

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**GLOBE GENERAL SERVICES AND
SECURITY AGENCY AND GAUDENCIO
G. CANTOS, JR.,**

Petitioners,

-versus-

**G.R. No. 106477
October 23, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION (FIRST DIVISION) AND
LEONARDO L. MARBEBE,**

Respondents.

X-----X

DECISION

BELLOSILLO, J.:

Globe General Services and Security Agency (GLOBE) and Gaudencio G. Cantos, Jr., assail in this Petition for *Certiorari* the Order and Resolution of the National Labor Relations Commission (NLRC) dated 6 February 1992 and 20 July 1992, respectively, for having been issued in grave abuse of discretion.

Respondent Leonardo L. Marbebe was a security guard employed by petitioners and assigned at the Lourdes School in Quezon City. On 20 February 1990 he filed a complaint with the Department of Labor and

Employment against petitioners and Lourdes School for illegal suspension, underpayment of salary, nonpayment of overtime, legal holiday pay and premium pay as well as for violation of PD No. 851.^[1]

The evidence for respondent Marbebe shows that since 30 March 1989 when he started working for petitioners, he was only paid a daily wage of P54.00 although the minimum daily wage was already fixed at P64.00 by R.A. 6640, later increased to P89.00. Then on 13 February 1990 he was suspended for ten (10) days or until 23 February 1990 and directed to report to GLOBE for “proper investigation,” after which he was no longer posted for duty. On 20 February 1990 he requested “one (1) month vacation leave effective 24 February 1990,” which was noted by a certain V. O. Mata of petitioner GLOBE, but when he (Marbebe) returned to work he was refused admittance by petitioners despite a letter from the Labor Arbiter Ricardo C. Nora requesting that “he (Marbebe) be accepted back to work to his former place of assignment.”^[2]

Petitioners did not present any evidence nor submit any position paper.

In his order of 28 June 1990 Labor Arbiter Ricardo C. Nora dismissed with prejudice the complaint against Lourdes School, which was originally made party respondent, after it paid Marbebe his claim for underpayment of salary in the amount of P5,625.00 resulting in his execution of a Quitclaim and Release in its favor.

On 30 July 1990 the Labor Arbiter rendered his decision holding that “the suspension of Marbebe for ten (10) days leading to constructive dismissal (was) illegal and in violation of Article 279 of the Labor Code as amended on Security of Tenure.” Accordingly, petitioners were ordered to (a) reinstate Marbebe to his former position as security guard and (b) pay the illegally discharged employee his overtime pay of P24,850.83 and back wages of P15,889.25, or the total sum of P40,740.08.^[3]

Petitioners appealed to the NLRC which in its resolution of 15 March 1991 dismissed the appeal “for not having been duly perfected” since petitioners did not file a supersedeas bond for the monetary award as mandated by Art. 223 of the Labor Code, as amended by R.A. 6715

and the NLRC Interim Rules on Appeal.^[4] Petitioners moved for reconsideration contending among others that they failed to file the required appeal bond since the computation of the monetary award in the decision under review was erroneous.

In its challenged Order of 6 February 1992 the NLRC denied reconsideration and increased the monetary judgment from P40,740.08 to P93,604.58. In all other respects, the decision of the Labor Arbiter was affirmed.^[5]

On 5 March 1992 petitioners filed a “Motion for Reconsideration and to Admit Bond and Stay Execution” claiming that the NLRC should not have affirmed the decision of the Labor Arbiter. Reconsideration was again denied in the challenged Resolution of 20 July 1992;^[6] hence, this recourse.

Petitioners contend that the NLRC acted without jurisdiction in affirming a void decision of the Labor Arbiter based solely as it was on the unverified position paper of Marbebe. Further, petitioners claim that their failure to file appeal bond was due to the miscalculation of the monetary award in the decision, contending that the NLRC should not have perfunctorily dismissed their appeal but instead should have remanded the same to the Labor Arbiter to allow them to present their evidence. Finally, petitioners assert that the finding of illegal dismissal was not supported by evidence.

We find for petitioners. We rule that NLRC exceeded its jurisdiction when it modified the Labor Arbiter’s decision after it had already attained finality when petitioners failed to file an appeal bond within the reglementary period. Article 223 of the Labor Code, as amended by R.A. 6715, provides —

ARTICLE 223. Appeal. — Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decision, awards or orders. Such appeal may be entertained only on any of the following grounds: (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter; (b) If the decision, order or award was secured through fraud or coercion,

including graft and corruption; (c) If made purely on questions of law; and (d) If serious errors in the findings of fact are raised which would cause grave or irreparable damage or injury to the appellant.

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. (Emphasis supplied)

From the foregoing it is clear that appeal from any decision, award or order of a Labor Arbiter should be made within ten (10) days from receipt of the decision, award or order. In cases where the judgment involves a monetary award, the appeal is deemed perfected only upon the posting of a cash or surety bond also within ten (10) days from receipt of such judgment. The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is evident in the provision itself when it states that the appeal may be perfected “only upon the posting of a cash or surety bond.” The word “only” makes it perfectly evident that our legislators 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 considered completed.^[7]

The records show that while petitioners filed their Memorandum of Appeal with the NLRC within the reglementary period, there was no corresponding cash or surety bond for the monetary award with no explanation offered for the omission. It was only after NLRC dismissed their appeal by reason thereof did petitioners for the first time manifest their objections to the judgment award of the Labor Arbiter.

In their motion for reconsideration filed 21 March 1991 petitioners expostulated that “to secure a supersedeas bond based on said erroneous monetary award is highly contrary to law, evidence, equity and justice for it will unduly, unjustifiably and unlawfully burden (petitioners).”^[8] Nonetheless, on 14 June 1991, or about ten (10) months from receipt of the decision of the Labor Arbiter and three (3)

months after receipt of the NLRC resolution dismissing their appeal petitioners filed their “Motion to Admit Supersedeas Bond.” The surety bond posted by them was only for the amount of P24,850.83 which represented overtime pay due complainant Leonardo L. Marbebe as petitioners stood firm in their objection that the P40,740.08 total award was “bloated.”^[9]

Despite established jurisprudence justifying outright denial of the motion for reconsideration and the much-delayed, if not patently inadequate, surety bond filed by petitioners, NLRC opted to go over the records of the case, in effect reinstating what should have remained a dismissed appeal. While NLRC, on several occasions,^[10] had been cautioned against a rigid application of the requirements for perfection of appeal under Art. 223, in the case at bar it seems to have strayed a mite too far by adopting an extremely lenient view which to our mind is completely unwarranted the circumstances of the case obtaining.

In *Italian Village Restaurant vs. NLRC*,^[11] the Court stressed that the perfection of an appeal within the reglementary ten-day period from notice of the decision is jurisdictional. To extend the period of appeal is to prolong the resolution of the case, a circumstance which would give the employer the opportunity to wear out the energy and meager resources of the worker to the point that he would be constrained to give up for less than what he deserves in law. It bears emphasizing that up to this time private respondent Marbebe has not been reinstated to his former position. Paragraph 3 of Art. 223 of the Labor Code clearly mandates that in any event the reinstatement aspect of the appealed decision is immediately executory, even during the pendency of the appeal.

There is no way by which the late filing of the appeal bond by petitioners, albeit under protest and in amount much less than the adjudged award, can be sanctioned even on the broader interest of substantial justice. By their own admission petitioners disregarded the requirement of the bond because they believed that the award on which it would be based was erroneously computed. Inasmuch as in actual practice NLRC allows the reduction of the appeal bond upon motion of the appellant and on meritorious grounds, what petitioners should have done was to file a motion to that effect within the

reglementary period for appeal. Such motion shall be in lieu of the bond the amount of which is being contested. In the meantime, the appeal is not deemed perfected and the Labor Arbiter retains jurisdiction over the dispute until NLRC shall have acted on the motion and appellant has filed the bond as fixed by NLRC.^[12] In other words, given the remedies readily available to them, petitioners cannot use error or uncertainty in the computation of the award as a justification for not submitting the mandatory bond.

In sum, as there was no appeal bond filed together with the memorandum of appeal within the period for the perfection of appeal, it follows that no appeal from the decision of the Labor Arbiter has been perfected. Accordingly, the decision sought to be appealed has become final and executory. NLRC acted in excess of its jurisdiction when it proceeded to thresh out the merits of the appeal and eventually rendered judgment modifying the award.

WHEREFORE, the petition for certiorari is **GRANTED**. The challenged Order and Resolution of the National Labor Relations Commission dated 6 February 1992 and 20 July 1992, respectively, are **SET ASIDE** and the Decision of the Labor Arbiter dated 30 July 1990 is **REINSTATED**. No costs.

SO ORDERED.

**Padilla, Davide, Jr., Kapunan and Hermosisima, JJ.,
concur.**

[1] Annex "A," Petition, Rollo, p. 40.

[2] Annex "F," id., Rollo, p. 65.

[3] Annex "C," Petition, Rollo pp. 68-72.

[4] "Annex "F," id., Rollo, pp. 83-84.

[5] "Annex "J," Petition, Rollo, pp. 107-108.

[6] "Annex "M," id, Rollo, pp. 119-123.

[7] Viron Garments Mfg., Co., Inc., vs. NLRC, G.R. No. 97357 18 March 1992, 207 SCRA 339, 342.

[8] Annex "F," Petition, Rollo, p. 88.

[9] Annex "I," Petition, Rollo, pp. 97-99, 100.

- [10] See *Star Angel Handicraft vs. NLRC*, G.R. No. 108914, 20 September 1994, 236 SCRA 580; *YBL (Your Bus Line) vs. NLRC*, G.R. No. 93381, 28 September 1990, 190 SCRA 160.
- [11] G.R. No. 95594, 11 March 1992, 207 SCRA 204.
- [12] *Star Angel Handicraft vs. NLRC*, G.R. No. 108914, 20 September 1994, 236 SCRA 580.

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