 5, 1981 reversed the ruling of the Labor Arbiter and affirmed the clearance for termination granted by the Regional Director. In an En Banc resolution dated June 4, 1981 the NLRC likewise denied petitioners' motion for reconsideration.

As regards the other ten (10) petitioners (Ramon Cabalda, Wenceslao Quilantang, Alfredo Pablo, Vicente Millama, Elmagecio Lastimosa, Manuel Bernaiha, Genaro Oyao, Renato Visitacion, Rosalito Escopete and Nicasio Imbong), on August 7, 1976, ALU advised GMC of their expulsion from the union and requested that their services be terminated pursuant to the closed-shop provision. On August 18, 1986, joint application for clearance was filed by GMC and ALU which was docketed as NLRC Case No. 7--1120. On September 22, 1976, the Regional Director, Department of Labor, granted the clearance and on September 30, 1976 the said petitioners were dismissed. Labor Arbiter Teodorico L. Ruiz sustained their dismissals in his decision dated September 20, 1978.

On October 4, 1977, the ten (10) petitioners received a copy of the Labor Arbiter's decision. By mail, they filed six copies of their appeal on October 18, 1977. Payment of the appeal fee and the submission of additional five (5) copies of the appeal memorandum were made on October 19, 1977 (Rollo, p. 19).

On May 17, 1978 the NLRC resolved to dismiss the appeal in NLRC Case No 7-1120 on the ground that it was filed beyond the ten (10) day reglementary period (Rollo, p. 157). A motion for reconsideration was filed on August 7, 1978 but it was not resolved by the NLRC.

On February 26, 1986 herein petitioners filed the instant petition for certiorari. The deceased Nicasio Imbong one of the petitioners is represented in the case by his wife Mrs. Imbong. In this case petitioners seek the nullification of the decisions of public respondent in NLRC Cases Nos. 7-929, 7-1062 and 7-1120 on the ground that with grave abuse of discretion the NLRC allegedly committed serious error in affirming the dismissal of herein petitioners.

At the outset the procedural issue raised by ALU in its comment dated January 29, 1989 as to the timeliness of the petition must be settled before we can proceed with the resolution of the other issues raised in this petition. In its comment ALU pointed out, among others, that the instant petition dated January 30, 1986, should be dismissed because it was not filed within a reasonable time.

Partly, We agree with ALU insofar as it concerns NLRC Cases Nos. 7-929 and 7-1062. The record will show that in a consolidated resolution dated June 4, 1981 (Rollo, pp. 276-277) the NLRC EN BANC Resolved to deny the Motion for Reconsideration of the seven petitioners. From June 9, 1981 up to February 26, 1986 the date of the filing of the instant petition more than four years had lapsed. The burden of establishing the jurisdictional fact that the petition for certiorari under Rule 65 was filed within a reasonable time is on the seven petitioners. However, they conveniently omitted such material fact in their petition and despite ALU's comment they did not in their consolidated reply refute the allegation that the petition was not filed within a reasonable time. They did not even bother to offer an explanation why it took them more than four years from June 4, 1981 to file the instant petition. Petitioners' silence is an eloquent admission that the petition is indeed not filed within a reasonable time.

Delay in filing a petition for certiorari in the Supreme Court may bar the petition. Although the special civil action for certiorari under Rule 65, Rules of Court, requires no definite time frame within which the petition may be filed, jurisprudence has established the rule that it must be filed within a reasonable time (*Dimayacyac v. Court of Appeals*, 93 SCRA 256 [1979]). Reasonable time has been defined as so much time as is necessary under the circumstances for a reasonable, prudent and diligent man to do (*East Realty Investment Inc. v. Court of Appeals et al.*, 166 SCRA 256 [1988]). Thus, in the case of *Philippine Overseas Drilling and Oil Respondent Corporation v. Minister of Labor* (146 SCRA 79 [1986]) this Court ruled that a petition filed four (4) months after the petitioner received copy of the order sought to be reviewed cannot be said to have been filed within a reasonable time.

With regard to the other ten (10) petitioners in NLRC Case No. 7-1120 the NLRC correctly ruled that the appeal of the Labor Arbiter's decision was filed outside the reglementary period. Under Article 223 of the Labor Code, a decision of a labor arbiter is final and executory unless appealed to the National Labor Relations Commission by any or both of the parties within ten (10) days from notice of the decision. The ten (10) day period required by law contemplates calendar days and not working days (*Vir-Jen Shipping and Marine Services v. NLRC*, 115 SCRA 347 [1982]).

In the case at bar whether the decision of the labor arbiter was received by petitioners on October 5, 1977 as alleged in their petition or on October 4, 1977 as found by the NLRC, the undisputed fact remains that the appeal thru mail was filed only on October 18, 1977 and the appeal fees were paid on October 19, 1977, after the expiration of the ten (10) calendar days reglementary period. Perfection of an appeal within the period prescribed by law is jurisdictional (*De Los Santos v. NLRC*, G.R. 83927, June 28, 1989) so that the failure to perfect an appeal has the effect of rendering the judgment final and executory.

In view of the foregoing it appears unnecessary to discuss the other issues raised in this petition.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Atty. Juanito Coling counsel for Petitioners; Atty. Januario T. Seno counsel for ALU; Atty. Joseph M. Baduel counsel for GMC.

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