SUPREME COURT
THIRD DIVISION

VICENTE SAN JOSE,
***Petitioner*,**

-versus-

G.R. No. 121227
August 17, 1998

NATIONAL LABOR RELATIONS COMMISSION and OCEAN TERMINAL SERVICES, INC.,
***Respondent*.**
x----------x

D E C I S I O N

PURISIMA, *J.*:

Before the Court is a Petition for Certiorari seeking to annul a Decision of the National Labor Relations Commission dated April 20, 1995 in NLRC-NCR-CA-No. 00671-94 which reversed, on jurisdictional ground, a Decision of the Labor Arbiter dated January 19, 1994 in NLRC-NCR Case No. 00-03-02101-93 a case for a money claim — underpayment of retirement benefit. Records do not show that petitioner presented a Motion for Reconsideration of subject Decision of the National Labor Relations Commission, which motion is, generally required before the filing of Petition for Certiorari.

While the rule prescribing the requisite motion for reconsideration is not absolute and recognizes some exceptions, there is no showing that the case at bar constitutes an exception. Nevertheless, we gave due course to the petition to enable the Court to reiterate and clarify the jurisdictional boundaries between Labor Arbiters and Voluntary Arbitrator or Panel of Voluntary Arbitrators over money claims, and to render substantial and speedy justice to subject aged stevedore retiree who first presented his claim for retirement benefit in April 1991, or seven years ago.

Labor law practitioners and all lawyers, for that matter, should be fully conversant with the requirements for the institution of certiorari proceedings under Rule 65 of the Revised Rules of Court. For instance, it is necessary that a Motion for Reconsideration of the Decision of the National Labor Relations Commission must first be resorted to. The ruling in Corazon Jamer vs. National Labor Relations Commission, G.R. No. 112630, September 5, 1997, comes to the fore and should be well understood and observed. An ordinary allegation — "and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law" (Rule 65, Sec. 1, Revised Rules of Court) is not a foolproof substitute for a Motion for Reconsideration, absence, of which can be fatal to a Petition for Certiorari. Petitioner cannot and should not rely on the liberality of the Court simply because he is a working man.

In the Jamer case, this court said:

> "This premature action of petitioners constitutes a fatal infirmity as ruled in a long line of decisions, most recently is the case of Building Care Corporation vs. National Labor Relations Commission —
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> The filing of such motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed.

Likewise, a motion for reconsideration is an adequate remedy; hence certiorari proceedings, as in this case, will not prosper."

As stated in the Decision of the Labor Arbiter in NLRC-NCR-Case No. 00-03-0201-93, dated January 19, 1994, the facts of this case are undisputed. The Labor Arbiter reported, thus:

> "Complainant, in his position paper (Record, pages 11 to 14) states that he was hired sometime in July 1980 as a stevedore continuously until he was advised in April 1991 to retire from service considering that he already reached 65 years old (sic); that accordingly, he did apply for retirement and was paid P3,156.39 for retirement pay." (Rollo, pp. 15, 26-27, 58-59).

Decision of the Labor Arbiter in NLRC-NCR-Case No. 00-03-02101-93, January 9, 1994 (Rollo, pp. 15017, at pp. 16-17).

The Labor Arbiter decided the case solely on the merits of the complaint. Nowhere in the Decision is made mention of or reference to the issue of jurisdiction of the Labor Arbiter (Rollo, pp. 15-17). But the issue of jurisdiction is the bedrock of the Petition because, as earlier intimated, the Decision of the National Labor Relations Commission, hereinbelow quoted, reversed the Labor Arbiter's Decision on the issue of jurisdiction. Reads subject Decision of the Labor Arbiter:

> "Respondents, in their Reply to complainant's position paper, allege (Record, pages 18 to 21) that complainant's latest basic salary was P120.34 per day; that he only worked on rotation basis and not seven days a week due to numerous stevedores who can not all be given assignments at the same time; that all stevedores only for paid every time they were assigned or actually performed stevedoring; that the computation used in arriving at the amount of P3,156.30 was the same computation applied to the other stevedores; that the use of divisor 303 is not applicable because complainant performed stevedoring job only on call, so while he was connected with the company for the past 11 years, he did not actually render 11 years of service; that the burden of proving that complainant's latest salary was

> P200.00 rests upon him; that he already voluntarily signed a waiver of quitclaim; that if indeed respondent took advantage of his illiteracy into signing his quitclaim, he would have immediately filed this complaint but nay, for it took him two (2) years to do so.

The issue therefore is whether or not complainant is entitled to the claimed differential of separation pay.

We find for the complainant. He is entitled to differential.

We cannot sustain a computation of length of service based on the ECC contribution records. Likewise, the allegation that complainant rendered service for only five days a month for the past 11 years is statistically improbable, aside from the fact that the best evidence thereof are complainant's daily time records which respondent are (sic) duty bound to keep and make available anytime in case of this.

The late filing has no bearing. The prescription period is three years. It is suffice (sic) that the filing falls within the period.

Whether or not complainant worked on rotation basis is a burden which lies upon the employer. The presumption is that the normal working period is eight (8) hours a day and six (6) days a week, or 26 days a month, unless proven otherwise.

Also, the burden of proving the amount of salaries paid to employees rests upon the employer not on the employee. It can be easily proven by payrolls, vouchers, etc. which the employers are likewise duty bound to keep and present. There being non, we have to sustain complainant's assertion that his latest salary rate was P200 a day or P5,200 a month. Therefore, his retrenchment pay differential is P25,443.70 broken down as follows:

$$\text{P200 x 26 days} = \frac{\text{P5,200 x 11 years}}{2}$$

= (P2,600 x 11 years) - P3,156.30
= P28,600 - P3,156.30
= P25,443.70"

The Decision of the National Labor Relations Commission in NLRC-NCR-CA No. 06701-94, April 20, 1995 (Rollo, pp. 18-21).

The National Labor Relations Commission reversed on jurisdictional ground the aforesaid Decision of the Labor Arbiter; ruling, as follows:

> "His claim for separation pay differential is based on the Collective Bargaining Agreement (CBA) between his union and the respondent company, the pertinent portion of which reads:
>
> ANY UNION member shall be compulsory retired (sic) by the company upon reaching the age of sixty (60) years, unless otherwise extended by the company for justifiable reason. He shall be paid his retirement pay equivalent to one-half (½) month salary for every year of service, a fraction of at least six months being considered as one (1) whole year.
>
> The company agrees that in case of casual employees and/or workers who work on rotation basis the criterion for determining their retirement pay shall be 303 rotation calls or work days as equivalent to one (1) year and shall be paid their retirement pay equivalent to one half (½) month for every year of service.
>
> x x x
>
> Since the instant case arises from interpretation or implementation of a collective bargaining agreement, the Labor Arbiter should have dismissed it for lack of jurisdiction in accordance with Article 217 (c) of the Labor Code. which reads: (Emphasis supplied)
>
> Art. 217. Jurisdiction of Labor Arbiter and the Commission.
>
> x x x
>
> (c) Cases arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company procedure/policies

shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitrator as may be provided in said agreements."

Petitioner contends that:

I. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO THE APPEAL DESPITE THE FACT 4 (SIC) THAT IT WAS FILED OUT OF TIME AND THERE IS NO SHOWING THAT A SURETY BOND WAS POSTED.

II. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN SETTING ASIDE THE DECISION OF . . . DATED 19 JANUARY 1994 AND DISMISSING THE CASE ON THE GROUND OF LACK OF JURISDICTION WHEN THE ISSUE DOES NOT INVOLVE ANY PROVISION OF THE COLLECTIVE BARGAINING AGREEMENT. (Rollo, pp. 7-8)

The Manifestation and Motion (In Lieu of Comment) sent in on December 6, 1995 by the Office of the Solicitor General support the second issue, re: jurisdiction raised by the Petitioner (Rollo, pp. 26-33, at pp. 38-32).

Labor Arbiter Decision

Labor Arbiters should exert all efforts to cite statutory provisions and/or judicial decision to buttress their dispositions. An Arbiter cannot rely on simplistic statements, generalizations, and assumptions. These are not substitutes for reasoned judgment. Had the Labor Arbiter exerted more research efforts, support for the Decision could have been found in pertinent provisions of the Labor Code, its Implementing Rules, and germane decisions of the Supreme Court. As this Court said in Juan Saballa, et al. vs. NLRC, G.R. No. 102472-84, August 22, 1996:

"This Court has previously held that judges and arbiters should draw up their decisions and resolutions with due care, and make certain that they truly and accurately reflect their conclusions and their final dispositions. A decision should

> faithfully comply with Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts of the case and the law on which it is based. If such decision had to be completely overturned or set aside, upon the modified decision, such resolution or decision should likewise state the factual and legal foundation relied upon. The reason for this is obvious: aside from being required by the Constitution, the court should be able to justify such a sudden change of course; it must be able to convincingly explain the taking back of its solemn conclusions and pronouncements in the earlier decision. The same thing goes for the findings of fact made by the NLRC, as it is a settled rule that such findings are entitled to great respect and even finality when supported by substantial evidence; otherwise, they shall be struck down for being whimsical and capricious and arrived at with grave abuse of discretion. It is a requirement of due process and fair play that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal."

This is not an admonition but rather, advice and a critique to stress that both have obligations to the Courts and students of the law. Decisions of the Labor Arbiters, the National Labor Relations Commission, and the Supreme Court serve not only to adjudicate disputes, but also as an educational tool to practitioners, executives, labor leaders and law students. They all have a keen interest in methods of analysis and the reasoning processes employed in labor dispute adjudication and resolution. In fact, decisions rise or fall on the basis of the analysis and reasoning processes of decision makers or adjudicators.

On the issues raised by the Petitioner, we rule:

I. Timeliness of Appeal And Filing of Appeal Bond

The Court rules that the appeal of the respondent corporation was interposed within the reglementary period, in accordance with the Rules of the National Labor Relations Commission, and an appeal bond was duly posted. We adopt the following Comment dated August 14, 1996, submitted by the National Labor Relations Commission, to wit:

"While it is true that private respondent company received a copy of the decision dated January 19, 1994 of the Labor Arbiter and filed its appeal on February 14, 1994, it is undisputed that the tenth day within which to file an appeal fell on a Saturday, the last day to perfect an appeal shall be the next working day.

Thus, the amendments to the New Rules of Procedure of the NLRC, Resolution No. 11-01-91 which took effect on January 14, 1992, provides in part:

x x x

> 1. Rule VI, Sections 1 and 6 are hereby amended to read as follows:
>
> Section 1. Period of Appeal — Decisions, awards or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders of the Labor Arbiter. If the 10th day falls on a Saturday, Sunday or a Holiday, the last day to perfect the decision shall be the next working day. (Emphasis supplied)

Hence, it is crystal clear that the appeal was filed within the prescriptive period to perfect an appeal. Likewise, the petitioner's contention that private respondent did not post the required surety bond, deserves scant consideration, for the simple reason that a surety bond was issued by BF General Insurance Company, Inc., in the amount of P25, 443.70 (Rollo, pp. 63-64).

2. Jurisdictional Issue

The jurisdiction of Labor Arbiters and Voluntary Arbitrator or Panel of Voluntary Arbitrators is clearly defined and specifically delineated in the Labor Code. The pertinent provisions of the Labor Code, read:

> "A. Jurisdiction of Labor Arbiters
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> Art. 217. Jurisdiction of Labor Arbiter and the Commission. — (a) Except as otherwise provided under this Code the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
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> 1. Unfair labor practice cases;
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> 2. Termination disputes;
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> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
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> 4. claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
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> 5. Cases arising from any violation of Article 264 of this Code, including questions involving the 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) regardless of whether accompanied with a claim for reinstatement.
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> x x x
>
> (c) Cases arising from the interpretation or implementation of collective bargaining agreement and those arising from the

interpretation or enforcement of company procedure/policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitrator so maybe provided in said agreement.

B. Jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators

Art. 261. Jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. For purposes of this Article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

Art. 262. Jurisdiction over other labor disputes. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks."

The aforecited provisions of law cannot be read in isolation or separately. They must be read as a whole and each Article of the Code

reconciled one with the other. An analysis of the provisions of Articles 217, 261, and 262 indicates, that:

1. The jurisdiction of the Labor Arbiter and Voluntary Arbitrator or Panel of Voluntary Arbitrators over the cases enumerated in Articles 217, 261 and 262, can possibly include money claims in one form or another.

2. The cases where the Labor Arbiters have original and exclusive jurisdiction are enumerated in Article 217, and that of the Voluntary Arbitrator or Panel of Voluntary Arbitrators in Article 261.

3. The original and exclusive jurisdiction of Labor Arbiters is qualified by an exception as indicated in the introductory sentence of Article 217 (a), to wit:

> Art. 217. Jurisdiction of Labor Arbiters (a) Except as otherwise provided under this Code the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers."

The phrase "Except as otherwise provided under this Code" refers to the following exceptions:

A. Art. 217. Jurisdiction of Labor Arbiters.

x x x

> (c) Cases arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company procedure/policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitrator as may be provided in said agreement.

B. Art. 262. Jurisdiction over other labor disputes. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other

labor disputes including unfair labor practices and bargaining deadlocks.

Parenthetically, the original and exclusive jurisdiction of the Labor Arbiter under Article 217 (c), for money claims is limited only to those arising from statutes or contracts other than a Collective Bargaining Agreement. The Voluntary Arbitrator or Panel of Voluntary Arbitrators will have original and exclusive jurisdiction over money claims "arising from the interpretation or implementation of the Collective Bargaining Agreement and, those arising from the interpretation or enforcement of company personnel policies", under Article 261.

4. The jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators is provided for in Arts. 261 and 262 of the Labor Code as indicated above.

1. A close reading of Article 261 indicates that the original and exclusive jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators is limited only to:

> "Unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies. Accordingly, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement."

2. Voluntary Arbitrators or Panel of Voluntary Arbitrators, however, can exercise jurisdiction over any and all disputes between an employer and a union and/or individual worker as provided for in Article 262.

> Art. 262. Jurisdiction over other labor disputes. — The voluntary arbitrator or panel of voluntary arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks."

It must be emphasized that the jurisdiction of the Voluntary Arbitrator or Panel of Voluntary Arbitrators under Article 262 must be voluntarily conferred upon by both labor and management. The labor disputes referred to in the same Article 262 can include all those disputes mentioned in Article 217 over which the Labor Arbiter has original and exclusive jurisdiction.

As shown in the above contextual and wholistic analysis of Articles 217, 261, and 262 of the Labor Code, the National Labor Relations Commission correctly ruled that the Labor Arbiter had no jurisdiction to hear and decide petitioner's money-claim-underpayment of retirement benefits, as the controversy between the parties involved an issue arising from the interpretation or implementation" of a provision of the collective bargaining agreement. The Voluntary Arbitrator or Panel of Voluntary Arbitrators has original and exclusive jurisdiction over the controversy under Article 261 of the Labor Code, and not the Labor Arbiter.

3. Merits of the Case

The Court will not remand the case to the Voluntary Arbitrator or Panel of Voluntary Arbitrators for hearing. This case has dragged on far too long — eight (8) years. Any further delay would be a denial of speedy justice to an aged retired stevedore. There is further the possibility that any Decision by the Voluntary Arbitrator or Panel of Voluntary Arbitrators will be appealed to the Court of Appeals, and finally to this Court. Hence, the Court will rule on the merits of the case.

We adopt as our own the retirement benefit computation formula of the Labor Arbiter, and the reasons therefor as stated in the decision above-quoted.

The simple statement of the Labor Arbiter that "we cannot sustain a computation of length of service based on ECC contribution records", was not amply explained by the Labor Arbiter; however, there is legal and factual basis for the same. It is unrealistic to expect a lowly stevedore to know what reports his employer submits to the Employee's Compensation Commission under Book IV, Health,

Safety and Welfare Benefits, Title II, Employees Compensation and State Insurance Fund, of the Labor Code, simply because the insurance fund is solely funded by the employer and the rate of employer's contribution varies according to time and actuarial computations. (See Articles 183-184; Labor Code). The worker has no ready access to this employer's record. In fact, it is farthest from his mind to inquire into the amount of employer's contribution, much less whether the employer remits the contributions. The worker is at all times entitled to benefits upon the occurrence of the defined contingency even when the employer fails to remit the contributions. (See Article 196 (b), Labor Code).

All employers are likewise required to keep an employment record of all their employees, namely: payrolls; and time records. (See Book III, Rule X, specifically Secs. 6, 7, 8, 1 and 12, Omnibus Rules — Implementing the Labor Code).

The respondent-employer was afforded the opportunity to show proof of the petitioner's length of service and pay records. In both instances, the respondent-employer failed. By its own folly, it must therefore suffer the consequences of such failure. (South Motorists Enterprises vs. Tosoc, 181 SCRA 386, [1990]) From the very beginning — by the provision of the retirement provision of the Collective Bargaining Agreement, i.e., the length of service as requirement for retirement, and salary as a basis for benefit computation — the employer was forewarned of the need for accurate record keeping. This is precisely the basis of retirement, and the computation of benefits based on years of service and monthly wage.

To recapitulate; the Court hereby rules —

1. That the National Labor Relations Commission correctly ruled that the Labor Arbiter had no jurisdiction over the case, because the case involved an issue "arising from the interpretation or implementation" of a Collective Bargaining Agreement;

2. That the appeal to the National Labor Relations Commission was filed within the reglementary period and that the appeal bond was filed; and

3. That we adopt the computation formula for the retirement benefits by the Labor Arbiter, and the basis thereof. The respondent must therefore pay the petitioner the additional amount of Twenty-Five Thousand Four Hundred Forty-Three and Seventy Centavos (P25,443.70) Pesos.

In view of the long delay in the disposition of the case, this decision is immediately executory.

SO ORDERED.

Narvasa, *C .J* ., Romero and Kapunan, *JJ*., concur.
