

## SECOND DIVISION

[ G.R. No. 113600, May 28, 1999 ]

**RIZALINA LAMZON, DOING BUSINESS UNDER THE NAME AND  
STYLE RIZAL INTERNATIONAL SHIPPING SERVICES,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
FIRST DIVISION, MANILA, HON. FELICISIMO O. JOSON, IN HIS  
CAPACITY AS ADMINISTRATOR, PHILIPPINE OVERSEAS  
EMPLOYMENT ADMINISTRATION, MANUEL BANTA AND  
EDILBERTO CUETARA, RESPONDENTS.**

### D E C I S I O N

**BUENA, J.:**

Edilberto T. Cuetara and Manuel M. Banta, private respondents herein, were hired by petitioner Rizal International Shipping Services for employment on board M/V Silver Hope, a vessel owned and operated by Silver Lines Company, Ltd. of Japan, as Chief Engineer and Bosun respectively. For the alleged non-payment of wages, overtime pay and sales bonus covering the period of January 1 to March 6, 1988, private respondents Cuetara and Banta filed separate complaints for non-payment of wages and other benefits before the Philippine Overseas Employment Agency, hereinafter known as the "POEA". Private respondents Cuetara and Banta later on amended their separate complaints and filed a joint complaint on April 11, 1990.<sup>[1]</sup>

Acting on private respondents complaint for unpaid wages, the POEA on October 28, 1992 rendered a decision in favor of private respondents, ordering petitioner Rizal International Shipping Services to pay Cuetara and Banta their unpaid claim amounting to three thousand four hundred thirty two and 20/100 US Dollars (US\$3,432.20) or its equivalent in Philippine peso and one thousand fifty-four and 64/100 US Dollars (US\$1,054.64) or its equivalent in Philippine peso respectively, plus attorney's fees equivalent to five percent (5%) of the total award <sup>[2]</sup>

Convinced that the POEA decision was rendered with grave abuse of discretion for being contrary to law and the facts of the case, petitioner, on **November 12, 1992**, filed a "Notice of Appeal"<sup>[3]</sup> with the POEA, alleging, among others, that petitioner is paying the appeal fee in the amount of P100.00 and posting a surety bond in the amount of P113, 068.36, in accordance with law, rules and regulation of the POEA and praying that the entire records of the case be elevated to respondent National Labor Relations Commission, hereinafter known as the "NLRC." Together with the "Notice of Appeal," petitioner as appellant filed the "Appeal Memorandum,"<sup>[4]</sup> the receipt of payment of the appeal fee<sup>[5]</sup> and the "Motion for Extension of Time to File Appeal Bond"<sup>[6]</sup> praying for an extension of ten(10) days from November 13, 1992 within which to file an appeal bond.

On **November 20, 1992**, petitioner filed the required appeal/surety bond in the

amount of P113, 068.36.

The NLRC in a Resolution dated October 26, 1993 dismissed the appeal with the following ratiocination:

"On November 12, 1992, the respondent appealed from the aforesaid disposition without however posting an appeal bond required in this jurisdiction. In fact, on the same date, November 12, 1992, the respondent filed a 'Motion for Extension of Time to File Appeal Bond' (Record, pp. 264-265) asking that it be given ten (10) days within which to file an appeal bond. Thus, it was only on November 20, 1992 that the respondent was able to post the required appeal bond.

"It being settled that perfection of an appeal within the reglementary period carries with it the duty to post cash or surety bond, as required by law, on time (Italian Village Restaurant vs. NLRC, et al., G.R. No. 95594, March 11, 1992, 2<sup>nd</sup> Div., Nocon, J.) and the Supreme Court having likewise held:

'Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. Failure to interpose a timely appeal (or a motion for reconsideration) renders the appealed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment (San Miguel Corporation vs. NLRC, et al., G.R. No. 101021, April 6, 1993, 3<sup>rd</sup> Div., Melo, J., citing Paramount Vinyl Corp. v. NLRC, et al. [190 SCRA 533 (1990) and all its jurisprudential references].'

we cannot but dismiss respondent's appeal.

"WHEREFORE, respondent's appeal is hereby dismissed.

"SO ORDERED."<sup>[7]</sup>

Not satisfied with the NLRC Resolution, petitioner filed a motion for reconsideration. Petitioner contends that in view of the 'Motion for Extension of Time to File Appeal Bond' specifically praying for an extension of ten (10) days from November 13, 1992 or until November 23, 1993 within which to file and submit the required appeal bond, the posting of the appeal bond on November 20, 1992 is deemed to have been filed on time. Furthermore, petitioner argued that the "Notice of Appeal," the "Appeal Memorandum" and the "Motion for Extension of Time to File Appeal Bond" were filed to perfect the appeal from the decision of the POEA to the NLRC.<sup>[8]</sup> On January 11, 1994, the NLRC issued an Order denying the motion for reconsideration with the following disquisition:

"The problem with respondent is that she assumes that the 10-day period for perfecting an appeal, fixed by Article 223 of the Labor Code, and during which she was to post her appeal bond, exists at the pleasure of, and can easily be extended by the appellants so that even without our granting her motion for extension, an appeal bond thereafter filed has to

be reconsidered as filed, worse, on time.

"In a fairly recent case, not far detached by time, the Supreme Court held:

"The perfection of an appeal within the reglementary period from receipt of the decision is jurisdictional. (Veterans Philippine Scout Security Agency vs. NLRC, 174 SCRA 347, cited in 207 SCRA 208). To extend the appeal period is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter would be constrained to give up his suit for less than what is due him. (Arceo vs. NLRC, Third Division, Minute Resolution cited in Italian Village Restaurant vs. NLRC, 207 SCRA 204, 208)" [Emphasis ours; St. Gothard Disco Pub & Restaurant, et. al. vs. NLRC, et. al., G.R. No. 102570, February 1, 1993, 1<sup>ST</sup> Division. Grino-Aquino, J],

thereby implying that We do not have much liberty to extend the period to appeal.

Clearly, We did not commit any palpable or patent error in promulgating our October 26, 1993 Resolution.

WHEREFORE, respondent's Motion for Reconsideration dated November 26, 1993 is hereby DENIED.

SO ORDERED."<sup>[9]</sup>

Hence this petition *via* certiorari with application for preliminary injunction and/or temporary restraining order.

On April 11, 1994, this Court issued a temporary restraining order (TRO) commanding respondent NLRC to cease and desist from implementing its Resolution dated October 26, 1993 and Order dated January 11, 1994.<sup>[10]</sup>

Petitioner imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in dismissing its appeal and its motion for reconsideration on the ground that its appeal was not perfected within the period provided by law and the rules. Petitioner claims that its appeal from the POEA decision to the NLRC was perfected on November 12, 1992, with the filing of the "Notice of Appeal," "Appeal Memorandum" and the "Motion For Extension Of Time To File Appeal Bond."<sup>[11]</sup> Petitioner insists that it did not extend the appeal period, rather emphasizing that the filing of the appeal bond, like in this case, could be extended with the filing of an appropriate motion to that effect *provided* the "Notice of Appeal," the "Appeal Memorandum," the "Appeal Fee" and the "Motion For Extension Of Time To File Appeal Bond" are filed within the reglementary period to perfect the appeal.<sup>[12]</sup>

This petition must fail.