334 Phil. 16

SECOND DIVISION

[G.R. No. 108278, January 02, 1997]

NIACONSULT, INC., JOSE DEL ROSARIO, WILFREDO S. TIANGCO, AND CESAR DE GUZMAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JESUS C. OCAMPO, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the order, dated July 21, 1992, and the resolution, dated December 22, 1992, of the National Labor Relations Commission, dismissing petitioners' appeal from a decision of the Labor Arbiter on the ground that it had been filed beyond the reglementary period.

The facts are as follows:

Petitioner NIAConsult, Inc. a subsidiary of the National Irrigation Administration (NIA), employed private respondent Jesus C. Ocampo as Irrigators Development Chief-B.

On July 4, 1990, the Board of Directors of petitioner NIAConsult, Inc. abolished private respondent's position effective August 31, 1990. On August 2, 1990, private respondent Jesus Ocampo filed a complaint alleging illegal dismissal by petitioners.

A decision was rendered in his favor on February 15, 1991 by the Labor Arbiter, who ruled that the abolition of private respondent's position had been done in bad faith. Accordingly, petitioners were ordered to reinstate private respondent and to pay him backwages and honoraria, as well as damages and attorney's fees.

Petitioners appealed to the NLRC on March 11, 1991. It was alleged that counsel received the decision on March 4, 1991. Private respondent filed an answer to the memorandum of appeal, but later moved to dismiss the appeal on the ground that, upon verification, he discovered that the registry return card showed the date of receipt to be March 1, 1991, and not March 4, 1991, as alleged by petitioners in their appeal memorandum. When private respondent went to the post office to verify the date of receipt of the decision, he discovered that it had actually been delivered to and received at the NIA Records Section earlier on February 25, 1991. This fact was certified by Marino B. London, Postmaster I at the NIA Post Office.

Atty. Musa I. Maglayang filed an affidavit of merit relating the circumstances of his receipt of the questioned registered mail and the corresponding return card as follows:

1. That I am one of the Corporate Attorneys of the National Irrigation Administration (NIA) and one of the Counsels for NIACONSULT, Inc. in NLRC-NCR Case No. 00-08-G4156-90 "Jesus C. Ocampo vs. NIACONSULT, Inc. et al" now the subject of an appeal with the National Labor Relations Commission, NCR, Manila;

2. That from February 24 to 28, 1991, I was officially on field work at NIA's Regions IX and XII, particularly in Pagadian City, Dipolog City and Kapatagan, Lanao del Norte, in connection with "Pp. vs. William Sy" and "Heirs of Dimavivas vs. NIA, et al." among other cases, and returned home on February 28, 1991; as per copy of time card hereto attached as Annex "A" and made an integral part hereof;

3. That sometime in the afternoon of March 1, 1991, I passed by the NIA Office in Quezon City to get my salary only as I was on official leave of absence as per copy of my Time Card hereto attached as Annex "B" and made an integral part hereof;

4. That while in the office, one of the personnel of the NIA Records Division presented several mail matters addressed to me and I received some, but because I was in a hurry and at the same time on a leave of absence told the Records personnel that I will receive the rest on Monday, March 4, 1991, when I will officially report for work;

5. That on March 4, 1991, I reported for office work at Quezon City and on the same date I received a registered mail which is the Decision of the Labor Arbiter in NLRC-NCR Case No. 00-08-G4156-90 entitled "Jesus C. Ocampo vs. NIACONSULT, Inc. et. al.," proof of which receipt of Decision is my initial with date "3/4/91" at the tail of my name on the front portion of the envelope containing the decision, a copy hereto attached as Annex "C" and likewise made a part hereof; . . .[1]

On the basis of these facts, the NLRC dismissed on July 2, 1992 petitioners' appeal on the ground that it was filed out of time. The motion for reconsideration filed by petitioners was denied.

Hence, this petition. Petitioners contend that their appeal, which they filed on March 11, 1991, was timely because, as shown by the registry return card, their counsel received the mail containing the decision on March 1, 1991 so that their appeal was perfected on the tenth day of the appeal period. In addition, petitioners assail the decision of the Labor Arbiter, claiming that the damages awarded to private respondent were excessive, that the dismissal of private respondent was legal, and that the Labor Arbiter had no power to order the officers of the corporation to pay damages to private respondent as there was no privity of contract between them and private respondent.

The petition is without merit.

As the NLRC observed, the official address given by petitioners' former counsel, Atty. Musa I. Maglayang, was c/o NIA Bldg., EDSA, Quezon City. To consider the date of receipt of the decision of the Labor Arbiter to be February 25, 1991, when the decision was delivered at this address, is not to violate the rule (Rule 13, §2) that