

ROLANDO L. CERVANTES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, J.S. CONTRACTOR, PAL MARITIME CORP., AND/OR WESTERN SHIPPING AGENCIES,PTE, LTD. RESPONDENTS.

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

Before Us is the Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court filed by Petitioner ROLANDO L. CERVANTES (hereinafter Petitioner) which seeks to annul the Decision[2] dated 21 JUNE 2002 of the NATIONAL LABOR RELATIONS COMMISSION (NLRC) which set aside the Decision[3] dated 2 JULY 1999 of Labor Arbiter DONATO G. GUINTO JR. in NLRC-NCR OCW Case No. (M) 00-10-2852-96 entitled Rolando L. Cervantes vs. PAL Maritime Corporation and Western Shipping Agencies, PTE. LTD. and the NLRC Resolution[4] dated 26 December 2002, denying Petitioner's Motion for Reconsideration of the aforesaid Decision.

THE FACTS

The instant controversy stemmed from a complaint for illegal dismissal with claims for unpaid salaries under the contract, actual, moral and exemplary damages and attorney's fees filed by the Petitioner against Respondents PAL MARITIME CORPORATION (hereinafter Respondent PAL) and WESTERN SHIPPING AGENCIES (hereinafter Respondent Western).

Petitioner was hired by herein Respondents on 21 June 1996 for the position of Master on board the "Vessel M/V Themistocles" for a contract period of ten (10) months. By virtue thereof the Petitioner joined his assigned vessel on 1 July 1996 at the port of Cristobal, Panama.

Months before the expiration of his contract, Petitioner was repatriated to Manila on 13 October 1995. However, it was only on 13 October 1996, after the lapse of one year, more or less, when the Petitioner finally filed a complaint before the Office of the Labor Arbiter against the Respondents for Illegal Dismissal with claims for unpaid salary, actual, moral and exemplary damages and attorney's fees.

As no amicable settlement was reached, the Labor Arbiter directed the parties to submit their respective position papers together with their corresponding pieces of evidence. It was the contention of the Petitioner that he was repatriated to Manila despite of his diligent and effective performance of duties as Master on board the vessel "M/V Themistocles".

This was countered by the Respondents, alleging that Petitioner's repatriation was brought about by the latter's voluntary offer of relief and resignation. It was further maintained by the Respondents that said complaint was a mere afterthought and was solely designed to harass the Private Respondents.

On 23 October 2000, Labor Arbiter DONATO G. QUINTO, JR., rendered its Decision ruling in favor of the Petitioner and holding the Respondents jointly and severally liable for Petitioner's claim for unpaid salaries amounting to US\$7,440.00, the dispositive portion thereof reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant Rolando L. Cervantes to have been illegally dismissed and ordering respondents PAL Maritime Corporation and Western Shipping Agencies PTE., LTD to pay, jointly and severally, the amount of US\$7,440.00, or its peso equivalent at the time of payment, representing his salary for the unexpired portion of his contract, plus 10% thereof as attorney's fees, all as discussed and computed above :

SO ORDERED.[5]

Thereupon, the Respondents filed a Notice of Appeal with the NLRC. However, the Respondents failed to attach a copy of the "Joint Declaration", which should accompany the appeal bond, as required by Section 6, Rule VI of the NLRC Revised Rules of Procedure. Prompting the Petitioner to file a Motion to Dismiss Appeal for lack of merit.

On 23 October 2000, the NLRC issued an order directing the Respondents to file their "Joint Declaration". Consequently, Petitioner filed a Motion for Reconsideration and Dismissal of the Appeal on the ground that Private Respondents' omission in accompanying their memorandum of appeal with a "Joint Declaration" under oath prevented the perfection of an appeal and ultimately infects the jurisdiction of the Commission to entertain said appeal.[6]

On 21 June 2002, the NLRC rendered the assailed Decision reversing the abovementioned Decision of the Labor Arbiter, the fallo of which reads:

"Considering that complainant was not illegally dismissed, the award of salaries for the unexpired portion of the contract has no basis.,

"It is therefore recommended that the appealed Decision is hereby SET ASIDE and NEW ONE ENTERED DISMISSING the complaint for lack of merit.

SO ORDERED.[7]

On 26 December 2002, the NLRC in a subsequent Resolution[8] denied Petitioner's motion for reconsideration. Hence, the instant petition.

THE ISSUES

As can be gleaned from the instant Petition, supra, the Petitioner anchored his petition on the following grounds:

- Whether or not NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not dismiss the appeal of private respondents despite the late submission of the joint declaration as mentioned in Section 6, Rule VI of the NLRC, Revised Rule of Procedures;
- Whether or not NLRC committed grave abuse of discretion in referring the appealed decision of Labor Arbiter Quinto, Jr., to Labor Arbiter Concepcion;
- Whether or not NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it abdicated its jurisdiction and dismissed the case.

OUR RULING

The petition must fail.

Petitioner contends that the Respondents' omission of accompanying their memorandum of appeal with a joint declaration under oath as required by the NLRC Rules of Procedure prevented the perfection of the appeal. This contention lacks a leg to stand on. Rule VI, Section 3 of the NLRC Rules of Procedure categorically provides:

“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 ground relied upon and arguments in support thereof; the relief prayed for; and a statement of date when the appellant received the appealed decision, order, or award and proof of service on the other party.

A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.”

As shown by the records, the Respondents’ appeal was duly perfected by the posting of the necessary surety bond equal to the monetary amount, filing of the notice of appeal and appeal memorandum within the reglementary period. What is clearly required by the law is the simultaneous filing of the surety bond, notice of appeal and appeal memorandum.

An appeal is an essential part of the judicial system and litigants should not be deprived of their right to appeal on a mere technicality when it can easily be rectified by directing the parties to submit the required documents. In the case of *Del Rosario vs. NLRC*[9], the Supreme Court ruled that the NLRC has the inherent power to allow late payment of the appeal fee. Accordingly, the rule of technicality must yield to the broader interests of substantial justice. Parenthetically, in the case of *FEM’s elegance Lodging House, et al vs. Murillo, et al.*[10], the High Tribunal held that the delay of a party in the submission of position paper is a procedural flaw and the admission thereof is within the discretion of the Labor Arbiter.

Anent, the 2nd issue, supra., Petitioner alleges that the NLRC committed grave abuse of discretion in referring the appealed Decision of Labor Arbiter QUINTO, JR., to Labor Arbiter CONCEPCION, maintaining that said action by the NLRC violated his right to procedural due process.

The aforesaid argument is flawed. Ordinarily, appealed cases may be remanded by the NLRC to the Labor Arbiter for the purpose of conducting further proceedings. Moreover, it is a requirement of due process and fair play that the parties were afforded fair and reasonable opportunity to explain their side of the controversy. Further, in the long line of cases, the Supreme Court had consistently held that the holding of a trial is discretionary on the part of the Labor Arbiter, and it cannot be demanded as a matter of right by the parties.[11] In the case of *Robusta Agro Marine Products, Inc vs. Gorombalem*[12], it was ruled that in order to simplify procedure, the Labor Code allows the Labor Arbiter to decide cases on the basis of position papers and other documents submitted without resulting to the technical rules of evidence as observed in the regular Courts of Justice.

In this light, the NLRC did not commit grave abuse of discretion when it remanded the controversy to Labor Arbiter CONCEPCION for review and final disposition.

Re the 3rd issue, supra, Petitioner avers that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it abdicated its jurisdiction and dismissed the case.

We beg to disagree.

The NLRC did not commit grave abuse of discretion in dismissing the complaint of the Petitioner. The series of communications between the Petitioner and the Respondent showed that the Petitioner was not dismissed from the service but rather he opted to be relieved from his post as Master of the vessel.[13]

The Petitioner’s letter / telefax message with date of 3 August 1995 to the Respondent, reads:

“xxx anyhow to avoid repetition n (sic) more harsh reports to come, better arrange (sic) my reliever n c/o bustillo reliever also. Upon arrange next usa loading port for their satisfaction”[14]

It is worthy to note that based on the evidence extort in the records the Petitioner did not refute the existence of the above-mentioned letter, thereby, affirming that he indeed made the offer to be relieved from his position.

On the other hand, the Respondents' reply dated 20 September 1995 to the said letter/telefax follows:

“xxx Owners have decided to relieve you upon passing panama canal or next convenient port. We trust this pre-matured ending of contract is mutually agreed and for the benefits of all parties concerned.”[15]

Withal, having voluntarily signified his intention to resign, the owners of the vessel relieved him from his post.[16] As borne by th records, the event which evidently triggered the resignation of the Petitioner stemmed from the inspection report of the owners of “MV Themistocles” thru “P and I Club”, wbbhich reported /telefax among others, the lack of working knowledge of the chief officer with grain loading, calculation procedures, as well as the disorganization of key ship documents[17]. In reaction to the report, the Respondent sent a communication/telefax advising the Petitioner to take corrective actions aboard the vessel in order to improve operational and maintenance standards[18]. However, as stated earlier the Petitioner sent instead the letter/telefax, supra. In fine, it was the Petitioner who brought out the idea of relief, which was consequently accepted by the Respondents. The records of the case clearly belies the claim of herein Petitioner of illegal dismissal.

As decided in the case of Interod Maritime, Inc. vs. NLRC[19], Resignation is the voluntary act of an employee who “finds himself in a situation where he believes that personal reason cannot be sacrificed in favor of the exigency of the service, then he has no other choice but to disassociate himself from his employment.”

It bears stressing herein that the only requirement in resignation is that the employee should notify the employer of his intentions to sever the employer-employee relationship. This is different in cases of termination wherein compliance with the twin requirements of due process is essential and mandatory.

Definitely, the notice requirement has no application in the instant case considering that the Petitioner by his own volition, voluntarily and willingly offered his release from his post as Master of Vessel. As succinctly held by the High Tribunal in the case of Philippines Today Inc.,. vs. NLRC[20], an employee may be deemed to have resigned from his position, and such “resignation” may be accepted and made effective by the management, although the employee did not mention the word “resign” and/or “resignation”.

WHEREFORE, premises considered, the Petition is hereby DENIED. The challenged Decision and Resolution of the NLRC are Affirmed in toto.

SO ORDERED.

De Los Santos, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, pp.4-26

[2] Rollo, pp. 27-38

[3] Rollo, pp. 137-157

[4] Rollo, page 37

[5] Rollo, page 156-157

[6] Rollo, page 253

[7] Rollo, page 35

- [8] Rollo, page 52
- [9] G.R. No. 64204, May 31, 1985,
- [10] G.R. Nos. 117442-43, January 11, 1995
- [11] RBEAU vs. NLRC, G.R. Nos. 100342-44, October 29, 1999
- [12] G.R. Nos. 80500, July 5, 1989
- [13] Rollo, p. 34
- [14] Rollo p. 209
- [15] Rollo p. 210
- [16] Rollo p. 284
- [17] Rollo pages 205, 206
- [18] Rollo pages 205-206
- [19] G.R. No. 81087, June 19, 1991
- [20] G.R. No. 112965, January 30, 1997

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