

THIRD DIVISION

**PHILEMPLOY SERVICES
AND RESOURCES, INC.,**
Petitioner,

G.R. No. 152616

Present:

QUISUMBING, *J.*,
Chairperson,
CARPIO,
CARPIO MORALES, and
TINGA, *JJ.*

- versus -

Promulgated:

ANITA RODRIGUEZ,
Respondent.

March 31, 2006

X - - - - - X

DECISION

CARPIO, *J.*:

The Case

This is a petition for review^[1] to annul the Decision^[2] dated 15 March 2002 of the Court of Appeals in CA-G.R. SP No. 54386. The Court of Appeals reversed the 11 June 1998 Decision^[3] and the 3 February 1999 Resolution^[4] of the National Labor Relations Commission (“NLRC”) in NLRC NCR Case No. ADJ(L)-95-01-0306. The Court of Appeals reinstated the 26 December 1996 Decision of Labor Arbiter Manuel R. Caday.

The Facts

The facts, as summarized by the Labor Arbiter and adopted *in toto* by the Court of Appeals and the NLRC, are as follows:

In March 1994, complainant Anita Rodriguez applied with respondent Philempl[o]y Services and Resources, Inc. at 36 Main Ave.cor. 8th Ave., Cubao, Quezon City for deployment abroad as a factory worker.

After her interview, complainant secured the necessary documentation for her travel, such as passport, medical certificate, NBI clearance, among others, to which she expended the sum of P2,000.00.

In December 1994, she set out from Cotabato to Manila to report to the office of respondent after she had received a telegram (Annex "A") requiring her to report.

Ms. Brenda Castro, an official of respondent, demanded from complainant the sum of P60,000.00 as placement fee. Since she could not afford such amount, they agreed that she would have to pay initially the amount of P30,000.00 as downpayment and the balance of P30,000.00, plus 7% interest every month thereafter through salary deductions.

After she had pledged her motorcycle and a necklace, she paid Ms. Castro the amount of P30,000.00 plus 10% interest on December 29, 1994, but she was not issued any receipt.

Thereafter, she executed a contract of employment as a domestic helper of one Chao Hung Ching of Taipei, Taiwan with a monthly salary of NT\$14,010, plus free food and accommodation for a period of one (1) year. (Annexes "A" and "B")

On January 11, 1995, she again reported to the office of respondent where another sum of P900.00 for Medicare was required on complainant. After she had pledged her College ring, she paid respondent said amount.

On January 13, 1995, she was deployed by respondent to the latter's principal arriving in Taiwan later that day. (Annex "D")

As such domestic helper, she worked from 5:00 a.m. until 10:00 p.m. Among her chores were to carwash the vehicle of her master, cook the meals, housecleaning and babysitting.

For her desire to improve her lot, as well as those she left behind, she weathered all the hardships and loneliness working abroad.

In the morning of January 24, 1995, she wrote her family in the Philippines of her difficulties as a DH in Taiwan and of her desire to return home after her one-year contract. She requested the wife of [her] master to mail said letter. Later that evening, she had a talk with her master where she was told that she is sending her home on account of certain problems. Complainant pleaded that she continue her employment, confronted as she was with the debts she had to pay.

On January 25, 1995, complainant was accompanied to the airport by a certain Ms. Go to whom she inquired why she was being repatriated to the Philippines. All that Ms. Go answered was that there was some kind of a problem. While at the airport, Ms. Go forced complainant to sign an Affidavit where it stated, among others, that her leaving as a DH was voluntary and that she would assume all the obligations for her travel back to the Philippines. Since complainant did not want to sign said Affidavit, Ms. Go took complainant to the Office of the Foreign Affairs where, through an immigration police, complainant's passport and plane ticket were given to her. Two policemen accompanied complainant board the plane bound for the Philippines.

From January 13 to 24, 1995 or a period of twelve (12) days, complainant was only paid the sum of NT\$1,931.00.

In resisting complainant's allegations, respondent, in its Position Paper with an accompanying Affidavit of Bayani Fontanilla, Jr. and annexes, asserted the following material averments, to wit:

Complainant was hired and deployed for Taiwan as a domestic helper for a one-year contract with principal Chao Hung Ching in Taiwan with a monthly salary of NT\$14,010.00. Among other stipulations of the contract, it was agreed that she would undergo a forty (40) days probationary period before she becomes a regular domestic helper.

In the course of her recruitment, complainant was personally interviewed through telephone calls by her principal and apprised of the terms and conditions of her employment as a domestic helper in Taiwan.

Complainant was charged of her placement fees as allowed by law and by the POEA rules and regulations.

On January 13, 1995, complainant departed for Taiwan. It was only on January 15, 1995 when she actually performed her work as a domestic helper after she had undergone an orientation.

During the first ten (10) days of her probationary period, complainant was observed to be inattentive and incompetent to perform her duties and responsibilities. She could not cook and do simple things as washing clothes. It was the principal's mother-in-law who did most of the household chores, like babysitting of the child. Worse, complainant was already complaining of the cold weather. However, the principal was nonetheless optimistic that complainant would improve her chores, but to no avail as complainant kept insisting that she be allowed to go home on account of her incapability to perform her job. The complainant even told her foreign employer that "she had hired a housemaid in their house for more than ten years to do the task."

After the first ten (10) days' work with the principal employer, complainant returned to the Philippines.^[5]

On 26 December 1996, the Labor Arbiter rendered his decision with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents jointly and severally to pay complainant the sum of P10,900.00 representing the excess placement fee paid by her; the amount of NT\$161,115.00 or its peso equivalent in the amount of P155,411.15 representing her unearned wages corresponding to the unexpired portion of her contract; NT\$3,492.22 or its peso equivalent in the amount of P3,368.59 representing salary differentials; and ten percent (10%) of the total monetary award due complainant as attorney's fees.

SO ORDERED.^[6]

Philemploy Services and Resources, Inc. ("petitioner") and Chao Hung Ching appealed to the NLRC. The NLRC rendered its decision on 11 June 1998. The pertinent parts of the decision read as follows:

Right from the time complainant was accepted as an applicant for the position of Caretaker/Domestic helper, she has already a second thought about said position. Her reason is that it is not the position she applied for. (see No. 7 of complainant's Sinumpaang Salaysay, page 30, record). This statement is not found in the Arbiter's translation into English of such Sinumpaang Salaysay which was adopted by complainant as part of her position paper, and upon which the Labor Arbiter's a quo factual antecedents have been derived.

Indeed, such omitted material facts coming from complainant herself, is pregnant of bold manifestation that in fact she had difficulty in adjusting herself to the nature of her accepted position different from what was intended. It reinforces thus, respondents' observation that complainant misrepresented herself to her foreign employer that she knows the household chores.

Yet, despite all of these misgivings shown by complainant, her foreign employer was willing to give her time to organize and learn herself the duties and responsibilities attendant to the position of house helper. But the same becomes naught when she insisted to be repatriated before the end of the one-year contract.

Normally, this Commission does not disturb the factual finding of the Labor Arbiter a quo when supported by substantial evidence. (Union of Filipino Workers vs. NLRC, G.R. No. 98111, April 7, 1993).

But in this case, We find it more prudent to deviate from said decisional rule to avoid injustice.

We sympathize with the misfortune of complainant, but factual as well as corroborative circumstances speak loudly against the charge of dismissal. Complainant preferred to go back home earlier than expected. As such, she should not be allowed to utilize this forum as a convenient avenue to enforce a claim which is devoid of factual or legal basis.^[7]

The dispositive portion of the decision of the NLRC reads:

WHEREFORE, in view thereof, the appealed decision is hereby modified deleting the award of ₱155,411.15 representing unearned wages corresponding to the unexpired portion of the contract, there being no illegal dismissal that took place.

In all other respects, the decision is affirmed.

SO ORDERED.^[8]

Anita Rodriguez ("Anita") filed a motion for reconsideration on 3 September 1998.^[9]

On 15 September 1998, Anita filed before the NLRC a Manifestation^[10] asserting, *inter alia*, that —

While it is conceded that respondents had filed their appeal within the period permitted by law yet, it is submitted that the said appeal should not have been entertained on the very simple ground that the surety bond it submitted to perfect their appeal is a “FAKE” and “FORGERIES” as certified to by no less than NORMA A. VILLANO, Assistant Vice President of the Eastern Assurance & Surety Corporation in her letter dated September 11 and 14, 1998 regarding the surety bonds Nos. G(16)54276 B-2772 in the amount of P118,779.69 and G(16)54194/B-2691 in the amount of P50,000.00, respectively.^[11]

Anita asserted that since petitioner failed to comply with the requirements for perfecting an appeal, no appeal was perfected from the decision of the Labor Arbiter and petitioner’s appeal should have been “outrightly dismissed.”^[12]

The NLRC denied Anita’s motion for reconsideration in its assailed 3 February 1999 Resolution.^[13]

On 17 August 1999, Anita filed a petition for certiorari^[14] before the Court of Appeals assailing the decision and resolution of the NLRC. On 23 August 1999, the Court of Appeals issued the following resolution:

Before We act on the instant petition for certiorari, the petitioner is directed to inform this Court in writing, within five (5) days from receipt hereof, the date when C. S. Cruz and Associates, her counsel, received a copy of the Resolution dated February 3, 1999 in the case before the National Labor Relations Commission.

SO ORDERED.^[15]

On 17 April 2000, Anita’s new counsel, Emerson C. Tumanon (“Atty. Tumanon”), filed with the Court of Appeals his Entry of Appearance and Compliance.^[16] Atty. Tumanon asserted that Anita engaged his services as counsel in the present case in view of the death of Anita’s former counsel, Ciriaco S. Cruz (“Atty. Cruz”), on 26 June 1999. Atty. Tumanon stated that upon verification with the records of the NLRC, he found out that Atty. Cruz never received a copy of the assailed 3 February 1999 Resolution.

The Ruling of the Court of Appeals

On 15 March 2002, the Court of Appeals rendered judgment as follows:

WHEREFORE, premises considered, the decision of the NLRC dated June 11, 1998, as well as its Resolution of February 3, 1999 is hereby REVERSED and SET ASIDE. In lieu thereof, the decision of the Labor Arbiter dated December 26, 1996 is hereby REINSTATED.

SO ORDERED.^{[\[17\]](#)}

The Court of Appeals ruled that, contrary to the view of the NLRC, the fact that Anita “had a second thought about her position as a caretaker or domestic helper as it was not the position she applied for, was not pregnant of bold manifestation that in fact she had difficulty in adjusting herself to the nature of her accepted position.” The Court of Appeals stated that neither would Anita’s “second thoughts” bolster petitioner’s allegation that Anita “misrepresented to her foreign employer that she knows the house chores.”

The Court of Appeals held that petitioner’s allegation that Anita did not know her job was incredible. The Court of Appeals stated that the nature of the work given to Anita “such as car-washing the vehicle of her master, cooking the meals, housecleaning and babysitting, was too simple and menial for an ordinary person of average intelligence to easily learn, especially so for Anita, who is a registered midwife and a family woman.” The Court of Appeals ruled that even granting that Anita did not know her job, petitioner, who had the duty to evaluate her qualification, should have rejected her application outright.

The Court of Appeals also ruled that if there is doubt on the credibility of the evidence presented by the parties, the doubt should be resolved in Anita’s

favor. The Court of Appeals stated that it is a settled rule that in case of doubt, the scales of justice must be tilted in favor of the employee.

On petitioner's claim that the petition for certiorari was filed out of time, the Court of Appeals ruled that the provisions of law pertinent to the issue were Sections 9 and 10, Rule 13 of the 1997 Rules of Civil Procedure.

The Court of Appeals held that petitioner failed to prove that Anita's counsel received the first notice of service of the 3 February 1999 resolution of the NLRC. The Court of Appeals stated that except for petitioner's allegation that Anita's counsel received the first, second, and third notices, and the presentation of the certified true copy of the second notice, there is no sufficient proof that Anita's counsel received the first notice.

The Court of Appeals also stated that petitioner should have presented the postmaster's certification on the sending of the first notice, which should include the data not only on whether the corresponding notice was issued or sent but also on how, when and to whom delivery of the notice was made. The Court of Appeals held that with petitioner's failure to adduce the required conclusive proof that the postmaster sent the first notice to Anita's counsel, the conclusion was ineluctable that Anita's counsel did not receive the first notice. The Court of Appeals held that there was no way in this case to determine the reckoning date of the period for the filing of the petition for certiorari.

Hence, petitioner filed the present petition.

The Issues

In assailing the decision of the Court of Appeals, petitioner contends that:

1. The Petition for Certiorari filed by respondent before the Court of Appeals docketed as CA-G.R. No. Sp-54386 was out of time, hence, the Court of Appeals had no jurisdiction to entertain the same; and
2. The factual findings of the Court of Appeals are contrary to those of the National Labor Relations Commission in NLRC Case No. Adj. (L) 95-01-0306.^[18]

The Ruling of the Court

We find merit in the petition.

Petitioner has raised a factual issue, i.e., whether Anita was illegally dismissed, which is not proper in a petition for review. We have consistently ruled that it is not the function of this Court to assess and evaluate the facts and the evidence again, our jurisdiction being generally limited to reviewing errors of law that might have been committed by the trial court or administrative agency.^[19] Nevertheless, since the factual findings of the Court of Appeals and the Labor Arbiter are at variance with those of the NLRC, we resolve to review the records and the evidence presented by the parties.^[20]

This Court generally accords respect to the factual findings of the NLRC. However, the rule is equally settled that this Court will not uphold erroneous conclusions of the NLRC if the NLRC's findings of fact on which its conclusions are based are not supported by substantial evidence.^[21] Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative or quasi-judicial bodies, is that level of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[\[22\]](#) Factual findings of administrative agencies will be set aside if found arbitrary.
[\[23\]](#)

Petitioner assails the appellate court's finding that it was incredible for Anita not to know her job because the nature of work of a domestic helper was easy. Petitioner asserts that the Court of Appeals "completely overlooked that it was not a matter of learning the job, but it was more on the psychological preparedness of Anita to do menial job, which way back home were being done by her own househelpers." Petitioner asserts that it did not say that Anita did not know her job as even petitioner's evaluation of Anita's qualifications was outstanding. Petitioner stresses that Anita's repatriation was of her own accord.

On the other hand, Anita asserts that all that petitioner has presented were mere self-serving allegations, such as (1) she was not doing her job as domestic helper; (2) she did not know how to wash clothes; (3) she had broken several glasswares of her foreign employer; and (4) when her foreign employer called her attention, she allegedly answered that she used to have her own househelper at home to do the housekeeping chores for her. Anita asserts that petitioner has not adduced any substantial evidence to support its allegations.

Anita also asserts that she did not have second thoughts about accepting the job of domestic helper because she knew how to do the job of a domestic helper.

We note that in its Position Paper filed before the Labor Arbiter, petitioner pointed out that they had agreed in their employment contract that Anita's placement was subject to a 40-day probationary period.[\[24\]](#) Anita is deemed to have admitted the existence of this stipulation in the employment contract as she never disputed petitioner's assertion in all the pleadings that she submitted to the NLRC, the Court of Appeals, and this Court. Hence, **even if it were true that Anita's foreign employer terminated her services after 10 days of her employment,**

there could be no illegal dismissal as the termination was effected during the agreed probationary period.

The law in point is Section 6, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, thus —

Probationary employment. There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x

- (c) The services of any employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.
- (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

Indeed, an employer, in the exercise of its management prerogative, may hire an employee on a probationary basis in order to determine his fitness to perform his work. The employee's services may be terminated for a just cause or for his failure to qualify as a regular employee based on reasonable standards made known to him at the time of his engagement. [\[25\]](#)

Anita was employed as a domestic helper on a probationary basis. Her foreign employer interviewed her through telephone calls and apprised her of the terms and conditions of her employment as househelper. Upon her arrival at her employer's house in Taiwan, her employer apprised her again of her duties as househelper. [\[26\]](#)

The findings of fact of the Labor Arbiter which the NLRC and the Court Appeals adopted reveal that Anita's foreign employer was dissatisfied with her performance.

The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute would automatically be decided in favor of labor.
[\[27\]](#)

However, although Anita's employment was terminated because she failed to meet the standards of her foreign employer, still it is necessary and obligatory to afford Anita her basic right to notice. Section 2, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Security of tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and **subject to the requirements of due process.**

(b) **The foregoing shall also apply in cases of probationary employment;** provided, however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.

x x x x

(d) In **all** cases of termination of employment, the following standards of due process shall be substantially observed:

x x x x

If the termination is brought about by the completion of a contract or phase thereof, or by **failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.** (Emphasis supplied)

Records disclose that Anita was repatriated to the Philippines on 25 January 1995. On the night before her departure, her employer's wife merely told her that she was sending her home "on account of some problem." When Anita asked Ms. Go, who accompanied her to the airport the following day, why she was being repatriated, Ms. Go merely answered that "there was some kind of a problem."^[28]

The information given to Anita cannot be considered as equivalent to the written notice required by law to be served on the employee. The notice should inform the employee of the ground or grounds for his termination and that his dismissal is being sought.

The absence of notice in the present case makes Anita's termination defective for which petitioner must be sanctioned for its non-compliance with the requirements of or for failure to observe due process. Not being a mere technicality but part of procedural due process, to which every employee is entitled to ensure that the employer's prerogative to dismiss is not exercised arbitrarily, this requisite notice must be complied with strictly.^[29]

Hence, it was incumbent upon Anita's foreign employer to comply with this requirement. This, her employer failed to do, entitling Anita to nominal damages^[30] of P30,000 in accordance with recent jurisprudence,^[31] to vindicate or recognize her right to procedural due process which was violated by her employer.

In *Agabon v. National Labor Relations Commission*,^[32] this Court held:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be

vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

As enunciated by this Court in *Viernes v. National Labor Relations Commission*, an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process. The Court, after considering the circumstances therein, fixed the indemnity at P2,590.50, which was equivalent to the employee's one month salary. This indemnity is intended not to penalize the employer but to vindicate or recognize the employee's right to statutory due process which was violated by the employer.

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. *Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00.* We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.

While it is no longer necessary to resolve the other issues presented in this petition, still we opt to discuss them one by one.

Petitioner asserts that Anita filed her petition for certiorari before the Court of Appeals out of time. According to petitioner, on the envelope containing the assailed 3 February 1999 Resolution are annotations consisting of: (a) Atty. Ciriaco S. Cruz, C. S. Cruz & Associates, Counsel for Complainant, 1801 Int. J. P. Laurel St., San Miguel, Manila; (b) First Notice; (c) Second Notice; (d) Third Notice; and (e) Return to Sender Unclaimed. Petitioner asserts that these annotations reveal how, when, and to whom delivery of the mail was made.

Petitioner contends that since only the date of the second notice of the postmaster – 23 February 1999 – is readable, it can be deduced from this that Atty. Cruz constructively received the 3 February 1999 Resolution on 28 February 1999 or five days from 23 February 1999.

Petitioner also argues that it is not necessary to present the postmaster's certification. Petitioner maintains that the annotations on the mail envelope "can stand on equal footing with and have similar evidentiary value as a postmaster's certification."

Petitioner stresses that since Anita's counsel filed the petition for certiorari with the Court of Appeals only on 17 August 1999 or more than 60 days from 28 February 1999, the Resolution "has already assumed finality and the Court of Appeals has no jurisdiction over that petition."

These arguments are erroneous. Section 9, Rule 13 of the 1997 Rules of Civil Procedure provides:

Service of judgments, final orders or resolutions. — Judgments, final orders or resolutions shall be served either personally or by registered mail. x x x

Section 10 of the same Rule provides:

Completeness of service. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster.

In the present case, there is no proof of actual receipt of the notice of the registered mail by Anita's counsel. Petitioner merely relied on the envelope which bore the notations "Return to Sender Unclaimed," "Second Notice 2-23,"

and “Third Notice”^[33] tending to indicate that the registered mail was returned to sender because it was unclaimed despite the notices sent by the postmaster to the addressee. Petitioner should not have relied on these notations to support the presumption of constructive service.^[34] The envelope does not constitute sufficient proof that a first notice was sent by the postmaster, much less, that there was completeness of service.^[35]

A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee.^[36]

For completeness of constructive service, there must be conclusive proof that Anita’s former counsel had actually received the notice.^[37] Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee. Thus, Section 13 of Rule 13 provides:

Proof of service. – x x x If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the **certified or sworn copy of the notice given by the postmaster to the addressee.** (Emphasis supplied)

There must be compliance with Section 13 of Rule 13 on proof of service by registered mail. As the Court ruled in *Dela Cruz v. Dela Cruz*:^[38]

In the present case there is no proof of the actual receipt of the notice of the registered mail by counsel for the defendants, Atty. Belen. The trial court merely relied on the notations on the wrapper or envelope of the returned order of September 21, 1965 consisting of “R & S”, “unclaimed” and the stamped box with the wordings “2nd notice” and “last notice” tending to indicate that the registered mail was returned to sender because it was unclaimed inspite of the notices sent by the postmaster to the addressee therein. The trial court, on the basis of said notations, assumed that the first notice of the postmaster must have been received by

defendants on or before November 3, 1965, the date when the order in the envelope was returned to the Urdaneta Post Office. This finding of the court *a quo* is untenable.

In *Barrameda vs. Castillo*, this Court held:

Therefore, to obviate injustice, it is incumbent upon a party, who relies on constructive service or who contends that his adversary was served with a copy of a final order or judgment upon the expiration of five days from the first notice of registered mail sent by the postmaster to prove that the first notice was sent and delivered to the addressee. **A certification from the postmaster would be the best evidence of that fact** (*Grafil vs. Feliciano*, L-27156, June 30, 1967, 20 SCRA 616). The mailman's testimony may also be adduced to prove that fact, as was done in *Aldecoa vs. Hon. Arellano and Siguenza*, 113 Phil. 75, 78.

The postmaster's certification as to the sending of the first notice 'should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made.' (*Hernandez vs. Navarro*, L-28296, November 24, 1972, 48 SCRA 44, 64, per Barredo, J.).

As stressed by Justice Barredo in a recent case, 'there must be clear proof of compliance with the postal regulations governing the sending and receipt of the notice referred to in' section 8 of Rule 13 (*Vecino vs. Court of Appeals*, L-38612, March 29, 1977). The mere exhibition in court of the envelope containing the unclaimed mail is not sufficient proof that a first notice was sent.

Note that in a certain case a first notice was sent but it was received by the addressee's eleven-year old child who did not deliver it to the addressee himself. It was held that to apply the presumption in that case and to insist on constructive service would work an injustice rather than promote justice (*Cabuang vs. Hon. Bello*, 105 Phil. 1135, 1138).

In the instant case, there is no evidence that the first notice was sent to Barrameda's lawyer and that it was delivered to him or should have been received by him. The envelope containing the unclaimed mail was presented in court. The face of the envelope contains the notation 'Returned to sender. Reason: Unclaimed'. Above the stamp, on the back of the envelope, with the legend 'City of San Pablo, Philippines, Jan. 29, 1966', are written the dates, '2-3-66 and 2-9-66'. Written also on the back of the envelope are the following: 'R to S, notified 3/3/66'.

Relying on those notations on the envelope, the trial court literally and rigidly applied the presumption as to constructive service. It

did not require appellee Castillo to present the postmaster's certification that a first notice was sent to Barrameda's lawyer and that the notice was received by the latter.

Under those circumstances, the trial court's order dismissing Barrameda's appeal is fraught with injustice. (Emphasis supplied)

Here, there is no postmaster's certification that the registered mail was unclaimed by Atty. Cruz, Anita's former counsel, and thus returned to sender after the first notice was sent to and actually received by him on a specified date. Absent such notice, the disputable presumption of completeness of service does not arise and by implication, petitioner could not presume actual receipt by Atty. Cruz.^[39]

Under Section 4 of Rule 65 of the 1997 Rules of Civil Procedure, the special civil action for certiorari should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed.^[40] As there is no conclusive proof of service of the resolution dated 3 February 1999 denying Anita's motion for reconsideration of the NLRC decision, the resolution cannot be deemed to have become final and executory. There is no way in the instant case to determine the reckoning date of the period provided by law for the filing of the special civil action for certiorari. Hence, the Court of Appeals did not lose jurisdiction over Anita's petition for certiorari filed before it.

That Anita herself received a copy of the assailed resolution is of no moment. Section 5(a), Rule III of The New Rules of Procedure of the NLRC provides:

x x x x

For the purpose of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the **counsel/representative of record**.

Moreover, jurisprudence teaches that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.^[41]

The service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party. Neither may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. This is because it is the lawyer who is supposed to know the next procedural steps or what ought to be done in law for the protection of the rights of the client, and not the latter.^[42] The sending of the copy of the assailed resolution to Anita was not even necessary.

WHEREFORE, we **GRANT** the petition and **SET ASIDE** the decision of the Court of Appeals. However, petitioner Philemploy Services and Resources, Inc. shall pay respondent Anita Rodriguez P30,000 as nominal damages. No pronouncement as to costs.

SO ORDERED.

ANTONIO T. CARPIO

Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

CONCHITA CARPIO MORALES

Associate Justice

DANTE O. TINGA

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

CERTIFICATION

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

ARTEMIO V. PANGANIBAN

Chief Justice

^[1] Under Rule 45 of the Rules of Court.

^[2] Penned by Associate Justice B. A. Adefuin-De la Cruz, with Associate Justices Wenceslao I. Agnir, Jr. and Josefina Guevara-Salonga, concurring. *Rollo*, pp. 28-35.

^[3] Penned by Commissioner Alberto R. Quimpo. *Id.* at 45-49.

^[4] *Id.* at 50-51.

^[5] *Id.* at 37-40.

^[6] *Id.* at 43-44.

^[7] *Id.* at 47-48.

- [8] Id. at 48.
- [9] CA rollo, pp. 29-37.
- [10] Id. at 40-41.
- [11] Id.
- [12] Id. at 41.
- [13] Rollo, pp. 50-51.
- [14] Id. at 52-64.
- [15] CA rollo, p. 44.
- [16] Id. at 49-50.
- [17] Rollo, p. 35.
- [18] Id. at 13.
- [19] *Bangko Sentral ng Pilipinas v. Santamaria*, 443 Phil. 108 (2003).
- [20] *Gutierrez v. Singer Sewing Machine Company*, G.R. No. 140982, 23 September 2003, 411 SCRA 512; *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388 (2003).
- [21] *Electruck Asia, Inc. v. Meris*, G.R. No. 147031, 27 July 2004, 435 SCRA 310; *Anflo Management & Investment Corp. v. Bolanio*, 439 Phil. 309 (2002); *Smith Kline & French Laboratories, Ltd. v. CA*, 420 Phil. 10 (2001).
- [22] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583; *Diamond Motors Corporation v. Court of Appeals*, G.R. No. 151981, 1 December 2003, 417 SCRA 46.
- [23] *Pangilinan v. General Milling Corporation*, G.R. No. 149329, 12 July 2004, 434 SCRA 159; *Manila Water Company, Inc. v. Pena*, G.R. No. 158255, 8 July 2004, 434 SCRA 53.
- [24] Rollo, p. 40.
- [25] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, 29 June 2004, 433 SCRA 206.
- [26] Rollo, pp. 9-10.
- [27] *Makati Haberdashery, Inc. v. NLRC*, G.R. Nos. 83380-81, 15 November 1989, 179 SCRA 448.
- [28] Rollo, p. 39.
- [29] *Iran v. NLRC*, 352 Phil. 261 (1998).
- [30] Id.
- [31] *Chua v. National Labor Relations Commission*, G.R. No. 146780, 11 March 2005, 453 SCRA 244.
- [32] G.R. No. 158693, 17 November 2004, 442 SCRA 573, 616-617.
- [33] CA rollo, p. 75.
- [34] *Johnson & Johnson (Phils.) Inc. v. Court of Appeals*, G.R. No. 99434, 24 September 1991, 201 SCRA 768.
- [35] *Abrajano v. Court of Appeals*, 397 Phil. 76 (2000); *Dela Cruz v. Dela Cruz*, No. L-48697, 15 April 1988, 160 SCRA 361; *Barrameda v. Castillo*, No. L-27211, 6 July 1977, 78 SCRA 1.
- [36] *Elane v. Court of Appeals*, G.R. No. 80638, 26 April 1989, 172 SCRA 822; *Antonio v. Court of Appeals*, No. L-35434, 9 November 1988, 167 SCRA 127; *Barrameda v. Castillo*, No. L-27211, 6 July 1977, 78 SCRA 1.
- [37] *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655 (1999); *Santos v. CA*, 356 Phil. 458 (1998).
- [38] No. L-48697, 15 April 1988, 160 SCRA 361, 364-365.
- [39] *Ty v. Banco Filipino Savings and Mortgage Bank*, G.R. Nos. 149797-98, 13 February 2004, 422 SCRA 649; *Abrajano v. Court of Appeals*, 397 Phil. 76 (2000).
- [40] *Abbott Laboratories Phils., Inc. v. Abbott Laboratories Employees Union*, 380 Phil. 364 (2000); *St. Martin Funeral Home v. NLRC*, 356 Phil. 811 (1998).
- [41] *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655 (1999); *Magno v. Court of Appeals*, No. L-58781, 31 July 1987, 152 SCRA 555; *Cubar v. Mendoza*, 205 Phil. 672 (1983).
- [42] *Gundayao v. Court of Appeals*, G.R. No. 77459, 21 May 1990, 185 SCRA 606; *Francisco v. Puno*, 195 Phil. 264 (1981).

