

**LEE B. SUELTO AND DR. HENRY T. FACUNDO, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION,
HAPPY JACK ORGANIC CORP., NEVEO MOSSER, CHIEF EXECUTIVE
OFFICER, WE...**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Petition[1] for Certiorari under Rule 65 of the Rules of Court assailing the Resolution[2] dated 30 July 2010 of the National Labor Relations Commission (NLRC), in NLRC NO. MAC-04-010837-2009 (RAB-XI-05-00444-08) for Unpaid Salaries, Breach of Contract, Damages and Attorney's Fees, setting aside its earlier Resolution[3] dated 29 December 2009, which dismissed respondents' appeal for non-perfection. The dispositive portion of the assailed resolution reads:

“WHEREFORE, the instant motion for reconsideration is GRANTED and our assailed Resolution is SET ASIDE. In lieu thereof, a new judgment is rendered nullifying the appealed decision of the Labor Arbiter dated March 13, 2009 and instead DISMISSING the above-entitled case for lack of jurisdiction.” [4]

Factual Antecedents

The case emanates from the Complaint[5] for Illegal Termination, Breach of Contract, Unpaid Salaries, Damages and Attorney's Fees filed by the complainants against respondents Happy Jack Organic Corporation (HJOC) and its officers, Neveo Mosser (Chief Executive Officer), Welsita F. Flores (Chief Operating Officer), and Marilyn Young (Managing Director).

The factual antecedents as gleaned from the records are as follows:

Complainants Henry T. Facundo (Facundo)[6] and Lee B. Suelto (Suelto)[7] were hired by respondent HJOC as technical consultants. Suelto signed a 15-month Consultancy Services Agreement with a term from October 22, 2007 to December 31, 2008;[8] whereas, Facundo signed a two-year Consultancy Services Agreement with a term from January 1, 2008 to December 31, 2010.[9] Thereafter respondent HJOC failed to pay salaries of complainant Facundo from February to April 2008,[10] and complainant Suelto from October 2007 to April 2008.[11]

On April 22, 2008, the HJOC, invoking financial distress, terminated its consultancy services with the complainants. Consequently, it could no longer afford to pay the consultancy fees and allowances of the complainants.[12]

On 7 May 2008, the complainants filed with the Regional Arbitration Branch No. XI of Davao City (Labor Arbiter for brevity) a complaint for Unpaid Salaries, Breach of Contract, Damages and Attorney's Fees, docketed as NLRC CASE NO. 05-00444-08.

On 13 March 2009, Labor Arbiter rendered a decision in favor of the complainants, viz

“WHEREFORE, premises considered, judgment is hereby rendered:

- Declaring the termination of consultancy services lawful;

- Ordering respondent Happy Jack Organic Corporation solely liable to pay complainants their respective unpaid wages/salaries, nominal damages and attorney's fees thereof.

Other claims are hereby dismissed for lack of factual and legal basis.

SO ORDERED.”[13]

On 13 April 2009, respondents filed a Notice of Appeal[14] attaching their Appeal Memorandum[15]

In their COMMENT[16] to the appeal memorandum, the complainants questioned respondents' appeal for failure to comply with the requisites for the perfection of appeal under Sections 4 and 6 of the 2005 Revised Rules of Procedure of the NLRC.

On 29 December 2009, the National Labor Relations Commission, Eighth Division of Cagayan de Oro City (NLRC for brevity) dismissed respondents' appeal for non-perfection. It held:

“Records show that (1) Marilyn P. Young lacks authority from the respondent corporation to sign the supersedeas bond and other bond documents for and in its behalf, (2) the signatories of the bonding company to the bond documents lacks authority to issue bonds and/or sign the bonds for and in its behalf, (3) the respondents' counsel failed to sign the joint declaration under oath relative to the supersedeas bond posted herein, and (4) an undated check was offered as collateral to secure the bond.

Xxx

The assailed decision having thus become final and executory for failure to perfect the appeal, this Commission, therefore, loses jurisdiction to entertain the present appeal, much less render a resolution modifying the said decision.[17]

The respondents filed a motion for reconsideration of the 29 December 2009 NLRC Resolution. They invoked that there was a substantial compliance with the requisites for perfecting an appeal.

On 30 July 2010, the NLRC granted respondents' motion for reconsideration and set aside its 29 December 2009 resolution. It held that the respondents substantially complied with the appeal bond requirements.

The NLRC, then, held the appeal meritorious and nullified the 13 March 2009 Decision of the Labor Arbiter. Applying the four-fold test, it ruled that complainants were not employees of respondents but were independent contractors. Hence, for want of employer-employee relationship with respondents, the Labor Arbiter was without jurisdiction over the complaint.

Hence, this Petition.

In this recourse, respondents (hereinafter petitioners) submit for resolution the following Assignment of Errors,[18] to wit:

“A

That the Honorable Commissioners of the NLRC, Fifth Division no longer has the jurisdiction to entertain the appeal for failure to comply with the Section 4, Rule VI of the 2005 Revised Rules of Procedure of NLRC[;]

B

That the Honorable Commissioners (sic) the National Labor Relations Commission acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it dismissed, modified and reversed a DECISION that is already FINAL and EXECUTORY[;]

C

That the Honorable Commissioners (sic) the National Labor Relations Commission acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it ruled that private respondents have “SUBSTANTIALLY COMPLIED” with the posting of SURETY BOND as required by the Rule, where compliance of the same is not only MANDATORY but ALSO JURISDICTIONAL.”[19]

Our Ruling

The sole issue submitted for resolution is whether respondents’ appeal of the 13 March 2009 Labor Arbiter decision before the NLRC had been perfected.

We rule in the negative.

Indisputable is the legal doctrine that the appeal of a decision involving a monetary award in labor cases may be perfected “only upon the posting of a cash or surety bond.”[20] The lawmakers intended the posting of the bond to be an indispensable requirement to perfect an employer’s appeal.[21] Hence, 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 effectively renders the judgment final and executory.[22]

Article 223 of the Labor Code provides:

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.

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.

XXX

XXX

XXX

On the other hand, Section 6 of the 2005 Revised Rules of Procedure of the NLRC 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 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:

- a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case;
- b) an indemnity agreement between the employer-appellant and bonding company;
- c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;
- d) a certificate of authority from the Insurance Commission;
- e) certificate of registration from the Securities and Exchange Commission;
- f) certificate of authority to transact surety business from the Office of the President;
- g) certificate of accreditation and authority from the Supreme Court; and
- h) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

xxx

Relying on the afore-quoted provisions, the petitioners questioned respondents' appeal on the grounds:

- 1) that the Joint Declaration[23] attesting to the genuineness of the posted bond is defective because it lacks the signature of Atty. Abarquez, counsel of respondent company;
- 2) the security or collateral provided by the respondent company is an undated check[24]; and
- 3) that the Undertaking[25] executed by the respondent company and CAP General Insurance were not signed by the authorized representatives of both corporations because Vicente Manliclic, Bobby Hilson Lariosa and Erlinda Pinpin were merely authorized "to transact business for and in behalf of the Surety Company and they were never authorized as signatories to the bond." [26]

The NLRC in its 30 July 2010 Resolution held that there was a substantial compliance by the respondents with the appeal bond requirement, viz:

Xxx the failure of the respondents' counsel to sign the joint declaration attached to the supersedeas bond is a mere oversight xxx

xxx

We carefully reviewed the records once more and accordingly, We find that respondents have substantially complied with the posting of bond equivalent to perfect their appeal. Marilyn Young, as general manager, is an officer of respondent corporation supposedly mentioned in its constitution and by-laws and as such, she was reasonably duly authorized to sign the joint declaration and undertaking attached to the surety bond in the same manner that she was authorized to sign the verification and certification of non-forum shopping appended to

respondents' memorandum of appeal. Xxx it was enough that Marilyn Young and Vicente Manliclic, the bonds manager, have signed the same documents. Thus, for having been considered perfected, respondents' appeal is reinstated and ripe for resolution on its merits.[27]

It will not be amiss to state that the NLRC failed to address the second issue raised by the petitioners, to wit: the security or collateral provided by the respondent company is an undated check[28]

In case of a security bond, proof of security is mandatory, viz:

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

c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; (Emphasis and Underscoring Supplied)

xxx[29]

The pertinent rule provides for a dual requirement, viz: (a) the posting of surety bond and (b) the bond must be secured by a security deposit or collateral. The rule is clear. A check shall not be considered as an acceptable security for the bond. The necessary import of the foregoing provision is that "the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable." [30] (Emphasis and Underscoring Supplied)

The rule requiring the employer to post a surety bond to perfect his appeal assures the workers that they will receive the money judgment awarded to them upon the dismissal of the employer's appeal.[31] This assurance is re-enforced by the further requirement that the bond shall be secured by a collateral or security deposit. A check does not satisfy the requirement of security because the payment therefor is always subject to a contingency - the availability of the funds to the check.

Here, a perusal of the records reveals that the respondent company offered an Undated Check[32] as collateral security for the bond in contravention with the above requirement

Then and now, it has been held that procedural rules do not exist for the convenience of the litigants.[33] *Mejillano v. RTC*[34] held:

Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules were established primarily to provide order to and enhance the efficiency of our judicial system.

The right to appeal is not a natural right or a part of due process.[35] It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[36] He who seeks to avail of the right to appeal must play by the rules.[37]

This, respondents did not do when they failed to comply with the requirements for posting the security bond. (Emphasis Supplied)

All told, the NLRC did not acquire jurisdiction over respondents' appeal. Consequently, respondents' appeal before the NLRC did not prevent the 13 March 2009 Labor Arbiter decision from becoming final and executory.

WHEREFORE, the Petition is GRANTED. The assailed 30 July 2010 NLRC Resolution is hereby REVERSED

and SET ASIDE. The 13 March 2009 Labor Arbiter Decision is hereby REINSTATED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, pp. 4-19.

[2] Rollo, 29-34.

[3] Rollo, pp. 24-26.

[4] Rollo, p. 34.

[5] Rollo, p. 36-46.

[6] Rollo, p. 63.

[7] Rollo, p. 89,97.

[8] Rollo, p. 62.

[9] Rollo, p. 94.

[10] Rollo, p. 95-94.

[11] Rollo, p. 36-46.

[12] Rollo, p. 97.

[13] Rollo, p. 93.

[14] Rollo, p. 95-104.

[15] Rollo, p. 94.

[16] Rollo, pp.122-131.

[17] Rollo, pp. 24-25.

[18] Rollo, p. 15.

[19] Rollo, p. 15.

[20] Rosewood Processing, Inc. v. NLRC, G.R. Nos. 116476-84, 21 May 1998.

[21] Rosewood Processing, Inc. v. NLRC, G.R. Nos. 116476-84, 21 May 1998.

[22] Philippine Airlines, Inc. vs. National Labor Relations Commission, 263 SCRA 638, 658, October 28, 1996.

[23] Rollo, p. 111.

[24] Rollo, p. 121 .

[25] Rollo, pp. 112-113.

[26] Rollo, p. 13.

[27] Rollo, p. 30.

[28] Rollo, p. 121 .

[29] Section 6 of the 2005 Revised Rules of Procedure of the NLRC.

[30] Imperial Textile Mills, Inc. v NLRC, G.R. No. 101527, 19 January 1993.

[31] Fernandez, et al. v. NLRC, et al., G.R. No. 105892, 28 January 1998.

[32] Rollo, p. 121.

[33] Ko v. Philippine National Bank, G.R. Nos. 169131-32, 20 January 2006

[34] G.R. No. 154717, 19 June 2009.

[35] Producers Bank of the Phils. v. Court of Appeals, 430 Phil. 812 (2002).

[36] Producers Bank of the Phils. v. Court of Appeals, 430 Phil. 812 (2002).

[37] Mejillano v. RTC G.R. No. 154717, 19 June 2009.

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