

FIRST DIVISION

[G.R. No. 205575, July 22, 2015]

**VISAYAN ELECTRIC COMPANY EMPLOYEES UNION-ALU-TUCP
AND CASMERO MAHILUM, PETITIONERS, VS. VISAYAN ELECTRIC
COMPANY, INC. (VECO), RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Resolutions dated September 25, 2012^[2] and December 19, 2012^[3] of the Court of Appeals (CA) in CA-GR. SP No. 06329, which dismissed the *certiorari* petition filed by petitioners Visayan Electric Company Employees Union-ALU-TUCP (the Union) and Casmero Mahilum (Mahilum; collectively petitioners) against the Decision^[4] dated June 30, 2011 of the National Labor Relations Commission (NLRC) in NLRC CC(V)-12-000003-10 (NCMB-RBVII-NS-10-12-10) for failure of their new counsel to show cause why their *certiorari* petition should not be dismissed for having been filed beyond the reglementary period.

The Facts

Respondent Visayan Electric Company, Inc. (VECO) is a corporation engaged in the supply and distribution of electricity in Cebu City and its neighboring cities, municipalities, and barangays.^[5] The Union is the exclusive bargaining agent of VECO's rank-and-file employees, and Mahilum was the Union's president from October 2007 until his termination from employment on October 28, 2010.^[6]

It was claimed that, before Mahilum was elected as union officer, he was transferred from VECO's Public Relations Section to its Administrative Services Section without any specific work. When he was elected as union secretary, he was transferred to the Line Services Department as its Customer Service Representative.^[7] At the time of his election as union president, VECO management allegedly: (a) terminated active union members without going through the grievance machinery procedure prescribed under the Collective Bargaining Agreement^[8] (CBA); (b) refused to implement the profit-sharing scheme provided under the same CBA^[9]; (c) took back the motorbikes issued to active union members; and (d) revised the electricity privilege^[10] granted to VECO's employees.^[11]

Thus, on May 1, 2009, union members marched on the streets of Cebu City to protest VECO's refusal to comply with the political and economic provisions of the CBA. Mahilum and other union officers were interviewed by the media, and they handed out a document^[12] containing their grievances against VECO, the gist of which came out in local newspapers.^[13] Following said incident, Mahilum was

allegedly demoted as warehouse staff to isolate him and restrict his movements. Other union officers were transferred to positions that will keep them away from the general union membership.^[14]

On May 8, 2009, Mahilum was issued a Notice to Explain^[15] why he should not be terminated from service due to loss of trust and confidence, as well as in violating the Company Code of Discipline, for causing the publication of what VECO deemed as a libelous article. The other union officers likewise received similar notices^[16] for them to explain their actions, which they justified^[17] as merely an expression of their collective sentiments against the treatment of VECO's management towards them.^[18]

On May 20, 2009, the union officers were notified^[19] of the administrative investigation to be conducted relative to the charges against them. During the scheduled investigation, the Union's counsel initially raised its objection to the proceedings and insisted that the investigation should be conducted through the grievance machinery procedure, as provided in the CBA.^[20] However, upon the agreement to proceed with the investigation of the Union Vice President, Renato Gregorio M. Gimenez (Gimenez), through his own counsel, Mahilum and the other union officers likewise agreed to proceed with the aforesaid investigation, with Gimenez's counsel representing the Union.^[21]

Prior to the said investigation, the Union filed on May 18, 2009, a Notice of Strike^[22] with the National Conciliation and Mediation Board (NCMB) against VECO, which facilitated a series of conferences that yielded a Memorandum of Agreement^[23] (MOA) signed by the parties on August 7, 2009.^[24] The parties likewise put to rest the critical issue of electricity privilege and agreed before the NCMB on a conversion rate of said privilege to basic pay. Moreover, the administrative investigation on the alleged libelous publication was deferred until after the CBA renegotiation.^[25]

However, even before the conclusion of the CBA renegotiation^[26] on June 28, 2010, several complaints for libel were filed against Mahilum and the other union officers by VECO's Executive Vice President and Chief Operating Officer Jaime Jose Y. Aboitiz.^[27] The administrative hearing on the charges against Mahilum resumed with due notice to the latter, but he protested the same, referring to it as "*moro-moro*" or "*kangaroo*" and insisting that the investigation should follow the grievance machinery procedure under the CBA.^[28] Nonetheless, VECO's management carried on with its investigation and, on the basis of the findings thereof, issued a notice^[29] terminating Mahilum from employment on October 28, 2010.^[30]

On even date, the Union filed another Notice of Strike^[31] with the NCMB against VECO on the grounds of unfair labor practice, specifically union busting for the dismissal and/or suspension of its union president and officers, refusal to bargain collectively, as well as non-observance of the grievance procedure in their CBA.^[32] To avert any work stoppage that will prejudice VECO's power distribution activity, the Secretary of Labor intervened and issued an Order^[33] dated November 10, 2010 certifying the labor dispute to the NLRC for compulsory arbitration.^[34]

Consequently, the strike was enjoined; Mahilum was ordered reinstated in the payroll; and the parties were directed to refrain from committing any act that would exacerbate the situation.^[35]

The NLRC Ruling

After submission of the respective position papers^[36] of both parties, the NLRC Seventh Division rendered Decision^[37] on June 30, 2011 dismissing the charge of unfair labor practice against VECO for lack of merit, and declaring Mahilum's dismissal from employment as legal.

The NLRC found VECO to have acted within the bounds of law when it administratively investigated the suspended or terminated employees and union officers/members, instead of subjecting their respective cases to the grievance machinery procedure provided in the CBA.^[38] In resolving apparently conflicting provisions in the CBA, the NLRC applied the **specific** provision found in Section 13 of Article XIV that disciplinary actions shall be governed by the rules and regulations promulgated by the company. Since the administrative investigations conducted by VECO were found to have complied with procedural due process requirements, there was no unfair labor practice to speak of.^[39]

On the matter of Mahilum's dismissal and the filing of criminal cases against the union officers, the NLRC found no substantial evidence to prove the imputation of union busting. Similarly unsubstantiated were the allegations of fraud and deceit in hiring and contracting out services for functions performed by union members, and declaring certain positions confidential and transferring union members to other positions without prior discussions, thereby allegedly interfering with their right to self-organization and reducing union membership.^[40]

The issue on VECO's alleged modification of the electricity privilege, which the Union claimed as violative of the CBA, was declared mooted by the MOA entered into between the parties, with the assistance of the NCMB, providing for, *inter alia*, electricity privilege conversion to basic pay. This was subsequently incorporated in the Renegotiated CBA dated June 28, 2010.^[41]

Finally, the NLRC ruled that Mahilum was terminated for a just and valid cause under Article 282 (c) of the Labor Code, *i.e., fraud or willful breach of trust by the employee of the trust reposed in him by his employer or duly authorized representative*, when he, together with some other union officers, caused the publication of a document which was deemed to have dishonored and blackened the memory of former corporate officer Luis Alfonso Y. Aboitiz, besmirched VECO's name and reputation, and exposed the latter to public hatred, contempt, and ridicule.^[42]

Aggrieved, petitioners filed a motion for reconsideration^[43] from the foregoing NLRC Decision, which was denied in a Resolution^[44] dated July 29, 2011. They received said Resolution on August 18, 2011.^[45]

On October 18, 2011, petitioners elevated their case to the CA on *certiorari* petition,^[46] docketed as CA-G.R. SP No. 06329, imputing grave abuse of discretion

amounting to lack or excess of jurisdiction on the part of the NLRC.

On February 29, 2012, the CA issued a Resolution^[47] directing petitioners to show cause why the *certiorari* petition should not be dismissed for having been filed "one day behind the reglementary period."^[48]

On March 13, 2012, Atty. Jonas V. Asis (Atty. Asis) from the Seno Mendoza & Associates Law Offices filed in behalf of petitioners a Manifestation/Explanation^[49] claiming that "there was unintended error/mistake in the computation of the period,"^[50] and that there was no prejudice caused to VECO by the "unintended one-day late filing of the petition."^[51]

The CA Ruling

On September 25, 2012, the CA issued the assailed September 25, 2012 Resolution^[52] pointing out that on March 7, 2012, petitioners had filed a Manifestation^[53] that they had terminated the services of Atty. Asis and the Seno Mendoza & Associates as their counsel in this case, and have contracted the services of Atty. Remigio D. Saladero, Jr. (Atty. Saladero) as their new counsel. Consequently, the CA deemed as not filed the Manifestation/Explanation filed by Atty. Asis, and dismissed the *certiorari* petition for failure of Atty. Saladero to comply with the Resolution dated February 29, 2012.

The motion for reconsideration^[54] filed by Atty. Saladero imploring the CA to consider the Manifestation/Explanation filed by Atty. Asis despite the fact that he was no longer petitioners' counsel of record was denied in a Resolution^[55] dated December 19, 2012 for lack of merit.

The Issue

Undeterred, petitioners are now before the Court maintaining that the CA erred in dismissing the *certiorari* petition on account of the one-day delay in its filing despite the serious errors committed by the NLRC in absolving VECO from the charge of unfair labor practice and illegal dismissal of Mahilum.

The Court's Ruling

The petition is not impressed with merit.

Under Section 4, Rule 65 of the 1997 Rules of Civil Procedure, *certiorari* should be filed "**not later than sixty (60) days** from notice of the judgment, order or resolution" sought to be assailed. The provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a pleading is a jurisdictional caveat that even this Court cannot trifle with.^[56]

The Union admittedly^[57] received on August 18, 2011 the NLRC's July 29, 2011 Resolution, which denied their motion for reconsideration of the NLRC's June 30, 2011 Decision. Therefore, the 60-day period within which to file a petition for

certiorari ended on October 17, 2011. But the *certiorari* petition was filed one day after, or on October 18, 2011. Thus, petitioners' failure to file said petition within the required 60-day period rendered the NLRC's Decision and Resolution impervious to any attack through a Rule 65 petition for *certiorari*, and no court can exercise jurisdiction to review the same.^[58]

Petitioners adamantly insist, however, that the "one-day delay occasioned by an honest mistake in the computation of dates should have been overlooked by the CA in favor of substantial justice."^[59] Their former counsel, Atty. Asis, allegedly thought in good faith that the month of August has thirty (30) days, and that sixty (60) days from August 18, 2011 is October 18, 2011.^[60]

The Court is not convinced.

First. The fact that the delay in the filing of the petition for *certiorari* was only one day is **not** a legal justification for non-compliance with the rule requiring that it be filed not later than sixty (60) days from notice of the assailed judgment, order or resolution. The Court cannot subscribe to the theory that the ends of justice would be better subserved by allowing a petition for *certiorari* filed only one-day late. When the law fixes sixty (60) days, it cannot be taken to mean also sixty-one (61) days, as the Court had previously declared in this wise:

[W]hen the law fixes thirty days [or sixty days as in the present case], we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim and fancy should play no part in its application.

^[61]

Second. While it is always in the power of the Court to suspend its own rules, or to except a particular case from its operation,^[62] the liberality with which equity jurisdiction is exercised must always be anchored on the basic consideration that the same must be warranted by the circumstances obtaining in the case.^[63] However, there is no showing herein of any exceptional circumstance that may rationalize a digression from the rule on timeliness of petitions.

Moreover, petitioners failed to satisfactorily show that the refusal of VECO to follow the grievance machinery procedure under Section 4, Article XVII of the CBA in the suspension and termination from employment of the other union officers and members constituted unfair labor practice.

True, it is a fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions. If the provisions of the CBA seem clear and unambiguous, the literal meaning of their stipulations shall control. However, as in this case, when general and specific provisions of the CBA are inconsistent, the **specific provision shall be paramount** to and govern the general provision.^[64]