

## SECOND DIVISION

[ G.R. No. 125602, April 29, 1999 ]

**ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
THIRD DIVISION, LABOR ARBITER RICARDO N. OLAIREZ, RUBEN  
DE LA CRUZ ROMANO AND LUCIO L. MAGGAY, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

The crux of the present controversy is whether the appeal from the decision of the Labor Arbiter to the National Labor Relations Commission was perfected within the reglementary period.

On 6 October 1995 private respondent Ruben de la Cruz Romano filed before the Regional Arbitration Branch No. II of Tuguegarao, Cagayan, a complaint against petitioner Associated Anglo-American Tobacco Corporation, a corporation duly organized under the laws of the Philippines manufacturing and selling cigarette products, claiming that he was employed as truck driver by petitioner from 1 October 1973 to 14 December 1994; after twenty-one (21) years of employment he retired due to failing eyesight; in those twenty-one (21) years, he was underpaid and deprived of his 13<sup>th</sup> month pay, service incentive leave pay and overtime pay. Upon his retirement, he requested financial assistance from petitioner but was denied.

On 6 November 1995 another complaint was filed against petitioner this time by private respondent Lucio L. Maggay before the same Regional Arbitration Branch No. II claiming that he was also hired in April 1972 as delivery truck helper and since then was underpaid and deprived of his 13<sup>th</sup> month pay and service incentive leave pay.

Summons was served on Elpidio Ching, named in the complaint of private respondent Romano as petitioner's owner/Manager/President. On 19 October 1995 Atty. Jesus John B. Garma appeared for Ching and manifested that his client was a mere salesman, not an owner nor President of petitioner corporation, and asked that Ching be dropped as party respondent. Before acting on the request, the Labor Arbiter ordered another summons to be served on petitioner.<sup>[1]</sup>

On 23 November 1995 Atty. Garma filed a motion reiterating his prayer for Ching to be dropped from the complaint. It was granted.<sup>[2]</sup>

For the three (3) scheduled mandatory conferences petitioner failed to appear. No reason was given thus leaving the Labor Arbiter with no other option but to consider petitioner to have waived its right to be heard and to present evidence.

On 21 February 1996 the Labor Arbiter granted the money claims of private respondent, except those covered by the period before September 1992 in the case of Romano, and before November 1992 in the case of Maggay, on account of prescription. In addition, the Labor Arbiter granted attorney's fees of ten per cent (10%) of the total monetary awards plus interest of one per cent (1%) per month until full payment.<sup>[3]</sup>

Petitioner appealed on the grounds *inter alia* that it did not receive a copy of the complaint nor of the notice of hearing and that Ching was its exclusive distributor/dealer of cigarette products in Cagayan Valley and who directly hired both private respondents. However, on 27 May 1996 public respondent National Labor Relations Commission dismissed the appeal for having been filed beyond the 10-day prescriptive period from receipt of the questioned decision.<sup>[4]</sup> According to the NLRC, inasmuch as the decision was received by petitioner on 23 February 1996, it had up to March 1996<sup>[5]</sup> to file its appeal, but did so only on 14 March 1996.<sup>[6]</sup>

Petitioner sought reconsideration alleging that the letter of transmittal of the records by Labor Arbitration Associate Ofelia Q. Cagurangan addressed to the Executive Clerk of Court of the NLRC showed that it received the Labor Arbiter's decision on 28 February 1996.<sup>[7]</sup> On 25 June 1996 the NLRC denied reconsideration<sup>[8]</sup> holding that on the basis of the Bailiff's Return - which is the best proof of service - the Labor Arbiter's decision was duly served on petitioner on 23 February 1996 through one Ernesto Garma of the law office of Atty. Jesus John B. Garma.<sup>[9]</sup>

Petitioner insists on the timeliness of its appeal since the letter of transmittal of the records and the registry return receipt disclose that it received the decision of the Labor Arbiter on 28 February 1996 so the last day to file its appeal fell on 9 March 1996; on the other hand, the date it sent through registered mail its notice of appeal with memorandum together with the requisite bond is indicated on the mailing envelope as 8 March 1996. Petitioner disputes the authority of Ernesto Garma or Atty. Jesus John B. Garma to receive the Labor Arbiter's decision on its behalf since Atty. Garma is the lawyer for Elpidio Ching who was responsible for the latter's exclusion as respondent before the Labor Arbiter.

The Solicitor General supports the stand of petitioner, for which reason, the NLRC filed its own comment that Ching was an agent/representative of petitioner whose lawyer was Atty. Garma based on petitioner's admission in the present petition that it "learned about the instant case through Ching, who assured (it) of taking whatever actions necessary to protect the interest of the company."<sup>[10]</sup> The NLRC thus maintains that the notice of the decision of the Labor Arbiter to Atty. Garma received through Ernesto Garma is notice to petitioner through Ching represented by Atty. Garma.

No abuse of discretion was committed by the NLRC. Section 4, Rule III, of its *New Rules of Procedure* states -

Sec. 4. Service of Notices and Resolutions. - (a) Notices or summons and copies of orders, resolutions or decision shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof by registered mail; Provided that