PHARMACIA AND UPJOHN, INC. (NOW PFIZER PHILIPPINES, INC.), ASHLEY MORRIS, ALEDA CHU, JANE MONTILLA & FELICITO GARCIA, PETITIONERS, VS. RICARDO P. ALBAYDA, JR., RESPONDENT.

G.R. No. 172724. August 23, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the November 30, 2005 Decision[2] and May 5, 2006 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 00386.

The facts of the case are as follows:

Respondent Ricardo P. Albayda, Jr. (respondent) was an employee of Upjohn, Inc. (Upjohn) in 1978 and continued working there until 1996 when a merger between Pharmacia and Upjohn was created. After the merger, respondent was designated by petitioner Pharmacia and Upjohn (Pharmacia) as District Sales Manager assigned to District XI in the Western Visayas area. During the period of his assignment, respondent settled in Bacolod City.

Sometime on August 9, 1999, a district meeting was held in Makati City wherein one of the topics discussed was the district territorial configuration for the new marketing and sales direction for the year 2000.

In December 1999, respondent received a Memorandum[4] announcing the sales force structure for the year 2000. In the said memorandum, respondent was reassigned as District Sales Manager to District XII in the Northern Mindanao area. One of the key areas covered in District XII is Cagayan de Oro City.

In response to the memorandum, respondent wrote a letter[5] dated December 27,1999 to Felicito M. Garcia (Garcia), Pharmacia's Vice-President for Sales and Marketing, questioning his transfer from District XI to District XII. Respondent said that he has always been assigned to the Western Visayas area and that he felt that he could not improve the sales of products if he was assigned to an unfamiliar territory. Respondent concluded that his transfer might be a way for his managers to dismiss him from employment. Respondent added that he could not possibly accept his new assignment in Cagayan de Oro City because he will be dislocated from his family; his wife runs an established business in Bacolod City; his eleven- year-old daughter is studying in Bacolod City; and his two-year-old son is under his and his wife's direct care.

On January 10, 2000, Garcia wrote a letter[6] to respondent denying his request to be reassigned to the Western Visayas area. Garcia explained that the factors used in determining assignments of managers are to maximize business opportunities and growth and development of personnel. Garcia stressed that other people î º both reprensentatives and district sales managers î º have been re-located in the past and in the year 2000 re-alignment.

On February 16, 2000, respondent wrote a letter[7] to Aleda Chu (Chu), Pharmacia's National Sales and External Business Manager, reiterating his request to be reassigned to the Western Visayas area. Respondent alleged that

during one conversation, Chu assured him that as long as he hits his sales target by 100%, he would not be transferred. Respondent again speculated that the real reason behind his transfer was that it was petitioners' way of terminating his employment. Respondent harped that his transfer would compel him to lose his free housing and his wife's compensation of P50,000.00 from her business in Bacolod City.

In a letter[8] dated March 3, 2000, Chu said that she did not give any assurance or commitment to respondent that he would not be transferred as long as he achieved his 100% target for 1999. Chu explained to respondent that they are moving him to Cagayan de Oro City, because of their need of respondent's expertise to build the business there. Chu added that the district performed dismally in 1999 and, therefore, they were confident that under respondent's leadership, he can implement new ways and develop the sales force to become better and more productive. Moreover, since respondent has been already in Bacolod and Iloilo for 22 years, Chu said that exposure to a different market environment and new challenges will contribute to respondent's development as a manager. Finally, Chu stressed that the decision to transfer respondent was purely a business decision.

Respondent replied through a letter[9] dated March 16, 2000. Respondent likened his transfer to Mindanao as a form of punishment as he alleged that even Police Chief General Panfilo Lacson transferred erring and non-performing police officers to Mindanao. Respondent argued that Chu failed to face and address the issues he raised regarding the loss of his family income, the additional cost of housing and other additional expenses he will incur in Mindanao.

In a memorandum[10] dated May 11, 2000, Jane B. Montilla (Montilla), Pharmacia's Human Resource Manager, notified respondent that since he has been on sick leave since January 5, 2000 up to the present, he had already consumed all his sick leave credits for the year 2000. Montilla stated that per company policy, respondent would then be considered on indefinite sick leave without pay. In another memorandum[11] dated May 15, 2000, Montilla informed respondent of the clinic schedule of the company appointed doctor.

In a letter[12] dated May 17, 2000, respondent acknowledged his receipt of the letters from Montilla. Respondent informed Montilla that his doctors had already declared him fit for work as of May 16, 2000. Respondent stated that he was already ready to take on his regular assignment as District Sales Manager in Negros Occidental or in any district in the Western Visayas area.

In a letter[13] dated May 17, 2000, Chu expressed her disappointment on the way respondent viewed their reason for moving his place of assignment. Chu was likewise disappointed with respondent's opinion that with the movement, he be given additional remuneration, when in fact, such was never done in the past and never the practice in the industry and in the Philippines. Chu concluded that it appeared to her that respondent would not accept any reason for the movement and that nothing is acceptable to him except a Western Visayas assignment. Consequently, Chu referred the case to the Human Resource Department for appropriate action.

Montilla met with respondent to discuss his situation. After the meeting, Montilla sent respondent a memorandum[14] wherein his request to continue his work responsibilities in Negros Occidental or in any district in the Western Visayas area was denied as there was no vacant position in those areas. Montilla stressed that the company needed respondent in Cagayan de Oro City, because of his wealth of experience, talent and skills. Respondent, however, was also given an option to be assigned in Metro Manila as a position in the said territory had recently opened when Joven Rodriguez was transferred as Government Accounts and Special Projects Manager. Montilla gave respondent until June 2, 2000 to talk to his family and weigh the pros and cons of his decision on whether to accept a post in Cagayan de Oro City or in Manila.

In a letter[15] dated May 31, 2000, respondent reiterated the concerns he raised in his previous letters.

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Montilla sent respondent another memorandum[16] dated June 6, 2000, stating that it is in the best interest of the company for respondent to report to the Makati office to assume his new area of assignment.

In a letter[17] dated June 8, 2000, respondent told Montilla that he will be airing his grievance before the National Labor Relations Commission (NLRC).

In a memorandum[18] dated June 15, 2000, Montilla stated that contrary to the opinion of respondent, respondent is entitled to Relocation Benefits and Allowance pursuant to the company's Benefits Manual. Montilla directed respondent to report for work in Manila within 5 working days from receipt of the memorandum.

In another memorandum[19] dated June 26, 2000, Montilla stated that she had not heard from respondent since his June 8, 2000 letter and that he has not replied to their last memorandum dated June 15, 2000. Respondent was warned that the same would be a final notice for him to report for work in Manila within 5 working days from receipt of the memo; otherwise, his services will be terminated on the basis of being absent without official leave (AWOL).

On July 13, 2000, Montilla sent respondent a memorandum[20] notifying him of their decision to terminate his services after he repeatedly refused to report for work despite due notice, the pertinent portions of which read:

> As I mentioned many times in our talks, you are in a Sales position for which you had signed up. Your employment contract actually states that you are willing to be assigned anywhere else in the Philippines, wherever the company needs you sees you fit.
>
> Metro Manila is the biggest and most advanced market we have in the Philippines. It is where the success or failure of our business lies. It is, therefore, the most competitive and significant area for sales. It is the most challenging and most rewarding of all areas. Only the best field managers are given the opportunity to manage a territory in Metro Manila. This is why I chose Manila over Cagayan de Oro for you in my letter dated June 6, 2000. And because you had assured us that you were fit to work, after being on sick leave for about five and a half months, I asked you to assume your new assignment in Metro Manila before June 16, 2000.
>
> Before June 16, 2000, you wrote us a letter advising us that you can not accept the new assignment in Manila. In response, we advised you that the assignment in Manila is a business need and for said reason you were requested to report for work within five working days from receipt of notice. However, you failed to comply. So we issued another memo dated June 26, 2000, instructing you to report for work and advising you that should you continue to fail to report for work, the company shall be constrained to terminate your employment.
>
> In view of the foregoing, we have no alternative but to terminate your services on the basis of absence without official leave (AWOL) and insubordination pursuant to Article 282 of the Labor Code of the Philippines, which shall be effective on July 19, 2000.[21]

On August 14, 2000, respondent filed a Complaint[22] with the NLRC, Regional Arbitration Branch No. VI, Bacolod City against Pharmacia, Chu, Montilla and Garcia for constructive dismissal. Also included in the complaint was Ashley Morris, Pharmacia's President. Since mandatory conciliation failed between the parties, both sides were directed to submit their position papers.

On July 12, 2002, the Labor Arbiter (LA) rendered a Decision[23] dismissing the case, the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaint against respondents in the above-entitled case is DISMISSED for lack of merit.
>
> SO ORDERED.[24]

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Respondent appealed to the NLRC. In a Decision[25] dated July 26, 2004, the NLRC dismissed the appeal, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal of complainant is hereby DISMISSED for lack of merit. The decision of the Labor Arbiter is AFFIRMED en toto.
>
> SO ORDERED.[26]

Respondent filed a Motion for Reconsideration,[27] which was denied by the NLRC in a Resolution[28] dated November 10, 2004.

Aggrieved, respondent filed a Petition for Certiorari[29] before the CA.

On November 30, 2005, the CA rendered a Decision ruling in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, this petition is hereby given due course and the Resolution dated November 10, 2004 and the Decision dated July 26, 2004 of the NLRC Fourth Division in NLRC Case No. V-000521-2000 (RAB Case No. 06-08-10650-2000), are hereby REVERSED and SET ASIDE. Accordingly, the case is REMANDED to the National Labor Relations Commission, Regional Arbitration Branch No. VI, Bacolod City, for the proper determination of the petitioner's claims.
>
> SO ORDERED.[30]

Petitioners filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated May 5, 2006.

Hence, herein petition, with petitioner raising a lone assignment of error to wit:

> WHETHER OR NOT THE COURT OF APPEALS (CEBU CITY) CAN REVERSE OR SET ASIDE THE FACTUAL AND LEGAL FINDINGS OF THE NLRC WHICH WAS BASED ON SUBSTANTIAL EVIDENCE WHEN THERE IS NO SHOWING OF PALPABLE ERROR OR THAT THE FINDINGS OF FACTS OF THE LABOR ARBITER IS CONTRARY TO THAT OF THE NLRC.[31]

The petition is meritorious.

As a general rule, this Court does not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction.[32] This Court leaves the evaluation of facts to the trial and appellate courts which are better equipped for this task.

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[33]

In the present case, this Court is prompted to evaluate the findings of the LA, the NLRC, and the CA which are diametrically opposed.

Petitioners argue that the CA erred when it reversed the factual and legal findings of the NLRC which affirmed

the decision of the LA. Petitioners contend that it is well established that factual findings of administrative agencies and quasi-judicial bodies are accorded great respect and finality and are not to be disturbed on appeal unless patently erroneous.

After a judicious examination of the records herein, this Court sustains the findings of the LA and the NLRC which are more in accord with the facts and law of the case.

On petitioners' exercise of management prerogative

Jurisprudence recognizes the exercise of management 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.[34]

To determine the validity of the transfer of employees, the employer must 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.[35]

Both the LA and the NLRC ruled that the reassignment of respondent was a valid exercise of petitioners' management prerogative.

The LA shared petitioners' posture that the transfer of respondent was a valid exercise of a legitimate management prerogative to maximize business opportunities, growth and development of personnel and that the expertise of respondent was needed to build the company's business in Cagayan de Oro City which dismally performed in 1999.[36]

In addition, the LA explained that the reassignment of respondent was not a demotion as he will also be assigned as a District Sales Manager in Mindanao or in Metro Manila and that the notice of his transfer did not indicate that his emoluments will be reduced. Moreover, the LA mentioned that respondent was entitled to Relocation Benefits and Allowance in accordance with petitioners' Benefits Manual.

On respondent's allegation that his family stands to lose income from his wife's business, the LA ruled:

> The allegation of complainant that his income will be affected because his wife who is doing business in Bacolod City and earns P50,000.00, if true, should not be taken in consideration of his transfer. What is contemplated here is the diminution of the salary of the complainant but not his wife. Besides, even if complainant may accept his new assignment in Cagayan de Oro or in Metro Manila, his wife may still continue to do her business in Bacolod City. Anyway, Bacolod City and Manila is just one (1) hour travel by plane.[37]

Lastly, the LA pointed out that in respondent's contract of employment, he agreed to be assigned to any work or workplace as may be determined by the company whenever the operations require such assignment.

The NLRC affirmed in toto the findings of the LA. The NLRC ruled that petitioners' restructuring move was a valid exercise of its management prerogative and authorized under the employment contract of respondent, to wit:

> We do not see in the records any evidence to prove that the restructuring move of respondent company was done with ill motives or with malice and bad faith purposely to constructively terminate complainant's employment. Such misinterpretation or misguided supposition by complainant is belied by the fact that respondent's officers had in several communications officially sent to complainant, expressly recognized complainant's expertise and capabilities as a top sales man and manager for which reason the respondent company needs his services and skills to energize the low-performing areas in order to maximize business opportunities and to afford complainant an opportunity for further growth and development. Complainant

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> persistently refused instead of taking this opportunity as a challenge after all, the nature of employment of a sales man or sales manager is that it is mobile or ambulant being always seeking for possible areas to market goods and services. He totally forgot the terms and conditions in his employment contract, stated in part, thus:
>
> x x x x
>
> You agree, during the period of employment, to be assigned to any work or workplace for such period as may be determined by the company and whenever the operations thereof require such assignment.[38]

The rule in our jurisdiction is that findings of fact of the NLRC, affirming those of the LA, are entitled to great weight and will not be disturbed if they are supported by substantial evidence.[39] Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[40] As explained in Ignacio v. Coca-Cola Bottlers Phils., Inc:[41]

> x x x Factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality.[42]

Based on the foregoing, this Court rules that the CA had overstepped its legal mandate by reversing the findings of fact of the LA and the NLRC as it appears that both decisions were based on substantial evidence. There is no proof of arbitrariness or abuse of discretion in the process by which each body arrived at its own conclusions. Thus, the CA should have deferred to such specialized agencies which are considered experts in matters within their jurisdictions.

Moreover, what is objectionable with the CA decision is that in finding that the reassignment of respondent was arbitrary and unreasonable it had, in effect, imposed on petitioners its own opinion or judgment on what should have been a purely business decision, to wit:

> Discussing the issues jointly, a perusal of the records shows that there was no overwhelming evidence to prove that petitioner was terminated for a just and valid cause. Public respondent had overlooked the fact that the reassignment of petitioner was arbitrary and unreasonable as the same was in contrast to the purposes espoused by private respondents. Undoubtedly, petitioner is a complete alien to the territory and as no established contacts therein, thus, he cannot be effective nor can he maximize profits. It cannot also contribute to his professional growth and development considering that he had already made a mark on his territory by virtue of his twenty-two (22) long years of valuable service. Considering the quality of his performance in his territory, the private respondents cannot therefore reason out that they are merely exercising their management prerogative for it would be unreasonable since petitioner has not been amiss in his responsibilities. Furthermore, it would undeniably cause undue inconvenience to herein petitioner who would have to relocate, disrupting his family's peaceful living, and with no additional monthly remuneration.[43]

In the absence of arbitrariness, the CA should not have looked into the wisdom of a management prerogative. It is the employer's prerogative, based on its assessment and perception of its employee's 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.[44]

As a matter of fact, while the CA's observations may be acceptable to some quarters, it is nevertheless not universal so as to foreclose another view on what may be a better business decision. While it would be profitable to keep respondent in an area where he has established contacts and therefore the probability of him reaching and even surpassing his sales quota is high, on the one hand, one can also make a case that since respondent is one of petitioners' best district managers, he is the right person to turn around and improve the sales numbers in Cagayan

de Oro City, an area which in the past had been dismally performing. After all, improving and developing a new market may even be more profitable than having respondent stay and serve his old market. In addition, one can even make a case and say that the transfer of respondent is also for his professional growth. Since respondent has been already assigned in the Western Visayas area for 22 years, it may mean that his market knowledge is very limited. In another territory, there will be new and more challenges for respondent to face. In addition, one can even argue that for purposes of future promotions, it would be better to promote a district manager who has experience in different markets.

The foregoing illustrates why it is dangerous for this Court and even the CA to look into the wisdom of a management prerogative. Certainly, one can argue for or against the pros and cons of transferring respondent to another territory. Absent a definite finding that such exercise of prerogative was tainted with arbitrariness and unreasonableness, the CA should have left the same to petitioners' better judgment. The rule is well settled that labor laws discourage interference with an employer's judgment in the conduct of his business. 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. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[45]

In addition, this Court cannot agree with the findings of the CA that the transfer of respondent was unreasonable, considering he had not been remiss in his responsibilities. What the CA failed to recognize is that the very nature of a sales man is that it is mobile and ambulant. On this point, it bears to stress that respondent signed two documents signifying his assent to be assigned anywhere in the Philippines. In respondent's Employment Application,[46] he checked the box which asks, "Are you willing to be relocated anywhere in the Philippines?"[47] In addition, in respondent's Contract of Employment,[48] item (8) reads:

> You agree, during the period of your employment, to be assigned to any work or workplace for such period as may be determined by the company and whenever the operations thereof require such assignment.[49]

Even if respondent has been performing his duties well it does not mean that petitioners' hands are tied up that they can no longer reassign respondent to another territory. And it is precisely because of respondent's good performance that petitioners want him to be reassigned to Cagayan de Oro City so that he could improve their business there.

In Abbott Laboratories (Phils.), Inc. v. National Labor Relations Commission,[50] which involved a complaint filed by a medical representative against his employer drug company for illegal dismissal for allegedly terminating his employment when he refused to accept his reassignment to a new area, the Court upheld the right of the drug company to transfer or reassign its employee in accordance with its operational demands and requirements. The ruling of the Court therein, quoted hereunder, also finds application in the instant case:

> Therefore, Bobadilla had no valid reason to disobey the order of transfer. He had tacitly given his consent thereto when he acceded to the petitioners' policy of hiring sales staff who are willing to be assigned anywhere in the Philippines which is demanded by petitioners' business.
>
> By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassignments are part of the employment contract.[51]

On the existence of grounds to dismiss respondent from the service

Because of respondent's adamant refusal to be reassigned, the LA ruled that petitioners had valid grounds to terminate his employment, to wit:

> As early as in December 27, 1999, complainant already signified his refusal to accept his new assignment in Cagayan de Oro. Complainant
>
> was on sick leave since January 5, 2000 up to May 11, 2000, for about four (4) months and he already consumed his leave credits up to March 2000. Hence, starting April 2000 he was already on indefinite leave without pay.
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> x x x x
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> In his letter dated May 17, 2000, addressed to respondent Jane B. Montilla, complainant informed her that his doctors have already declared him fit for work as of May 16, 2000, and he was ready to assume to his regular assignment as District Sales Manager of Negros Occidental. This is a strong indication that complainant really does not want to accept his new assignment either in Cagayan de Oro or in Metro Manila, which is clearly a defiance of the lawful order of his employer, and a ground to terminate his services pursuant to Article 282 of the Labor Code.
>
> Notwithstanding his adamant refusal to resume working to his new assignment in Metro Manila, complainant was still given by respondent Montilla another chance to think it over up to June 2, 2000. By way of reply, complainant, in his letter dated May 31, 2000 to Ms. Montilla, he clearly expressed his disagreement to his transfer and would rather seek justice elsewhere in another forum.
>
> But still the respondent company, notwithstanding the position taken by complainant in his letter dated May 31, 2000 that he is refusing his transfer gave complainant until June 16, 2000 to reconsider his position. In a letter dated June 5, 2000, respondent Montilla gave complainant a period of five (5) days from receipt thereof to report to Manila, but still complainant did not comply. Ms. Montilla sent complainant a final notice dated June 26, 2000 for him to report to Manila within five (5) working days from receipt of the same, with a warning that his failure to do so, the company would be constraint to terminate his services for being absent without official leave.
>
> Finally, is was only on July 19, 2000, when the services of complainant was terminated by respondent company through its Human Resource Manager on the ground of absence without leave and insubordination pursuant to Article 282 of the Labor Code.
>
> Clearly, the complainant had abandoned his work by reason of his being on AWOL as a consequence of vigorous objection to his transfer to either Cagayan de Oro or Metro Manila. The long period of absence of complainant without official leave from April to July 19, 2000 is more than sufficient ground to dismiss him. The refusal of complainant to accept his transfer of assignment is a clear willful disobedience of the lawful order of his employer and a ground to terminate his services under Article 282, par. (a) of the Labor Code, as amended. The series of chances given complainant to report for work, coupled by his adamant refusal to report to his new assignment, is a conclusive indication of willful disobedience of the lawful orders of his employer.[52]

In addition, the NLRC also ruled that respondent was guilty of insubordination, thus:

> Apparently, complainant, by his unjustified acts of refusing to be transferred either to Mindanao or Manila for personal reasons, absent any bad faith or malice on the part of respondents, has deliberately ignored and defied lawful orders of his employer. An employee who refuses to be transferred, when such transfer is valid, is guilty of insubordination. x x x[53]

Based on the foregoing, this Court rules that the findings of the LA and the NLRC are supported by substantial evidence. The LA clearly outlined the steps taken by petitioners and the manner by which respondent was

eventually dismissed. The NLRC, for its part, explained why respondent was guilty of insubordination. No abuse of discretion can, therefore, be attributed to both agencies, and the CA was certainly outside its mandate in reversing such findings.

This Court has long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.[54] Such being the case, respondent cannot adamantly refuse to abide by the order of transfer without exposing himself to the risk of being dismissed. Hence, his dismissal was for just cause in accordance with Article 282(a)[55] of the Labor Code.

The CA, however, ruled that respondent was not guilty of insubordination, to wit:

> As to the findings of insubordination, the records show that petitioner was not guilty of such offense. For insubordination to exist, the order must be reasonable and lawful, sufficiently known to the employee and in connection to his duties. Where an order or rule is not reasonable, in view of the terms of the contract of employment and the general right of the parties, a refusal to obey does not constitute a just cause for the employee's discharge. It is undeniable that the order given by the company to petitioner to transfer to a place where he has no connections, leaving his family behind, and with no clear additional remuneration, can be considered unreasonable and petitioner's actuation cannot be considered insubordination.[56]

This Court cannot agree with the findings of the CA, in view of the fact that it was an error for it to substitute its own judgment and interfere with management prerogatives. No iota of evidence was presented that the reassignment of respondent was a demotion as he would still be a District Sales Manager in Cagayan de Oro City or in Metro Manila. Furthermore, he would be given relocation benefits in accordance with the Benefits Manual. If respondent feels that what he was given is less than what is given to all other district managers who were likewise reassigned, the onus is on him to prove such fact. Furthermore, records reveal that respondent has been harping on the fact that no additional remuneration would be given to him with the transfer. However, again, respondent did not present any evidence that additional remuneration were being given to other district managers who were reassigned to different locations, or that such was the practice in the company. This Court, therefore, is inclined to believe the statement of Chu in her May 17, 2000 letter to respondent that additional remuneration is never given to people who are reassigned, to wit:

> x x x Likewise, I am disappointed that with the movement, you expect to be paid additional remuneration when in fact, this has never been done in the past and never a practice within the industry and the Philippines.[57]

Lastly, while it is understandable that respondent does not want to relocate his family, this Court agrees with the NLRC when it observed that such inconvenience is considered an "employment" or "professional" hazard which forms part of the concessions an employee is deemed to have offered or sacrificed in the view of his acceptance of a position in sales.

On the observance of due process

The CA ruled that respondent was denied due process in the manner he was dismissed by petitioners, to wit:

> Furthermore, the finding that petitioner was afforded due process is bereft of any legal basis. An employee must be given notice and an ample opportunity, prior to dismissal to adequately prepare for his defense. This is an elementary rule in labor law that due process in dismissal cases contemplates the twin requisites of notice and hearing. These procedural requirements have been mandatorily imposed to the employer to accord its employees the right to be heard. Failure of the employer to comply with such requirements renders its judgment of dismissal void and inexistent. A written notice from the employer containing the causes for the dismissal must be given. The employee is then given ample opportunity to be heard and to defend himself,

> appraising him of his right to counsel if he desires. Lastly, a written notice informing the employee of the decision of the employer, citing there reasons therefore, is given. The above procedure was not followed in the instant case and the series of communications and meetings cannot take the place and is therefore not sufficient to take the place of notice and hearing.[58]

In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[59]

While no actual hearing was conducted before petitioners dismissed respondent, the same is not fatal as only an "ample opportunity to be heard" is what is required in order to satisfy the requirements of due process.[60] Accordingly, this Court is guided by Solid Development Corporation Workers Association v. Solid Development Corporation[61] (Solid), where the validity of the dismissal of two employees was upheld notwithstanding that no hearing was conducted, to wit:

> [W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.
>
> In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. Even if no hearing was conducted, the requirement of due process had been met since they were accorded a chance to explain their side of the controversy[62]

In the case at bar, this Court finds that petitioners had complied with the requirements of law in effecting the dismissal of respondent. Petitioners sent respondent a first notice in the form of a memorandum[63] dated June 26, 2000, warning him that the same would serve as a final notice for him to report to work in Manila within 5 working days from receipt thereof, otherwise, his services would be terminated on the basis of AWOL. After receiving the memorandum, respondent could have requested for a conference with the assistance of counsel, if he so desired. Like in Solid, had respondent found the time too short, he should have responded to the memorandum asking for more time. It, however, appears to this Court that respondent made no such requests. On July 13, 2000, petitioners sent another memorandum[64] notifying respondent that they are terminating his services effective July 19, 2000, after he repeatedly refused to report to work despite due notice. Even if no actual hearing was conducted, this Court is of the opinion that petitioners had complied with the requirements of due process as all that the law requires is an ample opportunity to be heard.

In conclusion, it bears to stress that the CA should not have disturbed the factual findings of the LA and the NLRC in the absence of arbitrariness or palpable error. The reassignment of respondent to another territory was a valid exercise of petitioners' management prerogative and, consequently, his dismissal was for cause and in accordance with the due process requirement of law.

This Court, however, is not unmindful of previous rulings,[65] wherein separation pay has been granted to a validly dismissed employee after giving considerable weight to long years of employment.[66]

An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.[67]

In Philippine Long Distance Telephone Co. v. National Labor Relations Commission,[68] the Court laid down the guidelines in the grant of separation pay to a lawfully dismissed employee, thus:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[69]

In the instant case, this Court rules that an award to respondent of separation pay by way of financial assistance, equivalent to one-half (1/2) month's pay for every year of service, is equitable. Although respondent's actions constituted a valid ground to terminate his services, the same is to this Court's mind not so reprehensible as to warrant complete disregard of his long years of service. It also appears that the same is respondent's first offense. While it may be expected that petitioners will argue that respondent has only been in their service for four years since the merger of Pharmacia and Upjohn took place in 1996, equity considerations dictate that respondent's tenure be computed from 1978, the year when respondent started working for Upjohn.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED. The November 30, 2005 Decision and May 5, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 00386 are REVERSED and SET ASIDE.

In view of the above disquisitions, petitioners are ordered to pay respondent separation pay by way of financial assistance equivalent to one-half (1/2) month pay for every year of service.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

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[1] Rollo, pp. 8-53.

[2] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas concurring, id. at 55-63.

[3] Rollo, pp. 65-66.

[4] Id. at 141-142. See also Assignment of respondent to District XII, p. 155.

[5] Id. at 167-168.

[6] Id. at 169.

[7] Id. at 170-171.

[8] Id. at 172-173.

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[9] Id. at 174-175.

[10] Id. at 177.

[11] Id. at 178.

[12] Id. at 180-181.

[13] Id. at 179.

[14] Id. at 182.

[15] Id. at 183-184.

[16] Id. at 185.

[17] Id. at 186-187.

[18] Id. at 188.

[19] Id. at 189.

[20] Records, pp. 159-160.

[21] Id.

[22] Id. at 1-2.

[23] Rollo, pp. 262-290.

[24] Id. at 290.

[25] Id. at 315-328.

[26] Id. at 327.

[27] Id. at 329-338.

[28] Id. at 352-353.

[29] Id. at 354-380.

[30] Id. at 62-63.

[31] Id. at 25.

[32] Coca-Cola Bottlers Phils., Inc. v. Daniel, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 503.

[33] R & E Transport, Inc. v. Latag, 467 Phil. 355, 365 (2004).

[34] Philippine Industrial Security Agency Corporation v. Aguinaldo, G.R. No. 149974, June 15, 2005, 460 SCRA 229, 239; Mendoza v. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 765-766.

[35] Floren Hotel v. National Labor Relations Commission, 497 Phil. 458, 473 (2005); Jarcia Machine Shop and Auto Supply, Inc. v. NLRC, 334 Phil. 84, 95 (1997).

[36] Rollo, p. 281.

[37] Id. at 284.

[38] Id. at 323-324.

[39] Western Shipping Agency, Inc. v. NLRC, 323 Phil. 479, 484 (1996).

[40] Madlos v. NLRC, G.R. No. 115365, March 4, 1996, 254 SCRA 248, 257.

[41] 417 Phil. 747 (2001).

[42] Id. at 753. (Emphasis supplied.)

[43] Rollo, pp. 60-61.

[44] PNOC-EDC v. Abella, 489 Phil. 515, 537 (2005).

[45] Union Carbide Labor Union v. Union Carbide Phils., Inc., G.R. No. 41314, November 13, 1992, 215 SCRA 554, 557; National Federation of Labor Unions (NAFLU) v. National Labor Relations Commission, G.R. No. 90739, October 3, 1991, 202 SCRA 346.

[46] Rollo, pp. 138-140.

[47] Id. at 139.

[48] Id. at 130-131.

[49] Id. at 131.

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

[51] Id. at 719. (Emphasis supplied.)

[52] Rollo, pp. 286-287.

[53] Id. at 325.

[54] Mercury Drug Corporation v. Domingo, 497 Phil. 112, 125 (2005).

[55] ART. 282. Termination by employer.--An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

x x x x

[56] Rollo, p. 61.

[57] Id. at 179.

[58] Id. at 61-62.

[59] Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 140-141.

[60] Perez v. Philippine Telegraph & Telephone Company, G.R. No. 152048, April 7, 2009, 584 SCRA 110.

[61] Supra note 59.

[62] Id. at 140-141.

[63] Rollo, p. 189.

[64] Records, pp. 159-160.

[65] See Aparente Sr. v. National Labor Relations Commission, 387 Phil. 96 (2000); Firestone Tire and Rubber Co. v. Lariosa, February 27, 1987, 148 SCRA 187.

[66] Philippine Commercial International Bank v. Abad, 492 Phil. 657, 667 (2005).

[67] Aparente, Sr. v. National Labor Relations Commission, supra note 65.

[68] No. L-80609, August 23, 1988, 164 SCRA 671.

[69] Id. at 682.

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