

**RICO S. FLORES, RENZ B. LAMPASO, WILLIAM F. MENDOZA,
MICHAEL G. GOMEZ, GINO PERJE, HERMAN S. HIMOTO, JUDY D.
FERNANDEZ, AND JOSE DEOLITO B. VILLARIN, PETITIONERS, VS.
HON. NATIO...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a petition for certiorari[1] under Rule 65 of the Rules of Court seeking the annulment of the June 14, 2013 Decision[2] and August 30, 2013 Resolution[3] of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City in NLRC Case No. VAC-01-000023-13. The NLRC in its assailed Decision gave due course to herein respondents' appeal and declared petitioners to have not been dismissed but affirmed the monetary awards granted to them by the Labor Arbiter. In its assailed Resolution, the NLRC denied herein petitioners' partial motion for reconsideration.

The relevant facts of the case are as follows:

Herein petitioners, Rico S. Flores, Renz B. Lampaso, William F. Mendoza, Michael G. Gomez, Gino Perje, Herman S. Himoto, Judy Fernandez, and Jose Diolito B. Villarin were employed as construction workers of respondent Balangaw Construction Solutions & Services (Balangaw). They were assigned to do specific assignments like laborer, helper, carpenter, leadman, mason, among others.

On May 8, 2012, petitioners filed a complaint[4] for illegal dismissal and money claims against respondent Balangaw, its owner Julio Encabo and its operations manager Jumar Dennis Encabo. In their position paper,[5] they claimed that they were summarily dismissed by respondents as they were simply told by the management, allegedly through Jumar Dennis Encabo, that they were already terminated as respondent Balangaw would be hiring new workers to replace them. They also demanded in their position paper for overtime pay, holiday pay, service incentive leave pay, 13[th] month pay, and wage differential as these labor standards benefits, they alleged, were not granted to them.

Respondent Jumar Dennis Encabo filed a motion to dismiss[6] alleging that he should not be a party as he is not the owner of Balangaw and alleged that he never told petitioners that they were dismissed by the company because they would be replaced with new workers.

On their part, respondents Balangaw and Julio Encabo alleged in their position paper[7] that petitioners were hired on per contract or per project basis, hence they were project employees and not regular employees. They claimed that some of the petitioners were hired only in January and some in February 2012 to do a construction job on their project Furenland Subdivision. They narrated that petitioners actually left their job without notice on April 14, 2012, and petitioner Villarin, in fact, left earlier on March 31, 2012. According to respondents, petitioners abandoned their jobs and worked with another construction company and this resulted in the delay of the project. In fact, respondents claimed, that Furenland Development Corporation had to warn respondent Balangaw for payment of liquidated damages due to the delay of the turn-over. Respondents also negated the

claim that petitioners were not paid minimum wage and other labor standards benefits as they actually paid petitioners based on the minimum wage and that they were never required to do overtime work and works on holidays.

On November 21, 2012, Labor Arbiter Henry B. Tañoso rendered a Decision[8] declaring petitioners as regular employees of respondent Balangaw and finding them illegally dismissed, so they were awarded separation pay, in lieu of reinstatement, and backwages. Also, the Decision granted petitioners' claim for wage differentials, 13[th] month pay and service incentive leave pay. The complaint against Jumar Dennis Encabo, meanwhile, was dismissed.

Respondents lost no time and filed their notice of appeal with memorandum of appeal.[9] However, instead of posting the required cash or surety bond in the amount Php939,085.50, equivalent to the total monetary award granted to petitioners, respondents filed an Urgent Motion for Reduction of Supersedeas Bond[10] praying for the reduction of the required bond to P300,000.00 and deposited such amount with NLRC-RAB VI.

In a Resolution[11] dated February 28, 2013, the NLRC denied respondents' motion to reduce the required bond and considered respondents' appeal not duly perfected for failure to post the required bond; thus, it dismissed respondents' appeal.

Aggrieved by this dismissal, respondents sought for the reconsideration[12] of the February 28, 2013 Resolution praying for the allowance of their appeal. They reiterated that respondent Julio Encabo, being the sole owner of Balangaw, could not, at that time, secure the full amount of the bond as he was undergoing medical attention for chronic kidney disease secondary to diabetes mellitus nephropathy, diabetes mellitus, type 2 and hypertensive cardiovascular disease. Thus, they prayed that the bond be reduced and that its cash bond in the amount of Php300,000.00 already posted with NLRC RAB VI be considered as sufficient compliance, and that their appeal be considered filed and perfected.

On June 14, 2013, the NLRC in its assailed Decision[13] reconsidered its dismissal of the respondents' appeal and gave due course to the same. It found compelling reasons and exceptional circumstances that allowed it in relaxing the technical application of its rules. Hence, the appeal was decided on the merits.

In this assailed Decision, not only that the NLRC gave due course to respondents' appeal but also it partially granted the same and declared herein petitioners not dismissed by the respondents. Hence, it deleted the award for backwages and separation pay in lieu of reinstatement, but it affirmed the finding that petitioners were regular employees and the grant of their monetary claims.

Thus, the assailed Decision held:

“WHEREFORE, IN THE LIGHT OF THE FOREGOING, respondent's motion for reconsideration to declare the appeal as having been accordingly filed and perfected is GRANTED. However, on the merits, We only PARTIALLY GRANT respondent's appeal. We rule that complainants are regular employees, and that they are NOT GUILTY of abandonment. On the termination issue, considering that the fact of dismissal is not proven, We have no basis to declare respondent Julio Encabo guilty of illegal dismissal. Necessarily, the award of backwages and separation pay as decreed by the Labor Arbiter below is deleted. And with the finding that there exists no abandonment nor dismissal of employment in this case, the parties are restored back to their previous employment relations. In consequence, the following complainants are ordered to report back for work, and respondent to accept them back to work, within ten (10) days from receipt hereof, otherwise, they are deemed to have tendered voluntary resignations, namely:

XXXX

XXXX

Further, respondent Julio Encabo is ordered to pay complainants Rico S. Flores, Renz B. Lampaso, William F. Mendoza, Gino Perje, Herman S. Himolo, Michael S. Gomez, Judy D. Fernandez, and Jose Diolito B. Villarin the total amount of TWO HUNDRED NINETY-SIX THOUSAND SIX HUNDRED EIGHTY-EIGHT PESOS and 98/100 (P296,688.98) as stated in the body of the (sic) this Decision.

Except for the above modification, the rest of the Labor Arbiter's Decision STANDS.

SO ORDERED.”[14]

Finding the above Decision adverse to their cause, petitioners partially moved for its reconsideration.[15] They argued that they were able to prove the fact of their dismissal and that they were illegally dismissed, so they should be entitled to backwages and separation pay in lieu of reinstatement. Likewise, they firmly contended that the NLRC could not anymore give due course to respondents' appeal because the Labor Arbiter's Decision already attained finality for failure of respondents to seasonably perfect their appeal.

Petitioners' motion for reconsideration, however, was denied in the assailed Resolution[16] dated August 30, 2013 of the NLRC.

Hence, this recourse.

In this petition, petitioners accuse the NLRC of committing grave abuse of discretion in giving due course to respondents' appeal despite its failure to perfect the same as it failed to post the required bond under the NLRC Rules of Procedure. Likewise, petitioners anchor their petition on NLRC's finding that they were not able to prove the fact of their dismissal, hence, there could be no dismissal to speak of, much less an illegal one. Accordingly, petitioners raise the following grounds for their petition for certiorari, thus:

I

“PUBLIC RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ALLOWING AND GIVING DUE COURSE TO RESPONDENTS' APPEAL DESPITE RESPONDENTS' FAILURE TO PERFECT THEIR APPEAL WITHIN THE PRESCRIBED PERIOD SET BY LAW.”[17]

II

“PUBLIC RESPONDENT NLRC ALSO ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT HEREIN PETITIONERS WERE NOT ILLEGALLY DISMISSED BY THE RESPONDENTS.”[18]

Petitioners limit this petition only on two issues: a) Whether respondents' appeal to the NLRC should have been dismissed for failure to post the required bond; and b) whether the NLRC correctly found that petitioners failed to prove the fact of their dismissal, thus there can be no finding of illegal dismissal.

On the first issue, petitioners maintain that the NLRC should not have given due course to respondents' appeal for their failure to post a sufficient bond. They assert that the appeal was not perfected because respondents only posted an amount of Php300,000.00 which they consider as not reasonable and that their motion to reduce the required bond was not based on meritorious ground as his financial difficulty could not be considered as meritorious. Thus, they conclude that respondents' failure to post the required amount of bond within the period to perfect their appeal rendered the Decision of the Labor Arbiter final and executory.

We do not find merit on petitioners' contention.

Indeed, the general rule is that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond. But this is not without exception. Procedural rules may

be relaxed to give way to the full determination of a case on its merits.

In the case of *McBurnie v. Ganzon, et al.*[19] the Supreme Court En Banc has enumerated exceptional circumstances where the Supreme Court has relaxed the rule on posting of cash or surety bond in appeals before the NLRC, it held:

“Although the general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond, the Court has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved. Guidelines that are applicable in the reduction of appeal bonds were also explained in *Nicol v. Footjoy Industrial Corporation*. The bond requirement in appeals involving monetary awards has been and may be relaxed in meritorious cases, including instances in which (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.”

The same case also reiterated the ruling in *Blancaflor v. NLRC*[20] and elucidated, to wit:

“xxx the Court also emphasized that while Article 223 of the Labor Code, as amended by Republic Act No. 6715, which requires a cash or surety bond in an amount equivalent to the monetary award in the judgment appealed from may be considered a jurisdictional requirement for the perfection of an appeal, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits to be threshed out by the NLRC, the foregoing requirement of the law should be given a liberal interpretation.”

Thus, in *McBurnie*, the Supreme Court En Banc, considering the very issue of posting of bonds for appeals before the NLRC, has formulated the following guidelines in the requirement of posting of cash or surety bond pursuant to Section 6, Rule VI of the 2011 NLRC Rules of Procedure, as amended. The Supreme Court disposed, thus:

“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 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.”

Clearly, considering these guidelines, the NLRC did not commit any grave abuse of discretion in giving due

course to respondents appeal as respondents actually complied with these guidelines.

The NLRC found it meritorious that respondent Julio Encabo does not have, at that time, sufficient means to post a full cash bond and a surety bond considering the cost. But, respondents actually posted in cash the amount of Php300,000.00 which is even more than the ten percent (10%) of the total monetary award subject to the appeal, exclusive of damages and attorney's fees, as provided by the above guidelines.

Verily, respondents' appeal to the NLRC was duly filed and perfected. And We find no taint of grave abuse of discretion on the part of the NLRC in giving due course to respondents' appeal.

Anent the second issue on whether or not the petitioners were illegally dismissed, petitioners argue that they are protected by security of tenure, thus they could not be summarily dismissed without substantial or procedural due process. They assert that they were verbally informed by respondent Jumar Dennis Encabo that they were already terminated as they would be replaced by new workers.

Petitioners, thus, question the finding of the NLRC that they were not able to sufficiently and substantially prove the fact of their dismissal. They argue that respondents consistently alleged that petitioners abandoned their jobs, but respondents never denied petitioners' declaration that they were verbally dismissed by respondent Jumar Dennis Encabo, hence, such silence constitutes an admission of the truth. Likewise, petitioners argue that the verbal dismissal made by respondent Jumar Dennis Encabo was binding on the respondent Balangaw and respondent Julio Encabo considering that respondent Jumar Dennis Encabo was Balangaw's operations manager, and being such, he was vested with power to fire employees. Hence, petitioners concluded that the NLRC erred in applying the *res inter alios acta* rule, as it held, "respondent Julian Encabo is not bound by the declarations or admissions of a third person, like Jumar Dennis Encabo, in the absence of any clear authority granted by, or proof of admission or conspiracy by the former for acts, declarations or omissions of the latter." [21]

The contention of petitioners must fail.

The main consideration of the NLRC in ruling that the petitioners failed to prove the fact of their alleged dismissal was their failure to adduce evidence that would positively and convincingly show the positive act of dismissing them by respondents. It held that aside from their bare allegation that they were verbally told of their termination as they would be replaced by other workers, petitioners failed to substantiate such claim.

The NLRC ratiocinated in this wise:

"In the case at bar, the degree of proof required to clearly, positively and convincingly establish the fact of dismissal is not met. It is obviously wanting. Complainants merely based their charge from bare, uncorroborated and self-serving allegations. That charge, as depicted in their position papers, runs as follows: "21. Complainants were unceremoniously dismissed by the Respondents. They were simply told by the management, thru Respondent DENNIS, that they were terminated since it will be hiring new workers to replace the Complainants, as it did hire new workers. The Respondents did not also furnish the Complainants prior written notice/s of the cause of their termination, nor did he give the Complainants the opportunity to be heard and defend themselves. The Respondents simply informed the Complainants, through verbal order, that their services are terminated because the management will be hiring new workers." (emphasis original)

It is worthwhile to note that the above-quoted declaration admits only one significant point as to the singular cause for termination of the complainants, and that is "xxx they were terminated since it will be hiring new workers to replace the Complainants, xxx". In fact, the complainants further admit that the respondents simply informed them that "their services are terminated because the management will be hiring new workers." On the basis of this admission, complainants are categorical in their accusation that respondents are guilty of illegally terminating their services. Other than these admissions relating to the cause of their termination, e.g. (sic)

replacement or hiring of new workers, no other cause or causes for termination were hurled against respondents. Simply put, with the complainants' submission as to the only cause of their dismissal, it would be inconsequential for this Commission to hear the respondents' side as to the cause/reason for termination other than replacing complainants from their employment, if such was the fact, for the rule is:

“Parties must rely on the strength of their own evidence , not upon the weakness of the defense offered by their opponent.” (citations omitted)

xxxx

xxxx

Complainants' serious charge of “replacement” as the alleged reason of respondents for the severance of their employment is not even corroborated by any piece of evidence. Complainants could have secured testimonies or declarations under oath from the purported newly hired workers replacing them to prove that fact. Alternatively, they could have secured any written evidence to prove that, in fact, they were dismissed on that ground – that they will be replaced. The only obstacle that restrains complainants from clearly establishing their case for illegal dismissal is that, their cause of action as regards the validity for their termination is weak because their allegation is not backed up by substantial evidence. Worst, they even failed to unleash the burden of proving that in fact their services were terminated by the respondents in this case. Indeed, complainants are the ones who bear the burden of showing through satisfactory evidence the bases of their complaint that they were replaced as reason for their dismissal before a charge for illegal dismissal could be sustained. Xxxx”[22]

We affirm the above ruling of the NLRC as We find the Records bereft of any evidence to prove the fact of dismissal. And We cannot subscribe to petitioners' contention that this issue was admitted by respondents through their silence because, in respondents' Reply to position paper, they vehemently denied that respondent Jumar Dennis Encabo talked to petitioners about replacing herein petitioners and their alleged dismissal. The said Reply stated:

“13. There is no truth to the allegations that they were unceremoniously dismissed by respondent through the Operations Manager, Jumar Dennis E. Encabo, apparently because new workers will be hired to replace the Complainants. Respondent vehemently denied any talks or meetings to the effect that they will be dismissed. It is quite absurd reasoning, that an employee will be informed that he will be dismissed because they will be replaced by new workers. Again, it was the complainants who maliciously abandoned their work post and had put the respondent in total jeopardy.”[23]

Moreover, after scrutinizing the records, We hold that the NLRC is correct in holding that petitioners' “serious charge of “replacement” as the alleged reason of respondents for the severance of their employment is not even corroborated by any piece of evidence.”[24] Considering the nature of respondents' business which call for output work at a particular time-frame, it would be, indeed, very inconvenient for them to look for new workers to replace the old ones in the middle of a project which would result in delays. In fact, nothing on record would also show that they were prevented to work by respondents.

Going on the issue that the verbal dismissal made by respondent Jumar Dennis Encabo would bind respondents Balangaw and Julio Encabo, We concede that the rule on *res inter alios acta alteri nocere non habet* would not apply in this case. Thus, statements from respondent Jumar Dennis Encabo, who represented the management, are binding to herein respondents Balangaw and Julio Encabo. This finding, however, is not enough to annul the assailed Decision and assailed Resolution of the NLRC. This so because petitioners failed to prove that the statements about their replacement and termination were, in fact, made by the respondents.

Verily, Our finding that the NLRC erred in applying the *res inter alios acta* rule would constitute only as a mere

error of judgment, and not an error of jurisdiction. And correcting errors of judgment is not the province of a certiorari action. Likewise, it bears emphasizing that when the NLRC applied the *res inter alios acta* rule, it was operating on an assumption *ex gratia* argumenti, that is, it applied the *res inter alios acta* rule assuming that respondent Jumar Dennis Encabo indeed verbally told the petitioners of their termination and replacement. In fact, in its assailed Decision, the NLRC considered this issue merely “peripheral”.

At this point, it is important to emphasize that the main basis of the NLRC in concluding that the fact of dismissal was not proven by petitioners was their failure to adduce substantial evidence to support their allegation that they were dismissed and replaced by respondents. Their mere allegation that respondent Jumar Dennis Encabo verbally told them of their termination and their replacement was not established as a fact. The absence of evidence to prove such allegation would indeed be taken against petitioners as it is their burden to prove such fact of dismissal before respondents prove that such dismissal was not illegal.

Indeed, while we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a *prima facie* case that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[25]

Finally, We underscore, lest it be forgotten, that “a petition for certiorari under Rule 65 of the Rules of Court is confined to the correction of errors of jurisdiction and will not issue absent a showing of a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction. [And] not every error in a proceeding, or every erroneous conclusion of law or of fact, is an act in excess of jurisdiction or an abuse of discretion.”[26] Hence, We do not assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction. [27]

In the instant case, We find no grave abuse of discretion on the part of NLRC in rendering the assailed Decision and assailed Resolution. Its findings and conclusions are very well supported by substantial evidence. As such, petitioners cannot take refuge under the prerogative writ of certiorari.

WHEREFORE, the instant petition is hereby DENIED. The June 14, 2013 Decision and August 30, 2013 Resolution of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City in NLRC Case No. VAC-01-000023-13 are AFFIRMED.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] See Amended Petition for Certiorari, Records, pp. 285-308.

[2] Rollo, pp. 497-511.

[3] Rollo, pp. 533-534.

[4] Rollo, pp. 309-312.

[5] Rollo, pp. 313-330

[6] See Assailed Decision, Records, p. 500.

- [7] Rollo, pp. 335-347.
- [8] Rollo, pp. 375-395.
- [9] Rollo, pp. 410-446.
- [10] Rollo, pp. 396-400.
- [11] Rollo, pp. 475-480.
- [12] Rollo, pp. 481-489.
- [13] Supra, note 2.
- [14] Rollo, p. 510.
- [15] Rollo, pp. 512-519.
- [16] Supra, note 3.
- [17] Rollo, p. 294.
- [18] Rollo, p. 301.
- [19] G.R. Nos. 178034 & 178117; G R. Nos. 186984-85, October 17, 2013.
- [20] G.R. No. 101013, February 2, 1993.
- [21] Rollo, p. 507.
- [22] Rollo, pp. 505-506. Emphasis supplied.
- [23] Rollo, p. 369.
- [24] Rollo, p. 506.
- [25] MZR Industries v. Colambot, G.R. No. 179001, August 28, 2013.
- [26] Aujero v. Philippine Communications Satellite Corporation, G.R. No. 193484, January 18, 2012.
- [27] Mercado v. AMA Computer College-Parañaque City, Inc., G.R. No. 183572, April 13, 2010.

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