

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**ALLIED BANKING CORPORATION,  
*Petitioner,***

***-versus-***

**G.R. No. 144412  
November 18, 2003**

**COURT OF APPEALS and  
POTENCIANO L. GALANIDA,  
*Respondents.***

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**DECISION**

**CARPIO, J.:**

**The Case**

Before the Court is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of 27 April 2000 and the Resolution of 8 August 2000 of the Court of Appeals in CA-G.R. SP No. 51451. The Court of Appeals upheld the Decision<sup>[3]</sup> of 18 September 1998 and the Resolution of 24 December 1998 of the National Labor Relations Commission (“NLRC”) in NLRC Case No. V-000180-98. The NLRC modified the Decision dated 23 December 1997 of Labor Arbiter Dominador A. Almirante (“Labor Arbiter”) in NLRC Case No. RAB VII-05-0545-94 holding that Allied Banking Corporation (“Allied Bank”) illegally dismissed Potenciano L. Galanida (“Galanida”). The NLRC awarded Galanida separation pay,

backwages, moral and exemplary damages, and other amounts totaling ₱1,264,933.33.

### **Antecedent Facts**

For a background of this case, we quote in part from the Decision of the Court of Appeals:

Private respondent Potenciano Galanida was hired by petitioner Allied Banking Corporation on 11 January 1978 and rose from accountant-book keeper to assistant manager in 1991. His appointment was covered by a “Notice of Personnel Action” which provides as one of the conditions of employment the provision on petitioner’s right to transfer employees:

“REGULAR APPOINTMENT: It is understood that the bank reserves the right to transfer or assign you to other departments or branches of the bank as the need arises and in the interest of maintaining smooth and uninterrupted service to the public.”

Private respondent was promoted several times and was transferred to several branches as follows:

- “a) January, 1978 to March, 1982 – Tagbilaran City Branch
- “b) April, 1982 to May, 1984 – Lapulapu City Branch
- “c) June, 1984 – Mandaue City Branch
- “d) July, 1984 to April, 1986 – Tagbilaran City Branch
- “e) May, 1986 to May, 1987 – Dumaguete City Branch
- “f) June, 1987 to August, 1987 – Carbon Branch, Cebu City
- “g) September, 1987 to Sept. 1989 – Lapulapu City Branch, Cebu
- “h) October, 1989 to Sept. 1992 – Carbon Branch, Cebu City
- “i) October 1992 to Sept. 1994 – Jakosalem Regional Branch, Cebu City” (*Rollo, p. 47*)

Effecting a rotation/movement of officers assigned in the Cebu homebase, petitioner listed respondent as second in the order of priority of assistant managers to be assigned outside of Cebu City having been stationed in Cebu for seven years already. Private

respondent manifested his refusal to be transferred to Bacolod City in a letter dated 19 April 1994 citing as reason parental obligations, expenses, and the anguish that would result if he is away from his family. He then filed a complaint before the Labor Arbiter for constructive dismissal.

Subsequently, petitioner bank informed private respondent (Rollo, p. 86) that he was to report to the Tagbilaran City Branch effective 23 May 1994. Private respondent refused. In a letter dated 13 June 1994, petitioner warned and required of private respondent as follows:

“There is no discrimination in your transfer. In fact, among the officers mentioned, only you have refused the new assignment citing difficulty of working away from your family as if the other officers concerned do not suffer the same predicament. To exempt you from the officer transfer would result in favoritism in your favor and discrimination as against the other officers concerned.

“In furtherance of maintaining a smooth and uninterrupted service to the public, and in accordance with the Bank’s order of priority of rotating its accountants’ places of assignments, you are well aware that Roberto Isla, AM/Accountant, assigned in Cebu for more than ten (10) years, was, on February 14, 1994, reassigned to Iligan City Branch and then to Cagayan de Oro City Branch on June 8, 1994. Hence, your objection on the ground of your length of service is without merit.

X X X

“As discussed, your refusal to follow instruction concerning your transfer and reassignment to Bacolod City and to Tagbilaran City is penalized under Article XII of the Bank’s Employee Discipline Policy and Procedure which provides:

‘XII Transfer and Reassignment

Refusal to follow instruction concerning transfers and reassignments.

### ***First and subsequent offenses –***

The penalty may range from suspension to dismissal as determined by management. The employee shall be required to comply with the order of transfer and reassignment, if the penalty is not termination of employment.’

“In view of the foregoing, please explain in writing within three (3) days from receipt hereof why no disciplinary action should be meted against you for your having refused to follow instructions concerning the foregoing transfer and reassignment.”<sup>[4]</sup>

On 16 June 1994, Galanida replied that “whether the bank’s penalty for my refusal be Suspension or Dismissal xxx it will all the more establish and fortify my complaint now pending at NLRC, RAB 7.”<sup>[5]</sup> In the same letter, he charged Allied Bank with discrimination and favoritism in ordering his transfer, thus:

What I cannot decipher now under the headship of Mr. Olveda is management’s discriminatory act of transferring only the long staying accountants of Cebu in the guise of its exercise of management prerogative when in truth and in fact, the ulterior motive is to accommodate some new officers who happen to enjoy favorable connection with management. How can the bank ever justify the transfer of Melinda T. Co, a new officer who had experienced being assigned outside of Cebu for more than a year only to Tabunok Branch? If the purpose is for check and balance, is management implying that Melinda Co can better carry out such function over Mr. Larry Sabelino, who is a seasoned and experienced accountant or any of the Metro Cebu accountants for that matter? Isn’t this act of management an obvious display of favoritism?<sup>[6]</sup>

On 5 October 1994, Galanida received an inter-office communication<sup>[7]</sup> (“Memo”) dated 8 September 1994 from Allied Bank’s Vice-President for Personnel, Mr. Leonso C. Pe. The Memo informed Galanida that Allied Bank had terminated his services

effective 1 September 1994. The reasons given for the dismissal were: (1) Galanida's continued refusal to be transferred from the Jakosalem, Cebu City branch; and (2) his refusal to report for work despite the denial of his application for additional vacation leave. The salient portion of the Memo reads:

Therefore, your refusal to follow instruction concerning your transfer and reassignment to Bacolod City and to Tagbilaran City is without any justifiable reason and constituted violations of Article XII of the Bank's EDPP.

In view of the foregoing, please be informed that the Bank has terminated your services effective September 1, 1994 and considered whatever benefit, if any, that you are entitled as forfeited in accordance with 04, V Administrative Penalties, page 6 of the Bank's EDPP which provides as follows:

“04. Dismissal.

Dismissal is a permanent separation for cause.

Notice of termination shall be issued by the Investigation Committee subject to the confirmation of the President or his authorized representative as officer/employee who is terminated for cause shall not be eligible to receive any benefit arising from her/his employment with the Bank or to termination pay.”

It is understood that the termination of your service shall be without prejudice to whatever legal remedies which the Bank may have already undertaken and/or will undertake against you.

Please be guided accordingly. (*Emphasis supplied*)<sup>[8]</sup>

### **The Ruling of the Labor Arbiter**

After several hearings, the Labor Arbiter held that Allied Bank had abused its management prerogative in ordering the transfer of Galanida to its Bacolod and Tagbilaran branches. In ruling that Galanida's refusal to transfer did not amount to insubordination, the

Labor Arbiter misquoted this Court's decision in *Dosch vs. NLRC*, 208 Phil. 259 (1983). thus:

As a general rule, the right to transfer or reassign an employee is recognized as an employer's exclusive right and the prerogative of management (*Abbott Laboratories vs. NLRC*, 154 SCRA 713 [1987]).

The exercise of this right, is not however, absolute. It has certain limitations. Thus, in *Helmut Dosch vs. NLRC, et al.*, 208 Phil. 259; 123 SCRA 296 (1983), the Supreme Court, ruled:

“While it may be true that the right to transfer or reassign an employee is an employer's exclusive right and the prerogative of management, such right is not absolute. The right of an employer to freely select or discharge his employee is limited by the paramount police power for the relations between capital and labor are not merely contractual but impressed with public interest. And neither capital nor labor shall act oppressively against each other.

Refusal to obey a transfer order cannot be considered insubordination where employee cited reason for said refusal, such (sic) as that of being away from the family.”<sup>[9]</sup> (*Underscoring supplied by the Labor Arbiter*)

The Labor Arbiter reasoned that Galanida's transfer was inconvenient and prejudicial because Galanida would have to incur additional expenses for board, lodging and travel. On the other hand, the Labor Arbiter held that Allied Bank failed to show any business urgency that would justify the transfer.

The Labor Arbiter also gave credence to Galanida's claim that Allied Bank gave Ms. Co special treatment. The Labor Arbiter stated that Allied Bank deliberately left out Ms. Co's name from the list of accountants transferred to Cebu as contained in Allied Bank's letter dated 13 June 1994. However, Mr. Regidor Olveda, Allied Bank's Vice President for Operations Accounting, testified that the bank transferred Ms. Co to the Tabunok, Cebu branch within the first half

of 1994.

Still, the Labor Arbiter declined to award Galanida back wages because he was not entirely free from blame. Since another bank had already employed Galanida, the Labor Arbiter granted Galanida separation pay in lieu of reinstatement. The dispositive portion of the Labor Arbiter's Decision of 23 December 1997 provides:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering respondent Allied Banking Corporation to pay complainant the aggregate total amount of Three Hundred Twenty Four Thousand Pesos (P324,000.00) representing the following awards:

- a) Separation pay for P272,000.00;
- b) Quarter bonus for 1994 – P16,000.00;
- c) 13<sup>th</sup> month pay for 1994 – P16,000.00;
- d) Refund of contribution to Provident Fund - P20,000.00.

**SO ORDERED.**<sup>[10]</sup>

### **The Ruling of the NLRC**

On appeal, the NLRC likewise ruled that Allied Bank terminated Galanida without just cause. The NLRC agreed that the transfer order was unreasonable and unjustified, considering the family considerations mentioned by Galanida. The NLRC characterized the transfer as a demotion since the Bacolod and Tagbilaran branches were smaller than the Jakosalem branch, a regional office, and because the bank wanted Galanida, an assistant manager, to replace an assistant accountant in the Tagbilaran branch. The NLRC found unlawful discrimination since Allied Bank did not transfer several junior accountants in Cebu. The NLRC also held that Allied Bank gave Ms. Co special treatment by assigning her to Cebu even though she had worked for the bank for less than two years.

The NLRC ruled that Galanida's termination was illegal for lack of due process. The NLRC stated that Allied Bank did not conduct any hearing. The NLRC declared that Allied Bank failed to send a

termination notice, as required by law for a valid termination. The Memo merely stated that Allied Bank would issue a notice of termination, but the bank did not issue any notice.

The NLRC concluded that Allied Bank dismissed Galanida in bad faith, tantamount to an unfair labor practice as the dismissal undermined Galanida's right to security of tenure and equal protection of the laws. On these grounds, the NLRC promulgated its Decision of 18 September 1998, the relevant portion of which states:

In this particular case, We view as impractical, unrealistic and no longer advantageous to both parties to order reinstatement of the complainant. For lack of sufficient basis, We deny the claim for 1994 quarter bonus. Likewise, no attorney's fees is awarded as counsels for complainant-appellee are from the City Prosecutor's Office of Cebu.

**WHEREFORE**, premises considered, the decision of the Labor Arbiter dated December 23, 1997 is hereby MODIFIED by increasing the award of separation pay and granting in addition thereto backwages, moral and exemplary damages. The respondent-appellant, **ALLIED BANKING CORPORATION**, is thus ordered to pay to herein complainant-appellee, **POTENCIANO L. GALANIDA**, the following amounts:

- a) P336,000.00 – representing separation pay
  - b) P833,600.00 – representing backwages
  - c) P 5,333.23 – representing proportional 1994  
13<sup>th</sup> month pay
  - d) P 20,000.00 – representing refund of  
Provident Fund Contribution
  - e) P 50,000.00 – representing moral damages
  - f) P 20,000.00 – representing exemplary damages
- P1,264,933.33 – TOTAL AWARD  
=====

All other claims are dismissed for lack of basis. The other respondents are dropped for lack of sufficient basis that they acted in excess of their corporate powers.

**SO ORDERED.**<sup>[11]</sup>

Allied Bank filed a motion for reconsideration which the NLRC denied in its Resolution of 24 December 1998.<sup>[12]</sup>

Dissatisfied, Allied Bank filed a petition for review questioning the Decision and Resolution of the NLRC before the Court of Appeals.

**The Ruling of the Court of Appeals**

Citing *Dosch vs. NLRC*,<sup>[13]</sup> the Court of Appeals held that Galanida's refusal to comply with the transfer orders did not warrant his dismissal. The appellate court ruled that the transfer from a regional office to the smaller Bacolod or Tagbilaran branches was effectively a demotion. The appellate court agreed that Allied Bank did not afford Galanida procedural due process because there was no hearing and no notice of termination. The Memo merely stated that the bank would issue a notice of termination but there was no such notice.

The Court of Appeals affirmed the ruling of the NLRC in its Decision of 27 April 2000, thus:

**WHEREFORE**, for lack of merit, the petition is DISMISSED and the assailed Decision of public respondent NLRC is AFFIRMED.

**SO ORDERED.**<sup>[14]</sup>

Allied Bank filed a motion for reconsideration which the appellate court denied in its Resolution of 8 August 2000.<sup>[15]</sup>

On 26 April 2001, Allied Bank appealed the appellate court's decision and resolution to the Supreme Court. Allied Bank prayed that the Supreme Court:

- (1) issue a temporary restraining order or writ of preliminary injunction *ex parte* to restrain the implementation or execution of the questioned Decision and Resolution;
- (2) declare Galanida's termination as valid and legal;

- (3) set aside the Court of Appeals' Decision and Resolution;
- (4) make permanent the restraining order or preliminary injunction;
- (5) order Galanida to pay the costs; and
- (6) order other equitable reliefs.

### **The Issues**

Allied Bank raises the following issues:

1. WHETHER UNDER THE FACTS PRESENTED THERE IS LEGAL BASIS IN PETITIONER'S EXERCISE OF ITS MANAGEMENT PREROGATIVE.
2. WHETHER PRIVATE RESPONDENT'S VIOLATIONS OF COMPANY RULES CONSTITUTE A GROUND TO WARRANT THE PENALTY OF DISMISSAL.
3. WHETHER UNDER THE FACTS PRESENTED, THERE IS LEGAL BASIS TO HOLD THAT ALLIED BANK AFFORDED PRIVATE RESPONDENT THE REQUIRED DUE PROCESS.
4. WHETHER UNDER THE FACTS, THERE IS LEGAL BASIS TO HOLD THAT PRIVATE RESPONDENT CANNOT RECOVER ANY MONETARY AWARD.<sup>[16]</sup>

In sum, Allied Bank argues that the transfer of Galanida was a valid exercise of its management prerogative. Allied Bank contends that Galanida's continued refusal to obey the transfer orders constituted willful disobedience or insubordination, which is a just cause for termination under the Labor Code.

On the other hand, Galanida defended his right to refuse the transfer order. The memorandum for Galanida filed with this Court, prepared by Atty. Loreto M. Durano, again misquoted the Court's ruling in *Dosch vs. NLRC*, thus:

His (Galanida's) refusal to transfer falls well within the ruling of the Supreme Court in *Helmut Dosch vs. NLRC, et. al.*, 123 SCRA 296 (1983) quoted as follows:

Refusal to obey a transfer order cannot be considered insubordination where employee cited reason for said refusal, such as that of being away from the family.”<sup>[17]</sup>

### **The Ruling of the Court**

The petition is partly meritorious.

#### ***Preliminary Matter:*** Misquoting Decisions of the Supreme Court

The memorandum prepared by Atty. Durano and, worse, the assailed Decision of the Labor Arbiter, both misquoted the Supreme Court’s ruling in *Dosch vs. NLRC*. The Court held in *Dosch*:

We cannot agree to Northwest’s submission that petitioner was guilty of disobedience and insubordination which respondent Commission sustained. The only piece of evidence on which 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 his position, saying:

“I would, therefore, prefer 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.<sup>[18]</sup>

The phrase “refusal to obey a transfer order cannot be considered insubordination where employee cited reason for said refusal, such as that of being away from the family” does not appear anywhere in the *Dosch* decision. Galanida’s counsel lifted the erroneous phrase from one of the italicized lines in the syllabus of *Dosch* found in the

Supreme Court Reports Annotated (“SCRA”).

The syllabus of cases in official or unofficial reports of Supreme Court decisions or resolutions is not the work of the Court, nor does it state this Court’s decision. The syllabus is simply the work of the reporter who gives his understanding of the decision. The reporter writes the syllabus for the convenience of lawyers in reading the reports. A syllabus is not a part of the court’s decision.<sup>[19]</sup> A counsel should not cite a syllabus in place of the carefully considered text in the decision of the Court.

In the present case, Labor Arbiter Almirante and Atty. Durano began by quoting from *Dosch*, but substituted a portion of the decision with a headnote from the SCRA syllabus, which they even underscored. In short, they deliberately made the quote from the SCRA syllabus appear as the words of the Supreme Court. We admonish them for what is at the least patent carelessness, if not an outright attempt to mislead the parties and the courts taking cognizance of this case. Rule 10.02, Canon 10 of the Code of Professional Responsibility mandates that a lawyer shall not knowingly misquote or misrepresent the text of a decision or authority. It is the duty of all officers of the court to cite the rulings and decisions of the Supreme Court accurately.<sup>[20]</sup>

### ***Whether Galanida was dismissed for just cause***

We accord great weight and even finality to the factual findings of the Court of Appeals, particularly when they affirm the findings of the NLRC or the lower courts. However, there are recognized exceptions to this rule. These exceptions are:

- (1) when the findings are grounded on speculation, surmise and conjecture;
- (2) when the inference made is manifestly mistaken, absurd or impossible;
- (3) when there is grave abuse of discretion in the appreciation of facts;

- (4) when the factual findings of the trial and appellate courts are conflicting;
- (5) when the Court of Appeals, in making its findings, has gone beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the appellate court is premised on a misapprehension of facts or when it has failed to consider certain relevant facts which, if properly considered, will justify a different conclusion;
- (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; and
- (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.<sup>[21]</sup>

After a scrutiny of the records, we find that some of these exceptions obtain in the present case.

The rule is that the transfer of an employee ordinarily lies within the ambit of the employer's prerogatives.<sup>[22]</sup> The employer exercises the prerogative to transfer an employee for valid reasons and according to the requirement of its business, provided the transfer does not result in demotion in rank or diminution of the employee's salary, benefits and other privileges.<sup>[23]</sup> In illegal dismissal cases, the employer has the burden of showing that the transfer is not unnecessary, inconvenient and prejudicial to the displaced employee.<sup>[24]</sup>

The constant transfer of bank officers and personnel with accounting responsibilities from one branch to another is a standard practice of Allied Bank, which has more than a hundred branches throughout the country.<sup>[25]</sup> Allied Bank does this primarily for internal control. It also enables bank employees to gain the necessary experience for eventual promotion. The *Bangko Sentral ng Pilipinas*, in its Manual of Regulations for Banks and Other Financial Intermediaries,<sup>[26]</sup> requires the rotation of these personnel. The Manual directs that the "duties of personnel handling cash, securities and bookkeeping

records should be rotated” and that such rotation “should be irregular, unannounced and long enough to permit disclosure of any irregularities or manipulations.”<sup>[27]</sup>

Galanida was well aware of Allied Bank’s policy of periodically transferring personnel to different branches. As the Court of Appeals found, assignment to the different branches of Allied Bank was a condition of Galanida’s employment. Galanida consented to this condition when he signed the Notice of Personnel Action.<sup>[28]</sup>

The evidence on record contradicts the charge that Allied Bank discriminated against Galanida and was in bad faith when it ordered his transfer. Allied Bank’s letter of 13 June 1994<sup>[29]</sup> showed that at least 14 accounting officers and personnel from various branches, including Galanida, were transferred to other branches. Allied Bank did not single out Galanida. The same letter explained that Galanida was second in line for assignment outside Cebu because he had been in Cebu for seven years already. The person first in line, Assistant Manager Roberto Isla, who had been in Cebu for more than ten years, had already transferred to a branch in Cagayan de Oro City. We note that none of the other transferees joined Galanida in his complaint or corroborated his allegations of widespread discrimination and favoritism.

As regards Ms. Co, Galanida’s letter of 16 June 1994 itself showed that her assignment to Cebu was not in any way related to Galanida’s transfer. Ms. Co was supposed to replace a certain Larry Sabelino in the Tabunok branch. The employer has the prerogative, based on its assessment of the employees’ qualifications and competence, to rotate them in the various areas of its business operations to ascertain where they will function with maximum benefit to the company.<sup>[30]</sup>

Neither was Galanida’s transfer in the nature of a demotion. Galanida did not present evidence showing that the transfer would diminish his salary, benefits or other privileges. Instead, Allied Bank’s letter of 13 June 1994 assured Galanida that he would not suffer any reduction in rank or grade, and that the transfer would involve the same rank, duties and obligations. Mr. Olveda explained this further in the affidavit he submitted to the Labor Arbiter, thus:

X X X

19. There is no demotion in position/rank or diminution of complainant's salary, benefits and other privileges as the transfer/assignment of branch officers is premised on the role/functions that they will assume in the management and operations of the branch, as shown below:

(a) The Branch Accountant, as controller of the branch is responsible for the proper discharge of the functions of the accounting section of the branch, review of documentation/proper accounting and control of transaction. As such, the accounting functions in the branch can be assumed by any of the following officers with the rank of: Senior Manager/Acctg.; Manager/Acctg.; Senior Asst. Manager/Acctg.; Asst. Manager/Acctg.; Accountant or Asst. Accountant.

X X X

20. The transfer/assignment of branch officer from one branch, to another branch/office is lateral in nature and carries with it the same position/rank, salary, benefits and other privileges. The assignment/transfer is for the officer to assume the functions relative to his job and NOT the position/rank of the officer to be replaced.

There is also no basis for the finding that Allied Bank was guilty of unfair labor practice in dismissing Galanida. Unfair labor practices relate only to violations of "the constitutional right of workers and employees to self-organization"<sup>[31]</sup> and are limited to the acts enumerated in Article 248 of the Labor Code, none of which applies to the present case. There is no evidence that Galanida took part in forming a union, or even that a union existed in Allied Bank.

This leaves the issue of whether Galanida could validly refuse the transfer orders on the ground of parental obligations, additional expenses, and the anguish he would suffer if assigned away from his family.

The Court has ruled on this issue before. In the case of *Homeowners Savings and Loan Association, Inc. vs. NLRC*, G.R. No. 97067, September 26, 1996, 262 SCRA 406 we held:

The acceptability of the proposition that transfer made by an employer for an illicit or underhanded purpose – i.e., to defeat an employee’s right to self-organization, to rid himself of an undesirable worker, or to penalize an employee for union activities – cannot be upheld 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 grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer. What then?

This was the very same situation we faced in *Phil. Telegraph and Telephone Corp. vs. Laplana*, G.R. No. 76645, 23 July 1991, 199 SCRA 485. In that case, the employee, Alicia Laplana, was a cashier at the Baguio City Branch of PT & T who was directed to transfer to the company’s branch office at Laoag City. In refusing the transfer, the employee averred that she had established Baguio City as her permanent residence and that such transfer will involve additional expenses on her part, plus the fact that an assignment to a far place will be a big sacrifice for her as she will be kept away from her family which might adversely affect her efficiency. In ruling for the employer, the Court upheld the transfer from one city to another within the country as valid as long as there is no bad faith on the part of the employer. We held then:

“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.”

Galanida, through counsel, invokes the Court’s ruling in *Dosch vs. NLRC, et al.*, 208 *Phil.* 259; 123 SCRA 296 (1983). *Dosch*, however, is not applicable to the present case. Helmut Dosch refused a transfer consequential to a promotion. We upheld the refusal because no law compels an employee to accept a promotion, and because the position

Dosch was supposed to be promoted to did not even exist at that time.<sup>[32]</sup> This left as the only basis for the charge of insubordination a letter from Dosch in which the Court found “not even the slightest hint of defiance, much less xxx insubordination.”<sup>[33]</sup>

Moreover, the transfer of an employee to an overseas post, as in the *Dosch* case, cannot be likened to a transfer from one city to another within the country, *PT & T vs. Laplana*, G.R. No. 76645, 23 July 1991, 199 SCRA 485 which is the situation in the present case. The distance from Cebu City to Bacolod City or from Cebu City to Tagbilaran City does not exceed the distance from Baguio City to Laoag City or from Baguio City to Manila, which the Court considered a reasonable distance in *PT & T vs. Laplana*.

The refusal to obey a valid transfer order constitutes willful disobedience of a lawful order of an employer. *Homeowners Savings and Loan Association, Inc. vs. NLRC*, G.R. No. 97067, 26 September 1996, 262 SCRA 406. Employees may object to, negotiate and seek redress against employers for rules or orders that they regard as unjust or illegal. However, until and unless these rules or orders are declared illegal or improper by competent authority, the employees ignore or disobey them at their peril. *Westin Philippine Plaza Hotel vs. NLRC*, 366 Phil. 313 (1999). For Galanida’s continued refusal to obey Allied Bank’s transfer orders, we hold that the bank dismissed Galanida for just cause in accordance with Article 282 (a) of the Labor Code.<sup>[34]</sup> Galanida is thus not entitled to reinstatement or to separation pay.

### ***Whether Galanida’s dismissal violated the requirement of notice and hearing***

To be effective, a dismissal must comply with Section 2 (d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code (“Omnibus Rules”), which provides:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

- (i) A written notice served on the employee specifying the ground or grounds of termination, and giving said

employee reasonable opportunity within which to explain his side.

- (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
- (iii) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The first written notice was embodied in Allied Bank's letter of 13 June 1994. The first notice required Galanida to explain why no disciplinary action should be taken against him for his refusal to comply with the transfer orders.

On the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard.<sup>[35]</sup> An actual hearing is not necessary. The exchange of several letters, in which Galanida's wife, a lawyer with the City Prosecutor's Office, assisted him, gave Galanida an opportunity to respond to the charges against him.

The remaining issue is whether the Memo dated 8 September 1994 sent to Galanida constitutes the written notice of termination required by the Omnibus Rules. In finding that it did not, the Court of Appeals and the NLRC cited Allied Bank's rule on dismissals, quoted in the Memo, that, "Notice of termination shall be issued by the Investigation Committee subject to the confirmation of the President or his authorized representative."<sup>[36]</sup> The appellate court and NLRC held that Allied Bank did not send any notice of termination to Galanida. The Memo, with the heading "Transfer and Reassignment," was not the termination notice required by law.

We do not agree.

Even a cursory reading of the Memo will show that it unequivocally

informed Galanida of Allied Bank's decision to dismiss him. The statement, "please be informed that the Bank has terminated your services effective September 1, 1994 and considered whatever benefit, if any, that you are entitled to as forfeited"<sup>[37]</sup> is plainly worded and needs no interpretation. The Memo also discussed the findings of the Investigation Committee that served as grounds for Galanida's dismissal. The Memo referred to Galanida's "open defiance and refusal" to transfer first to the Bacolod City branch and then to the Tagbilaran City branch. The Memo also mentioned his continued refusal to report for work despite the denial of his application for additional vacation leave.<sup>[38]</sup> The Memo also refuted Galanida's charges of discrimination and demotion, and concluded that he had violated Article XII of the bank's Employee Discipline Policy and Procedure.

The Memo, although captioned "Transfer and Reassignment," did not preclude it from being a notice of termination. The Court has held that the nature of an instrument is characterized not by the title given to it but by its body and contents.<sup>[39]</sup> Moreover, it appears that Galanida himself regarded the Memo as a notice of termination. We quote from the Memorandum for Private Respondent-Appellee, as follows:

The proceedings may be capsulized as follows:

1. On March 13, 1994<sup>[40]</sup> Private Respondent-Appellee filed before the Region VII Arbitration Branch a Complaint for Constructive Dismissal. A copy of the Complaint is attached to the Petition as Annex "H";

x x x

5. On September 8, 1994, Petitioner-Appellant issued him a Letter of Termination. A copy of said letter is attached to the Petition as Annex "N";
6. Private Respondent-Appellee filed an Amended/Supplemental Complaint wherein he alleged illegal dismissal. A copy of the Amended/Supplemental Complaint is attached to the Petition as Annex "O";<sup>[41]</sup>

*(Emphasis supplied)*

The Memorandum for Private Respondent-Appellee refers to the Memo as a “Letter of Termination.” Further, Galanida amended his complaint for constructive dismissal<sup>[42]</sup> to one for illegal dismissal<sup>[43]</sup> after he received the Memo. Clearly, Galanida had understood the Memo to mean that Allied Bank had terminated his services.

The Memo complied with Allied Bank’s internal rules which required the bank’s President or his authorized representative to confirm the notice of termination. The bank’s Vice-President for Personnel, as the head of the department that handles the movement of personnel within Allied Bank, can certainly represent the bank president in cases involving the dismissal of employees.

Nevertheless, we agree that the Memo suffered from certain errors. Although the Memo stated that Allied Bank terminated Galanida’s services as of 1 September 1994, the Memo bore the date 8 September 1994. More importantly, Galanida only received a copy of the Memo on 5 October 1994, or more than a month after the supposed date of his dismissal. To be effective, a written notice of termination must be served on the employee.<sup>[44]</sup> Allied Bank could not terminate Galanida on 1 September 1994 because he had not received as of that date the notice of Allied Bank’s decision to dismiss him. Galanida’s dismissal could only take effect on 5 October 1994, upon his receipt of the Memo. For this reason, Galanida is entitled to backwages for the period from 1 September 1994 to 4 October 1994.

Under the circumstances, we also find an award of ₱10,000 in nominal damages proper. Courts award nominal damages to recognize or vindicate the right of a person that another has violated.<sup>[45]</sup> The law entitles Galanida to receive timely notice of Allied Bank’s decision to dismiss him. Allied Bank should have exercised more care in issuing the notice of termination.

**WHEREFORE**, the Decision of 27 April 2000 of the Court of Appeals in CA-G.R. SP No. 51451 upholding the Decision of 18 September 1998 of the NLRC in NLRC Case No. V-000180-98 is **AFFIRMED**, with the following **MODIFICATIONS**:

- 1) The awards of separation pay, moral damages and exemplary damages are hereby deleted for lack of basis;
- 2) Reducing the award of backwages to cover only the period from 1 September 1994 to 4 October 1994; and
- 3) Awarding nominal damages to private respondent for P10,000.

This case is REMANDED to the Labor Arbiter for the computation, within thirty (30) days from receipt of this Decision, of the backwages, inclusive of allowances and other benefits, due to Potenciano L. Galanida for the time his dismissal was ineffectual from 1 September 1994 until 4 October 1994.

Labor Arbiter Dominador A. Almirante and Atty. Loreto M. Durano are ADMONISHED to be more careful in citing the decisions of the Supreme Court in the future.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.**

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Corona Ibay-Somera and Elvi John S. Asuncion, Seventh Division.

[3] Penned by Presiding Commissioner Irene E. Ceniza, concurred in by Commissioners Bernabe S. Batuhan and Amorito V. Cañete, Fourth Division.

[4] Rollo, p. 82.

[5] Ibid., p. 123.

[6] Ibid.

[7] Ibid., p. 156.

[8] Ibid.

[9] CA Rollo, p. 67.

[10] Ibid.

[11] CA Rollo, p. 46.

[12] Ibid., p. 64.

[13] Supra, see note 9. The Court of Appeals cited *Dosch vs. NLRC* accurately.

- [14] Rollo, p. 82.
- [15] Ibid., p. 100.
- [16] Ibid., p. 45.
- [17] Rollo, p. 475. Underscoring supplied by counsel.
- [18] Supra, see note 9.
- [19] French Oil Mill Machinery Co., Inc. vs. Court of Appeals, 356 Phil. 780 (1998).
- [20] Insular Life Assurance Co., Ltd., Employees Association-Natu vs. Insular Life Assurance Co., Ltd., No. L-25291, 30 January 1971, 37 SCRA 244.
- [21] (Solid Homes, Inc. vs. Court of Appeals, 341 Phil. 261 [1997]).
- [22] (OSS Security & Allied Services, Inc. vs. NLRC, 382 Phil. 35 [2000]; Abbott Laboratories Inc. vs. NLRC, No. L-76959, 12 October 1987, 154 SCRA 713).
- [23] Castillo vs. National Labor Relations Commission, 367 Phil. 605 (1999).
- [24] Ibid.
- [25] Petitioner's Memorandum, rollo, p. 438; Affidavit of Vice-President Regidor M. Olveda, rollo, p. 200.
- [26] Rollo, pp. 100-104.
- [27] Section 1168.8 of the Manual states:
- a. The duties of personnel handling cash, securities and bookkeeping records should be rotated.
  - b. Rotation assignment should be irregular, unannounced and long enough to permit disclosure of any irregularities or manipulations.
- x x x
- [28] CA Rollo, pp. 80-81.
- [29] Rollo, p. 116. Portions of this letter were also quoted in the Court of Appeals' Decision.
- [30] Pantranco North Express, Inc. vs. NLRC, 373 Phil. 520 (1999) citing Philippine Japan Active Carbon Corp. vs. NLRC, G.R. No. 83239, 8 March 1989, 171 SCRA 164.
- [31] Article 247 of the Labor Code.
- [32] Ibid.
- [33] Ibid.
- [34] ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:
- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- [35] (Gabisay vs. NLRC, 366 Phil. 593 (1999) citing Tan vs. NLRC, 359 Phil. 499 (1998)).
- [36] Rollo, p. 156.
- [37] Ibid.
- [38] Ibid. The relevant portion of the Memo states:  
As a manifestation of your open defiance and refusal to follow instruction concerning your transfer, you filed several applications for vacation leaves the latest of which was that dated May 31, 1994 which was approved for an unextendible (sic) period of six (6) days or until June 10, 1994 due to

exigency of the service. So far management had approved a total of more than fifteen (15) days which you have availed for the current year.

[39] *Dosch vs. NLRC*, supra, see note 9.

[40] The complaint indicates that it was filed on 13 May 1994, not on 13 March 1994.

[41] Supra, see note 17.

[42] *Rollo*, p. 114.

[43] *Ibid.*, p. 164.

[44] Sec. 2 (d) (iii), Rule 1, Book VI, Omnibus Rules Implementing the Labor Code. Quoted earlier.

[45] Civil Code, Art. 2221.