

## THIRD DIVISION

[ G.R. No. 142689, October 17, 2002 ]

**POLICARPIO T. CUEVAS, PETITIONER, VS. BAIS STEEL CORPORATION AND STEVEN CHAN, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

The *timely* perfection of an appeal is a mandatory requirement. One cannot escape the rigid observance of this rule by claiming ignorance or oversight. Neither can it be trifled with as a "mere technicality" to suit the interest of a party. Verily, the periods for filing petitions for review and for certiorari are to be observed religiously. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner have the right to enjoy the finality of the decision.

#### Statement of the Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the January 6, 2000 Decision<sup>[1]</sup> and the March 15, 2000 Resolution<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR SP No. 52936. The decretal portion of the Decisions reads as follows:

"The foregoing considered, the contested Decision is hereby nullified and set aside, and the December 23, 1997 Decision by the Labor Arbiter, directing the dismissal of the complaint is reinstated."<sup>[4]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

The CA reversed the Decision of the Fourth Division of the National Labor Relations Commission<sup>[5]</sup> (NLRC), which had disposed as follows:

'WHEREFORE, premises considered, the decision of the Labor Arbiter dated December 23, 1997, is hereby NULLIFIED AND SET ASIDE and a new one entered, ordering respondent-appellee, BAIS STEEL CORPORATION, to pay complainant-appellant, POLICARPIO T. CUEVAS, the following:

- 'a) Separation pay equivalent to one (1) month pay for every year of actual service, with a fraction of six (6) months being considered as one (1) year in the amount of P26,929.75;
- 'b) Backwages from the time of his illegal dismissal on October 24, 1996 up to the time of promulgation of the decision in the amount of P115,750.40;
- 'c) To pay complainant-appellant attorney's fees equivalent to ten (10)% percent on top of the total judgment award.

"All other claims are hereby dismissed for lack of merit.""[6]

### **The Facts**

The factual antecedents of the case are summarized by the NLRC as follows:

"Herein complainant starting July 16, 1991, works as 'boiler tender' for the respondent Bais Steel Corporation, a galvanizing plant located at Tanjay, Negros Oriental, owned and managed by the president Antonio Steven L. Chan. His daily rate/salary was P165.34 with overtime pay and night shift differentials.

"On September 2, 1996, complainant filed an illegal suspension case against respondent company denominated as NLRC Sub-RAB Case No. 09-0105-96-D. The case was dismissed with prejudice per order dated September 30, 1996. The dismissal was anchored on the agreement that respondent company will delete or erase from the 201 file of complainant the alleged 'violation on sleeping rules'.

"Sometime [I]n the second week of September 1996, complainant tried to organize a union, but his attention was called by the owner of the respondent company, Mr. Antonio Steven L. Chan.

"On October 17, 1996, complainant was notified in writing regarding his transfer to the Crating Section with a specific job[,], strictly that of making coco lumber crates only (from Boiler Tender) with a work schedule from 8:00 a.m. to 5:00 p.m.

"On October 20, 1996, this being a Sunday, complainant worked for half-day, in order to look for some money for the tuition fee of his son. His application for leave was left to his immediate supervisor which was approved as is the practice during a Sunday. While on the way out from the company premises together with other co-workers, they met the owner, Mr. Antonio Steven L. Chan [who] inquired where they [were] going. Complainant informed him that he [was] on half-day and already off-duty, to attend to some personal problems. The owner informed him that [his] supervisor ha[d] no authority to approve [his] leave and [told him] to return to work. Complainant insisted and went on half-day leave.

"The following day, October 21, 1996, complainant reported for work, but the retaliatory acts of management [were] already felt by complainant starting from his demotion, reduction in working hours and oppression. Realizing the pressures being exerted by respondent, he decided to apply for leave of absence on October 22, 1996. The same was disapproved[;] nonetheless, complainant did not report for work as he ha[d] to consult a lawyer about his problem, and submitted a medical certificate to justify HIS LEAVE OF ABSENCE THE FOLLOWING DAY.

"On October 23, 1996, complainant informed the resident-manager, Mr. Roberto dela Rosa, that if given his separation pay, he [would] just resign. This proposal was accepted by management. Thus, complainant signed a management prepared letter of resignation[,], believing to be paid his separation pay as agreed. After signing said resignation letter, complainant alleged that he was made to sign another document which

he refused[;] then and there respondent refused to pay him the agreed separation pay.

"Interpreting the aforesaid action of the respondent as constructive dismissal or forced resignation, complainant filed the instant complaint for illegal dismissal, and non-payment of separation pay.

"Complainant likewise, prays for moral and exemplary damages as well as attorney's fees.

"Respondent, on the other hand, avers that complainant personally delivered his resignation letter to the respondent's Resident Manager and failed to report for work effective October 24, 1996.

"And that he is considered to have 'abandoned work', if he considers himself not resigned, since more than two (2) months had elapsed since he last reported for work up to the time of the filing of this complaint.

"During the scheduled mandatory conference and hearings, the parties failed to arrive at an amicable settlement; hence, [they] were directed to submit their respective position papers and other documentary evidence.

"A full-blown hearing followed as evidenced by the transcript of stenographic notes and formal offer of exhibits and opposition thereto attached to the records of the case.

"On December 23, 1997, the Labor Arbiter a quo, rendered the assailed decision."<sup>[7]</sup> (Citations omitted)

Respondents received a copy of the July 24, 1998 Decision rendered by the NLRC on September 18, 1998. Six days later or on September 24, 1998, they filed a Motion for Reconsideration, which was denied in a Resolution dated November 27, 1998. On February 19, 1999, they filed with this Court a Petition for Certiorari<sup>[8]</sup> under Rule 65. However, in accordance with *St. Martin Funeral Homes v. NLRC*,<sup>[9]</sup> it was referred to the CA in a Resolution<sup>[10]</sup> dated March 17, 1999.

The CA dismissed the Petition on the following grounds:

"1. Absence of explanation on service by registered mail; and

"2. Lack of a verified statement on material date when the notice of denial of the Motion for Reconsideration was received.

"We, therefore, have no way of finding out if herein Petition for Certiorari was filed within the reglementary period.

"Not being sufficient in form, herein Petition is hereby DISMISSED."<sup>[11]</sup>

Thereafter, respondents filed an Urgent Motion for Reconsideration alleging that their failure to submit the above-mentioned requisites was inadvertent and not intended to delay the prosecution of the case.<sup>[12]</sup> On July 2, 1999, the CA denied their Motion.<sup>[13]</sup> On August 17, 1999, they filed a second Motion for Reconsideration,<sup>[14]</sup> which was again denied in a Resolution dated August 20, 1999.<sup>[15]</sup> Undeterred, they filed a third Motion for Reconsideration on September 8,

1999,<sup>[16]</sup> which the CA granted in a Resolution<sup>[17]</sup> dated October 1, 1999, with the following instructions:

“Without necessarily giving due course to the Petition for Certiorari, the Comment, not a motion to dismiss, should be submitted within a period of ten (10) days from notice. The Reply, if any, should also be submitted within a period of ten (10) days from receipt of a copy of the Comment.”  
<sup>[18]</sup>

After the parties submitted their respective Comment and Reply,<sup>[19]</sup> the CA rendered the assailed Decision granting the Petition for Certiorari.

### **Ruling of the Court of Appeals**

The CA held that, based on the facts in hand, Petitioner Cuevas had voluntarily submitted his resignation letter to the resident manager on October 23, 1996. Hence, he was not illegally dismissed by respondents.

Furthermore, the appellate court observed that petitioner had not raised any question of law when he filed with his Notice of Appeal and Memorandum of Appeal from the Decision of the Labor Arbiter. The CA cited Article 223 of the Labor Code, which states:

“Art. 223. Appeal. -- Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter.
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.”

It opined that the NLRC had no basis whatsoever to entertain the appeal submitted by petitioner, because none of the above-mentioned grounds was presented.

The CA ignored the issue of the timeliness of the filing of the certiorari Petition.

Hence, this recourse to this Court.<sup>[20]</sup>

### **Issues**

In his Memorandum, petitioner raises the following issues for the Court’s consideration:

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Whether or not the Court of Appeals -- former First Division departed from the accepted and usual course of judicial proceedings in issuing the