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This decision is immediately executory upon its promulgation.

SO ORDERED.

Feria, Actg. C.J. (Chairman), Alampay, Gutierrez, Jr. and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 69769. October 9, 1986]

FFW-ARIS PHILIPPINES CHAPTER and LOURDES BARROZO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION AND ARIS PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FAILURE OF APPELLANT TO FURNISH A COPY OF APPEAL TO THE ADVERSE PARTY; NOT FATAL THERETO.—** Failure of petitioner to furnish a copy of appeal to the adverse party not fatal to the appeal (*J.D. Magpayo Customs Brokerage vs. NLRC*, 118 SCRA 645). Petitioner explained the circumstances as to why private respondent was not furnished copy of her appeal memorandum, thus: she personally filed the appeal with the Ministry of Labor and Employment and she was advised to furnish the adverse party a copy of the appeal by registered mail. She, however, failed to comprehend the instructions given her because she was given only her copy of the appeal stamped by the MOLE. Believing that it was actually the obligation of the MOLE to send a copy of the appeal to the adverse party, petitioner an ordinary factory worker, let the situation rest at that. This circumstance was brought out in the motion for reconsideration filed by petitioner's counsel citing jurisprudence to support his case, but the same was not favorably considered by the respondent NLRC. We believe that the case of *Carnation Philippines Employees Union - FFW vs. NLRC*,

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G.R. No. L-64397, October 11, 1983, 125 SCRA 42, cited by petitioner in her motion for reconsideration and in this petition should have been applied. In said case, this Honorable Court ruled — Dismissal of appeal for failure of appellant to furnish copy of its appeal on the appellee, is set aside, as such failure is a mere formal lapse, an excusable neglect. Appeal is an essential part of the judicial system and litigants should not be deprived of their right to appeal (*Castro vs. CA,* 123 SCRA 782). And the rules of procedure cannot be applied in a very rigid and technical sense. They must be used only to help secure, not override, substantial justice (*Castro vs. CA, supra).*"

APPEARANCES OF COUNSEL

Edwin D. Dellaban for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PARAS, *J.*:

This is a Petition for *Certiorari* to review the Resolution of the National Labor Relations Commission (NLRC for short) dismissing complainant's (Lourdes Barrozo's) appeal for her alleged failure to furnish copy of the appeal to the adverse party.

The background of the case as presented by Petitioner is summarized as follows: —

Petitioner Lourdes Barrozo, with over five years continuous service with private respondent, Aris (Phils.) Inc., was terminated from employment on September 10, 1982 on alleged dishonesty involving the trifling sum of FIVE (P5.00) PESOS. It appears that on August 26, 1982, a memo was issued by management against Barrozo based on a report of her supervisor, Iluminada Cipres, that she had cheated management in her work. Petitioner contested her dismissal for being contrary to law, alleging that the same was effected without just cause and due process. Petitioner filed a complaint on September 15, 1982, praying among other things, for her reinstatement and payment of her backwages. Conciliatory proceedings were conducted before

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the Sala of Labor Arbiter Teorico Dogelio but the same proved futile, prompting the latter to order both parties to submit their respective position papers, after which, the case was deemed submitted for resolution. On December 6, 1982, the labor arbiter issued an Order dismissing the complaint of petitioner, dispositive portion of the same, reading:

"WHEREFORE, judgment is hereby rendered:

a) Dismissing the charge of illegal dismissal and of unfair labor practice against herein respondent; and

b) Ordering the respondent to extend financial assistance in the sum of Eight Hundred Pesos (P800.00) to the herein complainant.

SO ORDERED." (p. 73, Record).

From the above ruling, complainant (herein petitioner) filed an appeal before NLRC, alleging that said ruling suffered from a "corrosion of grave abuse of discretion and substantial errors in the appreciation of the facts."

On December 15, 1983, the NLRC, rendered a Resolution quoted as follows —

RESOLUTION

It appearing from the appeal filed by the complainant on the Decision, dated 6 December 1982, of the Labor Arbiter below, that it lacks valid proof that a copy of the same has been furnished the counsel for the respondent which omission is further strengthened by the absence of any responsive pleading to the appeal on the part of the respondent; and

Considering that an appeal of such a nature stands on equal footing with a similar pleading filed outside the reglamentary period of appeal; and considering further the well-settled rule that perfection of an appeal within the reglamentary period of appeal is not only mandatory but jurisdictional;

Verily, no perfected appeal has been elevated to this Commission for review, and, consequently, the disputed decision has already become final and executory.

WHEREFORE, in view of the foregoing, let the instant appeal be, as it is hereby, DISMISSED.

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SO ORDERED. ("Annex A," p. 11, Record)

When her Motion for Reconsideration was also denied, complainant filed present petition on December 15, 1984, contending that the NLRC gravely abused its discretion and acted in total lack or in excess of jurisdiction when it rendered the above-mentioned orders. The Office of the Solicitor-General as counsel for the public respondent NLRC, in its Comment, dated June 27, 1985 advances the following:

"D I S C U S S I O N

I. Failure of petitioner to furnish a copy of appeal to the adverse party not fatal to the appeal (*J.D. Magpayo Customs Brokerage vs. NLRC*, 118 SCRA 645).

Petitioner explained the circumstances as to why private respondent was not furnished copy of her appeal memorandum, thus: she personally filed the appeal with the Ministry of Labor and Employment and she was advised to furnish the adverse party a copy of the appeal by registered mail. She, however, failed to comprehend the instructions given her because she was given only her copy of the appeal stamped by the MOLE. Believing that it was actually the obligation of the MOLE to send a copy of the appeal to the adverse party, petitioner an ordinary factory worker, let the situation rest at that. This circumstance was brought out in the motion for reconsideration filed by petitioner's counsel citing jurisprudence to support his case, but the same was not favorably considered by the respondent NLRC.

We believe that the case of *Carnation Philippines Employees Union — FFW vs. NLRC*, G.R. No. L-64397, October 11, 1983, 125 SCRA 42, cited by petitioner in her motion for reconsideration and in this petition should have been applied. In said case, this Honorable Court ruled -

> Dismissal of appeal for failure of appellant to furnish copy of its appeal on the appellee, is set aside, as such failure is a mere formal lapse, an excusable neglect.

Appeal is an essential part of the judicial system and litigants should not be deprived of their right to appeal (*Castro vs. CA*, 123 SCRA 782). And the rules of procedure cannot be applied in a very rigid and technical sense. They must be used only to help secure, not override, substantial justice (*Castro vs. CA, supra*)." (pp. 61-63, Record).

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and joins the petitioners in their prayer to have the appealed resolution declared null and void and for the appeal to be given due course.

We hereby give due course to the petition and consider the COMMENT of the Solicitor General as respondent's ANSWER.

In view of this court's opinion that the failure to send a copy of the appeal (with the NLRC) is not a fatal or jurisdictional defect, the instant petition is clearly meritorious.

WHEREFORE, We hereby DECLARE the questioned Resolution of the NLRC as null and void and ORDER the same to give due course to petitioner Lourdes Barrozo's appeal.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.