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SUPREME COURT
SECOND DIVISION

ELIZABETH SUBLAY,
***Petitioner*,**

-versus-

G.R. No. 130104
January 31, 2000

NATIONAL LABOR RELATIONS COMMISSION, EURO-SWISS FOOD INC., WERDENBERG INTERNATIONAL CORPORATION and WERNER BERGER,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

This is a Special Civil Action for *Certiorari* to set aside the Decision of the National Labor Relations Commission dated 23 June 1997[1] dismissing petitioner's appeal from the decision of the Labor Arbiter on the ground that it was filed beyond the ten (10)-day reglementary period.

On 16 May 1991 petitioner Elizabeth Sublay was employed by private respondent Euro-Swiss Food Inc. (EURO-SWISS) as its Chief Accountant until her termination from the service on 31 December

1994. On the first day of December 1994 petitioner received a letter from private respondent Werner Berger, President of EURO-SWISS, informing her of his decision to abolish the position of Chief Accountant thus terminating her services effective 31 December 1994. The reason advanced for the abolition of her position and her consequent termination was that the computerization of the accounting system as well as the burning down of its factory significantly reduced the company's operations hence, according to Werner Berger, he could perform his functions with "minimal assistance from the encoder and the accounting clerks."[2]

Petitioner, in filing a case for illegal dismissal and non-payment of her 13th month pay against EURO-SWISS and/or Werner Berger, maintained that she was unjustly dismissed as there was no just and valid cause for her dismissal under Arts. 282, 283 and 284 of the Labor Code. The Labor Arbiter however was of a different opinion—[3]

> The admitted facts and the adduced evidence show that the complainant was justly dismissed for "installation of labor saving devices and redundancy." Respondent Werner Berger informed the complainant that Euro-Swiss Food, Inc., would abolish the position of chief accountant that the complainant held for as much as with the computerization of the Accounting system there was for him only minimal assistance from the encoder and the accounting clerks. Added to this was the burning of the factory building which reduced the respondent company's operations, and the respondents thus did not feel the need anymore of the complainant's services.

The complainant conceded that with the computer operational systems that she helped set up for the Accounting Department "only a push of a finger of a knowledgeable employee is needed and the reports needed by management could then be generated." It therefore appears that the complainant's dismissal was an accomplished and admitted fact; she made final arrangement as to the payment of her last compensation, benefits, and separation pay; and she turned over documents in her custody to her employer.

The Labor Arbiter ordered private respondent EURO-SWISS to pay petitioner her separation pay equivalent to one (1) month for every year of service or a total of P50,400.00.

On 9 December 1996 petitioner appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

On the basis of the facts established by the NLRC, petitioner's counsel of record Atty. Gabriel Marquez received the Labor Arbiter's decision on 21 November 1996, hence, she had until 2 December 1996 (1 December 1996 being a Sunday) within which to appeal. However, petitioner through Atty. Raymond Paolo Alikpala filed her appeal only on 9 December 1996 or seven (7) days late; consequently, the NLRC dismissed her appeal.[4]

Petitioner is now before us ascribing grave abuse of discretion amounting to lack of jurisdiction to the NLRC in denying outright her appeal on a mere "technicality." In her sole assignment of error, she bewailed the NLRC's egregious error when it summarily dismissed her appeal for having been filed out of time, thus totally ignoring the facts and circumstances of the case for the sake of expediency.[5] To justify her procedural lapse, petitioner revealed that she received a copy of the Labor Arbiter's decision on 2 December 1996 upon which she immediately called up Atty. Alikpala, a collaborating counsel[6] who, she learned, was not sent a copy of the decision. Atty. Alikpala however was horrified to discover that co-counsel Atty. Marquez had already been furnished a copy of the decision on 21 November 1996 so that by 2 December 1996 the ten (10)-day reglementary period had already lapsed, the tenth (10th) day from 21 November 1996 being 1 December 1996, a Sunday.

While petitioner acknowledges that "procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party,"[7] she contends that efficiency and order should not be the system's primordial values, taking over the places on the pedestal once occupied by justice and equity. To fortify her stand, she invokes the judicial policy of allowing appeals, although filed late, when the interest of substantial justice so requires. She cites Firestone and Rubber Co. of the Phils. vs. Lariosa[8] where this Court overlooked the late filing of appeal because the Notice of Decision

received by the employee's counsel advised him that the appeal could be filed within ten (10) "working" days which should properly have been ten (10) "calendar" days. In that case we discarded the stringent rule on the perfection of appeal in view of the sheer absence of any culpability on the part of respondent's counsel. The procedural lapse was solely attributable to his mistaken reliance on the notice which wrongly interpreted the ten (10) day reglementary period. Again in City Fair Corporation vs. NLRC[9] where the NLRC was brought to task for allowing the appeal of the employees filed a day late, we ruled that a greater injustice would occur if appeal was not given due course than when the reglementary period to appeal was to be strictly followed.

Petitioner contends that as in the aforecited cases, the facts and circumstances of her case justify the setting aside of the procedural requirement on the perfection of appeals. She remains steadfast in her belief that the NLRC erred in sending a notice of the Labor Arbiter's decision only to her lead counsel, Atty. Marquez, but failed to furnish Atty. Alikpala, her "active" counsel, with a copy thereof and ignoring the latter's request in his Entry of Appearance filed on 13 May 1996 that they (referring to the law office Saguisag and Associates to which Atty. Alikpala belonged) "be served and furnished with courtesy copies of all motions, orders, judgment, and other papers in the said case."[10]

It is doctrinally well-entrenched that the perfection of appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, and deprives the appellate court or body of the legal authority to alter the final judgment, much less to entertain, the appeal. As pointed out by petitioner, this Court has time and again sidestepped the rule on the statutory or reglementary period for filing an appeal. We have resorted to this extraordinary measure even at the expense of sacrificing order and efficiency if only to serve the higher ideals of justice and equity. Yet we cannot respond with alacrity to every clamor of injustice and bend the rules to placate a vociferous protestor crying and claiming to be a victim of a wrong. It is only in highly meritorious cases that this Court opts not to strictly apply the rules and thus prevent a grave injustice from being done. Such does not obtain in this case.

It is undisputed that petitioner was represented by two (2) lawyers, Atty. Marquez as lead counsel, and Atty. Alikpala as collaborating counsel. She alleged that Atty. Marquez to whom a copy of the Labor Arbiter's decision was given, failed to file the appeal and to notify her of the adverse decision resulting in its late filing and subsequent dismissal by the NLRC. She reasoned that had Atty. Alikpala been likewise served a copy of the decision she would not be in this distressing situation.

The rule is that when a party is represented by two (2) or more lawyers, notice to one (1) suffices as a notice to the party represented by him. Hence, the Labor Arbiter was not in error when he served a copy of the decision only on Atty. Marquez who after all was still the counsel of record when the decision was rendered. Likewise petitioner cannot claim that although Atty. Marquez was not asked to formally withdraw he has for all intents and purposes withdrawn because, by failing to actively represent petitioner, he virtually relinquished his responsibility over the case to Atty. Alikpala.

The unbroken stream of judicial dicta is that clients are bound by the action of their counsel in the conduct of their case. Otherwise, if the lawyer's mistake or negligence was admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned. Besides, without formally withdrawing his appearance, Atty. Marquez continued to be the counsel of petitioner. Courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter. In the absence of compliance with the essential requirements for valid substitution of counsel of record,[11] the court can safely presume that he continuously and actively represents his client.

Lastly, petitioner's claim for judicial relief in view of her counsel's alleged negligence is incongruous, to say the least, considering that she was represented by more than one (1) lawyer. Although working merely as a collaborating counsel who entered his appearance for petitioner as early as May 1996, i.e., more or less six (6) months before the termination of the proceedings a quo, Atty. Alikpala had the bounden duty to monitor the progress of the case. A lawyer has

the responsibility of monitoring and keeping track of the period of time left to file an appeal. He cannot rely on the courts to appraise him of the developments in his case and warn him against any possible procedural blunder. Knowing that the lead counsel was no longer participating actively in the trial of the case several months before its resolution, Atty. Alikpala who alone was left to defend petitioner should have put himself on guard and thus anticipated the release of the Labor Arbiter's decision. Petitioner's lead counsel might have been negligent but she was never really deprived of proper representation. This fact alone militates against the grant of this petition.

Once again we remind the members of the legal profession that every case they handle deserves their full and undivided attention, diligence, skill and competence, regardless of its importance and whether they accept it for a fee or for free keeping in mind that not only the property but also the life and liberty of their clients may be at stake.

WHEREFORE, the petition is **DISMISSED** for failure of petitioner Elizabeth Sublay to sufficiently establish that public respondent National Labor Relations Commission, in its assailed Decision committed grave abuse of discretion amounting to lack of jurisdiction in denying the appeal of petitioner for having been filed beyond the ten (10)-day reglementary period. No cost.

SO ORDERED.

Mendoza, Quisumbing, Buena and De Leon, Jr., *JJ*., concur.

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[1] Decision penned by Commissioner Vicente S.E. Veloso, concurred in by Commissioners Bartolome S. Carale (on official leave) and Alberto R. Quimpo.
[2] See Original Records, p. 37.
[3] Decision, dated 18 November 1996, by Labor Arbiter Potenciano Cañizares JR., NLRC NCR Arbitration Branch, Quezon City; Rollo, pp. 45-46.
[4] Rollo, p. 38.
[5] Original Records, p. 3.

[6] It was before Labor Arbiter Cañizares Jr. that Atty. Raymond Paolo A. Alikpala filed his Entry of Appearance dated 13 May 1996 for petitioner in collaboration with Atty. Marquez.
[7] Rollo, p. 18.
[8] G.R. No. 70479, 27 February 1987, 148 SCRA 187.
[9] G.R. No. 95711, 21 April 1995, 243 SCRA 1995.
[10] Rollo, p. 24.
[11] The essential requisites of valid substitution of counsel are: 1) there must be a written request for substitution; 2) it must be filed with the written consent of the client; 3) it must be with the written consent of the attorney to be substituted; and 4) in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court. See Nacuray vs. NLRC, G.R. Nos. 114924-27, 18 March 1997, 270 SCRA 9.

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