

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

ALFREDO S. PAGUIO,
Petitioner,

-versus-

**G.R. No. 154072
December 3, 2002**

**PHILIPPINE LONG DISTANCE
TELEPHONE CO., INC., ENRIQUE D.
PEREZ, RICARDO P. ZARATE,
ISABELO FERIDO, and RODOLFO R.
SANTOS,**

Respondents.

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DECISION

MENDOZA, J.:

This is a Petition for Review on Certiorari of the Decision,^[1] dated March 7, 2002, and Resolution,^[2] dated June 25, 2002, of the Court of Appeals, affirming with modification a decision of the National Labor Relations Commission (NLRC) finding that petitioner had been demoted by respondent PLDT but deleting the award to petitioner of P384,000.00 representing salary increase from January 1997.

The facts are as follows:

Petitioner Alfredo S. Paguio was appointed Head of PLDT's Garnet Exchange on October 1, 1994. He reported to the Head of the Greater Metro Manila (GMM) East Center, Rodolfo R. Santos, one of the respondents herein. At about this time, PLDT implemented the Greater Metro Manila Network Performance Assessment program covering 27 exchanges of the 5 centers. Petitioner wrote respondent Santos a memorandum, dated January 27, 1995, criticizing the 1994 performance ranking of the GMM Exchanges. He pointed out that the old historical data applicable to a fifty-year old facility should not be used in determining the performance of a division with newly installed facilities because of the discrepancies between old and new facilities in terms of output, performance, and manpower required. According to petitioner, a newly-installed facility has less trouble and requires less manpower than an old facility, as a result of which divisions operating on newly installed facilities would appear to have performed better than divisions with old facilities, thereby causing inequality between these two in their performance rating.^[3] Ironically, despite these observations, petitioner's Garnet Exchange, the oldest plant in the GMM East Center, placed in the top 10 Exchanges and ranked number one in the GMM performance assessment for November 1995. Nonetheless, petitioner again sent a memorandum to respondent Santos criticizing the 1995 East Exchanges performance ranking for being based only on the attainment of objectives, without considering other relevant factors that contributed to the attainment of the same.^[4]

In June 1996, respondent PLDT implemented the East Center OPSIM Manpower Rebalancing. Petitioner again wrote respondent Santos requesting reconsideration, claiming that the scheme was not fair to an old exchange like Garnet. Respondent Santos denied petitioner's request and instructed petitioner to submit the rebalancing schedules. Petitioner thus elevated the matter to respondent Ferido, the FVP-GMM Network Services, through a memorandum.^[5]

In January 1997, respondent Santos announced the 1996 performance assessment rating of the Exchanges. Petitioner wrote respondent Santos, complaining that the rating and ranking of the Exchanges were unfair. He reiterated his observation regarding the variance between the old and the new Exchanges. Respondent Santos furnished petitioner with a blank assessment sheet with instruction to

rate his own performance during the period covered. Petitioner gave himself an “outstanding” rating with a total statistical points of 976 based on Garnet’s performance, but respondent Santos reduced it to 958, in turn lowering Garnet’s rank to number 4.^[6]

On January 17, 1997, respondent Santos issued a memorandum reassigning petitioner to a position in the Office of the GMM East Center Head for Special Assignments effective February 1, 1997.^[7] Protesting the said transfer, petitioner asked respondent Ferido for a formal hearing on the charges against him and for the deferment of his re-assignment pending resolution of the charges.^[8] Petitioner also filed with respondent Ferido a complaint against respondent Santos for grave abuse of discretion and manipulation.^[9] As no immediate action was taken by respondent Ferido, petitioner elevated the matter to respondent Enrique Perez, Senior Executive Vice-President and Chief Operating Officer of PLDT.^[10]

In his memorandum to petitioner dated May 5, 1997, respondent Ferido affirmed the action of respondent Santos transferring him to any group in the company that may need his services. Respondent Ferido further indicated that the reassignment is based on respondent Santos’ “well-founded conclusion that [petitioner is] not a team player and cannot accept decisions of management already arrived at, short of insubordination.”^[11] In a memorandum dated May 23, 1997, respondent Perez affirmed the action taken by respondent Ferido and explained to petitioner that his transfer was not in the nature of a disciplinary action that required compliance with the process of “investigation, confrontation, and evaluation” before it can be implemented and that the same was not done in bad faith.^[12]

As a result, petitioner filed a complaint for illegal demotion and damages against respondents. The Labor Arbiter dismissed the complaint on the ground that petitioner’s transfer was an exercise of a management prerogative and there was no showing that the same amounted to a demotion in rank and privileges. The Labor Arbiter said:^[13]

As we have earlier pointed out, in the operation of its business, respondent possessed the prerogative to move around its employees in such manner as the company might deem

beneficial to its business, subject to the limitation that such action be in good faith. In this case, however, we have not found any other motivating factor in respondent's action of transferring complainant, than to eliminate conflict and even hostility at the Garnet Exchange, and consequently, effect a smooth relay and implementation of policies and decisions emanating from higher management.

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We have considered complainant's accusations that by his transfer, he had suffered a demotion in rank and privileges. But there is no evidence on record to substantiate that claim. It appeared that complainant maintained his previous salary and status as Manager. In regard to salary increases, even in his previous position, complainant did not have any demandable right thereto as the same was, as he himself admitted, dependent on the general standards of performance and efficiency. In his present position, complainant, as Manager, is subject to the same measure of merits. Thus, he cannot, therefore, complain of being no longer entitled to salary increases.

In light of the foregoing, we hereby find the transfer of complainant to be valid.

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

SO ORDERED.

Petitioner appealed to the NLRC, which reversed the decision of the Labor Arbiter and ruled:^[14]

First, the alleged ground therefor, that is, Mr. Paguio's opposition to company business decision in his submitted Comment on the performance rating of his division, is not just. The truth of the matter is that he was just presenting in good faith his criticism on the way the performance of his division was rated and ranked. His purpose in doing so was just to help

his team see its deficiencies and point the way to improvement. Thus, he was then building teammanship, not destroying it as opined by his superior respondent-appellant Rodolfo Santos.

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Secondly, his transfer involves a diminution of his salary, benefits and other privileges. On account of his transfer, he was assigned a functionless position. As a consequence, he was deprived of the opportunity to get promoted or to be entitled to wage increase equivalent to sixteen percent (16%) of his salary starting January 1997, as he could not have any performance to speak of in his present designation there being no work assigned to him. It bears to stress that salary increase in the company is periodically granted to employees based on performance and accomplishments.

Thus, the NLRC ordered:^[15]

WHEREFORE, premises considered, the Appeal is PARTIALLY GRANTED. Accordingly, the Decision appealed is hereby modified to the effect that complainant-appellant Alfredo S. Paguio was illegally transferred; and that respondent-appellee PLDT is DIRECTED to reassign him to his former position without loss of seniority rights and other privileges and to pay him the amount of Three Hundred Eighty Four Thousand Pesos (P384,000.00) equivalent to sixteen percent (16%) of his monthly salary representing wage increase starting January, 1997. As to other aspects, the Decision is SUSTAINED.

SO ORDERED.

As the NLRC likewise denied its motion for reconsideration, respondent PLDT filed a special civil action for certiorari in the Court of Appeals, seeking a reversal of the decision of the NLRC. The appeals court upheld the NLRC decision that petitioner's transfer was not justified by the circumstances. It noted that petitioner was well intentioned in criticizing the management of the company and that even as he criticized the management decisions petitioner

nevertheless complied with them. As regards petitioner's transfer, the appeals court said:^[16]

While it is true that private respondent's re-assignment did not involve a diminution of salary, however, petitioners have not disputed that he was actually placed on a "frozen status," as he was assigned to a functionless position, with no office and staff, and without any opportunity to get any promotion or wage increase as he does not have any performance to speak of because there is no work assigned to him. On the other hand, as Senior Manager or Head of Garnet Exchange, private respondent supervised the installation and repairs of telephone lines in Ortigas Complex, Valle Verde, Capitolyo and nearby residential areas.

Petitioners argue that reinstatement of private respondent to his former position is no longer feasible because the same was abolished on August 16, 1998 as a result of the consolidation of the Garnet and Cubao Exchanges to form the Ortigas Exchange. Considering the fact that the transfer of private respondent was illegal, petitioners are obliged to reinstate private respondent to an equivalent position of Senior Manager with the same salary, rank, privileges and other benefits.

Nonetheless, the Court of Appeals found no basis for the award of salary increases to petitioner. It ruled:^[17]

However, we agree with petitioners that private respondent is not entitled to the amount of P348,000.00, equivalent to 16% of his monthly salary representing wage increases starting January 1997. Private respondent himself admits that the salary increase is periodically granted to employees based on performance and accomplishments. The fact that private respondent had previously been granted salary increases by reason of his outstanding performance does not automatically give rise to the presumption that if he was allowed to stay as Head of Garnet Exchange, his performance would continue to be outstanding.

Hence, the Court of Appeals ordered:^[18]

WHEREFORE, the Decision of the National Labor Relations Commission finding that private respondent was illegally transferred is AFFIRMED, with Modification by ordering his reinstatement to his former or equivalent position with the same salary, rank, privileges and other benefits, and deleting the award of P348,000.00 equivalent to 16% of his monthly salary increase starting January 1997.

SO ORDERED.

Petitioner moved for reconsideration, but the Court of Appeals denied his motion. Petitioner now seeks review of the decision of the Court of Appeals, insofar as it deleted the original award of P384,000.00 to him representing his salary increase.

This petition is no longer concerned with the legality of petitioner's transfer from the Garnet Exchange of the PLDT, as head of that unit, to an unspecified assignment as respondent PLDT did not appeal from the decision of the Court of Appeals. What is in issue before us is whether petitioner is entitled to an amount equal to 16% of his monthly salary representing his salary increase during the period of his demotion.

Petitioner bases his right to the award of P384,000.00 equivalent to 16% of his monthly salary increase starting from January 1997 on the fact that, throughout his employment until his illegal transfer in 1997, he had been consistently given by the company annual salary increases on account of his above average or outstanding performance.^[19] He claims that his contemporaries now occupy higher positions as they had been promoted several times during the course of this case. Thus, even if he ranked higher and performed better than they during the past years, petitioner has now been left behind career-wise. Petitioner averred that this would not have taken place had he not been illegally transferred. He argues that justice and equity requires that he be given the monetary award deleted by the Court of Appeals from the decision of the NLRC.

Undeniably, this particular award which petitioner is seeking is not based on any wage order or decree but on an employee's performance during a certain period, as evaluated according to a specified criteria.

Petitioner claims that there is a high probability that he would have been granted the increase had he not been transferred from the Garnet Exchange of respondent PLDT. Petitioner likens his claim to that for backwages in illegal dismissal cases.

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work.^[20] They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.

Petitioner's claim, however, is based simply on expectancy or his assumption that, because in the past he had been consistently rated for his outstanding performance and his salary correspondingly increased, it is probable that he would similarly have been given high ratings and salary increases but for his transfer to another position in the company.

In contrast to a grant of backwages or an award of *lucrum cessans* in the civil law, this contention is based merely on speculation. Furthermore, it assumes that in the other position to which he had been transferred petitioner had not been given any performance evaluation. As held by the Court of Appeals, however, the mere fact that petitioner had been previously granted salary increases by reason of his excellent performance does not necessarily guarantee that he would have performed in the same manner and, therefore, qualify for the said increase later. What is more, his claim is tantamount to saying that he had a vested right to remain as Head of the Garnet Exchange and given salary increases simply because he had performed well in such position, and thus he should not be moved to any other position where management would require his services.

Notwithstanding the foregoing, we hold that petitioner is entitled to damages. Under Article 21 of the Civil Code, any person who willfully

causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. The illegal transfer of petitioner to a functionless office was clearly an abuse by respondent PLDT of its right to control the structure of its organization. The right to transfer or reassign an employee is decidedly an employer's exclusive right and prerogative.^[21] In several cases, however, we have ruled that such managerial prerogative must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner by which such right is to be exercised.^[22] As found by both the NLRC and the Court of Appeals, there is no clear justification for the transfer of petitioner except that it was done as a result of petitioner's disagreement with his superiors with regard to company policies.

Petitioner is entitled to an award of moral and exemplary damages. The Court has held that in determining entitlement to moral damages, it suffices to prove that the claimant has suffered anxiety, sleepless nights, besmirched reputation and social humiliation by reason of the act complained of. Exemplary damages, on the other hand, are granted in addition to moral damages "by way of example or correction for the public good."^[23] Furthermore, as petitioner was compelled to litigate and incur expenses to enforce and protect his rights, he is entitled to an award of attorney's fees.^[24] The amount of damages recoverable is, in turn, determined by the business, social and financial position of the offended parties and the business and financial position of the offender.^[25]

With the finding that the transfer was illegal, petitioner is entitled to be reinstated to his former, or a substantially equivalent, position without loss of seniority rights. Reinstatement contemplates a restoration to a position from which one has been removed or separated so that the employee concerned may resume the functions of the position he already held.^[26] This position would be Senior Manager Level 2, the position he occupied before he was illegally transferred.

Respondent PLDT claims that, as a result of a major organizational change when Manuel Pangilinan became president of the company, the position of petitioner as Staff Executive of GMM Network Sector

was now renamed as Staff Executive of GMM Operations. Petitioner, on the other hand, argues that his former position has been abolished as a result of the consolidation of the Garnet and Cubao Exchanges to form the Ortigas Exchange. He further added that granting him the very same position would not do so much in vindicating him since most of his contemporaries have already surpassed him in ranking, having been promoted to higher positions during the pendency of this case.

Reinstatement, to which petitioner is lawfully entitled, must be given full effect and must restore petitioner to his rightful place in the present organizational structure of respondent company approximating his status before he was illegally transferred. As the position no longer exists, petitioner should be restored to an equivalent position.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with the **MODIFICATION** that respondents are hereby **ORDERED** to pay petitioner P50,000.00 as moral damages, P20,000.00 as exemplary damages and attorney's fees equivalent to 10% of the amount to which petitioner is entitled in this case. Costs against respondents.

SO ORDERED.

Quisumbing, Austria-Martinez and Callejo, Sr., JJ., concur. Bellosillo, J., no part. Close relationship to one of parties.

[1] Per Justice Marina L. Buzon, and concurred in by Justices Cancio C. Garcia and Alicia L. Santos of the Second Division of the Court of Appeals.

[2] Per Justice Marina L. Buzon, and concurred in by Justices Cancio C. Garcia and Bennie A. Adefuin-De la Cruz of the Special Former Second Division of the Court of Appeals.

[3] NLRC Decision, p. 3; Rollo, p. 141.

[4] CA Decision, p. 3; Rollo, p. 46.

[5] Id.

[6] Petition, p. 6; Rollo, p. 15.

[7] Annex B, Rollo, p. 79.

[8] Annex C, id., p. 80.

[9] Annex D, id., p. 81.

- [10] Annex H, id., p. 85.
- [11] Annex P, id., p. 100.
- [12] Annex R, CA Rollo, p. 135.
- [13] Rollo, pp. 109-116.
- [14] Annex F, Rollo, pp. 147-149.
- [15] Id., pp. 149-150.
- [16] Rollo, p. 58.
- [17] Id., pp. 58-59.
- [18] Id., p. 59.
- [19] Petition, p. 27; Rollo, p. 36.
- [20] See *Asia Fancy Plywood Corporation vs. National Labor Relations Commission*, 301 SCRA 189 (1998); *St. Theresa's School of Novaliches Foundation and Adoracion Roxas vs. National Labor Relations Commission and Esther Reyes*, 289 SCRA 110 (1998); *Belaunzaran vs. National Labor Relations Commission*, 265 SCRA 800 (1996); *Chong Guan Trading vs. National Labor Relations Commission*, 172 SCRA 832 (1989); *St. Theresa's School of Novaliches Foundation and Adoracion Roxas vs. National Labor Relations Commission and Esther Reyes*, 289 SCRA 110 (1998).
- [21] *Dela Salle University vs. Dela Salle University Employees Association*, 330 SCRA 363 (2000).
- [22] *Blue Dairy Corporation vs. National Labor Relations Commission*, 314 SCRA 401 (1999). See also *Philippine Industrial Security Agency Corporation vs. Dapiton*, 320 SCRA 124 (1999); *Philippine Telegraph and Telephone Corporation vs. Laplana*, 199 SCRA 485 (1991); *Yuco Chemical Industries, Inc. vs. MOLE, et al.*, 185 SCRA 727 (1990).
- [23] *Philippine Aeolus Automotive United Corporation vs. National Labor Relations Commission*, 331 SCRA 237 (2000).
- [24] *National Bookstore, Inc. vs. Court of Appeals*, G.R. No. 146741, February 27, 2002; *Litonjua Group of Companies vs. Vigan*, 360 SCRA 194 (2001).
- [25] *Nueva Ecija I Electric Cooperative, Inc. vs. National Labor Relations Commission*, 323 SCRA 86 (2000).
- [26] *Philippine National Construction Corporation vs. NLRC and Federico Dagasdas*, 292 SCRA 266 (1998).