SUPREME COURT
SECOND DIVISION

LAMSAN TRADING, INC.,
***Petitioner*,**

-versus-

G.R. No. 73245
September 30, 1986

THE HONORABLE VICENTE LEOGARDO, JR., Deputy Minister, Ministry of Labor and Employment, DANILO SARMIENTO, ISAGANI ACURIL, ROQUITO REYES, and RAFAEL TALAVER,
***Respondents*.**
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D E C I S I O N

GUTIERREZ, JR., *J.*:

The main issue poised in this Petition for *Certiorari* is whether or not respondent Deputy Minister of Labor Vicente Leogardo, Jr., committed an act amounting to grave abuse of discretion or lack of jurisdiction when he reconsidered and reversed his order granting petitioner company the clearance to terminate the services of the private respondents and ordered the latter's reinstatement with three years backwages.

We treat the Comments filed by the private and public respondents as Answers, note the consolidated reply and the rejoinder, and decide the case on its merits.

Private respondents Danilo Sarmiento, Isagani Acuril, Roquito Reyes, and Rafael Talaver were rank-and-file employees of petitioner company. On December 12 and 13, 1978, Criminal Case Nos. 939 to 942 were filed against them and a number of others before the Municipal Trial Court of Sultan Kudarat, Maguindanao, for qualified theft of steel drums belonging to petitioner company committed around four months earlier or sometime in October, 1977.

Apart from filing criminal charges, the petitioner also sought clearance from the Ministry of Labor to terminate the services of the respondent employees on the ground of "dishonesty/stealing."

There was no opposition by the employees to the request for clearance. It was, therefore, granted on December 26, 1978. The opposition to the clearance application was filed several hours after the clearance had already been granted.

On January 2, 1979, the respondent employees filed a motion for reconsideration of the order granting clearance to terminate their services. The motion was set for hearing on February 5, 1979 but nobody appeared for the employees on that date. The Regional Director of the Ministry of Labor denied the motion for reconsideration.

After receiving notice of the denial, the employees filed their notice of appeal from said order.

On the ground that "oppositors had not presented a memorandum on appeal or any pleading to pursue its appeal filed on February 13, 1979," the Ministry of Labor and Employment (MOLE) in an order dated January 6, 1983, dismissed the respondent employees' appeal, affirming the grant of clearance to terminate employment in favor of petitioner.

On February 8, 1983, the respondent employees filed a motion for reconsideration of said order explaining that their counsel, Atty.

Lanang S. Ali, a trial lawyer of the Citizens Legal Assistance Office (CLAO) of the Ministry of Justice, had, as early as February 13, 1979, transmitted the records of the case to the Special Appealed Cases Division of the CLAO Manila, which division handles all appealed cases. Due to oversight, negligence, or inaction on the part of the CLAO Division in Manila, no memorandum on appeal was prepared or submitted.

The petitioner filed an opposition to the motion for reconsideration.

On December 7, 1984, the Ministry of Labor and Employment through the Deputy Minister, issued another order reconsidering the order dated January 6, 1983. The MOLE rendered a new judgment denying the applicant company's application for clearance to terminate and ordering the respondent employees' reinstatement with backwages. The petitioner filed a motion for reconsideration, which motion was denied for having been filed out of time.

It is this action of the respondent Ministry that is now raised in this petition for *certiorari*.

Meanwhile, Criminal Case No. 939 against respondent Roquito Reyes was dismissed on January 12, 1981 for failure to prosecute. Criminal Case Nos. 940 to 942 against the other respondent employees and other persons were dismissed on July 12, 1982 for the same reason.

The court, in dismissing the cases for qualified theft, noted the reasons cited by the accused in their ex-parte joint motion to dismiss. Among them — (1) No evidence was presented by the prosecution since the cases were filed in 1978 or almost four years earlier; (2) There was no attempt to set the cases for hearing, with a setting one year earlier having been postponed due to non-availability of prosecution witnesses; (3) The complainant, now the petitioner, filed a manifestation-motion to have the cases "written off the record;" and (4) The complainant employer was willing to "give its former employees a certificate of proper discharge" provided no further claims and counterclaims would be filed. The only method whereby the employer could get any form of evidence on who committed the theft was to have the respondents testify against each other. No such testimony could be secured.

The petitioner assails the MOLE order which denounces as illegal a dismissal it had once ordered approved, as well as its denial of petitioner's motion for reconsideration, filed one day late, while having given due course to respondent employees' memorandum on appeal, filed nearly four (4) years after the appeal was taken.

In its order dated December 7, 1984, the Deputy Labor Minister held that:

> "Viewed in the light of the foregoing facts and evidence which remain unrebutted in the records, the application for clearance to terminate oppositors employment must perforce fail for lack of substantial evidence to sustain the same."

We do not find the reconsideration by the MOLE of its previous order as arbitrary. The circumstances surrounding its issuance may be rather unusual but it is neither correct nor fair to portray the public respondent's order as the result of a capricious or mercurial mind. It was upon his cognizance of an erroneous ruling that a re-examination of the earlier findings and conclusions became not only necessary but just.

Reference to our ruling in International Hardwood and Veneer Co. of the Philippines vs. Leogardo (117 SCRA 967), and to other cases on valid dismissals due to dishonesty or stealing is erroneous.

The supposed dishonesty in this petition is not substantiated by any evidence whatsoever. If the private respondents are cashiers, managers, supervisors, salesmen, or other personnel occupying positions of responsibility, the requirement that an employee should enjoy the trust and confidence of his employer may justify their termination. (See Reynolds Philippines vs. Eslava, 137 SCRA 259; New Frontier Mines, Inc. vs. National Labor Relations Commission, 129 SCRA 502; Associated Citizens Bank vs. Ople, 103 SCRA 130; and Metro Drug Corporation vs. National Labor Relations Commission, G.R. No. 72248, July 2, 1986.) However, the private respondents are ordinary rank and file workers. They are electricians and operators of equipment. There has to be some kind of proof that the respondents were involved in the loss of company property. Mere accusations by

the employer, especially in the light of what happened in the criminal prosecutions, will not suffice.

The records of this case indicate that the application to terminate the employees was grounded solely on the criminal charges filed against them. Since the cases were kept pending for almost four years inspite of the failure to present even a single witness in support of the criminal complaints, the application for clearance should have been denied for lack of merit instead of being granted on the ground that the respondent employees failed to timely enter any opposition.

The MOLE is not estopped to correct its initial error in the light of subsequent events brought to its attention. It is precisely for this purpose that motions for reconsideration are made available to bring such lapses to the attention of the adjudicating body for rectification (Siy vs. Court of Appeals, 138 SCRA 536; Sampang vs. Inciong, 137 SCRA 56; Gonzales, Jr. vs. Intermediate Appellate Court, 131 SCRA 468; Dineros vs. Roque, 88 SCRA 540, and Philippine Advertising Counselors, Inc. vs. Revilla, 52 SCRA 246). It was upon such a motion for reconsideration that the respondent Deputy Minister took to task the proper administration of justice, while exercising its prerogative to revise, reverse, or revoke a previous order or ruling. There being no abuse of discretion such privilege must remain undisturbed.

Anent the alleged illiberality or discrimination in denying the petitioner's motion for reconsideration of the Ministry's order revoking the clearance to terminate respondent employees, we note that the same was admittedly filed out of time. The order sought to be reconsidered had become both final and executory.

Rules of procedure and practice of the Ministry of Labor provide periods within which to do certain acts such as to file a motion for reconsideration. Such periods are imposed with a view to prevent needless delays and to ensure the orderly and speedy discharge of judicial business. Strict compliance with such rule is both mandatory and imperative (FJR Garments Industries vs. Court of Appeals, 130 SCRA 216). Only strong considerations of equity, which are missing in this case, will lead this Court to allow an exception to the procedural rule in the interest of substantial justice.

As stated in the order of respondent Deputy Minister Leogardo, the petitioner had only until March 15, 1985 to file its motion for reconsideration. However, it was only on March 16, 1985 that applicant sent by registered mail its present motion for reconsideration. Consequently, the respondent ruled that the same was filed out of time and it had no jurisdiction to review or disturb its final order (Order, Rollo, pp. 53-54).

That the application of such rule appears to the petitioner as discriminatory, is understandable considering the four (4) year delay in the filing of the respondents' memorandum on appeal as compared to the petitioner's delay. The petitioner emphasizes that its motion for reconsideration was only one day late. However, there is considerable difference between a motion for reconsideration and a memorandum on appeal. No period for the filing of a memorandum on appeal is provided by the Rules as in the case of a motion for reconsideration. It is not mandatory for an appeal to be perfected that a memorandum must also be submitted within the period to appeal. (Arrastre Security Association — TUPAS vs. Ople, 127 SCRA 580) In fact an appeal can be decided without a party's memorandum.

The absence of a rule on the filing of an appellant's memorandum is not the principal reason for our affirmance of the respondent Deputy Minister's order allowing respondent employees' appeal. More compelling is the policy that rules of technicality must yield to the broader interests of substantial justice. The dismissal of an appeal on purely technical grounds is frowned upon by this Court, especially considering in the case at bar, the merit of respondent employees' clarification of the delay for which they should not be faulted.

The private respondents were represented before the then MOL Regional Office No. XII in Cotabato City by CLAO Trial Attorney Lanang S. Ali. Under the rules of CLAO, a trial lawyer in a regional office is not allowed to appear in cases appealed to the ministry or the National Labor Relations Commission in Manila, The CLAO Special and Appealed Cases Division is exclusively tasked to handle all such cases. Thus, as early as February 13, 1979, the counsel for private respondents had immediately transmitted the records of the case to said Division, but for some reason, the CLAO office in Manila failed to file the necessary memorandum on appeal, delaying the case for a

considering period. However, upon discovery of such omission, the original counsel for respondent employees immediately sought to rectify the same by preparing and himself filing the memorandum on appeal.

As a general rule, negligence of counsel may not be condoned and should bind the client. Under the special circumstances of this case, however, we find the delay excusable. It cannot be attributed to private respondents or their Maguindanao counsel who had every right to presume that official duty would be regularly performed by the CLAO in Manila. Considering, the circumstances in which Atty. Ali found the respondents' appeal, his display of diligence in the pursuit of the appeal for his clients should be commended instead of deplored. We find for the private respondents.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Feria, Fernan, Alampay and Paras, *JJ*., concur.