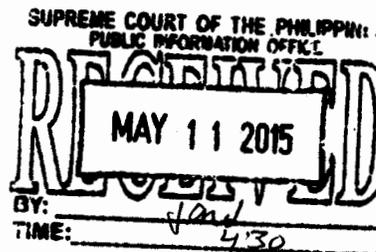




Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 7, 2015 which reads as follows:

“G.R. No. 196396 (*Eureka Personnel and Management Services, Inc. v. Judy Flores*).—Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision¹ dated 30 September 2010 and Resolution² dated 16 March 2011 in CA-G.R. SP No. 02635.

The CA Decision affirmed the Decision³ and Resolution⁴ of the National Labor Relations Commission (NLRC), which ruled that petitioner had failed to perfect its appeal from the Decision⁵ of the Labor Arbiter because of the posting of an insufficient appeal bond. The CA Resolution denied the motion for reconsideration filed by petitioner.

FACTS

Petitioner hired respondent as heavy equipment operator on behalf of its foreign principal Fouad Abdulla Fouad Co., Ltd. in Saudi Arabia.⁶ The employment contract executed for the engagement provided for the salary of 1,400 Saudi Arabian Riyal (SAR) for a period of 24 months commencing on 10 December 2000.

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¹ *Rollo*, pp. 20-30. The Decision issued by the Court of Appeals Eighteenth Division was penned by Associate Justice Socorro B. Inting, with Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon concurring.

² *Id.* at 32-33.

³ *Id.* at 81-84; dated 31 August 2004.

⁴ *Id.* at 86-90; dated 14 January 2005.

⁵ *Id.* at 71-79; dated 29 April 2002.

⁶ *Id.* at 21.

On 26 May 2001, respondent was terminated and later repatriated.⁷ He filed a complaint against petitioner and its foreign principal before the Labor Arbiter for illegal dismissal, payment of unpaid salaries for the unexpired portion of the employment contract, refund of placement fee, interest and damages.

For its part, petitioner alleged that respondent's deployment to the job site was disapproved by Saudi Aramco, because his eye vision had failed to meet the standards set for a crane operator.⁸ Considering that his employment could no longer be retained, respondent was repatriated accordingly.

RULING OF THE LABOR ARBITER

In a Decision dated 29 April 2002, the Labor Arbiter found that respondent was terminated from employment without a just or valid cause. Petitioner was held jointly and severally liable, together with its foreign principal, to pay respondent his salaries for the unexpired 18.29 months of his employment contract in the amount of SAR25,606 (SAR1,400 x 18.29 months),⁹ as well as the reimbursement of his placement fees plus interest in the amount of PhP112,000.¹⁰

According to the Labor Arbiter, in view of the execution of the employment contract, respondent was certainly found to be fit for the position of heavy equipment operator after the latter was subjected to the required pre-qualification screening.¹¹ Thus, petitioner cannot later claim that respondent failed to meet the standards set for the job.

Petitioner filed a Motion for Reconsideration before the NLRC,¹² which treated the motion as an appeal.¹³ Petitioner also filed a Motion to Reduce Bond, accompanied by an appeal bond in the amount of PhP28,000,¹⁴ arguing that the Labor Arbiter's award was excessive.

According to petitioner, it was an error for the Labor Arbiter to award salaries equivalent to the entire unexpired portion of the employment contract. Under Section 10 of Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), workers who are illegally terminated are entitled to their salaries for the unexpired portion of their employment contracts or for only three months for every year of the unexpired term, whichever is less.¹⁵

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⁷ Id.

⁸ Id. at 22.

⁹ Id. at 78.

¹⁰ Id. at 79.

¹¹ Id. at 76-77.

¹² Id. at 96.

¹³ Id. at 23.

¹⁴ Id. at 15, 28.

¹⁵ Id. at 10.

RULING OF THE NLRC

On 31 May 2003, the NLRC issued an Order denying the Motion to Reduce Bond.¹⁶ It ordered petitioner to post the appeal bond equivalent to the monetary award of the Labor Arbiter within 10 days; otherwise, the appeal would be dismissed for non-perfection.

Instead of complying, petitioner filed another Motion for Reconsideration arguing that the Order “was a deprivation of [its] right to appeal considering that [it is] entitled to a reduction of the appeal bond on meritorious ground.”¹⁷

In a Resolution dated 29 January 2004, the NLRC reconsidered and reduced the appeal bond to 50% of the monetary award, or SAR 12,803 for respondent’s salaries for the unexpired portion of his employment contract and PhP56,000 for reimbursement of the placement fees plus interest.¹⁸ The Commission, however, gave a warning that no further motions for reconsideration from petitioner shall be entertained, and that failure to comply with the posting of the appeal bond in the reduced amount would constrain it to resolve the appeal based on the evidence at hand.

On 23 June 2004, petitioner filed a Notice of Compliance with an attached surety bond in the amount of PhP34,000, supposedly in addition to the original appeal bond of PhP28,000.¹⁹

In the Decision dated 31 August 2004, the NLRC dismissed the appeal because of the failure of petitioner to file a sufficient appeal bond.²⁰ It found that the bond posted by petitioner in the amount of PhP28,000 had already expired as early as 29 July 2003.²¹

Petitioner’s motion for reconsideration was denied in the Resolution dated 14 January 2005.²²

Petitioner then filed a petition for certiorari before the CA.

RULING OF THE CA

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¹⁶ Id. at 96.

¹⁷ Id. at 82.

¹⁸ Id. at 96.

¹⁹ Id. at 83.

²⁰ Id. at 83-84.

²¹ Id. at 83.

²² Id. at 89.

In the challenged Decision dated 30 September 2010, the CA dismissed the petition.²³ The appellate court ruled that the posting of the bond is indispensable to the perfection of an appeal from the decision of the Labor Arbiter when the appeal involves monetary awards.²⁴ This requirement is not only mandatory but also jurisdictional. As such, it must be complied with in order that jurisdiction over the appeal could be conferred on the NLRC.²⁵

Petitioner was given several opportunities to comply with the appeal bond requirement, according to the CA, which held that “[p]etitioner’s failure to post the required bond and its continuous insistence that the bond should be fixed at the amount it prayed for in its appeal is but a blatant abuse of the liberality of the NLRC and of the law.”²⁶ Worse, petitioner’s actions resulted in the evil sought to be avoided by the law in the first place: the delay and the evasion of the employer’s obligation to satisfy the employee’s monetary claims.

ISSUE

Whether the CA erred in finding that the NLRC committed no grave abuse of discretion in dismissing petitioner’s appeal for failure to post the required appeal bond.

OUR RULING

The above issue is framed according to the mode of review that we undertake in petitions assailing a Rule 65 decision of the CA, specifically in labor cases. When the CA gave due course to the petition for certiorari filed by petitioner, it undertook a review of the NLRC Decision to determine the presence or absence of grave abuse of discretion.

In the instant Rule 45 petition, rather than determining whether the decision on the merits of the case by the NLRC – or even by the Labor Arbiter – was correct, we look into whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC.²⁷

It is from this perspective that we deny the petition. We find that the CA correctly dismissed the petition for certiorari assailing the NLRC Decision that had dismissed petitioner’s appeal.

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²³ Id. at 29.

²⁴ Id. at 26.

²⁵ Id. at 27.

²⁶ Id. at 28.

²⁷ *Montoya v. Transmed Manila Corp.*, 613 Phil. 696 (2009).

There is grave abuse of discretion when a court or tribunal performed a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction.²⁸ To consider it grave, "the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."²⁹

Indeed, when we look at the proceedings, it is difficult to ascribe grave abuse of discretion on the part of the NLRC.

Petitioner committed its first procedural gaffe when it filed a Motion for Reconsideration of the Labor Arbiter's Decision. Under Section 5(f), Rule V of the NLRC Rules of Procedure, a motion for reconsideration of any decision or order of the Labor Arbiter is a prohibited pleading and shall not be allowed, acted upon or elevated to the NLRC.

While the NLRC would have been fully justified in not acting upon the Motion for Reconsideration, it opted to treat the motion as an appeal. Thereafter, it denied the Motion to Reduce Bond and gave petitioner a fresh 10 days within which to post the appeal bond equivalent to the monetary award of the Labor Arbiter.

Petitioner remained steadfast in its position that the Labor Arbiter erred in awarding salaries equivalent to the entire unexpired portion of the employment contract, an error that had a direct effect on the amount of the appeal bond. Instead of complying, it filed another motion for reconsideration, which was well-taken by the NLRC. The NLRC reconsidered its denial of the Motion to Reduce Bond and directed petitioner to post an appeal bond equivalent to 50% of the monetary award.

Petitioner posted a surety bond in the amount of PhP34,000, supposedly in addition to the original appeal bond of PhP28,000, which turned out to have long expired. This is an act of defiance of the NLRC Order.

Even if the original appeal bond had not expired, the total bond posted by petitioner would be only Php62,000. This amount would hardly cover the reduced appeal bond equivalent to 50% of the monetary award; that is, Php56,000 for the reimbursement of the placement fees plus interest and SAR12,803³⁰ for respondent's salaries for the unexpired portion of the employment contract.

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²⁸ *Cebu Metal Corporation v. Saliling*, 532 Phil. 517 (2006).

²⁹ *Malayang Manggagawa ng Stayfast, Phils., Inc. v. NLRC*, G.R. No. 155306, 28 August 2013, 704 SCRA 24, 39, citing *Yu v. Reyes-Carpio*, G.R. No. 189207, 15 June 2011, 652 SCRA 341, 348.

³⁰ In 2004, the exchange rate ranged from PhP14.73-15.07 to a Saudi Arabian Riyal <<http://www.freecurrencyrates.com/exchange-rate-history/SAR-PHP/2004>> (Last accessed 6 April 2015).

Petitioner contends that the salaries to be awarded for the unexpired portion of respondent's employment contract should not go beyond three months for every year of the unexpired term. Even if we were to go by this contention, the amount of Php62,000 would not cover Php56,000 and SAR8,400 (SAR1,400 multiplied by six months for the 18.27 unexpired months of the employment contract, assuming that a fraction of six months would be considered a year). Even if we were not to consider a fraction of six months as constituting a year, the amount of Php62,000 would still not cover Php56,000 and SAR4,200 (SAR1,400 multiplied by three months for the 18.27 unexpired months of the employment contract).

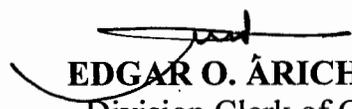
We agree with the CA in its observation that petitioner was given several opportunities by the NLRC to post the required appeal bond in order to perfect the appeal. The chances given to petitioner were all wasted because it does not seem to have intended to abide by the rule in the first place. The NLRC cannot be said to have acted capriciously or whimsically in denying the appeal for non-perfection.

The appeal of petitioner from the Decision of the Labor Arbiter rested on the alleged excessive award for respondent's salaries for the unexpired portion of the employment contract.³¹ Petitioner sought to obtain its ultimate relief from the unfavorable Decision of the Labor Arbiter through the simple expedient of insisting on its Motion to Reduce Bond. Petitioner cannot be allowed to prolong the proceedings and deprive respondent of the monetary award, while having nothing at stake in the final resolution of its appeal because it has not filed the required appeal bond. As correctly stated by the CA, it is exactly what the required posting of an appeal bond seeks to avoid: the employer's use of an appeal to delay, or even evade, its obligation to satisfy its employee's just and lawful claims.³²

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated 30 September 2010 and Resolution dated 16 March 2011 in CA-G.R. SP No. 02635 are **AFFIRMED**.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court
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³¹ *Rollo*, p. 15.

³² *Viron Garments Manufacturing Co., Inc. v. NLRC*, G.R. No. 97357, 18 March 1992, 207 SCRA 339.

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RAB L-01-05-1014)

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