

SECOND DIVISION

[G.R. No. 205061, June 08, 2016]

**EMERTIA G. MALIXI, PETITIONER, VS. MEXICALI PHILIPPINES
AND/OR FRANCESCA MABANTA, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

Before us is a Petition for Review on *Certiorari*^[1] seeking to set aside the August 29, 2012 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 115413, which dismissed the Petition for *Certiorari* filed therewith and affirmed the May 28, 2010 Resolution^[3] of the National Labor Relations Commission (NLRC) reinstating respondents Mexicali Philippines (Mexicali) and Francesca Mabanta's appeal, partly granting it and ordering petitioner Emerita G. Malixi's (petitioner) reinstatement but without the payment of backwages. Likewise assailed is the December 14, 2012 Resolution^[4] of the CA denying petitioner's Motion for Reconsideration.^[5]

Antecedent Facts

This case arose from an Amended Complaint^[6] for illegal dismissal and nonpayment of service charges, moral and exemplary damages and attorney's fees filed by petitioner against respondents Mexicali and its General Manager, Francesca Mabanta, on February 4, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 12-17618-08.

Petitioner alleged that on August 12, 2008, she was hired by respondents as a team leader assigned at the delivery service, receiving a daily wage of Three Hundred Eighty Two Pesos (P382.00) sans employment contract and identification card (ID). In October 2008, Mexicali's training officer, Jay Teves (Teves), informed her of the management's intention to transfer and appoint her as store manager at a newly opened branch in Alabang Town Center, which is a joint venture between Mexicali and Calexico Food Corporation (Calexico), due to her satisfactory performance. She was apprised that her monthly salary as the new store manager would be Fifteen Thousand Pesos (P15,000.00) with service charge, free meal and side tip. She then subsequently submitted a resignation letter^[7] dated October 15, 2008, as advised by Teves. On October 17, 2008, she started working as the store manager of Mexicali in Alabang Town Center although, again, no employment contract and ID were issued to her. However, in December 2008, she was compelled by Teves to sign an end-of-contract letter by reason of a criminal complaint for sexual harassment she filed on December 3, 2008 against Mexicali's operations manager, John Pontero (Pontero), for the sexual advances made against her during Pontero's visits at Alabang branch.^[8] When she refused to sign the end-of-contract letter, Mexicali's administrative officer, Ding Luna (Luna), on December 15, 2008, personally went to the branch and caused the signing of the same. Upon her vehement refusal to sign,

she was informed by Luna that it was her last day of work.

Respondents, however, denied responsibility over petitioner's alleged dismissal. They averred that petitioner has resigned from Mexicali in October 2008 and hence, was no longer Mexicali's employee at the time of her dismissal but rather an employee of Calexico, a franchisee of Mexicali located in Alabang Town Center which is a separate and distinct corporation.

In her reply, petitioner admitted having resigned from Mexicali but averred that her resignation was a condition for her promotion as store manager at Mexicali's Alabang Town Center branch. She asserted that despite her resignation, she remained to be an employee of Mexicali because Mexicali was the one who engaged her, dismissed her and controlled the performance of her work as store manager in the newly opened branch.

Proceedings before the Labor Arbiter

In a Decision^[9] dated August 27, 2009, the Labor Arbiter declared petitioner to have been illegally dismissed by respondents. By piercing the veil of corporate fiction, the Labor Arbiter ruled that Mexicali and Calexico are one and the same with interlocking board of directors. The Labor Arbiter sustained petitioner's claim that she is an employee of Mexicali as she was hired at Calexico by Mexicali's corporate officers and also dismissed by them and hence, held Mexicali responsible for petitioner's dismissal. The Labor Arbiter then observed that petitioner was only forced to resign as a condition for her promotion, thus, cannot be utilized by Mexicali as a valid defense. As the severance from employment was attended by fraud, petitioner was awarded moral and exemplary damages. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal and ORDERED to reinstate complainant to her former position even pending appeal. All the respondents are hereby jointly and severally ordered to pay complainant the following:

1. Full backwages from date of dismissal to date of actual reinstatement which to date amounts to P139,013.94.
2. Moral damages in the sum of P100,000.00.
3. Exemplary damages in the sum of P50,000.00.

SO ORDERED.^[10]

Proceedings before the National Labor Relations Commission

On October 26, 2009, respondents filed an Appeal Memorandum with Prayer for Injunction^[11] with the NLRC, averring that the Labor Arbiter erred in: (1) holding them liable for the acts of Calexico, which is a separate entity created with a different purpose, principal office, directors/incorporators, properties, management and business plans from Mexicali as evidenced by their respective Articles of Incorporation and By-Laws;^[12] (2) ruling that petitioner's resignation was not voluntary; and, (3) ruling that there is an employer-employee relationship between

petitioner and Mexicali on the basis of petitioner's mere allegation that she was hired and dismissed by Mexicali's officers.

In a Resolution^[13] dated November 25, 2009, the NLRC dismissed the appeal for having been filed beyond the 10-day reglementary period to appeal. The NLRC rioted that the Appeal Memorandum was filed only on October 26, 2009 despite respondents' receipt of the Labor Arbiter's Decision on October 13, 2009 (as stated in the Appeal Memorandum).

Respondents filed a Motion for Reconsideration and Motion for Issuance of TRO/Injunction^[14] explaining that the Appeal Memorandum filed by them contained a typographical error as to the date of actual receipt of the Labor Arbiter's Decision; that while a copy of the said decision was received by them on October 13, 2009, the same was only received by their counsel of record on October 15, 2009^[15] which is the reckoning date of the 10-day reglementary period within which to appeal.

In a Resolution^[16] dated May 28, 2010, the NLRC granted respondents' motion and reinstated the appeal. The NLRC ruled that pursuant to its Rules of Procedure, the date to reckon the 10-day reglementary period should be the date when the counsel actually received the copy of the Labor Arbiter's Decision and that respondents' appeal was filed on time.

The NLRC likewise ruled on the merits of the appeal. It partly granted it by sustaining respondents' contention that Mexicali and Calexico are separate and distinct entities, Calexico being the true employer of petitioner at the time of her dismissal. Contrary to the findings of the Labor Arbiter, petitioner voluntarily resigned from Mexicali to transfer to Calexico in consideration of a higher pay and upon doing so severed her employment ties with Mexicali. The NLRC, nevertheless, ordered Mexicali, being the employer of Teves and Luna who caused petitioner's termination from her employment with Calexico, to reinstate petitioner to her job at Calexico but without paying her any backwages. The dispositive portion of the NLRC Resolution reads:

WHEREFORE, premises considered, this Commission GRANTS the Motion, for Reconsideration of its 25 November 2009 Resolution which dismissed the appeal for having been filed out of time.

This Commission also PARTLY GRANTS the appeal of respondents-appellants and the Decision of the Labor Arbiter dated 27 August 2009 is MODIFIED ordering Mexicali Food Corporation to cause the reinstatement of complainant-appellee to his former position as store manager at its franchisee Calexico Food Corporation within ten (10) days from receipt of this Resolution without backwages.

SO ORDERED.^[17]

Proceedings before the Court of Appeals

Petitioner sought recourse with the CA via Petition for *Certiorari*.^[18] It was petitioner's contention that the NLRC erred in reinstating respondents' appeal

despite being filed beyond the reglementary period; in resolving the issue of dismissal considering that only the timeliness of the appeal was the sole issue raised in respondents' motion for reconsideration; and in holding that she was not illegally dismissed but voluntarily resigned from Mexicali.

In a Decision^[19] dated August 29, 2012, the CA dismissed the Petition for *Certiorari* and affirmed the May 28, 2010 Resolution of the NLRC. The CA ruled that the NLRC correctly reinstated respondents' appeal and properly resolved the issues raised therein to conform with the well-settled principle of expeditious administration of justice. The CA also agreed with the NLRC that there was no illegal dismissal since petitioner voluntarily tendered her resignation to assume a position in Calexico.

Petitioner moved for reconsideration which was denied by the CA in its Resolution^[20] of December 14, 2012.

Hence, this Petition.

Issues

I

WHETHER THE COURT OF APPEALS ERRED IN SUSTAINING THE NATIONAL LABOR RELATIONS COMMISSION'S DECISION REINSTATING THE RESPONDENTS' APPEAL DESPITE BEING FILED OUT OF TIME.

II

WHETHER THE COURT OF APPEALS ERRED IN SUSTAINING THE NATIONAL LABOR RELATIONS COMMISSION'S RESOLUTION (*TO THE RESPONDENTS' MOTION FOR RECONSIDERATION*) PARTLY GRANTING THE RESPONDENTS' APPEAL (*REGARDING THE ISSUE OF ILLEGAL DISMISSAL*) DESPITE BEING A NON-ISSUE IN THEIR MOTION FOR RECONSIDERATION.

III

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THERE WAS NO ILLEGAL DISMISSAL.

IV

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE PETITIONER RESIGNED FROM HER EMPLOYMENT WITH THE RESPONDENTS.

V

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FAILING TO RULE ON THE ISSUE OF WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE AWARD OF MORAL AND EXEMPLARY

DAMAGES RENDERED BY THE LABOR ARBITER, DESPITE BEING RAISED
IN THE PETITIONER'S PETITION FOR CERTIORARI.^[21]

Petitioner maintains that the CA gravely erred in affirming the NLRC's reinstatement of respondents' appeal despite being filed out of time and the NLRC's ruling that there was no illegal dismissal, arguing that it is a non-issue in respondents' motion for reconsideration and there was absence of any valid cause for terminating her employment with Mexicali.

Our Ruling

The Petition has no merit.

The appeal before the NLRC was filed on time.

Section 6, Rule III of the 2005 Revised Rules of Procedure of the NLRC (2005 NLRC Rules) expressly mandates that "(f)or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record." This procedure is in line with the established rule that if a party has appeared by counsel, service upon him shall be made upon his counsel.^[22] "The purpose of the rule is to maintain a uniform procedure calculated to place in competent hands the prosecution of a party's case."^[23] Thus, Section 9, Rule III of the NLRC Rules provides that "(a)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure x x x."

Accordingly, the 10-day period for filing an appeal with the NLRC should be counted from the receipt by respondents' counsel of a copy of the Labor Arbiter's Decision on October 15, 2009. Petitioner's contention that the reckoning period should be the date respondents actually received the Decision on October 13, 2009 is bereft of any legal basis. As mentioned, when a party to a suit appears by counsel, service of every judgment and all orders of the court must be sent to the counsel. Notice to counsel is an effective notice to the client, while notice to the client and not his counsel is not notice in law.^[24] Therefore, receipt of notice by the counsel of record is the reckoning point of the reglementary period.^[25] From the receipt of the Labor Arbiter's Decision by respondent's counsel on October 15, 2009, the 10th day falls on October 25, 2009 which is a Sunday, hence, Monday, October 26, 2009, is the last day to file the appeal. Consequently, respondents' appeal was timely filed.

The NLRC has authority to resolve the appeal on its merits despite being a non-issue in respondents' motion for reconsideration.

Petitioner still argues that the NLRC gravely abused its discretion in ruling on the merits of the case despite being a non-issue in the motion for reconsideration, She contends that in resolving the issue of the legality or illegality of her dismissal, which was not raised in respondents' motion for reconsideration, the NLRC deprived her of the opportunity to properly refute or oppose respondents' evidence thereby violating her right to due process.

The contention is untenable. The essence of procedural due process is that a party to a case must be given sufficient opportunity to be heard and to present evidence.^[26] Indeed, petitioner had this opportunity to present her own case and submit