

FIRST DIVISION

[G.R. No. 117610, March 02, 1998]

**KATHY-O ENTERPRISES, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, LABOR ARBITER NIEVES DE CASTRO
AND ERNESTO C. ARUTA, RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J.:

This special civil action for *certiorari* and prohibition with preliminary injunction seeks the nullification of the 23 August 1994^[1] order of public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 006621-94 dismissing the appeal of petitioner Kathy-O Enterprises (hereafter KATHY-O) from the 20 December 1993^[2] order of public respondent Labor Arbiter Nieves V. De Castro in NLRC NCR Case No. 00-12-06646-91 granting the motion for execution of judgment filed by respondent Ernesto Aruta (hereafter ARUTA), and the NLRC resolution of 14 October 1994^[3] denying the motion for reconsideration of the 23 August 1994 order.

Petitioner KATHY-O, a sole proprietorship, owned and operated by Mrs. Arlene Estrella, employed respondent ARUTA in its garment factory on 1 March 1984 as a pattern maker and the operations manager. ARUTA's responsibilities included purchasing materials, preparing patterns and delivering garments to Shoe Mart (hereafter SM) department stores.

On 6 March 1991, SM returned KATHY-O's garments due to defects in material, wrong style and poor workmanship. To prevent further losses, Estrella advised ARUTA to undertake corrective measures to improve KATHY-O's operations. However, the flaws in KATHY-O's operations remained as the volume of merchandise returned for the period of March until October 1991 continued to increase, costing KATHY-O an alleged total loss of P463, 085.00.

In October 1991, ARUTA asked for a raise. However, Estrella deferred his request until the company's situation improved.

ARUTA then applied for a vacation leave effective October 7 to 30 1991. But as Estrella badly needed ARUTA's services for the forthcoming holiday season, she denied the application and pleaded that ARUTA right the inefficiencies in KATHY-O's operations. However, ARUTA absented himself from work without Estrella's approval.

On 9 October 1991, KATHY-O hired a new pattern maker in order to comply with its commitments and the exigencies of work brought about by ARUTA's absence.

In November 1991, when ARUTA reported for work, Estrella directed him to take the night shift as she was still trying to adjust to the new pattern maker. Aruta insisted that he work the day shift, but Estrella did not accede. Resentful, ARUTA did not report for work that month.

Perceiving the hiring of another pattern maker in his stead and his transfer to the night shift as a dismissal, on 2 December 1991, ARUTA filed an illegal dismissal case against KATHY-O. In the proceedings before the Labor Arbiter, Aruta alleged that he was denied due process as he was dismissed without valid cause, written notice of termination nor investigation.^[4]

On 30 July 1992, public respondent Labor Arbiter Nieves de Castro rendered a decision^[5] dismissing the charge of illegal dismissal for lack of merit, and as to ARUTA, found him guilty of absence without approved leave and defiance of a lawful and reasonable order, acts inimical to the interest of KATHY-O. The Labor Arbiter ruled that ARUTA's conduct could not be left unpunished, otherwise he would set a "bad example and/or precedent" and that "[o]ne year and 8 months' suspension [from service would] certainly teach [him] his lesson not to defy a lawful and reasonable order of the employer and not absent himself without approved leave for no justifiable reason at all." Nevertheless, the Labor Arbiter ordered KATHY-O to reinstate ARUTA to his former position effective 1 September 1992.

The dispositive portion of the Order reads as follows:

WHEREFORE, the charge of illegal termination is hereby DISMISSED for lack of merit.

Respondent is hereby directed to reinstate complainant to his former [position] as Operation's [sic] Manager and Pattern Maker effective September 1, 1992 with warning that a repetition of similar misconduct shall be dealt with more severely.

Neither party appealed from the decision.

Come 1 September 1992, however, ARUTA did not report back for work at KATHY-O. It was only sometime in March 1993, or after a period of more than six months, that ARUTA and his counsel informed KATHY-O of his desire to be reinstated or that he be paid separation pay and back wages. However, KATHY-O rejected both options.

On 4 May 1993, ARUTA moved^[6] to execute the 30 July 1992 decision as regards his reinstatement. KATHY-O opposed,^[7] contending that ARUTA had already been replaced and invoking laches.

In its Order of 20 December 1993, the Labor Arbiter granted ARUTA's motion on the ground that the decision had become final and executory.

On 7 February 1994, KATHY-O filed its Notice of Appeal^[8] and submitted a Memorandum on Appeal.^[9] The appeal was docketed as NLRC NCR CA No. 006621-94 and assigned to the Second Division of the National Labor Relations Commission (NLRC).

On 26 August 1994, the NLRC denied KATHY-O's appeal for having been filed out of time, finding that the latter received a copy of the 20 December 1993 order on 25 January 1994 as shown in the "Notice of Resolution/Order," and not on 28 January 1994 as claimed by KATHY-O; hence, it had only until 4 February 1994 within which to file its appeal. In its Order of 14 October 1994,^[10] the NLRC denied KATHY-O's motion for reconsideration for lack of merit. In said motion, KATHY-O's counsel alleged that he was of the belief that his office received the order in question on 28 January 1994 "as

the date appearing on the office stamp showing receipt of the Order was written by the receiving clerk in such a way that the figure '5' would easily be mistaken as '8'." ^[11]

Unsatisfied, KATHY-O instituted this petition alleging that:

1. RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN IT DISMISSED PETITIONER'S APPEAL ON A MERE TECHNICALITY ALTHOUGH THE APPEAL ITSELF IS CLEARLY MERITORIOUS;
2. RESPONDENT COMMISSION SERIOUSLY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT THE SLIGHT DELAY IN THE FILING OF THE APPEAL WAS DUE TO AN EXCUSABLE AND HONEST MISTAKE, WHICH CANNOT OVERRIDE AN OTHERWISE MERITORIOUS APPEAL;
3. RESPONDENT LABOR ARBITER GRAVELY ABUSED HER DISCRETION WHEN SHE ORDERED THE ISSUANCE OF [A] WRIT OF EXECUTION DESPITE SUPERVENING EVENTS ATTRIBUTED [sic] TO RESPONDENT ARUTA HIMSELF WHICH RENDERED HIS REINSTATEMENT IMPRACTICABLE WITHOUT UNDUE DAMAGE OR INJURY TO PETITIONER AND ITS EMPLOYEES.

KATHY-O concedes that strict adherence to the Notice of Resolution/Order relied upon by the NLRC would lead one to conclude that KATHY-O received the 20 December 1993 order on 25 January 1994, thus its appeal filed only on 7 February 1994 was indeed filed late. Nevertheless, petitioner reiterates its explanation that it committed an honest mistake when "it mistook the figure '5' written on the Notice of Resolution (Annex 'J') by the office receptionist as '8' because of an extra stroke." Petitioner thus pleads for relaxation of the rule on the application of the reglementary periods of appeal and that the appeal be decided on the merits, not dismissed on a mere technicality.

KATHY-O further avers that there is ostensible merit in its appeal for while the main decision ordering ARUTA's reinstatement had become final, supervening causes or reasons arose which rendered execution "no longer possible without undue damage;" ARUTA's reinstatement would have impaired its operations and "the tenure and standing of the other employees who, unlike [ARUTA], had remained faithful and responsible in the performance of their assigned tasks;" moreover, KATHY-O argues, ARUTA had abandoned his right and was guilty of laches.

In his comment to the petition, ARUTA asks the Court to dismiss the petition for lack of merit; asserts that KATHY-O's appeal from the Labor Arbiter's order was filed after the lapse of ten days from receipt thereof and stresses that KATHY-O's failure to send a notice signifying its intention to accept him could not prejudice his reinstatement.

In its comment to the petition, the Office of the Solicitor General (hereafter OSG) contends that the petition is impressed with merit. While admitting that KATHY-O's appeal was filed late, *i.e.*, 3 days beyond the 10-day reglementary period provided in the Labor Code, KATHY-O's counsel committed an honest mistake in misreading the figure "5" in *25 January 1994* as an "8" because of an "extra upward stroke." Additionally, the OSG agrees with KATHY-O that the appeal raised valid issues and should not have been dismissed on technical grounds.

In its comment on the petition (which this Court required in view of the stand of the OSG), the NLRC maintains that it committed no abuse of discretion when it ordered execution of the 30 July 1992 decision, the same having long become final and