

**PHILIPPINE TELEGRAPH & TELEPHONE CORPORATION,
PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR
RELATIONS COMMISSION, PT&T PROGRESSIVE WORKERS
UNION-NAFLU-KMU, CRISTINA RODIEL, J...**

G.R. No. 152057. September 29, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review filed by petitioner Philippine Telegraph and Telephone Corporation (PT&T) of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 54346 promulgated on June 15, 2001 affirming the resolution of the National Labor Relations Commission (NLRC) promulgated on May 31, 1999 reversing the decision of the Labor Arbiter, and its Resolution dated February 6, 2002 denying the petitioner's motion for reconsideration.

The petitioner is a domestic corporation engaged in the business of providing telegraph and communication services thru its branches all over the country. It employed various employees, among whom were the following:

- Cristina Rodiel, initially as a Probationary Junior Counter- Clerk on July 1, 1995 at the Cabanatuan Branch, regularized on November 28, 1995;
- Jesus Paracale as a Probationary Junior CW Operator in Padada, Davao del Sur on November 16, 1988, regularized on April 15, 1990, transferred to Malita, Davao Branch on November 16, 1990, to Makar, South Cotabato Branch on September 1, 1994 and to Kiamba, South Cotabato Branch on April 1, 1995;
- Romeo Tee as Counter-Clerk at the Zamboanga Branch on January 16, 1982, as a TTY Operator on November 16, 1986, promoted as TTY Operator General on November 1, 1989 and designated as TRITY Operator Regions on July 1, 1997;
- Benjamin Lakandula as a Counter-Clerk at the Iligan City Branch on January 16, 1982;
- Avelino Acha as Probationary Junior Counter at the Naga City Branch, regularized on June 10, 1983, transferred to Legaspi City Branch on November 16, 1989;
- Ignacio Dela Cerna as a Probationary Junior CW-Operator in at the Pagadian City Branch regularized on March 15, 1986 and designated as TR/TTY Operator Regions on July 1, 1993 at the Pagadian City Branch, and
- Guillermo Demigillo as Clerk.[2]

Sometime in 1997, after conducting a series of studies regarding the profitability of its retail operations, its existing branches and the number of employees, the petitioner came up with a Relocation and Restructuring Program designed to (a) sustain its (PT&T's) retail operations; (b) decongest surplus workforce in some branches, to promote efficiency and productivity; (c) lower expenses incidental to hiring and training new personnel; and (d) avoid retrenchment of employees occupying redundant positions.[3]

On August 11, 1997, private respondents Cristina Rodiel, Jesus Paracale, Romeo Tee, Benjamin Lakandula, Avelino Acha, Ignacio Dela Cerna and Guillermo Demigillo received separate letters from the petitioner, giving them the option to choose the branch to which they could be transferred. Thereafter through HRAG Bulletin No. 97-06-16, the private respondents and other petitioner's employees were directed to "relocate" to their new PT&T Branches. The affected employees were directed to report to their respective relocation assignments in a Letter dated September 16, 1997.

The petitioner offered benefits/allowances to those employees who would agree to be transferred under its new program, thus:

EXISTING
RELOCATION
ALLOWANCE SPECIAL
RELOCATION
ALLOWANCE FLAT
RELOCATION
ALLOWANCE MOVING
EXPENSES
(FREIGHT)

1. Temporary relocation - per diem of P260.00/day 2.1 Married employee bringing along his family
P17,500.00
P15,000

2. Permanent relocation - a flat monthly allowance of P5,100.00 2.2 Married employee not bringing along his family

P10,000.00
N/A

2.3 Single employee bringing along his qualified dependent/s

P10,000.00
P15,000

2.4 Single employee not bringing along his dependent/s

P7,000.00
N/A[4]

Moreover, the employees who would agree to the transfers would be considered promoted, thus:

FROM TO

NAME POSITION/JG* WORK
LOCATION POSITION WORK
LOCATION

1. ACHA, AVELINO Jr. Counter-
JG2 Legaspi (Br) Courier - JG3 Romblon/
Odiongan (SL)
2. RODIEL, CRISTINA Jr. Counter
Clerk-JG2 Cabanatuan
(CL) Clerk-JG4 Baguio (NWL)
3. DELA CERNA, IGNACIO Jr. CW
Operator-JG2 Cotabato City
(CM) Clerk-JG4 Kidapawan (CM)
4. DEMIGILLO GUILLERMO Jr. CW
Operator-JG2 Midsayap
North Courier-JG3 Lebak (CM)
5. LAKANDULA, BENJAMIN Counter-JG3 Iligan (NM) Clerk - JG4 Butuan (EM)
6. PARACALE, JESUS Jr. CW
Operator-JG2 Makar, Gen.
Santos (SM) Clerk - JG4 Butuan (EM)
7. TEE, ROMEO TTY
Operator-Gen.
JG4 Zamboanga
City (WM) Clerk - JG4 Jolo (WM)[5]

The private respondents rejected the petitioner's offer. On October 2, 1997, the petitioner sent letters to the private respondents requiring them to explain in writing why no disciplinary action should be taken against them for their refusal to be transferred/relocated.[6]

In their respective replies to the petitioner's letters, the private respondents explained that:

The transfers imposed by the management would cause enormous difficulties on the individual complainants. For one, their new assignment involve distant places which would require their separation from their respective families. For instance, in the case of Avelino Acha who would be coming from Bicol Region, he would have to take a boat in going to his new assignment in Odiongan, Romblon. The voyage would take a considerable period of time and it would be imperative for him to relocate to Romblon to be able to attend to his new assignment.

The same holds true with the other complainants. Romeo Tee for instance, will have to take an overnight boat trip from his previous assignment in Zamboanga to his new assignment in Jolo, Sulu. He would have to part with his family and resettle to Jolo in connection with his transfer. Cristina Rodiel on the other hand, would be transferred to Baguio City which is quite distant from her previous workbase and residence at Cabanatuan. Jesus Paracale finds himself in the same difficult situation as he would be transferred from General Santos City at the Southern tip of Mindanao to Butuan City, almost a day's travel by bus and located at the northernmost tip of the island. Benjamin Lakandula and Guillermo Demigillo, are also in the same situation as their new assignments are quite distant from their previous places of work.[7]

Dissatisfied with this explanation, the petitioner considered the private respondents' refusal as insubordination and

willful disobedience to a lawful order; hence, the private respondents were dismissed from work.[8] They forthwith filed their respective complaints against the petitioner before the appropriate sub-regional branches of the NLRC.[9]

Subsequently, the private respondents' bargaining agent, PT&T Workers Union-NAFLU-KMU, filed a complaint against the petitioner for illegal dismissal and unfair labor practice for and in behalf of the private respondents, including Ignacio Dela Cerna, before the arbitration branch of the NLRC.[10]

In their position paper, the complainants (herein private respondents) declared that their refusal to transfer could not possibly give rise to a valid dismissal on the ground of willful disobedience, as their transfer was prejudicial and inconvenient; thus unreasonable. The complainants further asserted that since they were active union members, the petitioner was clearly guilty of unfair labor practice[11] especially considering their new work stations:

- Jesus Paracale, from General Santos Branch to Butuan City Branch;
- Romeo Tee, from Zamboanga Branch to Jolo Branch;
- Benjamin Lakandula, from Iligan City to Butuan City;
- Avelino Acha, from Legaspi City Branch to Odiongan Branch;
- Ignacio Dela Cerna, from Pagadian City Branch to Butuan Branch; and
- Guillermo Demigillo, from Midsayap to Lebak Cotabato Branch.[12]

For its part, the petitioner (respondent therein) alleged that the private respondent's transfers were made in the lawful exercise of its management prerogative and were done in good faith. The transfers were aimed at decongesting surplus employees and detailing them to a more demanding branch.

In their reply to the petitioner's position paper, the private respondents opined that since their respective transfers resulted in their promotion, they had the right to refuse or decline the positions being offered to them. Resultantly, the refusal to accept the transfer could not have amounted to insubordination or willful disobedience to the "lawful orders of the employer."

After the parties filed their respective pleadings, the Honorable Labor Arbiter Celenito N. Daing rendered a Decision on September 25, 1998 dismissing the complaint for lack of merit.[13]

The labor arbiter ratiocinated that an employer, in the exercise of his management prerogative, may cause the transfer of his employees provided that the same is not attended by bad faith nor would result in the demotion of the transferred employees. The labor arbiter ruled in favor of the petitioner, finding that the aforesaid transfers indeed resulted in the private respondents' promotion, and that the complaint for unfair labor practice was not fully substantiated and supported by evidence.

Aggrieved, the private respondents appealed that aforesaid decision to the NLRC.

On May 31, 1999, the NLRC issued a Resolution which reversed and set aside the decision of the labor arbiter. The NLRC ruled that the petitioner illegally dismissed the private respondents, thus:

WHEREFORE, premises considered, the Appeal is hereby GRANTED. Accordingly, the Decision appealed from is REVERSED and SET ASIDE and a new one entered declaring respondent-appellee guilty of illegal dismissal and ordering Philippine Telegraph and Telephone Corporation to reinstate individual complainants-appellants to their former positions without loss of seniority rights and other privileges and to pay them full backwages from the date of their dismissal up to the date of their actual reinstatement, computed

as follows ...[14]

The NLRC interpreted the said transfers of the respondents as a promotion; that the movement was not merely lateral but of scalar ascent, considering the movement of the job grades, and the corresponding increase in salaries. As such, the respondents had the right to accept or refuse the said promotions. The NLRC concluded that in the exercise of their right to refuse the promotion given them, they could not be dismissed.

Without filing a motion for reconsideration, the petitioner filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals, assailing the May 31, 1999 Resolution of the NLRC. The petitioner raised the following errors:

4.1

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED AGAINST PRIVATE RESPONDENTS' DISMISSAL ON THE GROUND OF INSUBORDINATION FOR REFUSING TO HEED TO THE TRANSFER ORDER OR THE PETITIONER.

4.2

PUBLIC RESPONDENT COMMITTEE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SUSTAINED PRIVATE RESPONDENT'S CONTENTION THAT THEY WERE IN FAC BEING PROMOTED AND NOT TRANSFERRED, THUS RENDERING THE LATTER'S DISOBEDIENCE JUSTIFIED.

PUBLIC RESPONDENTS (SIC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENTS ARE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES, AS WELL AS PAYMENT OF FULL BACKWAGES FROM DATE OF DISMISSAL UP TO DATE OF ACTUAL REINSTATEMENT.[15]

On June 15, 2001, the Court of Appeals rendered a Decision affirming the resolution of the NLRC, the dispositive portion of which reads:

WHEREFORE, finding no grave abuse of discretion on the part of the respondent commission, the petition is hereby DISMISSED for lack of merit. The assailed May 31, 1999 Resolution of the National Labor Relations Commission, Third Division is hereby AFFIRMED IN TOTO.[16]

The petitioner filed a motion for reconsideration. On February 6, 2002, the CA issued a Resolution denying the motion.[17]

Dissatisfied, the petitioner filed its petition for review assailing the decision and resolution of the CA, insisting that:

I

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDERS DATED JUNE 15, 2001 AND FEBRUAR 6, 2002 AFFIRMING THE ORDER DATED MAY 31, 1999 OF THE THIRD DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION, CONSIDERING THAT:

- THE ORDER DATED MAY 31, 1999 OF THE NATIONAL LABOR RELATIONS COMMISSION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE;
- THE PETITIONER DID NOT ADMIT IN ITS POSITION PAPER FILED BEFORE THE LABOR

ARBITER THAT THE PRIVATE RESPONDENTS WERE BEING PROMOTED. ON THE CONTRARY, IT HAS ALWAYS BEEN THE CONTENTION OF THE PETITIONER THAT THE PRIVATE RESPONDENTS WERE SIMPLY ORDERED TRANSFERRED TO OTHER WORK STATIONS WITHOUT DEMOTION IN RANK AND DIMINUTION IN SALARY;

- THE PRIVATE RESPONDENTS WERE LEGALLY TERMINATED FOR JUST AND AUTHORIZED CAUSE FOR WILFULL DISOBEDIENCE TO THE LAWFUL ORDERS OF THE PETITIONER (TRANSFER ORDER PURSUANT TO ITS RELOCATION AND RESTRUCTURING PROGRAM), AFTER AFFORDING THEM DUE PROCESS OF LAW AND THUS NOT ENTITLED TO REINSTATEMENT; AND

- PETITIONER ACTED IN GOOD FAITH IN IMPLEMENTING ITS RELOCATION AND RESTRUCTURING PROGRAM WHICH RESULTED IN THE TERMINATION OF THE PRIVATE RESPONDENTS. AND AS SUCH, THE PRIVATE RESPONDENTS ARE NOT ENTITLED TO THE PAYMENT OF ANY BACKWAGES.[18]

In their Comment, the private respondents argue that the petition should be dismissed for the following reasons: (a) that a petition for review under Ruler 45 is limited to questions of law; (b) the private respondents were promoted and not only transferred as established by the evidence on record; and (b) private respondents could not be penalized with dismissal for declining their promotions.

The petition is denied due course.

As has been enunciated in numerous cases, the issues that can be delved into a petition for review under Rule 45 are limited to questions of law. Thus, the Court is not tasked to calibrate and assess the probative weight of evidence adduced by the parties during trial all over again.[19] The test of whether the question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[20]

In the case at bar, the petitioner would want this Court to ascertain whether or not the findings of NLRC, as affirmed by the CA, are substantiated by the evidence on record; hence, requiring a review involving questions of facts. For this reason alone, this case should be dismissed.

Even if the Court were to review the instant case on its merits, the dismissal of the petition is inevitable.

Section 3, Rule V of the NLRC provides that:

Section 3. Submission of Position Papers/Memorandum - Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agree upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers. Without prejudice to the provisions of Section 2 of this Rule, the Labor Arbiter shall direct both parties to submit simultaneously their position papers with supporting documents and affidavits within an inextendible period of ten (10) days from notice of termination of the mandatory conciliation. mediation conference.

In its position with the labor arbiter, the petitioner adverted that when the private respondents were transferred, they were also promoted, thus:

Clearly, the transfer of the complainants is not unreasonable nor does it involve demotion in rank. They are being moved to branches where the complainants will function with maximum benefit to the company and they were in fact promoted not demoted from a lower job-grade to a higher job-grade and receive even higher salaries than before. Thus, transfer of the complainants would not also result in diminution in pay benefit and privilege since the salaries of the complainant would be receiving a bigger salary if not the same salary plus additional special relocation package. Although the increase in the pay is not significant this however would be translated into an increase rather than decrease in their salary because the complainants who were transferred from the city to the province would greatly benefit because it is of judicial notice that the cost of living in the province is much lower than in the city. This would mean a higher purchasing power of the same salary previously being received by the complainants.[21]

Indeed, the increase in the respondents' responsibility can be ascertained from the scalar ascent of their job grades. With or without a corresponding increase in salary, the respective transfer of the private respondents were in fact promotions, following the ruling enunciated in *Homeowners Savings and Loan Association, Inc. v. NLRC*: [22]

... [P]romotion, as we defined in *Millares v. Subido*, is "the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary." Apparently, the indispensable element for there to be a promotion is that there must be an "advancement from one position to another" or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee. This can be likened to the upgrading of salaries of government employees without conferring upon the, the concomitant elevation to the higher positions....[23]

The admissions of the petitioner are conclusive on it. An employee cannot be promoted, even if merely as a result of a transfer, without his consent. A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to 'lure the employee away from his permanent position cannot be done without the employees' consent.[24]

There is no law that compels an employee to accept a promotion for the reason that a promotion is in the nature of a gift or reward, which a person has a right to refuse.[25] Hence, the exercise by the private respondents of their right cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer. As such, there was no valid cause for the private respondents' dismissal.

As the questioned dismissal is not based on any of the just or valid grounds under Article 282 of the Labor Code, the NLRC correctly ordered the private respondents' reinstatement without loss of seniority rights and the payment of backwages from the time of their dismissal up to their actual reinstatement.

IN LIGHT OF THE ALL THE FOREGOING, the Decision of the Court of Appeals dated June 15, 2001 is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring.

[2] Rollo, pp. 13-14.

[3] Id. at 14.

[4] Id. at 105.

[5] Id. at 104.

[6] Id. at 69-74.

[7] Id. at 88-89.

[8] Id. at 80-86.

[9] Cristina Rodiel filed a complaint for illegal dismissal on October 21, 1997; Jesus Paracale, on October 20, 1997, Romeo Tee, on October 29, 1997. Benjamin Lakandula also filed a complaint for illegal dismissal. Avelino Acha filed his complaint for illegal dismissal on November 18, 1997, while Guillermo Demigillo filed his complaint on November 20, 1997. Ignacio Dela Cerna accepted the transfer order and was thus reinstated (Rollo, p. 101).

[10] Docketed as NLRC-NCR Case No. 00-11-08339-97.

[11] Id. at 89-90.

[12] Id. at 15.

[13] Id. at 130.

[14] Id. at 57.

[15] Id. at 148-149.

[16] Id. at 52.

[17] Id. at 55.

[18] Id. at 20.

[19] Superlines Transportation Company, Inc. and Manolet Lavides v. ICC Leasing and Financing Corporation, G.R. No. 150673, February 28, 2003.

[20] Pilar Y. Goyena v. Amparo Ledesma-Gustilo, G.R. No. 147148, January 13, 2003.

[21] Rollo, pp. 104-105.

[22] 262 SCRA 406 (1996).

[23] Id. at 416.

[24] Editha H. Canonigo v. Court of Appeals, et al., G.R. No. 111144, July 18, 2002.

[25] Ma. Erly P. Erasmo v. Home Insurance & Guaranty Corporation, G.R. No. 139251, August 29, 2002.

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