

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**EVELYN CATUBAY, PATRICIA
CONCEPCION, ROSITA CUERPO,
FELY LALU, ANGELITA PERALTA,
VIRGINIO MAGLAY and
FEDERATION OF DEMOCRATIC
LABOR UNIONS (FEDLU),
*Petitioners,***

-versus-

**G.R. No. 119289
April 12, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION (FIRST DIVISION),
LAPAZ NGO, Owner/Manager of
Fishwealth Canning Corporation
and FISHWEALTH CANNING
CORPORATION,
*Respondents.***

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DECISION

KAPUNAN, J.:

The sole issue in the instant case is whether or not public respondent National Labor Relations Commission (NLRC) abused its discretion

in taking cognizance of private respondents' appeal and ordering the remand of the case to the labor arbiter.

The individual petitioners were initially employed by Majescan Manufacturing Corporation and Pan Asia Food Manufacturing Corporation on the following dates, to wit: Evelyn Catubay - April 3, 1984; Patricia Concepcion - April 16, 1982; Rosita Cuerpo - May 2, 1982; Fely Lalu - January 10, 1981; Angelita Peralta - December 28, 1979; and Virgilio Maglay - September 9, 1974.^[1] On December 15, 1985, the business of Majescan Corporation and Pan Asia Corporation was sold to private respondent Fishwealth Canning Corporation (private respondent Fishwealth, for brevity) which is owned and managed by one Mrs. Lapaz Ngo. Petitioners were retained in the employ of private respondent Fishwealth.^[2]

Private respondent Fishwealth is a company engaged in the manufacture of canned sardines. The sardines, which are imported from Japan, arrive frozen in huge blocks of ice. The petitioners' job was to handle and process these frozen sardines in preparation for canning. Petitioners, with the exception of Virginio Maglay, were piece-rate workers who were paid from P50.00 to P70.00 per day for work rendered from 4:00 a.m. to 12:00 nn and from 12:30 p.m. to 5:00 p.m., Mondays to Saturdays. Petitioner Virginio Maglay, on the other hand, was a daily-paid employee who worked 8 hours a day or from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5 p.m. He was paid a daily wage of P128.00.^[3]

Sometime in October 1992, petitioner Virginio Maglay suffered a work-related accident. He was bending to shovel fish from a tank when a nearby pile of trays containing wet fish fell on him. He suffered broken hip bone and developed a limp as a result of the accident. The rest of the individual petitioners, on the other hand, contracted arthritis or rheumatism because of their constant exposure to cold.^[4]

In order to recuperate from their work-related ailments, petitioners went on unpaid sick leave with the approval of private respondents. However, when they returned to work after their leave, private respondents refused to take them back unless they applied first with an employment agency and/or a labor contractor and accept new

terms of employment. Hence, petitioners filed a complaint for payment of salary differentials and separation pay against private respondents before the arbitration branch of the NLRC.^[5]

Private respondents submitted their position paper to the labor arbiter on June 17, 1993, alleging therein that petitioners, being piece-rate workers are not entitled to the minimum wage. Neither are they entitled to separation pay because their refusal to be converted to contractual employees of the employment agency/labor contractor is tantamount to insubordination and abandonment which are grounds for termination.^[6]

On January 24, 1994, Labor Arbiter Facundo L. Leda rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, decision is hereby rendered ordering respondents Fishwealth Canning Corporation and Lapaz Ngo to pay, jointly and severally, the complainants the following amounts representing their salary differentials and separation pay:

Evelyn Catubay.....	P50,541.14
Patricia Concepcion.....	57,025.54
Rosita Cuerpo.....	51,400.70
Fely Lalu.....	52,154.70
Angelita Peralta.....	68,184.74
Virginio Maglay.....	26,624.00
Total.....	P305,930.82

SO ORDERED.^[7]

Private respondents were furnished a copy of the aforesaid decision on February 4, 1994. They filed their appeal memorandum on February 14, 1994 or on the last day for filing the same. Two days later, or on February 16, 1994, private respondents filed a “Motion to Admit Docket Fee/Filing Fees” attaching thereto the required fee of P110.00. The labor arbiter refused to act on the matter on the ground of lack of jurisdiction. On February 17, 1994, private respondents filed a “Manifestation and Motion to Admit Appeal Fee,” this time, before the NLRC.^[8]

Meanwhile, on March 16, 1994, petitioners moved for execution of the judgment. Private respondents were notified of a conference to be held on March 24, 1994. The conference was reset to April 6, 1994, but private respondents again failed to appear. Thus, on April 12, 1994, the labor arbiter issued a writ of execution.^[9]

On April 14, 1994, private respondents moved to quash the aforesaid writ of execution alleging that the writ was premature considering that private respondents had filed their appeal memorandum within the ten-day reglementary period and that there was still a pending motion to admit the appeal fee. They also filed a “Manifestation and Motion to Elevate” the records of the case to the NLRC for review.^[10]

On April 19, 1994, the labor arbiter issued an order denying private respondents’ motions and upholding the validity of the writ of execution considering that the judgment had already become final and executory. He noted that although an appeal memorandum had been filed, the records show receipt only of the appeal fee. There was nothing to show that private respondents posted the required cash or surety bond pursuant to Sections 3 (a) and 6 of the New Rules of Procedure of the NLRC and Article 223 of the Labor Code.^[11]

On April 22, 1994, private respondents posted their surety bond. The labor arbiter, on the same day, issued the following order:

It appearing that the respondents have posted the required amount of cash bond, albeit beyond the reglementary period prescribed under the pertinent provisions of the Labor Code, as amended, and the rules implementing the same, and pursuant to the Order issued by this Office dated April 19, 1994, let the Writ of Execution, dated April 12, 1994 be, as it is hereby QUASHED.

SO ORDERED.^[12]

On May 3, 1994, petitioners filed an “Amended Answer with Motion” and submitted to public respondent NLRC the resolution of the question of whether or not a valid appeal had been interposed by private respondents.^[13]

On August 9, 1994, private respondents filed a “Supplemental Memorandum of Appeal” alleging denial of due process. Anent private respondents, the labor arbiter decided the case without giving them the opportunity to present counter evidence.^[14]

On October 27, 1994, public respondent NLRC rendered the assailed decision in favor of private respondents. It ordered the remand of the case to the labor arbiter to “afford the parties the opportunities to ventilate their respective stand on the issues raised in this case.” The dispositive portion of said decision reads as follows:

WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE and the records of this case is remanded to the Labor Arbiter a quo for further appropriate proceedings.

SO ORDERED.^[15]

Petitioners’ motion for reconsideration of the aforequoted decision was denied by public respondent NLRC. Hence, the instant petition wherein petitioners make the following assignment of error:

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER REMANDING THE RECORDS OF THE CASE FOR FURTHER PROCEEDINGS AND CONSEQUENTLY IN THE DENIAL OF THE PETITIONERS MOTION FOR RECONSIDERATION NOTWITHSTANDING THE FACT THAT SAID DECISION AND RESOLUTION ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE CONTRARY TO LAW.^[16]

Petitioners’ claim that private respondents’ appeal was not duly perfected is impressed with merit.

Article 223 of the Labor Code, as amended, reads in part:

ART. 223. Appeal. -

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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.

X X X

Section 3, Rule VI of the New Rules of Procedure of the National Labor Relations Commission, likewise provides the requisites for perfection of appeal, thus:

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 in 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 requisite aforestated shall not stop the running of the period for perfecting an appeal.

Section 6 of the same Rules further provides:

Section 6. Bond. - In case the decision of the Labor Arbiter, the 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, which shall be in effect until final disposition of the case, 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.

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Clearly, for an appeal to be perfected, the appellant must not only file the appeal memorandum and pay the appeal fee, but must also post the required cash or surety bond. The posting of a cash or surety bond is mandatory.^[17] Moreover, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional.^[18]

In the case at bar, the private respondents received a copy of the January 24, 1994 decision of the labor arbiter on February 4, 1994. They filed their appeal memorandum by registered mail on the last day for filing the same or on February 14, 1994. However, in his order, dated April 19, 1994, the labor arbiter noted that the records showed only receipt of the appeal fee of ₱110.00. There was nothing therein to show that the required cash or surety bond had been posted by the private respondents. Hence, the labor arbiter held that no appeal had been perfected within the reglementary period. Consequently, the decision of the labor arbiter, dated January 24, 1994, became final and executory.^[19]

In a recent case, this Court had occasion to rule that the failure of the private respondent therein to comply with the requirements for perfection of appeal rendered the decision of the labor arbiter final and executory and placed it beyond the power of the NLRC to review or reverse it.^[20]

In this case, the private respondents posted their surety bond sometime in April 1994 or more than two months after the lapse of the period to perfect appeal.^[21] While it is true that this Court has relaxed the application of the rules on appeal in labor cases, it has only done so where the failure to comply with the requirements for perfection of appeal was justified or where there has been substantial compliance with the rules. Hence, the Supreme Court has allowed tardy appeals in judicious cases, *e.g.*, where the presence of any justifying circumstance recognized by law, such as fraud, accident, mistake or excusable negligence, properly vested the judge with

discretion to approve or admit an appeal filed out of time; or where on equitable grounds, a belated appeal was allowed as the questioned decision was served directly upon petitioner instead of her counsel of record who at the time was already dead.^[22]

Here, no justifiable reason was put forth by the private respondents for their late filing of the required bond. The bond is *sine qua non* to the perfection of appeal from the labor arbiter's monetary award. (*Peftok Integrated Services, Inc. vs. NLRC, 293 SCRA 507 [1998]*).^[23] The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond; the word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected. (*MERS Shoes Manufacturing, Inc. vs. NLRC, et al., 286 SCRA 647 [1998]*).^[24]

Yet, despite the late payment of the appeal fee and the late posting of the surety bond by private respondents herein, the NLRC still took cognizance of their appeal over the petitioners' opposition and rendered a decision in favor of private respondents, remanding the case to the labor arbiter for further proceedings. The order to remand the case was premised on alleged lack of due process, particularly failure to give private respondents full opportunity to present their case. Public respondent NLRC found that:

The records show that on the last two (2) scheduled hearings of this case on August 16, 1993 and September 2, 1993, the respondents or their counsel were not notified of said hearings. Neither were they required to submit any memorandum in support of their stand.

The records further show that the Labor Arbiter, without the knowledge of the respondents and without issuing an Order in accordance with Section 5 of Rule V of the New Rules and Procedure of the NLRC, considered the case submitted for resolution and rendered the assailed decision.^[25]

Contrary to the findings of public respondent, the records show that private respondents were, time and again, given the opportunity to

present their side. We quote with approval the Solicitor General's findings on the matter:

Labor Arbiter Facundo L. Leda, to whom the case was assigned, summoned the parties for mandatory conference on April 12, 1993. Private respondents did not appear despite their receipt of a copy of the summons (p. 11, Records). On March 26, 1993 the case was reset to April 20, 1993. Private respondents were notified and appeared on said date (p. 16, Records). At the hearing on April 29, 1993, the parties were required to submit their respective position papers on May 13, 1993 without prejudice to any settlement (Minutes of Proceedings, p. 17, Records). Private respondents did not appear during the May 13, 1993 hearing nor submit their position paper as directed. Thus, the Labor Arbiter was constrained to reset the hearing to May 28, 1993 and private respondents were again ordered to submit their position paper on said date, otherwise the case would be decided only on the basis of the position paper of complainants (p. 35, Records). Private respondents appeared before the Labor Arbiter on May 28, 1993, but without their position paper. The Labor Arbiter granted private respondents' request for extension of time to file their position paper until June 17, 1993, again warning them that the case would be submitted for decision should they fail to do so (p. 37, Records).

Private respondents submitted their position paper on June 17, 1993.

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On July 5, 1993, petitioners submitted a supplemental position paper and reply to respondents' position paper (p. 49, Records).

At the scheduled hearing on July 7, 1993, petitioners rested their case while private respondents were allowed to present their evidence on July 22, 1993. Private respondents' Liaison Officer, who arrived late, was informed of the Order (p. 79, Records).

On July 22, 1993, an entry of appearance and motion for additional time to file pleadings and documentary evidence was filed by private respondents' new counsel (pp. 80-81, Records). Private respondents were given until August 2, 1993 to submit their documents and the continuation of the formal hearing of the case set to August 9, 1993 (p. 82, Records).

On August 2, 1993, private respondents submitted an "Amended Position Paper and Reply to Complainants' Position Paper". Attached thereto were the documentary evidence of private respondents, to wit: (1) Deed of Sale with Assumption of Mortgage between Majescan, Pan Asia Food and private respondents, (2) payrolls of private respondents.

At the hearing held on August 16, 1993, private respondents' authorized representative inadvertently signed the space in the "minutes of the Proceedings" pertaining to the complainants. Petitioners' representative, arriving late, signed on the left margin of the constancia (p. 207, Records). The case was reset for the last time to September 2, 1993 at 10:00 a.m. with the order that should the parties decide to submit the case for decision, they are required to file their respective memoranda on the scheduled hearing date after which the case would be deemed submitted for decision.

Private respondents failed to appear at the September 2, 1993 hearing. Petitioners submitted their memorandum on said date.^[26]

As can be gleaned above, private respondents were afforded more than an adequate chance to present their evidence. Thus, they can hardly claim to have been denied due process by the labor arbiter.

Moreover, Section 4, Rule V of the New Rules of Procedure of the NLRC vests upon the labor arbiter the discretion to determine the need for a formal trial of hearing. He may, at his discretion, merely require the parties to submit their respective position papers/memoranda and decide on the basis thereof. In the instant case, the labor arbiter not only called for hearings, but required both parties to submit their position papers as well as memoranda. It will

be recalled, that private respondents failed to appear at the last hearing set by the labor arbiter. Neither did they submit their memorandum. They cannot now be allowed to claim denial of due process when it was they who were less than vigilant of their rights.

Finally, this case has been pending for more or less 7 years, from the time of institution of the action in 1993 to the present. To remand the case to the labor arbiter for further proceedings would be the height of injustice, especially to the petitioners who are but lowly laborers trying to earn a livelihood.

WHEREFORE, in view of the foregoing, the Decision, dated October 27, 1994, of public respondent NLRC is hereby **REVERSED** and **SET ASIDE** and the Decision, dated January 24, 1994, of Labor Arbiter Facundo L. Leda, ordering private respondents Fishwealth Canning Corporation and Mrs. Lapaz Ngo to pay jointly and severally, the petitioners their respective salary differentials and separation pay in the total sum of Three Hundred Five Thousand Nine Hundred Thirty Pesos and Eighty-Two Centavos (P305,930.82) is hereby **REINSTATED**.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 90 - 91.

[2] Id., at 91.

[3] Id.

[4] Id., at 230.

[5] Id., at 91.

[6] Id., at 231.

[7] Id., at 99.

[8] Id., at 234.

[9] Id., at 235.

[10] Id.

[11] Id., at 236.

[12] Ibid.

[13] Id.

[14] Id., at 235-236.

[15] Id., at 157.

- [16] Id., at 54-55.
- [17] Viron Garments Manufacturing Co., Inc., et. al. vs. NLRC, et. al., 207 SCRA 339 (1992)
- [18] Garcia vs. NLRC, et al, 264 SCRA 261 (1996)
- [19] see Rollo, p. 106.
- [20] Quiambao vs. NLRC, et al., 254 SCRA 211 (1996)
- [21] see the Labor Arbiter's Order, dated April 22, 1994, Rollo, p. 124.
- [22] (Kathy - O Enterprises vs. NLRC, et al., 286 SCRA 729 [1998]).
- [23] (MERS Shoes Manufacturing, Inc. vs. NLRC, et al., 286 SCRA 647 [1998]).
- [24] (Peftok Integrated Services, Inc. vs. NLRC, 293 SCRA 507 [1998]).
- [25] Id., at 156.
- [26] Rollo, pp. 230-233.

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