

**JOSEPHINE RUIZ, PETITIONER, VS. WENDEL OSAKA REALTY CORP.,
D.M. WENCESLAO AND ASSOCIATES, INC. AND DELFIN J.
WENCESLAO, JR., RESPONDENTS.**

G.R. No. 189082. July 11, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a Petition filed under Rule 45 or the 1997 Rules of Civil Procedure, praying for the reversal of the Decision[1] of the Court of Appeals (CA) dated 29 October 2005 and its subsequent Resolution[2] dated 10 August 2009. The CA reversed the Decision rendered by the National Labor Relations Commission (NLRC) against petitioners Wendel Osaka Realty Corp. (WORC), D.M. Wenceslao and Associates, Inc. (DMWAI), and Delfin Wenceslao (respondents) and reinstated the Decision of the Labor Arbiter, which ruled that petitioner Josephine Ruiz (petitioner) was not illegally dismissed.

Petitioner was hired on 1 February 1982 as secretary to respondent Delfin J. Wenceslao, Jr. (Delfin), the president of DMWAI.[3] After a few years, she expressed her intention to resign, because she could not get along with her co-workers. Instead of allowing her to leave, Delfin decided to transfer her.[4] Thus, on 1 November 1989, she was appointed as executive assistant to the president of respondent WORC, who happens to be respondent Delfin also.[5] She was its only employee.[6]

At that time, and even up to the present, the only undertaking of WORC has been its reclamation project in Cavite City known as the Ciudad Nuevo Project.[7]

Delfin supposedly promoted petitioner to Office Manager of DMWAI effective 1 August 2001.[8] On 21 October 2002, she was assigned to be a member of a task force formed for the implementation of the marketing campaign for the Ciudad Nuevo Project.[9]

Sometime in 2002, the BIR informed Delfin of the tax deficiency allegations against his companies. Its investigators supposedly had information that could only be verified in its business files.[10] He was further informed by the BIR that the bases for its allegations against his companies were the latter's very own records. This information prompted him to check the company files and records. On November 2002, he discovered that "various very important files"[11] of DMWAI were missing.

It must be noted that the foregoing allegations were first raised in the Comment of respondents. In the Position Paper[12] they filed with the Labor Arbiter, they claimed that the chairperson of the board of directors of WORC had ordered a check of the company's files, because a number of them appeared to be missing.[13]

Respondents claim that they received a call from a woman, who later turned out to be the wife of a former employee—one who was close friends with petitioner. The caller supposedly wanted to report that there were records of DMWAI in her bedroom, and that it was her husband who had brought them there. He allegedly told her that these files were handed to him by another woman.[14]

The aforementioned female informant turned out to be Mrs. Miguela S. Sunico. Her husband was a former DMWAI employee, who is currently a BIR officer. She testified that the missing files were with her husband, who allegedly told her that these documents had been handed to him by petitioner.

In order to determine who was responsible for the unauthorized taking of the files, Delfin required all the employees who had access to the files to fill up a questionnaire he had drawn up. Out of the 15 employees who were asked to submit their answers, 14 complied.[15] Petitioner was the only one who failed to answer the questionnaire.

According to petitioner, she filled up the questionnaire, but wanted to talk to Delfin first before submitting it. She asked him if there was truth to the rumor that she was being suspected of stealing company records. He admitted that he had indeed received this kind of information. Petitioner thus requested that she be allowed to confront her accuser.

However, Delfin informed her that all she needed to do was submit the questionnaire. She decided not to submit it.

Delfin claims, on the other hand, that he was the one who called petitioner to ask why she did not answer the questionnaire. She allegedly said that accomplishing it would have been an acknowledgment of wrongdoing, and that it was not lawful for her to be compelled to fill it up.[16]

Thus, on 3 December 2002, Delfin sent a letter[17] to petitioner informing her that she would be placed under a 30-day preventive suspension. He explained therein that he saw no reason why she refused to fill up the questionnaire, and that her refusal was equivalent to an admission that she took the corporate files, to wit:

x x x. Only you have not filled your copy up and you told me in person that you do not wish to answer the questionnaire.

For me, there is no reason why you do not wish to accomplish the form. Your not doing so only serves to make you acknowledge that you have gotten corporate files for purposes inimical to the interest of the company. This is serious misconduct for which you should be dismissed for cause. You will accordingly face an investigation for the charge and the panel to inquire into the matter shall be convened shortly.

Petitioner refused to accept the letter when a copy was served upon her.

On 9 December 2002, petitioner, through one of the employees of DMWAI, submitted the questionnaire the former had filled up. Thereafter, specifically on 10 December 2002, petitioner filed an illegal suspension case with the Labor Arbiter against respondent corporations.

Meanwhile respondent corporations formed a panel of investigators to look into the matter.

When the 30-day preventive suspension of petitioner ended, there was still an ongoing investigation on the matter. Thus, in a 2 January 2003 letter,[18] she was informed by Andrew M. Taningco, a member of the panel of investigators, that the company had decided to put her on “vacation leave with pay for a period of fifteen (15) days.” The letter also mentioned that its contents had been conveyed to petitioner on 26 December 2002, and that she did “not voice any objections.”

Petitioner was furnished a copy of the Sworn Statement[19] of Mrs. Sunico and was given three days from her receipt of the statement to submit her written explanation.[20]

Petitioner denied the accusations of Mrs. Sunico through a letter dated 13 January 2003 and addressed to Andrew M. Taningco.[21] Petitioner insisted that Mr. Sunico had explicitly denied that the documents came from the

former.[22] Respondents alleged, however, that “Mr. Francisco Sunico never denied that the files were found in his house. Much less did he deny that Ms. Ruiz gave them to him,”[23] to wit:

x x x. Petitioner said she wanted to confront her accuse [sic]. x x x the panel decided to accommodate her.

x x x x x x x x x

x x x. However, as Mrs. Sunico repeated her written statement that she saw the files in their bedroom and Mr. Sunico told her it was petitioner who gave the files to him, petitioner never, never confronted Mr. Francisco Sunico to ask him if he really gave such information to his wife. Much less did she take him to task for making such a statement to Mrs. Sunico.

And all throughout the session, Mr. Sunico never denied that he made a statement to Mrs. Sunico that it was petitioner who gave the files to him. Neither did he deny that petitioner turned them over to him. (Underscoring in the original)[24]

Thereafter, respondents reported the matter to the National Bureau of Investigation (NBI).[25]

Delfin then informed petitioner that her 15-day vacation leave had ended on 18 January 2003. She was further informed that she should report for work on 20 January 2003, and so she did. On that same day, though, she was given a letter[26] dated 18 January 2003 informing her that she had been assigned to WORC’s Ciudad Nuevo Project in Cavite City. She was further informed that the investigation was still ongoing and was expected to be completed within 30-45 working days.

Petitioner, in a letter[27] dated 20 January 2003, wrote to Delfin reiterating her claim that she had no knowledge of how the missing files had ended up in Mr. Sunico’s possession. She also requested that Delfin’s decision to transfer her to Cavite City be reconsidered, considering that she lived in Bulacan.

Petitioner continued to work in Cavite until 15 April 2003. She claims that she had to quit her job because of “poor health and the humiliation she was subjected to” in her workplace. She further alleged that the transportation allowance given by respondents was simply not sufficient.

Thereafter, petitioner amended her Complaint for illegal suspension to include constructive illegal dismissal; nonpayment of proportionate 13[th] month pay, confidential allowance, and separation pay; moral and exemplary damages; and attorney’s fees.

In a Decision[28] promulgated on 31 March 2004, the Labor Arbiter found that petitioner had not been illegally dismissed, but that she was entitled to her claim for prorata 13[th] month pay, to wit:

Under the circumstances, complainant was not illegally dismissed.

She was the prime suspect in a case involving the leaking of company files to the BIR, which is still pending investigation before the NBI. If found culpable, complainant may be administratively, civilly, and even criminally liable.

Complainant was preventively suspended and was reassigned to a ongoing project outside the office to protect company interests.

It was complainant who opted not to work, claiming constructive dismissal, harassments, demotion and non-payment of benefits.

Only her money claims for pro-rata 13[th] month pay, has factual legal basis.

WHEREFORE, premises considered, instant complaint is hereby dismissed for lack of merit.

Respondent corporations, unless they have proof of payment, are directed to pay complainant's pro-rata 13[th] month pay for year 2003.

SO ORDERED.[29]

Petitioner filed her Appeal[30] with the NLRC on 3 May 2004. Through its 11 July 2007 Decision,[31] it reversed the Labor Arbiter's Decision. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the Decision, dated 31 March 2004, of Labor Arbiter Edgardo M. Madriaga is hereby SET ASIDE, and a new judgment is rendered directing respondents WENDEL OSAKA REALTY CORP., D.M. WENCESLAO AND ASSOCIATES, INC. and DELFIN J. WENCESLAO, JR., to jointly and severally pay complainant separation pay equivalent to one (1) month salary for every year of service, and full backwages, inclusive of allowances, computed from the time her compensation was withheld from her up to the finality of this Decision.

SO ORDERED.[32]

Respondents filed their Motion for Reconsideration (MR),[33] but it was likewise denied through the NLRC's 28 September 2007 Resolution.[34]

Respondents appealed to the CA, which granted their Petition[35] and reinstated the Labor Arbiter's Decision. According to the CA, the suspension of petitioner pending investigation and her transfer to respondents' Cavite office was justified by the gravity of her offense.[36] It held that "letting her [petitioner] stay in Quezon City did not make petitioners [respondents] secure about their files and records." [37]

Petitioner filed an MR,[38] but it was denied through a Resolution.

Hence, the present Petition for Review[39] under Rule 45.

For consideration in the present Petition is the sole issue of whether or not petitioner was constructively dismissed when she was reassigned to respondents' Cavite branch.

The NLRC ruled that petitioner's assignment to Cavite City was not for legitimate business reasons, but it was "simply because respondent believed that she was guilty, [and] that she was undesirable, unreliable, and a security risk." [40] The CA ruled, however, that the transfer of petitioner was justified, considering the gravity of the offense she was being charged with.[41]

We agree with the appellate court.

An employer has the inherent right to transfer or assign an employee in pursuance of its legitimate business interest, subject only to the condition that the move be not motivated by bad faith.[42]

Insisting that there was no valid ground for her transfer,[43] petitioner claims thus:

As it was, there was really no business necessity to transfer petitioner. The only reason behind the transfer, as private respondents admitted, was that they suspected petitioner of taking out company records. Unsubstantiated suspicious and baseless conclusions of the employer do not provide legal justifications for transferring an employee. There was clearly no business urgency that necessitated the transfer. Proof of this was the fact that the complainant was not given any job to perform after her transfer to Cavite City. She was reduced into a mere office décor, the only female among the throng of male project workers.[44]

She also claims that respondents' act of transferring her was motivated by bad faith[45] and thus amounted to constructive dismissal, viz:

The underlying purpose behind the transfer was plainly to humiliate petitioner into giving up her job. The

disdain and embarrassment she was made to suffer all the more established the fact that she was constructively dismissed.[46]

To further prove that her transfer or reassignment was motivated by bad faith, petitioner avers that what made everything worse was that she was not given a single task for the four months she was working in Cavite.[47] She had no chair to sit on or table to work at—a fact, she claims, that only proves respondents' intention to humiliate her.[48] She concludes: "There was no justifiable reason why private respondent failed to give petitioner any task if her transfer was due to legitimate business reasons." [49]

In answering these allegations, respondents explained that the only undertaking of WORC was its reclamation project in Cavite City. When petitioner was transferred to Cavite, she was supposed to continue with what she was doing in Quezon City. None of her earlier functions was withheld from her. She was further given the task to assist those who were undertaking the reclamation project. Thus, they contend, it is not true that she was never given a job to perform.

Besides, as the appellate court found and as petitioner admitted,[50] the project manager of the Ciudad Nuevo Project had given her job description.[51]

As to the claim of petitioner that her transfer was without valid basis, we disagree.

As the executive assistant of the president, petitioner undeniably occupied a sensitive position that required her employer's utmost trust and confidence. Respondents had the right to reassign her the moment that confidence was breached. It has been shown that such breach proved that she was no longer fit to discharge her assigned tasks, to wit:

x x x [B]reach of trust and confidence as a ground for reassignment must be related to the performance of the duties of the employee such as would show him to be thereby unfit to discharge the same task.[52]

Having lost his trust and confidence in petitioner, respondent Delfin had the right to transfer her to ensure that she would no longer have access to the companies' confidential files.

Although it is true that petitioner has yet to be proven guilty, respondents had the authority to reassign her, pending investigation. As held in *Blue Dairy Corporation and/or Aviguetero and Miguel v. NLRC and Recalde*:

Re-assignments made by management pending investigation of irregularities allegedly committed by an employee fall within the ambit of management prerogative. The purpose of reassignments is no different from that of preventive suspension which management could validly impose as a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.[53]

Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is a sufficient basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position.[54]

When petitioner was assigned to Cavite, there was an ongoing investigation of the charges filed against her. It is undisputed that she refused to fill up, for no justifiable reasons, the questionnaire distributed by her employer to determine who among those who had access to the confidential files was responsible for their taking. Furthermore, a witness had executed an Affidavit claiming that she found the missing files, and that her husband told her that it was petitioner who handed those files to him. Lastly, the person who supposedly received these documents from petitioner did not deny or rebuke the statements made by his wife.

We rule that the foregoing reasons and circumstances are sufficient to justify respondents' transfer of petitioner.

Still, for the transfer to be valid, petitioner asks this Court to rule that respondents should prove that it was not inconvenient or prejudicial to her. She insists that the validity or legality of the transfer of an employee is negated by the demotion or the withdrawal or decrease of the latter's salaries, benefits, and other privileges.[55]

Petitioner claims that the transfer was inconvenient or prejudicial to her, because "her health suffered and she became sickly because of the extended travel she was made to undergo every working day between her home in Bulacan and her assignment in Cavite City." [56]

She also claims that the justification of private respondents that she should have rented a house in Cavite City is adding insult to injury.[57]

An employer's decision to transfer an employee, if made in good faith, is a valid exercise of a management prerogative, although it may result in personal inconvenience or hardship to the employee.[58] We have already ruled that the transfer of the employment of petitioner to Cavite was not motivated by bad faith. Thus, any resulting inconvenience or hardship on her part is of no moment.

Petitioner also claims that her transfer was coupled with a diminution in the benefits previously granted to her, to wit:

It is an established fact that petitioner has been enjoying a "confidential" allowance of ₱2,000.00 a month for more than a decade. This benefit was suddenly withdrawn when she was transferred.[59]

However, respondents were able to prove that, for her position in Cavite, petitioner received a ₱2,554 per month travelling allowance, which was more than the ₱2,000 she received as monthly allowance prior to her transfer.[60]

Petitioner says that her transfer resulted in her demotion—from a managerial to a clerical position, viz:

The matter is completely factual. It is beyond dispute that petitioner held the position of Office Manager. She was transferred to a position that was merely clerical in nature. Evidence of this fact was also submitted in the proceedings a quo.[61]

As proof of her appointment to a managerial position, petitioner attached a 31 July 2001 letter [62] printed on a sheet of paper carrying the DMWAI letterhead. This letter signed by respondent Delfin informed her that she was being appointed as DMWAI's office manager effective 1 August 2001.

In their Reply to Complainant's Position Paper, [63] respondents allege that they cannot recall the circumstances surrounding the writing of the letter, and why it was written on a sheet of paper with the DMWAI letterhead. [64] They deny her allegation that she was promoted to the position of office manager. According to them, such a promotion should have been preceded by the submission of an application for the position and by a document "severing the employer-employee relationship between WORC and the complainant." [65]

Respondents add that that they never saw the need to appoint an office manager. Even on the assumption that the appointment became necessary, that position was usually assigned to companies and not to individuals, to wit:

x x x. It has been his policy to assign companies, not individuals, to act as Office Managers. Besides, there was already somebody -- his own son, Carlos Delfin C. Wenceslao --- who was already discharging the position in the DMWAI quarterbacked by his two (2) other children, Edwin Michael C. Wenceslao and Paolo Vincent C. Wenceslao. In other words, there was absolutely no need therefor.[66]

Petitioner failed to present evidence to prove that she was holding a managerial position. In fact, respondents aver

that she was the only employee of WORC.[67] They also aver that that she received her salaries from that company—her Social Security System records, withholding tax forms, and income tax returns state that WORC was her employer.[68] Petitioner herself, being its only employee, was the one who executed all the foregoing documents.

It is important to note that petitioner worked for four months in Cavite before giving up on her job.[69] Initially, she accepted the reassignment and had no issues with the fact that her residence was far from her new workplace. She was never dismissed from employment; she simply decided to stop going to work. It is obvious from the facts of this case that she resigned from work. Inevitably, her Complaint for illegal dismissal should be dismissed.

It is clear that the filing of an illegal dismissal case by petitioner was a mere afterthought. It was filed not because she wanted to return to work, but to claim separation pay and back wages.

Lastly, petitioner argues that respondent Delfin should be held jointly and severally liable with respondent corporations because of the "dilution of the identity employer." [70]

In labor cases, directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees if their termination was committed with malice or bad faith. The ruling applies when a corporate officer acts with malice or bad faith in suspending an employee.[71] Such malice or bad faith is not present in this case.

WHEREFORE, the instant Petition is DENIED. The 29 October 2008 Decision of the Court of Appeals reversing the 11 July 2007 Decision of the National Labor Relations Commission — which had earlier directed respondents Wendel Osaka Realty Corporation, D.M. Wenceslao and Associates, Inc., and Delfin J. Wenceslao, Jr. to jointly and severally pay petitioner Josephine Ruiz separation pay and full back wages — is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 7-20; CA-G.R. SP No. 102968, penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican.

[2] Id. at 21-22.

[3] Id. at 85.

[4] Id. at 365.

[5] Id. at 86.

[6] Id. at 365.

[7] Id.

[8] Id. at 87.

[9] Id. at 88.

[10] Id. at 366.

[11] Id. at 90.

[12] Id. at 106-114.

- [13] Id. at 106.
- [14] Id. at 367.
- [15] Id. at 107.
- [16] Id. at 108.
- [17] Id. at 90.
- [18] Id. at 93.
- [19] Id. at 95-96.
- [20] Id. at 94.
- [21] Id. at 100-101.
- [22] Id. at 150.
- [23] Id. at 111.
- [24] Id. at 369.
- [25] Id.
- [26] Id. at 102.
- [27] Id. at 103.
- [28] Id. at 147-162, penned by Labor Arbiter Edgardo M. Madriaga.
- [29] Id. at 161-162.
- [30] Id. at 163-176.
- [31] Id. at 179-188.
- [32] Id. at 187.
- [33] Id. at 211-221.
- [34] Id. at 223-225.
- [35] Id. at 226-258.
- [36] Id. at 14.
- [37] Id. at 15.
- [38] Id. at 326-333.
- [39] Id. at 25-57.
- [40] Id. at 184.
- [41] Id. at 65.
- [42] Philippine Telegraph and Telephone Corp. v. Laplana, 276 Phil. 527 (1991).
- [43] Rollo, p. 45.

[44] Id. at 553-554.

[45] Id. at 47.

[46] Id. at 51.

[47] Id. at 50.

[48] Id. at 52.

[49] Id.

[50] Id. at 69.

[51] Id. at 104-105.

[52] 373 Phil. 179, 187 (1999).

[53] Consolidated Food Corporation/President John Gokongwei. v. NLRC, 373 Phil. 751, 762 (1999) citing Samillano v. NLRC, 333 Phil. 658 (1996); Atlas Fertilizer Corporation v. NLRC, 340 Phil. 85 (1997).

[54] Falguera v. Linsangan, 321 Phil. 736 (1995).

[55] Rollo, p. 44.

[56] Id. at 559.

[57] Id. at 560.

[58] Homeowners Savings and Loan Association, Inc. v. NLRC and Cabatbat, 330 Phil. 979 (1996).

[59] Rollo, pp. 558.

[60] Id. at 371.

[61] Id. at 555.

[62] Id. at 87.

[63] Id. at 125-133.

[64] Id. at 126.

[65] Id. at 127.

[66] Id. at 126-127.

[67] Id. at 379.

[68] Id. at 127.

[69] Id. at 68.

[70] Id. at 53.

[71] Tan v. Timbal, Jr., 478 Phil. 497 (2004).

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