

FIRST DIVISION

[G.R. No. 103370. June 17, 1996]

UNITED PLACEMENT INTERNATIONAL, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION, LEONARDO ARAZAS, LIVY DACELO and CESAR HERNANDEZ, *respondents*.

DECISION

VITUG, J.:

The petition for *certiorari* assails the Resolution of the National Labor Relations Commission ("NLRC") dismissing the appeal of petitioner United Placement International in POEA Case No. L-86-05-378-A & B for having been interposed beyond the reglementary period.

Leonardo Arazas, Livy Dacillo and Cesar Hernandez, herein private respondents, applied for overseas employment with Placemethaus and General Services (Placemethaus for brevity). Virgilio Reyes of Placemethaus informed the applicants that their deployment abroad could be facilitated by completing the requisite documents and paying a placement fee of P19,300.00 each. Hopeful, private respondents each paid the quoted amount to Reyes. No receipt was issued.

On 09 November 1985, private respondents were made to sign two-year employment contracts bearing the signature of the general manager, Janet A. Gregorio, of Placemethaus. Only private respondent Dacillo, however, was furnished with a copy of the agreement. Prior to their departure, in December of 1986, for Dammam, Saudi Arabia, private respondents were each provided with a sealed envelope with the instruction that the envelopes were to be opened only if and when required by the authorities to show their employment contracts at the port of destination. The envelopes each contained a notice and confirmation of employment issued by Luz R. Abad, manager of United Placement International, in favor of private respondents.

After only a five-month stay in Saudi Arabia, or on 19 April 1986, private respondents' employment contracts were pre-terminated, and they were sent back to the Philippines.

Soon after their arrival, private respondents filed with the Philippine Overseas Employment Administration ("POEA") their complaint for illegal dismissal, nonpayment of bonus and a refund of placement fees against Placemethaus and the United Placement International.

Corresponding summonses and notices were sent to petitioner for the hearings scheduled for 03 July 1986, 15 July 1986, 07 August 1986, 11 August 1986, 03 September 1986, 12 September 1986, 19 September 1986, 17 February 1987, 04 March 1987 and 14 April 1987. On 08 August 1986, a certain Atty. Hernandez personally appeared for petitioner before the hearing officer. He requested that the hearing be reset to 03 September 1986. On said date, neither he nor a representative of petitioner appeared. On 12 September 1986, however, Luz R. Abad personally appeared for petitioner. She submitted a written manifestation requesting for the authentication and verification of all documents submitted by private respondents,

claiming that the notices/confirmation of employment given the private respondents were not genuine and that her signatures thereon were forged.

While the case was pending with the POEA, petitioner moved its offices from Suite 450 Padilla de los Reyes Bldg., 232 Juan Luna, Binondo, Manila, to the second floor of the C. Rivilla Bldg., 115 Aguirre St., Legaspi Village, Makati, Metro Manila. The transfer was approved by Cecilia E. Curso, Chief of the Licensing and Evaluation Department of the POEA, on 19 November 1986.

On the day of the supposed final hearing of the case, or on 04 March 1987, petitioner did not appear.

On 18 July 1988, the POEA through then Administrator Tomas Achacoso, issued an order holding Placemethaus solely responsible for the refund of placement fees claimed by private respondents since it was that agency which "actually deployed" the respondents.^[1] On 28 July 1988, the POEA rendered its decision disposing of the case, as follows:

"WHEREFORE, premises considered, judgment is rendered ordering the respondents, jointly and severally, to pay complainants Leonardo Arazas, Livi Dacillo (sic), and Cesar Hernandez, the amount of FIVE THOUSAND SEVEN HUNDRED US DOLLARS (US\$5,700.00), for each of them, or their equivalent in Philippine Currency at the time of payment, representing their individual salaries corresponding to the unexpired portion of their employment contracts computed at the rate of US\$300.00 a month for nineteen (19) months. Payment of said amounts should be coursed through this Office.

"SO ORDERED."^[2]

The POEA sent a copy of its decision to petitioner by registered mail (Registered Letter No. 2432) at the latter's address of record (Binondo office). The post office sent the registered mail notice on 04 August 1988. Two other notices were sent, one on 11 August 1988 and another on 17 August 1988, to petitioner. On 17 September 1988, since the registered matter still remained unclaimed, the post office returned the mail to the POEA.

After almost a year, or on 11 September 1989, petitioner appealed the Achacoso ruling to the NLRC. On 11 December 1990, the NLRC dismissed^[3] the appeal on the ground that the decision sought to be reviewed had long become final and executory.

The NLRC denied, on 18 November 1991, petitioner's motion for reconsideration for lack of merit.^[4]

Petitioner would now have this Court reverse the NLRC on the argument that since the transfer to the new address of petitioner was sanctioned by the POEA itself, the date of service of the decision to the old address should not be considered as the starting point of the ten-day reglementary period for appeal but as of 01 September 1989, or about a year later, when petitioner received the decision "through the initiative of Luz R. Abad." Hence, petitioner asserted, the appeal was timely filed on 11 September 1989.

The argument is bereft of merit.

Petitioner's notice of change of address, duly acknowledged by the POEA Licensing and Evaluation Department, was made in compliance with Section 12,^[5] Rule II, Book II, of the 1985 POEA Rules and Regulations. This Book deals with the licensing and regulation of participants in the overseas employment program. It has nothing to do with the adjudication of complaints by overseas employees against recruitment agencies, a matter separately treated in Book VI of the Rules. In the adjudication of such complaints, it is the hearing officer, the government

official charged with evaluating and recommending to the POEA Administrator the proper action in adjudicatory cases, who has custody of the records.^[6] In the discharge of his functions, the hearing officer acts on the basis of the records before him. Even when a particular matter of interest, like a party's change of address, is furnished a department of the POEA, the hearing officer would quite likely still be incognizant thereof; thus, such as it should be, he must instead be bound by and act on the basis of what appears on record.^[7] Notices of processes are also handled by clerks who themselves must be guided by the records of the case. It is incumbent upon, and it behooves, the parties or counsel to themselves make certain that all official communications, either by mail or personally, properly reach them at their correct addresses,^[8] a matter they can do by simply making that data of record.

Petitioner believes that the service to it of the POEA decision can be considered complete when and only once the mail is *actually* received.^[9] That is not the case. Section 8, Rule 13, of the Rules of Court, which can apply suppletorily to the 1985 POEA Rules and Regulations,^[10] provides that service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. In accordance with this rule, petitioner is deemed to have received the challenged decision on 09 August 1988 or five (5) days from 04 August 1988 in the absence of proof to overturn the presumption that the postmaster had regularly performed his duty.^[11] Pursuant to Sections 1, 2 and 3 of Rule V, Book VI, of the 1985 POEA Rules and Regulations, petitioner had only ten (10) days from 09 August 1988 within which to appeal to the NLRC by filing a notice of appeal or a memorandum of appeal with the Adjudication Department of the POEA.

Petitioner's asseveration that it has been denied due process is not borne out by the records. Even before the acknowledgment by POEA of the transfer to Makati of petitioner's offices, notices had already been sent to petitioner at its Binondo office for the seven (7) hearing dates. It would appear that petitioner simply ignored the notices. Luz R. Abad herself merely considered the complaint a "nuisance suit, more than anything else."^[12] What the law proscribes is lack of opportunity to be heard.^[13] That opportunity, the Court is convinced, has sufficiently been accorded to petitioner.

Two final reminders that need not be belabored at length: (1) A minute resolution disposing of a motion for reconsideration, provided it has legal basis (e.g., the motion's utter lack of merit), is not improper at all,^[14] and (2) the timely perfection of an appeal is not only mandatory but likewise jurisdictional in character.^[15]

WHEREFORE, the questioned NLRC Resolution of 11 December 1990 and the minute resolution of 18 November 1991 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

^[1] *Rollo*, pp. 7-8.

^[2] *Rollo*, pp. 37-38.

^[3] Penned by Commissioner Domingo H. Zapanta and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Rustico L. Diokno.

^[4] *Rollo*, p. 27.

[5] Sec. 13 under the 1991 POEA Rules and Regulations.

[6] Sec. 1, Rule I; Sec. 4, Rule II, and Sec. 7, Rule III, Book VI of the 1985 POEA Rules and Regulations.

[7] Philippine Suburban Development Corporation vs. Court of Appeals, 100 SCRA 109; Lopez vs. De los Reyes, 31 SCRA 214.

[8] Vill Transport Services, Inc. vs. Court of Appeals, 193 SCRA 25.

[9] Petitioner's Memorandum, pp. 6-8.

[10] Rule III, Book VI of the 1991 POEA Rules and Regulations now contains this section:

"Sec. 5. *Proof and Completeness of Service*. The return is *prima facie* proof of the facts stated therein. Service by registered mail is completed upon receipt of the addressee or agent; but if the addressee or agent fails to claim his mail from the post office within five (5) calendar days from date of last notice of the postmaster, service shall take effect after such time."

[11] Philippine National Bank vs. CFI of Rizal, Pasig, Branch XXI, 209 SCRA 294; Aportadera, Sr. vs. Court of Appeals, 158 SCRA 695.

[12] *Rollo*, p. 19.

[13] Edén vs. Ministry of Labor and Employment, 182 SCRA 840.

[14] Borromeo vs. Court of Appeals, 186 SCRA 1.

[15] Lucero vs. NLRC, 203 SCRA 218; see also Bank of America, NT & SA vs. Gerochi, Jr., 230 SCRA 9.