

THIRD DIVISION

[G.R. No. 123204, July 11, 1997]

**NATIONWIDE SECURITY AND ALLIED SERVICES, INC. AND/OR
PRESIDENT/GENERAL MANAGER, PETITIONERS, VS. NATIONAL
LABOR RELATIONS COMMISSION AND JUNJIE B. SUICON,
RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court to nullify and set aside the Order^[1] of 21 November 1995 of the National Labor Relations Commission (NLRC) in NLRC NCR CA 009674-95 (NCR-00-09-04937-92) which denied petitioners' motion^[2] to reduce the appeal bond in connection with their appeal from the Decision of 29 June 1995 of the Labor Arbiter in favor of private respondents.

There is no dispute as to the relevant antecedents which were summarized by the Office of the Solicitor General in its Comment^[3] for public respondent NLRC.

On 8 September 1992, private respondent Junjie B. Suicon filed before the Labor Arbiter a complaint for underpayment of wages and non-payment of overtime, premium, holiday, service incentive leave, thirteenth month, and night shift differential pay against petitioners. The complaint was amended on 19 October 1992 to include a cause of action for illegal dismissal.

On 29 June 1995, the Labor Arbiter rendered a decision with the dispositive portion providing:

WHEREFORE, the respondents Nationwide Security and Allied Services, Inc. and GUANI Marketing Inc. are hereby ordered, jointly and severally, to pay the complainant backwages in the amount of P195,585.00 representing wage differentials and premium pay for overtime work, night duty in the amount of P176, 518.94; and 13th month pay in the amount of P25,886.25. Attorney's fee[s] equivalent to ten percent (10%) of the total amount is also assessed on the respondents.^[4]

The aggregate of the awards excluding attorney's fees amounts to P397,990.19.

On 11 August 1995, or four days after their receipt of the decision, petitioners filed a Motion to Reduce Bond with the NLRC arguing:

1. That, the judgment amount of P397,990.19 adjudged to be paid to complainant jointly and severally by respondents Nationwide Security and Allied Services, Inc./Romeo T. Nolasco (NATIONWIDE) and GUANI Marketing INC. (GUANI) in accordance with the Decision rendered in this case on June 29, 1995, copy thereof was received by the herein respondent NATIONWIDE on August 07, 1995 was based on arbitrary figures and therefore self-serving, as explained below:

x x x

5. That, the finding that complainant was illegally terminated from his work (page 2 of Decision, last paragraph thereof) and entitled to backwages from September 1, 1992 to June 30, 1995 allegedly "in view of the "ANSWER" of the respondent NSASI which admitted the material averments of the complaint" according to the questioned Decision, clearly show the whimsical, capricious, sham, frivolous, arbitrary or despotic act of the said Decision amounting to Grave Abuse of Discretion to the Labor Arbiter as explained by the following:

x x x

8. That, allowing the judgment amount to ripen into finality without having the same reviewed based on this Motion would give complainant "undue advantage" at the expense of and to the damage and prejudice of the herein respondents;

9. That, herein respondent NATIONWIDE made their own computation to refute the one embodied in the questioned Decision, the said computation which shows the amount of P37,538.17 as due complainant was previously attached to herein respondents' "Answer With Cross Claim" and for the purpose of this Motion, a copy of the same is hereto attached as Annex "A" as already stated;

10. That, considering that the said computation is based on PADPAO rate as evidenced by the figures thereat which show P2,200 actual salary and P5,752.50 Padpao rate, for 15 days and 31 days respectively, being in agreement with the figures on paragraph[s] 2 and 3 hereof, and with the figures in the questioned Decision, as well as the complaint sheet, it is respectfully submitted that the amount of P37,538.17 be adjudged as the correct amount due complainant Suicon;

11. That, considering further that the judgment amount is to be paid jointly and severally by respondents NATIONWIDE and GUANI, and considering that respondent NATIONWIDE is not in a position to raise the whole amount of P37,538.17, it is further respectfully submitted that only one half (1/2) of the correct amount of P37,538.17 or P18,769.08 be considered and approved to be the appeal or supersedeas bond to be posted by herein respondent NATIONWIDE.

On 17 August 1995, petitioners filed their Memorandum on Appeal.

On 21 November 1995, the NLRC issued its questioned Order denying the above motion on the grounds that "petitioners' alleged inability to post the bond is without basis," and to grant the motion on the grounds stated therein "would be tantamount to ruling on the merits." The NLRC then decreed:

PREMISES CONSIDERED, instant motion to reduce bond is hereby DISMISSED for lack of merit. Respondents are hereby directed to post the bond in the amount of three hundred ninety seven thousand nine hundred ninety pesos and 19/100 (P397,990.19) within five (5) days from receipt hereof. Otherwise, instant appeal shall be dismissed. No further Motions for Reconsideration shall be entertained.

SO ORDERED.

On 17 January 1996, petitioners filed the instant petition and urged us to set aside the above order of 21 November 1995 on the ground that the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing said order. Petitioners cite *Star Angel Handicraft v. NLRC*^[5] where we reiterated the rule relaxing, or giving a liberal interpretation to, the requirement of the posting of an appeal bond for the perfection of an appeal under Article 233 of the Labor Code. Petitioners also allege that they "cannot afford to post the bond of P397,990.19 because [they do] not have that sum from [the] business with Guani Marketing, Inc.," and to use funds from other sources "would not be a sound business judgment."

We required respondents to comment on the petition.

In their separate comments, the Office of the Solicitor General and private respondents pray that we dismiss the petition for lack of merit. The former asserts that the cases of *Star Angel Handicraft v. NLRC* and *Erectors, Inc. v. NLRC*^[6] cited by petitioners are not applicable and that the NLRC did not act without or in excess of jurisdiction or with grave abuse of discretion in denying petitioners' motion to reduce the bond. Private respondent contends that no jurisdictional issue is involved and this petition "is moot and academic" since respondent NLRC had resolved in its questioned order to put off consideration of the correctness of the computation of petitioners' liability until the hearing of the case on the merits.

It appears that on 22 February 1996 the NLRC handed down a resolution^[7] dismissing petitioners' appeal for their failure to post a cash or surety bond in the amount of P397,990.19 as required in the Order of 21 November 1995, to which petitioners moved for reconsideration.^[8]

The sole issue in this case is whether the Commission acted with grave abuse of discretion in denying petitioner's motion for reduction of appeal bond.

Article 223 of the Labor Code, as amended, explicitly provides that an appeal from a decision of the Labor Arbiter must be made within ten (10) calendar days from receipt of a copy of the decision by the party intending to appeal therefrom or the aggrieved party; and if the decision involves 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 NLRC "in the amount equivalent to the money award in the judgment appealed from." Rule VI of the New Rules of Procedure of the NLRC^[9] implements this Article, with Sections 1, 3, 5, 6 and 7 thereof pertinently providing as follows: