

KEY RURAL BANK, INC., (FORMERLY, KEY RURAL BANK (SAN PEDRO, LAGUNA, INC.), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) 2ND DIV. AND JOSEPHINE F. LOMIO-TARNATE, RE...

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Via the extraordinary Writ of Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure, petitioner implored the Court to evaluate the Resolutions dated October 9, 2009[2] and February 23, 2011[3] of public respondent National Labor Relations Commission, which denied its Motion for Reduction of Appeal bond relative to its appeal from the Labor Arbiter's Decision[4] dated December 10, 2004 in favor of private respondent.

We traced the root of the casus belli on October 8, 1996 when petitioner Key Rural Bank, Inc., (hereinafter referred to as petitioner) hired private respondent Josephine L. Tarnate (hereinafter referred to as private respondent) as Accounting Clerk.

After nine months, petitioner promoted private respondent as Bookkeeper. However, for reasons only known to petitioner, the salaries and allowances due to its employees for December, 2000 and January, 2001 were withheld from them but private respondent continued to work at petitioner's bank in San Pedro, Laguna. After several follow-ups, private respondent received her salary for December, 2000, but petitioner refused to pay private respondent's allowance and salaries from December 16 to February, 2001. By reason thereof, private respondent decided to tender her resignation in March, 2001.

On May 12, 2002, private respondent filed a Complaint[5] for constructive dismissal with claims for unpaid salaries, living allowances, 13[th] month pay, separation pay, retirement benefits, moral damages, exemplary damages and attorney's fees against petitioner.

Petitioner filed its Reply[6] and averred that private respondent was not constructively dismissed but voluntarily resigned from her job, as evidenced by the Resignation Letter dated February 28, 2001.

On December 10, 2004, Labor Arbiter Danna M. Castillon rendered a Decision and agreed with private respondent's theory of constructive dismissal.[7]

Dissatisfied with the Decision, petitioner presented a Notice of Appeal on February 17, 2005[8] with the attached Motion for Reduction of Surety/Appeal/Supersedeas Bond[9] to the effect that, upon approval of its Motion for reduction of the bond, it shall post a surety/appeal bond to be issued by Summit Guaranty and Insurance Company, Inc.

On February 23, 2005, petitioner filed a Supplemental Motion for Reduction of Bond and Manifestation of Submission of Supersedeas Bond[10] in the amount of P150,000.00 issued by Premiere Insurance and Surety Corporation.[11]

On March 10, 2006, the NLRC issued an Order,[12] which dismissed the appeal filed by petitioner for non-perfection.

Petitioner's Motion for Reconsideration[13] on March 30, 2006 was also denied by the NLRC in a Resolution[14] dated June 15, 2006 and the Resolution became final and executory on July 13, 2006, as evidenced by the Entry of Judgment issued by the Executive Clerk of the Second Division of the NLRC.

After the denial of its Motion for Reconsideration, petitioner filed a Petition for Certiorari[15] before this Court on August 15, 2006, docketed as CA-G.R. SP No. 95687, which imputed grave abuse of discretion amounting to lack or excess of jurisdiction upon the NLRC for dismissing its appeal without resolving the Motion for Reduction of Surety/Appeal/Supersedeas Bond.

In a Decisionp[16] dated April 29, 2008, the Fifth Division of this Court remanded the case to the NLRC. It ruled that the public respondent should have acted upon, and resolved, the Motion to reduce bond before dismissing the appeal. Thus, it ordered the NLRC to first resolve petitioner's Motion to Reduce Bond dated February 17, 2005, inclusive of its Supplemental Motion dated February 23, 2005, viz:

“WHEREFORE, the petition is GRANTED.

Accordingly, the March 10, 2006 Order of the National Labor Relations Commission (NLRC) which dismissed petitioner's appeal for non-perfection thereof is hereby REVERSED and SET ASIDE.

The public respondent is hereby ordered to resolve first petitioner Key Rural Bank, Inc.'s Motion to Reduce Bond, dated February 17, 2005 and its Supplemental Motion, dated February 23, 2005, before deciding whether or not to give due course to the appeal.

SO ORDERED.”[17]

On October 9, 2009, the NLRC issued the first assailed Resolution, which denied petitioner's Motion for Reduction of Surety/Appeal/Supersedeas Bond and Manifestation of Submission of Respondents-Appellants Supersedeas Bond,[18] thusly:

“Although the motion to reduce bond was timely filed, the filing of the same does not, however, stop the running of the prescriptive period of perfecting an appeal as provided by Section 6 of Rule VI of the 2005 Revised Rules of Procedure of the National Labor Relations Commission (NLRC).

Clearly, an appeal bond should have been posted within the ten (10) day reglementary period.

xxx xxx xxx

Considering that not only did respondents-appellants fail to post the required appeal bond but also posted the unapproved bond on February 23, 2005 or beyond the ten (10) day reglementary period to perfect an appeal, the period within which to perfect their appeal had already lapse.”[19]

On December 2, 2009, petitioner sought reconsideration[20] of the Resolution dated October 9, 2009.

On March 12, 2010, the NLRC issued a Resolution,[21] which denied petitioner's Motion for Reduction of Bond and the subsequent Supplemental Motion for Reduction of Bond, the dispositive portion of which reads, as follows:

“ALL TOLD, the Motion for Reduction of Surety/Appeal/Supersedeas Bond without bond, and the subsequent Supplemental Motion for Reduction of Surety/Appeal/Supersedeas Bond and Manifestation of Submission of Respondents-Appellants Supersedeas Bond of Respondents-Appellants are hereby DENIED. Consequently, the appeal is hereby declared not perfected.

SO ORDERED.”[22]

On July 1, 2010, petitioner filed a Motion to Resolve its (Motion for Reconsideration dated December 2, 2009 of the Resolution dated October 9, 2009) with Motion to Quash and Set-Aside Entry of Judgment.[23]

On February 23, 2001, the NLRC issued the second assailed Resolution,[24] which denied the Motion for Reconsideration dated December 2, 2009 and it likewise set aside the Entry of Judgment dated June 11, 2011:

“WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby denied; the Entry of Judgment dated June 11, 2010 is set aside.

SO ORDERED.”[25]

Unfazed, petitioner filed a Petition for Certiorari[26] anchored on these ascriptions:

“I

...THE HON. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN EFFECTIVELY DISMISSING PETITIONER'S APPEAL IN NLRC CA NO. 044978-05 (NLRC-RAB IV Case No. 0315263-02-L) BASED ON ALLEGED NON-PERFECTION OF APPEAL, AND IN DENYING PETITIONER'S MOTION TO REDUCE BOND AND SUPPLEMENTAL MOTION, COMPLETELY IGNORING THE COURT OF APPEAL'S DECISION DATED APRIL 29, 2008 IN CA-G.R. SP NO. 95687, WHICH FOUND THAT PETITIONER SUBSTANTIALLY COMPLIED WITH THE RULES AND THE APPEAL PRESENTED CRUCIAL ISSUES.

II

... THE HON. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT FINDING THAT THERE WAS NO CONSTRUCTIVE DISMISSAL IN THIS CASE CONSIDERING THAT THERE WAS A LETTER OF RESIGNATION HANDED IN; AND THAT THERE WAS NO FACTUAL AND LEGAL BASIS FOR THE GRANT OF THE JUDGMENT AWARD.”[27]

From the foregoing backdrop, what loomed as the pervasive issue is the legal feasibility of public respondent's dismissal of petitioner's appeal in NLRC Case No. 044978-05 for non-perfection thereof.

At the outset, it must be underscored that the submission of the Motion to Reduce Bond, appended to the Notice of Appeal, was in the nick of time. Yet, it may be asked: can a sheer Motion to reduce the appeal bond lead to a perfection of an appeal in a labor case?

It may be recalled that on March 10, 2006, the NLRC dismissed the appeal, without resolving the Urgent Motion to Reduce Bond filed by petitioner, for failure to post a bond. It was opined by the NLRC that the appeal bond must first be posted before the Commission could act on the motion to reduce. Along this line, the Fifth Division of this Court entertained a different view with a declaration that the NLRC should have acted upon, and resolved, the Motion to reduce bond before dismissing the appeal, thusly:[28]

“Petitioner bank substantially complied with the rules considering that it seasonably filed on February 17, 2005 or within seven (7) days from receipt of the Labor Arbiter's decision a notice of appeal, appeal memorandum with motion for reduction of surety/appeal/supersedeas bond.

On February 23, 2005, despite the fact that the first motion for reduction had not yet been acted upon, in good faith, petitioner bank immediately filed a supplemental motion for reduction of surety/appeal/supersedeas bond and manifestation of private respondent's supersedeas bond, wherein it manifested that it was submitting a supersedeas bond in the amount of P150,000.00. Said amount constitutes a reasonable amount in relation to the judgment award of P420,284.85.

Under the circumstances, the public respondent should have acted upon, and resolved, the motion to reduce bond before dismissing the appeal. A liberal interpretation of the bond requirement in this case would best serve the interest of justice considering the crucial issues to be resolved in this case which are: 1) whether or not there was constructive dismissal considering that there was a letter of resignation handed in and 2) whether or not there was factual and legal basis for the judgment award.[29]

Thereafter, the NLRC heeded this Court per the October 9, 2008 disposition of petitioner's Motion to Reduce Bond:[30]

“Guided by the April 29, 2008 decision of the Court of Appeals which ordered “to resolve first” the “Motion to Reduce Bond dated February 17, 2005”, “before deciding whether or not to give due course to the appeal” (unnumbered page before p/412, Records), this Commission (Second Division) in our October 9, 2009 Resolution denied the motion to reduce bond, and thereafter declared the appeal not perfected contained in our March 10, 2006 Order and June 15, 2006 Resolution.

This is after it was found again that the appeal filed by Respondent-Appellants on February 17, 2006 was without an appeal bond. As manifested by Respondents-Appellants in their Appeal, they received the appealed decision on February 10, 2005, and “the appeal shall be perfected on or before February 21, 2005, no bond was filed by them.

During the period of appeal, therefore, there was no reduced bond to approve. Hence, the motion to reduce bond had to be denied. And because the appeal was not perfected for having been filed without a bond, the appeal has to be declared not perfected.

The appeal bond was filed by Respondents-Appellants on February 23, 2005 after the period to appeal or perfect an appeal lapsed.”[31]

Petitioner now imputes grave abuse of discretion on the part of the NLRC when it issued the Resolutions dated October 9, 2009 and February 23, 2011.

We were far from convinced that grave abuse of discretion had attended the dismissal of petitioner’s appeal.

Well-settled is the doctrine that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[32]

Article 223 of the Labor Code,[33] as amended, explicitly provides that if the decision involves 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 NLRC “in the amount equivalent to the money award in the judgment appealed from.”

In the 2002 NLRC New Rules of Procedure, another qualification to the reduction of an appeal bond was added in Section 6:

“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.

x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds, and only 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.”

Ergo, by explicit provision of law, an appeal is perfected only upon the posting of a cash or surety bond. The requirement for posting the surety bond is jurisdictional and cannot be trifled with. 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.[34]

In the scenario at hand, petitioner alleged that it received the Decision of the Labor Arbiter on February 10, 2005.[35] Hence, it had up to February 21, 2005 within which to file an appeal. Petitioner filed an Appeal on February 17, 2005 without posting any bond, but only a Motion to Reduce the Bond and stated that it shall file a bond upon issuance of an Order by the NLRC. It must be stressed however that the mere filing of a Motion to Reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. As such, petitioner did not perfect its appeal when it did not post any bond, and the posting of a supersedeas bond on February 23, 2005 can no longer be considered as it was filed beyond the reglementary period within which to perfect its appeal, which was on February 21, 2005.

Although Section 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, allowed the reduction of the appeal bond, this practice made explicit by Resolution 01-02, Series of 2002, was subject to these preconditions: (1) the motion to reduce the 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.[36]

A review of jurisprudence showed that while in most cases, a Motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time that the Motion for reduction is resolved, *Sara Lee Philippines, Inc. vs. Macatlang*[37] will assume resonance to the necessity of even a partial bond within the reglementary period:

“The Court adhered to a strict application of Article 223 when appellants do not post an appeal bond at all. By explicit provision of law, an appeal is perfected only upon the posting of a cash or surety bond. The posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional. The reason behind the imposition of this requirement is enunciated in *Viron Garments Mfg. Co., Inc. v. NLRC*, thus:

The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.

Thus, when petitioners, in the cases of *Ong v. Court of Appeals, Rural Bank of Coron (Palawan), Inc. v. Cortes, Sy v. ALC, Ciudad Fernandina Food Corporation Employees Union-Association Labor Unions v. Court of Appeals*, and *Stolt-Nielsen Maritime Services, Inc. v. NLRC*, did not post a full or partial appeal bond, it was held that no appeal was perfected. A longer look on past ruling would show that:

In *Nationwide Security and Allied Services, Inc. v. NLRC*, it was found that petitioners had funds from its other businesses to post the required bond. The Court did not find as acceptable petitioner’s excuse, that “[using] funds from sources other than that earned from [its company is not] a sound business judgment” to exempt it from posting an appeal bond.

Petitioner’s failure in *Mers Shoes Mfg, Inc. v. NLRC*, to post the required bond within the reglementary period after it has been ordered reduced, justified the dismissal of its appeal.

The labor arbiter’s decision in *Santos v. Velarde* stated the exact award of backwages to be paid by petitioner, thus the Court affirmed the dismissal of the appeal by the non-payment of the appeal bond within the 10-day period provided by law.

Even if petitioner in *Heritage Hotel Manila v. NLRC* questioned as basis of the appeal bond the computation of the monetary award, the Court did not excuse it from posting a bond in a reasonable amount or what it believed to be the correct amount.

In *Banahaw Broadcasting Corporation v. Pacana III*, the NLRC issued an order denying petitioner's motion for recomputation of the monetary award and ordered it to post the required bond within 10 days. When BBC further demonstrated its unwillingness by completely ignoring this warning and by filing a Motion for Reconsideration on an entirely new ground, we held that the NLRC cannot be said to have committed grave abuse of discretion by making good its warning to dismiss the appeal.

Upon the other hand, the Court did relax the rule respecting the bond requirement to perfect appeal in cases where: (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."

Clearly, all that is required to perfect the appeal is the posting of a bond to ensure that the award is eventually paid should the appeal be dismissed[38] In this case, petitioner should have posted a bond, even if it was only partial, but it did not. Thus, no relaxation of the Rule may thus be considered.

Viewed in the light of the foregoing disquisition and factual milieu, no grave abuse of discretion can be ascribed upon the NLRC.

WHEREFORE, premises considered, the Petition for Certiorari and Prohibition is hereby DISMISSED for lack of merit.

SO ORDERED.

Reyes, Jr. J.C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] Dated April 5, 2011.

[2] Resolution dated October 9, 2009, Rollo, pp. 47-54.

[3] Resolution dated February 23, 2011, Rollo, pp. 55-59.

[4] Decision dated December 10, 2004, Rollo, pp. 83-92.

[5] Complaint filed on May 12, 2002, Rollo, pp. 253-254.

[6] Reply filed on September 26, 2002, Rollo, pp. 277-294.

[7] Decision dated December 10, 2004, Rollo, pp. 83-92.

[8] Notice of Appeal dated February 17, 2005, Rollo, pp. 93-107.

[9] Motion for Reduction of Surety/Appeal/Supersedeas Bond dated February 17, 2005, Rollo, pp. 108-115.

[10] Supplemental Motion for Reduction of Surety/Appeal/Supersedeas Bond, Rollo, pp. 112-115.

[11] Supersedeas Bond, Rollo, pp. 116-119

[12] Order dated March 10, 2006, Rollo, pp. 146-150.

- [13] Motion for Reconsideration dated March 27, 2006, Rollo, pp. 245-249
- [14] Resolution dated June 15, 2006, Rollo, pp. 250-251.
- [15] Petition for Certiorari, Rollo, pp. 151-174.
- [16] Decision dated April 29, 2008, Rollo, pp. 323-335.
- [17] See Page 13 of the Decision, Rollo, page 335.
- [18] Resolution dated October 9, 2009, Rollo, pp. 47-54.
- [19] See pages 5-6 of the Resolution dated October 9, 2009, Rollo, pp. 51-52.
- [20] Motion for Reconsideration dated December 2, 2009, Rollo, pp. 60-81.
- [21] Resolution dated March 12, 2010, Rollo, pp. 336-343.
- [22] See Pages 7-8 of the Resolution, Rollo, pp. 342-343.
- [23] Motion to Resolve dated June 25, 2010, Rollo, pp. 344-350.
- [24] Resolution dated February 23, 2011, Rollo, pp. 356-359.
- [25] See page 3 of the Resolution, Rollo, page 358.
- [26] Petition for Certiorari dated April 5, 2011, Rollo, pp. 3-46.
- [27] See page 13 of the Petition for Certiorari, Rollo, page 15.
- [28] Decision dated April 29, 2008, Rollo, pp. 323-335.
- [29] See page 12 of the Decision dated April 29, 2008, Rollo, page 334.
- [30] Resolution dated February 23, 2011, Rollo, pp. 356-359.
- [31] See page 2-3 of the Resolution dated February 23, 2011, Rollo, pp. 57-58.
- [32] *Calipay vs. NLRC*, G.R. No. 166411, August 3, 2010, 626 SCRA 409.
- [33] “ART. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
 - (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
 - (c) If made purely on questions of law; and
 - (d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.
- 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.”
- [34] *Viron Garments Mfg. Co., Inc. v. NLRC*, G.R. No. 97357, March 18, 1992, 207 SCRA 339.
- [35] See par. 1 of the Notice of Appeal, Rollo, page 93.

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