

SAMEER OVERSEAS PLACEMENT AGENCY, INC., PETITIONER, VS. NOE LEVANTINO, IDG HUMAN RESOURCES, INC., (FORMERLY IDG TRADING AND GENERAL SERVICES, INC.), RESPONDENTS.

G.R. NO. 153942. June 29, 2005

Ponente: TINGA, J.

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TINGA, J.:

Petitioner Sameer Overseas Placement Agency, Inc. (Sameer) is engaged in the recruitment and placement of Philippine Overseas Contract Workers, and duly licensed for that purpose by the Department of Labor and Employment and the Philippine Overseas Employment Administration (POEA).[1]

A complaint for illegal dismissal, underpayment of wages, and illegal deductions was filed by respondent Noe Levantino (Levantino). Hired and deployed by Sameer for and in behalf of its foreign principal, Arabian Fal Co., on 20 July 1994,[2] Levantino's contract provided that his office employment was for twelve (12) months and fixed his basic monthly salary at Two Hundred Seventy-Seven US Dollars (US\$277.00). However, upon his arrival at the job site on 21 July 1994, Levantino was made to sign another contract of employment, this time with the basic monthly salary of Six Hundred Seventy-Nine Saudi Rial (SR679.00), plus One Hundred Eighty Saudi Rial (SR180.00) as food allowance.

On 4 January 1995, barely six (6) months after the start of his employment, Levantino was terminated by the foreign employer and subsequently repatriated to the Philippines. He filed on 7 February 1995 the aforementioned complaint with the POEA.

Sameer filed a third-party complaint against IDG Human Resources, Inc. (IDG), alleging that IDG should be held liable for the claims of Levantino since Sameer's accreditation for foreign principal, Arabian Fal Co., had already been transferred to IDG pursuant to an affidavit of assumption of responsibility and quitclaims.[3]

The Labor Arbiter Jovencio Ll. Mayor, Jr., in a Decision dated 22 September 1997, ruled that Levantino was terminated for just or authorized cause, the employee having been unable to rebut the allegations raised against him of poor habits, disobedience of superiors, and low productivity.[4] He concluded, however, that Levantino was not paid his basic salary in accordance with his POEA approved contract of employment of Two Hundred Seventy-Seven US Dollars (US\$277.00), and illegal deductions were made by the foreign employer from the basic monthly salary for the food allowance. Thus, the Labor Arbiter held that Levantino was entitled to a wage differential of Five Hundred Seventy-Five US Dollars and Sixty Cents (US\$575.60), and attorney's fees of Fifty-Seven US Dollars and Fifty-Six Cents (US\$57.56). The Labor Arbiter likewise held that Sameer and IDG were jointly and severally liable to pay Levantino, citing the case of Mars International Manpower, Inc. v. NLRC.[5] The dispositive portion reads:

PREMISES CONSIDERED, respondents Sameer Overseas Placement Agency, Inc. and IDG Trading & General Services are hereby ordered to pay jointly and severally complainant herein the amount of SIX HUNDRED THIRTY-THREE US DOLLARS and 16/100 (US\$633.16) or its peso equivalent as discussed

above.

SO ORDERED.[6]

Having received a copy of the decision on 17 October 1997, Sameer had until 28 October 1997 to perfect the appeal, 27 October falling on a Sunday. It filed its notice of appeal and a memorandum of appeal on 27 October 1997, along with a motion for extension of time to file a surety-appeal bond, alleging that it was still arranging for the issuance of such with the bonding company. It was only on 3 November 1997 that it filed the appeal bond.[7] Thus, the National Labor Relations Commission (NLRC) First Division, in an Order dated 16 June 1998, dismissed the appeal for failure to perfect it within the ten (10)-day reglementary period. The Court of Appeals Sixteenth Division affirmed the dismissal by the NLRC; hence, the present petition.

Before this Court, Sameer argues that since it subsequently submitted the appeal bond, the filing of the bond should retroact to the date of the filing of the motion for reduction, which had been filed within the reglementary period to perfect the appeal. It characterizes the appeal bond requirement as procedural, and urges that the case be decided on the merits. It also claims that its late filing of the appeal bond does not damage or prejudice Levantino or the government, as its late filing complies with the purpose of the law to guarantee the monetary award in favor of the plaintiff once it becomes final and executory.[8]

These arguments aside, it is indisputable that the Labor Code is explicit in providing that the appeal from a decision of the Labor Arbiter must be perfected within ten (10) days, and that such appeal is perfected only upon the posting of a cash or surety bond.

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. . .

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 supplied.)

Contrary to Sameer's suggestion, the appeal bond requirement is not merely procedural but jurisdictional, for without it, the NLRC does not acquire jurisdiction over the appeal.[9] Applying the express provisions of the law, the NLRC did not acquire jurisdiction over Sameer's appeal within the ten (10)-day reglementary period to perfect the appeal, for the appeal bond was filed six (6) days after the lapse of the reglementary period.

True enough, the Court has recognized leeway in the relaxation of this requirement, and even the NLRC Rules of Procedure authorizes, upon justifiable causes, the reduction of the appeal bond. Yet the overpowering legislative intent of Article 223 remains a strict application of the appeal bond requirement as a requisite for the perfection of an appeal and as a burden imposed on the employer. As the Court held recently, thus:

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by 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.[10]

Even the NLRC Rules of Procedure plainly expects that the employer submit the entire cash or surety bond within the reglementary period, even if there may be cause for its subsequent reduction, to wit:

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 requisite aforestated shall not stop the running of the period for perfecting an appeal.

. . . .

Section 6. Bond. – In case the decision of the Labor Arbiter, the 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, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.[11](Emphasis supplied.)

The provisions being as they are, we cannot fault the NLRC with grave abuse of discretion, or the Court of Appeals with reversible error of law in refusing to take cognizance of Sameer's belatedly perfected appeal.

There is nothing peculiar or extraordinary in the factual milieu that obtains reversal of the assailed decisions. Had Sameer been inclined to diligently comply with the requisites of appeal, as plainly stated in the Labor Code, it could have, as early as 17 October 1998, undertaken steps to procure the appeal bond. There is nothing in the period between 17 October 1998 and 28 October 1998 that suggests innate difficulty in obtaining the said bond. In fact, Sameer, who submitted the bond only on 3 November 1998, probably incurred further delay in submitting the appeal bond due to the early November holidays, though such fact is of no moment considering that these holidays came only after the lapse of the reglementary period.

Nor should have there been eminent difficulty in obtaining the said bond, considering that the amount of the monetary judgment, Six Hundred Thirty-Three U.S. Dollars and Sixteen Cents (US\$633.16), is relatively miniscule. It is not even expected that Sameer itself expends from its own funds the entire amount of the monetary judgment for the appeal bond. As the Court noted in *Biogenetics Marketing and Research Corporation v. NLRC*:[12]

. . . The mandatory filing of a bond for the perfection of an appeal is evident from the aforequoted provision that the appeal may be perfected only upon the posting of cash or surety bond. It is not an excuse that the over P2 million award is too much for a small business enterprise, like the petitioner company, to shoulder. The law does not require its outright payment, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is a moderate and reasonable sum for the premium for such bond.[13] (Emphasis supplied.)

Sameer stressed that it already had a total of Three Hundred Thousand Pesos (P300,000.00) posted as bonds with the POEA, in conformity with POEA Rules and Regulations. Yet to the Court's mind, the appellate court's comments on this point are sufficiently responsive:

Petitioner lays emphasis on its compliance with the POEA Rules and Regulations with regard to the posting of the cash and surety bonds and escrow deposit which amounted to P350,000.00. However, while it is true that the cash and surety bonds and the money placed in escrow are supposed to guarantee the payment of all valid and legal claims against the employer, the POEA can also go against these bonds for violations by the recruiter of the conditions of its license, the provisions of the Labor Code and its implementing rules, E.O. 247 (reorganizing the POEA) and the POEA Rules, as well as the settlement of other liabilities the recruiter may incur. Thus, the bonds posted with the POEA are not limited to answer for monetary awards to employees whose contracts of employment have been violated.[14]

The remaining arguments posed by Sameer pertain to the merits of the case, i.e., on whether it could be held jointly and severally liable with IDG considering that it was no longer the agent of the foreign employer. We do not wish to belabor any discussion on this point, considering that it has passed evaluation on three prior levels of review; but as with the Court of Appeals, we agree that such ruling is supported by jurisprudence. In support of the holding on Sameer's liability, the Labor Arbiter cited the Court's ruling in *ABD Overseas Manpower Corp. v. NLRC*.^[15] We have reviewed the citation, and find its application to the present case seemly. The Court therein accorded premium to the fact that it had been the previous local recruitment agency of the foreign employer who had contracted with the complainant therein, and that the POEA Rules on the assumption by the transferee agency of the contractual obligations of the principal cannot be used as a shield against liability. Similarly in this case, it was Sameer, not IDG, which had contracted with Levantino, and guaranteed the wages which were not eventually paid to the employer, and it does not run contrary to justice that Sameer be absolved from liability to Levantino.

However, whatever merit Sameer's case may have had, it cannot escape the fact that it inexcusably failed to perfect its appeal within the mandated reglementary period, and thus should suffer the consequences for such failure. We cannot respond with alacrity to every clamor of injustice and bend the rules to placate a vociferous protestor crying and claiming to be a victim of a wrong. It is only in highly meritorious cases that this Court opts not to strictly apply the rules and thus prevent a grave injustice from being done.^[16] This is not one of those cases.

WHEREFORE, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, p. 3.

[2] *Id.* at 29.

[3] *Id.* at 29.

[4] *Id.* at 51-52. The Labor Arbiter considered a fax message from Arabian Fal Co. to IDG enumerating such complaints against Levantino.

[5] G.R. No. 118748, 17 July 1996.

[6] NLRC Decision, *id.* at 54.

[7] *Id.* at 56-57.

[8] Rollo, pp. 10-12.

[9] See *Unicane Workers Union-CLUP v. NLRC*, 330 Phil. 291, 301 (1996); *Viron Garments Mftg., Co., Inc. v. NLRC*, G.R. No. 97357, 18 March 1992, 207 SCRA 339, 342. See also *Quiambao v. NLRC*, 324 Phil. 455, 461 (1996); *UERM-Memorial Medical Center v. NLRC*, 336 Phil. 66, 70(1997).

[10] *Ong v. Dabac*, G.R. No. 152494, 22 September 2004, 438 SCRA 668, 677.

[11] Notwithstanding subsequent amendments to the Rules of Procedure, the cited provisions from Rule VI remain unchanged from the time petitioners filed their appeal in 1999 up until the present day.

[12] 372 Phil. 653 (1999).

[13] *Id.* at 661.

[14] *Rollo*, pp. 32-33.

[15] G.R. No. 117056, 24 February 1998, 286 SCRA 455. Incorrectly cited by the Labor Arbiter as *Mars International Manpower, Inc. v. NLRC*, G.R. No. 118748, 17 July 1996. See *Rollo*, p. 54.

[16] *Corporate Inn Hotel v. Lizo*, G.R. No. G.R. No. 148279, 27 May 2004, 429 SCRA 573, 578 citing *Sublay v. NLRC*, G.R. No. 130104, 31 January 2000, 324 SCRA 188, 194.

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