

**ROOS INDUSTRIAL CONSTRUCTION, INC. and OSCAR TOCMO,
Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and JOSE
MARTILLOS, Respondents.**

G.R. No. 172409. February 04, 2008

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TINGA, J.:

In this Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioners Roos Industrial Construction, Inc. and Oscar Tocmo assail the Court of Appeals'[2] Decision dated 12 January 2006 in C.A. G.R. SP No. 87572 and its Resolution[3] dated 10 April 2006 denying their Motion for Reconsideration.[4]

The following are the antecedents.

On 9 April 2002, private respondent Jose Martillos (respondent) filed a complaint against petitioners for illegal dismissal and money claims such as the payment of separation pay in lieu of reinstatement plus full backwages, service incentive leave, 13[th] month pay, litigation expenses, underpayment of holiday pay and other equitable reliefs before the National Capital Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC NCR South Sector Case No. 30-04-01856-02.

Respondent alleged that he had been hired as a driver-mechanic sometime in 1988 but was not made to sign any employment contract by petitioners. As driver mechanic, respondent was assigned to work at Carmona, Cavite and he worked daily from 7:00 a.m. to 10:00 p.m. at the rate of P200.00 a day. He was also required to work during legal holidays but was only paid an additional 30% holiday pay. He likewise claimed that he had not been paid service incentive leave and 13th month pay during the entire course of his employment. On 16 March 2002, his employment was allegedly terminated without due process.[5]

Petitioners denied respondent's allegations. They contended that respondent had been hired on several occasions as a project employee and that his employment was coterminous with the duration of the projects. They also maintained that respondent was fully aware of this arrangement. Considering that respondent's employment had been validly terminated after the completion of the projects, petitioners concluded that he is not entitled to separation pay and other monetary claims, even attorney's fees.[6]

The Labor Arbiter ruled that respondent had been illegally dismissed after finding that he had acquired the status of a regular employee as he was hired as a driver with little interruption from one project to another, a task which is necessary to the usual trade of his employer.[7] The Labor Arbiter pertinently stated as follows:

x x x If it were true that complainant was hired as project employee, then there should have been project employment contracts specifying the project for which complainant's services were hired, as well as the duration of the project as required in Art. 280 of the Labor Code. As there were four (4) projects where complainant was allegedly assigned, there should have been the equal number of project employment contracts executed by the complainant. Further, for every project termination, there should have been the equal number of termination report submitted to the Department of Labor and Employment. However, the record shows that there is only one termination [report] submitted to DOLE pertaining to the last project assignment of

complainant in Carmona, Cavite.

In the absence of said project employment contracts and the corresponding Termination Report to DOLE at every project termination, the inevitable conclusion is that the complainant was a regular employee of the respondents.

In the case of *Maraguinot, Jr. v. NLRC*, 284 SCRA 539, 556 [1998], citing capital *Industrial Construction Group v. NLRC*, 221 SCRA 469, 473-474 [1993], it was ruled therein that a project employee may acquire the status of a regular employee when the following concurs: (1) there is a continuous rehiring of project employees even after the cessation of a project; and (2) the tasks performed by the alleged “project employee” are vital, necessary and indispensable to the usual business or trade of the employer. Both factors are present in the instant case. Thus, even granting that complainant was hired as a project employee, he eventually became a regular employee as there was a continuous rehiring of this services.

x x x

In the instant case, apart from the fact that complainant was not made to sign any project employment contract x x x he was successively transferred from one project after another, and he was made to perform the same kind of work as driver.[8]

The Labor Arbiter ordered petitioners to pay respondent the aggregate sum of P224,647.17 representing backwages, separation pay, salary differential, holiday pay, service incentive leave pay and 13th month pay.[9]

Petitioners received a copy of the Labor Arbiter’s decision on 17 December 2003. On 29 December 2003, the last day of the reglementary period for perfecting an appeal, petitioners filed a Memorandum of Appeal[10] before the NLRC and paid the appeal fee. However, instead of posting the required cash or surety bond within the reglementary period, petitioners filed a Motion for Extension of Time to Submit/Post Surety Bond.[11] Petitioners stated that they could not post and submit the required surety bond as the signatories to the bond were on leave during the holiday season, and made a commitment to post and submit the surety bond on or before 6 January 2004. The NLRC did not act on the motion. Thereafter, on 6 January 2004, petitioners filed a surety bond equivalent to the award of the Labor Arbiter.[12]

In a Resolution[13] dated July 29, 2004, the Second Division of the NLRC dismissed petitioners’ appeal for lack of jurisdiction. The NLRC stressed that the bond is an indispensable requisite for the perfection of an appeal by the employer and that the perfection of an appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. In addition, the NLRC restated that its Rules of Procedure proscribes the filing of any motion for extension of the period within which to perfect an appeal. The NLRC summed up that considering that petitioners’ appeal had not been perfected, it had no jurisdiction to act on said appeal and the assailed decision, as a consequence, has become final and executory.[14] The NLRC likewise denied petitioners’ Motion for Reconsideration[15] for lack of merit in another Resolution.[16] On 11 November 2004, the NLRC issued an entry of judgment declaring its resolution final and executory as of 9 October 2004. On respondent’s motion, the Labor Arbiter ordered that the writ of execution be issued to enforce the award. On 26 January 2005, a writ of execution was issued.[17]

Petitioners elevated the dismissal of their appeal to the Court of Appeals by way of a special civil action of certiorari. They argued that the filing of the appeal bond evinced their willingness to comply and was in fact substantial compliance with the Rules. They likewise maintained that the NLRC gravely abused its discretion in failing to consider the meritorious grounds for their motion for extension of time to file the appeal bond. Lastly, petitioners contended that the NLRC gravely erred in issuing an entry of judgment as the assailed resolution is still open for review.[18] On 12 January 2006, the Court of Appeals affirmed the challenged resolution of the

NLRC. Hence, the instant petition.

Before this Court, petitioners reiterate their previous assertions. They insist on the application of *Star Angel Handicraft v. National Labor Relations Commission, et al.*[19] where it was held that a motion for reduction of bond may be filed in lieu of the bond during the period for appeal. They aver that *Borja Estate v. Ballad*,[20] which underscored the importance of the filing of a cash or surety bond in the perfection of appeals in labor cases, had not been promulgated yet in 2003 when they filed their appeal. As such, the doctrine in *Borja* could not be given retroactive effect for to do so would prejudice and impair petitioners' right to appeal. Moreover, they point out that judicial decisions have no retroactive effect.[21]

The Court denies the petition.

The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision.[22] Article 223 of the Labor Code states:

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.

x x x

Contrary to petitioners' assertion, the appeal bond is not merely procedural but jurisdictional. Without said bond, the NLRC does not acquire jurisdiction over the appeal.[23] Indeed, non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[24] It must be stressed that there is no inherent right to an appeal in a labor case, as it arises solely from the grant of statute.[25]

Evidently, the NLRC did not acquire jurisdiction over petitioners' appeal within the ten (10)-day reglementary period to perfect the appeal as the appeal bond was filed eight (8) days after the last day thereof. Thus, the Court cannot ascribe grave abuse of discretion to the NLRC or error to the Court of Appeals in refusing to take cognizance of petitioners' belated appeal.

While indeed the Court has relaxed the application of this requirement in cases where the failure to comply with the requirement was justified or where there was substantial compliance with the rules,[26] the overpowering legislative intent of Article 223 remains to be for 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.[27] As the Court held in the case of *Borja Estate v. Ballad*: [28]

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 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 considered completed. The law however 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 of such bond.[29]

Moreover, no exceptional circumstances obtain in the case at bar which would warrant a relaxation of the bond requirement as a condition for perfecting the appeal. 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[30] and this is not one of those cases.

In addition, petitioners cannot take refuge behind the Court's ruling in *Star Angel*. Pertinently, the Court stated in *Computer Innovations Center v. National Labor Relations Commission*:^[31]

Moreover, the reference in *Star Angel* to the distinction between the period to file the appeal and to perfect the appeal has been pointedly made only once by this Court in *Gensoli v. NLRC* thus, it has not acquired the sheen of venerability reserved for repeatedly-cited cases. The distinction, if any, is not particularly evident or material in the Labor Code; hence, the reluctance of the Court to adopt such doctrine. Moreover, the present provision in the NLRC Rules of Procedure, that "the filing of a motion to reduce bond shall not stop the running of the period to perfect appeal" flatly contradicts the notion expressed in *Star Angel* that there is a distinction between filing an appeal and perfecting an appeal.

Ultimately, the disposition of *Star Angel* was premised on the ruling that a motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time the said motion for reduction is resolved. The unduly stretched-out distinction between the period to file an appeal and to perfect an appeal was not material to the resolution of *Star Angel*, and thus could properly be considered as obiter dictum.^[32]

Lastly, the Court does not agree that the *Borja* doctrine should only be applied prospectively. In the first place, *Borja* is not a ground-breaking precedent as it is a reiteration, emphatic though, of long standing jurisprudence.^[33] It is well to recall too our pronouncement in *Senarillos v. Hermosisima, et al.*^[34] that the judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case.^[35]

At all events, the decision of the Labor Arbiter appears to be well-founded and petitioners' ill-starred appeal untenable.

WHEREFORE, the Petition is DENIED. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 12-49; dated 8 June 2006.

[2] Id. at 51-62; penned by Associate Justice Hakim S. Abdulwahid with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe.

[3] Id. at 64.

[4] Id. at 66-77.

[5] Id. at 158.

[6] Id. at 130-134.

[7] Id. at 53; NLRC Decision dated 30 October 2003.

[8] Id. at 169-170.

[9] Id. at 170-172.

[10]Id. at 173-188; dated 22 December 2003.

[11] Id. at 190-192.

[12]Id. at 53-54.

[13] Id. at 116-120.

[14]Id. at 118-119.

[15] Id. at 214-220; dated 13 August 2004.

[16] Id. at 121; Dated 31 August 2004.

[17] Id. at 56.

[18] Id. at 56-57.

[19]G.R. No. 108914, 20 September 1994, 236 SCRA 580.

[20]G.R. No. 152550, 8 June 2005, 459 SCRA 657.

[21] Rollo, pp. 35-37.

[22] Borja Estate v. Ballad, supra note 20 at 667.

[23] Sameer Overseas Placement Agency, Inc. v. Levantino, G.R. No. 153942, 29 June 2005, 462 SCRA 231, 235.

[24]Computer Innovations Center v. National Labor Relations Commission, G.R. No. 152410, 29 June 2005, 462 SCRA 193.

[25] Id.

[26] See Borja Estate v. Ballad, supra note 20 at 669-670.

[27] Sameer Overseas Placement Agency, Inc. v. Levantino, supra note 23 at 236.

[28]Supra note 19.

[29] Borja Estate v. Ballad, supra note 20 at 667-669.

[30] Sameer Overseas Placement Agency, Inc. v. Levantino, supra note 23 at 240.

[31] G.R. No. 152410, 29 June 2005, 462 SCRA 183.

[32] Id. at 192-193.

[33]Borja Estate v. Ballad, supra note 19 at 667, citing Catubay v. National Labor Relations Commission, 386 Phil. 648, 657; 330 SCRA 440, 447 (2000); Taberrah v. National Labor Relations Commission, 342 Phil. 394, 404; 276 SCRA 431, 440 (1997); Italian Village Restaurant v. National Labor Relations Commission, G.R. No. 95594, 11 March 1992, 207 SCRA 204, 208 (1992); Cabalan Pastulan Negrito Labor Association v. National Labor Relations Commission, 311 Phil. 744; 241 SCRA 643 (1995); Rosewood Processing, Inc. v. National Labor Relations Commission, 352 Phil. 1013, 1028; 290 SCRA 408, 420 (1998).

[34] 100 Phil. 501, 504 (1956).

[35] Columbia Pictures, Inc. v. Court of Appeals, 329 Phil. 875, 907-908.

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