

## THIRD DIVISION

[ G.R. NO. 162342, October 11, 2006 ]

**JAIME H. BALLAO, PETITIONER, VS. COURT OF APPEALS,  
NATIONAL LABOR RELATIONS COMMISSION AND CHINA  
BANKING CORPORATION, RESPONDENTS.**

### DECISION

#### **QUISUMBING, J.:**

This petition for review on certiorari assails the Decision<sup>[1]</sup> dated August 28, 2003 of the Court of Appeals in CA-G.R. SP. No. 65955 and its Resolution dated February 6, 2004 denying the motion for reconsideration. The appellate court affirmed the Decision dated February 2, 2001 of the National Labor Relations Commission (NLRC) reversing the Decision dated November 26, 1999 of the Labor Arbiter.

The antecedent facts are as follows:

Petitioner Jaime H. Ballao was an employee of respondent China Banking Corporation (Chinabank). As a "runner" in the cash department of Chinabank's Binondo Branch, he was tasked, among others, to get cash from the vault upon request of the teller.

On August 27, 1997, the cashier's record reflected that the amount requisitioned did not tally with the records of the tellers. The discrepancy was P150,000, which from the record of the cashier was the same amount teller Anna Margaret Ngo requisitioned. The cash custodian Lauro Villapando allegedly gave the cash to Ballao to be delivered to Ngo. Ballao and Ngo denied receiving the amount.

After investigation, Chinabank found petitioner Ballao guilty of (1) serious misconduct; (2) fraud or willful breach of trust reposed in him by Chinabank; (3) stealing or attempting to steal from the bank or from others within the premises; and (4) falsifying bank records or documents and tampering bank equipment or facilities for the purpose of defrauding the bank or committing a dishonest act. Chinabank terminated Ballao's services.

Seasonably, petitioner filed a complaint for illegal dismissal before the NLRC-NCR Arbitration Branch, Quezon City. The Labor Arbiter found Ballao's termination illegal, and ordered Chinabank to pay his backwages and to reinstate him.

On appeal, however, the NLRC reversed the Labor Arbiter's decision and dismissed the complaint for lack of merit. Petitioner moved for reconsideration but it was denied for failure to file it within the reglementary period.

Aggrieved, petitioner filed a petition for certiorari with the Court of Appeals. The appellate court held that the NLRC decision already became final and executory,

considering that no timely motion for reconsideration was filed by Ballao. Petitioner sought reconsideration but it was denied.

Hence, the instant petition where petitioner maintains that:

x x x [THE COURT OF APPEALS ERRED] IN HAPHAZARDLY HOLDING THAT PETITIONER'S MOTION FOR THE RECONSIDERATION OF THE NLRC'S FEBRUARY 2, 2001 DECISION WAS FILED ON MARCH 9, 2001 DESPITE NLRC'S RECEIPT OF THE MOTION THAT WAS FILED THROUGH REGISTERED MAIL ON MARCH 5, 2001 AND THE PRESENTATION OF THE REGISTRY RETURN CARD AND THE CERTIFICATION FROM THE FRISCO (MAIN) POST OFFICE THAT THE MOTION WITH REGISTRY NUMBER 8388 WAS ADDRESSED TO THE NLRC, BANAWA STREET, QUEZON CITY AND WAS MAILED ON MARCH 5, 2001, THE TENTH DAY TO FILE SAID MOTION.

x x x THE LACK OF A VERIFICATION OF THE MOTION FOR RECONSIDERATION IS A FORMAL, RATHER THAN A SUBSTANTIAL, DEFECT AND IS NOT FATAL.<sup>[2]</sup>

Simply stated, the issue in this case is whether Ballao's motion for reconsideration of the NLRC decision was properly denied by the Court of Appeals.

Petitioner argues that the appellate court erred in finding that the motion was filed out of time despite submission of proof, namely, the certification from the Frisco (Main) Post Office and the registry return card, that the same was filed on the tenth day of the reglementary period.<sup>[3]</sup> Further, petitioner argues that the lack of verification is merely a formal defect which may be corrected by requiring compliance by petitioner to submit an oath, considering that he has a meritorious case.<sup>[4]</sup>

Chinabank, for its part, maintains that the motion was fatally defective because of petitioner's failure to verify it, and it should be considered as an unsigned pleading. Private respondent also avers that there was no proof on record that the motion was filed on time and served on Chinabank. In sum, Chinabank insists that petitioner was not illegally terminated.<sup>[5]</sup>

The Court of Appeals in dismissing the petition for certiorari found that the motion was not filed on time and it was not under oath, and there was no proof of service on the other party, nor to its counsel. It added that petitioner did not comply with the rules of the NLRC, and the motion should have been treated as a mere scrap of paper, as if no motion for reconsideration was filed, thus making the NLRC decision final and executory.<sup>[6]</sup>

Under Section 15,<sup>[7]</sup> Rule VII of the NLRC Rules of Procedure, a motion for reconsideration of any order, resolution or decision must be under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision.

In the present case, we note that petitioner received the NLRC decision on February 23, 2001, thus the tenth day for filing a motion for reconsideration was March 5, 2001.<sup>[8]</sup> In his manifestation<sup>[9]</sup> filed on March 9, 2001 with the NLRC, petitioner

stated that he filed the motion through registered mail on March 5, 2001, and that the pleadings attached therein were just copies of the motion. A registry return receipt<sup>[10]</sup> was also submitted which shows that the motion was posted on March 5, 2001 and received by the NLRC on March 21, 2001. Furthermore, on record is another registry return receipt<sup>[11]</sup> showing that Chinabank, through counsel, received a copy of the motion on March 9, 2001. Chinabank filed an opposition to said motion, thus, it could not claim that it was not served a copy. These matters could not be ignored as these served as proofs that clearly, the motion for reconsideration of petitioner was filed on time.

Time and again, we have said the lack of verification is merely a formal defect that is neither jurisdictional nor fatal. In a proper case, the court may order the correction of the pleading or act on the unverified pleading, if the attending circumstances are such that strict compliance with the rule may be dispensed with in order to serve the ends of justice.<sup>[12]</sup> It should be stressed that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts cannot be enslaved by technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat vis-à-vis substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the Court's power to suspend the rules or except a particular case from its operation.<sup>[13]</sup> This is more so in labor cases where social justice should be emphasized. In light of the circumstances of this case, we find that the lack of verification may be excused, so that the case could be decided on its merits.

Was petitioner illegally dismissed?

As a rule, the Supreme Court is not a trier of facts. Again, this applies with greater force in labor cases. Factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded respect and even finality by this Court. But where the findings of the NLRC and the Labor Arbiter are contradictory, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.<sup>[14]</sup> Our perusal of the records shows that petitioner's dismissal was unjustified.

The acts allegedly committed by petitioner were (1) making an unauthorized and fraudulent requisition of P150,000 from the vault and taking possession of the same without bank approval; (2) falsifying bank document to make it appear that teller Ngo supposedly requested the said amount; and (3) concealing the Teller's Cash Transaction Documents to suppress/delay the discovery of the fraud.<sup>[15]</sup>

In a memorandum<sup>[16]</sup> dated April 13, 1998, private respondent dismissed Ballao for the following reasons:

1. Serious misconduct (par. [a], of Article 282 Title I, Book Six, Labor Code);