

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**REMEDIOS K. ASIS,
*Petitioner,***

-versus-

**G.R. No. 107378
January 25, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION, VETERANS
PHILIPPINES SCOUT SECURITY
AGENCY and/or ENGR. SERGIO
JAMILA IV,**

Respondents.

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DECISION

MENDOZA, J.:

This is a Petition for *Certiorari* seeking the annulment of the Decision of the National Labor Relations Commission which reversed the Decision of the Labor Arbiter, finding petitioner to have been illegally dismissed and ordering private respondent to pay him backwages and separation pay.

The facts are as follows:

Petitioner Remedios K. Asis (a male) was hired by private respondent Philippines Scout Security Agency (hereinafter referred to as Security Agency) on August 23, 1990 as a security guard. He was assigned at the Paguyo Breeder Farm of Purefoods Corporation, in Sta. Rosa, Laguna, where he was designated as detachment commander. His monthly salary was P4,417.40.

On July 4, 1990, petitioner applied for a leave of absence effective July 9 to 15, 1990. His application was approved and he went on leave, but when he reported back for work on July 16, 1990, he found that another security guard had been appointed in his place. He was informed that he had been transferred to Calauan, Laguna as an ordinary security guard and, for this purpose, he was asked by an officer of the Security Agency to sign a “cancellation of official duties”. Petitioner signed the “cancellation of official duties” but refused to accept his new assignment.

On August 13, 1990, petitioner filed a complaint for illegal dismissal. He claimed that he had been constructively dismissed by being demoted from detachment commander to ordinary security guard; that he was assigned to a place where he might not be able to perform effectively; and that his demotion without any just or lawful cause was tantamount to an illegal dismissal.

Private respondents, on the other hand, claimed that petitioner had not been dismissed but that it was he who stopped reporting for work after taking a leave of absence; that his relief from his last post was upon the request of their client, Purefoods Corporation; and that the transfer of the assignment of security guards is a management prerogative. respondents also averred that Remedios was asked to go back to work but he refuse.

At the hearing before the Labor Arbiter,^[1] petitioner presented his evidence and was duly cross-examined by the private respondents’ counsel. When it came to the turn of private respondents on March 27, 1992 they could not present their evidence because of the absence of their witness. The hearing was therefore reset on April 23, 1992 and the parties were notified that the hearing was “intransferrable,” but when the new date arrived, only petitioner was present. Private

respondents' counsel arrived after the hearing had been adjourned. The case was therefore considered submitted for decision.

Private respondents moved for a reconsideration. Their motion was, however, denied by the Labor Arbiter. Thereafter, based on the position papers, comments and replies of the parties and the evidence adduced by the petitioner, the Labor Arbiter rendered a decision finding petitioner to have been illegally dismissed. The Labor Arbiter found no valid reasons for the transfer as petitioner had not violated any rule and regulation of the Security Agency. He ruled that petitioner's transfer amounted to a demotion and, therefore, he was justified in refusing his assignment to Calauan, Laguna.

As regards private respondents' claim that the assignment of petitioner to a new post was due to the request of Purefoods Corporation to replace him, the Labor Arbiter held that no evidence was presented to support such claim. The Labor Arbiter said that if there was such a request, it should have been attached to the position paper of private respondents.

The Labor Arbiter ruled that petitioner was entitled to "limited" backwages for one year equal to P35,356.00 and that, in view of the strained relation between the parties which made reinstatement not feasible, petitioner should instead be granted separation pay at the rate of one month's salary for every year of service which, based on his last salary of P4,417.40 a month, was equal to P17,669.60. However, the dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, respondents are hereby directed (1) to pay complainant one year backwages amounting to P26,402.00 and separation pay amounting to P35,356.00; separation pay monetary claims are hereby dismissed for insufficient evidence.

SO ORDERED.^[2]

Apparently the amount of P35,356.00 mentioned in the dispositive portion was for backwages-for one year and not for separation pay, while the amount of P26,402.00 should be P17,669.60 and it should be for separation pay, not for backwages. Be that as it may, on appeal,

the NLRC reversed the decision on the ground that petitioner's new assignment was an exercise of management prerogative. It gave credence to private respondents' claim that petitioner's relief as detachment commander at the Paguyo Breeder Farm of Purefoods Corporation was the result of the latter's request; that petitioner was assigned as an ordinary security guard at Calauan, Laguna because it was the only post available at that time and the reassignment was made to make his services continuous and uninterrupted.^[3]

The NLRC held that there was no constructive dismissal as there was no substantial inconvenience or damage to the complainant arising from the change of assignment. Neither was there a diminution in pay, benefits and privileges, because "in fact, as respondent claimed, it was stressed upon his reassignment that there would be no diminution in his benefits."

The dispositive portion of NLRC's Decision reads:

WHEREFORE, the decision of the Labor Arbiter, awarding backwages and separation pay to the complainant is hereby set aside. The complainant is requested to report back to the respondent's office for resumption of his duties as security guard and to abide by the official instructions to be given to him. The complaint for illegal dismissal is dismissed for lack of merit.

SO ORDERED.^[4]

On August 17, 1992, petitioner moved for a reconsideration. As his motion was denied, petitioner filed the present petition.

The Solicitor General filed a Manifestation In Lieu of Comment, taking the side of petitioner. He states that there is no evidence to show that Purefoods Corporation requested the relief of petitioner. He contends that petitioner's transfer to Calauan, Laguna is a demotion and that because of the distance from his former post, petitioner would suffer great-inconvenience.

The sole issue tendered for resolution by the parties is whether or not petitioner Remedios K. Asis was constructively dismissed. We hold

that he was. We have recognized the prerogative of management to transfer employees as the exigency of the business may require. This prerogative cannot, however, be exercised if the result is the demotion in rank or the diminution in salary, benefits and other prerogatives of the employee. And this prerogative must not be exercised in bad faith. While transfer may occasion hardship or inconvenience to an employee, yet unnecessary or inconvenient and prejudicial transfers cannot be justified.^[5] Much less can management exercise this prerogative as a pretext for disciplining its employees without due process.

In this case Purefoods Corporation allegedly asked for the relief of petitioner as early as May 30, 1990, but it was only on July 16, 1990 — after his return from a leave of absence which private respondents had granted - that he was told of his transfer. Before that, he was not informed of the new assignment, much less the reasons for such assignment. In fact he was never formally notified of his transfer. He just found this out when another security guard was appointed to his post as detachment commander.

In their Comment on the instant petition, private respondents submit a “Client’s Monthly Assessment” dated May 30, 1990 where it is stated that Purefoods Corporation wanted to “replace security guard Remedios Asis due to negligence of duty (gambling and drinking liquor).” This belated presentation has not been explained. There was not even a claim either in the Labor Arbiter’s office or in the NLRC that Purefoods Corporation requested petitioner’s relief because of neglect of duty, much less gambling and drinking. It is clear that the last-minute presentation of this self-serving piece of evidence is intended to justify what is an indefensible position.

Nor can petitioner’s transfer to Calauan, Laguna be justified. In the first place, it is a demotion to a position lower than that previously held by him. Where before he was a detachment commander, he would now be demoted to mere security guard. As petitioner testified, his duties and responsibilities as detachment commander were, among others, to detail and supervise the men under him. He would no longer have this prerogative as a mere security guard. His duties would cease to be supervisory. Secondly, because of the distance of Sta. Rosa to Calauan, he would have to spend more on transportation,

so that although private respondents claim that he would suffer no diminution in pay, the result would be that he would earn less. For practical purposes he would suffer a cut in his salary.

For the foregoing reasons, we hold that petitioner was constructively removed and that his dismissal was illegal. In accordance with Art. 279 of the Labor Code, as amended by R.A. No. 6715, which took effect on March 21, 1989, he is entitled to full backwages from the time (July 16, 1990) of the dismissal up to the time the decision in this case becomes final, less whatever amount private respondent may prove the petitioner might have earned in the interim. On the other hand, petitioner should be given separation pay, in lieu of reinstatement as ordered by the Labor Arbiter, at the rate of one month's salary for every year of service (P4,417.40 x 4 years) in the total amount of P17,669.60.

WHEREFORE, the Petition is **GRANTED**, the Decision of the National Labor Relations Commission dated July 31, 1992 is **SET ASIDE**, and this case is remanded to the NLRC for computation of the backwages to be paid by private respondent to petitioner in addition to the grant to petitioner of separation pay in the amount of P17,669.60.

SO ORDERED.

Regalado, Romero and Puno, JJ., concur.

[1] Labor Arbiter Ambrosio B. Sison.

[2] Rollo, p. 30.

[3] Rollo, p. 42.

[4] Rollo, p. 45.

[5] Yuco Chemical Industries, Inc. vs. Ministry of Labor and Employment, 185 SCRA 727 (1990).