

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**WILHELMINA S. OROZCO,  
*Petitioner,***

***-versus-***

**G.R. No. 155207  
April 29, 2005**

**THE FIFTH DIVISION OF THE  
HONORABLE COURT OF APPEALS,  
PHILIPPINE DAILY INQUIRER, AND  
LETICIA JIMENEZ MAGSANOC,  
*Respondents.***

X-----X

**RESOLUTION**

**TINGA, J.:**

Ostensibly, the question raised in this present petition is of general interest to students of law – whether a newspaper columnist is an employee of the newspaper which publishes the columns. However, for failure to file the appeal bond required by law, the Court is impelled to defer the settlement of the above issue until the jurisdictional requirement has been duly complied with.

This Petition for Review under Rule 45 of the Rules of Court assails the Resolution<sup>[1]</sup> of the Court of Appeals Fifth Division denying the Motion for Reconsideration filed by Wilhelmina Orozco (Orozco) and

the Decision<sup>[2]</sup> of the same division in CA-G.R. SP No. 50970, the dispositive portion of which provides:

WHEREFORE, based on the foregoing, the petition is hereby GRANTED. The assailed decision of the public respondent NLRC affirming the decision of the Labor Arbiter that private respondent Wilhelmina Orozco is an employee of petitioner PDI is hereby SET ASIDE. Private respondent Orozco's complaint is hereby DISMISSED for lack of merit.

SO ORDERED.<sup>[3]</sup>

The above ruling of the Court of Appeals reversed the Decision<sup>[4]</sup> of the National Labor Relations Commission (NLRC) which affirmed the Decision<sup>[5]</sup> of the Labor Arbiter,<sup>[6]</sup> the decretal portion of which stated:

WHEREFORE, judgment is hereby rendered, finding complainant to be an employee of respondent company; ordering respondent company to reinstate her to her former or equivalent position, with backwages.

Respondent company is also ordered to pay her 13th month pay and service incentive leave pay.

Other claims are hereby dismissed for lack of merit.

SO ORDERED.<sup>[7]</sup>

This case arose out of the complaint filed by Orozco against private respondents Philippine Daily Inquirer (PDI) and Leticia Jimenez-Magsanoc (Magsanoc), the editor-in-chief of the PDI at that time, for illegal dismissal, underpayment, non-payment of allowance, separation pay, retirement pay, service incentive leave pay, 13<sup>th</sup> month pay, moral and exemplary damages, discrimination in pay and for attorney's fees<sup>[8]</sup> with the Arbitration Branch of the NLRC on 1 June 1993.<sup>[9]</sup>

Based on the records of this case, Orozco was engaged as a columnist by PDI on 8 March 1990. She penned the column "Feminist

Reflections” which appeared in the Lifestyle Section under the editorship of Lolita T. Logarta.<sup>[10]</sup>

Orozco worked by submitting weekly columns with a per article wage of Two Hundred Fifty Pesos (P250.00) which was later increased to Three hundred Pesos (P300.00).<sup>[11]</sup>

In June 1991, Magsanoc as editor-in-chief of PDI discussed how to improve the Lifestyle section of the newspaper with the Lifestyle editor. They agreed to cut down the number of columnists and for this reason, PDI decided to drop or terminate Orozco’s column in November 1992.<sup>[12]</sup>

Orozco’s column thus appeared in PDI for the last time on 7 November 1992. Upon inquiry at the office of Magsanoc as to why her column was stopped, the secretary told Orozco that it was Eugenia Apostol (Apostol), the chairperson of PDI, who had decided to stop her column.<sup>[13]</sup>

Apostol was out of the country at that time so Orozco waited until February 1993 to talk to her. In a telephone conversation with Orozco, Apostol stated that she had been told by Magsanoc that there were too many columnists in the Lifestyle Section.<sup>[14]</sup>

Aggrieved at the stoppage of her column, Orozco filed the instant case against private respondents before the NLRC. The PDI raised as primary defense the claim that Orozco was not an employee of the newspaper. However, in a Decision dated 29 October 1993, Labor Arbiter Arthur L. Amansec ruled that Orozco had been illegally dismissed, after concluding that Orozco had indeed been an employee of the PDI.

The PDI, through counsel, received a copy of the Labor Arbiter’s Decision on 16 December 1993.<sup>[15]</sup> It timely filed a Notice and Memorandum dated 24 December 1993, but it did not lodge a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from. PDI adverted to such failure on its part before the NLRC but justified the same on the ground that the Decision of the Labor Arbiter did not fix any amount but merely stated that Orozco was entitled to backwages.

The NLRC dismissed the appeal in its Decision dated 23 August 1994. In this Decision, it made note of the failure of PDI to perfect the appeal by filing the cash or surety bond. Nonetheless, the NLRC ventured to delve on the merits, and thereupon, affirmed the finding of the Labor Arbiter that Orozco was an employee of PDI.

Private respondents elevated the case to the Supreme Court by way of the special civil action of certiorari. Pursuant to the ruling in *St. Martin Funeral Homes vs. NLRC*,<sup>[16]</sup> this Court referred the case to the Court of Appeals.

On 11 July 2002, the Court of Appeals reversed the decision of the NLRC by holding that Orozco is not an employee of PDI. The reversal was grounded on factual premises, the appellate court concluding that the NLRC had misappreciated the facts and rendered a ruling wanting in substantial evidence. It thereby dismissed Orozco's complaint for lack of merit. The Court of Appeals likewise dismissed Orozco's motion for reconsideration on 11 September 2002. Hence, this petition.

In her Memorandum, Orozco posits that the Court of Appeals should have dismissed outright the private respondent's petition for certiorari for their failure to file a cash bond or a surety bond as provided for in Article 223 of the Labor Code.

In support of the argument, Orozco contends that a grievous error tantamount to grave abuse of discretion was committed by the Court of Appeals when it failed to appreciate the observation of the NLRC that private respondents did not perfect their appeal as they did not deposit on time any cash or surety bond in compliance with the provision of Art. 223 of the Labor Code when they filed an appeal of the Labor Arbiter's decision at the NLRC. Orozco argues that the posting of the cash or surety bond is mandatory and must be made by the employer within the reglementary period of ten (10) days from receipt of the Labor Arbiter's decision so as to perfect his appeal. Failing to do so, the employer loses the right to appeal, and the Labor Arbiter's decision becomes final and executory, regardless of whether or not the NLRC declares it so, by operation of law.<sup>[17]</sup>

The NLRC in its decision concluded that it had no jurisdiction over PDI's appeal but proceeded nonetheless to discuss the merits of the case. On the other hand, the Court of Appeals made no mention at all of the jurisdictional defect, whether in its recital of facts or discussion of the arguments.

The novelty of the argument on the merits aside, it is essential not to lose sight of the jurisdictional issue, as it determines whether or not an appeal had indeed been perfected.

The provisions of the Labor Code are quite clear cut on the matter. The relevant portion of Article 223 states:

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.

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)

By explicit provision of law, an appeal is perfected only upon the posting of a cash or surety bond. The reason behind the imposition of this requirement is not difficult to divine. As the Court said in *Viron Garments Mfg., Co., Inc. vs. NLRC*:<sup>[18]</sup>

The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.<sup>[19]</sup>

But while the posting of a cash or surety bond is jurisdictional and is a condition sine qua non to the perfection of an appeal, there is a

plethora of jurisprudence recognizing exceptional instances wherein the Court relaxed the bond requirement as a condition for posting the appeal.

In *Olacao vs. NLRC*<sup>[20]</sup> for example, the NLRC had discovered that the separation pay awarded by the Labor Arbiter had already been paid by the employer. Since a modification of the Labor Arbiter's Decision was the only way to forestall the grant of separation pay twice, the NLRC allowed the appeal perfected only on the twelfth (12<sup>th</sup>) day.<sup>[21]</sup> In *Cosico, Jr. vs. NLRC*,<sup>[22]</sup> the employer timely posted the bond based on the monetary award for back wages and thirteenth month pay, but excluding the exorbitant award for moral and exemplary damages. The Court ruled that there was substantial compliance, owing to the fact that the NLRC had since excluded the award of damages from the computation of the surety bond.<sup>[23]</sup> And in *Star Angel Handicraft vs. NLRC*,<sup>[24]</sup> the Court noted that a motion for reduction of the appeal bond had been filed within the reglementary period, and that the appeal should not be deemed perfected until the NLRC has acted on the motion and the appellant has filed the bond as fixed by the NLRC.<sup>[25]</sup>

In *YBL vs. NLRC*,<sup>[26]</sup> the appeal was interposed by the employers on 11 September 1989, or only six (6) days from the effectivity of the Interim Rules on Appeals which incorporated for the first time the appeal bond requirement imposed by Republic Act No. 6715, an amendatory law to the Labor Code. The Court therein considered the apparent fact that neither the counsel for the employer nor that for the employee was already aware of the then new requirement requiring the posting of a bond on appeal.<sup>[27]</sup> The same justification was cited with approval by the Court in *Blancaflor vs. NLRC*,<sup>[28]</sup> and the same circumstance is likewise apparent in *Rada vs. NLRC*.<sup>[29]</sup>

In the case of *Taberrah vs. NLRC*,<sup>[30]</sup> the Court made note of the fact that the assailed decision of the Labor Arbiter concerned did not contain a computation of the monetary award due the employees, a circumstance which is likewise present in this case. In said case, the Court stated.

As a rule, compliance with the requirements for the perfection of an appeal within the reglementary period is mandatory and

jurisdictional. However, in *National Federation of Labor Unions vs. Ladrido* as well as in several other cases, this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality.<sup>[31]</sup>

The judgment of the Labor Arbiter in this case merely stated that petitioner was entitled to backwages, 13<sup>th</sup> month pay and service incentive leave pay without however including a computation of the alleged amounts. As the private respondents asserted in their motion for reconsideration anent the NLRC Decision:

### III. NO BOND WAS FILED BECAUSE OF THE VAGUENESS OF THE AWARD

The award as contained in the appealed 29 October 1993 decision did not state the exact amount to be awarded. In particular, while it may be assumed, as stated in the decision subject of this motion, the award be based on the P300.00 per column/article basis, this is not clear in the decision which likewise mentioned an award for thirteenth (13<sup>th</sup>) month pay and service incentive leave pay. Noteworthy is the fact that the complainant, not being an employee, was not being paid a fixed salary. Hence, herein respondents-appellants requested in their memorandum on appeal that the Commission fixes (sic) the amount of the bond, if it finds the same necessary in exceptional cases like the present case, to wit:

“X x x. Respondents-appellants however manifest that they are able and willing to post a bond that this Commission may fix if the latter finds it necessary.” (Notice and Memorandum on Appeal dated 24 December 1993, p. 7).<sup>[32]</sup> (Emphasis in the original)

In the case of *NFLU vs. Ladrido III*,<sup>[33]</sup> this Court postulated that “private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter.”<sup>[34]</sup> The

computation of the amount awarded to petitioner not having been clearly stated in the decision of the labor arbiter, private respondents had no basis for determining the amount of the bond to be posted.

Thus, while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business,<sup>[35]</sup> the law does admit of exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.<sup>[36]</sup> But while this Court may relax the observance of reglementary periods and technical rules to achieve substantial justice,<sup>[37]</sup> it is not prepared to give due course to this petition and make a pronouncement on the weighty issue obtaining in this case until the law has been duly complied with and the requisite appeal bond duly paid by private respondents.

**WHEREFORE**, without giving due course to the petition, the Labor Arbiter is hereby ordered to clarify the amount of the award due the petitioner. Private respondents are ordered to post the requisite bond in accordance with Article 223 of the Labor Code, whereupon, the petition will be given due course. No pronouncement as to costs.

**SO ORDERED.**

**Puno, J., (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.**

---

[1] Promulgated on 11 September 2002; Rollo, p. 107.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., concurred in by Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, promulgated on 11 July 2002; Rollo, pp. 101-106.

[3] Id. at 106.

[4] Dated 23 August 1994, penned by Commissioner Rogelio I. Ragala and concurred in by Commissioner Victoriano R. Calaycay of the Second Division; Id. at 89-98.

[5] Dated 29 October 1993; Id. at 83-88.

[6] Arthur L. Amansec.

[7] Rollo, p. 88.

[8] Id. at 186, 352.

- [9] Id. at 348.
- [10] Id. at 309, 350.
- [11] Id. at 350.
- [12] Id. at 185.
- [13] Id. at 350-351.
- [14] Ibid.
- [15] Id. at 292.
- [16] 356 Phil. 811 (1998).
- [17] Id. at 5-6.
- [18] Ibid.
- [19] Id. See also *Guadia vs. NLRC*, 376 Phil. 548, 555 (1999); *Calabash Garments, Inc. vs. NLRC*, 329 Phil. 226 (1996).
- [20] G.R. No. 81390, 29 August 1989, 177 SCRA 38.
- [21] Id. at 49.
- [22] G.R. No. 118432, 338 Phil. 1080 (1997).
- [23] Id. at 592.
- [24] G.R. No. 108914, 20 September 1994, 236 SCRA 580.
- [25] Id. at 584.
- [26] G.R. No. 93381, 28 September 1990, 190 SCRA 160.
- [27] Id. at 163.
- [28] G.R. No. 101013, 2 February 1993, 218 SCRA 366, 371.
- [29] G.R. No. 96078, 9 January 1992, 205 SCRA 69.
- [30] 342 Phil. 394 (1997).
- [31] Ibid.
- [32] Id. at 140.
- [33] G.R. Nos. 94540-41, 8 May 1991, 196 SCRA 833.
- [34] Ibid.
- [35] Id. citing *Arnold Ginete vs. Hon. Court of Appeals*, G.R. No. 127596, 24 September 1998, 296 SCRA 38.
- [36] *Buenaobra vs. Lim King Guan*, G.R. No. 150147, 20 January 2004, 420 SCRA 359, 364.
- [37] Ibid.