

STELLAR INDUSTRIAL SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS AND COMMISSION, NATIONAL ORGANIZATION OF WORKINGMEN, ISIDRO MALABANAN, JUANILLO RICO, ANTONIO PERMIT...

Ponente: BARRIOS, J.

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BARRIOS, J.:

In this Petition for Certiorari, the petitioner Stellar Industrial Services, Inc. (hereafter Stellar for brevity) assails the Resolutions dated January 25, 2001 and March 23, 2001 issued by the respondent National Labor Relations Commission (or NLRC), denying its appeal and the concomitant motion for its reconsideration.

The dismissed appeal is from the consolidated cases filed by the above respondents against the Philippine Airlines, Inc. (or PAL) and Stellar for Illegal Dismissal and Regularization. The respondents are members of the National Organization of Workingmen who were hired by Stellar to work for PAL. They were allegedly dismissed by Stellar at the instance of PAL without just cause and without giving them due process. They also claimed that they should be considered regular employees of PAL because Stellar is a labor-only contractor, hence a mere agent or intermediary of PAL. On the other hand, Stellar contended that it is an independent job contractor providing manpower services to its clients. It hired the respondents as janitors and station loaders and assigned them to PAL, one of its clients. It claimed that the respondents were not illegally terminated but some were dismissed for cause while the others abandoned their jobs. For its part, PAL maintained that Stellar is an independent contractor which provides janitorial and station loading services to PAL. PAL claimed that the respondents were not its employees but that of Stellar which hired them and had the power of control and dismissal over them.

On September 30, 1992, the Labor Arbiter rendered its Decision in favor of the respondents and ordered PAL and Stellar to jointly and severally pay backwages. Consequently, PAL and Stellar filed their respective appeals, while the respondents filed a partial appeal with the NLRC.

On January 25, 2001, the NLRC rendered the assailed Resolution, disposing that:

WHEREFORE, premises considered. Respondent Stellar's appeal is DISMISSED for not having been perfected in accordance with the NLRC rules. Respondent PAL's appeal is GRANTED. Complainants' appeal is DISMISSED for lack of merit.

The Labor Arbiter's decision is SET ASIDE in so far as it held PAL liable for reinstatement and payment of full backwages. Said decision is however AFFIRMED insofar as it ordered STELLAR liable for backwages as indicated therein. Further, said decision is MODIFIED in that the Respondent Stellar Industrial Services, Inc. is ordered to pay Complainants attorney's fees equivalent to ten (10%) of their total monetary award.

SO ORDERED. (p. 102, rollo)

As said, the Motion for Reconsideration filed by Stellar was likewise struck down.

Hence this petition for certiorari, with Stellar assigning as errors the following:

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING PETITIONER'S APPEAL AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION THEREOF SIMPLY DUE TO ITS FAILURE TO POST A BOND WITHOUT GIVING PETITIONER THE CHANCE TO COMPLY WITH SAID REQUIREMENT AND CONSIDERING THAT:

- 1) CO-RESPONDENT PAL HAD POSTED A BOND FOR THE FULL AMOUNT OF THE MONETARY AWARD; AND
- 2) COMPLAINANTS (INDIVIDUAL RESPONDENTS HEREIN) WERE VALIDLY DISMISSED IN ACCORDANCE WITH LAW. (p. 14, rollo)

The core and encompassing issue in this petition is whether or not the NLRC committed grave abuse of discretion in dismissing the appeal on the mere technicality that Stellar failed to post cash or surety bond.

Article 223 of the Labor Code, in relation to Sections 3 and 6, Rule VI of the New Rules of Procedure of the NLRC, provides that in order for an appeal to be perfected the appellant must not only file the appeal memorandum and pay the appeal fee but must also post the required cash or surety bond. The posting of a cash or surety bond is mandatory. It should be stressed that the intention of lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond; the word “only” makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer’s appeal may be perfected (*Catubay vs. National Labor Relations Commission*, 330 SCRA 440).

In this case, Stellar’s appeal to the NLRC was not accompanied by the required cash or surety bond which is a breach of the mandatory requirement for the perfection of an appeal. In dismissing Stellar's appeal, the NLRC correctly ruled that:

x x x Respondent Stellar's prayer that it be exempted from posting the appeal bond, it appearing that PAL posted a surety bond in the amount of P1.9 Million, cannot be given consideration. It must be pointed out (that) the Labor Arbiter declared Respondents Stellar and PAL to be jointly and solidarily liable for Complainants' backwages. A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor to demand the whole obligation (*Inciong, Jr. vs. Court of Appeals*, 257 SCRA 578 [1996]). This means that in the event that Complainants finally prevail in this case, they can demand payment of the whole monetary award either from Respondent Stellar or Respondent PAL. Accordingly, despite Respondent PAL's posting of a surety bond in the amount of P1.9 Million, it is mandatory for Respondent Stellar to post a cash or surety bond also for the whole amount of the monetary award. For Respondent Stellar's failure to post any cash or surety bond, its appeal is deemed not perfected. Hence, We have no recourse but to dismiss the same. x x x (p. 91, rollo)

This rendered the Decision of the Labor Arbiter final and executory and placed it beyond the power of the NLRC to reverse or even just to review it. Thus, the perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and has the effect of rendering the judgment final and executory. Such requirement cannot be trifled with (*Navarro vs. National Labor Relations Commission*, 327 SCRA 22), and there are no ifs or buts.

It bears stressing that for a writ of certiorari to issue, it is a condition sine qua non that there be grave abuse of discretion or such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal

hostility and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Sevilla Trading Company vs. Semana*, 428 SCRA 239). Finding no basis for the issuance of the writ -

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña III, and Romilla-Lontok, JJ., concur.

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