

ITALIAN VILLAGE RESTAURANT AND/OR MR. ANDREW NG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FELICISIMO D. EVANGELISTA, RESPONDENTS.

G.R. No. 95594. March 11, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for certiorari to annul and set aside the July 31, 1990 order of the public respondent National Labor Relations Commission (NLRC) dismissing petitioners' appeal for not filing the cash or surety bond within the reglementary period as well as the orders dated September 10, 1990 and October 2, 1990 denying petitioners' motions for reconsideration.

It appears on record that at around 11:00 A.M. of August 26, 1988, private respondent Felicisimo Evangelista, a waiter of petitioner Italian Village Restaurant, had a fight with another employee, Rodolfo Regala, inside the waiter's quarter of said restaurant resulting in his termination as per memorandum dated August 31, 1988[1] issued by the petitioner for violation of the petitioner's House Rules and Regulations, paragraph 6, which penalizes with dismissal "an act of initiating an actual fight or indulging in a fight inside the company's premises." [2]

As a result of his dismissal, private respondent Felicisimo Evangelista filed a complaint against herein petitioner on September 9, 1988 with the Arbitration Branch of the National Labor Relations Commission, NCR, docketed as NLRC-NCR Case No. 00-09-03813-88 for illegal dismissal, underpayment, illegal deduction, payment of moral and exemplary damages and attorney's fees.

After hearing on the merits, a decision was rendered by the Arbiter on October 20, 1989, the dispositive portion of which reads:

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to reinstate complainant to his former position with all the rights, privileges and benefits appertaining thereto and with backwages from September 1, 1988 until his actual reinstatement. Further, respondents are ordered to pay complainant the sum of P14,040.00 representing the accumulated deductions from his salary. Finally, respondents are also ordered to pay complainant attorney's fees equivalent to ten (10%) percent of whatever amounts adjudicated in his favor.

"All other claims of the complainant are hereby dismissed for lack of merit.

"SO ORDERED." [3]

Petitioner received a copy of the decision on December 4, 1989 and the next day, December 5, 1989, petitioner immediately filed its appeal with the National Labor Relations Commission.

On April 26, 1990, petitioner received an Order from the NLRC dated April 25, 1990, as follows:

"1. To post with the RAB of origin or direct to Commission a cash or surety bond issued by a reputable bonding company duly accredited by the regular Courts in the amount of thirty seven thousand nine hundred fifty nine (P37,959.00) Pesos more or less which is equivalent to the monetary award in the judgment you are appealing from; and

"2. To immediately reinstate complainant(s) under the same terms and conditions prevailing prior to his dismissal, or separation or, at APPELLANT's option to reinstate him in the payroll, and to submit proof of compliance thereof, otherwise, a Writ of Execution shall issue."

Instead of complying with the Order, petitioner filed on May 4, 1990 a motion for extension of ten (10) days from May 6, 1990 to post a surety bond. And without waiting for an action on its motion, filed on May 15, 1990 or nine (9) days from May 6, 1990, a supersedeas bond.

For the late filing of its bond, the NLRC issued an Order dated July 31, 1990 dismissing petitioner's appeal which it received on August 28, 1990. The Order reads:

"However, the records show that the aforementioned compliance was effected only after nineteen (19) days from receipt of the aforesaid Order which determined the amount of the bond required to be posted.

"Article 223 of the Labor Code of the Philippines, as amended, provides among others, as follows:

"In case of 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 x x x."

"Since the respondents had not filed any cash or surety bond within ten (10) calendar days from receipt of the Order of this Commission dated April 25, 1990, its appeal is deemed not perfected."

Its Motion for Reconsideration having been denied in the Order of September 6, 1990 and so with its second Motion for Reconsideration on September 25, 1990 (Annexes E, F and H-Petition), petitioner instituted the present Petition for Certiorari.

Petitioners' contention that the NLRC acted with grave abuse of discretion in dismissing their appeal has no factual or legal basis.

Article 223 of the Labor Code as amended by RA 6715 provides:

"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:

‘(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

‘(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

‘(c) If made purely on questions of law; and

‘(d) 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.' (underscoring ours)"[4]

It is clear from the aforementioned provision of the law that the appeal of any decision, award or order of a labor arbiter should be made within 10 days from receipt of said decision, award or order and in cases where the judgment involves a monetary award, the appeal is deemed perfected only upon the posting of a cash or surety

bond also within 10 days from receipt of the order. Such mandatory periods are imposed to prevent needless delays and to insure the orderly and speedy discharge of judicial business.

In the case at bar, petitioner received a copy of the decision of the Labor Arbiter on December 4, 1989. Immediately thereafter, or on December 5, 1989 petitioners filed their appeal without the necessary supersedeas bond which should have been filed simultaneously with the notice of appeal to perfect the same.

Public respondent instead of dismissing right away the appeal of petitioners issued an Order on April 25, 1990, directing the petitioners to file a supersedeas bond in the amount of P37,959.00 within ten (10) days from receipt of the Order, and which the latter received on April 26, 1990. Consequently, petitioners have until May 6, 1990 within which to file the supersedeas bond. This they did not do. What they did was to file a motion for extension of ten (10) days from May 6, 1990 or up to May 16, 1990. No action was taken on the motion in view of Section 6, Rule VIII of the Revised Rules of the NLRC which provides:

"No extension of period. No motion for extension of the period within which to perfect an appeal shall be entertained." (p. 5, Memo of Private Respondent)

Petitioners filed their supersedeas bond only on May 15, 1990 or nineteen (19) days from receipt of the Order. Aside from the more than four months that the appeal was pending without the required supersedeas bond, petitioners were still given a ten day period by the public respondent in its order of April 25, 1990. How then can petitioners claim abuse of discretion on the part of public respondent. On the contrary, public respondent was more than lenient to petitioners. Besides, up to this point in time, private respondent has not been reinstated by the petitioners to his former position as mandated by Article 223, paragraph 3 of the Labor Code as amended, which states:

"In any event the decision of the Labor Arbiter reinstating a dismissed or separated employee insofar as the reinstatement aspect is concerned shall immediately be executory, even pending appeal."

The perfection of an appeal within the reglementary period from the decision is jurisdictional.[5] To extend the period of the appeal is to delay the case, a circumstance which would give the employer the chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him.[6]

At any rate, we find no grave abuse of discretion on the part of the public respondent which "implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." [7]

WHEREFORE, in view of the foregoing considerations, the Petition is dismissed for lack of merit. Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Exhibit "11".

[2] Exhibit "5".

[3] pp. 7-8, Decision; pp. 367-368, Record.

[4] Art. 223, Rollo, pp. 59-60.

[5] *Veterans Philippines Scout Security Agency vs. NLRC*, G.R. No. 78062, 174 SCRA 347 (1989).

[6] Arceo vs. NLRC, G.R. No. 51839, June 14, 1989, Third Division, Minute Resolution.

[7] Abad Santos vs. Province of Tarlac, 38 O.G. 830; Palma vs. Q. & S., Inc., 17 SCRA 97.

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