

FIRST DIVISION

[G.R. No. 167708, August 22, 2008]

THE HON. SECRETARY OF LABOR AND EMPLOYMENT, EDGARDO M. AGAPAY AND SAMILLANO A. ALONSO, JR., PETITIONERS, VS. PANAY VETERAN'S SECURITY AND INVESTIGATION AGENCY, INC. AND JULITO JALECO,^[1] RESPONDENTS.

DECISION

CORONA, J.:

This is a petition for review^[2] of the November 25, 2004 amended decision^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 72713.

Petitioners Edgardo M. Agapay and Samillano A. Alonso, Jr.^[4] were hired by respondent Panay Veteran's Security and Investigation Agency, Inc. as security guards sometime in 1988. They were stationed at the plant site of Food Industries, Inc. (FII) in Sta. Rosa, Laguna until FII terminated its contract with respondent security agency on July 6, 2000. They were not given new assignments and their benefits (including 13th month pay, overtime pay and holiday pay as well as wage differentials due to underpayment of wages) were withheld by respondent security agency. This prompted them to file a complaint for violation of labor standards in the regional office of the Department of Labor and Employment in the National Capital Region (DOLE-NCR).

Acting on the complaint, Manuel M. Cayabyab, a labor employment officer of the DOLE-NCR, conducted an inspection of respondent security agency on October 30, 2000. During the inspection, respondent security agency failed to present its payroll as well as the daily time records submitted by petitioners Agapay and Alonso, Jr. Such failure was noted as a violation.

After conducting his inspection, Cayabyab issued a notice of inspection to respondent security agency through its authorized representative, respondent Julito Jaleco.^[5] Cayabyab explained the contents and significance of the notice to respondent Jaleco. He emphasized the need for respondents either to comply with labor standards by paying the claims of petitioners Agapay and Alonso, Jr. (as computed by Cayabyab) or to raise any question regarding the notice to the DOLE-NCR within five days.

Respondents neither paid the claims of petitioners Agapay and Alonso, Jr. nor questioned the labor employment officer's findings. Thus, in his May 10, 2001 order, the Regional Director of the DOLE-NCR adopted the findings and computation of Cayabyab as to the unpaid benefits due to petitioners Agapay and Alonso, Jr. The dispositive portion of the order read:

WHEREFORE, premises considered, Panay Veterans Security and Investigation Agency, Inc. and/or Julius Jaleco [are/]is hereby ordered to pay Edgardo Agapay, [et al.] the aggregate amount of P206,569.20 representing 13th month, overtime and legal holiday [pay] & [underpaid] wages within ten (10) days from receipt hereof.

Otherwise, a [w]rit of [e]xecution shall be issued for the enforcement of [this] order.

SO ORDERED.^[6]

Respondents moved for reconsideration but the DOLE-NCR Regional Director denied it.

Undeterred, respondents filed an appeal (with motion to reduce cash or surety bond) to the Secretary of Labor and Employment. In his July 9, 2002 order, the Secretary of Labor and Employment found that respondents failed to perfect their appeal since they did not post a cash or surety bond equivalent to the monetary award. Thus, the appeal was dismissed and the DOLE-NCR Regional Director's May 10, 2001 order was declared final and executory. The Secretary of Labor and Employment denied reconsideration.

Respondents assailed the Secretary of Labor and Employment's July 9, 2002 order via a petition for certiorari in the CA. The CA initially dismissed the petition for lack of merit and ordered respondents to pay a total recomputed amount of P224,603.26.^[7] However, the CA granted reconsideration by applying the following ruling in *Star Angel Handicraft v. National Labor Relations Commission*^[8] (NLRC) by analogy:

Inasmuch as in practice, the NLRC allows the reduction of the appeal bond upon motion of appellant and on meritorious grounds, it follows that a motion to that effect may be filed within the reglementary period for appealing. Such motion may be filed in lieu of a bond which amount is being contested. In the meantime, the appeal is not deemed perfected and the Labor Arbiter retains jurisdiction over the case until the NLRC has acted on the motion and appellant has filed the bond as fixed by the NLRC.

Thus, the CA amended its decision and allowed respondents to pursue their appeal.^[9] The Secretary of Labor and Employment moved for reconsideration but it was denied. Thus, this petition.

The Secretary of Labor and Employment contends that respondents failed to perfect their appeal in the manner prescribed by the Labor Code. He further asserts that a motion to reduce the appeal bond is not allowed by the Labor Code and the Rules of Disposition of Labor Standards Cases in the Regional Offices (Rules on the Disposition of Labor Standards Cases) and does not suspend the period of appeal. Moreover, the rules of procedure of the NLRC do not apply in this case.

We uphold the Secretary of Labor and Employment.

Respondents Failed to

Perfect Their Appeal

Article 128 of the Labor Code provides:

ART. 128. *Visitorial and enforcement power.* -

(a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. **In case said order 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.** (emphasis supplied)

In this connection, this Court ruled in *Guico, Jr. v. Hon. Quisumbing*:^[10]

Article 128(b) of the Labor Code clearly provides that the appeal bond must be "in the amount equivalent to the monetary award in the order appealed from." The records show that petitioner failed to post the required amount of the appeal bond. His appeal was therefore not perfected.

The rule is that, to perfect an appeal of the Regional Director's order involving a monetary award in cases which concern the visitorial and enforcement powers of the Secretary of Labor and Employment, the appeal must be filed and the cash or surety bond equivalent to the monetary award must be posted within ten calendar days from receipt of the order.^[11] Failure either to file the appeal or post the bond within the prescribed period renders the order final and executory.

The legislative intent to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that "an appeal by the employer may be perfected only upon the posting of a cash or surety bond."^[12] The word "only" makes it clear 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.^[13] In one case, we held that:

Anent the issue of whether or not the respondent Secretary of Labor acted with grave abuse of discretion in dismissing petitioner's appeal on the ground that petitioner failed to post the required cash or surety bond, we rule in the negative.

Article 128 of the Labor Code likewise explicitly provides that **in case an order issued by the duly authorized representative of the Secretary of Labor and Employment involves a monetary award, an appeal by the employer may be perfected only upon posting of a cash or surety bond in an amount equivalent to the monetary award in the order appealed from.**

As correctly noted by the Office of the Solicitor General, **since the Order appealed from involves a monetary award, an appeal by petitioner may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by respondent Secretary of Labor in the amount equivalent to the monetary award in the Order appealed from.**

It is undisputed that petitioner herein did not post a cash or surety bond when it filed its appeal with the Office of respondent Secretary of Labor. Consequently, petitioner failed to perfect its appeal on time and the Order of respondent Regional Director became final and executory.

Thus, the Secretary of Labor and Employment thru Undersecretary Cresenciano B. Trajano correctly dismissed petitioner's appeal.^[14] (emphasis supplied)

In this case, respondents admit that they failed to post the required bond when they filed their appeal to the Secretary of Labor and Employment. Because of such failure, the appeal was never perfected and the May 10, 2001 order of the DOLE-NCR Regional Director attained finality.

MOTION TO REDUCE APPEAL BOND IS NOT ALLOWED IN APPEALS TO THE SECRETARY OF LABOR

The jurisdiction of the NLRC is separate and distinct from that of the Secretary of Labor and Employment. In the exercise of their respective jurisdictions, each agency is governed by its own rules of procedure. In other words, the rules of procedure of the NLRC are different from (and do not apply in) cases cognizable by the Secretary of Labor and Employment.

Unlike the New Rules of Procedure of the NLRC,^[15] no provision in the Rules on the Disposition of Labor Standards Cases governs the filing of a motion for the reduction of the amount of the bond. However, on matters that are not covered by the Rules