

**NORKIS TRADING CO., INC., ATTY. NORBERTO QUISUMBING, JR.,
RACQUEL LICSI, EMMANUEL S. TAMAYO AND NICHOL JUDE
THADDEUS JURIDICO, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSI...**

G.R. NO. 168159. August 19, 2005

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168159/>

CHICO-NAZARIO, J.:

For resolution is a petition for review of the Decision[1] and Resolution of the Court of Appeals, dated 07 March 2005 and 18 May 2005, respectively, affirming the Resolution of the National Labor Relations Commission (NLRC) dated 26 March 2004, which, in turn, affirmed the Decision of Labor Arbiter Rolando L. Bobis, dated 06 November 2003, finding petitioners guilty of illegal dismissal.

On 06 June 2005, petitioners filed before this Court a motion for extension of time to file petition for review. In our resolution of 04 July 2005, we denied this motion due to lack of:

a)

sufficient showing that petitioners have not lost the fifteen (15)-day reglementary period pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of counsel's failure to indicate whether the Court of Appeals resolution dated 18 May 2005 is a denial/dismissal of the petition or a denial of the motion for reconsideration thereof; and

b)

service of a copy of the motion on the Court of Appeals in accordance with Section 4, Rule 13 in relation to Section 2, Rule 45 of the Rules.[2]

In the same resolution, this Court noted petitioners' manifestation dated 07 June 2005 "that copies of the motion were served on the Court of Appeals and the Office of the Solicitor General on 7 June 2005 by registered mail." [3]

On 04 July 2005, petitioners filed their petition for certiorari raising the sole issue of -

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DENYING THE PETITIONERS' MOTION FOR RECONSIDERATION THEREBY AFFIRMING THE DECISION OF THE NLRC AND LABOR ARBITER THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED AND THEREFORE ENTITLED TO BACKWAGES, 13TH MONTH PAY, SERVICE INCENTIVE LEAVE PAY, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[4]

The antecedent facts are exhaustively presented in the assailed decision of the Court of Appeals as follows:

Private respondent Ma. Arlene C. Gnilo started working for petitioner Norkis Trading Co., Inc. on March 8,

1990 when she was initially trained as administration and finance officer assigned to the company's branch at Calamba, Laguna. She was subsequently appointed as Acting Administrative Finance Officer with assignment at Naga City Branch, a position she held until she achieved regular employment status. On December 1, 1993, she was appointed as Branch Bookkeeper/Cashier of Naga City Branch (Rank Category 4B). On January 24, 2001, she was promoted as Acting Senior Branch Control Officer for Bicol Region.

During her stint as Senior BCO for Bicol Region, private respondent was instructed by her immediate superior Ms. Marfi Ruiz to confirm transactions pertaining to collections and deposits of BCO Marivic Faura at Polangui. In a memorandum dated May 22, 2002, private respondent was informed by Deputy Controller Ms. Rhea De Jesus about a recent company audit which disclosed that she had disregarded the detailed instructions of her superior and failed to perform her duties as a Senior Branch Control Officer. She was thus directed to explain in writing what actually transpired during her assignment at Polangui. She complied by submitting her written explanation on May 25, 2002. An investigation by the company's Internal Audit Group ensued and private respondent was formally charged with "Negligence Resulting to Material Loss." She was instructed to make herself available by reporting to the Inquiry Assistance Panel (IAP) on June 20, 2002.

After the hearing of the IAP was concluded, private respondent made a written "Request for Re-assignment" addressed to Ms. De Jesus to be assigned as Cashier of the Naga Branch which is vacant and considering that she is a resident of Naga City and a mother. On July 29, 2002, she reiterated this request to be assigned anew in Naga City while waiting for the resolution of her case, citing that she is a mother of three (3) growing kids and she wanted to be with her family. In August and September 2002, private respondent also requested to be furnished a copy of the minutes and/or audit report of the IAP investigation. The company did not accede to her requests and she continued reporting at the main office performing whatever work assigned to her, such as monitoring of collections at Cubao Branch for which she submitted an accomplishment report to Deputy Controller Emmanuel S. Tamayo.

For the period March 18 to April 1, 2003, the company withheld the Transportation and Travel Allowance ("TNT") being received by private respondent amounting to P7,555.00, which prompted her to formally protest her "questionable assignment" at the Home Office (HO) in Mandaluyong City which she insisted is against her appointment as Senior BCO for Bicol Region and Samar. In a letter dated March 21, 2003, addressed to Deputy Controller Emmanuel S. Tamayo, private respondent berated management for wanting to ease her out of the company due to a labor case (constructive dismissal) filed by her husband, who also worked at Norkis for more than thirteen (13) years, and such withdrawal of her travel allowances is calculated to cause suffering on her part. She expressed that the situation has become unbearable for her so that she is constrained to report back to Naga City effective March 24, 2003, there being no written order issued by management for her to stay in the main office.

Upon returning to Naga City, however, private respondent learned from a co-employee that Deputy Controller Tamayo through a telephone call gave instruction to deny her entry to the branch premises and access to company records. She caused this incident to be entered at the local police blotter. On April 2, 2003, she received a faxed "Speedletter" from Deputy Managing Director Nichol Jude Thaddeus C. Juridico and Deputy Controller Emmanuel S. Tamayo directing her to report back to the main office reminding her that her new assignment required her to report to the main office pending issuance of a permanent assignment, and that she was instructed to monitor the BCO of Porta Coeli Finance Corporation (PCFC) branches and to assist the BCO Accounting Manager Belen Yaun in the meantime. She was ordered to explain in writing within forty-eight (48) hours why no disciplinary action should be taken against her for abandonment of work, which under existing company policy, carries the penalty of dismissal. She was also directed to refund the total amount of P123,685.00 of travel and transportation allowance received by her during the period June 1, 2002 and March 17, 2003 because she is not entitled thereto while assigned at the main office.

In her faxed reply, private respondent explained that she reported at the main office starting June 10, 2002 upon assurance given by her former superior, Ms. Aurea De Jesus, that she shall be receiving her regular

"TNT" package as Senior BCO-Bicol Region and Samar since her stay in the main office would be just temporary as they will just iron out the problem in Polangui Branch. There was hesitation on her part since being a permanent resident of Naga City and mother of three (3) children, she will be dislocated and separated from her family. She insisted that it was never clarified to her that her area of assignment is being changed and also denied that Deputy Controller Tamayo specifically instructed her to monitor the BCOs of Porta Coeli Finance Corporation (PCFC) or assist Ms. Belen Yaun, pointing out that if she ever assisted Ms. Yaun it was her initiative to get herself busy and if ever she had a record of travel to a PCFC branch, it was done out of an emergency or her superior was just forced to. She asserted that her assignment at the HO is a demotion intended to make her feel that her continued presence in the company is no longer necessary because neither Mr. Tamayo nor Ms. Yaun have been talking to her. Were it not for her monthly "TNT," she could not have stayed at the HO because her take-home pay amounted to only a little over P2,500.00 every fifteen (15) days, and its subsequent withdrawal by the company constrained her to report back to Naga City branch, her repeated requests to be returned to her post having been ignored for the reason that top management was against it. She asserted that her "TNT" being a long and accepted company policy, may not be arbitrarily withdrawn and that all her cash advances and liquidations have been previously approved by her superiors including Mr. Tamayo. She deplored the mental anguish and social humiliation wrought to her by her present predicament and sought understanding from the management, wanting to know the reasons behind their instruction to deny her entry to the premises of the Naga City branch and access to company records as if she were a thief.

In a memorandum dated April 9, 2003, management reiterated its directive to private respondent for her to report back to the main office, reminding her that despite her denial regarding any instruction from Mr. Tamayo for her to monitor the PCFC branches, records showed that she had complied based on reports she had submitted to the office. Private respondent, however, maintained her position that she could no longer report to the Home Office after the company withdrew her monthly "TNT." She asserted that considering her difficult situation, she had no choice but to stick to her appointment as Senior BCO-Bicol Region and Samar there being no superseding memo changing her assignment.

On April 14, 2003, private respondent received a memorandum from the IAP for an investigation on the charges of abandonment of work, insubordination and refusal to report back to the place of work (Head Office), and directing her to attend a hearing set on April 16, 2003 at the main office. On April 15, 2003, private respondent acknowledged receipt of said memo but proposed that the hearing be held at Naga City or that she be allowed to make a cash advance to defray her expenses in going to Mandaluyong City to attend the hearing and investigation by the IAP. She failed to attend the IAP hearing on the scheduled date as she had been waiting for action from management regarding the concerns she had communicated. On that same day, she found out that her salary for the period April 1 to 15, 2003 was withheld and failing to get an explanation from management, she again reported the matter to the police. Thereupon, she faxed a letter addressed to HRD Manager Raquel Licsi that the situation had become unbearable for her tantamount to constructive dismissal and consequently she will ventilate her case before the NLRC.

On April 21, 2003, private respondent filed a complaint for constructive dismissal before the regional arbitration branch at Naga City, with claims for nonpayment of salaries, service incentive leave pay, 13th month pay, and praying for reinstatement with full back wages, and moral and exemplary damages, and attorney's fees (NLRC SUB RUB V No. 05-04-00098-03). On April 24, 2003, private respondent received another memo on the rescheduled date of IAP hearing that very same day, but in a handwritten reply she submitted to the Naga City Branch, she manifested that she could not longer report at the HO in view of the case she had already instituted with the NLRC. On April 30, 2003, the company terminated her services effective May 2, 2003.[5]

In his decision dated 06 November 2003, the Labor Arbiter found petitioners guilty of illegal dismissal. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding respondents [petitioners herein] guilty of ILLEGAL DISMISSAL. Consequently, the latter are hereby directed to reinstate the complainant [private respondent herein] to her former position as Sr. BCO in her assignment in Bicol/Samar, within ten (10) days from receipt of this decision, without loss of seniority and to pay her salary corresponding thereto. Further, respondents are hereby ordered to pay jointly and severally complainant with the following:

- Backwages computed from the date of her separation on April 16, 2003 up to the date of her actual reinstatement, either physically or on payroll, at the option of the respondent, which as of the date of this decision has already amounted to P69,911.14, based on the rate of P9,273.02 per month for seven (7) [months];
- 13[th] Month Pay equivalent to P3,091.00;
- Service Incentive Leave Pay for three (3) years amounting to P5,349.75 computed at the rate of P356.65/day of five (5) days per year.
- Moral Damages of P200,000.00;
- Exemplary Damages of P100,000.00; and
- Attorney's fees equivalent to 10% of the above-amount of P378,351.89 which is P37,835.18.

All other claims are hereby ordered DISMISSED for lack of merit.[6]

Petitioners thereafter filed their memorandum of appeal before the NLRC which, however, affirmed in toto the decision of the Labor Arbiter.[7] Petitioners' motion for reconsideration was likewise denied.[8]

Petitioners seasonably filed their petition for review on certiorari before the Court of Appeals. In the decision[9] now impugned before us, the appellate court denied said petition and dismissed the same for lack of merit. In said decision, the Court of Appeals also affirmed the NLRC's resolutions dated 26 March 2004 and 20 May 2004. The dispositive portion of the Court of Appeals decision follows:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. Consequently, the challenged Resolutions dated March 26, 2004 and May 20, 2004 of the National Labor Relations Commission in NLRC CA No. 038611-04 (NLRC SRAB-V-0400098-03) are hereby both affirmed.[10]

Petitioners moved for the reconsideration of this ruling but they were rebuffed by the appellate court.[11]

In this petition, petitioners argue, in the main, that the decision to transfer or re-assign private respondent from Naga City to the head office in Manila was a legitimate exercise of petitioner corporation's management prerogative. Thus, private respondent's refusal to report to work in Manila, coupled with her insistence that she be allowed to resume her work in Naga City, constitutes insubordination and willful disobedience justifying the termination of her employment.

We do not agree.

Concededly, employers are allowed, under the broad concept of management prerogative, to regulate all aspects of personnel administration including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and the dismissal and recall of workers.[12]

Particularly on the matter of transfer of personnel, this Court, in the case of *Philippine Japan Active Carbon Corporation v. National Labor Relations Commission*,[13] held that:

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications,

aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.[14]

The management's right to transfer or re-assign its personnel, however, is not absolute as it is subject to limitations imposed by law, collective bargaining agreements, and general principles of fair play and justice.[15] The employer must, therefore, muster the test for determining the validity of the transfer of employees as enunciated in the case of *Blue Dairy Corporation v. National Labor Relations Commission*,[16] to wit:

. . . 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 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.[17]

In this case, petitioners failed to pass this test. In the words of the Court of Appeals -

While petitioners invoke management prerogative in the transfer of private respondent to Manila, there is no showing at all of any valid and legitimate reason (i.e., business necessity) for the verbal transfer order, as in fact private respondent was not given work to do, only occasionally and constantly (sic) avoided by her superiors. Her meek and desperate plea to be allowed to return to her former post in Naga City Branch was met with total silence on management's end. Such insensitivity and disdain pervading her work environment became more intense when her travel allowances were withdrawn and management demanded for refund of those amounts received by her on the ground that she is not entitled thereto while posted in the main office, which realized such erroneous grant only at a late stage after all the vouchers underwent routine approval by the concerned officers of the company. No other conclusion is discernible from the attendant circumstances except to confirm private respondent's sentiment gleaned from what she had been hearing all along, that top management indeed wanted to "ease her out of the company," as a consequence of her husband's filing of a similar illegal dismissal suit before the NLRC.[18]

Surely, petitioners cannot expect this Court to sustain its stance by the simple expedient of invoking its "management prerogative." In the end, it is still up to them, as employers, to discharge the burden of proving the validity of private respondent's transfer to the head office. Having failed in this regard, we are constrained to sustain the findings of the Court of Appeals as well as those of the NLRC.

We, likewise, rule in favor of private respondent with respect to her entitlement to moral and exemplary damages. Moral damages may be recovered only where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.[19] These damages, however, are not intended to enrich private respondent such that, after deliberations, we find the amount of P50,000.00 for moral damages and P50,000.00 for exemplary damages sufficient to assuage the sufferings experienced by private respondent and by way of example or correction for the

public good.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The Court of Appeals Decision dated 07 March 2005 and its Resolution dated 18 May 2005 are hereby AFFIRMED with the following MODIFICATIONS: 1) the amount of backwages shall be computed from the date of private respondent's illegal dismissal until the finality of this judgment; and 2) the amount of moral and exemplary damages are reduced to P50,000.00 each. With costs.

SO ORDERED.

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

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring.

[2] Rollo, p. 11.

[3] Ibid.

[4] Rollo, p. 21.

[5] Rollo, pp. 252-256.

[6] Rollo, p. 150.

[7] Rollo, p. 201.

[8] Rollo, p. 214.

[9] Rollo, pp. 252-269.

[10] Rollo, p. 268.

[11] Rollo, p. 284.

[12] San Miguel Corporation v. Reynaldo R. Ubaldo, et al., G.R. No. 92859, 01 February 1993, 218 SCRA 293.

[13] G.R. No. 83239, 08 March 1989, 171 SCRA 164, 168, cited in Agustin Chu v. National Labor Relations Commission, G.R. No. 106107, 02 June 1994, 232 SCRA 764.

[14] Id. at 768.

[15] Philippine Airlines, Inc. v. National Labor Relations Commission, G.R. No. 85985, 13 August 1993, 225 SCRA 301.

[16] G.R. No. 129843, 14 September 1999, 314 SCRA 401.

[17] Id. at 408.

[18] Rollo, pp. 265-266.

[19] Permex, Inc. and/or Jane (Jean) Punzalan, et al. v. National Labor Relations Commission, G.R. No. 125031, 24 January 2000, 323 SCRA 121.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.