

**ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE (ZANECO), INC.,
AND ADELMO P. LAPUT, ACTING GENERAL MANAGER,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, 8TH
DIVISION, CAGAYAN...**

Ponente: CAMELLO, J.

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CAMELLO, J.:

This Rule 65 petition seeks the corrective writ against the Resolution of the National Labor Relations Commission (NLRC) dated June 20, 2012[1] reversing and setting aside the Decision of the Executive Labor Arbiter dated August 5, 2011,[2] and the Resolution dated December 28, 2012[3] denying the motion for reconsideration in NLRC Case No. MAC-08-012215-2011 (SRAB 09-02-10008-2011). The antecedents of this Petition, are briefly outlined in the Labor Arbiter's decision, in this manner:

Respondent ZANECO is a duly organized and existing electric rural cooperative operating in the province of Zamboanga del Norte and in the two cities of Dipolog and Dapitan. Like all other cooperatives in the country, it is under the supervision, control, and authority of the National Electrification Administration (NEA) but its day-to-day affairs are managed by a Board of Directors.

ZANECO employed herein complainant on November 16, 1994 as Clerk/Receptionist. She was assigned to the Office of the General Manager in Dipolog City, and became a regular employee xxx. After two (2) years, she was designated as Acting Head of the Human Resource Division and at the same time Secretary to the then General Manager, Albino Palma. She held said positions for nine (9) years. At the time of her alleged dismissal, she was paid the amount of P20,136.00 salary per month. (xxx).

In the year 2008, respondent ZANECO started studying how to effectively solve the problem of system's loss, technical problems in the electric power distribution and supply, theft of electricity, seemingly lack of personnel in certain fields of operation, lack of proper monitoring and guidance, and other aspects of managements. (xxx).

Accordingly, to better address these problems, and with the aim and objective of better management and providing better electric service to the community, management decided to harness the service of some employees, some of whom had to be given temporary additional work loads, and some of whom had to be temporarily assigned to other areas without loss of seniority rights and diminution of benefits. Complainant was one of those ordered to be temporarily assigned to Liloy Area Office effective June 9, 2009. (xxx)

After receiving the order on June 2, 2009, complainant wrote respondent General Manager Laput a letter requesting for the reconsideration of her transfer for reasons that she will be away from her loved ones; that she had just been married and hospitalized for miscarriage and because she has been on leave for three (3) months; that she was still undergoing medical treatment.

After evaluating complainant's request, respondents granted her request for reconsideration by suspending the effectivity of her transfer to said area to July 16, 2009. (xxx)

On July 15, 2009, complainant again wrote the respondent General Manager Laput a letter asking for another reconsideration of her temporary transfer which was to take effect the following day (xxx) but this was denied in an office order of even date. (xxx). Thereafter, complainant finally complied and reported to the Liloy Area Office.

But just barely two and a half months from her assumption at said office, complainant again wrote a letter to respondent General Manager Laput and requested to be transferred back to main office in Dipolog City so she can be reunited with her husband. (xxx). Together with said letter, complainant also submitted her Monthly Communication Report of even date addressed to respondent General Manager and which solicited a letter from the latter commending complainant for her good work. (xxx).

Failing to get a positive response to her request complainant applied for a leave of absence from December 10 to December 29, 2009 for reasons of medical check-up which was approved by the respondent General Manager Laput (xxx). Thereafter, complainant did not anymore report for work and on January 5, 2010, she wrote respondent General Manager Laput and requested for her re-assignment/transfer to ZANECO Main Office for reasons that she was two (2) months pregnant and that she was advised by her OB-GYNE doctor to avoid travel and strenuous physical activities considering that her age belonged to a high-risk level pregnancy with attached medical certificate. She likewise admitted that she did not file for leave of absence from December 30, 2009 to January 4, 2010 (xxx). Management denied her request.

On February 8, 2010, complainant again wrote another letter requesting management that she be returned/transferred to the Main Office because she was already three-months pregnant and avoids miscarriage so she can save the child and will have the “chance to become a mother” (xxx). But up to this point in time, complainant had not reported for work and had never filed a leave of absence. Management then was prompted to apprise her of her remaining leave credits to enlighten her of the importance of filing an application for leave of absence which was received by her sister at complainant’s residence on April 12, 2010. (xxx).

Since complainant totally ignored the above-mentioned communication, management again sent her a second notification letter containing the same tenor dated April 22, 2010 (xxx). This was personally brought to complainant’s known residence by a ZANECO employee who was informed that complainant was not there. The informant-mother of the complainant- was requested to sign and acknowledge receipt of the second notice but she refused to sign and receive the same. She likewise declined to disclose when her daughter will be returning to her home. Respondents made several follow-ups in complainant’s residence of her whereabouts and were later informed that she has already left for Dumaguete City but her mother refused to give her daughter’s address in said city. (xxx).

After a while, complainant, through an emissary, served a letter, dated May 4, 2010, to the ZANECO President, copy furnished to the Board of Directors, detailing the notification letters sent her, and pleaded for humanitarian considerations on her predicament. (xxx). But after management did not give any positive response to her plea, complainant, this time, wrote General Manager Laput and explained that the reason of her 5-month absence without leave was because she was seven (7) months pregnant and requested that she be reassigned to Piñan Area Office. (xxx).

Considering that complainant did not present any proof to buttress her allegations, and did not personally see respondent General Manager regarding this matter, and still did not report for work, management issued to her a memorandum dated July 21, 2010, directing her to submit her written explanation within seventy-two (72) hours why no disciplinary action shall be taken against her for her failure and refusal to report for work since January 2, 2010. (xxx). The same ZANECO employee was tasked to personally serve the memorandum to complainant in her house but was told by the latter’s mother that she was not around and was not anymore residing in said house. The mother likewise did not reveal complainant’s present address and refuse to acknowledge receipt of said memorandum on July 23, 2010. (xxx).

After two months elapsed without any explanation given by complainant, management again sent her a second

memorandum, dated September 17, 2010, to give her another opportunity to clarify and explain in writing within seventy-two (72) hours why no disciplinary action shall be taken against her for her failure or refusal to report for work or why she abandoned her job. (xxx). Again, complainant's mother explained that her daughter does not anymore reside in their house but was now residing in Dumaguete City. She, however, did not divulge the latest address of her daughter. Just the same, the memorandum was left to complainant's mother. Respondents thereafter also mailed a copy of said memorandum to complainant's last known address at Bolicon, Turno, Dipolog City. (xxx) This second notice was received at complainant's address by a certain Virgie Velasco on October 4, 2010. (xxx). Complainant, however, averred in her position paper that she personally received the same on October 8, 2010 at 4:45 p.m. from the Postman (xxx).

Complainant failed to comply with the second memorandum. However, on the very same day when the memo was received by Virgie Velasco, complainant also wrote a letter to respondent General Manager Laput to apply for retirement from service "after seeing the futility of having her request to be returned to base be granted. (xxx).

She then returned to Guihulngan, Negros Occidental but was later on informed that she was terminated from service. (xxx)

On August 5, 2011,[4] Executive Labor Arbiter Rhett Julius J. Plagata rendered a Decision, the dispositive portion reads:

WHEREFORE, the charges and claims in the above entitled case are hereby dismissed for lack of merit.

SO ORDERED.[5]

Not satisfied with the decision, private respondent Yu filed a Notice of Appeal to the NLRC.

On June 20, 2012,[6] public respondent rendered its Resolution, reversing and setting aside the Decision dated August 8, 2011, the dispositive portion reads:

WHEREFORE, the appeal of complainant-appellant is hereby GRANTED. The Decision of the Executive Labor Arbiter appealed from is hereby REVERSED and SET ASIDE and a new one entered declaring complainant-appellant to have been illegally dismissed thereby ordering respondents-appellee to pay her separation pay equivalent to one (1) month's pay for every year of service, a fraction of at least six (6) months considered as one (1) whole year or to her retirement benefits under respondent-appellee's Policy Bulletin No. 3-9E adopted on 04 July 1992 by the latter's Board Resolution No. 053, whichever is higher.

Respondents-appellee are likewise ordered to pay complainant-appellant backwages which shall be determined by the Executive Labor Arbiter a quo during the pre-execution proceeding below pursuant to the above discussion, and attorney's fees equivalent to ten (10%) percent of the total award herein granted which shall be determined likewise at the pre-execution stage.

SO ORDERED.

Petitioners filed a Motion for Reconsideration. On December 28, 2012,[7] public respondent rendered a Resolution, denying the motion for want of merit.

This petition alleges the following grounds:[8]

1)

THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN REFUSING TO EVEN GIVE CREDENCE THAT THE MEMORANDUM ORDER ISSUED BY MANAGEMENT SUFFICIENTLY JUSTIFIED THE TEMPORARY ASSIGNMENT OF THE PRIVATE RESPONDENT VELASCO AS ALTER-EGO OF THE GENERAL MANAGER, AND THAT THIS WAS ALSO EXPLICITLY,

PROPERLY, AND EFFECTIVELY EXPLAINED IN PETITIONERS' POSITION PAPER.

2)

THE NLRC COMMITTED A GRAVE ABUSE AND REVERSIBLE ERROR IN EVEN REWARDING PRIVATE RESPONDENT VELASCO WHO WENT ON AN UNAUTHORIZED WORK-HOLIDAY FOR A CONTINUOUS PERIOD OF ALMOST TEN (10) MONTHS, WITHOUT ANY LEAVE APPLICATION, THUS REWARDING A WORKER FOR GOING ON AWOL, AND EVEN DELIBERATELY HIDING HERSELF FROM HER EMPLOYER.

3)

ORIGINALLY NEVER THEN CLAIMED THAT SHE WAS ILLEGALLY DISMISSED. SHE DID NOT EVEN CLAIM THAT SHE WAS CONSTRUCTIVELY DISMISSED. SHE INSTEAD APPLIED FOR RETIREMENT, TO PRE-EMPT THE DISCIPLINARY ACTION IMPOSED AGAINST HER. THUS, THE NLRC TOTALLY ACCEPTED HOOK, LINE AND SINKER EVERYTHING THAT THE PRIVATE RESPONDENT ASSERTED IN THIS CASE, TOTALLY OBLIVIOUS OF THE FACT THAT SHE NEVER EVEN RAISED THSE ISSUES ORIGINALLY. THUS, THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT DECREED THE REINSTATEMENT OF THE PRIVATE RESPONDENT OR AWARDED SEPARATION PAY, OR RETIREMENT BENEFIT, OR BACKWAGES.

4)

THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN IGNORING THE EMPLOYERS' RIGHT TO RELY ON THE DECISION OF THE SUPREME COURT IN GTE DIRECTORIES CORPORATION vs. SANCHEZ, ET. AL., G.R. No. 76219, MAY 27, 1991 WHICH MANDATED THE PROCEDURE TO QUESTION AN ASSIGNMENT OR TRANSFER ORDER. THUS, THE NLRC INEQUITABLY AND UNFAIRLY IMPOSED UPON THE EMPLOYERS TO WAIT AND SUFFER IN ETERNITY FROM THE REFUSAL OF THE WORKER TO REPORT TO WORK, WITHOUT CHALLENGING HER ASSIGNMENT OR TRANSFER.

5)

THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN GRANTING BACKWAGES TO THE PRIVATE RESPONDENT VELASCO "RECKONED FROM THE TIME HER SALARY WAS WITHHELD, PARTICULARLY AT THE TIME SHE WAS CONSIDERED ON LEAVE WITHOUT PAY, UP TO THE TIME THE ORDERED SEPARATION PAY OR RETIREMENT BENEFITS IS FULLY PAID", TAKING INTO CONSIDERATION THAT THE COMPLAINANT DELIBERATELY REFUSED TO WORK, AND EVEN HID HERSELF FROM THE EMPLOYER. WORST, AS IN THIS CASE, THE ASPECT OF REINSTATEMENT WAS NOT EVEN FAVORABLY CONSIDERED.

6)

THE NLRC COMMITTED A GRAVE ERROR IN REVERSING THE DECISION OF THE EXECUTIVE LABOR ARBITER WHO DECREED THAT THE PRIVATE RESPONDENT WAS VALIDLY DISMISSED AND THAT SHE WAS NOT ENTITLED TO HER MONETARY CLAIMS.

The core issue is whether or not the respondent Commission acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside the decision of the Executive Labor Arbiter Plagata.

Judicial review of the decisions of the National Labor Relations Commission by way of certiorari under Rule 65 is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the Labor Tribunal. Grave abuse of discretion is committed only when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. A special civil action for certiorari will prosper only if grave abuse of discretion is manifested.

In setting aside the Decision of the Labor Arbiter, the NLRC gave the following reasons, and We quote:

xxx

Thus, a transfer is deemed to be a constructive dismissal when three conditions concur: first: when the transfer is unreasonable, inconvenient or prejudicial to the employee, second, when the transfer involves a demotion in rank or diminution of salaries, benefits and other privileges; and third, when the employer performs a clear act of discrimination, insensibility, or disdain towards the employee, which forecloses any choice by the latter except to forego of his continued employment.

The burden of proof in constructive dismissal cases is on the employer to establish that the transfer of an employee is for valid and legitimate grounds. We find respondents-appellee failed to discharge this burden.

xxx

While said transfer order is allegedly “in the exigency of the service xxx”, respondents-appellee failed to adduce evidence to prove the urgent need to dispatch complainant-appellant to Liloy Area Office. There is nothing on record where it could be inferred that complainant-appellant’s function as staff assistant assigned to and directly reports to the General Manager, who is in this case, respondent-appellee laput himself, is urgently required at Liloy Area Office. Further, there is no showing on record of any request from Liloy Area Office that the latter is in dire need of complainant-appellant’s services as such staff assistant. From the foregoing, we can safely postulate that complainant-appellant’s assignment to the Liloy Area Office was unnecessary and unwarranted which could lead us to give credence to complainant-appellant’s contention that her transfer was one in bad faith and the consequence of her joining in opposing respondent-appellee Laput’s appointment as general manager which the latter got anyway.

Thus, the transfer of complainant-appellant is apparently whimsical if not vindictive considering the “travel distance” from Dipolog City to Liloy, as admitted by respondent-appellant in his 25 May 2009 Transfer of personnel Order, it was designed to inconvenience her who was just then recently married and suffered a miscarriage. Her transfer is therefore viewed as unreasonable considering the attendant circumstances.

Moreover, the transfer order expressly and explicitly mentioned that complainant-appellant is “transferred and assigned temporarily at Liloy Area Office.” However, the same order or succeeding orders of respondent-appellant Laput did not expressly provide for a fixed period for such reassignment or a day certain when such temporary reassignment would wind up giving us the impression that such was for an indefinite period until when complainant-appellant would last. And despite request for her to be returned to base considering that her reassignment was merely temporary, all said pleas were met with total silence on respondent-appellee’s end, particularly respondent-appellee Laput to whom these supplications were addressed. Instead, what she received were warnings for her absences. Such insensibility and disdain exhibited by respondent-appellee resultantly foreclosed any option for the complainant-appellant except for retirement after sixteen (16) years in service.

From the foregoing circumstance, there can be no other conclusion but that complainant-appellant was

constructively dismissed. xxx

xxx

A fortiori, we disagree with the finding of the Executive Labor Arbiter a quo that complainant-appellant Velasco-Yu is guilty of abandonment.

xxx

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.

Thus, in the case before us, the continued absence of complainant-appellant cannot be deemed as abandonment. The fact that she repeatedly requested for her to be returned to respondents-appellee's main office in Dipolog City where she was originally assigned clearly negates the contention that she had intention to sever her employment relations with respondent cooperative.

As regards the termination letter dated 14 October 2010 which states that "xxx for failure and refusal to report to work or got (sic) to your place of assignment since 04 January 2010, until now, you are hereby ordered dismissed from service", the same is rendered moot and academic considering that complainant-appellant was already dismissed constructively as earlier discussed. We view it as a futile attempt of respondents-appellee to make complainant-appellant's discharge legal.

xxx

We do not agree.

The rule in a labor case is that the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. In the present case, petitioners were able to show that private respondent was dismissed for just cause.

Upon a careful consideration of the petition and its subsequent pleadings, as well as the documents attached to them, We find the petition meritorious and give it due course accordingly.

Prior to the termination of private respondent Yu, records reveal the following scenario:

- 1) On May 25, 2009, ZANECO due to the exigency of service, issued a Memorandum ordering private respondent Yu to be transferred temporarily to Liloy Area Office effective June 9, 2009;[9]
- 2) After receiving the Memorandum, Yu wrote a letter dated June 3, 2009, addressed to General Manager Laput, requesting for the reconsideration of her transfer.[10] Her request was granted and extended the effectivity of her transfer to July 16, 2009.[11]
- 3) On July 15, 2009, Yu wrote again to General Manager Laput for another reconsideration of her transfer, but this time, her request was denied by the issuance of an Office No. 2009-22.
- 4) On July 15, 2009,[12] Yu wrote again to Laput asking for another reconsideration of her temporary transfer but was denied in an Office Order No. 2009-22 dated July 15, 2009.[13]
- 5) Yu complied with the Memorandum. On October 1, 2009,[14] Yu wrote a Letter addressed to General Manager Laput requested to be transferred back to the main office in Dipolog City so that she can be reunited with her husband. Attached to her letter, she submitted her Monthly Communication Report addressed to General Manager Laput and letter from General Manager Laput commending Yu for her good work.[15]
- 6) On December 10, 2009,[16] Yu applied then for a Leave of Absence from December 10 to December 29,

2009 for reasons of medical check-up. Her leave of absence was approved by General Manager Laput.[17]

7) Instead of reporting back to work after her approved leave, Yu wrote a letter dated January 5, 2010[18] to General Manager Laput requesting for her re-assignment/transfer to ZANECO Main Office for the reason that she was two (2) months pregnant and was advised by her Ob-Gyne doctor to avoid travel and strenuous physical activities. In the same letter, she admitted that after the date of her approved leave she failed to file her leave of absence since then up to January 4, 2010. Attached to her letter was a Medical Certificate dated January 4, 2010 where the doctor advised her to avoid strenuous physical activities.[19]

8) On February 4, 2010, the Management denied her letter request dated January 5, 2010.[20]

9) On February 8, 2010,[21] Yu wrote again, reiterating her request that she be returned/transferred to the Main Office. We note that after the approved leave of absence, Yu did not report to work nor did she file an Application for Leave of Absence from December 30, 2009 until the day she was terminated.

10) Thus, Management was prompted to apprise her of her remaining leave credits to enlighten her of the importance of filing an application for leave of absence in a letter dated March 31, 2010.[22] The Letter was received by her sister at Yu's residence on April 12, 2010.

11) On April 22, 2010,[23] the Management sent a second notice containing the same tenor of the Letter dated March 31, 2010. The letter was brought to Yu's residence but was informed that Yu was not there. Yu's mother refused to receive the letter and declined to disclose when her daughter will be returning home. Petitioners made several follow-ups in complainant's residence of her whereabouts and were later informed that she had already left for Dumaguete. Again, the mother allegedly refused to give the address of her daughter.

12) On May 4, 2010,[24] Yu wrote a letter addressed to the ZANECO President, copy furnished to the Board of Directors, detailing the notification letters sent her, and pleaded for humanitarian considerations on her predicament.

13) On May 27, 2010, Yu wrote a letter addressed to General Manager Laput, explaining the reason of her 5-month absence without leave was due to her pregnancy, and that she was already in her 7[th] month of pregnancy and requested that she be assigned to Piñan Area Office.

14) For failure to report to work, on July 21, 2010, the Management issued a Memorandum to Yu, directing her to submit her written explanation within 72 hours why no disciplinary action shall be taken against her for failure and refusal to report for work since January 2, 2010. The Memorandum was delivered to Yu's residence, but her mother refused to sign and receive the memorandum.

15) For failure to receive any explanation from Yu, the Management sent her again a second Memorandum dated September 17, 2010, to give her another opportunity to clarify and explain in writing within 72 hours why no disciplinary action shall be taken against her for her failure or refusal to report for work or why she abandoned her job. Copy of the memorandum was left to Yu's mother and at the same time mailed a copy to Yu's last known address at Bolicon, Turno, Dipolog City which was received by a certain Virgie Velasco on October 4, 2010. However, We note that in Yu's position paper, she claimed that she personally received the Memorandum from a postman on October 8, 2010 at 4:45 pm.

16) Again, no compliance was made by Yu, instead, Yu wrote a letter dated to General Manager Laput and opted to apply for retirement from service in her letter dated October 4, 2010.[25]

17) On October 14, 2010, the office issued Memorandum No. 2010-140,[26] terminating the services of respondent Yu for failure and refusal to report to work.

We note that at the earliest instance, petitioner had given private respondent YU the fullest opportunity to explain

as due process of law requires. We find that the termination of the respondent's employment is justified because her actions meant more than being away from work without prior leave. Her absence, under the surrounding circumstances of the case and the injury she caused to the company, gave the employer reason to cite her for refusal to obey lawful orders from the company. After failing to inform her company of her whereabouts and after her deliberate omission to submit her explanation why no disciplinary action should be taken against her, respondent Yu opted to ignore the memorandum/notices sent to her. A careful reading shows that the medical certificate stated that no more than that she needed to avoid strenuous activities; nowhere in the certificate was it stated that she was not allowed to travel or that she was advised to take a bed rest that would somehow justify her long absence from work without leave for ten months (from January up to the time she was terminated on October 14, 2010). In short, respondent Yu, left without notice and without leave of her employer or any of its officers who could make the necessary adjustments in her work assignments. Under the circumstances surrounding the incident, private respondent did in fact abandon her assignment by her failure and refusal to report for work since January 2, 2010. More than that, We find that respondent Yu had exhibited the tendency to bypass authority and to disrespect her superior as shown by her failure to inform her immediate superior of her present address, her failure to file an application for leave of absence, her failure to comply with the company's directive not once but several times, and her trip to Dumaguete City. Thus, based on these considerations, the grounds stated in the company's notice of termination constitute ample reasons for the company to justify the termination of her services.

In Our own consideration of the merits of the case and the cited grounds for termination, We find error of significant weight and substance to call for the reversal in its assailed NLRC Resolution. By private respondent's own acts, tested against common sense standards that should apply to a professional like private respondent, she provided the petitioner employer sufficient reasons to terminate her employment.

Indeed, the employer has the burden of proving that the transfer of an employee is for valid and legitimate grounds.[27] In particular, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.[28]

In the case at bar, We find no showing of bad faith on the part of the petitioner in the exercise of its management prerogative. It has likewise been established that the challenged act of the employer would not result in diminution of petitioner's salaries, benefits, and other privileges.

The right of the employer to transfer employees in the interest of the efficient and economic operation of its business cannot be seriously challenged. That is its prerogative. The only limitation on the discretion of management in this regard is that it be free of mala fides. The only time the employer cannot be allowed to exercise this right is where it is vitiated by improper motive and is merely a disguised attempt to remove or punish the employee sought to be transferred.

We see no reason to ascribe bad faith or malice to the petitioner's move to transfer an employee to another branch. In fact, We even find such movement beneficial to Yu; it is an occasion for obtaining additional knowledge that would give her a more well-rounded familiarity with the operations of the company, and thus help the latter further strengthen its existing internal control system. There appears no justification for denying an employer the right to transfer employees to expand their competence and maximize their full potential for the advancement of the establishment. Respondent Yu claims that her OB-GYNE doctor advised her not to travel, but she gave no evidence to support her claim apart from her medical certificate which merely advised her to avoid strenuous physical activities.

Yu cannot complain that her transfer was inhuman, unfair, and discriminatory because this transfer was against her wishes and inconvenient on her part and it is not commensurate to her self-worth or personal qualifications. Certainly, this Court cannot accept the proposition that when an employee opposes her employer's decision to transfer her to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail.[29] That would subvert the well-entrenched concept of employer's prerogative. We rule that the transfer was a valid exercise of prerogative since no bad faith on the part of the petitioner has been shown.

Let it be emphasized, though, that the prerogative of an employer to transfer an employee, like any other right, is not absolute. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that must be exercised. Thus it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor can it be invoked when the real reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.[30]

In the instant case, petitioner failed to show that such transfer was ill motivated; nor was there any abuse of discretion on the part of petitioner. To sanction the disregard or disobedience by employees of a reasonable rule or order laid down by management would be disastrous to the discipline and order within the enterprise. It is in the interest of both the employer and the employee to preserve and maintain order and discipline in the work environment. Deliberate disregard of company rules or defiance of management prerogative cannot be countenanced. This is not to say that the employees have no remedy against rules or orders they regard as unjust or illegal. They can object to them, ask to negotiate about them, or bring proceedings for redress against the employer. But until and unless the rules or orders are declared to be illegal or improper by competent authority, the employees can only ignore or disobey them at their own peril. A refusal to obey the transfer constitutes willful disobedience of a lawful order of her employer and could be sanctioned under Article 282 of the Labor Code.

FOR THESE REASONS, the petition is GRANTED. The challenged Resolutions of the respondent National Labor Relations Commission in NLRC Case No. MAC-08-012215-2011 (SRAB 09-02-10008-2011) NLRC dated August 5, 2011 and December 28, 2012 respectively are SET ASIDE. The Decision of the Executive Labor Arbiter dated August 8, 2011 is REINSTATED.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Rollo, pp. 57-71.

[2] Rollo, pp. 163-173. By Executive Labor Arbiter Rhett Julius J. Plagata.

[3] Rollo, pp. 72-74.

[4] Rollo, pp. 163-173.

[5] Rollo, p. 173.

[6] Rollo, pp. 58-71.

[7] Rollo, pp. 73-74.

[8] Rollo, pp. 23-25, Assignment of Errors.

- [9] Rollo, p. 99.
- [10] Rollo, p. 100.
- [11] Rollo, p. 101.
- [12] Rollo, p. 102.
- [13] Rollo, p. 103.
- [14] Rollo, p. 104.
- [15] Rollo, p. 167, Decision dated August 5, 2011, p. 5.
- [16] Rollo, p. 105.
- [17] Ibid.
- [18] Rollo, p. 106.
- [19] Rollo, p. 107.
- [20] Rollo, p. 106.
- [21] Rollo, p. 108.
- [22] Rollo, pp. 109-111.
- [23] Rollo, p. 112.
- [24] Rollo, p. 114.
- [25] Rollo, p. 120.
- [26] Rollo, p. 121.
- [27] Philippine Japan Active Carbon Corporation v. NLRC, GR 83239, 171 SCRA 164 [1989].
- [28] Ibid.
- [29] Philippine Telegraph and Telephone Corporation v. Laplana, GR No. 76645, 199 SCRA 485 [1991].
- [30] Pocketbell Philippines, Inc. v. NLRC, GR No. 106843. 240 SCRA 358 [1995].

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