

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**MARIANO ONG, doing business under
the name and style MILESTONE
METAL MANUFACTURING,
*Petitioner,***

-versus-

**G.R. No. 152494
September 22, 2004**

**THE COURT OF APPEALS, CONRADO
DABAC, BERNABE TAYACTAC,
MANUEL ABEJUELLA, LOLITO
ABELONG, RONNIE HERRERO,
APOLLO PAMIAS, JAIME ONGUTAN,
NOEL ATENDIDO, CARLOS TABBAL,
JOEL ATENDIDO, BIENVENIDO
EBBER, RENATO ABEJUELLA,
LEONILO ATENDIDO, JR., LODULADO
FAA and JAIME LOZADA,
*Respondents.***

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D E C I S I O N

YNARES-SANTIAGO, J.:

This is a Petition for Review on Certiorari assailing the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 62129, dated October 10,

2001, which dismissed the petition for certiorari for lack of merit, as well as the resolution,^[2] dated March 7, 2002, denying the motion for reconsideration.

Petitioner is the sole proprietor of Milestone Metal Manufacturing (Milestone), which manufactures, among others, wearing apparels, belts, and umbrellas.^[3] Sometime in May 1998, the business suffered very low sales and productivity because of the economic crisis in the country. Hence, it adopted a rotation scheme by reducing the workdays of its employees to three days a week or less for an indefinite period.^[4]

On separate dates, the 15 respondents filed before the National Labor Relations Commission (NLRC) complaints for illegal dismissal, underpayment of wages, non-payment of overtime pay, holiday pay, service incentive leave pay, 13th month pay, damages, and attorney's fees against petitioner. These were consolidated and assigned to Labor Arbiter Manuel Manasala.

Petitioner claimed that 9 of the 15 respondents were not employees of Milestone but of Protone Industrial Corporation which, however, stopped its operation due to business losses. Further, he claims that respondents Manuel Abuela, Lolita Abelong, Ronnie Herrero, Carlos Tabbal, Conrado Dabac, and Lodualdo Faa were not dismissed from employment; rather, they refused to work after the rotation scheme was adopted. Anent their monetary claims, petitioner presented documents showing that he paid respondents' minimum wage, 13th month pay, holiday pay, and contributions to the SSS, Medicare, and Pag-Ibig Funds.^[5]

On November 25, 1999, the Labor Arbiter rendered a decision awarding to the respondents the aggregate amount of P1,111,200.40 representing their wage differential, holiday pay, service incentive leave pay and 13th month pay, plus 10% thereof as attorney's fees. Further, petitioner was ordered to pay the respondents separation pay equivalent to ½ month salary for every year of service due to the indefiniteness of the rotation scheme and strained relations caused by the filing of the complaints.^[6]

Petitioner filed with the NLRC a notice of appeal with a memorandum of appeal and paid the docket fees therefor. However, instead of posting the required cash or surety bond, he filed a motion to reduce the appeal bond. The NLRC, in a resolution dated April 28, 2000, denied the motion to reduce bond and dismissed the appeal for failure to post cash or surety bond within the reglementary period.^[7] Petitioner's motion for reconsideration was likewise denied.^[8]

Petitioner filed a petition for certiorari with the Court of Appeals alleging that the NLRC acted with grave abuse of discretion in dismissing the appeal for non-perfection of appeal although a motion to reduce appeal bond was seasonably filed. However, the petition was dismissed and thereafter the motion for reconsideration was likewise dismissed for lack of merit.^[9]

Hence, this petition for review on the following assignment of errors:

I.

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE NLRC DISMISSING THE APPEAL OF PETITIONERS (sic) FOR NON-PERFECTION WHEN A MOTION TO REDUCE APPEAL BOND WAS SEASONABLY FILED WHICH IS ALLOWED BY THE RULES OF PROCEDURE OF THE NLRC.

II.

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DISMISSAL BY NLRC OF PETITIONER'S APPEAL AND IN EFFECT UPHOLDING THE ERRONEOUS DECISION OF THE LABOR ARBITER AWARDED SEPARATION PAY TO PRIVATE RESPONDENTS DESPITE THE FINDING THAT THERE WAS NO ILLEGAL DISMISSAL MADE BY MILESTONE.

III.

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE NLRC'S DISMISSAL OF PETITIONER'S APPEAL AND IN EFFECT UPHOLDING THE ERRONEOUS DECISION OF THE LABOR ARBITER THAT PETITIONER MILESTONE HAS VIOLATED THE MINIMUM WAGE LAW AND THAT PRIVATE RESPONDENTS WERE UNDERPAID.

IV.

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE NLRC'S DISMISSAL OF PETITIONER'S APPEAL AND IN EFFECT UPHOLDING THE ERRONEOUS DECISION OF THE LABOR ARBITER THAT PETITIONER MILESTONE HAS NOT PAID PRIVATE RESPONDENTS THEIR SERVICE INCENTIVE LEAVE PAY, 13TH MONTH PAY, AND HOLIDAY PAY.

V.

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE NLRC'S DISMISSAL OF PETITIONER'S APPEAL AND IN EFFECT UPHOLDING THE ERRONEOUS DECISION OF THE LABOR ARBITER THAT THE EVIDENCE SUBMITTED BY PRIVATE RESPONDENTS IN SUPPORT OF THEIR CLAIMS ARE NOT SELF-SERVING, IRRELEVANT AND IMMATERIAL TO THE FACTS AND LAW IN ISSUE IN THIS CASE.^[10]

The petition lacks merit.

Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.^[11]

Article 223 of the Labor Code, as amended, sets forth the rules on appeal from the Labor Arbiter's monetary award:

ART. 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.

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. (Emphasis ours)

The pertinent provisions of Rule VI of the New Rules of Procedure of the NLRC,^[12] which were in effect when petitioner filed his appeal, provide:

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 x x x.

x x x

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.

X X X

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 damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal. (Emphasis ours)

In the case at bar, petitioner received the decision of the Labor Arbiter on January 6, 2000. He filed his notice of appeal with memorandum of appeal and paid the corresponding appeal fees on January 17, 2000, the last day of filing the appeal. However, in lieu of the required cash or surety bond, he filed a motion to reduce bond alleging that the amount of P1,427,802,04 as bond is “unjustified and prohibitive” and prayed that the same be reduced to a “reasonable level.” The NLRC denied the motion and consequently dismissed the appeal for non-perfection. Petitioner now contends that he was deprived of the chance to post bond because the NLRC took 102 days to decide his motion.

Petitioner's argument is unavailing.

While, Section 6, Rule VI of the NLRC's New Rules of Procedure allows the Commission to reduce the amount of the bond, the exercise

of the authority is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds.^[13] Petitioner's motion reads:

1. The appeal bond which respondents-appellants will post in this case is P1,427,802.04. They are precisely questioning this amount as being unjustified and prohibitive under the premises.
2. The amount of this appeal bond must be reduced to a reasonable level by this Honorable Office.

WHEREFORE, in view thereof, it is respectfully prayed of this Honorable Office that the appeal bond of P1,427,802.04 be reduced.^[14]

After careful scrutiny of the motion to reduce appeal bond, we agree with the Court of Appeals that the NLRC did not act with grave abuse of discretion when it denied petitioner's motion for the same failed to either elucidate why the amount of the bond was "unjustified and prohibitive" or to indicate what would be a "reasonable level."^[15]

In *Calabash Garments, Inc. vs. NLRC*,^[16] it was held that "a substantial monetary award, even if it runs into millions, does not necessarily give the employer-appellant a "meritorious case" and does not automatically warrant a reduction of the appeal bond."

Even granting *arguendo* that petitioner has meritorious grounds to reduce the appeal bond, the result would have been the same since he failed to post cash or surety bond within the prescribed period.

The above-cited provisions explicitly provide that an appeal from the Labor Arbiter to the NLRC must be perfected within ten calendar days from receipt of such decisions, awards or orders of the Labor Arbiter. In a judgment involving a monetary award, the appeal shall be perfected only upon (1) proof of payment of the required appeal fee; (2) posting of a cash or surety bond issued by a reputable bonding company; and (3) filing of a memorandum of appeal. A mere notice of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal.^[17]

The posting of cash or surety bond is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the judgment final and executory.^[18] This requirement is intended to discourage employers from using the appeal to delay, or even evade, their obligation to satisfy their employee's just and lawful claims.^[19]

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.^[20]

The fact that the NLRC took 102 days to resolve the motion will not help petitioner's case. The NLRC Rules clearly provide that "the filing of the motion to reduce bond shall not stop the running of the period to perfect appeal." Petitioner should have seasonably filed the appeal bond within the ten-day reglementary period following the receipt of the order, resolution or decision of the NLRC to forestall the finality of such order, resolution or decision. In the alternative, he should have paid only a moderate and reasonable sum for the premium, as was held in *Biogenerics Marketing and Research Corporation vs. NLRC*,^[21] to wit:

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 a moderate and reasonable sum for the premium for such bond. (Emphasis ours)

While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the Rules or where the appellants, at

the very least, exhibited willingness to pay by posting a partial bond.^[22] Petitioner's reliance on the case of *Rosewood Processing, Inc. vs. NLRC*^[23] is misplaced. Petitioner in the said case substantially complied with the rules by posting a partial surety bond of fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. while his motion to reduce appeal bond was pending before the NLRC.

In the case at bar, petitioner did not post a full or partial appeal bond within the prescribed period, thus, no appeal was perfected from the decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory and therefore immutable. Clearly, then, the NLRC has no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose.^[24]

WHEREFORE, in view of the foregoing, the petition is **DENIED**. The assailed decision of the Court of Appeals in CA-G.R. SP No. 62129, dated October 10, 2001, dismissing the petition for certiorari for lack of merit, is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Justices Wenceslao I. Aguir, Jr. and Mariano C. Del Castillo, Rollo, pp. 131-144.

[2] Rollo, p. 145.

[3] Rollo, pp. 38-40.

[4] Rollo, p. 42.

[5] *Id.*, pp. 16-17, 24, 26.

[6] *Id.*, pp. 74-75.

[7] Rollo, p. 103.

[8] Rollo, p. 108.

- [9] Rollo, pp. 144-145.
- [10] Rollo, pp. 17-18.
- [11] Producers Bank of the Philippines vs. Court of Appeals, G.R. No. 126620, 17 April 2002, 381 SCRA 185.
- [12] Amended by Resolution No. 3-99, Series of 1999, which took effect on January 1, 2000, and further amended by Resolution No. 01-02, Series of 2002.
- [13] Mers Shoes Manufacturing, Inc. vs. NLRC, 350 Phil. 294, 305 [1998].
- [14] CA Rollo, pp. 90-91.
- [15] Rollo, p. 142.
- [16] 329 Phil. 226, 235 [1996].
- [17] Lamzon vs. NLRC, 367 Phil. 169, 177 [1999].
- [18] Philippine Transmarine Carriers, Inc. vs. Cortina, G.R. No. 146094, 12 November 2003.
- [19] Gaudia vs. NLRC, 376 Phil. 548, 555 [1999].
- [20] Catubay vs. NLRC, 386 Phil. 648, 658 [2000].
- [21] 372 Phil. 653, 661 [1999].
- [22] Teofilo Gensoli & Co. vs. NLRC, 352 Phil. 232, 239 [1998].
- [23] 352 Phil. 1013 [1998].
- [24] Navarro vs. NLRC, 383 Phil. 765, 774-775 [2000].