Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MICHELIN ASIA PACIFIC APPLICATION SUPPORT CENTER, INC.,		**G.R. No. 189861**
	Petitioner,	Present:
- versus -		SERENO, C.*J.*, Chairperson, VELASCO, JR.* LEONARDO-DE CASTRO,
MARIO J. ORTIZ,	Respondent.	PEREZ, and PERLAS-BERNABE, *JJ.*

Promulgated:

NOV 19 2014

x----------x

RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 2, 2009 and the Resolution[3] dated September 29, 2009 of the Court of Appeals (CA) in CA-G.R. SP. No. 106570 which annulled and set aside the Resolutions dated March 24, 2008,[4] June 24, 2008,[5] and September 22, 2008[6] of the National Labor Relations Commission (NLRC) in NLRC NCR LAC No. 01-000455-08 dismissing respondent Mario J. Ortiz's (Ortiz) appeal due to several procedural errors.

---

* Designated Acting Member per Special Order No. 1870 dated November 4, 2014.

1 *Rollo*, pp. 31-71.

2 Id. at 8-19. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Andres B. Reyes, Jr. and Fernanda Lampas Peralta, concurring.

3 Id. at 21.

4 Id. at 235-237. Penned by Commissioner Tito F. Genilo with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring.

5 Id. at 260-261.

6 Id. at 323-324. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring.

The Facts

On March 1, 2003, Ortiz was employed by petitioner Michelin Asia Pacific Application Support Center, Inc. (Michelin ASC) as Personnel Manager and was thereby involved in the processes of recruitment, probation and employee contract monitoring, medical claims, and payroll, among others.[7]

In line with the Michelin Group's "Tonus" initiative, which is a program for improving working methods, increasing efficiency, and reducing fixed costs across all of its affiliates, functions, and departments globally,[8] a formal review of the Service Personnel processes at Michelin ASC was conducted and results therefrom determined that the functions of the Personnel Manager could be absorbed by the Service Center/Site Manager and/or Assistant Personnel Manager.[9]

Thus, on November 30, 2006, Michelin ASC sent Ortiz a letter[10] informing him of the termination of his employment effective the close of business on December 31, 2006 on the ground of redundancy.[11] It also notified the Department of Labor and Employment - Regional Office about Ortiz's intended termination and submitted an Establishment Termination Report.[12]

On December 6, 2006, Ortiz accepted a separation package in the amount of □2,225,561.66[13] and executed a Release, Waiver and Quitclaim[14] (quitclaim) in favor of Michelin ASC. Respondent also signed a Final Pay Computation evidencing payment of the said amount.[15]

This notwithstanding, Ortiz, on February 27, 2007, filed a complaint[16] for illegal dismissal against Michelin ASC,[17] docketed as NLRC-NCR Case No. 00-02-01810-07, claiming, among others, that: (*a*) he was not aware that Michelin ASC had an impending redundancy program; (*b*) he was promised a separation package in the amount of 2.5 months' salary for every year of service; and (*c*) he, was, however, offered a lesser package upon his

---

7 See Position Paper filed by Michelin ASC dated August 9, 2007; id. at 93-94.
8 Id. at 33.
9 Id. at 34-35.
10 Id. at 128.
11 Id. at 159.
12 Id. See also id. at 129.
13 See Acknowledgment Receipt dated December 6, 2006; id. at 137.
14 Id. at 131-133.
15 Id. at 134-135.
16 Id. at 90-91.
17 Impleading as well John Ticzon, Michelin ASC's Service Center/Site Manager (see Position Paper of Ortiz filed on August 9, 2007); id at 560.

termination but was forced to accept the same since he had a family to support and was then 53 years old.[18]

The LA Ruling

In a Decision[19] dated November 27, 2007, the Labor Arbiter (LA) dismissed the illegal dismissal complaint, holding that Michelin ASC complied with the statutory requirements of a valid redundancy program and that the same was conducted in good faith.[20] In this relation, the LA pointed out that Ortiz executed a quitclaim in favor of Michelin ASC and had received the total of □2,225,561.66, which amount was more than what the law provides as separation pay.[21] Furthermore, the LA did not sustain Ortiz's claim regarding the separation package amounting to 2.5 months' salary for every year of service, considering the Affidavit[22] executed by Michelin ASC's Senior Legal Counsel, Angeline Khoo, denying the same.[23] Unconvinced, Ortiz appealed before the NLRC.[24]

The Proceedings Before the NLRC

In a Resolution[25] dated March 24, 2008, the NLRC dismissed Ortiz's appeal for not having been duly perfected, observing that his **Memorandum of Appeal was <u>not accompanied by a certificate of non-forum shopping</u> in violation of Section 4,[26] Rule VI of the New Rules of Procedure of the NLRC**[27] (NLRC Rules).

Ortiz moved for reconsideration[28] but was denied by the NLRC in a Resolution[29] dated June 24, 2008, considering that his motion was filed out of time. In particular, the NLRC observed that Ortiz himself admitted that he received a copy of the resolution sought to be reconsidered on April 14, 2008. However, his **<u>motion for reconsideration was only filed on May 7, 2008</u>, hence, <u>beyond the 10-day reglementary period to perfect the same</u>,**

---

18 Id. at 185-187.

19 Id. at 185-197. Signed by Labor Arbiter Marita V. Padolina.

20 Id. at 190 and 196-197.

21 Id. at 195.

22 Dated August 31, 2007. (Id. at 154-161.)

23 Id. at 154. See also id. at 191.

24 See Memorandum of Appeal dated January 25, 2008 docketed as NLRC LAC No. 01-000455-08; id. at 198-204.

25 Id. at 235-237.

26 SEC. 4. Requisites for Perfection of Appeal. — A) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for, and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

27 As Amended by NLRC RESOLUTION NO. 01-02, February 12, 2002 entitled "AMENDING CERTAIN PROVISIONS OF THE NEW RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION."

28 Dated April 18, 2008. (*Rollo*, pp. 238-241.)

29 Id. at 320-321.

in violation of the mandatory requirement under Section 15,[30] **Rule VII of the NLRC Rules**.

Dissatisfied, Ortiz filed a **second motion for reconsideration**[31] on July 14, 2008, to which Michelin ASC was required to comment.[32]

In a Resolution[33] dated September 22, 2008, the NLRC did not give due course to the **second motion for reconsideration for being in violation also of Section 15,**[34] **Rule VII of the NLRC Rules**, or the prohibition against second motions for reconsideration.

The Proceedings Before the CA

Undeterred, Ortiz, on December 12, 2008, filed a petition for *certiorari*[35] before the CA assailing the LA Decision and the NLRC's March 24, 2008, June 24, 2008, and September 22, 2008 Resolutions.

In a Resolution[36] dated December 19, 2008, the CA dismissed Ortiz's petition for having been filed out of time, remarking that a second motion for reconsideration before the NLRC was not allowed. The CA also dismissed the petition on the ground that a relevant pleading was not attached to it, *i.e.*, Ortiz's reply.

Ortiz filed a Motion for Reconsideration dated January 9, 2009,[37] to which Michelin ASC was required to comment.[38]

In a Decision[39] dated June 2, 2009, the CA reversed its earlier December 19, 2008 Resolution, and annulled the NLRC's March 24, 2008, June 24, 2008, and September 22, 2008 Resolutions, thus directing the NLRC to give due course to Ortiz's appeal. Mainly, the CA ruled that there

---

30 SEC. 15. Motions for Reconsideration. — Motion for reconsideration of any decision resolution/order of the Commission **shall not be entertained except when based on palpable or patent, errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision/resolution/order**, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party, and provided further, that **only one such motion from the same party shall be entertained**.

Should a motion for reconsideration be entertained pursuant to this section, the Resolution shall be executory after ten (10) calendar days from receipt thereof. (Empahses supplied)

31 Titled as "Motion for Reconsideration"; *rollo*, pp. 262-264.

32 See "Opposition (to Complainant-Appellant's Second Motion for Reconsideration)" dated August 26, 2008; id. at 268-271.

33 Id. at 323-324.

34 See footnote 30.

35 Id. at 275-300.

36 Id. at 497. Issued by Division Clerk of Court Teresita C. Custodio.

37 Id. at 498-514.

38 See CA Resolution dated January 26, 2009 issued by Executive Clerk of Court II Caroline G. Ocampo-Peralta, MNSA; id. at 691. See also Michelin ASC's Comment dated February 24, 2009; id. at 526-533.

39 Id. at 8-19.

was *prima facie* merit in Ortiz's contention and found it fitting to relax the procedural rules.[40]

Aggrieved, Michelin ASC moved for reconsideration[41] but was denied in a Resolution[42] dated September 29, 2008, hence, the instant petition.

The Issue Before the Court

The essential issue before the Court is whether or not the CA properly granted Ortiz's petition for *certiorari* and annulled the NLRC Resolutions.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a ***capricious and whimsical manner that is tantamount to lack of jurisdiction***. To be considered "grave," the discretionary authority must be exercised **in a despotic manner by reason of passion or personal hostility, and must be *so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law***.[43]

After evaluating the relevant antecedents of this case, the Court comes to the conclusion that no grave abuse of discretion, in the sense above-described, was committed by the NLRC in dismissing Ortiz's appeal. As seen from the preceding factual narration, it is clear that the NLRC – in due observance of its own procedural rules – had amply justified its dismissal of Ortiz's appeal in view of his numerous procedural infractions, namely: (*a*) his failure to attach to his Memorandum of Appeal a certificate of non-forum shopping in violation of Section 4, Rule VI of the NLRC Rules;[44] (*b*) his filing of a motion for reconsideration of the NLRC's March 24, 2008 Resolution beyond the 10 day reglementary period in violation of Section 15, Rule VII of the NLRC Rules;[45] and (*c*) his filing of a second motion for reconsideration in violation of Section 15, Rule VII of the NLRC Rules.[46]

---

40 Id. at 16.
41 Dated June 25, 2009. (Id. at 547-558.)
42 Id. at 21.
43 *Ramos v. BPI Family Savings Bank, Inc.*, G.R. No. 203186, December 4, 2013; emphases and underscoring supplied.
44 *Rollo*, pp. 235-236.
45 Id. at 320-321.
46 Id. at 323-324.

Of significant consideration is Ortiz's violation of the mandatory requirement on the timely filing of a motion for reconsideration, which thus rendered the NLRC's initial March 24, 2008 Resolution **final and executory**. *Silva v. NLRC*[47] instructs:

> Time and again, this Court has been emphatic in ruling that the seasonable filing of a motion for reconsideration within the l0-day reglementary period following the receipt by a party of any order, resolution or decision of the NLRC, is a **mandatory requirement** to forestall **the finality** of such order, resolution or decision. The statutory base for this is found in Article 223[48] of the Labor Code and Section 14, Rule VII[49] of the New Rules of Procedure of the National Labor Relations Commission.[50] (Emphases supplied)

"A definitive final judgment [– such as the NLRC's March 24, 2008 Resolution –] however erroneous, is no longer subject to change or revision."[51] Settled is the rule that "**[a] decision that has acquired finality becomes immutable and unalterable**. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law."[52]

Hence, by the foregoing consideration alone, the CA should have dismissed Ortiz's *certiorari* petition. But this is not all.

To compound his mistakes, Ortiz even filed a **second motion for reconsideration**, which is a **prohibited pleading under the NLRC Rules**. As a prohibited pleading, the filing of said motion **could not have tolled the running of the 60-day reglementary period for the filing of a petition for *certiorari*** under Rule 65 of the Rules of Court before the CA. Thus, since the NLRC's June 24, 2008 Resolution assailed by Ortiz's second motion for reconsideration was received by him on July 8, 2008,[53] while his petition for *certiorari* before the CA was filed **more than 60 days thereafter**, or on December 12, 2008,[54] his *certiorari* petition should have been dismissed outright for having been filed out of time.

---

47 G.R. No. 110226, June 19, 1997, 274 SCRA 159.

48 Art. 223. "(T)he decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties."

49 SEC. 14. Motions for Reconsideration. — Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath *and filed within (10) calendar days from receipt of the order*, *resolution or decision*, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party and provided further, that only one such motion from the same party shall be entertained. (Now Section 15, Rule VII of the New Rules of Procedure of the NLRC, As Amended by NLRC Resolution No. 01-02, Series of 2002 [see footnote 34].)

50 *Silva v. NLRC*, supra note 47, at 167.

51 *Gonzales v. Solid Cement Corporation*, G.R. No. 198423, October 23, 2012, 684 SCRA 344, 350.

52 Id.

53 *Rollo*, p. 262.

54 Id. at 40 and 298.

Therefore, for all these reasons, the Court reverses the CA Decision and reinstates the NLRC Resolutions dismissing Ortiz's appeal. Accordingly, it is now unnecessary to delve on the other ancillary issues raised in the petition of Michelin ASC.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 2, 2009 and the Resolution dated September 29, 2009 of the Court of Appeals in CA-G.R. SP. No. 106570 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Resolutions dated March 24, 2008, June 24, 2008, and September 22, 2008 of the National Labor Relations Commission in NLRC NCR LAC No. 01-000455-08 are **REINSTATED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice