

GUALBERTO AGUANZA, PETITIONER, VS. ASIAN TERMINAL, INC., KEITH JAMES, RICHARD BARCLAY, AND ATTY. RODOLFO CORVITE, RESPONDENTS.

G.R. No. 163505. August 14, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 9 January 2004 of the Court of Appeals (appellate court) as well as the Resolution[3] promulgated on 5 May 2004 in CA-G.R. SP No. 74626. The appellate court denied Gualberto Aguanza's (Aguanza) petition for certiorari and ruled that the National Labor Relations Commission (NLRC) was correct when it held that the transfer of the base of Asian Terminal, Inc.'s (ATI) Bismark IV from Manila to Bataan was a valid exercise of management prerogative. Thus, Aguanza was no longer entitled to receive out-of-port allowance and meal allowance for work done in Bataan.

The Facts

The appellate court narrated the facts as follows:

Petitioner Gualberto Aguanza was employed with respondent company Asian Terminal, Inc. from April 15, 1989 to October 1997. He was initially employed as Derickman or Crane Operator and was assigned as such aboard Bismark IV, a floating crane barge owned by Asian Terminals, Inc. based at the port of Manila.

As of October 1997, he was receiving the following salaries and benefits from [ATI]:

- a. Basic salary - P8,303.30;
- b. Meal allowance - P1,800 a month;
- c. Fixed overtime pay of 16 hours when the barge is assigned outside Metro Manila;
- d. P260.00 per day as out of port allowance when the barge is assigned outside Manila.

Sometime in September 1997, the Bismark IV, together with its crew, was temporarily assigned at the Mariveles Grains Terminal in Mariveles, Bataan.

On October 20, 1997, respondent James Keith issued a memo to the crew of Bismark IV stating that the barge had been permanently transferred to the Mariveles Grains terminal beginning October 1, 1997 and because of that, its crew would no longer be entitled to out of port benefits of 16 hours overtime and P200 a day allowance.

[Aguanza], with four other members of the crew, stated that they did not object to the transfer of Bismark IV to Mariveles, Bataan, but they objected to the reduction of their benefits.

When they objected to the reduction of their benefits, they were told by James Keith to report to the Manila office only to be told to report back to Bataan. On both occasions, [Aguanza] was not given any work assignment.

After being shuttled between Manila and Bataan, [Aguanza] was constrained to write respondent Atty. Corvite for clarification of his status, at the same time informing the latter of his willingness to work either in Manila or Bataan.

While he did not agree with private respondents' terms and conditions, he was nonetheless willing to continue working without prejudice to taking appropriate action to protect his rights.

Because of private respondents' refusal to give him any work assignment and pay his salary, [Aguanza] filed a complaint for illegal dismissal against respondents.

On the other hand, private respondents claim that:

[Aguanza] was employed by [ATI] on February 1, 1996 as a Derickman in Bismark IV, one of the floating crane barges of [ATI] based in the port of Manila. In 1997, [ATI] started operation at the Mariveles Grains Terminals, Mariveles, Bataan. Beginning October 1, 1997, Bismark IV including its crew was transferred to Mariveles. For their transfer, [ATI] offered the crew the following:

"I am asking you to reply to me by the 31st October 1997 if you wish to be transferred to Mariveles under the following salary conditions:

- regular 40-hour duty Monday to Friday
- overtime paid in excess of 8 hours/day
- overtime paid on Saturdays and Sundays
- no additional allowance
- no transportation"

By way of reply to the memorandum, [Aguanza] along with all the members of the crew of Bismark IV namely: Rodrigo Cayabyab, Wilfredo Alamo, Eulogio Toling, Jonathan Pereno, Marcelito Vargas, Erwin Greyblas and Christian Paul Almario (crew member Nestor Resuello did not sign the said letter) answered through an undated letter, to wit:

"We used to receive the following whenever we are assigned out of town.

- 1) P200.00 a day allowance
- 2) P60.00 per day food allowance
- 3) 16 hours per day fixed overtime

We have been receiving this [sic] compensation and benefits whenever we are assigned to Bataan. x x x"

They asserted that they have no objection to their assignment in Mariveles, Bataan but on the former terms and conditions.

Eventually, the other members of the crew of Bismark IV accepted the transfer and it was only [Aguanza] who refused the transfer.

On November 12, 1997, [Aguanza] wrote the company asserting that he did not request his transfer "to Manila from Mariveles." He stressed that he was willing to be assigned to Mariveles so long that there is no diminution of his benefits while assigned to Mariveles, which meant, even if he was permanently based in Mariveles, Bataan, he should be paid 24 hours a day - 8 hours regular work and 16 hours overtime everyday plus P200.00 per day allowance and P60.00 daily food allowance.

[Aguanza] insisted on reporting to work in Manila although his barge, Bismark IV, and its other crew were already permanently based in Mariveles, Bataan. [Aguanza] was not allowed to time in in Manila because his

work was in Mariveles, Bataan.

In [Aguanza]'s appointment paper, [Aguanza] agreed to the following conditions printed and which reads in part:

"That in the interest of the service, I hereby declare, agree and bind myself to work in such place of work as ATI may assign or transfer me. I further agree to work during rest day, holidays, night time or other shifts or during emergency." [4]

The Labor Arbiter's Ruling

In his Decision dated 28 September 1998, the Labor Arbiter found that respondents illegally dismissed Aguanza. Aguanza was willing to report back to work despite the lack of agreement on his demands but without prejudice to his claims. The Labor Arbiter also construed ATI's offer of separation pay worth two months' salary for every year of service as indicative of ATI's desire to terminate Aguanza's services. ATI failed to justify its failure to allow Aguanza to work because of Aguanza's continued insistence that he be paid his former salary and benefits. ATI's refusal to pay the same amount to Aguanza violated the rule against diminution of benefits. Although ATI had the prerogative to transfer employees, the prerogative could not be exercised if the result was demotion of rank or diminution of salary, benefits and other prerogatives of the employee. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, this office is convinced that complainant Aguanza was illegally dismissed by respondents. Consequently, respondent is hereby ordered to immediately reinstate complainant to his former position without loss of seniority rights and to pay him full backwages and benefits from the time he was dismissed effective November 1997 until he is actually reinstated. Considering that it is clear from respondents' letters that their intention is to assign complainant to Mariveles, Bataan, he is entitled to all the salary and benefits due him if assigned to said place.

Anent the claim of complainant for the cash conversion of his vacation and sick leave credits, respondents never denied their liability for the same. Consequently, they are, likewise, also ordered to pay complainant the cash equivalent of his unused vacation and sick leave credits.

Considering that the respondents are obviously in bad faith in effecting the dismissal as reflected in their ordering him to report back for work but refusing to accept him back, complainant should be awarded moral and exemplary damages in the amount of P50,000.00 and P100,000.00, respectively.

Further, respondents are ordered to pay complainant attorney's fees equivalent to ten (10%) percent of the total amount awarded in favor of the complainant.

SO ORDERED. [5]

Respondents appealed from the Labor Arbiter's judgment on 5 May 1999.

The Ruling of the NLRC

In its Decision promulgated on 11 February 2002, the NLRC dismissed Aguanza's complaint and set aside the decision of the Labor Arbiter. The NLRC adopted the report and recommendation of Labor Arbiter Cristeta D. Tamayo (Arbiter Tamayo). Arbiter Tamayo recommended that the appeal of respondents should be granted, and found that Aguanza's insistence to be paid out-of-town benefits, despite the fact that the crane to which he was assigned was already permanently based outside Metro Manila, was unreasonable.

The NLRC denied Aguanza's motion for reconsideration in an Order dated 23 September 2002.

The Decision of the Appellate Court

The appellate court affirmed the ruling of the NLRC and dismissed Aguanza's petition in a Decision promulgated on 9 January 2004. The appellate court stated that:

The fixed overtime of 16 hours, out-of-port allowance and meal allowance previously granted to [Aguanza] were merely supplements or employment benefits given under a certain condition, i.e., if [Aguanza] will be temporarily assigned out-of-port. It is not fixed and is contingent or dependent of [Aguanza's] out-of-port reassignment. Hence, it is not made part of the wage or compensation.

This Court also finds utter bad faith on the part of [Aguanza]. [Aguanza] claims that he does not contest his permanent reassignment to Mariveles, Bataan and yet he insisted on reporting to Manila. If petitioner had only been sincere to his words, he would have reported to Mariveles, Bataan where his work is, and in compliance with the employment contract with [ATI].

There was no illegal dismissal since it was [Aguanza] who refused to report to Mariveles, Bataan where he was assigned.

[Aguanza's] other claims have no basis and, accordingly, should be denied.

WHEREFORE, premises considered, this petition is DENIED and ORDERED DISMISSED.

SO ORDERED.[6]

In a Resolution promulgated on 5 May 2004, the appellate court denied Aguanza's motion for reconsideration.

The Issues

In the present petition, Aguanza states that the appellate court committed the following errors:

- It was grievous error for the Court of Appeals to uphold the decision of the NLRC in NLRC NCR CA No. 021014-99 notwithstanding the fact that respondents' appeal to the NLRC was never perfected in view of the insufficiency of the supersedeas bond posted by them.

- There is no factual or legal basis for the respondent Court of Appeals to hold that respondents were correct in not allowing petitioner to "time-in" in Manila.

3. The Court of Appeals likewise disregarded the evidence on record and applicable laws in declaring that the petitioner is not entitled to the cash conversion of his vacation and sick leave credits as well as in denying petitioner's claims for moral and exemplary damages as well as attorney's fees.[7]

The Ruling of the Court

The petition has no merit. We see no reason to overturn the rulings of the NLRC and of the appellate court.

As a preliminary matter, we agree with the NLRC and the appellate court that the alleged defect in the perfection of the appeal to the NLRC because of the insufficiency of the supersedeas bond is a defect in form which the NLRC may waive.[8]

Transfer of Operations is

a Valid Exercise of Management Prerogative

Aguanza asserts that his transfer constituted constructive dismissal, while ATI asserts that Aguanza's transfer was a valid exercise of management prerogative. We agree with ATI.

ATI's transfer of Bismark IV's base from Manila to Bataan was, contrary to Aguanza's assertions, a valid exercise of management prerogative. The transfer of employees has been traditionally among the acts identified as a management prerogative subject only to limitations found in law, collective bargaining agreement, and general

principles of fair play and justice. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[9]

On the other hand, the transfer of an employee may constitute constructive dismissal "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." [10]

Aguanza's continued employment was not impossible, unreasonable or unlikely; neither was there a clear discrimination against him. Among the employees assigned to Bismark IV, it was only Aguanza who did not report for work in Bataan. Aguanza's assertion that he was not allowed to "time in" in Manila should be taken on its face: Aguanza reported for work in Manila, where he wanted to work, and not in Bataan, where he was supposed to work. There was no demotion in rank, as Aguanza would continue his work as Crane Operator. Furthermore, despite Aguanza's assertions, there was no diminution in pay.

When Bismark IV was based in the port of Manila, Aguanza received basic salary, meal allowance, and fixed overtime pay of 16 hours and per diem allowance when the barge was assigned outside of Manila. The last two items were given to Aguanza upon the condition that Bismark IV was assigned outside of Manila. Aguanza was not entitled to the fixed overtime pay and additional allowances when Bismark IV was in Manila.

When ATI transferred Bismark IV's operations to Bataan, ATI offered Aguanza similar terms: basic pay for 40 hours of work from Monday to Friday, overtime pay for work done in excess of eight hours per day, overtime pay for work done on Saturdays and Sundays, no additional allowance and no transportation for working in Bataan. The circumstances of the case made no mention of the salary structure in case Bismark IV being assigned work outside of Bataan; however, we surmise that it would not be any different from the salary structure applied for work done out-of-port. We, thus, agree with the NLRC and the appellate court when they stated that the fixed overtime of 16 hours, out-of-port allowance and meal allowance previously granted to Aguanza were merely supplements or employment benefits given on condition that Aguanza's assignment was out-of-port. The fixed overtime and allowances were not part of Aguanza's basic salary. Aguanza's basic salary was not reduced; hence, there was no violation of the rule against diminution of pay.[11]

Aguanza did not contest his transfer, but the reduction in his take-home pay. Aguanza even asserted, contrary to his acts, that he bound himself to work in such place where ATI might assign or transfer him. ATI did not dismiss Aguanza; rather, Aguanza refused to report to his proper workplace.

WHEREFORE, we DENY the petition. We AFFIRM the Decision of the Court of Appeals promulgated on 9 January 2004 as well as the Resolution promulgated on 5 May 2004 in CA-G.R. SP No. 74626.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 46-55. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam, concurring.

[3] Id. at 57.

[4] Id. at 47-50.

[5] Id. at 104-105.

[6] Id. at 54.

[7] Id. at 18-19.

[8] Article 218(c), Labor Code of the Philippines.

[9] See *Abbott Laboratories (Phils.), Inc. v. NLRC*, No. L-76959, 12 October 1987, 154 SCRA 713.

[10] *Escobin v. NLRC*, 351 Phil. 973, 999 (1998).

[11] Article 100, Labor Code of the Philippines.

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