

SPECIAL FIFTEENTH DIVISION

[CA-G.R. SP NO. 127047, November 24, 2014]

**JESSIE H. ESPOLONG, LEVI R. PASCUAL AND LEO R. PASCUAL,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(FIFTH DIVISION), TOP RATE CONSTRUCTION AND GENERAL
SERVICES, INC. AND RAUL NELSON S. SANARES. RESPONDENTS.**

D E C I S I O N

VILLON, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the decision^[1] dated June 8, 2012 and the resolution^[2] dated July 30, 2012 of public respondent National Labor Relations Commission (NLRC), Fifth Division, in NLRC LAC No. 01-000275-12. The said issuances overturned the decision^[3] dated October 28, 2011 of Labor Arbiter (LA) Joel S. Lustria in NLRC-NCR Case No. 05-06882-11 which, in turn, found merit in the complaint for illegal dismissal and non-payment of separation pay filed by petitioners Jessie H. Espolong (or "Jessie"), Levi R. Pascual (or "Levi") and Leo R. Pascual (or "Leo").

The factual and procedural antecedents of the case are hardly in dispute.

Leo, Jessie and Levi were hired by private respondent Top Rate Construction and General Services, Inc. (or "Top Rate") as janitors/members of the maintenance crew sometime in October 1995,^[4] January 1997,^[5] and December 1998,^[6] respectively. They were all assigned to perform their tasks and duties at BF Homes Subdivision, Las Piñas City (or "BF Homes"). On January 13, 2011, however, BF Homes informed Top Rate that due to its cost-cutting program, it was turning over to the latter the janitorial and maintenance personnel assigned thereat, including petitioners, at the end of the month.^[7] On January 31, 2011, petitioners were informed by private respondent Raul Nelson S. Sanares (or "Sanares"), Vice President of Top Rate, that they had been terminated from their employment effective on that same day.

Thereafter, petitioners instituted the instant case before the arbitration branch of the NLRC.^[8] Petitioners argued that they were regular employees because, in addition to the length of their tenure with the company, their positions were usually necessary or desirable to the business of Top Rate. Hence, they were illegally dismissed from employment.

Private respondents disagreed with petitioners' assertion. They averred that petitioners were contractual employees whose terms merely expired when BF Homes terminated the janitorial and maintenance phase of work of its service agreement with Top Rate. They also claimed that Top Rate is a legitimate job contractor pursuant to Department Order (DO) No. 18-02, series of 2002^[9] of the

Department of Labor and Employment (DOLE). Hence, petitioners were not even entitled to separation pay.

The LA found merit in petitioners' cause of action. The pertinent portions of his decision dated October 28, 2011 are quoted hereinbelow, to wit:

"xxx Complainants' dismissal is anchored on the fact that respondents' service agreement to (sic) its client, BF Homes was terminated because of the cost-cutting program that the latter has adopted. Thus, respondents consequently deemed complainants' contractual employment as having expired also, which to us, deserved scant consideration. It must be stressed that herein complainants is (sic) not privy to the service agreement or whatever contracts that respondents and its (sic) client BF Homes may have. Complainants have nothing to do with the termination of the service agreement between herein respondents and its (sic) client, BF Homes. In short, complainants were unceremoniously dismissed.

xxx xxx xxx

WHEREFORE, premises considered, judgment is hereby rendered, declaring respondents guilty of illegal dismissal. Accordingly, respondents are hereby ordered jointly and severally liable:

- 1) To pay complainants the amounts of which, opposite their respective names, representing their backwages, computed only up to the promulgation of this decision:

Names	Separation Pay
Jessie H. Espolong	P102,774.22
Levi R. Pascual	P102,774.22
Leo R. Pascual	P102,774.22

- 2) To pay complainants the amounts of which, opposite their respective names, representing their separation pay:

Names	Separation Pay
Jessie H. Espolong	P147,056.00
Levi R. Pascual	P136,552.00
Leo R. Pascual	P168,064.00

SO ORDERED."^[10]

On December 23, 2011, private respondents interposed an appeal^[11] before the NLRC which, in its February 28, 2012 resolution, dismissed the same on technical

grounds. Thus:

"Respondents seasonably filed their Appeal on December 23, 2012 (sic) with a P759,994.66 surety bond issued by Plaridel Surety and Insurance Company, per PSIC Bond No. 00170 JCL (15). However, the surety was not accompanied by a copy of their Indemnity Agreement with the bonding company and a copy of the security deposit or collateral securing the bond, as required in the aforesaid Rule. Being so, it is as if no bond was filed.

The posting of the bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. The posting of the bond is not only mandatory but a jurisdictional requirement as well, and non-compliance therewith rendered the decision of the Labor Arbiter final and executory.

Thus, Respondents are deemed to have lost their appeal due to non-perfection.

WHEREFORE, premises considered, the respondents' Memorandum of Appeal is **DISMISSED** for non-perfection.

SO ORDERED."^[12]

Private respondents sought a reconsideration^[13] of the above resolution, attaching therewith a copy of the requisite Indemnity Agreement^[14] and an Official Receipt^[15] of covering their P759,994.66 cash collateral, both dated December 21, 2011. The aforesaid resolution was set aside and private respondents' appeal was reinstated. On June 8, 2012, the NLRC rendered the assailed decision reversing the ruling of the LA, ratiocinating as follows:

"Indeed, the provisions of Department Order 18-02 [Series of 2002] which implement Articles 106 to 109 of the Labor Code on sub-contracting, are applicable in this case.

"That respondent corporation is a legitimate job contractor is borne out by the evidence on record evincing its registration with the Securities (and) Exchange Commission and the Department of Labor and Employment, and by the service contracts it has entered into with various entities.

"As provided in paragraph [a], Section 4, of Department Order 18-02 [Series of 2002], 'contracting' or 'subcontracting' refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal as hereinafter qualified.

"In this case, respondent company's client, BF Homes had a service contract with the former, which was renewed on a regular basis. It was under these service contracts that the complainants were deployed to perform janitorial services to the client, and undisputedly, their assignment was covered by separate contracts, duly signed by the complainants, and providing for a specific duration, salary rate and containing the express provision, to wit:

'xxx

3. Ang kontratang ito ay nasasakupan ng mga batas at alituntunin ng tanggapan at mawawalang bisa pagkatapos ng kontrata ng Top Rate Construction & General Services, Inc. at BF HOMES, INCORPORATED sa petsang isinasaad ng kontrata or sa anumang araw na tapusin ng BF HOMES, INCORPORATED ang kontrata ng Top Rate Construction & General Services, Inc.'

"Evidently, the complainants' continued employment was dependent on the existence of a valid service contract with the client to whom they were assigned to render janitorial services.

"It has been held that the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship.

"All told, the subsequent expiration of the complainants' assignment at BF Homes Inc., and the subsequent non-renewal of their services did not make respondent liable for unjustified termination, as what transpired in the complainants' case is the expiration and non-renewal of a valid employment contract.

xxx xxx xxx

WHEREFORE, premises considered, the Decision of Labor Arbiter Joel S. Lustria dated October 28, 2011 is **VACATED and SET ASIDE** and a new one entered **DISMISSING** the complaint for lack of merit.

SO ORDERED."^[16]

Petitioners' motion for reconsideration^[17] was denied in the assailed July 30, 2012 resolution for being filed out of time, thus:

"As evidenced in the registry return card, complainants through counsel received a copy of the Commission's Decision on June 16, 2012 giving complainants until June 27, 2012 since June 26, 2012 falls on a Sunday to seasonably move for reconsideration.

"However, records disclose that complainants' Motion for Reconsideration was personally filed on June 28, 2012 and was received by the NLRC 5th Division on June 29, 2012. Complainants have in effect waived their right to move for reconsideration for failure to comply with the jurisdictional requirement of filing a Motion within the ten [10]-day reglementary period.

"**WHEREFORE**, premises considered, the Motion for Reconsideration of complainants is **DENIED** for being filed out of time.

SO ORDERED."^[18]

Hence the present recourse, petitioners raising the following issues, to wit:

I.

THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHICH AMOUNTS TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WHEN (SIC) DISMISSED PETITIONERS' MOTION FOR RECONSIDERATION MERELY ON TECHNICAL GROUND;

II.

THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHICH AMOUNTS TO LACK OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO APPRECIATE MATERIAL FACTS SHOWING THAT PETITIONERS ARE REGULAR EMPLOYEES;

III.

THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHICH AMOUNTS TO LACK OR IN EXCESS OF JURISDICTION WHEN IT MISTAKENLY APPLIED DOLE DEPARTMENT ORDER NO. 18-02, SERIES OF 2002 AND CITED INAPPLICABLE JURISPRUDENCE.^[19]

It is well settled that rules of procedure in labor cases may be relaxed.^[20] The said rules should not be applied in a very rigid and technical sense.^[21] Thus, We find that the minor lapses on the part of the petitioners, specifically delay of only one (1) day in the filing of motion for reconsideration of the assailed NLRC decision is excusable in light of the aforesaid jurisprudential doctrine.

Now, on the substantive aspect of the case. Petitioners contend that as janitors/members of the maintenance crew who have been with the company for