

## SECOND DIVISION

[ CA-G.R. SP. No. 135336, February 26, 2015 ]

**N.I.F. LUMBER, REPRESENTED BY NORMAN I. FERRER,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
RONALDO VILLANUEVA AND PAQUITO MABULAY,  
RESPONDENTS.**

### **DECISION**

**GONZALES-SISON, M., J.:**

Assailed in this Petition for Certiorari filed by N.I.F. Lumber, represented by Norman I. Ferrer, are the December 27, 2013<sup>[1]</sup> and February 27, 2014<sup>[2]</sup> resolutions of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 12-003438-13.

The case arose from the complaint filed by Paquito S. Mabulay and Ronaldo M. Villanueva against N.I.F. Lumber, a sole proprietorship engaged in the selling and trading of construction materials, and impleaded Ferrer as its owner/general manager.

The facts are as follows:

Sometime in June 2002 and November 2002, petitioner hired Villanueva and Mabulay as "*pahinante*" or helpers until their alleged illegal dismissal on December 10, 2012 and November 2012, respectively.

Sometime in July 2012, Mabulay allegedly had fever and thus, failed to report for work. Due to lack of money, he was only able to seek treatment from a quack doctor. Upon full recovery sometime in November 2012, Mabulay claimed that Ferrer sent him home informing him to just wait for a call to return to work but has since not heard of Ferrer after their meeting.

On one hand, Villanueva alleged that on December 9, 2012, he was ordered by Ferrer to make hollow blocks as replacement for those that were destroyed by dogs. Villanueva waited until 11:00 in the morning but no materials were delivered so he decided to go home. Villanueva averred that he reported for work the next day but Ferrer allegedly also informed him to just wait for a call but has since not heard after their meeting.

Mabulay and Villanueva then filed a complaint for illegal dismissal, underpayment of wages, claim for full backwages and non-payment of overtime pay, thirteenth month pay, holiday pay and rest day pay.

Petitioner denied that it dismissed Mabulay and Villanueva. It averred that Villanueva was a contractual employee, who was also occasionally engaged as a hollow blocks maker on a piece-work basis. After producing the desired number of

hollow blocks, Villanueva's employment on a piece-work basis is also terminated. Petitioner asserted that Villanueva last reported for work on November 22, 2012 and was absent without leave (AWOL) thereafter.

As regards Mabulay, petitioner claimed that it hired him as a store/delivery man on a temporary or provisional basis from March 31, 2012 to August 30, 2012. However, on June 19, 2012, Mabulay failed and refused to report for work despite a return to work order.

However, petitioner's own vouchers<sup>[3]</sup> showed that Mabulay still reported for work and, in fact, received his salary until June 29, 2012.

### **The Labor Arbiter's Decision**

On August 18, 2013, the Labor Arbiter rendered a Decision<sup>[4]</sup>, disposing of the case as follows:

**WHEREFORE**, all the foregoing premises being considered, judgment is hereby rendered finding the complainants to have been illegally dismissed from their employment, and consequently, respondents are jointly and solidarily liable to pay the complainants the aggregate sum of P557,396.65 as stated and itemized above.

All other claims are denied for lack of basis.

**SO ORDERED.**

The Labor Arbiter held that Villanueva is a regular employee of petitioner being engaged to make hollow blocks and to assist in the delivery of construction materials, which are necessary and desirable in the usual business, *i.e.*, selling and trading of construction materials, of petitioner. The Labor Arbiter also found that Villanueva and Mabulay have been employed continuously by petitioner for at least 10 years. Moreover, it ruled that the employees were illegally dismissed and that petitioner failed to prove abandonment of work.

### **The NLRC Ruling**

Petitioner filed a Memorandum of Appeal<sup>[5]</sup> and a Motion to Reduce Bond<sup>[6]</sup> before the NLRC without posting a bond.

On December 27, 2013, the NLRC rendered a Resolution<sup>[7]</sup>, the fallo of which states:

WHEREFORE, respondents' motion to reduce bond is denied and the appeal is hereby DISMISSED for not having been duly perfected in accordance with our Rules.

**SO ORDERED.**

The NLRC dismissed the appeal and the attached motion to reduce bond for failure of herein petitioner to post any amount of bond, cash or surety. The NLRC held that the mere filing of a motion to reduce bond did not stop the running of the period

within which to perfect an appeal.

Petitioner moved for reconsideration, which the NLRC denied on February 27, 2014.

### **The Issue**

Hence, this petition. Petitioners advance the following grounds for the allowance of the petition:

**I. THE HONORABLE PUBLIC RESPONDENT HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT SETTING ASIDE THE LABOR ARBITER'S DECISION FINDING THAT THERE IS A CASE OF ILLEGAL DISMISSAL, AND HOLDING THAT PETITIONER IS LIABLE TO PAY PRIVATE RESPONDENTS THEIR MONEY CLAIMS; AND**

**II. THE HONORABLE PUBLIC RESPONDENT HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING ITS RESOLUTION DISMISSING THE APPEAL OF PETITIONER FOR FAILURE TO PERFECT THE APPEAL.**

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

The crucial issue in this case concerns the perfection of an appeal without posting a cash or surety bond.

THE PETITION IS UTTERLY WITHOUT MERIT.

At the outset, it should be stressed that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner prescribed by and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, he loses the right to appeal.<sup>[8]</sup>

The primary rule governing appeal from the ruling of the labor arbiter is Article 223 of the Labor Code which provides:

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

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. *[Emphasis ours.]*

In this regard, Sections 4(a) and 6 of Rule VI of the 2011 NLRC Rules of Procedure of the NLRC, as amended, reaffirms the explicit jurisdictional principle in Article 223