

SECOND DIVISION

[G.R. No. 166411, August 03, 2010]

**ELPIDIO CALIPAY, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, TRIANGLE ACE CORPORATION AND
JOSE LEE, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), dated August 24, 2004 and December 10, 2004, respectively, in CA-G.R. SP No. 79277. The CA Decision dismissed the special civil action for *certiorari* filed by petitioner, while the CA Resolution denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On July 16, 1999, a Complaint^[3] for illegal dismissal, unfair labor practice, underpayment of wages and 13th month pay, non-payment of service incentive leave pay, overtime pay, premium pay for holiday, rest day, night shift allowances and separation pay was filed by herein petitioner Elpidio Calipay, together with Alfredo Mission and Ernesto Dimalanta against herein private respondents Triangle Ace Corporation (Triangle) and Jose Lee.

Calipay and the other complainants alleged in their Position Paper that in the course of their employment, they were not given any specific work assignment; they performed various kinds of work imposed upon them by Lee; in discharging their functions, they were required by Lee to work for nine (9) hours a day, beginning from 7:00 a.m. and ending at 6:00 p.m. with a break of one hour at 12:00 noon; they were also required to report from Monday to Sunday; for work rendered from Mondays to Saturdays beyond the normal eight (8) working hours in a day, they were paid a uniform daily wage in the amount of P140.00 even during holidays; for work performed on Sundays, they were not paid any wage due to the policy of Lee that his workers must provide work without pay at least a day in the week under his so-called "*bayanihan system*"; in receiving their wages, they were not given any duly accomplished payslips; instead, they were forced to sign a blank form of their daily time records and salary vouchers.

It was further alleged that in May 1998, Lee confronted Calipay and Mission regarding their alleged participation and assistance in Dimalanta's claim for disability benefits with the Social Security System; despite their denials, Lee scolded Calipay and Mission; this incident later led to their dismissal in the same month.

In their Position Paper, private respondents countered that the termination of Calipay and the other complainants was for a valid or just cause and that due

process was observed. They claimed, among others, that Calipay was on absence without leave (AWOL) status from November 2, 1998 up to November 17, 1998; a memorandum dated November 17, 1998, requiring him to explain why his services should not be terminated, was sent by mail but he refused to receive the same; for failure to explain his side, another memorandum dated December 11, 1998 was issued terminating Calipay's employment on the ground of abandonment of work; there is no unfair labor practice because there is no union; there is full compliance with the law regarding payment of wages and other benefits due to their employees; non-payment of nightshift premium is true, because the company does not operate at night.

On July 10, 2000, the Labor Arbiter handling the case rendered a Decision^[4] dismissing the Complaint for lack of merit.

Calipay and the other complainants filed an appeal with the National Labor Relations Commission (NLRC).^[5]

On February 1, 2002, the NLRC rendered judgment via a Resolution^[6] based on the findings that: (a) in dismissing the complainants from their employment, respondents failed to faithfully observe the requirements of notice and hearing rendering the said dismissals invalid and illegal; (b) the dismissals were not based on any of the just causes provided in Article 282 of the Labor Code; (3) the complainants' failure to report for work were justified by their sudden termination from employment which nullified respondents' contention that complainants were guilty of abandonment of work. The dispositive portion of the NLRC Decision reads as follows:

WHEREFORE, the Decision appealed from is hereby MODIFIED, ordering respondents Triangle Ace Corporation Inc./Jose Lee to reinstate the complainants to their former position without loss of seniority rights and benefits and to pay them full backwages reckoned from the date of dismissals up to actual reinstatement which as of even date amount to P149,017.57 for Alfredo Mission, P148,705.44 for Elpidio Calipay, and P165,961.77 for Ernesto Dimalanta, plus ten (10%) percent of the total award as and for attorney's fees totaling P46,368.47 computed as follows:

x x x x

Should reinstatement be not feasible, the payment of separation pay in lieu thereof is awarded.

The Decision is AFFIRMED in all other respects.

SO ORDERED.^[7]

Aggrieved, private respondents filed a Motion for Reconsideration.

On September 24, 2002, the NLRC issued a Resolution^[8] granting private

respondents' Motion for Reconsideration, the dispositive portion of which reads:

WHEREFORE, the instant motion being meritorious is GIVEN DUE COURSE. Accordingly, Our Resolution promulgated on February 1, 2002 is hereby RECONSIDERED and the decision of the Arbiter *a quo* dated 10 July 2002 is REINSTATED and AFFIRMED en (sic) toto.

SO ORDERED.^[9]

As a consequence, Calipay and the other complainants moved for the reconsideration of the above-quoted Resolution, but the same was denied by the NLRC in a Resolution dated June 30, 2003.

Calipay and the other complainants then filed a special civil action for *certiorari*, with the CA assailing the September 24, 2002 and June 30, 2003 Resolutions of the NLRC.

On August 24, 2004, the CA rendered its presently disputed Decision dismissing the abovementioned petition for *certiorari*.

Calipay filed a Motion for Reconsideration, but the CA denied it in its Resolution dated December 10, 2004.

Hence, the instant petition of Calipay raising the following issues:

I.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT ISSUED ITS DECISION DATED 24 AUGUST 2004 AND RESOLUTION DATED 10 DECEMBER 2004 DISMISSING THE PETITION FOR CERTIORARI AND AFFIRMING THE RESOLUTIONS OF PUBLIC RESPONDENT NLRC DATED 30 JUNE 2003 AND 24 SEPTEMBER 2002, WHICH RESOLUTIONS DISMISSED PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BY REVERSING RESPONDENT NLRC'S PREVIOUS RESOLUTION DATED 01 FEBRUARY 2002.

II.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE SUBJECT RESOLUTIONS OF PUBLIC RESPONDENT NLRC DISMISSING THE APPEAL FILED BY PETITIONER AND REINSTATED THE DECISION OF LABOR ARBITER PANGANIBAN ORDERING THE DISMISSAL OF THE COMPLAINT FOR ILLEGAL TERMINATION NOTWITHSTANDING THE PREVIOUS RESOLUTION OF PUBLIC RESPONDENT NLRC DATED 01 FEBRUARY 2002 DECLARING THE ILLEGALITY OF PETITIONER'S DISMISSAL FROM EMPLOYMENT.

III.

WHETHER OR NOT SUBSTANTIAL JUSTICE WAS UNDULY COMPROMISED WHEN PUBLIC RESPONDENT COURT OF APPEALS AFFIRMED NLRC'S DISMISSAL OF PETITIONER'S APPEAL DATED 06 SEPTEMBER 2000 AND RULED AGAINST PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BASED SOLELY ON TECHNICAL RULES OF PROCEDURE WHEN THE SAME SHOULD HAVE BEEN RELAXED TO GIVE WAY TO MERITORIOUS AND JUDICIOUS CASES SUCH AS THIS INVOLVING DISMISSAL FROM WORK OF AN EMPLOYEE.^[10]

Petitioner's basic contention is that the CA erred in dismissing the petition filed with it on the basis of strictly adhering to purely technical grounds. Petitioner argues that he cannot be solely faulted for his failure to timely file his appeal with the NLRC, considering that his former counsel suddenly and unexpectedly withdrew his services at the time that said counsel should have been preparing his appeal, leaving petitioner without anyone to help him prepare his appeal on time. Petitioner avers that in a number of cases, this Court allowed the late filing of an appeal where such appeal by a dismissed worker is, like in the present case, impressed with merit in order that the ends of substantial justice would be served.

The petition lacks merit.

It bears to reiterate the settled rule that the timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a "mere technicality" to suit the interest of a party.^[11] The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules.^[12]

Procedural rules setting the period for perfecting an appeal or filing a petition for review are generally inviolable.^[13] It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege.^[14] Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.^[15] The requirements for perfecting an appeal within the reglementary period specified in law must, as a rule, be strictly followed.^[16] Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business.^[17] Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.^[18] Failure to perfect the appeal renders the judgment of the court final and executory.^[19] Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.^[20]

It is true that procedural rules may be waived or dispensed with in the interest of substantial justice.^[21] This Court may deign to veer away from the general rule if, on its face, the appeal appears to be absolutely meritorious.^[22] Indeed, in a number of instances, procedural rules are relaxed in order to serve substantial justice. However, the Court sees no reason to do so in this case as there is no