

SECOND DIVISION

[G.R. No. 111211, July 24, 1997]

**ABS-CBN EMPLOYEES UNION AND JOSE ENTRADICHO,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
AND ABS-CBN BROADCASTING CORPORATION, RESPONDENTS.**

DECISION

ROMERO, J.:

This petition for *certiorari* assails the July 12, 1993, decision of the National Labor Relations Commission (NLRC) reversing the judgment of Labor Arbiter Oswald B. Lorenzo dated August 31, 1990, but ordering private respondent to pay petitioner the amount of P1,000.00 as indemnity.

Petitioner Jose Entradicho was employed by respondent ABS-CBN Broadcasting Corporation (ABS-CBN) as cameraman on September 7, 1987 until his dismissal on August 4, 1989.

It is undisputed that on July 15, 1989, petitioner did not report for the taping of an ABS-CBN production entitled "Kris at 18." The taping thereof was allegedly delayed, mishandled and haphazardly done to the damage and prejudice of ABS-CBN. The latter's TV Engineering Director, Fernando Morales, directed petitioner to explain within 48 hours why no action should be taken against him for his absence on said date. He retorted that he brought his sick daughter to the hospital for immediate medical attention and borrowed from relatives the necessary funds to answer for the expenses which may be incurred. Morales accepted his explanation with a stern warning that a repetition of a similar offense would be meted a corresponding disciplinary action.

On July 16, 1989, however, ABS-CBN's Personnel Manager Hermilindo^[1] P. Ocampo, saw the name of petitioner in the closing credits of the program "Supermodels" aired on People's Television 4 (PTV 4),^[2] a fact later confirmed by Engr. Tony Lidua of said station.

With this discovery, Ocampo required petitioner to report to him the circumstances regarding the July 15, 1989, incident. Petitioner denied deserting his assignment with ABS-CBN in favor of the production of "Supermodels." He admitted, however, that his fleeting stint with PTV 4 started only late in the afternoon of July 15, 1989, a job he was "forced to accept" because of an urgent financial need "to defray the medical expenses of his sick child."^[3]

On August 2, 1989, petitioner was terminated from his employment on the ground of acts constituting disloyalty.

In a complaint for illegal dismissal filed by petitioner against ABS-CBN, Labor Arbiter

Oswald B. Lorenzo rendered a decision, the dispositive portion of which reads thus:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered as follows:

1. Declaring the dismissal of complaint JOSE ENTRADICHO by respondent firm as having been illegally effected;
2. Ordering respondent firm to immediately reinstate herein complainant to his former or substantially equivalent position without loss of seniority rights and benefits previously enjoyed;
3. Ordering respondent to pay complainant his full back wages from 04 August 1989 up to 31 August 1990 or a total of FORTY-SIX THOUSAND NINETY-TWO PESOS AND TWENTY-FOUR CENTAVOS (P46,092.24), or a period of 12.97 months times P3,556.50 per month;
4. Ordering respondent to pay complainant the amount of ONE THOUSAND SEVEN HUNDRED SEVENTY EIGHT PESOS AND TWENTY-FIVE CENTAVOS (P1,778.25), representing his fifteen (15) days suspension or the equivalent one-half month pay;
5. Ordering respondent to pay complainant for and as attorney's fees the amount of FOUR THOUSAND SEVEN HUNDRED EIGHTY SEVEN AND FOUR CENTAVOS (P4,787.04), representing ten (10) per cent of the total award in this case.

Finally respondent firm is hereby ordered to show compliance of the immediate reinstatement of complainant ENTRADICHO, either physically or merely in the payroll at the option of the former within five (5) days from the receipt of this decision."

On appeal, the NLRC set aside said decision and dismissed the case for lack of merit, but ABS-CBN was ordered to indemnify petitioner in the amount of P1,000.00 for its non-observance of due process in the termination of his services. Without filing any motion for reconsideration of the NLRC's decision, petitioner filed the instant special civil action.

The petition must be dismissed.

At the outset, the instant petition is procedurally defective for failure of petitioner to file a motion for reconsideration with the NLRC before availing of the special civil action of certiorari. In the case of *Building Care Corporation v. NLRC*,^[4] the Court declared that this premature action constitutes a fatal infirmity thus:

"x x x The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by the law was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned decision.

(T)he filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or vindicate itself of an act unfairly imputed. x x x

x x x And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration."

A motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.^[5] We had an occasion to stress this significant matter in *Zapata v. NLRC*, ^[6] where we ruled in this wise:

"Petitioner cannot, on its bare and self-serving representation that reconsideration is unnecessary, unilaterally disregard what the law requires and deny respondent NLRC its right to review its pronouncements before being haled to court to account therefor. On policy considerations, such prerequisite would provide an expeditious termination to labor disputes and assist in the decongestion of court dockets by obviating improvident and unnecessary recourse to judicial proceedings. The present case exemplifies the very contingency sought to be, and which could have been, avoided by the observance of said rules."

Rule VII, Section 14 of the NLRC Rules of Procedure provides that motions for reconsideration must be filed within ten (10) calendar days from receipt of the order, resolution, or decision of the NLRC,^[7] a procedure which is jurisdictional. Hence certiorari, as in this case, will not prosper.^[8] Section 1, Rule 65 of the 1997 Rules of Civil Procedure clearly provides that:

"Section 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

xxx xxx xxx."

In the absence of a motion for reconsideration filed within the ten-day reglementary period, the assailed order, resolution, or decision of the NLRC becomes final and executory after ten calendar days from receipt thereof.^[9]