

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**RODOLFO QUIAMBAO,
*Petitioner,***

-versus-

**G.R. No. 91935
March 4, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION AND CENTRAL CEMENT
MARKETING CORP.,**

Respondents.

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D E C I S I O N

MENDOZA, J.:

This is a Petition for *Certiorari* to Annul the Decision of the National Labor Relations Commission in NLRC RAB II CN-0052086, reversing the decision of Labor Arbiter Gregorio Calasan, finding petitioner to have been illegally dismissed, and accordingly dismissing petitioner's complaint for lack of merit.

The facts are as follows:

Rodolfo Quiambao was hired as officer-in-charge of private respondent Central Cement Corporation's Tuguegarao Branch on December 1, 1982. Six months later, he was made permanent Branch

Manager at a monthly salary of P2,500.00 with a monthly emergency cost of living allowance of P350.00 and a representation allowance of P200.00. Among other things, petitioner, together with William Kho, the Branch Cashier, was in charge of credit collections. He submitted monthly reports to the Central Office on the operations of the branch and the outstanding balances of its customers. He was also required to attend regular monthly meetings in the Central Office, together with the Vice President for Marketing and the Marketing Manager.

In April 1984, a financial and performance audit made by the Central Office showed the Tuguegarao Branch of which he was the Manager to be in “a state of disarray and chaos.”

On May 25, 1984, petitioner was suspended for an indefinite period for poor performance in extending credit to customers, violation of company rules and regulations and gross negligence. He was informed that a committee would be created to investigate him and that afterward he would be informed of the management’s decision. As a result of further investigation petitioner was charged with estafa before the Provincial Fiscal of Tuguegarao, while a civil case for collection was brought against him in the Regional Trial Court of Makati.

The criminal complaint was dismissed by Acting Provincial Fiscal Alejandro de Guzman. Although on appeal to the Ministry of Justice the then Deputy Minister of Justice, now Associate Justice of this Court, Reynato S. Puno reversed the provincial fiscal and ordered the filing of an information for estafa against petitioner, the case was eventually dismissed by the Regional Trial Court of Tuguegarao because of the failure of the prosecution witnesses to appear. The civil suit filed by Central Cement was likewise dismissed by Branch 60 of the Regional Trial Court of Makati for failure of Central Cement to prove its case against petitioner Quiambao.

Meanwhile, on March 15, 1985 petitioner demanded reinstatement with backwages. But Central Cement ignored his demand and instead served him with a notice of termination on the ground of loss of confidence.

Petitioner therefore filed a complaint for illegal dismissal. After hearing, the Labor Arbiter found petitioner to have been illegally dismissed and ordered respondent Central Cement Marketing Corporation to pay the total amount of P203,100.00, broken down as follows:

1. P100,600.00 as three (3) years backwages without qualification and deduction based on P2,500.00 monthly basic pay plus P350.00 monthly ECOLA;
2. P2,500.00 as separation pay equivalent to one month basic pay;
3. P100,000.00 as moral damages.

Central Cement was also ordered to pay the complainant's counsel ten (10%) percent of the judgment sum as attorney's fees.

Central Cement appealed to the National Labor Relations Commission. Petitioner moved to dismiss appeal on the ground that Cement Central had not posted a supersedeas bond as required by Art. 223 of Labor Code, but the NLRC did not act on his motion. Instead, on October 23, 1989, the NLRC rendered a decision reversing the finding of the Labor Arbiter and dismissing Quiambao's complaint. On January 17, 1990, Quiambao moved for a reconsideration. On the other hand, private respondent filed a motion to dismiss the motion for reconsideration on the ground that it was filed out of time, with the consequence that the judgment of the NLRC, which dismissed the complaint, had become final and executory.

Without waiting for the resolution of the motion Quiambao filed this petition for certiorari. Petitioner alleges that the NLRC committed a grave abuse of its discretion by:

1. Disregarding established facts based upon the evidence on record which are material to and decisive to the controversy;

2. Holding that respondent Central Cement Marketing Corporation accorded due process to petitioner before he was terminated from service; and
3. Disregarding the right of the petitioner herein to security of tenure.

On November 23, 1990 he filed a supplemental petition, alleging that the NLRC acted without jurisdiction and contrary to law in taking cognizance of the appeal of Central Cement from the decision of the Labor Arbiter despite the fact that Central Cement had not posted a supersedeas bond.

The petition is well taken.

First. Petitioner is right that the filing of a supersedeas bond is indispensable to the perfection of an appeal in cases which, like the present one, involve monetary awards and that because Central Cement failed to comply with this requirement, the decision of the Labor Arbiter, finding Central Cement guilty of the illegal dismissal of petitioner, became final and executory. Art. 223 expressly provides that “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.”

Private respondent contends that Art. 223 of the Labor Code is not self executing and that since the rules implementing it took effect only on September 5, 1989, after private respondent had appealed to the NLRC on June 19, 1989, and that at the time it brought its appeal, there was no requirement to give a supersedeas bond as condition for perfecting its appeal. This contention is without merit. We have already held that Art. 223 is self executing and does not need any rule to implement it.^[1] The filing of supersedeas bond for the perfection of an appeal is mandatory and jurisdictional. As held in *Viron Transit vs. NLRC*:^[2]

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal is clearly

limited in the provision that the 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.

It is true that, in some cases,^[3] this Court relaxed the requirement of posting supersedeas bond for the perfection of an appeal. But the decisions in those cases were justified by the fact that there was substantial compliance with the rule, so that on balance, technical considerations had to give way to considerations of equity and justice.^[4] In the case at bar, no similar justifications exist excusing Central Cement’s failure to comply with the rule on mandatory posting of supersedeas bond.

Thus, in *Rada vs. NLRC*^[5] the bond was paid, although belatedly. On the other hand in the case of *Blancaflor vs. NLRC*^[6] the failure to give a bond was in part due to the failure of the Labor Arbiter to state the exact amount of backwages and separation pay due. There was therefore no basis for determining the amount of the bond to be filed by private respondents therein. Central Cement’s only excuse in this case for not complying with the rule is that no supersedeas bond was required to be posted when it appealed on June 19, 1989. As already stated, however, Art. 223 is self executing.

In *Your Bus Line vs. NLRC*^[7] the petitioner was excused for its failure to give the bond because it was misled by the notice of the decision which, while stating the requirements for perfecting an appeal, did not mention that a bond must be filed. The lawyer for petitioner relied on such notice, and this Court, considering this circumstance as an excusable mistake, allowed petitioner to file the bond and appeal from the decision of the Labor Arbiter. No basis for excusing private respondent’s failure to post a bond, similar to the defective notice in that case, has been called to our attention.

The consequence of private respondent’s failure to comply with the mandatory requirement for the perfection of the appeal was to render the decision of the Labor Arbiter final and executory, and to place it

beyond the power of the NLRC to review and, even more so, to reverse. The record shows that petitioner objected to the appellate jurisdiction of the NLRC but the NLRC was heedless, as it ignored petitioner's motion for the dismissal of the appeal. The NLRC thus acted without jurisdiction in reversing the decision of the Labor Arbiter in favor of petitioner.

Second. Petitioner filed a motion for reconsideration of the decision of the NLRC. Although his motion was not filed within ten (10) calendar days as provided by Rule VII, §14 of the NLRC Rules of Procedure, for which reason private respondent filed a motion to dismiss, petitioner's failure to file his motion within the reglementary period was of no consequence as the judgment of the NLRC, which he sought to reconsider, is anyway a nullity.^[8] The requirement for a motion for reconsideration, as a condition for the filing of a petition for certiorari, does not apply where the decision sought to be annulled is a nullity.^[9]

Third. Notwithstanding the foregoing conclusions, we have taken pains to consider the merits of this case. We hold that the decision of the NLRC, finding petitioner to have been dismissed, for cause has no basis in the evidence.

It is noteworthy that, like the Labor Arbiter, the NLRC found that private respondent Central Cement failed to substantiate its allegations that petitioner was guilty of violating company rules and regulations, extending credit to customers beyond the allowable limits and poor sales performance. The only reason why the NLRC upheld petitioner's dismissal was because of the filing of criminal charges for estafa against petitioner. The NLRC considered this circumstance as justifying private respondent's loss of trust and confidence in petitioner. To be sure, the then Deputy Minister of Justice found probable cause against petitioner and directed the filing of an information against him in court. The fact, however, is that the case was subsequently dismissed by the RTC of Tuguegarao for failure of the prosecution to prosecute. On the other hand, the civil suit for collection was dismissed by the RTC of Makati for failure of private respondent to prove its case. The filing of these cases, therefore, cannot support the private respondent's claim of loss of trust and confidence in petitioner.

This case is to be distinguished from those cases in which it was held that the acquittal of the employee in the criminal case was not a bar to his dismissal on the ground of loss of confidence.^[10] The rulings in those cases were based on findings that the evidence in the criminal case was not sufficient to satisfy the requirement of proof beyond reasonable doubt but otherwise adequate to support a finding that there was substantial evidence that the employee was guilty. In contrast, in the case at bar, there is entire want of evidence to justify the dismissal of the petitioner. The NLRC merely relied on the fact that the Ministry of Justice found petitioner probably guilty of estafa. In fact, the NLRC found that the charges against him had not been substantiated.

Moreover there was, in this case, no investigation by the private respondent. There was only a financial and performance audit conducted. The alleged “state of disarray and chaos” in the Tuguegarao Branch of the company had not been shown to have been caused by petitioner. Petitioner was served with a notice of indefinite preventive suspension on the ground that he violated company rules and regulations, extended credit to customers beyond the limit and neglected his duties. But petitioner was not informed of these charges nor given the chance to be heard. On top of this, the NLRC found no evidence substantiating the charges.

Nor is there evidence that he misappropriated funds of the company or extorted money from customers, as charged. As already stated, private respondent simply relied on the outcome of the preliminary investigation and the subsequent filing of the criminal case as basis for the dismissal of petitioner on this ground. That case was eventually dismissed by the RTC of Tuguegarao for failure of prosecution witnesses to testify, as was the civil case brought in the RTC of Makati, which found that it was not petitioner Quiambao but the company’s cashier, Antonio Kho, who had misappropriated the money.

With the dismissal of both the criminal and civil cases and without any company investigation conducted to establish petitioner’s culpability, private respondent’s claim of loss of confidence became

untenable. It was grave abuse of discretion for the NLRC to uphold petitioner's dismissal.

WHEREFORE, the petition is **GRANTED**, the decision of the NLRC is **SET ASIDE** and the decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Regalado, Romero and Puno, JJ., concur.

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- [1] Aquino vs. NLRC, 226 SCRA 76 (1993).
 - [2] 207 SCRA 339 (1992).
 - [3] Rada vs. NLRC, 205 SCRA 69 (1992); Blancaflor vs. Court of Appeals, 218 SCRA 366 (1993); Your Bus Lines, et al. vs. NLRC, SCRA 169 (1990).
 - [4] Cabalan Pastulan Negrito Labor Association vs. NLRC, 241 SCRA 643 (1995).
 - [5] Supra, note 3.
 - [6] Supra, note 3.
 - [7] Supra, note 3.
 - [8] National Investment and Development Corp. vs. CA, 180 SCRA 164 (1989); cf. Planas vs. CIR, 112 Phil. 377 (1961).
 - [9] Aquino vs. NLRC, 226 SCRA 76 (1993); Saldaña vs. CA, 190 SCRA 396 (1990).
 - [10] Ocean Terminal Services vs. NLRC, 197 SCRA 491 (1991); Mercury Drug Corp. vs. NLRC, 177 SCRA 580 (1989); San Miguel Corporation vs. NLRC, 128 SCRA 181 (1984); Dole Phils., Inc. vs. NLRC, 123 SCRA 673 (1983).