

**PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION,
PETITIONER, VS. ALICIA LAPLANA, HON. RICARDO ENCARNACION,
AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.**

G.R. No. 76645. July 23, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Alicia Laplana was the cashier of the Baguio City Branch Office of the Philippine Telegraph and Telephone Corporation (hereafter, simply PT & T). Sometime in March 1984, PT & T's treasurer, Mrs. Alicia A. Arogo, directed Laplana to transfer to the company's branch office at Laoag City. Laplana refused the reassignment and proposed instead that qualified clerks in the Baguio Branch be trained for the purpose. She set out her reasons therefor in her letter to Mrs. Arogo dated March 27, 1984, viz.:

"1. I have established Baguio City as my permanent residence. Working in Laoag will involve additional expenses like for my board and lodging, fare, and other miscellaneous expenses. My salary alone will not be enough -- there will be no savings and my family will spend more on account of my transfer.

"2. I will be away from my family. A far assignment would be a big sacrifice on my part keeping me away from my husband and family which might affect my efficiency.

"3. Since I have been with PT & T for more than six years already, I have learned to work with my co-employees here more effectively. Working in another place with entirely different environment will require long adjustment period, thereby affecting performance of my job."

On April 12, 1984, Mrs. Arogo reiterated her directive for Laplana's transfer to the Laoag Branch, this time in the form of a written Memorandum, informing Laplana that "effective April 16, 1984, you will be reassigned to Laoag branch assuming the same position of branch cashier," and ordering her "to turn over your accountabilities such as PCF, undeposited collections, used and unused official receipts, other accountable forms and files to Rose Caysido who will be in charge of cashiering in Baguio."

Apparently Laplana was not allowed to resume her work as Cashier of the Baguio Branch when April 16, 1984 came. She thereupon wrote again to Mrs. Arogo advising that the directed transfer was unacceptable, reiterating the reasons already given by her in her first letter dated March 27, 1984. On April 30, 1984, Laplana received a telegram from Mrs. Arogo reading as follows:

"PLEASE REPORT TO MANILA ON MAY 2, 1984 FOR NEW JOB ASSIGNMENT

IF YOU DON'T REPORT ON MAY 2, 1984, WE WILL CONSIDER THIS AS ABANDONMENT OF
YOUR JOB AND THIS MIGHT CONSTRAIN US TO IMPOSE DISCIPLINARY ACTION AGAINST YOU

YOU CAN GET YOUR CASH ADVANCE FOR TRANSPORTATION FROM MRS. BAUTISTA TODAY."

On May 8, 1984, Laplana in turn sent a telex message to Mrs. Arogo which reads as follows:

"I LOVE WORKING FOR OUR COMPANY HOWEVER I AM SORRY I CANNOT ACCEPT YOUR JOB OFFER IN MANILA. THANK YOU AND RETRENCH ME INSTEAD. MY BEST REGARDS."

Thereafter, Laplana sent a letter to Mrs. Arogo on May 15, 1984, expatiating on her telex message and reiterating her request to "be retrenched," as follows:

"Dear Mrs. Arogo:

Thank you for the job offer in Manila. However, I cannot accept the said offer because I have established Baguio City as my permanent residence. Considering the high cost of living in Manila it will surely involve additional expenses on my part. My salary alone will not be enough to sustain my expenses. Furthermore, a far assignment will be a big sacrifice on my part keeping me away from my husband which might affect my health due to an entirely new environment and climate, thereby affecting my efficiency.

In view of the above reasons, I hereby request management to retrench me.

* * * * *."

Termination of Laplana's employment on account of retrenchment thereupon followed. On May 19, 1984, PT & T issued an "Employee's Service Report" which contained the following remarks regarding Laplana: "Services terminated due to retrenchment with corresponding termination pay effective May 16, 1984." And on June 30, 1984, Mrs. Arogo sent a Memorandum to the company's Baguio Branch Manager embodying the computation of the separation and 13th month pay due to Laplana, together with a check for the amount thereof, P2,512.50 and a quitclaim deed, and instructing said manager to "have the quitclaim signed by Alicia Laplana before releasing the check and return all copies of said form ** immediately." On July 4, 1984, Laplana signed the quitclaim and received the check representing her 13th month and separation pay.

On October 9, 1984, Laplana filed with the Labor Arbiters' Office at Baguio City, thru the CLAO, a complaint against PT & T, its "Baguio Northwestern Luzon Branch, Baguio City," and Paraluman Bautista, Area Manager. In her complaint, she set forth substantially the facts just narrated, and alleged, as right of action, that "when she insisted on her right of refusing to be transferred, the Defendants made good its warning by terminating her services on May 16, 1984 on alleged ground of 'retrenchment,' although the truth is, she was forced to be terminated and that there was no ground at all for the retrenchment;" that the company's "act of transferring is not only without any valid ground but also arbitrary and without any purpose but to harass and force ** (her) to eventually resign."

In answer, the defendants alleged that -

- 1) Laplana "was being transferred to Laoag City because of increase in sales due to the additional installations of vodafone line;"
- 2) in connection with her transfer, Laplana had been informed "that she would be given ten (10) days relocation allowance and transportation expense from Baguio to Laoag City;"
- 3) the company "was exercising management prerogatives in transferring complainant ** and there is no showing that this exercise was arbitrarily and whimsically done;"
- 4) Laplana's services were terminated on her explicit declaration that "she was willing to be retrenched rather than be assigned to Laoag City or Manila;"
- 5) in any event, the company had been actually suffering losses; in fact, in June, 1984, several employees "were retrenched because of losses incurred due to rising costs in wages, rentals production supplies and other operational costs."

Upon the issues thus raised, judgment was rendered on March 28, 1985 by the Labor Arbiter in Laplana's favor.[1] The Arbiter's verdict was made to rest essentially on the following pronouncements (made avowedly in reliance on the doctrine laid down by this Court in *Helmut Dosch v. NLRC and Northwest Airlines, Inc.*, G.R. No.51182, July 5, 1983[2]), to wit:

"Transferring an employee from one place to another is not by itself unlawful. It is within the inherent right of an employer to transfer or assign an employee in the pursuit of its legitimate business interests. However, this right is not absolute.

Transfer becomes unlawful where it is motivated by discrimination or in bad faith, or is effected as a form of punishment or demotion without sufficient cause.

The transfer of the complainant from Baguio City to Laoag City or to Manila is patently a demotion and a form of punishment without just cause and would cause untold suffering on the part of the complainant. * * ."

With these premises in mind, the Arbiter ruled "that the complainant was illegally dismissed * * (and her) acceptance of separation pay * * cannot cure the illegality of her dismissal because it was forced upon her - she was compelled to accept the lesser evil," and that there was "no evidence to show that the complainant was retrenched to prevent losses," but that on the contrary, "it is continuously expanding and improving its facilities, and hiring new employees." Accordingly, he ordered -

1) PT & T "to reinstate immediately the complainant, Alicia R. Laplana, to her former position or equivalent position without loss of seniority rights and benefits earned with full backwages and benefits less P2,512.50, the amount she received as separation, from the time her compensation was suspended until reinstated;"

2) the dismissal of the claim for moral and exemplary damages for lack of merit; and

3) the dismissal of the case against Mrs. Paraluman Bautista also for lack of merit.

The National Labor Relations Commission affirmed the Arbiter's judgment and dismissed the respondents' appeal, by Resolution dated August 5, 1986.[3]

There can be no quarrel with the Arbiter's formulation of the general principle governing an employer's prerogative to transfer his employees from place to place or from one position to another. The Arbiter acknowledges "the inherent right of an employer to transfer or assign an employee in the pursuit of its legitimate business interests" subject only to the condition that it be not "motivated by discrimination or (made) in bad faith, or ** effected as a form of punishment or demotion without sufficient cause." This is a principle uniformly adhered to by this Court.[4]

The case law on the matter is succinctly set out by a noted commentator on Labor Relations Law as follows:[5]

" ** Except as limited by special laws, the employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and the discipline, dismissal and recall of workers. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of his business and does not deprive the employer of the right to select or dismiss his employees for any cause, except in cases of unlawful discrimination (*NLU v. Insular-Yebana Tobacco Corp.*, 2 SCRA 924, 931; *Republic Savings Bank v. CIR*, 21 SCRA 226, 235).

" * * The employer has the prerogative of making transfers and reassignment of employees to meet the requirements of the business. Thus, where the rotation of employees from the day shift to the night shift was a standard operating procedure of management, an employee who had been on the day shift for some time may

be transferred to the night shift (*Castillo v. CIR*, 39 SCRA 81). Similarly, transfers effected pursuant to a company policy to transfer employees from one theater to other theaters operated by the employer, in order to prevent connivance among them, was sustained (*Cinema, Stage and Radio Entertainment Free Workers v. CIR*, 18 SCRA 1071). Similar transfers and re-assignments of employees have been upheld such as the re-assignment of one from a position of supervisor to that of engineer at the power house (*Interwood Employees Assn. v. Interwood*, 99 Phil. 82), or the transfer of the union president from his position of messenger clerk in a hotel to purely office work and two other unionists from the position of hotel guard to line and elevator men, without diminution of pay or other employees' rights (*Bay View Hotel Employees Union v. Bay View Hotel*, L-10393, March 30, 1960), or the temporary assignment of a sales clerk to another section of the store (*Marcaida v. PECO*, 63 O.G. 8559)."

Subsequent decisions of this Court have made no deviation from the doctrine. In *Philippine Japan Active Carbon Corp. v. NLRC*, promulgated on March 8, 1989,[6] this Court made the following pronouncement, to wit:

"It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.

In *Yuco Chemical Industries, Inc. v. MOLE, et al.* (judgment promulgated on May 28, 1990),[7] the same "general principles on transfer" were restated. The Court said:

" * * . In a number of cases, the Court has 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. This is a privilege inherent in the employer's right to control and manage its enterprise effectively. Even as the law is solicitous of the employees' welfare, it cannot ignore the right of the employer to exercise what are clearly and obviously management prerogatives. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.

But like all other rights, there are limits. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right must be exercised. Thus it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee."

The acceptability of the proposition that transfers made by an employer for an illicit or underhanded purpose -- e.g., to evade the duty to bargain collectively, or to defeat the employees' right of collective bargaining, or discriminate against one or some of them on account of their union activities -- is self-evident and cannot be gainsaid. The difficulty lies in the situation where no such illicit, improper or underhanded purpose can be ascribed to the employer, the objection to the transfer being ground solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer. What then?

In *Dosch v. NLRC*, supra, this Court found itself unable to agree with the NLRC that the petitioner employee was guilty of disobedience and insubordination in refusing to accept his transfer from the Philippines to an overseas post. Said the Court:

" * * . The only piece of evidence on which (respondent employer) Northwest bases the charge of

contumacious refusal is petitioner's letter dated August 28, 1975 to R. C. Jenkins wherein petitioner acknowledged receipt of the former's memorandum dated August 18, 1975, appreciated his promotion to Director of International Sales but at the same time regretted 'that at this time for personal reasons and reasons of my family, I am unable to accept the transfer from the Philippines' and thereafter expressed his 'preference to remain in my position of Manager-Philippines until such time that my services in that capacity are no longer required by Northwest Airlines.' From this evidence, We cannot discern even the slightest hint of defiance, much less imply insubordination on the part of petitioner."

Withal, it is evident that the courteous tone of the employee's letter did not alter the actuality of his refusal to accept the transfer decreed by his employer in the exercise of its sound business judgment and discretion; and that the transfer of an employee to an overseas post cannot be likened to a transfer from a city to another within the country, as in the case at bar.

In this case, the employee (Laplana) had to all intents and purposes resigned from her position. She had unequivocally asked that she be considered dismissed, herself suggesting the reason therefor -? retrenchment. When so dismissed, she accepted separation pay. On the other hand, the employer has not been shown to be acting otherwise than in good faith, and in the legitimate pursuit of what it considered its best interests, in deciding to transfer her to another office. There is no showing whatever that the employer was transferring Laplana to another work place, not because she would be more useful there, but merely "as a subterfuge to rid ** (itself) of an undesirable worker," or "to penalize an employee for ** union activities ** ." The employer was moreover not unmindful of Laplana's initial plea for reconsideration of the directive for her transfer to Laoag; in fact, in response to that plea not to be moved to the Laoag Office, the employer opted instead to transfer her to Manila, the main office, offering at the same time the normal benefits attendant upon transfers from an office to another.

The situation here presented is of an employer transferring an employee to another office in the exercise of what it took to be sound business judgment and in accordance with pre-determined and established office policy and practice, and of the latter having what was believed to be legitimate reasons for declining that transfer, rooted in considerations of personal convenience and difficulties for the family. Under these circumstances, the solution proposed by the employee herself, of her voluntary termination of her employment and the delivery to her of corresponding separation pay, would appear to be the most equitable. Certainly, the Court cannot accept the proposition that when an employee opposes his employer's decision to transfer him to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail. In adopting that proposition by way of resolving the controversy, the respondent NLRC gravely abused its discretion.

WHEREFORE, the writ of certiorari prayed for is GRANTED and the Resolution of August 5, 1986 of respondent NLRC is thereby nullified and set aside, and the termination of services of private respondent is declared legal and proper. No costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 44-55. The decision was written by Labor Arbiter Ricardo Q. Encarnacion.

[2] 123 SCRA 296

[3] Rollo, pp. 74-79. The resolution was promulgated by the Third Division, composed of Presiding Commissioner Guillermo C. Medina, Commissioner Miguel B. Varela, and Commissioner Gabriel M. Gatchalian, the first two concurring "IN THE RESULTS."

[4] The rule is the same in American Law: 51A CJS, 225-226; 48 Am Jur 2d, 745-746: e.g., while it is "the normal right of an employer to transfer employees in the course of business, the transfer of an employee, or the change in status of an employee from permanent to temporary, traceable to membership or nonmembership in a labor union, or to activities on behalf of a bargaining agency, constitutes discrimination within the interdiction of the statute. ** "

[5] Fernandez, P. V., Labor Relations Law, 1985 ed., pp. 44, 45

[6] By the First Division, Griño-Aquino, J., ponente: 171 SCRA 164

[7] By the Third Division, Fernan, C.J., ponente: 185 SCRA 727

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