

JONATHAN V. MORALES, PETITIONER, VS. HARBOUR CENTRE PORT TERMINAL, INC. RESPONDENT.

G.R. No. 174208. January 25, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

Assailed in this petition for review on certiorari filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure is the Decision^[1] dated 19 June 2006 rendered by the Special Tenth Division of the Court of Appeals in CA-G.R. SP No. 92491,^[2] the dispositive portion of which states:

WHEREFORE, premises considered, the Petition is GRANTED and the assailed NLRC decision is hereby SET ASIDE. In lieu thereof, the decision of the Labor Arbiter is ordered REINSTATED. No costs.

SO ORDERED.^[3]

The Facts

On 16 May 2000, petitioner Jonathan V. Morales (Morales) was hired by respondent Harbour Centre Port Terminal, Inc. (HCPTI) as an Accountant and Acting Finance Officer, with a monthly salary of P18,000.00.^[4] Regularized on 17 November 2000,^[5] Morales was promoted to Division Manager of the Accounting Department, for which he was compensated a monthly salary of P33,700.00, plus allowances starting 1 July 2002.^[6] Subsequent to HCPTI's transfer to its new offices at Vitas, Tondo, Manila on 2 January 2003, Morales received an inter-office memorandum dated 27 March 2003, reassigning him to Operations Cost Accounting, tasked with the duty of "monitoring and evaluating all consumables requests, gears and equipment" related to the corporation's operations and of interacting with its sub-contractor, Bulk Fleet Marine Corporation. The memorandum was issued by Danilo V. Singson (Singson), HCPTI's new Administration Manager, duly noted by Johnny U. Filart (Filart), its new Vice President for Administration and Finance, and approved by its President and Chief Executive Officer, Vicente T. Suazo, Jr.^[7]

On 31 March 2003, Morales wrote Singson, protesting that his reassignment was a clear demotion since the position to which he was transferred was not even included in HCPTI's plantilla. In response to Morales' grievance that he had been effectively placed on floating status,^[8] Singson issued a 4 April 2003 inter-office memorandum to the effect that "transfer of employees is a management prerogative" and that HCPTI had "the right and responsibility to find the perfect balance between the skills and abilities of employees to the needs of the business."^[9] For the whole of the ensuing month Morales was absent from work and/or tardy. Singson issued to Morales a 29 April 2003 inter-office memorandum denominated as a First Warning. The memorandum reminded Morales that, as an employee of HCPTI, he was subject to its rules and regulations and could be disciplinarily dealt with pursuant to its Code of Conduct.^[10] In view of the absences Morales continued to incur, HCPTI issued a Second Warning dated 6 May 2003^[11] and a Notice to Report for Work and Final Warning dated 22 May 2003.^[12]

In the meantime, Morales filed a complaint dated 25 April 2003 against HCPTI, Filart and Singson, for constructive dismissal, moral and exemplary damages as well as attorney's fees. In support of the complaint which was docketed as NLRC-NCR Case No. 00-04-05061-2003 before the arbitral level of the National Labor Relations Commission (NLRC),^[13] Morales alleged that subsequent to its transfer to its new offices, HCPTI had suspended all the privileges enjoyed by its Managers, Division Chiefs and Section Heads; that upon the instruction of Filart, Paulo Christian Suarez, HCPTI's Corporate Treasurer, informed him on 7 March 2003 that he was going to be terminated and had only three (3) weeks to look for another job; that having confirmed his impending termination on 27 March 2003, Filart decided to "temper" the same by instead reassigning him to Operations Cost Accounting; and, that his reassignment to a position which was not included in HCPTI's plantilla was a demotion and operated as a termination from employment as of said date. Maintaining that he suffered great humiliation when, in addition to being deprived of his office and its equipments, he received no further instructions from Filart and Singson regarding his new position, Morales claimed that he was left no other choice but file his complaint for constructive dismissal.^[14]

Served with summons on 7 May 2003,^[15] HCPTI, Filart and Singson filed their position paper, arguing that Morales abandoned his employment and was not constructively dismissed. Calling attention to the supposed fact that Morales' negligence had resulted in HCPTI's payment of P3,350,000.00 in taxes from which it was exempt as a PEZA-registered company, said respondents averred that, confronted by Filart sometime in March 2003 regarding the lapses in his work performance, Morales admitted his inability to handle his tasks at the corporation's Accounting Department; that as a consequence, HCPTI reassigned Morales from managerial accounting to operations cost accounting as an exercise of its management prerogative to assign its employees to jobs for which they are best suited; and, that despite the justification in Singson's 4 April 2003 reply to his 31 March 2003 protest against his reassignment, Morales chose to stop reporting for work. Faulting Morales with unjustified refusal to heed the repeated warnings and notices directing him to report for work, HCPTI, Filart and Singson prayed for the dismissal of the complaint and the grant of their counterclaim for attorney's fees.^[16]

In receipt of the parties' replies^[17] and rejoinders,^[18] Labor Arbiter Facundo L. Leda went on to render a Decision dated 21 November 2003, dismissing for lack of merit Morales' complaint for constructive dismissal. In discounting said employees' illegal dismissal from service, the Labor Arbiter ruled that Morales' reassignment was a valid exercise of HCPTI's management prerogative which cannot be construed as constructive dismissal absent showing that the same was done in bad faith and resulted in the diminution of his salary and benefits.^[19] On appeal, the foregoing decision was, however, reversed and set aside in the 29 July 2005 Decision rendered by the NLRC's Third Division in NLRC NCR CA No. 038548-04. Finding that Morales' reassignment was a clear demotion despite lack of showing of diminution of salaries and benefits,^[20] the NLRC disposed of the appeal in the following wise:

WHEREFORE, the decision dated 21 November 2003 is VACATED and SET ASIDE. The respondent company is ordered to pay complainant the following:

1. Backwages: (28 March 2003 to 21 Nov. 2003)

a. Salary: P33,700 x 7.77 mos. =

P261,849.00

b. 13th month pay: P261,849/12

21,820.75

P283,669.75

2. Separation Pay: (16 May 2000 to 21 Nov. 2003)

one month for every year of service

(P33,700.00 x 4) =

P134,800.00

Total =

P 418,469.75

The other claims are DISMISSED.

SO ORDERED.[21]

With the NLRC's 10 October 2005 denial of the motion for reconsideration of the foregoing decision,[22] HCPTI elevated the case to the CA through the Rule 65 petition for certiorari docketed before said court's then Special Tenth Division as CA-G.R. SP No. 92491.[23] In view of the 3 November 2005 Entry of Judgment issued by the NLRC,[24] Morales filed a motion for execution[25] which remained unresolved due to the parties' signification of their willingness to explore the possibility of amicably settling the case.[26] On 19 June 2006, the CA rendered the herein assailed decision, reversing the NLRC's 29 July 2005 Decision, upon the following findings and conclusions: (a) Morales' reassignment to Operations Cost Accounting was a valid exercise of HCPTI's prerogative to transfer its employees as the exigencies of the business may require; (b) the transfer cannot be construed as constructive dismissal since it entailed no demotion in rank, salaries and benefits; and, (c) rather than being terminated, Morales refused his new assignment by taking a leave of absence from 4 to 17 April 2003 and disregarding HCPTI's warnings and directives to report back for work.[27]

Morales' motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's Resolution dated 14 August 2006,[28] hence, this petition.

The Issues

Morales proffers the following issues for resolution in seeking the reversal of the CA's 19 June 2006 Decision and 14 August 2006 Resolution, to wit:

I

WHETHER OR NOT THE CHANGE IN THE DESIGNATION/POSITION OF PETITIONER CONSTITUTED CONSTRUCTIVE DISMISSAL.

II

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.

III

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION DECISION WHICH HAS GAINED FINALITY MAY BE PREVENTED EXECUTION BY REASON OF THE PETITION FOR CERTIORARI FILED BY RESPONDENTS.[29]

The Court's Ruling

We find the petition impressed with merit.

Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay"[30] and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not,[31] constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[32] In cases of a transfer of an employee, the rule is settled that the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity[33] and that the transfer is not unreasonable, inconvenient or prejudicial to the employee. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.[34]

Our perusal of the record shows that HCPTI miserably failed to discharge the foregoing onus. While there was a lack of showing that the transfer or reassignment entailed a diminution of salary and benefits, one fact that must not be lost sight of was that Morales was already occupying the position of Division Manager at HCPTI's Accounting Department as a consequence of his promotion to said position on 22 October 2002. Concurrently appointed as member of HCPTI's Management Committee (MANCOM) on 2 December 2002,[35] Morales was subsequently reassigned by HCPTI "from managerial accounting to Operations Cost Accounting" on 27 March 2003, without any mention of the position to which he was actually being transferred. That the reassignment was a demotion is, however, evident from Morales' new duties which, far from being managerial in nature, were very simply and vaguely described as inclusive of "monitoring and evaluating all consumables requests, gears and equipments related to [HCPTI's] operations" as well as "close interaction with [its] sub-contractor Bulk Fleet Marine Corporation." [36]

We have carefully pored over the records of the case but found no evidentiary basis for the CA's finding that Morales was designated as head of HCPTI's Operations Department[37] which, as indicated in the corporation's plantilla, had the Vice-President for Operations at its helm.[38] On the contrary, Morales' demotion is evident from the fact that his reassignment entailed a transfer from a managerial position to one which was not even included in the corporation's plantilla. For an employee newly charged with functions which even the CA recognized as pertaining to the Operations Department, it also struck a discordant chord that Morales was, just the same, directed by HCPTI to report to Filart, its Vice-President for Finance[39] with whom he already had a problematic working relationship.[40] This matter was pointed out in Morales' 31 March 2003 protest but was notably brushed aside by HCPTI by simply invoking management prerogative in its inter-office memorandum dated 4 April 2003.[41]

Admittedly, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[42] By management prerogative is meant the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[43] Although jurisprudence recognizes said management prerogative, it has been ruled that the exercise thereof, while ordinarily not interfered with,[44] is not absolute and is subject to limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice.[45] Thus, an employer may 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.[46] Indeed, having the right should not be confused with the manner in which that right is exercised.[47]

In its comment to the petition, HCPTI argues that Morales' transfer was brought about by the reorganization of its corporate structure in 2003 which was undertaken in the exercise of its management prerogative to regulate every aspect of its business.[48] This claim is, however, considerably at odds with HCPTI's assertions before the Labor Arbiter to the effect, among other matters, that Morales erroneously and negligently authorized the repeated payments of realty taxes from which the corporation was exempt as a PEZA-registered company; that confronted by Filart regarding his poor work performance which resulted in losses amounting to P3,350,000.00, Morales admitted his inability to handle his job at the accounting department; and, that as a consequence, HCPTI decided to reassign him to the Operations Cost Accounting.[49] Without so much as an affidavit from Filart to prove the same, this purported reason for the transfer was, moreover, squarely refuted by Morales' 31 March 2003 protest against his reassignment.[50]

By itself, HCPTI's claim of reorganization is bereft of any supporting evidence in the record. Having pointed out the matter in his 31 March 2003 written protest, Morales was able to prove that HCPTI's existing plantilla did not include an Operations Cost Accounting Department and/or an Operations Cost Accountant.[51] As the party belatedly seeking to justify the reassignment due to the supposed reorganization of its corporate structure, HCPTI, in contrast, did not even bother to show that it had implemented a corporate reorganization and/or approved a new plantilla of positions which included the one to which Morales was being transferred. Since the burden of evidence lies with the party who asserts the affirmative of an issue, the respondent has to prove the allegations in his affirmative defenses in the same manner that the complainant has to prove the allegations in the complaint.[52] In administrative or quasi-judicial proceedings like those conducted before the NLRC, the standard of proof is substantial evidence which is understood to be more than just a scintilla or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[53]

Having alleged 27 March 2003 as the date of his constructive dismissal, Morales was erroneously taken to task by the CA for inconsistently claiming that he took a leave of absence from 4 April 2003 to 17 April 2003.[54] As the date of his reassignment, 27 March 2003 was understandably specified by Morales as the date of his constructive dismissal since it was on said date that he considered himself demoted. Alongside his reporting for duty subsequent thereto, Morales' leave of absence on the aforesaid dates is, in turn, buttressed by HCPTI's 29 April 2003 Inter-Office Memorandum which, labeled as a First Warning, called attention to his being "either absent or tardy from work on several occasions during the entire month of April".[55] Since Morales could not have been tardy had he outrightly rejected his reassignment, this Inter-Office Memorandum notably debunks HCPTI's contention that he altogether stopped reporting for work after receiving Singson's reply to his 31 March 2003 protest against the demotion that resulted from his reassignment to Operations Cost Accounting.[56]

Although much had been made about Morales' supposed refusal to heed his employer's repeated directives for him to return to work, our perusal of the record also shows that HCPTI's theory of abandonment of employment cannot bear close scrutiny. While ostensibly dated 6 May 2003, the Inter-Office Memorandum labeled as a Second Warning was sent to Morales thru the JRS Express only on 9 May 2003[57] or two (2) days after summons were served on HCPTI, Filart and Singson on 7 May 2003.[58] Sent to Morales on 26 May 2003 or after the parties' initial conference before the Labor Arbiter on 19 May 2003,[59] there was obviously even less reason for HCPTI's 22 May 2003 letter denominated as Notice to Report for Work and Final Warning. As a just and valid ground for dismissal, at any rate, abandonment requires the deliberate, unjustified refusal of the employee to resume his employment,[60] without any intention of returning.[61] Since an employee like Morales who takes steps to protest his dismissal cannot logically be said to have abandoned his work, it is a settled

doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment.[62]

WHEREFORE, premises considered, the petition is GRANTED and the CA's assailed 19 June 2006 Decision is, accordingly, REVERSED and SET ASIDE. In lieu thereof, another is entered REINSTATING the NLRC's 29 July 2005 Decision.

SO ORDERED.

Carpio, (Chairperson), Sereno, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Associate Justice Estela M. Perlas-Bernabe is designated as Acting Member of the Second Division per Special Order No. 1174 dated 9 January 2012.

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas.

[2] Record, CA-G.R. SP No. 92491, CA's 19 June 2006 Decision, pp. 266-277.

[3] Id. at 277.

[4] Record, NLRC Case No. 00-04-05061-2003, 16 May 2000 Initial Work Instructions, p. 27; 33.

[5] 17 November 2000 Letter, id at 38.

[6] 22 October 2002 Letter, id. at 47.

[7] 27 March 2003 Inter-Office Memorandum, id. at 54.

[8] Letter 31 March 2003, id. at 57.

[9] 4 April 2003 Inter-Office Memorandum, id. at 89.

[10] 29 April 2003 Inter-Office Memorandum, id. at 90.

[11] 6 May 2003 Inter-Office Memorandum, id. at 92.

[12] 22 May 2003 Inter-Office Memorandum, id. at 94.

[13] 25 April 2003 Complaint, id. at 2.

[14] Morales' Affidavit 15 August 2003, id. at 27-31.

[15] 29 April 2006 Summons, id. at 6.

[16] Respondents' 11 August 2003 Position Paper, id. at 61-76.

[17] Morales 3 September 2003 Reply and Respondents' 11 September 2003 Reply, id. at 97-106; 111-119.

[18] Respondents' 26 September 2003 Rejoinder and Morales 30 September 2003 Rejoinder, id. at 121-141.

[19] Labor Arbiter's 21 November 2003 Decision, id. at 142-156.

[20] NLRC's 29 July 2005 Decision, id. at 303-313.

[21] Id. at 312.

[22] NLRC's 10 October 2005 Resolution, id. at 364-365.

- [23] CA rollo, CA-G.R. SP No. 92491, HCPTI's 13 December 2005 Rule 65 Petition for Certiorari, pp. 2-35.
- [24] Record, NLRC Case No. 00-04-0561-2003, NLRC's 3 November 2005 Entry of Judgment.
- [25] Morales' 13 February 2006 Motion for Execution, id. at 408-409.
- [26] 15 August 2006 Minutes of Proceedings before Labor Arbiter Aliman D. Mangandog, id. at 454.
- [27] CA rollo, CA-G.R. SP No. 92491, CA's 19 June 2006 Decision, pp. 266-277.
- [28] CA's 14 August 2006 Resolution, id. at 315.
- [29] Rollo, p. 618.
- [30] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 766 (2002) citing *Philippine Japan Active Carbon Corporation v. NLRC, et al.*, 253 Phil. 149, 152, (1989).
- [31] *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 236.
- [32] *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).
- [33] *Philippine Veterans Bank v. National Labor Relations Commission*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 212.
- [34] *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 51 (2006).
- [35] Record, NLRC Case No. 00-04-0561-2003, 2 December 2002 Inter-Office Memorandum, p. 49.
- [36] 27 March 2003 Inter-Office Memorandum, id. at 54.
- [37] Record, CA-G.R. SP No. 92491, p. 273.
- [38] Record, NLRC Case No. 00-04-0561-2003, p. 55.
- [39] Id. at 50; 54.
- [40] Id. at 102.
- [41] Id. at 89.
- [42] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, 7 July 2004, 433 SCRA 756, 766.
- [43] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, 13 April 2010, 618 SCRA 218, 237.
- [44] *Castillo v. National Labor Relations Commission*, 367 Phil. 605, 616 (1999).
- [45] *Norkis Trading Co., Inc. v. NLRC*, 504 Phil. 709, 718 (2005).
- [46] *Herida v. F&C Pawnshop and Jewelry Store*, G.R. No. 172601, 16 April 2009, 585 SCRA 395, 401.
- [47] *Emirate Security and Maintenance Systems, Inc. and Roberto A. Yan v. Menese*, G.R. No. 182848, 5 October 2011.
- [48] Rollo, pp. 109-110.
- [49] Record, NLRC Case No. 00-04-0561-2003, pp. 63-64; 70; 98-99.
- [50] Letter dated 31 March 2003, id. at 57.

- [51] HCPTI Plantilla of Positions for CY 2002, *id.* at 55-56.
- [52] *Aklan Electric Cooperative, Incorporated v. NLRC*, 380 Phil. 225, 245 (2000).
- [53] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).
- [54] Record, CA-G.R. SP No. 92491, p. 275.
- [55] Record, NLRC Case No. 00-04-0561-2003, Inter-Office Memorandum dated 29 April 2003, p. 90.
- [56] Rollo, p. 141.
- [57] Record, NLRC Case No. 00-04-0561-2003, JRS Express' 5 May 2009 Receipt, p. 93.
- [58] Return Cards for Summons, *id.* at 3-5.
- [59] 19 May 2003 Minutes, *id.* at 7.
- [60] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, 12 September 2006, 501 SCRA 577, 586.
- [61] *Baron Republic Theatrical v. Peralta*, G.R. No. 170525, 2 October 2009, 602 SCRA 258, 265.
- [62] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110, 118.

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