

## FIRST DIVISION

**[ G.R. No. 201237, September 03, 2014 ]**

**PHILIPPINE TOURISTERS, INC. and/or ALEJANDRO R. YAGUE, JR., PETITIONERS, VS. MAS TRANSIT WORKERS UNION-ANGLO-KMU\* AND ITS MEMBERS, REPRESENTED BY ABRAHAM TUMALA, JR., RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated November 25, 2011 and the Resolution<sup>[3]</sup> dated March 12, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 96000 which reversed and set aside the Decision<sup>[4]</sup> dated January 20, 2006 of the National Labor Relations Commission (NLRC) in NLRC NCR CN. 30-04-01713-01/ CA No. 036901-03, thereby reinstating the Decision<sup>[5]</sup> dated July 14, 2003 of the Labor Arbiter (LA) finding MAS Transit, Inc. (MTI) and petitioners Philippine Touristers, Inc. (PTI) and/or its president, Alejandro R. Yague, Jr. (Yague) guilty of unfair labor practice, *i.e.*, illegal lock out.

### The Facts

On June 14, 2000, respondent Samahan ng Manggagawa sa Mas Transit-Anglo-KMU (the Union) – a union organized through the affiliation of certain MTI bus drivers/conductors with the Alliance of Nationalist and Genuine Labor Organizations – filed a petition<sup>[6]</sup> for certification election before the Department of Labor and Employment (DOLE) - National Capital Region (NCR), docketed as Case No. NCR-OD-M-0006-018.<sup>[7]</sup> The DOLE granted the Union's petition, prompting MTI to file a motion for reconsideration which was, however, denied in a Resolution dated February 7, 2001.<sup>[8]</sup>

Earlier, or on September 15, 2000, MTI decided to sell<sup>[9]</sup> its passenger buses together with its Certificate of Public Convenience (CPC) issued by the Land Transportation Franchising and Regulatory Board (LTFRB) to PTI for a total consideration of P98,345,834.43. Records disclose that the sale of 50 passenger buses together with MTI's CPC was approved by the LTFRB in a Decision<sup>[10]</sup> dated December 28, 2000. As such, PTI was issued a new CPC authorizing it to operate the service on the Baclaran-Malabon via EDSA route using the passenger buses that were sold.<sup>[11]</sup>

In light of the foregoing, MTI issued a "*Patalastas*"<sup>[12]</sup> dated March 7, 2001 apprising all of its employees of the sale and transfer of its operations to PTI, and the former's intention to pay them separation benefits in accordance with law and based on the resources available. The employees were also advised to apply anew

with PTI should they be interested to transfer. Thereafter, or on March 31, 2001, MTI sent each of the individual respondents<sup>[13]</sup> a Memorandum<sup>[14]</sup> informing them of their termination from work, effective on said date, in line with the cessation of its business operations caused by the sale of the passenger buses to the new owners.<sup>[15]</sup>

Claiming that the sale was intended to frustrate their right to self-organization and that there was no actual transfer of ownership of the passenger buses as the stockholders of MTI and PTI are one and the same, the Union, on behalf of its 98 members (respondents),<sup>[16]</sup> filed a complaint<sup>[17]</sup> for illegal dismissal, unfair labor practice, *i.e.*, illegal lock out, and damages against MTI and/or Tomas Alvarez (Alvarez), and PTI and Yague (petitioners), before the NLRC, docketed as NLRC NCR CN. 30-04-01713-01/ CA No. 036901-03.

In their defense,<sup>[18]</sup> MTI and Alvarez denied that the individual respondents were illegally dismissed or locked out, contending that the closure of its business operations was valid and justified. They claimed that the company was forced to sell its passenger buses to PTI as it was already suffering from serious financial reverses; and that since there was nothing more to operate, it had no choice but to cease operations. They further added that the required Establishment Termination Report was submitted to the DOLE on March 29, 2001, while several employees – including some of the individual respondents – were paid their separation benefits. Hence, they contended that the claims for reinstatement and backwages were without factual and legal bases. Finally, they sought the dismissal of the complaint against 30 of the respondents<sup>[19]</sup> since they had executed a “*Sinumpaang Salaysay Para sa Pag-uurong ng Demanda*” dated June 11, 2001 where they categorically moved for the withdrawal of their complaint.<sup>[20]</sup>

For their part, petitioners denied any liability to the respondents considering that no employer-employee relationship existed between them and that petitioners were impleaded just because PTI happened to be the buyer of some of MTI’s passenger buses. They further pointed out that PTI is not the predecessor-in-interest of MTI as the sale involved the passenger buses only and did not include the latter’s other assets.<sup>[21]</sup>

### **The LA Ruling**

In a Decision<sup>[22]</sup> dated July 14, 2003, the LA ruled in favor of the respondents, finding MTI and petitioners guilty of unfair labor practice, *i.e.*, illegal lock out.

The LA held that MTI’s closure of business and cessation of operations, allegedly due to serious financial reverses, were actually made to subvert the right of its employees to self-organization.<sup>[23]</sup> In this relation, the LA pointed out that MTI never disclosed its intent to conduct the said closure during the proceedings for certification election but only after the refusal of the Union officers and members to abandon their union,<sup>[24]</sup> despite threats from its managerial personnel to do so, under pain of termination.<sup>[25]</sup> The LA also adverted to the fact that only the Union’s officers and members were locked out and terminated by MTI on March 31, 2001, while the other workers who withdrew from the complaint were re-admitted back to work,<sup>[26]</sup> adding too that MTI’s claim of serious financial reverses had no basis in

fact.<sup>[27]</sup> Furthermore, the LA observed that there was no actual stoppage of operations as the remaining employees of MTI continuously worked for PTI,<sup>[28]</sup> the owners and stockholders of both corporations being one and the same.<sup>[29]</sup> Accordingly, MTI and petitioners were adjudged jointly and severally liable for the individual respondents' backwages, separation pay, and attorney's fees.<sup>[30]</sup>

### **The NLRC Proceedings**

Dissatisfied, petitioners appealed before the NLRC by filing their Notice of Appeal<sup>[31]</sup> and Appeal Memorandum,<sup>[32]</sup> accompanied by a Manifestation with Motion for Reduction of Bond,<sup>[33]</sup> praying that the required bond covering the monetary judgment of P12,833,210.00 (full judgment award) be reduced in view of PTI's liquidity problems. Simultaneously, petitioners posted South Sea Surety and Insurance Company, Inc. (SSSICI) Surety Bond No. G(21) 002718<sup>[34]</sup> in the amount of P5,000,000.00 (partial bond), seeking that the same be considered as substantial compliance for purposes of perfecting their appeal.

MTI, on the other hand, did not interpose any appeal.

Meanwhile, respondents opposed petitioners' motion to reduce bond and moved for the dismissal of their appeal for failure to perfect the same as the bond posted was not in an amount equivalent to the full judgment award as mandated by law.<sup>[35]</sup>

On September 12, 2003, petitioners filed a Manifestation and Motion attaching thereto PTI's Audited Financial Statement (AFS) as of December 31, 2001 in support of the motion to reduce bond.<sup>[36]</sup>

Pending the NLRC's action, petitioners subsequently filed a Supplemental Manifestation on January 12, 2004, withdrawing its initial motion and, instead, submitting for approval their additional surety bond, SSSICI Surety Bond No. G(16) 002066 in the amount of P7,833,210.00, to cover the full judgment award.<sup>[37]</sup> This was followed by another motion seeking to substitute SSSICI Surety Bond No. G(21)002718 in the amount of P5,000,000.00 with that of SSSICI Surety Bond No. G(16) 003459 for the same amount as the former bond was found to have been erroneously and inadvertently issued in favor of MTI and not PTI.<sup>[38]</sup>

Again, respondents vehemently opposed the foregoing actions of petitioners and sought for the inhibition<sup>[39]</sup> of the Commissioners of the NLRC-Third Division for failure to dismiss the appeal despite the apparent failure to perfect the same.

In a Decision<sup>[40]</sup> dated April 19, 2004, the NLRC dismissed the appeal for petitioners' failure to post the required bond equal to the full judgment award within the ten (10)-day reglementary period prescribed under the NLRC Rules of Procedure. It also pointed out that the partial bond petitioners posted was invalid since it was not signed by an authorized signatory of the insurance company as advised by the NLRC in a Memorandum dated January 5, 2004, and that the ground relied upon for the reduction of the bond was not substantiated.<sup>[41]</sup> Likewise, it dismissed respondents' motion for inhibition for lack of basis.<sup>[42]</sup>

Undeterred, petitioners moved for reconsideration,<sup>[43]</sup> insisting that the NLRC should adopt a liberal interpretation of the rules on perfection of appeal considering that they had substantially complied with the same and had in fact completely posted the required bond prior to the resolution of their motion to reduce bond.<sup>[44]</sup>

Finding merit in petitioners' motion for reconsideration, the NLRC, in an Order<sup>[45]</sup> dated September 30, 2004, reinstated their appeal. It held that there was substantial compliance with the rules considering the subsequent posting of an additional bond to complete the full judgment award, adding too that petitioners' initial motion to reduce bond was based on a meritorious ground – that is, the inability of PTI to post the full amount due to its liquidity problems as evidenced by its submitted AFS.<sup>[46]</sup> However, considering that PTI's bonding company, SSSICI, was not authorized to transact business in all courts all over the country per the Court's Certification dated August 6, 2004, petitioners were directed to replace the bond,<sup>[47]</sup> which they timely complied with through the posting of Supersedeas Bond No. SS-B-10150,<sup>[48]</sup> in the amount of P12,833,000.00, issued on November 8, 2004 by the Far Eastern Surety & Insurance Company, Inc.<sup>[49]</sup>

Thereafter, or on January 20, 2006, the NLRC rendered a Decision,<sup>[50]</sup> modifying its April 19, 2004 Decision by dismissing the complaint against petitioners. The modification was brought about by the NLRC's finding that there were no factual and legal bases to hold petitioners jointly and severally liable with MTI as the two corporations are separate and distinct juridical entities with different stockholders and owners.<sup>[51]</sup> To this end, it ruled that the individual respondents were employees of MTI and not PTI, and that the sale of the passenger buses to PTI was not simulated or fictitious since the deed evidencing said sale was duly notarized and approved by the LTFRB in a Decision dated December 28, 2000.<sup>[52]</sup>

Disagreeing with the NLRC, respondents filed a motion for reconsideration<sup>[53]</sup> which was, however, denied in a Resolution<sup>[54]</sup> dated June 30, 2006, prompting them to elevate the matter on certiorari before the CA.<sup>[55]</sup>

### **The CA Ruling**

In a Decision<sup>[56]</sup> dated November 25, 2011, the CA annulled and set aside the modified ruling of the NLRC finding the latter to have acted with grave abuse of discretion in applying a liberal interpretation of the rules on perfection of appeal.

It held that PTI's alleged liquidity problems cannot be considered as a meritorious ground to reduce the bond as there was no showing that they were incapable of posting at least a surety bond equivalent to the full judgment award.<sup>[57]</sup> It further observed that the partial bond posted was defective, having been issued in favor of MTI and not PTI, and that the bonding company which issued the same was not authorized to transact business in all courts of the Philippines during that time.<sup>[58]</sup> Perforce, the CA concluded that there was no basis to extend liberality to and relax the rules in favor of petitioners.

Aggrieved, petitioners filed a motion for reconsideration<sup>[59]</sup> which was denied in a

Resolution<sup>[60]</sup> dated March 12, 2012, hence, this petition.

### **The Issue Before the Court**

The central issue for the Court's resolution is whether or not the CA erred in ascribing grave abuse of discretion on the part of the NLRC when the latter gave due course to petitioners' appeal and consequently issued a modified Decision absolving petitioners from liability.

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

There is merit in the petition.

For an appeal from the LA's ruling to the NLRC to be perfected, Article 223 (now Article 229)<sup>[61]</sup> of the Labor Code requires the posting of a cash or surety bond in an amount equivalent to the monetary award in the judgment appealed from, viz.:

ART. 223. *Appeal.* – 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. Such appeal may be entertained only on any of the following grounds:

1. If there is a *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
2. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
3. If made purely on questions of law; and
4. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

**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 Commission in the amount equivalent to the monetary award in the judgment appealed from.**

x x x x (Emphasis and underscoring supplied)

While it has been settled that the posting of a cash or surety bond is **indispensable** to the perfection of an appeal in cases involving monetary awards from the decision of the LA,<sup>[62]</sup> the Rules of Procedure of the NLRC<sup>[63]</sup> (the Rules), particularly Section 6, Rule VI thereof, nonetheless allows the reduction of the bond upon a showing of (a) the existence of a **meritorious ground** for reduction, and (b) the posting of a bond in a **reasonable amount** in relation to the monetary award, viz.: