

FIRST DIVISION

[G.R. No. 109371, November 18, 1999]

**JOSE GAUDIA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, PANQUI SUGAR CORPORATION AND
JOSE ROMASANTA, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The case before the Court is a petition for *certiorari*^[1] assailing as having been issued with grave abuse of discretion amounting to lack of jurisdiction the decision^[2] of the National Labor Relations Commission (NLRC) reversing the labor arbiter's decision^[3] finding that petitioner Jose Gaudia was illegally dismissed by his employer, respondent Panqui Sugar Corporation.

The facts are as follows:

In November 1977, petitioner was employed as company driver of respondent corporation earning a monthly salary of P2,940.00.

On February 19, 1990, there was found a 45" x 8" iron rail worth P500.00 hidden in respondent's truck driven by Abraham Gaudia as it was about to leave the company compound. Abraham Gaudia, petitioner's nephew, denied any knowledge of the iron rail. He pointed to his uncle, petitioner herein, as having concealed the iron rail under the truck.

In a memorandum^[4] dated February 28, 1990, respondent corporation directed petitioner to submit within seventy-two (72) hours a written explanation on why he should not be dismissed from employment for pilferage of company property.

On March 5, 1990, respondent corporation, by Memorandum No. 08,^[5] terminated petitioner's employment effective March 6, 1990 for engaging in an act prejudicial to the interests of the company.

On March 9, 1990, the union president Efren S. Muñoz wrote a letter^[6] to respondent Jose A. Romasanta, Assistant Vice-President for Administration of respondent corporation, requesting for a re-investigation of petitioner's dismissal.

Unmoved by the request for a re-investigation, respondent corporation filed with the Regional Trial Court, Branch 67, Paniqui, Tarlac a complaint against petitioner for qualified theft.

In a letter^[7] dated December 8, 1990, petitioner requested respondent Romasanta to drop the case for qualified theft. In return, petitioner signified that he was

resigning as company driver with a waiver of all benefits, rights and privileges accorded to an employee being separated from the service.

On February 28, 1991, the court dismissed the case for qualified theft against petitioner.

On August 9, 1991, petitioner filed with the NLRC Regional Arbitration Branch No. III, San Fernando, Pampanga a complaint for illegal dismissal against respondents with prayer for reinstatement without loss of seniority rights, full backwages, privileges, moral and exemplary damages amounting to P50,000.00 and litigation expenses totalling P10,000.00.

On June 5, 1992, after due hearing, Labor Arbiter Dominador B. Saldares rendered a decision finding the respondents guilty of illegally dismissing petitioner, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby entered, ordering the respondents, jointly and severally, as follows:

1. To pay the separation pay of complainant in the sum of P38,220.00 without any deduction or qualification; and
2. To pay moral and exemplary damages in the sum of P25,000.00.

"SO DECIDED.

"San Fernando, Pampanga, 05 June 1992.

"(s/t) DOMINADOR B. SALDARES

"Labor Arbiter"^[8]

On June 29, 1992, respondents received notice of the Labor Arbiter's decision. On July 9, 1992, respondents filed an appeal memorandum^[9] with the NLRC, without posting the cash or surety bond as required under Rule VI, Section 3 of the New Rules of Procedure of the NLRC.

On July 15, 1992, petitioner moved for execution of the Labor Arbiter's decision, claiming that said decision had become final and executory for non-perfection of respondent's appeal brought about by their failure to post the required bond within the ten-day reglementary period.

On July 17, 1992, Labor Arbiter Saldares issued a writ of execution.

On August 6, 1992, private respondents filed with the Labor Arbiter's Office an Ex-Parte Motion to Quash the Writ of Execution.

Meantime, on August 3, 1992, private respondents posted with the Labor Arbiter's Office a surety bond.

On November 20, 1992, the NLRC rendered decision reversing the Labor Arbiter's judgment. It found that there was sufficient cause to dismiss petitioner, but that there was non-compliance with due process since the dismissal was effective on March 6, 1990 or only a day after petitioner received the notice of dismissal. Private respondents were thus directed to indemnify petitioner in the amount of P3,000.00 for failure to comply strictly with the requisites of due process.^[10]

On January 29, 1993, the NLRC denied^[11] petitioner's motion for reconsideration of its November 20, 1992 decision.

Hence, this petition.^[12]

Petitioner submits that: (1) the NLRC erred in giving due course to the appeal notwithstanding private respondents' failure to post the cash or surety bond within the reglementary period, and (2) the NLRC erred in holding that respondents had sufficient cause to dismiss petitioner.

On November 13, 1995, we gave due course to the petition.^[13]

The petition is impressed with merit.

On the procedural issue involved, petitioner points out that the posting of a cash or surety bond is a mandatory requirement for the perfection of an appeal to the NLRC from a judgment of the Labor Arbiter. This is clearly prescribed in Article 223 of the Labor Code and Sections 3 and 6, Rule VI of the New Rules of Procedure of the NLRC which read, respectively:

"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.

"x x x

x x x

x x x

"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 x x

x x x."

"RULE VI

"APPEALS

"Section 3. Requisites for Perfection of Appeal. -- (a.) The appeal shall be filed within the reglementary period as provided in Section 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 Section 5 of