

## **FIFTH DIVISION**

**[ SP No. 109166, July 29, 2010 ]**

**ROMAN UY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER MADJARAN AJAN AND RODELIO DIEGO, RESPONDENTS.**

### **D E C I S I O N**

## **Court of Appeals**

Assailed to this petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure is the Decision dated February 6, 2009 and Resolution dated April 23, 2009 issued by public respondent National Labor Relations Commission in NLRC NCR Case No. 02-01994-08 which dismissed petitioner Roman Uy's appeal for non-perfection and denied the motion for reconsideration thereof, respectively.

### **The Facts**

It appears that sometime in July 2006, private respondent Rodelio Diego was hired by petitioner Roman Uy as a truck helper (*pahinante*) in his business of distributing Rebisco product. As a truck helper, private respondent earned Php 350.00 a day, inclusive of allowances.

On February 8, 2008, private respondent filed a complaint for illegal dismissal against petitioner with claims for underpayment of wages, non-payment of overtime pay, holiday pay, service incentive leave pay, 13th month pay and separation pay.

To excuse himself from the payment of the above-mentioned money claims, petitioner argued that the private respondent was hired merely as an "extra pahinante", who worked only when he was called to do so. At times, private respondent would be asked to report only twice or thrice a week.

On September 22, 2008, Labor Arbiter Madjayran Ajan rendered judgment in favor of private respondent. On the ground of constructive dismissal, petitioner was directed to reinstate private respondent to his former position with full backwages and ordered to pay the latter's claims for underpayment of salaries, non-payment of service incentive leave pay and 13th month pay plus attorney's fees in the total amount of Php 114,187.97.<sup>[1]</sup>

Petitioner received a copy of the foregoing decision on November 17, 2008 and, on the tenth day therefrom, filed a Partial Appeal<sup>[2]</sup> before the National Labor Relations Commission (NLRC) with Motion for Reduction of Bond.<sup>[3]</sup> Together with the appeal, petitioner filed a cash bond in the reduced amount of Php 35,000.00 on the claim that the company is not in a financial position to post a bond equal to the total amount of the monetary award stated in the Labor Arbiter's decision.

The reason advanced by petitioner, however, failed to impress the NLRC. On February 6, 2009, the NLRC dismissed the appeal on the ground of non-perfection. The NLRC reasoned out in this wise:

"We find no merit in the respondent's motion. It must be stressed that under Section 6, Rule VI of the 2005 Rules of Procedure of this commission, no motion to reduce bond shall be entertained except on meritorious ground. The reduction of the required bond is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds (*Casimiro, et al. vs. Storn Real Estate, Inc. et al.*, G.R. No. 162233, March 10, 2006). In this case, we note that the justification of the movant that his business is not really that big and profitable is not substantiated and pregnant with admission that he makes profit from his business. The other justification of the movant that employers suffered reverses due to spiraling cost of oil products is so vague and deserves scant consideration. Succinctly -put, respondent's justification for the reduction of the appeal bond are vague and unsubstantiated, not worthy of belief. The reduction of the bond is not warranted when no meritorious ground is shown to justify the same (*Nicol, et al. vs. Footjoy Industrial Corporation*, G.R. No. 159372, July 27, 2007).

Conversely, respondent is considered to have failed to comply with the requirement of posting bond, and since the filing of the motion to reduce bond did not stop the running of the period to perfect an appeal, the appeal of the respondent is deemed to have not been perfected within the period to appeal, it is well settled that the posting of appeal bond is mandatory (*Phil. Trans marine Carriers, Inc. vs. Cortina*, 415 SCRA 714) and is jurisdictional, without which the NLRC, as in this case, does not have the authority to review and revise the judgment of the Labor Arbiter (*Cordova, et al. vs. Keysa's Boutique*, G.R. No. 156379, Sept. 16, 2005)."

[4]

Aggrieved, petitioner moved for reconsideration but the same was denied in the April 23, 2009 Resolution of the NLRC.

### **The Issue**

Unfazed, petitioner filed the petition at bench seeking the nullification of the assailed Decision and Resolution on the ground that public respondent committed grave abuse of discretion in dismissing petitioner's appeal for non-perfection.

### **The Court's Ruling**

We find the petition bereft of merit.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.[5]

Article 223 of the Labor Code clearly provides that "[decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders".

It further provides that "in case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commissions in the amount equivalent to the monetary award in the judgment appealed from."

Similarly, Sections 4 (a) and 6 of Rule VI of the New Rules of Procedures of the NLRC, as amended, state:

'Section 4. *Requisites for Perfection of Appeal.*— (a) The appeal shall be filed within the reglementary period as provided in Sec. 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Sec. 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

**A mere notice of appeal without complying with the other requisite aforestated shall not stop the running of the period for perfecting an appeal.**

Section 6. *Bond*—in case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, **an appeal by the employer shall be perfected only upon the posting of a cash or surety bond,** which shall be in effect until final disposition of the case, **issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.**

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The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. **The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal,**" (Underscoring and emphasis supplied)

The legislative intent to make the posting of a cash or surety bond a mandatory requisite for the perfection of an appeal by the employer is underscored in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" in Article 223 of the Labor Code makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal which is optional on the part of the defeated party, but not to the posting of an appeal bond which is compulsory, if he desires to appeal.<sup>[6]</sup>