Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **August 23, 2022**, *which reads as follows:*

"**G.R. No. 261329** ***(Rene J. Elumbaring, doing business under the name and style of Renjamel Security Agency v. Lory B. Orias, Diosdado L. Padilla, Rannel C. Salguero,[1] Peter O. Tutor, Joneil Balos,[2] Marvin P. Baradillo, Carlo A. Caña, Antonio L. Danao, Jr., Walter S. Asperin, Sali S. Patosa, Cito Mollanida, Porferio O. Aguilar, Jr.,[3] and Luminado D. Lopez).*** – This is a Petition for Review on *Certiorari*[4] assailing the Decision[5] dated April 22, 2021 and the Resolution[6] dated March 23, 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 09553-MIN. The CA dismissed the petition for *certiorari* filed by Rene J. Elumbaring (petitioner) and accordingly declared the Decisions of the Labor Arbiter (LA), all dated February 27, 2019, in NLRC Case No. RAB 13-06-00386-2018,[7] NLRC Case No. RAB 13-06-00385-2018,[8] NLRC Case No. RAB 13-08-00452-2018,[9] and NLRC Case No. RAB 13-07-00414-2018[10] final and executory.

After careful consideration of the issues raised and the arguments advanced in the present petition, the Court resolves to deny it for failure of petitioner to sufficiently show that the CA committed any reversible error in finding no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) when it dismissed his appeal for non-perfection.[11]

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[12] The party who seeks to avail

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1 Rannel Salguerro in some parts of the *rollo*.
2 Joniel Balos in some parts of the *rollo*.
3 Porferiom Aguilar in some parts of the *rollo*.
4 *Rollo*, pp. 3-31.
5 Id. at 40-50; penned by Associate Justice Anisah B. Amanodin-Umpa, with Associate Justices Edgardo T. Lloren and Loida S. Posadas-Kahulugan, concurring.
6 Id. at 58-60.
7 Id. at 62-75; penned by Labor Arbiter Exequiel M. Dayot III.
8 Id. at 76-89.
9 Id. at 90-100.
10 Id. at 101-111.
11 See NLRC Decision dated May 31, 2019, Id. at 113-117; penned by Presiding Commissioner Bario-Rod M. Talon, with Commissioners Elbert C. Restauro and Rosario L. Bernardo-Sagadal, concurring.
12 *Boardwalk Business Ventures, Inc. v. Villareal*, 708 Phil. 443, 452 (2013).

of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[13]

Article 229 (formerly Article 223) of the Labor Code governs appeals in labor cases:

> ART. 229. [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
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> x x x x
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> **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 supplied)

From the foregoing, it is clear that the posting of a bond is indispensable to the perfection of an appeal. In *University Plans Incorporated v. Solano*,[14] the Court elucidated that the word "only" makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. Moreover, the Court clarified that the word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he/she desires to appeal.[15] Thus, Section 4(b), Rule VI of the 2011 NLRC Rules of Procedure further provides that "[a] mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal."

Under Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the appeal bond may nevertheless be reduced, subject to the following conditions: (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Compliance with these two conditions will stop the running of the period to perfect an appeal.[16]

In the instant case, there is no dispute that the second condition was fulfilled. With respect to the first condition, however, the NLRC ruled that it was wanting.

The requirement on the existence of "meritorious ground" delves on the worth of the parties' arguments, taking into account their respective rights and the circumstances that attend the case.[17] The merit referred to may pertain to an

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13 *Mauleon v. Porter*, 739 Phil. 203, 214-215 (2014).
14 667 Phil. 623 (2011).
15 Id. at 634.
16 *Turks Shawarma Company/Gem Zeñarosa v. Pajaron*, 803 Phil. 315, 325 (2017).
17 *McBurnie v. Guanzon*, 719 Phil. 680, 714 (2013).

appellant's lack of financial capability to pay the full amount of the bond, the merits of the main appeal such as when there is a valid claim that there was no illegal dismissal to justify the award, the absence of employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.[18]

As correctly observed by the NLRC, and affirmed by the CA, none of which obtains in this case. Petitioner's financial incapability to pay the bond in its entirety was not sufficiently established by the evidence he presented. As aptly discussed by the CA:

> Notably, petitioner based its motion to reduce bond alleging that it is not capable of raising the entire judgment award due to liquidity problems brought about by its clients' failure to pay to them their obligations. To bolster its claim, petitioner presented copies of demand letters sent to its clients and breakdown of its collectibles amounting to P6,723,012.24. However, the documents that petitioner presented were not sufficient to establish that it was indeed having liquidity problems. Contrary to petitioner's assertion, this Court finds that these documents tend to show that petitioner is capable of operating its business, even if its clients deferred in their payment amounting to a hefty sum of P6,723,012.24. The amount of the collectible even shows that petitioner is far from its claim that the existence of its business is "hand-to-mouth" and that "failure or a mere delay on the part of his clients to pay their respective bills will immediately cause financial dislocation on its part. Hence, if petitioner can afford to allow its clients to incur obligation in such great amount, there is no reason that it cannot secure the amount of a mere P936,926.45 to post as appeal bond.
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> Undoubtedly, the NLRC correctly ruled that petitioner "merely presents the demand letters and its collectibles which, by any stretch of imagination, cannot be considered as proof of their financial incapability, absent any showing how these collectibles affected their income. The fact that some of its clients are in arrears with their obligation does not automatically mean that it does not have enough liquid assets to comply with the bond requirement nor it is sufficient representation of its current financial status."
>
> It is also worthy to point out that the bond required herein does not only refer to cash bond, but also to surety bond. Hence, if petitioner had liquidity problems, then it should exhaust the other means of satisfying the bond requirement, such as surety bond. Petitioner's failure to exhaust other means in securing the bond defeats its plea of good faith.[19]

Even delving into the merits of the case, the appeal proved to be futile. Petitioner questioned Lory B. Orias, Diosdado L. Padilla, Rannel C. Salguero, Peter O. Tutor, Joneil Balos, Marvin P. Baradillo, Carlo A. Caña, Antonio L. Danao, Jr., Walter S. Asperin, Sali S. Patosa, Cito Mollanida, Porferio O. Aguilar, Jr., and Luminado D. Lopez's (respondents') entitlement to service incentive leave pay, overtime pay differentials and unpaid overtime pay. In determining the employee's entitlement to monetary claims, the burden of proof

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18 Id. at 715.
19 *Rollo*, pp. 47-48.

is shifted from the employer or the employee, depending on the monetary claim sought.[20]

In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment.[21] Here, the payrolls submitted by petitioner indubitably revealed that respondents were not paid their service incentive leave pay.

On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business. It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days.[22] The Contracts of Security Services entered into by petitioner with his client, Platinum Group Metals Corporation, constitute *prima facie* evidence that respondents worked 12-hour shifts. In this connection, the Court quotes with approval the pronouncement of the NLRC, as reproduced in the CA Decision, *viz.*:

> x x x Complainants [herein respondents] primarily asserted that they were made to work 12 hours a day, but that they were only given over time (sic) pay equivalent to two hours. The Labor Arbiter a *quo* found that this claim was supported by the very evidence submitted by respondent Renjamel as the contract of Security Services between it and PGMC showed that their rate was computed for overtime pay differentials and unpaid overtime pay.
>
> On appeal, respondent Renjamel merely alleges that the contract is simply a guide in paying the actual services rendered by the complainants since the actual situation on the ground is flexible and varied from day-to-day and month to month. Yet, it fails to offer evidence to show that indeed the situation differed from that provided in the contract and that complainants did not render 12 hours of work per day. To the mind of this Commission, respondent Renjamel could have easily done so by the presentation of Daily Time Records or logs showing the hours worked by complainants in a day. It is basic rule in evidence that each party must prove his affirmative allegation and that mere allegation is not evidence. Furthermore, the burden of proving payment lies with respondent Renjamel, which it has failed to do even on appeal.[23]

It is likewise of no moment that the NLRC did not rule on the matter of petitioner's willingness to complete the required bond, as manifested in his motion for reconsideration. If anything, it just goes to show that, contrary to his insistence of financial difficulty, petitioner was indeed capable of posting the full amount of the bond, but instead chose to move for its reduction. Unfortunately, petitioner did not succeed in convincing the NLRC that there was meritorious ground as to warrant the reduction of his appeal bond.

It bears stressing that the reduction of the bond is not a matter of right on

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20 *Minsola v. New City Builders, Inc.*, 824 Phil. 864, 879 (2018).
21 Id.
22 Id. at 880.
23 *Rollo*, p. 48.

the part of the movant but lies within the sound discretion of the NLRC.[24] The NLRC has full discretion to grant or deny the same, and its ruling will not be disturbed unless tainted with grave abuse of discretion.[25] For decisions of the NLRC, there is grave abuse of discretion "when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse exists and the CA should so declare and accordingly, dismiss the petition."[26]

Based on the above disquisitions, the Court finds no compelling reason to reverse the CA which held that there was none. Hence, the CA cannot be faulted for sustaining the NLRC's denial of petitioner's motion to reduce bond and, consequently, dismissal of his appeal for non-perfection.

In sum, since petitioner opted not to pay the whole amount of the appeal bond, the perfection of his appeal was dependent on the satisfaction of the two conditions earlier mentioned. Compliance with only one did not stop the running of the period to perfect his appeal, thereby making the Decisions of the LA final and executory.

In conformity with prevailing jurisprudence,[27] a legal interest at the rate of six percent (6%) *per annum* shall be imposed on the monetary awards granted in favor of respondents, computed from the finality of this Resolution until fully paid.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated April 22, 2021 and the Resolution dated March 23, 2022 of the Court of Appeals in CA-G.R. SP No. 09553-MIN are **AFFIRMED**.

All monetary awards in the February 27, 2019 Decisions of the Labor Arbiter in NLRC Case No. RAB 13-06-00385-2018, NLRC Case No. RAB 13-06-00386-2018, NLRC Case No. RAB 13-07-00414-2018, and NLRC Case No. RAB 13-08-00452-2018 shall be subject to legal interest of six percent (6%) *per annum* from the date of finality of this Resolution until full payment.

Let the case be **REMANDED** to the Labor Arbiter for the execution of the award.

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24 *Turks Shawarma Company v. Pajaron and Carbonilla*, supra note 16 at 328.
25 *Ramirez v. Court of Appeals*, 622 Phil. 782, 798 (2009).
26 *Madrio v. Atlas Fertilizer Corporation*, G.R. No. 241445, August 14, 2019.
27 *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED."

By authority of the Court:

MisADCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
8/24/22

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