

**NORKIS TRADING CO., INC. and/or MANUEL GASPAR E. ALBOS, JR.,
Petitioner, vs. MELVIN GNILO, Respondent.**

G.R. No. 159730. February 11, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated June 20, 2003 and the Resolution[2] dated August 25, 2003 of the Court of Appeals (CA) in CA G.R. SP No. 72568.

Melvin R. Gnilo (respondent) was initially hired by Norkis Trading Co., Inc. (petitioner Norkis) as Norkis Installment Collector (NIC) in April 1988. Manuel Gaspar E. Albos, Jr. (petitioner Albos) is the Senior Vice-President of petitioner Norkis. Respondent held various positions in the company until he was appointed as Credit and Collection Manager of Magna Financial Services Group, Inc.-Legaspi Branch, petitioner Norkis's sister company, in charge of the areas of Albay and Catanduanes with travel and transportation allowances and a service car.

A special audit team was conducted in respondent's office in Legaspi, Albay from March 13 to April 5, 2000 when it was found out that respondent forwarded the monthly collection reports of the NICs under his supervision without checking the veracity of the same. It appeared that the monthly collection highlights for the months of April to September 1999 submitted by respondent to the top management were all overstated particularly the account handled by NIC Dennis Cadag, who made it appear that the collection efficiency was higher than it actually was; and that the top management was misled into believing that respondent's area of responsibility obtained a favorable collection efficiency.

Respondent was then charged by petitioners' Inquiry Assistance Panel (Panel) with negligence of basic duties and responsibilities resulting in loss of trust and confidence and laxity in directing and supervising his own subordinates. During the investigation, respondent admitted that he was negligent for failing to regularly check the report of each NIC under his supervision; that he only checked at random the NIC's monthly collection highlight reports; and that as a leader, he is responsible for the actions of his subordinates. He however denied being lax in supervising his subordinates, as he imposed discipline on them if the need arose.

On May 30, 2000, petitioner Norkis through its Human Resource Manager issued a memorandum[3] placing respondent under 15 days suspension without pay, travel and transportation allowance, effective upon receipt thereof. Respondent filed a letter protesting his suspension and seeking a review of the penalty imposed.

Another memorandum[4] dated June 30, 2000 was issued to respondent requiring him to report on July 5, 2000 to the head office of petitioner Norkis in Mandaluyong City for a re-training or a possible new assignment without prejudice to his request for a reconsideration or an appeal of his suspension. He was then assigned to the Marketing Division directly reporting to petitioner Albos.

In a letter[5] dated July 27, 2000, respondent requested petitioner Albos that he be assigned as Sales Engineer or to any position commensurate with his qualifications. However, on July 28, 2000, respondent was formally appointed as Marketing Assistant to petitioner Albos, which position respondent subsequently assumed.

However, on October 4, 2000, respondent filed with the Labor Arbiter (LA) a complaint for illegal suspension, constructive dismissal, non-payment of allowance, vacation/sick leave, damages and attorney's fees against petitioners.

On March 30, 2001, the LA rendered his decision[6] dismissing the complaint for lack of merit.

The LA found that the position of Credit and Collection Manager held by respondent involved a high degree of responsibility requiring trust and confidence; that his failure to observe the required procedure in the preparation of reports, which resulted in the overstated collection reports continuously for more than six months, was sufficient to breach the trust and confidence of petitioners and was a valid ground for termination; that instead of terminating him, petitioners merely imposed a 15-day suspension which was not illegal; and that petitioners exercised their inherent prerogative as an employer when they appointed respondent as a Marketing Assistant.

Respondent appealed the LA decision to the National Labor Relations Commission (NLRC). In a Resolution[7] dated January 29, 2002, the NLRC reversed the LA, the dispositive portion of which reads:

WHEREFORE, premises considered, complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is REVERSED. It is hereby declared that complainant was constructively dismissed from his employment. Respondent Norkis Trading Co., Inc is ordered to pay complainant the amount of P411,796.00 as backwages and separation pay, plus ten percent (10%) thereof as attorney's fees.[8]

In so ruling, the NLRC found that the 15-day suspension cannot be considered harsh and unconscionable as petitioners validly exercised their management prerogative to impose discipline on an erring employee for negligence by submitting unreliable and inaccurate reports for six consecutive months to the top management who used the reports in their planning and decision-making activities, and thus caused damage or injury one way or another to petitioners. It however held that the transfer of respondent from the position of Credit and Collection Manager to Marketing Assistant resulted in his demotion in rank from Manager to a mere rank and file employee, which was tantamount to constructive dismissal and therefore illegal.

The NLRC ruled that respondent was constructively dismissed and therefore he was entitled to reinstatement and payment of full backwages from the time he quit working on October 19, 2000 due to his demotion up to the time of his actual reinstatement. However, it found that the parties' relationship was already strained on account of this case; thus, it ordered the payment of respondent's separation pay equivalent to his one-month salary for every year of service. It upheld the LA's dismissal of respondent's prayer for damages for failure to submit substantial evidence to support the same, but awarded attorney's fees.

Petitioners filed their Motion for Reconsideration while respondent filed his Motion for Reconsideration/Clarification.

On June 24, 2002, the NLRC issued another Resolution,[9] the dispositive portion of which reads:

WHEREFORE, premises considered, respondents' [petitioners] motion for reconsideration is DENIED for lack of merit while complainant's [respondent] motion for reconsideration is GRANTED. This Commission's January 29, 2002 Resolution in the above-entitled case is hereby AFFIRMED with the MODIFICATION that respondent Norkis Trading Company, Inc. is ordered to pay complainant the adjusted amount of P444,739.38 as backwages, separation pay, 13th month pay and refund of provident fund contribution.[10]

In granting respondent's motion for reconsideration, the NLRC found that petitioners admitted in their Rejoinder

that they had not paid respondent his 13[th]-month pay and that respondent had yet to make a written request for the refund of his provident fund contribution; thus, respondent was entitled thereto and the provident fund contribution must also be returned to him.

Petitioners filed a petition for certiorari with the CA. Subsequently, they also filed a Motion for the Issuance of a Temporary Restraining Order or a Writ of Preliminary Injunction, as respondent had filed a Motion for the Issuance of a Writ of Execution with the NLRC.

On June 20, 2003, the CA rendered its assailed Decision denying the petition and affirming the NLRC Resolutions.

On August 25, 2003, the CA denied petitioners' Motion for Reconsideration.

Hence, herein petition wherein petitioners assigned the following errors committed by the CA:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE ERRONEOUS FINDINGS OF THE NLRC DESPITE THE FACT THAT THE NLRC OVERLOOKED, MISAPPRECIATED OR MISAPPLIED SOME FACTS THAT WOULD HAVE AFFECTED THE RESULT OF THE CASE.

THE HONORABLE COURT OF APPEALS ACTED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT HELD THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED. [11]

Petitioners contend that factual findings of quasi-judicial agencies, while generally accorded finality, may be reviewed by this Court when the findings of the NLRC and the LA are contradictory; that in the exercise of its equity jurisdiction, this Court may look into the records of the case to re-examine the questioned findings.

Petitioners claim that they were merely exercising their inherent prerogative as an employer when they appointed respondent as Marketing Assistant to the Senior Vice-President for Marketing; that respondent's performance evaluations during the previous years showed that he was weak in the financial aspect of operation, but was good in marketing; thus, he would function with utmost efficiency and maximum benefit to the company in the Marketing Department; and that he had accepted his appointment unconditionally.

Petitioners submit that the positions of Credit and Collection Manager and Marketing Assistant are co-equal and of the same level of authority; that the scope of work of a Marketing Assistant is wider, since he has access to confidential informations and has the chance to communicate directly with higher officers of the company; that his area of responsibility as Credit and Collection Manager was limited to branches located in Legaspi City and Virac, Catanduanes; whereas as Marketing Assistant, he is responsible for analyzing and coordinating all marketing information relevant to the company's motorcycles from all over Luzon, and his reports are necessary for the planning and decision-making activities of petitioners' top management; and that there is no demotion, since respondent's position is more encompassing and vital to the company and he is receiving the same salary.

Petitioners also contend that they should not be adjudged to pay attorney's fees as they did not act in bad faith.

In his Comment, respondent states that it is not the function of this Court to analyze and weigh all over again the evidence already considered in the proceedings below, as its jurisdiction is limited to reviewing errors of law; that the CA had not only passed upon the legal/factual issues and arguments presented by the parties but had waded into the records and found out that the findings of the NLRC were supported by substantial evidence. He informs this Court that he was able to enforce the writ of execution issued by the NLRC and subsequently secured the release of the monetary award on November 14, 2003.

The parties thereafter filed their respective memoranda.

The issue for resolution is whether respondent's transfer from the position of Credit and Collection Manager to that of a Marketing Assistant amounts to a constructive dismissal. This is a factual matter. Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on certiorari. The *raison d'être* is that the Court is not a trier of facts. It is not to re-examine and re-evaluate the evidence on record. The general rule is that the factual findings of the NLRC, as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA, as it appears in this case. Thus we have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[12]

Well-settled is the rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirement of its business.[13] An owner of a business enterprise is given considerable leeway in managing his business. Our law recognizes certain rights, collectively called management prerogative as inherent in the management of business enterprises. We have consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges[14] and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[15] This privilege is inherent in the right of employers to control and manage their enterprises effectively.[16]

The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[17]

The employer bears the burden of showing that the transfer is not unreasonable, inconvenient or prejudicial to the employee; and does not involve a demotion in rank or a diminution of his salaries, privileges and other benefits.[18] Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.[19]

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay.[20] Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee, leaving him with no option but to forego his continued employment.[21]

A transfer is defined as a "movement from one position to another which is of equivalent rank, level or salary, without break in service." [22] Promotion, on the other hand, 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." [23] Conversely, demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.[24]

In this case, while the transfer of respondent from Credit and Collection Manager to Marketing Assistant did not result in the reduction of his salary, there was a reduction in his duties and responsibilities which amounted to a demotion tantamount to a constructive dismissal as correctly held by the NLRC and the CA.

A comparison in the nature of work of these two positions shows a great difference. As Credit and Collection Manager, respondent was clothed with all the duties and responsibilities of a managerial employee. He could devise and implement action plans to meet his objectives and exercise independent judgment in resolving problem accounts. He had power and control over NICs, Branch Control Officers (BCOs) and Cashiers under his

supervision, and he provided them training in the performance of their respective works. Further, he had the authority to ensure reserves in the NICs, BCOs and Cashiers in case of expansion, reassignment and/or termination. There is no doubt that said position of Credit and Collection Manager entails great duties and responsibilities and involves discretionary powers. In fact, even in petitioners' pleadings, they repeatedly stated that the position involved a high degree of responsibility requiring trust and confidence as it relates closely to the financial interest of the company.

On the other hand, the work of a Marketing Assistant is clerical in nature, which does not involve the exercise of any discretion. Such job entails mere data gathering on vital marketing informations relevant to petitioners' motorcycles and making reports to his direct supervisor. He is a mere staff member in the office of the Senior Vice-President for Marketing. While petitioners claim that the position of a Marketing Assistant covers a wide area as compared with the position of Credit and Collection Manager, the latter is reposed with managerial duties in overseeing petitioners' business in his assigned area, unlike the former in which he merely collates raw data. These two positions are not of the same level of authority.

There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity.[25]

We quote with approval the findings of the CA on the matter of respondent's demotion in his functions, thus:

x x x Studying minutely the proof proffered by both sides, our considered ruling is that there is more than the requisite quantum of evidence in support of the NLRC's conclusion that indeed, private respondent was constructively dismissed. This is evident, not only from the much reduced powers and prerogatives of the private respondent when his position was changed from Credit and Collection Manager to Marketing Assistant to the Senior Vice President; the variance in the duties between the two, as may be gleaned from the definition of functions made of record, in this case, are glaring and indubitable. As Credit and Collection Manager, private respondent had the authority to "devise and implement action plans x x x, manage and control the security and safety of collections and repossessed units x x x, effectively supervise, teach and train BCO and cashiers x x x, discipline NIC's, BCO's and cashiers, x x x," among others. In other words, he was part of management, or was at the supervisory level, to say the least. On the other hand, as Marketing Assistant to the Senior Vice President, private respondent was stripped of all management and oversize wherewithal, and became an appendage of his immediate supervisor, confined to such mundane functions as to "analyze monthly LTO data x x x, coordinate with Sales Engineers x x x, and make quarterly reports x x x," give inputs on such dreary information such as prices of rice and copra, tobacco and gasoline, sources of people's income, peace and order situation, prepare brochures, etc., which are humdrum clerical tasks requiring little or no discretion. Worse, he lost all the people under him, and had no staff, and was relegated to a "mere rank and file employee who had no one under his supervision and whose duties were merely routinary and clerical in nature which did not require the use of independent judgment." [26]

Moreover, petitioners failed to refute respondent's claim that as Credit and Collection Manager, he was provided with a service car which was no longer available to him as Marketing Assistant; thus, such was a reduction in his benefit.

There is also constructive dismissal when an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee as to foreclose any choice on his part except to resign from such employment.[27] As aptly observed by the CA, to wit:

While we may allow petitioners the leeway of disciplining its employees, which is why we uphold the finding of the NLRC that the fifteen-day suspension of private respondent was legal and proper, We cannot countenance the barbaric treatment suffered by the latter in the hands of his bosses. Undisputed it is that not only was private respondent made to look like an idiot when he was not given work in his new assignment, but

that he was humiliated and debased when petitioner Albos, in a very uncouth manner, hurled expletives at the private respondent, calling him bobo, gago and screaming putang ina mo in front of him, at the same time “crumpling (his) report” and throwing it into his face. Such undignified and boorish deeds perpetrated against private respondent directly caused him to forthwith leave the employ of petitioner corporation, which he served loyally for some twelve (12) years. [28]

Respondent’s demotion in the nature of his functions coupled with petitioner Albos’s act of insensibility no doubt amounts to his constructive dismissal.

Anent petitioners’ claim that respondent unconditionally accepted his formal appointment as Marketing Assistant on August 3, 2000, we note that in a letter dated July 27, 2000 addressed to petitioner Albos when he learned that he would be assigned as a Marketing Assistant, respondent had expressed reservations on such assignment and asked that he instead be assigned as Sales Engineer or to any position commensurate to his qualifications. Respondent could not be faulted for accepting the position of a Marketing Assistant, since he did so and stayed put in order to compare and evaluate his position. However, he experienced not only a demotion in his duties and responsibilities, an undignified treatment by his immediate superior, which prompted him to file this case.

Petitioners argue that it is patently inimical to their interest if respondent would be maintained in the position of Credit and Collection Manager, as he was negligent in the performance of his duties as such; that the 1999 incident was not the first time that respondent forwarded to top management overstated collection reports, since three of the NICs under respondent’s supervision committed similar misrepresentations in 1997; and that it has been held that the mere existence of a basis for believing that the supervisor or other personnel occupying positions of responsibility has breached the trust and confidence reposed in him by his employer is a sufficient ground for dismissal.

While petitioners have the prerogative to transfer respondent to another position, such transfer should be done without diminution of rank and benefits which has been shown to be present in respondent’s case. He could have been transferred to a job of managerial position and not to that of a Marketing Assistant. Moreover, petitioners failed to substantiate their claim that respondent was weak in the financial aspect of operation, but he was good in marketing, as the performance evaluation report relied upon by petitioners would not suffice. On the other hand, the evaluation report dated March 10, 1997 stated that respondent’s track records in sales and collection showed his potential for advancement and could be the basis for his promotion to Marketing Manager.

We note that the alleged overstated collection reports of three NICs under respondent’s supervision submitted in 1997, were already mentioned in the IAP report of the 1999 incident for which respondent was meted the penalty of 15- day suspension without salary, travel and transportation allowance; thus, the same could no longer be used to justify his transfer. Moreover, respondent’s demotion, which was a punitive action, was, in effect, a second penalty for the same negligent act of respondent.

Finally, we find no error committed by the NLRC in awarding attorney’s fees. In *San Miguel Corporation v. Aballa*,[29] we held that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney’s fees is justifiable under Article 111 of the Labor Code,[30] Section 8, Rule VIII, Book III of its Implementing Rules,[31] and paragraph 7, Article 2208 of the Civil Code.[32] The award of attorney’s fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[33]

WHEREFORE, the petition is DENIED. The Decision dated June 20, 2003 and the Resolution dated August 25, 2003 of the Court of Appeals are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Corona, Nachura, and Reyes, JJ., concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

** Pursuant to Section 4, Rule 45 of the Rules of Court, the Court of Appeals, as respondent, is deleted from the title of the case.

[1] Penned by Justice Romeo A. Brawner (now COMELEC Commissioner), concurred in by Justices Eliezer R. delos Santos and Regalado E. Maambong, rollo, pp. 29-34.

[2] Id. at 36.

[3] CA rollo, p. 82.

[4] CA rollo, p. 83.

[5] Id. at 248.

[6] Penned by Labor Arbiter Jovencio Ll. Mayor, Jr., rollo, pp. 37-57.

[7] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, CA rollo, pp. 26-49.

[8] Id. at 48.

[9] CA rollo, pp. 50-58.

[10] Id. at 57.

[11] Rollo, p. 15.

[12] Union Motor Corporation v. National Labor Relations Commission, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 689-690.

[13] Castillo v. National Labor Relations Commission, 367 Phil. 605, 615 (1999).

[14] Id.

[15] The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 284, citing Mendoza v. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766, citing Lanzaderas v. Amethyst Security and General Services, Inc., 452 Phil. 621, 635 (2003); Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission, 334 Phil. 84, 95 (1997); Escobin v. National Labor Relations Commission, 351 Phil. 973, 999 (1998).

[16] Mendoza v. Rural Bank of Lucban, supra note 15, citing Lanzaderas v. Amethyst Security and General Services, Inc., supra note 15; Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission, supra note 15, at 93; Escobin v. National Labor Relations Commission, supra note 15.

[17] Mendoza v. Rural Bank of Lucban, supra note 15. See Antonio H. Abad Jr., Compendium on Labor Law (2004), p. 55.

[18] *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999).

[19] *Id.*

[20] *Blue Dairy Corporation v. National Labor Relations Commission*, *supra* note 18, citing *Philippine-Japan Active Carbon Corporation v. National Labor Relations Commission*, G.R. No. 83239, March 8, 1989, 171 SCRA 164, 168.

[21] *Blue Dairy Corporation v. National Labor Relations Commission*, *supra* note 18, citing *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, 331 Phil. 694, 702 (1996).

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

[23] *Id.*, citing *Millares v. Subido*, 127 Phil. 370, 378 (1967).

[24] *Tinio v. Court of Appeals*, *supra* note 22.

[25] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 769 (2002).

[26] *Rollo*, p. 32.

[27] *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 910 (2002); see also *Ala Mode Garments, Inc. v. National Labor Relations Commission*, 335 Phil. 971, 978 (1997); *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, *supra* note 21; *Philippine-Japan Active Carbon Corporation v. National Labor Relations Commission*, *supra* note 20.

[28] *Rollo*, p. 33.

[29] G.R. No. 149011, June 28, 2005, 461 SCRA 392.

[30] ART. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[31] SEC. 8. Attorney's fees. — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[32] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

x x x x

[33] *San Miguel Corporation v. Del Rosario*, *supra* note 29, at 432-433.

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