

BLUE DAIRY CORPORATION AND/OR EDISON T. AVIGUETERO AND PEDRO G. MIGUEL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELVIRA R. RECALDE, RESPONDENTS.

G.R. No. 129843. September 14, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

BLUE DAIRY CORPORATION, engaged in the processing of dairy and chocolate products, juices and vegetables, hired on 14 May 1994 private respondent Elvira R. Recalde as a food technologist in its laboratory with the following specific functions: microanalysis of toppings and syrup, onions and garlic, and liquid mixes (soft serve and milk shake); physical and chemical analysis of liquid mixes, including raw materials for toppings and syrup and its inspection; routine computation for liquid mixes and supervision while weighing the materials; performing chlorine test for lettuce, red onion, white onion and green pepper; preparation of forms for toppings and syrup; sensory evaluation of toppings and syrup; product development (assistant); and, preparation of food coloring for orange syrup production.[1]

On 22 May 1994, a Sunday, Recalde reported for work but claimed that she was not given her premium pay.

On 21 October 1994 Recalde accompanied Production Manager Editha N. Nicolas in conducting a sensory evaluation of vanilla syrup in one of the outlets of a client. While on their way back to the office a post fell on the company vehicle they were riding due to a raging typhoon damaging the vehicle's windshield and side mirror.

On 3 December 1994 Recalde was transferred from the laboratory to the vegetable processing section where she cored lettuce, minced and repacked garlic and performed similar work, and was restricted from entering the laboratory. She was unhappy. She considered her new job humiliating and menial. On 14 December 1994 she stopped reporting for work. The following day she sent a letter to petitioner Edison T. Aviguetero, the President and Chairman of the Board of Director of Blue Dairy Corporation, reading -

I would like to inform you that I will no longer report for work because of your drastic and oppressive action. And besides, I have already filed a case against BLUE DAIRY CORPORATION and/or EDISON T. AVIGUETERO, PEDRO G. MIGUEL x x x x[2]

On 16 December 1994 Recalde filed a complaint against petitioner Blue Dairy Corporation, Edison T. Aviguetero and Pedro G. Miguel[3] for constructive dismissal and non-payment of premium pay. She also claimed overtime pay as well as moral and exemplary damages plus attorney's fees.

Petitioners contended that Recalde was given a less sensitive assignment outside of the laboratory on account of her dishonesty which resulted in loss of trust and confidence. They seriously took into account the result of the investigation concerning the 21 October incident that Recalde was actually scouting for a new residence using company vehicle without prior permission from the General Manager and during office hours, in violation of par. IV, subpars. B and G, of the company's General Rules and Regulations. Petitioners accorded credence to the

narrations of Rolando V. Flores, driver of the damaged vehicle, to that effect which act of dishonesty could even have merited dismissal from employment had they adhered simply to jurisprudential rule but took into account instead the spirit of the approaching Christmas season.

The Labor Arbiter was convinced that petitioners were guilty of constructive dismissal as he found the justification for Recalde's transfer unreasonable: first, the unofficial trip on the way back to the office on 21 October was undertaken through the bidding of the Production Manager; second, loss of trust and confidence must necessarily occur in the performance of duties; and third, the new position of Recalde was too humiliating and demeaning. The Labor Arbiter also found that petitioners failed to grant premium pay to Recalde for her work performed on 22 May 1994, a Sunday.

On 31 October 1996 petitioners were thus ordered to reinstate Recalde to her former position as food technologist assisting in the quality assurance processes of the company and performing laboratory work without loss of seniority rights and privileges, with full back wages as well as to grant her premium pay, initially computed thus -

Back Wages:

12/14/94 - 12/30/96 = 24.53 mos.

P183.33 x 30 days x 24.53 mos. ----- P134,912.54

Premium Pay for Rest Day:

(May 22, 1994): P183.33 x 30% = P55.00 ---- -55.00

TOTAL AWARD: ----- P134,967.54

The other claims were dismissed for lack of merit.[4]

On 30 April 1997 public respondent National Labor Relations Commission (NLRC) affirmed the ruling.[5] On 19 June 1997 reconsideration was denied.[6]

Petitioners insist that the transfer of Recalde from the laboratory to the vegetable processing section was effected in the exercise of management prerogative. It did not amount to a constructive dismissal as Recalde erroneously maintained. Moreover, petitioners submit that the coring of lettuce together with the other production jobs connected therewith is one of the most important aspects of the corporation's existence; in fact, those assigned to the vegetable processing section are mostly professionals like teachers, computer secretaries and forestry graduates.

No grave abuse of discretion was committed by the NLRC. Indeed, it is the prerogative of management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualifications, aptitudes and competence, and in order to ascertain where he can function with maximum benefit to the company.[7] This is a privilege inherent in the employer's right to control and manage his enterprise effectively. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.[8]

But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.[9] In particular, the employer must be able to show that the 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.[10] Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay.[11] Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[12]

In the present case, petitioners failed to justify Recalde's transfer from the position of food technologist in the laboratory to a worker in the vegetable processing section. We recall that what triggered Recalde's transfer was the 21 October incident where she was found to have allegedly utilized company vehicle in looking for a new residence during office hours without permission from management. In petitioners' view, she was dishonest such that they lost their trust and confidence in her. Yet, it does not appear that Recalde was provided an opportunity to refute the reason for the transfer. Petitioners merely relied on the narrations of the company driver. Nor was Recalde notified in advance of her impending transfer which was, as we shall elucidate later, a demotion in rank. In *Gaco v. NLRC*[13] we noted -

While due process required by law is applied in dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should, as in cases of dismissals, be given a chance to contest the same.

Further, petitioners overstretched the effect of Recalde's claimed wrongdoing. We have ruled that breach of trust and confidence as a ground for dismissal from employment must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer.[14] By analogy, breach of trust and confidence as a ground for reassignment must be related to the performance of the duties of the employee such as would show him to be thereby unfit to discharge the same task. Clearly, the act of dishonesty imputed to Recalde has no bearing at all to her work in the laboratory.

Further still, granting that Recalde was proved guilty of dishonesty, the company's General Rules and Regulations provide the corresponding sanctions therefor. Recalde appears to have no prior record of infractions. For "leaving post temporarily without permission during working hours" committed for the first time, "warning" is imposable, whereas for "unauthorized use of any company vehicle" committed for the first time, the commensurate penalty is "15 days suspension." [15] Although petitioners invoked the pertinent provisions of the rules and regulations which Recalde allegedly violated, for reasons known only to them, they disregarded those sanctions. Instead, they gave her a less sensitive assignment outside of the laboratory as they claimed that had they adhered to the rules she would have been dismissed outright for her dishonesty in the unauthorized use of company property. Then too is their claim that they were moved by compassion on account of the then approaching Christmas season. Commendable as this "compassionate" gesture may seem, nevertheless, petitioners failed to realize that it was not relief from dismissal which they provided to Recalde when they assigned her to the vegetable processing section but discomfiture.

We find insignificant the submission of petitioners that "the coring of lettuce together with the other production jobs connected therewith is one of the most important aspects of the corporation's existence" and that "those assigned to the vegetable processing section are mostly professionals like teachers, computer secretaries and forestry graduates." Rather, the focus should be on the comparison between the nature of Recalde's work in the laboratory and in the vegetable processing section. As food technologist in the laboratory, she occupied a highly technical position requiring use of her mental faculty. As a worker in the vegetable processing section, she

performed mere mechanical work. It was virtually a transfer from a position of dignity to a servile or menial job.[16] We agree with the observation of the Office of the Solicitor General that the radical change in Recalde's nature of work unquestionably resulted in, as rightly perceived by her, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt.

Another aspect of comparison is the workplaces themselves. Petitioners admitted in their answer to Recalde's complaint that -

Respondent's Laboratory is the most expensive area, on a per-square-meter basis, in the company's premises. It is here where the quality of the company's products is tested and assured. Since these products are food items ingested by the consuming public, this Laboratory becomes several folds critical. Hence, only highly trusted authorized personnel are allowed access to this place.[17]

In other words, the laboratory is the place where the quality of the totality of petitioners' products such as dairy, juices, chocolates and vegetables is tested. On the other hand, the vegetable processing section, as the name implies, involves processing of vegetables alone. Definitely, a transfer from a workplace where only highly trusted authorized personnel are allowed access to a workplace that is not as critical is another reason enough for Recalde to howl a protest.

We reiterate that the NLRC did not commit grave abuse of discretion in affirming the ruling of the Labor Arbiter that petitioners are guilty of constructive dismissal. Recalde is entitled to reinstatement as food technologist without loss of seniority rights and privileges and with full back wages, as directed by the Labor Arbiter. We clarify however that conformably with Art. 279 of the Labor Code, as amended by Sec. 34 of RA 6715, to be included in the computation of back wages are the illegally dismissed employee's allowances and other benefits or their monetary equivalent.

WHEREFORE, the petition is DISMISSED. The Decision of public respondent National Labor Relations Commission finding that private respondent Elvira R. Recalde was constructively dismissed from employment and entitled to premium pay is AFFIRMED. Petitioners Blue Dairy Corporation, Edison T. Aviguetero and Pedro G. Miguel are ordered to reinstate private respondent Recalde as food technologist in the laboratory without loss of seniority rights and privileges and with full back wages inclusive of allowances and other benefits or their monetary equivalent to be computed from her dismissal on 14 December 1994 up to actual reinstatement, and to grant her premium pay of P55.00 for work performed on 22 May 1994, a Sunday. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

[1] NLRC Records, p. 14.

[2] Id., p. 26.

[3] Vice President and General Manager, Blue Dairy Corporation.

[4] Decision penned by Labor Arbiter Leandro M. Jose; NLRC Records, pp. 109-110.

[5] Decision penned by Commissioner Rogelio I. Rayala, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay; Rollo, p. 34.

[6] Rollo, p. 36.

[7] Yuco Chemical Industries v. Ministry of Labor, G. R. No. 75656, 28 May 1990, 185 SCRA 727; Philippine Telegraph and Telephone Corporation v. Laplana, G. R. No. 76045, 23 July 1991, 199 SCRA 485; M. Ramirez Industries v. Secretary of Labor and Employment, G. R. No. 89894, 3 January 1997, 266 SCRA 111.

[8] Yuco Chemical Industries v. Ministry of Labor; see Note 8.

[9] Philippine Telegraph and Telephone Corporation v. Laplana; see Note 8.

[10] Philippine-Japan Active Carbon Corporation v. NLRC, G. R. No. 83239, 8 March 1989, 171 SCRA 164.

[11] Ibid.

[12] Philippine Advertising Counselors, Inc. v. NLRC, G. R. No. 120008, 18 October 1996, 263 SCRA 395.

[13] G. R. No. 104690, 23 February 1994, 230 SCRA 260.

[14] Equitable Banking Corporation v. NLRC, G. R. No. 102467, 13 June 1997, 273 SCRA 352.

[15] Par. IV (B and G) of petitioner company's general rules and regulations; NLRC Records, pp. 29 and 30.

[16] Quisaba v. Sta Ines-Melale Veneer and Plywood, Inc., No. L-38088, 30 August 1974, 58 SCRA 771.

[17] NLRC Records, p. 20.

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