SUPREME COURT
SECOND DIVISION

VIRGILIO M. CAÑETE,
***Petitioner*,**

-versus-

G.R. No. 114161
November 23, 1995

NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) and VICENTE TING/V.T. MARKETING,
***Respondent*.**
x----------x

D E C I S I O N

PUNO, *J.*:

Petitioner VIRGILIO M. CAÑETE assails the Decision and Resolution of the National Labor Relations Commission (NLRC), dated September 20, 1993 and December 20, 1993, respectively, as having been issued with grave abuse of discretion. Petitioner claims he was illegally dismissed from service. His employer, however, private respondent VICENTE TING/V. T. MARKETING, maintains petitioner abandoned his job.

Private respondent is a wholesaler of dry goods. Petitioner started working with private respondent as helper-utility man on July 11, 1987. Petitioner alleged that he and his co-employees worked from

7:30 a.m. until past 6:00 p.m., but it was made to appear on their time cards that they worked the regular eight (8) hours from 8:00 a.m. to 5:00 p.m. Thus, they received compensation for only eight (8) hours work and were underpaid.

On July 22, 1992, at about 7:10 a.m., petitioner arrived at the workplace and found some of his co-employees already working. He casually remarked: "Why are we working so early when we were supposed to start (at) 7:30 a.m.? In fact, we (have) already been deprived of half an hour('s pay) because our payrolls indicate that we start (work) at 8:00 a.m." Somehow, his remark reached management. At about 6:00 p.m. that night, petitioner was summoned by respondent's manager, Joaquin Chua. He was told not to report for work anymore and he would just be paid for the services he rendered. Petitioner inquired why he was being dismissed. Referring to petitioner's remark that morning, Chua told petitioner he was interfering with the work of his co-employees. Petitioner explained he merely aired a harmless observation. His explanation did not satisfy Chua. Petitioner was ordered to turn the following day to get his separation pay.

The next day, when petitioner reported for work, he was offered the amount of Six Thousand Pesos (P6,000.00) as separation pay. He refused the offer. Respondent then barred him from working. A month later, petitioner filed with the Department of Labor a complaint for illegal dismissal, underpayment of wages, non-payment of 13th month pay and damages.[1]

Private respondent, on the other hand, presented a different story. On July 22, 1992, private respondent reprimanded petitioner for his repeated and habitual absences from work. From that day on, petitioner did not report for work. It was three (3) days later, or on July 25, 1992, when petitioner returned but only to demand payment for his three-days work for the payroll period July 20-25, 1992. Private respondent reported the abandonment of work to the Department of Labor on August 10, 1992. He also furnished petitioner a copy of the notice of termination due to abandonment at his last known address. However, the notice did not reach petitioner since, as per the Certification[2] of Postmaster Roberto Robit, petitioner was unknown at the given address.[3]

In support of his position that petitioner had repeatedly absented himself from work, and that he was reprimanded thereof, private respondent submitted to the NLRC petitioner's time records which disclosed the following:

(a) petitioner worked for only four (4) days for the payroll period May 14-19, 1990;

(b) he was absent for three (3) days for the payroll period June 25-30, 1990;

(c) he was absent for two (2) days for the payroll period November 12-17, 1990;

(d) he was absent for three (3) days for the payroll period May 11-16, 1992; and

(e) he was absent the whole working week of May 18-23, 1992.

In a Decision, dated March 8, 1993,[4] Labor Arbiter Ray Alan T. Drilon ruled that petitioner did not abandon his job but was illegally dismissed from service. Petitioner was awarded backwages, separation pay and attorney's fees. he was also given wage differentials due to a finding of underpayment of wages.

As per the return of service, Atty. Enrique Chua, private respondent's counsel, received a copy of the Decision of the labor arbiter on March 15, 1993. However, private respondent's appeal to the National Labor Relations Commission (NLRC) was filed only on March 26, 1993, or a day after the lapse of the ten-day period prescribed by law. Initially, the NLRC dismissed his appeal.[5]

Private respondent moved for a reconsideration of the dismissal of his appeal. He explained that the copy of the labor arbiter's Decision, which was sent by registered mail to his lawyer, Atty. Enrique Chua, was received by one NENETTE VASQUEZ, a person not under the employ of his lawyer. Vasquez was a sales representative of United System, an office which adjoins Chua's law office. Attached to the Motion was the affidavit of Vasquez[6] where she deposed that she

received a copy of said Decision on March 15, 1993, at about 8:20 a.m. On said date and time, she was resting at the well-ventilated premises of Atty. Chua's office which was then still closed. She was still resting when the postman who regularly delivered mail in said building, asked her if she could receive the mail intended for Atty. Chua as the latter's office was still closed. She acceded and signed the registry return card.

Vasquez stayed on the premises of Atty. Chua's office for about 15-20 minutes. Thereafter, she left to see a prospective client and inadvertently brought with her the mail intended for Atty. Chua. She was able to give the mail to Anelyn Cadiz, Chua's clerk, only the following day, March 16, 1993. However, she failed to inform Cadiz that she actually received the mail the day before. Cadiz thus presumed that the mail was delivered only on said date. Consequently, Atty. Chua reckoned the period of appeal from March 16, 1993 and actually filed respondent's appeal ten (10) days thereafter, or on March 26, 1993. Vasquez' account of the incident was corroborated by the postman, Roque S. Tubungbanua[7] and Chua's clerk, Anelyn Cadiz.[8]

Petitioner opposed the Motion for Reconsideration.[9] He alleged that service of the copy of the labor arbiter's Decision to Vasquez on March 15, 1993 should be deemed as proper service to respondent's counsel. Petitioner also objected to the documents submitted by respondent to the NLRC for the first time on appeal, viz: (a) petitioner's daily time record and payroll for the months of August and December 1989 and April 1990 attached to respondent's Notice and Memorandum on Appeal; (b) Certification of the Postmaster of Bacolod City, dated may 11, 1993, that he was not able to effect delivery of the notice of abandonment for petitioner was unknown at the given address. Petitioner charged that he was denied due process when these documents were presented only at such late stage and was not adduced at the hearing before the labor arbiter.

In its Decision,[10] dated September 20, 1993, the NLRC reversed the Decision of the labor arbiter. It ruled that petitioner was not illegally dismissed but abandoned his work. Nonetheless, in view of the willingness of the employer to pay separation pay, the NLRC awarded to petitioner the amount of Nine Thousand Seven Hundred Fifteen

Pesos and Eighty Centavos (P9,715.80) as separation pay. Petitioner's claims for underpayment of wages and damages were found unmeritorious and were likewise dismissed. Petitioner moved for reconsideration. It was denied.[11]

Hence, this petition for certiorari.

Petitioner contends that the NLRC acted with grave abuse of discretion in: (a) declaring private respondent's appeal to have been seasonably filed; (b) holding that petitioner was not dismissed but abandoned his employment; and, (c) admitting and considering evidence which had been presented by private respondent for the first time on appeal.

Before proceeding with the substantive issue raised in this petition, we shall first rule on the procedural objections raised by petitioner.

First. Petitioner avers that private respondent failed to make a timely appeal of the Decision of the labor arbiter to the NLRC. He insists that receipt by Nenette Vasquez of a copy of the Decision of the labor arbiter on March 15, 1993 should have been considered as receipt of said Decision by Atty. Chua, private respondent's then counsel of record. The fact that Ms. Vasquez may have handed a copy of said Decision to a clerk of Atty. Chua only on March 16, 1993 is of no moment. Since the return of service shows that the Decision was received on March 15, 1993, private respondent had only until March 25, 1993 within which to perfect his appeal with the NLRC. Hence, private respondent's appeal on March 26, 1993 was belatedly filed, rendering the labor arbiter's Decision final and executory.

The contention has no merit.

Section 4, Rule 13 of the Rules of Court provides:

> "SEC. 4. Personal service. — Service of the papers may be made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof . If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the

evening, at the party's or attorney's residence, if known, with a person of sufficient discretion to receive the same."

We have rule that where a copy of the decision is served on a person who is neither a clerk nor one in charge of the attorney's office, such service is invalid.[12] In the case at bar, it is undisputed that Nenette Vasquez, the person who received a copy of the labor arbiter's Decision, was neither a clerk of Atty. Chua, respondent's counsel, nor a person in charge of Atty. Chua's office. Hence, her receipt of said Decision on March 15, 1993 cannot be considered as notice to Atty. Chua. Since a copy of the Decision was actually delivered by Vasquez to Atty. Chua's clerk only on March 16, 1993, it was only on this date that the ten-day period for the filing of respondent's appeal commenced to run. Thus, respondent's March 26, 1993 appeal to the NLRC was seasonably filed.

Second. Petitioner charges that the NLRC abused its discretion when it considered, over his objection, certain documents[13] which private respondent submitted for the first on appeal. Petitioner claims he was denied due process.

We do not agree.

Article 221 of the Labor Code mandates that technical rules of evidence in courts of law shall not be controlling in any of the proceedings before the Commission or the Labor Arbiters, Further, the Commission is required to use every reasonable means to ascertain the facts without regard to technicalities or procedure. Technical rules may be relaxed to prevent miscarriage of justice. They must not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[14]

In the case at bar, petitioner had the opportunity to rebut the truth of these additional documents. Respondent NLRC correctly accorded weight to these documents considering their nature and character. These were daily time records, certifications from the postmaster etc., whose trustworthiness can be relied upon.

Consequently, we find no grave abuse of discretion on the part of the NLRC in considering on appeal petitioner's daily time records and

payrolls for the period August 1989, December 1989 and April 1990 to rebut the charge of underpayment of wages. On the basis of these documents, it was sufficiently proved that petitioner received the minimum daily wage for said period. Perforce, the NLRC correctly dismissed petitioner's charge for underpayment of wages.

However, on the issue of illegal dismissal, we find that petitioner did not abandon his work but was illegally dismissed from service.

Private respondent claims that petitioner abandoned his employment after he was reprimanded for his past absences. As proof thereof, private respondent submitted the pertinent daily time records of petitioner from way back May 1990. However, the evidence adduced by private respondent show that petitioner was last absent from work on May 18-23, 1992. Private respondent's stance that he reprimanded petitioner for his past absences after the lapse of one month, or on July 22, 1992 strains the limits of credence. Indeed, private respondent did not cite any immediate circumstance which could have triggered such a reprimand on that particular day. The circumstances narrated by private respondent leading to petitioner's alleged abandonment of work are highly suspect. On top of all, it is difficult o imagine that petitioner would abandon his job for prior to his dismissal on July 22, 1992, petitioner, a daily-wage earner, had been in the employ of private respondent since July 11, 1987, or for close to five (5) years. We find it incongruous for petitioner to give up his job after receiving a mere reprimand from his employer. What is more telling is that on August 19, 1992 or less than a month from the time he was dismissed from service, petitioner immediately filed a complaint against his employer for illegal dismissal with a prayer for reinstatement. Petitioner's acts negate any inference that he abandoned his work. Abandonment is a matter of intention and cannot be lightly inferred or legally presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to discontinue the employment.[15] The burden of proving abandonment of work as a just cause for dismissal is on the employer. Private respondent failed to discharge this burden.

IN VIEW WHEREOF, the Decision and Resolution of the National Labor Relations Commission, dated September 20, 1993 and

December 20, 1993, respectively, are **REVERSED**. Accordingly, the Decision of Labor Arbiter Ray Alan T. Drilon, dated March 8, 1993, is **REINSTATED**, except with respect to the award of wage differential s relative to the charge of underpayment of wages which is hereby deleted. No costs.

SO ORDERED.

Narvasa, *C.J.*, Regalado, Mendoza and Francisco, *JJ.*, concur.

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[1] Petitioner's Position Paper, Rollo, pp. 81-88.
[2] Dated May 11, 1993, Rollo, p. 64.
[3] Private Respondent's Notice and Memorandum of Appeal to the NLRC, Rollo, pp. 43-50.
[4] Rollo, pp. 31-41.
[5] Resolution, dated April 21, 1993, Rollo, p. 42.
[6] Rollo, pp. 60-61.
[7] Affidavit, dated May 11, 1993, Rollo, p. 62.
[8] Affidavit, dated May 11, 1993, Rollo, p. 63.
[9] Manifestation/Opposition, dated July 9, 1993, Rollo, pp. 73-76.
[10] Penned by Commissioner Bernabe S. Batuhan and concurred in by Commissioner Irenea Ceniza, Rollo, pp. 20-26.
[11] Resolution, dated December 20, 1993, Rollo, p. 28.
[12] Adamson vs. Adamson, G.R. No. 86819, November 9, 1989, 179 SCRA 279.
[13] Specifically: (a) Petitioner's daily time records and the company's payrolls for the months of August and December 1989 and April 1990; (b) Written notices dated June 3, 1987 and October 3, 1991, purporting to be petitioner's admission of infractions of company policies; (c) Certification of the postmaster of Bacolod City, dated May 11, 1993, that he sent notices of registered mail (notice of abandonment) to petitioner on August 20 and 25, 1993; (d) Certification from the same postmaster clarifying that he sent the notices, not in 1993, but in the year 1992; and, (e) Employee's data sheet. These documents were attached by private respondent to his Motion for Reconsideration, Supplemental Motion for Reconsideration and his Memorandum on Appeal.
[14] Philippine-Singapore Ports Corporation vs. National Labor Relations Commission, G.R. No. 67035, January 29, 1993; 218 SCRA 77; Ranara vs. National Labor Relations Commission, G.R. No. 100969, August 14, 212 SCRA 631; Bristol Laboratories Employees' Association vs. National Labor Relations Commission, G.R. No. 87974, July 2, 1990, 187 SCRA 118; Associated Labor Union vs. Ferrer-Calleja, G.R. No. 77282, May 5, 1989, 173 SCRA 178.

[15] Shin I Industrial (Phils.) vs. National Labor Relations Commission, G.R. No. L-74489, August 3, 1988, 164 SCRA 8; Asphalt and Cement Pavers, Inc. vs. Leogardo, Jr., No. L-74563, June 20, 1988, 162 SCRA 312.
