# WILLIAM ENDELISEO BARROGA, PETITIONER, VS. DATA CENTER COLLEGE OF THE PHILIPPINES AND WILFRED BACTAD, RESPONDENTS.

*G.R. No. 174158. June 27, 2011*

Ponente: DEL CASTILLO, J.

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**DEL CASTILLO, J.:**

Our labor laws are enacted not solely for the purpose of protecting the working class but also the management by equally recognizing its right to conduct its own legitimate business affairs.

This Petition for Review on Certiorari [2] seeks the reversal of the Resolutions dated May 15, 2006 [3] and August 4, 2006 [4] of the Court of Appeals (CA) in CA-G.R. SP No. 93991, which dismissed petitioner William Endeliseo Barroga's Petition for Certiorari for procedural infirmities, as well as the Decision [5] dated August 25, 2005 and Resolution [6] dated January 31, 2006 of the National Labor Relations Commission (NLRC), with respect to the dismissal of petitioner's claim of constructive dismissal against respondents Data Center College of the Philippines and its President and General Manager, Wilfred Bactad.

Factual Antecedents

On November 11, 1991, petitioner was employed as an Instructor in Data Center College Laoag City branch in Ilocos Norte. In a Memorandum [7] dated June 6, 1992, respondents transferred him to University of Northern Philippines (UNP) in Vigan, Ilocos Sur where the school had a tie-up program. Petitioner was informed through a letter [8] dated June 6, 1992 that he would be receiving, in addition to his monthly salary, a P1,200.00 allowance for board and lodging during his stint as instructor in UNP-Vigan. In 1994, he was recalled to Laoag campus. On October 3, 2003, petitioner received a Memorandum [9] transferring him to Data Center College Bangued, Abra branch as Head for Education/Instructor due to an urgent need for an experienced officer and computer instructor thereat.

However, petitioner declined to accept his transfer to Abra citing the deteriorating health condition of his father and the absence of additional remuneration to defray expenses for board and lodging which constitutes implicit diminution of his salary. [10]

On November 10, 2003, petitioner filed a Complaint [11] for constructive dismissal against respondents. Petitioner alleged that his proposed transfer to Abra constitutes a demotion in rank and diminution in pay and would cause personal inconvenience and hardship. He argued that although he was being transferred to Abra branch supposedly with the same position he was then holding in Laoag branch as Head for Education, he later learned through a Memorandum [12] from the administrator of Abra branch that he will be re-assigned merely as an instructor, thereby relegating him from an administrative officer to a rank-and-file employee. Moreover, the elimination of his allowance for board and lodging will result to an indirect reduction of his salary which is prohibited by labor laws. Petitioner also claimed that when he questioned the indefinite suspension of the scholarship for post-graduate studies extended to him by respondents, [13] the latter became indifferent to his

legitimate grievances which eventually led to his prejudicial re-assignment. He averred that his transfer is not indispensable to the school's operation considering that respondents even suggested that he take an indefinite leave of absence in the meantime if only to address his personal difficulties. [14] Petitioner thus prayed for his reinstatement and backwages. Further, as Head for Education at Data Center College Laoag branch, petitioner asked for the payment of an overload honorarium as compensation for the additional teaching load in excess of what should have been prescribed to him. Exemplary damages and attorney's fees were likewise prayed for.

For their part, respondents claimed that they were merely exercising their management prerogative to transfer employees for the purpose of advancing the school's interests. They argued that petitioner's refusal to be transferred to Abra constitutes insubordination. They claimed that petitioner's appointment as instructor carries a proviso of possible re-assignments to any branch or tie-up schools as the school's necessity demands. Respondents argued that petitioner's designation as Head for Education in Laoag branch was merely temporary and that he would still occupy his original plantilla item as instructor at his proposed assignment in Abra branch. Respondents denied liability to petitioner's monetary claims.

Ruling of the Labor Arbiter

On September 24, 2004, the Labor Arbiter rendered a Decision [15] dismissing the Complaint for lack of merit. The Labor Arbiter ruled that there was no demotion in rank as petitioner's original appointment as instructor on November 11, 1991 conferred upon respondents the right to transfer him to any of the school's branches and that petitioner's designation as Head for Education can be withdrawn anytime since he held such administrative position in a non-permanent capacity. The Labor Arbiter held that the exclusion of his allowance for board, lodging and transportation was not constructive dismissal, enunciating that the concept of non-diminution of benefits under Article 100 of the Labor Code prohibits the elimination of benefits that are presently paid to workers to satisfy the requirements of prevailing minimum wage rates. Since the benefit claimed by petitioner is beyond the coverage of the minimum wage law, its non-inclusion in his re-assignment is not considered a violation. The Labor Arbiter also denied petitioner's claim for overload honorarium for failure to present sufficient evidence to warrant entitlement to the same. The claim for damages was likewise denied.

Ruling of the National Labor Relations Commission

In a Decision [16] dated August 25, 2005, the NLRC affirmed the findings of the Labor Arbiter that there was no constructive dismissal. It ruled that the management decision to transfer petitioner was well within the rights of respondents in consonance with petitioner's contract of employment and which was not sufficiently shown to have been exercised arbitrarily by respondents. It agreed with the Labor Arbiter that petitioner's designation as Head for Education was temporary for which he could not invoke any tenurial security. Further, the NLRC held that it was not proven with certainty that the transfer would unduly prejudice petitioner's financial situation. The NLRC, however, found petitioner to be entitled to overload honorarium pursuant to CHED Memorandum Order No. 25 for having assumed the position of Head for Education, albeit on a temporary basis. The NLRC disposed of the case as follows:

> WHEREFORE, premises considered, the decision under review is hereby MODIFIED by ordering the respondent Data Center College of the Philippines, to pay the complainant the sum of SEVENTY THREE THOUSAND SEVEN THUNDRED [sic] THIRTY and 39/100 Pesos (P73,730.39), representing overload honorarium.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED. [17]


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From this Decision, both parties filed their respective motion for partial reconsideration. Petitioner assailed the NLRC Decision insofar as it dismissed his claims for reinstatement, backwages, damages and attorney's fees. [18] Respondents, for their part, questioned the NLRC's award of overload honorarium in favor of petitioner. These motions were denied by the NLRC in a Resolution dated January 31, 2006. [19]

Ruling of the Court of Appeals

Both parties filed petitions for certiorari before the CA. Respondents' petition for certiorari was docketed as CA-G.R. SP No. 94205, which is not subject of the instant review. On the other hand, petitioner filed on April 7, 2006, a Petition for Certiorari [20] with the CA docketed as CA-G.R. SP No. 93991 assailing the NLRC's finding that no constructive dismissal existed. Realizing his failure to attach the requisite affidavit of service of the petition upon respondents, petitioner filed on April 27, 2006, an Ex-Parte Manifestation and Motion [21] to admit the attached affidavit of service and registry receipt in compliance with the rules.

On May 15, 2006, the CA dismissed the petition in CA-G.R. SP No. 93991 in a Resolution which reads:

> Petition is DISMISSED outright due to the following infirmities:
>
> 1. there is no statement of material dates as to when the petitioner received the assailed decision dated August 25, 2005 and when he filed a Motion for Reconsideration thereof;
>
> 2. there is no affidavit of service attached to the petition;
>
> 3. these initiatory pleadings and the respondents' Motion for Reconsideration of the Decision dated August 25, 2005 are not attached to the petition.
>
> SO ORDERED. [22]

Petitioner filed a Motion for Reconsideration [23] alleging that the material dates of receipt of the NLRC Decision and the filing of his motion for reconsideration are explicitly stated in his Partial Motion for Reconsideration which was attached as an annex to the petition and was made an integral part thereof. As to the absence of the affidavit of service, petitioner argued that there is no legal impediment for the belated admission of the affidavit of service as it was duly filed before the dismissal of the petition. As for his failure to attach respondents' motion for reconsideration, petitioner manifested that a separate petition for certiorari has been filed by respondents and is pending with the CA, docketed as CA-G.R. SP No. 94205, where the denial of said motion is at issue.

On August 4, 2006, the CA issued the following Resolution:

> Due to non-compliance despite opportunity afforded to comply, petitioner's June 9, 2006 Motion for Reconsideration is hereby DENIED for
>
> lack of merit.
>
> SO ORDERED. [24]

Issues

Hence, this petition assigning the following errors:

> THE HONORABLE COURT OF APPEALS PATENTLY COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITION FOR CERTIORARI [UNDER RULE 65] OF THE PETITIONER BY GIVING PRECEDENT TO TECHNICALITIES RATHER THAN THE MERITORIOUS GROUNDS ASSERTED THEREIN.
>
> THE PUBLIC RESPONDENT, NATIONAL LABOR RELATIONS COMMISSION, SERIOUSLY ERRED

IN ITS CONSLUSIONS OF LAW IN RENDERING IT[S] ASSAILED DECISION AND RESOLUTION STATING THAT THE PETITIONER WAS NOT CONSTRUCTIVELY DISMISSED, THUS, NOT ENTITLED TO REINSTATEMENT, BACKWAGES, AND ATTORNEY'S FEES.[25]

Petitioner imputes grave abuse of discretion on the CA in not giving due course to his petition despite substantial compliance with the requisite formalities as well as on the NLRC in not ruling that he was constructively dismissed by respondents.

Our Ruling

Petitioner's substantial compliance calls
for the relaxation of the rules. Therefore, the
CA should have given due course to the petition.

The three material dates which should be stated in the petition for certiorari under Rule 65 are the dates when the notice of the judgment was received, when a motion for reconsideration was filed and when the notice of the denial of the motion for reconsideration was received. [26] These dates should be reflected in the petition to enable the reviewing court to determine if the petition was filed on time. [27] Indeed, petitioner's petition before the CA stated only the date of his receipt of the NLRC's Resolution denying his motion for partial reconsideration. It failed to state when petitioner received the assailed NLRC Decision and when he filed his partial motion for reconsideration. However, this omission is not at all fatal because these material dates are reflected in petitioner's Partial Motion for Reconsideration attached as Annex "N" of the petition. In Acaylar, Jr. v. Harayo, [28] we held that failure to state these two dates in the petition may be excused if the same are evident from the records of the case. It was further ruled by this Court that the more important material date which must be duly alleged in the petition is the date of receipt of the resolution of denial of the motion for reconsideration. In the case at bar, petitioner has duly complied with this rule.

Next, the CA dismissed the petition for failure to attach an affidavit of service. However, records show that petitioner timely rectified this omission by submitting the required affidavit of service even before the CA dismissed his petition.

Thirdly, petitioner's failure to attach respondent's motion for reconsideration to the assailed NLRC decision is not sufficient ground for the CA to outrightly dismiss his petition. The issue that was raised in respondents' motion for reconsideration is the propriety of the NLRC's grant of overload honorarium in favor of petitioner. This particular issue was not at all raised in petitioner's petition for certiorari with the CA, therefore, there is no need for petitioner to append a copy of this motion to his petition. Besides, as already mentioned, the denial of respondents' motion for reconsideration has been assailed by respondents before the CA docketed as CA-G.R. SP No. 94205. At any rate, the Rules do not specify the documents which should be appended to the petition except that they should be relevant to the judgment, final order or resolution being assailed. Petitioner is thus justified in attaching the documents which he believed are sufficient to make out a prima facie case. [29]

The Court has time and again upheld the theory that the rules of procedure are designed to secure and not to override substantial justice. [30] These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided. [31] The CA thus should not have outrightly dismissed petitioner's petition based on these procedural lapses.

Petitioner's transfer is not tantamount to
constructive dismissal.

Nevertheless, the instant petition merits dismissal on substantial grounds. After a careful review of the records and the arguments of the parties, we do not find any sufficient basis to conclude that petitioner's re-assignment amounted to constructive dismissal.

Constructive dismissal is quitting because continued employment is rendered impossible, unreasonable or unlikely, or because of a demotion in rank or a diminution of pay. It exists when there is a clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment. [32] Petitioner alleges that the real purpose of his transfer is to demote him to the rank of an instructor from being the Head for Education performing administrative functions. Petitioner further argues that his re-assignment will entail an indirect reduction of his salary or diminution of pay considering that no additional allowance will be given to cover for board and lodging expenses. He claims that such additional allowance was given in the past and therefore cannot be discontinued and withdrawn without violating the prohibition against non-diminution of benefits.

These allegations are bereft of merit.

Petitioner was originally appointed as instructor in 1991 and was given additional administrative functions as Head for Education during his stint in Laoag branch. He did not deny having been designated as Head for Education in a temporary capacity for which he cannot invoke any tenurial security. Hence, being temporary in character, such designation is terminable at the pleasure of respondents who made such appointment. [33] Moreover, respondents' right to transfer petitioner rests not only on contractual stipulation but also on jurisprudential authorities. The Labor Arbiter and the NLRC both relied on the condition laid down in petitioner's employment contract that respondents have the prerogative to assign petitioner in any of its branches or tie-up schools as the necessity demands. In any event, it is management prerogative for employers to transfer employees on just and valid grounds such as genuine business necessity. [34] It is also important to stress at this point that respondents have shown that it was experiencing some financial constraints. Because of this, respondents opted to temporarily suspend the post-graduate studies of petitioner and some other employees who were given scholarship grants in order to prioritize more important expenditures. [35]

Indeed, we cannot fully subscribe to petitioner's contention that his re-assignment was tainted with bad faith. As a matter of fact, respondents displayed commiseration over the health condition of petitioner's father when they suggested that he take an indefinite leave of absence to attend to this personal difficulty. Also, during the time when respondents directed all its administrative officers to submit courtesy resignations, petitioner's letter of resignation was not accepted. [36] This bolsters the fact that respondents never intended to get rid of petitioner. In fine, petitioner's assertions of bad faith on the part of respondents are purely unsubstantiated conjectures.

The Court agrees with the Labor Arbiter that there was no violation of the prohibition on diminution of benefits. Indeed, any benefit and perks being enjoyed by employees cannot be reduced and discontinued, otherwise, the constitutional mandate to afford full protection to labor shall be offended. [37] But the rule against diminution of benefits is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period which is consistent and deliberate. [38]

Petitioner was granted a monthly allowance for board and lodging during his stint as instructor in UNP-Vigan, Ilocos Sur as evinced in a letter dated June 6, 1992 with the condition stated in the following tenor:

> Please be informed that during your assignment at our tie-up at UNP-VIGAN, ILOCOS SUR , you will be receiving a monthly Board and Lodging of Pesos: One Thousand Two Hundred x x x (P1,200.00).
>
> However, you are only entitled to such allowance, if you are assigned to the said tie-up and the same will be changed or forfeited depending upon the place of your next reassignment. [39] (Italics supplied.)


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Petitioner failed to present any other evidence that respondents committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Moreover, there is no conclusive proof that petitioner's basic salary will be reduced as it was not shown that such allowance is part of petitioner's basic salary. Hence, there will be no violation of the rule against diminution of pay enunciated under Article 100 of the Labor Code. [40]

WHEREFORE, the Resolutions dated May 15, 2006 and August 4, 2006 of the Court of Appeals in CA-G.R. SP No. 93991 are SET ASIDE. The Decision dated August 25, 2005 and Resolution dated January 31, 2006 of the National Labor Relations Commission in NLRC Case No. RAB I-12-1242-03 (LC) insofar as it found respondents Data Center College of the Philippines and Wilfred Bactad not liable for constructive dismissal, are AFFIRMED.

**SO ORDERED.**

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

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[1] Also appears as Wilfredo Bactad in some parts of the records.

[2] Rollo, pp. 3-30.

[3] Annex "A" of the Petition, id. at 31-32; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[4] Annex "B" of the Petition, id. at 33.

[5] Annex "D" of the Petition, id. at 37-50; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[6] Annex "C" of the Petition, id. at 34-36.

[7] Annex "W" of the Petition, id. at 165.

[8] Annex "V" of the Petition, id. at 164.

[9] Dated October 3, 2003, Annex "U" of the Petition, id. at 163.

[10] See petitioner's letter to respondent Bactad dated October 13, 2003, Annex "X" of the Petition, id. at 166.

[11] Annex "F" of the Petition, id. at 56.

[12] Dated November 4, 2003, Annex "Z" of the Petition, id. at 168.

[13] See petitioner's letter to respondent Bactad dated October 27, 2003, Annex "AA" of the Petition, id. at 170.

[14] See respondent Bactad's letter to petitioner dated October 29, 2003, Annex "Y" of the Petition, id. at 167.

[15] Annex "M" of the Petition, id. at 92-108; penned by NLRC, Regional Arbitration Branch No. 1 Officer-in-Charge Irenarco R. Rimando.

[16] Supra note 5.

[17] Rollo, p. 49.

[18] See petitioner's Partial Motion for Reconsideration with Motion to Admit Additional Documentary Evidence, Annex "O" of the Petition, id. at 124-135.

[19] Supra note 6.

[20] CA rollo, pp. 2-16.

[21] Id. at 93-95.

[22] Supra note 3.

[23] CA rollo, pp. 99-104.

[24] Supra note 4.

[25] Rollo, p. 12.

[26] Batugan v. Balindong, G.R. No. 181384, March 13, 2009, 581 SCRA 473, 482.

[27] Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals, G.R. No. 158703, June 26, 2009, 591 SCRA 112, 127.

[28] G.R. No. 176995, July 30, 2008, 560 SCRA 624, 636.

[29] Quintano v. National Labor Relations Commission, 487 Phil. 412, 424-425 (2004).

[30] Reyes, Jr. v. Court of Appeals, 385 Phil. 623, 629 (2000).

[31] Van Melle Phils., Inc. v. Endaya, 458 Phil. 420, 430 (2003).

[32] Montederamos v. Tri-Union International Corporation, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

[33] Pabu-aya v. Court of Appeals, 408 Phil. 782, 790 (2001).

[34] Merck Sharp and Dohme (Philippines) v. Robles, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 497.

[35] See respondents' letter to the Commission on Higher Education dated December 11, 2003 in relation to petitioner's letter seeking clarification of the temporary suspension of the employees' masteral studies, rollo, pp. 172-173.

[36] See respondents' letter to petitioner dated September 26, 2003, Annex "Z-1" of the Petition, id. at 169.

[37] Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU), G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

[38] TSPIC Corporation v. TSPIC Employees Union (FFW), G.R. No. 163419, February 13, 2008, 545 SCRA 215, 232.

[39] Supra note 8.

[40] Aguanza v. Asian Terminal, Inc., G.R. No. 163505, August 14, 2009, 596 SCRA 104, 113.


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