ALBERT O. TINIO, PETITIONER, VS. COURT OF APPEALS, SMART COMMUNICATIONS, INC., ALEX O. CAEG AND ANASTACIO MARTIREZ, RESPONDENTS.

G.R. No. 171764. June 08, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari seeks to annul and set aside the Decision and Resolution of the Court of Appeals dated October 25, 2005[1] and March 2, 2006,[2] respectively, in CA-G.R. SP No. 90677 which reversed and set aside the Decision of the National Labor Relations Commission (NLRC) dated July 30, 2004,[3] and its Resolution dated April 20, 2005,[4] for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court reinstated the Decision of the Labor Arbiter dated December 9, 2003[5] which dismissed petitioner's complaint for lack of merit.

On December 1, 2002, Smart Communications, Inc. (SMART) employed petitioner Albert O. Tinio as its General Manager for Visayas/Mindanao (VISMIN) Sales and Operations based in Cebu.[6]

On May 14, 2003, private respondent Alex O. Caeg, Group Head, Sales and Distribution of SMART, under the supervision of co-respondent Anastacio Martirez, informed petitioner of his new assignment as Sales Manager for Corporate Sales in SMART's Head Office in Makati City, effective June 1, 2003. However, petitioner deferred action on his assignment until he had been apprised of the duties and responsibilities of his new position and the terms and conditions of his relocation. In a memorandum dated May 26, 2003, Caeg informed petitioner that his transfer was for the greater business interest of the company; that petitioner is expected to meet at least 80% of his sales and collection targets; and that financial assistance shall be provided for his physical transfer to Manila.

On June 2, 2003, petitioner reported to SMART's Head Office in Makati and discussed with Ann Margaret V. Santiago, HRD Group Head, his job description, functions, responsibilities, salary and benefits, as well as options for relocation/transfer of his family to Manila. The Department Head for Corporate Business Group, VIP Accounts Management and Marketing PR, Julie C. Carceller, likewise explained to him details of his new assignment such as job description, scope of the position, objectives and goals of the department, key responsibilities as well as targets and expectations of SMART from the Corporate Business Group. The next day, June 3, 2003, petitioner and Caeg met to discuss further details of petitioner's new position.[7]

Thereafter, petitioner did not report for work. He instead filed a complaint for constructive dismissal with claims for moral and exemplary damages and attorney's fees against SMART and private respondents Caeg and Martirez. On June 16, 2003, Caeg required petitioner to explain his continuing refusal to transfer to his new assignment, but instead of giving an explanation, petitioner referred Caeg to his complaint for constructive dismissal.[8] Private respondents also scheduled a hearing on June 23, 2003 but petitioner failed to attend. Thus, private respondents terminated petitioner's employment effective June 25, 2003 for insubordination.[9]

On December 9, 2003, the Labor Arbiter rendered judgment finding that petitioner was not constructively or

illegally dismissed; hence, the complaint was ordered dismissed. But the Labor Arbiter awarded financial assistance to petitioner in the amount of P235,400.00.[10]

On appeal, the NLRC reversed the Labor Arbiter's decision and declared that petitioner was illegally dismissed, awarded him full backwages, including the corresponding 13th month pay, moral and exemplary damages, as well as attorney's fees. Private respondents' motion for reconsideration was denied.[11]

On a petition for certiorari under Rule 65 to the Court of Appeals, private respondents alleged that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that: (1) the transfer of Tinio resulted in a demotion in rank; (2) the transfer was not a valid exercise of management prerogative; (3) SMART did not comply with the procedural requirements of due process, and Tinio's termination was made with malice and in bad faith; and (4) Tinio is entitled to reinstatement and full backwages.[12]

On October 25, 2005, the Court of Appeals reversed and set aside the Decision of the NLRC and reinstated the Decision of the Labor Arbiter dismissing the complaint for lack of merit.[13] Petitioner's motion for reconsideration was denied; hence, this appeal.[14]

The twin issues for resolution are: (1) whether private respondents' act of transferring petitioner to its Head Office in Makati was a valid exercise of management prerogative; and (2) whether petitioner was constructively dismissed.

This Court has consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or a diminution of salary, benefits and other privileges.[15] As a rule, the Court will not interfere with an employer's prerogative to regulate all aspects of employment which include among others, work assignment, working methods and place and manner of work. Labor laws discourage interference with an employer's judgment in the conduct of his business.[16]

The doctrine is well-settled 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.[17] This is a privilege inherent in the employer's right to control and manage his enterprise effectively. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.[18]

An employee's right to security of tenure does not give him a vested right to 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, or inconvenient, or 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.[19]

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 the right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. 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 of 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 his continued employment.[20]

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."[21] 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.

The burden of proof in constructive dismissal cases is on the employer to establish that the transfer of an employee is for valid and legitimate grounds, i.e., that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of salaries, privileges and other benefits.

Hence, it may be gleaned from the foregoing discourse that a transfer is deemed to be constructive dismissal when three conditions concur: first, when the transfer is unreasonable, inconvenient or prejudicial to the employee; second, when the transfer involves a demotion in rank or diminution of salaries, benefits and other privileges; and third, when the employer performs a clear act of discrimination, insensibility, or disdain towards the employee, which forecloses any choice by the latter except to forego his continued employment.

In the instant case, the transfer from Cebu to Makati was not unreasonable, inconvenient or prejudicial to the petitioner considering that it was a transfer from the provincial office to the main office of SMART. The position would entail greater responsibilities because it would involve corporate accounts of top establishments in Makati which are significantly greater in value than the individual accounts in Visayas and Mindanao. In terms of career advancement, the transfer was even beneficial and advantageous since he was being assigned the corporate accounts of the choice clients of SMART. Moreover, the transfer was not economically inconvenient because all expenses relative thereto were to be borne by SMART.

Also, the transfer from Cebu to Makati does not represent a demotion in rank or diminution of salaries, benefits and other privileges. It was a lateral transfer with the same salaries, benefits and privileges. The title of Corporate Sales Manager, as correctly pointed out by the appellate court, is not derogatory to the petitioner considering that he will still receive the same benefits and salary he received as Senior Manager.[22] The position is deemed in the level of Senior Manager considering that the skills and competencies required involve handling the accounts of top corporate clients of the company, representing some of the largest corporations in the Philippines.

Mere title or position held by an employee in a company does not determine whether a transfer constitutes a demotion. Rather, it is the totality of the following circumstances, to wit: economic significance of the work, the duties and responsibilities conferred, as well as the same rank and salary of the employee, among others, that establishes whether a transfer is a demotion.

We find that petitioner was not demoted since his transfer from Cebu to Makati was being implemented due to a valid corporate reorganization to streamline management operations. The act of management in reorganizing as well as transferring its employees to achieve its stated objectives is a legitimate exercise of their management prerogatives, barring any showing of bad faith which is absent in the instant case. Despite the change of petitioner's title from "Senior Manager" to "Corporate Sales Manager," he still enjoyed the same rank and salary. Although Cebu operations of SMART constitute a large individual client base representing both Visayas and Mindanao, the Makati operations deal with higher corporate or business sales due to the larger concentration of top Philippine and multinational corporations. In other words, petitioner will be managing the select client base that produces the bulk of the corporate sales income of SMART. We ruled in Philippine Wireless Inc. v. National

Labor Relations Commission[23] that there is no demotion where there is no reduction in position, rank or salary as a result of the transfer.[24]

Moreover, private respondents did not act with discrimination, insensibility, or disdain towards petitioner, which foreclosed any choice by the latter except to forego his continued employment. SMART, through its representatives, attempted to address petitioner's grievances by meeting with the latter on several occasions thus addressing this internal problem utilizing the proper corporate channels. Several meetings were held between petitioner and private respondents with a view to clarifying the details of petitioner's new assignment, such as job description, relation to corporate structure, functions, responsibilities, salary and benefits. Meetings were on-going when petitioner opted to file a complaint for constructive dismissal.

We agree with the Court of Appeals' ruling that private respondent SMART exercised its management prerogative in transferring petitioner from Cebu to Makati as the person in charge of the post-paid sales accounts. SMART management has the prerogative to transfer or re-assign its employees to a position where they can contribute significantly to the company objectives in line with its corporate reorganization. Petitioner's argument that the transfer was hastily arrived at, considering that he was being ordered to transfer within 15 days from notice and that the Makati head office personnel were unaware thereof is untenable. Moreover, petitioner knew of the management prerogative to re-assign its employees as expressly stipulated in petitioner's employment contract.

No evidence was presented to substantiate petitioner's claim that the transfer was punitive or that private respondents were in bad faith. The failure of private respondent Caeg to directly address the supposed "punitive" nature of the transfer cannot establish bad faith, without independent evidence to prove this allegation.

We held in Abbott Laboratories (Phils.), Inc. v. National Labor Relations Commission,[25] that an employee has no valid reason to disobey the order of transfer given by management, especially if he has tacitly given his consent thereto when he acceded to the company's policy of hiring sales staff who are willing to be assigned anywhere in the Philippines which is demanded by the employer's business.[26]

By the very nature of their employment, sales executives are expected to travel. They should anticipate re-assignment according to the demands of the employer's business. Companies which rely heavily on sales such as private respondent SMART are expected to assign their employees to areas where markets may be expanded or places where their sales could be improved. The right to transfer or reassign an employee is thus a reasonable exercise of management prerogatives and is recognized as an employer's exclusive right in running its company.[27]

In the instant case, petitioner premised his deliberate and unjustified refusal to return to work on the belief that he had been constructively dismissed, despite attempts by SMART to accommodate his demands. Petitioner's deliberate and unjustified refusal to resume his employment, a form of neglect of duty, despite attempts by the company to hear out his grievances, constitutes abandonment. Petitioner's failure to report for work, or absence without valid or justifiable reason, coupled with a clear intention to sever employer-employee relationship, leads us to no other conclusion than that he abandoned his work. As such, the award of financial assistance in the amount of P235,400 given by the Labor Arbiter and affirmed by the appellate court must be deleted for lack of basis.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated October 25, 2005 and March 2, 2006, respectively, in CA-G.R. SP No. 90677, dismissing the complaint for constructive dismissal against private respondents Smart Communications, Inc., Alex O. Caeg and Anastacio Martirez are AFFIRMED with the MODIFICATION that the award of financial assistance be DELETED for lack of basis. No pronouncement as to costs.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, p. 286. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid.

[2] Id. at 295.

[3] Id. at 410. Penned by Commissioner Ernesto S. Dinopol and concurred in by Commissioner Romeo L. Go.

[4] Id. at 420.

[5] Id. at 220. Penned by Labor Arbiter Fatima Jambaro-Franco.

[6] Id. at 287.

[7] Id.

[8] Id. at 287-288.

[9] Id. at 288.

[10] Id.

[11] Id. at 289.

[12] Id.

[13] Id. at 286-294.

[14] Id. at 295-297.

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

[16] Id. at 616.

[17] Philippine-Japan Active Carbon Corporation v. National Labor Relations Commission, G.R. No. 83239, March 8, 1989, 171 SCRA 164, 168.

[18] Blue Dairy Corporation v. National Labor Relations Commission, G.R. No. 129843, September 14, 1999, 314 SCRA 401, 408.

[19] Supra note 17.

[20] Supra note 18 at 408-409.

[21] Millares v. Subido, 127 Phil. 370, 378 (1967).

[22] Rollo, p. 292.

[23] 369 Phil. 907 (1999).

[24] Id. at 911.

[25] G.R. No. L-76959, October 12, 1987, 154 SCRA 713.

[26] Id. at 719.

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[27] Id.

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