SUPREME COURT
SECOND DIVISION

CORAZON R. PAGDONSALAN,
***Petitioner*,**

-versus-

G.R. No. L-63701
January 31, 1984

NATIONAL LABOR RELATIONS COMMISSION and GILMART INDUSTRIES, PHIL.,
***Respondents*.**
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D E C I S I O N

ESCOLIN, *J.*:

We set aside the questioned resolution of respondent NLRC which dismissed the petitioner's appeal on the sole ground that the latter failed to furnish respondent employer with a copy of her appeal memorandum. We also reverse the appealed decision rendered by Labor Arbiter Ricarte T. Soriano, dated April 27, 1981.

Petitioner was employed by respondent Gilmart Industries Phil. as machine operator from April 4, 1956 up to 1958 when a union strike was declared causing the temporary closure of the company. Upon resumption of the company's operations sometime in 1959, petitioner was employed anew as a "separator". In May 1975, she was

transferred to the yarn section of the company's plant and made to perform the work of a security guard. However, she was not extended any formal appointment as security guard or watchwoman.

Sometime in 1980, after having worked with respondent company for twenty-three (23) years, petitioner's health began to fail. On October 2, 1980, she filed an application for retirement benefits under the Collective Bargaining Agreement entered into by the company and the Union of its employees, Section 1, Article XXIV thereof reads as follows:

> "Section 1. Permanent employees and workers covered by this agreement shall be retired at the option of the company upon reaching the age of fifty (50) years or after ten (10) years to fifteen (15) years service to the company and shall be entitled to retirement benefits equivalent to twenty two (22) days pay for every year of service."

The company disapproved her application on the ground that under Section 2, Article I of the CBA, "all security personnel" are excluded from the agreement. Thus,

> "Section 2. Exemptions. The following shall be specifically excluded from the agreement:
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> (a) . . .
>
> (b) . . .
>
> (c) . . .
>
> (d) all security personnel
>
> (e) . . ."

The company offered to pay petitioner's full separation pay on the basis of thirteen (13) days per year of service, but the same was rejected by the latter.

On December 19, 1980, the company terminated her employment, without prior notice of dismissal or clearance from the Ministry of Labor and Employment.

Hence, petitioner filed a complaint against respondent company for retirement benefits provided for by the CBA. After due hearing, Labor Arbiter Ricarte T. Soriano rendered a decision dated April 27, 1981 dismissing petitioner's complaint "for being devoid of merit."

On May 25, 1981, petitioner appealed said decision with the respondent NLRC, but the same was dismissed on the ground that petitioner failed to furnish respondent employer with copy of her memorandum of appeal, as required by Article 223 of the New Labor Code and Section 9, Rule XIII of the Implementing Rules and Regulations.

Reconsideration thereof having been denied, petitioner filed the instant petition.

The issues to be resolved are: [1] Whether or not petitioner's failure to furnish respondent employer with copy of her appeal memorandum justifies dismissal of the appeal; and [2] Whether petitioner is entitled to retirement benefits under the aforecited Section 1, Article XXIV of the CBA.

The Solicitor General in his comment argued against the dismissal of petitioner's appeal on mere technicality, and recommended that —

> "the petition be given due course and that thereafter judgment be rendered declaring that petitioner is entitled to the retirement benefits provided in Section 1, Article XXIV of the CBA."

The Solicitor General suggested that "since this recommendation is contrary to the position of the NLRC, the NLRC be given the opportunity to submit its own comment on the petition if it so desires."[1]

Respondent NLRC, thru the chief of its Legal and Research Services, subsequently filed its comment, stating its position on the issues as follows:

> "Public respondent NLRC committed no error in dismissing the appeal for the simple reason that appellant Corazon R. Pagdonsalan failed to observe the provision of the Labor Code for appeal that no copy thereof was served to the other party as required by law.
>
> "she is not covered by the agreement and hence not entitled to the retirement benefits covenanted therein." (Section 2, Article I of the CBA)

The first issue raised herein is not of first impression. In J.D. Magpayo Customs Brokerage vs. NLRC,[2] this Court ruled that the appellant's failure to furnish copy of his memorandum appeal to respondent is not a jurisdictional defect, and does not justify dismissal of the 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 decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals is required by Section 1 of Rule 45, Rules of Court. We act on the petitions and simply require the petitioners to comply with the rule.
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> "Jurisprudential support is not absent to sustain Our action. In Estrada vs. National Labor Relations Commission, G.R. 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 Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations."

The same rule was reiterated in Carnation Phil. Employees Labor Union-FFW vs. NLRC.[3]

Moreover, the dismissal of an employee's appeal on a purely technical ground is inconsistent with the constitutional mandate on protection to labor. As this Court said in Estrada vs. NLRC:[4]

> "In Phil. Blooming Mills Employees Organization vs. Phil. 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 regulations, 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 cases, 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."

In fine, the appeal interposed by petitioner from the decision of the labor arbiter should be given due course. However, instead of remanding the case to the respondent NLRC, an exercise that would only delay the final adjudication of the litigation, We now proceed to resolve the merits of said appeal. The sole question involved therein — whether or not petitioner is entitled to retirement benefits provided in Section I, Article XXIV of the CBA — can readily be determined from the uncontroverted facts on record. Besides, this legal issue is well within the province of this Court to consider in view of "its exclusive jurisdiction to renew and determine all such cases involving only errors or questions of law."[5]

Labor Arbiter Ricarte T. Soriano ruled that petitioner is not entitled to the benefits provided for by the CBA for the reason that she was performing the job of a security guard or watchwoman at the time she applied for retirement. The Labor Arbiter relied on Section 3, Rule I

of the CBA which expressly excludes "security personnel" from its coverage. The conclusion however fails to take into account the fact that when respondent employer assigned petitioner to work as security guard sometime in May 1979, the latter had already rendered nineteen (19) years of service with the company. There is thus no question that petitioner had already acquired a vested right to such retirement benefits when she was ordered to perform the work of security guard since under Section I, Article XXIV of the CBA, only ten (10) to fifteen (15) years service is required to entitle an employee to the benefits provided for therein. This vested right is property within the contemplation of the due process clause; and needless to add, the company may not arbitrarily deprive petitioner of such right by the simple expedient of assigning her to the job of security guard.

What is more, petitioner was never extended any formal appointment as a security guard or watchwoman. Thus, for all intents and purposes, she should be considered as still holding the position of "separator" at the time she applied for retirement.

WHEREFORE, the decision of Labor Arbiter Ricarte T. Soriano is hereby set aside. Accordingly, the respondent company is ordered to pay petitioner's retirement benefits in accordance with the provisions of Section 1, Article XXIV of the CBA. No costs.

SO ORDERED.

Makasiar, *J.*, *(Chairman)*, Aquino, Concepcion Jr., Guerrero, Abad Santos and De Castro, *JJ.*, concur.

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[1] p. 75, Rollo.
[2] 118 SCRA 646.
[3] G.R. No. 64397, promulgated October 11, 1983.
[4] 112 SCRA 688, 692-693.
[5] People vs. Court of Appeals, 119 SCRA 162, 167.