NAGKAHIUSANG NAMUMUO SA DASUCECO-NATIONAL FEDERATION OF LABOR (NAMADA-NFL) AND ROSENDO EBORDA, PETITIONERS, VS. DAVAO SUGAR CENTRAL CO. INC. AND MR. CONSTANCIO B. GALINATO, GENE...

G.R. NO. 145848. August 09, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Sometime in 1997, Romeo Ardas, one of three shift warehousemen at the Davao Sugar Central Company, Inc. (DASUCECO), retired.

Geminiano Hortel (Hortel), DASUCECO's product warehouseman, recommended petitioner Rosendo Eborda (Eborda) to the position of shift warehouseman vacated by Romeo Ardas, by letter of September 10, 1997 addressed to DASUCECO's personnel manager Cesar de Ramos. The body of the letter reads:

> I highly recommend ROSENDO EBORDA, JR. as SHIFT WAREHOUSEMAN in lieu of ROMEO ARDAS who recently retired from employment.
>
> Recommendee possess (sic) the necessary qualifications for the position through his experience as Sugar Checker of Product Warehouse where job functions and responsibilities is (sic) nearest to the position vacant.
>
> For your perusal and disposition.
>
> Thank you.
>
> x x x x[1] (Underscoring supplied)

The recommendation-letter bore the approval of Rolando Cantila (Cantila), "ICO Supervisor." Personnel Officer Cesar de Ramos did not act on the recommendation, however.

The pertinent provision of Article III, Section 4 of the Collective Bargaining Agreement (CBA) forged between DASUCECO and its exclusive bargaining union, herein petitioner NAGKAHIUSANG NAMUMUO SA DASUCECO-NATIONAL FEDERATION OF LABOR (NAMADA-NFL) (the union), reads:

> SECTION 4. FILLING OF VACANCIES
>
> Where a vacancy arises, resulting from the creation of new positions or any other causes, preference shall be given to employees who, in the judgment of the COMPANY, possess the necessary qualifications for the position. The COMPANY shall first determine who would be the best suited or qualified for the position through the use of the established criteria of ability, efficiency, qualifications and experience in handling the job. When, in the judgment of the COMPANY, all such factors or criteria are equal, the employees whose job level is nearest to the position vacant will be given preference in filling up the same. In case of equal job levels between two or more employees, seniority shall be the deciding factor. Seniority shall be determined on the basis of the employees' length of continuous service with the COMPANY, counted from probationary

> employment. x x x."[2] (Emphasis and underscoring supplied)

In 1998, a vacancy again occurred in one of the two remaining positions of shift warehouseman, the incumbent thereof having been transferred to another position in DASUCECO.

On January 4, 1988, DASUCECO promoted its employee Wilfredo Vilbar to one of those vacant positions of shift warehouseman, prompting Eborda, through the union, to avail of the grievance procedure under the CBA, he protesting that DASUCECO violated the above-quoted Section 4 of Article III of the CBA.

As nothing came out of his protest, Eborda and the union lodged a complaint before the Regional Office of the National Conciliation and Mediation Board. The complaint was referred to Voluntary Arbitrator Conrado Macasa, Sr.

Finding Hortel's letter-recommendation to be a management determination that Eborda was qualified for the position of shift warehouseman, the Voluntary Arbitrator rendered judgment, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> - Declaring respondents to have violated Section 4, Article III of the CBA;
>
> - Directing respondents to effect the promotion of ROSENDO EBORDA to the position of Shift Warehouseman effective immediately;
>
> - Directing respondents to pay ROSENDO EBORDA his salary differentials from job level 2 to job level 4 effective January 4, 1999, per agreement of the parties.[3]

On Petition for Review, the Court of Appeals, by Decision of May 30, 2000,[4] reversed the Voluntary Arbitrator's decision.

In resolving in the negative the main issue of "whether the letter-recommendation, in itself and without approval of the personnel officer, constitutes a management determination that Eborda is qualified for the vacancy in question," the appellate court held that the letter-recommendation was a mere proposal or advice, subject to the final approval of DASUCECO's personnel officer, hence, not determinative of Eborda's entitlement to appointment to the vacancy of shift warehouseman, citing Bermudez v. Executive Secretary Torres[5] and Bothelho Shipping Corporation v. Hon. Leuterio, et al.[6]

The appellate court amplified its finding in this wise:

> The Supreme Court has, in a long line of cases, upheld the employer's management prerogative on personnel matters. In Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission (281 SCRA 509), it ruled :
> The hiring, firing, transfer, demotion, and promotion of employees has been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in 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.

Indeed, the exercise of management prerogative is valid provided it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite (Great Pacific Life Employees Union vs. Great pacific Life Assurance Corporation, G.R. No. 126717, February 11, 1999).

The records show that DASUCECO's decision not to promote Eborda was based on these vital considerations: (i)

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that per his medical records, he was suffering from acute anxiety disorder and brief reactive psychosis, a condition likely to affect his efficiency and ability to get along with fellow workers; and (ii) he does not possess the required educational qualification for the subject position, i.e., at least college level, as he is merely a high school graduate.

On the other hand, the letter-recommendation is merely based on Eborda's "experience as Sugar Checker". It did not consider the other qualifications required for the position of shift warehouseman.

Since there is no showing of bad faith on the part of DASUCECO in refusing to promote Eborda, We rule that it validly exercised its management prerogative in accordance with the CBA and the basic tenets of justice and fair play.[7] (Emphasis and underscoring supplied)

Their Motion for Reconsideration having been denied, petitioners lodged the present Petition for Review, contending that the appellate court

> . . . MUST HAVE SERIOUSLY ERRED IN RESOLVING THAT THE RECOMMENDATION OF SUPERVISORY EMPLOYEES WAS INEFFECTIVE AND NOT BINDING AND OBLIGATORY ON THE PART OF THE MANAGEMENT.[8]

Petitioners draw attention to the definition of Supervisory Employees under Article 212(m) of Presidential Decree No. 442, as amended (Labor Code of the Philippines) which goes:

> ART. 212(m) x x x
>
> . . . Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. x x x (Emphasis supplied)

To petitioners, the phrase "effectively recommend such managerial actions" in the above-quoted provision of the Labor Code should not be construed as an ordinary recommendation, like the recommendation of a politician given to one for the purpose of employment or an ordinary business transaction. The phrase should be construed, they suggest, to mean that "the management has to really act based on the recommendation of its supervisors who after all knows [sic] more about the conduct, demeanor, and work attitude of the concerned worker."[9]

Respecting the cases cited by the appellate court, petitioners contend that those are not labor-related and the recommendations subject therein are not made by supervisory employees.

Respondents DASUCECO and its General Manager maintain, however, that DASUCECO cannot be compelled to promote Eborda on the basis of the recommendation, the same being subject to the final approval of the management.

Respondents invite attention to the following specifications or qualifications for the position of shift warehouseman:

> - Holder of Bachelor['s] Degree preferably Engineering or Commerce major in accounting. If college level, at least seven (7) years experience in Sugar Warehouse activities in a Sugar Mill or Refinery.
>
> - Preferably with experience in Warehouse activities.
>
> - Ability to get along with fellow workers.
>
> - With good moral character.
>
> - Not more than 35 years old.[10] (Underscoring supplied)

Further, they invite attention to the fact that the recommendation of Hortel and Cantila for the promotion of

Eborda was mainly on account of "his experience as Sugar Checker of Product Warehouse."[11]

Respondents thus emphasize that DASUCECO did not approve the recommendation after it considered the qualifications of Eborda vis-à-vis the specifications/qualifications for the position of shift warehouseman. Respondents add that "most importantly, as required by law,"[12] DASUCECO exercised in good faith its management prerogative not to promote petitioner Eborda.[13]

The petition fails.

Indeed, as the above-quoted body of the letter of Hortel which bore the approval of Cantila clearly shows, the recommendation for the promotion of Eborda was based on a finding that he "posses[es] the necessary qualifications through his experience . . ."

Since petitioner does not even meet the above-quoted educational qualification for the position of shift warehouseman as he merely finished high school, not to mention that, as noted by the appellate court, his medical records showed that he was suffering from acute anxiety disorder and brief reactive psychosis which are likely to affect his efficiency and ability to get along with his fellow workers, the decision of DASUCECO, which does not appear to have been actuated by bad faith, not to promote Eborda was a management prerogative which must be respected.

WHEREFORE, the petition is DENIED.

Costs against petitioners.
SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 35.

[2] CA rollo, pp. 79-80.

[3] Id. at 82.

[4] Penned by Justice Edgardo P. Cruz and concurred in by Justices Ramon A. Barcelona and Marina L. Buzon, CA rollo at 79-86

[5] 370 Phil. 769 (1999) citing Cuyegkeng v. Cruz, 108 Phil. 1147 (1960).

[6] 118 Phil. 127 (1963).

[7] CA rollo pp. 84-85.

[8] Rollo, p. 11.

[9] Id. at 12.

[10] Id. at 60.

[11] Id. at 62.

[12] Manila Electric Company v. NLRC, 331 Phil. 838 (1996).

[13] Rollo, p. 64.

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