SUPREME COURT
THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
***Petitioner*,**

-versus-

G.R. No. 120506
October 28, 1996

NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR ARBITER CORNELIO LINSANGAN, UNICORN SECURITY SERVICES, INC., and FRED BAUTISTA, et al.,
***Respondents*.**
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D E C I S I O N

DAVIDE, JR., *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court to annul the decision of the Labor Arbiter dated 12 August 1991 in NLRC Case No. 00-11-06008-90 and the resolutions of public respondent National Labor Relations Commission (NLRC) promulgated on 27 October 1994 and 31 May 1995 dismissing the appeal filed by the petitioner and denying the motion for reconsideration, respectively.

The dispute arose from these antecedents:

On 23 December 1987, private respondent Unicorn Security Services, Inc. (USSI) and petitioner Philippine Airlines, Inc. (PAL) executed a security service agreement.[1] USSI was designated therein as the CONTRACTOR. Among the pertinent terms and conditions of the agreement are as follows:

> (4) The CONTRACTOR shall assign to PAL an initial force of EIGHTY ONE (81) bodies which may be decreased or increased by agreement on writing. It is, of course, understood that the CONTRACTOR undertakes to pay the wages or salaries and cost of living allowance of the guards in accordance with the provisions of the Labor Code, as amended, the different Presidential Decrees, Orders and with the rules and regulations promulgated by competent authorities implementing said acts, assuming all responsibilities therefore.
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> x x x
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> (6) Without any expense on the part of PAL, CONTRACTOR shall see to it that the guards assigned in PAL are provided, at the expense of CONTRACTOR, with the necessary firearms, ammunitions and facilities needed for the rendition of the security services as aforesaid;
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> (7) CONTRACTOR shall select, engage and discharge the guards, employees, or agents, and shall otherwise direct and control their services herein provided or herefore to be set forth or prescribed. The determination of wages, salaries and compensation of the guards or employees of the CONTRACTOR shall be within its full control but shall in no way contravene existing laws on the matter. It is further understood that CONTRACTOR as the employer of the security guards agrees to comply with all relevant laws and regulations, including compulsory coverage under the social Security Act, Labor Code, as amended and the Medical Care Act, in its operations. Although it is understood and agreed between parties hereto that CONTRACTOR in the performance of its obligations under this Agreement, is subject to the control and direction of PAL merely as to the result as to be accomplished by the work or

services herein specified, and not as to the means and methods for accomplishing such result, CONTRACTOR hereby warrants that it will perform such work or services in such manner as will achieve the result herein desired by PAL.

(8) Discipline and administration of the security guards shall be the sole responsibility of the CONTRACTOR to the end that CONTRACTOR shall be able to render the desired security service requirements of PAL. CONTRACTOR, therefore, shall conform to such rules and regulations that may be issued by PAL. For this purpose, Annex "A", which forms part of this Agreement, contains such rules and regulations and CONTRACTOR is expected to comply with them. At its discretion, PAL may. however, work out with CONTRACTOR such rules and regulations before their implementation.

(9) Should PAL at any time have any justifiable objection to the presence in its premises of any of CONTRACTOR's officer, guard or agent under this Agreement, it shall send such objection in writing to CONTRACTOR and the latter shall immediately take proper action.

(10) The security guards employed by CONTRACTOR in performing this Agreement shall be paid by the CONTRACTOR and it is distinctly understood that there is no employee-employer relationship between CONTRACTOR and/or his guards on the one hand, and PAL on the other. CONTRACTOR shall have entire charge, control and supervision of the work and services herein agreed upon, and PAL shall in no manner be answerable or accountable for any accident or injury of any kind which may occur to any guard or guards of the CONTRACTOR in the course of, or as a consequence of, their performance of work and services under this Agreement, or for any injury, loss or damage arising from the negligence or carelessness of the guards of the CONTRACTOR or of anyone of its employ to any person or persons or to its or their property whether in the premises of PAL or elsewhere; and the CONTRACTOR hereby covenants and agrees to assume, as it does hereby assume, any and all liability or on account of any such injury, loss or damage, and shall indemnify PAL for any

liability or expense it may incur by reason thereof and to hold PAL free and harmless from any such liability.

x x x

(13) For and in consideration of the services to be rendered by CONTRACTOR under these presents, PAL shall pay CONTRACTOR the amount of PESOS NINE & 40/100 CTVS (P9.40) PER HOUR multiplied by 905 hours equivalent to PESOS TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED NINE & 58/100 CTVS, Philippine currency, — (P275,909.58) the basis of eight (8) working hours per office/guard a day, Sundays and holidays included, the same to be payable on or before the 15th of each month for the services on the first half of the month and on or before the end of the month for services for the 2nd half of the month.

Nothing herein contained shall prevent the parties from meeting for a review of the rates should circumstances warrant.

x x x

(20) This Agreement shall take effect on 06 December 1987 and shall be in force for a period of SIX (6) MONTHS — 05 JUNE 1988 thereafter it shall continue indefinitely unless sooner terminated upon thirty (30) days notice served upon by one party to the other, except as provided for in Articles 16, 17 & 18 hereof.

Sometime in August of 1988, PAL requested 16 additional security guards. USSI provided what was requested; however, PAL insisted that what USSI did was merely to pick out 16 guards from the 86 already assigned by it and directed them to render overtime duty.

On 16 February 1990, PAL terminated the security service agreement with USSI without giving the latter the 30-day prior notice required in paragraph 20 thereof. Instead, PAL paid each of the security guards actually assigned at the time of the termination of the agreement an amount equivalent to their one-month salary to compensate for the lack of notice.

In November 1990, USSI, allegedly "in its capacity as Trustee for Sixteen or so Security Guards," filed with the NLRC Arbitration Branch, National Capital Region, a complaints[2] against PAL for the recovery of P75,600.00 representing termination pay benefit due the alleged 16 additional; security guards, which PAL failed and refused to pay despite demands. It further asked for an award of not less than P15,000.00 for each of the 16 guards as damages for the delay in the performance of PAL's obligation, and also for attorney's fees in an amount equivalent to 10% of whatever might be recovered. Pertinent portions of the complaint read as follows:

3. By virtue of said contract and upon its effectivity, respondent required eighty-six (86) security guards whom complainant USSI supplied; on or sometime in August 1989, respondent asked for sixteen (16) security guards to render twelve (12) hours each.

4. In February 1990 and for reasons of its own, respondent caused to terminate not only the contract but also the services of the security guards; in effecting such termination, said respondent caused to pay the equivalent of one (1) month's notice unto all the security guards, except the 16 who, as aforementioned were rendering 12 hours each from date of assignment up to and until their termination.

5. As computed, the termination pay benefits due the 16 security guards amount to P75,600.00, or less, which , despite demands, respondent fails, neglects or refuses to pay, as it continue refusing, failing or neglecting to so do up to the present time.

6. Respondent has not only incurred in delay in the performance of its obligation but also contravened the tenor thereof, hence, complainants are by law, entitled to be indemnified with damages for no less than P15,000.00 each for complainants though the correct amount is left solely to the sound discretion of the Honorable Labor Arbiter.

7. Complainants are now compelled to litigate their plainly valid, just or demandable claim on account of which services of counsel have been required and thereby obligated themselves to pay, for and as attorney's fees, the sum equivalent to ten percent (10%) of whatever sums or sum may be recovered in the case.

The complaint was docketed as NLRC-NCR Case No. 00-11-06008-90 and assigned to Labor Arbiter Cornelio L. Linsangan.

PAL filed a motion to dismiss the complaint[3] on the grounds that the Labor Arbiter had no jurisdiction over the subject matter or nature of the complaint and that USSI had no cause of action against PAL. In amplification thereof, PAL argued that the case involved the interpretation of the security service agreement, which is purely civil in character and falls outside of the Labor Arbiter's jurisdiction. It is clear from Article 217 of the Labor Code that for claims to be within the jurisdiction of Labor Arbiters, they must arise from an employer-employee relationship. PAL claimed that USSI did not allege the existence of an employer-employee relationship between PAL and USSI or its guards, and that in fact, paragraph 10 of the agreement provides that there is no employers-employee relationship between the CONTRACTOR and/or his guards on the one hand and PAL on the other.

In its Oppositions[4] USSI pointed out that PAL forgot or overlooked the fact that "insofar as labor standards, benefits, etc. have to be resolved or adjudicated, liability therefor is shifted to, or assumed by, respondent [herein petitioners] which, in law, has been constituted as an indirect employer."

PAL filed a Supplemental Motion to Dismiss[5] wherein it cites the following reasons for the dismissal of the complaint: (1) the clear stipulations in the agreement (paragraphs 4 and 10) that there exists no employer-employee relationship between PAL on the one hand and USSI and the guards on the other : (2) there were no 16 additional guards. as the 16 guards who were required to render 12-hour shifts were picked out from the original 86 guards already assigned and were already given one-month salary in lieu of the 30-day notice of termination of the agreement; (3) USSI had no legal

personality to file the case as alleged trustee of the 16 security guards; and (4) the real parties in interest — the 16 security guards — never showed any interest in the case wither by attending any hearing or conference, or by following up the status of the case.

Attached to the supplemental motion to dismiss were, among other things, xerox copies of confirmation letters of USSI to PAL to show that no additional guards were in fact provided.[6]

Labor Arbiter Linsangan did not resolve the motion to dismiss and the supplemental motion to dismiss. On 12 August 1991, he handed down a Decision[7] ordering PAL to pay : (1) the sum of P75,600.00 representing the equivalent of one-month's separation pay due the 16 individual security guards, plus 10% interest from the date of filing of the case until the whole obligation shall have been fully settled; (2) the sum of P5,000.00 by way of exemplary damages due each of the 16 security guards; and (3) another sum equivalent to 10% of the total award for and as attorney's fees.

It was in that decision that Labor Arbiter Linsangan mentioned for the first time that the resolution of the motion to dismiss and supplemental motion to dismiss "was deferred until [the] case is decided on the merits" considering "the ground not to be indubitable." In holding that he had jurisdiction over the case, he stated:

As herefore and invariably held in similar cases, the issue of whether or not Labor Arbiters have jurisdiction over money claims affecting security guards assigned by security agencies (like complainant herein) to their client-companies such as PAL is, more or less, settled, especially since, as the law views such as peculiar relationship, such money claims insofar as they have to be paid, are the ultimate responsibility of the client-firms. In effect, the security guards have been constituted as indirect employees of the client just as the client becomes the indirect employer of the guards. Art. 107 and 109 of the Labor Code expressly provide that:

To justify the awards, Labor Arbiter Linsangan opined:

Evidence adduced clearly show that sometime in December 1987, aforementioned security service contract was executed, based on which the required number of security guards were assigned to, or posted at, the various premises of respondent — PAL. Said number of security guards may, as the contract provides, be increased or reduced at respondent's request, such that the original number or eighty-six (86) guards, an additional sixteen (16) were needed and, accordingly supplied who, pursuant to PAL's instructions, were required to render twelve (12) hours each, per day.

In February 1990, and for reasons of its own, PAL caused to terminate, as it did, the contract of security service. Unequivocably, it caused to pay the separation pay benefits of the 86 - security guards for the equivalent amount of one (1) month's pay. As to the additional 16, it failed and refused to grant similar equivalent, without any valid reasons therefor.

As earlier stated, respondent opted to rely solely on the ground set forth in its Motion to Dismiss as well as Supplement thereto. It failed to file, despite directive made thereon, its position paper. Neither did it submit, nor adduce, evidence (documentary or otherwise) to rebut or controvert complainant's claims especially since the money equivalent of the one month separation pay due the 16 guards has been duly quantified as amounting to Seventy Five Thousand Six Hundred (P75,600.00) Pesos. Thus established, it is clear that there was absolutely no legal/justifiable reason why said 16 guards applied and who rendered 12 hours each per day had to be discriminated against.

Following PAL's failure or refusal to pay, demands were made by complainant, asking at the same time why that was so. Conceivably, respondent has smarted itself on its mistaken belief that there was, as between the guards and itself, no employer-employee relationship and, hence, there is no legal basis for it to pay. If that was so, why did it pay separation pay unto the 86 regular employed guards.

PAL being widely known as a progressively-minded employer, it should be the first to show good example for emulation. In this instant case, it did not; in fact, its actuations were not consistent with good faith. It should, therefore, beheld liable for exemplary damages

and having required complainant to litigate a plainly valid, just or demandable claim, an award for attorney's fees must perforce be assessed.

On 3 September 1991, PAL filed its Appeal[8] wherein it indicated that it received a copy of the decision on 26 August 1991. Attached thereto was a machine copy of the Notice of Judgment/Final Order, with the date of its receipt, i.e., 26 August 1991,[9] having been stamped on the upper right hand corner by PAL's Legal Department.

USSI countered this Appeal with a motion for execution of judgment[10] on the ground that since PAL, received a copy of the decision on the 23rd, not on the 26th, of August 1991 it had until 2 September 1991 to appeal; hence, the appeal interposed on 3 September was late by one day. The decision had then become final and executory.

In its Opposition[11] to this motion, PAL insisted that it received a copy of the decision on 26 August 1991; thus, it had until 5 September 1991 to file its appeal.

On 30 September 1991, Labor Arbiter Linsangan issued a writ of execution.[12]

On 1 October 1991, PAL filed a motion to quash[13] the writ of execution. It tried to explain therein why it thought all along that it received a copy of the decision on 26 August 1991, thus:

> 4. Upon investigation the undersigned counsel learned that on 23 August 1991 (Friday) a server-messenger went to PAL Legal Department to serve said decision. The receiving clerks at that time were all out to the office so that the server persuaded a secretary, Ms. April Rose del Rosario to receive the same, notwithstanding the fact that Ms. Del Rosario told him (server) that she was not authorized to receive documents for and in behalf of PAL. Ms. Del Rosario then stamped the date of receipt on the services copy without stamping (the date of receipt) PAL's copy of the decision which was left by the server. Thereafter, Ms. del Rosario

placed PAL's copy of the Decision on the incoming documents rack of the receiving clerk.

Attached herewith is the affidavit of Ms. Del Rosario and as Annex "A" hereof.

5. On 26 August 1991 (Monday), the receiving clerk/messenger Mr. Greg Soriano upon finding the Decision among the documents in the incoming documents rack, immediately stamped "Received 26 August 1991" thereon, on the honest and sincere belief that the same just arrived that day (26 August 1991). He then forwarded the same to the secretary of the undersigned counsel.

   Attached herewith is the affidavit of Mr. Greg Soriano marked as Annex "B" hereof.

6. The undersigned counsel believing that the said decision was received on 26 August 1991 reckoned/counted the ten (10) day period for appeal from said date.

7. Considering the foregoing circumstances, the undersigned counsel's innocent reliance on the date of receipt stamped on the copy of the Decision furnished him was clearly due to an innocent mistake and/or excusable neglect. Hence, justice and equity dictates that respondent PAL should be considered to have filed its Appeal within the reglementary period for Appeal.[14]

On 8 October 1991, Labor Arbiter Linsangan issued an Order[15] denying the motion to quash.

On 10 October 1991, PAL appealed[16] to the NLRC the aforesaid order of 8 October 1991 on the ground that it was issued with grave abuse of discretion.

In its resolution of 27 October 1994,[17] the Second Division of the NLRC dismissed PAL's appeal for having been filed out of time. It sustained the Labor Arbiter's finding that PAL had received a copy of the decision on 23 August 1991, and hence the last day to appeal was

2 September 1991. It ruled that whether or not the decision was received by an employee other than the receiving clerk or messenger was of no moment, as the proper performance of employee's duties was PAL's concern.

On 31 May 1991, the NLRC denied the motion for reconsideration[18] for the reason that it cannot accept PAL's excuse at it may "open the floodgates to abuse"; and that the lapse of the period to appeal had already deprived the Commission of jurisdiction over the case.[19]

PAL then filed this special civil action for certiorari under Rule 65 of the Rules of Court alleging that (1) public respondents committed serious and patent error in failing to declare that the Labor Arbiter had no jurisdiction over the instant case; (2) The Labor Arbiter gravely abused its discretion in ordering PAL to pay the separation pay of the 16 security guards assigned at the PAL's premises by USSI; and (3) respondent NLRC committed grave abuse of discretion in declaring PAL's appeal to have been filed out of time.

PAL argues that since USSI's cause of action was founded on the security service agreement, and that thereunder no employer-employee relationship existed between PAL and the security guards who were USSI's employees, the Labor Arbiter had no jurisdiction over the complaint. Moreover, assuming arguendo that the claims of the security guards were valid, USSI had no personality to file the complaint, for there is nothing whatsoever to show that it was expressly authorized by the security guards to act as their "trustee."

As to the second assigned error, PAL asserts that it is not liable to pay separation pay because (1) it was not employer of the security guards; (2) even as an indirect employer, as held by the Labor Arbiter, its liability was limited to violations of labor standards law, and non-payment of the separation pay is not violation of the said law; (3) the security service agreement with USSI did not provide for payment of separation pay; (4) the payment made to the 86 security guards upon the termination of the agreement without the prior 30-day notice was not separation pay but a benefit in lieu of the 30-day notice required under paragraph 20 of the agreement; and (5) since PAL was not the employer of the security guards, in no way could it terminate their services.

In its third assigned error, PAL submits that rules of procedure ought not to be applied in a very rigid technical sense, since they are used only to help secure and not override substantial justice, especially in this case where the appeal was meritorious. Moreover, the delay in the perfection of the appeal, reckoned from the finding of the Labor Arbiter, was only one day; but if reckoned from what its counsel innocently believed to be PAL's date of receipt of the decision, which was 26 August 1991, the appeal could be said to have been seasonably filed.

In its Comment, USSI points out that the grounds relied upon by PAL are based on factual a issue, namely, the discrimination made by PAL in paying the 86 and not the 16 security guards. It argues that the case touched upon the rights of the 16 security guards as employees; thus the same was within the jurisdiction of the Labor Arbiter. As regards PAL's plea for the relaxation of the rule of perfection of appeals, USSI contends that the negligence of PAL's counsel should not be deemed "compelling reason to warrant relaxation of the rule."

In its Manifestation and Motion in Lieu of Comment,[20] the Office of the Solicitor General agrees with the PAL that the Labor Arbiter did not have jurisdiction over the complaint because there was no employer-employee relationship between PAL and the 16 security guards; that Articles 107 and 109 of the Labor Code which provide for joint and several liability for payment of wages by the direct and indirect employer find no application in the present case because the 16 security guards employed by USSI were not after unpaid wages; and that in the interest of justice and considering that the appeal was filed only one day late, the rule of perfection of appeals should have been relaxed to prevent a miscarriage of justice.

In view of the stand of the Office of the Solicitor General, we advised public respondents to file their own comment if they so desired.

In their Comment, the NLRC and Labor Arbiter Linsangan maintain that they had jurisdiction over the case because of Articles 107 and 109 of the Labor Code which constitute PAL as indirect employer of the 16 security guards, there being a question involving separation pay due the latter; that the 16 security guards were entitled to

separation pay, because PAL paid the other 86 security guards when the service agreement was terminated; and that for the NLRC to excuse the delay of one day in filing the appeal would open the floodgates of abuse.

The instant petition is impressed with merit.

We agree with petitioner PAL that the Labor Arbiter was without jurisdiction over the subject matter of NLRC-NCR Case No. 00-11-06008-90, because no employer-employee relationship existed between PAL and the security guards provided by USSI under the security service agreement, including the alleged 16 additional security guards.

We have pronounce in numerous cases[21] that in determining the existence of an employer-employee relationship, the following elements are generally considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee's conduct.

In the instant case, the security service agreement between PAL and USSI provides the key to such consideration. A careful perusal thereof, especially the terms and conditions embodied in paragraphs 4, 6, 7, 8, 9, 10, 13 and 20 quoted earlier in this ponencia, demonstrates beyond doubt that USSI — and not PAL — was the employer of the security guards. It was USSI which (a) selected, engaged or hired and discharged the security guards; (b) assigned them to PAL according to the number agreed upon; (c) provided, at its own expense, the security guards with firearms and ammunitions; (d) disciplined and supervised them or controlled their conduct; and (e) determined their wages, salaries, and compensation; and (f) paid them salaries or wages. Even if we disregard the explicit covenant in said agreement that "there exists no employer-employee relationship between CONTRACTOR and/or his guards on the one hand, and PAL in the other" all other considerations confirm the fact that PAL was not security guards' employer. Analogous to the instant case is Canlubang Security Agency Corp. vs. NLRC.[22]

Considering then that no employer-employee relationship existed between PAL and the security guards, the Labor Arbiter had no

jurisdiction over the claim in NLRC-NCR Case No. 00-11-06008-90. Article 217 of the Labor Code (P.D. No. 442), as amended, vests upon Labor Arbiters exclusive original jurisdiction only over the following:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claims for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral exemplary and other forms of damages arising from employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In all these cases, an employer-employee relationship is an indispensable jurisdictional requisite.

The Labor Arbiter cannot avoid the jurisdictional issue or justify his assumption or jurisdiction on the pretext that PAL was the indirect employer of the security guards under Article 107 in relation to Articles 106 and 109 of the Labor Code and, therefore, it is solidarily liable with USSI. We agree with the Solicitor General that these Articles are inapplicable to PAL under the facts of this case. Article 107 provides:

> ART. 107. Indirect Employer. — The provisions of the immediately preceding Article shall likewise apply to any

> person, partnership, association or corporation which, not being an employer contracts with an independent contractor for the performance or any work, task, job or project.

The preceding Article referred to, which is Article 106, partly reads as follows:

> ART. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and to the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

While USSI is an independent contractor under the security service agreement and PAL may be considered an indirect employer,. that status did not make PAL the employer of the security guards in every respect. As correctly posited by the Office of the Solicitor General, PAL may be considered an indirect employer only for purposes of unpaid wages since Article 106, which is applicable to the situation contemplated in Section 107, speaks of wages. The concept of indirect employer only relates or refers to the liability for unpaid wages. Read together, Articles 106 and 109 simply mean that party with whom an independent contractor deals is solidarily liable with the latter for unpaid wages, and only to that extent and for the purpose that the latter is considered a direct employer. The term "wage" is defined in Article 97 (f) of the Labor Code as "the remuneration or earning, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee."

No valid claim for wages or separation pay can arise from the security service agreement in question by reason of its termination at the instance of PAL. The agreement contains no provision for separation pay. A breach thereof could only give rise to damages under the Civil code, which is cognizable by the appropriate regular court of justice. Besides, there is no substantial proof that USSI in fact provided 16 additional guards. On the contrary, PAL was able to prove in the annexes attached to its supplemental motion to dismiss that the 16 guards were actually picked out from the original group and were just required to render overtime service.

The Labor Arbiter's lack of jurisdiction was too obvious from the allegations in the complain and its annex (the security service agreement) in NLRC-NCR Case No. 00-11-06008-90. The Labor Arbiter then should have forthwith resolved the motion to dismiss and the supplemental motion to dismiss. As correctly pointed out by PAL, under Section 15 of Rule V of the New Rules of Procedure of the NLRC, any motion to dismiss on the ground of lack of jurisdiction, improper venue, res judicata, or prescription shall be immediately resolved by the Labor Arbiter by a written order. Yet, the Labor Arbiter did not, and it was not only his decision that he mentioned that the resolution of the motion to dismiss "was deferred until this case is decided on the merits" because the ground therefore was not "indubitable." On this score the Labor Arbiter acted with grave abuse of discretion for disregarding the rules he was bound to observe.

We shall now turn to the issue of tardiness of the appeal. The record does indeed show that on the original copy of the Notice of Judgment/Final Order,[23] there is stamped by the PAL Legal Department the date of its receipt of the Decision, viz., "Aug. 23, 1991."

It is not also denied by respondents that on the right upper hand corner of PAL's copy of the Notice of Judgment/Final Orders,[24] there is stamped the date of receipt thereof by PAL Legal Department, viz., "AUG. 23 1991." PAL explained how this discrepancy occurred and how its counsel was misled into believing that PAL received a copy of the decision only on 26 August 1991. This belief in good faith rendered excusable any negligence it might have committed. Besides,

the delay in the perfection of the appeal was only one day. Considering that the Labor Arbiter had no jurisdiction over the subject matter of NLRC-NCR Case No. 00-11-06008-90 and that the 16 security guards are not in fact entitled to separation pay under the security service agreement, the higher interest of justice favors a relaxation of the rule on perfection of appeals in labor cases.

While it is an established rule that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory, it is equally settled that the NLRC may disregard the procedural lapse where there is an acceptable reason to excuse tardiness in the taking of the appeal.[25] Among the acceptable reasons recognized by this Court are (a) counsel's reliance on the footnote of the notice of the decision of the Labor Arbiter that "the aggrieved party may appeal within ten (10) working days";[26] (b) fundamental consideration of substantial justice;[27] (c) prevention of miscarriage of justice or of unjust enrichment, as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision;[28] and (d) special circumstances of the case combined with its legal merits[29] or the amount and the issue involved.[30] A one-day delay in the perfection of the appeal was excused in Pacific Asia Overseas Shipping Corp. vs. NLRC.,[31] Insular life Assurance Co. vs. NLRC,[32] and City Fair Corp. vs. NLRC.[33]

In the instant case, the Labor Arbiter's lack of jurisdiction — so palpably clear on the face of the complaint — and the perpetuation of unjust enrichment if the appeal is disallowed are enough combination of reasons that warrant a relaxation of the rules on perfection of appeals in labor cases.

WHEREFORE, the instant petition is hereby **GRANTED**. The questioned decision of the Labor Arbiter dated 12 August 1991 and the resolutions of the Second Division of the National Labor Relations Commission promulgated on 27 October 1994 and 31 May 1995 are hereby **SET ASIDE**, and NLRC-NCR Case No. 00-11-06008-90 is **DISMISSED.**

SO ORDERED.

Narvasa, *C.J.*, Melo, Francisco and Panganiban, *JJ.*, concur.

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[1] Original Records (OR), 6-13; Rollo, 50-57.
[2] OR, 2-4; Rollo, 46-48.
[3] OR, 19-22; Rollo, 58-60.
[4] OR, 27-29.
[5] Id., 48-58; Rollo, 64-74.
[6] Id., 59-65; Id., 75-76.
[7] Id., 66-71; Id., 40-45.
[8] OR, 73-89; Rollo, 82-105.
[9] Id., 93.
[10] Id., 105-106; Id., 102-103.
[11] Id., 108-109; Id., 104-105.
[12] Id., 113-114; Id., 106-107.
[13] Id., 116-117; Id., 109-110.
[14] OR, 115-116.
[15] Id., 125.
[16] Id., 128-143.
[17] Per Commissioner Calaycay, V., with Commissioners Aquino, R. and Rayala, R. concurring, Rollo, 29-34.
[18] Rollo, 177-185.
[19] Id., 36-38.
[20] Rollo, 202-216.
[21] Among others, see, Viana vs. Al-Lagadan, 99 Phil. 408, 411-412 [1956]; Social Security System vs. Court of Appeals, 39 SCRA 629, 636 [1971]; American President Lines vs. Clave, 114 SCRA 826, 832 [1982]; Besa vs. Trajano, 146 SCRA 501, 507 [1986]; "Brotherhood" Labor Unity Movement of the Philippines vs. Zamora 147 SCRA 49, 54 [1987]; Bautista vs. Inciong, 158 SCRA 665, 668 [1988]; Agro Commercial Security Service Agency, Inc. vs. NLRC, 175 SCRA 790, 795 [1989]; Ruga vs. NLRC, 181 SCRA 266, 273 [1990]; Singer Sewing Machine Co. vs. Drilon, 193 SCRA 270, 275 [1991]; Canlubang Security Agency Corp. Vs. NLRC, 216 SCRA 280, 284 [1992]; Vallum Security Services vs. NLRC, 224 SCRA 781. 785 [1993]; Air Material Wing Savings and Loan Association vs. NLRC, 233 SCRA 592, 594-595 [1994].
[22] Supra, note 21.
[23] OR, 72.
[24] OR, 93.
[25] Chong Guan Trading vs. NLRC, 172 SCRA 831, 839 [1989].
[26] Id., Firestone Tire and Rubber Co. vs. Lariosa, 148 SCRA 187, 190-191 [1987].
[27] Insular Life Assurance Co. vs. NLRC, 156 SCRA 740, 746 [1987]; see also the Resolution therein of 26 July 1988. Ruga vs. NLRC, supra, note 21, at 272;

Benguet Electric Coop. vs. NLRC, 209 SCRA 55, 61 [1992]; Blancaflor vs. NLRC, 218 SCRA 366, 370-371 [1993].

[28] Olacao vs. NLRC, 177 SCRA 38, 41 [1989].
[29] Pacific Asia Overseas Shipping Corp. vs. NLRC, 161 SCRA 122, 130 [1988].
[30] City Fair Corp. vs. NLRC, 243 SCRA 572, 576 [1995].
[31] Supra, note 29.
[32] Supra, note 27.
[33] Supra, note 30.