

M/B ROXANNE 2/GINA GUTIEREZ, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND RANY P. RAFAELA, RENE RAFAELA AND SONY P. RAFAELA, RESPONDENTS.

Ponente: CAMELLO, J.

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CAMELLO, J.:

Before us is a petition for certiorari[2] seeking to nullify and set aside the Resolutions dated 30 September 2011 and 21 March 2012 issued by public respondent National Labor Relations Commission (NLRC), 8[th] Division, Cagayan de Oro City, in NLRC MAC-07-012142-2011 (RAB-XI-10-01048-10 and RAB-XI-11-01104-10).

The following are the pertinent antecedents.

On 20 October 2010, private respondent Rany P. Rafaela, who was then working as banca (boat) driver of M/B Roxanne 2, a passenger boat, sought the release of his salary from Gina Gutierrez, the boat's owner. The latter however got angry for his alleged shortages and instead, dismissed him from his job. On even date, he filed a complaint for illegal dismissal with money claims against M/B Roxanne 2/Gina Gutierrez, Owner. Because of the complaint, Gina Gutierrez also dismissed private respondents Rene Rafaela and Sony Rafaela on 07 November 2010. She told them "Dili sa mo motrabaho kay misaka sa labor si Rany." [3] On the same day, both filed a similar complaint.

Before the Regional Arbitration Branch No. XI, efforts to settle the controversy were made but to no avail. Consequently, the parties were directed to submit their position paper. Only private respondents complied.

On 11 May 2011, Labor Arbiter Miriam A. Libron-Barroso rendered her Decision,[4] the fallo of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants were illegally dismissed. Respondent M/B ROXANNE 2/GINA GUTIEREZ, Owner, are hereby ordered to jointly and solidarily pay complainants the total amount of PESOS: ONE HUNDRED SIXTY THOUSAND SIX HUNDRED FIFTY ONLY (P160,650.00) representing separation pay and proportionate 13[th]month pay for 2010 plus ten percent (10%) of the award as attorney's fees.

All other claims are dismissed for failure of the complainants' (sic) to substantiate the same.

SO ORDERED.

Aggrieved, petitioners appealed before public respondent. The latter dismissed the appeal for non-perfection.[5] It held:

We are not convinced with respondent's justification for reduction of the bond and proffered no evidence of financial difficulty to raise the amount and besides the sum of P20,000.00 posted is neither sufficient nor substantial amount to ensure that the winning litigant will be paid in the event that his or her cause will be sustained before this Commission. Nothing in the Labor Code or the NLRC Rules of Procedures (sic) authorizes the posting of a bond that is less than the monetary award in the judgment, or would deem such insufficient posting as sufficient to perfect the appeal.

Consequently, petitioner Gina Gutierrez now seeks the extraordinary writ of certiorari to annul and set aside the assailed Resolution on the following grounds, to wit:

I. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT DISMISSED THE PETITIONERS' APPEAL, AND DENIED PETITIONERS' MOTION FOR RECONSIDERATION ON THE SOLE GROUND THAT THE BOND POSTED IS NOT SUFFICIENT (SIC) DESPITE THE MOTION TO REDUCE BOND FILED BY HER;

II. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS (SIC) THE CASE AGAINST PETITIONER GINA GUTIEREZ WHO CEASED TO BE WORKING WITH MB/ROXANE (SIC) 2.

It is noted that Gina Gutierrez is the only petitioner in this extraordinary action. This is clear even from the first sentence of the petition. However, a careful perusal of the records reveals that both Gina Gutierrez and M/B Roxanne 2 had been represented by the same counsel in the quasi-judicial agencies below. Conveniently however, sole petitioner Gina Gutierrez now fails to attach the appeal memorandum filed before public respondent, thus, depriving this Court of the means of finding whether or not she solely filed the appeal or was with M/B Roxanne 2.

Again, from the records, the issue of ownership was raised only on appeal when petitioner moved to reduce the appeal bond. This Court cannot help observing that when petitioner and M/B Roxanne 2 were impleaded as respondents before the Regional Arbitration Branch No. XI, for reasons only known to them, they failed to submit their position paper, thus, waiving their right to present their evidence and argue their side. On appeal, they filed a motion to reduce bond, alleging that Gina cannot afford to raise the amount of the required bond. But then again, from the assailed 21 March 2012 Resolution of public respondent, the latter mentioned that petitioner and M/B Roxanne 2 could very well afford a surety bond, considering that an appeal bond is not limited to cash bond only.

Petitioner Gina Gutierrez now insists that as a mere employee, and not the owner, she should not be the one appealing the Labor Arbiter's Decision, but instead, it should have been M/B Roxanne 2. Then why didn't M/B Roxanne 2 appeal, when in fact, both were represented by the same counsel? To our mind, M/B Roxanne 2 is hiding behind the shadow of Gina in its attempt to escape liability. But whether or not Gina is the actual owner is immaterial because M/B Roxanne has its own juridical personality. With M/B Roxanne 2's failure to appeal, the latter is deemed to be in conformity with the Labor Arbiter's Decision.

Now to the main cause.

The crux of the controversy is whether or not public respondent gravely abused its discretion tantamount to lack or excess of jurisdiction when it denied petitioner's motion to reduce bond and at the same time, dismissed the appeal for non-perfection.

We rule in the negative.

By "grave abuse" of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction as when the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

Section 4, in relation with Section 6, Rule VI of the 2011 NLRC Rules of Procedure provides:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - a) The appeal shall be:

(1) filed within the reglementary period provided in Section 1 of this Rule;

(2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as

amended;

(3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order; (4) in three (3) legibly typewritten or printed copies; and

(5) accompanied by:

- i) proof of payment of the required appeal fee and legal research fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and
- iii) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforesated shall not stop the running of the period for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

SECTION 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 amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:
xxx

(Italics supplied)

Where the law speaks in clear and categorical language, there is no room for interpretation; there is only room for application. Where the provisions of law are couched in mandatory form, courts should not distinguish between material and immaterial omissions. What the law decrees must be obeyed. Thus, in abiding by what the rules provide, public respondent apparently committed no abuse of discretion. The Supreme Court in *Becton Dickinson Phils., Inc. v. NLRC*,^[6] pronounced that there was no grave abuse of discretion on the part of the NLRC which strictly followed the rules of procedure in the course of their proceedings, thus:

In this recourse, petitioners put emphasis on the supposed basis to justify their assertion of liberal application of the rules, namely, to avoid miscarriage of substantial justice, allegedly on account of NLRC's total disregard of the evidence material to or decisive of the controversy. On this score, petitioners presently fault the Court of Appeals for not finding grave abuse of discretion on the part of the Commission.

It is relevant to note that petitioners are aware of the fact that compliance with the requisites for perfecting an appeal is the general rule, and non-compliance therewith is the exception. Petitioners, however, insist that their case falls within the exception.

In resolving this issue, it may well be stressed that the right to appeal is not a natural right nor is it part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law. Petitioners cannot insist, as there is no duty on the part of the court or the NLRC for that matter, to take cognizance of an appeal which has not been perfected in accordance with the rules of procedure laid down therefore. It is only in the exercise of courts' sound judicial discretion and in the interest of

substantial justice, that this Court (Supreme Court) may suspend the rules should it find cogent reasons for doing so.[7]

It is well settled, indeed, that litigations should as much as possible be decided on the merits and not on technicalities. Yet it is equally as well-settled that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the time, manner, procedure and conditions set by law.[8] A party who wants to avail itself of this remedy must strictly comply with the requirements of the law. Just because the 2011 NLRC Rules of Procedure must be liberally construed and that public respondent is not bound by the technicalities of law and procedure does not mean that the rules could be brushed aside at will. Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.[9] This was explained by the Supreme Court in *Cordova v. Keysa's Boutique*,[10] thus:

Art. 223 of the Labor Code 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 Commission in the amount equivalent to the monetary award. We have ruled that the word only makes it perfectly clear that the lawmakers intended that the posting of the bond is the exclusive means by which an employer's appeal may be perfected. The filing of a supersedeas bond, which is actually a security required from an appellant to ensure payment of the adjudged monetary award in case the appeal fails, is indispensable to the perfection of the appeal. We further held that the posting of a cash or surety bond for the perfection of an appeal 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.

As a general rule, non-compliance with this legal requirement is fatal and has the effect of rendering the appealed judgment final and executory. In some cases, however, this Court relaxed the requirement of posting a supersedeas bond for the perfection of an appeal. The decisions in these exceptional cases were justified by the fact that there was substantial compliance with the rule.

In fine, petitioner failed to demonstrate that public respondent gravely abused its discretion in issuing the assailed Resolutions. There is thus no warrant to allow the extraordinary writ of certiorari to issue.

FOR THIS REASON, the petition is DENIED.

SO ORDERED.

Inting, and Perez, JJ., concur.

[1] As captioned.

[2] Filed under Rule 65 of the Rules of Court.

[3] English translation: "Do not work yet because Rany filed a labor case."

[4] Rollo, pp.25-27.

[5] Resolution dated 30 September 2011, Rollo, pp. 15-17.

[6] G.R. Nos. 159969 & 160116, November 15, 2005, 475 SCRA 123.

[7] Italics supplied.

[8] *Insular Life Savings and Trust Company vs. Sps. Runes*, G.R. No. 152530, August 12, 2004.

[9] *Cordova vs. Keysa's Boutique*, see Note no. 9.

[10] G.R. No. 156379, September 16, 2005.

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