

FOREVER SECURITY & GENERAL SERVICES, PETITIONER, VS. ROMEO FLORES AND LOPE RALLAMA, RESPONDENTS.

G.R. No. 147961. September 07, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before the Court is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 58253 dated December 11, 2000 and the Resolution[2] dated April 24, 2001 denying petitioner's motion for reconsideration.

Romeo D. Flores and Lope A. Rallama were employed as security officers of Forever Security and General Services (Forever Security) in 1990 and 1988, respectively. As security officers, they worked for twelve (12) hours everyday including Sundays and holidays. On February 15, 1993, Forever Security dismissed Flores and Rallama on the ground that they abandoned their posts, duties and responsibilities as security guards.[3] Hence, they filed Complaints[4] for Illegal Dismissal with the National Labor Relations Commission (NLRC), against Forever Security and/or its Executive Vice President Antonio Garin. The case was docketed as NLRC NCR Case No. 00-04-2813-93.

In his complaint, Flores alleged that he did not receive his salary from January 18, 1993 to February 15, 1993. The reason given was that he was allegedly absent without official leave (AWOL) since December 26, 1992. He vehemently denied this and averred that his absence from such date until January 15, 1993 was with the company's consent and that he resumed work since then until he was terminated from service.[5] Rallama, on the other hand, averred that he failed to go to work on January 3 to 31, 1993 because he was hospitalized. When he returned for work, he was told that he was considered AWOL.[6] Flores and Rallama further claimed that during their employment with Forever Security, they were not paid the proper overtime pay, premium pay, rest day and holiday pay, and night shift differential, service incentive leave pay and 13th month pay. They prayed for reinstatement with payment of backwages and other monetary claims plus attorney's fees.[7]

For its part, Forever Security, thru its Vice President Garin, averred that Flores and Rallama went on vacation and sick leave, respectively, but failed to report for work thereafter, thus, they were considered to have abandoned their posts, duties and responsibilities which is a ground for their dismissal from service. It likewise asserted that it had fully paid the complainants' salaries and wages, overtime pay, premium pay for holiday and rest day, night shift differential, service incentive leave pay and 13th month pay. It prayed that the case be dismissed for lack of merit.[8]

The case was calendared for hearings on May 3 and 10, June 10 and 20, and July 15 and 29, 1993, but Forever Security and Vice President Garin failed to appear. On September 16, 1994, Labor Arbiter Ernesto S. Dinopol rendered a decision[9] in favor of complainants-employees, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered declaring that the dismissal of complainants ROMEO D. FLORES and LOPE A. RALLAMA was illegal and unjustified and ordering respondents FOREVER

SECURITY AND GEN. SERVICES, INC. and ANTONIO GARIN to reinstate them to their former positions without loss of seniority rights and other privileges.

Above-named respondents are further ordered to pay jointly and severally complainants, the following sums, as computed by the Research and Information Unit of this Commission:

ROMEO FLORES:

(12 hours duty, with the following benefits included: 13th month pay, SILP, night shift differentials, rest day pay, holiday pay, uniform allowance, overtime pay of 4-hours a day) = - -

P 87,857.45

Backwages from February 1, 1993 up to date of reinstatement which if computed as of today, September 16, 1994 amounts to (P6,826.37 x 19.5 months) = - - - - -

P 133,114.21

TOTAL AWARD - - - - -

P 220,971.66

LOPE RALLAMA : (Same Benefits)

As computed by the Research and Information Unit - - - - -

P 76,325.95

Backwages from February 15, up to date of reinstatement which if computed as of today, September 16, 1994 amounts to (P6,826.37 x 19 months) = - - - - -

P 129,701.03

TOTAL AWARD - - - - -

P 206,026.98

SO ORDERED.[10]

On April 27, 1995, Forever Security and Garin appealed the Labor Arbiter's decision to the NLRC.[11] The case was docketed as NLRC NCR CA No. 00-9021-95 and was raffled to the Second Division. Instead of posting a cash or surety bond, Forever Security and Garin filed a Motion for Extension of Time to File/Submit Appeal/Surety Bond,[12] alleging among others, that appellants are finalizing appropriate arrangements with an insurance bonding company; that due to lack of material time, they are not able to file surety/appeal bond. They further prayed that they be given a thirty (30)-day extension from April 27, 1995 or until May 27, 1995, within which to file a surety/appeal bond.[13]

On July 31, 1995, the Second Division issued a Resolution[14] dismissing the appeal for appellants' failure to perfect the same in accordance with the requirements of the Labor Code, specifically by posting the required cash or surety bond.[15] Appellants filed a Motion for Reconsideration[16] but it was denied in a Resolution dated October 24, 1995.[17] An official certification was later issued by the Philippine Postal Corporation, signed by Makati Central Acting Postmaster Danilo A. Velasco, stating that a copy of said resolution was delivered and received by the parties.[18] The decision thus became final and executory and an Entry of Judgment was issued on August 2, 1996.[19]

Flores and Rallama moved for the issuance of a Writ of Execution[20] which was favorably acted upon by the Labor Arbiter on August 28, 1997.[21] The writ, however, was returned unserved, thus, an Alias Writ of Execution and a Second Alias Writ of Execution were subsequently issued.[22] Pursuant to the Writ of Execution and Alias Writs of Execution, a Notice of Garnishment was issued.[23] Thereafter, Forever Security and Garin filed an urgent ex-parte motion to quash the writ of execution and alias writs of execution.[24] They insisted that the Resolution of the Second Division denying their motion for reconsideration was not yet final and executory considering that respondents' counsel failed to receive a copy of the same. As such, the Entry of Judgment is null and void and consequently, the Writ of Execution, Alias Writs of Execution and Notice of Garnishment were all irregularly issued and have no legal force and effect.[25]

On March 15, 1999, pursuant to the Notice of Garnishment, an Order[26] of garnishment was issued directing Mr. Taja Guinomia and Mrs. Cynthia Tayam of the Department of Foreign Affairs, Office of Fiscal Management, to release a check drawn in favor of the NLRC Cashier amounting to P430,758.64. Forever Security and Garin then filed an Urgent Ex-parte Motion for Reconsideration and Opposition to Release[27] which was, however, denied in an Order[28] dated May 12, 1999. Said order became the subject of another appeal which the NLRC denied in a Resolution[29] dated February 9, 2000, ratiocinating that the same was dilatory in nature and indicative of bad faith. Their Motion for Reconsideration was likewise denied for lack of merit in a Resolution dated March 7, 2000.[30]

Forever Security, represented by Garin, as petitioner, elevated the matter before the CA in a special civil action for certiorari, prohibition and mandamus. In a Decision[31] dated December 11, 2000, the CA dismissed the petition, the decretal portion of which reads:

WHEREFORE, premises considered, the petition for certiorari, prohibition and mandamus is DENIED for lack of merit.

SO ORDERED.[32]

The court found that petitioner failed to substantiate its claim that respondents were guilty of abandonment, which would have justified their dismissal from service. The court further held that petitioner failed to observe the

procedural rules provided for by the Labor Code. As to the allegation that petitioner's counsel did not receive a copy of the NLRC resolution denying its motion for reconsideration, the court applied the rule on presumption of receipt in the ordinary course of mail. The CA opined that the certification issued by the acting postmaster of the Makati Central Post Office negates petitioner's claim that their former counsel, Atty. Cleofe L. Jaime, failed to receive a copy of the NLRC resolution. Consequently, there is nothing left to be done except to implement the orders of execution and garnishment.[33]

Forthwith, petitioner filed a Motion for Reconsideration[34] which was denied in a Resolution[35] dated April 24, 2001.

Hence, this petition.

The issues, as raised by the petitioner, are as follows:

WHETHER OR NOT THE COURT OF APPEALS HAS ERRED IN LAW:

- FOR NOT HOLDING VALID AND LEGAL THE DISMISSAL OF RESPONDENTS FLORES AND RALLAMA ON THE GROUND OF ABANDONMENT.

- FOR HOLDING THAT THE ORDER DATED OCTOBER 24, 1995 WAS DULY RECEIVED BY PETITIONER'S COUNSEL, ATTY. MA. CLEOFE JAIME IN THE ORDINARY COURSE OF THE MAIL APPLYING THE PRESUMPTION UNDER RULE 131, SECTION 5 (v), AND FOR HOLDING THE PETITIONER TO HAVE FAILED TO OVERCOME SUCH PRESUMPTION BY SATISFACTORY PROOF.

- FOR HOLDING FINAL AND EXECUTORY THE DECISION DATED SEPTEMBER 16, 1994 OF LABOR ARBITER ERNESTO DINOPOL.

Petitioner maintains that the CA decision runs counter to the Rules of Procedure of the NLRC, particularly Rule III, Sections 6 and 7. To buttress its claim, petitioner insists that there is nothing in said rule that would suggest that the completeness of service of the order, coursed through mail, shall be determined by applying the rules of presumption under the Revised Rules of Court. Petitioner contends that the NLRC Rules, to be considered complete service, service of summons, notices, orders, decisions or final awards sent through registered mail must be received by the addressee or his/her agent. In the present case, such was not complied with. Thus, the presumption under Section 5(v), Rule 131 of the Revised Rules of Court finds no application or persuasion in the present case.[36]

Petitioner added that there was no proof on who actually received the copy of the resolution or whether such person was authorized to receive it in behalf of Atty. Jaime. Consequently, the entry of judgment, writ of execution and alias writs of execution, notice of garnishment, and order of garnishment are all null and void ab initio.[37] Moreover, petitioner claims that the issue of abandonment and reinstatement has become moot and academic since it had already ceased operation and closed its business as a security agency since December 31, 1993.[38]

The petition is without merit on both the procedural and substantive issues.

At the outset, this Court would like to point out that the present case at bench had long become final and executory for failure of petitioner to comply with procedural rules on perfection of appeals to the NLRC.

Article 223 of the Labor Code sets forth the rules on appeal from the Labor Arbiter's monetary award, thus:

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. 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. (Emphasis ours)

Moreover, Sections 1 and 6, Rule VI of the New Rules of Procedure of the NLRC[39] provide:

SEC 1. Periods of Appeal. — Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be 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 of the Labor Arbiter x x x.

x x x

SEC. 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 monetary award.

The requirement of a cash or surety bond for the perfection of an appeal from the Labor Arbiter's monetary award is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the award final and executory.[40] The logical purpose of an appeal bond is to insure, during the period of appeal, against any occurrence that would defeat or diminish recovery under the judgment if subsequently affirmed; it also validates and justifies, at least prima facie, an interpretation that would limit the amount of the bond to the aggregate of the sums awarded other than in the concept of moral and exemplary damages.[41] This is consistent with the State's constitutional mandate to afford full protection to labor in order to forcefully and meaningfully underscore labor as a primary social and economic force.[42]

As clearly explained by the NLRC, petitioner filed its appeal and paid the appeal fee on April 27, 1995. Instead of posting a cash or surety bond, it filed a motion for extension of time to file appeal or surety bond. Petitioner asked that it be given until May 27, 1995 within which to post the bond. Apparently, petitioner did not make good its promise on the specified date. At the time of the issuance of the NLRC Resolution dated July 31, 1995 dismissing the appeal, no bond was posted. Records reveal that it was only in 1999 when the petitioner posted the bond, long after the finality of the Labor Arbiter's decision.

Indeed, the Court, in a number of cases, has applied substantial compliance of the rules and allowed the appeal to proceed despite the failure of the petitioner company to post the full amount of the bond.

In *Rosewood Processing, Inc. v. NLRC*,[43] the Court considered petitioner's motion to reduce bond as substantial compliance to the procedural requirement of posting of bond. In that case, petitioner filed, together with its memorandum on appeal and notice of appeal, a motion to reduce the appeal bond accompanied by a surety bond for fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. The rule on substantial compliance was applied because of the willingness to post the bond as well as the clear merits which appeared in the appeal from the labor arbiter's Decision.

In *Your Bus Lines v. NLRC*,[44] this Court excused the appellant for its failure to post the bond because it relied on the notice of the decision which, while stating the requirements for perfecting an appeal, did not mention that a bond must be filed.

Also, in *Blancaflor v. NLRC*,[45] it was noted that the failure of the appellant to post a bond was in part due to the

failure of the Labor Arbiter to state the exact amount of back wages and separation pay due; thus, no basis existed for the computation of the amount of the bond to be filed.

Further, in *UERM-Memorial Medical Center v. NLRC*,^[46] the appellant-employer was allowed to post a property bond in lieu of a cash or surety bond. In that case, the judgment involved more than P17M and its precipitate execution could adversely affect the existence of the employer medical center. It also appeared that the real property bond was worth more than P102M, hence, the posting of a real property bond was sufficient compliance with the requirements of Art. 223.

There is no dispute regarding the instances where a more compassionate interpretation of the rules may be allowed. These instances, however, call for the existence of meritorious grounds and substantial compliance or at the very least, a willingness to pay by posting a partial bond.^[47]

In the instant case, petitioner has not by any overt act shown substantial compliance or exhibited intent to comply therewith in view of its absolute failure to post a bond during the pendency of the appeal. There is likewise no satisfactory showing of the existence of meritorious grounds, allowed by law and jurisprudence to justify a departure from the effect of non-compliance. Therefore, guided by the above doctrines, the Court is left with no alternative but to state that the failure of petitioner to post the requisite appeal bond resulted in the non-perfection of its appeal, and consequently, the finality of the Labor Arbiter's decision.

Considering the foregoing, the issues raised by petitioner deserve scant consideration. However, if only to satisfy petitioner and erase doubts on the validity of the Labor Arbiter's decision, the Court will deal with the issues raised herein.

On whether or not the service of the NLRC Order to the counsel of petitioner is valid, the answer is in the affirmative. Sections 4 and 5, Rule III of the Rules of Procedure state:

Section 4. Service of notices and resolutions.--a) Notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; x x x Provided further, That in cases of decision and final awards, copies thereof shall be served on both the parties and their counsel: x x x

x x x."

Section 5. Proof and completeness of service.-- The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent. x x x

The acting postmaster of the Makati Post Office certified that the registered mail was sent to the address of petitioner's counsel and was accordingly received in said office. Said certification was based on the registry receipt and the record of the post office duly accomplished in the ordinary course of business. The postmaster certified not only as to the sending of the registered mail but also as to the name of the carrier of the mail; the receipt thereof by the recipient at the correct address; and the name of the person who received it.^[48] Notwithstanding the certification, petitioner merely offered an allegation of non-receipt. It is a legal presumption, based on wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial (and quasi-judicial) tribunal are regular and valid, and that judicial (quasi-judicial) acts and duties have been and will be duly and properly performed.^[49] The burden of proving the irregularity in official conduct, if any, is on the part of petitioner who in this case clearly failed to discharge the same. Considering the sufficiency of the postmaster's certification, the CA did not err in applying the presumption of receipt in the ordinary course of mail.

Now, on the validity of respondents' dismissal on the ground of abandonment.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty; hence, a just cause for termination of employment by the employer under Article 282 of the Labor Code, which enumerates the just causes for termination by the employer.[50] Two factors must be present in order to constitute an abandonment: (a) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship. The second is the more determinative factor and is manifested by overt acts from which it may be deduced that the employee has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified. Mere absence from work does not imply abandonment.[51]

It is apparent from the records that respondents did not abandon their work. After their absence both Flores and Rallama reported back for work, thus negating any intent on their part to sever their employer-employee relationship with petitioner. As aptly held by the CA:

It should be noted that respondent Flores worked for almost one month after the expiration of his leave while respondent Rallama reported back for work after being hospitalized but was simply told that he was on AWOL and was no longer allowed to work. Abandonment is further belied by the filing of this complaint x x x.[52]

WHEREFORE, premises considered, the petition is hereby DENIED. The Decision of the Court of Appeals dated December 11, 2000 and its Resolution dated April 24, 2001 are AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo, pp. 15-22.

[2] Id. at 29.

[3] Id. at 16.

[4] Records, pp. 20-22, 23-29.

[5] Id. at 20-21.

[6] Id. at 25-26.

[7] Id. at 16-26.

[8] Id. at 27-29.

[9] Id. at 30-34.

[10] Id. at 33-34.

[11] Id. at 36-38, 39-47.

[12] Id. at 49-50.

[13] Id. at 50.

[14] Id. at 48-52.

[15] Id. at 50-51.

[16] Id. at 53-56.

[17] Id. at 57.

[18] Id. at 130.

[19] Id. at 58.

[20] Id. at 59.

[21] Id. at 60-63.

[22] Id. at 64-71.

[23] Id. at 72.

[24] Id. at 73-78.

[25] Id. at 73-75.

[26] Id. at 80-81.

[27] Id. at 82-87.

[28] Id. at 89-92.

[29] Id. at 123-131.

[30] Id. at 147.

[31] Rollo, pp. 15-23.

[32] Id. at 22.

[33] Id. at 21-22.

[34] Id. at 24-27.

[35] Id. at 29.

[36] Id. at 213-214.

[37] Id. at 219-222.

[38] Id. at 7.

[39] Promulgated on August 31, 1990, the Rules applicable at that time.

[40] *Stolt-Nielsen Marine Services, Inc. v. NLRC*, G.R. No. 147623, December 13, 2005, 477 SCRA 516; *Philippine Scout Veterans Security and Investigation Agency v. Pascua*, G.R. No. 154002, August 19, 2005, 467 SCRA 441; *Ong v. Court of Appeals*, G.R. No. 152494, September 22, 2004, 438 SCRA 668.

[41] *Stolt-Nielsen Marine Services, Inc. v. NLRC*, *supra*.

[42] *Balagtas Multi-Purpose Cooperative, Inc. v. Court of Appeals*, G.R. No. 159268, October 27, 2006.

[43] 352 Phil. 1013 (1998).

[44] G.R. No. 93381, September 28, 1990, 190 SCRA 160.

[45]G.R. No. 101013, February 2, 1993, 218 SCRA 366.

[46] 336 Phil. 66 (1997).

[47] Ciudad Fernandina v. Court of Appeals, G.R. No. 166594, July 20, 2006, 495 SCRA 807.

[48]Rollo, pp. 218-219.

[49]Masagana Concrete Products v. NLRC, 372 Phil. 459 (1999).

[50] Remington Industrial Sales Crporation v. Castaneda, G.R. Nos. 169295-96, November 20, 2006.

[51] Victory Liner, Inc. v. Race, G.R. No. 164820, March 28, 2007; Remington Industrial Sales Corporation v. Castaneda, Id.; Micro Sales Operation Network v. NLRC, G.R. No. 155279, October 11, 2005, 472 SCRA 328.

[52]Rollo, p. 20.

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