

**ANGEL P. MEDRANO AND RONEL T. VARGAS, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION,
LINKERS SECURITY & DETECTIVE AGENCY/ELSIE S. MARIANO,
RESPONDENTS.**

Ponente: SADANG, J.

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SADANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the April 30, 2012[1] and May 31, 2012[2] Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR Case Nos. 11-16359-10 (NLRC LAC No. 11-003045-11).

Factual Antecedents

Private respondent Linkers Security and Detective Agency (Linkers) is a sole proprietorship owned and operated by private respondent Elsie Mariano and engaged in the business of providing security services. On June 16, 2009, Linkers employed petitioners Angel P. Medrano and Ronel T. Vargas (hereafter, petitioners) as security guards, assigning them to the Philippine National Railways (PNR) with a daily 12-hour tour of duty, 7 days a week.[3]

On January 23, 2010, during a post inspection conducted by PNR Operations Officer Alfredo Francisco, Vargas was caught sleeping on duty at his post at PNR's FTI Station, Taguig City.[4] In his explanation letter,[5] Vargas admitted his infraction and claimed that he was not feeling well. He pleaded to Linkers/Mariano to retain him because he has a family to support.

On April 15, 2010, Medrano was likewise caught sleeping at his post at PNR's Edsa Station. He admitted his infraction and apologized in a letter.[6] He undertook not to repeat the infraction and committed to do his best to serve his employer and its clients.

After submitting their explanation letters, Medrano and Vargas no longer reported for duty.[7]

On April 27, 2010, Linkers/Mariano filed with the Department of Labor and Employment an Establishment Employment Report[8] relative to Medrano's termination effective April 23, 2010.

On November 19, 2010, petitioners Medrano and Vargas filed with the NLRC, National Capital Region, Quezon City, a complaint[9] for illegal dismissal, reinstatement, and payment of full backwages, damages, and attorney's fees against Linkers/Mariano (hereafter, respondent). The case was docketed as NLRC Case No. NCR-11-16359-10.

In their Position Paper,[10] petitioners Medrano and Vargas averred that they were dismissed by respondent on April 23, 2010 and May 7, 2010, respectively. They alleged that they never committed any act that constitutes just cause for dismissal under Article 282 of the Labor Code and respondent did not observe the two-notice rule in effecting their dismissal. They averred that as security guards they cannot be dismissed without just cause because their jobs are usually necessary and desirable to respondent's business and they have rendered more than 10 months of continuous service.

In her Position Paper,[11] respondent argued that: petitioners were caught sleeping on the job and no longer reported for work after said infraction, hence, they voluntarily severed their employment; petitioners' failure to report for work forced respondent to file the required report with the DOLE; it cannot be said that respondent unilaterally and illegally terminated petitioners because the severance from employment was of their liking and was never initiated by respondents. Respondent invoked *Security and Credit Investigation, Inc. v. NLRC*[12] which ruled that an employee's claim of illegal dismissal cannot be sustained absent any showing of an overt or positive act of dismissal on the part of the employer. She stressed that petitioners' infractions are serious because the nature of their job demanded utmost and extraordinary diligence and by sleeping on the job petitioners also became part of the security risk. She also argued that if petitioners were indeed illegally dismissed, they should have filed prompt and seasonable complaints, hence, their belated complaint is a mere afterthought.

Records show that in July 2010, prior to their filing of this case, petitioners filed a suit for money claims against respondent, docketed as NLRC-NCR Case No. 05-06490-10,[13] for underpayment of salaries, overtime pay, holiday and rest day premium pay, service incentive leave pay, 13th month pay, and ECOLA. In that case, petitioners did not rebut respondent's claim that they no longer reported for work after they were caught sleeping on the job. Labor Arbiter (LA) Jovencio Mayor, Jr., in an October 28, 2010 Resolution, dismissed the suit, save the claim for payment of 13th month pay. LA Mayor declared that petitioners' failure to report for work constitutes abandonment of work. In its August 31, 2011 Resolution, the NLRC affirmed LA Mayor's resolution.[14]

On August 31, 2011, LA Thomas T. Que, Jr. rendered a Decision[15] in this case sustaining petitioners' claim of illegal dismissal. LA Que ruled that respondent failed to prove that petitioners abandoned their work. He found that no further disciplinary action was taken against petitioners and there were no notices of infraction and hearings thereon and no notices of termination were served as required under Section 2 (a), Rule I, Book IV of the Omnibus Rules Implementating the Labor Code. The fallo of the Decision reads:[16]

WHEREFORE, premises considered, judgment is hereby rendered finding respondents GUILTY of illegal dismissal and, correspondingly, holding said Respondents jointly and severally liable to pay Complainants their separation pay and full backwages counted from their date of dismissal until finality of decision, as contained in the Computation and Examination Unit's schedule of computation herein adopted and attached as Annex "A", plus nominal damages of P 30, 000.00 each.

All other claims are DISMISSED for lack of merit.

SO ORDERED.

As computed, the total monetary award under the decision amounts to P538,913.61. Medrano's award was P272,566.44 and Vargas P266, 347.17.[17]

Respondent filed a Memorandum of Appeal (with Motion to Reduce Bond and Notice of New Address)[18] reiterating that petitioners voluntarily severed the employment ties by their failure to return to work after their infractions, thus, they could not have been illegally dismissed. As to her motion for reduction of appeal bond, respondent contended that the LA's findings were devoid of factual basis and that she had tendered a bond in an amount that is one-half of the judgment award, the 10-day appeal period being too short to secure a surety or supersedeas bond for the full amount. She averred that the award is exorbitant and her business is having financial difficulties due to this case and the lack of projects.

The NLRC denied respondent's motion to reduce bond in a December 27, 2011 Order;[19] however, in its assailed April 30, 2012 Resolution,[20] the NLRC ruled in favor of respondent and reversed LA Que's August 31, 2011 Decision. The fallo of the April 30, 2012 Resolution reads:[21]

WHEREFORE, premises considered, the instant appeal is GRANTED, and the assailed Decision dated August 31, 2011 is REVERSED AND SET ASIDE to the effect that complainants were not illegally dismissed. The awards of backwages, separation pay, attorney's fees are DELETED for lack of merit. The award of NOMINAL DAMAGES is modified to P10, 000.00. The award of Service Incentive Leave Pay is likewise DELETED for lack of factual and legal basis.

SO ORDERED.

Petitioners moved for reconsideration,[22] insisting that the appeal of respondent was not perfected because of the non-posting of appeal bond and that the LA did not commit grave abuse or serious error in ruling in their favor.

Respondent also sought partial reconsideration[23] on the grounds that: the award of nominal damages is not warranted because petitioners had already received monetary award in NLRC-NCR Case No. 05-06490-10, that petitioners did not claim nominal damages in their complaint; and nominal damages is warranted only where the dismissal is tainted with bad faith or fraud, or constitutes an act oppressive to labor, or done contrary to morals, good customs and public policy which does not obtain in the instant case.

The NLRC denied both motions for reconsideration in the assailed May 31, 2012 Resolution.[24]

Hence, petitioners' petition for certiorari on this ground:[25]

THAT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION THIRD DIVISION WITH ALL DUE RESPECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN REVERSING THE DECISION OF THE HONORABLE LABOR ARBITER DESPITE OF NON-PERFECTION OF PRIVATE RESPONDENTS' MEMORANDUM OF APPEAL WITH MOTION TO REDUCE BOND.

RULING

The issues are: 1) whether the NLRC committed grave abuse of discretion amounting to excess or lack of jurisdiction in giving due course to the appeal of respondent; and 2) whether the NLRC committed grave abuse of discretion in reversing the decision of the LA.

Petitioners insist that the non-posting of appeal bond resulted in the non-perfection of the appeal, hence, the NLRC did not acquire jurisdiction over the case.

Respondent counters that any issue regarding the December 27, 2011 Order which directed the posting of additional bond has been mooted because petitioners did not move for reconsideration thereof and she posted the required additional bond.

An appeal is not a matter of right; it is but a mere statutory privilege. As such, it may only be availed of in the manner provided by the statutes and the rules allowing it. A party who seeks to exercise the right to appeal must comply with the statutory requirements, otherwise, the privilege is lost.[26] The primary provision governing appeals from the ruling of the Labor Arbiter is Article 223 of the Labor Code which reads:

Art. 223. Appeal. — 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. Such appeal may be entertained only on any of the following grounds:

- a. If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;

c. If made purely on questions of law; and

d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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.(Underscoring supplied).

The requisites for perfection of appeal under Article 223, as amended by Republic Act No. 6715, are: 1) payment of appeal fees; 2) filing of the memorandum of appeal; and 3) payment of the required cash or surety bond. These requisites must be satisfied within 10 days from receipt of the decision or order appealed from.[27]

By express provision, an appeal is perfected only upon the posting of a cash or surety bond, thus, the rule that the posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional.[28] The rationale for the bond requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.[29]

It has been held that strict adherence to Article 223 applies only when appellants do not post an appeal bond at all.[30] The rule has been relaxed in these cases: 1) there was substantial compliance with the Rules; 2) the 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.[31]

There is no merit in petitioners' contention that respondent's non-posting of a bond in the amount of P 266,347.17 equivalent to the monetary award to petitioner Vargas was fatal to respondent's appeal. What is crucial in determining respondent's perfection of appeal is the posting of the amount of P269,500.00 bond coupled with the filing of her Memorandum of Appeal with Motion to Reduce Bond within the 10-day reglementary period and her subsequent posting of the additional bond in compliance with the NLRC's December 27, 2011 Order.

The governing rule on bonds is Section 6, Rule VI (Appeals) of the 2011 NLRC Rules of Procedure. It reads:

Sec. 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees. x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of the motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. (Emphasis supplied).

Prior pronouncements of the Supreme Court relative to the appeal bond subscribed to the rule that even when an appellant seeks a reduction of the bond before the NLRC, he is unqualifiedly required to post a cash or surety bond securing the full amount of the judgment award within the 10-day reglementary period to perfect his appeal. Prevailing jurisprudence, however, rectifies these pronouncements and holds that the filing of a motion to reduce

bond coupled with compliance with the two conditions for the grant of such motion namely, (1) a meritorious ground and (2) posting of a bond in a reasonable amount, shall suffice to suspend the running of the period to perfect an appeal from the labor arbiter's decision to the NLRC. To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond.[32] In *Garcia v. KJ Commercial*[33] it was reiterated that the "filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal." The Supreme Court also emphasized that while Article 223 of the Labor Code, which requires a cash or surety bond in an amount equivalent to the monetary award in the judgment appealed from, is a jurisdictional requirement for the perfection of an appeal, it nevertheless reiterated its call for a liberal application of the law and the rules on the appeal bond requirement "with an eye on the interest of substantial justice and the merits of the case." [34]

Jurisprudence holds firm the importance of appeal bonds in appeals from monetary awards of labor arbiters. The NLRC, pursuant to Section 6, Rule VI of the NLRC Rules of Procedure, shall only accept motions to reduce bond that are coupled with the posting of a bond in a reasonable amount. It cannot be over-emphasized that the bond requirement imposed upon appellants in labor cases is intended to ensure the satisfaction of awards that are made in favor of appellees, in the event that their claims are eventually sustained by the courts. On the part of the appellants, its posting may also signify their good faith and willingness to recognize the final outcome of their appeal.[35]

Pertinent to the reasonableness of the bond that respondent initially posted, the case of *McBurnie v. Ganzon*[36] definitively fixed "reasonable amount" at ten percent (10%) of the monetary award. It also set forth the parameters on the filing and acceptance of motions to reduce bond, viz:

To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that gives parties the chance to seek a reduction of the appeal bond are effectively carried out without, however, defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

The foregoing shall not be misconstrued to unduly hinder the NLRC's exercise of its discretion, given that the percentage of bond that is set by this guideline shall be merely provisional. The NLRC retains its authority and duty to resolve the motion and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of "meritorious grounds" and "reasonable amount". Should the NLRC, after considering the motion's merit, determine that a greater amount or the full amount of the bond needs to be posted by the appellant, then the party shall comply accordingly. The appellant shall be given a period of 10 days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

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Furthermore, on the matter of the filing and acceptance of motions to reduce appeal bond, as provided in Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the Court hereby RESOLVES that henceforth, the following guidelines shall be observed:

- (a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;
- (b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a provisional cash or surety bond equivalent to ten percent (10%) of the monetary award subject of the appeal,

exclusive of damages and attorney's fees;

(c) Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day reglementary period to perfect an appeal from the labor arbiter's decision to the NLRC;

(d) The NLRC retains its authority and duty to resolve the motion to reduce bond and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of meritorious grounds and reasonable amount; and;

(e) In the event that the NLRC denies the motion to reduce a bond, or requires a bond that exceeds the amount of the provisional bond, the appellant shall be given a fresh period of ten (10) days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

Following the foregoing guidelines, it is clear that respondent duly perfected her appeal. Her P269,500.00 bond equivalent to one-half of the LA's judgment award more than satisfied the 10% threshold specified in the guidelines. The posting of this provisional bond along with the filing of the Memorandum of Appeal with the Motion to Reduce Bond effectively suspended the running of the 10-day reglementary period. Record also shows that respondent later posted the additional bond in compliance with the NLRC's December 27, 2011 Order which denied her Motion to Reduce Bond, thus, completing the required bond and perfecting her appeal. Consequently, the LA's decision did not attain finality and there was no legal obstacle to the exercise by the NLRC of its appellate jurisdiction. The NLRC did not gravely abuse its discretion when it gave due course to respondent's appeal.

We now come to the issue of whether the NLRC committed grave abuse of discretion in reversing the findings of the LA.

Petitioners insist in their Memorandum[37] that their termination was not for any of the valid or authorized causes under Article 288,[38] 289[39], and 290[40] of the Labor Code. They contend that for neglect of duty to constitute a just cause for dismissal, it must be both gross and habitual which is not true in this case because they committed their infractions only once.

On the other hand, respondent argues that certiorari is not the proper remedy because it is limited to errors in jurisdiction and does not include errors in judgment. She contends that the NLRC correctly ruled out illegal dismissal because dismissal, as defined in *Soberado v. Calve*,[41] is the employer's unilateral termination of the employee's services. In this case, petitioners unilaterally and voluntarily severed their employment ties with respondent as evident from the fact that they never returned to work after their infractions.

The ruling of the NLRC that there is no illegal dismissal in this case is grounded on the finding that petitioners were caught sleeping on the job. The NLRC ruled that this act constitutes gross neglect of duty which is a valid cause for dismissal under Article 282 of the Labor Code. However, petitioners claim that a single instance of sleeping on duty does not constitute a valid cause for dismissal. They argue that it is only when such act is gross and habitual that the dismissal can be sanctioned.

We disagree. True, neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.[42] However, an exception must be made in this case because the dismissed employees are security guards. A survey of jurisprudence, both old and of recent vintage, consistently hold the view that the requisites "gross" and "habitual" neglect do not apply to security guards. *Luzon Stevedoring Corp. v. Court of Industrial Relations*[43] (1965) declared that considering that the function of a security guard is essentially entrusted and charged with the

protection of company property from pilferage and loss, sleeping in post is a grave offense, hence, the employer has the right to dismiss the erring securing guards if only as a measure of self-protection. Adhering to Luzon Stevedoring, subsequent jurisprudence hold that a security guard found sleeping on the job is doubtless subject to dismissal.[44] In *VH Manufacturing, Inc. v. NLRC*[45] (2000) involving a quality control inspector whose dismissal was on the ground of sleeping on the job and the authorities relied upon by VH Manufacturing are those which upheld the dismissal of security guards for sleeping on the job, the Supreme Court declared the dismissal illegal, stressing that the doctrine that sleeping on the job is always a valid ground for dismissal applies only to “security guards whose duty necessitates that they be awake and watchful at all times inasmuch as their function, to use the words in *Luzon Stevedoring Corp. v. Court of Industrial Relations*, is to protect the company from pilferage and loss.”

Thus, even if petitioners were caught sleeping on duty only once, that does not make their dismissal illegal. Also, their infraction is compounded by the fact that they did not simply doze off but rather deliberately slept in their posts. The photographs[46] on record show that Medrano was sleeping inside a mosquito net while Vargas, with his shoes off, was sleeping on a bench inside the ticketing office. As security guards posted at PNR's FTI and EDSA Stations, the importance of petitioners' vigilance on duty is not to be taken lightly since their duties essentially entails securing the railway facilities and, ultimately, the safety of the riding public. Certainly, the NLRC did not abuse its discretion when it reversed the findings of the LA.

Concerning the nominal damages awarded by the NLRC, it is not disputed that respondent did not observe the two-written notice rule under Article 277 of the Labor Code. The only evidence presented on this point is the Establishment Employment Report to the DOLE. Conformably with the ruling in *Agabon v. National Labor Relations Commission*,[47] when the dismissal was for just cause, the lack of statutory due process does not nullify the dismissal or render it illegal or ineffectual. However, the violation of the employee's right to statutory due process warrants the payment of indemnity in the form of nominal damages whose amount is addressed to the sound discretion of the court taking into account the relevant circumstances.[48] We sustain the NLRC's award of P 10,000.00 each to Medrano and Vargas. Under the circumstances, said award is sufficient vindication of their right to due process.

WHEREFORE, the petition for certiorari is DISMISSED. The April 30, 2012 and May 31, 2012 Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR Case Nos. 11-16359-10 (NLRC LAC No. 11-003045-11) are AFFIRMED.

SO ORDERED.

Librea-Leagogo, J., Chairperson, and [*]Valenzuela, JJ., concur.

[*] Vice Associate Justice Amy C. Lazaro-Javier, per Office Order No. 38-15-RSF dated February 3, 2015.

[1] Rollo, pp. 18-23.

[2] Id. at 24-26.

[3] Id. at 27, 30-31, 38.

[4] Id. at 48-49.

[5] Id. at 49.

[6] Id. at 50.

[7] Id. at 21, 38.

[8] Id. at 51-52.

[9] Id. at 27-29.

[10] Id. at 30-35.

[11] Id. at 36-47.

[12] 350 SCRA 357.

[13] Rollo, 84-87, 93-99. Respondents Linkers and Mariano's Position Paper, filed on July 2, 2010. Petitioners' Medrano and Vargas' Position Paper, filed on July 27, 2010.

[14] Id. at 20, 58, 149-150.

[15] Supra, note 3.

[16] Rollo, p. 62.

[17] Id. at 63, RE: COMPUTATION OF COMPLAINANTS' MONETARY AWARD AS PER DECISION OF HONORABLE LABOR ARBITER THOMAS T. QUE, JR.

[18] Id. at 64-83.

[19] Id. at 116-118. The dispositive portion of the December 27, 2011 Order reads:

WHEREFORE, the Motion to Reduce Bond is DENIED. Respondents-appellants is hereby ordered to post a cash or surety bond in the amount equivalent to the monetary award granted in the appealed Decision (less the P 269, 500.00 cash bond already posted) and a joint declaration, indemnity agreement and collateral security in case respondents-appellants opted to post a surety bond which shall be issued by a reputable bonding company duly accredited by this Commission or the Supreme Court to transact business as required by Art. 223 of the Labor Code as amended and Section 6, Rule VI of the NLRC 2005 Revised Rules of Procedure, within an unextendible period of ten (10) calendar days from receipt of this Order, otherwise, the appeal shall be dismissed for non-perfection.

SO ORDERED.

[20] Supra, note 1.

[21] Id. at 23.

[22] Id. at 125-130.

[23] Id. at 119-124.

[24] Supra, note 2.

[25] Rollo, p. 6.

[26] Sara Lee Philippines, Inc. v. Emilindad D. Macatlang, et al., G.R. Nos. 180147-150, G.R. Nos. 180319, 180685, June 4, 2014 citing Calipay v. NLRC, G.R. No. 166411, August 3, 2010, 626 SCRA 409, 416. Lepanto Consolidated Mining Corporation v. Belio Icao, G.R. No. 196047, January 15, 2014, citing BPI Family Savings Bank Inc. v. Pryce Gases, Inc., G.R. No. 188365, June 29, 2011, 653 SCRA 42, 51; National Power Corporation v. Spouses Laohoo, G.R. No. 151973, July 23, 2009, 593 SCRA 564; Philux, Inc. v. National Labor Relations

Commission, G.R. No. 151854, September 3, 2008, 564 SCRA 21, 33.

[27] *Sara Lee Philippines, Inc. v. Emilindad D. Macatang*, supra, citing *Ramirez v. Court of Appeals*, G.R. No. 182626, December 4, 2009, 607 SCRA 752, 761.

[28] *Banahaw Broadcasting Corp., v. Pacana III*, G.R. No. 171673, May 30, 2011, 646 SCRA 196, 210.

[29] *Viron Garments Mfg. Co., Inc. v. NLRC*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342

[30] *Banahaw Broadcasting Corp., v. Pacana III*, supra.

[31] *Sara Lee Philippines, Inc. v. Emilindad D. Macatang*, supra, citing *Nicol v. Footjoy Industrial Corp.*, 555 Phil. 275, 292 (2007). Among the illustrative cases cited are: In *Lopez v. Quezon City Sports Club Inc.*, (596 Phil. 204, (2009))the posting of the amount of P4,000,000.00 simultaneously with the filing of the motion to reduce the bond to that amount, as well as the filing of the memorandum of appeal, all within the reglementary period, altogether constitute substantial compliance with the Rules. In *Intertranz Container Lines, Inc. v. Bautista*, (G.R. No. 187693, July 13, 2010, 625 SCRA 75) this Court has relaxed the appeal bond requirement when it was clear from the records that petitioners never intended to evade the posting of an appeal bond. In *Semblante v. Court of Appeals* (G.R. No. 196426, August 15, 2011, 655 SCRA 396) the Court stated that the rule on the posting of an appeal bond cannot defeat the substantive rights of respondents to be free from an unwarranted burden of answering for an illegal dismissal for which they were never responsible. It was found that respondents, not being petitioners' employees, could never have been dismissed legally or illegally. In the recent case of *Garcia v. KJ Commercial* (G.R. No. 196830, February 29, 2012, 667 SCRA 396) respondent showed willingness to post a partial bond when it posted a P50,000.00 cash bond upon filing of a motion to reduce bond. In addition, when respondent's motion for reconsideration was denied, it posted the full surety bond.

[32] *Andrew James McBurnie v. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, G.R. Nos. 178034 and 178117, G.R. Nos. 186984-85, October 17, 2013.

[33] G.R. No. 196830, February 29, 2012, 667 SCRA 396, 409, as cited in *Andrew James McBurnie v. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, supra.

[34] *Blancaflor v. NLRC*, G.R. No. 101013, February 2, 1993, 218 SCRA 336 as cited in *Andrew James McBurnie v. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, supra; *Princess Joy Placement and General Services, Inc. v. German A. Binalla*, G.R. No. 197005, June 4, 2014.

[35] *Andrew James McBurnie v. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, supra, citing *Mindanao Times Corporation v. Confesor*, G.R. No. 183417, February 5, 2010, 611 SCRA 748.

[36] Supra.

[37] Rollo, pp. 165-185.

[38] Erroneously cited. See Rollo, p. 179. Proper provision should be Article 282 of the Labor Code.

ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized

representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[39] Id. Should be Article 283.

ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[40] Id. Should be Article 284.

ART. 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[41] 99 SCRA 549.

[42] FLP Enterprises Inc.- Francesco Shoes/Emilio Francisco B. Pajaro v. Ma. Joeralyn D. Dela Cruz and Vilma Malunes, G.R. No. 198093, July 28, 2014; Cavite Apparel, Incorporated and Adriano Timoteo v. Michelle Marquez, G.R. No. 172044, February 06, 2013, citing Nissan Motor Phils., Inc. v. Angelo, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 530, Nissan Motor Phils., Inc. v. Angelo, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 530 and Valiao v. Court of Appeals, 479 Phil. 459, 469 (2004), citing JGB & Associates, Inc. v. NLRC, 324 Phil. 747, 754 (1996).

[43] G.R. No. L-17411, December 31, 1965.

[44] Phil. Long Distance Telephone Co. v. NLRC, G.R. No. L-80609, August 23, 1988, 164 SCRA 671, 681, as cited in Osias Academy v. Department of Labor and Employment, et al. G.R. No. 83234, April 18, 1989, 172 SCRA 458; Benguet Corporation v. NLRC (Fourth Division) and Coralis, G.R. No. 84974, May 8, 1992; A'Prime Security Services, Inc. v. NLRC, G.R. No. 93476, March 19, 1993, 220 SCRA 142; and Central Philippines Bandag Retreaders, Inc. v. Prudencio J. Diasnes, G.R. No. 163607, July 14, 2008.

[45] G.R. 130957, January 19, 2000, 322 SCRA 417, 422. The pertinent pronouncement in the case states:

xxx xxx xxx

Second. Petitioner's reliance on the authorities it cited that sleeping on the job is always a valid ground for dismissal, is misplaced. The authorities cited involved security guards whose duty necessitates that they be

awake and watchful at all times inasmuch as their function, to use the words in *Luzon Stevedoring Corp. v. Court of Industrial Relations*, is “to protect the company from pilferage or loss.” Accordingly, the doctrine laid down in those cases is not applicable to the case at bar.

[46] Rollo, pp. 48, 50.

[47] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-617 as cited in *Samar-Med Distribution v. National Labor Relations Commission and Josafat Gutang*, G.R. No. 162385, July 15, 2013.

[48] *Samar-Med Distribution v. National Labor Relations Commission and Josafat Gutang*, *supra*.

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