**SUPREME COURT**
**THIRD DIVISION**

**SAN MIGUEL CORPORATION,**
***Petitioner*,**

***-versus-***

**G.R. No. 101021**
**April 6, 1993**

**THE NATIONAL LABOR RELATIONS COMMISSION and MARIO BRAGANCIA,**
***Respondents*.**
**x----------x**

**D E C I S I O N**

**MELO, *J.*:**

Before us is a Petition for *Certiorari* seeking to nullify the Resolution dated June 14, 1991 (Annex "K", p. 115, Rollo) of public respondent National Labor Relations Commission (NLRC, hereafter) in NLRC NCR CA No. 000933-90, as well as the Resolution dated July 19, 1991 (Annex "M", p. 141 Rollo), which denied petitioner's motion for

reconsideration, both for having been allegedly issued with grave abuse of discretion amounting to lack of jurisdiction.

We shall rely on the narration of facts of the NLRC.

On February 6, 1990, private respondent Mario Bragancia, a machine operator in the Feeding Section, Main Bottling Department of petitioner San Miguel Corporation was dismissed from service. The cause of the termination, per version of petitioner, was that Bragancia, together with a, certain Cornelio Caoili, assaulted Florentino Sevilla, a co-employee, when the latter refused to join a boycott of overtime work.

Bragancia denied the charge, claiming that his role in the incident was merely to pacify the protagonists, Caoili and Sevilla, and sought, through the CBA-established grievance committee, a reconsideration of his dismissal. When the grievance committee sustained his termination, private respondent filed, on July 4, 1990, a complaint for unfair labor practice and illegal dismissal, with prayer for actual, moral, and exemplary damages.

On September 17, 1990, petitioner filed a motion to dismiss the case for alleged lack of jurisdiction on the part of the Labor Arbiter over the subject matter of the complaint, claiming that since Bragancia had sought reconsideration of his dismissal from the grievance machinery established pursuant to Section 2, Article III of the CBA, then any recourse therefrom should be before a panel of voluntary arbitrators in accordance with the same CBA, citing in support thereof Article 261 of the Labor Code, as amended, which provides:

> 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 enforcement of company personnel policies referred to in the immediately preceding Article.

Petitioner's motion was favorably viewed by Labor Arbiter Ernesto Dinopol who issued on October 9, 1990, an Order (Annex "H", p. 83, Rollo) disposing:

> Wherefore, all the foregoing premises considered, the Motion to Dismiss being impressed with merit, is hereby granted, and this case, conformably with paragraph 1(c) of Article 217 of the Code, is hereby referred to the voluntary arbitration as provided for in the collective bargaining agreement.

Records (Annex "I", p. 86, Rollo) show that Bragancia's counsel received a copy of the aforesaid order on October 23, 1990. He filed his Appeal-Memorandum on November 5, 1990, maintaining that the Labor Arbiter had jurisdiction over his complaint. Following NLRC rules, however, he should have filed his appeal on November 2, 1990, the tenth calendar day.

Nonetheless, the NLRC ruled in his favor and remanded the case to the arbitration branch for further proceedings (p. 121, Rollo).

Petitioner's motion for reconsideration was denied for lack of merit on July 19, 1991. Hence, the instant petition, with petitioner contending that:

> I
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> Respondent NLRC acted with grave abuse of discretion in resolving individual respondent's appeal considering that the appealed order had already become final and executory.
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> II
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> Respondent NLRC acted with grave abuse of discretion in reversing the labor arbiter's order dismissing the complaint for lack of jurisdiction and remanding the case to the grievance machinery. (p. 12, Rollo.)

Petitioner is correct in pointing out that the ten-day period fixed by Article 223 of the Labor Code, concerning appeals from decisions or orders of the Labor Arbiter contemplates "calendar" days and not "working" days (Vir-Jen Shipping and Marine Services vs. NLRC, 115 SCRA 347 [1982]; Ernesto Dizon, Jr. vs. NLRC, et al., 181 SCRA 477 [1990]); and that if the last day to appeal falls on a Saturday, the act is

still due on that day, Saturday being a business day (Olacao vs. NLRC, 177 SCRA 38 [1989]).

Moreover, we have consistently ruled that perfection of an appeal within the ten-day reglementary period is not only mandatory but jurisdictional. Thus, in the case of Paramount Vinyl Corp. vs. NLRC, et al. (190 SCRA 533 [1990]), we stated:

> Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. Failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment [Cruz vs. WCC, G.R. No. L-42739, January 31, 1978, 81 SCRA 445; Volkshel Labor Union vs. NLRC, G.R. No. L-39686, June 28, 1980, 98 SCRA 314; Acda vs. Minister of Labor, G.R. No. 51607, December 15, 1982, 119 SCRA 306; Rizal Empire Insurance Group vs. NLRC, G.R. No. 73140, May 29, 1987, 150 SCRA 565; MAI Philippines, Inc. vs. NLRC, G.R. No, 73662, June 18, 1987, 151 SCRA 196; Narag vs. NLRC, G.R. No. 69628, October 28, 1987, 155 SCRA 199; John Clement Consultants, Inc. vs. NLRC, G.R. No. 72096, January 29, 1988, 157 SCRA 635; Bongay vs. Martinez, G.R. No. 77188, March 14, 1988, 158 SCRA 552; Manuel L. Quezon University vs. Manuel L. Quezon Educational Institution, G.R No. 82312, April 19, 1989, 172 SCRA 597]. (at pp. 533-534.)

On the basis of the foregoing, it is clear that the NLRC abused its discretion when it entertained Bragancia's appeal. Labor Arbiter Ernesto Dinopol's decision had already become final and executory when the Union/Bragancia filed their Appeal-Memorandum on November 5, 1990, 3 days too late.

**WHEREFORE**, the petition is hereby **GRANTED**. The challenged Resolutions of June 14, 1991 and July 19, 1991 are hereby **SET ASIDE** and the decision of Labor Arbiter Ernesto Dinopol referring the case to Voluntary Arbitration is hereby **REINSTATED**.

The temporary restraining order issued on March 2, 1992 is hereby **LIFTED**. No special pronouncement is made as to costs.

**SO ORDERED.**

**Feliciano, Bidin, Davide, Jr. and Romero, *JJ.*, concur.**

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