

**FILWEB SYSTEM TECHNOLOGY AND LARRY MERCADO,
PETITIONERS, VS NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION) AND MA. THERESA A. JASARENO, RESPONDENTS.**

SP NO. 111641, October 28, 2010

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c00b9adc877b/>

Court of Appeals

Before Us is a Petition for Certiorari filed by Petitioners Filweb System Technology and Larry Mercado under Rule 65 of the 1997 Rules of Civil Procedure, seeking to annul and set aside the Resolution (Rollo, pp. 26-29) dated June 30, 2009 of the public respondent National Labor Relations Commission (NLRC), Third Division, Quezon City in NLRC LAC No. 02-000-602-09(8) (NLRC CN. RAB-IV-06-26854-08-L) and its subsequent Resolution (Rollo, pp. 30-34) dated September 15, 2009 which denied the Petitioners' motion for reconsideration.

The instant case stemmed from a complaint for illegal dismissal and nonpayment of night shift differential which Private Respondent Acting Junior Member per Office Order No. 307-10-ABR dated October 22, 2010. Ma. Theresa A. Jasareno (hereinafter Respondent) filed against Filweb System Technology (Filweb for brevity) and Larry Mercado (hereinafter Petitioners).

In her Position Paper (Rollo, 39-45), Respondent alleged that she was hired through the selection process of interview and examination. She alleged that she started working for Filweb in December 2006 and was assigned at the Resume Writing Department. When hired, she was paid P10,000.00 as monthly salary which was later increased to P12,000.00.

In order to accommodate the increase of clientele as well as the demands of her job, she was given the work shift 6:00 A.M. to 6:00 P. M. Later on, her shift was from 7:00 A. M. to 7:00 P.M. until finally it became 9:00 P.M. to 9:00 A.M. She was, however, informed that she is not entitled to night shift differential pay as Filweb pays them on commission.

According to Respondent, the sudden shift of working hours adversely affected her health which necessitated her to take a leave of absence from October 29, 2007 until November 2, 2007. She was likewise unable to report for work on November 21 and November 22, 2007 because she had to attend to her child who then had a viral infection.

She also stated in her Position Paper that she was suspended on September 28, 2007 and was later terminated from service on December 19, 2007.

Refuting the allegations in Respondent's position paper, Petitioners averred that Respondent was not Filweb's regular employee. At the time of Respondent's service at Filweb, she was always late for work. Even worse, she always incurred absences but failed to present any medical certificate.

Petitioners further alleged that due to Respondent's unexplained absences, her performance was deemed unsatisfactory which resulted to "client refund and chargeback."

Unfortunately, the parties failed to settle the case amicably. On November 19, 2008, the Labor Arbiter rendered a

Decision (Rollo, pp. 46-52) and declared that Respondent was illegally dismissed. The dispositive part thereof reads:

"WHEREFORE, premises considered, Respondent Filweb System Technology and/or Larry Mercado, Sole Proprietor thereof, are DIRECTED to pay Complainant Ma. Theresa A. Jasareno separation pay in lieu of reinstatement from the date of her hiring up to the date of the promulgation of this judgment and full backwages and other benefits from the date of her dismissal up to this judgment's promulgation date, as a consequence of her illegal dismissal.

Such awarded claims are computed as follows:

Separation Pay:

From 1/07 to 11/08

P12,000.00 x 2 yrs. = P24,000.00

Backwages:

From 2/08 to 11/08

12,000 x 10 mos. = P120,000.00

Grand Total P144,000.00

Complainant's claims for night shift differential and for moral and exemplary damages are DISMISSED for lack of merit and lack of jurisdiction, respectively.

SO ORDERED." (Rollo, pp. 51-52)

Aggrieved thereby, Petitioners interposed an appeal to the NLRC, captioned as "Motion to Dismiss and/or Appeal (With Prayer to Reduce Bond" (Rollo, pp. 53-59). In the challenged Resolution dated June 30, 2009, supra, the NLRC dismissed the Petitioners' appeal as the amount posted as bond clearly fell short of the judgment award of P144,000.00, thus:

"WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for non-perfection.

SO ORDERED." (Rollo, p. 28)

The NLRC likewise denied the Petitioners' subsequent motion for reconsideration per its Resolution issued on September 15, 2009, supra.

Hence, this petition anchored on the following grounds-

"THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE CHALLENGED RESOLUTION DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER ON THE GROUND THAT IT WAS FILED BEYOND THE REGLEMENTARY PERIOD FOR FILING A MOTION FOR RECONSIDERATION BEFORE THE NATIONAL LABOR RELATIONS COMMISSION[;] [AND]

"THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE CHALLENGED RESOLUTION DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER ON THE GROUND OF FAILURE TO POST THE REQUIRED APPEAL BOND." (Rollo, pp. 12-13)

Simply stated, the issue is whether or not the NLRC gravely abused its discretion in issuing the assailed Resolutions.

In ascribing grave abuse of discretion upon the NLRC, Petitioners insist that their new counsel who formally entered appearance on July 21, 2009 did not receive a copy of the June 30, 2009 NLRC Resolution, hence, the reckoning date should be their date of receipt on July 22, 2009.

The NLRC did not commit grave abuse of discretion.

Concededly, it is a time-honored principle that administrative and quasi-judicial bodies like the National Labor Relations Commission are not bound by the technical rules of procedure in the adjudication of cases. However, the rule on substitution of counsel or employment of additional counsel is still observed in labor cases. (Gudez, et al. vs. NLRC, et al., 183 SCRA 644, 648 [1990]) Thus, in order to resolve the issue on the timeliness of Petitioners' motion for reconsideration, We must first determine if there was valid substitution of counsel.

The following are the essential requisites of a valid substitution of counsel:

(1)

there must be a written request for substitution;

(2)

it must be filed with the written consent of the client;

(3)

it must be with the written consent of the attorney to be substituted; and

(4)

in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court. (Santana-Cruz vs. Court of Appeals, 361 SCRA 520, 532 [2001])

There was no compliance with the aforementioned requisites. Petitioners' new counsel merely filed a Formal Entry of Appearance (Rollo, pp. 67-68) on July 21, 2009. Even worse, the Panganiban Law Offices, the counsel of record, was not notified of the substitution. As reflected in the Formal Entry of Appearance, the parties notified were only the Respondent and the Executive Clerk of the NLRC's Third Division. (Rollo, p. 68) Verily, the NLRC cannot simply presume that Petitioners' counsel of record was substituted by Villanueva Lucero Castaneda Law Offices from the latter's mere filing of its formal entry of appearance. As held by the Supreme Court in *Sublay v. National Labor Relations Commission, et al.*, (324 SCRA 188, 195 [2000]), thus:

xxx Courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter. In the absence of compliance with the essential requirements for valid substitution of counsel of record, the court can safely presume that he continuously and actively represents his client." (Underscoring for emphasis)

Thus, absent any valid substitution of counsel, the Panganiban Law Offices remains as Petitioners' counsel of

record. As such, the 10-day reglementary period should be reckoned from July 21, 2009, counsel of record's date of receipt of the June 30, 2009 NLRC Resolution. On this score, We find as highly instructive the Supreme Court's ruling in *Manaya v. Alabang Country Club, Incorporated* (525 SCRA 140, 147 [2007]), thus:

"It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period." (Emphasis Ours)

With July 21, 2009 as the controlling date of receipt, Petitioners only had until July 31, 2009, a Friday, as the tenth day for filing their motion for reconsideration from the NLRC Resolution which dismissed their appeal. Certainly, Petitioners' motion for reconsideration filed on August 3, 2009 was already filed beyond the 10-day reglementary period mandated by Article 223 of the Labor Code, *infra*.

Even assuming *arguendo* that the motion for reconsideration was timely filed, NLRC's denial thereof was not in any way tainted with grave abuse of discretion.

Article 223 of the Labor Code, as amended, provides the rules on appeal from the Labor Arbiter's monetary award:

"Art. 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any of both parties within ten (10) calendar days from receipt of such decisions, awards, or orders, xxx.

xxx xxx xxx

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." (Emphasis Ours)

Section 6, Rule VI of the New Rules of Procedure of the NLRC (As Amended by NLRC Resolution No. 01-02, Series of 2002) likewise provides:

"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 cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

xxx

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 filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal." (Emphasis supplied)

From the aforequoted provisions, it is explicit that the filing of the bond is not only mandatory but a jurisdictional requirement as well, to confer jurisdiction upon the NLRC. Although Petitioners posted a cash bond, the amount posted was only P2,000.00 which was grossly inadequate compared to the monetary award of P144,000.00. Nothing in the Labor Code or the NLRC Rules of Procedure 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 (*Colby Construction and Management Corporation vs. National Labor Relations Commission*, 539SCRA159, 173 [2007])

Petitioners may have prayed for the reduction of the bond, however, this is subject to the conditions that (1) the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. (Section 6, Rule VI, New Rules of Procedure of the NLRC; Nicol vs. Footjoy Industrial Corp., 528 SCRA 300, 310 [2007])

In their prayer to reduce bond, Petitioners cited that they have been suffering from gross financial reverses for the past three years of operation. (Rollo, p. 54) Petitioners, however, failed to support this claim. Even more, the cash bond of P2,000.00 is not a reasonable amount in relation to the monetary award of P144,000.00.

Time and again, the Supreme Court has held that the right to appeal is not a constitutional right, but a mere statutory privilege. As such, parties who seek to avail themselves of this privilege must comply with the statutes or rules allowing it. (Air France Philippines vs. Leachon, 472 SCRA 439, 442-443 [2005]) Perforce, Petitioners' failure to comply with the mandatory and jurisdictional requirement of posting a bond in an amount equivalent to the monetary award warranted the summary dismissal for non-perfection of appeal.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed NLRC Resolutions dated June 30, 2009 and September 15, 2009 STAND.

SO ORDERED.

Villamor and Bueser, [*], JJ., concur

[*] Acting Junior Member per Office Order No. 307-10-ABR dated October 22, 2010.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.