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THIRD DIVISION

[G.R. No. 182626, December 04, 2009]

HILARIO S. RAMIREZ, PETITIONER, VS. HON. COURT OF APPEALS, CEBU CITY, HON. NLRC, 4TH DIVISION, CEBU CITY AND MARIO S. VALCUEBA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the (a) 13 July 2007 Resolution[1] of the Court of Appeals which dismissed the Petition for *Certiorari* under Rule 65 filed by petitioner Hilario Ramirez for failure to properly verify his petition and to state material dates and (b) the 7 March 2008 Resolution[2] of the same court denying petitioner's Motion for reconsideration.

The facts are:

Respondent Mario Valcueba (Valcueba) filed a Complaint[3] for illegal dismissal and nonpayment of wage differential, 13th month pay differential, holiday pay, premium pay for holidays and rest days, and service incentive leaves with claims for moral and exemplary damages and attorney's fees, against Hilario Ramirez (Ramirez). Valcueba claimed that Ramirez hired him as mechanic on 28 May 1999. By 2002, he was paid a daily wage of P140.00, which was increased to P165.00 a day in 2003 and to P190.00 in 2005. He was not paid for holidays and rest days. He was not also paid the complete amount of his 13th month pay. On 27 February 2006, Josephine Torres, secretary of Ramirez, informed Valcueba that he would not be allowed to return to work unless he agreed to work on *pakyaw* basis.[4] Aggrieved, he filed this case.

Ramirez, on the other hand, presented a different version of the antecedents, asserting that Valcueba was first hired as construction worker, then as helper of the mechanic, and eventually as mechanic. There were three categories of mechanics at the workplace. First were the mechanics assigned to specific stations. Second were the mechanics paid on *pakyaw* basis; and finally, those who were classified as rescue/emergency mechanics. Valcueba belonged to the last category. As emergency/rescue mechanic, he was assigned to various stations to perform emergency/rescue work. On 26 February 2006, while he was assigned at the Babag station, Ramirez directed him to proceed to Calawisan, Lapu-lapu City, as a unit had developed engine trouble and the mechanic assigned in that area was absent. Valcueba did not report to the Calawisan station. In fact, he did not report for work anymore, as he allegedly intended to return to Mindanao.[5]

Further, Ramirez insisted that Valcueba was never terminated from his employment. On the contrary, it was the latter who abandoned his job. On 26 February 2006,

Valcueba, as rescue or emergency mechanic, temporarily assigned at Babag Station, did not report at Calawisan, Lapu-lapu City when Ramirez ordered him to answer an emergency call, which required him to fix Ramirez's troubled taxi unit. The mechanic assigned in the area was then absent at that time. The refusal of Valcueba to obey the lawful order of Ramirez was bolstered by his failure to report for work the following day, 27 February 2006. Valcueba advanced no reason regarding his failure to answer an emergency call of duty, nor did he file an application for a leave of absence when he failed to report for work that day.

After hearing, the Labor Arbiter rendered her decision, where she pointed out that:

> The allegation of complainant that his refusal to work on *pakiao* basis prompted respondent Hilario Ramirez to dismiss him from the service is not substantiated by any piece of evidence. Not even a declaration under oath by any affiant attesting to the credibility of complainant's allegation is presented. No documentary evidence purporting to clearly indicate that complainant was discharged was submitted for Our judicious consideration. A fortiori, there is reason for Us to doubt complainant's submission that he was dismissed from his employment grounded on disobedience to the lawful order of respondent.
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> On the side of respondent Ramirez, he insisted that complainant was never terminated from his employment. On the contrary, he alleged that it was complainant who abandoned his job. As rescue or emergency mechanic temporarily assigned at Babag Station, on February 26, 2006, complainant did not report at Calawisan, Lapu-Lapu City when respondent Ramirez ordered him to answer an emergency call, which required him to fix the respondent's troubled taxi unit. The mechanic assigned in the area was then absent at that time. The refusal of complainant to obey the lawful order of respondent Ramirez is bolstered by his failure to report for work the following day, February 27, 2006. Complainant advanced no reason as to why he failed to answer an emergency call of duty nor did he file an application for a leave of absence when he failed to report for work that day.
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> Nonetheless, as the records are bereft of any evidence that respondent sent complainant a letter which advised the latter to report for work, We do not rule out a case of abandonment because the overt act of not answering an emergency call is not insufficient to constitute abandonment.
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> Consequently, there being no dismissal nor abandonment involved in this case, it is best that the parties to this case should be restored to their previous employment relations. Complainant must go back to work within ten (10) days from receipt of this judgment, while respondent must accept complainant back to work, also within ten (10) days from receipt of this decision.[6]

In the end, the Labor Arbiter decreed:

> WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring respondent HILARIO RAMIREZ, OWNER OF H.R. TAXI, NOT GUILTY of illegally dismissing complainant from the service, it appearing that there is no dismissal to speak of in this case. Consequently, complainant is ordered to report back for work within ten (10) days from receipt hereof, and respondent Hilario Ramirez must complainant (sic) back to work as soon as the latter would express his intention to report for work or within the same period of ten (10) days from receipt hereof, whichever comes first. Proof of compliance hereof, must be submitted within the same period (sic), complainant would be guilty of abandonment and respondent of illegal dismissal.
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> In addition, respondent HILARIO RAMIREZ, owner of H.R. Taxi, is hereby ordered to pay complainant MARIO S. VALCUEBA the following:
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> a. Wage Differential - P30,538.00
> b. 13th Month Pay - 15,287.98
> Total Award - P45,825.98
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> Philippine currency, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.
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> Other claims are DISMISSED for failure to substantiate.[7]

Records show that Ramirez received the Labor Arbiter's decision on 5 June 2006. He filed a Motion for Reconsideration and/or Memorandum of Appeal with Urgent Motion to Reduce Appeal Bond[8] on the 9th day of the reglementary period or on 14 June 2006 before the National Labor Relations Commission (NLRC).

Resolving the motion, the NLRC issued a Resolution[9] dated 29 September 2006, which reads:

> Upon a careful perusal of the motion to reduce bond, however, the Commission found that the same does not comply with Section 6, Rule VI of the NLRC Rules of Procedure.
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> x x x x
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> Respondent has not offered a meritorious ground for the reduction of the appeal bond and the amount of P10,000.00 he posted is not a reasonable amount in relation to the monetary award of P45,825.98. Consequently, his motion to reduce appeal bond shall not be entertained and his appeal is dismissed for non-perfection due to lack of an appeal bond.

The NLRC then held:

> WHEREFORE, premises considered, the appeal of respondent is hereby DISMISSED for non-perfection due to want of an appeal bond.[10]

Ramirez filed a Motion for Reconsideration, which the NLRC resolved in a Resolution dated 20 December 2006 in this wise:

> The mere filing of a motion to reduce bond without complying with the requisites of meritorious grounds and posting of a bond in a reasonable amount in relation to the monetary award does not stop the running of the period to perfect an appeal. Thus, respondent's failure to abide with the requisites so mentioned has not perfected his appeal. Verily, since the assailed Decision of the Labor Arbiter contains a monetary award in favor of complainant, it behooves upon respondent to post the required bond.
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> While the filing of a motion to reduce bond can be considered as a motion of preference in case of an appeal, the same holds true only when such motion complies with the requirements stated above. Consequently, respondent's motion to reduce bond which missed to comply with such requisites does not deserve to be entertained nor to be given a preferred resolution.
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> WHEREFORE, premises considered, the motion for reconsideration of respondent is hereby DENIED for lack of merit.[11]

The decision of the Labor Arbiter became final and executory on 19 February 2007 and was entered in the Book of Entries of Judgment on 4 May 2007.[12]

Ramirez went up to the Court of Appeals. The case was docketed as CA-G.R. SP No. 02614. In a resolution dated 13 July 2007,[13] the Court of Appeals dismissed the Petition outright for failure of Ramirez to properly verify his petition and to state material dates.

Ramirez's Motion for Reconsideration was denied by the Court of Appeals in a resolution dated 7 March 2008;[14] hence, this petition where Ramirez prays that the "dismissal resolution issued by the Court of Appeals be set aside and in its stead to give due course to this petition by dismissing the unwarranted claims imposed by the NLRC for being highly speculative, with no evidence to support of (sic)."[15]

The issues are:

> I
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> PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE SUBSTANTIAL COMPLIANCE OF THE FILED PETITION.
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> II
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> THE DISMISSAL RESOLUTION (ANNEX "A") HAS NOT RESOLVED THE

LEGAL ISSUES RAISED IN CA-G.R. SP NO. 02614.[16]

The case presents no novel issue.

We first resolve the propriety of dismissal by the NLRC.

At the outset, it should be stressed that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner prescribed by and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, he loses the right to appeal.[17]

Article 223 of the Labor Code provides for the procedure in case of appeal to the NLRC:

> 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:
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> 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 finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.
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> **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.** (Emphasis supplied.)

Sections 4(a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, reaffirms the explicit jurisdictional principle in Article 223 even as it allows in justifiable cases the reduction of the appeal bond. The relevant provision states:

> SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - (a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision,