

SPECIAL SIXTEENTH DIVISION

[CA – G.R. SP No. 130355, March 30, 2015]

AMALGAMATED MOTORS, PHILS., INC., PETITIONER, VS. GENEROSO GOMBAN AND NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), RESPONDENTS.

D E C I S I O N

BRUSELAS, JR. J.:

Before us is a *Petition for Certiorari* filed by the petitioner pursuant to Rule 65 against the Resolution^[1] of the National Labor Relations Commission (NLRC) which dismissed the appeal of the petitioner by reason of non-perfection due to its failure to post bond either in a form of cash or surety bond. The dispositive portion of the NLRC decision is herein quoted as follows:

“WHEREFORE, premises considered, respondents' appeal is hereby dismissed for non-perfection thereof.

SO ORDERED.”^[2]

Likewise assailed is the Resolution^[3] dated 27 March 2013 which denied the petitioner's motion for reconsideration for lack of merit.

The pertinent and relevant facts, as submitted by the parties, are as follows:

The respondent Generoso Gomban (“Gomban”) was hired by petitioner Amalgamated Motors Philippines, Inc. (“petitioner”) on 15 January 2007 as Executive Assistant to Ambassador Felimon R. Cuevas, who was then the president and chairman of the Cuevas Group of Companies to which the petitioner belonged as one of its subsidiaries. Due to his commendable service, Gomban was granted salary increases and was later assigned to supervise Bounty Hunters for Industrial Insurance, Co. He was likewise appointed in-charge of the hiring of personnel of Sulo Hotel.

Sometime in February 2010, Gomban was afflicted with Influenza and on 19 March 2010, he was diagnosed with community-acquired pneumonia. Consequently, his doctor advised him to take a long rest from work. On 25 March 2010, Gomban informed the petitioner's office and filed his leave of absence. On 23 April 2010 Gomban's condition progressed to Pulmonary Tuberculosis III and, thus, he was advised to extend his sick leave for six (6) months because he would undergo anti-tuberculosis treatment and isolation.^[4]

On 17 May 2010, Gomban received a Memorandum^[5] from the petitioner directing him to explain within forty (48) hours from receipt thereof why no disciplinary action should be taken against him for being absent from 12 April 2010. On 20 May 2010,

Gomban submitted his written explanation stating therein the reason for his absences and asked that he be given a chance to personally explain in detail the circumstances regarding his extended leave.^[6]

On 23 May 2010, Gomban attempted to report for work but was not allowed to pending an action of the management on his explanation letter. Thereafter, a Notice of Termination dated 25 May 2010^[7] was issued stating that the company was not satisfied with Gomban's explanation for his absences. Consequently, Gomban instituted a complaint for illegal dismissal and monetary claims against the petitioner.

For its part, the petitioner averred that Gomban failed to report for work since 12 April 2010 without filing any leave of absence and that he did not even inform the company of his whereabouts. Through a memorandum, Gomban was directed to explain why no disciplinary action should be taken against him for being on absence without official leave (AWOL). In Gomban's written explanation, he admitted that he did not secure any approval from the petitioner before taking several absences as he was advised by his physician to extend his sick leave. He even apologized for his transgression of the company rules. Because the petitioner found Gomban's explanation to be unsatisfactory and unacceptable, it issued a Memorandum dated 25 May 2010 dismissing Gomban from his employment.

Via the 15 October 2012 decision rendered by the Labor Arbiter, Gomban's complaint for illegal dismissal was dismissed but the petitioner was ordered to pay Gomban financial assistance, his unpaid wages, 13th month pay and service incentive leave pay. The Labor Arbiter ratiocinated as follows:

“Complainant's absence without authorization was lengthy. From the lapse of his official leave and the time he tried to enter work, 40 days had lapsed. Moreover, considering the nature of complainant's job, which includes the additional responsibilities given him in regards the Sulu Hotel and the Bounty Hunters For Industrial Insurance, respondents cannot reasonably wait for complainant to re-appear and resume work, if and when he does in the first place. Finally, and more importantly, complainant was afflicted by a very contagious disease. He himself has admitted that his doctors advised him to go on rest and to have an intensive six (6) month anti-TB treatment. His illness, therefore, could not be reasonably treated within a period of six (6) months as he had already used more than one (1) month even before commencing his treatment.

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Be that as it may, complainant's cause for dismissal is not reflective of his depraved frame of mind. He has not been dismissed for a criminal or malicious activity nor for a serious or grave offense. He should be granted financial assistance by way of separation pay.

On complainant's claim for unpaid wages, the same should be granted. Respondent company is in possession of complainant's time card. It could have easily presented the same to show that he did not render service

from March 16-25, 2010. Having failed to do so, it cannot simply rely on its bare denial.

So too must complainant's claim for 13th month pay and service incentive leave pay be granted. These are benefits granted by law to employees like complainant. Having the burden of proving payment, respondent should have presented evidences of payment, such as payrolls, vouchers or even copies of pay slips showing proper payment. As there is none, no payment can be presumed."^[8]

On appeal, the petitioner asseverated that, the two-notice rule had been properly observed before Gomban was terminated from his employment with valid cause. The petitioner argued that because Gomban was terminated on a valid ground by reason of his unauthorized absences for almost two months, the Labor Arbiter erred in awarding him financial assistance. It further asseverated that Gomban was terminated not because of mere transgression of company rules but because his acts or omissions constituted serious misconduct. As to the monetary award, the petitioner asserted that Gomban failed to substantiate his claim that he was entitled thereto.

In the assailed decision, the NLRC dismissed the appeal because the petitioner failed to post the required appeal bond as prescribed by the NLRC Rules of Procedure. Thus, the NLRC ruled in this wise:

"The mandatory filing of a bond for the perfection of an appeal is evident from the aforequoted provision that the appeal may be perfected only upon the posting of a cash or surety bond. It is obvious that since no appeal bond was posted by respondents, no appeal was perfected from the decision of the Labor Arbiter, for which reason the decision sought to be appealed to the NLRC has become final and executory and therefore immutable (Biogenerics Marketing Research Corporation vs. NLRC, GR No. 122725, September 8, 1999)."^[9]

Aggrieved, the petitioner comes to us *via* a petition for *certiorari*^[10] and raises the following issues for resolution, to wit:

"I.

WHETHER OR NOT PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL SOLELY ON THE BASIS OF PURE TECHNICALITY.

II.

WHETHER OR NOT PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN AWARDING MONETARY CLAIMS DESPITE THE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE SAME."

In this petition, the petitioner fundamentally assails the dismissal of its appeal due to its failure to post an appeal bond. It further assails the award of separation pay as financial assistance as well as the other monetary claims adjudicated in favor of