

FIRST DIVISION

[G.R. NO. 151854, September 03, 2008]

**PHILUX, INC. AND MAX KIENLE, PETITIONERS, VS. NATIONAL
LABOR RELATIONS COMMISSION AND PATRICIA PERJES,
RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Procedure of the **Decision dated January 11, 2002**^[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 62735* dismissing the petition for *certiorari* under Rule 65 filed by herein petitioners Philux, Inc. and Max Kienle. The petition for *certiorari* assailed the dismissal by the National Labor Relations Commission (NLRC) of the petitioners' appeal of the earlier Labor Arbiter's decision declaring herein private respondent Patricia Perjes to have been illegally dismissed and directing the petitioners to reinstate her and pay her backwages.

As culled from the Decision of the CA, the antecedent facts are as follows:

The records disclose that the petitioner, Philux, Inc., is a corporation engaged in the manufacture and sale of wood furnitures; while private respondent Patricia (Patria) Perjes was a daily-paid regular employee of the latter occupying the position of saleslady assigned to the petitioner's showroom at SM South mall, Zapote, Alabang Road, Las Piñas City.

On April 20, 1999, for failure of the petitioner-corporation to positively respond to the private respondent's demand incorporated in her letter dated October 20, 1998, the National Labor Union in behalf of the private respondent filed a Complaint before the Labor Arbiter docketed as NLRC Case No. 00-04-04757-99. The aforesaid Complaint prayed for the following reliefs:

- (a) Payment of monthly commission from June 1998 until final settlement of the case;
- (b) Payment of underpaid P50.00 from June 1998 up to November 20, 1998;
- (c) Payment of 7 days sick leave and 7 days vacation leave for 1998 based on management practice;
- (d) Payment of 13th month pay for the year 1997; and
- (e) Payment of damages and attorney's fees.

On June 24, 1999, the private respondent filed a Manifestation and Motion to include Additional Complaint for illegal dismissal based on her transfer of work assignment from the petitioner's showroom in SM Las Piñas to SM Megamall, EDSA, Mandaluyong City. The private respondent

demanded her reinstatement to her former position with full backwages from May 12, 1999 up to her actual reinstatement without loss of seniority rights and other privileges.

Upon order of the Labor Arbiter, the parties submitted their respective position papers.

In her position paper, the private respondent asserted her right for payment of commission, 13th month pay, and overtime pay, the same being based on existing laws. She also claimed that the deduction of P50.00 from her basic salary was likewise illegal, there being no written authorization therefore.

The private respondent insisted that she never abandoned her work. Her failure to report for work was with a valid reason, i.e., she had to look after her then sick brother who had suffered hypertensive intra-cerebral bleeding and pneumonia. Moreover, she allegedly needed to work near his place of abode. She lives in Bo. San Vicente, San Pedro, Laguna and it would take her 2 to 3 hours travel time, more or less, to and from her new post. Besides, petitioners' decision to transfer her to SM Megamall was purely harassment, especially so when it came to know that she has filed the aforementioned claims for payment.

On the other hand, the petitioners alleged that on June 8, 1998, the management suspected an anomaly in the reported sales of its showroom at SM South Mall then manned by Francis Otong and the private respondent. Petitioner Max Kienle reported the matter to the police of Almanza Uno, Las Piñas city. Thenceforth, an investigation was conducted where Francis Ong and the private respondent admitted in writing the following:

1. that Francis Otong had been manipulating the sales record of the petitioner with the knowledge and consent of the private respondent, enabling them to pocket the sum of P460,167.79;
2. That the management for humanitarian reason accepted the admission xxx and their offer of re-payment by payroll deductions.
3. That the private respondent authorized in writing the deductions from her payroll to be applied to the account of Mr. Otong with the petitioner. Mr. Otong promised to reimburse the private respondent whatever amount deducted from the latter.
4. That with their written consent, starting June 15, 1998, the petitioner deducted the amount of P50.00 from the private respondent's daily basic salary plus her commission.

Hence, according to the petitioners, the claims of the private respondent have no basis at all. The deductions made against her salary were authorized. She was not required to work continuously for 9 hours and the management had no control as regards the duration of her break time. Ergo, she was not entitled to overtime pay. Her 13th month pay for

1997 was already paid. As regards her claim of leave payments, she admitted in her position paper that the amount representing 5 days sick leave and 5 days vacation leave were already remitted to her; while her claim for additional 2 days each was without basis in law and in fact. Also, the private respondent's claim for damages and attorney's fees has no merit, her termination being an act of self-defense of the petitioner so as to avert unnecessary losses for unauthorized transaction.

The management likewise decided to transfer the private respondent to its Megamall showroom so that she could be supervised by other Philux employees, unlike in the South Mall where most of the time she was alone. The move by the petitioner was purposely made to avert recurrence of losses. Moreover, her transfer was sought because of her propensity to be absent for flimsy reasons which resulted in not opening the store on time and/or leaving the store manned only by one person. Such was allegedly against the contract of employment of the private respondent with the petitioner. Thus, the questioned transfer is not without basis. On the contrary, the private respondent's willful disobedience constitutes a valid ground for termination of her employment.^[2]

In a decision dated June 30, 2000,^[3] the Labor Arbiter rendered judgment in private respondent's favor. In part, the decision states:

It appears that complainant and co-employee Francis Otong were involved in a violation of company policy. However, management admittedly condoned their offense and the parties agreed to a schedule of salary deductions so that complainant and Otong will be able to pay their financial liabilities to the company.

Complainant having been totally condoned, management is estopped from doing further acts which are deemed prejudicial to her interest, thus her transfer to another branch which will cause inconvenience to her and against her will and consent amount to constructive illegal dismissal.

Thus, complainant is entitled to reinstatement to her former position and station and full backwages until her actual reinstatement, computed below as follows:

May 12, 1999 to June 30, 2000 = 13.633 months
Basic salary: P 250.00

1. Salaries and Wages
P 250.00 x 26 days x 13.63388,614.50
months
2. 13th Month Pay
P 88,614.50/12 7,384.54
3. Service Incentive Leave Pay
P 250.00 x 5 days x 13.633/12 1,420.10

TOTAL P

As for the money claims, respondent have explained that they were the result of the schedule of salary deductions agreed upon by both parties pursuant to the condonation of offense as discussed above.

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed and respondent corporation is hereby directed to reinstate her and pay her backwages as computed above.

SO ORDERED.

A copy of the aforesaid Labor Arbiter's decision was received on July 14, 2000 by the petitioners. The latter filed a Motion for Reconsideration^[4] on July 24, 2000 and private respondent filed an Opposition^[5] thereto. In its Resolution dated August 31, 2000^[6], the NLRC treated the motion for reconsideration as an appeal from the Labor Arbiter's decision but dismissed the same for failure of the petitioners to post a bond as mandated by law.

The petitioners then filed a Motion to Reinstate Appeal dated September 25, 2000^[7] alleging that this failure to post an appeal bond was due to the absence of the officers of the corporation in the country at the time the appeal was filed. Attached to the motion was a *supersedeas* bond^[8] of the same date.

On October 24, 2000, the NLRC denied by Resolution^[9] the petitioners' motion to reinstate appeal which it treated as a motion for reconsideration of the dismissal of their appeal on the ground that while a surety bond was posted, the same was filed beyond the reglementary period to appeal.

Thereafter, the petitioners filed a petition for certiorari^[10] under Rule 65 of the Rules of Court with the CA which was docketed as *CA-G.R. SP No. 62735*.

In its herein assailed Decision dated January 11, 2002,^[11] the CA dismissed the aforementioned petition for lack of merit, in effect affirming the impugned resolutions of the NLRC.

Hence, the petitioners are now before this Court *via* the instant petition for review under Rule 45. They contend that the CA committed serious error by inflexibly applying a stringent interpretation of a mere procedural rule such as the posting of an appeal bond within the ten (10)-day period provided by law.

On April 15, 2002, we resolved to require the private respondent, through the labor union representative, to comment on the petition.^[12] A copy of the Resolution having been returned unserved, the Court subsequently required service thereof to the private respondent herself. Upon private respondent's failure to file a comment, the latter, by Resolution,^[13] was required to show cause why she should not be disciplinarily dealt with or be held in contempt. Subsequently, by Resolution dated April 23, 2003,^[14] the Court imposed on the private respondent a fine or a penalty of imprisonment if the fine is not paid, and to comply with the earlier Resolution requiring explanation and comment, within ten days from notice. Still failing to

comply with the aforementioned resolution, the Court, on September 17, 2003, resolved to inform the private respondent that she is deemed to have waived the filing of the comment and that the case shall forthwith be resolved on the basis of the pleadings submitted by the petitioners.^[15]

The petition has no merit.

It is settled that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege that may be exercised only in the manner and in accordance with the provisions of the applicable law.^[16] Hence, a party who seeks to avail of the same must comply with the requirements of the rules, failing which the right to appeal is invariably lost.

By explicit provision of law, an appeal from rulings of the Labor Arbiter to the NLRC must be perfected within ten (10) calendar days from receipt thereof, otherwise the same shall become final and executory.^[17] In case of a judgment involving a monetary award, the appeal shall be perfected only upon (1) payment of the required appeal fee, (2) posting of a cash or surety bond issued by a reputable bonding company and (3) filing of a memorandum of appeal.^[18] The mere filing of a notice of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal.^[19]

In this case, the petitioners, through their former counsel, who received a copy of the decision of the Labor Arbiter on July 14, 2000, filed a Motion for Reconsideration on July 24, 2000 which was the last day to perfect an appeal. No cash or surety bond, however, was posted by the petitioners. The motion having been treated as an appeal by the NLRC, the lack of a bond is fatal to the said appeal. The judgment in question involves a monetary award and an appeal therefrom by the employer may be perfected only upon the posting of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from.

Clearly then, the CA acted in accordance with law in dismissing the petition for *certiorari* assailing the dismissal by the NLRC of the petitioners' appeal for failure of the latter to post the required appeal bond.

The petitioners, however, argue that they should not suffer the consequences of their former counsel's negligence and/or gross ignorance of the rules of procedure because gross injustice would result. While the general rule is that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of the client, the petitioners invoke exceptions thereto, i.e., where the reckless or gross negligence of counsel would deprive the client of due process of law, or where it would result in the outright deprivation of the client's property through a technicality.

Unfortunately, petitioners' case does not fall under the exception but rather is squarely within the ambit of the general rule. The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.^[20] The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court, in which case the remedy then is to reopen the case and allow the party who was