

MERCK SHARP AND DOHME (PHILIPPINES) AND PETER S. CARBONELL, PETITIONERS, VS. JONAR P. ROBLES, GEORGE G. GONITO AND CHRISTIAN ALDRIN S. CRISTOBAL, RESPONDENTS.

G.R. No. 176506. November 25, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition for review on certiorari under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision[1] in CA-G.R. SP No. 94265 which partially granted the petition for certiorari filed by respondents Jonar P. Robles, George G. Gonito and Christian Aldrin S. Cristobal and reversed the National Labor Relations Commission's (NLRC's) finding of illegal dismissal as regards Cristobal in NLRC CA No. 043454-2005. In turn, the NLRC affirmed the Labor Arbiter's dismissal of respondents' complaint against petitioner Merck Sharp and Dohme (Philippines) (MSD) for illegal dismissal.[2]

The facts, fairly summarized by the CA, follow.

[Respondents] Jonar P. Robles, George G. Gonito, and Christian Aldrin S. Cristobal (hereafter Jonar, George, and Christian, respectively and [respondents] collectively) are former health care representatives assigned at the District V-MSD Cardiovascular Unit, Region I (hereafter MSD -V) of [petitioner corporation] Merck Sharp and Dohme x x x, a pharmaceutical corporation organized under Philippine law.

[Respondents] alleged that on November 28, 2003, they were summoned together with the other health care representatives in MSD-V by their Regional Sales Manager, Peter S. Carbonell [petitioner Carbonell] to a meeting. [Respondents] claim that no meeting took place. Instead, the other health care representatives were directed to leave while [respondents] were told to stay behind.

Thereafter, the director of Human Resources, General and Legal, Jerome Sarte, came and distributed to [respondents], Employees' Notice to Explain (hereafter ENTE) dated November 27, 2003. [Respondents] were told that they were being preventively suspended based on an evidence gathered through an informer-witness. [Respondents] alleged that the ENTE was read aloud to them. A sample of an ENTE reads as follows:
Gonito, George

"It has come to the attention of management, through a signed document submitted by a source we cannot reveal at this point, that you may have been involved in several questionable transactions deemed contrary to company and corporate values. The seriousness of accusations contained therein prompted management to conduct an initial investigation of facts, which involved a re-review of the Expense Reports you have submitted beginning at the start of this year. Preliminary findings showed that there is cause for citing you under several provisions of the Company's Code of Conduct, herein enumerated:

Facts of the case:

1. EXPENSE REPORT for January 16-31

· Event: PR Campaign for VMMC Supply Department

· Receipt: Lorna's Food Services - 6 February 2003, Php 2,500.

o Receipt appeared old and yellowish x x x

o When double checked x x x the person talked to said that they are not engaged in Catering Services

o An independent private investigation agency commissioned by the company, x x x was able to locate said Lorna's Food Services x x x she denied having validly issued the said receipt and that the signature in the said receipt was not her hand nor any other authorized signatory of her business. In other words, the transaction covered by the said receipt is fictitious.

x x x x

2. EXPENSE REPORT for April 16-30 x x x

· Event: Journal Club Meeting

· Receipt: Lorna's Food Services - 23 April 2003, Php 3,500.

o Same comments as above on phone double checking and proprietor declaration.

o Receipt[,] however[,] had a Control Number (397), which according to private investigation agency appeared to be manually stamped and therefore spurious. x x x

POSSIBLE DISCIPLINARY INFRACTION/S

1. DISHONESTY: Misrepresentation, forging, or falsifying personal or company records. (1[st] Offense - Termination)

2. OFFENSES AGAINST COMPANY INTEREST: Submitting false, misleading, or inaccurate data about the work of other employees.

a) willful (1[st] Offense - Termination)

b) Due to negligence (1[st] Offense - Written Reprimand)

3. LOSS OF TRUST AND CONFIDENCE

You are hereby required to explain in writing your side on the facts above mentioned, within seventy-two (72) hours upon receipt of this notice (Tuesday, 2 December 2003). Kindly state in clear terms your reasons behind this issue and explain why no corrective action, including termination of employment should be taken against you for above alleged actions. Please take note also that your written response will be taken without prejudice to other incriminatory findings which may be discovered in the course of formal investigation and hearing of this case.

x x x x

In the meantime, pending completion of formal investigation and hearing of this case, and in view of the seriousness of the charges raised in the light of the sensitivity of the position you presently occupy, management is putting you under PREVENTIVE SUSPENSION effective immediately upon receipt of this notice. You shall be notified in due course of the scheduled administrative investigation to be conducted by the Company. Please make the necessary turn over of your Company Car to the Admin. Officer within twenty-four (24) hours, as well as other company properties in your possession before going on preventive suspension. The company will allow you to further use your company issued cell phone while on Preventive Suspension to allow open communication lines when this case is on-going. However, billing for your calls during said period will be fully charged to your personal account."

[Respondents] were directed to submit a written explanation within 72 hours from receipt and their salaries and benefits will be withheld indefinitely. [Respondents] assert that the ENTEs were general and the documents

[referred] to were not attached.

On December 1, 2003, [respondents] filed with the Labor Arbiter a complaint for illegal suspension. On December 4, 2003, [petitioners] summoned [respondents] for a hearing. During the said hearing, [respondents] reiterated their request that they be furnished a copy of the alleged primary findings against them. [Petitioners] refused stating that the investigation is not a formal hearing thus, a trial type proceeding was inapplicable.

On December 22, 2003, [respondents] Jonar and George received a Notice of Corrective Action (hereafter NOCA) informing them that management has decided to terminate their services effective immediately. Christian, however, was informed that his suspension was lifted. Jonar and George filed a supplemental complaint affidavit for illegal termination.

Christian, on the other hand, reported back for work. He was shocked, however, when he discovered that he was reassigned to District I of Baguio City and La Union as his new area of responsibility. Christian requested for a transfer. His request was not favorably acted upon, instead, he received his second ENTE dated January 19, 2004, for dishonesty and offenses against company interest. [Respondent] Christian answered the ENTE stressing that although he was previously exonerated, he is again being charged for the same offense. To support his case, Christian secured a certification from the Chief Resident of the Department of Family Medicine FEU-NRMF with regard [to] his sponsoring [a] lecture in the said department on May 7, 2003. Thereafter, Christian got sick due to the stress brought about by his receiving several ENTEs. As such, he was compelled to apply for a sick leave. Christian stated that his sick leave application was not acted upon and instead he received his third ENTE dated February 4, 2004, for insubordination, serious misconduct or willful disobedience. Christian, thereafter, resigned citing oppression and utter unbearability of the work atmosphere. Christian then amended his complaint for constructive dismissal.

On November 15, 2004, the Labor Arbiter rendered a decision dismissing [respondents'] complaint for utter lack of merit. Upon appeal to the NLRC, the latter affirmed the Labor Arbiter.[3]

Undaunted, respondents filed a petition for certiorari before the CA alleging grave abuse of discretion in the NLRC's dismissal of their complaint.

As previously adverted to, the CA partially granted the petition for certiorari and declared that respondent Cristobal was constructively dismissed by petitioner MSD.

Hence, this petition for review on certiorari raising the following issues:

1. [WHETHER THE] COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO PRIVATE RESPONDENT'S (CRISTOBAL'S) PETITION FOR CERTIORARI.
2. [WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC DECISION.
3. [WHETHER THE] HONORABLE COURT MAY REVIEW FACTUAL CONCLUSION[S] OF THE COURT OF APPEALS WHEN CONTRARY TO THOSE OF THE NLRC OR THE LABOR ARBITER.[4]

We first dispose of the procedural issues.

The issue of whether we can review factual conclusions of the CA, when contrary to those of the administrative tribunal, need not detain us unnecessarily. We have long held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when

supported by substantial evidence.[5] Corollary thereto is our well-entrenched holding that this Court is not a trier of facts; this is strictly adhered to in labor cases.[6] However, the rule admits of exceptions when: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (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) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[7] In the case at bar, we gave due course to MSD's petition as the findings of fact and the conclusions of law of the Labor Arbiter and the NLRC differ from those of the CA.

MSD next contends that the CA gravely erred when it did not dismiss outright respondent Cristobal's petition for certiorari for the latter's failure to first file a motion for reconsideration of the NLRC's resolution.

While MSD is correct in stating that, generally, certiorari, as a special civil action, will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors,[8] the rule admits of the following exceptions:

- (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.[9]

The second and fourth exceptions are applicable in this case. As pointed out by respondent Cristobal, Jean Sarmiento, one of the complainants in NLRC-NCR Case No. 00-12-13804-2003 before the Labor Arbiter who was similarly situated as Cristobal and had likewise claimed constructive dismissal by MSD, filed a motion for reconsideration which was perfunctorily denied by the NLRC. At that moment, respondent Cristobal was justified in directly filing a petition for certiorari with the CA to annul the NLRC resolution. In point is *Abraham v. National Labor Relations Commission*:^[10]

The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for certiorari is that the law intends to afford the tribunal, board, or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. In the present case, the NLRC was already given the opportunity to review its ruling and correct itself when the respondent filed its motion

for reconsideration of the NLRC's initial ruling in favor of petitioner. In fact, it granted the motion for reconsideration filed by the respondent and reversed its previous ruling and reinstated the decision of the Labor Arbiter dismissing the complaint of the petitioner. It would be an exercise in futility to require the petitioner to file a motion for reconsideration since the very issues raised in the petition for certiorari, i.e. whether or not the petitioner was constructively dismissed by the respondent and whether or not she was entitled to her money claims, were already duly passed upon and resolved by the NLRC. Thus the NLRC had more than one opportunity to resolve the issues of the case and in fact reversed itself upon a reconsideration. It is highly improbable or unlikely under the circumstances that the Commission would reverse or set aside its resolution granting a reconsideration.[11]

We now come to the pivotal issue for our resolution: whether respondent Cristobal was constructively dismissed by petitioner MSD.

MSD is adamant that the CA erred in not characterizing the work reassignment of respondent Cristobal as falling within the ambit of management prerogative and, thus, beyond challenge. In addition, MSD postulates that the work reassignment of medical representatives, such as respondent Cristobal, is not only dictated by the nature of the work, but is, more importantly, written in the employment contract.

Once more, we agree with MSD's statement of the general rule that the work reassignment of an employee is a management prerogative. Indeed, even the Constitution recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." [12] Yet, we are quick to point out that the invocation of management prerogative carries the corresponding burden of proving such contention. We reiterated as much in the recent case of *Norkis Trading Co., Inc. v. Gnilo*: [13]

Well-settled is the rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirement of its business. An owner of a business enterprise is given considerable leeway in managing his business. Our law recognizes certain rights, collectively called management prerogative as inherent in the management of business enterprises. We have consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his 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. This privilege is inherent in the right of employers to control and manage their enterprises effectively.

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. Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.

The employer bears the burden of showing that the transfer is not unreasonable, inconvenient or prejudicial to the employee; and does not 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.[14]

In the case at bar, specifically in the matter of respondent Cristobal's transfer, the Labor Arbiter and the NLRC promptly dismissed Cristobal's charge of constructive dismissal. Both labor tribunals relied heavily on the stipulation in the employment contract which reads:

9. You agree to be assigned to any work for such period as may be determined by [MSD] whenever the operations thereof require such assignment. It is also understood that, depending upon the operational requirements of [MSD], you may be assigned to any location in the Philippines. These assignments are subject to change any time whenever necessary in the interest of [MSD].

This provision, coupled with their finding that the new assignment did not involve a demotion in rank and/or a diminution in pay, led to the labor tribunals' uniform conclusion that Cristobal unjustly refused to comply with his new work assignment, and was, therefore, not constructively dismissed.

In marked contrast, the CA, in ruling that Cristobal was constructively dismissed, had this to say:

This Court, however, takes exception to the ruling of the NLRC as regards the case of Christian. The pertinent portion of the NLRC's ruling reads as follows:

"x x x. It is undisputed that complainants Sarmiento, Cristobal and Tomeldan were merely transferred to their new assignments as a result of an annual implementation of the new Territorial configuration/PHR Assignments usually done by the Company at the start of every year. x x x The records of the case are bereft of any evidence showing that their resignation was an involuntary one; and it was resorted to because their continued employment has become impossible, unreasonable or unlikely. It is worthy to note that said transfers affect not only the [respondents] but some other co-employees as well, which included three (3) other District Managers."

The facts of the case at bar show that after Christian's suspension was lifted, he was given a new assignment. Christian requested for a transfer which was not granted. Thereafter, Christian received a new ENTE containing the charges similar to the ones for which he was already exonerated. Moreover, [petitioners] failed to explain why they did not act on Christian's application for sick leave and instead gave him another ENTE. The events that thereafter transpired lead to the conclusion that Christian's continued employment with [petitioner MSD] has become unbearable. It is settled that constructive dismissal exists when an act of clear discrimination, insensibility or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment.

Indeed it is settled that "the objection to the transfer being grounded on 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." A scrutiny of the facts of the case at bar, however, shows that the transfer of Christian reeks with bad faith as to consider his case one of constructive dismissal. Under the law, Christian has to be reinstated to his former position with full backwages from the time he was dismissed up to his actual reinstatement.[15]

We are in accord with the appellate court's ruling that respondent Cristobal was constructively dismissed by MSD.

Time and again we have ruled that in constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just and valid grounds, such as genuine business necessity.[16] 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 of salary and other benefits. If the employer fails to overcome this burden of proof, the employee's transfer is tantamount to unlawful constructive dismissal.

Our holding in *Westmont Pharmaceuticals, Inc. v. Samaniego*[17] is instructive, to wit:

Westmont and Unilab failed to discharge this burden. Samaniego was unceremoniously transferred from Isabela to Metro Manila. We hold that such transfer is economically and emotionally burdensome on his part. He was constrained to maintain two residences - one for himself in Metro Manila, and the other for his family in Tuguegarao City, Cagayan. Worse, immediately after his transfer to Metro Manila, he was placed "on floating status" and was demoted in rank, performing functions no longer supervisory in nature.

There may also be constructive dismissal if an act of clear 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. This was what happened to Samaniego. x x x.[18]

As with *Westmont* and *Unilab* in the cited case, MSD failed to discharge the required burden of proof. The

following circumstances negate MSD's claim that, on the whole, the transfer of Cristobal was done in good faith and based on just and valid grounds:

1. Although MSD was unable to prove the initial charge against Cristobal, the threat of an investigation remained like a Damocles sword looming over him. Eventually, Cristobal's preventive suspension was lifted, and he was reassigned subsequently to a different district. In the meantime, Cristobal was again asked to explain a similar charge of dishonesty and acting against the interest of MSD, likewise based on an expense report supported by a receipt from Lorna Food Services. We note that MSD claims that it commissioned an investigation agency to ascertain the veracity of some reports of employees' fraudulent transactions. The second charge against Cristobal was ostensibly based on an expense report for a different date. However, this expense report was likewise supported by a receipt issued by Lorna Food Services, which should have been within the knowledge of MSD. And as the first charge did not stick, the second, yet identical, charge of dishonesty--coupled with a very far reassignment-- undoubtedly, created an oppressive atmosphere for Cristobal.

2. Cristobal's request for reassignment was not acted upon and was, ultimately, denied. In fact, no business reason whatsoever was stated in the electronic mail to justify the necessity of transferring Cristobal. Curiously, the list of district assignments in 2003 and 2004 submitted by MSD in evidence clearly shows that only Cristobal was reassigned, and to a station infinitely distant from where he lived. To make matters worse, upon denial of the request for transfer, Cristobal was ordered to report for work in the new assignment the very next day. This clearly demonstrates an insensitivity to the welfare of Cristobal and his family given that he lives in Marikina and was now required to report immediately for work in the Baguio and San Fernando areas.

3. Lastly, MSD did not give any reason why Cristobal's request for a five-day sick leave was denied.

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 94265 is AFFIRMED. Petitioner Merck Sharp and Dohme (Philippines) is ordered to REINSTATE respondent Christian Aldrin S. Cristobal and to pay him full backwages. No costs.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Vicente S.E. Veloso, concurring, rollo pp. 43-54.

[2] Rollo, pp. 471-488.

[3] Id. at 44-49.

[4] Petitioner's Memorandum. (Rollo, p. 974.)

[5] Dealco Farms, Inc. v. National Labor Relations Commission (5[th] Division), G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[6] Id.

[7] Id.

[8] Abraham v. National Labor Relations Commission, G.R. No. 143823, March 6, 2001, 353 SCRA 739.

[9] Id. at 744-745.

[10] Supra note 8.

[11] Id. at 745.

[12] See 1987 CONSTITUTION, Art. XIII, Sec. 3.

[13] G.R. No. 159730, February 11, 2008, 544 SCRA 279.

[14] Id. at 289-290. (Citations omitted.)

[15] Rollo, pp. 52-53. (Citations omitted.)

[16] Westmont Pharmaceuticals, Inc. v. Samaniego, G.R. Nos. 146653-54 and 147407-08, February 20, 2006, 482 SCRA 611.

[17] Id.

[18] Id. at 620-621.

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