

MINDANAO TIMES CORPORATION, PETITIONER, VS. MITCHEL R. CONFESOR, RESPONDENT.

G.R. No. 183417. February 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Via petition for review on certiorari, Mindanao Times Corporation (petitioner) seeks the reversal of the Court of Appeals Amended Decision[1] of November 29, 2007 and Resolution[2] of May 26, 2008 setting aside the National Labor Relations Commission (NLRC) Resolutions of November 30, 2004[3] and February 28, 2005[4] which reinstated the Decision of the Labor Arbiter.

Mitchel Confesor (respondent) was employed on May 1998 by petitioner, publisher of a newspaper of general circulation in Mindanao and Davao City. He became petitioner's Associate Editor in six months.

Respondent resigned from petitioner on June 17, 2003. On August 28, 2003, he filed a verified complaint[5] before the Labor Arbiter for payment of separation pay and pro-rated 13[th] month pay for 2003. He later amended his complaint[6] from one of money claims to illegal dismissal, averring that petitioner's President and Chief Operating Officer forced him to resign after he and Anthony Allada, a columnist, published separate articles which appeared in the June 14, 2003 issue of petitioner's newspaper accusing then Presidential Assistant Dominador "Boy" Zuño, Jr., Cong. Prospero Nograles and Cong. Corazon Malanyaon of being involved in some anomalies; and that he did resign as he was told that he would be entitled to separation pay and other benefits, but that the promised benefits were not forthcoming, hence, his filing of the complaint.

By Decision[7] of January 19, 2004, the Labor Arbiter, finding that respondent was constructively dismissed, ordered petitioner to pay him P71,909.77 representing backwages, as well as separation pay and 10% of the total award as attorney's fees.

Both parties appealed to the NLRC in Cagayan de Oro City, respondent contending that, in addition to the award granted by the Labor Arbiter, he was entitled to service incentive leave pay and moral and exemplary damages. Petitioner, on the other hand, questioned the Labor Arbiter's finding of constructive dismissal.

In compliance with the appeal bond requirement, petitioner deposited the amount of P71,909.77 with the United Coconut Planters Bank and surrendered to the NLRC the passbook[8] covering the deposit, along with a Deed of Assignment[9] it executed assigning the proceeds of the deposit in favor of respondent and authorizing the NLRC to release the same in the event that the Labor Arbiter's Decision becomes final and executory.

By Resolution of November 30, 2004, the NLRC reversed the ruling of the Labor Arbiter and dismissed respondent's complaint, holding that there was no constructive dismissal since respondent effectively resigned from his employment.

Respecting the issue raised by respondent of whether the bank deposit complied with the appeal bond requirement, the NLRC held that it was in substantial compliance with Sec. 6, Rule 6 of the NLRC Rules of

Procedure.

The Court of Appeals, to which respondent assailed the NLRC resolution via petition for certiorari, dismissed said petition by Decision[10] of November 13, 2006.

On respondent's Motion for Reconsideration, however, the appellate court, by the assailed Amended Decision of November 29, 2007, set aside the NLRC February 28, 2005 Resolution and reinstated the Labor Arbiter's Decision which it declared to have become final and executory.

In concluding that the Labor Arbiter's Decision had become final and executory, the appellate court held that the bank deposit of petitioner failed to substantially comply with the appeal bond requirement, noting that its Deed of Assignment "cannot be a substitute for the cash or surety bond contemplated under the Rules for the perfection of appeal" as the deed "does not ensure payment of the adjudged monetary award in case the appeal of [herein petitioner] fails."

Petitioner's motion and supplemental motion for reconsideration having been denied, it filed the present petition, insisting that its bank deposit and Deed of Assignment which it transmitted to the NLRC, along with the passbook, constituted substantial compliance with the rule on perfection of appeals.

The petition is bereft of merit.

Article 223[11] of the Labor Code provides that an appeal by the employer to the NLRC from a judgment of a labor arbiter which involves a monetary award may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from. Section 4 of the New Rules of Procedure of the NLRC echoes the provision, viz.:

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 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 for perfecting an appeal.

b) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his answer or reply within the said period may be construed as a waiver on his part to file the same.

c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding specific issues that were elevated on appeal. (emphasis supplied)

Further, Sec. 6 of the same Rules provides:

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.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

- a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.
- b) a copy of the indemnity agreement between the employer-appellant and bonding company; and
- c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

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. (emphasis and underscoring supplied)

Clearly, an appeal from a judgment as that involved in the present case is perfected "only" upon the posting of a cash or surety bond. *Accessories Specialist, Inc. v. Alabanza* enlightens:[12]

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the LA. The intention of the lawmakers to make the bond a mandatory 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 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 therewith renders the decision of the LA 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. (citations omitted, italics in the original; emphasis and underscoring supplied)

"Cash," means a sum of money; cash bail (the sense in which the term "cash bond" is used) is a sum of money posted by a criminal defendant to ensure his presence in court, used in place of a surety bond and real estate.[13]

In the present case, the Deed of Assignment, as well as the passbook, which petitioner submitted to the NLRC is neither a cash nor a surety bond. Petitioner's appeal to the NLRC was thus not duly perfected, thereby rendering the Labor Arbiter's Decision final and executory.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., concur.

[1] Rollo, pp. 29-38. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez.

[2] Id. at 40-41. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez.

[3] CA rollo, pp. 33-39. Penned by Commissioner Jovito C. Cagaanan and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.

[4] Id. at 46-47. Penned by Commissioner Jovito C. Cagaanan and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.

[5] Appendix "D" of Petition; rollo, p. 49.

[6] Appendix "E" of Petition; id. at 50.

[7] Id. at 52-60. Penned by Labor Arbiter Miriam A. Libron-Barroso.

[8] UCPB Savings Account No. 410-120469-0; NLRC records II, p. 68.

[9] Id. at 88-89.

[10] Rollo, pp. 142-155. Penned by Associate Justice Sixto C. Marella, Jr., and concurred in by Associate Justices Edgardo A. Camello and Mario V. Lopez.

[11] Article 223. Appeal. x 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.

[12] G.R. No. 168985, July 23, 2008.

[13] Black's Law Dictionary 216, 6[th] ed.

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