SUPREME COURT
SECOND DIVISION

FLEXO MANUFACTURING CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 55971
February 28, 1985

THE NATIONAL LABOR RELATIONS COMMISSION and VIRGILIO M. MANTES,
***Respondents*.**
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D E C I S I O N

CUEVAS, *J.*:

The instant Petition for *Certiorari* seeks the review and reversal of the Decision of respondent National Labor Relations Commission dated October 17, 1980, which ordered petitioner Flexo Manufacturing Corporation to reinstate private respondent Virgilio M. Mantes "to his former or equivalent position with full backwages counted from April 25, 1977 until reinstated, based on his latest rate of pay or the minimum rate under the law, whichever is more beneficial to him, without loss of seniority rights and privileges appurtenant thereto."

Petitioner Flexo Manufacturing Corporation is a business firm engaged in the manufacture and printing of packaging materials for goods and merchandise. Private respondent Virgilio M. Mantes, upon the other hand, was employed by petitioner as its slitting machine operator from 1966 to March 8, 1974 when he was terminated by petitioner on ground of abandonment. On December 20, 1975, private respondent was rehired and assigned to his former work.

On April 18, 1977, private respondent failed to report for work having been stricken with influenza. He was supposed to report for work in the night of said date, as he was at that time with the night shift. In the morning, however, of that day, he requested Cristeno Magrata, a fellow worker, to deliver his handwritten note to the management informing them of his inability to report for work due to illness. The letter was given by Magrata to Armando Buenaventura, the foreman of private respondent, in the morning of April 18, 1977 and even before the start of work of the night shift workers to which private respondent belonged.[1]

On April 25, 1977, private respondent went to Flexo to report for work, bringing with him a medical certificate issued by Dr. Josefina Merano of the Caloocan Health Department certifying to the effect that private respondent Mantes was under her medical treatment for influenza during the period from April 18, 1977 to April 23, 1977,[2] As it was the procedure of Flexo Manufacturing Corporation that before an employee who was absent could be actually allowed to work, he must first secure a sort of an excuse slip from both the Personnel and Production Managers, private respondent Mantes presented the medical certificate to Mr. Robert Chan, the Production Manager and Mr. Norberto Enciso, the Personnel Manager, both of whom refused to give the required excuse slip despite private respondent's plea that he be allowed to report back for work.[3] Since then, private respondent was not allowed to work.

Then, sometime on the third week of May 1977, private respondent received thru the mail, a xerox copy of a clearance application[4] filed by petitioner, stating therein that private respondent was terminated effective May 20, 1977 on the ground of abandonment, in that he was absent from April 19, 1977 and reported for work only on May 10, 1977.

Private respondent opposed petitioner's clearance application by filing a complaint on May 25, 1977,[5] with the Department of Labor, Regional Office No. 4.

On May 23, 1978, Labor Arbiter Ricarte T. Soriano rendered a decision giving due course to petitioner's application for clearance to terminate the services of private respondent and dismissing the latter's complaint for illegal dismissal.[6]

Private respondent appealed the aforesaid decision to the National Labor Relations Commission (hereinafter referred to as NLRC).

On October 17, 1980, respondent NLRC issued its decision reversing the ruling of Labor Arbiter Ricarte T. Soriano.[7] The dispositive portion of the decision reads —

> "WHEREFORE, in the light of the foregoing findings, the decision appealed from is hereby reversed.
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> Accordingly, the respondent is hereby ordered to reinstate the appellant to his former or equivalent position with full backwages counted from April 25, 1977 until reinstated, based on his latest rate of pay or the minimum rate under the law whichever is beneficial to him without loss of seniority rights and privileges appurtenant thereto. The application for clearance to dismiss the appellant is hereby denied for lack of merit.
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> SO ORDERED."

Hence, the instant petition for certiorari with preliminary injunction, petitioner contending that respondent NLRC acted with grave abuse of discretion and or without jurisdiction —

1. in entertaining and favorably resolving the appeal of the private respondent from the decision of the Labor Arbiter despite the fact that the petitioner was not notified of the filing and pendency of said appeal so that petitioner was thus

deprived of reasonable opportunity to be heard therein, all in violation of petitioner's constitutional right of due process;

2. in failing to inquire into the timeless of the filing of private respondent's appeal from the decision of Labor Arbiter Ricarte T. Soriano dated May 23, 1978 and in failing to make a finding and ruling on said jurisdictional question considering that there is a very serious question as to the timeless of private respondent's said appeal from the very face of his notice of appeal; and

3. in ordering the reinstatement of private respondent to his former or equivalent position with full backwages counted from April 25, 1977 until reinstated, or a period of almost four (4) years considering that the facts found by the Labor Arbiter in his decision were not disturbed by the respondent NLRC.

We find the petition devoid of merit.

Petitioner's allegation that it was never duly served with a copy of the notice of appeal as required by Section 9, Rule XIII of Book V of the Rules and Regulations Implementing the Labor Code which provides —

> "Sec. 9. Requisite of Appeal — The appeal shall be under oath and shall state specifically the grounds relied upon and the supporting arguments.
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> The appellant shall serve a copy of the appeal to the appellee and the latter shall reply thereto within ten (10) working days from receipt thereof. Failure on the part of the appellee to file his answer within the reglementary period shall be considered waiver on his part."

is belied by the evidence on record which clearly shows that a copy of private respondent's notice of appeal, as well as his memorandum on appeal, was mailed to Atty. Fermin T. Madera, petitioner's counsel of record on July 20, 1978. This is evidenced by registry receipt No. 34120, attached as Annex "1" of private respondent's COMMENT on

the petition dated February 17, 1981.[8] The same was received by the Office of Atty. Fermin T. Madera on July 27, 1978, by a certain Mrs. G. Elbinias as evidenced by the registry return receipt.[9] Incidentally, Atty. Madera was the associate of Judge M. Elbinias, who at that time was not yet appointed to the judiciary.

Petitioner denies having received said copy of the notice of appeal allegedly because of incomplete address placed by the private respondent's counsel. It further contends that its failure to receive copy of the notice of appeal from the decision of the labor arbiter to the NLRC has deprived it of its opportunity to be heard and therefore violative of its constitutional right to due process. Petitioner further argues that the questioned decision of the NLRC is null and void on that ground, because private respondent's appeal should have been dismissed outright in view of his failure to serve a copy of his appeal upon the petitioner.

There is no merit in petitioner's above-arguments. This same issue — whether or not the failure of appellant to serve a copy of his appeal upon the appellee will result in the dismissal of the appeal is not of first impression. It had been squarely raised and resolved by this Court in the case of J.D. Magpayo Customs Brokerage vs. NLRC, 118 SCRA 645 where We ruled that the appellant's failure to furnish a copy of his appeal is not a jurisdictional defect and does not justify the dismissal of his appeal. Thus —

> "The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review the decision of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals, as required by Section 1 of Rule 45, Rules of Court. We act on the petition and simply require the petitioner to comply with the Rules.
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> Jurisprudential support is not absent to sustain Our action. In Estrada vs. National Labor Relations Commission, G.R. No. 57735, March 19, 1982, 112 SCRA 688, this Court set aside the Order of the NLRC which dismissed an appeal on the sole ground that the appellant had not furnished the appellee a memorandum of appeal contrary to the requirements of Art.

> 223 of the New Labor Code and Sec. 9, Rule XIII of the Implementing Rules and Regulations."

The same rule was re-echoed in the later cases of Carnation Philippines Employees Labor Union-FFW vs. National Labor Relations Commission[10] and Pagdonsalan vs. National Labor Relations Commission.[11]

> "Neither can private respondent validly complain that it has been denied the right to due process by having been allegedly deprived of the opportunity to answer petitioner's appeal on account of the latter's failure to furnish the former with copy of his memorandum of appeal. Since the entire record of the case on appeal is open for review by the NLRC, the absence of an answer or opposition to the appeal would not really have a significant bearing on the adjudication of the case, as would otherwise perhaps constitute a denial of private respondent's right to due process."[12]

In the case at bar, even if petitioner was not able to participate in the proceedings before respondent NLRC, it could not have been unduly prejudiced because no additional arguments or evidence were received. In deciding private respondent's appeal, the NLRC relied on the very same evidence and arguments presented before the labor arbiter which included the position paper, affidavits and other supporting documents submitted by the petitioner. Private respondent's appeal did not raise new issues. It was anchored on practically the same grounds and the issues raised and discussed were likewise the same as those in the proceedings before the Labor Arbiter and which the petitioner had all the opportunity to refute. In fact, the Labor Arbiter's findings of fact were adopted by respondent NLRC in its questioned decision, although the latter drew therefrom a different legal conclusion. It has been ruled that "there is no denial of due process if the decision is based on evidence adduced at the hearing or at least contained in the records."[13]

On the other issue of whether or not private respondent's appeal to the NLRC was seasonably filed, the evidence on record discloses that the labor arbiter's decision which private respondent appealed to the NLRC is dated May 23, 1978. Private respondent obtained a xerox

copy of the decision or July 6, 1978. If the ten-day period for filing the notice of appeal has to be counted from July 6, 1978, then the notice of appeal must be filed on or before July 20, 1978 because said date is the tenth working day from July 6, 1978. Private respondent filed his notice of appeal on July 20, 1978, which was perfectly within the reglementary period.

It must be noted, however, that July 6, 1978 was the date private respondent himself received a xerox copy of the decision. But the record shows that private respondent's counsel received a copy of the labor arbiter's decision only on August 21, 1978. From this date, private respondent had ten working days to file his notice of appeal. As it is, his notice of appeal was filed on July 20, 1978 and even before the ten-day period had started to run.[14]

Moreover, the dismissal of an employee's appeal on a purely technical ground is inconsistent with the constitutional mandate or protection to labor.[15] Where the rules are applied to labor cases, the interpretation must proceed in accordance with the liberal spirit of the labor laws.[16] As this Court said in Estrada vs. NLRC[17] —

> "In Phil. Blooming Mills Employee Organization vs. Philippine Blooming Mills Co., Inc., the Court through Mr. Justice Makasiar stressed the dominance and superiority of constitutional rights over statutes and subordinate implementing rules and regulation, thus: '(D)oes the mere fact that the motion for reconsideration was filed two (2) days late defeat the rights of the petitioning employees? Or more directly and concretely, does the inadvertent omission to comply with a mere Court of Industrial Relations procedural rule governing the period for filing a motion for reconsideration or appeal in labor case, promulgated pursuant to a legislative delegation, prevail over constitutional rights? The answer should be obvious in the light of the aforecited cases. To accord supremacy to the foregoing rules of the Court of Industrial Relations over basic human rights sheltered by the Constitution, is not only incompatible with the basic tenet of constitutional government that the Constitution is superior to any statute or subordinate rules and regulations, but also does violence to natural reason and logic."

We now come to the more important issue of whether or not private respondent was illegally dismissed from employment. On this point We quote with approval the following findings of respondent Commission —

> "This Commission believes that the complainant-appellant was illegally dismissed from employment. It has been duly shown by sufficient proofs by the appellant at the time he suffered influenza on April 18, 1977, that he sent to respondent, a handwritten note of such illness through a co-worker, Mr. Cristino Magrata, who was then bound to their office. This note was given by Magrata to Mr. Armando Buenaventura, foreman of the appellant who received the same (Annex "2"). On April 25, 1977, Mantes reported for work at the respondent bringing with him the Medical Certificate of his illness issued by Dr. Josefina Merano of the Caloocan Health Department to prove that he was sick from April 18-23, 1977 but he was not accepted by Mr. Robert Chan, the production manager of respondent.
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> These facts were never disputed by the respondent by convincing proofs. Instead, the respondent argued that the appellant absented himself from his work on April 18, to May 10, 1977 without leave and concluded that the appellant abandoned his job and applied later for a clearance to dismiss him. According to the respondent the previous dismissal of the appellant due to abandonment and his past absences without leave after he was re-employed confirmed the abandonment he made on April 18 to May 10, 1977. These facts allegedly confirmed also the pervasiveness of the complainant not to adhere to company rules and regulations. These arguments of the respondent deserves scant consideration because the same were never substantiated.
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> This Commission gives more credence to the statement of the appellant which are duly supported with convincing evidence. The absences of the appellant from April 18 to 23, 1977, could not be considered abandonment. On the contrary such absences were justified and excusable because the same was incurred due to illness which is duly supported with a medical certificate and

> the affidavit of the attending physician who attended to the appellant. There was proper notice of such illness of the appellant duly given to a responsible official of the respondent and this was supported by the affidavit of the person also an employee of the respondent. As such, there was no violation of company rules and regulations as alleged by the respondent."

For abandonment to constitute a valid cause for termination of employment, there must be a deliberate unjustified refusal of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient; it must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[18] Such a situation does not obtain in the case at bar. On the contrary, the evidence on record conclusively shows that private respondent reported for work on April 25, 1977, but was not allowed to work until he received a copy of petitioner's clearance application for his dismissal.

Besides, private respondent immediately filed a complaint for illegal dismissal, seeking his reinstatement, on May 25, 1977, soon after he received a xerox copy of petitioner's clearance application. It has been held that "it would be illogical for the private respondent to abandon his work and then immediately file an action seeking his reinstatement."[19]

Since there was no abandonment of work, private respondent is entitled to reinstatement with backwages. In the case of Mercury Drug Co., Inc. vs. Court of Industrial Relations,[20] this Court adopted the policy of fixing the amount of backwages to a just and reasonable level without qualification and deduction to do away with the attendant delay in awarding backwages because of the extended hearing to prove the earnings elsewhere of each and every employee. In line with this policy, We have thereafter consistently awarded backwages to the maximum of three (3) years only.[21]

In the case of Capital Garment Corporation vs. Ople[22] this Court held that "since the case has been pending for four (4) years, We find that a period of two years for purposes of fixing the backwages of petitioner is fair and reasonable." Then in the more recent case of Philippine Airlines, Inc. vs. NLRC[23] We ruled that "since the case has

been pending for five years and four months, an award of two and one-half years of backwages is just and equitable."

This case has been pending since May 1977 or a period of almost eight (8) years now. Considering the philosophy for the fixing of backwages as indicated in the above cited decisions, it is our opinion and we so hold that an award of backwages for three (3) years would he fair, just and reasonable.

WHEREFORE, the appealed decision of the respondent Commission is hereby **MODIFIED** insofar as the payment of backwages is concerned in that the petitioner is ordered to pay private respondent backwages for three (3) years computed on the basis of his pay as of April 25, 1977, without qualification and deduction. The Decision is **AFFIRMED** in all other respects. The restraining order earlier issued is hereby ordered **LIFTED**.

Costs against petitioners.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Abad Santos and Escolin, *JJ*., concur.

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[1] Annex "1" and Annex "2" of Mantes Memorandum to NLRC; Decision of the Labor Arbiter dated May 21, 1978; Decision of NLRC dated October 17, 1980.
[2] Annex "3" of Mantes Memorandum to NLRC.
[3] Decision on the Labor Arbiter dated May 23, 1978; Decision of NLRC dated October 17, 1980.
[4] Annex "A" Petition.
[5] Annex "B", Petition.
[6] Annex "C", Petition.
[7] Annex "D", Petition.
[8] Page 63, Rollo.
[9] Page 64, Rollo.
[10] 125 SCRA 42.
[11] 127 SCRA 463.
[12] Luis Estrada vs. NLRC, 112 SCRA 689.

[13] Provincial Chapter of Laguna, Nacionalista Party vs. COMELEC, 122 SCRA 423; Cebu Institute of Technology vs. Min. of Labor, 113 SCRA 257.
[14] Sec. 7, Rule XIII, governing NLRC Procedures of Book V of the Rules and Regulations Implementing the Labor Code.
[15] Pagdonsalan vs. NLRC, supra.
[16] Ablaza vs. CIR, 126 SCRA 247.
[17] supra.
[18] Peñaflor vs. National Labor Relations Commission, 120 SCRA 68; Capital Garment Corporation vs. Ople, 117 SCRA 473; Judric Canning Corporation vs. Inciong, 115 SCRA 887.
[19] Judric Canning Corporation vs. Inciong, supra.
[20] 56 SCRA 694.
[21] People's Bank & Trust Company, et al vs. People's Bank & Trust Company Employees' Union, et al., 69 SCRA 10; Insular Life Insurance Co., Ltd. Employees Association-NATU vs. Insular Life Assurance Co., Ltd., 76 SCRA 50; Monteverde, et al vs. Court of Industrial Relations, et al., 79 SCRA 259; Davao Dev. Corp. vs. NLRC, et al., 81 SCRA 489; L.R. Aguinaldo, Inc. vs. CIR, et al., 82 SCRA 309; Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., 90 SCRA 391; Litex Employees Association, et al vs. Court of Industrial Relations, et al., 116 SCRA 459.
[22] 117 SCRA 473.
[23] 120 SCRA 224.