

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**BENGUET ELECTRIC COOPERATIVE  
and GERARDO P. VERZOSA,  
*Petitioners,***

***-versus-***

**G.R. No. 158606  
March 9, 2004**

**JOSEPHINE FIANZA,  
*Respondent.***

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**DECISION**

**YNARES-SANTIAGO, J.:**

Josephine Fianza had been employed with petitioner Benguet Electric Cooperative (BENECO) since August 1, 1979.<sup>[1]</sup> She occupied various positions,<sup>[2]</sup> until, in 1991, she became Property Custodian under the Office of the General Manager, with a Salary Grade of 5.<sup>[3]</sup> By 1999, Fianza was receiving a monthly salary of P8,494.00.<sup>[4]</sup>

On June 29, 1999, BENECO's General Manager, petitioner Gerardo P. Versoza, issued Office Order No. 42, addressed to Fianza and another employee, Josephine B. Calinao.<sup>[5]</sup> The body of this Office Order reads:

In the exigency of the service and until further notice, effective

July 16, 1999, you are hereby temporarily detailed to the Finance Department to assume the duties of a Bill Distributor without any change in salary rate. You are therefore directed to turn over all records and accountabilities related to your present assignment and report to the Officer-in-Charge, Finance Department, for further instructions.<sup>[6]</sup>

Fianza acknowledged receipt of the letter under protest.<sup>[7]</sup> On July 14, 1999, she wrote a letter to Versoza,<sup>[8]</sup> stating:

In response to your Office Order No. 42, I would like to take exception to my detail without cause to assume the details of a Bill Distributor albeit without change in salary grade. My job description is that of Property Custodian and [I] have been in service for almost twenty (20) years. The job being presently assigned to me amounts to a demotion and the working conditions of a Bill Distributor are totally different and more strenuous and expose me to unfavorable and dangerous circumstances and therefore not similarly situated as that of a Property Custodian.

I therefore express objection to my detail and will continue discharging my present assignment as I believe that my detail has been done without justifiable reason.<sup>[9]</sup>

In another letter to Versoza of the same date, Fianza reiterated that she did not accept the proposed transfer, and expressed hope of a dialogue between her and Versoza.<sup>[10]</sup>

In response, Versoza issued the following Memorandum dated July 19, 1999:<sup>[11]</sup>

To: Josephine D. Fianza  
From: The General Manager  
Subject: Non-Compliance of Office Order No. 42

Our Office Order No. 42 was issued in the exigency of the service and until further notice. Management has decided that, in the new temporary assignment, you would be more helpful in improving our overall productivity and efficiency and thereby

help reduce our cost of operation. The position of Property Custodian may eventually be phased out upon approval of the already proposed Table of Organization as part of a sound business decision.

[If you fail] to comply therewith within three (3) days from receipt hereof, we will be constrained to charge you [with] insubordination. The other personnel given the same temporary assignment have already complied therewith. There is no reason why you should not.

We expect your due compliance in the interest of service and [to] turn over your responsibilities as Property Custodian.

Please be guided accordingly.<sup>[12]</sup>

Fianza received a copy of this Memorandum on July 20, 1999. The previous day, however, on July 19, 1999, she filed a complaint for constructive dismissal with the Regional Arbitration Branch, National Labor Relations Commission, Cordillera Administrative Region,<sup>[13]</sup> which was docketed as RAB-CAR-07-0348-99.

Meanwhile, Fianza continued to report for work as Property Custodian.<sup>[14]</sup> On July 22, 1999, Versoza issued another Memorandum, stating that Fianza should report to her new assignment; otherwise, she would be considered absent without leave, and her salary withheld until she report for work in her new assignment.<sup>[15]</sup>

On August 4, 1999, Versoza issued another Memorandum, the body of which reads:

To: Josephine D. Fianza  
From: The General Manager  
Subject: Duties and Responsibilities

Pursuant to Office Order No. 42 dated June 29, 1999, you are temporarily detailed to the Finance Department to be able to help more in our efforts to reduce our cost of operation. Therefore, you are no longer authorized to perform the duties

and functions of a Property Custodian.

In view hereof, all documents prepared and signed by you effective July 16, 1999 are hereby cancelled. Please turn over all documents and records related to the function of a Property Custodian to the Administrative Officer as soon as possible.

On August 5, 1999, Fianza wrote a letter to Versoza about her salary from July 16, 1999 to July 30, 1999, claiming that she had been paid for only seven (7) days although she had never been absent during the said period.<sup>[16]</sup> On August 12, 1999, Fianza stopped reporting for work.<sup>[17]</sup>

In the proceedings before the Labor Arbiter, petitioners BENEKO and Verzosa averred that there was no constructive dismissal. They claimed that Fianza's transfer from Property Custodian to Bill Distributor was a valid exercise of management prerogative, exercised in the exigency of service. They pointed out that the position of Property Custodian under the Office of the General Manager has been abolished, and the functions thereof have been absorbed by other departments. In fact, they claimed that the proposed reorganization had been in effect well in advance of Fianza's transfer.<sup>[18]</sup>

Fianza maintained that there was a substantial demotion in rank from Property Custodian to Bill Distributor, which demotion negated management's claims of the validity of the transfer. Fianza pointed to the significant differences in the educational qualifications, work experience, skills and job description between the two positions, which differences allegedly pointed to the demotion.<sup>[19]</sup> In particular, Fianza claimed the following differences between the two positions:

	<b>Property Custodian</b>	<b>Bill Distributor</b>
<b>Education</b>	Graduate of BS Commerce, preferably major in accounting.	Must have completed at least two (2) years college.
<b>Experience</b>	Two (2) years in property and supply management or any related training.	Not necessary but preferably have undergone training.
<b>Skills</b>	Computer literate	Must know how to drive

**Duties and Responsibilities**

Receives, accounts and records all procured office supplies and materials.	Withdraws assigned route/booklet of electric bills and/or disconnection notices from Head, Collection Section Safeguard
Issues office supplies and equipment to the different offices based on approved requests.	booklets of electric bills and/or disconnection notices in their custody.
Cleans and maintains office supplies storage room.	Sees to it that all electric bills and/or disconnection notices are properly distributed and acknowledged by the proper consumer and that all receiving copies are intact when returned back to the office.
Records all materials and supplies distributed for proper accounting.	
Prepares monthly office supplies inventory report.	May receive, entertain and address problems, complaints and requests from member-consumers.
Prepares and submits request for purchase of office supplies and materials based on the requirements of the different departments.	Performs other duties as needed and/or assigned by superior.
Performs other duties as may be assigned to him/her from time to time.	

On March 15, 2000, the Labor Arbiter rendered a Decision dismissing Fianza's complaint.<sup>[20]</sup> The Labor Arbiter found that (1) there was no demotion in rank, since both positions were ranked a grade level of '5'; (2) there was no change in salary rate, since Fianza would continue to receive the monthly salary of P8,494.00; (3) there was no

significant disparity in the positions of Property Custodian and Bill Distributor; and (4) there was no showing or arbitrariness on the part of either BENECO or Versoza. Accordingly, the Labor Arbiter ruled that Fianza's claim that she had been constructively dismissed was unmeritorious.<sup>[21]</sup>

Upon Fianza's appeal, the NLRC Third Division affirmed the Labor Arbiter's Decision.<sup>[22]</sup>

Fianza's Motion for Reconsideration was denied on December 22, 2000.<sup>[23]</sup> On April 2, 2001, Fianza filed a petition for *certiorari* with the Court of Appeals, alleging grave abuse of discretion on the part of the NLRC.<sup>[24]</sup> On November 29, 2002, the Court of Appeals rendered judgment reversing the resolution of the NLRC,<sup>[25]</sup> the dispositive portion of which reads:

WHEREFORE, the instant petition for *certiorari* is hereby granted. The assailed Resolutions of the NLRC dated September 18, 2000 and December 22, 2000 are hereby REVERSED AND SET ASIDE. The private respondents are directed to:

- a) Immediately reinstate the Petitioner to her previous position, without loss of seniority and other benefits;
- b) Pay all backwages and other benefits that she was not able to collect [by] reason of her illegal termination.

SO ORDERED.<sup>[26]</sup>

In reversing the NLRC, the Court of Appeals compared the duties and responsibilities of a Property Custodian and a Bill Distributor, and concluded that a comparison of the two positions would lead to the conclusion that there was indeed a demotion in the rank of Fianza. The Court of Appeals characterized the job of a Property Custodian as clerical in nature, with duties more or less confined to the office; a Bill Distributor, on the other hand, would have to perform field work, necessitating skills in driving and travel from one place to another.<sup>[27]</sup> The Court of Appeals further reasoned thus:

What appears is that petitioner is demoted in rank. What could be more glaring than the fact that being a female employee, it is disadvantageous and strenuous to assign petitioner to distribute bills in the areas covered by private respondent. The nature of [the] job of bill distributor is tailor-made for male employees, as it involves traveling from one place to another. Noteworthy is the requirement that a bill distributor must know how to drive. Such a skill is not required of a property custodian. Certainly, it would be unbearable for petitioner to undertake such duties.

Contrary to the NLRC's observation, electric cooperatives do not utilize female bill distributors. It is because the nature of the job involved is taxing for female employees.<sup>[28]</sup>

Petitioners' Motion for Reconsideration<sup>[29]</sup> having been denied, the instant petition was filed on the following assignment of errors:

### **I.**

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVIEWING, DISREGARDING AND CHANGING THE FINDINGS OF FACT OF THE LABOR ARBITER, WHICH FINDINGS WERE IN EFFECT AFFIRMED BY THE NLRC.

### **II.**

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DECLARED THAT THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION 'BY IGNORING THIS DISPARITY TANTAMOUNT TO A DEMOTION IN RANK.'

### **III.**

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENT'S TRANSFER OF POSITION FROM A PROPERTY CUSTODIAN TO A BILL DISTRIBUTOR IS A CASE OF CONSTRUCTIVE DISMISSAL.

#### IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT BEING A FEMALE EMPLOYEE, IT IS DISADVANTAGEOUS AND STRENUOUS TO ASSIGN [FIANZA] TO DISTRIBUTE BILLS.

#### V.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONERS FAILED TO COMPLY WITH THE STANDARD LAID DOWN BY JURISPRUDENCE IN PROVING THAT RESPONDENT'S TRANSFER WAS A VALID MANAGEMENT PREROGATIVE.

#### VI.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE REINSTATEMENT OF RESPONDENT TO HER PREVIOUS POSITION IN SPITE OF THE ESTABLISHED FACT THAT HER PREVIOUS POSITION AS PROPERTY CUSTODIAN WAS ALREADY ABOLISHED.<sup>[30]</sup>

We rule in favor of the petitioners.

The resolution of this case depends upon a determination of the validity of Fianza's transfer from Property Custodian to Bill Distributor. To resolve this point, the scope and limits of the exercise of management prerogative must be balanced against the security of tenure given to labor. In this jurisdiction, we recognize that management has a wide latitude to regulate, according to his own discretion and judgment, all aspects of employment,<sup>[31]</sup> including the freedom to transfer and reassign employees according to the requirements of its business.<sup>[32]</sup> On the other hand, the transfer of an employee may constitute constructive dismissal when it amounts to 'an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes

unbearable to the employee.’ (*Escobin vs. National Labor Relations Commission*, 351 Phil. 973 [1998]).

Fianza claims that, although she was not actually fired from the services of BENEKO, she was constructively dismissed therefrom. This claim of constructive dismissal is based mainly on the allegation that, upon transfer from the position of Property Custodian to Bill Distributor of BENEKO, she was demoted from a position with a rank of ‘5’ to a rank of ‘4’. Fianza claims that, contrary to the allegations of petitioners, the position of Property Custodian was not phased out. She further maintains that such transfer was neither necessary nor temporary, and was done in an arbitrary and capricious manner. Finally, Fianza alleges that a comparison of the two positions reveals that her former job was clerical in nature, and that she was transferred to a menial and servile position, which bolsters her contention that she was demoted.

After careful deliberation, we note that the Labor Arbiter and the NLRC have already ruled on most of the foregoing factual contentions, and that their findings are not tainted with arbitrariness or grave abuse of discretion, but are supported by substantial evidence, *i.e.*, ‘that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion.’<sup>[33]</sup>

On the first point, both the Labor Arbiter<sup>[34]</sup> and the NLRC<sup>[35]</sup> concur that the position of Property Custodian and Bill Distributor have exactly the same rank, *i.e.* Level 5. This is a point with which the Court of Appeals agrees.<sup>[36]</sup> In fact, the Court of Appeals found that the position of Bill Distributor would have meant an increase in salary, to P8,906.00 per month.<sup>[37]</sup> This finding was supported by petitioners’ documentary evidence, including certified copies of BENEKO’s plantilla as of the pendency of the proceedings *a quo*.<sup>[38]</sup>

The second point, anent the abolition of the position of Property Custodian, is one on which the Labor Arbiter, the NLRC, and the Court of Appeals differ. The Labor Arbiter found that the position of Property Custodian had already been phased out.<sup>[39]</sup> In contrast, the NLRC found that the position of Property Custodian had not been abolished.<sup>[40]</sup> The Court of Appeals, although it made no specific mention of the abolition of the position of Property Custodian,

implicitly held that such position still existed, as it in fact ordered Fianza's reinstatement thereto.<sup>[41]</sup>

An examination of these contrasting positions, however, demonstrates that only the ruling of the Labor Arbiter was supported by substantial evidence. Indeed, the ruling of the NLRC is based on a misinterpretation of the ruling of the Labor Arbiter. The finding of the NLRC in its Resolution dated September 18, 2000 regarding the abolition of the position of Property Custodian is based on the interpretation that '[i]n the appealed Decision, the Labor Arbiter ruled that complainant's position as property custodian was not abolished, but that petitioners in a valid exercise of management prerogative, only transferred her to the position of bill distributor.'<sup>[42]</sup>

We thus uphold the Labor Arbiter's finding that the position of Property Custodian had been abolished. The abolition of a position deemed no longer necessary is a management prerogative, and this Court, absent any findings of malice and arbitrariness on the part of management, will not efface such privilege if only to protect the person holding that office. (*Equitable Banking Corporation vs. NLRC*, 339 Phil. 541 [1997]).

As found by the Labor Arbiter and affirmed by the NLRC, there had been a proposed restructuring of the organization of respondent BENECO, which process began before 1999. The Labor Arbiter and the NLRC affirmed that the restructured Table of Organization of BENECO was prepared after a thorough review by management of the indispensable and unessential positions in the old *plantilla*. It was undertaken to address the requirements of an automated system and to streamline BENECO's operations. Under the re-vamped organization, the position of Property Custodian under the Office of the General Manager had already been abolished.<sup>[43]</sup>

The position of Property Custodian was deemed a superfluity, since, even as early as 1997, many functions of the said office had been absorbed by other offices.<sup>[44]</sup> Certainly, the position was not abolished because Fianza was the occupant thereof; rather, the position was abolished because the functions of the position had become redundant and unnecessary. There is no showing that the position of Property Custodian was abolished in order to single out Fianza, or

that malice and ill-will attended the phasing out of the position. As such, the deletion of Fianza's position should be accepted and validated as a sound exercise of management prerogative, which this Court should not interfere with.

In cases when an employee's position is abolished due to corporate restructuring, the law, in general, permits the severance of the employer-employee relationship, provided that certain requirements are met. In the instant case, Fianza was not terminated from employment, but was transferred to another department.

Management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business (*Philippine Telegraph and Telephone Corporation vs. Laplana*, G.R. No. 76645, 23 July 1991, 199 SCRA 485) is generally not constitutive of constructive dismissal. (*Isabelo vs. NLRC*, G.R. Nos. 113366-68, 24 July 1997, 276 SCRA 141). Thus, in *Philippine Japan Active Carbon Corporation vs. NLRC*, [171 SCRA 164, March 9, 1989] the Court ruled:

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.<sup>[45]</sup>

The employer has the burden of proving that the transfer of an employee is for valid and legitimate grounds.<sup>[46]</sup> 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.<sup>[47]</sup>

The Labor Arbiter and NLRC found that the reorganization of BENECO was done in good faith, and that the transfer would not be unreasonable, inconvenient or prejudicial to the employee. Petitioners, therefore, have discharged the burden of proving that the transfer was not unreasonable, inconvenient or prejudicial to the employee.

Since it has likewise been established that there would be no demotion of titular rank, or diminution of salaries, benefits and other privileges, the remaining issue to be resolved is whether the duties and functions exercised by a Bill Distributor would amount to a demotion.

We are not persuaded that there is a significant disparity between the position of a Property Custodian and that of a Bill Distributor that amounts to a demotion tantamount to a constructive dismissal. Admittedly, one is an office job and the other would require travel. However, the position of a Bill Distributor is not purely mechanical labor. As Fianza herself points out, a Bill Distributor may receive, entertain and address problems, complaints and requests from member-consumers, and the position thus involves the exercise of discretion. Similar transfers and re-assignments of employees have been upheld, such as the transfer of a union president from his position of messenger clerk in a hotel to purely office work.<sup>[48]</sup> Mere incidental inconvenience is not sufficient to warrant Fianza's claims of constructive dismissal.

Fianza has not presented any evidence to substantiate her claim that her reassignment as a Bill Collector was prompted by the malevolence or bad faith of management. Indeed, Fianza was not the only employee affected by the transfer; another employee, Josephine Calinao, was likewise transferred, and she assumed her position without protest.<sup>[49]</sup> Fianza cannot complain of constructive dismissal because this transfer was against her wishes and not commensurate to her self-worth or personal qualifications. '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.'<sup>[50]</sup> On the basis of the qualifications, training and performance of the employee, the prerogative to determine the place or station where he or she is best qualified to serve the interests of the company belongs to the employer.

Moreover, the position of a Bill Distributor is undoubtedly crucial to the operations of the Petitioner BENECO. As an electric cooperative, its lifeblood hinges on the proper collection of revenues from its clients. To consider this position 'demeaning', 'menial' or 'servile' reveals arrogance.

Finally, an examination of the re-organized *plantilla* demonstrates that there are no positions with a rank of Level 5 other than Bill Distributors, Company Drivers or Mechanic/Drivers.<sup>[51]</sup> As such, the maintenance of Fianza's rank in BENECO would involve other positions likewise possessing driving skills – a skill useful for women as well as men, and a skill that Fianza's own documentary evidence would suggest that she possesses.<sup>[52]</sup>

Fianza's refusal to obey the transfer order constitutes willful disobedience of a lawful order of her employer sanctioned under Article 282<sup>[53]</sup> of the Labor Code and, therefore, warrants dismissal. It must be noted that during the preliminary conference, Fianza was advised that BENECO was willing to reinstate her, but because her position as Property Custodian was no longer existing, she would have to report for work as Bill Distributor.<sup>[54]</sup> Fianza refused this offer.<sup>[55]</sup> She must now bear the consequences of her refusal.

To sanction the disregard or disobedience by employees of a reasonable rule or order laid down by management would be disastrous to the discipline and order within the enterprise. It is in the interest of both the employer and the employee to preserve and maintain order and discipline in the work environment. Deliberate disregard of company rules or defiance of management prerogative cannot be countenanced. This is not to say that the employees have no remedy against rules or orders they regard as unjust or illegal. They can object thereto, ask to negotiate thereon, bring proceedings for redress against the employer. But until and unless the rules or orders are declared to be illegal or improper by competent authority,

the employees ignore or disobey them at their peril. (*GTE Directories Corporation vs. Sanchez*, 274 Phil. 783 [1991]; *Westin Philippine Plaza Hotel vs. NLRC*, 366 Phil. 313 [1999]).

**WHEREFORE**, the petition is **GRANTED**. The assailed Decision of the Court of Appeals dated November 29, 2002, and Resolution dated May 20, 2003, are **ANNULLED** and **SET ASIDE**. The Resolutions of the National Labor Relations Commission dated September 18, 2000 and December 20, 2000, ordering the dismissal of the complaint for constructive dismissal, are **REINSTATED**. No pronouncement as to costs.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Carpio, and Azcuna, JJ., concur.**  
**Panganiban, J., on official leave.**

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[1] CA Records, p. 53; p. 88.

[2] Id., p. 53; p. 89-100.

[3] Id., p. 53; p. 100-101.

[4] Id., p. 53.

[5] Id., p. 102.

[6] Id.

[7] Id.

[8] Id., p. 104.

[9] Id.

[10] Id., p. 105.

[11] Id., p. 106.

[12] Id.

[13] Id., p. 55.

[14] Id.

[15] Id., p. 108.

[16] Id., p. 110.

[17] Id., p. 56.

[18] Id., pp. 56-57.

[19] Id., pp. 82-85.

[20] Id., pp. 53 et seq.

[21] Id., pp. 57-60.

[22] Id., pp. 63 et seq.

[23] Id., pp. 68-69.

[24] Id., pp. 11 et seq.

- [25] Id., pp. 192 et seq.  
[26] Id., p. 202.  
[27] Id., p. 200.  
[28] Id., p. 201.  
[29] Id., pp. 206 et. seq.  
[30] Rollo, pp. 19-20.  
[31] San Miguel Brewery Sales Force Union vs. Ople, G.R. No. 53515, 8 February 1989, 170 SCRA 25.  
[32] Autobus Workers' Union vs. National Labor Relations Commission, G.R. No. 117453, 353 Phil. 419 (1998).  
[33] (Equitable Banking Corporation vs. NLRC, 339 Phil. 541 [1997]).  
[34] CA Records, p. 60.  
[35] Id., p. 64.  
[36] Id., p. 199-201.  
[37] Id., pp. 199.  
[38] Id., p. 57-59.  
[39] Id., p. 58.  
[40] Id., p. 64.  
[41] Id., p. 202.  
[42] Id., p. 64.  
[43] Rollo, pp. 76-77.  
[44] Id., p. 78.  
[45] Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission, G.R. No. 83239, 8 March 1989, 171 SCRA 164.  
[46] Jarcia Machine Shop and Auto Supply vs. National Labor Relations Commission, 334 Phil. 84 (1997).  
[47] Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission, supra.  
[48] Bay View Hotel Employees Union vs. Bay View Hotel, 107 Phil. 489 (1960).  
[49] CA Records, pp. 59-60.  
[50] Philippine Telegraph and Telephone Corporation vs. Laplana, supra.  
[51] Rollo, p. 77.  
[52] CA Records, p. 116.  
[53] LABOR CODE, art. 282. Termination by employer. - An employer may terminate an employment for any of the following just causes:  
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;  
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[54] CA Records, p. 56.  
[55] Id.