**SUPREME COURT**
**FIRST DIVISION**

**SOUTHERN COTABATO DEV'T. AND CONSTRUCTION, INC. or SODECO / LIBERTY CONSTRUCTION JOINT VENTURE/ELLA G. DEMANDANTE,**
***Petitioners*,**

***-versus-***

**G.R. No. 121582**
**October 16, 1997**

**NATIONAL LABOR RELATIONS COMMISSION, Fourth Division, and PEDRO RABINA, ALEXANDER YBA, BILLY BULFA, JOSE GERONILLA, ALFREDO SEIT, JUANITO DUEÑAS, RICHARD SILORIO, NENITO NALIPAY, ENIE DINOLAN, JOSE NICO ESPAÑOL, ROBERTO ALABATA, JOSE SUELTO, ARTEMIO VILAN, SENENIO B. SALACOT, JESUS BANQUERIGO, MOISES REPOLLO, WEBSTER SERION, RENATO DUEÑAS, JAIME RODRIGUEZ, RAUL AGUSTIN, WELIJADO SALOMA, JOSEPH SALOMA, MELICIO DARING, JR., GUILLERMO ALMARIO, GUILBERT TIO, BENEGILDO ARABE, ROMULO SALACOT, MIGUELITO ORIOLA, ARTEMIO VILAN, JR., ARMANDO VILAN, ALBERT SUELTO, ALBERTO QUINQUELERIA, SIXTO TOLEDO, RODRIGO MARAVILLAS, RAMON**

**SILORIO, HAROLD MIRAFLOR, DAVID RABINA, ALFONSO DUEÑAS, ROBERTO FERNANDO ALABATA, ANTONIO MONTEDERAMOS, JR., DANNY SEDILLO, PURIFICACION BALBUENA, WEBSTER SERION, JR., MARIANO SILORIO, BENITO MAGSINO, and TOMAS ESPAÑOL,**
***Respondents.***
**x----------x**

## D E C I S I O N

**DAVIDE, JR., *J.*:**

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court assailing the Decision[1] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0098-93 (RAB VII-04-349-90-D, 04-350-90 D, 05-368-90-D, 05-369-90-D, 06-381-90-D, 06-382-90-D, 06-383- 90-D, 02-0043-92-D) and its Resolution[2] denying petitioners' Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

Petitioners Southern Cotabato Development and Construction, Inc. (SODECO) and Liberty Construction entered into a joint venture for the construction of a road, funded by the Asian Development Bank (ADB), connecting the municipality of Sibulan in Negros Oriental and Bais City. Petitioner Ella G. Demandante was the Managing Director of SODECO.

Private respondents, hired by SODECO as watchmen, survey aides, laborers and carpenters in connection with the road construction project, alleged that they were dismissed by Demandante when they asked for salary increases. They then sued for illegal dismissal and sought reinstatement with payment of wage differentials, overtime

pay, premium pay for rest days and holidays, thirteenth month pay and damages with Regional Arbitration Branch VII of the NLRC.

Of the original forty-six (46) complainants, only thirty-four filed their respective affidavits; the remaining twelve did not and likewise failed to appear during the hearing to substantiate their claims. Five complainants, namely, Artemio Vilan, Jr., Armando S. Vilan, Webster Serion, Jr., Joseph Saloma and Melecio Baring, Jr., voluntarily withdrew their complaints through a verified motion to dismiss.[3]

In their position paper, private respondents alleged that they were underpaid as petitioners paid a daily wage of merely P50 for the carpenters, P40 or P35 for the other workers, with the exception of Danny Sedillo and Purificacion Balbuena who earned P400 a month. Private respondents-watchmen also claimed that they were not paid their premium pay for working on their rest days or holidays, and for overtime of at least four hours which they were required to render daily. Private respondents further alleged that they signed petitioners' copy of the payroll in triplicate, with the first page indicating the actual amount received and the second and third pages left blank and stapled closely to the first sheet.

In their position paper, petitioners denied the charge of illegal dismissal. They alleged that private respondents were project employees whose work was coterminous with the phases of project to which they were assigned.

During trial, of the thirty-four (34) complainants who submitted their affidavits, only fifteen (15)[4] testified on their behalf. Petitioners objected to the admission of the affidavits of those who did not testify on ground that said affidavits were inadmissible hearsay evidence and their admission would violate administrative due process.[5] Petitioners presented only one witness, Arnoldo Demandante, SODECO's paymaster, who identified and offered nine payroll sheets, but failed to account for thirteen payroll sheets for the period of 1 June 1989 to 15 March 1990, which he claimed to have been lost.[6]

In his Decision,[7] the Labor Arbiter granted the motion to dismiss the complaint filed by complainants Artemio Vilan, Jr., Armando S. Vilan, Webster Serion, Jr., Joseph Saloma and Melecio Baring, Jr.,

and dismissed the complaint insofar as those who failed to submit their affidavits or substantiate their claims during trial were concerned, for failure to prosecute their case. The Labor Arbiter found complainants to be "project" employees, hence, were not illegally dismissed; gave full faith and credit to petitioners' payroll sheets; and ruled that only the watchmen were entitled to premium pay for service rendered on rest days, holiday pay and overtime pay. He thus rendered judgment as follows:

> WHEREFORE, judgment is hereby rendered ordering the respondents to pay to the following watchmen: Nenito Nalipay, Ernie Dinolan, Jose Suelto, Alexander Yba, Alfredo Seit, Juanito Dueñas and Jose Nico Español, their premium pay on rest day, holiday pay, and overtime pay. Attorney's fees of ten (10%) percent is adjudicated on the total monetary award. All other claims of complainants is [sic] hereby dismissed for not being substantiated with clear and convincing evidence.
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> The computation of the monetary award is attached to this decision and forms as [sic] an integral part hereof.

Private respondents appealed to the NLRC, which, however, dismissed the appeal on 11 March 1993[8] for private respondents' failure to appeal within the ten-day reglementary period. On motion for reconsideration, the NLRC reconsidered the dismissal for "meritorious reasons" and "in the interest of justice" in its Resolution[9] of 2 April 1993.

Before the NLRC, private respondents argued that the Labor Arbiter committed grave abuse of discretion in dismissing the complaint against the complainants who failed to testify. Private respondents contended that the testimony of the other complainants were sufficient, considering that the evidence for one was also the evidence for the others, and cited the case of private respondent Jose Español who, notwithstanding the absence of his testimony, was awarded overtime pay and premium payment for services rendered on his rest days and holidays. While admitting they were project employees, they insisted they were illegally dismissed as they claimed that they were dismissed before the completion of the project, particularly after they asked for salary increases.

In opposition to the appeal, petitioners insisted that complainants were project employees who had to be laid off upon the completion of the phases of the project to which they were assigned; that the watchmen were hired temporarily; and that complainants had admitted signing the payrolls without being forced or intimidated to do so.

In its assailed Decision[10] of 29 March 1995, the NLRC found as follows:

> Anent the issue of illegal dismissal, it is evident that the respondents failed to take up the burden of proving just cause for the dismissal of the complainants. As the Supreme Court held in the Alhambra Industries, Inc. versus NLRC, et al., G.R. No. 106771, November 18, 1994, "Termination of employment is not anymore a mere cessation or severance of contractual relationship but an economic phenomenon affecting members of the family. This explains why under the broad principles of social justice the dismissal of employees is adequately protected by the laws of the state. Hence, Art. 277, par. (b) of the Labor Code of the Philippines, as amended by Sec. 33, R.A. 6715, provides:
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> > "Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden or

proving that the termination was for a valid or authorized cause shall rest on the employer."

The Supreme Court likewise held in the case of SAN MIGUEL CORPORATION vs. NATIONAL LABOR RELATIONS COMMISSION, G.R. No. 96497, May 31, 1993, 222 SCRA 818, that "To validly dismiss an employee, an employer must meet two (2) conditions: first, the dismissal must be for a cause provided for in the Labor Code; and second, the observance of notice and hearing prior to the employee's dismissal. The importance of notice and hearing was stressed in Salaw vs. National Labor Relations Commission (202 SCRA 7 [1991]) wherein the Supreme Court stated: "The inviolability of notice and hearing for a valid dismissal of an employee cannot be over-emphasized. Those twin requirements constitute essential elements of due process in cases of employee dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal; on the other hand, the requirement of hearing affords the employee the opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither one of these two requirements can be dispensed without running afoul of the due process requirement of the Constitution."

In the instant case, hearings were conducted as the parties opted for hearing instead of a submission of the case based on position papers and supporting documents; and yet the respondents presented only their paymaster who is ostensibly not in a position to testify as to the legality of the dismissals. The respondents argued that the complainants, who were project employees, were laid-off upon the completion of the phases of the project to which they were assigned and yet, produced no notices thereof. As to the case of the watchmen, it unmistakably appears that they were illegally and unjustly dismissed. They were hired to watch the facilities, and the respondents later discharged them for the simple reason that they had to be replaced with licensed and armed guards. The respondents failed to show that the watchmen by their service contracts were hired for a definite period or up to their replacement by licensed and armed guards.

Anent the issue of labor standards, the complainants admitted that they voluntarily signed three sets of payrolls, one showing the amounts they actually received, and the others were blank. While it can be inferred that the payrolls presented were the blank payrolls, the complainants failed to lay down sound and solid premises for the inference. Indeed, We cannot just believe one's word as against another's, especially in this case, where the submitted documents enjoy a presumption of validity.[11]

In disposing of the case, the NLRC thus ruled:

> WHEREFORE, the respondents [petitioners herein] are hereby ordered to pay the thirteen (13) watchmen their salaries from the time they were withheld from them up to the completion of the above-mentioned project.
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> The respondents [petitioners herein] are further ordered to pay the other complainant-workers their salaries from the time they were withheld from them up to the completion of the particular phase or phases of the above-mentioned project that they were designated to.
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> For this purpose, the Labor Arbiter a quo is hereby ordered to take appropriate action to ascertain the completion of the project, as well as the completion of the phases of the project to which particular complainants were assigned. Thereafter, the Labor Arbiter shall compute the herein particular awards and issue the corresponding writ of execution. The appealed decision is affirmed in other respects.

Petitioners sought reconsideration of the NLRC decision, but the NLRC denied their plea it in its Resolution[12] of 27 July 1995. Petitioners then filed this special civil action, asserting that:

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> THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE EVIDENCES [sic] AND THE JUDICIAL ADMISSIONS OF SOME PRIVATE RESPONDENTS WHICH ADEQUATELY

NEGATE THE VALIDITY OF THEIR CLAIMS AGAINST THE PRIVATE RESPONDENTS.

II

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING DUE COURSE TO THE APPEAL OF THE PRIVATE RESPONDENTS DESPITE THE FACT THAT THE SAME WAS FILED BEYOND THE TEN-DAY REGLEMENTARY PERIOD.

III

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED.

IV

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING BACKWAGES TO THE PRIVATE RESPONDENTS.

Anent their first, third and fourth grounds, petitioners maintained that the NLRC was bound by the findings of fact of the Labor Arbiter who received both the testimonial and documentary evidence for the parties; and that the Labor Arbiter's decision was anchored on reason and experience for it was a matter of judicial notice that a road project had several phases which required different skills for specific periods. As to the carpenters, after the completion of the construction of the motor pool building and bunkhouse, their services were no longer needed, while the survey aides were necessary only for the first phase of the project, which was road realignment. The laborers, on their part, were employed for the menial tasks of digging canals, laying concrete pipes and the like. Hence, these employees were project employees and were laid off only upon the completion of the phase of the project to which they were assigned. As such, the twin procedural requirements of notice and hearing did not apply to them. As to the watchmen, they were hired on a temporary basis and were replaced when SODECO hired licensed and armed security guards to

secure the valuable construction equipment which had arrived. Petitioners likewise assailed the award of back wages to complainants who did not submit their affidavits nor appear during the trial, or to those who even moved for the dismissal of their complaint.

As to their second ground, petitioners argued that since the NLRC was definite in finding that the appeal was filed late, the decision of the Labor Arbiter had thus become final. As the period to appeal is mandatory and jurisdictional, the NLRC then committed grave abuse of discretion when it reconsidered its earlier order dismissing the appeal on ground of "interest of justice."

In their Comment, private respondents argued that the instant petition was dilatory and frivolous. Petitioners' presentation of a lone witness, SODECO's paymaster, indicated the weak nature of their defense, and their deliberate refusal to present petitioner Ella Demandante to refute the charge of illegal dismissal was highly suspect. Private respondents likewise asserted that notwithstanding their status as project employees, they could not be dismissed without cause and without due process before the completion of the project; besides, petitioners did not file a report of termination from work with the nearest Public Employment Office as required by Policy Instruction No. 20.

On motion of the Office of the Solicitor General which complained that the NLRC failed to transmit the record of the case to the former despite repeated requests, we required the NLRC to file its own Comment to the petition.

In its Comment, the NLRC argued that the issues raised by petitioners were factual in nature and that the evidence on record supported its findings that private respondents were illegally dismissed. Further, petitioners failed to discharge the burden of proof to show that the workers were dismissed with just cause; and likewise failed to comply with the twin procedural requirements of notice and hearing. Hence, as private respondents were illegally dismissed, the award of back wages was proper. Anent the issue of the timeliness of the appeal, the NLRC claimed that the appeal was seasonably filed as it was shown in the motion for reconsideration that private respondent's appeal "was filed by registered mail and within the

reglementary period;" in fact, private respondents "submitted a certification of the Postmaster of Dumaguete City and a Registry Return Card showing that their appeal was filed on time, and petitioners did not file an opposition thereto."

In their reply to the comment of the NLRC, petitioners refuted the argument of the NLRC and invoked the dissenting opinion[13] of Commissioner Bernabe Batuhan, who voted to dismiss the appeal filed by private respondents.

In their supplemental reply, petitioners submitted a certification[14] issued by the Project Manager of the ADB Project Management Office, attesting that petitioners' road project was substantially completed on 10 June 1993.

We find merit in the petition insofar as it concerns the award of back wages to those who did not submit affidavits nor appear during trial, and to those who filed motions to dismiss their complaint.

Public respondent NLRC did not disagree with the finding of the Labor Arbiter that of the forty-six (46) original complainants, only 34 submitted their affidavits; the remaining twelve (12) failed to do so and likewise did not appear during the hearing. From the Labor Arbiter's enumeration of those who did not submit their affidavits, four (4) were among the six (6) who filed motions to dismiss their complaints, viz.:, (1) Artemio Vilan, Jr.; (2) Armando Vilan; (3) Webster Serion, Jr.; and, (4) Melecio Baring, Jr.[15]

Clearly then, as to those who opted to move for the dismissal of their complaints, or did not submit their affidavits nor appear during trial and in whose favor no other independent evidence was adduced, no award for back wages could have been validly and properly made for want of factual basis. There is no showing at all that any of the affidavits of the thirty-four (34) complainants were offered as evidence for those who did not submit their affidavits, or that such affidavits had any bearing at all on the rights and interest of the latter. In the same vein, private respondents' position paper was not of any help to these delinquent complainants.

As to the other grounds, however, the petition must fail for lack of merit.

It is not disputed that private respondents were project employees. As such, they were entitled to security of tenure guaranteed by the Constitution[16] and the Labor Code[17] for the duration of the project they were hired for, or the phases thereof to which they were assigned or in connection with which they rendered services. The length of their employment is determined by the completion of the task for which they were hired.[18]

Policy Instruction No. 20, aimed to stabilize the employer-employee relations in the construction industry, pertinently provides as follows:

x x x

> Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination What is required of the company is a report to the nearest Public Employment Office for statistical purposes.
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> If a construction project or any phase thereof has a duration of more than one year and a project employee is allowed to be employed therein for at least one year, such employee may not be terminated until the completion of the project or any phase thereof in which he is employed without a previous written clearance from the Secretary of Labor. If such an employee is terminated without a clearance from the Secretary of Labor, he shall be entitled to reinstatement with back wages.
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> The employees of a particular project are not terminated at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the project is the completion of the project for an employee in such phase. In other words, employees terminated upon the completion of their

> phase of the project are not entitled to separation pay and exempt from the clearance requirement.
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> On the other hand, those employed in a particular phase of a construction project are also not terminated at the same time. Normally, less and less employees are required as the phase draws closer to completion. Project employees terminated because their services are no longer needed in their particular phase of the project are not entitled to separation pay and are exempt from the clearance requirement, provided they are not replaced. If they are replaced, they shall be entitled to reinstatement with back wages.

It is settled that the burden of proving that an employee was dismissed with just cause rests upon the employer.[19] In respect of project employees, the employer bears the same burden if the former are dismissed before the completion of the project, or of the phases thereof for which their services were contracted. Here, petitioners relied on the testimony of its lone witness, SODECO's paymaster, and their documentary evidence limited to the incomplete payroll sheets, the vouchers and daily time records prepared by private respondents. While these documents are relevant, they are not conclusive in determining the termination of the respective "phases" for which private respondents were hired. The best evidence would have been the service contract of each complainant and the schedule of completion of the various phases of the construction project which should have been in petitioners' possession. However, petitioners failed to present even copies of these documents; accordingly, no credible evidence supported their claim of completion of the phases of the project for which private respondents were employed, and petitioners have only themselves to blame.

Petitioners could have, of course, validly terminated private respondents even before the completion of the project or the phases thereof for which they rendered services, if accompanied by any of the just causes provided by law.[20] Petitioners did not, however, avail of any of such causes believing that they laid off private respondents due to the completion of the phases of the project to which the latter were assigned.

Since private respondents were illegally dismissed, the NLRC committed no error in awarding full back wages to private respondents from the time they were dismissed up to the completion of the project or the phases thereof to which they were assigned, as the case may be, pursuant to Article 279 of the Labor Code.

As to the other complainants who submitted their affidavits but were not presented as witnesses during trial, it suffices to state that under Article 221 of the Labor Code, the rules of evidence prevailing in courts of law or equity do not control proceedings before the Labor Arbiter or the NLRC. The Labor Arbiter and the NLRC are authorized to use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law and procedure, all in the interest of due process. Under Section 3 of Rule V of the New Rules of Procedure of the NLRC, cases before Labor Arbiters may be deemed submitted for decision on the basis of verified position papers accompanied by all supporting documents, including affidavits of the witnesses which stand in place of the latter's direct testimony. In Rabago vs. NLRC,[21] we rejected the argument that affidavits are inadmissible as hearsay evidence where the affiants were not presented for cross-examination, and held that the rules of evidence are not strictly observed in proceedings before administrative bodies such as the NLRC, where decisions may be reached on the basis of position payers only.[22]

As to the second issue, we rule that the NLRC did not err in allowing the appeal of private respondents. As noted in the comment of the NLRC, petitioners did not oppose private respondents' motion to reconsider the order dismissing the appeal, and in said motion it was shown that the appeal was posted within the reglementary period as evidenced by the certification of the postmaster of Dumaguete City and the return card. If petitioners believed that the NLRC erred in granting reconsideration, then they should have moved for reconsideration; however, on the contrary, they vigorously argued their defenses and asked for affirmative relief from the NLRC. They are now in estoppel to claim lack of jurisdiction on the part of the NLRC to decide the appeal.[23]

**WHEREFORE**, the instant Petition is hereby **DISMISSED** and the Decision of the NLRC in NLRC Case No. V-0098-93 is **MODIFIED**,

in that the award of back wages should not apply to private respondents Artemio Vila, Jr., Armando S. Vilan, Webster Serion, Jr., Joseph Saloma and Melecio Baring, Jr., who moved for dismissal of their complaints, and to others who did not submit their affidavits and did not even appear during the hearing of the cases before the Labor Arbiter.

The Labor Arbiter is directed to resolve with purposeful dispatch the issues referred to him in the challenged decision of the National Labor Relations Commission.

No pronouncement as to costs.

**SO ORDERED.**

**Bellosillo, Vitug, Kapunan and Hermosisima, Jr., *JJ.*, concur.**

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[1] Annex "A" of Petition; Rollo, 63-70. Per Presiding Commissioner Irenea E. Ceniza with Commissioner Amorito V. Cañete, concurring, and Commissioner Bernabe S. Batuhan, dissenting.
[2] Annex "C" of Petition; Rollo, 79-81.
[3] Labor Arbiter's Decision (Annex "G" of Petition), 3-4; Rollo 100-101. The Labor Arbiter enumerated those who did not submit affidavits as follows: Purification Balbuena, Webster Serion, Jr. Benito Magsino, Mariano Silorio, Melecio Baring, Artemio Vilan, Jr., Alberto Quinquileria, Rodrigo Maravillas and Artemio Vilan, Sr.
[4] They were Jose Suelto, Alexander Yba, Alfredo Seit, Jesus Banquirigo, Nenito Nalipay, Senenio Salacut, Ernie Dinolan, Alfonso Dueñas, Raul Agustin, Ramon Silorio, Jose Geronilla, Jaime Rodriguez, Tomas Español, Benegildo Arabe and Miguelito Oriola (Labor Arbiter's Decision, p. 4, Rollo, 101).
[5] Ibid.
[6] Rollo, 73.
[7] Annex "G" of Petition; Id., 98-106. Per Labor Arbiter Geoffrey P. Villahermosa.
[8] Annex "H" of Petition; Id., 113.
[9] Annex "I" of Petition; Rollo, 116.
[10] Supra note 1.
[11] Rollo, 66-69.
[12] Supra note 2.
[13] Rollo, 72-77.

[14] Id., 213.
[15] Supra notes 3 and 4.
[16] Section 3, Article XIII, 1987 Constitution.
[17] Article 279, Labor Code.
[18] See Article 280, Labor Code; Philippine National Construction Corporation vs. NLRC, 174 SCRA 191, 193 [1989]; ALU-TUCP vs. NLRC, 234 SCRA 678, 685 [1994].
[19] Pan Pacific Sales Industrial Co., Inc, NLRC, 194 SCRA 633, 637 [1991]; Reno Foods, Inc. vs. NLRC, 249 SCRA 379, 386, [1995]; Lim vs. NLRC, 259 SCRA 485, 497 [1996].
[20] Articles 282, 283 and 284, Labor Code of the Philippines.
[21] 200 SCRA 158, 164-165 [1991].
[22] See Rase vs. NLRC, 237 SCRA 523, 534 [1994].
[23] Tijam vs. Sibonghanoy, 23 SCRA 29 [1968]; Ocheda vs. Court of Appeals, 214 SCRA 629, 639 [1992]; Pantranco North Express, Inc. vs. Court of Appeals, 224 SCRA 477, 491 [1993].