

## FIRST DIVISION

[ G.R. No. 183417, February 05, 2010 ]

**MINDANAO TIMES CORPORATION, PETITIONER, VS. MITCHEL R. CONFESOR, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Via petition for review on certiorari, Mindanao Times Corporation (petitioner) seeks the reversal of the Court of Appeals *Amended* Decision<sup>[1]</sup> of November 29, 2007 and Resolution<sup>[2]</sup> of May 26, 2008 setting aside the National Labor Relations Commission (NLRC) Resolutions of November 30, 2004<sup>[3]</sup> and February 28, 2005<sup>[4]</sup> which reinstated the Decision of the Labor Arbiter.

Mitchel Confesor (respondent) was employed on May 1998 by petitioner, publisher of a newspaper of general circulation in Mindanao and Davao City. He became petitioner's Associate Editor in six months.

Respondent resigned from petitioner on June 17, 2003. On August 28, 2003, he filed a verified complaint<sup>[5]</sup> before the Labor Arbiter for payment of separation pay and pro-rated 13<sup>th</sup> month pay for 2003. He later *amended* his complaint<sup>[6]</sup> from one of money claims to illegal dismissal, averring that petitioner's President and Chief Operating Officer forced him to resign after he and Anthony Allada, a columnist, published separate articles which appeared in the June 14, 2003 issue of petitioner's newspaper accusing then Presidential Assistant Dominador "Boy" Zuño, Jr., Cong. Prospero Nograles and Cong. Corazon Malanyaon of being involved in some anomalies; and that he did resign as he was told that he would be entitled to separation pay and other benefits, but that the promised benefits were not forthcoming, hence, his filing of the complaint.

By Decision<sup>[7]</sup> of January 19, 2004, the Labor Arbiter, finding that respondent was constructively dismissed, ordered petitioner to pay him P71,909.77 representing backwages, as well as separation pay and 10% of the total award as attorney's fees.

Both parties appealed to the NLRC in Cagayan de Oro City, respondent contending that, in addition to the award granted by the Labor Arbiter, he was entitled to service incentive leave pay and moral and exemplary damages. Petitioner, on the other hand, questioned the Labor Arbiter's finding of constructive dismissal.

In compliance with the appeal bond requirement, petitioner deposited the amount of P71,909.77 with the United Coconut Planters Bank and surrendered to the NLRC the passbook<sup>[8]</sup> covering the deposit, along with a Deed of Assignment<sup>[9]</sup> it executed assigning the proceeds of the deposit in favor of respondent and authorizing the NLRC to release the same in the event that the Labor Arbiter's Decision becomes

final and executory.

By Resolution of November 30, 2004, the NLRC reversed the ruling of the Labor Arbiter and dismissed respondent's complaint, holding that there was no constructive dismissal since respondent effectively resigned from his employment.

Respecting the issue raised by respondent of whether the bank deposit complied with the appeal bond requirement, the NLRC held that it was in substantial compliance with Sec. 6, Rule 6 of the NLRC Rules of Procedure.

The Court of Appeals, to which respondent assailed the NLRC resolution via petition for certiorari, dismissed said petition by Decision<sup>[10]</sup> of November 13, 2006.

On respondent's Motion for Reconsideration, however, the appellate court, by the assailed *Amended* Decision of November 29, 2007, set aside the NLRC February 28, 2005 Resolution and *reinstated* the Labor Arbiter's Decision which it declared to have become final and executory.

In concluding that the Labor Arbiter's Decision had become final and executory, the appellate court held that the bank deposit of petitioner failed to substantially comply with the appeal bond requirement, noting that its Deed of Assignment "cannot be a substitute for the cash or surety bond contemplated under the Rules for the perfection of appeal" as the deed "does not ensure payment of the adjudged monetary award in case the appeal of [herein petitioner] fails."

Petitioner's motion and supplemental motion for reconsideration having been denied, it filed the present petition, insisting that its bank deposit and Deed of Assignment which it transmitted to the NLRC, along with the passbook, constituted substantial compliance with the rule on perfection of appeals.

The petition is bereft of merit.

Article 223<sup>[11]</sup> of the Labor Code provides that an appeal by the employer to the NLRC from a judgment of a labor arbiter which involves a monetary award may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from. Section 4 of the New Rules of Procedure of the NLRC echoes the provision, *viz.*:

**SECTION 4. REQUISITES FOR PERFECTION OF APPEAL.** a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the *posting of a cash or surety bond as provided in Section 6 of this Rule*; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for, and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated