Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

MANILA MINING CORPORATION, **Petitioner,**	**G.R. No. 182800**
- versus -	Present: SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN PEREZ, and PERLAS-BERNABE, *JJ.*
LOWITO AMOR, ET. AL., **Respondents.**	Promulgated: APR 20 2015

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DECISION

PEREZ, *J.*:

Compliance with the requirements for the perfection of an appeal from the decision of a Labor Arbiter is at issue in this Rule 45 Petition for Review on *Certiorari* which primarily seeks the nullification of the 29 November 2007 Decision[1] rendered by the then Twenty-Second Division of the Court of Appeals (CA) in CA-G.R. SP No. 00609,[2] the decretal portion of which states:

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1 Penned by Court of Appeals Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

2 CA's 29 November 2007 Decision; CA *rollo*, pp. 152-161.

> WHEREFORE, the petition is hereby GRANTED. The Resolutions of the NLRC dated 25 April 2005 and 30 June 2007, respectively, are ANNULLED and SET ASIDE. The 25 October 2004 Resolution of the Labor Arbiter is REINSTATED.
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> SO ORDERED.[3]

The facts are not in dispute.

Respondents Lowito Amor, Rollybie Ceredon, Julius Cesar, Ronito Martinez and Fermin Tabili, Jr. were regular employees of ***petitioner*** Manila Mining Corporation, a domestic corporation which operated a mining claim in Placer, Surigao del Norte, in pursuit of its business of large-scale open-pit mining for gold and copper ore. In compliance with existing environmental laws, petitioner maintained Tailing Pond No. 7 (TP No. 7), a tailings containment facility required for the storage of waste materials generated by its mining operations. When the mine tailings being pumped into TP No. 7 reached the maximum level in December 2000, petitioner temporarily shut down its mining operations pending approval of its application to increase said facilty's capacity by the Department of Environment and Natural Resources-Environment Management Bureau (DENR-EMB), Butuan City. Although the DENR-EMB issued a temporary authority on 25 January 2001 for it to be able to continue operating TP No. 7 for another six (6) months and to increase its capacity, petitioner failed to secure an extension permit when said temporary authority eventually lapsed.[4]

On 27 July 2001, petitioner served a notice, informing its employees and the Department of Labor and Employment Regional Office No. XII (DOLE) of the temporary suspension of its operations for six months and the temporary lay-off of two-thirds of its employees.[5] After the lapse of said period, petitioner notified the DOLE on 11 December 2001 that it was extending the temporary shutdown of its operations for another six months.[6] Adversely affected by petitioner's continued failure to resume its operations, respondents filed the complaint for constructive dismissal and monetary claims which was docketed as NLRC Case No. RAB-13-10-00226-2003 before the Regional Arbitration Branch No. XIII of the National Labor Relations Commission (NLRC). On 25 October 2004, Executive Labor Arbiter Benjamin E. Pelaez rendered a Decision holding petitioner liable for constructive dismissal in view of the suspension of its operations beyond the

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3 Id. at 161.
4 Id. at 153.
5 Petitioner's 27 July 2001 Letter, id. at 74.
6 Petitioner's 11 December 2001 Letter, id. at 75.

six-month period allowed under Article 286[7] of the *Labor Code of the Philippines*. Finding that the cause of suspension of petitioner's business was not beyond its control,[8] the Labor Arbiter applied Article 283[9] of the same Code and disposed of the case in the following wise:

> WHEREFORE, premises considered, judgment is hereby entered:
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> 1) Declaring [respondents] to have been constructively dismissed from their employment; and
> 2) Ordering [petitioner] to pay xxx [respondents] their separation pay equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six (6) months shall be considered as one whole year, moral damages and exemplary damages in the amount of Ten Thousand Pesos (₱10,000.00) and Five Thousand Pesos (₱5,000.00), respectively, for each of the [respondents] and attorney's fees equivalent to ten (10%) percent in the total amount of TWO MILLION ONE HUNDRED THIRTY EIGHT THOUSAND ONE HUNDRED NINETY & 02/100 PESOS (₱2,138,190.02) ONLY x x x x
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[10]

Aggrieved, petitioner filed its memorandum of appeal before the NLRC[11] and moved for the reduction of the appeal bond to ₱100,000.00, on the ground that its financial losses in the preceding years had rendered it unable to put up one in cash and/or surety equivalent to the monetary

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7 Art. 286. When employment not deemed terminated. The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

8 Labor Arbiter's 25 October 2004 Decision; CA *rollo*, pp. 44-53.

9 Art. 283. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

10 CA *rollo*, pp. 52-53

11 Petitioner's 3 December 2004 Memorandum of Appeal; id. at 56-68.

award.[12] In opposition, respondents moved for the dismissal of the appeal in view of the fact that, despite receipt of the appealed decision on 24 November 2004, petitioner mailed their copy of the memorandum of appeal only on 7 February 2005. Respondents also argued that the appeal bond tendered by petitioner was so grossly disproportionate to monetary award for the same to be considered substantial compliance with the requirements for the perfection of an appeal from a Labor Arbiter's decision.[13] Without addressing the procedural issues raised by respondents, however, the NLRC Fifth Division went on to render a Resolution dated 25 April 2005 in NLRC CA No. M-008433-2005, reversing the appealed decision and dismissing the complaint for lack of merit. Finding that the continued suspension of petitioner's operations was due to circumstances beyond its control, the NLRC ruled that, under Article 283 of the *Labor Code*, respondents were not even entitled to separation pay considering the eventual closure of their employer's business due to serious business losses or financial reverses.[14]

Unfazed by the denial of their motion for reconsideration in the NLRC's 30 June 2005 Resolution,[15] respondents filed the Rule 65 petition for *certiorari* which was docketed as CA-G.R. SP No. 00609 before the Mindanao Station of the CA. Insisting that petitioner's memorandum of appeal was filed 65 days after the lapse of reglementary period for appeal, respondents called attention to the fact that, as grossly inadequate as it already was *vis-à-vis* the ₱2,138,190.02[16] monetary award adjudicated in their favor, the check in the sum of ₱100,000.00 deposited by petitioner by way of appeal bond was dishonored upon presentment for payment. Aside from the fact that the Labor Arbiter's 25 October 2004 Decision had already attained finality, respondents faulted the NLRC for applying Article 283 of the *Labor Code* absent allegation and proof of compliance with the requirements for the closure of an employer's business due to serious business losses.[17] In its comment, on the other hand, petitioner claimed that, having caused the same to be immediately funded, the check it issued for the appeal bond had since been deposited by the NLRC. Insisting that the cessation of its operations was due to causes beyond its control, petitioner argued that the subsequent closure of its business due to business losses exempted it from paying separation pay.[18]

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12 Petitioner's 6 December 2004 Motion for Reduction of Bond; id. at 69-71.
13 Respondents' 15 February 2005 Motion to Dismiss Appeal; id. at 76-79.
14 NLRC's 25 April 2005 Resolution; id. at 35-40.
15 NLRC's 30 June 2005 Resolution; id. at 42.
16 Sometimes indicated as ₱2,138,189.98.00.
17 Respondent's 28 September 2005 Rule 65 Petition for *Certiorari*; id. at 2-33.
18 Petitioner's 5 December 2005 Comment; id. at 89-108.

On 29 November 2007, the CA's then Twenty-Second Division rendered the herein assailed decision, granting respondents' petition and nullifying the NLRC's 25 April 2005 Resolution. In reinstating the Labor Arbiter's 25 October 2004 Decision, the CA ruled that petitioner failed to perfect its appeal therefrom considering that the copy of its 3 December 2004 Memorandum of Appeal intended for respondents was served the latter by registered mail only on 7 February 2005. Aside from posting an unusually smaller sum as appeal bond, petitioner was likewise faulted for replenishing the check it issued only on 1 April 2005 or 24 days before the rendition of the assailed NLRC Decision. Applying the principle that the right to appeal is merely a statutory remedy and that the party who seeks to avail of the same must strictly follow the requirements therefor, the CA decreed that the Labor Arbiter's Decision had already attained finality and, for said reason, had been placed beyond the NLRC's power of review.[19] Petitioner's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's 2 May 2008 Resolution,[20] hence, this Rule 45 petition for review on *certiorari*.[21]

Petitioner seeks the reversal of the CA's 29 November 2007 Decision and 2 May 2008 Resolution on the following grounds:

> **THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER'S APPEAL FILED WITH THE NATIONAL LABOR RELATIONS COMMISSION WAS FATALLY DEFECTIVE [SINCE IT] HAD FULLY COMPLIED WITH THE REQUIREMENTS OF THE LABOR CODE FOR PERFECTING AN APPEAL.**
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> **THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN IMMEDIATELY SETTING ASIDE THE DECISION OF THE NLRC WITHOUT REVIEWING THE MERITS OF THE CASE.**
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> **AT THE TIME OF THE PROMULGATION OF THE ASSAILED DECISION BY THE COURT OF APPEALS, THE HONORABLE SUPREME COURT HAD ALREADY AFFIRMED THE FINDING THAT PETITIONER WAS ALREADY PERMANENTLY CLOSED DUE TO MASSIVE FINANCIAL LOSSES.**[22]

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19 CA's 29 November 2007 Decision; id. at 152-161.
20 CA's 2 May 2008 Resolution; id. at 214-217.
21 Petitioner's 12 June 2008 Petition for Review; *rollo*, pp. 29-56.
22 Id. at 40; 48.

Time and again, it has been held 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 and in accordance with the provisions of law.[23] A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost.[24] Insofar as appeals from decisions of the Labor Arbiter are concerned, Article 223 of the *Labor Code of the Philippines*[25] provides that, "(d)ecisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the [NLRC] by any or both parties within ten (10) calendar days from the receipt of such decisions, awards or orders." In case of a judgment involving a monetary award, the same provision mandates that, "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 [NLRC] in the amount equivalent to the monetary award in the judgment appealed from." Alongside the requirement that "the appellant shall furnish a copy of the memorandum of appeal to the other party," the foregoing requisites for the perfection of an appeal are reiterated under Sections 1, 4 and 6, Rule VI of the *NLRC Rules of Procedure* in force at the time petitioner appealed the Labor Arbiter's 25 October 2004 Decision, *viz.*:

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23 *Colby Construction and Management Corp. and/or Lo v. NLRC*, 564 Phil. 145, 154 (2007).

24 *Philux, Inc., et al., v. NLRC*, 586 Phil. 19, 26 (2008).

25 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. Such appeal may be entertained only on any of the following grounds:

a. If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
c. If made purely on questions of law; and
d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders.

> SECTION 1. PERIODS OF APPEAL. - Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, resolutions or orders of the Labor Arbiter x x x x. If the 10th x x x x day x x x x falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.
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> SECTION 4. 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 verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping *with proof of service on the other party of such appeal*. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal. (Italics supplied)
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> SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.
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> No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.
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> The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

Having received the Labor Arbiter's Decision on 24 November 2004,[26] petitioner had ten (10) calendar days or until 4 December 2004 within which to perfect an appeal. Considering that the latter date fell on a Saturday, petitioner had until the next working day, 6 December 2004, within which to comply with the requirements for the perfection of its appeal. Our perusal of the record shows that, despite bearing the date 3 December 2004, petitioner's memorandum of appeal was subscribed before Notary Public Ronald Rex Recidoro only on 6 December 2004.[27] Without

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[26] CA *rollo*, p. 56.

[27] Id. at 66-67.

proof as to the actual date of filing of said pleading being presented by both parties, the CA discounted the timeliness of its filing in light of the established fact that the copy thereof intended for respondents was only served by registered mail on 7 February 2005.[28] Since proof of service of the memorandum on appeal is required for the perfection of an appeal from the decision of the Labor Arbiter, the CA ruled that "respondents filed its appeal not earlier than 07 February 200[5], which is way beyond the ten-day reglementary period to appeal."[29]

As allegation is not evidence, however, the rule is settled that the burden of evidence lies with the party who asserts the affirmative of an issue.[30] As the parties claiming the non-perfection of petitioner's appeal, it was, therefore, respondents who had the burden of proving that said memorandum of appeal was, indeed, filed out of time. By and of itself, the fact that the copy of memorandum of appeal intended for respondents was served upon them by registered mail only on 7 February 2005 does not necessarily mean that petitioner's appeal from the Labor Arbiter's decision was filed out of time. On the principle that justice should not be sacrificed for technicality,[31] it has been ruled that the failure of a party to serve a copy of the memorandum to the opposing party is not a jurisdictional defect and does not bar the NLRC from entertaining the appeal.[32] Considering that such an omission is merely regarded as a formal lapse or an excusable neglect,[33] the CA reversibly erred in ruling that, under the circumstances, petitioner could not have filed its appeal earlier than 7 February 2005.

The question regarding the appeal bond rises from the record which shows that, in addition to its memorandum of appeal, petitioner filed a 6 December 2004 motion for the reduction of the appeal bond on the ground that the cash equivalent of the monetary award and/or cost of the surety bond have proven to be prohibitive in view of the tremendous business losses it allegedly sustained. As supposed measure of its good faith in complying with the Rules, petitioner attached to its motion Philam Bank Check No. 0000627153, dated 6 December 2004, in the amount of ₱100,000.00 only. As pointed out by respondents, however, said check was subsequently dishonored upon presentment for payment for insufficiency of funds. In its 1 April 2005 Ex-Parte Manifestation, petitioner informed the NLRC that it "only learned belatedly that the same check was dishonored" as there appeared to be "an inadvertent mix-up as other checks issued for [its] other

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28 Id. at 156.
29 Id. at 159.
30 *Aklan Electric Cooperative Incorported v. NLRC*, 380 Phil. 225, 245 (2000).
31 *Okada v. Security Pacific Assurance Corporation*, 595 Phil. 732, 746 (2008).
32 *Sunrise Manning Agency, Inc. v. NLRC*, 485 Phil. 426, 431 (2004).
33 *J.D. Magpayo Customs Brokerage Corporation v. NLRC*, 204 Phil. 276, 278 (1982).

obligations were negotiated ahead [thereof], leaving an insufficient balance in its account." As a consequence, petitioner claimed that "the deficiency in deposit has been promptly and immediately replenished as soon as the check's dishonor was reported" and that the same may already be re-deposited at any of NLRC's depositary banks.[34]

The issue that has bedevilled labor litigation for long has been clarified by the ruling in *McBurnie v. Ganzon, et al.*,[35] which built on and extended the ruling that while it is true that reduction of the appeal bond has been allowed in meritorious cases[36] on the principle that substantial justice is better served by allowing appeals on the merits,[37] it has been ruled that the employer should comply with 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, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal.[38]

The *McBurnie* ruling pronounced:

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> Furthermore, on the matter of the filing and acceptance of motions to reduce appeal bond, as provided in Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the Court hereby RESOLVES that henceforth, the following guidelines shall be observed:
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> (a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;
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> (b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a provisional cash or surety bond equivalent to ten percent (10), of the monetary award subject of the appeal, exclusive of damages and attorney's fees;
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> (c) Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day reglementary period to perfect an appeal from the labor arbiter's decision to the NLRC;

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34 Petitioner's 1 April 2005 Ex-Parte; CA *rollo*, pp. 72-73
35 G.R. Nos. 178034 & 178117; G.R. Nos. 186984-85, 17 October 2013, 707 SCRA 646.
36 *Coral Point Development Corporation v. NLRC*, 383 Phil. 456, 464 (2000).
37 *Miguel v. JCT Group, Inc*., 493 Phil. 660, 674 (2005)
38 Supra note 35, at 658.

> (d) The NLRC retains its authority and duty to resolve the motion to reduce bond and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of meritorious grounds and reasonable amount; and
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> (e) In the event that the NLRC denies the motion to reduce bond, or requires a bond that exceeds the amount of the provisional bond, the appellant shall be given a fresh period of ten (10) days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.[39]

In this case, we see that with no proof to substantiate its claim, petitioner moved for a reduction of the appeal bond on the proferred basis of serious losses and reverses it supposedly sustained in the years prior to the rendition of the Labor Arbiter's decision.

The first condition may be left for the nonce. As to the second condition, we may consider that the amount of ₱100,000.00 supposedly posted was provisional bond sufficient to suspend the running of the 10-day reglementary period to perfect an appeal from the Labor Arbiter's decision.

That would however not improve petitioner's position one bit.

Respondent correctly called attention to the fact that the check submitted by petitioner was dishonored upon presentment for payment, thereby rendering the tender thereof ineffectual. Although the NLRC chose not to address the issue of the perfection of the appeal as well as the reduction of the bond in its Resolution dated 25 April 2005, the record shows that petitioner only manifested its deposit of the funds for the check 24 days before the resolution of its appeal or 116 days after its right to appeal the Labor Arbiter’s decision had expired. Having filed its motion and memorandum on the very last day of the reglementary period for appeal, moreover, petitioner had no one but itself to blame for failing to post the full amount pending the NLRC’s action on its motion for reduction of the appeal bond. If redundancy be risked it must be emphasized that the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. Since it is the posting of a cash or surety bond which confers jurisdiction upon the

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[39] Id. at 693-694.

NLRC,[40] the rule is settled that non-compliance is fatal and has the effect of rendering the award final and executory.[41]

Viewed in the light of the foregoing considerations, the CA cannot be faulted for no longer discussing the merits of petitioner's case. Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case and can no longer be revised, reviewed, changed or altered. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[42]

Without necessarily resulting to a termination of employment, an employer may at any rate, *bona fide* suspend the operation of its business for a period of not exceeding six months under Article 286 of the *Labor Code*.[43] While the employer is, on the one hand, duty bound to reinstate his employees to their former positions without loss of seniority rights if the operation of the business is resumed within six months, employment is deemed terminated where the suspension exceeds said period.[44] Not having resumed its operations within six months from the time it suspended its operations on 27 July 2001, it necessarily follows that petitioner is liable to pay respondents' separation pay[45] computed at one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher,[46] as well as the damages and attorney's fees adjudicated by the Labor Arbiter. Without proof of the serious business losses it allegedly sustained and/or compliance with the reportorial requirements under Article 283 of the *Labor Code*, petitioner cannot expediently plead exemption from said liabilities due to the supposed financial reverses which led to the eventual closure of its business. It is essentially required that the alleged losses in business

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40 *Accessories Specialist, Inc. v. Alabanza*, 581 Phil. 517, 527 (2008).

41 *Stolt-Nielsen Marine Services, Inc. v. NLRC*, 513 Phil. 642, 656 (2005).

42 *Zamboanga Forest Managers Corp. v. New Pacific Timber & Supply Co.*, 647 Phil. 403, 415 (2010), citing *Filipro, Inc, v. Permanent Savings and Loan Bank*, 534 Phil. 551, 560 (2006).

43 *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, 486 Phil. 348, 362 (2004).

44 *Lagonoy Bus Co., Inc./Buencamino v. Court of Appeals (former4th Div.)*, 556 Phil. 775, 781 (2007).

45 *Toogue v. National Labor Relations Commission*, G.R. No. 112334, 18 November 1994, 238 SCRA 241, 246.

46 *Serrano v. NLRC*, 380 Phil. 416, 452 (2000).

operations must be proven for, otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.[47] The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns[48] which were not presented in this case.

Neither can petitioner evade said liabilities on the strength of the 28 July 2005 Decision rendered by the CA's Twenty-Second Division in CA-G.R. SP No. 00072, entitled *Rosito Asumen, et al. v. National Labor Relations Commission, et al.*, where its employees' claim for separation pay was denied on account of the subsequent closure of its business due to serious business losses and financial reverses.[49] Although the employees Rule 45 petition for review on *certiorari* had been denied in the 7 February 2007 Resolution issued by this Court's Second Division in UDK-13776,[50] the ruling in said case can hardly be considered binding on respondents who were not parties thereto. As for the inequality in benefits which would supposedly result if the CA's assailed decision and resolution were not reversed, suffice it to say that this Court had sustained the claim for separation pay of petitioner's employees in the case of *Manila Mining Corp Employees Association-Federation of Free Workers Chapter, et al. v. Manila Mining Corporation, et al.*[51] *Stare decisis* is inapplicable; the matter of separation pay for petitioner's employees has been decided case to case.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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47 *F.F. Marine Corporation v. The 2nd Division, NLRC*, 495 Phil. 140, 157 (2005).

48 *Waterfront Cebu Hotel v. Jimenez*, G.R. No. 174214, 13 June 2012, 672 SCRA 185, 197, citing *Flight Attendants and Stewards Association of the Philippines, Inc., v. Phil. Airlines, Inc., et al.*, 581 Phil. 228, 255 (2008).

49 CA's 28 July 2005 Decision in CA-G.R. SP No. 00072; *rollo*, pp. 244-261.

50 7 February 2007 Resolution in UDK-13776; id. at 263.

51 G.R. No. 178222-23, 29 September 2010, 631 SCRA 553.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice