

TWELFTH DIVISION

[CA-GR SP NO. 91995, August 31, 2006]

**RUBEN YAMILAO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, MATRIX CORPORATE SECURITY AND
GENERAL SERVICES, INC., RESPONDENTS.**

D E C I S I O N

SABIO, JR., J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Court assailing the Resolution dated January 24, 2005 of the public respondent National Labor Relations Commission (NLRC) in NLRC NCR 00-01-00805-03 dismissing the appeal of petitioner Ruben Yamilao for being filed out of time, as well as its Resolution dated July 27, 2005 which likewise denied his motion for reconsideration.

On May 24, 1999, petitioner filed a complaint for illegal dismissal, non-payment of separation pay, service incentive leave pay, 13th month pay and attorney's fees against the private respondent Matrix Corporate Security and General Services, Inc. alleging, among others, that he was employed by the public respondent as its security officer on January 24, 1997; that his last assigned post was at SIM'S Motolite Battery; that on November 16, 1998, he was relieved from his duty therein because of the Cost Cutting Procedure implemented by the SIM'S Motolite Battery; that from the said date, he continued to follow-up his assignment with the private respondent; that when he was not given an assignment for more than six months, he construed the same as constructive dismissal, hence, he filed the illegal dismissal complaint.

On June 5, 2001, Labor Arbiter Elias H. Salinas rendered a decision finding that petitioner was not illegally dismissed by the private respondent and ordered instead for his reinstatement. The dispositive portion reads thus:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit. Accordingly, complainant is hereby directed to report for work with the respondent agency and the latter, to accept back complainant and reinstate him to his former position as security guard but without back wages. Respondents are likewise ordered to pay complainant the sum of P4,215.38 as 13th month pay and service incentive leave pay for the year 1999.

All other claims are ordered dismissed.

SO ORDERED."^[1]

However, on January 16, 2003, petitioner filed another complaint for illegal dismissal and other monetary claims against the private respondent. In his Position Paper, he

alleged that pursuant to the decision of Labor Arbiter Salinas, he reported back to work, however, the private respondent refused to reinstate him. Subsequently, sometime in December 2001, he received a letter dated December 7, 2001 from the private respondent informing him that he had to update his clearances and requirements for possible assignment implying that from the time the June 5, 2001 decision was promulgated, he failed to show up for an employment.^[2]

On January 8, 2002, petitioner received a letter of termination for his continued non-compliance of private respondent's directive of December 7, 2001 requiring him to submit his updated and renewed documents.^[3]

In its Position Paper, the private respondent argued that the second complaint for illegal dismissal was already barred by a prior judgment of June 5, 2001 and petitioner's failure and refusal to report back for work and submit his renewed and updated requirements was a clear case of abandonment. Furthermore, it postulated that the monetary claims awarded in favor of the petitioner in the June 5, 2001 decision had already prescribed.^[4]

In a decision of November 7, 2003, Labor Arbiter Ernesto S. Dinopol dismissed the second complaint of petitioner ratiocinating, thus:

"What complainant submitted is only the Certificate of Re-training (Annex 'A', complainant's Reply) which does not prove his submission of the other requirements on or before December 31, 2001, his allegations to the contrary (page 2, second to the last paragraph of his Reply) notwithstanding.

We, therefore, see complainant as wanting in efforts that qualify him for redeployment and thus, respondent's having dismissed him through a letter dated January 8, 2003, the contents of which are hereunder quoted xxx is justified."^[5]

On March 12, 2004, petitioner filed his notice of appeal before the public respondent NLRC. However, in the assailed Resolution of January 24, 2005, the NLRC dismissed his appeal for being filed out of time.

"Records show that complainant, through counsel, was in receipt of the decision of the Labor Arbiter on January 5, 2004 (Records, p. 112). Complainant, having a period of ten (10) calendar days therefrom within which to file an appeal, therefore, had until January 15, 2004, in order to do so. And, while it is conceded, as counsel for the complainant seeks to intimate, that he is a pauper litigant, this alone does not justify a belated filing of the appeal, since it was still within the capability of complainant's counsel to do so notwithstanding the indigency of her client. The Rules even explicitly provide that the counting of reglementary periods shall be reckoned from the date of receipt of a notice or decision by a litigant's counsel, if he is represented by one. Further, even if, we were to assume that indigency may warrant a posture of leniency insofar as the lapse in the period to appeal is concerned, it cannot, however, extend to such an unreasonable length of time as to constitute as wanton disregard of the law and the Rules, as well as, the equally significant right of an opposing party, to an expeditious disposition of his case. The filing of an appeal on