MARY ABIGAILS FOOD SERVICES, INC., MARY RESURRECCION T. PUNO, PETITIONERS, VS. COURT OF APPEALS AND PERLA B. BOLANDO, RESPONDENTS.

G.R. NO. 140294. May 09, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for certiorari under Rule 65 of the Rules of Court, petitioners urge the Court to nullify and set aside the following issuance of the Court of Appeals in CA-G.R. SP No. 52775, to wit:

> - Decision[1] dated July 1, 1999, affirming the dismissal by the National Labor Relations Commission (NLRC) of petitioners' appeal from an adverse decision of the Labor Arbiter for failure to perfect the same within the reglemantory period; and
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> - Resolution[2] dated September 14, 1999, denying petitioners' motion for reconsideration.

Reviewed, the records reveal the following factual antecedents:

Sometime in September, 1997, private respondent Perla B. Bolando was hired by petitioner Mary Abigail's Food Services, Inc. (Abigail's for brevity), to work as a counter-girl at its branch at the Rizal Technological College. Bolando's work schedule was from 10:00 o'clock a.m. to 8:00 o'clock p.m., except on Saturdays when she works from 9:00 o'clock a.m. to 4:00 o'clock p.m. She likewise works on Sundays when required by management. Bolando receives a daily wage of P 180.00 with two (2) complete meal allowances of P40.00.

On February 10, 1998, Bolando was given a memorandum by management terminating her services due to excessive tardiness and falsification of time record.[3]

Contending that her dismissal by reason of tardiness is unjust, harsh and unreasonable, and that she was denied due process as she was not given an opportunity to be heard, Bolando filed with the arbitration branch of the NLRC, National Capital Region, a complaint[4] for illegal dismissal, payment of separation pay, overtime pay, holiday pay, etc., against Abigail's and its owner Mary Resurreccion T. Puno as well as its supervisor Flor Magdaong.

In their position paper[5], the three (3) justified Bolando's dismissal not only for her habitual tardiness but also for her having committed fraud by tampering her time card to conceal her tardiness. They also pointed out Bolando's violation of company rules and regulations, her being impolite and dishonest and her causing troubles at the workplace and making unauthorized changes in the prices of food. They also claimed that contrary to Bolandos allegation, she was accorded full due process before her termination was affected, adding that while she started working with Abigail's in September, 1997, she subsequently left her employment and was rehired only sometime in May, 1996.

In a decision dated November 12, 1998[6], the Labor Arbiter rendered judgment for Bolando, thus:

> IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered ordering the respondents to pay the complaint 1) separation pay from May 1996 up to February 1998 computed at ½ month for every year of service rendered or in the sum of P4,680.00 (P180.00 x 13 days x 2 years = P4,680.00); 2) to pay the complainant the sum of P30,712.50 (P180.00/8 x 1.25 x 2 hours x 26 days x 21 mos. = P30,712.50) as overtime pay from May 1996 up to 10 February 1998. The respondents are, likewise assessed the sum of P3,539.25 representing 10% of the benefits awarded as attorney's fees. The rest of the claims are dismissed for lack of merit.SO ORDERED.

Explains the Labor Arbiter in his decision:

> ILLEGAL DISMISSAL – There is little merit to the claim of the complainant that her dismissal was a harsh disciplinary action for her infraction. The recorded frequency of her tardiness do not indicate habitual character. The attempt to cover up one of those tardiness on 8 September 1998 was only the first of such infraction and there should be leniency in the imposition of penalty. The other alleged offenses are of inconsequential value on the complainant's work attitude or are plainly unsubstantiated. Be that as it may, the complainant has opted for the separation pay as an alternative benefit in lieu of her reinstatement. That gesture of the complainant must be welcomed for in the evaluation of the issue, this Office is all along inclined to imposed (sic) the grant of separation benefit in lieu of reinstatement as a remedial recourse. Although the complainant started her employment with the respondent in September 1997, nonetheless, this was interrupted on complainant's option and was employed again in May 1996. Her separation benefit must be reckoned from May 1996 up to February 1998.
>
> MONEY CLAIMS – Admittedly, the complainant was made to suffer to work for 10 hours per day, that was from 10:00 a.m. to 8:00 p.m. and 9:00 a.m. to 7:00 p.m. on Saturdays. There is no showing that the complainant was correspondingly paid for those excess hours of service.
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> It has been shown that the complainant availed of her service incentive leave pay as her absences were charged to the said benefit in which case the claim must be denied.
>
> Likewise, the claim for 13th month pay must be disallowed it being indicated in the petty cash vouchers presented that she received the benefit from the respondents in the past.

It is not disputed that petitioners received, thru counsel, their copy of the aforementioned decision of the Labor Arbiter on December 23, 1998. As such, the last day of the 10-day period for them to take an appeal therefrom to the NLRC under the Labor Code would be on January 2, 1999. Because January 2, 1999 was a Saturday, petitioners filed their Notice of Appeal and Memorandum of Partial Appeal on the following business day, January 4, 1999, a Monday,[7] and subsequently posted a surety bond only on January 7, 1999.[8]

In a Resolution dated February 26, 1999[9], the NLRC's Third Division, finding that the required bond was posted three (3) days beyond the 10-day reglementary period for perfecting an appeal, dismissed petitioners' appeal "for failure to perfect the same within the reglementary period".

In time, petitioners moved for a reconsideration, asseverating that their late filing of the required bond should not prejudice the perfection of their appeal considering the timely filing of their Notice of Appeal and Memorandum of Partial Appeal, and the liberal interpretation given to the provisions of the Labor Code in the matter of appeal bond in cases involving monetary awards, as in the instant case.

In its subsequent resolution of April 20, 1999,[10] the NLRC denied petitioners' motion for reconsideration.

Therefrom, petitioners went to the Court of Appeals on a petition for certiorari under Rule 65 in CA-G.R. SP No. 52775, maintaining that the NLRC should have relaxed the time-requirement for the posting of appeal bond, additionally claiming that the long holiday (Christmas season) which followed their receipt on December 23, 1998

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of the Labor Arbiter's decision rendered the timely filing of the required bond an impossibility.

As stated at the outset hereof, the Court of Appeals, in a decision dated July 1, 1999, dismissed petitioners' recourse thereto and accordingly affirmed the assailed NLRC resolutions, viz:

> WHEREFORE, finding no grave abuse of discretion, the petition is hereby DISMISSED, for lack of merit. Consequently, the assailed resolution of February 26, 1999 and April 20, 1999 of public respondent National Labor Relations Commission are hereby both AFFIRMED.
> SO ORDERED.

With their motion for reconsideration having been denied by the same court in its resolution of September 14, 1999, petitioners are now with us via the present recourse.

We DENY.

To begin with, it bears stressing that petitioners came to this Court via the vehicle of certiorari under Rule 65 of the Rules of Court, instead of a petition for review under Rule 45 of the same Rules.

In San Miguel Corporation vs. Court of Appeals,[11] citing National Irrigation Administration vs. Court of Appeals,[12] we have made clear the following:

> The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 x x x of the 1997 Rules of Civil Procedure. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a verified petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45, the reglementary period to appeal is fifteen (15) days from notice of the judgment or denial of the motion for reconsideration.

Worse, even if we are to view petitioners' present recourse as one of a petition for review, still it must fall for having been filed out of time. By petitioners own admission, they received, through counsel, their copy of the appellate court's resolution denying their motion for reconsideration on September 23, 1999.[13] Upon the other hand, they filed their present recourse only on October 22, 1999, as stamped on page 1 of their petition.[14] Such being the case, the assailed decision of the Court of Appeals had already become final, the 15-day period to elevate the same to this Court via Rule 45 having already expired [15]

In any event, the petition suffers from another infirmity that warrants its outright dismissal.

The primordial issue posed in this case is whether or not petitioners' appeal with the NLRC was correctly dismissed for failure to perfect the same by not posting the required bond within the reglementary period provided for by law.

We rule in the affirmative.

The Labor Code, as amended, pertinently 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 the receipt of such decisions, awards, or orders. Such appeal may be entertained only on the following grounds: xxx
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> xxx xxx xxx
>
> In case of a judgement 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.

On the other hand, Rule VI of the New Rules of Procedure of the NLRC outlines the manner of perfecting an appeal, thus:

> 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.[16]

Clear it is from the above that an appeal to the NLRC from any decision, award or order of the Labor Arbiter must have to be made within ten (10) calendar days from receipt of such decision, award or order with proof of payment of the required appeal bond accompanied by a memorandum of appeal. And where, as here, the decision of the Labor Arbiter involves a monetary award, the appeal is deemed perfected only upon the posting of a cash or surety bond also within ten (10) calendar days from receipt of such decision in an amount equivalent to the monetary award.[17]

The posting of a cash or surety bond is a requirement sine qua non for the perfection of an appeal from the labor arbiter's monetary award.[18] Notably, the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with the requirements therefore is fatal and has the effect of rendering the judgment sought to be appealed final and executory.[19] Such requirement cannot be trifled with.[20]

Here, while it is true that petitioners seasonably filed their notice of appeal and memorandum of partial appeal, they admittedly posted the required bond three (3) days late. Hence, their appeal from the decision of the Labor Arbiter to the NLRC was never perfected.

It may be so, as pointed out by the petitioners, that this Court has relaxed the application of the rules on appeal in labor cases where the failure to comply with the requisites for the perfection of appeal was justified or where there has been substantial compliance with the rules.[21]

Verily, the belated filing of the appeal bond was justified in cases where the labor arbiter's decision did not state the exact amount awarded as backwages and overtime pay,[22] or the failure to file a bond was considered an excusable mistake because the appealing party was misled by the notice of the decision which, while stating the requirements for perfecting an appeal, did not mention that a bond must be filed. [23]

For sure, in Quiambao vs. NLRC,[24] we even ruled that a relaxation of the appeal bond requirement for the perfection of an appeal "could be justified by substantial compliance with the rule so that on the balance, technical considerations had to give way to considerations of equity and justice."

Unfortunately for the petitioners, no similar justification exists herein to warrant a relaxation of the rule.

For one, the reason given by the petitioners to justify their late posting of the bond merits no serious consideration. The explanation given i.e., that it was impossible to secure the required bond and file it within the ten-day reglementary period because after receiving a copy of the decision of the Labor Arbiter on December 23, 1998, a long holiday (Christmas) season followed, is simply unacceptable. Surely, the occurrence of the holiday season did not at all make impossible petitioners' fulfillment of their responsibility to post the required bond. Pursuing petitioners' excuse, no bond would ever be posted on time whenever the reglementary period to file the same falls on such a season.

For another, it should be noted that in those instances where this Court excused the delayed posting of the bond, the failure was due to the excusable oversight or error of a third party, that is, the failure of the labor arbiter to state in the decision the exact amount awarded and the inclusion of the bond as a requisite for perfecting an appeal.

Here, upon receipt of a copy of the labor arbiter's decision, petitioners, knowing fully well the amount to be put up as a bond ought to be posted together with their notice of appeal and memorandum of partial appeal to the NLRC within ten days, should have taken appropriate measures to avoid any delay. Remiss in this respect, petitioners have no one to blame but themselves.

And precisely, because of their own negligence, a relaxation of the rule requiring the posting of a bond simultaneously with the notice of appeal and memorandum on appeal cannot be justified. For, to stress, in those instances where this Court appreciated substantial compliance, there were, at least efforts to comply with the requirement by the posting of a partial bond,[25] or the filing of a motion for reduction of bond[26] all within the ten-day period.

It is of no moment that petitioners' notice of appeal and memorandum of partial appeal were timely filed. We need not stress that Article 223 of the Labor Code, as amended, is explicit that "an appeal by the employer may be perfected only upon the posting of a cash or surety bond". As we have said in Viron Garments Manufacturing Co., Inc. vs NLRC:[27]

> 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 that 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.

With the reality that herein petitioners failed to perfect their appeal by the non-payment of the appeal bond within the ten-day period provided for by law, it follows that the judgment of the labor arbiter has passed to the realm of finality. Neither, therefore, the NLRC nor the Court of Appeals may be faulted for ruling against petitioners.

On a final note, it bears stressing that the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules.[28] The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.[29]

With the view, we take of this case, we need not address the other issues raised in the petition.

WHEREFORE, the petition is DISMISSED and the challenged decision and resolution of the Court of Appeals AFFIRMED.

No costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

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[1] Penned by Associate Justice Martin S. Villarama and concurred in by then, now a member of this Court, Associate Justice Helen Sandoval-Gutierrez and then Associate, now Presiding Justice, Romeo A. Brawner; Rollo, pp. 72-74.

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[2] Rollo, p. 81.

[3] Record p. 35.

[4] Record, p. 2, Rollo, p. 26.

[5] Rollo, pp. 27-32; Rec., pp. 16-21.

[6] Rollo, pp. 50-55.

[7] Rollo, pp. 56-58.

[8] Record p. 171.

[9] Rollo, pp. 59-60.

[10] Rollo, pp. 70-71.

[11] 375 SCRA 311, 315 [2002].

[12] 318 SCRA 255, 264 [1999].

[13] Petition, p. 5; Rollo, p. 7.

[14] Rollo, p. 3.

[15] See Asian Transmission Corporation vs. Court of Appeals. 425 SCRA 478, 483-484 [2004].

[16] now Section 4, Rule VI, 2002 NLRC New Rules of Procedure.

[17] Biogenerics Marketing and Research Corp., et. al. vs. NLRC, 313 SCRA 748, 755 [1999].

[18] Santos vs. Velarde, 402 SCRA 321, 326 [2003].

[19] Navarro, et. al. vs. NLRC, et. al. 327 SCRA 22, 28 [2000]; MERS Shoes Manufacturing. Inc. vs. NLRC 286 SCRA 647, 653 [1998].

[20] Ibid.

[21] Catubay, et. al. vs. NLRC, 330 SCRA 440, 448 [2000].

[22] Rada vs. NLRC, 205 SCRA 69 [1992]; In Blancaflor vs. NLRC, 218 SCRA 366 [1993], the failure to give a bond was in part due to the failure of the labor arbiter to state the exact amount of backwages and separation pay due; In Taberrah vs. NLRC, 276 SCRA 431 [1997], the memorandum of appeal contained the allegation that the amount of the monetary amount was still being computed by the Corporate Auditing Examiner, no computation of said award having been stated in the labor arbiter's decision.

[23] Your Bus Line vs. NLRC, 190 SCRA 160 [1990].

[24] 245 SCRA 211, 216 [1996].

[25] Gensoli & Company vs. NLRC, 289 SCRA 407 [1998].

[26] Rosewood Processing, Inc. vs. NLRC, 290 SCRA 408 [1998]; also Star Angel Handicraft vs. NLRC, 236 SCRA 580 [1994].

[27] 207 SCRA 339, 342 [1992]

[28] Corporate Inn Hotel vs. Lizo, 429 SCRA 573, 577 [2004].

[29] Ibid.

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