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SECOND DIVISION

[G.R. No. 174641, November 11, 2008]

NATIONAL MINES AND ALLIED WORKERS UNION (NAMAWU), PETITIONER, VS. MARCOPPER MINING CORPORATION, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve in this Decision the petition for review on *certiorari*[1] filed by petitioner National Mines and Allied Workers Union (*NAMAWU*) to annul and set aside the decision of the Court of Appeals (*CA*) in CA-G.R. No. 70875[2] and its subsequent order denying the petitioner's motion for reconsideration.[3] The CA decision nullified the resolution[4] and the order[5] of the National Labor Relations Commission (*NLRC*) denying the appeal filed by Marcopper Mining Corporation (*MARCOPPER*), and ordered the NLRC to give due course to MARCOPPER's appeal.

THE FACTUAL BACKGROUND

On April 1, 1996, the Department of Environment and Natural Resources (*DENR*) ordered the indefinite suspension of MARCOPPER's operations for causing damage to the environment of the Province of Marinduque by spilling the company's mine waste or tailings from an old underground impounding area into the Boac River, in violation of its Environmental Compliance Certificate (*ECC*).[6]

NAMAWU was the exclusive bargaining representative of the rank-and-file workers of MARCOPPER. On April 10, 1996, it filed a complaint with the Regional Arbitration Branch No. IV of the NLRC against MARCOPPER for nonpayment of wages, separation pay, damages, and attorney's fees; the case is hereinafter referred to as the *"environmental incident case."*[7] NAMAWU claimed that due to the indefinite suspension of MARCOPPER's operations, its members were not paid the wages due them for six months (from April 12, 1996 to October 12, 1996) under Rule X, Book III, Section 3(b) of the Implementing Rules and Regulations of the Labor Code.[8] It further claimed that its members are also entitled to be paid their separation pay pursuant to their collective bargaining agreement with MARCOPPER and pursuant to Book IV, Rule I, 4(b) of the Labor Code's implementing rules.

MARCOPPER denied liability, contending that NAMAWU had not been authorized by the individual employees - the real parties-in-interest - to file the complaint; and that the complaint should be dismissed for lack of certification of non-forum shopping, for the pendency of another action between the same parties, and for lack of factual and legal basis.[9]

Labor Arbiter Pedro C. Ramos ruled in NAMAWU's favor in a decision dated March

14, 2000.[10] He ordered MARCOPPER, John Loney and Steve Reed (President and General Manager of the company, respectively) to pay jointly and severally the rank-and-file workers represented by NAMAWU and other employees similarly situated, the following claims: their wages for the suspension of operation for the period April 12, 1996 to October 12, 1996; separation pay; and attorney's fees. The wages and separation pay amounted to forty-four million six hundred twenty-two thousand eight hundred seventy-one and 02/100 pesos (P44,622,871.02), while the attorney's fees amounted to four million four hundred sixty-two thousand two hundred eighty-seven and 10/100 pesos (P4,462,287.10).

MARCOPPER appealed the decision to the NLRC. In this appeal, it also moved that it be allowed not to post an appeal bond for 615 NAMAWU members – former MARCOPPER employees who had been dismissed effective March 7, 1995 due to an earlier illegal strike. MARCOPPER, however, posted the required bond for three non-striking employees, namely: Apollo V. Saet, Rogelio Regencia and Jose Romasanta.

The NLRC dismissed MARCOPPER's appeal in a Resolution dated February 28, 2002 for its failure to post the appeal bond required by Article 223 of the Labor Code. Loney and Reed were at the same time dropped as respondents in the case.

The NLRC subsequently denied MARCOPPER's motion for reconsideration.[11] MARCOPPER thus sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. **The petition imputed grave abuse of discretion on the NLRC for disregarding an earlier CA decision in CA-G.R. SP No. 51059 (*illegal strike case*) involving the same parties and the same reliefs; and for awarding wages and separation pay to NAMAWU members who had earlier been dismissed and were no longer MARCOPPER employees when MARCOPPER suspended its operations.**

The CA granted MARCOPPER's petition in the currently assailed decision promulgated on October 14, 2004.[12] Accordingly, it nullified the NLRC resolution of February 28, 2002 and the order dated April 16, 2002, and ordered the NLRC to give due course to MARCOPPER's appeal.[13] The CA found the non-filing of the appeal bond for the 615 NAMAWU members covered by the Labor Arbiter's award to be justified since their employment had been terminated as early as March 7, 1995, *i.e.,* prior to the suspension of operations for which wages and separation pay were being claimed.

The CA noted in the assailed decision that it had previously confirmed the validity of the termination of employment of NAMAWU members in its decision dated May 28, 1999 on the illegal strike case.[14] The CA stressed, too, that NAMAWU elevated the illegal strike case to this Court for review, and that we denied the petition for review in our Resolution of July 12, 2000.[15] Our Resolution was entered in the Book of Entries of Judgment on December 27, 2000.[16]

The CA's denial of NAMAWU's motion for the reconsideration of the CA's October 14, 2004 decision cleared the way for the present petition.

THE PETITION

The petition, which submits four issues for our resolution, boils down to the core issues of whether the CA erred in ruling that there was no need for MARCOPPER to post an appeal bond, and in ordering the NLRC to give due course to MARCOPPER's appeal.[17]

NAMAWU submits that:

First, an appeal is not a constitutional right but a mere statutory privilege; parties who wish to avail of the privilege must comply with the statutes or rules regulating the appeal. It points out that, by law, an appeal may be perfected only upon the posting of a cash or surety bond.[18] No exception is provided nor allowed as the legal intent is to make the bond an indispensable requisite for the perfection of an appeal.

Second, the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with the legal requirement renders the judgment final and executory.[19] The bond serves as an assurance to the workers that they would be paid if they finally prevail, as held in *Coral Point Development Corp. v. NLRC.*[20]

Third, the CA delved into the merits of the company's appeal despite the patent lack of a perfected appeal. This happened, the petitioner submits, when the CA took cognizance of its decision in CA-G.R. SP No. 51059 (the *illegal strike case*) where 615 company employees were adjudged to have been terminated for cause effective March 7, 1995. CA-G.R. SP No. 51059 refers to *"an entirely separate and distinct case not connected with the case under consideration"* and it became final and executory only on July 12, 2000 when it was upheld by this Court[21] and when an Entry of Judgment was recorded in the Book of Entries of Judgment.[22] A retroactive application of this ruling would be prejudicial to the workers involved and cannot be done.

Fourth, outside of the 615 employees who were the focus of the assailed CA decision, there were other employees similarly situated who are not covered by the previous illegal strike case (CA-G.R. SP No. 51059) but are covered by the March 14, 2000 decision of Labor Arbiter Ramos. The company's position implies that there were no employees working with the company from the dismissal date of March 7, 1995 to March 24, 1996 when the disaster happened.

Fifth, the CA ignored the fact that the present case involves an issue pertaining to MARCOPPER's violation of safety and health rules which resulted in the loss of jobs of all its workers. This was the reason why the Labor Arbiter ordered MARCOPPER to pay the workers not only separation pay but also unpaid wages for the duration of the disaster. The decision cited by the CA involved an illegal strike and entailed only separation pay. Even granting that the previous strike case could bar the safety and health case under consideration, still MARCOPPER was under legal obligation to post a bond to perfect its appeal to the NLRC to guarantee the payment of the money claims of workers who were not included in the illegal strike case.

Sixth, in the guise of ruling on the issue of the non-filing of an appeal bond, the CA already decided the case in favor of MARCOPPER. When the CA ordered the NLRC to

give due course to MARCOPPER's appeal without an appeal bond, there was nothing more left to be done by the NLRC but to reverse the decision of the Labor Arbiter.

THE CASE FOR THE RESPONDENT

The respondent company and its principal officers presented their case in a Comment[23] filed on January 26, 2007 and a Memorandum[24] submitted on November 22, 2008. They submit that –

1. The CA correctly ruled that there is no necessity for the filing of an appeal bond considering that the employment of petitioner NAMAWU's members was terminated even before the issuance by the DENR of its order on April 1, 1996. [25]

2. There is no pre-judgment of MARCOPPER's appeal with the NLRC; the CA had to consider the member-employees' termination from employment in order to resolve the issue of whether there was a need for the posting of an appeal bond in the present case.

MARCOPPER reiterated that petitioner NAMAWU's members were dismissed from employment on March 7, 1995 for their participation in a strike declared illegal by the NLRC.[26] The dismissal was subsequently affirmed by the CA in CA-G.R. SP No. 51059.[27] The CA decision in turn was affirmed by this Court in its Resolution of July 12, 2000 in G.R. No. 143282, which Resolution was entered in the Book of Entries of Judgment on December 27, 2000.

Imputing bad faith on the part of NAMAWU, MARCOPPER decries that despite the pendency of the illegal strike case, NAMAWU filed on April 10, 1996 the present complaint[28] for wages and separation pay arising from the suspension of operations that started on April 12, 1996. It insists that the strike case also considered the separation pay of the NAMAWU members, as expressly recognized in the NLRC decision.[29] It stresses, too, that since the entitlement of NAMAWU members to their money claims had already been resolved and denied in a final and executory judgment, it was unjust to declare the company liable for money claims from April 12, 1996 to October 12, 1996 – a period when the NAMAWU members were no longer MARCOPPER employees.

MARCOPPER points out that it did not deliberately fail to post the required appeal bond. It submits that it filed in good faith a Motion to Dispense with the Filing of an Appeal Bond[30] for the 615 employees, and at the same time posted a bond for three complainants[31] – Apollo V. Saet, Rogelio Regencia, and Jose Romasanta – who were not included in the strike case. It claims that the motion is similar to a Motion to Reduce Bond that the NLRC should have resolved first before it dismissed the appeal.

It expresses disappointment that it was only after close to two years (or on February 28, 2002) that the NLRC rendered its resolution dismissing the appeal based on the failure to post an appeal bond. Aside from the unusual delay in the NLRC resolution, MARCOPPER finds it odd that the NLRC did not resolve its motion to dispense with the posting of the appeal bond before dismissing the appeal. It points out that the motion should have been resolved in view of the following circumstances: (1) the

appealed judgment involved a considerable amount; (2) there was already a decision of the CA in the illegal strike case when the NLRC resolved the environmental incident case; and (3) there was no intention to violate the bond requirement because it posted the necessary bond corresponding to the award in favor of three employees who were not involved in the illegal strike case.

THE RULING OF THE COURT

We state at the outset that we do not agree with NAMAWU's position that the illegal strike case between it and MARCOPPER – CA-G.R. SP No. 51059; later, this Court's G.R. No. 143282, July 12, 2000) – is "an entirely separate and distinct case not connected with the case under consideration." In the first place, both the previous and the present cases are between the same parties – NAMAWU and MARCOPPER. Both cases refer to termination of employment and its consequences. In fact, the payment of separation pay that NAMAWU seeks in the present case was considered by the NLRC in its decision in the illegal strike case, although the award was stricken out by the CA when the illegal strike case was brought to it for review. Thus, the two cases are *intimately intertwined* in the consideration made by the tribunals *a quo* as well as in point of time as our discussions below will show. If they differ at all, the difference lies only in the grounds and circumstances of termination since the illegality of NAMAWU's strike of February 27, 1995 is not under consideration in the present case, having been laid to rest by the final and executory decision of this Court of July 12, 2000.

The employment of the NAMAWU officers and members had been declared terminated on March 7, 1995 as a result of their failure to return to work after their strike of February 27, 1995. Thereafter, the illegal strike litigation commenced, resulting in a decision by the NLRC on November 11, 1996 declaring the strike illegal. Apart from confirming the termination of the services of the union officers, the NLRC declared:[32]

> However, **We take judicial notice of the fact that due to the environmental incident involving spillage of mine waste and tailings, the Deparment of Environment and Natural Resources ordered the cessation of operation of the Company on April 1, 1996 rendering the workers out of work, which to this time, is already beyond the allowable period of six (6) months temporary suspension of operation under Article 286 of the Labor Code. This being so, said Union members are entitled to separation pay in lieu of reinstatement.**
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> Let it be stressed that the grant of separation pay shall include all the Union members, the grant of the same being based on their termination of employment by operation of law. The 13 officers of the Union whom we declared to have lost their employment status and the 44 Union members who retired are excluded from the grant of the separation pay. Reduced in figure (sic) there are 562 Union members who are entitled to separation pay.
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