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Wilfredo V. Lapidan
 WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

Republic of the Philippines
 Supreme Court
 Baguio City

MAY 26 2016

THIRD DIVISION

FRANCIS C. CERVANTES,
 Petitioner,

G.R. No. 191616

Present:

VELASCO, JR., *J.*, Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, *JJ.*

- versus -

CITY SERVICE CORPORATION
and VALENTIN PRIETO, JR.,
 Respondents.

Promulgated:

April 18, 2016

x-----*Wilfredo V. Lapidan*-----x

DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner Francis Cervantes assailing the Resolutions of the Court of Appeals (CA), dated October 30, 2009¹ and March 11, 2010² in CA-G.R. SP No. 111037, which dismissed petitioner's petition for *certiorari* for having been filed out of time and denied the petitioner's motion for reconsideration, respectively.

The instant petition stemmed from a Complaint for illegal dismissal dated December 19, 2007 filed before the National Labor Relations Commission (NLRC) by petitioner Francis C. Cervantes against respondents City Service Corporation and/or Valentin Prieto, Jr. for illegal dismissal, underpayment of salaries/wages, overtime pay, holiday pay, holiday

¹ Rollo, pp. 32-34.
² *Id.* at 67-68.

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premium, rest day premium, service incentive leave, separation pay, ECOLA, moral and exemplary damages, and attorney's fees.

On June 30, 2008, the Labor Arbiter, in NLRC-NCR-12-14080-07, dismissed the complaint for lack of merit. It found that it was Cervantes who refused to work after he was transferred to another client of City Service. The Labor Arbiter stressed that employees of local manpower agencies, which are assigned to clients, do not become employees of the client.

Cervantes appealed the Labor Arbiter's decision, but was denied in a Resolution dated February 5, 2008. Undaunted, Cervantes moved for reconsideration, but was denied anew in a Resolution³ dated July 22, 2009.

Thus, on October 6, 2009, Cervantes, through counsel Atty. Angelito R. Villarín, filed before the CA a Petition for *Certiorari*⁴ under Rules 65 of the Rules of Court, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in affirming the assailed Resolutions dated February 9, 2009 and July 22, 2009 which dismissed Cervantes' complaint for illegal dismissal and denied his motion for reconsideration, respectively.

In the assailed Resolution⁵ dated October 30, 2009, the CA dismissed Cervantes' petition for *certiorari* for having been filed out of time. The appellate court argued that, by petitioner's admission, his mother received the assailed Resolution of the NLRC denying his motion for reconsideration on July 30, 2009. Thus, counting sixty (60) days therefrom, petitioner had only until September 28, 2009 within which to file the petition. However, the petition for *certiorari* was filed only on October 7, 2009, or nine (9) days late.

Cervantes moved for reconsideration, but was denied in Resolution⁶ dated March 11, 2010. Thus, the instant petition for review on *certiorari* raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RECKONING THE PERIOD FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 FROM RECEIPT OF THE ASSAILED RESOLUTION OF THE NLRC DATED JULY 22, 2009

³ *Id.* at 256-258.

⁴ *Id.* at 264-307.

⁵ *Id.* at 320-322.

⁶ *Id.* at 67-68.



WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RULING THAT THE SAID PETITION SHOULD HAVE BEEN DISMISSED ANYWAY BECAUSE PETITIONER FAILED TO ATTACH COPIES OF RESPONDENT'S REPLY MEMORANDUM AND COMMENT TO THE MOTION FOR RECONSIDERATION FILED WITH THE NLRC; AND

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION FOR SUSTAINING THE DECISION OF THE LABOR ARBITER THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

Procedurally, petitioner insists that he filed the petition for *certiorari* on time, which should be reckoned from the moment his counsel was informed about the Resolution denying his motion for reconsideration, and not from the date his mother received a copy of the NLRC Resolution.

The petition is partly meritorious.

In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.⁷

The rule is –

where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. Notice should be made upon the counsel of record at his exact given address, to which notice 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.

When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.⁸



⁷ *Spouses Soriano v. Soriano*, 558 Phil. 627, 641-642 (2007).

⁸ *Id.* at 642.

The NLRC Rules governing the issuance and service of notices and resolutions is, likewise, no different:

SECTION 4. SERVICE OF NOTICES, RESOLUTIONS, ORDERS AND DECISIONS. - a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;

b) *In case of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail or by private courier*; Provided that, in cases where a party to a case or his/her counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected as herein provided. Where parties are numerous, service shall be made on counsel and upon such number of complainants, as may be practicable and shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended. *For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.*

c) The bailiff or officer serving the notice, order, or resolution shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail or by private courier, the name of the addressee and the date of receipt of the notice, order or resolution shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated.⁹

Also, in *Ginete v. Sunrise Manning Agency, et al.*,¹⁰ the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration."¹¹ The Court further clarified that the period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65, pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes v. NLRC*¹² in light of Section 4 of Rule 65, as amended, which states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed."

The Court further expounded therein, to wit:

⁹ The 2011 NLRC Rules of Procedure, Rule III, Sec. 4. (Emphasis ours)
¹⁰ 411 Phil. 953 (2001).
¹¹ *Ginete v. Sunrise Manning Agency, et al., supra*, at 956.
¹² 356 Phil. 811 (1998).



Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that "(F)or the purpose(s) of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record." ***Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for certiorari filed with the Court of Appeals from decisions of the NLRC. This procedure is in line with the established rule that notice to counsel is notice to party and when a party is represented by counsel, notices 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.*** It is to be noted also that Section 7 of the NLRC Rules of Procedure provides that "(A)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure" a provision which is similar to Section 23, Rule 138 of the Rules of Court. More importantly, Section 2, Rule 13 of the 1997 Rules of Civil Procedure analogously provides that if any party has appeared by counsel, service upon him shall be made upon his counsel.¹³

In *Bello v. NLRC*,¹⁴ citing anew *Ginete v. Sunrise Manning Agency, et al.*,¹⁵ the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration."¹⁶

Thus, based on the foregoing, while in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail, for purposes of appeal, however, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

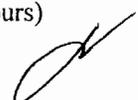
In the instant case, it is not disputed that during the NLRC proceedings, petitioner was represented by counsel, Atty. Romeo S. Occena, as in fact the NLRC *albeit* belated, furnished a copy of its July 29, 2009 Resolution to Atty. Occena on November 19, 2009. Petitioner's several motions during the proceedings before the NLRC were likewise all signed by Atty. Occena as counsel. Consequently, following the policy that the period to appeal shall be counted from receipt of resolution by the counsel of record, considering that petitioner is represented by a counsel, the latter is considered to have received notice of the NLRC Resolution dated July 22, 2009 on November 19, 2009, the date when his representative and counsel, Atty. Occena was served notice thereof and not on July 30, 2009, or the date when petitioner's mother received the same decision.

¹³ *Ginete v. Sunrise Manning Agency, et al.*, *supra* note 10, at 958. (Emphasis ours)

¹⁴ 559 Phil. 20 (2007).

¹⁵ *Supra* note 10.

¹⁶ *Bello v. NLRC*, *supra* note 14, at 27.



Accordingly, the 60-day period for filing the petition for *certiorari* with the CA should be counted from the receipt by the petitioner's counsel of a copy of the NLRC Decision dated July 22, 2009 on November 19, 2009. It should be stressed that the NLRC sent the notice of Resolution to petitioner's counsel only on November 19, 2009. While there was a notice of Resolution dated July 22, 2009, said notice was not served upon petitioner's counsel. Thus, strictly speaking, the running of the 60-day period to appeal should be counted from November 19, 2009 when the notice of Resolution dated July 22, 2009 was served on petitioner's counsel. Considering that petitioner filed his petition for *certiorari* on October 7, 2009, the same was well within the prescribed period to appeal. The petition for *certiorari* was filed on time.

However, the foregoing discussion notwithstanding, we have reviewed the records of the case at bar and find no reversible error committed by the NLRC concerning the merits of the present petition. While the petition for *certiorari* was timely filed with the CA, the instant petition would still suffer the same verdict of dismissal in view of the identical findings of the Labor Arbiter and the NLRC. The findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the same are supported by substantial evidence.

We find that the NLRC correctly upheld petitioner's dismissal to be valid. Records show that petitioner was relieved from his post in UST due to his poor work performance and attitude. However, while petitioner was removed from UST, private respondent immediately reassigned him to Mercury Drug Fairview which he refused to accept. Despite notices requiring him to report back to work, petitioner refused to heed. Considering that it was petitioner who went on absence without official leave (AWOL), the same negates the allegation of illegal dismissal.

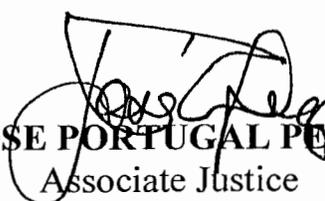
WHEREFORE, premises considered, the petition is **DENIED**. The NLRC Resolutions dated February 9, 2009 and July 22, 2009 are **AFFIRMED**.

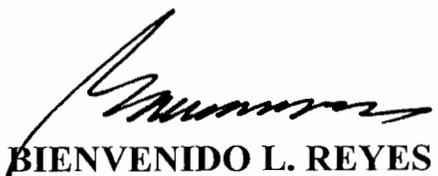
SO ORDERED.

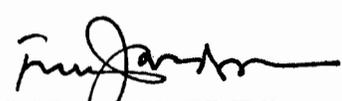

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

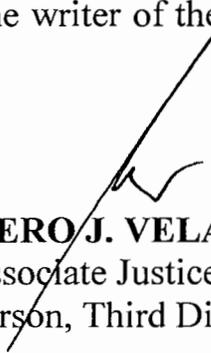

JOSE PORTUGAL PEREZ
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

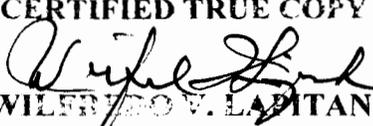
ATTESTATION

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.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

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.

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WILFREDO V. LADITAN
 Division Clerk of Court
 Third Division


MARIA LOURDES P. A. SERENO
 Chief Justice

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