SUPREME COURT
SECOND DIVISION

RODENTO NAVARRO, ANTONIO BOCABAL and JULIAN R. DE GUZMAN,
***Petitioners*,**

-versus-

G.R. No. 116464
March 1, 2000

NATIONAL LABOR RELATIONS COMMISSION (NLRC), ARACELI CORNEJO and OLIMPIO BRETON,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for Certiorari seeks to annul the decision promulgated on July 29, 1993, by public respondent in NLRC NCR Case No. 003279-92, and its resolution dated April 11, 1994, which denied petitioner's motion for reconsideration.

Petitioners allege that they were jeepney drivers of private respondent Araceli Cornejo on boundary system. They regularly ply the jeepneys assigned to them for eleven hours a day, five times a week and each of them earn an average of P350.00 daily.

On April 20, 1991, when petitioners Rodento Navarro and Antonio Bocabal were about to get the keys of their respective jeepneys, private respondent Olimpio Breton, the dispatcher, told them that they cannot go out on the usual working hours of 5 PM to 4 AM (night shift) because their working hours were moved to a new schedule of work, 7 PM to 6 AM. Expecting that the sudden change of working hours will adversely affect their earnings, Navarro, Bocabal and seven other night shift drivers decided not to ply their routes that day to protest the sudden change of working hours. Petitioner Julian De Guzman reported to work as usual. However, he cut short his trip because he allegedly felt dizzy and suffered stomach pain.

The following day, all the drivers who participated in the protest action were summoned by Breton and were meted a one-day suspension but were asked to pay the boundary for April 20. However, Breton promised to restore the night shift hours to 5 PM to 4 AM.

On April 23, 1991, petitioners were surprised to find somebody else were assigned to their respective jeepneys. Breton told petitioners to look for work elsewhere, although the other drivers who participated in the protest action were allowed to work.

For their part, private respondents claim that on April 20, 1991, at about 5:45 PM, Breton advised the night shift drivers to take out the jeepneys at 7 PM. This action was made considering that the regular hours were no longer observed by the drivers. Frequently, the jeepneys were no longer checked-up because immediately after the day shift drivers return the jeepneys at around 6 PM, the night shift drivers take them out without giving time for inspection. Because of this strict implementation of time of work, the night shift drivers left the compound and convinced other drivers to stop their operation. As a consequence, the jeepneys were not taken out that night resulting in the loss of income to the operator.

On April 21, 1991, Breton met with the night shift drivers wherein they agreed that the working hours starting the next day would be from 5 AM to 4 PM for the day shift, and 5 PM to 4 AM for the night shift. Nonetheless, the night shift drivers were not able to drive their

units on that day since Breton advised the day shift and extra drivers to continue driving the units. This was a precautionary step in the event the regular drivers would continue their strike as what happened in December 1990 when all the drivers went on strike for five days.

Private respondents also claim that they were surprised petitioners never returned to work. Since their business is imbued with public interest, extra drivers were made to drive the jeepneys assigned to petitioners. They maintain that no new drivers were hired to replace petitioners. It was only on June 7, 1991, after the first hearing of this complaint, when petitioners made clear their refusal to return to work before the labor arbiter that replacements for them were hired. Private respondents insist that petitioners were not dismissed but abandoned their work.

On May 15, 1991, petitioners filed before the Regional Arbitration Branch a complaint for illegal dismissal. The minutes of the proceedings indicate that the counsel for private respondents informed the labor arbiter of the willingness of private respondents to take petitioners back. Petitioners reportedly turned down private respondents' offer since the drivers just want separation pay.

On June 28, 1991, petitioners amended their complaint in which they sought payment for severance pay, backwages, with 12% legal interest per annum; P50,000.00 to each complainant for moral damages; P50,000.00 as exemplary damages and P15,000.00 as attorney's fees.

On November 26, 1991, the labor arbiter rendered judgment in favor of petitioners and decreed as follows:

> "WHEREFORE, premises considered, respondents are ordered to pay complainants: RODENTO NAVARRO separation pay in the amount of P40,950.00 (9 yrs. P350 x 13 days x 9 yrs.); ANTONIO BOCABAL separation pay in the amount of P22,750.00 (5 yrs. P350.00 x 13 days x 5 yrs.) and JULIAN DE GUZMAN separation pay in the amount of P31,850.00 (7 yrs. P350.00 x 13 days x 7 yrs.) and the equivalent of 10% of the

total monetary award as attorney's fees in the amount of P9,555.00 (10% of 95,550.00).

SO ORDERED."[1]

On April 3, 1992, private respondents were served a copy of the decision of the labor arbiter. Aggrieved, they filed on April 13, 1992 with NLRC their memorandum on appeal. Nevertheless, it was only on April 30, 1992 , that private respondents filed the appeal bond. Unfortunately, the aforesaid bond was later discovered to be spurious because the person who signed it was no longer connected with the insurance company for more than ten years already. It was only on July 20, 1993, that private respondents posted a substitute bond issued by another company in the amount of P95,550.00.

In a decision dated July 29, 1993, public respondent ruled for private respondents, thus:

"WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE and another entered directing the complainants, under pain of losing their employment, to report back to work within ten (10) days from receipt of this Decision.

SO ORDERED."[2]

Their motion for reconsideration having been denied, petitioners filed the instant petition imputing grave abuse of discretion on the part of public respondent:

I

"IN FINDING THAT PETITIONERS HAVE ABANDONED THEIR JOBS;

II

IN NOT FINDING THAT THE DISMISSAL OF PETITIONERS WAS WITHOUT NOTICE AND HEARING.

III

IN ACTING ON THE APPEAL OF PRIVATE RESPONDENTS WHEN THE DECISION HAS BECOME FINAL FOR NON-FILING OF A SUPERSEDEAS BOND WITHIN THE REGLEMENTARY PERIOD TO APPEAL."[3]

We shall first discuss the third issue raised by the petitioners inasmuch as it deals with a jurisdictional question.

The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and has the effect of rendering the judgment final and executory. Such requirement cannot be trifled with.[4]

Article 223 of the Labor Code 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 decisions, awards, or orders.

x x x

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

Perfection of an appeal includes the filing, within the prescribed period, of the memorandum of appeal containing, among others, the assignment of error/s, arguments in support thereof, the relief sought and, in appropriate cases, posting of the appeal bond. In case where the judgment involves a monetary award, as in this case, the appeal may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company

> duly accredited by the NLRC.[5] The amount of the bond must be equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The records indicate that private respondents received the copy of labor arbiter's decision on April 3, 1992, hence, they had only until April 13, 1992 to perfect their appeal. While private respondents filed their memorandum of appeal on time, they posted surety bond only on April 30, 1992, which is beyond the ten-day reglementary period, a procedural lapse admitted by private respondents. Private respondents' failure to post the required appeal bond within the prescribed period is inexcusable.[6] Worse, the appeal bond was bogus having been issued by an officer no longer connected for a long time with the bonding company. Unfortunately, this irregularity was not sufficiently explained by private respondents. For sure, they cannot avoid responsibility by disavowing any knowledge of its fictitiousness for they were required to secure bond only from reputable companies. Corollary, they should have ensured that the bond is genuine, otherwise, the purpose of requiring the posting of bond, that is, to guarantee the payment of valid and legal claims against the employer, would not be served.

We are mindful of the fact that this Court, in a number of cases,[7] has relaxed this requirement on grounds of substantial justice and special circumstances of the case. However, we find no cogent reason to apply this same liberal interpretation herein when the bond posted was not genuine. In this case, there is really no bond posted since a fake or expired bond is in legal contemplation merely a scrap of paper. It should be stressed that the intention of 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.[8]

As the appeal filed by private respondents was not perfected within the reglementary period, the running of the prescriptive period for perfecting an appeal was not tolled.[9] Consequently, the decision of

the labor arbiter became final and executory upon the lapse of ten calendar days from receipt of the decision. Hence, the decision became immutable and it can no longer be amended nor altered by the labor tribunal. Accordingly, inasmuch as the timely posting of appeal bond is an indispensable and jurisdictional requisite and not a mere technicality of law, the NLRC has no authority to entertain the appeal, much less to set aside the decision of the labor arbiter in this case. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[10]

In view of the foregoing disposition, it is no longer necessary to discuss the other issues raised in this petition.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision rendered on July 29, 1993, by public respondent and its Resolution dated April 11, 1994, are **SET ASIDE**. The Decision of the Labor Arbiter dated November 26, 1991, is hereby **REINSTATED**. Costs against private respondents.

SO ORDERED.

Bellosillo, Mendoza, Buena and De Leon, Jr., *JJ*., concur.

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[1] Rollo, pp. 43-44.
[2] Id. at 36.
[3] Id. at 7.
[4] MERS Shoe Manufacturing Inc. vs. NLRC, 286 SCRA 647, 653 (1998).
[5] Aba vs. NLRC, GR-122627, July 28, 1999, p. 4.
[6] Don Orestes Romualdez Electric Cooperative Inc. vs. NLRC, GR-128389, November 25, 1999, p. 6.
[7] Rosewood Processing Inc. vs. NLRC, 290 SCRA 408, 420-421 (1998); Mabuhay Development Industries vs. NLRC, 288 SCRA 1, 6-7 (1998); Fernandez vs. NLRC, 285 SCRA 149, 165 (1998).
[8] See Note 4 at 653-654.
[9] Lamzon vs. NLRC, GR-113600, May 28, 1999, p. 6.
[10] Gaudia vs. NLRC, GR-109371, November 18, 1999, p. 9.