

THIRD DIVISION

[G.R. No. 148333, November 17, 2004]

**VIRGILIO SANTIAGO, PETITIONER, VS. BERGENSEN D.Y.
PHILIPPINES AND NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION), RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

Petitioner Virgilio Santos' petition for Certiorari before the Court of Appeals having been dismissed by Resolution^[1] of October 15, 1999 on the ground that it was filed out of time, and his Motion for Reconsideration having been denied by Resolution^[2] of May 18, 2001, he lodged the Petition for Review on Certiorari at bar.

Petitioner filed a complaint for illegal dismissal, non-payment of wages, overtime pay, vacation pay, moral and exemplary damages and attorney's fees against Bergensen D.Y. Philippines (respondent) before the Labor Arbiter.

The Labor Arbiter dismissed the complaint for lack of merit.

On appeal, the National Labor Relations Commission (NLRC), by Resolution^[3] of November 16, 1998, affirmed the finding that petitioner was not illegally dismissed. It, however, required respondent to pay petitioner the sum of Ten (10) Thousand Pesos (P10,000.00) for failure to afford petitioner due process.

Petitioner received a copy of the NLRC Resolution on December 18, 1998.^[4] On December 28, 1998, he filed a motion for reconsideration which the NLRC denied with finality by Resolution^[5] of August 5, 1999. On August 18, 1999,^[6] "he was informed by another law firm" of the denial of the Motion for Reconsideration.

On October 11, 1999, he filed before the appellate court a petition for Certiorari, docketed as CA-G.R. SP No. 55295, which was, as earlier adverted to, dismissed by Resolution^[7] of **October 15, 1999** for having been filed four (4) days late.

Petitioner through counsel alleged that he received copy of the resolution dated November 16, 1998 of the National Labor Relations Commission (NLRC) on December 18, 1998, denying his appeal. Ten days (10) days later, or on December 28, 1998, he filed his motion for reconsideration. On August 18, 1999, he actually received copy of the NLRC's resolution denying his aforesaid motion for reconsideration (although admittedly said resolution was received by another law firm earlier on August 16, 1999). The present petition for certiorari was filed on December 11, 1999.

There are fifty-four (54) days from August 18, 1999 to October 11, 1999. However, the ten (10) day period from receipt of the assailed resolution on December 18, 1998 to the filing of his motion for reconsideration on December 28, 1998 must be included in determining the 60-day reglementary period (Section 4, Rule 65 of the 1997 Rules of Civil Procedure as amended by Resolution of the Supreme Court En Banc dated July 21, 1998 in Bar Matter No. 803 which took effect on September 1, 1998). The last day of the reglementary period for filing the petition for certiorari was on October 7, 1999. Hence, the present petition for certiorari was filed four (4) days late.^[8] (Emphasis and underscoring supplied)

Petitioner's Motion for Reconsideration which was filed on **November 17, 1999** was denied by Resolution^[9] of May 18, 2001, hence, the petition at bar.

Before this Court, petitioner invokes the retroactive application of A.M. No. 00-2-03-SC, which took effect on **September 1, 2000**, amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure, contending that rules of procedure should be liberally construed in order to promote its objectives of securing a just, speedy and inexpensive disposition of every action and proceeding.^[10]

Under A.M. No. 00-2-03-SC, in case a motion for reconsideration of the judgment, order or resolution sought to be assailed has been filed, the 60-day period to file a petition for certiorari shall be counted from notice of the denial of such motion. Thus Section 4, Rule 65, as amended by A.M. No. 00-2-03-SC, provides:

SEC. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (Underscoring supplied)

This Court finds for petitioner.

When petitioner filed his petition for Certiorari before the appellate court on October 15, 1999, the prevailing rule was Section 4, Rule 65 (as amended by the Supreme Court En Banc Resolution in Bar Matter No. 83 dated July 21, 1998) which provided:

SEC. 4. *Where petition filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed xxx.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

The appellate court thus correctly dismissed his petition.