

## THIRD DIVISION

**[ G.R. No. 192369, November 09, 2016 ]**

**MARIA VICTORIA TOLENTINO-PRIETO, PETITIONER, VS.  
ROBERT S. ELVAS, RESPONDENT.**

**[G.R. No. 193685]**

**ROBERT S. ELVAS, PETITIONER, VS. INNSBRUCK  
INTERNATIONAL TRADING AND/OR MARIVIC TOLENTINO  
(A.K.A. MARIA VICTORIA TOLENTINO-PRIETO), RESPONDENTS.**

### D E C I S I O N

**JARDELEZA, J.:**

These are consolidated petitions for review<sup>[1]</sup> assailing the July 21, 2009 Decision<sup>[2]</sup> and May 17, 2010 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 107070, which reversed the June 30, 2008 Decision<sup>[4]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000089-08. The CA found that Robert S. Elvas (Elvas) was illegally dismissed from service, reinstating the November 13, 2007 Decision<sup>[5]</sup> of the Labor Arbiter (LA) in NLRC NCR Case No. 00-09-07571-06.

### Facts

Innsbruck International Trading (Innsbruck), owned by Maria Victoria Toletino-Prieto (Tolentino) [collectively, respondents], is engaged in the sanitation and fumigation of garbage dump trucks.<sup>[6]</sup> The Municipal Government of Rodriguez, Rizal, awarded it with the operation of the Wash Bay Station, a government project that involves the fumigation or decongestion of garbage dump trucks coming from all over Metro Manila, for the purpose of reducing or eliminating the odor caused by the dumping of garbage at the Rodriguez, Rizal landfill.<sup>[7]</sup> Elvas was employed as a checker at the Wash Bay Station. He records the number of dump trucks sanitized by Innsbruck and collects P30.00 from each of the truck fumigated.<sup>[8]</sup> For a 12-hour day's work, he receives a salary of P250.00.<sup>[9]</sup> Sometimes, he also discharges the function of a cashier with a duty to collect payments from other checkers and surrender them to the money collector.<sup>[10]</sup>

Sometime in February 2006, Tolentino allegedly discovered, based on the station logbook report and the report made by the Wash Bay Station Municipal Supervisor, that there were discrepancies between the number of dump trucks recorded and the amount of payment remitted by Elvas and the other employees.<sup>[11]</sup> Tolentino then sent a Letter-Memorandum dated May 25, 2006 to Elvas giving him 24 hours from receipt to explain why his employment should not be terminated because of his

involvement in the non-remittance of collections.<sup>[12]</sup> Elvas responded in a Letter dated May 29, 2006, asserting that he cannot answer the allegation against him given the limited period of time, and the fact that he was not furnished with the station logbook and other related documents.<sup>[13]</sup> He warned Tolentino that her accusation is a form of coercion and an act constituting constructive dismissal. He asked her to desist from pursuing acts which cause him anxiety and sleepless nights.<sup>[14]</sup> Thereafter, on September 11, 2006, he filed a Complaint for illegal dismissal, underpayment of salaries, 13<sup>th</sup> month pay, Emergency Cost of Living Allowance (ECOLA) and separation pay in lieu of reinstatement against respondents before the NLRC.<sup>[15]</sup>

In his position paper, Elvas argued that the Letter-Memorandum was Tolentino's way of forcing him to resign from work.<sup>[16]</sup> Tolentino's accusation was baseless since she never came up with specifics. She simply dismissed him from work on May 30, 2006; then, instituted an unfounded criminal case against him, which Tolentino later abandoned by not appearing in the preliminary investigation.<sup>[17]</sup> Elvas also alleged that Tolentino did not follow the two-notice requirement when she terminated his employment. He denied that he took flight and no longer reported for work after he was handed the Letter-Memorandum. On the contrary, he was told not to report for work and he saw for himself the employees who replaced him.<sup>[18]</sup>

Respondents countered that Elvas kept on evading the investigation conducted by the former by absenting himself during the scheduled investigation. During the confrontation with the other checkers, namely, Edilberto Rabe (Rabe) and Leonardo Constantino (Constantino), they admitted that they misappropriated the collection with Elvas.<sup>[19]</sup> The admission prompted Tolentino to file criminal complaints of *estafa* against them. Despite the pendency of the criminal action, Tolentino averred that she still gave Elvas an opportunity to explain his side of the case through the Letter-Memorandum. Hence, there was no violation of due process. More importantly, Tolentino contended that Elvas was not illegally dismissed from service as he himself abandoned his work.<sup>[20]</sup>

### **Labor Arbiter's Ruling**

The LA ruled in favor of Elvas and declared that he was illegally terminated from his employment. The LA noted that the admissions of Rabe and Constantino cannot be used against Elvas because nowhere in their affidavit did they state that the latter was an accomplice in their misappropriation. Other than the daily remittance and summary of purchases, Tolentino failed to adduce any evidence to support Elvas' participation in the misappropriation. There was likewise no abandonment of work on the part of Elvas because he had duly established that he continued working for Tolentino despite the low pay and the dire state and condition of the Rizal landfill.<sup>[21]</sup> Rather, the LA found that the charge of abandonment does not square with the recorded fact that Elvas was being accused of misappropriation and was actually charged in court with *estafa* thereby indicating his undesirability within the work premises and the pressure for him to leave. It is more indicative of constructive dismissal rather than abandonment of work.<sup>[22]</sup> The LA then awarded Elvas with separation pay, backwages, salary differential and 13<sup>th</sup> month pay totaling to

### **NLRC's Ruling**

Respondents appealed to the NLRC. Elvas filed a Motion to Dismiss Appeal and Issuance of Writ of Execution<sup>[24]</sup> on the ground that the appeal bond posted by respondents was take. He attached to the motion, a certification from Far Eastern Surety and Insurance Co., Inc. stating that the bond issued in favor of the NLRC relative to Case No. 00-09-07571-06 is non-existent in the bonds registry of the corporation.<sup>[25]</sup> Elvas contended that since no valid appeal bond was posted, the appeal was not perfected rendering the LA's Decision final and executory. He, therefore, asked for the issuance of a writ of execution. Upon discovering that the appeal bond was spurious, respondents terminated the services of their counsel and posted a new bond from Philippine Phoenix and Insurance, Inc.<sup>[26]</sup>

The NLRC decided to relax the rule on bond requirement, ruling that with the posting of a second bond, the issue about the first bond should be put to rest in the best interest of justice.<sup>[27]</sup> It found that respondents were without knowledge of the falsity of the bond, as in fact, they immediately dismissed their counsel upon learning of the fraud.<sup>[28]</sup>

Meanwhile, disposing of the merits of the case, the NLRC reversed the ruling of the LA and opined that it was Elvas who failed to establish his case for illegal dismissal. No written notice of dismissal was presented to prove the fact of termination of his employment.<sup>[29]</sup> Elvas also neither alleged nor proved how his employment was terminated or who dismissed him from the service.<sup>[30]</sup>

Elvas sought reconsideration but it was denied.<sup>[31]</sup> He elevated the case to the CA with the sole issue of whether the NLRC committed grave abuse of discretion amounting to excess of/lack of jurisdiction in giving due course to respondents' appeal despite the overwhelming evidence that no appeal was perfected in the absence of an appeal bond.<sup>[32]</sup>

### **CA's Ruling**

In its Decision, the CA sustained the NLRC in allowing respondents' appeal but as to the merits of the case, it reversed the latter and reinstated the LA's Decision that Elvas was illegally dismissed.

On the procedural aspect, the CA explained that respondents substantially complied with the bond requirement for perfecting an appeal when they immediately submitted a genuine bond after learning that the first bond was spurious. There was no showing that respondents purposely posted a false surety bond.<sup>[33]</sup> Therefore, to dismiss respondents' appeal would negate the interest of justice and deviate from the Labor Code of the Philippines<sup>[34]</sup> (Labor Code) mandate to liberally construe rules of procedure.

On the substantive aspect, although Elvas did not question the NLRC's ruling on the issue of illegal dismissal, the CA deemed it appropriate to resolve the merits of the

case to afford complete relief to the parties and to arrive at a just resolution of the case.<sup>[35]</sup> The CA held that Elvas was unceremoniously dismissed from work when he was directed by respondents not to report for work anymore. It gave credence to Elvas' claim that he kept coming back to the work premises to continue his employment but there were already workers who replaced him. This was neither denied nor refuted by respondents who merely insisted that Elvas was guilty of misappropriation.<sup>[36]</sup> The CA agreed with the LA that respondents failed to present witnesses or credible evidence to prove the charge against Elvas.

Both parties moved for reconsideration which were denied.<sup>[37]</sup> Thereafter, Elvas and Tolentino filed separate petitions for review before us which we consolidated in our Resolution<sup>[38]</sup> dated July 21, 2010.

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In her petition, Tolentino primarily faults the CA for reviewing the merits of the case considering that the issue of illegal dismissal was not assigned as an error in Elvas' petition before it. She alleges that she was denied due process of law because she was not given the opportunity to rebut the claim of termination of employment.<sup>[39]</sup> Furthermore, she submits that the issue of illegal dismissal is not closely related to or dependent on the error assigned by Elvas and it was also not argued in Elvas' petition.<sup>[40]</sup> Subsequently, even assuming that the CA can properly rule on the merits of the case, Tolentino asserts that she did not commit any act that can be construed as dismissal, actual or constructive, because Elvas has yet to show positive proof that he was dismissed.<sup>[41]</sup> The truth being that Elvas abandoned his work.<sup>[42]</sup>

In his Comment, Elvas advances that Tolentino's petition was filed out of time because the last day of filing was June 11, 2010 yet she filed it only on July 12, 2010.<sup>[43]</sup> Nonetheless, he agreed with Tolentino that he only raised one issue with the CA, that is, whether the NLRC committed grave abuse of discretion in giving due course to Tolentino's appeal in the absence of a valid appeal bond. Other than that, he avers that he would simply adopt the arguments raised in his own petition for review as Comment to Tolentino's petition.<sup>[44]</sup>

In her Reply, Tolentino refutes that her petition was filed out of time. She cites our Resolution dated July 2, 2010, where we granted her an extension of until July 12, 2010 within which to file her petition.<sup>[45]</sup>

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Elvas took issue on the CA's ruling allowing Tolentino's appeal before the NLRC. He reiterates that no appeal was perfected in the absence of an appeal bond, rendering the LA's Decision final and executory. Considering respondents' appeal to the NLRC which should not have been given due course, Elvas was allegedly deprived of the amounts awarded to him by the LA; hence, he prays that we order Tolentino to pay him damages for loss of opportunity to make use of the money judgment in an amount computed using the ordinary commercial bank's high yield interest rate.<sup>[46]</sup>

Tolentino filed a Comment, praying that Elvas' petition be dismissed outright for being filed one day late. She maintains that Elvas failed to cite a justifiable reason for the delay as he merely stated in a Manifestation that the belated filing was due to circumstances beyond his control.<sup>[47]</sup> She alleges that she did not file a spurious surety bond on purpose and that she relied in good faith on the representation of her former counsel that the bond was genuine and valid.<sup>[48]</sup> Lastly, she argues that she should not be held liable for damages because Elvas' alleged loss of opportunities to invest the LA's judgment award in a bank is highly speculative.<sup>[49]</sup>

Elvas filed a Reply, explaining the circumstances that led to the late filing of his petition.<sup>[50]</sup>

### **Issues**

1. Whether the petitions separately filed by the parties are seasonably filed;
2. Whether the CA erred in allowing respondents' appeal in the NLRC; and
3. Whether the CA erred in ruling on the question of Elvas' illegal dismissal considering that it was not raised as an issue in Elvas' petition before it.

### **Our Ruling**

We deny the consolidated petitions.

*Elvas' appeal was filed out of time.*

At the outset, we address the question of timeliness for both appeals. As borne by the records, Tolentino received a copy of the Decision and Resolution of the CA on July 31, 2009 and May 28, 2010, respectively.<sup>[51]</sup> Under Rule 45 of the Revised Rules of Court (the Rules), Tolentino had 15 days from receipt of the resolution denying her motion for reconsideration or until June 12, 2010 within which to file a petition for review. Tolentino, however, asked for additional period of 30 days or until July 12, 2010 to file her petition. We granted her request in our Resolution dated July 2, 2010.<sup>[52]</sup> On July 12, 2010, Tolentino filed her appeal. Clearly, her petition was filed on time.

Elvas received a copy of the Resolution of the CA denying his partial motion for reconsideration on May 21, 2010. He had until June 5, 2010 to file a petition for review. He sought an additional period of 30 days to file the same, which we granted in our Resolution<sup>[53]</sup> dated July 21, 2010. However, on the 30<sup>th</sup> day, or on July 5, 2010, Elvas failed to file his petition. Instead, he filed it on July 6, 2010. Evidently, Elvas' petition was filed out of time.

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.<sup>[54]</sup> Elvas calls for our compassion to overlook the one day delay in the filing of his petition; however, we have ruled time and again that our kind consideration is not for the undeserving. While it is within our power to relax the rule on timeliness of appeals, the circumstances obtaining in this case do not warrant our liberality.