

PHILIPPINE WIRELESS INC. (POCKETBELL) AND/OR JOSE LUIS SANTIAGO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND GOLDWIN LUCILA, RESPONDENTS.

G.R. No. 112963. July 20, 1999

Ponente: PARDO, J.

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PARDO, J.:

This petition for certiorari is to set aside the decision of the National Labor Relations Commission[1] on the ground that it was rendered with grave abuse of its discretion. The dispositive portion of the decision reads as follows:

"WHEREFORE, finding the appeal to be meritorious the decision appealed from is hereby REVERSED AND SET ASIDE and a new one ENTERED, declaring that the complainant has been constructively dismissed and ordering the respondent to pay him back wages from his dismissal on December 28, 1990 up to the date of the promulgation of this Resolution. And in lieu of reinstatement, respondent is likewise hereby ordered to pay complainant his separation pay at the rate of one (1) month pay for every year of service.

No Cost.

SO ORDERED."

"(s/t) EDNA BONITO-PEREZ

"Presiding Commissioner"[2]

The facts are as follows:

On January 8, 1976, petitioner Philippine Wireless Inc. hired respondent Goldwin Lucila as operator/encoder. On January 7, 1979, he was promoted as Head Technical and Maintenance Department of the Engineering Department. On September 11, 1987, he was promoted as Supervisor, Technical Services of the same department. On October 1, 1990, he was again promoted as Superintendent, Project Management.

On December 28, 1990, he tendered his resignation.

On December 3, 1991, he filed with the Arbitration Branch, National Labor Relations Commission, a complaint for illegal/constructive dismissal. He alleged that he was constructively dismissed inasmuch as his promotion from Supervisor, Technical Services to Superintendent, Project Management is demeaning, illusory and humiliating. The basis of his allegation was the fact that he was not given any secretary, assistant and/or subordinates.

On June 29, 1992, Labor Arbiter Benigno Villarente Jr. rendered a decision declaring that respondent actually resigned and dismissed the complaint for lack of merit.[3]

On June 15, 1993, public respondent NLRC reversed the findings of the labor arbiter, and ordered respondent's reinstatement with back wages or separation pay.

On August 27, 1993, petitioners filed a motion for reconsideration which the National Labor Relations Commission denied for lack of merit in a resolution dated November 16, 1993.

Hence, this petition.

At issue is whether or not petitioner was constructively dismissed from the petitioner's employment.

We find the petition meritorious.

The Court has held that constructive dismissal is "an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." [4] In this particular case, respondent voluntarily resigned from his employment. He was not pressured into resigning.

Voluntary resignation is defined as the act of an employee who "finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment." [5]

Respondent considered his transfer/promotion as a demotion due to the fact that he had no support staff to assist him in his work and whom he could supervise. There is no demotion where there is no reduction in position, rank or salary as a result of such transfer. [6] In fact, respondent Goldwin Lucila was promoted three (3) times from the time he was hired until his resignation from work.

WHEREFORE, the petition is hereby GRANTED. The questioned decision of the National Labor Relations Commission, dated June 15, 1993, is SET ASIDE. The decision of the Labor Arbiter dated June 29, 1992, is REINSTATED and AFFIRMED.

No costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In NLRC-NCR Case No.00-12-06869-91

[2] Rollo, pp. 20-28, Annex A of the petition.

[3] Ibid pp. 55-57.

[4] Escobin vs. NLRC, 289 SCRA 48; Eliseo Tan vs. NLRC, G.R. No. 128290, November 24, 1998.

[5] Habana vs. NLRC, et al, G.R. No. 121486, November 16, 1998.

[6] Juliana Brillantes vs. Guevarra, 27 SCRA 138; Fernando vs. Patricia Sto. Tomas, 234 SCRA 546.

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