

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**SM AGRI AND GENERAL
MACHINERIES,**
Petitioner,

-versus-

**G.R. No. L-74806
January 9, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION (Third Division),
EXECUTIVE LABOR ARBITER,
REGION V, THE PROVINCIAL
SHERIFF OF ALBAY, or any of his
deputies, and VIVENCIO ABO,**
Respondents.

X-----X

RESOLUTION

PADILLA, J.:

Before the Court is a Petition for *Certiorari* with Prayer for Issuance of a Writ of Preliminary Injunction, assailing the Resolution of the National Labor Relations Commission (NLRC), dated 29 November 1985,^[1] dismissing petitioner's appeal for allegedly having been filed out of time, and the Resolution dated 7 April 1986,^[2] denying petitioner's motion for reconsideration.

Private respondent Vivencio Abo was first employed on 2 August 1976 by SM Industries as Officer-in-Charge (OIC) of a branch office. In 1981, SM Industries changed its business name into SM Agricultural and General Machineries where Mr. Abo remained, to work as an OIC, until his termination from employment on 31 May 1982.

In a complaint filed with the Ministry of Labor and Employment, docketed as Case No. RAB-V-No. 0891-82,^[3] private respondent charged petitioner for unlawful dismissal and prayed for an award of damages. Petitioner's defense to the charge was the willful disobedience on the part of Abo in refusing to report sales, collection reports and monthly allowance since his appointment as OIC in January 1981 which, according to petitioner, rendered the termination of his employment on 31 May 1982 lawful.

The Labor Arbiter, on 29 March 1984, rendered a decision in favor of private respondent, copy of which was received by petitioner on 10 April 1984. The dispositive part of the decision provides:

“WHEREFORE, judgment is rendered in favor of the petitioner ordering respondent.

1. To reinstate petitioner with backwages without loss of seniority rights and other privileges due him from June 1982 and for a limited period of three (3) years.
2. To pay petitioner his unpaid salary for two (2) years in the amount of P10,000.00 and the sum of P7,920.00 emergency allowances covering the period from July 1980 up to June 1982.
3. To pay petitioner his 13th month pay for the last three (3) years in the sum of P1,350.00, service incentive leave of five (5) days in the sum of P257.96.
4. To pay petitioner moral damages in the sum of P30,000.00 and exemplary damages in the amount of P15,000.00 and to pay attorney's fees equivalent to 10% of the petitioner's total claim.”^[4]

From said decision, petitioner filed an appeal, by Registered Mail, on 23 April 1984^[5] on the grounds that there are serious errors in the findings of fact, excessive award of money claims and lack of authority to award damages.

However, in a Resolution dated 29 November 1985, the NLRC dismissed petitioner's appeal on the ground that it was filed out of time. The resolution reads as follows:

“x x x

“Respondent's counsel, Atty. Rolando L. Bobis, expressly admitted that he received a copy of the decision on 10 April 1984, while the appeal was only filed thru registered mail on 23 April 1984, or a period of thirteen (13) days.

“Under Article 223 of the Labor Code of the Philippines, as amended. ‘Decision, awards or orders of Labor Arbiters or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders or decision. (Emphasis supplied.) In the case of Vir-Jen Shipping Corporation and Marine Services vs. the National Labor Relations Commission, et al., G.R. No. 58011, The Supreme Court interpreted Article 223 to mean that an appeal from the Labor Arbiter's decision to the National Labor Relations Commission shall be within ten (10) calendar days, not ten (10) working days.

“WHEREFORE, the appeal is hereby dismissed for having been filed out of time.”^[5A]

Petitioner moved for reconsideration of said Decision^[6] contending that the appeal was filed within the reglementary 10-day period as provided in Art 223 of the Labor Code. According to petitioner, it was physically impossible to file the appeal on 20 April 1984 either personally or by registered mail, since it was Good Friday, a Legal Holiday. Such being the case, he filed the appeal on 23 April 1984 (Monday) which was the first business day after the Legal Holiday. Petitioner, while admitting that he filed the appeal on the 13th day, argued that the computation of the 10-day period requirement should

not be strictly applied to this case. NLRC, however, denied petitioner's motion for reconsideration in its 7 April 1986 resolution. Hence, this present recourse by the petitioner.

The issue to be resolved in this petition is whether or not the NLRC committed grave abuse of discretion in dismissing petitioner's appeal on the ground of tardiness or late filing.

We sustain petitioner's argument that when the last day for filing an appeal falls on a legal Holiday, the same can be filed on the next business day following said Legal Holiday. In fact, the Revised Administrative Code, specifically, Sec. 31, Art. VIII thereof, clearly provides that:

“Sec. 31. Pretermission of Holiday — Where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day.”

In the instant case, the records show that petitioner actually received the Labor Arbiter's decision on 10 April 1984. Following the 10-day period requirement of the Labor Code, the last day to appeal therefore was 20 April 1984, or the 10th calendar day from 10 April 1984. But since 20 April 1984 was a legal Holiday, it being Good Friday, and the next day, Saturday, was also declared a non-working public holiday by presidential proclamation No. 2353, the appeal could be filed (as it was actually filed) on the next business day which was 23 April 1984, a Monday, in accordance with the above-quoted administrative code provision.

Public respondent NLRC cites the case of *Vir-Jen Shipping and Marine Services vs. NLRC*^[7] in its 29 November 1985 resolution. This Court reiterates the doctrine enunciated in said case that the 10-day period provided in Art. 223 of the Labor Code refers to 10 calendar days and not 10 working days. This means that Saturdays, Sundays and Legal Holidays are not to be excluded, but included, in counting the 10-day period. This is in line with the objective of the law for speedy disposition of labor cases with the end in view of protecting the interests of the working man.

The ruling in the Vir-Jen Shipping case does not however apply to the case at bar. This is not a case of a Legal Holiday falling within the period, between the day when the decision appealed from was received and the last day to appeal or the 10th day. Instead, we have here a case where the Legal Holiday is coincidentally the 10th or the last day to appeal. NLRC's contention that petitioner's appeal was filed out of time because 20 April was the last day to file the appeal, and a Legal Holiday is deemed included in the computation of the 10-day reglementary period, is untenable. Sec. 31, Art. VIII of the Revised Administrative Code, and not the case of Vir-Jen Shipping, applies to the peculiar facts of this case.

Therefore, while upholding the interpretation made in the Vir-Jen Shipping case that the 10-day period fixed by Art. 223 of the Labor Code contemplates calendar days and not working days, the court recognizes an exception to this general rule, i.e., where the 10th day is a Sunday or a Legal Holiday, in which event, the appeal can be filed on the next business day. Consequently, in such a case, the supposedly last day to appeal will not be deemed the last day because it happens to be a Sunday or Legal Holiday. Instead, the act can be done on the next business day following that Sunday or Legal Holiday. Stated differently, the ruling in Vir-Jen Shipping case contemplates a situation where one is burdened with the task of computing a 10-day period which includes a Saturday, Sunday or Legal Holiday and not when the 10th day falls on a Sunday or Legal Holiday. To be noted is the fact that Saturday (unless legally declared a holiday) is considered a business day and therefore if the last day to appeal falls on a Saturday, the act is still due on that day and not on the next succeeding business day.

Without going into the merits of petitioner's appeal, we hold that the NLRC erred in dismissing the appeal on the ground that it was filed out of time.

ACCORDINGLY, the petition is **GRANTED**. The 29 November 1985 and 7 April 1986 resolutions of the NLRC are hereby **ANNULLED** and **SET ASIDE**. The NLRC is ordered to give due course to petitioner's motion for reconsideration and/or appeal for resolution on the merits thereof.

SO ORDERED.

Melencio-Herrera, J., (Chairman), Paras, Sarmiento and Regalado, JJ., concur.

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- [1] Annex "A", Petition, p. 11, Rollo.
 - [2] Annex "B", Petition, p. 13, Rollo.
 - [3] As cited in the Petition, p. 2, Rollo.
 - [4] Annex "C", Petition, p. 14, Rollo.
 - [5] Annex "D", Petition, p. 20, Rollo.
 - [5A] Annex "A", Petition, pp. 11-12, Rollo.
 - [6] Annex "G", Petition, p. 32, Rollo.
 - [7] SCRA 347, 20 July 1982.

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