SUPREME COURT
THIRD DIVISION

PHILIPPINE INDUSTRIAL SECURITY AGENCY CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 149974
June 15, 2005

PERCIVAL AGUINALDO,
***Respondent*.**
x----------x

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] of the Court of Appeals dated May 31, 2001 and its Resolution dated September 11, 2001 in CA-G.R. No. 62704, "PERCIVAL AGUINALDO, Petitioner, versus NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE INDUSTRIAL SECURITY AGENCY

CORP., and FAR EAST BANK AND TRUST COMPANY, Respondents."

On April 11, 1988, Philippine Industrial Security Agency Corporation (PISAC), petitioner, hired Percival Aguinaldo, respondent, as a security guard. He was assigned to secure the premises of Far East Bank & Trust Company (FEBTC) Branch in Santiago City. In 1993, he was promoted as Branch Head Guard.[2]

On November 13, 1998, Ms. Remy Tumamao, petitioner's roving personnel, caught respondent without headgear and smoking while on duty. Respondent explained his side in a Memorandum[3] dated November 14, 1998, thus:

> "This is in response with the inspection done last Friday November 13, 1998 at 10:30AM by Ms. Remy Tumamao of the Chief security office.
>
> I was not able to use my perching cap at that time because my hair is still wet. I was in complete attire before the incident but when I received an emergency call from our armor crew who, on that time has a cash transfer to Central Bank Tuguegarao Cagayan, I was informed that our armor car had a mechanical trouble. So even if it was raining, I called our Mechanic immediately residing beside our branch.
>
> Thank you for your kind consideration on this matter.
>
> SG. PERCIVAL AGUINALDO
> HEAD GUARD"

On November 23, 1998, petitioner security agency issued a memorandum to respondent directing him to report to the FEBTC main office in Malabon City for investigation.[4] The following day, or on November 24, petitioner issued a Relief Order[5] ordering him to report to its head office for further clarification of his status, thus:

> "(Y)ou are hereby relieved from your post at FEBTC Br., Santiago City effective 24 November 1998.

Report to PISACORP head Office for further clarification of your status.

By order: x x x"

Also on November 24, Antonio B. Banastas, Jr., Branch Head of FEBTC, Santiago City, wrote a Memorandum[6] to petitioner requesting the retention of respondent in the same office, thus:

"MEMORANDUM:

FOR: COL. MARCIAL CONACO, JR.
ASSISTANT VICE PRESIDENT
SECURITY OFFICE

S U B J E C T: WAIVER OF RELIEVE ORDER TO SECURITY GUARD PERCIVAL AGUINALDO

x----------x

This is relative to the spot inspection report of Ms. Remy Tumamao on November 13, 1998.

On the morning of November 13, 1998 our armoured car was on its way to deliver cash to Central Bank in Tuguegarao. At around 10:00 A.M., our armoured car personnel called up Mr. Aguinaldo and informed him that they incurred a mechanical trouble. Upon receiving the message, Mr. Aguinaldo went out to fetch or call a mechanic. Since it was raining on that morning, he did not wear his perching cap because his hair was still wet. It was during that moment when Ms. Tumamao saw him in the branch.

In view of the degree of offense committed by our Security Guard, he should be given a written reprimand and not relieved from his post since this was his first offense.

> Mr. Aguinaldo has been with the branch for ten years, he is a person of good moral character and has performed his job above our expectations.
>
> In view of this, I would like to seek your approval for the retention of Mr. Aguinaldo.
>
> Thank you.
>
> *(Sgd.)*
> ANTONIO B. BANASTAS, JR.
> *BRANCH HEAD*"

However, petitioner, in its letter[7] dated December 2, 1998, denied the above request, thus:

> "Please be advised that your request of retention at your former post (FEBTC Santiago) was denied. In view hereof, please report to Supervisor Lary Lopez for reassignment while you are reserved to the new bank branch that will soon to operate at Santiago.
>
> Please be guided accordingly.
>
> PEPITO C. NOVERAS
> *Operations Officer*"

Forthwith, petitioner assigned respondent temporarily to FEBTC Malabon City Branch pending the opening of another Branch in Santiago City where according to said petitioner, he will be re-assigned.

This prompted respondent to file with the Office of the Labor Arbiter, Tuguegarao, Cagayan a complaint for illegal dismissal and non-payment of separation pay with damages against petitioner.

On November 3, 1999, Executive Labor Arbiter Ricardo N. Olairez rendered a Decision[8] dismissing respondent's complaint for lack of merit.

On appeal, the National Labor Relations Commission (NLRC) rendered its Decision[9] dated March 29, 2000 reversing the appealed Decision, thus:

> "Did the Executive Labor Arbiter err in not ruling that the complainant was illegally dismissed from employment?
>
> Based on the memorandum dated December 2, 1998, respondent PISAC did not put the complainant on a floating status. Rather, it gave him a 'new assignment' as a reserved (security guard) for the new bank branch that was supposedly going to operate soon in Santiago. Clearly, what was given to him was a mockery of an assignment. There was no date given for his assumption of his 'new' post. There was no assurance that it would ever be realized. In fact, there is not even a single reference to the above-mentioned 'new agreement' in any of the pleadings of respondent PISAC. Respondent PISAC simply ignored every reference to the memorandum dated December 2, 1998 that the complainant made in his own pleadings.
>
> Respondent PISAC's act of giving the complainant an assignment in the future amounts to an indefinite suspension. It is settled that an indefinite suspension is tantamount to a constructive dismissal (Oriental Mindoro Electric Cooperative, Inc. vs. NLRC (246 SCRA 294). Under these circumstances, the complainant would ordinarily be entitled to reinstatement with full backwages (Article 279, Labor Code). However, since he prayed for separation pay in the complaint, he should be awarded separation pay in lieu of reinstatement and of course, full backwages.
>
> WHEREFORE, the decision is hereby reversed. Respondent Philippine Industrial Security Agency Corp. is hereby ordered to pay the complainant his full backwages from November 24, 1998 to the date of the finality of this decision and separation pay amounting to P59,400.00 (P5,400 x 11 years = P59,400.00).
>
> SO ORDERED."

On May 19, 2000, petitioner filed a motion for reconsideration. Surprisingly, it was granted by the NLRC in its Decision[10] dated August 29, 2000 thus:

> "WHEREFORE, the instant Motion for Reconsideration is GRANTED. Our Decision of 29 March 2000 is hereby RECONSIDERED and SET ASIDE. The 3 November 1999 Decision of Executive Labor Arbiter Ricardo N. Olairez dismissing the case is hereby REINSTATED.
>
> SO ORDERED."

Respondent then filed a motion for reconsideration but was denied by the NLRC in its Resolution[11] dated December 7, 2000.

Hence, respondent filed with the Court of Appeals a petition for certiorari[12] under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

On May 31, 2001, the Appellate Court rendered its Decision[13] granting the petition and setting aside the Decision of the NLRC. In finding for respondent, the Appellate Court held:

> "The petition is impressed with merit.
>
> Petitioner claims that his reassignment to another post that was not yet open amounted to constructive dismissal. We agree.
>
> A constructive dismissal is a quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay (Philippine Japan Active Carbon Corp. vs. NLRC, G.R. No. 83239, March 8, 1989). As further explained in Jarcia vs. NLRC (266 SCRA 97 [1997]):
>
> > 'In case of constructive dismissal, the employer has the burden of proving that the transfer and demotion 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; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal.'

In the case at bar, petitioner was validly relieved from his post for violating a company policy. The petitioner did not contest this violation as he in fact admitted to committing it during the investigation, though with a valid and plausible explanation. What tarnishes the whole scene is the fact that after petitioner was relieved from his old post in Santiago City, Isabela, he was temporarily reassigned to the head office of private respondent PISA in Malabon, Metro Manila pending the opening of another bank in Isabela (Rollo, p. 60). This act is unfair and downright oppressive considering that petitioner, along with his family, is a long-time resident of Santiago City, Isabela. The transfer would mean that petitioner would be away from his family or that he would bring his entire family to Manila entailing expenses. Further, it remains unclear if petitioner would be reassigned back to Isabela, as the said plan remains ambiguous for it is not clearly shown when the said reassignment would take place. In the Notice given to petitioner, it is stated that his reassignment to Manila is good for 179 days and maybe renewed after its expiration. We cannot give evidentiary weight to private respondent PISA's claim that petitioner will be reassigned back to another branch in Isabela as no evidence to that effect was offered.

While it is true that an 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, layoff of workers and the discipline, dismissal and recall of workers (San Miguel Brewery Sales vs. Ople, G.R. No. 53515, February 8, 1989), and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and

other privileges, as to constitute constructive dismissal (PT&T vs. Laplana, G.R. No. 76645, July 23, 1991).

Hence, petitioner cannot be faulted for filing an illegal dismissal case. While the case does not directly fall under the traditional concept of 'illegal dismissal' case, We hold that it partakes of the nature of constructive dismissal. In Philippine Advertising Counselors, Inc. vs. NLRC, 263 SCRA 395 (1996) and Masagana Concrete Products vs. NLRC, 313 SCRA 576 (1999), the Supreme Court keenly made this observation, to wit:

> 'Constructive dismissal, however, does not always involve such kinds of diminution, an act of clear discrimination, insensibility, or disdain by an employer may become so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.'

As explained earlier, this Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play.

However, private respondent Far East Bank cannot be held liable for petitioner's backwages as it is not the employer of the petitioner.

> WHEREFORE, the petition is GRANTED. The NLRC Decision dated August 29, 2000 is hereby SET ASIDE. Private respondent PISA is hereby ordered to REINSTATE petitioner to his former position without loss of seniority rights and privileges and to PAY his backwages computed from the time the same were withheld from him."[14] (Emphasis supplied)

Petitioner filed a motion for reconsideration but was denied in a Resolution dated September 11, 2001.[15]

Hence, the present recourse, petitioner ascribing to the Court of Appeals the following assignments of error:

1. The questioned Decision and Resolution of the Court of Appeals "are manifestly not in accord with law and established jurisprudence;" and

2. The petition is "dismissible outright for having been filed in violation of the Rule against forum-shopping."[16]

Petitioner primarily contends that respondent's re-assignment to Malabon City is only temporary, otherwise, he would have been placed in a "floating status." Moreover, such re-assignment is a valid exercise of management prerogative done in good faith and with valid reason.

Respondent counters that the Court of Appeals correctly ruled that his re-assignment is "unfair and downright oppressive" and constitutes constructive dismissal. The "floating status" anticipated by petitioner is just imaginary and without any basis, as the move to transfer him to a new or other post is completely unnecessary. Besides, Mr. Banastas, strongly recommended his retention in FEBTC-Santiago City considering that he has been with the Santiago City Branch for ten years and has performed his job efficiently.[17] His transfer to Malabon City is tantamount to constructive dismissal.

On the issue of forum-shopping, respondent contends that he filed only one petition for certiorari and that is with the Court of Appeals, docketed therein as CA-G.R. SP No. 62704.

For his part, the Solicitor General submits that the Court of Appeals did not err in giving due course to respondent's petition. First, the issue raised by petitioner is factual which necessarily calls for an examination of the evidence and is, therefore, not reviewable in a petition for certiorari. Second, there is no evidence on record showing that respondent indeed filed another petition for review.

The petition must fail.

Settled is the rule that findings of facts of the Court of Appeals are accorded respect, even finality, and will not be disturbed especially where such findings are supported by substantial evidence.[18] One of

the exceptions, however, is when there is a variance between the findings of the NLRC and the Court of Appeals, as in this case.

Jurisprudence recognizes the exercise of management prerogative. For this reason, courts often decline to interfere in legitimate business decisions of employers.[19] In fact, labor laws discourage interference in employers' judgment concerning the conduct of their business.[20]

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[21]

By transferring respondent to the Malabon City FEBTC Branch, petitioner resorted to constructive dismissal. A transfer amounts to constructive dismissal when the transfer is unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee,[22] as in this case. It is defined as an involuntary resignation resorted when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[23]

In constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for just and valid grounds, such as genuine business necessity.[24] The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of salary and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.[25]

In the case at bar, petitioner failed to overcome this burden of proof. Foremost, respondent explained that he was in complete attire that morning. However, the bank personnel informed him that the FEBTC armor car, on its way to deliver cash to the Central Bank Office in Tuguegarao, incurred mechanical trouble. So he immediately went outside to fetch a mechanic. It was then raining, hence, he got wet – the reason why he was not wearing his perching

cap. Under the circumstances, his failure to wear his perching cap is justified. Thus, he should not be held liable for any violation of office regulations which warrants his transfer to another work place.

Second, the letter of Mr. Banastas recommending the retention of respondent in the FEBTC Santiago City Branch negates petitioner's reasons in re-assigning the latter to the FEBTC Malabon City Branch. Service-oriented enterprises, such as petitioner's business of providing security services, generally adhere to the business adage that "the customer or client is always right."[26] Here, petitioner disregarded such aphorism.

Petitioner's act manifests insensibility to the welfare of respondent and his family. Obviously, his transfer to Malabon City will be prejudicial to them economically and emotionally. Indeed, , petitioner's action is in defiance of basic due process and fair play in employment relations.[27]

Third, petitioner's excuse in re-assigning respondent to Malabon City, pending the opening of another FEBTC Branch in Santiago City is unreasonable. The Appellate Court is correct in holding that there is no assurance that a new FEBTC Branch will be opened in Santiago City.

In Blue Dairy Corporation vs. NLRC,[28] we ruled that:

> "X x x the managerial prerogative to transfer personnel must not be exercised with 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 in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. X x x"

WHEREFORE, the petition is hereby **DENIED**. The assailed Decision of the Court of Appeals is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Panganiban, *J., (Chairman)*, Corona, Carpio-Morales, and Garcia, *JJ.*, concur.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Rebecca De Guia-Salvador.
[2] Rollo at 76.
[3] Exhibit "B", Rollo at 70.
[4] Annex "2", id. at 56..
[5] Exhibit "D", id. at 71.
[6] Exhibit "E", id. at 72.
[7] Exhibit "F", id. at 73.
[8] Rollo at 76-81.
[9] Id. at 90-95.
[10] Id. at 105-109.
[11] Id. at 111.
[12] Dated January 17, 2001.
[13] Rollo at 40-45.
[14] Id. at 43-45.
[15] Id. at 48.
[16] Id. at 24.
[17] Exhibit "E," Rollo at 72.
[18] Belaunzaran vs. NLRC, G.R. No. 120038, December 23, 1996, 265 SCRA 800.
[19] Mendoza vs. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004, citing Metrolab Industries, Inc. vs. Roldan-Confesor, 324 Phil. 416 (1996).
[20] Id., citing Bontia vs. NLRC, 325 Phil. 443 (1996).
[21] Id., citing Lanzaderas vs. Amethyst Security and General Services, Inc., 404 SCRA 505 (2003); Jarcia Machine Shop and Auto Supply, Inc. vs. NLRC, 334 Phil. 84 (1997).
[22] OSS Security & Allied Services, Inc., Juan Miguel M. Vasquez and Ma. Victoria M. Vasquez vs. National Labor Relations Commission and Eden Legaspi, G.R. No. 112752, February 9, 2000, citing Garcia vs. NLRC, G.R. No. 116568, September 3, 1999; Ledesma vs. NLRC, 246 SCRA 47, 51 (1995). Philippine Industrial Security Agency Corporation, vs. Virgilio Dapiton and the National Labor Relations Commission, G.R. No. 127421, December 8, 1999, citing Ala Mode Garments, Inc. vs. NLRC, 268 SCRA 497 (1997).
[23] Mendoza vs. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004, citing Blue dairy Corporation vs. NLRC, 373 Phil. 179 (1999); Escobin vs. NLRC, 351 Phil. 973 (1998); Philippine Japan Active Carbon Corporation vs. NLRC, March 8, 1989, 171 SCRA 164.
[24] Globe Telecom, Inc. vs. Florendo-Flores, G.R. No. 150092, September 27, 2002, 390 SCRA 213, citing Jarcia Machine Shop and Auto Supply, Inc. vs. NLRC, 334 Phil. 93.

[25] Mendoza vs. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004; Globe Telecom, Inc. vs. Florendo-Flores, G.R. No. 150092, September 27, 2002, 390 SCRA 213.
[26] OSS Security & Allied Services, Inc., Juan Miguel M. Vasquez and Ma. Victoria M. Vasquez, vs. National Labor Relations Commission and Eden Legaspi, supra, citing Castillo vs. NLRC, G.R. No. 104319, June 17, 1999; Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, 514 (1994); National Federation of Labor Unions vs. NLRC, 202 SCRA 346, 355 (1991).
[27] Zafra vs. Court of Appeals, G.R. No. 139013, September 17, 2002.
[28] 373 Phil. 179 (1999).