**SUPREME COURT**
**SECOND DIVISION**

**NIPPON PAINT EMPLOYEES UNION-OLALIA in behalf of ADONIS GUANSING,**
***Petitioner*,**

***-versus-***

**G.R. No. 159010**
**November 19, 2004**

**COURT OF APPEALS, NIPPON PAINT PHILS., INC. and HON. VOLUNTARY ARBITRATOR BERNARDINO M. VOLANTE,**
***Respondents*.**
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**D E C I S I O N**

**PUNO, *J.*:**

Before us is a Petition for Certiorari under Rule 45 of the Rules of Court to Review the Decision of the Court of Appeals in CA-G.R. SP No.76501 dated 25 April 2003.

Petitioner Nippon Paint Employees Union (NPEU) is a labor union duly organized under the laws of the Philippines. Respondent Nippon Paint Phils., Inc. (NPPI) is a corporation duly organized under the

laws of the Philippines engaged in the manufacture and sale of car paint.

The undisputed facts are as follows.

NPEU and NPPI were engaged in collective bargaining negotiations.[1] These negotiations ended in a deadlock, prompting NPEU to file a notice of strike with the National Conciliation and Mediation Board.[2] While the said labor dispute was pending, NPEU Secretary Adonis Guansing was interviewed by a reporter of the Philippine Daily Inquirer (PDI).[3] The interview was subsequently published in the PDI in its issue dated 1 April 2002. Its pertinent portions state, viz:

Singaporean-owned Nippon Paint controls 65 percent of the architectural and car paint market nationwide.

Thus, the workers said, there was no reason for the company to claim in ongoing collective bargaining talks that the company was losing money.

> "How is that possible when we supply 32 million liters of the 50 million liters of car paint used nationwide? We cover 65 percent of the total market demand," said Adonis Guansing, a chemist and auditor of the Nippon Paint Labor Union.
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> x x x

Guansing said that Nippon Paint could well afford to increase wages because the company made P600 million last year based on its declaration filed with the Securities and Exchange Commission.

> x x x
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> "We had no problem like this when the Japanese controlled Nippon Paint. It was only in 1997 that the union began facing serious problems when the Singaporeans took over majority ownership of the company," Guansing said.

Management claimed the company lost P297 million and there is an unsold inventory of paint worth P202 million.

> "That's the sad part. The management places on us the blame for their incompetence. The P297 million represents the company's collectibles while the P202 million was the paint the management has stored in various warehouses in case our union goes on strike," Guansing said.[4]

On 2 April 2002, NPPI issued a memorandum to Mr. Guansing, ordering him to explain why he should not be penalized for violation of company rules and regulations, which state:

> 16. NON-COMPANY ACTIVITIES
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> b) Engaging in any activity which is conflict (sic) with the Company's interests, either directly or indirectly.
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> | | |
> |---|---|
> | 1. Major case | 1st offense<br>DISMISSAL[5] |

After the submission of Mr. Guansing's reply and unsuccessful efforts by NPPI to organize a conference between them, the latter issued a memorandum on 16 May 2002 terminating the former's employment effective 20 May 2002.[6] Thereafter, Mr. Guansing, represented by NPEU, filed a complaint for illegal dismissal with the National Labor Relations Commission. Both parties agreed to submit the dispute to voluntary arbitration. On 18 December 2002, Voluntary Arbitrator Bernardino Volante promulgated a decision in favor of NPPI declaring Mr. Guansing's dismissal as legally effected but awarding P40,000.00 to the latter in the name of "compassionate justice." NPEU, acting on behalf of Mr. Guansing, challenged the said decision in the Court of Appeals by filing a Rule 65 petition for certiorari on 14 April 2003.[7] The Court of Appeals dismissed NPEU's petition in its decision dated 25 April 2003.[8] Hence, the present petition for certiorari.

NPEU asks this Court to rule on an issue of law – whether the Court of Appeals properly dismissed its petition for certiorari under Rule 65 for being an improper mode of appeal. It is the view of the Court of Appeals that NPEU should have appealed the voluntary arbitrator's decision by petition for review under Rule 43 instead of Rule 65.

In the case of Luzon Development Bank vs. Association of Luzon Development Bank Employees,[9] this Court ruled that a voluntary arbitrator partakes of the nature of a "quasi-judicial instrumentality" and is within the ambit of Section 9(3) of the Judiciary Reorganization Act, as amended, which provides:

> (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.[10]

As such, the decisions of a voluntary arbitrator fall within the exclusive appellate jurisdiction of the Court of Appeals. Indeed, this Court took this decision into consideration in approving the 1997 Rules of Civil Procedure, the pertinent provision of which states as follows:

> SECTION 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions

> Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.[11]

It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the Petition for Certiorari[12] and it has been repeatedly stressed that a petition for certiorari is not a substitute for a lost appeal.[13] This is due to the nature of a Rule 65 petition for certiorari which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law."[14] As previously ruled by this Court:

> We have time and again reminded members of the bench and bar that a special civil action for certiorari under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." Certiorari can not be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for lost appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[15]

The fact that the NPEU used the Rule 65 modality as a substitute for a lost appeal is made plainly manifest by: a) its filing the said petition 45 days after the expiration of the 15-day reglementary period for filing a Rule 43 appeal;[16] and b) its petition which makes specious allegations of "grave abuse of discretion" but asserts the failure of the voluntary arbitrator to properly appreciate facts and conclusions of law.[17]

This salutary rule has been disregarded on occasion by this Court in instances where valid and compelling circumstances warrant.[18] However, NPEU has not provided this Court any compelling reason why it must disregard the mandate of the Rules of Court.

**IN VIEW WHEREOF**, the decision of the Court of Appeals dated 25 April 2003 is hereby **AFFIRMED** and the instant Petition **DISMISSED**.

**SO ORDERED.**

**Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, *JJ.*, concur.**

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[1] Rollo, p. 81.
[2] Ibid.
[3] Ibid.
[4] Rollo, p. 114.
[5] Rollo, p. 244.
[6] Rollo, pp. 246-247.
[7] Rollo, p. 56.
[8] Rollo, p. 23.
[9] 249 SCRA 162 (1995).
[10] B.P. Blg 129, Section 9(3) (1980) as amended by Republic Act No. 7902.
[11] 1997 Rules of Civil Procedure, Rule 43, Section 1 (1997).
[12] Sebastian vs. Morales, 397 SCRA 549 (2003); 1997 Rules of Civil Procedure, Rule 56, Section 5(f).
[13] Republic vs. Court of Appeals, 322 SCRA 81 (2000) citing Bernardo vs. Court of Appeals, 275 SCRA 413 (1997).
[14] 1997 Rules of Civil Procedure, Rule 65, Section 1; Republic vs. Court of Appeals, 322 SCRA 81 (2000); Bernardo vs. Court of Appeals, 275 SCRA 413 (1997).
[15] Republic vs. Court of Appeals, 322 SCRA 81 (2000).
[16] Rollo, p. 56.
[17] Rollo, p. 58.
[18] Estate of Salud Jimenez vs. Philippine Export Processing Zone, 349 SCRA 240 (2001); Santo Tomas University Hospital vs. Surla, 294 SCRA 382 (1998).

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