

PNOC-EDC, NAZARIO VASQUEZ, PRESIDENT; MARCELINO TONGCO, ACTING MANAGER PROJECT OPERATIONS & MANAGER, PROJECT DEVELOPMENT; JESUS QUEVENCO, JR., RESIDENT MANAGER, SNGP/PIPE; AND R...

G.R. NO. 153904. January 17, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, seeking to set aside the Decision[1] of the Court of Appeals dated 30 January 2002 in CA-G.R. SP No. 54484, which affirmed, with modification, the Decision[2] of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City, dated 08 May 1998, reversing the Decision[3] of the Labor Arbiter dated 25 April 1997 in the consolidated cases RAB VII-07-0082-94-D and RAB VII-08-0082-95-D.

Petitioner Philippine National Oil Company - Energy Development Corporation (PNOC-EDC) is a government-owned and controlled corporation organized under the Corporation Code of the Philippines, with Nazario Vasquez as its president; Marcelino M. Tongco, Acting Manager, Project Development; Jesus Quevenco, Jr., Resident Manager, Southern Negros Geothermal Plant (SNGP)/PIPE; and Remegio Cornelio, Human Resource Officer, SNGP/PIPE. Private respondent Frederick V. Abella is an employee of the petitioner company, assigned as a Security Assistant.

The Facts of the Case

On 01 June 1989, herein private respondent Frederick V. Abella started working with herein petitioner PNOC-EDC as a probationary Security Assistant at its SNGP in Ticala, Valencia, Negros Oriental. Subsequently, he became a regular employee.

Less than one year later, or on 20 April 1990, Abella was informed that his employment with PNOC-EDC would be terminated effective 21 May 1990, allegedly due to a company-wide reorganization pursuant to its Manpower Reduction Program, wherein the position of Security Assistant at PNOC-EDC SNGP had been abolished.

Aggrieved, Abella filed a case of illegal dismissal, and for actual, moral, and exemplary damages with the NLRC, Regional Arbitration Branch No. VII at Dumaguete City, docketed as NLRC RAB VII-05-364-90-D, against the PNOC-EDC and its officers.

After hearing the parties, Labor Arbiter Geoffrey P. Villahermosa rendered a Decision[4] dated 27 August 1991, holding that Abella was illegally dismissed as the company and its officers failed to show a “clear scheme and convincing proof of reorganization,” to wit:

WHEREFORE, premises considered judgment is hereby rendered ordering respondents to reinstate

complainant to his former position without loss of seniority rights and privileges; his backwages from the time he was terminated on 21 May 1990 up to his actual reinstatement; his withheld second half salary for the month of May 1990 in the amount of P4,291.17; moral damages amounting to P30,000.00; exemplary damages for public good amounting to P20,000.00 and 10% attorney's fees from the total adjudicated claims.

The computation of the award of the complainant is hereto attached and forms as [an] integral part hereof.

All other claims are dismissed.

An appeal was timely filed with the NLRC.

Meanwhile, with said appeal still pending in the NLRC, the labor arbiter issued an order[5] dated 20 November 1991, directing the company to "admit back to work or reinstate the complainant under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll."

Pursuant to the above order, Abella was reinstated in the payroll as a General Services Assistant (PAL II), his original position of Security Assistant having been abolished by virtue of the company-wide reorganization. According to the company, "the position is of the same level as Assistant Security and had the same salary rate and benefits." [6]

On 11 February 1992, Abella, through counsel, wrote Quevenco, Resident Manager at the SNGP, to protest his assignment in the payroll as General Services Assistant (PAL II). Subsequently, he was again re-slotted in the payroll as a Pipeline Maintenance Foreman, which, according to the petitioners, is another "position with the same salary and benefits" [7] as another Security Assistant. This "change" of position was classified as a lateral transfer. [8]

On 24 August 1992, Abella wrote [9] petitioner Quevenco, [10] to request that he (Abella) be physically reinstated and allowed to perform security functions. He wrote:

Engr. Jesus M. Quevenco, Jr.
Resident Manager
PNOC Energy Development Corporation
Southern Negros Geothermal Project
Ticala, Valencia
Negros Oriental

Sir:

This is to officially inform you that despite my lawyer's letter [11] dated February 11, 1992, I am willing to perform security functions at PNOC-Energy Development Corporation, Southern Negros Geothermal Project.

In view of this, may I request adjustments/arrangements with our Head Office so I can immediately assume duty at your convenience.

Very respectfully yours,

(Sgd.) FREDERICK V. ABELLA [12]

Said request was granted on 27 October 1992 when Abella was temporarily [13] detailed as Security Assistant at SNGP's PAL II Development Project, Northern Cotabato. But on even date, he was also concomitantly designated as Acting Security Officer for the entire SNGP due to the reassignment of the incumbent Security Officer to the Northern Negros Geothermal Project of the company. [14]

On 03 November 1992, Abella wrote a letter, this time addressed to Vasquez, then Vice-President of the company, to confirm that he had assumed his security functions; that he was open for negotiations regarding his case; and, that he hoped that his appointment/work status would be normalized.

On 15 December 1992, in a telegraphic message, Tongco informed Abella to immediately report to Mindanao I Geothermal Plant (MIGP), Kidapawan, North Cotabato. In the same correspondence, Tongco defined private respondent's duties and functions and delimited the duration of his stay at MIGP as temporary, or for about 3 months only.

Shortly thereafter, or on 28 January 1993, Abella and the company agreed to settle NLRC RAB Case No. VII-05-364-90-D. Abella consequently received the amount of One Hundred Twenty-Four Thousand Eight Hundred Twenty-Four Pesos and Thirty-One Centavos (P124,824.31) as settlement of the said case and by virtue of the said agreement, both parties filed a Joint Motion to Dismiss^[15] before the NLRC, viz:

JOINT MOTION TO DISMISS

COMES NOW herein parties to the entitled case, to this Honorable Commission respectfully state that –

1. Complainant has offered and Respondent has accepted a proposal to settle the instant case amicably;
2. The parties have agreed to shoulder their respective costs;
3. All other claims, damages, and causes of action arising out of the instant case are waived;
4. Consequently, the parties are no longer interested in pursuing and desire to dismiss the case.

WHEREFORE, PREMISES CONSIDERED, it is hereby prayed that the instant case be dismissed.^[16]
(Emphasis supplied)

Acting on the Joint Motion to Dismiss, the NLRC issued a Resolution dated 22 February 1993, granting the above motion dismissing the appeal earlier filed before it, the pertinent portions of which read:

... Submitted before Us is a joint motion to dismiss the instant case dated February 1, 1993, filed by both parties duly assisted by their respective counsel.

In view of the manifest intention of the parties to effect a settlement of the dispute between them and it appearing that the terms of the instant motion is not contrary to law, morals, public order, and public policy, the same is hereby granted. After all "Compromise being the essence of labor justice should be honored."

WHEREFORE, in view of the foregoing, the instant joint motion to dismiss is hereby granted. The appeal is hereby dismissed as prayed for by the parties. Let the records of this case be forwarded to the Regional Arbitration Branch of origin for proper disposition.^[17]

An Entry of Finality of Judgment was subsequently entered in the books on 29 March 1993.

At this time, while carrying out security functions at MIGP, Kidapawan, North Cotabato, Abella's official item or position in the payroll was Maintenance Foreman, SNGP, Valencia, Negros Oriental. Said state of affairs prompted the late Jerry T. Susas^[18] to write Tongco about it and to recommend that "proper action be made in order to harmonize security-related support services at MIGP."^[19]

On 10 December 1993, Abella filed a motion for the issuance of a writ of execution of the decision dated 27 August 1991, of the labor arbiter. Corollary to the said motion, he informed Quevenco of his intention to report back to SNGP, Ticala, Valencia, Negros Oriental, his original assignment prior to the filing of the 1991 case^[20] for illegal dismissal.

On 31 January 1994, Abella received a show cause memorandum dated 28 January 1994 for his alleged absence without official leave (AWOL) and insubordination.

Responding to the above, Abella explained in a letter dated 02 February 1994 that his position as SGS Maintenance is in complete contravention of the decision of the labor arbiter.[21]

On 01 March 1994, despite the above response, Abella was nevertheless transferred to PNOC-EDC Leyte-A Geothermal Project, as a Security Assistant,[22] a position that was vacant at that time. Said transfer was accompanied by a Transfer or Change of Position Form[23] showing Abella's change of official position from Pipeline Maintenance Foreman to Security Assistant to be a lateral transfer.

On 24 May 1994, Tongco sent Abella a radiogram message instructing him to present himself, this time at the Mt. Labo Geothermal Project, Camarines Norte, as a Security Assistant. A second message followed emphasizing the need for Abella to report at the said site not later than 25 May 1994. On 01 June 1994, Abella was once more instructed to report to the petitioner company's Mt. Labo Geothermal Project. Said order was again accompanied by a Transfer or Change of Position Form[24] stating the transfer of Abella as a Security Assistant from Leyte to Mt. Labo to be a lateral transfer.

All the above-mentioned directives were disregarded or ignored.

In the intervening time, on 16 June 1994, the labor arbiter ruled on the motion for execution filed by the complainant by issuing a Writ of Execution directing the Sheriff, NLRC, Cebu City, to proceed to the premises of the company at Ticala, Valencia, Negros Oriental, to effect and to cause the reinstatement of Abella either by physical or by payroll reinstatement. On 17 June 1994, Sheriff Remegio B. Cornelio issued a certification that per attached pay slip, private respondent had been reinstated in the payroll with PNOC-EDC.

In the meantime, for failing to heed the directives of his supervisors, Abella received another "show cause" memorandum dated 14 July 1994, from Tongco, ordering him to explain in writing why no disciplinary action should be taken against him for insubordination and for being AWOL.

Abella, in his reply[25] dated 16 July 1994, countered that "he is not guilty of insubordination since he was not reinstated to his former position as Security Assistant at Ticala, Valencia, Negros Oriental, per Writ of Execution issued by the labor arbiter."

On 18 July 1994, claiming unfair and prejudicial treatment, Abella filed a complaint before the NLRC, Sub-Regional Arbitration Branch No. VII, Dumaguete City, for unfair labor practice, illegal suspension, nonpayment of mid-year bonus and 13th month pay for 1990 and 1991, claim for hazard pay, and annual salary increase against the company and its officers, docketed as NLRC Sub-RAB Case No. 07-0082-94-D.

Several months later, or on 06 October 1994, Abella received a notice[26] of disciplinary action of Grave Suspension with Final Warning, dated 28 September 1994, against him.

In response, on 17 October 1994, Abella filed another complaint with the NLRC, against the company and its officers, for unfair labor practice, illegal suspension, and nonpayment of wages with damages, docketed as NLRC Sub-RAB Case No. 010-0123-94-D.

Nevertheless, Abella continued working at SNGP, Ticala, Valencia, Negros Oriental, until he was accordingly notified of his termination for cause. Thereafter, he filed a third complaint with the NLRC against the company and its officers, this time for unfair labor practice, illegal dismissal, and nonpayment of wages, with prayer for reinstatement and payment of moral and exemplary damages as well as attorney's fees docketed as NLRC Sub-RAB Case No. 08-0082-95-D.

After hearing the parties, Labor Arbiter Geoffrey Villahermosa[27] rendered a consolidated Decision[28] dated 25 April 1997, the dispositive portion of which states:

WEREFORE, in the light of the foregoing, judgment is hereby rendered declaring the respondents not guilty of unfair labor practice and illegally dismissing the complainant, but however, as a measure of social justice and due to the afore-cited Supreme Court Ruling, the respondents are directed to pay the complainant his separation pay computed from June 1, 1989 to April 30, 1997 at one (1) month pay for every year of service, . .

In maintaining that Abella was not illegally dismissed, the labor arbiter opined that the records of the case show that Abella was “reassigned from his position in Ticala, Valencia, Negros Oriental, to that in Cotabato province by virtue of a memorandum issued by Tongco which Abella readily accepted and agreed to said transfer,” therefore there is no valid basis for the claim that he was not validly reinstated. Thus, the charges of insubordination and AWOL committed by Abella fall squarely within the provision of Rule 26 of the petitioner company’s rules and regulations as contained in the “PNOC Rules and Regulations on Discipline.” Said rules provide for a penalty ranging up to dismissal even for the first offense.

On appeal, the NLRC reversed and set aside the Decision[29] of the labor arbiter and entered a new one, viz:

WHEREFORE, as above-disquisitioned the decision appealed from is REVERSED and SET ASIDE and a new one ENTERED finding the dismissal illegal, hence complainant should be ordered reinstated to his former position as Security Assistant SNGP pursuant to the Decision of August 27, 1991 with full backwages from December 1, 1991 when he was illegally declared as AWOL up to his actual reinstatement.

The NLRC found that Abella was illegally dismissed “considering that at bar, the parties had reached a settlement without vacating the decision (of the labor arbiter dated 27 August 1991), then the decision should be given its full force and effect,” and as the “[r]ecords show that he was never reinstated to his former position as admitted by the correspondence of J.T. Susas dated 25 March 1993, memorandum of complainant dated 17 September 1993 and letter of complainant’s counsel to Engr. Quevenco, dated 03 January 1994.” The tribunal further held that a “review of the facts and circumstances of the case, we find that while the monetary consideration of the decision of 27 August 1991 has been satisfied the reinstatement aspect of the decision remained unsatisfied which prompted counsel to file a motion for the issuance of [a] writ of execution.” “The assignments of the complainants (sic) to the various positions could not equate to full enforcement of the decision of 27 August 1991 considering that these positions were not his former position and his assumption to these positions were under protest.”

There being a timely motion for reconsideration, the Honorable Commission, in a Resolution[30] dated 14 June 1999, reversed itself insofar as the order for reinstatement and computation of backwages were concerned. Instead, the Commission held that since Abella had already reached the retirement age of sixty (60) years, reinstatement would no longer be possible. Necessarily, the computation of backwages should only be from 01 December 1994 up to 15 January 1998. After 15 January 1998, Abella should be given all the benefits due him under the retirement provision of the collective bargaining agreement of the company.

With the denial of their motion for reconsideration, the company and its officers came to the Court of Appeals via a petition for certiorari under Rule 65 of the Revised Rules of Court and sought to nullify the abovestated NLRC Decision dated 08 May 1998 and Resolution dated 14 June 1999.

On 27 February 2002, the appellate court promulgated the impugned Decision[31] dismissing the petition for lack of merit, the dispositive portion of which states:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. Accordingly, the assailed decision and resolution of the NLRC, Fourth Division, Cebu City, are hereby AFFIRMED. No pronouncement

as to cost.

The company and its officers' motion for reconsideration having been denied, the instant petition was filed with the following assignment of errors:

I.

CONTRARY TO THE OPINION OF THE COURT OF APPEALS, IT IS NOT TRUE THAT THE REINSTATEMENT OF RESPONDENT WAS NOT A FAITHFUL COMPLIANCE OF THE PROVISIONS OF PARAGRAPH 3, ARTICLE 223 OF THE LABOR CODE.

II.

CONTRARY TO THE OPINION OF THE COURT OF APPEALS, THE JOINT MOTION TO DISMISS SUBMITTED BY PETITIONERS AND RESPONDENT BEFORE THE FOURTH DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION, CEBU CITY, SHOULD OPERATE TO DISMISS THIS CASE IN ITS TOTALITY, AND NOT JUST THE APPEAL PENDING BEFORE THE SAID DIVISION.

III.

CONTRARY TO THE OPINION OF THE COURT OF APPEALS, THERE IS CLEAR LEGAL AND FACTUAL BASIS TO HOLD RESPONDENT GUILTY OF THE OFFENSES OF INSUBORDINATION AND OF INFRACTION OF COMPANY RULES ON UNAUTHORIZED ABSENCES; HENCE, THE TERMINATION OF RESPONDENT FROM EMPLOYMENT AFTER OBSERVANCE OF DUE PROCESS WAS LEGAL.[32]

The Ruling of the Court

The first and second issues question the validity of the actual reinstatement of the private respondent following the order of the Labor Arbiter Geoffrey P. Villahermosa in NLRC RAB VII-05-364-90-D.

The issue of reinstatement is addressed by paragraph three of Article 223 of the Labor Code, to wit:

ART. 223. Appeal . . .

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

The above-stated provision of the Labor Code, however, must be read in conjunction with the implementing rules and regulations of the said law. Sec. 4(a) of Rule 1, Book VI of the Rules and Regulations Implementing the Labor Code, provides that:

SEC. 4. Reinstatement to former position. – (a) An employee who is separated from work without just cause shall be reinstated to his former position, unless such position no longer exists at the time of his reinstatement, in which case he shall be given a substantially equivalent position in the same establishment without loss of seniority rights. [Emphasis supplied.]

Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position more or less of a similar nature as this previously occupied by the employee.[33]

Accordingly, an employee who is separated from his employment on a false or nonexistent cause is entitled to be reinstated to his former position because the separation is illegal. If the position is no longer available for any

other valid and justifiable reason, however, the reinstatement of the illegally dismissed employee to his former position would neither be fair nor just. The law itself can not exact compliance with what is impossible. Ad impossibile tenetur.[34] The employer's remedy is to reinstate the employee to a substantially equivalent position without loss of seniority rights as provided for above.

In the case at bar, strictly applying the rules provided above, private respondent Abella should have been reinstated back to his old position as a Security Assistant at the SNGP, Ticala, Valencia, Negros Oriental. Or, at the very least, since the position of Security Assistant at Ticala, Valencia, Negros Oriental, had been abolished as claimed by the petitioners, he should have been reinstated to another position that is substantially equivalent to his former one. In reality, private respondent Abella was first reinstated in the payroll, as a General Services Assistant and subsequently, as a Pipeline Foreman, while he was actually discharging the functions of a Security Assistant. As insisted by the petitioners, this situation was due to the fact that the original position of the private respondent had already been abolished in the previous company-wide reorganization[35] in 1991.

But then, the private respondent was reslotted as Security Assistant when he was transferred to the Leyte Geothermal Project. He was, thus, performing the functions of a Security Assistant and at the same time occupying the official position of a Security Assistant though in a geographically different location, when said position became vacant.

Be that as it may, notwithstanding the above disquisitions, the atypical circumstances in this case capitulate against the outright application of the said rules. Whether or not the private respondent was validly reinstated per Order of the Labor Arbiter dated 27 August 1991, in NLRC RAB VII-05-364-90-D, is beside the point in view of the fact that the Joint Motion to Dismiss filed by the parties in the earlier case contained a clause whereby the parties agreed that "[a]ll other claims, damages and causes of action arising out of the instant case are waived."

Regrettably, the Court of Appeals and the NLRC have overlooked this very important fact.

The clause agreed to by the parties in the Joint Motion to Dismiss filed before the NLRC was in the nature of a compromise agreement, i.e., "an agreement between two or more persons, who for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which everyone of them prefers to the hope of gaining, balanced by the danger of losing." [36] Settlement of disputes by way of compromise, is an accepted, nay desirable and encouraged practice in courts of law and administrative tribunals.[37] Generally favored in law, such agreement is a bilateral act or transaction that is binding on the contracting parties and is expressly acknowledged by the Civil Code as a juridical agreement between them.

Prevailing case law provides that "a compromise once approved by final orders of the court has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery. Hence, 'a decision on a compromise agreement is final and executory.' Such agreement has the force of law and is conclusive on the parties. It transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules. Judges therefore have the ministerial and mandatory duty to implement and enforce it." [38] (Underlining supplied.) Hence, compromise agreements duly approved by the courts are considered the decisions in the particular cases they involve.[39]

In the case at bar, when both parties agreed to waive "all other claims, damages and causes of action" arising out of NLRC RAB VII-05-364-90-D, a compromise they entered into in good faith absent any allegation otherwise, they did not only agree to dismiss the appeal pending before the NLRC. Particularly, the private respondent also agreed to receive One Hundred Twenty-Four Thousand Eight Hundred Twenty-Four Pesos and Thirty-One Centavos (P124,824.31), thus, relinquishing his claim to the Decision[40] dated 27 August 1991, rendered by the labor arbiter in his favor. In return, the petitioner company, to put an end to the labor dispute, acquiesced to have

its appeal before the NLRC dismissed.

The waiver, executed by the private respondent and the petitioner company in which mutual concessions were given and mutual benefits were derived, was approved and considered by the NLRC when it promulgated its Order dated 22 February 1993, dismissing the appeal of the petitioners. Conformably, to cite jurisprudence, the Compromise Agreement approved by the proper authority became the decision in this particular case.

Settlements of this kind not only are recognized to be proper agreements but so encouraged as well.[41]

Undoubtedly, the allegations of invalid reinstatement on the part of the petitioners are a mere afterthought on private respondent's part in a fascinating attempt to extricate himself from an assignment that brought him to a far away place and caused him to be separated from his family.

It is well to note that even if each party agreed to something that neither might have actually wanted, except for the peace that would be brought by the avoidance of a protracted litigation, still, the agreement must govern their relations. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned or conveniently forgotten, simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But 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.[42] In the case at bar, the Joint Motion to Dismiss was not only signed by the private respondent, but by his counsel as well.

The resolution of the third issue hinges upon a determination of the validity of the orders directing the transfer of the private respondent from one site to another.

In this jurisdiction, we recognize that management has wide latitude to regulate, according to his own discretion and judgment, all aspects of employment, to the requirements of its business.[43] The scope and limits of the exercise of management prerogative, however, should attain a state of equilibrium when pitted against the constitutional right of labor to security of tenure.

Of relevant significance in the case at bar is the right of the employer to transfer employees in their work station. We have previously held that it is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit of the company.[44] This right flows from ownership and from the established rule that labor (laws) do not authorize the substitution of judgment of the employer in the conduct of his business, unless it is shown to be contrary to law, morals, or public policy.[45]

The rationale behind this rule is that an employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful.[46] Especially so in this case where the respondent was not appointed for a security assistant for a specified place but was only designated therein. But of course, the managerial prerogative to transfer personnel must be exercised without grave abuse of discretion --- not unnecessary, inconvenient nor prejudicial to the displaced employee, meaning there is no demotion in rank or diminution of salary, benefits and other privileges.

In this case, the private respondent was charged with insubordination for failing to heed the directives of his superior transferring him from one site to another. The Court of Appeals negated said charge and declared that

when private respondent Abella failed to obey the orders of the petitioners reinstating him to Leyte and Mt. Labo sites, said failure cannot give rise to insubordination as private respondent Abella had the right to be reinstated under the same terms as and conditions prevailing prior to his dismissal on 21 May 1990, especially so when the latter's refusal was premised on the fact that the labor arbiter had earlier issued a Writ of Execution ordering the reinstatement of the private respondent to his former position at PNOC-EDC SNGP, Ticala, Valencia, Negros Oriental.

We do not agree.

First and foremost, as discussed earlier, the order of the labor arbiter reinstating the private respondent to his former position in SNGP had already been superseded by the agreement of both parties to waive "[a]ll other claims, damages and causes of action arising out of the instant case" Consequently, the writ issued by the labor arbiter executing the order of reinstatement had no leg to stand on. Secondly, the law does not preclude the reinstatement of an employee, who has been separated from work without just cause, to a substantially equivalent position in the same establishment without loss of seniority rights, and with the same rank, salary and privileges,[47] if the former position is no longer available. Therefore, the claim of lack of insubordination due to lack of valid reinstatement must fail.

Insubordination or willful disobedience by an employee, to constitute a just cause for terminating his employment, the orders, regulations, or instructions of the employer or representative must be:

- reasonable and lawful;
- sufficiently known to the employee; and
- in connection with the duties which the employee has been engaged to discharge.

There is no doubt in this case that the assailed transfer orders fulfill the second and third elements above-stated. Private respondent Abella was well informed of the orders of transfer and said orders were well in connection with the security functions of the private respondent. It is only the issue of reasonableness and lawfulness of said orders that have to be elucidated on.

The reasonableness and lawfulness of an order, regulation, or instruction depend on the circumstances availing in each case. Reasonableness pertains to the kind or character of directives and commands and to the manner in which they are made.[48]

The petitioners aver that the orders were well within their managerial prerogative to make and that there was never any agreement that private respondent Abella had to be posted in a fixed place.

The appellate court, on the other hand, stated that its finding that the private respondent was not guilty of insubordination and abandonment was based on the fact that the dismissal of private respondent Abella was effected with bad faith, as it was intended to punish him for refusal to heed his employer's unreasonable orders.

The records of the present case fail to show any hint of truth to the declaration of the appellate court.

A thorough review of the records of the case shows that there is a valid reason behind the transfer of the private respondent to MIGP in Kidapawan, North Cotabato. As stated in the telegraphic message received by the private respondent,

DMD-15
DMK-22
DEC 15/92

TO: ABC / SEP CC EBP / JLA / FVA / MBP / BMO

FR: MMT

IN VIEW OF APO'S CRITICAL SECURITY SITUATION, AS DISCUSSED WITH EBP, FVABELLA WILL BE ASSIGNED TO MIGP IMMEDIATELY TO STRENGTHEN OUR APO SECURITY COVERAGE. ... FVA, WILL HANDLE OVERALL STRATEGIC PLANNING. ... PLS ADVISE FVA'S EARLIEST TRAVEL TO MIGP. ...

EMC[49]

Nothing in the above message alludes to any bad faith on the part of the petitioners. In truth, it is quite apparent that the order of transfer of the private respondent from Negros Oriental to Northern Cotabato was due to the exigencies of the state of affairs in the geothermal plants of the petitioner company. Other internal messages[50] between the petitioner company's officers and employees also sustain the validity of the necessity and lack of bad faith in ordering the transfer of the private respondent, to wit:

DMK-35

JAN. 06, 1993

TO: JLA CC: FVA/MBP

FM: MMT CC: EBP

WITH FVA'S PRESENCE IN M1GP, I EXPECT THAT WE WILL ATTAIN FF. OBJECTIVES:

COMPLETE, FINALIZE AND PUT INTO EFFECT OUR CONTINGENCY PLANS, SECUTIRY SOPS, ACCESS PROCEDURES AND CONDUCT QEKVTYXELI/NJETTQ.

2. EFFECTIVE COORDINATION BOTH WITH HIGHER KETEXYJM YVXBLJEXERQ AND SITE LPPEARJQ.

3. EFFECTIVE MONITORING AND CONTROL OF OUR SECURITY PROVISIONS I.E. DTVR ZVYJNQ, KETEXYJM.

4. IMPROVE RELATIONS WITH KETEXYJM.

5. ADDRESS CONCERNS OF OUR STAFF REGARDING QRAVJEXM ALCRJYZR. . . .

PLS. USE DAY 6 CODE.

2210H[51]

TO: JLA (KIDAP) FVA (DGTE) FR: MMT

CC: FCC (LABO) MBP (KIDAP)

AA. DUE TO THE ACCELERATED DRILLING AT LABO REQUIRING IMMEDIATE SECURITY COORDINATION AND SETTING-UP, EFFECTIVE IMMEDIATELY FVABELLA IS TRANSFERRED TO MT. LABO GEOTHERMAL PROJECT AS SECURITY ASSISTANT. . .

BB. TO RDO. OPERATOR SNGP PLS ENSURE MESSAGE IS SENT TO FVA.

CC. TO FVA, ADVISE ME TRAVEL DETAILS.[52]

TO: FVA (DGTE) FR: MMT

CC: FCC (LABO)

THE SITUATION AT LABO IS CRITICAL AND YOU HAVE TO BE THERE IMMEDIATELY. IT IS IMPERATIVE THAT YOU TRAVEL IMMEDIATELY, NOT LATER THEN (sic) 25 MAY. ADVISE TRAVEL DETAILS.[53]

By virtue of the characteristic or nature of the functions of security personnel, rotation and reassignment from one place to another, depending on the security needs of the company, are well within the job description of the private respondent.

As explained, the orders to the private respondent to report to the Leyte Geothermal Plant and, later on, to the Mt. Labo site in Camarines Norte undeniably met the standards aforesaid. What is more, the private respondent, when he accepted the offer of employment with the petitioner company, was aware that there was a possibility of a provincial assignment. When he accomplished his application for employment,[54] in answering the question: “Are you Willing To Accept A Provincial Assignment?” the private respondent answered in the affirmative. Another irrefutable fact is that the records of the case bear out that even before the first controversy[55] arose between the parties, the private respondent had been reassigned to at least three (3) different locations. His first assignment with the petitioner company was in Negros Oriental. A few months later, he was transferred to Camarines Norte; then again to Negros Oriental in 1990. In fact, in a memorandum[56] dated 24 January 1990, the private respondent was one of the three security personnel directed to transfer from one assignment to another.

Finally, it cannot be gainsaid that though the private respondent was assigned to perform security functions at other different sites, he had been receiving the same salary and benefits due a security personnel. Records even show that he was even accorded hazard pay for the duties and functions he was currently executing.[57]

The Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[58]

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision dated 30 January 2002, of the Court of Appeals and its Resolution dated 29 May 2002, denying the petitioners’ Motion for Reconsideration, are REVERSED and SET ASIDE. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo Sr. and Tinga, JJ., concur.

[1] Penned by Associate Justice Josefina Guevarra-Salonga with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr., concurring, Rollo, p. 30.

[2] CA Rollo, p. 98.

[3] CA Rollo, p. 65.

[4] CA Rollo, p. 24.

[5] CA Rollo, p. 34.

[6] NLRC Records, p. 0637.

[7] NLRC Records, p. 0638.

[8] CA Rollo, p. 38, evidenced by a Transfer or Change Position Form.

[9] NLRC Records, p. 0638.

[10] Resident Manager of PNOC-EDC SNGP.

[11] February 11, 1992

Mr. Jesus M. Quevenco, Jr.
Resident Manager
SNGP, PNOC-EDC
Tikala, Palinpinon
Valencia, Negros Oriental

S i r :

In the strongest terms possible, we protest and condemn your assignment of our client, Frederick V. Abella, to perform security functions despite the fact that his telegraphic assignment from your Head Office is as General Services Assistant (PAL II), another blatant violation of the NLRC Decision.

Under the law, you have only two (2) options, which are: (1) payroll reinstatement and (2) reinstatement to previous position.

Verily, we feel that you shall immediately make arrangements to rectify the above-mentioned violations otherwise, we shall consequently construe your actions as malicious persecution and/or unfair labor practice which are punishable by law.

Hoping for your kind and favorable consideration, we remain

Very truly yours,

(SGD) HANSEL T. ANITO
Counsel of Frederick V. Abella (NLRC Records, p. 0087)

[12] NLRC Records, p. 0671.

[13] CA Rollo, p. 40.

[14] CA Rollo, p. 41.

[15] Dated 01 February 1993.

[16] NLRC Records, p. 0676.

[17] NLRC Records, p. 677.

[18] Jerry T. Susas, Assistant to the Vice-President on Security, died in a helicopter crash during a company strike, 6 months after writing said memo.

[19] CA Rollo, p. 161.

[20] NLRC RAB-VII-05-364-90-D.

[21] Dated 27 August 1991.

[22] CA Rollo, p. 46.

[23] Id.

[24] Id.

[25] CA Rollo, p. 49.

[26] CA Rollo, p. 54.

[27] The same labor arbiter who rendered the decision dated 27 August 1991, in NLRC RAB VII-05-364-90-D.

[28] Supra, note 3.

[29] Supra, note 27.

[30] CA Rollo, p. 137.

[31] Rollo, p. 43.

[32] Rollo, p. 17.

[33] Union of Supervisors (RB) NATU v. Secretary of Labor, G.R. No. L-39889, 29 March 1984, 128 SCRA 442.

[34] Philippine Engineering Corp. v. Court of Industrial Relations, G.R. No. L-27880, 30 September 1971, 41 SCRA 89.

[35] Said reorganization was the same one which resulted in the termination of Abella's employment with PNOC-EDC.

[36] Rovero v. Amparo, 91 Phil. 228 (1952).

[37] Jose Vicente Santiago IV v. Bonier de Guzman, et al., G.R. No. 84578, 07 September 1989, 177 SCRA 344.

[38] Manila International Airport Authority v. ALA Industries Corporation, G.R. No. 147349, 13 February 2004.

[39] Esguerra v. Court of Appeals, G.R. No. 119310, 03 February 1997, 267 SCRA 380; Reformist Union of R.B. Liner, Inc., et al. v. NLRC, et al., G.R. No. 120482, 27 January 1997, 266 SCRA 713.

[40] CA Rollo, pp. 31-33.

[41] Santiago, IV v. De Guzman, G.R. No. 84578, 07 September 1989, 177 SCRA 344.

[42] Enieda Montilla v. NLRC, et al., G.R. No. 71504, December 17, 1993, 228 SCRA 538.

[43] Benguet Electric Cooperative and Gerardo P. Verzosa v. Josephine Fianza, G.R. No. 158606, 09 March 2004.

[44] Philippine Japan Active Carbon Corporation v. National Labor Relations Commission, G.R. No. 83239, 08 March 1989, 171 SCRA 164.

[45] Abbot Laboratories v. National Labor Relations Commission, G.R. No. L-76959, 12 October 1987, 154 SCRA 713.

[46] International Harvester Macleod v. Intermediate Appellate Court, G.R. No. L-73287, 18 May 1987, 149

SCRA 641.

[47] Rollo, p. 19.

[48] Azucena, *The Labor Code with Comments and Cases*, Vol. II, 1993, rev. ed., p. 557.

[49] NLRC Records, p. 0092.

[50] In the form of radiograms and telegrams.

[51] Coded telegram; NLRC Records, p. 0093.

[52] An outgoing radiogram dated 17 May 1994; NLRC Records, p. 0106.

[53] Outgoing radiogram dated 24 May 1994; NLRC Records, p. 0107.

[54] NLRC Records, p. 0147.

[55] Wherein the private respondent's employment was terminated due to a company-wide reorganization.

[56] NLRC Records, p. 0122.

[57] NLRC Records, p. 0122.

[58] *Homeowners Savings and Loan Association, Inc. v. NLRC*, G.R. No. 97067, 26 September 1996, 262 SCRA 406.

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