JOSE GAUDIA, PETITIONER, VS. NATIONAL LABOR RELATIONSCOMMISSION, PANIQUI SUGAR CORPORATION AND JOSE ROMASANTA, RESPONDENTS.

G.R. No. 109371. November 18, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is a petition for certiorari[1] assailing as having been issued with grave abuse of discretion amounting to lack of jurisdiction the decision[2] of the National labor Relations Commission (NLRC) reversing the labor arbiter's decision[3] finding that petitioner Jose Gaudia was illegally dismissed by his employer, respondent Paniqui Sugar Corporation.

The facts are as follows:

In November 1977, petitioner was employed as company driver of respondent corporation earning a monthly salary of P2,940.00.

On February 19, 1990, there was found a 45" x 8" iron rail worth P500.00 hidden in respondent's truck driven by Abraham Gaudia as it was about to leave the company compound. Abraham Gaudia, petitioner's nephew, denied any knowledge of the iron rail. He pointed to his uncle, petitioner herein, as having concealed the iron rail under the truck.

In a memorandum[4] dated February 28, 1990, respondent corporation directed petitioner to submit within seventy-two (72) hours a written explanation on why he should not be dismissed from employment for pilferage of company property.

On March 5, 1990, respondent corporation, by Memorandum No. 08,[5] terminated petitioner's employment effective March 6, 1990 for engaging in an act prejudicial to the interests of the company.

On March 9, 1990, the union president Efren S. Muñoz wrote a letter[6] to respondent Jose A. Romasanta, Assistant Vice-President for Administration of respondent corporation, requesting for a re-investigation of petitioner's dismissal.

Unmoved by the request for a re-investigation, respondent corporation filed with the Regional Trial Court, Branch 67, Paniqui, Tarlac a complaint against petitioner for qualified theft.

In a letter[7] dated December 8, 1990, petitioner requested respondent Romasanta to drop the case for qualified theft. In return, petitioner signified that he was resigning as company driver with a waiver of all benefits, rights and privileges accorded to an employee being separated from the service.

On February 28, 1991, the court dismissed the case for qualified theft against petitioner.

On August 9, 1991, petitioner filed with the NLRC Regional Arbitration Branch No. III, San Fernando, Pampanga

a complaint for illegal dismissal against respondents with prayer for reinstatement without loss of seniority rights, full backwages, privileges, moral and exemplary damages amounting to P50,000.00 and litigation expenses totalling P10,000.00.

On June 5, 1992, after due hearing, Labor Arbiter Dominador B. Saludares rendered a decision finding the respondents guilty of illegally dismissing petitioner, the dispositive portion of which reads:

> "WHEREFORE, premises considered, judgment is hereby entered, ordering the respondents, jointly and severally, as follows:
>
> - To pay the separation pay of complainant in the sum of P38,220.00 without any deduction or qualification; and
>
> - To pay moral and exemplary damages in the sum of P25,000.00.
>
> "SO DECIDED.
>
> "San Fernando, Pampanga, 05 June 1992.
>
> "(s/t) DOMINADOR B. SALUDARES
> "Labor Arbiter"[8]

On June 29, 1992, respondents received notice of the Labor Arbiter's decision. On July 9, 1992, respondents filed an appeal memorandum[9] with the NLRC, without posting the cash or surety bond as required under Rule VI, Section 3 of the New Rules of Procedure of the NLRC.

On July 15, 1992, petitioner moved for execution of the Labor Arbiter's decision, claiming that said decision had become final and executory for non-perfection of respondent's appeal brought about by their failure to post the required bond within the ten-day reglementary period.

On July 17, 1992, Labor Arbiter Saludares issued a writ of execution.

On August 6, 1992, private respondents filed with the Labor Arbiter's Office an Ex-Parte Motion to Quash the Writ of Execution.

Meantime, on August 3, 1992, private respondents posted with the Labor Arbiter's Office a surety bond.

On November 20, 1992, the NLRC rendered decision reversing the Labor Arbiter's judgment. It found that there was sufficient cause to dismiss petitioner, but that there was non-compliance with due process since the dismissal was effective on March 6, 1990 or only a day after petitioner received the notice of dismissal. Private respondents were thus directed to indemnify petitioner in the amount of P3,000.00 for failure to comply strictly with the requisites of due process.[10]

On January 29, 1993, the NLRC denied[11] petitioner's motion for reconsideration of its November 20, 1992 decision.

Hence, this petition.[12]

Petitioner submits that: (1) the NLRC erred in giving due course to the appeal notwithstanding private respondents' failure to post the cash or surety bond within the reglementary period, and (2) the NLRC erred in holding that respondents had sufficient cause to dismiss petitioner.

On November 13, 1995, we gave due course to the petition.[13]

The petition is impressed with merit.

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On the procedural issue involved, petitioner points out that the posting of a cash or surety bond is a mandatory requirement for the perfection of an appeal to the NLRC from a judgment of the Labor Arbiter. This is clearly prescribed in Article 223 of the Labor Code and Sections 3 and 6, Rule VI of the New Rules of Procedure of the NLRC which read, respectively:

> "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.
>
> "x x x x x x x x x
>
> "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.
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> "x x x x x x x x x."
>
> "RULE VI
>
> "APPEALS
>
> "Section 3. Requisites for Perfection of Appeal. -- (a.) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.
>
> "A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.
>
> x x x."
>
> "Section 6. Bond. - In case the decision of a Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monthly award, exclusive of moral and exemplary damages and attorney's fees.
>
> "The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.
>
> "The Commission may, in meritorious cases and upon motion of the appellant, reduce the amount of the bond. The filing, however, of the motion to reduce bond shall not stop the running of the period to perfect appeal." (underscoring supplied.)

In "Viron Garments Manufacturing Co., Inc., vs. NLRC, et al.,"[14] the Court said:

> "The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer, is clearly limned in 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.
>
> "The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to

> the posting of an appeal bond, if he desires to appeal.
>
> "The meaning and the intention of the legislature in enacting a statute must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction (Provincial Board of Cebu vs. Presiding Judge of Cebu Court of First Instance, Branch IV, 171 SCRA 1).
>
> "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."

In this case, respondents filed their notice of appeal within the ten-day period (July 9, 1992), however, they posted a surety bond only on August 3, 1992, or almost a month after the appeal period had lapsed. The explanation proferred by respondents that the surety failed to attach the required Supreme Court certification to the bond is not an excuse for the delay. The duty to ensure that the bond satisfies all the formal requirements before it is filed within the ten-day appeal period rests solely on the respondents as appellants.

Having failed to file the required bond within the reglementary period, private respondents' appeal to the NLRC had not been perfected, thus making the Labor Arbiter's decision final and executory. "This is so as perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal as required by the Rules has the effect of rendering the judgment final and executory."[15] Clearly then, the NLRC has no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter. "Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose."[16]

With the preceding disquisition, it is no longer necessary for the Court to delve into the other issue raised by petitioner on whether there is sufficient cause to dismiss him. That has been passed upon in his favor by the Labor Arbiter whose decision was final and executory.

WHEREFORE, the Court GRANTS the petition and SET ASIDE NLRC's decision dated November 20, 1992 ands resolution dated January 29, 1993 in NLRC CA No. L-000667-92. In lieu thereof, we declare final and executory Labor Arbiter Dominador B. Salvadores' decision dated June 5, 1992, as follows:

1. to pay the separation pay of petitioner Jose Gaudia in the sum of P38,220.00 without any deduction or qualification; and

2. to pay moral and exemplary damages in the sum of P25,000.00.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] Under Rule 65 of the 1964 Revised Rules of Court.

[2] Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Joaquin A. Tanodra. Rollo, pp. 74-81.

[3] Penned by Labor Arbiter Dominador B. Saludares, Rollo, pp. 52-61.

[4] Rollo, p. 48.

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[5] Rollo, p. 49.

[6] Rollo, p. 26.

[7] Rollo, p. 50.

[8] Decision, Labor Arbiter Dominador B. Saludares, Rollo, pp. 52-61, at p. 61.

[9] Rollo, pp. 63-70.

[10] Decision, NLRC, Rollo, pp. 74-81, at p. 80.

[11] Resolution, NLRC, Rollo, pp. 84-85.

[12] Petition filed on April 1, 1993, Rollo, pp. 2-15.

[13] Rollo, p. 144.

[14] 207 SCRA 339, 342 [1992].

[15] Filcon Manufacturing Corp. vs. NLRC, 199 SCRA 814, 822 [1991] citing Narag vs. NLRC, 155 scra 199 [1987].

[16] Marcopper Mining Corp. vs. Briones, 165 SCRA 464, 470 [1988].

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