

CAPITAL HOMES REALTY, INC. AND RYAN C. TABLAC, PRESIDENT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROWYN GRAYLE L. GARCIA, RESPONDENTS.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, as amended, seeking to nullify and set aside the resolutions dated October 30, 2014[2] and December 29, 2014[3] of public respondent National Labor Relations Commission (NLRC) in NLRC CAR No. 04-0165-14 which denied petitioners' motion to reduce appeal bond and dismissed petitioners' appeal from the decision[4] dated September 23, 2014 of the labor arbiter.

A perusal of the petition reveals that the petition suffers from the following defects:

First, the “verification and certification against forum shopping with affidavit of service”[5] attached to the petition refers to a “Petition for Review” and not the instant petition for certiorari.[6]

Second, Atty. Melissa Quitan-Corpuz, the notary public in the attached verification and certification against forum shopping with affidavit of service[7] did not indicate therein her (1) notarial commission number, (2) place of commission, (3) expiration date of commission, and (4) office address in violation of Section 2, Rule VIII of the 2004 Rules on Notarial Practice[8]. The foregoing defects are grounds for the dismissal of the petition at bench under Section 3, Rule 46, in relation to Section 1, Rule 65 of the Rules of Court for petitioner's failure to comply with the requirements of filing a verified petition and attaching a sworn certificate against forum shopping.

This Court also reviewed the record of the case and found the petition devoid of merit. This Court finds that respondent NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioners' motion to reduce appeal bond[9] and in dismissing petitioners' appeal[10] due to non-perfection of appeal.

In the decision[11] subject of petitioners' appeal before the NLRC, the labor arbiter found petitioners liable for illegal dismissal and payment to private respondent Rowyn Grayle L. Garcia 13[th] month pay, unpaid salaries, salary differentials, unpaid commissions, and attorney's fees in the total amount of P399,491.52. Article 223 of the Labor Code and Section 6, Rule VI of the 2011 NLRC Rules of Procedure provide the pertinent rules for the perfection of an employer's appeal from the decision of the labor arbiter involving monetary award, to wit:

“Article 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. xxx

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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.”

“RULE VI
APPEALS

Sec. 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.

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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.”

This Court finds that petitioners failed to perfect their appeal with the NLRC within the ten-day reglementary period allowed by the rules. Petitioners received a copy of the labor arbiter's decision on October 3, 2014[12]. Thus, petitioners needed to perfect their appeal within ten (10) days from October 3, 2014, or until October 13, 2014, by posting a cash or surety bond in an amount equivalent to the monetary award, exclusive of damages or attorney's fees, or in a reasonable amount in relation to the monetary award. However, petitioners filed their motion to reduce appeal bond and posted a cash bond in the amount of P10,000.00 only on October 13, 2014, or the last day of the reglementary period. Respondent NLRC denied the motion to reduce appeal bond after finding that the amount of P10,000.00 cannot be considered as “reasonable amount” that would suffice as substantial compliance with the rules. According to the NLRC, petitioners should have posted at least P36,347.41, which is equivalent to 10% of the total monetary award of P363,474.11, exclusive of attorney's fees.[13]

Respondent NLRC's conclusion cannot be considered to have been made in a whimsical and arbitrary manner that is tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction because the same has legal basis. In resolving petitioners' motion to reduce appeal bond, the NLRC referred to the guidelines set by the Supreme Court in the case of Andrew James Mcburnie vs. Eulalio Ganzon, et al., G.R. Nos. 178034 & 178117 and G.R. Nos. 186984-85, October 17, 2013 in order for a reduced bond to be considered as “reasonable amount”. In said case, the Supreme Court ruled:

“To clarify, the prevailing jurisprudence on the matter provides that the filing of a motion to reduce bond, coupled with compliance with the two conditions emphasized in *Garcia v. KJ Commercial* for the grant of such motion, namely, (1) a meritorious ground, and (2) posting of a bond in a reasonable amount, shall suffice to suspend the running of the period to perfect an appeal from the labor arbiter’s decision to the NLRC. To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond. Thus, we explained in *Garcia*:

The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal. x x x

x x x x

The NLRC has full discretion to grant or deny the motion to reduce bond, and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant’s motion is indeed based on 'meritorious ground' and whether the bond he or she posted is of a 'reasonable amount.' Thus, the appellant always runs the risk of failing to perfect an appeal.

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As the Court, nonetheless, remains firm on the importance of appeal bonds in appeals from monetary awards of LAs, we stress that the NLRC, pursuant to Section 6, Rule VI of the NLRC Rules of Procedure, shall only accept motions to reduce bond that are coupled with the posting of a bond in a reasonable amount. Time and again, we have explained that the bond requirement imposed upon appellants in labor cases is intended to ensure the satisfaction of awards that are made in favor of appellees, in the event that their claims are eventually sustained by the courts. On the part of the appellants, its posting may also signify their good faith and willingness to recognize the final outcome of their appeal.

At the time of a motion to reduce appeal bond's filing, the question of what constitutes 'a reasonable amount of bond' that must accompany the motion may be subject to differing interpretations of litigants. The judgment of the NLRC which has the discretion under the law to determine such amount cannot as yet be invoked by litigants until after their motions to reduce appeal bond are accepted.

Given these limitations, it is not uncommon for a party to unduly forfeit his opportunity to seek a reduction of the required bond and thus, to appeal, when the NLRC eventually disagrees with the party's assessment. These have also resulted in the filing of numerous petitions against the NLRC, citing an alleged grave abuse of discretion on the part of the labor tribunal for its finding on the sufficiency or insufficiency of posted appeal bonds.

It is in this light that the Court finds it necessary to set a parameter for the litigants' and the NLRC's guidance on the amount of bond that shall hereafter be filed with a motion for a bond's reduction. To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended." (emphasis supplied)

In the foregoing case, the Supreme Court fixed a "provisional reasonable bond" in an amount equivalent to at least 10% of the monetary award, exclusive of attorney's fees, in order for the NLRC to accept and entertain a motion to reduce appeal bond. Only upon posting of such provisional bond within the ten-day reglementary period shall the period to perfect appeal be deemed suspended. The record shows that petitioners filed their motion to reduce appeal bond on the last day of the reglementary period. The motion was accompanied by an appeal bond in the amount of P10,000.00 only, which cannot be considered as the "provisional reasonable amount" set by the Supreme Court in *McBurnie vs. Ganzon*. Thus, the period to perfect the appeal continued to run. Consequently, the labor arbiter's decision has become final and executory.[14]

The rule is settled that perfection of an appeal within the ten-day reglementary period is not only mandatory but jurisdictional. All of the essential requirements for the perfection of the appeal must also be filed within the reglementary period.[15] Petitioners' subsequent posting of the deficiency in the amount of P26,350.00 when they filed their motion for reconsideration did not cure the fatal defect of their appeal. This is because petitioners posted such deficiency after the lapse of the ten-day reglementary period, at which time the labor arbiter's decision has already become final and executory, and therefore immutable.[16] Hence, respondent NLRC acted in accordance with law and recent jurisprudence when it dismissed petitioners' appeal due to non-perfection.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Tijam, N. G., Chairperson, and [*]Peralta, Jr., E. B., JJ., concur.

[*]Vice J. Ramon A. Cruz, per Office Order No. 97-15-ABR dtd. 30 March 2015.

[1] Rollo, pp. 3-11.

[2] Rollo, pp. 12-16.

[3] Rollo, pp. 17-20.

[4] Rollo, pp. 21-38.

[5] Rollo, p. 10-11.

[6] Rollo, p. 10

[7] Rollo, p. 10-11.

[8] A.M. No. 02-8-13-SC

SEC. 2. Contents of the Concluding Part of the Notarial Certificate. – The notarial certificate shall include the following:

(a) the name of the notary public as exactly indicated in the commission;

(b) the serial number of the commission of the notary public;

(c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and

(d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

[9] Rollo, pp. 39-40.

[10] Rollo, pp. 55-68.

[11] Rollo, pp. 21-38.

[12] Rollo, pp. 5, 39, 56.

[13] Rollo, p. 15.

[14] Conrado Tan vs. Restituto Timbal, Jr. vs. G.R. No. 141926, July 14, 2004.

[15] Wallem Maritime Services, Inc. and Scandic Shipmanagement Limited vs. Eriberto S. Bultron, G.R. No. 185261, October 2, 2009.

[16] Wallem Maritime Services, Inc. and Scandic Shipmanagement Limited vs. Eriberto S. Bultron, G.R. No. 185261, October 2, 2009.

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