

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**POCKETBELL PHILIPPINES, INC.,
*Petitioner,***

-versus-

**G.R. No. 106843
January 20, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION and ARTHUR R.
ALINAS,
*Respondents.***

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D E C I S I O N

MENDOZA, J.:

This is a Petition for *Certiorari* and *Mandamus* to set aside the decision of the National Labor Relations Commission in NLRC NCR Case No. 00-03-01106-88 finding petitioner Pocketbell Philippines, Inc. guilty of illegal dismissal of the private respondent Arthur R. Alinas and ordering his reinstatement without loss of seniority rights and the payment to him of backwages for three years.

The facts are as follows:

Pocketbell Phils., Inc. is a corporation wholly owned by Filipinos and organized under Philippine laws. In July 1987, it was placed under

receivership by the securities and Exchange Commission, in view of an intra-corporate dispute between the Braga Family, which controlled the corporation, and the Telectronics system, Inc. As a result, corporate control was vested in a receivership committee. One of the committee members, Jose Abejo, was appointed General manager of the corporation.

It appears that during the dispute, private respondent Arthur R. Alinas, who was an Accounting Supervisor, continued to report to the then Executive Vice president of the corporation, Virgilio Braga, who held office in his house.

Eventually, control over the corporation was given to Telectronics system, Inc. The company staff was reorganized. among those affected was private respondent Alinas, who was replaced as Accounting Supervisor by Cecilia Agres in August 1987.

On September 2, Alinas was appointed Staff assistant to the Finance Manager without change in salary. He was not however, allowed to hold the job. On February 22, 1988, he was informed that he would be transferred to Pocketbell Davao City branch as Provincial marketing and Sales Supervisor. As Alinas refused the assignment he was asked to show cause why no disciplinary action should be taken against him.

On March 10, 1988, Alinas wrote the new EVP, Jose Abejo, giving the following reasons for refusing the transfer:

1. You are fully aware of my background which is that of an accountant. The new appointment for me is that of Provincial Marketing Sales Supervisor based in Davao City. With the welfare and benefit of the company in mind, I cannot give justice to the position because I have no experience in marketing work.
2. The new assignment will also cause inconvenience to my two sisters whom I am supporting especially since one of them will be reviewing for the coming CPA exams.
3. The assignment is at Davao City. This would mean that I would not be able to continue my studies here in manila.^[1]

On March 11, 1988, Abejo wrote Alinas informing him that his explanation was unsatisfactory in his letter, Abejo stated:

1. That it is the management's duty to gauge the capacity and qualifications of its supervisors and employees, and it is its conclusion that among the available supervisors you are the most qualified to reverse the losing streak of Pocketbell, Davao, which has never yet experienced a single profitable month since its opening 2 years ago.
2. That your assignment in Davao will in no way be a hindrance to the education of your sisters.
3. That the undersigned has explained to you that your assignment is temporary as we know that improvement and reversal of the performance of Davao can be expected before the start of the school year. By then you may even want to take up law in Ateneo de Davao.^[2]

Abejo gave Alinas until March 15, 1988 to assume his new assignment, otherwise his services would be terminated effective March 16, 1988.

On March 15, 1988, Alinas filed a complaint for unfair labor practice against the company and Jose Abejo, in the latter's official and personal capacity. The case was assigned to labor Arbiter Cornelio Linsangan, who, in a decision dated May 30, 1989, found the dismissal valid and accordingly dismissed the private respondent's complaint.^[3]

On appeal the NLRC reversed. The dispositive portion of its Decision,^[4] dated November 26, 1991, reads:

WHEREFORE, premises considered, the appealed decision is set aside, and a new judgment is entered; ordering the respondents to reinstate the complainant without loss of seniority rights and with full backwages but not to exceed three (3) years without qualification and deduction. In the event reinstatement is not feasible, then respondents are ordered to pay

complainant his separation pay equivalent to one (1) month salary for every year of service, plus backwages from the time of dismissal up to the promulgation of this decision, but limited to three years without qualification and deduction.

Respondents are likewise ordered to pay complainant the sum equivalent to ten (10) percent of the total monetary award as attorney's fees.^[5]

Pocketbell filed a motion for reconsideration, but the NLRC denied its motion for lack merit. Hence this petition.

First. Pocketbell Philippines, Inc. charges that, in grave abuse of its discretion, the NLRC reversed the findings of facts of the Labor Arbiter, even though such findings were not put in issue on appeal by private respondent.

We find this contention to be without merit. The NLRC considered the same facts found by the Labor Arbiter. Where the NLRC differed was as to the conclusion to be drawn from those facts. Otherwise, it acted within its appellate power and considered no issue which was not raised on the appeal, namely, the validity of private respondent's dismissal on March 16, 1988.

Thus the labor Arbiter found the facts to be as follows:

Respondent, Pocketbell Phils., Inc. is a corporation engaged in the paging business. On March 1982, it employed complainant herein as Accounts Receivable Clerk. Three years thereafter, the latter was promoted to the position of Accounting Supervisor.

Sometime in July 1987, respondent Pocketbell Phils., Inc. was placed under receivership by the Securities and Exchange Commission, SEC for brevity. Herein individual respondent Jose Abejo was appointed as its General Manager.

It appears that the said action of SEC was triggered by the intra-corporate dispute between the Braga Family on one hand, and the Telectronic System, Inc. on the other hand.

Evidence show that when the latter gained control of the interest of respondent company, a reorganization and reshuffle of key personnel were undertaken by the new management and among those who were affected was complainant Alinas.

On 2 September 1987 complainant was issued a new assignment as Staff assistant to the Finance Manager with no change in remuneration. On 22 Feb. 1988, a memorandum was issued by the Executive Vice president of Pocketbell, herein individual respondent Jose Abejo, advising complainant of his new appointment as Provincial Marketing and Sales Supervisor based in the company's Davao Branch Office.

It appears that complainant refused to receive the said memorandum, thus another memorandum was issued to him on 8 March 1988 directing him to explain in writing why he should not be subjected to disciplinary action.

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On 10 march 1988 complainant submitted to management his letter of explanation which states:

In connection with your memorandum dated March 7, 1988, directing me to explain why I should not be subjected to disciplinary action for insubordination, please consider the following:

- (1) You are fully aware of my background, which is that of an accountant. The new appointment for me is that of Provincial Marketing and Sales Supervisor based in Davao City. With the welfare and benefit of the company in mind, I cannot give justice to the position because I have no experience in marketing work.
- (2) The new assignment will also cause inconvenience to my 2 sisters whom I am supporting especially since one of them will be reviewing for the coming CPA exams.

(3) The assignments is at Davao City. This would mean that I would not be able to continue my studies here in Manila.

I hope that with the above explanation, you will understand that my inability to accept your new offer of assignment cannot be considered as an act of insubordination or disrespect to a superior.

In a letter of 11 March 1988, management advised complainant that his aforementioned answer was unsatisfactory. Hence, he was directed to assume his new assignment not later than 15 March 1988, failing which his services shall be considered terminated.

Complainant maintains that his dismissal on 16 March 1988 was illegal as the same was without just cause. He asserts that right after Telectronics Systems, Inc. took control of the management of respondent company from the Braga Family a plan to ease him out was already conceived by individual respondent Jose Abejo. To buttress his contention, complainant cited the following circumstances:

Sometime in August, 1987, about a month after respondent company was placed under a receivership, individual respondent Abejo told him that Ms. Cecilia Agres will be appointed as Acting Accounting Supervisor (complaint's position) and he will be given the new position of Budget Officer. The information was given to him in the presence of the new Finance Officer, the Administrative Manager and Ms. Cecilia Agres herself.

The promised position was never given to him and since then he was on floating status although he continued to report for work and received his salary without doing anything.

On 2 September 1987 he was issued a new appointment as Staff Assistant to the Finance Manager with no change in remuneration but he nonetheless continued to be floating as he was not given any specific assignment.

On 22 January 1988 he was called and told by respondent Abejo in his office that management does not feel comfortable with him.

On 25 January 1988 respondent Abejo offered him separation pay equivalent to 75% of his basic salary but which offer he turned down.^[6]

Based on these facts the labor Arbiter held that Alina's refusal to go to Davao was unjustified not only because there was a need for his services there but also because the transfer was "a chance" for him to "redeem the lost confidence of his employer." The reference to the company's "lost confidence" in Alinas is the Labor Arbiter's finding that by continuing to report to Virgilio T. Braga during the intra-corporate dispute, Alinas committed an act of disloyalty to the company. The labor Arbiter found:

On cross examination, complainant admitted that even after the company was placed under receivership and Virgilio Braga was ousted he continued to report to the latter who brought out the operation of the company to his residence. (TSN 26 Aug. 1988, pp. 49-53)

In the light of the foregoing, respondents cannot be faulted for it was the complainant himself who provided them the reasons to doubt his loyalty, especially considering the fact that the position he was then occupying was a very sensitive one. Moreover, it was reported and perceived at that time the Braga Family was organizing its own paging company.^[7]

On the other hand, the NLRC, based on the same facts found by the Labor Arbiter, drew a different conclusion: Alinas was not guilty of disloyalty. He and other employees merely followed the instructions of Virgilio Braga to report to him in his house, pending resolution of the controversy in the company, but they immediately reported to the receivership committee after they were directed to do so. His transfer to the Davao City branch was a mere subterfuge resorted to by the company to mask its real intention to remove him because of what it perceived was his personal loyalty to the Braga. The NLRC held:

It appears un rebutted that since that takeover by the receivership committee, the new management was bent on removing the complainant as shown by narration of the circumstances that led to his termination. He was first promised the job as budget officer, after his position of accounting supervisor was given to Ms. Agres. The position of budget officer was not extended to him for unknown reason(s). Instead, he was made a credit clerk with no definite duties and appointment. Later, he was made staff assistant to the Finance Manager but he was not made to perform the duties of such position. He was offered separation pay by the general manager, and when complainant refused he was given a provincial assignment in Davao City which management knew was not acceptable to him. And the reason for all these was that management was not feeling comfortable with complainant's presence in the company due to his perceived loyalty to the Braga family as shown by his continued reporting to its house of the executive vice president, Virgilio Braga, during the early days when the receivership committee took over the management of the company, added to this is the reported plan of the Braga family to organize or set up their own paging business.

But it was made clear by Virgilio Braga, in his affidavit, that complainant and the other employees were instructed by him to report at his house to form a temporary office pending clarification and resolution of a legal controversy. But upon receipt of the directive of the receivership committee, complainant and all other employees, immediately complied therewith. (Record, page 58). It could not then be said that complainant Alinas preferred to take orders from the ousted executive vice president and that he deliberately refused to submit to the authority of the receivership committee. Mr. Braga has assumed full responsibility for the employees reporting to his office.^[8]

There is, therefore, no basis for Pocketbell's contention that the NLRC considered facts which were not put in issue by private respondent in appealing from the decision of the Labor Arbiter. Indeed, by contending that "the decision of the Labor Arbiter had no sufficient

basis,” private respondent put in issue the correctness of the Labor Arbiter’s conclusion that private respondent was guilty of insubordination. Nor does the substantial evidence rule require a court to shut out from its view evidence in the record which fairly detracts from the decisions of a lower body.^[9] This is true of our review of the decisions of the NLRC. It is certainly even more true of the review by the NLRC of the decisions of the Labor Arbiter.

Second. Petitioner admits that after removing petitioner from the position of Accounting Supervisor, it offered him various other positions, but did not allow him to occupy those positions. Petitioner justifies its refusal on the ground that “[it] doubts the loyalty of the private respondent [because] the position of the private respondent is one of trust and confidence.”^[10]

To be sure the question of loyalty was never brought up in the discussion between petitioner and private respondent. By offering petitioner various positions in the company, i.e., Budget Officer, Staff Assistant to the Finance Manager, and then Marketing and Sales Supervisor, the petitioner affirmed its trust and confidence in him. In its memorandum of March 11, 1988 transferring private respondent to Davao City, petitioner in fact stated that the choice of private respondent was based on its judgment that private respondent was “the most qualified to reverse the losing streak of Pocketbell, Davao.”

It thus appears that the various positions promised (Budget Officer and Staff Assistant to the Finance Manager) to private respondent were never really intended to be given to him. The promises were made only to cover up the new management’s real intention to remove him from his position as Accounting Supervisor. This was because the new management “doubted” his loyalty but could not otherwise prove its doubts or suspicion. The NLRC was right in finding that the circumstances leading to the termination of his employment clearly showed that “the management was really bent on removing [him].” In fact private respondent was told that the new management was “uncomfortable” with him and for this reason it offered to give him separation pay. As he refused separation pay, he was given the Davao City assignment, which the management knew he would not accept.

We agree that normally it is the prerogative of the employer to transfer and reassign employees according to the requirements of its business. We said so in *Philippine Telegraph and Telephone Co. vs. Laplana*,^[1] invoked by petitioner, which summarized the course of decisions from *Interwood Employees Ass'n. vs. International Hardwood & Veneer Co. of the Phil.*^[2] to *Yaco Chemical Industries, Inc. vs. MOLE*^[3] upholding the employer's right to transfer its personnel for valid reasons. But we also said in *Laplana* case:

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 of self-organization. But the transfer can be upheld when there is no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.^[4]

In the case at bar, the invocation of the right to transfer employees was a mere pretext or subterfuge resorted to by petitioner to rid itself of an employee with whom it felt "uncomfortable."

WHEREFORE, the petition for certiorari is **DISMISSED** for lack of merit.

SO ORDERED.

Narvasa, C.J., Regalado and Puno, JJ., concur.

[1] Rollo, p. 47.

[2] Rollo, p. 48.

[3] Rollo, pp. 80-87.

[4] Per Commissioner Romeo B. Putong and concurred in by Commissioners Bartolome S. Carale (Chairman) and Vicente S.P. Veloso.

- [5] Rollo, p. 26.
- [6] Rollo, pp. 80-84.
- [7] Rollo, pp. 80-85.
- [8] NLRC pp. 5-6, Rollo, p. 19, 23 and 25.
- [9] Universal Camera Corp. vs. NLRC, 340 U.S. 474, 95 L.Ed. 456 (1956). Cf . Gonzales vs. Victory Labor Union (VILLU), 30 SCRA (1969).
- [10] Petition, p. 9, Rollo, p. 11.
- [11] 199 SCRA 485 (1991).
- [12] 99 Phil. 82 (1956).
- [13] 185 SCRA 727 (1990).
- [14] Supra note 11 at 493, quoting Yuco Chemical Industries, Inc. vs. MOLE, 185 SCRA 727 (1990).