

## THIRD DIVISION

[ G.R. No. 107307, August 11, 1997 ]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND LORENZO MENDOZA, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

In the interpretation of an employer's retrenchment program providing for separation benefits, all doubts should be construed in favor of the underprivileged worker.

#### Statement of the Case

This principle is emphasized in resolving this petition for certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court filed by Philippine National Construction Corporation (PNCC) assailing the September 30, 1992 Decision<sup>[2]</sup> of Respondent National Labor Relations Commission (NLRC)<sup>[3]</sup> in NLRC NCR CA No. 001672-91 (NCR-00-09-04156-89). Public Respondent NLRC affirmed in all respects, except the award of attorney's fees,<sup>[4]</sup> Executive Labor Arbiter Valentin C. Guanio's decision, dated December 3, 1990, which ordered thus:<sup>[5]</sup>

"WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent corporation [petitioner herein] to pay complainant [private respondent herein] his separation pay of P9,204.00 plus ten percent (10%) thereof as attorney's fees."

#### The Facts

The facts in this case are undisputed. From July 14, 1981 until September 23, 1982, Petitioner PNCC employed Private Respondent Mendoza as Driver II at its Magat Dam Project. A few days after, on September 27, 1982, private respondent was again employed as Driver II at PNCC's LRT Project until January 31, 1983. The following day, February 1, 1983, UNTIL August 1, 1984, petitioner deployed private respondent, also as Driver II, in its Saudi Arabia Project. It took more than six months for private respondent to be repatriated to the Philippines. Upon his return, he resumed his work as Driver II in the PG-7B Project of petitioner from February 22, 1985 until May 18, 1986.

For more than two years afterwards, private respondent was not given any work assignment. On August 17, 1988, he was hired anew as Driver II for the Molave Project of petitioner. This lasted until June 15, 1989.

Thereafter, private respondent claimed the benefits of petitioner's Retrenchment Program, particularly under paragraph. 2.1 thereof which provides:

"Coverage. -- Special separation benefits shall be given to all regular, project employees and permanent employees who have rendered at least one (1) year of continuous service with PNCC and are actively employed in the company as of the date of their separation."<sup>[6]</sup>

However, petitioner denied his claim. Thus, on September 5, 1989, private respondent filed a complaint for nonpayment of separation pay as provided for in said program.<sup>[7]</sup> As earlier stated, the executive labor arbiter granted private respondent's plea, and public respondent affirmed such grant minus the award of attorney's fees.

No motion for reconsideration was filed because, according to petitioner, "the questions raised before this Honorable Court are the same questions which were considered by Public Respondent NLRC."<sup>[8]</sup>

Acting on the petition, this Court (Second Division) in a Resolution dated October 27, 1992 issued a restraining order enjoining respondents from enforcing the assailed Decision.<sup>[9]</sup>

#### NLRC's Ruling

In dismissing petitioner's appeal, Respondent NLRC ratiocinated thus:<sup>[10]</sup>

"We fail to see any logic in respondent's [petitioner herein] contention that the period determinative of complainant's [private respondent herein] entitlement to separation benefits as per its Retrenchment Program of January 16, 1989 should be the latter's last assignment, which was for only about ten (10) months. PNCC's Retrenchment Program, particularly paragraph 2.1 thereof states that: 'Special separation benefits shall be given to regular, project employees and permanent employees who have rendered at least one year of continuous service in PNCC and are actively employed in the Company as of the date of their separation.'

Hence, it is clear that the foregoing provision of PNCC's Retrenchment Program speaks of at least one year of continuous service without specifying as to whether it should be immediately prior to the employee's separation.

We therefore discern no misappreciation of facts on the part of the Executive Labor Arbiter."

#### **The Issues**

Petitioner raises the following arguments:<sup>[11]</sup>

"A

The questioned decision of the labor arbiter which was affirmed by public respondent NLRC in its decision dated September 30, 1992 is not supported by evidence, applicable law and jurisprudence.

x x x

x x x

x x x

## **B**

Private respondent was a project employee and his service with petitioner was not continuous.”

The executive labor arbiter phrased the latter issue thus:<sup>[12]</sup>

“x x x the issue of whether the complainant is a regular or a project employee is not relevant since respondent’s retrenchment or separation program grants separation benefits to eligible employees irrespective of whether they are regular, project or permanent employees. The only important thing to consider is whether they are qualified or eligible to receive these benefits under the program.”

Petitioner contends that the complaint is barred by Article 291<sup>[13]</sup> of the Labor Code for having been filed late on “September 5, 1989 or after the lapse of more than three (3) years” from his separation from employment on May 18, 1986.<sup>[14]</sup> Petitioner argues further that private respondent was employed only for ten (10) months from “August 17, 1988 again as project employee, until his separation on June 15, 1989.”<sup>[15]</sup> Thus, he is not entitled to separation pay under its special separation program which applies only to employees who have rendered at least one year of continuous service at the time of their separation from PNCC.<sup>[16]</sup>

Private respondent, on the other hand, alleges that he cannot be expected to file a claim for separation benefits “within 3 years after 1986 when [he] was ‘rehired’ within two (2) years or in 1988.”<sup>[17]</sup> Further, private respondent contends that since he was terminated from service on “15 June 1989 or five (5) months after the cut-off date of 16 January 1989,” he was covered by the separation program.<sup>[18]</sup>

The Solicitor General “begs leave of this Honorable Court to discuss first and foremost the issue of whether or not Respondent Mendoza is a project employee, as the resolution of this issue in the negative will bar Respondent Mendoza’s claim for separation pay.”<sup>[19]</sup> The Solicitor General points out that “[w]hat is clear x x x is the employment of Respondent Mendoza by herein petitioner on five (5) occasions for its five (5) different projects. Respondent Mendoza was drawn from a ‘work pool’ from which petitioner drew workers [for] assignment to other projects at its discretion.”<sup>[20]</sup>

All told, the Court believes that this case can be resolved on the basis of two issues:

(1)Whether a motion for reconsideration is required prior to filing a petition for certiorari; and

(2)Whether private respondent is entitled to the separation benefits under

petitioner's Retrenchment Program.

### **The Court's Ruling**

The petition has no merit.

#### **First Issue**

##### **Failure to File a Motion for Reconsideration**

Petitioner, as noted earlier, admitted that it did not file a motion for reconsideration of the assailed NLRC Decision.<sup>[21]</sup> This premature action constitutes a fatal infirmity.<sup>[22]</sup> In *Interior Maritime Enterprises vs. National Labor Relations Commission*,<sup>[23]</sup> this Court, citing a catena of cases, categorically ruled that:

"x x x The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision, based on palpable errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision.

(T)he filing of such motion is intended to afford public respondent an opportunity to correct any factual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. x x x

x x x And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration."

Earlier, in *Labudahon vs. National Labor Relations Commission*<sup>[24]</sup>, we already warned that, where no motion for reconsideration is filed within ten (10) calendar days from its receipt, the NLRC decision shall become final and executory:

"The New Rules of Procedure of the National Labor Relations Commission mandate that a motion for reconsideration of any order, resolution or decision of the Commission must be filed within (10) calendar days from receipt of such order, resolution or decision. [Sec. 14, Rule VII of the New Rules of Procedure of the National Labor Relations Commission] If no motion for reconsideration is filed, the NLRC's order, resolution or decision shall become final and executory after ten (10) calendar days from receipt thereof.

The Court ruled upon a similar issue in the case of Zapata vs. NLRC [175 SCRA 56, 5 July 1989], and recently in the case of G.A. Yupangco vs. NLRC [Minute Resolution dated 17 February 1992, G.R. No. 102191]. In the Zapata case, we held --

'The implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of the respondent Commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution or decision shall become final and executory after ten calendar days from receipt thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had. x x x'

In the case at bar, petitioner's failure to file a motion for reconsideration, for whatever reason, is a fatal procedural defect that warrants the dismissal of his present petition."

The law is clear that a motion for reconsideration is a mandatory requirement before one may resort to the special civil action of certiorari. While there are recognized exceptions to this rule, petitioner has not convinced us that this case is one of them.<sup>24-a</sup> Petitioner's bare allegation that the same questions raised before the public respondent were to be raised before this Court affords no excuse. Petitioner should have complied with the procedural requirement. On this ground alone, the petition should be denied. There is, however, another cogent reason for dismissing it.

## **Second Issue**

### **Private Respondent Qualified Under Retrenchment Program**

What is being contested in this case is whether private respondent is covered by paragraph 2.1 of the separation program of PNCC. We again quote the said paragraph:<sup>[25]</sup>

"Coverage. -- Special separation benefits shall be given to all regular, project employees and permanent employees who have rendered at least one (1) year of continuous service with PNCC and are actively employed in the company as of the date of their separation."

The Cou[rt notes that the photocopy of the "Separation Program with Special Benefits" shows that there is a comma after the word "regular"; thus, it reads: "all regular, project employees and permanent employees x x x." The comma is also found in petitioner's Counter-Manifestation filed with the executive labor arbiter. In the petition itself, however, no comma was placed after the word "regular."

The requisites of petitioner's separation program are as follows:

- 1.The employee must be either a regular, project or permanent employee;