SUPREME COURT
THIRD DIVISION

LADISLAO P. VERGARA,
***Petitioner*,**

-versus-

G.R. No. 117196
December 5, 1997

NATIONAL LABOR RELATIONS COMMISSION and ARIS PHILIPPINES, INC.,
Respondents.
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Is an employee, who was acquitted from a criminal charge of qualified theft due to the prosecution's failure to prove his guilt beyond reasonable doubt, entitled to automatic reinstatement and backwages considering that his dismissal was based on the same act that gave rise to the criminal complaint? Does the failure to post an appeal bond render a decision of the labor arbiter final and executory even where such decision did not include a computation of the monetary award?

The Case

Before us is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the April 29, 1994 Decision[1] and the August 17, 1994 Resolution[2] of the National Labor Relations Commission in NLRC NCR Case No. 00-02-00934-89 which answered both of the foregoing questions in the negative. The challenged Decision set aside the labor arbiter's decision dated November 3, 1989 and entered a new one dismissing petitioner's complaint, while the impugned Resolution denied reconsideration. The dispositive portion of the labor arbiter's decision reads:[3]

> "WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered finding respondent [Private Respondent Aris Philippines, Inc.] guilty of illegal dismissal and consequently, respondent is hereby ordered to reinstate complainant [petitioner herein] to his former position without loss of backwages from the date of the latter's termination until his actual date of reinstatement.
>
> Finally, being compelled to litigate, complainant is also awarded attorney's fees equivalent to ten (10%) percent of the monetary award adjudicated to complainant."

The Facts

The facts of this case are undisputed. Public Respondent NLRC adopted the labor arbiter's narration of facts, viz.:[4]

> "This pertains to a complaint for illegal dismissal filed by Ladislao P. Vergara against Aris Philippines, Incorporated.
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> After submitting their respective position papers and replies, a hearing on the merits was conducted where complainant Ladislao P. Vergara was presented as the only complaining witness undergoing direct and cross-examination. During its turn, respondent did not present any witnesses but only offered certified true copies of transcript of stenographic notes of testimonies of its witnesses in a criminal case entitled People of the Philippines versus Ladislao Vergara, Criminal Case No.

4229. After the hearing on the merits, parties agreed to submit their respective memoranda after which the case will be considered submitted for decision.

Complainant alleged in his position paper that he was once employed as [a] puncher starting on February 20, 1986 until his termination on November 7, 1987 with a daily compensation of P64.00; that when he reported for work on November 7, 1987 his tour of duty was from 6:00 A.M. to 7:00 p.m.; that he passed the main gate and proceeded directly to the guard house and/or storage area where as a company practice he left his bag containing his reversible jacket and proceeded to the leather department where he performed his duties and responsibilities; that during breaktime at 8:00 a.m. he went to the canteen where he ate his baon and thereafter returned to his work areas [sic]; that during lunch break at 11:30 a.m. complainant went again to the canteen where he bought food and took his lunch after which he again returned to his work area to resume his work; that at 2:00 p.m. more or less, he went to the Personnel Department where he secured an undertime form and filled it up at the Leather Department after which he left to go home; that from the Leather Department, he passed at the Frisking Area where he was bodily inspected by a security guard; that he proceeded to the Guard House where the Storage Area was located and picked up his bag containing his jacket; that while he is [sic] [in] possession of his bag, he proceeded to the main gate where frisking of bags [was] always conducted by a guard; that before reaching the main gate the guard assigned at the Guard House where Storage Area is located called him up and requested him to open his bag which he did so obediently; that when he opened his bag he was surprised because his bag did not anymore contain his reversible jacket but various pieces of uncut leather; that he was brought by the guard to the Personnel Manager [to] whom he explained that he did not know how and who placed the uncut leather inside his bag and who stole his jacket; that unsatisfied by his explanation, he was brought to the Pasig Police Station, unassisted by counsel, where he was detained until November 12, 1987, that on January 26, 1988 he sent a reply to the letter of the respondent dated January 22, 1988 explaining to the latter that he had

nothing to do about the leather inside his bag; that despite his explanation letter respondent sent him a letter sometime on March 10, 1988 terminating his employment retroactive to November 7, 1987; that [a]side from terminating his services, respondent filed a case of attempted qualified theft against him before the Regional Trial Court of Pasig, Branch 68, docketed as Criminal Case No. 4295; that on August 17, 1988, a judgment was rendered acquitting him.

As evidence, complainant presented himself as complaining witness during hearing on the merits where he underwent direct and cross-examinations, and offered his reply marked as Annex 'A', termination letter as Annexes 'B' to 'B-1', judgment of acquittal as Annexes 'C' to 'C-13'.

On the other hand, respondent averred that as a matter of procedure, all employees going in and out of the company premises must pass through the main gate where their persons as well as their personal belongings such as handcarried bags, envelopes, sacks and the like are all subjected to routine frisking procedure by the security guards; that on November 7, 1987 at around 2:00 p.m., complainant who was supposed to time off at 3:00 p.m., tried to leave the company premises without leaving any request for under-time; that one of the security guards, Mr. Wilfredo Viernes, inspected the bag of the complainant and discovered that it contained nine (9) pieces of stripping leather owned by the respondent company the value of which amounted to One Thousand Four Hundred Fifty Nine Pesos and Twenty Three Centavos (P1,459.23); that respondent brought complainant first to Mr. Gavino Bay, the Director For Employees Relation and subsequently to the Eastern Police District, Pasig, Metro Manila for proper investigation; that Mr. Emerlito Matas and Security Guard Wilfredo Viernes gave sworn statement before Pat. Edgardo M. Hernandez; that after the police investigation, a complaint was elevated to the Provincial Fiscal who having formed a prima facie case against the complainant, filed an information for Attempted Qualified Theft before the Metropolitan Trial Court of Pasig, Branch 68 under docket number as Criminal Case No. 4295; that on January 14 1988, Mr. Jesus M. Perez, the Personnel Manager of

> the respondent company, sent complainant a memorandum requiring [him] to explain why no disciplinary measure [should] be imposed against him; that on January 26, 1988, complainant sent respondent a typewritten letter-explanation denying having attempted to steal strips of leather; that after a careful and objective consideration of the attendant facts, the written explanation of the complainant, the sworn statements of Mr. Emerlito Matas and security guard Viernes, and the Information filed by Assistant Fiscal Jose A. Mendoza, respondent decided to terminate the services of the complainant on the grounds of gross misconduct and loss of confidence due to attempted qualified theft; that a letter of termination was sent to complainant furnishing the Department of Labor and Employment with a copy of the same.
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> As evidence, respondent adduced the following documents: Annex 'A' -- a certified enumeration of the leathers found in complainant's bag[;] Annexes 'B' and 'C' — respective copies of sworn statements of Security Guard Viernes and Mr. Matas[;] Annex 'D' — copy of criminal information; Annex 'E' — Memorandum of the Personnel Manager requiring complainant to explain why he should not be imposed disciplinary measure; Annex 'F' — explanation letter of the complainant in answer to the Memorandum of the Personnel Manager denying having attempted to steal strips of leather; and Annex 'G' — letter of termination to the complainant.
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> During the hearing on the merits, respondent did not present any witnesses. Instead it offered certified true copies of transcript of stenographic notes of its witnesses during the proceeding in a criminal case. Thereafter, respondent submitted its memorandum."

As stated earlier, the labor arbiter found petitioner's dismissal illegal and ordered his reinstatement and the payment of his backwages. On May 31, 1991, Public Respondent NLRC dismissed private respondent's appeal because of its failure to post an appeal bond.[5] Subsequently, the NLRC reconsidered its resolution and ordered herein private respondent to post an appeal bond in the amount of P59,904.[6] In due course, public respondent rendered the assailed

Decision setting aside that of the labor arbiter. Thereafter, it issued the questioned Resolution denying petitioner's motion for reconsideration.[7]

Hence, this petition for certiorari.[8]

The Issues

Petitioner alleges grave abuse of discretion on the part of Public Respondent NLRC:[9]

"I

> In promulgating its Order of September 29, 1993, which in effect allowed or gave due course to the appeal of respondent company, considering that the decision of the labor arbiter had already become final and executory when respondent company failed to perfect its appeal in accordance with law.

II

> When it promulgated its Decision of April 29, 1994, which set aside the decision of the labor arbiter issued November 3, 1989, finding illegal the dismissal of the petitioner, which was already final and executory, and entering a new one dismissing the complaint for lack of merit, considering that said decision [sic] of the Respondent Commission was issued in complete disregard of and against the evidence, established jurisprudence and the law.

III

> When it promulgated its Order of August 17, 1994, denying for lack of merit the motion for reconsideration of petitioner, considering that the said Order was issued in complete disregard of and against the evidence, established jurisprudence, and the law."

Put simply, the issues for resolution are as follows: (1) May an appeal be given due course in spite of appellant's failure to post a

supersedeas bond? (2) Does the acquittal of an employee from a criminal charge, arising from the same act which was the cause of his dismissal from employment, entitle him to automatic reinstatement? (3) Is public respondent's denial of a motion for reconsideration, in view of the absence of "palpable or patent" errors in its assailed Decision, a denial based on "form and style" rather than on substance?

The Court's Ruling

The petition is without merit.

Preliminary Issue: Negligence of Petitioner's Counsel

Petitioner contends that he could not be bound by "the acts or omissions of former counsel and with the effects of his receipt on May 30, 1994 of the decision of the public respondent"[10] The following "events and circumstances" allegedly suggest "that there is more to this case than meets the eye."[11]

The former counsel failed (1) to question the order of the public respondent dated September 29, [1993], allowing the private respondent to post an appeal bond and perfect its appeal [sic] in spite of the fact that the decision of the labor arbiter had already become final and executory, (2) to file a motion for reconsideration of the decision of the public respondent dated April 29, 1994, dismissing the claim of the petitioner, notwithstanding his previous motion for extension of time to file a motion for reconsideration, and (3) to move and insist for the reinstatement of the petitioner which was awarded and ordered by the labor arbiter and which by law, Article No. 223 of the Labor Code, as amended, was immediately executory, even pending appeal." (Emphasis found in the original.)

Petitioner argues that the foregoing legal actions should have been undertaken by his counsel. These alleged actions, however, will not result in the reversal of the assailed Decision. In the first place, petitioner has in fact substantially raised the arguments that were allegedly neglected by his former counsel. Thus, in his "Motion to Dismiss Appeal" dated November 8, 1989 before the NLRC,[12] petitioner debunked the alleged finality of the labor arbiter's decision.

In any event, these allegedly omitted arguments are now raised before this Court and will now be ruled upon.

First Issue: Posting of Supersedeas Bond

Petitioner contends that public respondent committed grave abuse of discretion in giving due course to the appeal of private respondent. He maintains that the labor arbiter's decision had become final and executory because private respondent failed to "post the cash or surety bond mandated by law and the rules within the reglementary period of ten (10) days from its receipt of the said decision."

We disagree with petitioner's contention. Normally, the filing of an appeal bond is mandatory and jurisdictional. The facts obtaining in the present case, however, render this rule inapplicable. First, in his award, the labor arbiter did not fix the exact amount of backwages and attorney's fees. Second, private respondent had exerted efforts to determine the exact computation of the monetary award as a basis for filing the correct amount of the required appeal bond. Private respondent even filed with Public Respondent NLRC a Manifestation on November 27, 1989 calling its attention to the omission of the computation of the monetary award in the decision of the labor arbiter. This shows that private respondent was willing to file the required appeal bond, but that it was unable to do so for reasons beyond its control, i.e., the failure of the labor arbiter to indicate the exact amount or, at least, the basis for the computation of the monetary award. Third, private respondent immediately posted the surety bond upon receipt of the September 29, 1993 Order fixing the amount of the award at P59,904.00. Hence, no damage was suffered by petitioner.

It is already settled that the failure to post the appeal bond cannot prejudice the perfection of an appeal, where the labor arbiter's decision does not fix the exact amount of the monetary award. Thus, the Court held in Union Filipino Workers (UFW) vs. NLRC:[13]

> "However, despite the late filing of the bond by private respondent We rule that public respondent committed no grave abuse of discretion amounting to want of jurisdiction in giving due course to the appeal of private respondent for the following

reasons:

> 'Note that the decision appealed from by private respondent did not state the exact amount of monetary award. Rather, the labor arbiter ordered the NLRC's 'Corporation Auditing Examiner' to immediately make the computation of the award. As pointed out by private respondent in its memorandum, '(u)p to this late date, no computations of any kind ha(ve) been submitted by the 'Corporation Auditing Examiner' in this case. . . It was the Commission's own appeal section, which finally (evaluated and) came up with a tentative computation which served as a basis for the respondent club to file the bond.'

On October 23, 1990, private respondent received an Order from the NLRC to submit its bond in the amount of P529,056.00 within ten calendar days from receipt. Private respondent had actually filed the requisite bond on October 12, 1990, even before receipt of the said Order. The situation in which private respondent found itself was therefore not clear-cut. The amount on which the bond would be based had not been computed until very much later. As We ruled in NAFLU vs. Ladrido: 'Private respondent 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.' Said the court:

> 'In the order of public respondent NLRC dated August 10, 1990, it is stated that '(T)he policy of the Commission in situations like this (and the labor arbiter should have been aware of this) is for the labor arbiter to forward records to the Commission [and that] thereafter, the Commission will cause the computation of the awards and issue an order directing the appellant to file the required bond.' This appears to be a practice of the NLRC to allow a belated filing of the required appeal bond, in the instance when the decision of the labor arbiter involves a monetary award that has not yet been computed, considering that the computation will still have to be made by that office. It

> is understood of course, that appellant has filed the appeal on time, as in this case.'
>
> Moreover, there is no showing that private respondent abused the leniency of the NLRC, which would merit the dismissal of its appeal as in the case of Italian Village v NLRC. Private respondent immediately filed the bond upon the determination of the amount of the award." (Emphasis supplied; citations omitted.)

In this light, we agree with the public respondent's justification of its September 29 1993 Order:[14]

> "This pertains to the Motion for Reconsideration filed by respondent from the resolution of the Commission dated May 31, 1991, dismissing the instant appeal for non-posting of appeal bond.
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> This motion for reconsideration is predicated on the ground that respondent's non-posting of the appeal bond is due to the fact that the Labor Arbiter's decision failed to state the amount of backwages awarded to complainant. Moreover, respondent had offered to post the necessary bond in accordance with law."

Second Issue: ***Acquittal Does Not Ipso Facto Mean Reinstatement***

Petitioner assails public respondent's finding that petitioner "has been found guilty of violating company rules and regulations, more particularly, involving acts of dishonesty." He insists that his dismissal violated "the basic principle and essence of due process."[15] Private respondent's memorandum on the theft charge against him and the request for his explanation was sent only on "January 14, 1988, more than two (2) months after the commission of the alleged theft," but he points out that he was no longer permitted "to report for work" right after the date of the theft.[16]

Petitioner's contentions are not tenable.

Article 282 (c) of the Labor Code provides that an employment may be terminated because of "[f]raud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative." Loss of trust and confidence as a just cause for dismissing an employee does not require proof beyond reasonable doubt.[17] An employer needs only to establish sufficient basis for the dismissal of the employee.[18]

The Court finds adequate basis for private respondent's loss of trust and confidence in petitioner. It is admitted that petitioner's bag contained only his jacket when it was left at private respondent's storage area. When petitioner was about to leave the company premises, the guards found that his bag contained pieces of stripping leather, which had a cumulative total size of 47.25 square feet and weighed more than a blanket and, hence, much heavier than his jacket. He would have immediately noticed the difference in weight between his jacket and the pieces of leather found in his bag. Thus, petitioner's claimed ignorance of the presence of stripping leather inside his bag is at best dubious. Under the circumstances, we apply against petitioner the disputable presumption "[t]hat a person found in possession of a thing taken in a recent wrongful act is the taker and the doer of the whole act."[19] Besides, the evidence supporting the criminal charge, found after preliminary investigation as sufficient to show prima facie guilt, constitutes just cause for his termination based on loss of trust and confidence. To constitute just cause, petitioner's malfeasance did not require criminal conviction.[20] Verily, petitioner was dismissed not because he was convicted of theft, but because his dishonest acts were substantially proven.

An employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence. Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt; as noted earlier, the quantum of proof required is merely substantial evidence.[21] More importantly, the trial court acquitted petitioner not because he did not committed the offense, but merely because of the failure of the prosecution to prove his guilt beyond reasonable doubt. In other words, while the evidence presented against petitioner did not satisfy the quantum of proof required for conviction in a criminal case, it substantially

proved his culpability which warranted his dismissal from employment.

Third Issue: Assignment of "Palpable or Patent" Errors

Petitioner contends that public respondent, in its August 17, 1994 Order denying the motion for reconsideration of the assailed Decision, was "overly concerned with form and style, rather than with merit and substance."[22] According to petitioner, his motion for reconsideration "pointed out the glaring errors committed by the respondent Commission." Thus, in assailing the Decision, petitioner "used terms or language of equivalent, if not stronger import to [sic] "palpable and patent" in referring and calling attention to the errors."[23] The solicitor general, in his Comment dated April 7, 1995 agrees with the contention of petitioner that public respondent focused more on form and style rather than on substance."[24] However, he opines that this was merely "an error of judgment but not necessarily grave abuse of discretion" compelling reversal.

It is scarcely necessary to deal with this contention. Whether or not public respondent was able to fully evaluate the motion for reconsideration is already moot. Petitioner has aired in this petition the arguments in his motion for reconsideration of the NLRC Decision, and they have been adequately addressed by this Court. Assuming arguendo that the NLRC failed to consider the said motion for reconsideration, petitioner was not left without any recourse.

WHEREFORE, the petition is hereby **DISMISSED** and the assailed Decision and Resolution are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Narvasa, *C.J.*, Romero, Melo and Francisco, *JJ.*, concur.

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[1] Penned by Comm. Alberto R. Quimpo and concurred in Pres. Comm. Bartolome S. Carale and Comm. Vicente S.E. Veloso; rollo, pp. 36-43.
[2] Rollo, p. 45.
[3] Ibid, pp. 36.

[4] NLRC Decision, pp. 2-5; pp. 37-40.
[5] Rollo, pp. 127-129.
[6] Ibid., pp. 33-34.
[7] Ibid., p. 45.
[8] The case was deemed submitted for resolution upon receipt by this Court of private respondent's memorandum on January 10, 1997.
[9] Petition pp. 9-10; rollo, pp. 16-17. Original text in upper case.
[10] Petitioner's Consolidated Reply, p. 2; rollo, p. 236.
[11] Ibid., p. 3; rollo, p. 237.
[12] Rollo, pp. 124-126.
[13] 221 SCRA 267, 282-283, April 7, 1993, per Nocon, J .
[14] Rollo, p. 33.
[15] Petition, p. 16; rollo, p. 23.
[16] Ibid., p. 17; rollo, p. 24.
[17] Zamboanga City Electric Cooperative, Inc. vs. Buat, 234 SCRA 47, 51, March 29, 1995, citing Pepsi Cola Bottling Co. vs. National Labor Relations Commission, 210 SCRA 277, 282, June 13, 1992; Gubac vs. National Labor Relations Commission, 187 SCRA 412, 416, July 13, 1990 and other cases.
[18] Aurelio vs. National Labor Relations Commission, 221 SCRA 432, April 12, 1993; Philippine Long Distance Telephone Company vs. National Labor Relations Commission, 129 SCRA 163, April 30, 1984.
[19] Section 5[j], Rule 131 of the Rules of Court; People vs. Newman, 163 SCRA 496, 508, July 26, 1988; U .S . vs. Mohamad Ungal, 37 Phil. 835, March 20, 1918.
[20] Cf. Batangas Laguna Tayabas Bus Co. (BLTB Co.) vs. NLRC, 166 SCRA 721, 726-727, October 28, 1988.
[21] MGG Marine Services, Inc. vs. NLRC, 259 SCRA 664, 677, July 29, 1996, citing Sea Land Service, Inc. vs. National Labor Relations Commission, 136 SCRA 544, May 24, 1985; Estiva vs. National Labor Relations Commission, 225 SCRA 169, August 5, 1993; Philippine Long Distance Telephone Co. vs. National Labor Relations Commission, 129 SCRA 163, April 30, 1984, and other cases.
[22] Petition, p. 18; rollo, p. 25.
[23] Ibid., p. 19; rollo, p. 26.
[24] Public Respondent's Comment, pp 12-13; rollo, pp. 218-219. In its Manifestation and Motion dated November 19, 1996, public respondent adopted the comment as its memorandum (rollo, pp. 263-264).