SUPREME COURT
SECOND DIVISION

BIOGENERICS MARKETING AND RESEARCH CORPORATION and WOLFGANG ROEHR,
***Petitioners*,**

-versus-

G.R. No. 122725
September 8, 1999

NATIONAL LABOR RELATIONS COMMISSION and SERAFIN G. PANGANIBAN,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

The requirement of a cash or surety bond for the perfection of an appeal from a Labor Arbiter's monetary award is jurisdictional; non-compliance therewith is fatal and renders the award final and executory. Corollarilly, failure to file a motion for reconsideration of a resolution of the National Labor Relations Commission (NLRC) as a requisite sine qua non in pursuing any further relief or subsequent remedy likewise gives a stamp of finality to the resolution.

On 13 March 1991 petitioner Biogenerics Marketing and Research Corporation (BIOGENERICS), a domestic corporation, through petitioner Wolfgang Roehr, Chairman of its Board of Directors, employed private respondent Serafin G. Panganiban as its President and General Manager. On 18 December 1992, acting on an information that respondent Panganiban was allegedly trying to form a corporation in competition with BIOGENERICS, petitioner Roehr dismissed Panganiban from employment without prior notice.[1] On 27 January 1993 Panganiban filed a complaint for illegal dismissal, back wages, separation pay, moral and exemplary damages, and attorney's fees.

BIOGENERICS in its answer contended that Panganiban was not dismissed but that he voluntarily resigned from employment after being confronted with his alleged disloyal act of planning to set up a corporation in competition with the business of his employer.[2]

On 18 May 1994 the Labor Arbiter ruled that the dismissal of Panganiban was illegal having been effected without just cause and without due process. Accordingly, BIOGENERICS and Roehr were held solidarily liable to Panganiban for P330,000.00 representing his separation pay, P1,870,000.00 as back wages, P500,000.00 as moral damages, P500,000.00 as exemplary damages, and 10% of the total amount thereof as attorney's fees.[3]

On 13 June 1994 BIOGENERICS filed before the NLRC a "Memorandum of Appeal" and "Motion to Reduce Appeal Bond" reiterating Panganiban's voluntary resignation. BIOGENERICS stressed that the award of back wages was proper only when the dismissal of an employee was unjust or unlawful and not when the severance of employer-employee relationship was initiated by the employee. In strengthening their position to reduce the requisite appeal bond, petitioners argued that considering that the authorized capital stock of the corporation was only P2,000,000.00, an amount which was very much less than that awarded, posting the entire amount of the bond would necessarily put the corporation in a serious and precarious financial condition. Consequently, a cash bond of P50,000.00 only was initially posted by petitioners.

On 17 August 1994 the NLRC, finding that petitioner corporation had no justification for a substantial reduction of the bond other than its limited authorized capital stock, ordered petitioners to post an additional cash or surety bond in the amount of P1,950,000.00 within a non-extendible period of ten (10) days from receipt, with a warning that their failure to comply therewith would result in the dismissal of the appeal.[4]

On 15 September 1994 BIOGENERICS moved for reconsideration praying for further reduction of the bond. It averred that the P2,000,000.00 bond would still put a significant strain on its resources and derail its efforts to recover the business losses it sustained in 1993 as reflected in its financial statement.

On 30 September 1994 the NLRC denied the motion for reconsideration and disregarded petitioners' claim of serious business losses. It clarified that the bond required need not be in cash for the law and the implementing rules allowed the posting of a bond in the form of surety secured from reputable bonding insurance company. However, as a gesture of liberality, instead of dismissing the appeal, the NLRC granted petitioners another non-extendible period of five (5) days within which to post additional bond, again, with a warning that failure to post the same would mean a non-perfection of its appeal.

On 22 November 1994 petitioners filed an "Irrevocable Bank Guarantee No. GTE MNL 940027" in the amount of P1,950,000.00 as additional appeal bond which was entered into by and between BIOGENERICS and Hongkong and Shanghai Banking Corporation Limited. The instrument contained a statement that the "Guarantee will remain in force up to 21 November 1995"[5] or only for a period of one (1) year from the signing of the agreement.

As a consequence, the NLRC rejected the "Bank Guarantee" as a substitute for the bond holding that what is contemplated under Art. 223 of the Labor Code, as amended, is a cash or surety bond, and in case of a surety bond, the same must be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court as provided under Sec. 6 of Rule 6 of the New Rules of Procedure of the NLRC. Thus, for the third time, the NLRC ordered

petitioners to post a cash or surety bond within a non-extendible period of five (5) days.

On 20 February 1995, in compliance with the order of the NLRC, petitioners through Ms. Carmen Rodriguez, BIOGENERICS' Chairman of the Board and estranged wife of Roehr, filed a cash bond (RCBC Manager's Check No. 001097) in the amount of P1,940,240.00 plus a deposit fee of P9,760.00 for a total amount of P1,950,000.00.

On 1 March 1995 Rodriguez moved to withdraw the cash bond alleging that she voluntarily posted the cash bond on the mistaken belief that she had the obligation to post the bond in behalf of her husband and she learned upon advice that it was the legal duty of BIOGENERICS as appellant to post the necessary appeal bond.

It allowing the withdrawal of the bond, the NLRC relied on the provision of Sec. 6 of Rule 6 of the New Rules of Procedure which states that it is the employer who should post the cash or surety bond. It stated that in the present case, it was the wife of Roehr who posted the cash bond, which was contrary to the rules. In the Resolution of 6 March 1995, petitioners were also directed for the last time to post the requisite appeal bond within ten (10) days from notice with a final warning that the non-posting of the bond would eventually cause the dismissal of the appeal. Petitioners did not file a motion for reconsideration.

On 5 June 1995 the NLRC issued the assailed resolution dismissing the appeal for petitioners' failure to post the required bond.[6] The records showed that the Resolution of 6 March 1995 was received by counsel for petitioners on 7 March 1995.[7] However, petitioners opted not to comply with the Resolution. As a consequence, the NLRC considered the appealed decision as affirmed and thus had become final and executory.

Petitioners moved for reconsideration contending that the "NLRC should not have allowed Rodriguez to withdraw the cash bond because the money used in the posting of the cash bond belonged to Roehr and that the order of the NLRC directing petitioners to post another appeal bond would not only be off-tangent but certainly

oppressive and confiscatory."[8] Their motion having been denied, petitioners sought the present recourse by imputing grave abuse of discretion to the NLRC.

We must first examine the consequence of petitioners' inaction after the receipt by their counsel on 7 March 1995 of the NLRC Resolution of 6 March 1995. This Resolution allowed the withdrawal of the cash bond by Ms. Carmen Rodriguez and ordered petitioners for the fourth time to post the requisite appeal bond. As found by the NLRC and reflected in the records, there was no dispute that counsel for petitioners had indeed received the Resolution. The failure to file a motion for reconsideration on the pretext that he did not receive the Resolution was fatal and thus rendered it final and executory.

We have ruled that the implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution or decision of respondent Commission should be seasonably filed as a precondition for pursuing any further or subsequent recourse, otherwise, the order, resolution or decision would become final and executory after ten (10) calendar days from receipt thereof.[9] Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be had. This merely adopts the rule that the function of a motion for reconsideration is to point out to the court the error it may have committed and to give it a chance to correct itself. Subsequent issuance by the NLRC of the questioned Resolution dated 5 June 1995 was, therefore, a mere surplusage sought only to formalize the finality of the order. On the other hand, the motion for reconsideration thereon by petitioners was futile and belated as there was already a final judgment.

But a far more compelling factor militates against petitioners which convinces us that the instant petition is devoid of merit. It is obvious that since no appeal bond was posted by petitioners, no appeal was perfected from the decision of the Labor Arbiter, for which reason the decision sought to be appealed to the NLRC had in the meantime become final and executory and therefore immutable.

Appeals from decisions of the Labor Arbiter are governed by the following provisions of Rule VI of the New Rules of Procedure of the NLRC —

> SECTION 1. Period of Appeal. — Decisions, awards, or orders of the Labor Arbiter and the POEA 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 of the Labor Arbiter or of the Administrator, and in case of a decision of the Regional Director or his duly authorized Hearing Officer, within five (5) calendar days from receipt of such decisions, awards or orders.
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> SECTION 3. Requisites for Perfection of Appeal. — The appeal shall be filed within the reglementary period as provided in Sec. 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 in Sec. 5 of this Rule; shall be accompanied by memorandum of appeal.
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> SECTION 6. Bond. — In case the decision of a Labor Arbiter 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 the amount equivalent to the monetary award.

Thus it is clear that the appeal from any decision, award or order of the Labor Arbiter to the NLRC shall be made within ten (10) calendar days from receipt of such decision, award or order, and must be under oath, with proof of payment of the required appeal fee accompanied by a memorandum of appeal. In case the decision of the Labor Arbiter involves a monetary award, the appeal is deemed perfected only upon the posting of a cash or surety bond also within ten (10) calendar days from receipt of such decision in an amount equivalent to the monetary award. The mandatory filing of a bond for

the perfection of an appeal is evident from the aforequoted provision that the appeal may be perfected only upon the posting of cash or surety bond. It is not an excuse that the over P2 million award is too much for a small business enterprise, like the petitioner company, to shoulder. The law does not require its outright payment, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is moderate and reasonable sum for the premium for such bond.[10]

BIOGENERICS filed its "Memorandum of Appeal" and "Motion to Reduce Appeal Bond" with the NLRC on 13 June 1994 or exactly on the tenth day of the reglementary period. Having failed to adduce a valid justification for the reduction of the appeal bond to overcome the mandatory nature of the requirement, the NLRC denied its motion but granted petitioners a new period of ten (10) days within which to post the bond. But, again, petitioners failed to post the bond; instead, they moved for reconsideration. On this score alone, the appeal BIOGENERICS should have been dismissed outright for not having been perfected on time. That the NLRC entertained the motion for reconsideration and even went to the extent of further granting petitioners three (3) extensions, or a total of thirty (30) days including the first extension, within which to post the appeal bond, indicated its over-leniency to disregard the Labor Code as well as its own Rules to favor petitioners. Worse, petitioners gravely abused the liberality extended by the Labor Tribunal when they persistently failed and refused to post the bond despite the extensions given them.

Finally, in an attempt to provide their petition a semblance of merit, petitioners maintain that the NLRC should have not allowed Ms. Carmen Rodriguez to withdraw the appeal bond as the money used for the purpose allegedly belonged to petitioner Roehr. This last-ditch effort to thwart the claim of private respondent Panganiban deserves scant consideration. Petitioners failed to substantiate this claim.

WHEREFORE, the petition is dismissed. The assailed Resolution of the National Labor Relations Commission dated 5 June 1995, respectively, and 24 October 1995 are **AFFIRMED**.

SO ORDERED.

Mendoza, Quisumbing and Buena, *JJ.*, concur.

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[1] Records, pp. 17-18.
[2] Id., p. 36.
[3] Decision penned by Labor Arbiter Donato G. Quinto, Jr.; Records, p. 362.
[4] Rollo, p. 66.
[5] Ibid.
[6] Records, pp. 556-557; Rollo, pp. 9-10.
[7] Bailiff's Return issued by Ernesto C. Provido, Bailiff II, NLRC; Records, p. 582.
[8] Rollo, p. 6.
[9] Zapata vs. National Labor Relations Commission, G.R. No. 77827, 5 July 1989, 175 SCRA 56, 60.
[10] See Unicane Workers Union-CLUP and its Members vs. Unicane Food Products Mfg. Corp. and its Owner/Manager, Benido Ang, G.R. No. 107545. 9 September 1996, 261 SCRA 573, 584.
