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FIRST DIVISION

[G.R. No. L-51154. October 18, 1979]

METRO DRUG CORPORATION, *petitioner, vs.* **HON. EUGENIO I. SAGMIT, Regional Director, Regional Office No. V, Ministry of Labor, RODRIGO PETILOS and PROVINCIAL SHERIFF OF ALBAY,** *respondents.*

SYLLABUS

CONSTITUTIONAL LAW; BILL OF RIGHT; DUE PROCESS; WHEN DENIED IN ADMINISTRATIVE PROCEEDINGS.— In his Comment, respondent Director has not disputed petitioner's contention that the case had not been set for hearing. In fact, in his Order of reinstatement, he adverted to the absence of evidence to justify preventive suspension. Consequently, petitioner's averment that it was unable to present its evidence and was thus denied due process will have to be sustained. While the parties were required by respondent Director to submit Position Papers, only Petilos' Position Paper had been considered, that of petitioner having been misfiled in another case involving the same parties.

APPEARANCES OF COUNSEL

Eduardo T. Cuenca for petitioner.
Romulo L. Ricafort for respondents.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

Before this Court is a "Petition for *Mandamus* and *Certiorari* with Writ of Preliminary Injunction," impugning the Order, dated 18 July 1979, of public respondent Regional Director Eugenio I. Sagmit Jr., dismissing petitioner's appeal.

The pertinent basic facts may be stated thus:

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On 5 May 1978, petitioner Metro Drug Corporation filed with the Regional Office No. V of the Ministry of Labor, Legaspi City, a Report *apropos* of the preventive suspension of its employee, private respondent Rodrigo Petilos, on the ground of "truck stock shortages in the sum of ₱4,677.33" (Termination Case No. RO5-0789-78)

On 19 May 1978, private respondent, in turn, filed with the same Regional Office a "Complaint for Emergency Living Allowance" (LRD Case No. 70-78)

Petitioner presented its Position Paper in both cases on 22 August 1978, but filed the same in LRD Case No. 70-78.

On 20 October 1978, respondent Director of Regional Office No. V of the Ministry of Labor, Legaspi City, believing that petitioner had not filed any Position Paper, issued an Order directing petitioner to reinstate private respondent Petilos with payment of back wages computed from the date his compensation was withheld. Petitioner maintains that contrary to Section 4, Rule XIII of the Rules Implementing the Labor Code it received no notice of hearing for reception of the parties' evidence whatsoever prior to receipt of that Order and, consequently, that it was deprived of its day in Court.

On 19 December 1978, respondent public official ordered the issuance of a Writ of Execution. Petitioner moved for reconsideration raising the propriety of the issuance of said Writ particularly because the Order of 20 October 1978 had not yet attained finality as the same had not been served on petitioner, and prayed that it be given the opportunity to adduce evidence justifying Petilos' suspension. Respondent Director denied reconsideration for being without merit.

On 8 March 1978, petitioner filed a Memorandum of Appeal, followed by a Supplemental Memorandum on 9 March 1978, strongly reiterating its non-receipt of the Order of October 20, 1978.

On 23 April 1979, respondent Director withdrew the Writ of Execution after admitting that petitioner was, indeed, not furnished

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a copy of the questioned Order due to honest mistake of the office Clerk, and forthwith required service of said Order.

On 5 May 1979, petitioner received copy of that Order.

On 11 May 1979, petitioner filed a Motion for New Trial and/or Motion for Reconsideration on the ground of newly discovered evidence in that Petilos had committed additional misappropriations of company funds and stocks amounting to ₱7,573.03, so that on 16 January 1979, it filed against him a criminal case for Estafa in the total amount of ₱12,250.36.

On 15 June 1979, respondent Director sustained Petilos' contention that the Motion was dilatory in character and frivolous and denied new trial/reconsideration.

Petitioner received a copy of the above-mentioned Order on 28 June 1979.

Again, petitioner filed a Memorandum of Appeal from both Orders of 20 October 1978 and 15 June 1979, directed to the National Labor Relations Commission (NLRC).

On 18 July 1979, respondent Director found the appeal to be without merit adding that "moreover the appeal was filed out of time and the decision being questioned had already become final and executory. Nor may the case be elevated to the NLRC as prayed for by (petitioner), since the Commission (NLRC) is not the proper body to review a termination case such as the instant case but the Office of the Ministry of Labor." Forthwith, respondent Director ordered the issuance of a Writ of Execution.

Hence, petitioner's present recourse on 31 July 1979, alleging grave abuse of discretion on the part of respondent Director in finding in his several Orders that its appeal was filed out of time, that it was without merit, and that it could not be elevated to the NLRC. It prayed that the Orders be set aside and that respondent Director be directed to allow the appeal. We required respondents to comment and issued a Restraining Order enjoining them from enforcing or causing the enforcement of the Writ of Execution issued pursuant to respondent Director's Order of 18 July 1979. On 12 October 1979, we resolved to give due

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course to the Petition, dispensed with the filing of Memoranda, and declared this case submitted for decision.

We find this Petition impressed with merit.

1) In his Comment, respondent Director has not disputed petitioner's contention that the case had not been set for hearing. In fact, in his Order of reinstatement, he adverted to the absence of evidence to justify preventive suspension. Consequently, petitioner's averment that it was unable to present its evidence and was thus denied due process will have to be sustained. While the parties were required by respondent Director to submit Position Papers, only Petilos' Position Paper had been considered, that of petitioner having been misfiled in another case involving the same parties.

2) Contrary to respondent Director's findings petitioner's appeal was filed on time. Petitioner received copy of the Order of 20 October 1978 on May 5, 1979. It filed a Motion for Reconsideration and/or New Trial on 11 May 1979. Petitioner received the Order of denial on 28 June 1979 and interposed its appeal on 2 July 1979. Deducting the period during which the Motion for Reconsideration and/or New Trial was pending, petitioner's appeal was filed right on the tenth day. As pointed out by the Solicitor General, respondent Director's reliance on Section 7, Rule XIV, Book V of the Rules and Regulations Implementing the Labor Code issued on 16 February 1976, which allows only five days for an appeal from an Order of denial, is misplaced, as the same has been superseded by Policy Instructions No. 4 issued by the Minister of Labor on 23 April 1976 providing for a longer period of ten days for the perfection of an appeal.

And although, as respondent Director points out, petitioner's notice of appeal was defective in that it asked for review of the case by the NLRC when it should have been by the Minister of Labor, this is at best a technicality. It was incumbent upon respondent Director to transmit the records of the case to the proper reviewing authority despite petitioner's error, in much the same way that an appeal erroneously brought before an appellate Court is certified to the proper Court for determination.

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We agree with the Solicitor General that rather than remand petitioner's appeal to the Minister of Labor, which could prove but a futile exercise because of the absence of evidence, the more appropriate action is to return the records to respondent Director for the reception of the parties' evidence on the circumstances surrounding Petilos' suspension.

WHEREFORE, let the records of this case be remanded to Regional Office No. V of the Ministry of Labor, Legaspi City, which is hereby required to receive petitioner's evidence conformably herewith and to render judgment accordingly. The Restraining Order heretofore issued is hereby made permanent.

SO ORDERED.

Teehankee, Acting C.J. (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

EN BANC

[G.R. No. L-32629. October 23, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GUILLERMO TABION, ENRIQUE FAGEL, LUCIANO TABULOC, IGNACIO TADENA @ ASIONG, SIMO TABULOC and JOHN DOE,** *defendants.* **ENRIQUE FAGEL,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.— The defense of alibi cannot prevail over the positive testimony of the witnesses identifying and pointing to the accused Enrique Fagel as one of the policemen involved in the shooting incident in question. Pat. Florentino Tabarnilla of the Sto. Domingo police force testified that Enrique Fagel was in the group of policemen who went towards the drugstore on