

PHILIPPINE VETERANS BANK, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND BENIGNO MARTINEZ, RESPONDENTS.

G.R. No. 188882. March 30, 2010

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-188882/>

BRION, J.:

Submitted for our review in this petition for review on certiorari (with a prayer for temporary restraining order and/or writ of preliminary injunction)[1] are the decision[2] and the resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 00708. The CA decision affirmed the December 8, 2004 decision[4] and March 14, 2005[5] resolution of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City. The NLRC, in turn, reversed the decision of the Labor Arbiter (LA) that dismissed the respondent's complaint for constructive dismissal.

On February 20, 2003, respondent Benigno B. Martinez (respondent) filed a complaint for illegal dismissal, with a claim for backwages, reinstatement and damages against petitioner Philippine Veterans Bank (petitioner).

In his position paper, the respondent alleged that he was the manager of the petitioner's Dumaguete Branch from September 1, 2001 until January 8, 2003, when his supposed resignation from the petitioner became effective. The respondent claimed that his resignation stemmed from a report published by the Philippine Daily Inquirer regarding the anomalies hounding the petitioner's high-ranking officials. This controversy according to the respondent resulted in huge withdrawals of major depositors. Concerned, the respondent approached Mr. Wilfredo S. Aniñon (Mr. Aniñon), the petitioner's Area Head for Visayas and Mindanao to discuss how to resolve the matter. When Mr. Aniñon just brushed off the issue, the respondent requested the Mayor of Valencia (a known big depositor of the Dumaguete Branch) to talk to Mr. Aniñon. The latter apparently misinterpreted the respondent's actions and angrily confronted him the next day, saying - "You fool, you went to the mayor of Valencia to seek support. Let them pull out all their deposits, they cannot threaten me! Let them pull out immediately! I will see to it that you will be replaced there! If not, I'd manage the branch myself! Or I'll have Dumaguete Branch made under the Luzon area so that I have nothing to do with your branch."

On October 14, 2002, Mr. Aniñon went to the Dumaguete Branch and brought along with him Mr. Mansueto Quijote as the respondent's replacement and new branch manager. Mr. Aniñon then instructed the respondent to go to the petitioner's head office in Makati to report to the Vice President and Head of Branch Banking Division, Mr. Jose D. Lloren, Jr (VP Lloren).

The respondent flew to Manila and reported to the Makati Office, as ordered. VP Lloren told him that he would undergo training, but no such training took place. Instead, he was made to do clerical jobs. To compound the unjust treatment, the respondent had to travel at least 4 hours daily from his rented house in Cavite to Makati; his travel and living expenses consumed at least half of his salary. On January 8, 2003, the respondent tendered his resignation citing that "it is so expensive for [him] to be staying away from [his] family."

The petitioner in its Position Paper claimed that the respondent's transfer was not motivated by bad faith. It argued that Special Order No. 880, which ordered the respondent's transfer to the Branch Banking Division to undergo Branch Head Training effective October 21, 2002, authorized the respondent's transfer. The same Order stated that the respondent's transfer will not entail any change in rank and compensation and that he is also entitled to per diem and housing allowance amounting to six thousand pesos. The petitioner further claimed that the respondent's transfer was neither unceremonious nor without his consent since he agreed in his contract of employment that he can be given a different assignment at any given time. Finally, the petitioner claimed that the respondent was not placed on "floating status;" after his training on October 29, 2002, he was assigned to the Due Head Office Task Force to hold the sensitive position of reconciling all book entries of all the petitioner's branches. Thus, to the petitioner, the respondent was not constructively dismissed; he voluntarily resigned from his job.

The LA and NLRC Rulings

On June 30, 2003, the LA dismissed the respondent's complaint for lack of merit. The LA found that the petitioner was not guilty of constructive dismissal and that the respondent voluntarily resigned from the service.

On appeal, the NLRC reversed the LA's decision and held that the respondent was constructively dismissed. The NLRC awarded backwages, separation pay in lieu of reinstatement, moral and exemplary damages in the aggregate amount of P933,350.00. The NLRC found that the "unceremonious replacement" of the respondent on October 14, 2002 is akin to constructive dismissal. It also found that the events following the respondent's transfer, including the inconvenience that he had to face on a daily basis while working in Makati, left him with no other option but to resign.

On December 8, 2004, the petitioner filed a petition for certiorari before the Court of Appeals (CA) contending that the NLRC committed grave abuse of discretion in ruling that the respondent was constructively dismissed. During the pendency of the petition for certiorari, the petitioner filed a supplemental petition raising the theory that the present case involves the termination of an elected corporate officer, which issue is not within the jurisdiction of the LA, but within the exclusive and original jurisdiction of the Regional Trial Courts.

The CA Ruling

On February 27, 2009, the CA affirmed the NLRC's decision with modification on the award of backwages (to be reckoned from January 16, 2003 up to the finality of the decision) and attorney's fees. Procedurally, the CA found the petitioner's petition for certiorari to be defective and, therefore, dismissible since the Head of the Legal Department (who signed the Certification of Non-Forum Shopping) was not duly authorized to file the petition in the petitioner's behalf. The CA held that in the absence of any authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.

On the merits, the CA held that the petitioner is estopped from raising the issue of lack of jurisdiction for the very first time on appeal. The CA held that the respondent's unceremonious replacement amounted to constructive dismissal; it was clearly an act of clear discrimination, insensibility or disdain on the part of the petitioner.

The CA noted that jurisprudence prohibits transfers or reassignments of employees that are unreasonable and that inconvenience or prejudice them. In this case, the CA found that the respondent's transfer from Dumaguete to Makati City was clearly unreasonable, inconvenient and put him in the difficult predicament of choosing whether to live away from his family or to bring them to Manila which will entail additional expenses on his part. The CA also found no compelling reason (i.e. any urgency or genuine business necessity) to justify the petitioner's order of transfer. The petitioner's stated reason about branch head training because of the respondent's gross inefficiency is

unconvincing, since the petitioner failed to present any evidence that the latter had a record of gross inefficiency. Finally, the CA opined that the petitioner failed to show any valid reason why it had to require the respondent to go to Makati City to undergo branch head training when it could just as easily require the latter to undergo the same training in the VISMIN area. Based on these considerations, the CA concluded that the respondent's resignation amounted to constructive dismissal.

The present petition raises the following issues:

1)

Whether or not the petitioner is already estopped from raising the issue of lack of jurisdiction;

(2)

Whether or not the petitioner's act of transferring the respondent to its head office in Makati was a valid exercise of management prerogative; and

(3)

Whether or not the respondent's severance from employment was voluntary or was he constructively dismissed.

We DENY the petition for lack of merit.

Petitioner is estopped from
belatedly raising the issue of lack
of jurisdiction

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal.[6] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[7] To permit the petitioner in this case to change its theory on appeal would thus be unfair to the respondent, and offend the basic rules of fair play, justice and due process.[8]

In addition, the petitioner is already estopped from belatedly raising the issue of lack of jurisdiction since it has actively participated in the proceedings before the LA and NLRC. We have consistently held that while jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of it. It is an undesirable practice of a party participating in the proceedings and submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.[9]

The petitioner violated the
non-forum shopping provision

The certificate of non-forum shopping was filed by the petitioner's Legal Department Head, yet he failed to present proper authority showing that the petitioner authorized him to file the petition for certiorari. Coming from a major bank and from its Legal Department Head, this lapse cannot be condoned and the CA was right in dismissing the petition for this reason, among others.

The petitioner was constructively

dismissed

The settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[10] In the present case, we find that the NLRC's finding, as affirmed by the CA, that respondent's constructive dismissal is supported by substantial evidence.

In constructive dismissal cases, the employer has the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee. Failure of the employer to overcome this burden of proof taints the employee's transfer as a constructive dismissal.[11]

In the present case, the petitioner failed to discharge this burden. The NLRC, as affirmed by the CA, correctly found that the combination of the harsh actions of the petitioner rendered the employment condition of respondent hostile and unbearable for the following reasons:

First, the petitioner failed to show any urgency or genuine business necessity to transfer the respondent to the Makati Head Office. In fact, the respondent showed the actual motivation and the bad faith behind his transfer. The petitioner's stated reason that the respondent had to undergo branch head training because of his gross inefficiency cannot defeat the respondent's evidence on this point as the petitioner failed to present any evidence that the respondent had a record of gross inefficiency.

Second, the respondent's transfer from Dumaguete to Makati City is clearly unreasonable, inconvenient and oppressive, since the respondent and his family are residents of Dumaguete City. The CA correctly found that the respondent was placed in the very difficult predicament of having to choose whether to live away from his family or to bring them to Manila, which will entail additional expenses on his part.

Third, the petitioner failed to present any valid reason why it had to require the respondent to go to Makati Head Office to undergo branch head training when it could have just easily required the latter to undertake the same training in the VISMIN area.

Finally, there was nothing in the order of transfer as to what position the respondent would occupy after his training; the respondent was effectively placed in a "floating" status. The petitioner's allegation that the respondent was assigned to a sensitive position in the DUHO Task Force is suspect when considered with the fact that he was made to undergo branch head training which is totally different from a position that entails reconciling book entries of all branches of the former. Reconciling book entries is essentially an accounting task.

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[12] Based on the factual considerations in the present case, we hold that the hostile and unreasonable working conditions of the petitioner justified the finding of the NLRC and the CA that respondent was constructively dismissed.

WHEREFORE, premises considered, we DENY the present petition and AFFIRM the Court of Appeal's Decision dated February 27, 2009 and Resolution dated July 16, 2009 in CA-G.R. SP No. 00708.

SO ORDERED.

Carpio, (Chairperson),[*] Del Castillo, Abad, and Perez, JJ., concur.

[*] Designated Acting Chief Justice effective March 18, 2010, per Special Order No. 826 dated March 16, 2010.

[1] Rollo, pp. 12-38.

[2] Dated February 27, 2009; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justice Amy C. Lazaro-Javier and Associate Justice Francisco P. Acosta; id. at 186-205.

[3] Dated July 16, 2009, id. at 221-224.

[4] Id. at 59-72.

[5] Id. at 74-77.

[6] Lianga Lumber Co. v. Lianga Timber Co., Inc., No. L-38685, March 31, 1977, 76 SCRA 197.

[7] China Airlines Ltd., v. CA et al., G.R. Nos. 45985 & 46036, May 18, 1990, 185 SCRA 449.

[8] Siredy Enterprises, Inc., v. CA et al., G.R. No. 129039, September 17, 2002, 389 SCRA 34.

[9] Ilocos Sur Electric Cooperative, Inc. v. NLRC, G.R. No. 106161, February 1, 1995, 241 SCRA 36.

[10] Triumph International Phils. Inc. v. Ramon L. Apostol, G.R. No. 164423, June 16, 2009.

[11] Lorenzo Ma. D. G. Aguilar v. Burger Machine Holdings, Corp. et al, G.R. No. 172062, October 30, 2006, 506 SCRA 266.

[12] Id.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.