

SPECIAL THIRTEENTH DIVISION

[CA-G.R. SP NO. 129119, April 30, 2014]

KONGEN CONSTRUCTION & DEVELOPMENT CORPORATION, PETITIONER, VS. ARKIN S. ABAD, AND THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

DIMAAMPAO, J.:

This Petition for *Certiorari*^[1] fulminates against the *Decision*^[2] dated 12 October 2012 and *Resolution*^[3] dated 04 January 2013 of the National Labor Relations Commission (NLRC) which affirmed on Appeal the *Decision*^[4] of the Labor Arbiter finding merit in private respondent's *Complaint for Illegal Dismissal*, and denied the *Motion for Reconsideration* thereof, respectively in NLRC LAC NO. 07- 002200-12.

The diegesis of the case follows.

Petitioner Kongen Construction & Development Corporation (Kongen), a domestic corporation engaged in the business of construction of buildings and infrastructures,^[5] employed private respondent Arkin Abad (Abad) as Site Supervisor Engineer. The parties signed an *Employment Agreement*^[6] setting forth the following covenants:

"3.0 AGREEMENT

3.1 The First Party hereby appoints the Second Party and the Second Party hereby accepts the fulltime appointment as **SITE SUPERVISOR ENGINEER.**

4.0 TERMS AND CONDITIONS

4.1 The appointment of the Second Party, which is the rank of **SITE SUPERVISOR ENGINEER** will take effect on December 8, 2010 and shall perform his services under this agreement as a project-based employee.

4.2 The Second Party shall perform all duties and responsibilities necessary for the smooth and responsive operations of **KONGEN CONST. DEVT. CORP.**, of the First Party and such other responsibilities, which the First Party may assign to the Second Party.

x x x

x x x"^[7]

Abad was initially assigned to supervise Kongen's Stratford Residences until he was transferred to its Buddha Bar project in February 2011. Thereafter, he received a

Letter^[8] dated 25 August 2011 notifying him that his employment with Kongen would be terminated effective 25 September 2011. He was informed that the Buddha Bar project was about to end, and that his services were no longer needed.

Inevitably, Abad lodged with the Labor Arbiter a *Complaint for Illegal Dismissal*^[9] with prayer for monetary claims. He asserted that he was a regular employee performing duties and responsibilities which were usually necessary and desirable in the ordinary course of business of Kongen. His employment contract did not state the specific project to which he would be assigned, or the definite period or duration of his engagement. He claimed that the severance of his employment was not based on any ground and was done without compliance with due process of the law.

Kongen, for its part, contended that Abad was hired as a Site Supervisor for the Stratford Residences project until his eventual transfer to the Buddha Bar project. As a project-based employee, it was understood that his employment was dependent upon the project to which he would be assigned. Since the Buddha Bar project was about to be finished, he was informed that his services were no longer needed. Abad accepted the management's decision as manifested in his electronic mail dated 26 August 2011.^[10]

Sieving through the divergent postulations of the parties, the Labor Arbiter rendered the 30 April 2012 Decision disposing—

“WHEREFORE, (petitioner) Kongen Construction and Development Corporation is hereby found guilty of illegal dismissal. It is ordered to pay complainant (Abad) the total sum of Php509,321.48 representing:

1. 1. Backwages computed from the time of his dismissal up to (the) date hereof;
2. Separation pay equivalent to one month wage for every year of service, it being understood that a fraction of six month being considered one full year;
3. Wages from September 1 to 25, 2011;
4. Holiday pay and proportionate 13th month pay for 2011; and
5. Attorneys fees equivalent to ten (10%) percent of the total monetary award.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part hereof.

SO ORDERED.^[11]

Aggrieved, Kongen filed an Appeal *with Motion to Reduce Appeal Bond*^[12] before the NLRC. However, the labor tribunal gave short shrift to such entreaty via the assailed *Decision, viz—*

“WHEREFORE, premises considered, the motion to reduce appeal/supersedeas bond filed by (petitioner) Kongen Construction &

Development Corporation is DENIED for lack of merit. The appeal of said (petitioner) is DISMISSED for non-perfection and lack of merit. The assailed Decision of Labor Arbiter Raymund M. Celino dated April 30, 2012 is AFFIRMED.

SO ORDERED."^[13]

Kongen moved for reconsideration but this was denied through the challenged Resolution.

Left with no recourse, Kongen (now, petitioner) seeks recourse before Us anchored on the following grounds:

I

THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND/OR PATENT ERROR OF LAW WHEN IT DID NOT PASS UPON MERITORIOUS DEFENSE OF PETITIONERS IN THE ILLEGAL DISMISSAL CASE.

II

THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND/OR COMMITTED PATENT ERROR OF LAW WHEN IT DENIED PETITIONER'S MOTION TO REDUCE BOND AND WHEN IT HELD THAT PETITIONERS APPEAL WAS NOT PERFECTED.

The Petition is meritless.

First off, We delve into the issue of whether or not the *Appeal* filed by petitioner before the NLRC was perfected.

Jurisprudence teaches Us that the requirement of a cash or surety bond for the perfection of an appeal from the Labor Arbiter's monetary award is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the award final and executory.^[14] This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.^[15]

In any case, there is a catena of cases relaxing the rule on posting of appeal bond. The bond requirement on appeals involving monetary awards had been and could be relaxed in meritorious cases such as: (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (4) the appellants, at the very least, exhibited their willingness and/or good faith by