

## SEVENTH DIVISION

[ CA-G.R. SP NO. 89929, August 17, 2006 ]

**MORNING STAR TRAVEL AND TOURS, INC. ET.AL, PETITIONERS,  
VS. NATIONAL LABOR RELATIONS COMMISSION, AND NOVALYN  
SOYANGCO, RESPONDENTS.**

### DECISION

**COSICO, J.:**

This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolutions<sup>[1]</sup> dated January 31, 2005 and March 31, 2005 rendered by the National Labor Relations Commission (NLRC) (Third Division) in NLRC-00-02-02534-03 (NCR CA No. 041963-04) denying petitioners' motions for reconsideration which were filed as an offshoot to the November 30, 2004 Order of respondent Commission which in effect, ordered the petitioners to post an additional amount of appeal bond. For failure to comply with the November 30, 2004 Order, public respondent in its January 31, 2005 Resolution dismissed petitioners' appeal, the decretal portion thereof reads:

"WHEREFORE, respondents' Motion for Reconsdieration is hereby DENIED for lack of merit. Respondents' appeal is hereby DISMISSED for failure to comply with the requirements of appeal as mandated by law.

No further motion of this nature shall be entertained.

SO ORDERED." [Resolution, p. 2]

On another motion for reconsideration filed by petitioners, public respondent issued its March 31, 2005 Resolution denying the same. The dispositive portion of the aforesaid Resolution states:

"**PREMISES CONSIDERED**, respondents' instant Motion for Reconsideration dated March 4, 2005 which is a second Motion for Reconsideration of Resolution of November 30, 2004, is hereby NOTED. Let this case be dropped from the calendar of the commission.

**SO ORDERED.**" [Resolution, p. 2]

In addition, the petitioners put into issue in the present petition the alleged grave abuse of discretion amounting to lack or excess of jurisdiction committed by public respondent in finding that private respondent was illegally dismissed and thus entitled to an award of full backwages, 13th month pay, moral and exemplary damages and attorney's fees.

### The Facts

The instant petition emanated from the complaint for illegal dismissal and money claims filed by private respondent Novalyn Soyangco against her former employers who are the petitioners herein. In the proceedings before the Labor Arbiter, the parties were required to submit their respective pleadings and corresponding evidence and thereafter the case was submitted for decision. On May 31, 2004, Labor Arbiter Ramon Valentin C. Reyes to whom the case was assigned, rendered a decision finding that herein private respondent was illegally dismissed from employment and awarded her the amount of P622, 124.16 representing backwages, 13th month pay, separation pay, attorney's fees, moral and exemplary damages and held:

"In the first place, complainant never admitted that she submitted her resignation letter to the respondent [petitioners herein] although she admitted having prepared one because of the Memorandum of the respondent company dated October 26, 2002, offering several options to employees one of which was the giving by the respondents of separation pay of 15 for every year of service based on the latest salary of those who will voluntarily resign from their job.

Respondents claim that complainant filed her resignation when Respondent's officer was inclined to disapprove the letter request and complainant anticipated it that way, so on the same day in the afternoon (November 11, 2002) complainant submitted her resignation letter without waiting for the action on her letter request x x x The argument of respondents are purely gratuitous, conjectural and speculative which has no probative value. Moreover, a searching scrutiny of the copy of resignation x x x shows that there is no proof that it was personally received by respondents from complainant unlike the complainant's request-letter for leave of absence of four (4) days which find it more credible and in consonant to the natural course of things.

x x x the fact that complainant filed an illegal dismissal with this Office after respondents refused to admit her to return to work without even a notice of terminating her employment, much less to explain her side, are clear indication that such resignation was not voluntary and deliberate."

[2]

Not in agreement with the above ruling, petitioners immediately filed a notice of appeal and submitted a Memorandum of Appeal together with a Motion for the Reduction of the Appeal Bond to respondent Commission. Pending resolution of the motion to reduce the amount of appeal bond, petitioners posted the amount of Sixty Two Thousand Three Hundred Pesos (P62,300.00) as appeal bond or the equivalent of ten percent (10%) of the total judgment award.

Verily, on November 30, 2004, respondent Commission issued an order<sup>[3]</sup> directing the petitioners to post an additional amount of Five Hundred Fifty-Nine Thousand Eight Hundred Twenty-Four Pesos and Sixteen Centavos (P559,824.16) as appeal bond which represented the whole judgment award of the Labor Arbiter ruling thus:

"We are constrained to deny respondents' motion to reduce appeal bond. As held by the Supreme Court, in cases involving monetary award, an

employer seeking to appeal the Labor Arbiter's decision to the Commission is unconditionally required by Art. 223, Labor Code to post a bond in the amount equivalent to the monetary award . . ."

In response thereto, a Motion for Reconsideration of the aforesaid order was filed by petitioners but was denied by respondent Commission in its Resolution dated January 31, 2005 which ordered the dismissal of the former's appeal in this wise:

"We dismiss respondents' Motion for Reconsideration. The Commission is not convinced that respondents' financial situation warrants the reduction of bond as it failed to show sufficient proof of its current financial condition. The Supreme Court has held in several cases that the requirements of a cash or surety bond for the perfection of an appeal from a Labor Arbiter's monetary award is jurisdictional; non-compliance therewith is fatal and rendered the judgment final and executory . . ." [Resolution, p. 2]

Petitioners filed a motion for reconsideration of the January 31, 2005 Resolution which was also denied by public respondent in its Resolution dated March 31, 2005, to wit:

"We cannot give due course to [the] instant Motion for Reconsideration which is actually a second Motion for Reconsideration from our Resolution of November 30, 2004.

Let it be stressed that under Sec. 15, Rule VII of the NLRC Rules of Procedure, only one Motion for Reconsideration of any order, resolution or decision of the Commission shall be entertained." [Resolution, p. 2]

Undaunted, petitioners are now before us in this petition.

### **The Present Petition**

The following issues brought before for this Court for resolution are:

#### I.

THE HONORABLE THIRD DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GIVE DUE COURSE TO THE PETITIONERS' MOTION FOR RECONSIDERATION DATED JANUARY 31, 2005 AND DROPPED THE CASE FROM THE CALENDAR OF THE COMMISSION;

#### II.

THE HONORABLE LABOR ARBITER VALENTIN C. REYES COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RULED THAT THE PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED;

#### III.

THE HONORABLE LABOR ARBITER VALENTIN C. REYES COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RULED THAT PRIVATE RESPONDENT IS ENTITLED TO THE PAYMENT OF SEPARATION PAY, FULL BACKWAGES, 13th MONTH PAY, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

Petitioners aver<sup>[4]</sup> that respondent Commission in requiring additional bond representing the entire amount of monetary judgment committed grave abuse of discretion amounting to lack or excess of jurisdiction as it is utterly unconscionable and ineffectively deprived the former of their right to appeal. Notably, the posting of a cash bond in the amount equivalent to ten percent (10%) of the judgment award is actually allowed by the implementing rules and regulations of the NLRC. Likewise, the motions for reconsideration denied in the assailed Resolutions herein are independent and separate from one another as it refers to different incidents.

Corollary to this, petitioners assail the grave abuse of discretion committed by the Labor Arbiter when he ruled that private respondent was illegally dismissed. Contrary to the labor arbiter's findings which are based mostly in his incredulous and strict interpretation of the factual circumstances of the case, the records clearly show that private respondent resigned from her job and was in no way barred by petitioners from returning to her work. Private respondent simply refused to work by filing a resignation letter. Thus, considering that no illegal dismissal took place, private respondent was not illegally dismissed as to entitle her to an award of full backwages, separation pay, moral and exemplary damages and attorney's as the assailed ruling lacks factual and legal bases.

On the other hand, private respondent posits<sup>[5]</sup> that Art. 223 of the Labor Code, as amended, in relation to Sections 4 to 6, Rule VI of the 2002 NLRC Rules of Procedure is explicit that an appeal to the NLRC is deemed perfected only upon the posting of a cash or surety bond in an amount equivalent to the monetary award. Moreover, under the NLRC Rules, in order for a motion to reduce bond to be entertained, there must be an appeal bond posted in a reasonable amount in relation to the monetary award, otherwise the filing of such motion shall not stop the running of the period to perfect an appeal. In the instant case, petitioners failed to post a bond in a reasonable amount. Neither was proof presented to support petitioners' allegations to warrant a reduction of the bond. Consequently, the requisite amount of the bond not having been filed, petitioners' appeal was not perfected and the labor arbiter's decision is now final and executory.

Nonetheless, even granting arguendo that the appeal was perfected, the labor arbiter was correct in finding that private respondent was illegally dismissed from employment as the records of the case aptly support such fact.

### **This Court's Ruling**

The petition is bereft of merit.

Nothing is more settled in law and jurisprudence than the rule that the posting of an appeal bond of a judgment involving a monetary award to the National Labor