SUPREME COURT
FIRST DIVISION

C.W. TAN MFG. AND FEDERICO JAVIER as Plant Superintendent and JAIME SO as Plant Manager,
***Petitioner*,**

-versus-

G.R. No. 79596
February 10, 1989

NATIONAL LABOR RELATIONS COMMISSION, ASSOCIATED LABOR UNIONS (ALU) AND ANGELINO BRIMON,
***Respondents*.**
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D E C I S I O N

GANCAYCO, *J.*:

The issue presented in this Petition assailing a Decision of the public respondent National Labor Relations Commission (NLRC) dated March 12, 1987 and its resolution dated July 20, 1987 is whether or not the failure to furnish a copy of the memorandum of appeal from the decision of the labor arbiter to the adverse party and to pay the docketing fee within the reglementary period of appeal is jurisdictional in character such that non-compliance with the same renders the decision of the labor arbiter final and executory.

On May 2, 1982 the Associated Labor Union (ALU) and Angelino Brimon, a member thereof, filed a complaint for illegal dismissal against petitioners by virtue of a memorandum filed by petitioners which reads as follows:

> "This is to inform you that due to your undesirable attitude and intolerable violation of the company's rules and regulations, the management has concluded to terminate your employment."

Your record shows that the following violations were committed:

1. You have been suspended for five (5) days because of trying to coerce and threat (sic) your co-workers to cut down their production output for personal motive to give difficulties to the management.

2. Gross negligence (sic) in the performance of your work, that has caused unreasonable loss on the part of the company amounting to EIGHT HUNDRED PESOS (P800.00) in terms of raw materials and labor. The damaged units of bathtubs were thrown to trash.

3. Loss of respect to your superior and causing grievous (sic) insult and trying to instigate misunderstanding between the Plant Manager and the Plant Superintendent.

With all these violations the management has deem (sic) it proper to terminate your employment because its (sic) detrimental to the interest of the company and to its workers as well, effective on March 4, 1982. (page 20, Records)".

The immediate cause of respondent Brimon's dismissal was his having sought a leave of absence on March 2, 1982. It is alleged that when asked by the plant manager, petitioner Jaime So, if he secured the permission of the plant Superintendent petitioner Federico Javier, Brimon replied in the negative when in fact he sought a leave of absence and the request was denied. Thus, when Brimon reported for work the following day he was allegedly told to explain why he lied

to petitioner. Instead of doing so, he allegedly uttered in an arrogant manner, “Wala akong pakialam kay Dick Javier.”

On his part, Brimon alleged that he filed a leave of absence for one-half (1/2) day, from 1:00 to 5:00 P.M. on March 2, 1982 which was duly approved by his immediate supervisor, as well as by petitioner So. However, when he reported for work the following day on March 3, 1982, he was called to the administrative office by petitioner Javier. There, Javier handed him his salary and termination papers.

In a decision dated October 21, 1982, Labor Arbiter Porfirio E. Villanueva dismissed the complaint on the ground that the dismissal of Brimon was for a valid cause and that he was afforded due process. An appeal was interposed by private respondent Brimon to the public respondent NLRC. However, in a resolution dated May 28, 1984, the appeal was dismissed for having been filed out of time as there was no proof of service of the appeal to the adverse party. A Motion for Reconsideration of the said Resolution was filed by private respondent. In a decision dated March 12, 1987, public respondent reconsidered its Resolution and finding that private respondent was arbitrarily dismissed without the benefit of a formal investigation, set aside the decision of the labor arbiter and issued a new one reinstating private respondent to his former or equivalent position without loss of seniority rights or other privileges and benefits with full backwages from the period of dismissal up to the actual date of reinstatement. A Motion for Reconsideration of said decision filed by petitioners was denied by public respondent on July 20, 1987.

Hence, the instant petition where the only issue posed is whether or not the questioned decision of the labor arbiter had become final and executory for failure of private respondents to perfect their appeal on time.

There is no question in this case that the memorandum of appeal from the decision of the labor arbiter to the NLRC was filed within the reglementary period by private respondent. However he failed to furnish a copy thereof to the adverse party as required by Section 3, Rule IX of the Implementing Regulations which provides:

> "The appeal shall be under oath, shall contain already the memorandum of appeal and proof of service and shall only be considered perfected upon its filing after payment of the required appeal fee."

Private respondent, however, promptly furnished a copy of said memorandum of appeal to petitioners when his attention was called to this omission.

There is no question likewise that the private respondent failed to pay the required filing fee within the reglementary period of appeal and that he paid for the same only after this case was elevated to this Court.

The failure of the appellant (private respondent) to furnish a copy of the appeal memorandum to the adverse party is not a jurisdictional defect, but is a mere formal lapse as ruled by this court in several instances.[1] And when as in this case such requirement was complied with although beyond the period of appeal, the appeal should be given due course.

As to the issue of the non-payment of the appeal fee on time, this Court held in Del Rosario & Sons Logging Enterprises, Inc. vs. NLRC[2] that "the failure to pay the appeal docketing fee confers a directory and not a mandatory power to dismiss an appeal and such power must be exercised with a sound discretion and with a great deal of circumspection considering all attendant circumstances." It is true that in Acda vs. Minister of Labor,[3] We said that the payment of the appeal fee is "by no means a mere technicality but is an essential requirement in the perfection of an appeal." However, where as in this case the fee had been paid belatedly, the broader interest of justice and the desired objective in deciding the case on the merits demand that the appeal be given due course.

Petitioner, however calls the attention of this Court to the fact that in Del Rosario, the delayed payment of the appeal fee was during the pendency of the appeal before the NLRC, while in the present case, the delayed payment was made only when the petition was already filed before this Court which was after the lapse of a period of over five (5) years since the filing of the appeal. It must be noted that

under Section 12 of the 1975 NLRC Rules which is applicable to this case, the filing fee was only P25.00.[4]

Under Article 221 of the Labor Code, it is provided as follows:

> "ART. 221. Technical rules not binding. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.
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> x x x"

From the foregoing, it is clear that the technical rules of evidence are not binding in proceedings before the NLRC or labor arbiters and that all reasonable means should be used to ascertain the facts of the case without regard to the technicalities of law or procedure.

Although it is obvious that private respondent failed to pay the required docketing fee for an unreasonable length of time nevertheless this Court finds that under the circumstances of the case and considering the merit of the appeal, the greater interest of justice will be served by giving due course to the appeal despite the much delayed payment of the docketing fee. Indeed, private respondent Brimon, being a dismissed employee, can very well be considered as a pauper litigant whose failure to pay the nominal docketing fee of P25.00 within the reglementary period should be treated with understanding and compassion.

As to the merit of the decision of the public respondent, petitioners do not even question the same. Petitioners insist on its untenable stand that the decision of the labor arbiter became final and executory and that public respondent NLRC had no authority to set aside said decision of the labor arbiter.

The Court finds that there is a cogent basis in the finding of public respondent NLRC that private respondent Brimon was arbitrarily dismissed without benefit of a formal investigation.

WHEREFORE, the petition is **DISMISSED** and the subject decision of public respondent NLRC dated March 12, 1987 and its subsequent resolution dated July 20, 1987, are hereby **AFFIRMED** with the modification that the payment of backwages of private respondent shall not exceed the period of three (3) years. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, *JJ.*, concur.

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[1] Gaerlan, Sr. vs. National Labor Relations Commission, 132 SCRA 402 (1984); Pagdonsalan vs. National Labor Relations Commission, 127 SCRA 463 (1984); RJL Martinez Fishing Corporation vs. NLRC, 127 SCRA 454 (1984); Carnation Philippines Employees Labor Union — FFW vs. National Labor Relations Commission, 125 SCRA 42 (1983); and J.D. Magpayo Customs Brokerage Corp. vs. NLRC, 118 SCRA 645 (1982).
[2] 136 SCRA 669.
[3] 119 SCRA 306 (1982).
[4] This amount has been raised to P70.00 in the 1986 NLRC Rules, particularly under Section 4 thereof.
