

SECOND DIVISION

[G.R. No. 155844, July 14, 2008]

**NATIONWIDE SECURITY AND ALLIED SERVICES, INC.,
PETITIONER, VS. THE COURT OF APPEALS, NATIONAL LABOR
RELATIONS COMMISSION AND JOSEPH DIMPAZ, HIPOLITO
LOPEZ, EDWARD ODATO, FELICISIMO PABON AND JOHNNY
AGBAY, RESPONDENTS.**

R E S O L U T I O N

QUISUMBING, J.:

This petition for certiorari seeks the reversal and setting aside of the Decision^[1] dated January 31, 2002 and the Resolution^[2] dated September 12, 2002 of the Court of Appeals in CA-G.R. SP No. 65465. The appellate court had affirmed the January 30, 2001^[3] and April 20, 2001 Resolutions of the National Labor Relations Commission (NLRC).

The factual antecedents of this case are as follows.

Labor Arbiter Manuel M. Manansala found petitioner Nationwide Security and Allied Services, Inc., a security agency, not liable for illegal dismissal in NLRC NCR 00-01-00833-96 and 00-02-01129-96 involving eight security guards who were employees of the petitioner. However, the Labor Arbiter directed the petitioner to pay the aforementioned security guards P81,750.00 in separation pay, P8,700.00 in unpaid salaries, P93,795.68 for underpayment and 10% attorney's fees based on the total monetary award.^[4]

Dissatisfied with the decision, petitioner appealed to the NLRC which dismissed its appeal for two reasons -- first, for having been filed beyond the reglementary period within which to perfect the appeal and second, for filing an insufficient appeal bond. It disposed as follows:

WHEREFORE, in the light of the foregoing, it is hereby ordered that:

1. the instant appeal be considered DISMISSED; and,
2. the Decision appealed from be deemed FINAL and EXECUTORY.

SO ORDERED.^[5]

Its motion for reconsideration having been denied, petitioner then appealed to the Court of Appeals to have the appeal resolved on the merits rather than on pure technicalities in the interest of due process.

The Court of Appeals dismissed the case, holding that in a special action for

certiorari, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of public respondent NLRC. The dispositive portion of its decision states:

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED. The questioned Resolutions dated 30 January 2001 and 20 April 2001 of the National Labor Relations Commission are accordingly AFFIRMED.

SO ORDERED.^[6]

The Court of Appeals likewise denied the petitioner's motion for reconsideration.^[7] Hence, this petition which raises the following issues:

I.

WHETHER OR NOT TECHNICALITIES IN LABOR CASES MUST PREVAIL OVER THE SPIRIT AND INTENTION OF THE LABOR CODE UNDER ARTICLE 221 THEREOF WHICH STATES:

"In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of Law or equity shall not be controlling and **it is the spirit and [i]ntention of this Code that the Commission and its members and Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without [regard] to technicalities of law or procedure, all [i]n the interest of due process.**" Emphasis added.

II.

WHETHER OR NOT THE DOCTRINE IN THE CASE OF STAR ANGEL HANDICRAFT vs. NLRC, et al., 236 SCRA 580 AND ROSEWOOD PROCESSING, INC. VS. NLRC, G.R. [No.] 116476, May 21, 1998 FINDS APPLICATION IN THE INSTANT CASE [;]

III.

WHETHER OR NOT SEPARATION PAY IS JUSTIFIED AS AWARD IN CASES WHERE THE EMPLOYEE IS TERMINATED DUE TO CONTRACT EXPIRATION AS IN THE INSTANT CASE; AND

IV.

WHETHER OR NOT THE REQUIREMENT ON CERTIFICATION AGAINST FORUM SHOPPING WHICH WAS RAISED BEFORE THE NLRC IS ENFORCEABLE IN THE INSTANT CASE.^[8]

Petitioner contends that the Court of Appeals erred when it dismissed its case based on technicalities while the private respondents contend that the appeal to the NLRC had not been perfected, since the appeal was filed outside the reglementary period, and the bond was insufficient.^[9]

After considering all the circumstances in this case and the submission by the parties, we are in agreement that the petition lacks merit.

At the outset it must be pointed out here that the petition for certiorari filed with the Court by petitioner under Rule 65 of the Rules of Court is inappropriate. The proper remedy is a petition for review under Rule 45 purely on questions of law. There being a remedy of appeal via petition for review under Rule 45 of the Rules of Court available to the petitioner, the filing of a petition for certiorari under Rule 65 is improper.

But even if we bend our Rules to allow the present petition for certiorari, still it will not prosper because we do not find any grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the Court of Appeals when it dismissed the petition of the security agency. We must stress that under Rule 65, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.^[10] No such abuse of discretion happened here. The assailed decision by the Court of Appeals was certainly not capricious nor arbitrary, nor was it a whimsical exercise of judgment amounting to a lack of jurisdiction.^[11]

The Labor Code provides as follows:

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.

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The New Rules of Procedure of the NLRC states: