

MORNING STAR TRAVEL AND TOURS, INC. ET.AL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND NOVALYN SOYANGCO, RESPONDENTS.

Ponente: COSICO, J.

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COSICO, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolutions^[1] dated January 31, 2005 and March 31, 2005 rendered by the National Labor Relations Commission (NLRC) (Third Division) in NLRC-00-02-02534-03 (NCR CA No. 041963-04) denying petitioners' motions for reconsideration which were filed as an offshoot to the November 30, 2004 Order of respondent Commission which in effect, ordered the petitioners to post an additional amount of appeal bond. For failure to comply with the November 30, 2004 Order, public respondent in its January 31, 2005 Resolution dismissed petitioners' appeal, the decretal portion thereof reads:

“WHEREFORE, respondents' Motion for Reconsdieration is hereby DENIED for lack of merit. Respondents' appeal is hereby DISMISSED for failure to comply with the requirements of appeal as mandated by law.

No further motion of this nature shall be entertained.

SO ORDERED.” [Resolution, p. 2]

On another motion for reconsideration filed by petitioners, public respondent issued its March 31, 2005 Resolution denying the same. The dispositive portion of the aforesaid Resolution states:

“PREMISES CONSIDERED, respondents' instant Motion for Reconsideration dated March 4, 2005 which is a second Motion for Reconsideration of Resolution of November 30, 2004, is hereby NOTED. Let this case be dropped from the calendar of the commission.

SO ORDERED.” [Resolution, p. 2]

In addition, the petitioners put into issue in the present petition the alleged grave abuse of discretion amounting to lack or excess of jurisdiction committed by public respondent in finding that private respondent was illegally dismissed and thus entitled to an award of full backwages, 13th month pay, moral and exemplary damages and attorney's fees.

The Facts

The instant petition emanated from the complaint for illegal dismissal and money claims filed by private respondent Novalyn Soyangco against her former employers who are the petitioners herein. In the proceedings before the Labor Arbiter, the parties were required to submit their respective pleadings and corresponding evidence and thereafter the case was submitted for decision. On May 31, 2004, Labor Arbiter Ramon Valentin C. Reyes to whom the case was assigned, rendered a decision finding that herein private respondent was illegally dismissed from employment and awarded her the amount of P622, 124.16 representing backwages, 13th month

pay, separation pay, attorney's fees, moral and exemplary damages and held:

"In the first place, complainant never admitted that she submitted her resignation letter to the respondent [petitioners herein] although she admitted having prepared one because of the Memorandum of the respondent company dated October 26, 2002, offering several options to employees one of which was the giving by the respondents of separation pay of 15 for every year of service based on the latest salary of those who will voluntarily resign from their job.

Respondents claim that complainant filed her resignation when Respondent's officer was inclined to disapprove the letter request and complainant anticipated it that way, so on the same day in the afternoon (November 11, 2002) complainant submitted her resignation letter without waiting for the action on her letter request x x x The argument of respondents are purely gratuitous, conjectural and speculative which has no probative value. Moreover, a searching scrutiny of the copy of resignation x x x shows that there is no proof that it was personally received by respondents from complainant unlike the complainant's request-letter for leave of absence of four (4) days which find it more credible and in consonant to the natural course of things.

x x x the fact that complainant filed an illegal dismissal with this Office after respondents refused to admit her to return to work without even a notice of terminating her employment, much less to explain her side, are clear indication that such resignation was not voluntary and deliberate." [2]

Not in agreement with the above ruling, petitioners immediately filed a notice of appeal and submitted a Memorandum of Appeal together with a Motion for the Reduction of the Appeal Bond to respondent Commission. Pending resolution of the motion to reduce the amount of appeal bond, petitioners posted the amount of Sixty Two Thousand Three Hundred Pesos (P62,300.00) as appeal bond or the equivalent of ten percent (10%) of the total judgment award.

Verily, on November 30, 2004, respondent Commission issued an order [3] directing the petitioners to post an additional amount of Five Hundred Fifty-Nine Thousand Eight Hundred Twenty-Four Pesos and Sixteen Centavos (P559,824.16) as appeal bond which represented the whole judgment award of the Labor Arbiter ruling thus:

"We are constrained to deny respondents' motion to reduce appeal bond. As held by the Supreme Court, in cases involving monetary award, an employer seeking to appeal the Labor Arbiter's decision to the Commission is unconditionally required by Art. 223, Labor Code to post a bond in the amount equivalent to the monetary award . . ."

In response thereto, a Motion for Reconsideration of the aforesaid order was filed by petitioners but was denied by respondent Commission in its Resolution dated January 31, 2005 which ordered the dismissal of the former's appeal in this wise:

"We dismiss respondents' Motion for Reconsideration. The Commission is not convinced that respondents' financial situation warrants the reduction of bond as it failed to show sufficient proof of its current financial condition. The Supreme Court has held in several cases that the requirements of a cash or surety bond for the perfection of an appeal from a Labor Arbiter's monetary award is jurisdictional; non-compliance therewith is fatal and rendered the judgment final and executory . . ." [Resolution, p. 2]

Petitioners filed a motion for reconsideration of the January 31, 2005 Resolution which was also denied by public respondent in its Resolution dated March 31, 2005, to wit:

"We cannot give due course to [the] instant Motion for Reconsideration which is actually a second Motion for Reconsideration from our Resolution of November 30, 2004.

Let it be stressed that under Sec. 15, Rule VII of the NLRC Rules of Procedure, only one Motion for

Reconsideration of any order, resolution or decision of the Commission shall be entertained.” [Resolution, p. 2]

Undaunted, petitioners are now before us in this petition.

The Present Petition

The following issues brought before for this Court for resolution are:

I.

THE HONORABLE THIRD DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GIVE DUE COURSE TO THE PETITIONERS’ MOTION FOR RECONSIDERATION DATED JANUARY 31, 2005 AND DROPPED THE CASE FROM THE CALENDAR OF THE COMMISSION;

II.

THE HONORABLE LABOR ARBITER VALENTIN C. REYES COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RULED THAT THE PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED;

III.

THE HONORABLE LABOR ARBITER VALENTIN C. REYES COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RULED THAT PRIVATE RESPONDENT IS ENTITLED TO THE PAYMENT OF SEPARATION PAY, FULL BACKWAGES, 13th MONTH PAY, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY’S FEES.

Petitioners aver[4] that respondent Commission in requiring additional bond representing the entire amount of monetary judgment committed grave abuse of discretion amounting to lack or excess of jurisdiction as it is utterly unconscionable and ineffectively deprived the former of their right to appeal. Notably, the posting of a cash bond in the amount equivalent to ten percent (10%) of the judgment award is actually allowed by the implementing rules and regulations of the NLRC. Likewise, the motions for reconsideration denied in the assailed Resolutions herein are independent and separate from one another as it refers to different incidents.

Corollary to this, petitioners assail the grave abuse of discretion committed by the Labor Arbiter when he ruled that private respondent was illegally dismissed. Contrary to the labor arbiter’s findings which are based mostly in his incredulous and strict interpretation of the factual circumstances of the case, the records clearly show that private respondent resigned from her job and was in no way barred by petitioners from returning to her work. Private respondent simply refused to work by filing a resignation letter. Thus, considering that no illegal dismissal took place, private respondent was not illegally dismissed as to entitle her to an award of full backwages, separation pay, moral and exemplary damages and attorney’s as the assailed ruling lacks factual and legal bases.

On the other hand, private respondent posits[5] that Art. 223 of the Labor Code, as amended, in relation to Sections 4 to 6, Rule VI of the 2002 NLRC Rules of Procedure is explicit that an appeal to the NLRC is deemed perfected only upon the posting of a cash or surety bond in an amount equivalent to the monetary award. Moreover, under the NLRC Rules, in order for a motion to reduce bond to be entertained, there must be an appeal bond posted in a reasonable amount in relation to the monetary award, otherwise the filing of such motion shall not stop the running of the period to perfect an appeal. In the instant case, petitioners failed to post a bond in a reasonable amount. Neither was proof presented to support petitioners’ allegations to warrant a reduction of the

bond. Consequently, the requisite amount of the bond not having been filed, petitioners' appeal was not perfected and the labor arbiter's decision is now final and executory.

Nonetheless, even granting *arguendo* that the appeal was perfected, the labor arbiter was correct in finding that private respondent was illegally dismissed from employment as the records of the case aptly support such fact.

This Court's Ruling

The petition is bereft of merit.

Nothing is more settled in law and jurisprudence than the rule that the posting of an appeal bond of a judgment involving a monetary award to the National Labor Relations Commission is mandatory.[6] Under Article 223 of the Labor Code, as amended, in relation to Section 4(a), Rule VI of the 2002 NLRC Rules of Procedure, an appeal of a judgment of a Labor Arbiter involving a monetary award may only be deemed perfected upon the filing, within the ten (10) day reglementary period from receipt of such decision, award or order appealed from, of the following to wit: a notice of appeal, a memorandum of appeal with proof of payment of the appeal fee and the posting of a cash or surety bond in the amount equivalent to the monetary award in the appealed judgment.

Nevertheless, while the posting of an appeal bond is an indispensable requirement in the perfection of appeals of monetary judgments to the Commission, it has also been held that the filing of an appeal bond should be given liberal construction.[7] Hence, in *Rosewood Processing, Inc. v. NLRC*, the Supreme Court ruled that a relaxation of the appeal bond requirement could be justified by substantial compliance with the provisions of law and implementing rules.[8] In this connection, under the last two paragraphs of Sec. 6 of the aforesaid implementing Rule, there are instances when a reduction of the appeal bond is allowed, upon motion of the appellant which must be filed within the reglementary period of appeal and on the basis of meritorious grounds. It is only in cases, resting on meritorious grounds satisfactory proven by competent evidence, where a motion to reduce bond may be entertained taking into account the rationale for the requirement of posting a cash or surety bond as a condition for the perfection of an appeal which is to assure the workers that they will receive the money judgment awarded to them upon the dismissal of the employer's appeal.[9] And also, to discourage employers from using an appeal to delay or even evade their obligation to satisfy the just and lawful claims of their employees.[10]

In the instant case, there are no compelling reasons that may warrant a relaxation of the requirement on the amount of appeal bond. Undeniably, petitioners filed a motion to reduce bond and posted an amount of P62,300 which is equivalent to ten percent (10%) of the monetary award averring that such amount is reasonable under the circumstances considering the financial condition of the company and by reason of the fact that "there was difficulty in looking for surety bond since the Honorable Supreme Court has not yet given its approval for the operation of any bonding company"[11] However, as aptly observed by the public respondent Commission, other than mere assertions, no proof was shown to establish the existence or veracity of such allegations. This runs counter to the well-settled rule that he who alleges a fact has the burden of proving it.[12] In fact, petitioners failed to present relevant documents to prove the latter's claim that the company is under dire financial stress. Neither did petitioners present any proof to bolster their claim that they had difficulty in looking for a bonding company nor the alleged fact purporting to show that they even resorted to the utilization of a bonding company. As such, the rule remains that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[13]

That being the case, since no competent proof was presented by petitioners that there indeed exists meritorious grounds to warrant a reduction of the bond, respondent Commission was correct in disallowing the reduction of the amount of appeal bond. At such time, the prudent thing petitioners should have done was to comply with the order of public respondent and to post the additional appeal bond required by the latter within the period given, instead of obstinately insisting in their stand by filing a motion for reconsideration against the said order dated

November 30, 2004. Undoubtedly, when petitioners filed their motion for reconsideration of the aforesaid order, they were already forewarned that failure to comply therewith and file the additional amount of appeal bond would cause the dismissal of their appeal. Despite such knowledge, petitioners took a risk that inevitably caused them to lose their right to perfect their appeal. Such loss of appeal being their own doing; it is now a consequence that they unfortunately have to bear.

To repeat, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.[14] After all, an appeal is a mere statutory privilege that should be exercised in the manner provided for by law.

Nonetheless, even if we consider the broader interest of justice and in addition to the foregoing disquisition, a judicious reading of the arguments posed by petitioners in their memorandum of appeal and the petition fails to convince us of its merit. Suffice it to say that in illegal dismissal cases, the onus probandi lies on the employer.[15] Thus, the burden to prove that the cessation of employment by private respondent was due to her resignation lies on petitioners. Based on the records, we are convinced that private respondent Soyangco did not resign but was rather illegally dismissed from employment.

It has been held that resignation from one's employment must be unconditional and with intention to operate as such.[16] There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment.[17] Be it noted that though private respondent does not deny having executed the foregoing document, she was able to provide a suitable explanation for having executed the same which was due to the Inter-Office Memorandum of Morning Star Travel & Tours, Inc. dated October 26, 2002 wherein the company conducted a survey on the matter of the continuance of its business operations and where she chose the option of voluntary resignation from the company. Private respondent refutes having tendered such resignation letter and while petitioners presented such document into evidence, the latter, however, failed to show the manner as to how exactly did they obtain a copy thereof. Moreover, the act of private respondent in drafting a letter, simultaneous to the execution of the resignation letter, wherein she requested a leave of absence is certainly contradictory to the latter's unconditional intention to relinquish one's employment. So much so that private respondent after taking a leave of absence, returned to work but was however not accepted and was informed of her termination from employment.

Notably, the fact that private respondent filed a complaint for illegal dismissal bolsters her position that she did not resign her employment with petitioners and that there was no intention to resign. In this respect, the alleged transactions entered into between petitioners and private respondent as shown from the checks issued by the latter in the name of the company is not competent proof that Soyangco voluntarily resigned her employment. At most, the checks only establish that petitioners have monetary obligations to private respondent. It does not prove the fact of private respondent's resignation, nor does it support petitioners' allegation that Soyangco resigned in order to start her own business.

We cannot also subscribe to petitioners' position that the filing of the complaint for illegal dismissal is a mere "afterthought" and was motivated in order to pre-empt the filing of criminal complaints of estafa against private respondent. We note that the complaint for illegal dismissal was filed sometime in February 2004 or approximately three (3) months after private respondent ceased her employment with petitioners. Meanwhile, the demand letter[18] presented by petitioners to substantiate their claim was only executed on March 6, 2004 or after the filing of the illegal dismissal complaint. Considering the foregoing, no improper motive may therefore be clearly attributed on the part of private respondent in filing the illegal dismissal case in view of the fact that at the time of filing of the said complaint she had no knowledge, nor did petitioners impute such knowledge, that

criminal complaints will be filed against her. Significantly, the fact that presently, no estafa charges were filed against private respondent is an indication that the filing of the case of illegal dismissal was not triggered by a threat to file such criminal cases.

Admittedly, private complainant likewise failed to impute motive on the part of petitioners as to the reason why her employment was terminated. However, it bears stressing that the burden of proof in the instant case is not with private complainant but on the part of petitioners being the employers. As it now stands, while private complainant did indeed execute a resignation letter, there are unexplainable gaps in the events as to how petitioners obtain a copy of such resignation letter. While private respondent denied having tendered the same, petitioners failed to show and relate the circumstances as to person and manner how such resignation letter was reviewed by the company. Moreover, petitioners likewise failed to corroborate their assertion of improper motive on the part of private respondent that the filing of the complaint for illegal dismissal was merely used as a ploy to prevent the filing of criminal charges against her.

In fine, it has been held that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must tilt in favor of the latter – and the employer must affirmatively show rationally adequate evidence, as in this case, to prove its claim.[19] In controversies between a laborer and his master, doubts reasonably arising from the evidence should be resolved in the former's favor.[20] Thus, since petitioners dismally failed to satisfactorily prove the resignation of private respondent from her employment, it follows that her severance therefrom was brought about by dismissal. As mentioned earlier, the burden of proof to show that the employee was dismissed for a just cause rests on the employer and failure to discharge such burden would only mean that the dismissal was unjustified, hence, illegal. Such being the case, private respondent is entitled to such benefits and awards provided for by law to an illegally dismissed employee.

In view thereof, since petitioners' arguments in their memorandum of appeal are without merit and it appearing that the latter's appeal was not perfected within the period of time given by respondent Commission, no grave abuse of discretion was committed by the latter in issuing the assailed orders.

WHEREFORE, premises considered, the instant petition is DISMISSED.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Rollo at 67-69 and 25-27.

[2] Id. at 128.

[3] Id. 29-32.

[4] Id. at 138-155.

[5] Id. at 117-133.

[6] PSVSIA v. Pascua, 467 SCRA 441, 446 [2005].

[7] Fernandez v. NLRC, 285 SCRA 149,165 [1998].

[8] 290 SCRA 408, 421 [1998].

[9] Fernandez v. NLRC, supra. at 165.

[10] Ibid.

[11] Rollo at 140.

[12] Alarcon v. Court of Appeals, 405 SCRA 440, 447 [2003].

[13] Ongpauco v. Court of Appeals, 447 SCRA 395, 400[2004].

[14] PSVSIA v. Pascua, supra. at 448.

[15] Electruck Asia, Inc. v. Meris, 435 SCRA 310, 320 [2004]

[16] Azcor Manufacturing Inc., v. NLRC, 303 SCRA 26, 33 [1999]

[17] Ibid.

[18] Rollo at 52.

[19] Mayon Hotel & Restaurant v. Adana, 458 SCRA 609, 640 [2005].

[20] Ibid.

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