COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, VS. ANGEL U. DEL VILLAR, RESPONDENT.

G.R. No. 163091. October 06, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Petitioner Coca-Cola Bottlers Philippines, Inc. (the Company) filed this Petition for Review on Certiorari, under Rule 45 of the Rules of Court, seeking the reversal of (1) the Decision[1] dated October 30, 2003 of the Court of Appeals in CA-G.R. SP No. 53815, which reversed and set aside the Decision[2] dated February 26, 1999 of the National Labor Relations Commission (NLRC) in NLRC CN. NCR-00-12-07634-96; and (2) the Resolution[3] dated March 29, 2004 of the appellate court in the same case, which denied for lack of merit the Motion for Reconsideration of the Company.

The antecedent facts are as follows:

The Company, one of the leading and largest manufacturers of beverages in the country, initially hired respondent Angel U. del Villar (Del Villar) on May 1, 1990 as Physical Distribution Fleet Manager with a job grade of S-7 and monthly salary of P50,000.00, aside from the use of a company car, gasoline allowance, and annual foreign travel, among other benefits. In 1992, as part of the reorganization of the Company, Del Villar became the Transportation Services Manager, under the Business Logistic Directorate, headed by Director Edgardo I. San Juan (San Juan). As Transportation Services Manager, Del Villar prepares the budget for the vehicles of the Company nationwide.

While serving as Transportation Services Manager, Del Villar submitted a Report dated January 4, 1996 to the Company President, Natale J. Di Cosmo (Di Cosmo), detailing an alleged fraudulent scheme undertaken by certain Company officials in conspiracy with local truck manufacturers, overpricing the trucks purchased by the Company by as much as P70,000.00 each. In the same Report, Del Villar implicated San Juan and Jose L. Pineda, Jr. (Pineda), among other Company officials, as part of the conspiracy. Pineda then served as the Executive Assistant in the Business Logistic Directorate in charge of the Refrigeration Services of the Company.

In 1996, the Company embarked on a reorganization of the Business Logistic Directorate. As a result, the functions related to Refrigeration were assigned to the Transportation Services Manager, which was renamed the Transportation and Refrigeration Services Manager. Mr. Nathaniel L. Evangelista, the Physical Distribution Superintendent of the Zamboanga Plant, was appointed the Corporate Transportation and Refrigeration Services Manager, replacing both Del Villar and Pineda, who were in charge of the Transportation Services and Refrigeration Services of the Company, respectively. Pineda was then appointed as the Corporate Purchasing and Materials Control Manager, while Del Villar as Pineda's Staff Assistant. These new appointments took effect on May 1, 1996.[4]

On July 8, 1996, seven months after the submission of his Report on the fraudulent scheme of several company officials, Del Villar received a Memorandum[5] from San Juan. Through said Memorandum, San Juan informed

Del Villar that (1) Del Villar was designated as Staff Assistant to the Corporate Purchasing and Materials Control Manager, with a job grade of NS-VII; (2) with Del Villar's new assignment, he ceased to be entitled to the benefits accruing to an S-7 position under existing company rules and policies; and (3) Del Villar was to turn over the vehicle assigned to him as Transportation Services Manager to Pineda by July 10, 1996.

Although as the Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar continued to receive the same salary as Transportation Services Manager, but his car and other privileges were withdrawn and he spent his time at his new post sitting "at a desk with no meaningful work whatsoever."[6] Del Villar believed that he was demoted by the Company to force him to resign. Unable to endure any further the harassment, Del Villar filed with the Arbitration Branch of the NLRC on November 11, 1996 a complaint against the Company for illegal demotion and forfeiture of company privileges. Del Villar also impleaded in his complaint Company President Di Cosmo, Vice-President and General Manager Jaime G. Oracion (Oracion), Senior Vice-President and Human Resources Director Rosa Maria Chua (Chua), San Juan, and Pineda. The complaint was docketed as NLRC CN. NCR-00-12-07634-96, assigned to Labor Arbiter Felipe Pati.

The Company failed to appear, despite due notice, at the scheduled preliminary conference before the NLRC Arbitration Branch.

Del Villar filed his Position Paper, supported by his Complaint Affidavit.

The Company filed a Motion to Dismiss, instead of a position paper, praying for the dismissal of Del Villar's complaint on the ground that Del Villar had no cause of action. The Company reasoned that in appointing Del Villar as the Staff Assistant of the Corporate Purchasing and Materials Control Manager, from his former position as Transportation Services Manager, the Company was merely exercising its inherent management prerogative to transfer an employee from one position to another. The Company also contended that Del Villar had no vested right to the privileges he previously enjoyed as Transportation Services Manager. In an Order dated July 24, 1997, the Labor Arbiter deferred action on the Motion to Dismiss until after submission by the Company of its Position Paper within 15 days from receipt of said order.

The Company filed on October 13, 1997 a Manifestation in which it stated that it was adopting its Motion to Dismiss as its Position Paper.

Thereafter, NLRC CN. NCR-00-12-07634-96 was submitted for resolution.

On March 3, 1998, the Labor Arbiter rendered a Decision in Del Villar's favor. The Labor Arbiter held that the allegations in Del Villar's complaint sufficiently presented a cause of action against the Company. The Company, in filing a Motion to Dismiss, hypothetically admitted the truth of the facts alleged in the complaint, and the failure of the Company to deny or rebut Del Villar's allegations of bad faith on the part of the Company, gave rise to the presumption against the latter.

The Labor Arbiter proceeded to rule:

> The issue as to whether or not [the Company] acted illegally in demoting [Del Villar] is, therefore, answered in the affirmative.
>
> This office is inclined to believe and so holds that the reorganization of [the Company] appears to have been done sans the necessary requisite of good faith, after [Del Villar] had filed his complaint to the company President detailing the scam involving the purchase of the truck fleet of 1996.
>
> [Del Villar] was not outrightly dismissed; instead, he was removed from his former position as Transportation Services Manager, and demoted to Staff Assistant to the Corporate Purchasing and Materials Control Manager. Furthermore, as "Staff Assistant" [Del Villar] allegedly receives his usual salary but his car privileges, gasoline

> allowances, and foreign travel were withdrawn and he now sits at a desk "with no meaningful work whatsoever."
>
> [Del Villar] appears to have been singled out or discriminated upon due to his having reported the 1996 truck scam, and his present isolation can be seen as a punishment for acting in a righteous and forthright manner. Otherwise, as a "Staff Assistant" [Del Villar] should have been given some meaningful or responsible work appurtenant to the job designation.
>
> x x x x
>
> This Office finds and so holds that in all the foregoing rulings, the concept of management prerogative is limited or otherwise qualified. Procedurally and substantively, [the Company] through its named officers appears to have acted illegally and in bad faith in its purported "reorganization", in demoting [Del Villar] and in removing [Del Villar's] company privileges.
>
> Had [Del Villar] resigned under the circumstances, he could be said to have been constructively discharged because a constructive discharge is defined as "a quitting because continued employment is rendered impossible, unreasonable and unlikely, as an offer involving demotion in rank and a diminution in pay". (Philippine Japan Active Carbon Corporation and Tukuichi Satofuka vs. NLRC, G.R. 83239, Mar. 1989).[7]

For demoting Del Villar without justifiable cause, the Labor Arbiter ruled that the Company was liable for the following:

> As a consequence of [the Company's] acts [Del Villar] suffered the effects of humiliation, a besmirched repurtation, serious anxiety and sleepless nights which justify an award of moral damages.
>
> In order to serve as an example to other companies who may be so inclined as to emulate [the Company's] act of punishing their employee's honesty and sense of fair play, [the Company] must per force be assessed exemplary damages.
>
> In order to protect and vindicate his rights under the Labor Code, [Del Villar] was constrained to retain counsel for which [the Company] should be assessed attorney's fees of not less than ten percent (10%) of the awarded sum.
>
> In the matter of the unlawful withdrawal of [Del Villar's] car, gasoline allowance and foreign travel by [the Company], it is obligated to rectify the withdrawal of privileges by returning to [Del Villar] the said Toyota car, and if that is not possible, its value as of the time said car was withdrawn including the value of the gasoline allowance and foreign travel due him.[8]

In the end, the Labor Arbiter decreed:

> WHEREFORE, premises considered judgment is hereby rendered against [the Company and the impleaded Company officials] and in favor of [Del Villar] ordering [the Company] to (1) reinstate [Del Villar] to his former job level; (2) to return the car to [Del Villar] or to compensate [Del Villar] for the loss of his privileges such as the value of the Toyota car as of the time of taking including the value of the gasoline allowance and the foreign travel due [Del Villar]; (3) indemnify [Del Villar] moral damages of P1,000,000.00 Pesos and exemplary damages of P1,000,000.00 Pesos, aside from attorney's fees of 10% of sums herein awarded.[9]

The Company expectedly appealed to the NLRC.

While the case was still pending appeal before the NLRC, Del Villar received a letter dated April 28, 1998, signed by one Virgilio B. Jimeno for the Company, which read:

> Dear Mr. Del Villar:

> Presently, the Company is implementing various programs to ensure the accomplishment of its corporate goals and objectives, and to increase the productivity of its workforce.
>
> Since the various programs will affect some of its employees, the Company has initiated a special program called "Project New Start". This program is intended to assist employees whose positions will be declared redundant with the implementation of new distribution systems, utilization of improved operational processes and functional re-organizations.
>
> Your position has been determined as no longer necessary due to the reorganization of the Business Logistics Directorate. The Transportation and Refrigeration Services Department of the Technical Operations Directorate has absorbed your function and our efforts to transfer you to a similar position within the organization have not been successful. Thus, you are considered separated from [the Company] effective May 31, 1998.
>
> Thank you for your kind understanding. We wish you success and God's blessings in all your future undertakings.[10]

In a Decision dated February 26, 1999, the NLRC reversed the Labor Arbiter, reasoning that:

> Contrary to the Labor Arbiter's pronouncement that [the Company] should have rebutted allegations of bad faith and malice, we are more inclined to apply the presumption of good faith. Mere conclusions of fact and law should not be used as bases for an automatic finding of bad faith. As it is, we do not even see any disclosure of the scam and his alleged demotion. If indeed the so-called "great grandmother of Coca cola scams of 1996" were true, the logical consequence of such disclosure is for the president of the company to dismiss the erring employees and officers for their highly irregular acts and not to penalize [Del Villar] for making such disclosure. This is amply supported by the fact that the [the Company] conducted a thorough investigation of the reported scam and even obtained the services of an independent auditor to determine whether the alleged anomalous transactions were actually irregular and/or questionable. This manifests that [Del Villar's] disclosure was taken seriously contrary to his claims of discrimination. Accordingly, it cannot be said that the act of the [Company] was retaliatory or penal in nature nor tainted with bad faith and/or malice. Otherwise, [the Company] would not have given grave attention to the disclosure of [Del Villar].
>
> On the issue of whether there was a demotion, we are of the view that it was improper to conclude that [Del Villar's] movement from the position of Transportation Services Manager to Staff Assistant to the Corporate Purchasing and Materials Control Manager necessarily indicated a demotion. The records show that there was no diminution of salary. While it appears that his transportation benefits were withheld, it does not follow that his position as Staff Assistant is inferior to that of a Transportation Services Manager. We take notice of the fact that certain positions in a company involve traveling from one place to another, hence the necessity to provide for a car, and related benefits like allowances for gasoline and maintenance. A company cannot, however, be reasonably expected to provide the same benefits to an employee whose position for example, requires that he stays in the office during working hours. Benefits, privileges and perquisites that attach to a certain position do not provide sufficient bases for determining the superiority or inferiority of the position so held.[11]

Hence, the NLRC concluded:

> In fine We find that [Del Villar] was not demoted and that the [Company] has not acted in bad faith or with malice.
>
> WHEREFORE, in view of the foregoing, the Decision dated March 3, 1998 rendered by Labor Arbiter Felipe R. Pati is hereby REVERSED and SET ASIDE and a new one rendered DISMISSING the complaint for lack of merit.[12]

Del Villar moved for the reconsideration of the foregoing NLRC Decision, but the NLRC denied such motion for

lack of merit in a Resolution dated April 26, 1999.[13]

Unsatisfied, Del Villar brought his case before the Court of Appeals via a Petition for Certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 53815.

On October 30, 2003, the Court of Appeals promulgated its Decision favoring Del Villar. According to the Court of Appeals, the NLRC committed grave abuse of discretion by turning a blind eye on several indicia that clearly showed Del Villar was demoted without any lawful reason: (1) the very nomenclature used by the Company designating Del Villar's new job: from Transportation Services Manager, Del Villar was suddenly designated as staff assistant to another manager; (2) the diminution in the benefits being enjoyed by Del Villar prior to his transfer, such as the use of the company car, gasoline allowance, and annual foreign travel; and (3) Del Villar's new post in the Company did not require him to perform any meaningful work, a far cry from his previous responsibilities as Transportation Services Manager which include the preparation of the budget of the Company for all of its vehicles nationwide.

The Court of Appeals also made a finding of bad faith against the Company:

> It is true that Labor Arbiters cannot dictate business owners on how to run their enterprises. Concededly, employers and their managers have all the leeway to make the necessary adjustments in their organizations. But the prerogative is not absolute. It must be accompanied by good faith. x x x.
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> x x x x
>
> We have reasonable ground to believe that the reorganization theory poised by [the Company] was a mere afterthought. If indeed [Del Villar] was a casualty of a valid reorganization, officials of [the Company] could have easily told him in the several memos they issued to [Del Villar]. Edgardo San Juan, in a memo dated April 29, 1996, merely informed [Del Villar] the name of his replacement as Transportation Services Manager (Rollo, p. 53). In his second memo dated May 8, 1996, San Juan informed [Del Villar] that he would be "under the direct supervision of Mr. Jose L. Pineda, Jr. until an assignment, if any, would have been determined" for [Del Villar].
>
> Two (2) subsequent memos were received by [Del Villar] but still no hint on the reason behind his relief. Rosa Marie Chua, in a memo dated June 11, 1996, simply ordered [Del Villar] to return the company car (Rollo, p. 56). Again, Chua sent a memo dated June 17, 1996, telling [Del Villar] that the car was part of "perquisites" of a Transportation Services Manager and must be returned as he was already relieved of his position (Rollo, 56).
>
> In all four (4) memos, officials of [the Company] never once attributed to company reorganization as the reason behind [Del Villar's] relief as Transportation Services Manager. Instead, [the Company] waited for [Del Villar] to file a complaint before it declared publicly its reason for relieving him from his post.
>
> It is unfortunate enough for [the Company] to give San Juan, the very person charged by [Del Villar] of committing fraud against the company, the free hand to deal with his accuser. And whatever remains of [the Company's] tattered claim to good faith towards [Del Villar] evaporated by its absence of forthrightness to the latter. [The Company's] lack of candor clearly lends support to a conclusion that [Del Villar's] relief was occasioned by a reason alien to an alleged company reorganization. The evidence presented by [Del Villar] tend to show that he was demoted, not because of company reorganization, but because of his authorship of the report about the fraud being committed by certain officials of [the Company].[14]

Just like the Labor Arbiter, the Court of Appeals held the Company liable for the following but in reduced amounts:

> Albeit We are inclined to reinstate the decision dated March 3, 1998 of the Labor Arbiter, We feel, however, that the amount of moral and exemplary damages thereunder awarded to [Del Villar] to the tune of P1 million

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> each was excessive. To Our mind, the liability of [the Company] is mitigated when it continued providing [Del Villar] despite his demotion with the salary he was receiving as Transportation Services Manager. The moral and exemplary damages should thus be reduced to the reasonable amount of P500,000.00, for each item.[15]

The dispositive portion of the assailed Decision of the appellate court stated:

> WHER[E]FORE, the instant petition is hereby GRANTED. Accordingly, the assailed Decision dated February 26, 1999 and Resolution dated April 26, 1999 of the National Labor Relations Commission are hereby SET ASIDE. Subject to the modification reducing to P500,000.00 the amount of moral damages and to P500,000.00 the amount of exemplary damages, the decision dated March 3, 1998 of the Labor Arbiter is hereby REINSTATED.[16]

Del Villar filed on November 20, 2003 a Motion for Partial Reconsideration of the above-mentioned decision of the appellate court, praying for the award of backwages to be reckoned from May 31, 1998, the day he had been dropped from the payroll. The Company also moved for the reconsideration of the same judgment, asserting, among other arguments, that Del Villar's Petition for Certiorari in CA-G.R. SP No. 53815, was filed out of time and should have been dismissed.

In its Resolution dated March 29, 2004, the Court of Appeals denied the Motions for Reconsideration of both parties for lack of merit.[17]

In this Petition for Review, the Company raises three grounds for consideration of this Court:

> - . THE HONORABLE COURT OF APPEALS GAVE DUE COURSE TO THE PETITION DESPITE THE FACT THAT IT WAS CLEARLY FILED BEYOND THE REGLEMENTARY PERIOD PRESCRIBED BY LAW.
>
> - THE HONORABLE COURT OF APPEALS GAVE DUE COURSE TO THE [Court of Appeals] PETITION DESPITE THE FACT THAT [Del Villar] FAILED TO ESTABLISH THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE 26 FEBRUARY 1999 DECISION AND 26 APRIL 1999 RESOLUTION.
>
> - THE HONORABLE COURT OF APPEALS EFFECTIVELY DIRECTED [Del Villar's] REINSTATEMENT TO HIS FORMER JOB LEVEL DESPITE ITS IMPOSSIBILITY SINCE HE HAD ALREADY BEEN VALIDLY SEPARATED FROM SERVICE.[18]

The Company avers that the Court of Appeals erred in giving due course to Del Villar's Petition for Certiorari in CA-G.R. SP No. 53815 as the said remedy was filed out of time. Rule 65, Section 4 of the Rules of Court, as amended by Supreme Court Circular No. 39-98 on September 1, 1998, provided:

> Sec. 4. Where and when petition to be filed. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphases ours.)

The Company points out that Del Villar received a copy of the NLRC Decision dated February 26, 1999 on March 17, 1999. Twelve days later, on March 29, 1999, Del Villar filed a Motion for Reconsideration, thus, interrupting the 60-day reglementary period for filing a petition for certiorari. The NLRC denied Del Villar's Motion for Reconsideration in a Resolution dated April 26, 1999, a copy of which Del Villar received on May 21, 1999. From May 21, 1999, Del Villar only had 48 days more, or until July 8, 1999, within which to file his petition for certiorari; but he only did so 60 days later, on July 20, 1999. Clearly, Del Villar's Petition for Certiorari in CA-G.R. SP No. 53815 was filed 12 days late and way beyond the reglementary period as provided under the Rules of Court.

We do not agree.

While CA-G.R. SP No. 53815 was pending before the Court of Appeals, Section 4 of Rule 65 of the Rules of Court was amended anew by Supreme Court Circular No. 56-2000, which took effect on September 1, 2000, to read:

> Sec. 4. When and where petition filed. -- The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphases ours.)

It is clear that under Supreme Court Circular No. 56-2000, in case a motion for reconsideration of the judgment, order, or resolution sought to be assailed has been filed, the 60-day period to file a petition for certiorari shall be computed from notice of the denial of such motion.

The crucial question now is whether Supreme Court Circular No. 56-2000 should be applied retroactively to Del Villar's Petition in CA-G.R. SP No. 53815.

We answer affirmatively. As we explained in Perez v. Hermano[19]:

> Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed.
>
> In Narzoles v. National Labor Relations Commission [G.R. No. 141959, 29 September 2000, 341 SCRA 533-538], we described this latest amendment as curative in nature as it remedied the confusion brought about by Circular No. 39-98 because, "historically, i.e., even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for certiorari." Curative statutes, which are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements, by their very essence, are retroactive and, being a procedural rule, we held in Sps. Ma. Carmen and Victor Javellana v. Hon. Presiding Judge Benito Legarda (G.R. No. 139067, 23 November 2004] that "procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent."[20]

In the instant case, Del Villar filed a Motion for Reconsideration of the NLRC Decision dated February 26, 1999. Del Villar received a copy of the NLRC Resolution dated April 26, 1999, denying his Motion for Reconsideration, on May 21, 1999. As already settled by jurisprudence, Del Villar had a fresh period of 60 days from May 21, 1999 within which to file his Petition for Certiorari before the Court of Appeals. Keeping in mind the rule that in computing a period, the first day shall be excluded and the last day included,[21] exactly 60 days had elapsed from May 21, 1999 when Del Villar filed his Petition with the appellate court on July 20, 1999. Hence, without a doubt, Del Villar's Petition for Certiorari in CA-G.R. SP No. 53815 was seasonably filed.

We now turn our attention to the merits of the case.

The Company asserts that the Court of Appeals should not have issued a writ of certiorari in Del Villar's favor as there was no grave abuse of discretion on the part of the NLRC in finding that Del Villar was not demoted and that the Company had not acted in bad faith or with malice.

The issue of whether the Company, in transferring Del Villar from the position of Transportation Services Manager to Staff Assistant to the Corporate Purchasing and Materials Control Manager, validly exercised its management prerogative or committed constructive dismissal, is a factual matter. It is a settled rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. Moreover, in a petition for review on certiorari under Rule 45 of the Rules of Court, the Supreme Court reviews only errors of law and not errors of facts. However, where there is divergence in the findings and conclusions of the NLRC, on the one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, the Court is constrained to examine the evidence,[22] to determine which findings and conclusion are more conformable with the evidentiary facts. Hence, in the instant Petition, we embark on addressing not only the legal, but the factual issues as well.

Jurisprudence recognizes the exercise of management prerogative. For this reason, courts often decline to interfere in legitimate business decisions of employers.In fact, labor laws discourage interference in employers' judgment concerning the conduct of their business.[23]

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another - provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. 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.[24]

Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[25] In the case of Blue Dairy Corporation v. National Labor Relations Commission,[26] we described in more detail the limitations on the right of management to transfer employees:

> But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to 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. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal

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> exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[27]

In the case at bar, there is no dispute that Del Villar was transferred by the Company from the position of Transportation Services Manager to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager. The burden thus falls upon the Company to prove that Del Villar's transfer was not tantamount to constructive dismissal. After a careful scrutiny of the records, we agree with the Labor Arbiter and the Court of Appeals that the Company failed to discharge this burden of proof.

The Company and its officials attempt to justify the transfer of Del Villar by alleging his unsatisfactory performance as Transportation Services Manager. In its Petition, the Company disclosed that:

> 4.1. As Transportation Services Manager, [Del Villar] displayed an utterly woeful performance. He was unable to submit basic data as to type and brand of vehicles with highest/lowest maintenance cost as requested. [Del Villar] could not even update the records of his office. He never complied with his commitments on submission of reports and his claims of the availability of such reports were never substantiated.
>
> 4.2. [Del Villar] could not work with minimum or no supervision. His activities needed to be closely and constantly monitored by his superiors. [Del Villar] lacked initiative and had to be constantly reminded of what to do. The work he performed and/or submitted, more often than not, had to be redone. In his Performance and Potential Evaluation Sheet for 1995, [Del Villar] merited a mediocre grade of 2 in a scale of one (1) to five (5), the latter number being the highest grade. Copies of the Affidavit of Edgardo I. San Juan ["San Juan"], the Company's then Business Logistic Director, and respondent's Performance and Potential Evaluation Sheet for 1995 are attached as Annexes "B" and "C", respectively.[28]

San Juan averred in his Affidavit that Del Villar was inept and incompetent as Transportation Services Manager; and was even more unqualified to take over the new position of Transportation and Refrigeration Services Manager, which involved additional functions related to Refrigeration. It was for this reason that Del Villar was transferred to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager.

In his Counter-Affidavit submitted before the NLRC, Pineda, the Corporate Purchasing and Materials Control Manager, claimed that:

> 3. As his evaluation would show, Mr. del Villar was not a well-motivated employee. He could not perform his job well and promptly with minimum or no supervision and follow-up from his superiors. He repeatedly failed to observe the deadlines which I set for the submission of his reports and often procrastinates. His work product likewise suffered from accuracy and thoroughness. Despite several admonitions and guidance from me as his immediate superior, he simply refused to change his work attitude.[29]

We are unconvinced. The dismal performance evaluations of Del Villar were prepared by San Juan and Pineda after Del Villar already implicated his two superiors in his Report dated January 4, 1996 in an alleged fraudulent scheme against the Company. More importantly, we give weight to the following instances establishing that Del Villar was not merely transferred from the position of Transportation Services Manager to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager; he was evidently demoted.

A transfer is a movement from one position to another which is of equivalent rank, level or salary, without break in service. 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. Conversely, demotion involves a situation where 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.[30]

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First, as the Court of Appeals observed, Del Villar's demotion is readily apparent in his new designation. Formerly, he was the Transportation Services Manager; then he was made a Staff Assistant - a subordinate - to another manager, particularly, the Corporate Purchasing and Materials Control Manager.

Second, the two posts are not of the same weight in terms of duties and responsibilities. Del Villar's position as Transportation Services Manager involved a high degree of responsibility, he being in charge of preparing the budget for all of the vehicles of the Company nationwide. As Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar contended that he was not assigned any meaningful work at all. The Company utterly failed to rebut Del Villar's contention. It did not even present, at the very least, the job description of such a Staff Assistant. The change in the nature of work resulted in a degrading work condition and reduction of duties and responsibility constitute a demotion in rank. In Globe Telecom, Inc. v. Florendo-Flores,[31] we found that there was a demotion in rank even when the respondent therein continued to enjoy the rank of a supervisor, but her function was reduced to a mere house-to-house or direct sales agent.

Third, while Del Villar's transfer did not result in the reduction of his salary, there was a diminution in his benefits. The Company admits that as Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar could no longer enjoy the use of a company car, gasoline allowance, and annual foreign travel, which Del Villar previously enjoyed as Transportation Services Manager.

Fourth, it was not bad enough that Del Villar was demoted, but he was even placed by the Company under the control and supervision of Pineda as the latter's Staff Assistant. To recall, Pineda was one of the Company officials who Del Villar accused of defrauding the Company in his Report dated January 4, 1996. It is not too difficult to imagine that the working relations between Del Villar, the accuser, and Pineda, the accused, had been strained and hostile. The situation would be more oppressive for Del Villar because of his subordinate position vis-à-vis Pineda.

Fifth, all the foregoing caused Del Villar inconvenience and prejudice, so unbearable for him that he was constrained to seek remedy from the NLRC. The Labor Arbiter was correct in his observation that had Del Villar resigned immediately after his "transfer," he could be said to have been constructively dismissed. There is constructive dismissal when there is a demotion in rank and/or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[32]

Eventually, however, the Company actually terminated Del Villar's services effective May 31, 1998, as his position was no longer necessary or was considered redundant due to the reorganization of the Business Logistic Directorate.

Redundancy is one of the authorized causes for the dismissal of an employee. It is governed by Article 283 of the Labor Code, which reads:

> ART. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole

year.

Redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[33]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[34]

We mentioned in Panlilio v. National Labor Relations Commission[35] that an employer may proffer "new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring" as evidence of redundancy. We further explained in AMA Computer College Inc. v. Garcia[36] what constitutes substantial evidence of redundancy:

> ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification by its Human Resources Supervisor, Ma. Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion. As they are, they are grossly inadequate and mainly self-serving. More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining.[37] (Emphases ours.)

In this case, other than its own bare and self-serving allegation that Del Villar's position as Staff Assistant of Corporate Purchasing and Materials Control Manager had already become redundant, no other evidence was presented by the Company. Neither did the Company present proof that it had complied with the procedural requirement in Article 283 of prior notice to the Department of Labor and Employment (DOLE) of the termination of Del Villar's employment due to redundancy one month prior to May 31, 1998. The notice to the DOLE would have afforded the labor department the opportunity to look into and verify whether there is truth as to the claim of the Company that Del Villar's position had become redundant "with the implementation of new distribution systems, utilization of improved operational processes, and functional reorganization" of the Company. Compliance with the required notices would have also established that the Company abolished Del Villar's position in good faith.[38]

Del Villar's poor employee performance is irrelevant as regards the issue on redundancy. Redundancy arises because there is no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position.[39]

There being no authorized cause for the termination of Del Villar's employment, then he was illegally dismissed.

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary

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for every year of service.[40] Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. We note that Del Villar's reinstatement is no longer possible because the position he previously occupied no longer exists, per San Juan's Affidavit dated October 15, 1998.[41] Also, Del Villar had already received his separation pay sometime in October 1998.[42]

Because of his unjustified dismissal, we likewise award in Del Villar's favor moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harrassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. We have consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code.[43] These damages, however, are not intended to enrich the illegally dismissed employee, such that, after deliberations, we find the amount of P100,000.00 for moral damages and P50,000.00 for exemplary damages sufficient to assuage the sufferings experienced by Del Villar and by way of example or correction for the public good.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The Decision dated October 30, 2003 and Resolution dated March 29, 2004 of the Court of Appeals in CA-G.R. SP No. 53815 are hereby AFFIRMED with the following MODIFICATIONS: 1) the amount of backwages shall be computed from the date of Del Villar's illegal dismissal until the finality of this judgment; and 2) the amount of moral and exemplary damages are reduced to P100,000.00 and P50,000.00, respectively. For this purpose, the case is hereby REMANDED to the Labor Arbiter for the computation of the amounts due Angel U. del Villar.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

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[1] Rollo, pp. 158-173; penned by Presiding Justice Cancio C. Garcia with Associate Justices Renato C. Dacudao and Danilo B. Pine, concurring.

[2] Id. at 89-100.

[3] Id. at 190-193.

[4] CA rollo, p. 53.

[5] Id. at 57.

[6] Id. at 51.

[7] Rollo, pp. 62-65.

[8] Id. at 65-66.

[9] Id. at 66.

[10] CA rollo, p. 130.

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[11] Rollo, pp. 96-98.

[12] Id. at 100.

[13] Id. at 117-118.

[14] Id. at 169-171.

[15] Id. at 172.

[16] Id.

[17] Id. at 190-193.

[18] Id. at 11-12.

[19] 501 Phil. 397 (2005).

[20] Id. at 404.

[21] Article 13, Civil Code of the Philippines.

[22] Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 770-771.

[23] Philippine Industrial Security Agency Corporation v. Aquinaldo, 499 Phil. 215, 225 (2005).

[24] Mendoza v. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766.

[25] The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 288.

[26] 373 Phil. 179 (1999).

[27] Id. at 186.

[28] Rollo, pp. 5-6.

[29] Id. at 39.

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

[31] Id.

[32] Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter, 503 Phil. 980, 995 (2005).

[33] San Miguel Corporation v. Del Rosario, G.R. No. 168194, December 13, 2005, 477 SCRA 604, 614.

[34] AMA Computer College, Inc. v. Garcia, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 264.

[35] 346 Phil. 30, 34 (1997).

[36] Supra note 34.

[37] Id. at 265.

[38] Id.

[39] Id.

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[40] General Milling Corporation v. Casio and Pino, G.R. No. 149552, March 10, 2010; Mt. Carmel College v. Resuena, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[41] Rollo, p. 32.

[42] Id at 7.

[43] Cruz v. National Labor Relations Commission, 381 Phil. 775, 790 (2000).

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