

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**JOHN CLEMENT CONSULTANTS, INC.
and EDI STAFFBUILDERS
INTERNATIONAL, INC.,**
Petitioners,

-versus-

**G.R. No. 72096
January 29, 1988**

**NATIONAL LABOR RELATIONS
COMMISSION, and NESTOR A.
FLORES,**
Respondents.

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DECISION

NARVASA, J.:

As is well known, no law provides for an appeal from Decisions of the National Labor Relations Commission; hence, there can be no review and reversal on appeal by higher authority of its factual or legal conclusions. When, however, it decides a case without or in excess of its jurisdiction, or with grave abuse of discretion, the party thereby adversely affected may obtain a review and nullification of that Decision by this Court through the extraordinary writ of *certiorari*. Since, in this case, it appears that the Commission has indeed acted without jurisdiction and with grave abuse of discretion in taking

cognizance of a belated appeal sought to be taken from a decision of a Labor Arbiter and thereafter reversing it, the writ of *certiorari* will issue to undo those acts, and do justice to the aggrieved party.

Nestor Flores was engaged on April 17, 1978 as Managing Consultant by the John Clement Consultants, Inc., hereafter, simply JCCI. He was placed in charge of a division of JCCI, Staffbuilders International, Inc., hereafter simply SBII. A year or so afterwards, Flores was promoted to the position of Managing Consultant of JCCI's International Division.

In November, 1979, Flores was assigned in Bahrain, where he stayed up to February, 1980. During his tour of duty in that country, he obtained cash advances amounting to P14,211.30. This liability he failed to liquidate even after he returned to the Philippines, and infringement of standing company policy. The JCCI President directed the Finance Department to liquidate Flores' indebtedness by deducting the amount thereof from his salary in four (4) equal monthly installments, effective on the date of his return to this country. Evidently piqued by such a directive, Flores sent a telex message on April 21, 1980 to his President, who was then in the Middle East, advising of his desire to discuss terms of his separation from employment even by telex. The President's reply was that he would discuss those terms only when he returned on May 15, 1980.

Forthwith upon the return to the Philippines of the JCCI President, Flores met with him and reiterated his desire to resign. He was however advised to first take a two-week vacation leave, to meditate on his future with the company, which he did. While on leave, he rendered consultancy services for a rival firm, Sigma Personnel Services. Then on June 9, 1980, his leave having ended, he again met with the JCCI President and for the third time expressed his wish to resign, irrevocably. His resignation was then accepted, and he was told that a written communication to this effect was expected and should state that it would be effective immediately, conformably with the usual practice as regards senior managers among so-called multinationals. He was also told that they would be meeting to discuss the terms of his separation from the company.

Unaccountably Flores failed to submit any resignation letter. On June 11, 1980, the JCCI President issued a memorandum announcing Flores' resignation and ordering the supervisors theretofore serving under Flores to report directly to him (the President), in order to protect the competitive status of the firm. Flores thereupon ceased to come to the company premises; and he failed to appear at the meetings scheduled to discuss the terms of the severance of his ties with the JCCI. He also failed to return the company car assigned for his use, eventually doing so only on July 23, 1980, after receipt of a series of telegrams demanding such return.

Three months after his resignation, or on September 25, 1980, more particularly, Flores filed a complaint for illegal dismissal against JCCI and EDI with the Ministry of Labor & Employment. Due proceedings were had on his complaint, inclusive of the submission of position papers by the parties, and the holding of a hearing on the issues. While the case was pending, it further appears that Flores resumed, or continued, rendition of services to JCCI's competitor firm, Sigma Personnel Services, and even succeeded in "pirating" (causing transfer of business to Sigma of) one of JCCI's clients, United Engineering Services, Inc.

The decision on Flores' complaint was rendered by the Labor Arbiter on November 29, 1982.^[1] It dismissed his complaint for lack of merit. The judgment however declared that there was due to him the sum of P6,671.24 representing his bonus or share in the profits for the period from January to June, 1980, which amount JCCI and its affiliates were ordered to pay within ten (10) days under sanction of automatic issuance of a writ of execution for failure to do so.

Notice of the Labor Arbiter's decision was received by Flores on December 29, 1982. Fifteen days later, on January 13, 1983, he perfected an appeal to the National Labor Relations Commission.^[2] JCCI filed a motion to dismiss the appeal on January 28, 1983, asserting that it had been filed beyond the reglementary period of ten (10) days from notice.^[3] The motion to dismiss was never resolved. On April 26, 1984, the NLRC, by a majority vote, promulgated judgment reversing the Labor Arbiter's decision, ordering the reinstatement of Flores to his former position and the payment to him of fixed back wages for one (1) year without qualification or

deduction from earnings elsewhere during the period of his dismissal, and affirming the Arbiter's award of P6,671.24 representing bonus or share of the profit as well as his unpaid salary from June 1 to 15, 1980, deducting therefrom his advances.^[4] JCCI's motion for reconsideration filed on May 18, 1984 was denied by Resolution dated August 28, 1985,^[5] the NLRC *inter alia* holding itself to have jurisdiction over the case.

In the special civil action of *certiorari*, instituted in this Court by JCCI and EDI, they contend that —

- 1) the NLRC had no jurisdiction to take cognizance of Flores' appeal from the Labor Arbiter's decision: the appeal was perfected after the lapse of the reglementary period of ten (10) calendar days prescribed therefor, conformably with this Court's ruling in *Vir-Jen Shipping and Marine Services, Inc. vs. NLRC*,^[6] promulgated on July 20, 1982; the material dates essential for a determination of the seasonableness of the appeal had been subject of stipulation by the parties; no appeal having been timely taken, the labor arbiter's decision became final and the case was thereby placed beyond the appellate jurisdiction of the NLRC; hence, the latter's assumption of jurisdiction over the appeal was an overt defiance of the *Vir-Jen* ruling; and
- 2) even assuming NLRC's competence to take cognizance of the appeal, its decision was nonetheless tainted by grave abuse of discretion (a) in overturning the Labor Arbiter's judgment, the latter verdict being fully supported by the evidence on record, as well as (b) in decreeing the reinstatement of Flores and payment of back wages to him.^[7]

The petitioners' points are well taken. Their petition should be granted. The writ of *certiorari* will issue in their favor. As the Solicitor General correctly points out, Flores' appeal was indeed filed out of time: and the facts clearly establish that Flores had not been illegally dismissed but had in truth voluntarily resigned, his offer to resign being unconditional and irrevocable, and Flores clearly had acted in bad faith: he deliberately withheld submission of his written resignation in order to retain employment in JCCI while

“moonlighting” in a rival enterprise, contrary to JCCI company policy.^[8]

In taking cognizance of Flores’ appeal, notwithstanding the recorded actuality that it was filed 15 days after notice of the judgment sought to be appealed and therefore beyond the 10-day period of appeal set by law, the NLRC had acted without jurisdiction, in deliberate disregard of this Court’s holding in the aforesaid Vir-Jen case that the ten-day period of appeal set out in Article 223 of the Labor Code, as amended, meant calendar and not working days.

This Court is also satisfied, after a thoroughgoing review of the record, that the findings of fact of the Labor Arbiter are warranted by the evidence, and the rejection and reversal thereof by the NLRC was without justification, and was therefore whimsical and capricious.

WHEREFORE, the decision of the National Labor Relations Commission dated April 26, 1984, and its Resolution dated August 28, 1985, both subject of the petition, are annulled and set aside, and the Decision of the Labor Arbiter rendered on November 29, 1982 **REINSTATED** and **AFFIRMED**. This decision is immediately executory and no motion for extension of time to file motion for reconsideration will be entertained. Costs against private respondent.

Teehankee, C.J., Cruz, Paras and Gancayco, JJ., concur.

[1] Rollo, p. 48.

[2] Id., pp.49-50: Annex of petition for *certiorari* filed in this Court.

[3] Ibid.

[4] Rollo, p. 29.

[5] Id., pp. 30-31.

[6] 115 SCRA 347, 361.

[7] Rollo, pp. 8, 13, 23.

[8] Id., pp. 78, 79, 81, 82, 84, 86.