

**NARCAN SHIPPING AND PLACEMENT AGENCY, INC.,
LEONARDOCANDAVA AND KALBA MARINE MARINE SERVICES,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND
SULPICIO AGUIRRE, RESPONDE...**

Ponente: BARRIOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/03bc0f38aab3/>

BARRIOS, J.:

The petitioners Narcan Shipping and Placement Agency, Inc., Leonardo Candava, and Kalba Marine Services (or the petitioners unless individualized as Narcan Agency, Candava or Kalba Marine) by this petition for certiorari, assail the Resolution dated September 29, 2000 of the respondent National Labor Relations Commission (or NLRC) dismissing their appeal from the Decision of the Labor Arbiter Teresita Castillon-Lora (or the Labor Arbiter), as well as the Resolution dated November 29, 2000 denying its reconsideration.

The dismissed appeal is from NCR-OFW-(M) Case No. 98-08-0842 filed by the respondent Sulpicio Aguirre (or Aguirre) on August 3, 1998 against the petitioners for illegal dismissal, payment of salaries for the unexpired portion of the contract, moral and exemplary damages and attorney's fees.

Aguirre alleged that he was hired by Narcan Agency to work for its principal Kalba Marine in Dubai, United Arab Emirates (or UAE). While his application was being processed, he was made to sign a blank employment contract by Candava, and when he asked why certain portions of the contract were in blank, Candava replied that these will be filled up eventually with the position and salary that he applied for. According to Aguirre he signed another employment contract where it was stipulated that he will be employed as a Chief Engineer with a monthly salary of US\$1,500.00 and for a term of one (1) year. While at the airport prior to his departure, a representative of Narcan Agency handed to him a copy of his employment contract where it was stipulated that he will be employed as an Oiler instead of Chief Engineer, and with a salary of only US\$335.00. He called immediately Narcan Agency and demanded an explanation. He was told that the contract is merely for formality and he was assured of his position as Chief Engineer once he arrived in Dubai, UAE.

When he arrived in Dubai, he was immediately brought to the vessel Dubai Moon where he started performing the work of a Chief Engineer. On his fourth day at work, he was called for an interview by a British representative of the charterer of the vessel and he was asked whether he had any experience in anchor handling, to which Aguirre replied in the negative. The next day when the vessel was about to sail, a representative from Kalba Marine told him to stay behind because he will be sent back to the Philippines. He was unceremoniously repatriated on June 22, 1998.

In their traverse, the petitioners denied the charge of illegal dismissal and alleged that Aguirre was found to be incapable of performing the tasks for the position of Chief Engineer. He misrepresented to them that he is qualified for the position but it was later found out that he was unfamiliar with the vessel's engine and totally incompetent of operating it. He was also found to be wanting in basic communication skills. The petitioners further contended that Aguirre was terminated and repatriated because he failed to pass his probationary period

provided in his employment contract.

On September 30, 1999, the Labor Arbiter rendered a Decision in favor of Aguirre, disposing that:

WHEREFORE, premises considered respondents are hereby declared to have illegally dismissed complainant, and are hereby Ordered to pay complainant the following in Philippine Peso at the rate of exchange prevailing at the time of payment.

3 months salary - US\$4,500

10% of attorney's fees - 450

Total - US\$4,950

The claim for damages is hereby dismissed for lack of merit.

SO ORDERED. (p. 30, rollo)

The petitioners appealed this to the NLRC which rendered the assailed Resolution dismissing the appeal for failure to post a bond in the amount equivalent to the award, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, respondents' appeal is hereby DISMISSED for failure to post bond equivalent to the award as mandated by law.

SO ORDERED. (p. 55, rollo)

As said, the motion for its reconsideration was denied.

Hence, this petition for certiorari where the petitioners raise the following issues for consideration:

I

WHETHER OR NOT PRIVATE RESPONDENT'S DISMISSAL WAS WITH CAUSE.

II

WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO THREE (3) MONTHS SALARY AND ATTORNEY'S FEES.

III

WHETHER OR NOT PUBLIC RESPONDENT IS CORRECT IN DISMISSING THE APPEAL FOR ALLEGEDLY (sic) FAILURE TO POST BOND IN THE AMOUNT EQUIVALENT TO THE AWARD AS MANDATED BY LAW. (p. 7, rollo)

This case was initially subjected to Mediation but, with the repeated absences of the parties, this had to be recalled and submitted for decision on the merits.

We deny the petition.

In the first two issues, the petitioners contend that they are not guilty of illegal dismissal. They claim that Aguirre was dismissed for a cause because his knowledge was grossly insufficient to enable him to discharge the duties and responsibilities of the position he applied for.

To begin with, in illegal dismissal cases like the present one, the onus of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal (*Azcor Manufacturing, Inc. vs. NLRC*, 303 SCRA 26).

It has been established in this case that Aguirre was accepted for employment by Narcan Agency based on his submitted credentials and qualifications. The fact that the petitioners signed him up for a one-year contract and was actually deployed for employment abroad means that he passed and qualified for the position he applied for.

On the other hand, the petitioners failed to adduce sufficient evidence to prove that Aguirre was not qualified. It is also noteworthy that in their position paper filed before the Labor Arbiter the petitioners at first claimed that Aguirre was incapable of performing the expected work and responsibilities for the position of Chief Engineer. But in this petition, they now claim that he is not qualified for the position of Oiler because he had no sufficient knowledge about a vessel's engine and other marine matters. With these divergent versions and their bare allegation that Aguirre was dismissed for a cause, the petitioners failed to discharge the burden of proving the lawfulness of the termination of Aguirre from employment. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal (*Gabisay vs. NLRC*, 307 SCRA 141).

Moreover, two notices are required before an employee may be validly dismissed: (a) written notice containing a statement of the cause for termination, to afford the employee an opportunity to be heard and defend himself with the assistance of his representative, if he desires; and (b) if the employer decides to terminate the services of the employee, written notice must be given to the employee stating clearly the reason therefor (*Rodriguez, Jr. vs. NLRC*, 393 SCRA 511). The failure of the petitioners to present in evidence any notice of termination served upon Aguirre, let alone the lack of just cause for terminating his employment, renders the dismissal illegal.

Coming now to the third issue, the petitioners assert that the NLRC committed grave abuse of discretion in dismissing the appeal on the mere technicality that they failed to complete their cash bond as mandated by the Rules of Procedure of the NLRC.

Article 223 of the Labor Code, as amended, reads in part:

Art. 223. Appeal. –

x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x

Likewise, Section 3, Rule VI of the New Rules of Procedure of the NLRC provides for the requisites for the perfection of an appeal, thus:

Section 3. Requisites for Perfection of Appeal. – (a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisite aforestated shall not stop the running of the period for perfecting as appeal. (emphasis supplied)

Section 6 of the same Rules further provides:

Section 6. Bond. – In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees. (emphasis supplied)

x x x

Clearly, for an appeal to be perfected the appellant must not only file the appeal memorandum and pay the appeal fee but must also post the required cash or surety bond. The posting of a cash or surety bond is mandatory. It should be stressed that the intention of lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond; the word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected (Catubay vs. National Labor Relations Commission, 330 SCRA 440).

In this case, the petitioners posted in favor of Aguirre a bond in an amount which is less than that awarded by the Labor Arbiter. In a Resolution dated December 22, 1999, the NLRC ordered the petitioners to post an additional bond to complete the amount and make it equivalent to the monetary award. The petitioners however only partially complied with the order considering that the bond they posted was still not sufficient to cover the amount of the award. Thus, in its Order of April 28, 2000, the NLRC reiterated its directive for the petitioners to complete their bond with a warning of the dismissal of their appeal. The petitioners again failed to fully comply, hence their appeal was dismissed.

The petitioners' failure to comply with a mandatory requirement for the perfection of an appeal rendered the Decision of the Labor Arbiter final and executory and placed it beyond the power of the NLRC to reverse or review. Thus, the perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and has the effect of rendering the judgment final and executory. Such requirement cannot be trifled with (Navarro vs. National Labor Relations Commission, 327 SCRA 22).

It bears stressing that for a writ of certiorari to issue, it is a condition sine qua non that there be grave abuse of discretion or such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (Sevilla Trading Company vs. Semana, 428 SCRA 239). Finding no basis for the issuance of the writ –

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña III, and Romilla-Lontok, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.