

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**KATHY-O ENTERPRISES,
*Petitioner,***

-versus-

**G.R. No. 117610
March 2, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
NIEVES DE CASTRO and ERNESTO C.
ARUTA,**

Respondents.

X-----X

DECISION

DAVIDE, JR., J.:

This Special Civil Action for *Certiorari* and Prohibition with Preliminary Injunction seeks the nullification of the 23 August 1994^[1] order of public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 006621-94 dismissing the appeal of petitioner Kathy-O Enterprises (hereafter KATHY-O) from the 20 December 1993^[2] order of public respondent Labor Arbiter Nieves V. De Castro in NLRC NCR Case No. 00-12-06646-91 granting the motion for execution of judgment filed by respondent Ernesto Aruta (hereafter ARUTA), and the NLRC resolution of 14 October 1994^[3] denying the motion for reconsideration of the 23 August 1994 order.

Petitioner KATHY-O, a sole proprietorship, owned and operated by Mrs. Arlene Estrella, employed respondent ARUTA in its garment factory on 1 March 1984 as a pattern maker and the operations manager. ARUTA's responsibilities included purchasing materials, preparing patterns and delivering garments to Shoe Mart (hereafter SM) department stores.

On 6 March 1991, SM returned KATHY-O's garments due to defects in material, wrong style and poor workmanship. To prevent further losses, Estrella advised ARUTA to undertake corrective measures to improve KATHY-O's operations. However, the flaws in KATHY-O's operations remained as the volume of merchandise returned for the period of March until October 1991 continued to increase, costing KATHY-O an alleged total loss of P463,085.00.

In October 1991, ARUTA asked for a raise. However, Estrella deferred his request until the company's situation improved.

ARUTA then applied for a vacation leave effective October 7 to 30 1991. But as Estrella badly needed ARUTA's services for the forthcoming holiday season, she denied the application and pleaded that ARUTA right the inefficiencies in KATHY-O's operations. However, ARUTA absented himself from work without Estrella's approval.

On 9 October 1991, KATHY-O hired a new pattern maker in order to comply with its commitments and the exigencies of work brought about by ARUTA's absence.

In November 1991, when ARUTA reported for work, Estrella directed him to take the night shift as she was still trying to adjust to the new pattern maker. Aruta insisted that he work the day shift, but Estrella did not accede. Resentful, ARUTA did not report for work that month.

Perceiving the hiring of another pattern maker in his stead and his transfer to the night shift as a dismissal, on 2 December 1991, ARUTA filed an illegal dismissal case against KATHY-O. In the proceedings before the Labor Arbiter, Aruta alleged that he was denied due

process as he was dismissed without valid cause, written notice of termination nor investigation.^[4]

On 30 July 1992, public respondent Labor Arbiter Nieves de Castro rendered a Decision^[5] dismissing the charge of illegal dismissal for lack of merit, and as to ARUTA, found him guilty of absence without approved leave and defiance of a lawful and reasonable order, acts inimical to the interest of KATHY-O. The Labor Arbiter ruled that ARUTA's conduct could not be left unpunished, otherwise he would set a "bad example and/or precedent" and that "[o]ne year and 8 months' suspension [from service would] certainly teach [him] his lesson not to defy a lawful and reasonable order of the employer and not absent himself without approved leave for no justifiable reason at all." Nevertheless, the Labor Arbiter ordered KATHY-O to reinstate ARUTA to his former position effective 1 September 1992.

The dispositive portion of the Order reads as follows:

WHEREFORE, the charge of illegal termination is hereby DISMISSED for lack of merit.

Respondent is hereby directed to reinstate complainant to his former [position] as Operation's [sic] Manager and Pattern Maker effective September 1, 1992 with warning that a repetition of similar misconduct shall be dealt with more severely.

Neither party appealed from the decision.

Come 1 September 1992, however, ARUTA did not report back for work at KATHY-O. It was only sometime in March 1993, or after a period of more than six months, that ARUTA and his counsel informed KATHY-O of his desire to be reinstated or that he be paid separation pay and back wages. However, KATHY-O rejected both options.

On 4 May 1993, ARUTA moved^[6] to execute the 30 July 1992 decision as regards his reinstatement. KATHY-O opposed,^[7] contending that ARUTA had already been replaced and invoking laches.

In its Order of 20 December 1993, the Labor Arbiter granted ARUTA's motion on the ground that the decision had become final and executory.

On 7 February 1994, KATHY-O filed its Notice of Appeal^[8] and submitted a Memorandum on Appeal.^[9] The appeal was docketed as NLRC NCR CA No. 006621-94 and assigned to the Second Division of the National Labor Relations Commission (NLRC).

On 26 August 1994, the NLRC denied KATHY-O's appeal for having been filed out of time, finding that the latter received a copy of the 20 December 1993 order on 25 January 1994 as shown in the "Notice of Resolution/Order," and not on 28 January 1994 as claimed by KATHY-O; hence, it had only until 4 February 1994 within which to file its appeal. In its Order of 14 October 1994,^[10] the NLRC denied KATHY-O's motion for reconsideration for lack of merit. In said motion, KATHY-O's counsel alleged that he was of the belief that his office received the order in question on 28 January 1994 "as the date appearing on the office stamp showing receipt of the Order was written by the receiving clerk in such a way that the figure"s" could easily be mistaken as '8'."^[11]

Unsatisfied, KATHY-O instituted this petition alleging that:

1. RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN IT DISMISSED PETITIONER'S APPEAL ON A MERE TECHNICALITY ALTHOUGH THE APPEAL ITSELF IS CLEARLY MERITORIOUS;
2. RESPONDENT COMMISSION SERIOUSLY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT THE SLIGHT DELAY IN THE FILING OF THE APPEAL WAS DUE TO AN EXCUSABLE AND HONEST MISTAKE, WHICH CANNOT OVERRIDE AN OTHERWISE MERITORIOUS APPEAL;
3. RESPONDENT LABOR ARBITER GRAVELY ABUSED HER DISCRETION WHEN SHE ORDERED THE ISSUANCE OF [A] WRIT OF EXECUTION DESPITE SUPERVENING

EVENTS ATTRIBUTED [sic] TO RESPONDENT ARUTA HIMSELF WHICH RENDERED HIS REINSTATEMENT IMPRACTICABLE WITHOUT UNDUE DAMAGE OR INJURY TO PETITIONER AND ITS EMPLOYEES.

KATHY-O concedes that strict adherence to the Notice of Resolution/Order relied upon by the NLRC would lead one to conclude that KATHY-O received the 20 December 1993 order on 25 January 1994, thus its appeal filed only on 7 February 1994 was indeed filed late. Nevertheless, petitioner reiterates its explanation that it committed an honest mistake when "it mistook the figure '5' written on the Notice of Resolution (Annex 'J') by the office receptionist as '8' because of an extra stroke." Petitioner thus pleads for relaxation of the rule on the application of the reglementary periods of appeal and that the appeal be decided on the merits, not dismissed on a mere technicality.

KATHY-O further avers that there is ostensible merit in its appeal for while the main decision ordering ARUTA's reinstatement had become final, supervening causes or reasons arose which rendered execution "no longer possible without undue damage;" ARUTA's reinstatement would have impaired its operations and "the tenure and standing of the other employees who, unlike [ARUTA], had remained faithful and responsible in the performance of their assigned tasks;" moreover, KATHY-O argues, ARUTA had abandoned his right and was guilty of laches.

In his comment to the petition, ARUTA asks the Court to dismiss the petition for lack of merit; asserts that KATHY-O's appeal from the Labor Arbiter's order was filed after the lapse of ten days from receipt thereof and stresses that KATHY-O's failure to send a notice signifying its intention to accept him could not prejudice his reinstatement.

In its comment to the petition, the Office of the Solicitor General (hereafter OSG) contends that the petition is impressed with merit. While admitting that KATHY-O's appeal was filed late, i.e., 3 days beyond the 10-day reglementary period provided in the Labor Code, KATHY-O's counsel committed an honest mistake in misreading the figure "5" in 25 January 1994 as an "8" because of an "extra upward

stroke." Additionally, the OSG agrees with KATHY-O that the appeal raised valid issues and should not have been dismissed on technical grounds.

In its comment on the petition (which this Court required in view of the stand of the OSG), the NLRC maintains that it committed no abuse of discretion when it ordered execution of the 30 July 1992 decision, the same having long become final and executory; and asks for affirmance of its challenged orders on the ground that the appeal was not filed within the reglementary period.

Well settled is the principle that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but jurisdictional, and failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal.^[12] The underlying purpose of this principle is to prevent needless delay, a circumstance which would allow the employer to wear out the efforts and meager resources of the worker to the point that the latter is constrained to settle for less than what is due him.^[13]

Article 223 of the Labor Code, the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, is explicit that the aggrieved party has 10 calendar days from receipt thereof to appeal to the Commission. In the instant case, the records show that KATHY-O's counsel actually received a copy of the challenged Labor Arbiter's order on 25 January 1994, thus pursuant to Article 223 of the Labor Code, KATHY-O had only until 4 February 1994, the 10th calendar day from 25 January 1994, within which to appeal therefrom. As the appeal was filed only on 7 February 1994, plainly, KATHY-O's appeal was filed three days late.

We are not unaware of decisions of this Court allowing tardy appeals in judicious cases, e. g., in *Reyes vs. Court of Appeals*,^[14] where the presence of any justifying circumstance recognized by law, such as fraud, accident, mistake or excusable negligence, properly vested the judge with discretion to approve or admit an appeal filed out of time; or in *Ramos vs. Bagasao*,^[15] where on equitable grounds, a belated appeal was allowed as the questioned decision was served directly upon petitioner Ramos instead of her counsel of record who at the

time was already dead. While in *Rama vs. Court of Appeals*,¹⁶ the rule was relaxed to obtain a complete and equitable resolution of the rights and obligations of the parties; likewise in *PNB vs. Court of Appeals*,^[17] to arrive at a just and equitable determination of the controversy and considering the appeal was impressed with merit.

When proper, no serious impediment bars the allowance of tardy appeals under the Rules of Court, in recognition of this Court's inherent power to suspend adjective rules. It is a different matter, however, when the period to appeal is provided by statute, as in labor cases. For obvious reasons, this Court cannot ordinarily suspend the statute's operation. Article 223 of the Labor Code expressly provides that: "[d]ecisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders." While Section 1 of Rule VI of the New Rules of Procedure of the National Labor Relations Commission provides that "[I]f the 10th day falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day." Nevertheless, if only to be able to dispense substantial justice, strict observance of the period to appeal may not be exacted. Thus, in *Firestone Tire and Rubber Co. of the Philippines vs. Lariosa*,^[18] an appeal in a labor dispute was given due course despite the lapse of fourteen (14) days from notice of the decision, due to the fact that the Notice of Decision received by Lariosa's lawyer advised the parties that the appeal could be taken to the NLRC within ten (10) "working" days — not calendar days — from notice of the decision. For the same reason was the appeal in *Chong Guan Trading vs. NLRC*^[19] allowed. While in *City Fair Corporation vs. NLRC*,^[20] we ruled that the NLRC did not commit grave abuse of discretion when it entertained an appeal filed one (1) day late considering that the "facts and circumstances of the case warrant liberality considering the amount and the issue involved."

In this case, we find the reason for the 3-day delay justifiable, having been caused by inadvertence amounting to excusable negligence. Due to the presence of an upward stroke, the 5 in 25 January appeared to be and could have been mistaken as an "8", thus leading counsel for KATHY-O to misread 25 January, the date of receipt stamped by his receiving clerk on the copy of the decision intended for said counsel,

as 28 January. We agree then with the Solicitor General that the error was an honest mistake and may be excused.

It thus follows that the NLRC should be directed to decide the appeal on its merits. However, a remand of this case to the NLRC would only further delay its termination. The issue on appeal is simple, i.e., whether or not the Labor Arbiter committed any error in granting execution pending appeal. The records before us are complete and readily suggest an answer in the negative. The decision of the Labor Arbiter of 30 July 1992 directed KATHY-O to reinstate ARUTA on 1 September 1992. ARUTA had, therefore, five (5) years within which to secure execution of judgment pursuant to Section 1 of Rule VIII of the New Rules of Procedures of the NLRC. Clearly, the Labor Arbiter acted correctly in granting the motion for execution filed six months after ARUTA was to be reinstated, according to the decision.

As regards the supervening events interposed by KATHY-O, which would have prevented execution, the same were not duly proven. Nevertheless, it was established that ARUTA and his counsel informed KATHY-O on 1 March 1993 of his intention to be reinstated or in lieu thereof, his willingness to be paid separation pay with back wages. Under the circumstances here, reinstatement would be impractical and hardly promotive of the best interests of the parties. The resentment and enmity between ARUTA and KATHY-O which culminated in and was compounded by the illegal dismissal suit (NCR Case No. 00-12-06646-91), necessarily strained the relationship between them or even provoked antipathy and antagonism. We have ruled that separation pay can be awarded in lieu of reinstatement if reinstatement can no longer be had, as when the position previously held by the employee no longer exists or when there is strained relations as a result of loss of trust and confidence.^[21]

Accordingly, we rule that in lieu of reinstatement, ARUTA should instead be given separation pay at the rate of one month pay for every year of service, with a fraction of at least six months of service considered as one year of service, computed from the time he was first employed until he shall be paid the separation pay due him.

WHEREFORE, the instant petition is **GRANTED IN PART**. The challenged order of 23 August 1994 and resolution of 14 October 1994

of public respondent National Labor Relations Commission in NLRC NCR CA No. 006621-94 are set aside, and the Order of 20 December 1993 of Labor Arbiter Nieves V. De Castro in NLRC NCR Case No. 00-12-06646-91 is modified, and as modified, petitioner KATHY-O Enterprises is hereby **ORDERED** to pay separation pay to respondent ERNESTO C. ARUTA at the rate of one (1) month pay for every year of service, with a fraction of at least six (6) months of service considered as one (1) year of service, computed from the time he was first employed until he is paid the separation pay.

No pronouncement as to costs.

SO ORDERED.

**Bellosillo, Vitug and Quisumbing, JJ., concur.
Panganiban, J., in the result.**

-
- [1] Annex "B," of Petition; Rollo 33-35. Per Presiding Commissioner Victoriano R. Calaycay, with Commissioner Rogelio I. Rayala, concurring.
- [2] Annex "A," Id., 31.
- [3] Annex "C," Rollo, 36.
- [4] Rollo, 46.
- [5] Annex "D," of Petition; Rollo, 38-49.
- [6] Annex "F" of Petition; Rollo, 51-52.
- [7] Annex "G" of Petition; Id., 53-56.
- [8] Annex "K" of Petition; Id., 72.
- [9] Annex K-1" of Petition; Id., 73-82.
- [10] Annex "B" of Petition; Id., 32-35.
- [11] Annex "L" of Petition, Rollo, 83-84.
- [12] Chong Guan Trading vs. NLRC, 172 SCRA 831, 839 [1989]; Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237, 246 [1993]; Asuncion vs. NLRC, G.R. No. 109311, 17 June 1997.
- [13] Italian Village Restaurant vs. NLRC, 207 SCRA 204, 208 [1992].
- [14] 74 Phil. 235, 237-238 [1943], citing Bustamante vs. Tirona, No. 48813, 1 Off. Gaz., 875.
- [15] 96 SCRA 395, 397 [1980].
- [16] 148 SCRA 496, 504 [1987].
- [17] 246 SCRA 304, 316-319 [1995], citing Republic vs. Court of Appeals, 83 SCRA 453 [1978]; Siguenza vs. Court of Appeals, 137 SCRA 570 [1985]; Pacific Asia Shipping Corporation vs. NLRC, 161 SCRA 122 [1988]; Cortes vs. Court of Appeals, 161 SCRA 444 [1988]; Olacao vs. NLRC, 177 SCRA 38

[1989]; Legasto vs. Court of Appeals, 172 SCRA 722 [1989]; City Fair Corporation vs. NLRC, G.R. No. 95711, 21 April 1995.

[18] 148 SCRA 187, 190 [1987].

[19] 172 SCRA 831, 839 [1989].

[20] 243 SCRA 572, 576 [1995].

[21] Globe-Mackay Cable and Radio Corp. vs. NLRC, 206 SCRA 701 [1992].

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com