

THIRD DIVISION

[G.R. No. 146094. November 12, 2003]

PHILIPPINE TRANSMARINE CARRIERS, INC., *petitioner*, vs. FELIPE D. CORTINA, *respondent*.

DECISION

SANDOVAL-GUTIERREZ, J.:

For resolution is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision¹ dated May 14, 2000 and the Resolution² dated November 14, 2000 rendered by the Court of Appeals in CA-G.R. SP No. 54314, entitled Philippine Transmarine Carriers, Inc. and Blue Flag Navigation vs. National Labor Relations Commission and Felipe D. Cortina.

The factual antecedents as gleaned from the records are:

Felipe D. Cortina, respondent, was employed by Philippine Transmarine Carriers, Inc., petitioner, as a Third Officer assigned at the Blue Tank Lancer, a vessel owned by Blue Flag Navigation. Pursuant to their contract, respondents monthly salary is US \$800.00 and his employment is for a period of one (1) year from September 9, 1993.

However, on January 20, 1994 or only after four (4) months, petitioner forced respondent to disembark in Singapore because of the alleged sale of the Blue Tank Lancer vessel. As a consequence, he was discharged purportedly to be transferred to another vessel. But such transfer did not materialize.

On April 7, 1997, respondent filed with the Labor Arbiter a complaint against petitioner and Blue Flag Navigation for illegal dismissal, non-payment of salaries and separation pay, damages and attorneys fees, docketed as NLRC Case No. OCW-RAB-IV-798-L.

On September 24, 1997, the Labor Arbiter rendered a Decision³ declaring as illegal respondents termination from employment. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby ordered, as follows:

1. Denying the Motion to Dismiss, for lack of merit.
2. Ordering respondents to jointly and severally pay complainant the total sum of US \$ 2,640.00 as payment of the salaries, fixed overtime pay and fixed leave pay;

3. Dismissing the claim and counter-claim for damages and attorneys fees for lack of merit.

SO ORDERED.

Petitioner interposed an appeal to the National Labor Relations Commission (NLRC). However, in an Order⁴⁴ dated February 27, 1998, the NLRC dismissed the appeal for petitioners failure to attach thereto the original copy of the surety bond posted as well as the joint declaration of the employer, counsel, and the bonding company that the surety bond is genuine.

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated May 31, 1998.

Consequently, petitioner filed a petition for *certiorari* with the Court of Appeals contending that the NLRC committed grave abuse of discretion in dismissing its appeal.

On May 12, 2000, the Court of Appeals promulgated a Decision dismissing the petition. Its ratiocination is partly quoted as follows:

The petition is bereft of merit.

x x x

The posting of a surety bond is a jurisdictional requirement. The attachment of proof that a bond has been posted signifies that such requirement has been satisfied. It is the proof that serves as basis for the NLRC to acquire jurisdiction on the appeal. It is not incumbent upon the commission to check on the genuineness of the bond. Rather it is upon the petitioners to prove its genuineness. A mere xerox copy cannot prove that the bond posted is genuine.

We are therefore not convinced that the NLRC gravely abused its discretion in dismissing the appeal. What we rather see is its exercise of prudence in applying the provisions of the law. Petitioners are, however, not as careful. The negligence on the part of the counsel in the discharge of his duty cannot be approbated if we are to have an orderly administration of justice. Their negligence cannot be justified on the ground that their messenger lacked familiarity with the proper procedure for they could have checked the records themselves. A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable (Canon 18.03, Code of Professional Responsibility)

x x x

Anent the issue of illegal dismissal, it is petitioners contention that Cortina was not illegally dismissed, rather his contract of employment has been terminated due to the sale of the vessel on which Cortina was embarked. x x x

We do not acquiesce in the contention of petitioners. The dismissal of Cortina constitutes discharge without cause. As correctly ruled by the regional arbiter, the agency has not introduced any evidence showing that transfer of ownership of the vessel where complainant was assigned is a justifiable reason for the termination of his contract of employment. (Rollo, 36) When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid and authorized cause. (*Cosep vs. National Labor Relations Commission*, 290 SCRA 704 [1998]).

x x x

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Petitioner filed a motion for reconsideration but it was denied by the Appellate Court, in a Resolution dated November 14, 2000.

In the instant petition for review on *certiorari*, petitioner ascribes to the Court of Appeals the following errors: (1) in sustaining the NLRCs finding that the subsequent submission of the original copy of the appeal bond and the joint declaration of its genuineness did not cure the defect of the appeal; (2) in ruling that the sale and/or transfer of the vessel is not a valid cause to terminate respondents employment; and (3) in upholding the NLRCs monetary award to respondent equivalent to his salary for the unexpired portion of the employment contract instead of his one (1) month basic wage.

We agree with the Court of Appeals. The posting of appeal bond and submission of a joint declaration on its genuineness is mandatory. Pertinent are Sections 4(a) and 6 of Rule VI of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002, thus:

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 a 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 of perfecting an appeal.

X X X

SECTION 6. BOND. In case of 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 attorneys fees.

In case of surety bond, the same company 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 surety bond posted is genuine, and shall be in effect until final disposition of the case.

X X X.

The necessary import of the foregoing sections, as we held in *Imperial Textile Mills, Inc. vs. NLRC*,^[5] is that **the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.**

Thus, for petitioners failure to comply with the requirements on the posting of the surety bond and the submission of the joint declaration as to the genuineness of the surety bond, the Labor Arbiters Decision has become final and unappealable.

Assuming we relax the rules on appeal bond and the submission of a joint declaration, still we have to deny the instant petition. Evidence shows that respondent was illegally dismissed from the service. But petitioner justifies such dismissal by invoking Section 23 of the POEA Standard Employment Contract^[6] and Section 3, Article VI of the Collective Bargaining Agreement.^[7]

Obviously, petitioner misses the point. As found by the Court of Appeals, there is no proof that petitioner sold the vessel, thus:

Petitioner did not present even an iota of evidence to prove that the vessel on which Cortina was embarked, was indeed sold. Neither did petitioner establish that the vessel was laid-up or the voyage was discontinued.

WHEREFORE, the petition is DENIED. The Decision dated May 14, 2000 and Resolution dated November 14, 2000 of the Court of Appeals are hereby AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona, and Carpio-Morales, JJ., concur.

^[1] Annex B, Petition for Review on *Certiorari*, *Rollo* at 24-39.

^[2] Annex A, *id.* at 15-23.

^[3] Annex A, Comment and Opposition, *Rollo* at 53-64.

^[4] Annex B, *id.* at 65-66.

^[5] G.R. No. 101527, January 19, 1993, 217 SCRA 237.

^[6] Section 23. Where the vessel is sold, laid-up or the voyage is discontinued necessitating the termination of employment before the date indicated in the contract, the seafarer shall be entitled to earned wages, repatriation at employers cost and one (1) month basic salary as termination pay, unless arrangements have been made for the seafarer to join another vessel to complete his contract in which case the seafarer shall be entitled to earned wages until the date of joining another vessel.

^[7] Section 3. Both parties agree that in case of x x x sale of any vessel covered by this agreement, the company shall have the right to terminate the services of the seamen of such vessel prior to the expiration of the individual contracts, *provided* that such seamen are paid separation pay equivalent to one (1) month basic pay x x x; however, the seamen affected x x x may opt to be transferred and continue working in the other vessels owned and operated by the company x x x.