

**ABBOTT LABORATORIES (PHILIPPINES), INC., AND JAIME C. VICTA,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND
ALBERT BOBADILLA, RESPONDENTS.**

G.R. No. L-76959. October 12, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of respondent National Labor Relations Commission (NLRC) which set aside the Labor Arbiter's decision dismissing the complaint and instead entered a new decision ordering the complainant's reinstatement with full backwages from the date of his termination until his actual reinstatement.

The antecedent facts as found by the Labor Arbiter and reiterated in the NLRC decision are undisputed:

"Complainant Bobadilla started his employment with respondent company sometime in May 1982. After undergoing training, in September, 1982, complainant was designated professional medical representative (PMR) and was assigned to cover the sales territory comprising of Sta. Cruz, Binondo and a part of Quiapo and Divisoria, of the Metro Manila district. In connection with the respondent company's marketing and sales operations, it has been its policy and established practice of undertaking employment movements and/or reassignments from one territorial area to another as the exigencies of its operations require and to hire only applicant salesmen, including professional medical representatives (PMRs) who are willing to take provincial assignments, at least insofar as male applicants were concerned. Likewise, respondent company had made reassignments or transfers of sales personnel, which included PMRs, from one territorial area of responsibility to another on a more or less regular basis.

"In complainant's application for employment with respondent company, he agreed to the following: 1) that if employed, he will accept assignment in the provinces and/or cities anywhere in the Philippines; 2) he is willing and can move into and live in the territory assigned to him; and 3) that should any answer or statement in his application for employment be found false or incorrect, he will be subject to immediate dismissal, if then employed.

"On 22 July 1983, respondent Victa called complainant to his office and informed the latter that he was being transferred effective 1 August 1983 to the newly opened Cagayan territory comprising the provinces of Cagayan, Nueva Vizcaya and Isabela. The transfer order was made formal in a memorandum dated 29 July 1983. Among the reasons given for complainant's selection as PMR for the Cagayan territory were: 'The territory required a veteran and seasoned PMR who can operate immediately with minimum training and supervision. Likewise, a PMR who can immediately exploit the vast business potential of the area.

"In a letter dated 1 August 1983, which was received by Abbott on 4 August 1983, complainant, thru his lawyer, objected to the transfer on the grounds that it was not only a demotion but also personal and punitive in nature without basis legally and factually.

"On 8 August 1983, Victa issued another inter-office correspondence to complainant, giving the latter up to 15 August 1983 within which to comply with the transfer order, otherwise his name would be dropped from the payroll for having abandoned his job. When complainant failed to report to his new assignment, Abbott assigned thereat Fausto Antonio T. Tibi, another PED PMR who was priorly covering the provinces of Nueva Ecija and Tarlac.

"Meanwhile, complainant filed applications for vacation leave from 2 to 9 August 1983, and then from 10 to 13 August 1983. And on 18 August 1983, he filed the present complaint.

"After due consideration of the evidence adduced by the parties, the Arbiter below ruled for the respondent on the ground that the complainant is guilty of gross insubordination." (pp. 17-19, Rollo; pp. 1-3, NLRC decision)

On appeal, the respondent National Labor Relations Commission reversed the Arbiter's decision and held that herein petitioners had no valid and justifiable reason to dismiss the complainant. The National Labor Relations Commission ordered the latter's reinstatement with backwages.

A motion for reconsideration subsequently filed by the petitioners was denied.

On September 8, 1986, the petitioners filed their second motion for reconsideration which was not favorably acted upon by respondent National Labor Relations Commission as the record of the case had already been transmitted to the labor arbiter for the execution of its decision.

On December 16, 1986, the petitioners and the private respondent agreed before the labor arbiter that the former would bring the case before this Court.

Hence, this present petition.

Petitioners assigned as errors the following:

"x x x [R]espondent NLRC acted in excess of jurisdiction and/or grave abuse of discretion in that --

a] Respondent NLRC disregarded settled law and altered the parties' contract when it stated that private respondent's prior consent was necessary for the validity of his transfer, rendering his consequent dismissal for insubordination illegal.

b] Granting arguendo that prior consent of an employee is required for the validity of his transfer to another territory, private respondent had explicitly given such prior consent as a condition for his hiring and continued employment by petitioner Abbott.

c] Respondent NLRC abused its discretion when it declared private respondent's dismissal illegal despite his clear and wilfull insubordination." (pp. 7, 10 and 11, Rollo).

When asked to comment on the petition as counsel for NLRC, the Solicitor General, assisted by Assistant Solicitor General Zoilo A. Andin and Trial Attorney Alexander Q. Gesmundo, agreed with the petitioners' stand that the dismissal of the private respondent from his employment was for valid reasons.

The main issue in this case is whether or not Albert Bobadilla could be validly dismissed from his employment on the ground of insubordination for refusing to accept his new assignment.

We are constrained to answer in the affirmative.

The hiring, firing, transfer, demotion, and promotion of employees has been traditionally identified as a management prerogative subject to limitations found in law, a collective bargaining agreement, or general principles of fair play and justice. This is a function associated with the employer's inherent right to control and

manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. (See *Dangan v. National Labor Relations Commission*, 127 SCRA 706).

As a general rule, the right to transfer or reassign an employee is recognized as an employer's exclusive right and the prerogative of management.

We agree with the Labor Arbiter's conclusions that:

"Settled is the rule in this regard that an employer, except when limited by special laws, has the right to regulate, according to his own discretion and judgment, all aspects of employment, which includes, among others, hiring, work assignments, place and manner of work, working regulations and transfer of employees in accordance with his operational demands and requirements. This right flows from ownership and from the established rule that labor law does not authorize the substitution of judgment of the employer in the conduct of his business, unless it is shown to be contrary to law, morals or public policy (*NLU v. Insular-Yebana Tobacco Corp.*, 2 SCRA 924, 931; and *Republic Savings Bank v. Court of Industrial Relations*, 21 SCRA 226, 235).

"x x x Abbott, in accordance with the demands and requirements of its marketing and sales operations, adopted a policy to hire only sales applicants who are willing to accept assignments in the provinces anywhere in the Philippines, and to move into and live in the territory assigned to them.

"The existence and implementation of this policy are clearly discernible from the questions appearing in the application form under the heading: 'TO BE FILLED BY SALES APPLICANTS ONLY,' and the fact that Abbott, depending upon the needs of its marketing and sales operations, periodically made transfers or reassignments of its sales people.

"Complainant was precisely hired because he manifested at the outset as a job applicant his willingness to follow the conditions of his employment. In line with the policy, as practiced, Abbot, thru Jaime Victa, issued an inter-office correspondence transferring complainant to a newly opened sales territory - the Cagayan Region, comprising the provinces of Cagayan, Nueva Vizcaya and Isabela. According to respondents, complainant was selected as PMR for the region primarily because he was a veteran and seasoned PMR who can operate immediately with minimum training and supervision.

"That complainant is a veteran and seasoned PMR is admitted. In fact, it is even conceded by respondents that complainant was the leader of his peers in PED, as indicated in the letter dated 20 December 1982 of Jaime Victa to complainant. That the Cagayan Region is relatively inaccessible cannot be debated. That the territory needed a responsible PMR who could work under the least supervision is a judgment of respondents. And that this judgment was arrived at upon consultations among the PED Marketing Manager Jaime Victa, the Director for Administration Francisco Lim, and the General Manager A. C. Bout, has been proven by respondents.

"It appearing, therefore, that the order to transfer complainant is based upon a judgment of his employer Abbott, which judgment to transfer is in line with a company practice which is not contrary to law, morals or public policy, hence, beyond the competence of this office to question, the refusal of complainant to obey the lawful order of Abbott is gross insubordination - a valid cause for dismissal.

"Complainant asserted that the true reason for his transfer was the personal ill motives on the part of respondent Victa who resented the derogatory remarks attributed to him, as purportedly shown in Victa's memoranda dated 20 December 1982 and 26 April 1983. However, a cursory reading of said memoranda in question will show that the same were legitimately issued by Victa in the exercise of his functions as PED Manager. And the fact that

complainant never lifted a finger to formally question said memoranda is a mute admission on his part that the allegations therein are true.

"Complainant also alleged that his transfer was a demotion. However, no explanation was given much less any evidence presented in support of the allegation. On the other hand, it is clear that there was no change in complainant's position and salary, privileges and benefits he was receiving while in Manila. With respect to the sales commission, Abbott claimed that had complainant accepted the assignment, he could have earned more because the sales prospects in the Cagayan Territory, which comprises Nueva Vizcaya, Isabela and Cagayan Province were much higher than the territory assigned to him in Manila. Besides, the assignment offered an important avenue for future promotion, respondent concluded." (pp. 6-9, Labor Arbiter's decision).

Therefore, Bobadilla had no valid reason to disobey the order of transfer. He had tacitly given his consent thereto when he acceded to the petitioners' policy of hiring sales staff who are willing to be assigned anywhere in the Philippines which is demanded by the petitioners' business.

By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassignments are part of the employment contract.

WHEREFORE, the petition is hereby GRANTED. The questioned decision of the National Labor Relations Commission is SET ASIDE. The decision of the Labor Arbiter dated April 16, 1985 is REINSTATED.

SO ORDERED.

Fernan, (Chairman), Bidin, and Cortes, JJ., concur.

Feliciano, J., no part.

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