

SECOND DIVISION

[GR No. 172409, February 04, 2008]

**ROOS INDUSTRIAL CONSTRUCTION, INC. and OSCAR TOCMO,
Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and
JOSE MARTILLOS, Respondents.**

D E C I S I O N

TINGA, J.:

In this Petition for Review on Certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioners Roos Industrial Construction, Inc. and Oscar Tocmo assail the Court of Appeals'^[2] Decision dated 12 January 2006 in C.A. G.R. SP No. 87572 and its Resolution^[3] dated 10 April 2006 denying their Motion for Reconsideration.^[4]

The following are the antecedents.

On 9 April 2002, private respondent Jose Martillos (respondent) filed a complaint against petitioners for illegal dismissal and money claims such as the payment of separation pay in lieu of reinstatement plus full backwages, service incentive leave, 13th month pay, litigation expenses, underpayment of holiday pay and other equitable reliefs before the National Capital Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC NCR South Sector Case No. 30-04-01856-02.

Respondent alleged that he had been hired as a driver-mechanic sometime in 1988 but was not made to sign any employment contract by petitioners. As driver mechanic, respondent was assigned to work at Carmona, Cavite and he worked daily from 7:00 a.m. to 10:00 p.m. at the rate of P200.00 a day. He was also required to work during legal holidays but was only paid an additional 30% holiday pay. He likewise claimed that he had not been paid service incentive leave and 13th month pay during the entire course of his employment. On 16 March 2002, his employment was allegedly terminated without due process.^[5]

Petitioners denied respondent's allegations. They contended that respondent had been hired on several occasions as a project employee and that his employment was coterminous with the duration of the projects. They also maintained that respondent was fully aware of this arrangement. Considering that respondent's employment had been validly terminated after the completion of the projects, petitioners concluded that he is not entitled to separation pay and other monetary claims, even attorney's fees.^[6]

The Labor Arbiter ruled that respondent had been illegally dismissed after finding that he had acquired the status of a regular employee as he was hired as a driver

with little interruption from one project to another, a task which is necessary to the usual trade of his employer.^[7] The Labor Arbiter pertinently stated as follows:

x x x If it were true that complainant was hired as project employee, then there should have been project employment contracts specifying the project for which complainant's services were hired, as well as the duration of the project as required in Art. 280 of the Labor Code. As there were four (4) projects where complainant was allegedly assigned, there should have been the equal number of project employment contracts executed by the complainant. Further, for every project termination, there should have been the equal number of termination report submitted to the Department of Labor and Employment. However, the record shows that there is only one termination [report] submitted to DOLE pertaining to the last project assignment of complainant in Carmona, Cavite.

In the absence of said project employment contracts and the corresponding Termination Report to DOLE at every project termination, the inevitable conclusion is that the complainant was a regular employee of the respondents.

In the case of Maraguinot, Jr. v. NLRC, 284 SCRA 539, 556 [1998], citing capital Industrial Construction Group v. NLRC, 221 SCRA 469, 473-474 [1993], it was ruled therein that a project employee may acquire the status of a regular employee when the following concurs: (1) there is a continuous rehiring of project employees even after the cessation of a project; and (2) the tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer. Both factors are present in the instant case. Thus, even granting that complainant was hired as a project employee, he eventually became a regular employee as there was a continuous rehiring of this services.

x x x

In the instant case, apart from the fact that complainant was not made to sign any project employment contract x x x he was successively transferred from one project after another, and he was made to perform the same kind of work as driver.^[8]

The Labor Arbiter ordered petitioners to pay respondent the aggregate sum of P224,647.17 representing backwages, separation pay, salary differential, holiday pay, service incentive leave pay and 13th month pay.^[9]

Petitioners received a copy of the Labor Arbiter's decision on 17 December 2003. On 29 December 2003, the last day of the reglementary period for perfecting an appeal, petitioners filed a Memorandum of Appeal^[10] before the NLRC and paid the appeal fee. However, instead of posting the required cash or surety bond within the reglementary period, petitioners filed a Motion for Extension of Time to Submit/Post Surety Bond.^[11] Petitioners stated that they could not post and submit the required surety bond as the signatories to the bond were on leave during the holiday season,

and made a commitment to post and submit the surety bond on or before 6 January 2004. The NLRC did not act on the motion. Thereafter, on 6 January 2004, petitioners filed a surety bond equivalent to the award of the Labor Arbiter.^[12]

In a Resolution^[13] dated July 29, 2004, the Second Division of the NLRC dismissed petitioners' appeal for lack of jurisdiction. The NLRC stressed that the bond is an indispensable requisite for the perfection of an appeal by the employer and that the perfection of an appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. In addition, the NLRC restated that its Rules of Procedure proscribes the filing of any motion for extension of the period within which to perfect an appeal. The NLRC summed up that considering that petitioners' appeal had not been perfected, it had no jurisdiction to act on said appeal and the assailed decision, as a consequence, has become final and executory.^[14] The NLRC likewise denied petitioners' Motion for Reconsideration^[15] for lack of merit in another Resolution.^[16] On 11 November 2004, the NLRC issued an entry of judgment declaring its resolution final and executory as of 9 October 2004. On respondent's motion, the Labor Arbiter ordered that the writ of execution be issued to enforce the award. On 26 January 2005, a writ of execution was issued.^[17]

Petitioners elevated the dismissal of their appeal to the Court of Appeals by way of a special civil action of certiorari. They argued that the filing of the appeal bond evinced their willingness to comply and was in fact substantial compliance with the Rules. They likewise maintained that the NLRC gravely abused its discretion in failing to consider the meritorious grounds for their motion for extension of time to file the appeal bond. Lastly, petitioners contended that the NLRC gravely erred in issuing an entry of judgment as the assailed resolution is still open for review.^[18] On 12 January 2006, the Court of Appeals affirmed the challenged resolution of the NLRC. Hence, the instant petition.

Before this Court, petitioners reiterate their previous assertions. They insist on the application of *Star Angel Handicraft v. National Labor Relations Commission, et al.*^[19] where it was held that a motion for reduction of bond may be filed in lieu of the bond during the period for appeal. They aver that *Borja Estate v. Ballad*,^[20] which underscored the importance of the filing of a cash or surety bond in the perfection of appeals in labor cases, had not been promulgated yet in 2003 when they filed their appeal. As such, the doctrine in *Borja* could not be given retroactive effect for to do so would prejudice and impair petitioners' right to appeal. Moreover, they point out that judicial decisions have no retroactive effect.^[21]

The Court denies the petition.

The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision.^[22] Article 223 of the Labor Code states:

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. ...