

RAMIL L. CARCAMO AND BASIL SILVA, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION, SYKES ASIA, INC./ROMINA ALCRUZ, ELANE[] CABARON, MARICEL GONZALES, AND MIKE HENDERSON, RES...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision[2] dated September 20, 2012 of the National Labor Relations Commission (“public respondent NLRC” or “NLRC” for brevity), which affirmed the Decision[3] dated May 31, 2012 of the Labor Arbiter in NLRC-NCR NO. 06-09011-11. The Petition also questions the Resolution[4] dated November 26, 2012 of public respondent NLRC, which denied petitioners' eventual Motion for Reconsideration[5].

Among the salient facts are those as stated in public respondent NLRC's Decision[6] of September 20, 2012, which are as follows:

“Complainants Carcamo and Silva (petitioners here) allege that they were hired as regular non-coterminous agents on May 4, 2000 and July 25, 2000, respectively. As Team Leaders, they were entitled to a) no salary ceiling, b) payment of half of dependents' Medicaid premiums, and c) hazard pay. They directly reported to the Account Manager.

In May 2011, complainants (petitioners) were informed that the Microsoft would terminate its service agreement in June 2011, and all employees assigned to the account would be put on 'Temporary Reserved Status' without pay until further notice. xxx

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On November 2, 2011, Silva was recalled and instructed to report back to work at the Marikina Area SMSI. Carcamo was also directed to report on November 14, 2011 at the 43rd Floor One San Miguel Bldg. in Pasig City to which they complied. Silva was assigned to Sykes Marketing Services, Inc.'s Ecount which was not an account of respondent company. Silva was made to report to an Operations Supervisor, and not to an Account Manager. Their benefits were also reduced. They claim that they were constructively dismissed.

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Respondents (private respondents here), on the other hand, admit the complainants' (petitioners) employment as Customer Service Representatives and/or Team Leaders, and were assigned to People.Net account.

On April 13, 2011, Microsoft informed the respondent company of the termination of the account with them. Thus, a total of 323 employees and those assigned to the People.Net account would be displaced. They decided to put the affected employees under a 'Temporary Reserved Status' in tranches. Complainants (petitioners) were notified of the effectivity of their reserved status on June 10, 2011. In contemplation of possible re-assignment to another account, the company conducted interviews and assessments, and required them to attend.

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On October 13, 2011, Recall Notices were sent to complainants (petitioners), and scheduled them for training on November 7, 2011. They contend that there was no constructive dismissal when they were placed under 'Temporary Reserved Status'. The 6-month allowable period had not yet lapsed. They even recalled them back to work, hence, their 'Temporary Reserved Status' had not ripened into constructive dismissal.”[7] (Emphasis supplied)

On June 10, 2011[8], petitioners Ramil L. Carcamo and Basil Silva (“petitioners” for brevity) filed a Complaint for Constructive Illegal Dismissal against private respondents Sykes Asia, Inc. (“private respondents Sykes” for brevity), which is “engaged in the business of operating a multi-lingual, multi-call center”[9], and against Romina Alacruz, Elane Cabaron, Maricel Gonzales, Mike Henderson (“private respondents” for brevity), who were sued in their capacities as officers[10] (“private respondents” for brevity). On November 21, 2011, petitioners filed their Amended Complaint for “constructive illegal dismissal, non-payment of salaries/wages, moral and exemplary damages and attorney's fees”[11].

On May 31, 2012, the Labor Arbiter rendered a Decision[12] which dismissed petitioners' Complaint for lack of merit[13].

Upon petitioners' appeal, public respondent NLRC rendered its assailed Decision[14] of September 20, 2012 which affirmed the Labor Arbiter's Decision.

After petitioners' Motion for Reconsideration[15] was denied by public respondent NLRC in its assailed Resolution[16] of November 26, 2012, petitioners filed the Petition[17] at bench, praying as follows:

“WHEREFORE, it is respectfully prayed that 20 September 2012 Decision and the 26 November 2012 Resolution rendered by the National Labor Relations Commission in NLRC NCR Case No. 06-09011-11/LAC No. 07-002174-12 entitled 'Ramil Carcamo, Basil Basil James Silva, Alwyn Joy Rosel vs. Sykes Asia, Inc. &/or Romina Alacruz, Elaine Cabaron, Maricel Gonzales & Mike Henderson' be ANNULLED and SET ASIDE. In lieu thereof, it is prayed that a decision be rendered declaring petitioners illegally dismissed and ordering private respondents to REINSTATE Carcamo and Silva to their former positions without loss of seniority rights with full backwages and pay each petitioner:

1. Five Hundred Thousand Pesos (Php 500,000.00) as moral damages or such amount as may be deemed just and equitable under the premises.
2. Three Hundred Thousand Pesos (Php 300,000.00) as exemplary damages or such amount as may be deemed just and equitable under the premises.
3. Five Hundred Thousand Pesos (Php 500,000.00) as attorney's fees and other litigation expenses.

Other relief[s] just and equitable are likewise prayed for.”[18] (Italics was made in the original)

Petitioners raised the following grounds:

“ARGUMENTS

I

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION BY COMPLETELY IGNORING THE ESTABLISHED FACTS AND IRREFUTABLE EVIDENCE SHOWING THAT PETITIONERS CARCAMO AND SILVA WERE DEMOTED

II

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THERE WAS NO CONSTRUCTIVE DISMISSAL WHEN PETITIONERS CARCAMO AND SILVA WERE PLACED ON TEMPORARY RESERVED STATUS WITHOUT PAY AND BENEFITS CONSIDERING THAT PRIVATE RESPONDENT COMPANY'S POLICY ITSELF PROVIDES THAT AS REGULAR NON-COTERMINOUS EMPLOYEES, PETITIONERS ARE ENTITLED TO THE CONTINUOUS PAYMENT OF THEIR SALARIES, WAGES AND BENEFITS NOTWITHSTANDING THE WITHDRAWAL OF A CLIENT

III

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION BY FAILING TO AWARD DAMAGES CONSIDERING THAT PRIVATE RESPONDENTS ACTED IN BAD FAITH AND WANTON DISREGARD OF CARCAMO'S AND SILVA'S RIGHTS"[19] (Emphasis and underscoring were made in the original)

Contrary to petitioners' arguments in their assigned grounds I and II, petitioners were not constructively dismissed.

Petitioners had argued as follows:

"It is glaringly obvious that the NLRC turned a blind eye to the following facts:

- 1) SAI's (private respondent Sykes Asia, Inc.) policy that non-coterminous agents hold and retain their respective employment status with SAI regardless of the termination of the account or client to which they are assigned. Accordingly, the salaries, wages, and other benefits received by non-coterminous agents should not be interrupted in case of withdrawal or termination of clients or accounts,
- 2) Petitioners' status as regular non-coterminous employees,
- 3) SAI's 12 May 2011 letter informing petitioners that they were being placed on temporary reserved status without pay until further notice,
- 4) SAI unilaterally issued new guidelines in contravention of petitioners' vested rights under SAI's policy,
- 5) SAI's advertisements which negate private respondents' claim that they were 'constrained' to place petitioners under temporary reserved status,
- 6) Private respondents never presented proof of the supposed necessity to place petitioners under temporary reserved status,
- 7) Petitioner Silva was reinstated and directed to work for Sykes Marketing Services, Inc., a corporation separate and distinct from his employer-Sykes Asia, Inc.;
- 8) Petitioner Carcamo was informed by his superior, Rennie Santos that though the former's position was still Team Leader, he would no longer be handling agents and would merely assist one of the account managers in doing reports.
- 9) While all the other Team Leaders had their own elevated workstation, Carcamo was singled out and directed to sit and work on an agent's workstation;
- 10) Carcamo's and Silva's benefits were reduced upon their reinstatement.
- 11) Private respondents' indifference and refusal to reply or respond to petitioners' letters.

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xxx when petitioners Carcamo and Silva were directed to report for work, they were made to report directly to a Supervisor as their new immediate superior xxx. In other words, they became subordinates of the Supervisor who was formerly of equal rank with them. This is clearly a demotion xxx

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The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but made to appear as if it were not. xxx

xxx

Assuming arguendo that placement of employees under Temporary Reserved Status was a bona fide necessity because [of] the withdrawal of Microsoft as a client. It is petitioners' very contention that they, as non-coterminous employees who, by Sykes Asia Inc.'s own policy enjoy the status and right that their salaries, wages, benefits and work may not be interrupted, should not have been placed under Temporary Reserved Status in the first place.”[20] (Emphasis supplied; Underscoring was made in the original)

Defeating petitioners' arguments however, is that petitioner's having been required by private respondents to report to a supervisor was not a demotion[21], because there was no demotion of petitioner's rank or diminution of petitioner's salary, benefits, and other privileges. Neither was there any act of clear discrimination, insensibility, or disdain committed by private respondents against petitioners which would have left the latter with no option but to discontinue their employment with private respondents.[22]

Moreover, private respondents' act of placing petitioners on a “Temporary Reserved Status” was not tantamount to constructive dismissal. This is because, as the records revealed, the respective notices of “Temporary Reserved Status” dated May 12, 2011[23] of petitioners specified that, among others, “due to business and/or operational exigencies, SYKES [was] constrained to temporarily put [petitioners] on reserved status effective June 10, 2011”[24] and that “Management [would] assist to find [petitioners] another position in the company in the soonest possible time”[25].

However, on June 10, 2011[26], or the date of the implementation of petitioners' “Temporary Reserved Status”, petitioners immediately filed a Complaint for Constructive Dismissal against private respondents. Such filing of a Complaint by petitioners was premature, considering that petitioners were placed on a floating status for a period of not more than six (6) months from such date of implementation, which placement is allowed by law[27]. The premature filing of the Complaint was confirmed by the fact that even before the lapse of the six (6) month period, or on November 2011, private respondents recalled petitioners to work, and instructed them to report back.[28] All of these matters were as also found by public respondent NLRC in its Decision[29] of September 20, 2012, as follows:

“However, immediately upon the effectivity of their reserved status on June 10, 2011, the complainants, filed this complaint for constructive dismissal. At the time, there was no cause of action yet. The filing of the case is, therefore, considered premature. Thus, their claim of constructive dismissal is unfounded.

The Supreme Court has held, 'when the employee is placed on a prolonged 'floating status' lasting for more than six (6) months, he may be considered to have been constructively dismissed from the service' (Agro Commercial Security Services, Inc. vs. NLRC, G.R. No. 82823-24, July 31, 1989).

Despite the premature filing of the instant complaint, respondents recalled Silva and Carcamo on November 2, 2011 and November 14, 2011, respectively, and were given new assignments after attending the training program for the new account xxx;”[30] (Emphasis supplied)

Considering that petitioners were placed by private respondents on a “Temporary Reserved Status” for a period not exceeding six (6) months, then petitioners were not constructively dismissed. This situation is pursuant to the Supreme Court's declaration in *Nippon Housing Phil. Inc., and/or Tadashi Ota, et al. vs. Maiah Angela Leynes*, G.R. No. 177816, August 03, 2011, to wit:

“xxx the record, moreover, shows that NHPI simply placed her on floating status 'until such time that another project could be secured' for her xxx Article 286 of the Labor Code has been applied to other industries when, as a consequence of the bona fide suspension of the operation of a business or undertaking, an employer is constrained to put employees on floating status for a period not exceeding six months xxx NHPI had belatedly ventured into building management and, with BGCC as its only client in said undertaking, had no other Property Manager position available to Leynes.

Considering that even labor laws discourage intrusion in the employers' judgment concerning the conduct of their business, courts often decline to interfere in their legitimate business decisions, absent showing of illegality, bad faith or arbitrariness. Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. The record shows that Leynes filed the complaint for actual illegal dismissal from which the case originated on 22 February 2002 or immediately upon being placed on floating status as a consequence of NHPI's hiring of a new Property Manager for the Project. The rule is settled, however, that 'off-detailing' is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such a 'floating status' lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of said six-month and/or the actual dismissal of the employee is generally considered as prematurely filed.”(Emphasis and underscoring supplied)

Given that petitioners were not constructively dismissed by private respondents, then contrary to petitioners' arguments in their assigned ground III, petitioners were not entitled to the award of Damages.

No cogent reason was therefore shown to justify any deviation from the following findings of public respondent NLRC, which findings were in accordance with the facts and the law:

“Further, his allegation that he was made to report to an Operations Supervisor and not to Account Manager would not make him less of a Team Leader or degrade his personality.

Neither can we say that their benefits were reduced because they have not reported to their new assignment. If they are referring to the time when they were on a floating status, such is authorized by Article 286 of the Labor Code.

After the implementation of their 'Temporary Reserved Status', their services were not terminated. Thus, they remained employees of the company.

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For lack of legal basis, complainants are not entitled to damages.”[31] (Emphasis supplied)

The rule is settled that the findings of the Labor Arbiter, when affirmed by the NLRC, as in the instant case, are accorded due respect and even finality, and are binding upon the court[32] especially when supported by substantial evidence, as in this case.

Thus, after careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent NLRC was shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[33]

IN VIEW OF ALL THESE, the Petition is DENIED.

SO ORDERED.

Dicdican, (Chairperson) and Paredes, JJ., concur.

[*] Also referred as Elaine in the records

[1] Rollo, pp. 3-34

[2] Rollo, pp. 446-454

[3] Rollo, pp. 352-360

[4] Rollo, pp. 476-478

[5] Rollo, pp. 455-474

[6] Rollo, pp. 446-454

[7] Rollo, pp. 447-449

[8] Rollo, p. 354

[9] Rollo, p. 61

[10] Rollo, p. 124

[11] Rollo, p. 352

[12] Rollo, pp. 352-360

[13] Rollo, p. 360

[14] Rollo, pp. 446-454

[15] Rollo, pp. 455-474

[16] Rollo, pp. 476-478

[17] Rollo, pp. 3-34

[18] Rollo, p. 30

[19] Rollo, p. 14

[20] Rollo, pp. 19-27

[21] Rollo, p. 451

[22] Coca-Cola Bottlers Philippines, Inc. vs. Angel U. Del Villar, G.R. No. 163091, October 6, 2010

[23] Rollo, pp. 84-85 and 496-497

[24] Rollo, pp. 84 and 85

[25] Rollo, pp. 84 and 85

[26] Rollo, p. 354

[27] The Labor Code of the Philippines 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.

[28] Rollo, pp. 51-52

[29] Rollo, pp. 446-454

[30] Rollo, pp. 451-452

[31] rollo, pp. 451-453

[32] La Union Cement Workers Union & Arnulfo Almoite vs. National Labor Relations Commission and Bacnotan Cement Corporation (now Holcim Philippines, Inc.), G.R. No. 174621, January 30, 2009

[33] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.

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