

THIRD DIVISION

[G.R. No. 117196, December 05, 1997]

**LADISLAO P. VERGARA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND ARIS PHILIPPINES, INC.,
RESPONDENTS.
D E C I S I O N**

PANGANIBAN, J.:

Is an employee, who was acquitted from a criminal charge of qualified theft due to the prosecution's failure to prove his guilt beyond reasonable doubt, entitled to automatic reinstatement and backwages considering that his dismissal was based on the same act that gave rise to the criminal complaint? Does the failure to post an appeal bond render a decision of the labor arbiter final and executory even where such decision did not include a computation of the monetary award?

The Case

Before us is a petition for certiorari under Rule 65 of the Rules of Court assailing the April 29, 1994 Decision ^[1] and the August 17, 1994 Resolution ^[2] of the National Labor Relations Commission in NLRC NCR Case No. 00-02-00934-89 which answered both of the foregoing questions in the negative. The challenged Decision set aside the labor arbiter's decision dated November 3, 1989 and entered a new one dismissing petitioner's complaint, while the impugned Resolution denied reconsideration. The dispositive portion of the labor arbiter's decision reads: ^[3]

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered finding respondent [Private Respondent Aris Philippines, Inc.] guilty of illegal dismissal and consequently, respondent is hereby ordered to reinstate complainant [petitioner herein] to his former position without loss of backwages from the date of the latter's termination until his actual date of reinstatement.

Finally, being compelled to litigate, complainant is also awarded attorney's fees equivalent to ten (10%) percent of the monetary award adjudicated to complainant."

The Facts

The facts of this case are undisputed. Public Respondent NLRC adopted the labor arbiter's narration of facts, viz.: ^[4]

"This pertains to a complaint for illegal dismissal filed by Ladislao P. Vergara against Aris Philippines, Incorporated.

After submitting their respective position papers and replies, a hearing on the merits was conducted where complainant Ladislao P. Vergara was presented as the only complaining witness undergoing direct and cross-examination. During its turn, respondent did not present any witnesses but only offered certified true copies of transcript of stenographic notes of testimonies of its witnesses in a criminal case entitled People of the Philippines versus Ladislao Vergara, Criminal Case No. 4229. After the hearing on the merits, parties agreed to submit their respective memoranda after which the case will be considered submitted for decision.

Complainant alleged in his position paper that he was once employed as [a] puncher starting on February 20, 1986 until his termination on November 7, 1987 with a daily compensation of P64.00; that when he reported for work on November 7, 1987, his tour of duty was from 6:00 A.M. to 7:00 p.m.; that he passed the main gate and proceeded directly to the guard house and/or storage area where as a company practice he left his bag containing his reversible jacket and proceeded to the leather department where he performed his duties and responsibilities; that during breaktime at 8:00 a.m. he went to the canteen where he ate his baon and thereafter returned to his work areas [sic]; that during lunch break at 11:30 a.m. complainant went again to the canteen where he bought food and took his lunch after which he again returned to his work area to resume his work; that at 2:00 p.m. more or less, he went to the Personnel Department where he secured an undertime form and filled it up at the Leather Department after which he left to go home; that from the Leather Department, he passed at the Frisking Area where he was bodily inspected by a security guard; that he proceeded to the Guard House where the Storage Area was located and picked up his bag containing his jacket; that while he is [sic] [in] possession of his bag, he proceeded to the main gate where frisking of bags [was] always conducted by a guard; that before reaching the main gate the guard assigned at the Guard House where Storage Area is located called him up and requested him to open his bag which he did so obediently; that when he opened his bag he was surprised because his bag did not anymore contain his reversible jacket but various pieces of uncut leather; that he was brought by the guard to the Personnel Manager [to] whom he explained that he did not know how and who placed the uncut leather inside his bag and who stole his jacket; that unsatisfied by his explanation, he was brought to the Pasig Police Station, unassisted by counsel, where he was detained until November 12, 1987, that on January 26, 1988 he sent a reply to the letter of the respondent dated January 22, 1988 explaining to the latter that he had nothing to do about the leather inside his bag; that despite his explanation letter respondent sent him a letter sometime on March 10, 1988 terminating his employment retroactive to November 7, 1987; that [a]side from terminating his services, respondent filed a case of attempted qualified theft against him before the Regional Trial Court of Pasig, Branch 68, docketed as Criminal Case No. 4295; that on August 17, 1988, a judgment was rendered acquitting him.

As evidence, complainant presented himself as complaining witness during hearing on the merits where he underwent direct and cross-examinations, and offered his reply marked as Annex 'A', termination letter as Annexes 'B' to 'B-1', judgment of acquittal as Annexes 'C' to 'C-13'.

On the other hand, respondent averred that as a matter of procedure, all employees going in and out of the company premises must pass through the main gate where their persons as well as their personal belongings such as handcarried bags, envelopes, sacks and the like are all subjected to routine frisking procedure by the security guards; that on November 7, 1987 at around 2:00 p.m., complainant who was supposed to time off at 3:00 p.m., tried to leave the company premises without leaving any request for undertime; that one of the security guards, Mr. Wilfredo Viernes, inspected the bag of the complainant and discovered that it contained nine (9) pieces of stripping leather owned by the respondent company the value of which amounted to One Thousand Four Hundred Fifty Nine Pesos and Twenty Three Centavos (P1,459.23); that respondent brought complainant first to Mr. Gavino Bay, the Director For Employees Relation and subsequently to the Eastern Police District, Pasig, Metro Manila for proper investigation; that Mr. Emerlito Matas and Security Guard Wilfredo Viernes gave sworn statement before Pat. Edgardo M. Hernandez; that after the police investigation, a complaint was elevated to the Provincial Fiscal who having formed a prima facie case against the complainant, filed an information for Attempted Qualified Theft before the Metropolitan Trial Court of Pasig, Branch 68 under docket number as Criminal Case No. 4295; that on January 14, 1988, Mr. Jesus M. Perez, the Personnel Manager of the respondent company, sent complainant a memorandum requiring [him] to explain why no disciplinary measure [should] be imposed against him; that on January 26, 1988, complainant sent respondent a typewritten letter-explanation denying having attempted to steal strips of leather; that after a careful and objective consideration of the attendant facts, the written explanation of the complainant, the sworn statements of Mr. Emerlito Matas and security guard Viernes, and the Information filed by Assistant Fiscal Jose A. Mendoza, respondent decided to terminate the services of the complainant on the grounds of gross misconduct and loss of confidence due to attempted qualified theft; that a letter of termination was sent to complainant furnishing the Department of Labor and Employment with a copy of the same.

As evidence, respondent adduced the following documents: Annex 'A' - a certified enumeration of the leathers found in complainant's bag[;] Annexes 'B' and 'C' -- respective copies of sworn statements of Security Guard Viernes and Mr. Matas[;] Annex 'D' -- copy of criminal information; Annex 'E' -- Memorandum of the personnel Manager requiring complainant to explain why he should not be imposed disciplinary measure; Annex 'F' -- explanation letter of the complainant in answer to the Memorandum of the Personnel Manager denying having attempted to steal strips of leather; and Annex 'G' -- letter of termination to the complainant.

During the hearing on the merits, respondent did not present any witnesses. Instead it offered certified true copies of transcript of stenographic notes of its witnesses during the proceeding in a criminal case. Thereafter, respondent submitted its memorandum."

As stated earlier, the labor arbiter found petitioner's dismissal illegal and ordered his reinstatement and the payment of his backwages. On May 31, 1991, Public Respondent NLRC dismissed private respondent's appeal because of its failure to post an appeal bond. [5] Subsequently, the NLRC reconsidered its resolution and ordered herein private respondent to post an appeal bond in the amount of P59,904. [6] In due course, public respondent rendered the assailed Decision setting aside that of the labor arbiter. Thereafter, it issued the questioned Resolution denying petitioner's motion for reconsideration. [7]

Hence, this petition for certiorari.[8]

The Issues

Petitioner alleges grave abuse of discretion on the part of Public Respondent NLRC: [9]

"I

x x x In promulgating its Order of September 29, 1993, which in effect allowed or gave due course to the appeal of respondent company, considering that the decision of the labor arbiter had already become final and executory when respondent company failed to perfect its appeal in accordance with law.

II

x x x When it promulgated its Decision of April 29, 1994, which set aside the decision of the labor arbiter issued November 3, 1989, finding illegal the dismissal of the petitioner, which was already final and executory, and entering a new one dismissing the complaint for lack of merit, considering that said deciion [sic] of the Respondent Commission was issued in complete disregard of and against the evidence, established jurisprudence and the law.

III

x x x When it promulgated its Order of August 17, 1994, denying for lack of merit the motion for reconsideration of petitioner, considering that the said Order was issued in complete disregard of and against the evidence, established jurisprudence, and the law."

Put simply, the issues for resolution are as follows: (1) May an appeal be given due course in spite of appellant's failure to post a supersedeas bond? (2) Does the acquittal of an employee from a criminal charge, arising from the same act which was the cause of his dismissal from employment, entitle him to automatic reinstatement? (3) Is public respondent's denial of a motion for reconsideration, in

view of the absence of “palpable or patent” errors in its assailed Decision, a denial based on “form and style” rather than on substance?

The Court’s Ruling

The petition is without merit.

Preliminary Issue: Negligence of Petitioner’s Counsel

Petitioner contends that he could not be bound by “the acts or omissions of former counsel and with the effects of his receipt on May 30, 1994 of the decision of the public respondent xxx.” [10] The following “events and circumstances” allegedly suggest “that there is more to this case than meets the eye:” [11]

“x x x The former counsel failed (1) to question the order of the public respondent dated September 29, [1993], allowing the private respondent to post an appeal bond and perfect its appeal [sic] in spite of the fact that the decision of the labor arbiter had already become final and executory, (2) to file a motion for reconsideration of the decision of the public respondent dated April 29, 1994, dismissing the claim of the petitioner, notwithstanding his previous motion for extension of time to file a motion for reconsideration, and (3) to move and insist for the reinstatement of the petitioner which was awarded and ordered by the labor arbiter and which by law, Article No. 223 of the Labor Code, as amended, was immediately executory, even pending appeal.” (Underscoring found in the original.)

Petitioner argues that the foregoing legal actions should have been undertaken by his counsel. These alleged actions, however, will not result in the reversal of the assailed Decision. In the first place, petitioner has in fact substantially raised the arguments that were allegedly neglected by his former counsel. Thus, in his “Motion to Dismiss Appeal” dated November 8, 1989 before the NLRC, [12] petitioner debunked the alleged finality of the labor arbiter’s decision. In any event, these allegedly omitted arguments are now raised before this Court and will now be ruled upon.

First Issue: Posting of Supersedeas Bond

Petitioner contends that public respondent committed grave abuse of discretion in giving due course to the appeal of private respondent. He maintains that the labor arbiter’s decision had become final and executory because private respondent failed to “post the cash or surety bond mandated by law and the rules within the reglementary period of ten (10) days from its receipt of the said decision.”

We disagree with petitioner’s contention. Normally, the filing of an appeal bond is mandatory and jurisdictional. The facts obtaining in the present case, however, render this rule inapplicable. First, in his award, the labor arbiter did not fix the exact amount of backwages and attorney’s fees. Second, private respondent had exerted efforts to determine the exact computation of the monetary award as a basis for filing the correct amount of the required appeal bond. Private respondent even filed with Public Respondent NLRC a Manifestation on November 27, 1989