

FIRST DIVISION

[G.R. No. 120062, June 08, 2000]

**WORKERS OF ANTIQUE ELECTRIC COOPERATIVE, INC., HEREIN
REPRESENTED BY EDUARDO NIETES, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND ANTIQUE
ELECTRIC COOPERATIVE, INC., RESPONDENTS.**

D E C I S I O N

PARDO, J.:

What is before the Court is a petition for *certiorari*^[1] assailing the dismissal by the National Labor Relations Commission (NLRC) of petitioner's appeal for being filed out of time.^[2]

We recite the antecedent facts.

On November 19, 1987, the Department of Labor and Employment (DOLE)^[3] conducted a routine inspection on Antique Electric Cooperative, Inc. (ANTECO). The results showed an underpayment of employees wages^[4] during the period of November 1, 1984 to November 15, 1987 and non-payment or underpayment of 13th month pay for the years 1984, 1985 and 1986. The wage differentials were computed at One Million Four Hundred Twenty Seven Thousand, Four Hundred Twelve Pesos and Seventy Five Centavos (P1,427,412.75). Respondent failed to pay the wage differentials because of its cash position.^[5]

On September 19, 1989, the DOLE Regional Director for Iloilo City issued an order, to wit:

"WHEREFORE, premises considered, Antique Electric Cooperative and/or Paulo Lotilla is hereby ordered to pay its workers the sum of ONE MILLION FOUR HUNDRED TWENTY SEVEN THOUSAND FOUR HUNDRED TWELVE and 75/100 (P1,427,412.75) PESOS, representing the latter's wage differentials based on the attached computation within ten (10) days from receipt of this Order.

"SO ORDERED."^[6]

On October 10, 1989 and on September 19, 1989,^[7] the NLRC reiterated the above-quoted order.

On December 26, 1989, one hundred eight (108) workers of ANTECO signed a waiver, pertinently quoted, thus:^[8]

"We, the undersigned coop employees are agreeable with the negotiation of the management for the implementation of the back wages in the amount of FIVE HUNDRED THOUSAND PESOS ONLY (P500,000.00) or THIRTY FIVE PERCENT (35%) in its equivalent instead in the amount (*sic*) of ONE MILLION FOUR HUNDRED TWENTY SEVEN THOUSAND FOUR HUNDRED TWELVE PESOS and 75/100 (P1,427,412.75) as computed by the Department of Labor and Employment mandated in the Order issued last October 10, 1989. We, therefore waive our rights for (*sic*) the remaining amount such claim for the uncollected salary differentials shall be forfeited after affixing our signatories herein and the stipulated amount paid."

On June 27, 1990, the DOLE approved the waiver as it is "not contrary to law, good customs and public policy."^[9]

On September 27, 1991, petitioner filed with DOLE a motion for reconsideration alleging that the waiver was void for being contrary to the Constitution and public policy and for having been executed under undue influence, coercion, intimidation, and without assistance of counsel. The motion prayed for an *alias* writ of execution commanding the sheriff to collect the unpaid balance stated in the order dated September 19, 1989.^[10] On October 9, 1991, DOLE denied the motion for reconsideration.^[11]

On December 1, 1992, petitioner workers of ANTECO represented by Eduardo Nietes filed a position paper and/or complaint or petition for salary differentials.^[12] The position paper reiterated the arguments raised in the motion for reconsideration of September 27, 1991. Petitioners prayed that the waiver be declared null and void and that ANTECO be ordered to pay the unpaid balance of 65% of the wage differentials and moral and exemplary damages.^[13]

On January 11, 1993, ANTECO filed with the NLRC a manifestation moving for the position paper's dismissal on the grounds:

- "1. That there is a non-joinder of the proper and indispensable parties;
- "2. That Eduardo Nietes has no authority to represent the alleged ANTECO workers;
- "3. That the alleged parties are not named in the petition;
- "4. That the subject matter is already moot and academic;
- "5. That the alleged petitioners are in estoppel;
- "6. That the petition is not filed by the proper party (DOLE);
- "7. That the NLRC has no jurisdiction over the subject matter of the petition;
- "8. That there is no cause of action against respondent."^[14]

On October 8, 1993, the NLRC dismissed the case, reasoning that on August 31, 1993, it directed petitioner to file formal complaints but did not do so. The NLRC dismissed the case for failure to "acquire jurisdiction over the persons of the complainants."^[15]

Claiming to represent all of ANTECO's workers, on November 10, 1993, Eduardo

Nietes filed an appeal with the NLRC. He argued that the position paper satisfied the requirements of a formal complaint.^[16]

On February 7, 1994, the NLRC dismissed the appeal for being filed out of time. According to the NLRC, the appeal was filed nine (9) days late.^[17] The NLRC found that petitioner received a copy of the assailed order^[18] on November 3, 1993; the appeal was filed on November 22, 1993. The NLRC reasoned that the appeal "should have been filed on November 15, 1993, since November 13, 1993 was a Saturday."^[19]

On February 22, 1994, petitioner filed with the NLRC a motion for reconsideration alleging that the appeal was filed by registered mail on November 11, 1992. ^[20]

On September 14, 1994, the NLRC^[21] denied the motion for reconsideration,^[22] stating that the appeal was filed personally on November 22, 1993, not by registered mail as claimed, and that this is supported by the fact that the appeal fee and research fee were paid on the same date.^[23]

On September 28, 1994, petitioner filed with the NLRC a "petition for relief from order denying motion for reconsideration".^[24] On April 6, 1995, the NLRC denied the same on the ground that no such pleading or second motion for reconsideration is allowed under its rules.^[25]

Hence, this petition alleging that the NLRC committed grave abuse of discretion when it dismissed the case on technical grounds and failed to hear and try the case on the merits.^[26]

We deny the petition.

In a special civil action for *certiorari* under Rule 65, petitioner must prove that respondent exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility.^[27] There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.^[28]

Respondent NLRC did not commit a grave abuse of discretion when it ruled that the appeal was filed out of time. When it declared that the appeal was filed personally, it made a factual finding. Factual findings of labor officials when supported by substantial evidence, as in this case, the official receipts covering payment of appeal and legal research fees, are binding on the parties.^[29]

The perfection of an appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Non-compliance therewith renders the judgment sought to appeal final and executory.^[30] Article 223 of the Labor Code provides:

"Article 223. Appeal. Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both