G.R. No. 206612 - *TOYOTA ALABANG, INC., Petitioner, v. EDWIN GAMES, Respondent.*

Promulgated:

AUG 1 7 2015

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DISSENTING OPINION

BERSAMIN, *J.*:

Recognizing the imbalance of power between Management and Labor, the Court often gravitates towards the latter as a measure of compassion under the principle of social justice. However, our mandate to protect and promote the rights of employees should not lead us to ignore altogether the cause of the employers whose rights are just as forcefully protected under the law. In dispensing justice between Management and Labor, therefore, we should bear in mind that in the realm of labor law, the proposition that technical rules of procedure should not rigidly apply equally favors Management and Labor.[1]

For this reason, I **DISSENT**. I call for caution and prudence in dealing with the employer's motion for reconsideration. If we were to deny the motion for reconsideration, we would be fixated with technicalities that force us to overlook the substantial merits of the petition.

Antecedents

Respondent Edwin Games worked as a foreman at the Quality Control Department of petitioner Toyota Alabang, Inc. since August 1997. On December 14, 2005,[2] during a routine inspection of the car that Games was driving to test outside of the petitioner's premises, the security guard on duty found a box of expensive vehicle lubricants belonging to the petitioner inside the car's compartment. Games underwent inquest proceedings that led to the filing on December 16, 2005 of an information for frustrated qualified theft in the Regional Trial Court (RTC), Branch 197, in Las Piñas City (docketed as Criminal Case No. 05-1283).[3]

Almost two years later, or on August 24, 2007, Games filed a complaint for illegal dismissal. The petitioner claims that its previous

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[1] *Casimiro v. Stern Real Estate Inc.*, G.R. No. 162233, March 10, 2006, 484 SCRA 463, 478-479.

[2] *Rollo*, p. 72.

[3] Id.

counsel negligently failed to attend the scheduled hearings and to file any position paper or pleading in its behalf.

On February 5, 2008, Labor Arbiter Marita V. Padolina rendered a decision declaring that Games had been illegally dismissed due to the absence of both substantive and procedural due process,[4] disposing:

> WHEREFORE, premises considered, judgment is hereby rendered ordering TOYOTA ALABANG INC., to pay complainant Edwin B. Games separation pay in the amount of ₱135,454.00, backwages in the amount of ₱348,320.00, service incentive leave pay in the amount of ₱3,092.34 and attorney's fees in the amount of ₱48,686.64 or a total amount of FIVE HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED FIFTY THREE PESOS AND SEVEN CENTAVOS (₱535,553.07).
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> All other claims are dismissed for want of factual basis.
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> SO ORDERED.

A writ of execution was issued after the petitioner's counsel failed to appeal the decision.[5]

On October 17, 2008, the petitioner, through a new counsel, filed a motion to quash the writ of execution, and prayed, among others, for the re-opening of the case for the reception of its evidence. Unfortunately, however, Labor Arbiter Padolina denied the motion to quash, and her order was received by the petitioner on January 27, 2009.[6]

The petitioner consequently filed a memorandum of appeal, but the National Labor Relations Commission (NLRC)-First Division issued its resolution on January 20, 2010 denying the appeal for failure to attach an assignment of bank deposit that would serve as proof of security deposit of its appeal bond pursuant to Section 6, Rule VI of the 2005 NLRC Revised Rules of Procedure. The NLRC further noted that the petitioner was estopped from questioning the writ because it voluntarily made a partial payment with an undertaking to pay the balance at a later date; and ruled that an order of execution or garnishment of a final and executory judgment was not appealable.[7] The petitioner then moved for reconsideration, but its motion was denied on May 11, 2010.[8]

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[4] Id. at 142-147.
[5] Id. at 16-17.
[6] Id. at 17-18.
[7] Id. at 149-150.
[8] Id. at 152-153.

The petitioner elevated the matter to the Court of Appeals (CA) on *certiorari*,[9] but its petition was dismissed,[10] with the CA holding that the petitioner was not denied due process because it was able to participate in the scheduled hearings through its representative and counsel.[11]

The petitioner moved to reconsider, but the CA denied the motion on March 25, 2013.[12]

Hence, this appeal,[13] in which the petitioner argues that: (*a*) Section 6, Rule VI of the 2005 NLRC Revised Rules of Procedure did not require proof of actual assignment of bank deposit; and (*b*) the gross negligence of its previous counsel to attend the hearings and file the appropriate pleadings in its behalf amounted to the denial of due process.

The Court denied the petition for review on *certiorari* in the resolution promulgated on September 30, 2013.[14]

Before the Court now is the petitioner's motion for reconsideration,[15] whereby it maintains that it had substantially complied with the requirements of an appeal as prescribed under Section 6, Rule VI of the 2005 NLRC Rules of Procedure.

I **VOTE TO GRANT** the motion for reconsideration for the following reasons.

I
The Certificate of Security Deposit constitutes proof of security deposit required in Section 6(c), Rule VI of the 2005 NLRC Rules of Procedure

The petitioner posits that the Certificate of Security Deposit executed by Visayan Surety and Insurance Corporation attached to the memorandum of appeal was sufficient proof of security deposit as required by Section 6(c), Rule VI of the 2005 NLRC Rules of Procedure.[16] Hence, the NLRC erred in requiring an "assignment of bank deposit" as proof of security deposit.

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[9] Docketed as CA-G.R. SP No. 114885, entitled *Toyota Alabang, Inc. v. National Labor Relations Commission and Edwin Games.*
[10] Id. at 40-51.
[11] Id.
[12] Id. at 53-54.
[13] Id. at 12-32.
[14] Id. at 157-158.
[15] Id. at 159-188.
[16] The applicable rule at the time the NLRC dismissed the Memorandum of Appeal.

I find for the petitioner.

To require an "assignment of bank deposit" as proof of security deposit constituted grave abuse of discretion on the part of the NLRC, for there was nothing in Section 6(c), Rule VI of the 2005 NLRC Rules that prescribed the requirement. The provision only demanded "*proof of security deposit or collateral securing the bond,*" and did not specify that an assignment of bank deposit should constitute as proof of security deposit. Clearly, the rule mentioned only a "check" as an unacceptable security.

Verily, the certificate constituted sufficient proof of security deposit, as borne out by its text, to wit:

> CERTIFICATION OF SECURITY DEPOSIT
>
> This certifies "**V.S.I.C Bond No. G-FE-2009/522, MLA/G(16)4000 in the amount of Php 535,553.07** issued in NLRC-NCR-Case No. 00-08-091201-2007 entitled EDWIN B. GAMES versus TOYOTA ALABANG, INC., **is fully secured by a Security Deposit of equivalent amount**.
>
> **This certification is issued in compliance with the provisions of Section 6, Rule VI of the New Rules of Procedure of the National Labor Relations Commission (as amended by Resolution No. 01-02, series of 2002).**
>
> x x x x[17] (Emphasis supplied)

Moreover, Visayan Surety and Insurance Corporation solidarily bound itself as a surety with the petitioner as the principal debtor to assure the fulfillment of its obligation.[18] Hence, there was no rhyme or reason to still further require the petitioner to execute a deed of assignment or a deposit in favor of the NLRC in order to secure the payment of the money judgment.

At any rate, the petitioner submitted a certification from the Philippine Business Bank stating that it had set aside the amount of ₱535,553.07 under a Certificate of Time Deposit in the name of Toyota Alabang, Inc.[19] This submission sufficiently indicated the willingness on the part of the petitioner to submit to the judgment of the Labor Arbiter in the event of an adverse ruling.

Well to stress that the purpose in requiring a bond was to assure the employee that he would receive the money judgment in his favor upon the denial of the employers' appeal. The bond requirement was intended to

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[17] *Rollo*, p. 194.
[18] Article 2047, *New Civil Code*.
[19] *Rollo*, p. 24.

discourage the employer from using the appeal to delay, or even evade, the obligation to satisfy the employee's just and lawful claims.[20] Given the actions taken by the petitioner, there was no reason to doubt its sincerity to be bound by the ruling of the Labor Arbiter in favor of Games.

It is more in line with the desired objective of our labor laws to resolve controversies on their merits that the filing of a bond in appeals involving monetary awards should be given liberal construction.[21]

Furthermore, Section 6(c), Rule VI of the NLRC Rules applies to appeals from decisions of the Labor Arbiter involving a monetary award to the employee. **Conversely, an appeal from an order denying a motion to quash a writ of execution does not require a bond.**

The *ponente* opines in her December 23, 2014 reply, however, that the cited rule generally covers appeals from rulings of the Labor Arbiter involving a monetary award, and includes the denial of a motion to quash a writ of execution.

I humbly differ from this opinion considering that a writ of execution is not a decision, but an order directing the sheriff to enforce, implement or satisfy the final decisions, orders or awards of the Labor Arbiter or the Commission. The appeal bond requirement cannot be made to apply herein; hence, the NLRC gravely abused its discretion in requiring the petitioner to comply with the inapplicable rule.

The requirement of an appeal bond notwithstanding, the NLRC should have treated the petitioner's appeal as akin to a petition for relief from judgment that was permissible under Section 15, Rule V of the 2005 NLRC Rules of Procedure. It cannot be denied that the negligence of its previous counsel prevented the petitioner from meaningfully participating in the proceedings before the Labor Arbiter, and even from filing its appeal.

II
The dismissal of respondent employee rested on evidently substantial grounds

The petitioner maintains that Games was validly dismissed for stealing company property. As a result of his offense, the petitioner properly charged him criminally, such that the information for frustrated qualified

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[20] *Sy v. ALC Industries, Inc.*, G.R. No. 168339, October 10, 2008, 568 SCRA 367, 373; *Viron Garments Mftg., Co., Inc. v. NLRC,* G.R. 97357, March 18, 1992, 207 SCRA 339, 342.

[21] *Fernandez v. National Labor Relations Commission*, G.R. No. 105892, January 28, 1998, 285 SCRA 149, 165.

theft was then filed in court.[22] He was subsequently arraigned, and then tried. Under the circumstances, stealing company property constituted serious misconduct, and involved no less the commission of a crime against the employer, either or both of which were **just causes for terminating an employee** under Article 288 of the *Labor Code*, as amended.

The accusation for frustrated qualified theft should not be ignored by the Court because Games had been caught *in flagrante delicto*. He need not be found guilty beyond reasonable doubt for the crime, for it was enough that substantial evidence established his culpability. If we were to ignore his having committed a very serious offense against the interest of the petitioner as his employer in order to still favor the latter as a way of serving the liberal policy towards Labor, we would be preferring technicality to substance. I wish to remind that the constitutional policy to provide full protection to Labor is not meant to be a sword to oppress Management. Our commitment to the cause of Labor should not prevent us from sustaining the employer when it is in the right.[23]

With all due respect, I humbly differ from the *ponente*'s view that "a final and executory decision of the LA can no longer be reversed or modified."[24] The Court is first and foremost a court of law *and* justice, and for that reason it may relax the rule on finality of judgments in order to serve the ends of substantial justice. This the Court has not hesitated to do in meritorious circumstances. The Court emphatically did so in favor of the employer in *McBurnie v. Ganzon*:[25]

> It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned." In *De Guzman v. Sandiganbayan*, the Court, thus, explained:
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> > [T]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case. x x x.

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[22] *Rollo*, pp. 72-73.
[23] *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 614.
[24] Reply dated December 23, 2014, p. 4.
[25] G.R. Nos. 178034 and 178117,G.R. Nos. 186984-85, October 17, 2013, 707 SCRA 646, 665-668, citing *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 683-684.

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> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "*should give way to the realities of the situation*." x x x. (Citations omitted)

Consistent with the foregoing precepts, the Court has then reconsidered even decisions that have attained finality, finding it more appropriate to lift entries of judgments already made in these cases. In *Navarro v. Executive Secretary*, we reiterated the pronouncement in *De Guzman* that the power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself has already declared final. The Court then recalled in *Navarro* an entry of judgment after it had determined the validity and constitutionality of Republic Act No. 9355, explaining that:

> Verily, the Court had, on several occasions, sanctioned the recall of entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the [Local Government Code (LGC)] with respect to the creation of local government units. x x x. (citations omitted)

In *Muñoz v. CA*, the Court resolved to recall an entry of judgment to prevent a miscarriage of justice. This justification was likewise applied in *Tan Tiac Chiong v. Hon. Cosico*, wherein the Court held that:

> The recall of entries of judgments, albeit rare, is not a novelty. In *Muñoz v. CA*, where the case was elevated to this Court and a first and second motion for reconsideration had been denied with finality, the Court, in the interest of substantial justice, recalled the Entry of Judgment as well as the letter of transmittal of the records to the Court of Appeals. (citations omitted)
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> In *Barnes v. Judge Padilla*, we ruled:
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> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.

Relaxation of the rules in this instance is proper in view of the emerging trend in our jurisprudence to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities.[26] In *Aguam v. Court of Appeals*,[27] we said that disposing an appeal based on technicalities only gives a wrong impression of speedy disposal of cases while inappropriately resulting in miscarriage of justice.

Manila Trading & Supply Co. v. Zulueta, et al.,[28] even underscored the need to dig deep into the core of the controversy involving a malfeasance of an employee towards his employer, thus:

> [T]he right of an employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power. (Commonwealth Acts Nos. 103 and 213). But much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. There may, of course, be cases where the suspension or dismissal of an employee is whimsical or unjustified or otherwise illegal in which case he will be protected. Each case will be scrutinized carefully and the proper authorities will go to the core of the controversy and not close their eyes to the real situation.

In view of the gravity of the misconduct committed by Games, the motion for reconsideration is undeniably meritorious, and should be granted. The petitioner must be given the sufficient opportunity to prove its claim, and thus rebut the unfair finding of the Labor Arbiter that Games had been illegally dismissed, to wit:

> The box in the Toyota Altis car which complainant drive test belong to respondent Toyota Alabang and it was the security guard who took the same.

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[26] *Aujero v. Philippine Communications Satellite Corporation*, G.R. No. 193484, January 18, 2012, 663 SCRA 467, 478.

[27] G.R. No. 137672, May 31, 2000, 332 SCRA 784, 790.

[28] 69 Phil. 485, 486-487 (1940).

> The fact that complainant was not afforded the opportunity to be heard shows that complainant was terminated without due process of law.
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> Even if complainant found the box inside the Toyota Altis, the complainant is not guilty of anything as it was Janus Demetrio who placed the same inside the car of which complainant has no knowledge.[29]

Given that the Labor Arbiter found the absence of both substantive and procedural due process in dismissing Games, the more that the petitioner should be allowed to fully ventilate its side on the matter. This is only fair because Games brought his complaint for illegal dismissal almost two years after his arrest for qualified theft, indicating its being an afterthought. According to *Agabon v. National Labor Relations Commission*,[30] the absence of procedural due process did not nullify the dismissal that was based on a just cause. Such situation did not entitle the employee to backwages, reinstatement or separation pay, damages and attorney's fees under Article 285 of the *Labor Code*, as amended.

Assuming that the allegations of the petitioner were true, then Games was not entitled to the monetary award representing the reliefs accorded to an illegally dismissed employee under Article 285 of the *Labor Code*. At best, he could only be entitled to nominal damages of ₱30,000.00 pursuant to *Agabon*. The disparity between the monetary award to Games, and the nominal damages recognized in *Agabon* inevitably warrants a remand of the case for appropriate reception of evidence.

III
The petitioner should not suffer from the gross negligence committed by its counsel

Generally, the negligence of counsel binds the client. Nonetheless, the courts accord relief to the client who suffers by reason of the lawyer's gross or palpable mistake: (*a*) where reckless or gross negligence of counsel deprives the client of due process of law; (*b*) when its application will result in outright deprivation of the client's liberty or property; or (*c*) where the interests of justice[31]or equity[32] so require. These exceptions obtain in this case.

The petitioner showed that its former counsel did not appear during the scheduled hearings, did not file the position paper, and did not timely appeal the adverse result. Such omissions of counsel occurred without its knowledge and consent, and resulted in its inability to fully participate in the

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[29] *Rollo*, pp. 145-146.
[30] G.R. No. 158693, November 17, 2004, 442 SCRA 573.
[31] *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361; *Azucena v. Foreign Manpower Services*, G.R. No. 147955, October 25, 2004, 441 SCRA 346, 356.
[32] *Escudero v. Dulay,* G.R. No. L-60578, February 23, 1998, 158 SCRA 69, 78.

proceedings below. The counsel's negligence prevented it from ably defending its interest, and led to the denial of its right to due process. Hence, it should not be allowed to suffer the consequences of its former lawyer's palpable and gross negligence.

Unfortunately, the *ponencia* would make it appear that the petitioner was equally guilty of negligence. I respectfully disagree.

Negligence does not obtain on the part of the petitioner for its brief participation during the preliminary stages of the proceedings below, particularly the mandatory conciliation and mediation conference. A mandatory and conciliation proceeding does not provide litigants with an opportunity to be heard and present evidence in its behalf. Section 3, Rule V of the 2005 NLRC Rules of Procedure provides that the purpose of the mandatory and conciliation conference shall be to (1) amicably settle the case upon a fair compromise; (2) determine the real parties in interest; (3) determine the necessity of amending the complaint and including all causes of action; (4) define and simplify the issues in the case; (5) enter into admissions or stipulations of facts; and (6) thresh out all other preliminary matters.

Neither should we fault the petitioner for its failure to file the position paper despite having been informed of the necessity to file the same. The petitioner was not in the position to know the legal consequences of the non-filing of the position paper, for the knowledge was within the competence of the lawyer to whom it had already entrusted the duty and responsibility to take full charge of the legal matter.

The petitioner does not deserve condemnation for bestowing its full trust and confidence in its former counsel. Given the nature and extent of its business and operations, the petitioner could not be expected to supervise and monitor all the cases it had entrusted to its lawyer whose avowed duty was to protect and promote the client's interests at all times with utmost dedication and care.

The negligence of the petitioner's counsel should not also defeat an employer's prerogative to weed out an undesirable employee. To completely ignore the counsel's negligence, and thus to sideline the employer's lawful right to exercise its prerogatives, in order to favor a really unworthy employee would grossly undermine and render iniquitous the liberality that Labor deserves. In *Pampanga Bus Company v. Pambusco Employees' Union*,[33] we said:

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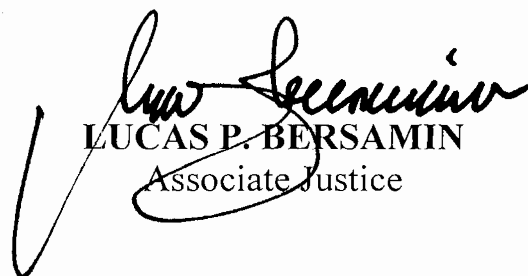
[33] 68 Phil. 541, 543 (1939).

> **The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.**

Furthermore, the interests of justice demand that we save the petitioner from the consequences of its counsel's reckless disregard of his duty. To reiterate, the respondent had undeniably stolen company property, and his act constituted a most valid and urgent ground for his dismissal from his employment and for which he must not be rewarded. Instead of being held to account for his willful and felonious acts, the ponencia's insistence on the strict application of the rules and the seeming disinterest in hearing the value of reason, inadvertently validates the employee's noxious behavior by generously rewarding him with separation pay, backwages, service incentive pay, and attorney's fees – awards which may arguably have been warranted, except that they are hinged on precarious technicality. Surely this is not how justice works. To allow the petitioner to be fully heard considering the visible merit of its cause will be more in consonance with the ends of justice. Needless to stress, the courts may waive or dispense with procedural rules in absolutely meritorious cases.[34]

The constitutional policy of providing full protection to Labor is not intended to oppress or destroy Management. Indeed, the capital and management sector must also be protected under a regime of justice and the rule of law.[35]

ACCORDINGLY, I VOTE TO GRANT the petitioner's motion for reconsideration, and **TO REMAND** the case to the Labor Arbiter for reception of the petitioner's evidence.



LUCAS P. BERSAMIN
Associate Justice

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[34] Supra note 26, at 479.

[35] *National Federation of Labor v. NLRC*, G.R. No. 127718, March 2, 2000, 327 SCRA 158, 166.