

**BISIG MANGGAGAWA SA TRYCO AND/OR FRANCISCO SIQUIG, AS
UNION PRESIDENT, JOSELITO LARIÑO, VIVENCIO B. BARTE,
SATURNINO EGERA AND SIMPLICIO AYA-AY, PETITIONERS, VS.
NATIONAL LABOR ...**

G.R. No. 151309. October 15, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This petition seeks a review of the Decision[1] of the Court of Appeals (CA) dated July 24, 2001 and Resolution dated December 20, 2001, which affirmed the finding of the National Labor Relations Commission (NLRC) that the petitioners' transfer to another workplace did not amount to a constructive dismissal and an unfair labor practice.

The pertinent factual antecedents are as follows:

Tryco Pharma Corporation (Tryco) is a manufacturer of veterinary medicines and its principal office is located in Caloocan City. Petitioners Joselito Lariño, Vivencio Barte, Saturnino Egera and Simplicio Aya-ay are its regular employees, occupying the positions of helper, shipment helper and factory workers, respectively, assigned to the Production Department. They are members of Bisig Manggagawa sa Tryco (BMT), the exclusive bargaining representative of the rank-and-file employees.

Tryco and the petitioners signed separate Memorand[a] of Agreement[2] (MOA), providing for a compressed workweek schedule to be implemented in the company effective May 20, 1996. The MOA was entered into pursuant to Department of Labor and Employment Department Order (D.O.) No. 21, Series of 1990, Guidelines on the Implementation of Compressed Workweek. As provided in the MOA, 8:00 a.m. to 6:12 p.m., from Monday to Friday, shall be considered as the regular working hours, and no overtime pay shall be due and payable to the employee for work rendered during those hours. The MOA specifically stated that the employee waives the right to claim overtime pay for work rendered after 5:00 p.m. until 6:12 p.m. from Monday to Friday considering that the compressed workweek schedule is adopted in lieu of the regular workweek schedule which also consists of 46 hours. However, should an employee be permitted or required to work beyond 6:12 p.m., such employee shall be entitled to overtime pay.

Tryco informed the Bureau of Working Conditions of the Department of Labor and Employment of the implementation of a compressed workweek in the company.[3]

In January 1997, BMT and Tryco negotiated for the renewal of their collective bargaining agreement (CBA) but failed to arrive at a new agreement.

Meantime, Tryco received the Letter dated March 26, 1997 from the Bureau of Animal Industry of the Department of Agriculture reminding it that its production should be conducted in San Rafael, Bulacan, not in Caloocan City:

MR. WILFREDO C. RIVERA
President, Tryco Pharma Corporation
San Rafael, Bulacan

Subject: LTO as VDAP Manufacturer at San Rafael, Bulacan

Dear Mr. Rivera:

This is to remind you that your License to Operate as Veterinary Drug and Product Manufacturer is addressed at San Rafael, Bulacan, and so, therefore, your production should be done at the above mentioned address only. Further, production of a drug includes propagation, processing, compounding, finishing, filling, repacking, labeling, advertising, storage, distribution or sale of the veterinary drug product. In no instance, therefore, should any of the above be done at your business office at 117 M. Ponce St., EDSA, Caloocan City.

Please be guided accordingly.

Thank you.

Very truly yours,

(sgd.)
EDNA ZENAIDA V. VILLACORTE, D.V.M.
Chief, Animal Feeds Standard Division[4]

Accordingly, Tryco issued a Memorandum[5] dated April 7, 1997 which directed petitioner Aya-ay to report to the company's plant site in Bulacan. When petitioner Aya-ay refused to obey, Tryco reiterated the order on April 18, 1997.[6] Subsequently, through a Memorandum[7] dated May 9, 1997, Tryco also directed petitioners Egera, Lariño and Barte to report to the company's plant site in Bulacan.

BMT opposed the transfer of its members to San Rafael, Bulacan, contending that it constitutes unfair labor practice. In protest, BMT declared a strike on May 26, 1997.

In August 1997, petitioners filed their separate complaints[8] for illegal dismissal, underpayment of wages, nonpayment of overtime pay and service incentive leave, and refusal to bargain against Tryco and its President, Wilfredo C. Rivera. In their Position Paper,[9] petitioners alleged that the company acted in bad faith during the CBA negotiations because it sent representatives without authority to bind the company, and this was the reason why the negotiations failed. They added that the management transferred petitioners Lariño, Barte, Egera and Aya-ay from Caloocan to San Rafael, Bulacan to paralyze the union. They prayed for the company to pay them their salaries from May 26 to 31, 1997, service incentive leave, and overtime pay, and to implement Wage Order No. 4.

In their defense, respondents averred that the petitioners were not dismissed but they refused to comply with the management's directive for them to report to the company's plant in San Rafael, Bulacan. They denied the allegation that they negotiated in bad faith, stating that, in fact, they sent the Executive Vice-President and Legal Counsel as the company's representatives to the CBA negotiations. They claim that the failure to arrive at an agreement was due to the stubbornness of the union panel.

Respondents further averred that, long before the start of the negotiations, the company had already been planning to decongest the Caloocan office to comply with the government policy to shift the concentration of manufacturing activities from the metropolis to the countryside. The decision to transfer the company's production activities to San Rafael, Bulacan was precipitated by the letter-reminder of the Bureau of Animal Industry.

On February 27, 1998, the Labor Arbiter dismissed the case for lack of merit.[10] The Labor Arbiter held that the

transfer of the petitioners would not paralyze or render the union ineffective for the following reasons: (1) complainants are not members of the negotiating panel; and (2) the transfer was made pursuant to the directive of the Department of Agriculture.

The Labor Arbiter also denied the money claims, ratiocinating that the nonpayment of wages was justified because the petitioners did not render work from May 26 to 31, 1997; overtime pay is not due because of the compressed workweek agreement between the union and management; and service incentive leave pay cannot be claimed by the complainants because they are already enjoying vacation leave with pay for at least five days. As for the claim of noncompliance with Wage Order No. 4, the Labor Arbiter held that the issue should be left to the grievance machinery or voluntary arbitrator.

On October 29, 1999, the NLRC affirmed the Labor Arbiter's Decision, dismissing the case, thus:

PREMISES CONSIDERED, the Decision of February 27, 1998 is hereby AFFIRMED and complainants' appeal therefrom DISMISSED for lack of merit. Complainants Joselito Lariño, Vivencio Barte, Saturnino Egera and Simplicio Aya-ay are directed to report to work at respondents' San Rafael Plant, Bulacan but without backwages. Respondents are directed to accept the complainants back to work.

SO ORDERED.[11]

On December 22, 1999, the NLRC denied the petitioners' motion for reconsideration for lack of merit.[12]

Left with no recourse, petitioners filed a petition for certiorari with the CA.

On July 24, 2001, the CA dismissed the petition for certiorari and ruled that the transfer order was a management prerogative not amounting to a constructive dismissal or an unfair labor practice. The CA further sustained the enforceability of the MOA, particularly the waiver of overtime pay in light of this Court's rulings upholding a waiver of benefits in exchange of other valuable privileges. The dispositive portion of the said CA decision reads:

WHEREFORE, the instant petition is DISMISSED. The Decision of the Labor Arbiter dated February 27, 1998 and the Decision and Resolution of the NLRC promulgated on October 29, 1999 and December 22, 1999, respectively, in NLRC-NCR Case Nos. 08-05715-97, 08-06115-97 and 08-05920-97, are AFFIRMED.

SO ORDERED.[13]

The CA denied the petitioners' motion for reconsideration on December 20, 2001.[14]

Dissatisfied, petitioners filed this petition for review raising the following issues:

-A-

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE PATENTLY ERRONEOUS RULING OF THE LABOR ARBITER AND THE COMMISSION THAT THERE WAS NO DISMISSAL, MUCH LESS ILLEGAL DISMISSAL, OF THE INDIVIDUAL PETITIONERS.

-B-

THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING AND CONCLUDING THAT PRIVATE RESPONDENTS COMMITTED ACTS OF UNFAIR LABOR PRACTICE.

-C-

THE COURT OF APPEALS ERRED IN NOT FINDING AND CONCLUDING THAT PETITIONERS ARE ENTITLED TO THEIR MONEY CLAIMS AND TO DAMAGES, AS WELL AS LITIGATION COSTS AND ATTORNEY'S FEES.[15]

The petition has no merit.

We have no reason to deviate from the well-entrenched rule that findings of fact of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[16] This is particularly true when the findings of the Labor Arbiter, the NLRC and the CA are in absolute agreement.[17] In this case, the Labor Arbiter, the NLRC, and the CA uniformly agreed that the petitioners were not constructively dismissed and that the transfer orders did not amount to an unfair labor practice. But if only to disabuse the minds of the petitioners who have persistently pursued this case on the mistaken belief that the labor tribunals and the appellate court committed grievous errors, this Court will go over the issues raised in this petition.

Petitioners mainly contend that the transfer orders amount to a constructive dismissal. They maintain that the letter of the Bureau of Animal Industry is not credible because it is not authenticated; it is only a ploy, solicited by respondents to give them an excuse to effect a massive transfer of employees. They point out that the Caloocan City office is still engaged in production activities until now and respondents even hired new employees to replace them.

We do not agree.

We refuse to accept the petitioners' wild and reckless imputation that the Bureau of Animal Industry conspired with the respondents just to effect the transfer of the petitioners. There is not an iota of proof to support this outlandish claim. Absent any evidence, the allegation is not only highly irresponsible but is grossly unfair to the government agency concerned. Even as this Court has given litigants and counsel a relatively wide latitude to present arguments in support of their cause, we will not tolerate outright misrepresentation or baseless accusation. Let this be fair warning to counsel for the petitioners.

Furthermore, Tryco's decision to transfer its production activities to San Rafael, Bulacan, regardless of whether it was made pursuant to the letter of the Bureau of Animal Industry, was within the scope of its inherent right to control and manage its enterprise effectively. While 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.[18]

This prerogative extends to the management's right to regulate, according to its own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business.[19] Management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business is, therefore, generally not constitutive of constructive dismissal.[20] Thus, the consequent transfer of Tryco's personnel, assigned to the Production Department was well within the scope of its management prerogative.

When the transfer is not unreasonable, or inconvenient, or prejudicial to the employee, and it does not involve a demotion in rank or diminution of salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.[21] However, the employer has the burden of proving that the transfer of an employee is for valid and legitimate grounds. The employer must 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.[22]

Indisputably, in the instant case, the transfer orders do not entail a demotion in rank or diminution of salaries, benefits and other privileges of the petitioners. Petitioners, therefore, anchor their objection solely on the ground that it would cause them great inconvenience since they are all residents of Metro Manila and they would incur

additional expenses to travel daily from Manila to Bulacan.

The Court has previously declared that mere incidental inconvenience is not sufficient to warrant a claim of constructive dismissal.[23] Objection to a transfer that is grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.[24]

Incidentally, petitioners cite *Escobin v. NLRC*[25] where the Court held that the transfer of the employees therein was unreasonable. However, the distance of the workplace to which the employees were being transferred can hardly compare to that of the present case. In that case, the employees were being transferred from Basilan to Manila; hence, the Court noted that the transfer would have entailed the separation of the employees from their families who were residing in Basilan and accrual of additional expenses for living accommodations in Manila. In contrast, the distance from Caloocan to San Rafael, Bulacan is not considerably great so as to compel petitioners to seek living accommodations in the area and prevent them from commuting to Metro Manila daily to be with their families.

Petitioners, however, went further and argued that the transfer orders amounted to unfair labor practice because it would paralyze and render the union ineffective.

To begin with, we cannot see how the mere transfer of its members can paralyze the union. The union was not deprived of the membership of the petitioners whose work assignments were only transferred to another location.

More importantly, there was no showing or any indication that the transfer orders were motivated by an intention to interfere with the petitioners' right to organize. Unfair labor practice refers to acts that violate the workers' right to organize. With the exception of Article 248(f) of the Labor Code of the Philippines, the prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices.[26]

Finally, we do not agree with the petitioners' assertion that the MOA is not enforceable as it is contrary to law. The MOA is enforceable and binding against the petitioners. Where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[27]

D.O. No. 21 sanctions the waiver of overtime pay in consideration of the benefits that the employees will derive from the adoption of a compressed workweek scheme, thus:

The compressed workweek scheme was originally conceived for establishments wishing to save on energy costs, promote greater work efficiency and lower the rate of employee absenteeism, among others. Workers favor the scheme considering that it would mean savings on the increasing cost of transportation fares for at least one (1) day a week; savings on meal and snack expenses; longer weekends, or an additional 52 off-days a year, that can be devoted to rest, leisure, family responsibilities, studies and other personal matters, and that it will spare them for at least another day in a week from certain inconveniences that are the normal incidents of employment, such as commuting to and from the workplace, travel time spent, exposure to dust and motor vehicle fumes, dressing up for work, etc. Thus, under this scheme, the generally observed workweek of six (6) days is shortened to five (5) days but prolonging the working hours from Monday to Friday without the employer being obliged for pay overtime premium compensation for work performed in excess of eight (8) hours on weekdays, in exchange for the benefits abovesited that will accrue to the employees.

Moreover, the adoption of a compressed workweek scheme in the company will help temper any inconvenience that will be caused the petitioners by their transfer to a farther workplace.

Notably, the MOA complied with the following conditions set by the DOLE, under D.O. No. 21, to protect the interest of the employees in the implementation of a compressed workweek scheme:

- The employees voluntarily agree to work more than eight (8) hours a day the total in a week of which shall not exceed their normal weekly hours of work prior to adoption of the compressed workweek arrangement;
- There will not be any diminution whatsoever in the weekly or monthly take-home pay and fringe benefits of the employees;
- If an employee is permitted or required to work in excess of his normal weekly hours of work prior to the adoption of the compressed workweek scheme, all such excess hours shall be considered overtime work and shall be compensated in accordance with the provisions of the Labor Code or applicable Collective Bargaining Agreement (CBA);
- Appropriate waivers with respect to overtime premium pay for work performed in excess of eight (8) hours a day may be devised by the parties to the agreement.
- The effectivity and implementation of the new working time arrangement shall be by agreement of the parties.

PESALA v. NLRC,[28] cited by the petitioners, is not applicable to the present case. In that case, an employment contract provided that the workday consists of 12 hours and the employee will be paid a fixed monthly salary rate that was above the legal minimum wage. However, unlike the present MOA which specifically states that the employee waives his right to claim overtime pay for work rendered beyond eight hours, the employment contract in that case was silent on whether overtime pay was included in the payment of the fixed monthly salary. This necessitated the interpretation by the Court as to whether the fixed monthly rate provided under the employment contract included overtime pay. The Court noted that if the employee is paid only the minimum wage but with overtime pay, the amount is still greater than the fixed monthly rate as provided in the employment contract. It, therefore, held that overtime pay was not included in the agreed fixed monthly rate.

Considering that the MOA clearly states that the employee waives the payment of overtime pay in exchange of a five-day workweek, there is no room for interpretation and its terms should be implemented as they are written.

WHEREFORE, the petition is DENIED. The Court of Appeals Decision dated July 24, 2001 and Resolution dated December 20, 2001 are AFFIRMED.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Chico-Nazario and Reyes, JJ., concur.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Raffle dated September 1, 2008.

[1] Penned by Associate Justice Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court), with Associate Justices Hilarion L. Aquino and Jose L. Sabio, Jr., concurring; rollo, pp. 41-49.

[2] CA rollo, pp. 252-272.

[3] Id. at 249-250.

[4] Id. at 244.

[5] Id. at 246.

[6] Id. at 247.

[7] Id. at 248.

[8] Rollo, pp. 64-69.

[9] Id. at 71-78.

[10] Id. at 110-118.

[11] Id. at 135.

[12] Id. at 161-162.

[13] Id. at 48.

[14] Id. at 51.

[15] Id. at 20.

[16] Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 191.

[17] Domondon v. National Labor Relations Commission, G.R. No. 154376, September 30, 2005, 471 SCRA 559, 566.

[18] Hongkong and Shanghai Banking Corporation v. NLRC, 346 Phil. 524, 535 (1997).

[19] Benguet Electric Cooperative v. Verzosa, 468 Phil. 980, 992 (2004).

[20] Id. at 995.

[21] Id. at 996.

[22] Tinio v. Court of Appeals, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 541.

[23] Duldulao v. Court of Appeals, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 202.

[24] Mercury Drug Corporation v. Domingo, G.R. No. 143998, April 29, 2005, 457 SCRA 578, 592.

[25] 351 Phil. 973 (1998).

[26] Philcom Employees Union v. Philippine Global Communications, G.R. No. 144315, July 17, 2006, 495 SCRA 214, 235.

[27] Land and Housing Development Corporation v. Esquillo, G.R. No. 152012, September 30, 2005, 471 SCRA 488, 498.

[28] 329 Phil. 581 (1996).

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