

ROMAN UY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER MADJARAN AJAN AND RODELIO DIEGO, RESPONDENTS.

SP No. 109166, July 29, 2010

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Court of Appeals

Assailed to this petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure is the Decision dated February 6, 2009 and Resolution dated April 23, 2009 issued by public respondent National Labor Relations Commission in NLRC NCR Case No. 02-01994-08 which dismissed petitioner Roman Uy's appeal for non-perfection and denied the motion for reconsideration thereof, respectively.

The Facts

It appears that sometime in July 2006, private respondent Rodelio Diego was hired by petitioner Roman Uy as a truck helper (pahinante) in his business of distributing Rebisco product. As a truck helper, private respondent earned Php 350.00 a day, inclusive of allowances.

On February 8, 2008, private respondent filed a complaint for illegal dismissal against petitioner with claims for underpayment of wages, non-payment of overtime pay, holiday pay, service incentive leave pay, 13th month pay and separation pay.

To excuse himself from the payment of the above-mentioned money claims, petitioner argued that the private respondent was hired merely as an "extra pahinante", who worked only when he was called to do so. At times, private respondent would be asked to report only twice or thrice a week.

On September 22, 2008, Labor Arbiter Madjayran Ajan rendered judgment in favor of private respondent. On the ground of constructive dismissal, petitioner was directed to reinstate private respondent to his former position with full backwages and ordered to pay the latter's claims for underpayment of salaries, non-payment of service incentive leave pay and 13th month pay plus attorney's fees in the total amount of Php 114,187.97.[1]

Petitioner received a copy of the foregoing decision on November 17, 2008 and, on the tenth day therefrom, filed a Partial Appeal[2] before the National Labor Relations Commission (NLRC) with Motion for Reduction of Bond.[3] Together with the appeal, petitioner filed a cash bond in the reduced amount of Php 35,000.00 on the claim that the company is not in a financial position to post a bond equal to the total amount of the monetary award stated in the Labor Arbiter's decision.

The reason advanced by petitioner, however, failed to impress the NLRC. On February 6, 2009, the NLRC dismissed the appeal on the ground of non-perfection. The NLRC reasoned out in this wise:

"We find no merit in the respondent's motion. It must be stressed that under Section 6, Rule VI of the 2005 Rules of Procedure of this commission, no motion to reduce bond shall be entertained except on meritorious ground. The reduction of the required bond is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds (Casimiro, et al. vs. Storn Real Estate,

Inc. et al., G.R. No. 162233, March 10, 2006). In this case, we note that the justification of the movant that his business is not really that big and profitable is not substantiated and pregnant with admission that he makes profit from his business. The other justification of the movant that employers suffered reverses due to spiraling cost of oil products is so vague and deserves scant consideration. Succinctly -put, respondent's justification for the reduction of the appeal bond are vague and unsubstantiated, not worthy of belief. The reduction of the bond is not warranted when no meritorious ground is shown to justify the same (Nicol, et al. vs. Footjoy Industrial Corporation, G.R. No. 159372, July 27, 2007).

Conversely, respondent is considered to have failed to comply with the requirement of posting bond, and since the filing of the motion to reduce bond did not stop the running of the period to perfect an appeal, the appeal of the respondent is deemed to have not been perfected within the period to appeal, it is well settled that the posting of appeal bond is mandatory (Phil. Trans marine Carriers, Inc. vs. Cortina, 415 SCRA 714) and is jurisdictional, without which the NLRC, as in this case, does not have the authority to review and revise the judgment of the Labor Arbiter (Cordova, et al. vs. Keysa's Boutique, G.R. No. 156379, Sept. 16, 2005)."[4]

Aggrieved, petitioner moved for reconsideration but the same was denied in the April 23, 2009 Resolution of the NLRC.

The Issue

Unfazed, petitioner filed the petition at bench seeking the nullification of the assailed Decision and Resolution on the ground that public respondent committed grave abuse of discretion in dismissing petitioner's appeal for non-perfection.

The Court's Ruling

We find the petition bereft of merit.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.[5]

Article 223 of the Labor Code clearly provides that "[decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders".

It further provides that "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 Commissions in the amount equivalent to the monetary award in the judgment appealed from."

Similarly, Sections 4 (a) and 6 of Rule VI of the New Rules of Procedures of the NLRC, as amended, state:

'Section 4. Requisites for Perfection of Appeal.— (a) The appeal shall be filed within the reglementary period as provided in Sec. 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 Sec. 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 an appeal.

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 damages and attorney's fees.

* * *

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal," (Underscoring and emphasis supplied)

The legislative intent to make the posting of a cash or surety bond a mandatory requisite for the perfection of an appeal by the employer is underscored in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" in Article 223 of the Labor Code makes it unmistakably plain 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. The word "may" refers to the perfection of an appeal which is optional on the part of the defeated party, but not to the posting of an appeal bond which is compulsory, if he desires to appeal.[6]

In this case, petitioner filed a motion to reduce bond on the last day within which to file an appeal, and thereupon, tendered the reduced cash bond in the amount of P35,000.00, which is approximately 30% of the total monetary award of P114,187.97. Nowhere in the Labor Code or the NLRC Rules of Procedure, however, does it authorize the posting of a bond that is less than the monetary award decreed in the judgment, or deem such insufficient bond as sufficient to perfect the appeal.

On the other hand, Article 223 of the Labor Code requires that the appeal be perfected only upon the posting of the cash or surety bond which is equivalent to the monetary award in the judgment appealed from. The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten (10)-day reglementary period. The obvious and legal purpose of an appeal bond is "to assure the workers that if they finally prevail in the case the monetary award will be given to them upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligation to the employees."[7]

Moreover, while the bond may be reduced upon motion by the employer, Rule VI, Section 3 states that the filing of such motion does not stay the reglementary period. Hence, unless the NLRC grants the reduction of the cash bond within the ten (10)-day reglementary period, the employer is still expected to post the cash or surety bond securing the full amount within the said ten (10)-day period. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the ten (10)-day period.[8]

Thus, an employer who files a motion to reduce the appeal bond is still required to post the full amount of cash or surety bond within the ten-day reglementary period, pending resolution of his motion.[9]

The bond requirements on appeals involving monetary awards is not a hard and fast rule. It has been and may be relaxed in meritorious cases, such as: (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

Hence, in *Rada vs. NLRC*,^[10] the delayed payment of the supersedeas bond was allowed considering that the decision of the labor arbiter failed to specify the amount of backwages and overtime pay, hence, the amount of supersedeas bond could not at the time of the appeal be determined. In *Teofilo Gensoli and Co. vs. NLRC*,^[11] the Supreme Court held that the deficient payment of the bond was made in good faith and noted the employer's willingness to comply with the rules when it gave an additional cash bond upon the filing of its motion for reconsideration before the NLRC. In *Erectors, Incorporated vs. NLRC*,^[12] petitioner was found to be in good faith and to have substantially complied with the rules when it filed an appeal bond in the amount of P151,200.00 (which turned out to be the correct amount) instead to the grossly erroneous amount of P1,576,224.00 as fixed in the order. In *Rosewood Processing, Inc. vs. NLRC*,^[13] not only was there substantial compliance with the rules when the petitioner therein filed a reduced surety bond in the amount of P50,000.00, the Supreme Court likewise found the appeal meritorious in that the labor arbiter clearly erred in holding the petitioner solidarily liable with the security agency for wage differentials incurred while the defendants were assigned to different companies. The present case does not come under any of the foregoing exceptions.

Moreover, while Section 6, Rule VI of the NLRC Rules of Procedure allows the reduction of the appeal bond upon motion of the appellant, the exercise of the authority is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds.^[14] As was held in the recent case of *Ramirez, vs. Court of Appeals*,^[15] the liberal interpretation and application of rules apply only to proper cases of demonstrable merit and under justifiable causes and circumstances. Thus, while the bond may be reduced upon motion by the employer, this is subject to the following conditions: (1) the motion to reduce the bond shall be based on the meritorious ground; and (2) a reasonable amount in relation to the monetary award is posted by the appellant.

In this case, petitioner failed to show that his motion for reduction of bond was based on meritorious grounds. His excuse that his business was neither that big nor profitable such that he cannot post a bond equivalent to the total award of P114,187.97 is specious and unacceptable. For one, no evidence was adduced to prove his financial predicament. For another, even conceding *arguendo* his claimed financial hardship, the law does not require him to pay outright the monetary award but allows him the option of posting a surety bond thru a reputable bonding company duly accredited by the Commission or the Supreme Court. This undercuts the notion of financial hardship as a justification for the inability to timely post the required bond.^[16] As emphasized in *Biogenerics Marketing and Researched Corporation vs. NLRC*, viz:

"It is not an excuse that the over P2 million award is too much for a small business enterprise, like the petitioner company, to shoulder. The law does not require its outright payment, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is a moderate and reasonable sum for the premium for such bond.^[17]

Further arguing that the dismissal of the appeal based on technicality is frowned upon, petitioner urges that he be given the fullest opportunity to prove the merits of his case to serve the ends of justice.

Again, the argument fails to persuade.

The rule on liberal construction is not a license to disregard the rules of procedure. Rules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.^[18] Moreover, as time and again held, Article 223 of the Labor Code, which prescribes the appeal bond requirement, is a rule of jurisdiction and not of procedure. There is little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely, the Labor Code. For the same reason, it has been repeatedly emphasized that the requirement for posting an appeal

bond is not merely procedural but jurisdictional and non-compliance therewith is fatal and has the effect of rendering the judgment final and executory.[19]

WHEREFORE, foregoing premises considered, the petition is hereby DENIED.

SO ORDERED.

Villon and Lazaro-Javier, JJ., concur.

[1] Rollo, pp. 20-25.

[2] Ibid., pp. 49-59

[3] Ibid., pp. 46-48

[4] Ibid., pp. 28-29

[5] Stolt-Nielsen Marine Services, Inc. (Now Stolt-Nielsen Transportation Group, Inc.) vs. NLRC, et al. G. R. No. 147623, December 13, 2005.

[6] Ramirez vs. Court of Appeal, G. R. No. 182626, December 4, 2009.

[7] Coral Point Development Corporation v. National Labor Relations Commission, 383 Phil 456 (2000).

[8] Computer Innovations Center, Inc. et al., vs. NLRC. et al., G.R. No. 152410, June 29, 2005.

[9] Colby Construction and Management Corporation vs. NLRC, G. R. No. 170099, November 28, 2007.

[10] G.R. No. 96078, 205 SCRA 69 (1992).

[11] G.R. No. 113051, 289 SCRA 407 (1998).

[12] G.R. No. 93690, 202 SCRA 597 (1991).

[13] G.R. No. 116476-84, 290 SCRA 408 (1998).

[14] Supra., note no. 5.

[15] G.R. No. 182626, December 4, 2009.

[16] Supra., note no. 7.

[17] G.R. No. 122725, September 8, 1999.

[18] Cordova vs. Keysa's Boutique, G.R. No. 156379, September 16, 2005.

[19] Ramirez vs. Court of Appeals, G.R. No. 182626, December 4, 2009.

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