

JULIE’S BAKESHOP AND/OR EDGAR REYES, PETITIONERS, VS. HENRY ARNAIZ EDGAR NAPAL, AND JONATHAN TOLORES, RESPONDENTS.

G.R. No. 173882. February 15, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business. This so-called management prerogative, however, should be exercised in accordance with justice and fair play.

By this Petition for Review on Certiorari,[1] petitioners Julie’s Bakeshop and/or Edgar Reyes (Reyes) assail the September 23, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 86257, which reversed the Resolutions dated December 18, 2003[3] and April 19, 2004[4] of the National Labor Relations Commission (NLRC) and ordered petitioners to reinstate respondents Henry Arnaiz (Arnaiz), Edgar Napal (Napal) and Jonathan Tolores (Tolores) and to pay them their backwages for having been constructively dismissed, as well as their other monetary benefits.

Factual Antecedents

Reyes hired respondents as chief bakers in his three franchise branches of Julie’s Bakeshop in Sibalom and San Jose, Antique. On January 26, 2000, respondents filed separate complaints against petitioners for underpayment of wages, payment of premium pay for holiday and rest day, service incentive leave pay, 13th month pay, cost of living allowance (COLA) and attorney’s fees. These complaints were later on consolidated.

Subsequently, in a memorandum dated February 16, 2000, Reyes reassigned respondents as utility/security personnel tasked to clean the outside vicinity of his bakeshops and to maintain peace and order in the area. Upon service of the memo, respondents, however, refused to sign the same and likewise refused to perform their new assignments by not reporting for work.

In a letter-memorandum dated March 13, 2000, Reyes directed respondents to report back for work and to explain why they failed to assume their duties as utility/security personnel. A second letter-memorandum of the same tenor dated March 28, 2000 was also sent to respondents. Respondents did not heed both memoranda.

Proceedings before the Labor Arbiter

Meanwhile, in the preliminary conference set on February 21, 2000, respondents with their counsel, Atty. Ronnie V. Delicana (Atty. Delicana), on one hand, and Reyes on the other, appeared before the Labor Arbiter to explore the possibility of an amicable settlement. It was agreed that the parties would enter into a compromise agreement on March 7, 2000. However, on February 29, 2000, respondents, who were then represented by a different counsel, Atty. Mariano R. Pefianco (Atty. Pefianco), amended their complaints by including in their causes of action illegal dismissal and a claim for reinstatement and backwages.

The supposed signing of the compromise agreement (which could have culminated in respondents receiving the total amount of P54,126.00 as payment for their 13th month pay and separation pay) was reset to March 28, 2000 because of respondents' non-appearance in the hearing of March 7, 2000. On March 28, 2000, Atty. Pefianco failed to appear despite due notice. On the next hearing scheduled on April 24, 2000, both Atty. Delicana and Atty. Pefianco appeared but the latter verbally manifested his withdrawal as counsel for respondents. Thus, respondents, through Atty. Delicana, and Reyes, continued to explore the possibility of settling the case amicably. Manifesting that they need to sleep on the proposed settlement, respondents requested for continuance of the hearing on April 26, 2000. Come said date, however, respondents did not appear.

Realizing the futility of further resetting the case to give way to a possible settlement, the Labor Arbiter ordered the parties to file their respective position papers.

Despite his earlier withdrawal as counsel, Atty. Pefianco filed a Joint Position Paper[5] on behalf of respondents alleging that they were dismissed from employment on February 21, 2000 without valid cause. As for petitioners, they stated in their position paper[6] that respondents were never dismissed but that they abandoned their jobs after filing their complaints. Petitioners denied that Reyes is the employer of Arnaiz and Napal but admitted such fact insofar as Tolores is concerned.

In his Decision[7] dated August 25, 2000, the Labor Arbiter expressed dismay over respondents' lack of good faith in negotiating a settlement. The Labor Arbiter denounced the way respondents dealt with Atty. Delicana during their discussions for a possible settlement since respondents themselves later on informed the said tribunal that at the time of the said discussions, they no longer considered Atty. Delicana as their counsel. Despite this, the Labor Arbiter still required the parties to submit their respective position papers. And as respondents' position paper was filed late and no evidence was attached to prove the allegations therein, the Labor Arbiter resolved to dismiss the complaints, thus:

WHEREFORE, premises considered the above-entitled cases should be, as they are hereby dismissed without prejudice.

SO ORDERED.[8]

Proceedings before the National Labor Relations Commission

Respondents filed a joint appeal[9] with the NLRC. In a Decision[10] dated January 17, 2002, the NLRC overruled the Decision of the Labor Arbiter and held that the burden of proof lies on herein petitioners as Reyes admitted being the employer of Tolores. Hence, petitioners not Tolores, had the duty to advance proof. With respect to Arnaiz and Napal, the NLRC noted that since their alleged employer was not impleaded, said respondents' cases should be remanded to the Labor Arbiter, and tried as new and separate cases. The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the case is REMANDED for purposes of identifying the real respondents, to be separated as discussed, if warranted, and for further proceedings to be conducted.

SO ORDERED.[11]

Respondents filed a Motion for Reconsideration,[12] alleging that the NLRC

Decision violated their right to speedy disposition of their cases. They also insisted that Reyes is their employer as shown by his letter-memorandum dated March 13, 2000 which directed all of them to report back for work. In addition, the fact that Reyes was willing to pay all the respondents the amount of P54,126.00 as settlement only proves that there is an employer-employee relationship between them and Reyes.

In a Resolution[13] dated September 23, 2003, the NLRC found merit in respondents' Motion for Reconsideration. It held that Reyes failed to present concrete proof of his allegation that a certain Rodrigo Gandiongco is the employer of Arnaiz and Napal; hence, Reyes is still presumed to be their employer as franchise owner of the branches where these employees were assigned. The NLRC further ruled that respondents' demotion in rank from chief bakers to utility/security personnel is tantamount to constructive dismissal which entitles them to the reliefs available to illegally dismissed employees. As for the money claims, the NLRC granted respondents their salary differentials, premium pay for rest day, holiday pay, service incentive leave pay, 13th month pay and COLA. In awarding such monetary awards, the NLRC ratiocinated that the employer bears the burden of proving that the employees received their wages and benefits. In this case, however, no proof of such payment was presented by the petitioners. The claim for overtime pay though was denied since proof of overtime work is necessary to warrant such award. Lastly, for Reyes' unjustified act done in bad faith, respondents were awarded 10% attorney's fees. The NLRC ruled as follows:

WHEREFORE, Our previous Decision is VACATED and a new one rendered declaring complainants to have been illegally dismissed. Complainants are to be reinstated to their former positions without loss of seniority rights. Complainants are further awarded backwages reckoned from the time they were constructively dismissed up to the time of their actual reinstatement, whether physically or on payroll.

Complainants being underpaid are to be [paid] their salary differentials reckoned three (3) years backwards from the time they filed the instant complaints on January 26, 2000, premium pay for holiday, premium pay for rest day, holiday pay, service incentive leave pay, 13[th] month pay and COLA, if these have not been paid to them yet.

SO ORDERED.[14]

Petitioners sought to reconsider this ruling via a Motion for Reconsideration,[15] insisting that respondents were not illegally dismissed and that their reassignment or transfer as utility/security personnel was indispensable, made in good faith and in the exercise of a valid management prerogative. Hence, such reassignment does not amount to constructive dismissal. Reyes claimed that it would be likely for respondents, after filing complaints against him, to do something prejudicial to the business as chief bakers, like mixing harmful ingredients into the bread that they bake. This could be inimical to the health of the consuming public. Petitioners averred that respondents' reassignment as utility/security personnel is a preventive measure designed to protect the business and its customers. They likewise added that the transfer was meant to be only temporary and besides, same does not involve any diminution in pay, rights and privileges of the respondents. Petitioners also alleged that respondents' wage of P115.00 per day is in consonance with and is even higher than the mandated minimum wage of P105.00 under Wage Order No. RB6-09 for retail and service establishments employing not more than 10 workers as in his business.

The NLRC, in its Resolution[16] dated December 18, 2003, again reconsidered its own ruling and held that respondents were not dismissed, either actually or constructively, but instead willfully disobeyed the return to work order of their employer. The NLRC upheld petitioners' prerogative to transfer respondents if only to serve the greater interest, safety and well-being of the buying public by forestalling irregular acts of said employees. The NLRC then put the blame on respondents for disobeying the lawful orders of their employer, noting that it was the same attitude displayed by them in their dealings with their counsel, Atty. Delicana, in the proceedings before the Labor Arbiter. It also reversed its previous ruling that respondents were underpaid their wages and adjudged them to be even overpaid by P10.00 per Wage Order No. RB 6-09-A. Thus, respondents' complaints were dismissed except for their claims for premium pay for holiday, and rest day, service incentive leave pay, 13th month pay and COLA, which awards would stand only if no payment therefor has yet been made.

Respondents filed a Motion for Reconsideration[17] and sought for the execution of the NLRC Resolution dated September 23, 2003 due to the alleged finality of the ruling. According to them, petitioners' pro forma Motion for Reconsideration of the said resolution did not suspend the running of the period for taking an appeal. This motion was, however, denied in the NLRC Resolution[18] dated April 19, 2004.

Proceedings before the Court of Appeals

Respondents appealed to the CA through a petition for certiorari,[19] wherein they imputed grave abuse of discretion on the part of the NLRC in not declaring them to have been illegally dismissed and entitled to salary differentials.

The CA, in its Decision[20] dated September 23, 2005, found merit in the petition, ruling that respondents were constructively dismissed since their designation from chief bakers to utility/security personnel is undoubtedly a demotion in rank which involved "a drastic change in the nature of work resulting to a demeaning and humiliating work condition." It also held that petitioners' fear that respondents might introduce harmful foreign substances in baking bread is more imaginary than real. Further, respondents could not be held guilty of abandonment of work as this was negated by their immediate filing of complaints to specifically ask for reinstatement. Nevertheless, the CA denied the claim for salary differentials by totally agreeing with the NLRC's finding on the matter. Said court then resolved to award respondents the rest of their monetary claims for failure of petitioners to present proof of payment and 10% attorney's fees as respondents' dismissal was attended with bad faith which forced them to litigate, viz:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us SETTING ASIDE and REVERSING the Resolutions dated December 18, 2003 and April 19, 2004 in NLRC Case No. V-000785-2000. The record of this case is hereby REMANDED to the Labor Arbiter for the computation of backwages, premium pay for holidays and rest days, holiday pay, service incentive leave pay, 13th month pay and attorney's fees due to the petitioners and, thereafter, for the payment thereof by the private respondent Reyes.[21]

Petitioners filed a Motion for Reconsideration[22] but the same was denied by the CA in a Resolution[23] dated May 25, 2006.

Issues

Hence, this present petition raising the following issues for the Court's consideration:

- DID THE HONORABLE COURT OF APPEALS, IN DISTURBING THE FINDINGS OF FACTS OF THE LABOR ARBITER AS WELL AS THE NATIONAL LABOR [RELATIONS] COMMISSION WHO HAVE TRIED THE CASE, [COMMIT] GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION?
- DID THE HONORABLE COURT OF APPEALS MANIFESTLY [OVERLOOK] RELEVANT FACTS NOT DISPUTED BY THE RESPONDENTS, WHICH, IF PROPERLY CONSIDERED COULD JUSTIFY A DIFFERENT CONCLUSION?
- WAS THE TRANSFER/REASSIGNMENT OF RESPONDENTS TO ANOTHER POSITION WITHOUT DIMINUTION IN PAY AND OTHER PRIVILEGES TANTAMOUNT TO CONSTRUCTIVE DISMISSAL?[24]

Petitioners maintain that the NLRC, in its Resolution dated December 18, 2003, merely upheld the findings of the Labor Arbiter that there was no constructive dismissal because of the absence of any evidence to prove such allegation. As such, Reyes' supposition is that the CA erred in coming up with a contrary finding.

Petitioners insist that the order transferring or reassigning respondents from chief bakers to utility/security personnel is a valid exercise of management prerogative for it does not involve any diminution in pay and privileges and that same is in accordance with the requirements of the business, viz: to protect its goodwill and reputation as well as the health and welfare of the consuming public.

Our Ruling

We find no merit in the petition.

The Court of Appeals is correct in reviewing the findings of the National Labor Relations Commission.

Petitioners claim that the CA should have accorded respect and finality to the factual findings rendered by the NLRC in its December 18, 2003 Resolution as the same merely affirmed the findings of the Labor Arbiter. Citing several jurisprudence on the matter, petitioners add that factual findings of labor officials who acquired expertise on matters within their jurisdiction have conclusive effect.

We reject this contention as none of the NLRC divergent rulings affirmed the findings of the Labor Arbiter. To recall, the Labor Arbiter dismissed respondents' complaints on a technicality, that is, on the ground that respondents' Joint Position Paper was filed late and that it did not contain any attachments to prove the allegations therein. Upon appeal, the NLRC rendered its first Decision on January 17, 2002 which remanded the case to the Labor Arbiter for purposes of identifying the real respondents and separating the consolidated cases if warranted, and for the conduct of further proceedings due to Reyes's allegation that Arnaiz and Napal have a different employer. The NLRC also disagreed with the Labor Arbiter's ratiocination that it behooved upon respondents to attach proof of their illegal dismissal. According to the NLRC, since Reyes admitted that he is Tolores's employer, the burden to prove that the termination is valid as well as the due payment of money claims falls upon petitioners. Upon petitioners' motion, however, the NLRC reconsidered this ruling and resolved the case on the merits. In so doing, it found the respondents to have been constructively dismissed through its Resolution dated September 23, 2003. The NLRC, however, once again reversed itself in a Resolution dated December 18, 2003 upon Reyes's filing of a Motion for Reconsideration. This time, the NLRC held that respondents were not illegally dismissed but instead abandoned their jobs. It was at this point that respondents sought recourse from the CA.

Indeed, "factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality."^[25] It is a well-entrenched rule that findings of facts of the NLRC, affirming those of the Labor Arbiter, are accorded respect and due consideration when supported by substantial evidence.^[26] We, however, find that the doctrine of great respect and finality has no application to the case at bar. As stated, the Labor Arbiter dismissed respondents' complaints on mere technicality. The NLRC, upon appeal, then came up with three divergent rulings. At first, it remanded the case to the Labor Arbiter. However, in a subsequent resolution, it decided to resolve the case on the merits by ruling that respondents were constructively dismissed. But later on, it again reversed itself in its third and final resolution of the case and ruled in petitioners' favor. Therefore, contrary to Reyes's claim, the NLRC did not, on any occasion, affirm any factual findings of the Labor Arbiter. The CA is thus correct in reviewing the entire records of the case to determine which findings of the NLRC is sound and in accordance with law. Besides, the CA, at any rate, may still resolve factual issues by express mandate of the law despite the respect given to administrative findings of fact.^[27]

The transfer/reassignment of respondents

constitutes constructive dismissal.

Petitioners contend that the order transferring or reassigning respondents from their position as chief bakers to utility/security personnel is within the ambit of management prerogative as employer. They harp on the fact that no evidence was presented by respondents to show that they were dismissed from employment.

We have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[28]

In constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just or valid ground, such as genuine business necessity. The employer must demonstrate that the transfer is not unreasonable, inconvenient, or prejudicial to the employee and that the transfer does not involve a demotion in rank or a diminution in salary and other benefits. “If the employer fails to overcome this burden of proof, the employee’s transfer is tantamount to unlawful constructive dismissal.”[29]

In this case, petitioners insist that the transfer of respondents was a measure of self-preservation and was prompted by a desire to protect the health of the buying public, claiming that respondents should be transferred to a position where they could not sabotage the business pending resolution of their cases. According to petitioners, the possibility that respondents might introduce harmful substances to the bread while in the performance of their duties as chief bakers is not imaginary but real as borne out by what Tolores did in one of the bakeshops in Culasi, Antique where he was assigned as baker.

This postulation is not well-taken. On the contrary, petitioners failed to satisfy the burden of proving that the transfer was based on just or valid ground. Petitioners’ bare assertions of imminent threat from the respondents are mere accusations which are not substantiated by any proof. This Court is proscribed from making conclusions based on mere presumptions or suppositions. An employee’s fate cannot be justly hinged upon conjectures and surmises.[30] The act attributed against Tolores does not even convince us as he was merely a suspected culprit in the alleged sabotage for which no investigation took place to establish his guilt or culpability. Besides, Reyes still retained Tolores as an employee and chief baker when he could have dismissed him for cause if the allegations were indeed found true. In view of these, this Court finds no compelling reason to justify the transfer of respondents from chief bakers to utility/security personnel. What appears to this Court is that respondents’ transfer was an act of retaliation on the part of petitioners due to the former’s filing of complaints against them, and thus, was clearly made in bad faith. In fact, petitioner Reyes even admitted that he caused the reassignments due to the pending complaints filed against him. As the CA aptly held:

In the case at bench, respondent Reyes failed to justify petitioners’ transfer from the position of chief bakers to utility/security personnel. We find that the threat being alluded to by respondent Reyes – that the petitioners might introduce harmful foreign substances in baking bread – is imaginary and not real. We recall that what triggered the petitioners’ reassignment was the filing of their complaints against private respondents in the NLRC. The petitioners were not even given an opportunity to refute the reason for the transfer. The drastic change in petitioners’ nature of work unquestionably resulted in, as rightly perceived by them, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt. There is demotion when an employee is transferred from a position of dignity to a servile or menial job. One does not need to stretch the imagination to distinguish the work of a chief baker to that of a security cum utility man.[31]

“[D]emotion involves a situation in which 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.”[32] When there is a demotion in rank and/or a diminution in pay; when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee; or when continued employment is rendered impossible, unreasonable or unlikely, the transfer of an employee may constitute constructive dismissal.[33]

We agree with the CA in ruling that the transfer of respondents amounted to a demotion. Although there was no diminution in pay, there was undoubtedly a demotion in titular rank. One cannot deny the disparity between the duties and functions of a chief baker to that of a utility/security personnel tasked to clean and manage the orderliness of the outside premises of the bakeshop. Respondents were even prohibited from entering the bakeshop. The change in the nature of their work undeniably resulted to a demeaning and humiliating work condition.

In *Globe Telecom, Inc. v. Florendo-Flores*,[34] we held:

The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion. It must always bear in mind the basic elements of justice and fair play. Having the right must not be confused with the manner that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.

Petitioners’ claim that respondents abandoned their job stands on shallow grounds. Respondents cannot be faulted for refusing to report for work as they were compelled to quit their job due to a demotion without any just cause. Moreover, we have consistently held that a charge of abandonment is inconsistent with the filing of a complaint for constructive dismissal.[35] Respondents’ demand to maintain their positions as chief bakers by filing a case and asking for the relief of reinstatement belies abandonment.[36]

As the transfer proves unbearable to respondents as to foreclose any choice on their part except to forego continued employment, same amounts to constructive dismissal for which reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement, should be granted.[37] The CA, therefore, did not err in awarding the reliefs prayed for by the respondents as they were, without a doubt, constructively dismissed.

WHEREFORE, the petition is DENIED. The September 23, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 86257 is AFFIRMED.

SO ORDERED.

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

[*] Also spelled as Naval in some parts of the records.

[1] Rollo, pp. 10-17.

[2] CA rollo, pp. 131-151; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato Jr. and Enrico A. Lanzanas.

[3] Id. at 51-53; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

[4] Id. at 59.

- [5] Id. at 13-14.
- [6] Id. at 15-17.
- [7] Id. at 18-30; penned by Labor Arbiter Rodolfo G. Lagoc.
- [8] Id. at 30.
- [9] Id. at 31-34.
- [10] Id. at 35-36; penned by Presiding Commissioner Irene E. Ceniza and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.
- [11] Id. at 36.
- [12] Id. at 37-40.
- [13] Id. at 41-45; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.
- [14] Id. at 45.
- [15] Id. at 46-50.
- [16] Supra note 3.
- [17] CA rollo, pp. 54-58.
- [18] Supra note 4.
- [19] CA rollo, pp. 2-12.
- [20] Supra note 2.
- [21] CA rollo, p. 151.
- [22] Id. at 153-159.
- [23] Id. at 171-172.
- [24] Rollo, p. 122.
- [25] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).
- [26] *Master Shirt Co., Inc. v. National Labor Relations Commission*, 360 Phil. 837, 842 (1998).
- [27] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 588-589.
- [28] *Unicorn Safety Glass, Inc. v. Basarte*, 486 Phil. 493, 505. (2004).
- [29] *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 500.
- [30] *Eastern Telecommunications Phils., Inc. v. Diamse*, 524 Phil. 549, 557 (2006).
- [31] CA rollo, p. 139.
- [32] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 291.
- [33] *Benguet Electric Cooperative v. Fianza*, 468 Phil. 980, 992 (2004).

[34] 438 Phil. 756, 769 (2002).

[35] Unicorn Safety Glass, Inc. v. Basarte, *supra* note 28 at 506.

[36] Micro Sales Operation Network v. National Labor Relations Commission, 509 Phil. 313, 322 (2005).

[37] Westmont Pharmaceuticals, Inc. v. Samaniego, 518 Phil. 41, 51-52 (2006).

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