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THIRD DIVISION

[G.R. No. 146212, September 05, 2007]

FRED N. BELLO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CORPUZ MOYA SECURITY AND SERVICES, INC. AND/OR REMEDIOS MOYA, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Petitioner Fred N. Bello seeks the reversal of the Resolution[1] of the Court of Appeals (CA) dated July 5, 2000, which dismissed his petition for *certiorari* for being filed out of time, and the CA Resolution [2] dated November 24, 2000, which denied his motion for reconsideration. It appears that on April 30, 1997, petitioner was employed as Operations Manager by respondent Corpuz Moya Security and Services, Inc. (CMSSI), a security agency. As such, he was in charge of all operational matters of the agency.[3] On July 15, 1997, CMSSI's Vice-President for Administration issued an Order limiting petitioner's functions to monitoring the formation of security guards assigned at Robinson's Galleria and Robinson's Ermita.[4] The petitioner protested the change of assignment; however, CMSSI insisted that the petitioner should follow the same. The petitioner agreed on the condition that he will be given a transportation allowance of not less than P60.00 and not more than P100.00 daily effective July 15, 1997.[5] Later, he sent a memorandum to CMSSI, questioning the change of his assignment and making some suggestions on how to improve CMSSI's operations.
[6]

In a Letter[7] dated August 28, 1997, the respondent CMSSI informed the petitioner that he was being dismissed:

> In view of the termination of our contract with the ROBINSONS ANTIPOLO HOMES and the need to adapt a policy of strict etrenchment due to loss of a substantial amount of a revenue by our company we are obliged much to our regret to inform you that we are dispensing with your services effective August 31, 1997 until such time as we shall be in a financial position to avail once more of your assistance.[8]

The petitioner received the letter on September 1, 1997. On September 15, 1997, the petitioner filed a Complaint[9] against CMSSI for illegal dismissal, unpaid salaries, nightshift differential, overtime pay and other money claims. In his Affidavit, the complainant admitted that the agency could hardly cope with its financial obligations, for which reason he has not yet requested for the reimbursement of his transportation expenses. For their part, the respondents explained that in the months of August and September 1997, Robinsons's Land Corporation cancelled its contracts with CMSSI. In order to cope with the huge loss of revenue, CMSSI was forced to adopt strict austerity measures. These measures

included the retrenchment of employees, particularly the petitioner, whose services had become unnecessary.; Moreover, based on the evaluation of the petitioner's performance, they found that he was incapable of discharging his duties and responsibilities, and that he was frequently absent for several days.[10]

On September 15, 1998, the Executive Labor Arbiter rendered a Decision[11] finding that the complainant was illegally dismissed. The Labor Arbiter held that the respondents failed to observe the procedure for the termination of employment, particularly the twin requirements of notice and hearing. He likewise noted that the reason for the retrenchment is not supported by substantial evidence. The dispositive portion of the decision states:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainant as illegally and unjustly dismissed and respondents are jointly and severally ordered to pay complainant ONE HUNDRED EIGHT THOUSAND PESOS (P108,000.00) representing his full backwages including 13th month pay and ordering respondents to reinstate complainant Fred N. Bello to his former position without loss of seniority rights. However, in case reinstatement is no longer practicable, complainant shall be paid separation pay of one-month pay for every year of service in addition to his full backwages. The reinstatement aspect is immediately executory even pending appeal.
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> SO ORDERED.[12]

On July 29, 1999, the National Labor Relations Commission (NLRC) reversed the Decision of the Labor Arbiter.[13] It found that there was sufficient basis for the petitioner's retrenchment in light of the financial difficulties being experienced by the Company at that time and the fact that petitioner was frequently absent. The NLRC ruled, thus:

> WHEREFORE, premises considered, the Decision dated 15 September 1998 is hereby REVERSED.
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> Respondent CORPUZ MOYA SECURITY & SERVICES, INC. is however ordered to indemnify complainant FRED N. BELLO the amount of P1,000.00. SO ORDERED.[14]

On September 13, 1999, the petitioner filed a motion for the reconsideration of the said decision, which the NLRC denied in a Resolution dated September 30, 1999.[15] The petitioner's counsel, Atty. Aileen Tagaban, received a copy of the Resolution on November 4, 1999. On the other hand, the petitioner's copy of the Resolution was returned unserved after three notices. The petitioner was only informed about the denial of his motion for reconsideration on April 18, 2000, through the Letter of the Deputy Executive Clerk, Second Division of the NLRC, dated April 10, 2000.[16] On June 2, 2000, the petitioner filed a petition for *certiorari* with the CA. On July 5, 2000, the CA issued a Resolution[17] dismissing the petition for *certiorari* for having been filed out of time. On August 4, 2000, the petitioner filed a motion for the reconsideration of the Resolution, which the appellate court denied on November 24, 2000.[18] The petitioner then filed this petition for review questioning the outright dismissal of his petition and praying that the Court grant his prayer for reinstatement and backwages. The Court required the respondents to file their

comment but they failed to do so. In a Resolution[19] dated December 8, 2003, the Court resolved to inform the respondents that they are deemed to have waived their right to file a comment and that the case will be resolved based on the pleadings submitted by the petitioner. The petitioner contends that the CA erred in finding that the petition for *certiorari* was filed out of time. He avers that, in labor cases, both the party and counsel must be furnished separately with copies of orders, decisions or resolutions of the NLRC; hence, the period within which to file the petition for *certiorari* must be counted from the time the counsel of record and the party shall have received their respective copies of the decision whichever comes later. To buttress this stance, he cites the case of *PNOC Dockyard and Engineering Corporation v. NLRC*[20] wherein the Court declared that "in labor cases, *both* the party and its counsel must be duly served their separate copies of the order, decision or resolution; unlike in ordinary judicial proceedings where notice to counsel is deemed notice to the party." The petitioner further urges the relaxation of the rules of procedure in view of the merits of his case. He avers that the respondents failed to substantiate their claim that the company is suffering from serious business losses to justify its policy of retrenchment. The Court agrees with the CA that the petition was filed out of time. The right to appeal is neither a natural right nor a part of due process. The perfection of an appeal within the period and in the manner prescribed by law is mandatory; noncompliance with this legal requirement is fatal and has the effect of making the judgment final and executory. [21] Here, the petitioner insists that he filed the petition for *certiorari on* time, which should be reckoned from the moment he was informed about the Resolution denying his motion for reconsideration, and not from the date his counsel received a copy of the said Resolution. The Court was confronted with the same issue in *Ginete v. Sunrise Manning Agency.*[22] In that case, the Court held that the period for filing a petition for certiorari should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration. The following discussion on this point is instructive:

> The case of PNOC Dockyard and Engineering Corporation vs. NLRC cited by petitioner enunciated that "in labor cases, *both* the party and its counsel must be duly served their separate copies of the order, decision or resolution; unlike in ordinary judicial proceedings where notice to counsel is deemed notice to the party." Reference was made therein to Article 224 of the Labor Code. But, as correctly pointed out by private respondent in its Comment to the petition, Article 224 of the Labor Code does not govern the procedure for filing a petition for *certiorari* with the Court of Appeals from the decision of the NLRC but rather, it refers to the execution of "final decisions, orders or awards" and requires the sheriff or a duly deputized officer to furnish both the parties and their counsel with copies of the decision or award for that purpose; There is no reference, express or implied, to the period to appeal or to file a petition for certiorari as indeed the caption is "execution of decisions, orders or awards." Taken in proper context, **Article 224 contemplates the furnishing of copies of "final decisions, orders or awards" and could not have been intended to refer to the period for computing the period for appeal to the Court of Appeals from a non-final judgment or order.** The period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65 pursuant to the ruling of the Court in the case of St. Martin Funeral Homes vs. NLRC. Section 4 of