

**WALLEM MARITIME
SERVICES, INC. and SCANDIC
SHIPMANAGEMENT LIMITED,**

Petitioner,

versus

ERIBERTO S. BULTRON,

Respondent.

G.R. No. 185261

Present:

YNARES-SANTIAGO,^{*} *J.*,

CARPIO MORALES,^{**}

Acting Chairperson,

PERALTA,^{***}

DEL CASTILLO, and

ABAD, *JJ.*

Promulgated:

October 2, 2009

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DECISION

CARPIO MORALES, J.:

Wallem Maritime Services, Inc. and Scandic Shipmanagement, Ltd. (petitioners) hired Eriberto S. Bultron (respondent) on February 3, 1999 as crane operator in their vessel *MV EASTERN FALCON* for a period of twelve (12) months.

In the course of his employment, respondent developed chronic coughs, hence, petitioners referred him to their company physician in Langkawi, Malaysia who issued a medical report dated April 6, 2000 stating, *inter alia*, that by the nature of [respondents] work as a seaman, he has been exposed to cement dust as his cargo ship carries cement; and that his Chest X-ray shows bilateral apical infiltrations of the lungs, minimal pleural effusion of the left lung and heart configuration is enlarged. Dr. Haroun thus advised petitioners to take care of him for further management . . . [\[1\]](#)

Petitioners allowed respondent to continue with his job until he was repatriated to Manila on April 29, 2000 at the expiration of his contract.^[2] As respondent constantly complained of on and off cough[ing], petitioners referred him to the Metropolitan Hospital.

After a series of medical tests, Dr. Robert D. Lim (Dr. Lim), petitioners medical coordinator at the Metropolitan Hospital, issued a medical report on July 28, 2000 stating that, *inter alia*, respondent is now fit to work.^[3]

Respondent refused, however, to sign the certificate of fitness for work as he felt he was still ill and suffering from disabilities.^[4]

Petitioners having discontinued providing medical services and treatment, respondent consulted, at his own expense, a private physician, Dr. Juan Alejandro Legaspi (Dr. Legaspi), who diagnosed him on August 10, 2000 to be suffering from spinal stenosis, L4-L5, L5-S1, and thus advised him to avoid exertional activities and prolonged sitting and to have bed rest.^[5]

Claiming, *inter alia*, that his illness has persisted and has totally disabled [him] from pursuing his work as a seaman due to petitioners failure to provide safety measures and protective gears during his work to shield him from contracting illnesses, respondent filed a *Complaint*^[6] for disability benefits and damages against petitioners before the NLRC-NCR Arbitration Branch, Quezon City.

Petitioners resisted respondents *Complaint*, contending that under the POEA Standard Employment Contract, he may only recover such benefits when his repatriation is due to medical reasons, not when it is due to completion of contract as in his case.

By Decision dated October 8, 2003, Labor Arbiter Felipe P. Pati found for respondent, disposing as follows:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents [now petitioners] jointly and severally liable to:

1. pay complainant [now respondent] his proportionate disability benefits in the amount of US\$60,000.00 or its peso equivalent at the time of payment; and
2. pay complainant attorneys fees at 10% of the total monetary award to be recovered.

All other claims are dismissed for lack of merit.

SO ORDERED. ^[7]

After petitioners received a copy of the Labor Arbiters Decision on November 4, 2003, they filed a *Notice of Appeal with Appeal Memorandum* via registered mail on the last day of the 10-day reglementary period of appeal or on November 14, 2003, a Friday, without the requisite *appeal bond*. It was only on the next business day, November 17, 2003, that they filed the *appeal bond*, together with another copy of petitioners *Notice of Appeal with Appeal Memorandum*.

Respondent thus filed a *Motion to Dismiss Appeal* ^[8] on the ground that petitioners appeal was filed out of time.

Explaining their failure to file their *appeal bond* on November 14, 2003, petitioners, through counsel, stated that the appeal bond was not processed on time by the bonding company and was issued only on 14 November 2003 at around 4:05 PM in the office of Pioneer Insurance Corporation at Paseo de Roxas, Makati City; and that undersigned counsel then carried the *appeal bond*, drove his car from Makati to Manila area, but due to extreme traffic condition, he called-up thru his mobile phone his legal assistant to file the appeal via registered mail. ^[9]

Petitioners thus concluded that **there is actually no delay** inasmuch as the appeal was initiated within the ten-day reglementary period via registered mail. ^[10]

The National Labor Relations Commission (NLRC), by Decision [\[11\]](#) of March 8, 2006, denied respondents motion to dismiss petitioners appeal which it considered to have been effected on November 14, 2003. On the merits, it reversed the Labor Arbiters decision and accordingly dismissed respondents complaint, as well as petitioners permissive counter-claims.

Respondents *Motion for Reconsideration* [\[12\]](#) having been denied, he filed a petition for *Certiorari* before the Court of Appeals.

By Decision [\[13\]](#) of February 20, 2008, the appellate court annulled the NLRC Decision and Resolution, and reinstated the Labor Arbiters Decision, it ruling that the NLRC never acquired jurisdiction over the appeal of petitioners as they failed to perfect their appeal within the ten calendar-day period and thus render the Labor Arbiters Decision final and executory. [\[14\]](#)

Petitioners *Motion for Reconsideration* having been denied by Resolution of October 22, 2008, [\[15\]](#) they filed the present Petition for Review on *Certiorari*.

The petition fails.

The decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the NLRC by any parties within ten (10) calendar days from receipt thereof, with proof of payment of the required appeal fee accompanied by a memorandum of appeal. And where, as here, the judgment involves monetary award, an appeal therefrom by the employer may be perfected only upon the posting of a cash or surety bond. [\[16\]](#) A mere notice of appeal without complying with the other requisites mentioned does not stop the running of the period for perfecting an appeal [\[17\]](#) as in fact no motion for

extension of said period is allowed. ^[18]

The perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional and must, therefore, be strictly observed.

Petitioners re-filing on the next working day, November 17, 2003, of the *Notice of Appeal with Appeal Memorandum*, which was accompanied, this time, by the *appeal bond*, did not cure the fatal defect of their appeal since said bond was filed after the ten-day reglementary period had expired at which time the Labor Arbiters judgment had already become final and executory and, therefore, immutable. ^[19]

Respecting petitioners argument that their appeal was initiated within the ten-day reglementary period, ^[20] suffice it to state that **all the essential requirements for the perfection of the appeal must be filed within the reglementary period.**

Petitioners bare invocation of the interest of substantial justice does not lie. ^[21] Only under exceptionally meritorious cases may a relaxation from an otherwise stringent rule be allowed to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the procedure prescribed ^[22] the existence of which petitioners failed to demonstrate.

WHEREFORE, the present Petition for Review on *Certiorari* is **DENIED**. Costs against petitioners.

SO ORDERED.

CONCHITA CARPIO MORALES
Associate Justice

WE CONCUR:

INSUELO YNARES-SANTIAGO

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

ROBERTO A. ABAD

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

CONCHITA CARPIO MORALES

Associate Justice

Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO

Chief Justice

* Additional member per Special Order No. 691.

** Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

*** Additional member per Special Order No. 711.

[1] Annex B of Respondents Position Paper, *rollo*, pp. 265-266, 278.

[2] CA Decision, *id.* at 96.

[3] *Id.* at 96-97.

[4] *Id.* at 97; Labor Arbiters Decision, *id.* at 115.

[5] *Ibid.*

[6] *Id.* at 184-193.

[7] *Id.* at 120-121.

[8] Annex M of Petition, *id.* at 321-323.

[9] Opposition to Complainants Motion to Dismiss Appeal, *id.* at 324-325 (underscoring supplied).

[10] *Ibid* (underscoring and emphasis supplied).

[11] Penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., with Commissioners Perlita B. Velasco and Romeo L. Go concurring; *id.* at 121-128.

[12] *Id.* at 330-354.

[13] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario; *id.* at 33-44.

[14] *Id.* at 39, 41-42.

[15] *Id.* at 47-50.

[16] Article 223 of the Labor Code, as amended; Section 3, Rule VI of the New Rules of Procedure of the NLRC; *Mary Abigails Food Services, Inc. v. Court of Appeals*, G.R. No. 140294, May 9, 2005, 458 SCRA 265, 273-274 (underscoring supplied).

[17] Section 3, Rule VI of the New Rules of Procedure of the NLRC.

[18] Section 7, *id.*

[19] *Stolt-Nielsen Marine Services, Inc. v. NLRC*, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 531.

[20] *Rollo*, pp. 324-325 (underscoring supplied).

[21] *Zaragoza v. Nobleza*, G.R. No. 144560, May 13, 2004, 428 SCRA 410, 420-421.

[22] *Id.*