

SYLLABI/SYNOPSIS

SECOND DIVISION

[G.R. No. 113600. May 28, 1999]

RIZALINA LAMZON, doing business under the name and style RIZAL INTERNATIONAL SHIPPING SERVICES, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION, MANILA, HON. FELICISIMO O. JOSON, in his capacity as ADMINISTRATOR, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, MANUEL BANTA and EDILBERTO CUETARA, *respondents*.

DECISION

BUENA, J.:

Edilberto T. Cuetara and Manuel M. Banta, private respondents herein, were hired by petitioner Rizal International Shipping Services for employment on board M/V Silver Hope, a vessel owned and operated by Silver Lines Company, Ltd. of Japan, as Chief Engineer and Bosun respectively. For the alleged non-payment of wages, overtime pay and sales bonus covering the period of January 1 to March 6, 1988, private respondents Cuetara and Banta filed separate complaints for non-payment of wages and other benefits before the Philippine Overseas Employment Agency, hereinafter known as the POEA. Private respondents Cuetara and Banta later on amended their separate complaints and filed a joint complaint on April 11, 1990.^{i[1]}

Acting on private respondents complaint for unpaid wages, the POEA on October 28, 1992 rendered a decision in favor of private respondents, ordering petitioner Rizal International Shipping Services to pay Cuetara and Banta their unpaid claim amounting to three thousand four hundred thirty two and 20/100 US Dollars (US\$3,432.20) or its equivalent in Philippine peso and one thousand fiftyfour and 64/100 US Dollars (US\$1,054.64) or its equivalent in Philippine peso respectively, plus attorneys fees equivalent to five percent (5%) of the total award ^{ii[2]}

Convinced that the POEA decision was rendered with grave abuse of discretion for being contrary to law and the facts of the case, petitioner, on **November 12, 1992**, filed a "Notice of Appeal"^{iii[3]} with the POEA, alleging, among others, that petitioner is paying the appeal fee in the amount of P100.00 and posting a surety bond in the amount of P113, 068.36, in accordance with law, rules and regulation of the POEA and praying that the entire records of the case be elevated to respondent National Labor Relations Commission, hereinafter known as the NLRC. Together with the "Notice of Appeal," petitioner as appellant filed the Appeal Memorandum,^{iv[4]} the receipt of payment of the appeal fee^{v[5]} and the Motion for Extension of Time to File Appeal Bond^{vi[6]} praying for an extension of ten(10) days from November 13, 1992 within which to file an appeal bond.

On **November 20, 1992**, petitioner filed the required appeal/surety bond in the amount of P113, 068.36.

The NLRC in a Resolution dated October 26, 1993 dismissed the appeal with the following ratiocination:

On November 12, 1992, the respondent appealed from the aforesaid disposition without however posting an appeal bond required in this jurisdiction. In fact, on the same date, November 12, 1992, the respondent filed a `Motion for Extension of Time to File Appeal Bond (Record, pp. 264-265) asking that it be given ten (10) days within which to file an appeal bond. Thus, it was only on November 20, 1992 that the respondent was able to post the required appeal bond.

It being settled that perfection of an appeal within the reglementary period carries with it the duty to post cash or surety bond, as required by law, on time (Italian Village Restaurant vs. NLRC, et al., G.R. No. 95594, March 11, 1992, 2nd Div., Nocon, J.) and the Supreme Court having likewise held:

`Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. Failure to interpose a timely appeal (or a motion for reconsideration) renders the appealed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment (San Miguel Corporation vs. NLRC, et al., G.R. No. 101021, April 6, 1993, 3rd Div., Melo, J., citing Paramount Vinyl Corp. v. NLRC, et al. [190 SCRA 533 (1990) and all its jurisprudential references].

we cannot but dismiss respondents appeal.

WHEREFORE, respondents appeal is hereby dismissed.

SO ORDERED.vii[7]

Not satisfied with the NLRC Resolution, petitioner filed a motion for reconsideration. Petitioner contends that in view of the Motion for Extension of Time to File Appeal Bond specifically praying for an extension of ten (10) days from November 13, 1992 or until November 23, 1993 within which to file and submit the required appeal bond, the posting of the appeal bond on November 20, 1992 is deemed to have been filed on time. Furthermore, petitioner argued that the "Notice of Appeal," the "Appeal Memorandum" and the "Motion for Extension of Time to File Appeal Bond" were filed to perfect the appeal from the decision of the POEA to the NLRC.viii[8] On January 11, 1994, the NLRC issued an Order denying the motion for reconsideration with the following disquisition:

The problem with respondent is that she assumes that the 10-day period for perfecting an appeal, fixed by Article 223 of the Labor Code, and during which she was to post her appeal bond, exists at the pleasure of, and can easily be extended by the appellants so that even without our granting her motion for extension, an appeal bond thereafter filed has to be reconsidered as filed, worse, on time.

In a fairly recent case, not far detached by time, the Supreme Court held:

The perfection of an appeal within the reglementary period from receipt of the decision is jurisdictional. (Veterans Philippine Scout Security Agency vs. NLRC, 174 SCRA 347, cited in 207 SCRA 208). To extend the appeal period is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter would be constrained to give up his suit for less than what is due him. (Arceo vs. NLRC, Third Division, Minute Resolution cited in Italian Village Restaurant vs. NLRC, 207 SCRA 204, 208) [Emphasis ours; St. Gothard Disco Pub & Restaurant, et. al. vs. NLRC, et. al., G.R. No. 102570, February 1, 1993, 1st Division. Grino-Aquino, J],

thereby implying that We do not have much liberty to extend the period to appeal.

Clearly, We did not commit any palpable or patent error in promulgating our October 26, 1993 Resolution.

WHEREFORE, respondents Motion for Reconsideration dated November 26, 1993 is hereby DENIED.

SO ORDERED.[ix\[9\]](#)

Hence this petition *via* certiorari with application for preliminary injunction and/or temporary restraining order.

On April 11, 1994, this Court issued a temporary restraining order (TRO) commanding respondent NLRC to cease and desist from implementing its Resolution dated October 26, 1993 and Order dated January 11, 1994.[x\[10\]](#)

Petitioner imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in dismissing its appeal and its motion for reconsideration on the ground that its appeal was not perfected within the period provided by law and the rules. Petitioner claims that its appeal from the POEA decision to the NLRC was perfected on November 12, 1992, with the filing of the Notice of Appeal, Appeal Memorandum and the Motion For Extension Of Time To File Appeal Bond.[xi\[11\]](#) Petitioner insists that it did not extend the appeal period, rather emphasizing that the filing of the appeal bond, like in this case, could be extended with the filing of an appropriate motion to that effect *provided* the Notice of Appeal, the Appeal Memorandum, the Appeal Fee and the Motion For Extension Of Time To File Appeal Bond" are filed within the reglementary period to perfect the appeal.[xii\[12\]](#)

This petition must fail.

The pertinent provision of Rule VI, NLRC Rules of Procedure, as amended, provides as follows:

"Section 1. Periods of Appeal. - Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be 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 of the Labor Arbiter or of the Administrator, and in case of a decision or of the Regional Director or his duly authorized Hearing Officer within five (5) calendar days from receipt of such decisions,

awards or orders. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day. (As amended on Nov. 7, 1991)

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Section 3. 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** under oath **with proof of payment** of the required **appeal fee** and the **posting of a cash or surety bond** as provided on Section 5 of this Rule; **shall be accompanied by a memorandum of appeal** 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, order or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

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Section 6. Bond. - **In case the decision of** a Labor Arbiter, **POEA Administrator** and Regional Director or his duly authorized hearing officer **involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond** issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.

The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. The filing, however, of the motion to reduce bond shall not stop the running of the period to perfect appeal.

Section 7. No Extension of Period. - No motion or request for extension of the period within which to perfect an appeal shall be allowed." *[Emphasis Supplied]*

Applying the aforesaid rules, an appeal from the POEA Administrator to the NLRC must be perfected within ten (10) calendar days from receipt of such decisions, awards or orders of the Administrator^{xiii}[13] otherwise, the same shall become final and executory. In a judgment involving a monetary award, the appeal shall be perfected only upon (1) **proof of payment** of the required **appeal fee** and (2) **posting of a cash or surety bond** issued by a reputable bonding company and (3) duly accompanied by a **memorandum of appeal**. A mere notice of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal.

Petitioner received the challenged NLRC Resolution dated October 28, 1992 on November 7, 1992.^{xiv}[14] From November 7, 1992 petitioner has a limited period of ten (10) days to perfect the appeal. Petitioner filed the "Notice of Appeal" with "Appeal Memorandum" and proof of payment of appeal fees on November 12, 1992 but it was only on November 20, 1992 that the requisite appeal bond was filed. Applying the NLRC rules of procedure, the appeal shall be taken only if it is shown that the required appeal fee is paid, the cash or surety bond and the memorandum of appeal are filed, otherwise, the running of the prescriptive period for perfecting an appeal will not be tolled. Petitioner insists that in view of its filing of the "Motion For Extension Of Time To File Appeal Bond," the posting of surety bond on November 20, 1992 is deemed to be on time.

We disagree.

As correctly observed by the NLRC, petitioner is presumptuous in assuming that the 10-day period for perfecting an appeal, during which she was to post her appeal bond, could be easily extended by the mere filing of an appropriate motion for extension to file the bond and even without the said motion being granted. It bears emphasizing that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law.^{xv}[15] Nevertheless, in certain cases, we had occasion to declare that while the rule treats the filing of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from, as a jurisdictional requirement to perfect an appeal, the bond requirement on appeals involving monetary awards is sometimes given a liberal interpretation in line with the desired objective of resolving controversies on the merits.^{xvi}[16] However, we find no cogent reason to apply this same liberal interpretation in this case. Considering that the motion for extension to file appeal bond remained unacted upon, petitioner, pursuant to the NLRC rules, should have seasonably filed the appeal bond within the ten (10) day reglementary period following receipt of the order, resolution or decision of the NLRC to forestall the finality of such order, resolution or decision. Besides, the rule mandates that no motion or request for extension of the period within which to perfect an appeal shall be allowed.^{xvii}[17] The motion filed by petitioner in this case is tantamount to an extension of the period for perfecting an appeal. As payment of the appeal bond is an indispensable and jurisdictional requisite and not a mere technicality of law or procedure, we find the challenged NLRC Resolution of October 26, 1993 and Order dated January 11, 1994 in accordance with law. The appeal filed by petitioner was not perfected within the reglementary period because the appeal bond was filed out of time. Consequently, the decision sought to be reconsidered became final and executory. Unless there is a clear and patent grave abuse of discretion amounting to lack or excess of jurisdiction, the NLRC's denial of the appeal and the motion for reconsideration may not be disturbed.

WHEREFORE, the petition is DISMISSED. The challenged NLRC Resolution of October 26, 1993 and Order dated January 11, 1994 are hereby affirmed.

The temporary restraining order issued on April 11, 1994 is hereby LIFTED.

SO ORDERED.

Bellosillo (Chairman), Puno, and Mendoza, JJ., concur.

Quisumbing, J., no part.

i[1] Annex C of Petition, *Rollo*, pp. 31-38.

ii[2] The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, respondent Rizal International Shipping Services is hereby directed to pay complainants the following amounts opposite their names hereinbelow stated:

Edilberto Cuetara THREE THOUSAND FOUR HUNDRED THIRTY TWO & 20/100 US DOLLAR (US \$3,432.20) or its equivalent in Philippine pesos at the current rate of exchange at the time of payment as satisfaction of his money claims;

Manuel Banta ONE THOUSAND FIFTY FOUR & 64/100 US DOLLARS (US\$1,054.64) or its equivalent at the time of payment as satisfaction of his money claims.

Complainants are further entitled to five percent (5%) of the total awards as and for attorneys fees.

The claim for damages is dismissed for want of jurisdiction.

SO ORDERED. [*Rollo*, p. 88].

iii[3] Annex K of Petition, *Rollo*, pp. 89-90.

iv[4] Annex K-1, *Rollo*, pp. 92-101.

v[5] *Rollo*, p. 91.

vi[6] Annex K-2 of Petition, *Rollo*, pp. 102-103.

vii[7] *Rollo*, pp. 115-116.

viii[8] Motion for Reconsideration, *Rollo*, pp. 117-119.

ix[9] NLRC Order, *Rollo*, pp. 121-123.

x[10] *Rollo*, pp. 125 - 127-C.

xi[11] *Rollo*, p. 18.

xii[12] *Rollo*, pp. 18 - 19; 204 - 205.

xiii[13] Section 1, Rule VI of the New Rules of Procedure of the National Labor Relations Commission.

xiv[14] Annex "K" of Petition, *Rollo*, p. 89.

xv[15] Luna vs. National Labor Relations Commission, March 20, 1997, 270 SCRA 227 citing Rodillas v. COMELEC, 245 SCRA 702 (1995).

xvi[16] Cosico, Jr. vs. NLRC, May 23, 1997, 272 SCRA 583 citing YBL vs. NLRC, 190 SCRA 160 [1990] and Star Angel Handicraft v. NLRC, 236 SCRA 580 [1994].

xvii[17] Section 7, Rule VI, NLRC Rules of Procedure, as amended.