

LEPANTO CONSOLIDATED MINING CORPORATION, PETITIONER, VS. BELIO ICAO, RESPONDENT.*G.R. No. 196047. January 15, 2014*

Ponente: SERENO, C.J.

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This Petition under Rule 45 of the Rules of Court seeks to annul and set aside the Court of Appeals (CA) Decision dated 27 September 2010 and the Resolution dated 11 March 2011 in CA-G.R. SP. No. 113095.[1] In the assailed Decision and Resolution, the CA upheld the Order of the National Labor and Relations Commission (NLRC) First Division dismissing petitioner's appeal for allegedly failing to post an appeal bond as required by the Labor Code. Petitioner had instead filed a motion to release the cash bond it posted in another NLRC case which had been decided with finality in its favor with a view to applying the bond to the appealed case before the NLRC First Division. Hence, the Court is now asked to rule whether petitioner had complied with the appeal bond requirement. If it had, its appeal before the NLRC First Division should be reinstated.

THE FACTS

We quote the CA's narration of facts as follows:

The instant petition stemmed from a complaint for illegal dismissal and damages filed by private respondent Belio C. Icao [Icao] against petitioners Lepanto Consolidated Mining Company (LCMC) and its Chief Executive Officer [CEO] Felipe U. Yap [Yap] before the Arbitration Branch of the NLRC.

Private respondent essentially alleged in his complaint that he was an employee of petitioner LCMC assigned as a lead miner in its underground mine in Paco, Mankayan, Benguet. On January 4, 2008, private respondent reported for the 1st shift of work (11:00 p.m. to 7:00 a.m.) and was assigned at 248-8M2, 750 Level of the mining area. At their workplace, private respondent did some barring down, installed five (5) rock bolt support, and drilled eight (8) blast holes for the mid-shift blast. They then had their meal break. When they went back to their workplace, they again barred down loose rocks and drilled eight (8) more blast holes for the last round of blast. While waiting for the time to ignite their round, one of his co-workers shouted to prepare the explosives for blasting, prompting private respondent to run to the adjacent panels and warn the other miners. Thereafter, he decided to take a bath and proceeded at [sic] the bathing station where four (4) of his co-workers were also present. Before he could join them, he heard a voice at his back and saw Security Guard (SG) Larry Bulwayan instructing his companion SG Dale Papsa-ao to frisk him. As private respondent was removing his boots, SG Bulwayan forcibly pulled his skullguard from his head causing it to fall down [sic] to the ground including its harness and his detergent soap which was inserted in the skullguard harness. A few minutes later, private respondent saw SG Bulwayan [pick] up a wrapped object at the bathing station and gave it to his companion. SGs Bulwayan and Papsa-ao invited the private respondent to go with them at the investigation office to answer questions regarding the wrapped object. He was then charged with "highgrading" or the act of concealing, possessing or unauthorized extraction of highgrade material/ore without proper authority. Private respondent vehemently denied the charge. Consequently, he was dismissed from his work.

Private respondent claimed that his dismissal from work was without just or authorized cause since petitioners failed to prove by ample and sufficient evidence that he stole gold bearing highgrade ores from the company premises. If private respondent was really placing a wrapped object inside his boots, he should have been sitting or bending down to insert the same, instead of just standing on a muckpile as alleged by petitioners. Moreover, it is beyond imagination that a person, knowing fully well that he was being chased for allegedly placing wrapped ore inside his boots, will transfer it to his skullguard. The tendency in such situation is to throw the object away. As such, private respondent prayed that petitioners be held liable for illegal dismissal, to reinstate him to his former position without loss of seniority rights and benefits, and to pay his full backwages, damages and attorney's fees.

For their defense, petitioners averred that SG Bulwayan saw private respondent standing on a muckpile and inserting a wrapped object inside his right rubber boot. SG Bulwayan immediately ran towards private respondent, but the latter ran away to escape. He tried to chase private respondent but failed to capture him. Thereafter, while SG Bulwayan was on his way to see his co-guard SG Papsa-ao, he saw private respondent moving out of a stope. He then shouted at SG Papsa-ao to intercept him. When private respondent was apprehended, SG Bulwayan ordered him to remove his skullguard for inspection and saw a wrapped object placed inside the helmet. SG Bulwayan grabbed it, but the harness of the skullguard was also detached causing the object to fall on the ground. Immediately, SG Bulwayan recovered and inspected the same which turned out to be pieces of stone ores. Private respondent and the stone ores were later turned over to the Mankayan Philippine National Police where he was given a written notice of the charge against him. On January 9, 2008, a hearing was held where private respondent, together with the officers of his union as well as the apprehending guards appeared. On February 4, 2008, private respondent received a copy of the resolution of the company informing him of his dismissal from employment due to breach of trust and confidence and the act of highgrading.[2]

THE LABOR ARBITER'S RULING THAT PETITIONER LCMC IS LIABLE FOR ILLEGAL DISMISSAL

On 30 September 2008, the labor arbiter rendered a Decision holding petitioner and its CEO liable for illegal dismissal and ordering them to pay respondent Icao P345,879.45, representing his full backwages and separation pay.[3] The alleged highgrading attributed by LCMC's security guards was found to have been fabricated; consequently, there was no just cause for the dismissal of respondent. The labor arbiter concluded that the claim of the security guards that Icao had inserted ores in his boots while in a standing position was not in accord with normal human physiological functioning.[4]

The labor arbiter also noted that it was inconsistent with normal human behavior for a man, who knew that he was being chased for allegedly placing wrapped ore inside his boots, to then transfer the ore to his skullguard, where it could be found once he was apprehended.[5] To further support the improbability of the allegation of highgrading, the labor arbiter noted that throughout the 21 years of service of Icao to LCMC, he had never been accused of or penalized for highgrading or any other infraction involving moral turpitude — until this alleged incident.[6]

THE NLRC ORDER DISMISSING THE APPEAL OF PETITIONER LCMC FOR FAILURE TO POST THE APPEAL BOND

On 8 December 2008, petitioner and its CEO filed an Appearance with Memorandum of Appeal[7] before the NLRC. Instead of posting the required appeal bond in the form of a cash bond or a surety bond in an amount equivalent to the monetary award of P345,879.45 adjudged in favor of Icao, they filed a Consolidated Motion For Release Of Cash Bond And To Apply Bond Subject For Release As Payment For Appeal Bond (Consolidated Motion).[8] They requested therein that the NLRC release the cash bond of P401,610.84, which they had posted in the separate case *Dangiw Siggao v. LCMC*,[9] and apply that same cash bond to their present appeal bond

liability. They reasoned that since this Court had already decided *Dangiw Siggao* in their favor, and that the ruling therein had become final and executory, the cash bond posted therein could now be released.[10] They also cited financial difficulty as a reason for resorting to this course of action and prayed that, in the interest of justice, the motion be granted.

In its Order dated 27 February 2009, the NLRC First Division dismissed the appeal of petitioner and the latter's CEO for non-perfection.[11] It found that they had failed to post the required appeal bond equivalent to the monetary award of P345,879.45. It explained that their Consolidated Motion for the release of the cash bond in another case (*Dangiw Siggao*), for the purpose of applying the same bond to the appealed case before it, could not be considered as compliance with the requirement to post the required appeal bond. Consequently, it declared the labor arbiter's Decision to be final and executory. The pertinent portions of the assailed Order are quoted below:

The rules are clear. Appeals from decision involving a monetary award maybe [sic] perfected only upon posting of a cash or surety-bond within the ten (10) day reglementary period for filing an appeal. Failure to file and post the required appeal bond within the said period results in the appeal not being perfected and the appealed judgment becomes final and executory. Thus, the Commission loses authority to entertain or act on the appeal much less reverse the decision of the Labor Arbiter (*Gaudia vs. NLRC*, 318 SCRA 439).

In this case, respondents failed to post the required appeal bond equivalent to the monetary award of P345,879.45. The Consolidated Motion for Release of Cash Bond (posted as appeal bond in another case) with prayer to apply the bond to be released as appeal bond may not be considered as compliance with the jurisdictional requirement, as the application or posting is subject to the condition that the cash bond would be released. Besides, even if the motion for release is approved, the ten (10) day period has long expired, rendering the statutory right to appeal forever lost.

WHEREFORE, respondents' appeal is hereby DISMISSED for non-perfection and the questioned decision is declared as having become final and executory. Let the Motion for Release of Cash bond be forwarded to the Third Division, this Commission, for appropriate action.

SO ORDERED.[12] (Emphasis supplied)

Petitioner and its CEO filed a Motion for Reconsideration. They emphasized therein that they had tried to comply in good faith with the requisite appeal bond by trying to produce a cash bond anew and also to procure a new surety bond. However, after canvassing several bonding companies, the costs have proved to be prohibitive.[13] Hence, they resorted to using the cash bond they posted in *Dangiw Siggao* because the bond was now free, unencumbered and could rightfully be withdrawn and used by them.[14] Their motion was denied in a Resolution dated 27 November 2009. Hence, they filed a Petition for Certiorari with the CA.

THE CA RULING AFFIRMING THE ORDER OF THE NLRC

On 27 September 2010, the CA issued its assailed Decision[15] affirming the Order of the NLRC First Division, which had dismissed the appeal of petitioner and the latter's CEO. According to the CA, they failed to comply with the requirements of law and consequently lost the right to appeal.[16]

The CA explained that under Article 223 of the Labor Code, an appeal from the labor arbiter's Decision must be filed within 10 calendar days from receipt of the decision. In case of a judgment involving a monetary award, the posting of a cash or surety bond in an amount equivalent to the monetary award is mandatory for the perfection of an appeal. In the instant case, the CA found that petitioner and its CEO did not pay the appeal fees and the required appeal bond equivalent to P345,879.45. Instead, it filed a Consolidated Motion praying that the cash bond it had previously posted in another labor case be released and applied to the present one. According to the

CA, this arrangement is not allowed under the rules of procedure of the NLRC.[17]

Furthermore, the CA said that since the payment of appeal fees and the posting of an appeal bond are indispensable jurisdictional requirements, noncompliance with them resulted in petitioner's failure to perfect its appeal. Consequently, the labor arbiter's Decision became final and executory and, hence, binding upon the appellate court.[18]

Nevertheless, the CA ruled that the CEO of petitioner LCMC should be dropped as a party to this case.[19] No specific act was alleged in private respondent's pleadings to show that he had a hand in Icao's illegal dismissal; much less, that he acted in bad faith. In fact, the labor arbiter did not cite any factual or legal basis in its Decision that would render the CEO liable to respondent. The rule is that in the absence of bad faith, an officer of a corporation cannot be made personally liable for corporate liabilities.

THE ISSUE

The sole issue before the Court is whether or not petitioner complied with the appeal bond requirement under the Labor Code and the NLRC Rules by filing a Consolidated Motion to release the cash bond it posted in another case, which had been decided with finality in its favor, with a view to applying the same cash bond to the present case.

Our Ruling

The Petition is meritorious. The Court finds that petitioner substantially complied with the appeal bond requirement.

Before discussing its ruling, however, the Court finds it necessary to emphasize the well-entrenched doctrine that an appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.[20]

In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code, which reads:

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

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 and underlining supplied)

The 2011 NLRC Rules of Procedure (NLRC Rules) incorporates this requirement in Rule VI, Section 6, which 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 bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

(Emphases and underlining supplied)

In *Viron Garments Manufacturing Co., Inc. v. NLRC*,^[21] the Court explained the mandatory nature of this requirement as follows:

The intention of the lawmakers to make the bond an indispensable 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 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. (Emphases supplied)

We now turn to the main question of whether petitioner’s Consolidated Motion to release the cash bond it posted in a previous case, for application to the present case, constitutes compliance with the appeal bond requirement. While it is true that the procedure undertaken by petitioner is not provided under the Labor Code or in the NLRC Rules, we answer the question in the affirmative.

We reiterate our pronouncement in *Araneta v. Rodas*,^[22] where the Court said that when the law does not clearly provide a rule or norm for the tribunal to follow in deciding a question submitted, but leaves to the tribunal the discretion to determine the case in one way or another, the judge must decide the question in conformity with justice, reason and equity, in view of the circumstances of the case. Applying this doctrine, we rule that petitioner substantially complied with the mandatory requirement of posting an appeal bond for the reasons explained below.

First, there is no question that the appeal was filed within the 10-day reglementary period.^[23] Except for the alleged failure to post an appeal bond, the appeal to the NLRC was therefore in order.

Second, it is also undisputed that petitioner has an unencumbered amount of money in the form of cash in the custody of the NLRC. To reiterate, petitioner had posted a cash bond of P401,610.84 in the separate case *Dangiw Siggao*, which was earlier decided in its favor. As claimed by petitioner and confirmed by the Judgment Division of the Judicial Records Office of this Court, the Decision of the Court in *Dangiw Siggao* had become final and executory as of 28 April 2008, or more than seven months before petitioner had to file its appeal in the present case. This fact is shown by the Entry of Judgment on file with the aforementioned office. Hence, the cash bond in that case ought to have been released to petitioner then.

Under the Rule VI, Section 6 of the 2005 NLRC Rules, “[a] cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied.” Hence, it is clear that a bond is encumbered and bound to a case only for as long as 1) the case has not been finally decided, resolved or terminated; or 2) the award has not been satisfied. Therefore, once the appeal is finally decided and no award needs to be satisfied, the bond is automatically released. Since the money is now unencumbered, the employer who posted it should now have unrestricted access to the cash which he may now use as he pleases – as appeal bond in another case, for instance. This is what petitioner simply did.

Third, the cash bond in the amount of P401,610.84 posted in *Dangiw Siggao* is more than enough to cover the appeal bond in the amount of P345,879.45 required in the present case.

Fourth, this ruling remains faithful to the spirit behind the appeal bond requirement which is to ensure that workers will receive the money awarded in their favor when the employer’s appeal eventually fails.^[24] There was no showing at all of any attempt on the part of petitioner to evade the posting of the appeal bond. On the contrary, petitioner’s move showed a willingness to comply with the requirement. Hence, the welfare of Icao is adequately protected.

Moreover, this Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases. In *Your Bus Lines v. NLRC*,^[25] the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision. While the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list. In *Blancaflor v. NLRC*,^[26] the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted. In *Cabalan Pastulan Negrato Labor Association v. NLRC*,^[27] petitioner-appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay. The plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted by this Court. In *UERM-Memorial Medical Center v. NLRC*,^[28] we allowed the appellant-employer to post a property bond in lieu of a cash or surety bond. The assailed judgment involved more than P17 million; thus, its execution could adversely affect the economic survival of the employer, which was a medical center.

If in the above-cited cases, the Court found exceptional circumstances that warranted an extraordinary exercise of its power to exempt a party from the rules on appeal bond, there is all the more reason in the present case to find that petitioner substantially complied with the requirement. We emphasize that in this case we are not even exempting petitioner from the rule, as in fact we are enforcing compliance with the posting of an appeal bond. We are simply liberally applying the rules on what constitutes compliance with the requirement, given the special circumstances surrounding the case as explained above.

Having complied with the appeal bond requirement, petitioner's appeal before the NLRC must therefore be reinstated.

Finally, a word of caution. Lest litigants be misled into thinking that they may now wantonly disregard the rules on appeal bond in labor cases, we reiterate the mandatory nature of the requirement. The Court will liberally apply the rules only in very highly exceptional cases such as this, in keeping with the dictates of justice, reason and equity.

WHEREFORE, premises considered, the instant Rule 45 Petition is GRANTED. The Court of Appeals Decision dated 27 September 2010 and its Resolution dated 11 March 2011 in CA-G.R. SP. No. 113095, which dismissed petitioner's Rule 65 Petition, are hereby REVERSED. Finally, the National Labor Relations Commission Resolutions dated 27 February 2009 and 27 November 2009 are SET ASIDE, and the appeal of petitioner before it is hereby REINSTATED.

SO ORDERED.

Leonardo-De Castro, Bersamin, Villarama, Jr., and Reyes, JJ. concur.

[1] Both the Decision and the Resolution in CA-G.R. SP. No. 113095 were penned by CA Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Rosmari D. Carandang and Manuel M. Barrios.

[2] Rollo, pp. 58-61.

[3] Id. at 124-133.

[4] Id. at 129.

[5] Id.

[6] Id. at 131.

[7] Id. at 134-150.

[8] Id. at 151-153.

[9] Docketed as G.R. No. 179013, the unrelated case of Dangiwi Siggao involved a different employee who filed his Complaint for illegal dismissal against LCMC (docketed as NLRC Case No. RAB-CAR-05-0250-03) several years before the employee in the instant case filed his. In any case, the Dangiwi Siggao Complaint was decided by the labor arbiter in favor of the complainants. Consequently LCMC filed an appeal to the NLRC (docketed as NLRC NCR CA No. 03767-04) which in a Decision dated 18 May 2005, reversed the labor arbiter's Decision. The CA (where the appeal was docketed as CA-GR SP No. 91681) affirmed the NLRC in CA Decision dated 30 March 2007. The CA Decision was brought to this Court through a Petition for Review on Certiorari which the Court dismissed on technical grounds in a Resolution dated 3 October 2007. See Consolidated Motion for Release of Cash Bond dated 8 December 2008 and Entry of Judgment, *Dangiwi Siggao v. LCMC*, dated 28 April 2008 and sent to the parties on 10 July 2008, Annex "O" of the instant Petition; rollo, pp.151-156.

[10] Id. at 151.

[11] Id. at 157-159.

[12] Id. at 158-159.

[13] Id. at 162.

[14] Id.

[15] Id. at 57-71.

[16] Id. at 65.

[17] Id. at 68.

[18] Id.

[19] Id. at 69.

[20] *BPI Family Savings Bank, Inc., v. Pryce Gases, Inc.*, G.R. No. 188365, 29 June 2011, 653 SCRA 42, 51; *National Power Corporation v. Spouses Laohoo*, G.R. No. 151973, 23 July 2009, 593 SCRA 564; *Philux, Inc. v. National Labor Relations Commission*, G.R. No. 151854, 3 September 2008, 564 SCRA 21, 33; *Cu-unjieng v. Court of Appeals*, 515 Phil. 568 (2006); *Stolt-Nielsen Services, Inc. v. NLRC*, 513 Phil. 642 (2005); *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil 812 (2002); *Villanueva v. Court of Appeals*, G.R. No. 99357, 27 January 1992, 205 SCRA 537; *Trans International v. Court of Appeals*, 348 Phil. 830 (1998); *Acme Shoe, Rubber & Plastic Corporation v. Court of Appeals*, 329 Phil. 531 (1996); and *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).

[21] G.R. No. 97357, 18 March 1992, 207 SCRA 339, 342. See also *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, 23 July 2008, 559 SCRA 550; *Cordova v. Keysa's Boutique*, 507 Phil. 147 (2005); *Gaudia v. NLRC*, 376 Phil. 548 (1999); and *Garais v. NLRC*, 326 Phil. 568 (1996).

[22] 81 Phil. 506 (1948).

[23] NLRC Records, p. 95.

[24] *Accessories Specialist, Inc. v. Alabanza*, 581 Phil. 517 (2008), *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, 567 Phil. 631 (2008), *Borja Estate v. Ballard*, 498 Phil. 694 (2005).

[25] 268 Phil. 169, 172 (1990).

[26] G.R. No. 101013, 2 February 1993, 218 SCRA 366, 371.

[27] 311 Phil. 744 (1995).

[28] 336 Phil. 66 (1997).

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