

**LOLITA A. LOPEZ, JOSECITO M. DE LA VEGA, MANUEL ANTIOQUIA
ELMER G. HILAUS, LUCIA B. MONTEMAYOR, CAROLINA ESPIRITU,
LEONARDO FORTE, HELEN NATIVIDAD, ROGER C. OBINSA, CARLOS
C. AS...**

G.R. No. 164032. January 19, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before us is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the 18 February 2004 decision[2] and the 3 June 2004 resolution[3] of the Court of Appeals in CA-GR SP No. 78245.

The factual antecedents of the case follow.

Claiming that it is a registered independent labor organization and the incumbent collective bargaining agent of Quezon City Sports Club (QCSC), the Kasapiang Manggagawa sa Quezon City Sports Club (union) filed a complaint for unfair labor practice[4] against QCSC on 12 November 1997, alleging that the latter committed the following unfair labor practices:

- Interference with, restraining and/or coercing employees, particularly members of the incumbent union in their exercise of their rights to self- organization;
- Discrimination in regards to payment of wages, hours of work and other terms and conditions of employment in order to discourage continued membership to the incumbent union;
- Violation of several economic provisions of the CBA such as, across the board implementation of any legislated wage increases, non-payment of salaries and wages for [the] period already worked, and non-payment of overtime pay to some employees and other related economic benefits which will be specifically enunciated by the petitioner in the succeeding pleadings to be filed.[5]

The Union averred that it was ordered to submit a new information sheet. [6] It immediately wrote a letter addressed to the general manager, Angel Sadang, to inquire about the information sheet, only to be insulted by the latter. The members of the union were not paid their salaries on 30 June 1997.[7] A board member, Antonio Chua allegedly harassed one of the employees and told him not to join the strike and even promised a promotion.[8] On 4 July 1997, the union wrote a letter to the management for the release of the members' salaries for the period 16-30 June 1997, implementation of Wage Order No. 5, and granting of wage increases mandated by the Collective Bargaining Agreement (CBA).[9] When its letter went unanswered, the union filed a notice of strike on 10 July 1997 for violation of Article 248 (a)(c)(e) of the Labor Code, nonpayment of overtime pay, refusal to hear its grievances, and malicious refusal to comply with the economic provisions of the CBA.[10] After conducting a strike vote,[11] it staged a strike on 12 August 1997. On 16 August 1997, the QCSC placed some of its employees under temporary lay-off status due to redundancy.[12] It appears that on 22 December 1997, QCSC also filed a

petition for cancellation of registration against the union.[13]

QCSC, for its part, contended that the union was not a legitimate labor union as it had a pending complaint for cancellation of certificate of registration; that there was no valid CBA; that it had not committed any unfair labor practice; and that the union had staged an illegal strike.[14]

On 29 December 1998, Labor Arbiter Joel S. Lustria promulgated a decision [15] (Lustria decision) finding QCSC guilty of unfair labor practice and ordering it to pay the affected employees their separation pay, backwages, and salary increase, totaling P27,504,864.46.[16] QCSC appealed from the labor arbiter's decision.[17] In turn, the union filed a motion to dismiss the appeal for non-perfection due to failure to post the appeal bond.[18]

QCSC filed a motion for reduction of the appeal bond to FOUR MILLION PESOS (P4,000,000.00).[19]

On 4 January 2000, QCSC filed a supplement to its appeal, citing a decision (Dinopol decision) dated 9 October 1998 of Labor Arbiter Ernesto Dinopol declaring the strike of the union illegal. The dispositive portion reads:

WHEREFORE, in view of the Union's having violated the no-strike- no-lockout provision of the Collective Bargaining Agreement, the strike it staged on August 12, 1998 is hereby declared illegal and consequently, pursuant to Article 264 of the Labor Code, the individual respondents, namely: RONILO C. LEE, EDUARDO V. SANTIA, CECILLE C. PANGAN, ROMEO M. MORGA, GENARO C. BANDO AND ALEX J. SANTIAGO, who admitted in paragraph 1 of their position paper that they are officers/members of the complaining Union are hereby declared to have lost their employment status.

The claim for damages is hereby DISMISSED for lack of merit.

SO ORDERED.[20]

Meanwhile, the National Labor Relations Commission (NLRC)[21] ordered the posting of an additional SIX MILLION PESO (P6,000,000.00)-bond. And on 1 August 2001, it[22] rendered a decision granting the appeal and reversing the Lustria decision. It ratiocinated:

We are now called upon to harmonize two conflicting decisions rendered by two different Labor Arbiters, as discussed above, in order to maintain uniformity of our Decision. Both Decisions involve the same rights and interests of the same contending parties.

From all indications, Labor Arbiter Lustria was apparently of the impression that herein individual complainants still retain their employment status when he decided this case. He was unaware, presumably, of the existence of the Decision rendered in NLRC CASE NO. 00-09-0667-97 which has already attained finality when he issued his decision granting the monetary claims of herein individual complainants.

Be that as it may, We are of the view that the Decision in NLRC CASE NO. 00-09-0663-97 must perforce prevail over the appealed Decision and the latter to yield to it. It must remain undisturbed following the established doctrine on primacy and finality of decision. It bears stressing at this juncture, at the risk of being repetitious, that in NLRC Case No. 00-09-0663-97 the employment status of herein individual complainants was already declared lost or forfeited as of August 12, 1998, the day the illegal strike was staged. From then on, they ceased to be employees of respondent Sports Club. The forfeiture of their employment status carries with it the extinction of their right to demand for and be entitled to the economic benefits accorded them by law and the existing CBA. For, such right is premised on the fact of employment.

Such being the case, it follows that the assailed decision did not create a demandable right or obligation, and therefore, any monetary award granted in their favor in the appealed decision pursuant to such right must necessarily be declared as wanting in legal basis, devoid of any force and effect. Compliance therewith can not be compelled as the respondent-appellant has nothing to comply.[23]

In said decision, the NLRC noted that forty-three (43) complainants had already entered into an amicable settlement with QCSC.

The other complainants (petitioners) meanwhile filed a motion for reconsideration which was denied by the NLRC. Thus, they filed a petition for certiorari under Rule 65 before the Court of Appeals. The petition was dismissed for lack of merit. Petitioners assailed the ruling of the NLRC for having been decided with grave abuse of discretion on two grounds: first, when it entertained the appeal despite the failure of respondent to post an appeal bond within the reglementary period and in ordering the reduction of the amount of the appeal bond to P10,000,000.00; and second, when it reversed the Lustria decision and upheld the Dinopol decision.

Relying heavily on the NLRC decision, the Court of Appeals dismissed the petition for certiorari.

In the instant petition, petitioners insist that the requirement for perfecting an appeal before the NLRC had not been met because under the Lustria decision, QCSC was ordered to pay the sum of P25,004,442.22 but it merely posted P4,000,000.00 and filed a motion for reduction of the bond. Moreover, QCSC failed to provide a sufficient justification in support of its motion to reduce the bond. On the substantive matter, petitioners once again challenge the ruling of the NLRC in declaring them to have lost their employment contrary to the Dinopol decision which only affected a few of the employees who were union members. Participation in an illegal strike, according to petitioners, does not automatically result in termination. Likewise, they maintain that the award of backwages in the Lustria decision was grounded on the lay-offs effected by QCSC, which are considered constructive dismissals. Furthermore, petitioners assail the NLRC decision when it avoided giving a definitive ruling on the charge of unfair labor practice. They also counter that the labor arbiter had jurisdiction over the money claims pertaining to wage orders and increases mandated by the CBA in the absence of a valid grievance machinery and for gross violation of the CBA, which is considered an unfair labor practice.

This petition essentially presents two legal questions. First, do the simultaneous filing of the motion to reduce the appeal bond and posting of the reduced amount of bond within the reglementary period for appeal constitute substantial compliance with Article 223 of the Labor Code?

At the outset, it should be stressed that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[24]

Article 223 of the Labor Code partly provides that:

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. Such appeal may be entertained only on any of the following grounds:

- If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- If made purely on questions of law; and
- If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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.

Likewise, Sections 4(a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, provide:

SECTION 4. 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 verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal in three (3) legibly typewritten copies 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, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period of perfecting an appeal.

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 cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond.[25]

Thus, the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed 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 unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and 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 compulsory 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 used, then there is no room for construction. The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the labor arbiter final and executory. This requirement is 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 is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[26]

However, Section 6 of the New Rules of Procedure of the NLRC also mandates, among others, that no motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award. Hence, the NLRC has the full discretion to grant or deny the motion to reduce the amount of the appeal bond.[27]

In addition, while the bond requirement on appeals involving a monetary award has been relaxed in certain cases,

this can only be done where there was substantial compliance with the Rules; or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond.[28]

This rule was given a liberal interpretation by this Court in *Nicol v. Footjoy Industrial Corporation*.^[29] In said case, Footjoy Industrial Corporation was sued by its employees for illegal dismissal. The Labor Arbiter declared the employees as having been constructively terminated and ordered Footjoy Industrial Corporation to pay wage differentials, backwages and attorney's fees totaling P51,956,314.00. Footjoy Industrial Corporation appealed to the NLRC and moved to reduce its appeal bond to P10,000,000.00. The NLRC, however, denied Footjoy Industrial Corporation's motion and later dismissed its appeal. The Court of Appeals reversed the NLRC. This Court through the Second Division ruled that the bond requirement on appeals involving monetary awards had been and could be relaxed in meritorious cases such as: (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.^[30]

Applying these jurisprudential guidelines, we find and hold that the NLRC did not err in reducing the amount of the appeal bond and considering the appeal as having been filed within the reglementary period. As correctly observed by the NLRC:

Since, in its Order of 29 February 2000, the Commission [with former Chairman Rogelio I. Rayala acting as Ponente] granted the motion to reduce bond, and in fact, directed respondent-appellant "to post an additional cash or surety bond in the amount of Six Million (P6,000,000.00) a matter which respondent complied with on March 21, 2000, it then is clear that respondent's appeal was perfected on time. Complainants-movants' questioning them anew in their motion for reconsideration is quite futile because under Article 223 of the Labor Code, our aforesaid 29 February 2000 Order obtained finality 10 days from complainant Union's receipt thereof, a fact that is not being disputed here.^[31] (citations omitted)

Moreover, the posting of the amount of P4,000,000.00 simultaneously with the filing of the motion to reduce the bond to that amount, as well as the filing of the memorandum of appeal, all within the reglementary period, altogether constitute substantial compliance with the Rules.

The NLRC's favorable ruling on QCSC's motion to reduce the appeal bond should be accorded due weight and respect absent any indication of grave error.

The second legal question deals with the validity of the NLRC decision, as affirmed by the Court of Appeals. We rule in favor of petitioners.

The assailed Dinopol decision involves a complaint for illegal strike filed by QCSC on the ground of a "no-strike no lockout" provision in the CBA. The challenged decision was rendered in accordance with law and is supported by factual evidence on record. Indeed, the grounds for declaring the strike, as alleged by the Union, were not substantially proven. In the notice of strike, the union did not state in particular the acts which allegedly constitute unfair labor practice. Moreover, by virtue of the "no-strike no lockout" provision in the CBA, the union was prohibited from staging an economic strike, i.e., to force wage or other concessions from the employer which he is not required by law to grant. However, it should be noted that while the strike declared by the union was held illegal, only the union officers were declared as having lost their employment status. In effect, there was a ruling only with respect to some union members while the status of all others had remained disputed.

Then came the Lustria decision, issued two (2) months later, finding that QCSC had committed unfair labor practices against the union and accordingly granting backwages and separation pay in favor of 112 employees.

The Lustria decision emanated from a complaint for unfair labor practice against QCSC. Culled from the union's pleadings were the specific acts committed by QCSC, such as:

- Insulting of the Union President as evidenced by the Salaysay of Ma. Cecilia Pangan;
- Cuddling and treating the minority union with favor, such as paying their salaries/wages fully and ahead of the incumbent union and as if it were the incumbent bargaining agents;
- Discouraging the members of the incumbent union from continuing their membership with the incumbent union as evidenced by the Pinagsamang Salaysay of Ramiro Espinosa and Ronaldo Q. Lim;
- Bribing union member and promising promotion if he will not join the strike as evidenced by the Salaysay of Bernard Delta;
- Transferring union members to another job description;
- Replacing them with members of minority union evidenced by Leslie Tamayo's Salaysay;
- Subjecting one union member to a very tense confrontation in the General Manager's Office after she commented during the NCMB conference that the 201 file of the employees are intact, resulting to her being taken to the hospital for nervous breakdown; and
- Requiring the union members to submit another information sheet, and failure to do so would mean no payment of their June 16-30, 1997 salary.[32]

Applying the totality of the conduct doctrine, Labor Arbiter Lustria held that QCSC had committed unfair labor practices.

There is no conflict between the Dinopol and the Lustria decisions. While both rulings involve the same parties and same issues, there is a distinction between the remedies sought by the parties in these two cases. In the Dinopol decision, it was QCSC which filed a petition to declare the illegality of the 12 August 1997 strike by the union. The consequence of the declaration of an illegal strike is termination from employment, which the Labor Arbiter did so rule in said case. However, not all union members were terminated. In fact, only a few union officers were validly dismissed in accordance with Article 264 of the Labor Code. Corollarily, the other union members who had merely participated in the strike but had not committed any illegal acts were not dismissed from employment. Hence, the NLRC erred in declaring the employment status of all employees as having been lost or forfeited by virtue of the Dinopol decision.

On the other hand, the Lustria decision involved the unfair labor practices alleged by the union with particularity. In said case, Labor Arbiter Lustria sided with the Union and found QCSC guilty of such practices. As a consequence, the affected employees were granted backwages and separation pay. The grant of backwages and separation pay however was not premised on the declaration of the illegality of the strike but on the finding that these affected employees were constructively dismissed from work, as evidenced by the layoffs effected by the company. As explained in the Lustria decision:

Considering that the temporary lay-off of listed employees effected by the respondents on 16 August 1997 was without documentary evidence to determine its validity, it is our considered view and we so hold that said employees were constructively dismissed without just or authorized cause and observance of due process. This opinion finds support from the hard and cold fact of absence of prior notice, report with the regional office of the Department of Labor and Employment having jurisdiction over the area and they remain under lay-off status of employment. In conclusion, they are entitled to backwages and separation pay in lieu of reinstatement as prayed. [33]

Clearly, there are two separate decisions issued by two different labor arbiters involving the same parties and interests. Considering that the remedies sought by the parties in each case differ, these two rulings may co-exist.

Therefore, with respect to petitioners and union officers Alex J. Santiago, Ma. Cecilia Pangan, Ronilo E. Lee, and Genaro Bando, who apparently had been substituted by present petitioner Teresita Bando, the Dinopol decision declaring them as having lost their employment status still stands.

To recapitulate, the NLRC erred in setting aside the Lustria decision, as well as in deleting the award of backwages and separation pay, despite the finding that the affected employees had been constructively dismissed.

Based on the foregoing, the Lustria decision should be upheld and therefore reinstated except as regards the four petitioners.

WHEREFORE, the petition is GRANTED IN PART. The decision of the Court of Appeals affirming the NLRC ruling is REVERSED AND SET ASIDE. The decision of Labor Arbiter Lustria dated 29 December 1998 in NLRC Case No. 00-11-08181-97 granting the monetary claims of petitioners is REINSTATED, except with respect to petitioners Alex J. Santiago, Ma. Cecilia Pangan, Ronilo E. Lee and Teresita Bando.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Chico-Nazario[*], and Brion, JJ., concur.

*As replacement of Justice Presbitero J. Velasco, Jr. per Administrative Circular No. 84-2007.

[1] Rollo, pp. 16-53.

[2] Id. at 54-66; Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong.

[3] Id. at 67.

[4] Records (Vol. 1), pp. 1-4.

[5] Rollo, p. 131.

[6] Id. at 136.

[7] Id. at 137.

[8] Id. at 138.

[9] Records (Vol. 1), pp. 136-137.

[10] Id. at 142.

[11] Id. at 144-145.

[12] Records (Vol II), pp. 346-347, 358-359.

[13] Id. at 343-345.

[14] CA rollo, pp. 335-340.

[15] Rollo, pp. 175-192.

[16] Rollo, p. 192.

[17] Id. at 193-199.

[18] Id. at 204.

[19] Id. at 206.

[20] Id. at 219.

[21] Presided by Commissioner Rogelio I. Rayala and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

[22] Presided by Commissioner Roy V. Señeres, and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

[23] CA rollo, pp. 43-45.

[24] Colby Construction and Management Corporation v. National Labor Relations Commission, G.R. No. 170099, 28 November 2007, 539 SCRA 159.

[25] Ciudad Fernandina Food Corporation Employees Union-Associate Labor Unions v. Court of Appeals, G.R. No. 166594, 20 July 2006, 495 SCRA 807, 817.

[26] Accessories Specialist Inc. v. Alabanza, G.R. No. 168985, 23 July 2008.

[27] Id.

[28] Colby Construction v. NLRC, G.R. No. 170099, 28 November 2007, 539 SCRA 159.

[29] G.R. No. 159372, 27 July 2007, 528 SCRA 300.

[30] Id. at 318.

[31] Rollo, p. 62.

[32] CA rollo, p. 115.

[33] CA rollo, p. 121.

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