EMIRATE SECURITY AND MAINTENANCE SYSTEMS, INC. AND ROBERTO A. YAN, PETITIONERS, VS. GLENDA M. MENESE, RESPONDENT.

G.R. No. 182848. October 05, 2011

Ponente: BRION, J.

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BRION, J.:

Before the Court is the petition for review on certiorari[1] which assails the decision[2] and the resolution[3] of the Court of Appeals (CA) rendered on February 28, 2008 and May 14, 2008, respectively, in CA-G.R. SP. No. 100073.[4]

The Antecedents

The facts of the case are summarized below.

On June 5, 2001, respondent Glenda M. Menese (Menese) filed a complaint for constructive dismissal; illegal reduction of salaries and allowances; separation pay; refund of contribution to cash bond; overtime, holiday, rest day and premium pay; damages; and attorney's fees against the petitioners, Emirate Security and Maintenance Systems, Inc. (agency) and its General Manager, Robert A. Yan (Yan).

Menese alleged in the compulsory arbitration proceedings that on April 1, 1999, the agency engaged her services as payroll and billing clerk. She was assigned to the agency's security detachment at the Philippine General Hospital (PGH). She was given a monthly salary of P9,200.00 and an allowance of P2,500.00, for a total of P11,700.00 in compensation. Effective May 2001, her allowance was allegedly reduced to P1,500.00 without notice, and P100.00 was deducted from her salary every month as her contribution to a cash bond which lasted throughout her employment. She was required to work seven (7) days a week, from 8:00 a.m. to 5:00 p.m. She was also required to report for work on holidays, except on New Year's Day and Christmas. She claimed that she was never given overtime, holiday, rest day and premium pay.

Menese further alleged that on May 4, 2001, she started getting pressures from the agency for her to resign from her position because it had been committed to a certain Amy Claro, a protégée of Mrs. Violeta G. Dapula (Dapula) the new chief of the Security Division of the University of the Philippines (UP) Manila and PGH. Menese raised the matter with Yan who told her that the agency was in the process of establishing goodwill with Dapula, so it had to sacrifice her position to accommodate Dapula's request to hire Claro.

Menese claimed that she was told not to worry because if she was still interested in working with the agency, she could still be retained as a lady guard with a salary equivalent to the minimum wage. She would then be detailed to another detachment because Dapula did not like to see her around anymore. If the offer was acceptable to her, she should report to the agency's personnel officer for the issuance of the necessary duty detail order. Menese thought about the offer and soon realized that she was actually being demoted in rank and salary. She eventually decided to decline the offer. She continued reporting to the PGH detachment and performed her usual functions as

if nothing happened.

Menese alleged that at this juncture, Claro reported at the agency's PGH detachment and performed the functions she was doing. She bewailed that thereafter she continuously received harassment calls and letters. She was also publicly humiliated and badly treated at the detachment. The agency, through Security Officer Alton Acab, prohibited her from using the office computer. On May 18, 2001, Jose Dante Chan, the agency's PGH detachment commander, arrogantly told her to leave PGH. Again on May 25, 2001, Chan shouted at her and told her to pack her things and to leave immediately, and not to return to the detachment anymore; otherwise, she would be physically driven out of the office.

Still not satisfied with what they did, the petitioners allegedly withheld her salary for May 16-31, 2001. She claimed that the petitioners dismissed her from the service without just cause and due process.

The petitioners, for their part, denied liability. They alleged that on May 8, 2001, Dapula informed the agency in writing,[5] through Yan, that she had been receiving numerous complaints from security guards and other agency employees about Menese's unprofessional conduct. She told the petitioners that she was not tolerating Menese's negative work attitude despite the fact that she is the wife of Special Police Major Divino Menese who is a member of the UP Manila police force, and that as a matter of policy and out of delicadeza, she does not condone nepotism in her division.

On the basis of Dapula's letter, Yan sent Menese a memorandum dated May 16, 2001,[6] instructing her to report to the agency's head office and, there and then, discussed with her Dapula's letter. Yan informed Menese that upon Dapula's request, she would be transferred to another assignment which would not involve any demotion in rank or diminution in her salary and other benefits. Although Menese said that she would think about the matter, the petitioners were surprised to receive summons from the labor arbiter regarding the complaint.

The Compulsory Arbitration Rulings

In a decision dated March 14, 2002,[7] Labor Arbiter Jovencio LL. Mayor, Jr. declared Menese to have been constructively dismissed. He found the petitioners wanting in good faith in transferring Menese to another detachment as she would be suffering a demotion in rank and a diminution in pay. Accordingly, he ordered the petitioners to immediately reinstate Menese and, solidarily, to pay her full backwages of P83,443.75 (latest computation); P66,924.00 in monetary benefits; P50,000.00 and P20,000.00 in moral and exemplary damages, respectively; and attorney's fees of P15,036.74.

The petitioners appealed to the National Labor Relations Commission (NLRC). On September 30, 2003, the NLRC Second Division issued a resolution[8] granting the appeal and reversing the labor arbiter's decision. It ruled that Menese was not constructively dismissed but was merely transferred to another detachment. It opined that the transfer was a valid exercise of the petitioners' management prerogative. However, it ruled that despite Menese's refusal to accept the transfer, she cannot be made liable for abandonment as her refusal was based on her honest belief that she was being constructively dismissed. The NLRC ordered Menese, at her option, to immediately report to the agency's head office and the agency to accept her back to work. It absolved Yan from liability, and deleted the award of backwages, overtime pay and damages.

On October 28, 2003, Menese filed a partial motion for reconsideration[9] of the NLRC resolution and later (on June 17, 2005), a motion to recall the entry of judgment of October 31, 2003. On June 1, 2007, the NLRC rendered a resolution[10] setting aside the entry of judgment and denying Menese's partial motion for reconsideration.

The Petition for Certiorari

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Menese elevated her case to the CA through a petition for certiorari[11] under Rule 65 of the Rules of Court. In the main, she argued that the agency was in bad faith when it issued the memoranda dated May 16, 2001,[12] May 22, 2001[13] and May 28, 2001,[14] ordering her transfer from the PGH detachment to the agency's head office. She posited that it was a ploy to create a vacancy in the detachment to accommodate the entry of Claro, Dapula's protégée. She regarded the transfer as a removal from her position at PGH -- a constructive dismissal.

The agency, in rebuttal, posited that Menese was not illegally dismissed, but was merely transferred to its head office in response to the request of the new head of the UP-PGH security division for the transfer. The action, it maintained, was a valid exercise of its management prerogative. Thus, Menese was guilty of abandoning her employment when she refused to report for work at her new posting.

The CA Decision

The CA granted the petition in its decision of February 28, 2008.[15] It set aside the assailed resolutions of the NLRC and reinstated the March 14, 2002 decision of the labor arbiter.

As the labor arbiter did, the CA found Menese to have been constructively, and therefore illegally, dismissed. It noted that the memoranda[16] on Menese's transfer were prompted by Dacula's letter, dated May 8, 2001,[17] to Yan, which contained allegations on Menese's supposed unprofessional conduct and involvement in nepotism. It further noted that when Yan asked Dapula in writing[18] to provide the agency with documents/evidence that would support her allegations, she failed to do so. The CA thus concluded that the reasons for Menese's transfer did not exist or that no substantial evidence was presented in that regard.

The CA brushed aside the petitioners' argument that it was their prerogative to transfer Menese from the agency's PGH detachment to its head office at Ortigas Avenue, Mandaluyong City. Relying on applicable jurisprudence, the appellate court pointed out that while it is the management's prerogative to transfer an employee from one office to another within the business establishment, it is not without limitation. It must be exercised in such a way that there is no demotion in rank or diminution in pay, benefits and other privileges. Otherwise, the transfer amounts to a constructive dismissal, as correctly pointed out by the labor arbiter in his decision of March 14, 2002.[19] In this light, the CA held that the petitioners failed to prove that Menese abandoned her employment.

The CA sustained all the other findings of the labor arbiter. On the whole, it ruled that the NLRC misappreciated the evidence in the case. The petitioners moved for reconsideration, but the CA denied the motion in its resolution of May 14, 2008.[20]

The Petitioners' Case

Aside from the petition itself,[21] the petitioners filed a reply to Menese's comment[22] and a memorandum[23] where they asked for a reversal of the assailed CA rulings on the ground that the CA gravely erred in:

(1) Affirming the labor arbiter's findings that Menese was constructively dismissed;

(2) Holding Yan solidarily liable with the agency for damages; and

(3) Sustaining the award of backwages, damages and attorney's fees, as well as overtime pay.

The petitioners insist that Menese was not illegally dismissed. They argue that it was Menese who deliberately and unjustifiably refused to work despite several notices[24] to her after she was validly relieved from her current work assignment due to a client's request. They maintain that since Menese chose not to return to work, she must be considered either to have resigned from or to have abandoned her employment. They further maintain that nothing on record shows any positive or overt act of the agency in dismissing Menese.

Moreover, the petitioners regard Menese's continued refusal to report to the agency's head office as an act of gross insubordination constituting a just cause for termination under Article 282(a) of the Labor Code. They argue that under this law, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representative in connection with his work.

The petitioners posit that she is not entitled to reinstatement and backwages since she failed to comply with the reinstatement option stated in the NLRC resolution. Neither is she entitled to overtime pay because she did not work beyond the eight (8)-hour working period; her one (1) hour time off from twelve noon to 1:00 p.m. is not compensable. Neither is Menese entitled to moral and exemplary damages because the evidence on record does not show any malice or bad faith on their part to justify the award.

The petitioners likewise take exception to the award of attorney's fees as the labor arbiter's decision and the NLRC's resolution failed to state the justification for the award. They further contend that the CA gravely erred in upholding the labor arbiter's ruling that Yan is solidarily liable with the agency, as Yan was merely acting in his capacity as the agency's general manager, and that there is no showing that Yan acted maliciously or in bad faith when he ordered Menese's transfer. They also point out that Menese did not challenge before the CA the NLRC ruling absolving Yan from any liability.

The Case for Menese

By way of her comment[25] and memorandum,[26] Menese asks that the appeal be denied for lack of merit.

She claims that at the arbitration stage, the petitioners readily admitted the fact of her removal, manifesting in open session their lack of interest to settle the case amicably as they have a strong evidence to support their defense of her dismissal for cause. She observed during the hearing that the petitioners were very confident about their case, because according to them, they had Dapula's letter asking for her immediate removal.[27]

Menese further claims that the petitioners realized that they did not have the necessary evidence, so Yan wrote Dapula a letter asking her for proof of the complaints or grievances of the security guards against Menese.[28] Dapula did not produce or present the evidence they asked for resulting in their failure to substantiate their defense of dismissal for cause. Menese contends that the petitioners then revised their theory of the case and made it appear that she was not actually dismissed but was merely transferred, purportedly in the exercise of their management prerogative.

She posits that her transfer was motivated by ill will and bad faith, as it was done to facilitate the entry of a favored applicant to the PGH detachment. She intimates that the labor arbiter resolved the case correctly when he found her to have been constructively or illegally dismissed. She bewails the NLRC's surprising reversal of the labor arbiter's decision, but feels vindicated when the CA set aside the NLRC ruling.

Menese submits that the CA is correct in nullifying the NLRC's reversal of her illegal dismissal case because the labor tribunal closed its eyes to the fact that bad faith attended her transfer. She points out that the petitioners' twin directives, vis-à-vis her transfer upon which the NLRC based its ruling, "were both issued for a selfish and immoral purpose;"[29] the first, dated May 16, 2001,[30] was issued for the purpose of creating a vacancy, and the second, dated May 22, 2001,[31] was intended to cover up the wrongdoing that was earlier committed. In other words, the directives were tainted with malice and ill will. On the matter of Yan's liability, Menese maintains that the NLRC committed a serious error in allowing him to get away with his wrongdoing considering the injustice done to her as a result of her unceremonious dismissal.

In a different vein, Menese assails the NLRC's exclusion of the one-hour meal break as overtime work, for it erroneously assumed that her employer had been giving its employees a 60 minute time-off for regular meals and

that she was not performing work during the period. She argues that this was not the actual practice in the workplace, contending that she continued working even during the one-hour meal break.

Finally, Menese maintains that the CA correctly reinstated the labor arbiter's award of attorney's fees and the imposition of solidary liability on Yan and the agency. She posits that in her quest for justice because of her unceremonious dismissal, she was constrained to engage the services of a counsel to handle her case.

The Court's Ruling

We deny the petition for lack of merit. The evidence of Menese's unwarranted, unjustified and, in her own language, "unceremonious" dismissal is so glaring that to ignore it is to commit, as the NLRC did, grave abuse of discretion.

We note as a starting point that at the time material to the case, Menese ceased to be the agency's payroll and billing clerk at its PGH detachment. The position was taken away from her as she had been transferred to the agency's main office on Ortigas Avenue, Mandaluyong City, upon the request of Dapula, the new chief of the UP-PGH Security Division. The transfer was to be carried out through a memorandum dated May 16, 2001[32] issued by Yan; a second memorandum dated May 22, 2001[33] issued by Personnel Officer Edwin J. Yabes, reminding Menese of Yan's instruction for her to report to the main office; and a third memorandum dated May 28, 2001,[34] also issued by Yabes informing Menese that it was her second notice to assume her work detail at the main office. Yabes instructed her to report for work on May 30, 2001.

Citing Mendoza v. Rural Bank of Lucban,[35] the petitioners argue that the transfer was undertaken in the exercise of management prerogative in the pursuit of their legitimate interests. They submit that Menese refused to comply with the valid transfer orders they issued, making her liable for abandonment and insubordination. They argue that nothing on record shows that she was illegally dismissed as no dismissal had been imposed on her.

On a superficial consideration, the petitioners' position looks unassailable as indeed an employer can regulate, generally without restraint and according to its own discretion and judgment, every aspect of its business, including work assignments and transfer of employees, subject only to limitations imposed by law.[36] This submission, however, glossed over or suppressed a crucial factor in the present labor controversy. We refer to Dapula's letter to Yan in early May 2001,[37] asking for Menese's transfer allegedly due to numerous complaints from security guards and co-workers regarding her unprofessionalism and because of nepotism; Menese is the wife of a member of the UP Manila police force.

Had Yan inquired into Dapula's claim of Menese's alleged unprofessionalism, ideally through an administrative investigation, he could have been provided with a genuine reason -- assuming proof of Dapula's accusation existed -- for Menese's transfer or even for her dismissal, if warranted. That the agency did not get into the bottom of Dapula's letter before it implemented Menese's transfer is indicative of the sheer absence of an objective justification for the transfer. The most that the agency did was to write Dapula a letter, through Yan, asking her to provide documents/evidence in support of her request for Menese's transfer.[38] Significantly, Yan's request came after the labor arbiter's summons to Yan regarding Menese's complaint. Dapula never responded to Yan's letter and neither did she provide the evidence needed for the agency's defense in the complaint.

As Menese noted, the petitioners did not submit as annex to the petition Yan's letter to Dapula, and the reason appears to be obvious -- they were trying to avoid calling attention to the absence of proof of Menese's alleged unprofessionalism and her involvement in nepotism. Evidently, the basis for Dapula's request did not exist. We thus find credible Menese's contention that her transfer was a ploy to remove her from the PGH detachment to

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accommodate the entry of Dapula's protégée. In short, the agency wanted to create a vacancy for Claro, the protégée. Confronted with this clear intent of the petitioners, we cannot see how Menese's transfer could be considered a valid exercise of management prerogative. As Menese rightly put it, her transfer was arbitrarily done, motivated no less by ill will and bad faith.

In Blue Dairy Corporation v. NLRC,[39] the Court stressed as a matter of principle that the managerial prerogative to transfer personnel must be exercised without abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it should not be used as a subterfuge by the employer to get rid of "an undesirable worker." Measured against this basic precept, the petitioners undoubtedly abused their discretion or authority in transferring Menese to the agency's head office. She had become "undesirable" because she stood in the way of Claro's entry into the PGH detachment. Menese had to go, thus the need for a pretext to get rid of her. The request of a client for the transfer became the overriding command that prevailed over the lack of basis for the transfer.

We cannot blame Menese for refusing Yan's offer to be transferred. Not only was the transfer arbitrary and done in bad faith, it would also result, as Menese feared, in a demotion in rank and a diminution in pay. Although Yan informed Menese that "based on the request of the client, she will be transferred to another assignment which however will not involve any demotion in rank nor diminution in her salaries and other benefits,"[40] the offer was such as to invite reluctance and suspicion as it was couched in a very general manner. We find credible Menese's submission on this point, i.e., that under the offered transfer: (1) she would hold the position of lady guard and (2) she would be paid in accordance with the statutory minimum wage, or from P11,720.00 to P7,500.00.

In these lights, Menese's transfer constituted a constructive dismissal as it had no justifiable basis and entailed a demotion in rank and a diminution in pay for her. For a transfer not to be considered a constructive dismissal, the employer must be able to show that the transfer is for a valid reason, entails no diminution in the terms and conditions of employment, and must be unreasonably inconvenient or prejudicial to the employee. If the employer fails to meet these standards, the employee's transfer shall amount, at the very least, to constructive dismissal.[41] The petitioners, unfortunately for them, failed to come up to these standards.

In declaring Menese's transfer to be in the valid exercise of the petitioners' management prerogative, the NLRC grossly misappreciated the evidence and, therefore, gravely abused its discretion in closing its eyes to the patent injustice committed on Menese. It completely disregarded the obvious presence of bad faith in Menese's transfer. Labor justice demands that Menese be awarded moral and exemplary damages[42] and, for having been constrained to litigate in order to protect her rights, attorney's fees.[43]

Yan's solidary liability

Yan had been aware all the time of the utter lack of a valid reason for Menese's transfer. He had been aware all the time that Dapula's charges against Menese -- the ostensible reason for the transfer -- were nonexistent as Dapula failed to substantiate the charges. He was very much a part of the flagrant and duplicitous move to get rid of Menese to give way to Claro, Dapula's protégée.

Based on the facts, Yan is as guilty as the agency in causing the transfer that was undertaken in bad faith and in a wanton and oppressive manner. Thus, he should be solidarily liable with the agency for Menese's monetary awards.

The overtime pay award

While the labor arbiter declared that Menese's claim for overtime pay is unrebutted[44] and, indeed, nowhere in

the petitioners' position paper did they controvert Menese's claim, we hold that the claim must still be substantiated. In Global Incorporated v. Commissioner Atienza,[45] a claim for overtime pay will not be granted for want of factual and legal basis. In this respect, the records indicate that the labor arbiter granted Menese's claim for holiday pay, rest day and premium pay on the basis of payrolls.[46] There is no such proof in support of Menese's claim for overtime pay other than her contention that she worked from 8:00 a.m. up to 5:00 p.m. She presented no evidence to show that she was working during the entire one hour meal break. We thus find the NLRC's deletion of the overtime pay award in order.

Also, the NLRC noted that the award of P2,600.00 for the refund of the cash bond deposit is overstated and should be adjusted to P600.00 only, as indicated by the payrolls. We likewise find the adjustment in order.

All told, except for the above clarifications on the overtime pay award and the refund of the cash bond deposit, we reiterate and so declare the petition to be devoid of merit.

WHEREFORE, premises considered, except for the overtime pay award and the refund of deposit for the cash bond, the petition is DENIED for lack of merit. The assailed decision and resolution of the Court of Appeals are AFFIRMED, with the following modifications:

1) The deletion of the overtime pay award; and

2) Adjustment of the refund of the cash or surety bond deposit award from P2,500.00 to P600.00.

Costs against the petitioners.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

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[1] Rollo, pp. 3-44; filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 45-62; penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justices Hakim S. Abdulwahid and Jose C. Reyes, Jr.

[3] Id. at 64-68.

[4] Entitled "Glenda M. Menese v. National Labor Relations Commission, Second Division, Emirate Security and Maintenance Systems, Inc. and Roberto A. Yan."

[5] Rollo, p. 117; Petition, Annex "F."

[6] Id. at 118; Petition, Annex "G."

[7] Id. at 100-116; Petition, Annex "E."

[8] Id. at 70-91; Petition, Annex "C," penned by Commissioner Victoriano R. Calaycay, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[9] Id. at 158-160; Petition, Annex "N."

[10] Id. at 92-99; Petition, Annex "D."

[11] Id. at 161-167; Petition, Annex "O"

[12] Supra note 6.

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[13] Rollo, p. 119; Petition, Annex "H."

[14] Id. at 120; Petition, Annex "I."

[15] Supra note 2.

[16] Supra notes 12, 13 and 14.

[17] Supra note 5.

[18] Rollo, p. 237; Menese's Rejoinder before the Labor Arbiter, Annex "F."

[19] Supra note 7.

[20] Supra note 3.

[21] Supra note 1.

[22] Rollo, pp. 242-269.

[23] Id. at 272-310.

[24] Supra notes 12, 13 and 14.

[25] Rollo, pp. 221-230; filed on July 23, 2008.

[26] Id. at 313-324; filed on March 23, 2009.

[27] Supra note 5.

[28] Supra note 18.

[29] Rollo, pp. 320-321; Menese's Memorandum, pp. 8-9, par. 29.

[30] Supra note 6.

[31] Supra note 13.

[32] Supra note 6.

[33] Supra note 13.

[34] Supra note 14.

[35] G.R. No. 155421, July 7, 2004, 433 SCRA 756.

[36] OSS Security and Allied Services, Inc. v. NLRC, 382 Phil. 35 (2000).

[37] Supra note 5.

[38] Supra note 18.

[39] 373 Phil. 179 (1999).

[40] Supra note 1, at 14; Petition, p. 12, par. 17.

[41] Aguilar v. Burger Machine Holdings Corporation, G.R. No. 172062, October 30, 2006, 506 SCRA 266.

[42] Id. at 278.

[43] LABOR CODE, Article III; Implementing Rules & Regulations, Book III, Rule VIII; and CIVIL CODE,

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Article 2208, (1) and (7).

[44] Supra note 7, at 114.

[45] 227 Phil. 64 (1986).

[46] Supra note 8, at 89.

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