

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

PEDRO B. NARAG,
Petitioner,

-versus-

**G.R. No. L-69628
October 28, 1987**

**THE NATIONAL LABOR RELATIONS
COMMISSION, and AIRBORNE
SECURITY SERVICES, INC.,**
Respondents.

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DECISION

GANCAYCO, J.:

This is a Petition to Review on Certiorari the Decision of December 27, 1987, of the National Labor Relations Commission (NLRC), Third Division, modifying on appeal the Decision of April 17, 1984^[1] of the NLRC Case No. NCR-8-5205-82,^[2] directing reinstatement of petitioner Narag and for payment of backwages for one (1) year.

The factual and legal background of this case is related most comprehensively in the Comment filed by the Solicitor General as follows:

“Private respondent Airborne Security Service, Inc. is a security agency, duly licensed and registered under Rep. Act 5487, providing security guards for fee or compensation to its clientele to protect the properties and persons of the officials and employees of said clientele. Among its officers are Mr. Enrique Peregrin as director of operations, and Mr. Pedro Solis as president. Its office is located at the Manila Textile Market Building, Room 323, C.M. Recto Avenue, Metro Manila.

Among the employees of the above-named security agency is herein petitioner Pedro B. Narag of San Andres Bukid, Metro Manila. He was employed in the said security agency thrice: the first in 1973 to 1976; the second in 1977 to 1978; and the third from November 1980 until he received on July 16, 1982 the Memorandum from his employer, which he considered as a letter of his dismissal from employment. During his latest period of employment with the respondent security agency, he was assigned as security-in-charge detailed at the Union Glass and Container Corporation (UGCC). His latest position was security officer and was paid a monthly compensation of P1,200.00 which included allowances.”

On July 14, 1982, respondent security agency received a communication from the personnel manager of its client, the Union Glass and Container Corporation, asking for the relief of its security-in-charge Narag. The following day, July 15, 1982, Mr. Peregrin of the security agency and Mr. Carlito Galita of the UGCC came to see Narag to confront him about the incident mentioned in the memorandum of relief sent by the personnel manager of UGCC to the said security agency.

Besides giving to the above-named officials his letter of explanation, Narag narrated the story regarding the incident, thus —

‘A. A certain visitor by the name of Mrs. Edar visited the company, she was looking for her husband. Because my guards were busy in their posts, what they did was to call the supervisor of the husband of Mrs. Edar informing him that Mrs. Edar was waiting at the gate for her

husband. After a lapse of about thirty (30) minutes my guard by the name of Alexander Okol, my shift-in-charge, again called the supervisor of Mr. Edar in order that Mr. Edar could meet his wife at the gate, then the supervisor answered my security guard to wait for a few minutes and they will locate for Mr. Edar. After about thirty (30) minutes Mr. Edar went to the gate and all of a sudden he shouted and accused the security guards why they did not call him earlier and because I was there, I explained to him that we informed his supervisor for no less than two (2) times, but Mr. Edar did not listen to my explanation and what he did was to go to Mr. Pineda and then after a few minutes Mr. Pineda called me up by phone wanting to talk to me and when I got hold of the phone, Mr. Pineda shouted at me and was accusing me of not performing my duty and I told him that we were doing everything in behalf of the employees there.’ (pp. 42-43, tsn, March 24, 1983).

Messrs. Peregrin and Galita merely laughed at the story told them by Narag, and instead told him to report the following day, July 16, 1982, to the central office of the Airborne Security Services, Inc. When asked why, the two officials did not bother to answer him. (p. 44, tsn, id.).

Acting on the request of the personnel manager of the UGCC, respondent security agency coursed a Memorandum on July 16, 1982 to Narag, which the latter received at its central office on the same day. The entire text of said Memorandum reads as follows:

‘MEMO TO: IOC Pedro Narag
 UGCC Security Department
 Bo. Ugong, Pasig
 Metro Manila

‘Our attention has been called to that incident at your place of work whereby you had engaged in an argumentation with a certain Mr. Edar, an employee of UGCC and also with, no less than, Mr. I. Pineda, UGCC

Corporate Personnel Manager. This was so despite your knowledge of the client's instructions that no member of the security forces should argue/discuss with any UGCC employees, not even to the lower laborer. This is much more when the person is an official of the company. The role (sic) of the security personnel is only to pacify in cases of trouble and/or make a report to proper authorities of such incident. Your allegedly rude and arrogant behavior had peeved UGCC management and had placed the integrity and reputation of the UGCC at stake.

'In view of the above, the client had requested for your immediate relief from that Unit. We are therefore left with no other recourse but to give in to their request.

'In the interest of the service, you are hereby informed that you are relieved immediately and placed under Headquarters disposition effective upon receipt of this memo.

'For information and guidance.

'(Sgd.) ENRIQUE G. PEREGRIN
Director SDC'

Thereafter, respondent agency assigned a certain Gabriel, to take over temporarily complainant Narag's post at the UGCC (pp. 26-27, tsn, May 9, 1983).

Pursuant to the said Memo, complainant Narag continued reporting for duty at the central headquarters of the respondent security agency from July 16, 1982 to July 31, 1982. But he was not given any assignment by his employer (p. 14, tsn, Feb. 1, 1983; pp. 14-15, 26-28, tsn, March 24, 1983).

On July 30, 1982, complainant Narag asked for his salary from the accounting department of the security agency but the people there informed him that he has no salary to receive because his services were already terminated. Because of this information,

complainant Narag approached Mr. Enrique Peregrin, director of operations of the said security agency, and asked him why he has no salary for the period from July 16 to 31, 1982. He was told by Mr. Peregrin that he has no salary to receive because he had been already laid off (pp. 14-15, tsn, March 24, 1983; p. 15, tsn, February 1, 1983).

Thus, on August 5, 1985, Narag filed a complaint with the National Labor Relations Commission, National Capital Region, Manila, against his employer, Airborne Security Services, Inc., for illegal dismissal, non-payment of legal holiday pay, violations of PD Nos. 525, 851 and 1123, and for reimbursement of cash deposits (see Annex 'A', Petition).

On October 10, 1982, respondent security agency through Mr. Jaime N. Sabado, vice-president for administration and finance, filed its Position paper, claiming that complainant Narag was duly paid of all his benefits and other remuneration as provided for under existing laws and regulations, and that it is not true that said complainant was illegally dismissed but that he 'was merely requested to be relieved and that he has to wait for a vacancy responsive (sic) to his rank' (see records).

Likewise, complainant Narag through counsel filed his Position Paper on October 18, 1982, reiterating that he was 'effectively dismissed without any cause whatsoever' (see records).

Thereafter, hearings on the merits of this case were conducted by Labor Arbiter Raymundo R. Valenzuela, with complainant Narag testifying for himself, while Messrs. Enrique Peregrin and Jaime Sabado and Cornelio Alpuerto testified as witnesses for respondent security agency.

On April 17, 1984, Labor Arbiter Valenzuela promulgated the decision in this labor case, the dispositive portion of which reads as follows:

'WHEREFORE, we find that complainant Pedro B. Narag was constructively dismissed without a valid cause for which respondent Airborne Security Services, Inc.,

through its responsible officials, should be, as it is hereby, ordered to reinstate him to his former position, and pay him one (1) year backwages, the least amount amenable to complainant which he conveyed to respondent's counsel and representative when undersigned made a last ditch effort to settle the same before promulgation of this Decision. His complaint for the payment of legal holiday pay, Ecola, 13th month pay are hereby dismissed for being devoid of merit. And in case he foregoes his reinstatement, respondent should further reimburse him his cash deposit of P240,00.' (see Annex 'B', Petition).

As admitted in its 'Partial Appeal,' filed by Vice-President Sabado, respondent security agency received on April 30, 1984 a copy of the aforementioned decision of the labor arbiter. And, on May 11, 1984, respondent security agency filed its aforesaid 'Partial Appeal' from the decision of the labor arbiter to the respondent Commission, claiming in the main that complainant Narag was only placed under headquarter's disposition on July 16, 1982; he was never dismissed from the service of respondent security agency (see records).

On December 27, 1984, respondent Commission, Third Division, en banc promulgated its decision on the appeal, finding that complainant Narag was not dismissed nor suspended from his employment but was merely directed to present himself to the security agency's central office for instruction and/or assignments, but he opted not to work during the period from July 16, to 31, 1982; hence, he should be, as it was so ordered, reinstated to his former position but without any backwages (see Annex 'C', Petition).

Believing that the foregoing decision of respondent Commission virtually set aside the labor arbiter's decision in this labor case, complainant Narag filed the instant petition for review before this Honorable Court."^[3]

In said Comment^[*] the Solicitor General prayed that the instant petition be given due course. In the Resolution of July 17, 1985,^[4] this Court gave due course to the petition.

Petitioner maintains that respondent NLRC has no jurisdiction to entertain the appeal filed by private respondent Airborne Security Service, Inc., much less modify the decision appealed from, the same having become final and executory after the lapse of ten (10) days from respondent's receipt thereof. Private respondent maintains otherwise, alleging that the ten (10) days period of appeal allowed under Art. 223^[5] of the New Labor Code contemplates ten (10) working days as per NLRC Resolution No. 1, Series of 1977. Accordingly, counting from April 30, 1984, the day of the receipt of the decision, to May 11, 1984, the day of filing the appeal, only nine (9) days lapsed.

We sustain the petitioner. It is too late in the day for private respondent to insist that an award, order or decision by the Labor Arbiter may be appealed to the NLRC within a period of ten (10) working days from receipt, discounting Saturdays and Sundays. May 10, 1984 is a Thursday. If it were a Sunday or holiday the filing of the appeal the following day would have been allowable.^[6] In the case of *Vir-Jen Shipping and Marine Services vs. NLRC*,^[7] this Court categorically held that the shortened period of ten (10) days fixed by Art. 223 of the Labor Code contemplates calendar days and not working days. This Court speaking through Associate Justice Barredo held:

“We are persuaded to this conclusion, if only because We believe that it is precisely in the interest of labor that the law has commanded that labor cases be promptly, if not peremptorily, disposed of. Long periods for any acts to be done by the contending parties can be taken advantage of more by management than by labor. Most labor claims are decided in their favor and management is generally the appellant. Delay in most instances, gives the employers more opportunity not only to prepare even ingenious defenses, what with well-paid talented lawyers they can afford, but even to wear out the efforts and meager resources of the workers, to the point that not infrequently the latter either give up or compromise for less than what is due them.^[8]

Thus, considering that the appeal by private respondent from the decision of the Labor Arbiter was filed on the eleventh day after receipt of the said decision, it was one (1) day late of the ten-day reglementary period which terminated on May 10, 1984.

Consequently, the decision of the Labor Arbiter had already become final and executory.^[9] Perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal as required by the Rules has the effect of rendering the judgment final and executory.^[10]

Moreover, a careful review of the records of the case show that the petitioner was effectively and illegally dismissed from the service by the private respondent. After he was relieved of his duties allegedly temporarily, he continued to report for duty but he was never given any assignment. And when on July 30, 1982 he asked for his salary at the accounting department of private respondent he was told that there was none and that he had already been laid off. No doubt the decision of the labor arbiter which was sought to be appealed is supported by the evidence and the applicable law.

WHEREFORE, the decision of December 27, 1984 of the Third Division of the National Labor Relations is hereby reversed and set aside and the decision of Labor Arbiter Raymundo R. Valenzuela, Arbitration Branch, National Capital Region, is hereby **AFFIRMED** for the reinstatement of petitioner and payment of one (1) year back wages and should petitioner forego his reinstatement then he should be reimbursed his cash deposit of P240.00. This Decision is immediately executory.

SO ORDERED.

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

[1] Penned by Labor Arbiter Raymundo R. Valenzuela.

[2] Pedro B. Narag vs. Airborne Security Services, Inc. for Illegal Dismissal and Other Violations of the Pertinent Provisions of the Labor Code, etc.

[3] Pp. 57-64, Rollo.

[*] In the Manifestation & Motion dated August 22, 1985, the Solicitor General prayed that said Comment be considered as Memorandum for Public respondent on the ground that it is complete and extensive in presentation and discussion which this Court granted in the Resolution of September 16, 1985.

[4] Page 82, Rollo.

[5] Art. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders, or decisions.

[6] Section 31, Revised Adm. Code; *Gonzaga vs. Le David*, 110 Phil. 463-464 (1960); *Calano vs. Cruz*, 91 Phil. 247 (1953); *Custria vs. The Solicitor General*, 71 Phil. 288 (1941).

[7] 115 SCRA 347.

[8] Page 361.

[9] *Alvero vs. De la Rosa*, 76 Phil. 428; *Tan Ching vs. Geraldez*, G.R. No. L-17954, April 30, 1964, 10 SCRA 748.

[10] *Makabingkit vs. People's Homesite and Housing Corporation*, 72 SCRA 326, April 17, 1976.