

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**NATIONWIDE SECURITY AND ALLIED
SERVICES, INC. and/or
PRESIDENT/GENERAL MANAGER,
*Petitioners,***

-versus-

**G.R. No. 123204
July 11, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION and JUNJIE B. SUICON,
*Respondents.***

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DECISION

DAVIDE, JR., J.:

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court to nullify and set aside the Order^[1] of 21 November 1995 of the National Labor Relations Commission (NLRC) in NLRC NCR CA 009674-95 (NCR-00-09-04937-92) which denied petitioners' Motion^[2] to reduce the appeal bond in connection with their appeal from the Decision of 29 June 1995 of the Labor Arbiter in favor of private respondents.

There is no dispute as to the relevant antecedents which were summarized by the Office of the Solicitor General in its Comment^[3] for public respondent NLRC.

On 8 September 1992, private respondent Junjie B. Suicon filed before the Labor Arbiter a complaint for underpayment of wages and non-payment of overtime, premium, holiday, service incentive leave, thirteenth month, and night shift differential pay against petitioners. The complaint was amended on 19 October 1992 to include a cause of action for illegal dismissal.

On 29 June 1995, the Labor Arbiter rendered a decision with the dispositive portion providing:

WHEREFORE, the respondents Nationwide Security and Allied Services, Inc. and GUANI Marketing Inc. are hereby ordered, jointly and severally, to pay the complainant backwages in the amount of P195,585.00 representing wage differentials and premium pay for overtime work, night duty in the amount of P176,518.94; and 13th month pay in the amount of P25,886.25. Attorney's fee[s] equivalent to ten percent (10%) of the total amount is also assessed on the respondents.^[4]

The aggregate of the awards excluding attorney's fees amounts to P397,990.19.

On 11 August 1995, or four days after their receipt of the decision, petitioners filed a Motion to Reduce Bond with the NLRC arguing:

1. That, the judgment amount of P397,990.19 adjudged to be paid to complainant jointly and severally by respondents Nationwide Security and Allied Services, Inc./Romeo T. Nolasco (NATIONWIDE) and GUANI Marketing INC. (GUANI) in accordance with the Decision rendered in this case on June 29, 1995, copy thereof was received by the herein respondent NATIONWIDE on August 07, 1995 was based on arbitrary figures and therefore self-serving, as explained below:

5. That, the finding that complainant was illegally terminated from his work (page 2 of Decision, last paragraph thereof) and entitled to backwages from September 1, 1992 to June 30, 1995 allegedly “in view of the “ANSWER” of the respondent NSASI which admitted the material averments of the complaint” according to the questioned Decision, clearly show the whimsical, capricious, sham, frivolous, arbitrary or despotic act of the said Decision amounting to Grave Abuse of Discretion to the Labor Arbiter as explained by the following:

x x x

8. That, allowing the judgment amount to ripen into finality without having the same reviewed based on this Motion would give complainant “undue advantage” at the expense of and to the damage and prejudice of the herein respondents;
9. That, herein respondent NATIONWIDE made their own computation to refute the one embodied in the questioned Decision, the said computation which shows the amount of P37,538.17 as due complainant was previously attached to herein respondents’ “Answer With Cross Claim” and for the purpose of this Motion, a copy of the same is hereto attached as Annex “A” as already stated;
10. That, considering that the said computation is based on PADPAO rate as evidenced by the figures thereat which show P2,200 actual salary and P5,752.50 Padpao rate, for 15 days and 31 days respectively, being in agreement with the figures on paragraph[s] 2 and 3 hereof, and with the figures in the questioned Decision, as well as the complaint sheet, it is respectfully submitted that the amount of P37,538.17 be adjudged as the correct amount due complainant Suicon;
11. That, considering further that the judgment amount is to be paid jointly and severally by respondents NATIONWIDE

and GUANI, and considering that respondent NATIONWIDE is not in a position to raise the whole amount of P37,538.17, it is further respectfully submitted that only one half (1/2) of the correct amount of P37,538.17 or P18,769.08 be considered and approved to be the appeal or supersedeas bond to be posted by herein respondent NATIONWIDE.

On 17 August 1995, petitioners filed their Memorandum on Appeal.

On 21 November 1995, the NLRC issued its questioned Order denying the above motion on the grounds that “petitioners’ alleged inability to post the bond is without basis,” and to grant the motion on the grounds stated therein “would be tantamount to ruling on the merits.” The NLRC then decreed:

PREMISES CONSIDERED, instant motion to reduce bond is hereby DISMISSED for lack of merit. Respondents are hereby directed to post the bond in the amount of three hundred ninety seven thousand nine hundred ninety pesos and 19/100 (P397,990.19) within five (5) days from receipt hereof. Otherwise, instant appeal shall be dismissed. No further Motions for Reconsideration shall be entertained.

SO ORDERED.

On 17 January 1996, petitioners filed the instant petition and urged us to set aside the above order of 21 November 1995 on the ground that the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing said order. Petitioners cite *Star Angel Handicraft vs. NLRC*^[5] where we reiterated the rule relaxing, or giving a liberal interpretation to, the requirement of the posting of an appeal bond for the perfection of an appeal under Article 233 of the Labor Code. Petitioners also allege that they “cannot afford to post the bond of P397,990.19 because [they do] not have that sum from [the] business with Guani Marketing, Inc.,” and to use funds from other sources “would not be a sound business judgment.”

We required respondents to comment on the petition.

In their separate comments, the Office of the Solicitor General and private respondents pray that we dismiss the petition for lack of merit. The former asserts that the cases of *Star Angel Handicraft vs. NLRC* and *Erectors, Inc. vs. NLRC*^[6] cited by petitioners are not applicable and that the NLRC did not act without or in excess of jurisdiction or with grave abuse of discretion in denying petitioners' motion to reduce the bond. Private respondent contends that no jurisdictional issue is involved and this petition "is moot and academic" since respondent NLRC had resolved in its questioned order to put off consideration of the correctness of the computation of petitioners' liability until the hearing of the case on the merits.

It appears that on 22 February 1996 the NLRC handed down a resolution^[7] dismissing petitioners' appeal for their failure to post a cash or surety bond in the amount of P397,990.19 as required in the Order of 21 November 1995, to which petitioners moved for reconsideration.^[8]

The sole issue in this case is whether the Commission acted with grave abuse of discretion in denying petitioner's motion for reduction of appeal bond.

Article 223 of the Labor Code, as amended, explicitly provides that an appeal from a decision of the Labor Arbiter must be made within ten (10) calendar days from receipt of a copy of the decision by the party intending to appeal therefrom or the aggrieved party; and if the decision involves 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 NLRC "in the amount equivalent to the money award in the judgment appealed from." Rule VI of the New Rules of Procedure of the NLRC^[1] implements this Article, with Sections 1, 3, 5, 6 and 7 thereof pertinently providing as follows:

Section 1. Periods of Appeal. — Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be 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. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day (As amended, on Nov. 7, 1991).

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 on appeal.

A mere notice of appeal without complying with the other requisites aforestated will not stop the running of the period for perfecting an appeal.

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Section 5. Appeal Fee. — The appellant shall pay an appeal fee of One hundred (P100.00) Pesos to the Regional Arbitration Branch, Regional Office, or to the Philippine Overseas Employment Administration and the official receipt of such payment shall be attached to the records of the case.

Section 6. Bond. — In case the decision of a Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon posting of a cash or surety bond 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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Section 7. No Extension of Period. — No motion or request for extension of the period within which to perfect an appeal shall be allowed.

It is evident from the foregoing provisions that the reglementary period to appeal or to perfect the appeal may not be extended. The appeal may be perfected by the filing of a notice of appeal, payment of the appeal fee and the posting of a cash or surety bond. Where, however, the amount of the bond is contested, the appropriate motion to reduce the bond must be filed with the NLRC within the reglementary period. Thus we held in *Star Angel Handicraft*.^[10]

Inasmuch as in practice the NLRC allows the reduction of the appeal bond upon motion of appellant and on meritorious grounds, it follows that a motion to that effect may be filed within the reglementary period for appealing. Such motion may be filed in lieu of a bond which amount is being contested. In the meantime, the appeal is not deemed perfected and the Labor Arbiter retains jurisdiction over the case until the NLRC has acted on the motion and appellant has filed the bond as fixed by the NLRC.

In sum then, the NLRC did not disregard *Star Angel Handicraft*, on the contrary, took it into account when it acted on petitioners' motion to reduce the bond even if petitioners had not yet so filed their appeal bond. Clearly, petitioners misinterpreted *Star Angel Handicraft*, where the bone of contention was the NLRC's refusal to act on therein petitioner's motion to reduce appeal bond without the latter first posting an appeal bond. We held there that the appeal bond was not a pre-requisite for taking cognizance of the motion to reduce the bond.

Neither are the cases cited in *Star Angel Handicraft* of any help to petitioners. In *Erectors, Incorporated vs. NLRC*,^[11] petitioner there believed it was unnecessary to file an appeal bond since the amount awarded as moral and exemplary damages was not included in the computation of the value of the bond. We thus ordered the NLRC to give due course to the appeal "insofar as [it] concerns the award of moral and exemplary damages" without requiring therein petitioner to post an appeal bond. In *Blancaflor vs. NLRC*^[12] petitioners alleged that the NLRC committed grave abuse of discretion in giving due course to the private respondents' appeal even as the latter filed their appeal bond out of time. We disagreed and allowed a relaxation of the rule concerning appeal bonds because: (1) at the time when the appeal was made, there was as yet no implementing rule on the

subject; and (2) the appealed decision did not state the amount of the monetary award, hence there was no basis to compute the amount of the appeal bond, and it was only in a later order that the NLRC fixed the amount. The Court thus found no abuse of discretion by the NLRC even though, strictly speaking, the appeal bond was filed out of time. In *Rada vs. NLRC*,^[13] we allowed the late posting of the appeal bond and held that “where the fee had been paid although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demands that the appeal be given due course.” And, in *YBL (Your Bus Line) vs. NLRC*,^[14] the appeal was dismissed by the NLRC due to petitioners’ failure to post the required bond resulting in the inability to perfect the appeal, thus rendering the decision final and executory. However, the notice of the decision therein enumerated the requirements of an appeal without mentioning an appeal bond; likewise, counsel for the parties did not then know of the new requirement of an appeal bond. Moreover, the decision did not state the amount of the separation pay awarded, thus there was no basis to compute the amount of the appeal bond. We ruled that “the circumstances of the non-filing of the bond are understandable,” and thus held that “petitioners should be given the opportunity to file the required bond and avail of the remedy of appeal.”

On the pivotal issue then of whether the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion in denying petitioners’ motion to reduce bond, the answer must inevitably be in the negative as we find said denial to be in accord with law and jurisprudence.

Petitioner’s contentions that it “cannot afford to post the bond of P397,990.10 because it does not have that sum earned from its business with Guani Marketing, Inc.” and that “to use funds from sources other than that earned from Guani Marketing, Inc. would not be a sound business judgment,” are an admission that it has the funds to post the required bond, albeit not from its business with Guani Marketing, Inc. A party’s belief that an act may constitute unsound business judgment is not an acceptable excuse to avoid or relax the requirements of law. Besides, the satisfaction of a security agency’s obligation to its security guards must not be made to depend upon its income from the establishment served by the guards.

The NLRC's "failure" to consider petitioners' "eleven (11) justifications presented" in its motion to reduce the appeal bond, which petitioners bewail, was likewise correct. To look with favor upon these justifications, reproduced earlier, would amount to a resolution on petitioners' appeal. Petitioners' arguments in its motion, at bottom, raise errors in the computation of the monetary award which are properly a subject of appeal and should be ventilated at the appropriate time, not in a mere motion to reduce bond. The Commission thus correctly pointed out that "to grant the Motion on stated ground would be tantamount to ruling on the merits of this case."

WHEREFORE, the instant special civil action is **DISMISSED** for lack of merit.

Costs against petitioners.

SO ORDERED.

Narvasa, C.J., Melo, Francisco, and Panganiban, JJ., concur.

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- [1] Per Lourdes C. Javier, Presiding Commissioner, with Ireneo B. Bernardo and Joaquin A. Tanodra, Commissioners, concurring. Annex "A" of Petition, Rollo, 13-15.
- [2] Annex "B" of Petition, Rollo, 16-25.
- [3] Rollo, 78-89.
- [4] Original Record (OR), 71.
- [5] G.R. No. 108914, 20 September 1994; 236 SCRA 580.
- [6] 202 SCRA 597 [1991].
- [7] Rollo, 65.
- [8] *Id.*, 56-62. None of the parties filed a manifestation if said motion had been resolved by the NLRC.
- [9] Promulgated on 31 August 1990 and took effect on 9 October 1990.
- [10] *Supra* note 5, at 584. See also *Globe General Services and Security Agency vs. NLRC*, 249 SCRA 408,415 [1995].
- [11] *Supra* note 6.
- [12] 218 SCRA 366 [1993]
- [13] 205 SCRA 69 [1992].

[14] 190 SCRA 160 [1990].

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