

TWELFTH DIVISION

[CA-G.R. SP. No. 115948, January 16, 2014]

**TRIPLE ONE MANAGEMENT AND DEVELOPMENT CORPORATION
AND /OR ANTOLIN M. ORETA, JR., PETITIONERS, V. OIC REG.
DIR. RAYMUNDO G. AGRAVANTE, UNDERSECRETARY LOURDES
TRASMONTE AND JESS DALAPO, RESPONDENTS.**

D E C I S I O N

ELBINIAS, J.:

For disposition is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order^[2] dated May 26, 2008 issued by public respondent DOLE-NCR OIC Regional Director Raymundo G. Agravante ("public respondent DOLE-NCR OIC-RD" for brevity) in Case No. NCROO-LSED-0311-IS-017 entitled "In the Matter of Labor Standards Inspection Conducted at Triple One Management & Development Corp., B5 L157 cor. Kaunlaran Village, Longos, Malabon."^[3] The Petition also questions the Order^[4] dated June 29, 2010 issued by public respondent DOLE's Undersecretary Lourdes M. Trasmonte ("public respondent DOLE Undersecretary" for brevity), which Order denied petitioners' "Manifestation with Motion to Admit (Motion for Reconsideration)"^[5].

The antecedent facts are as follows:

Private respondent Jess Dalapo ("private respondent Dalapo" or "private respondent" for brevity) worked as a driver for petitioner Triple One Management & Development Corporation ("petitioner TOMDC" for brevity). On November 8, 2003, private respondent Dalapo was involved in an incident, where he was accused of stealing petitioner TOMDC's empty cases of beer. The incident caused petitioner to place private respondent under preventive suspension.^[6]

Afterwards, private respondent Dalapo filed before public respondent Department of Labor and Employment, National Capital Region ("DOLE-NCR OIC-RD" for brevity) a case against petitioners TOMDC and its President and General Manager Mr. Antolin Oreta, Jr. ("petitioners" for brevity), where he claimed for payment of Minimum Wage, Holiday Pay, and Service Incentive Leave Pay.^[7]

On December 1, 2003, the Labor and Employment Officer ("LEO" for brevity) of public respondent DOLE-NCR OIC-RD conducted an inspection of petitioner TOMDC's operations. The rest of the facts are those as stated in public respondent DOLE-NCR OIC-RD's Order^[8] dated May 26, 2008, to wit:

"This refers to the inspection conducted at the above-named establishment on December 1, 2003 where the following violations were noted, to wit:

-Denied access to employment records and work premises at the scheduled date of inspection;

Per interview:

-Underpayment of wages and other related benefits;

-Non-payment of 5-day service incentive leave pay;

-Non-payment of legal/special holiday pay;

-Non-payment of ECOLA (W.O. No. NCR-09);

-Registration under Rule 1020

The above findings are indicated in the **Notice of Inspection Results issued, furnished and explained during the inspection by Labor and Employment Officer RODRIGO DELA CRUZ to the establishment, through its representative JUN SEGOVIA.** In the said notice, **the establishment was directed to effect correction and/or restitution at plant level or to submit to this Office any question on the above findings within seven (7) days from receipt thereof.**

Submission of questions on the findings is premised on the rule that **the burden of proving payment of monetary benefits in accordance with law and compliance with other labor standards lies with the establishment as it is in possession of the employment records and pertinent documents. If no record is presented, the presumption that evidence willfully suppressed would be adverse if presented applies.**

Records reveal that the establishment has submitted an Affidavit of Desistance purportedly executed by the complainant on December 8, 2003. xxx"^[9] (*Emphasis Supplied*)

On May 26, 2008, public respondent DOLE-NCR OIC-RD issued the first assailed Order^[10] adopting the findings of the LEO. The dispositive portion of the Order read as follows:

"WHEREFORE, premises considered **TRIPLE ONE MANAGEMENT & DEVELOPMENT CORPORATION and/or ANTOLIN ORETA, JR. are ordered to pay JESS DALAPO, the aggregate amount of ONE HUNDRED FORTY FIVE THOUSAND SEVEN HUNDRED NINETY FOUR PESOS and 80/100 (P 145,794.80)** within ten (10) days from receipt hereof.

Further the establishment is directed to register under Rule 1020 of the Occupational Safety and Health Standards (OSHS).

A Writ of Execution shall be issued upon finality of this Order.

SO ORDERED."^[11] (*Emphasis Supplied*)

On June 30, 2008, petitioners filed a "Manifestation with Motion for Extension to File an Appeal"^[12] from the Order^[13] of public respondent DOLE-NCR OIC-RD dated May 26, 2008.

On July 10, 2008, petitioners filed a "Manifestation with Motion to Admit (Motion for Reconsideration)"^[14] ("Motion for Reconsideration" for brevity) of the Order^[15] of

public respondent DOLE-NCR OIC-RD dated May 26, 2008. The attached "Motion for Reconsideration"^[16] however, was treated by public respondent DOLE Undersecretary as an Appeal. This "Motion for Reconsideration"^[17] or Appeal was denied in the other assailed Order^[18] of public respondent DOLE Undersecretary dated June 29, 2010, for not having been perfected. The dispositive portion of the Order stated the following:

"**WHEREFORE**, the Manifestation with Motion to Admit (Motion for Reconsideration), herein treated as an appeal, filed by Triple One Management [&] Development Corporation is hereby **DENIED** for not having been perfected. Accordingly, the Order dated May 26, 2008 of the Regional Director, DOLE-NCR, is now deemed **FINAL and EXECUTORY**.

Let the entire records of the case be remanded to the Regional Office of Origin for immediate execution.

SO ORDERED."^[19] (*Emphasis was made in the original*)

Petitioners then filed the Petition for Certiorari^[20] from the DOLE Undersecretary's Order^[21] dated June 29, 2010 praying for the following:

"WHEREFORE, premises considered it is respectfully prayed that the Honorable Court take cognizance of this Petition and subsequently issue an Order:

1. Setting aside the Order of the Regional Director RAYMUNDO AGRAVANTE dated May 26, 2008.
2. Setting aside the June 29, 2010 Order of Undersecretary Lourdes Transmonte denying the Manifestation with Motion to Admit (Motion for Reconsideration) and declaring the May 26, 2008 Order FINAL AND EXECUTORY.
3. Ordering that the complaint of JESS DALAPO moot and academic amidst his own Affidavit of Desistance.

Other remedies just and equitable under the circumstances are likewise prayed for."^[22]

Petitioners raised the following grounds:

"I.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN HE DENIED THE MOTION FOR RECONSIDERATION AND TREATED IT AS AN APPEAL AND THEREAFTER DISMISSED THE SAME ON THE BASIS OF TECHNICALITY.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT TAKING COGNIZANCE OF THE QUITCLAIM AND WAIVER OF RESPONDENT."^[23]

Contrary to petitioners' *first assigned ground*, public respondent DOLE Undersecretary properly denied petitioners' "Motion for Reconsideration"^[24] that was attached to petitioners' "Manifestation"^[25], which Motion was treated as an appeal.

On these matters, petitioners had raised the following arguments:

"22. It must be emphasized that petitioner seasonably filed a Motion for Extension of Time to File their Motion for Reconsideration due to a fortuitous event.

23. On June 21, 2008, the Province of Aklan where the Office of petitioner's former in-house counsel is located was hit by Typhoon Frank. As an off-shoot of the Typhoon the Municipality of Kalibo where **the office of petitioner's in-house counsel was located was submerged by the flood.**

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26. Respondent on its June 29, 2010 Order further opined that herein petitioner received the copy of the assailed Order on June 19, 2008 and filed its Motion for Extension of Time to File an Appeal only on June 30, 2008. **Petitioner humbly submits that June 29, 2008 or the 10th day from the alleged time of receipt falls on a Sunday. Under the rules, when the 10th day to file pleadings falls on a holiday, the same shall be made on the next working day, which was June 30, 2008 in this instant case. Petitioner therefore submits that for all intents and purposes the Motion for Extension of Time was filed within the 10 day period mandated by law."**^[26] (*Emphasis Supplied*)

Frustrating petitioners' contentions however, is that petitioners failed to appeal from public respondent DOLE-NCR OIC-RD's Order^[27] dated May 26, 2008 within the reglementary period provided for under Section 1, Rule IV of the "Rules of Disposition of Labor Standards Cases in the Regional Offices", to wit:

"Section 1. Appeal. – The order of the Regional Director shall be final and executory unless **appealed to the Secretary of Labor and Employment within ten (10) calendar days from receipt thereof.**" (*Emphasis Supplied*)

Records revealed that petitioners received public respondent DOLE-NCR OIC-RD's Order^[28] dated May 26, 2008 on June 19, 2008^[29]. Therefore, petitioners had until June 30, 2008^[30] to perfect their appeal. However, instead of filing an appeal, petitioners, through their counsel, filed on June 30, 2008, a "Manifestation with Motion for Extension to File an Appeal"^[31] ("Motion for Extension" for brevity). The filing of such Motion did not toll the running of the ten (10) day reglementary period to file petitioners' appeal. This is because the Motion for Extension was not a Motion for Reconsideration or Motion for New Trial under paragraph 2, Section 3 of Rule 41 of the Rules of Court^[32], which provision applies suppletorily^[33] to the "Rules of Disposition of Labor Standards Cases in the Regional Offices", the filing of which Motions would have suspended the running of such reglementary period. All of these