

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**S/G FRANCISCO G. LUNA, ORBITO
MACATIAG, JENNELTHO LANOJAN,
DOMINGO PEREZ, RAYMUNDO
ROMANO, LAMBERTO MONDEJAR,
JUANITO DEL AMEN, DENNIS
MARIANO, ARIEL SARGENTO and
WENIFREDO LAGBO,**

Petitioners,

-versus-

**G.R. No. 116404
March 20, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, LIONS SECURITY &
SERVICES CORP. and GRANDEUR
SECURITY AGENCY,**

Respondents.

X-----X

DECISION

MENDOZA, J.:

This is a Petition for *Certiorari* to annul the order dated May 3, 1994 of the NLRC, dismissing petitioners' appeal for having been filed beyond the reglementary period.

Petitioners were security guards of private respondents Lion's Security and Services Corporation and its successor, Grandeur Security Services Corporation. They filed a complaint for illegal dismissal, underpayment of wages and non-payment of labor standards benefits, before the regional arbitration branch of the NLRC. Judgment was rendered on March 18, 1993 against private respondents, holding them liable to pay petitioners wage differentials corresponding to the period of services rendered. But the Labor Arbiter found petitioners' dismissal proper and their other claims to be without merit.

Petitioners appealed to the NLRC. However, the NLRC dismissed their appeal on March 3, 1994, on the basis of its finding that petitioners' counsel had been furnished a copy of the Labor Arbiter's decision on April 12, 1993 but their appeal was filed only on May 5, 1993. The NLRC found that petitioners' counsel received a copy of the decision on April 12, 1993 based on the Notice of Judgment/Decision attached to the record of the case, which bore the notation "4-12-93 rm" above the typewritten name of petitioners' counsel, Atty. Ernesto R. Javalera. On the other hand, the NLRC based its statement that petitioners filed their appeal only on May 5, 1993 on the stamp "Received" of the NLRC Docket Section showing payment of the appeal fee and research fee. Consequently, the NLRC held that the appeal was filed out of time.

Petitioners brought this special civil action of certiorari, assailing the NLRC's order. They claim that their counsel received the decision of the Labor Arbiter on April 16, 1993 and filed their appeal on April 26, 1993, the last day of the 10-day reglementary period. As proof thereof, petitioners presented the registry return card addressed to the NLRC, which shows that the registered mail containing the decision was received by their counsel on April 16, 1993 and the envelope addressed to the NLRC, which they claimed contained their appeal memorandum, which was stamped April 26, 1993.

The Solicitor General, in his Manifestation and Motion in lieu of Comment, agreed with petitioners, noting that the NLRC must have mistaken the date "4-12-93" appearing above the name of Atty. Ernesto R. Javalera in the Notice of Judgment/Decision for the date of receipt and the letters "rm" to be the "initials" of their counsel. But

this could just have been the date a copy of the Labor Arbiter's decision was sent and the letters 'rm' meant that the decision was sent to petitioners' counsel by registered mail.

The NLRC, on the other hand, argues that, even conceding that petitioners' counsel received the appealed decision on April 16, 1993, the appeal of petitioners must nevertheless be considered as having been filed out of time because it was personally filed on May 5, 1993, based on the fact that the official receipt shows that the appeal and research fees were paid in cash on May 5, 1993 and that the appeal was stamped received by the Docket Section on that day. The NLRC avers that the envelope alone does not indicate that it contained petitioners' memorandum on appeal and their appeal fees, hence, it does not prove petitioners' allegation. The NLRC furthermore contends that this petition must be dismissed because petitioners did not file a motion for the reconsideration of the NLRC order before bringing this action.

Private respondent Grandeur Security Services Corporation also defends the order of the NLRC and contends that petitioners' appeal was not perfected because the required appeal fees were paid beyond the reglementary period.^[1]

The issue in this case is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the petitioners' appeal. We hold that it did not. Under the rules of the NLRC, an appeal from the Labor Arbiter's decision to the NLRC may be taken (1) by filing a verified memorandum of appeal and (2) by paying the appeal fees filed within ten (10) calendar days from receipt of a decision, award or order of the Labor Arbiter.^[2] Both requisites must be satisfied, otherwise the running of the prescriptive period for perfecting an appeal will not be tolled.

To be sure, as petitioners say, the date "4-12-93" written by hand on the Notice of Judgment/Decision, appears to be the date the Labor Arbiter's decision was sent to petitioners' counsel and the letters "rm" written above the typewritten name of Atty. Ernesto R. Javalera are not the initials of any person but are the abbreviations for "registered mail." Unlike other parties whose representatives signed the Notice of Judgment/Decision and wrote the date of personal service on them of

a copy of the decision, the proof of service on Atty. Javalera appears to have been made by registered mail. This is evident upon an examination of the Notice of Judgment/Decision, a xerox copy of which is attached as Annex 1 of the Solicitor General's Manifestation in lieu of Comment. With respect to the date of filing of petitioners' memorandum, we are likewise inclined to sustain petitioners claim that this was on April 26, 1993, the date stamped on the envelope which, petitioners allege, contained the appeal memorandum they sent to the NLRC. This is clear from the xerox copy of the envelope which is stamped "REGISTERED, APR 26, 1993." This envelope is addressed to:

Hon. EDUARDO J. CARPIO
or EXECUTIVE LABOR ARBITER
ARBITRATION BRANCH, Manila
National Capital Region, NLRC
Associated Bank Bldg.,
T.M. KALAW St., Ermita, Manila,

with indication of the name of the sender:

Atty. E.R. Javalera
704 Del Monte Ave., QC

As no other mail appears to have been sent by counsel to the addressee on that day, it is probable that this envelope contained the appeal memorandum of petitioners. Consequently, we think the appeal of petitioners to the NLRC was filed on time.

However, the records do not support their claim that they also paid the appeal fees on April 26, 1993, together with the filing of their appeal memorandum. What appears instead is that they paid the fees only on May 5, 1993, nine days after the expiration date of the reglementary period, as shown in the receipt given to petitioners. As the NLRC stated in its comment, the official receipt shows that the appeal fees were paid in cash only on May 5, 1993:

May it be noted on the Official Receipt of payment (p. 370 records) on the left lower portion stating "received." The box space for cash payment bears a check mark. This means to say

that payment was made in cash and therefore goes to show that payment was made personally on May 5, 1993.^[3]

This finding was not refuted by petitioners in their petition and reply. In the absence of clear and convincing evidence, this finding is entitled to great respect.^[4]

As payment of the requisite appeal fees is an indispensable and jurisdictional requisite and not a mere technicality of law or procedure, and as the failure to comply with this requirement renders the decision of the court final, we hold that the NLRC correctly dismissed petitioners' appeal. Indeed, appeal is only a statutory privilege and therefore it may only be exercised in the manner provided by law.^[5]

In addition, the dismissal of this petition is in order because petitioners failed to file a motion for a reconsideration of the NLRC's order before it was filed in this Court. The filing of a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari.^[6] The plain and adequate remedy referred to in Rule 65, §1 is a motion for reconsideration of the assailed decision. The purpose for this requirement is to enable the court or agency to pass upon and rectify its mistakes without the intervention of a higher court.^[7]

While the liberal construction of this requirement is in keeping with the constitutional mandate of protecting labor, nonetheless, there must be concrete, cogent, and valid reason for a party's failure to comply with this requirement.^[8] Here, petitioners' contention is that a motion for reconsideration is not necessary because what is involved is purely a legal issue. This claim is untenable. A question of law is involved "when the doubt or difference arises as to what the law is on a certain state of facts," whereas "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts."^[9] The questions when the order was received by petitioners, when the appeal was filed and when the appeal fees were paid are factual, not legal questions.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Regalado, Romero, Puno and Torres, Jr., JJ., concur.

[1] Rollo, p. 38.

[2] Rule VI, §3(a)(2). See *Star Angel Handicraft vs. National Labor Relations Commission*, 236 SCRA 580, 584 (1994).

[3] Rollo, p. 84.

[4] See *Capulong vs. Court of Appeals*, 185 SCRA 215 (1990); *People vs. De Guzman*, 229 SCRA 795 (1994).

[5] *Rodillas vs. COMELEC*, 245 SCRA 702 (1995).

[6] *PNCC vs. NLRC*, 245 SCRA 668 (1995); *Labudahon vs. NLRC*. 251 SCRA 129, (1995).

[7] *Villarama vs. NLRC*, 236 SCRA 280 (1994).

[8] E.g., *Philamlife Ins. Co. vs. Bonto-Perez*, 170 SCRA 508 (1989).

[9] *Cheesman vs. IAC*, 193 SCRA 93, 100-101 (1991) (per Narvasa, J.).