

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. SP No. 126011, February 17, 2015 ]**

**ANGEL P. MEDRANO AND RONEL T. VARGAS, PETITIONERS, VS.  
NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION,  
LINKERS SECURITY & DETECTIVE AGENCY/ELSIE S. MARIANO,  
RESPONDENTS.**

### **DECISION**

**SADANG, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the April 30, 2012<sup>[1]</sup> and May 31, 2012<sup>[2]</sup> Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR Case Nos. 11-16359-10 (NLRC LAC No. 11-003045-11).

#### ***Factual Antecedents***

Private respondent Linkers Security and Detective Agency (Linkers) is a sole proprietorship owned and operated by private respondent Elsie Mariano and engaged in the business of providing security services. On June 16, 2009, Linkers employed petitioners Angel P. Medrano and Ronel T. Vargas (hereafter, petitioners) as security guards, assigning them to the Philippine National Railways (PNR) with a daily 12-hour tour of duty, 7 days a week.<sup>[3]</sup>

On January 23, 2010, during a post inspection conducted by PNR Operations Officer Alfredo Francisco, Vargas was caught sleeping on duty at his post at PNR's FTI Station, Taguig City.<sup>[4]</sup> In his explanation letter,<sup>[5]</sup> Vargas admitted his infraction and claimed that he was not feeling well. He pleaded to Linkers/Mariano to retain him because he has a family to support.

On April 15, 2010, Medrano was likewise caught sleeping at his post at PNR's Edsa Station. He admitted his infraction and apologized in a letter.<sup>[6]</sup> He undertook not to repeat the infraction and committed to do his best to serve his employer and its clients.

After submitting their explanation letters, Medrano and Vargas no longer reported for duty.<sup>[7]</sup>

On April 27, 2010, Linkers/Mariano filed with the Department of Labor and Employment an Establishment Employment Report<sup>[8]</sup> relative to Medrano's termination effective April 23, 2010.

On November 19, 2010, petitioners Medrano and Vargas filed with the NLRC, National Capital Region, Quezon City, a complaint<sup>[9]</sup> for illegal dismissal,

reinstatement, and payment of full backwages, damages, and attorney's fees against Linkers/Mariano (hereafter, respondent). The case was docketed as NLRC Case No. NCR-11-16359-10.

In their Position Paper,<sup>[10]</sup> petitioners Medrano and Vargas averred that they were dismissed by respondent on April 23, 2010 and May 7, 2010, respectively. They alleged that they never committed any act that constitutes just cause for dismissal under Article 282 of the Labor Code and respondent did not observe the two-notice rule in effecting their dismissal. They averred that as security guards they cannot be dismissed without just cause because their jobs are usually necessary and desirable to respondent's business and they have rendered more than 10 months of continuous service.

In her Position Paper,<sup>[11]</sup> respondent argued that: petitioners were caught sleeping on the job and no longer reported for work after said infraction, hence, they voluntarily severed their employment; petitioners' failure to report for work forced respondent to file the required report with the DOLE; it cannot be said that respondent unilaterally and illegally terminated petitioners because the severance from employment was of their liking and was never initiated by respondents. Respondent invoked *Security and Credit Investigation, Inc. v. NLRC*<sup>[12]</sup> which ruled that an employee's claim of illegal dismissal cannot be sustained absent any showing of an overt or positive act of dismissal on the part of the employer. She stressed that petitioners' infractions are serious because the nature of their job demanded utmost and extraordinary diligence and by sleeping on the job petitioners also became part of the security risk. She also argued that if petitioners were indeed illegal dismissed, they should have filed prompt and seasonable complaints, hence, their belated complaint is a mere afterthought.

Records show that in July 2010, prior to their filing of this case, petitioners filed a suit for money claims against respondent, docketed as NLRC-NCR Case No. 05-06490-10,<sup>[13]</sup> for underpayment of salaries, overtime pay, holiday and rest day premium pay, service incentive leave pay, 13th month pay, and ECOLA. In that case, petitioners did not rebut respondent's claim that they no longer reported for work after they were caught sleeping on the job. Labor Arbiter (LA) Jovencio Mayor, Jr., in an October 28, 2010 Resolution, dismissed the suit, save the claim for payment of 13th month pay. LA Mayor declared that petitioners' failure to report for work constitutes abandonment of work. In its August 31, 2011 Resolution, the NLRC affirmed LA Mayor's resolution.<sup>[14]</sup>

On August 31, 2011, LA Thomas T. Que, Jr. rendered a Decision<sup>[15]</sup> in this case sustaining petitioners' claim of illegal dismissal. LA Que ruled that respondent failed to prove that petitioners abandoned their work. He found that no further disciplinary action was taken against petitioners and there were no notices of infraction and hearings thereon and no notices of termination were served as required under Section 2 (a), Rule I, Book IV of the Omnibus Rules Implementating the Labor Code. The *fallo* of the Decision reads:<sup>[16]</sup>

WHEREFORE, premises considered, judgment is hereby rendered finding respondents GUILTY of illegal dismissal and, correspondingly, holding said Respondents jointly and severally liable to pay Complainants their separation pay and full backwages counted from their date of dismissal

until finality of decision, as contained in the Computation and Examination Unit's schedule of computation herein adopted and attached as Annex "A", plus nominal damages of P 30, 000.00 each.

All other claims are DISMISSED for lack of merit.

*SO ORDERED.*

As computed, the total monetary award under the decision amounts to P538,913.61. Medrano's award was P272,566.44 and Vargas P266, 347.17.<sup>[17]</sup>

Respondent filed a Memorandum of Appeal (with Motion to Reduce Bond and Notice of New Address)<sup>[18]</sup> reiterating that petitioners voluntarily severed the employment ties by their failure to return to work after their infractions, thus, they could not have been illegally dismissed. As to her motion for reduction of appeal bond, respondent contended that the LA's findings were devoid of factual basis and that she had tendered a bond in an amount that is one-half of the judgment award, the 10-day appeal period being too short to secure a surety or supersedeas bond for the full amount. She averred that the award is exorbitant and her business is having financial difficulties due to this case and the lack of projects.

The NLRC denied respondent's motion to reduce bond in a December 27, 2011 Order;<sup>[19]</sup> however, in its assailed April 30, 2012 Resolution,<sup>[20]</sup> the NLRC ruled in favor of respondent and reversed LA Que's August 31, 2011 Decision. The *fallo* of the April 30, 2012 Resolution reads:<sup>[21]</sup>

WHEREFORE, premises considered, the instant appeal is GRANTED, and the assailed Decision dated August 31, 2011 is REVERSED AND SET ASIDE to the effect that complainants were not illegally dismissed. The awards of backwages, separation pay, attorney's fees are DELETED for lack of merit. The award of NOMINAL DAMAGES is modified to P10, 000.00. The award of Service Incentive Leave Pay is likewise DELETED for lack of factual and legal basis.

*SO ORDERED.*

Petitioners moved for reconsideration,<sup>[22]</sup> insisting that the appeal of respondent was not perfected because of the non-posting of appeal bond and that the LA did not commit grave abuse or serious error in ruling in their favor.

Respondent also sought partial reconsideration<sup>[23]</sup> on the grounds that: the award of nominal damages is not warranted because petitioners had already received monetary award in NLRC-NCR Case No. 05-06490-10, that petitioners did not claim nominal damages in their complaint; and nominal damages is warranted only where the dismissal is tainted with bad faith or fraud, or constitutes an act oppressive to labor, or done contrary to morals, good customs and public policy which does not obtain in the instant case.

The NLRC denied both motions for reconsideration in the assailed May 31, 2012 Resolution.<sup>[24]</sup>

Hence, petitioners' petition for certiorari on this ground:[25]

THAT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION THIRD DIVISION WITH ALL DUE RESPECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN REVERSING THE DECISION OF THE HONORABLE LABOR ARBITER DESPITE OF NON-PERFECTION OF PRIVATE RESPONDENTS' MEMORANDUM OF APPEAL WITH MOTION TO REDUCE BOND.

### ***RULING***

The issues are: 1) whether the NLRC committed grave abuse of discretion amounting to excess or lack of jurisdiction in giving due course to the appeal of respondent; and 2) whether the NLRC committed grave abuse of discretion in reversing the decision of the LA.

Petitioners insist that the non-posting of appeal bond resulted in the non-perfection of the appeal, hence, the NLRC did not acquire jurisdiction over the case.

Respondent counters that any issue regarding the December 27, 2011 Order which directed the posting of additional bond has been mooted because petitioners did not move for reconsideration thereof and she posted the required additional bond.

An appeal is not a matter of right; it is but a mere statutory privilege. As such, it may only be availed of in the manner provided by the statutes and the rules allowing it. A party who seeks to exercise the right to appeal must comply with the statutory requirements, otherwise, the privilege is lost.[26] The primary provision governing appeals from the ruling of the Labor Arbiter is Article 223 of the Labor Code which reads:

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. Such appeal may be entertained only on any of the following grounds:

- a. If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
- b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- c. If made purely on questions of law; and
- d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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.(Underscoring supplied).

The requisites for perfection of appeal under Article 223, as amended by Republic Act No. 6715, are: 1) payment of appeal fees; 2) filing of the memorandum of appeal; and 3) payment of the required cash or surety bond. These requisites must be satisfied within 10 days from receipt of the decision or order appealed from.<sup>[27]</sup>

By express provision, an appeal is perfected only upon the posting of a cash or surety bond, thus, the rule that the posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional.<sup>[28]</sup> The rationale for the bond requirement is 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>[29]</sup>

It has been held that strict adherence to Article 223 applies only when appellants do not post an appeal bond at all.<sup>[30]</sup> The rule has been relaxed in these cases: 1) there was substantial compliance with the Rules; 2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; 3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or 4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.<sup>[31]</sup>

There is no merit in petitioners' contention that respondent's non-posting of a bond in the amount of P 266,347.17 equivalent to the monetary award to petitioner Vargas was fatal to respondent's appeal. What is crucial in determining respondent's perfection of appeal is the posting of the amount of P269,500.00 bond coupled with the filing of her Memorandum of Appeal with Motion to Reduce Bond within the 10-day reglementary period and her subsequent posting of the additional bond in compliance with the NLRC's December 27, 2011 Order.

The governing rule on bonds is Section 6, Rule VI (Appeals) of the 2011 NLRC Rules of Procedure. It reads:

Sec. 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary ward, exclusive of damages and attorney's fees. x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of the motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. (Emphasis supplied).