

**SECRET INVESTIGATION & SECURITY CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
LABOR ARBITER JOVENCIO LL. MAYOR, JR., EFREN O. RAFAEL,
JOSEPH C. BRON, PRIMO B...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

The Secret Investigation & Security Corporation (hereafter the petitioner for brevity) by this petition for certiorari, assails the Resolution dated October 8, 2002 of the respondent National Labor Relations Commission (or NLRC) dismissing its appeal from the Decision of the Labor Arbiter Jovencio Ll. Mayor, Jr. (or the Labor Arbiter), as well as the Resolution dated January 17, 2003 denying its reconsideration.

The dismissed appeal was from the ruling in NLRC NCR Case No. 12-10940-99 filed by the respondents Elias B. Domingo, Efren O. Rafael, Primo B. Villanueva, Guzman B. Tamina, Edmundo A. Guzman, and Joseph C. Bron (hereafter the respondents unless individualized by their surnames), against the petitioner for illegal dismissal, underpayment of wages, refund of cash bond and attorney's fees.

The respondents alleged that they were hired on different dates as security guards by the Confidential Investigation & Security Corporation. They were subsequently absorbed by Manforce Incorporated and then by the petitioner after the security agencies merged sometime in 1999. They were assigned in the factory of the Universal Robina Corporation with a monthly salary of P6,000.00. On different dates they received a memorandum from the petitioner asking them to report to the office for their re-assignment and informing them that their failure to do so will result in the termination of their employment. They were eventually dismissed without cause and due process.

For its part, the petitioner claimed that the respondents were not dismissed but were relieved temporarily from their posts as requested by the client pending the investigation of reported pilferages that occurred during their tours of duty and within their areas of responsibility. The respondents were placed on a floating status for less than a month, which is allowed by law. Notices were sent to the respondents requesting them to report for possible posting and re-assignment but they ignored the notices and rejected the posts offered them because they preferred to be re-assigned in Calamba, Laguna and its neighboring areas. The petitioner also contended that the respondents are not entitled to their money claims for they have been paid accordingly.

On September 24, 2001, the Labor Arbiter rendered a Decision, the decretal portion of which reads:

WHEREFORE, in view of all the foregoing, respondent agency is hereby ordered to pay complainants herein the total amount of TWO HUNDRED EIGHTY-TWO THOUSAND EIGHT HUNDRED TWELVE (P282,812.20) PESOS and 20/100 as discussed above.

For insufficiency of evidence, the claims of TAMINA AND GUZMAN are hereby DISMISSED.

SO ORDERED. (pp. 57-58, rollo)

The petitioner filed a Motion for Partial Reconsideration of this which was treated as an appeal to the NLRC. The appeal, however, was dismissed by the NLRC for having been filed beyond the reglementary period and for the petitioner's failure to pay the appeal fee and to post the appeal bond which are mandatory requirements under the NLRC New Rules of Procedure. In its Resolution of October 8, 2002, the NLRC disposed that:

WHEREFORE, premises considered, the appeal is, as it is hereby, DISMISSED for being filed out of time and for non-perfection thereof.

SO ORDERED. (p. 67, rollo)

As said, the motion for its reconsideration was denied.

Hence, this petition for certiorari where the petitioner raises the following issues for consideration:

I

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UNILATERALLY REFUSED, THROUGH A FILING/RECEIVING CLERK, TO ACCEPT THE APPEAL OF RESPONDENT WITHIN THE TEN DAY REGLEMENTARY PERIOD THEN RULED THAT THE PETITION WAS FILED OUT OF TIME WHEN IT WAS MAILED THE NEXT BUSINESS DAY; AND

II

THE LABOR ARBITER GRAVELY ABUSED HIS DISCRETION WHEN HE MADE AS BASIS FOR THE COMPUTATION OF WAGES OF THE PRIVATE RESPONDENTS THE CONTRACTUAL PADPAO RATES INSTEAD OF THE PREVAILING MINIMUM WAGE LAWS. (pp. 4-5, rollo)

This case was subjected to mediation and on November 11, 2005 a Compromise Settlement was signed by the petitioner and the respondents Domingo as well as the by then deceased Villanueva and Rafael who were represented in the act by their respective spouses. On November 22, 2005, the Court rendered judgment disposing that:

WHEREFORE, judgment is hereby rendered in accordance with the full text of the Compromise Agreement, and the parties are hereby ordered and enjoined to comply therewith. No pronouncement as to costs.

SO ORDERED. (p. 125, rollo)

The respondent Bron was not included in the Compromise Agreement for his failure to appear during the mediation conference despite notice. On the other hand, Tamina and Guzman did not appeal the Decision of the Labor Arbiter dismissing their complaint against the petitioner.

Thus, the resolution of this petition is confined only to the issue of the propriety of the NLRC dismissal of the petitioner's appeal from the decision of the Labor Arbiter, but then only with respect to Bron who is the last man standing.

The core and encompassing issue in this petition is whether or not the NLRC committed grave abuse of discretion in dismissing the appeal on the mere technicality that the petitioner failed to perfect this within the reglementary period.

We find that the NLRC did not commit grave abuse of discretion in dismissing the appeal which was been filed beyond the ten-day reglementary period and without posting the required cash or surety bond. 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. NLRC*, 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). We find none such in this case.

On another point, the Manifestation and Motion of the counsel for the respondents is duly noted. Hence, the petitioner should be ordered to pay him attorney's fees equivalent to 10% of the total amount paid to Domingo, Villanueva and Rafael in the Compromise Agreement, as well as, the amount to be paid to Bron representing his wage differential.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED. Further, the petitioner is ORDERED:

1. to pay Bron his wage differential amounting to P18,112.50 as awarded by the Labor Arbiter in his Decision dated September 24, 2001; and
2. to pay counsel for the private respondents attorney's fees equivalent to 10% of the total settlement amount and the amount awarded to Bron.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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