SUPREME COURT
FIRST DIVISION

JARCIA MACHINE SHOP and AUTO SUPPLY, INC,
***Petitioner*,**

-versus-

G.R. No. 118045
January 2, 1997

NATIONAL LABOR RELATIONS COMMISSION and AGAPITO T. TOLENTINO,
***Respondents*.**
x----------x

D E C I S I O N

PADILLA, *J.*:

This Petition filed under Rule 65, Rules of Court, assails the Decision[1] of public respondent National Labor Relations Commission (NLRC) upholding the labor arbiter's ruling[2] which declared private respondent Agapito T. Tolentino's transfer and demotion as an illegal constructive dismissal.

The evidence shows that private respondent had been employed by petitioner Jarcia Machine Shop & Auto Supply Inc. (hereinafter, Jarcia) as machinist for sixteen (16) years beginning 1976.[3]

On 14 January 1993, Tolentino claimed to have been illegally dismissed from work by Crispulo Jarcia, president and general manager of the machine shop (petitioner corporation). Thus, Tolentino filed an illegal dismissal complaint against Jarcia with prayer for backwages, separation pay in lieu of reinstatement, damages and attorney's fees.[4]

Conciliation efforts were made but no compromise or settlement was reached in view of the failure of Jarcia and its counsel to appear during the continuation of the mandatory conference scheduled on 4 March 1993.[5] Consequently, on motion of private respondent, the labor arbiter issued an Order terminating said mandatory conference and directing the parties to submit their respective position papers and all documentary evidence in support of their claims within fifteen (15) days from notice.

However, despite receipt of the labor arbiter's order, Jarcia failed to comply therewith.[6] Thus, on 10 May 1993, the labor arbiter issued an Order considering the case submitted for decision.

As found by the labor arbiter and as narrated in Tolentino's position paper, the following are the antecedent facts surrounding Tolentino's termination from employment:[7]

> "On January 11, 1993, complainant's aunt-in-law came to his house and requested his wife to accompany her to an important and urgent matter. His wife acceded. Thus, the complainant was left alone to take care of their two children — one 3 years of age and the other, 5 months. Consequently, he failed to report for work on that day.
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> In the morning of the next day, January 12, the complainant reported for work. However, he was informed by Mr. Crispulo Jarcia (respondent's President and General Manager) that he cannot be admitted for work because he was under suspension for one month for his failure to report on the previous day. Complainant tried to reason out. In return, he received insulting and demeaning words from Mr. Jarcia. He was also told that his employment has been terminated.

> In the afternoon of the same day, the complainant proceeded to their common relative — Mr. Federico Guinto, to seek his intervention about the matter (the complainant and Mr. Jarcia are relatives by affinity). He was instructed by Mr. Guinto to report for work on the next day, assuring him that he (Mr. Guinto) will straighten things over [sic]. As instructed, the complainant reported for work; on the next day but to his surprise, he received the same insulting and demeaning words from Mr. Jarcia. Worse, he was demanded to [sic] pay the alleged rentals of the apartment he was occupying.
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> On January 14, 1993, the complainant sought Mr. Guinto and again the latter told him to report for work as he has allegedly settled the matter with Mr. Jarcia. In the afternoon of that date, the complainant reported for work. But this time however, he is not to be a machine shop operator anymore. He was assigned by Mr. Jarcia to do the servile job of transporting filling materials to the shop premises. He reasoned out that it was not his job to do construction works. But again, he was in the receiving end of invectives and humiliating words from Mr. Jarcia. He was told that his employment is terminated and that he should leave the place immediately. Thus, after serving the respondent for 16 long years, he was unceremoniously dismissed — just like that."
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> Uncontroverted as they were, the labor arbiter had no alternative but to grant Tolentino's claims. He ordered Jarcia to pay Tolentino a grand total of P88,810.67 for backwages, separation pay, attorney's fees, moral and exemplary damages.[8]
>
> Jarcia's counsel filed an "Urgent Motion for Reconsideration with Motion to Admit Position Paper", alleging that his clerk, whom he had instructed to mail Jarcia's position paper, had gone home to Bicol without mailing the same.[9] The clerk's mother was allegedly sick.[10]

Jarcia's motion for reconsideration was forwarded to the National Labor Relations Commission (NLRC) and was treated as an appeal.[11] On 23 November 1993, the NLRC affirmed the decision of the labor

arbiter. Quoted hereunder is the dispositive part of the NLRC's ruling:[12]

> "Prescinding from the factual record, there can be no quibbling that complainant's removal from the service bears the raiments [sic] of a constructive discharge. This can be clearly drawn in his transfer from a mere or less dignified position of machinist to the servile job of transporting filling materials in the construction business of the respondent. From all indications, the "second assignment" is with the evident purpose of demeaning him.
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> "Thus, save for the award of moral and exemplary damages and attorney's fees which is hereto deleted for being bereft of factual and legal basis, We go by the disposition of the Labor Arbiter below.
>
> "WHEREFORE, with the foregoing modification, let the appealed decision be as it is hereby Affirmed, and the appeal, dismissed."

Expectedly, on 27 December 1993, Jarcia filed with the NLRC a Motion for Reconsideration/Motion to Remand Case to the Labor Arbiter for hearing on the merits. But the NLRC denied said motion on 30 September 1994.[13]

Aggrieved, petitioner Jarcia filed this special civil action for certiorari, alleging that, in the light of the following considerations, public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it affirmed the labor arbiter's Decision[14] because —

1. The evidence submitted by petitioner showing the private respondent's propensity to absence, tardiness and work undertime was ignored.

2. Upholding the decision of the Labor Arbiter, in the light of the foregoing evidence, would be a derogation of management's right to protect the business.

3. Private respondent could not be entitled to backwages since he was not illegally dismissed.

We affirm the NLRC's decision.

We fail to see any grave abuse of discretion amounting to lack of jurisdiction on the part of public respondent in upholding the labor arbiter's decision which declared Tolentino's transfer as a constructive dismissal.

With respect to its first argument, petitioner contends that public respondent committed grave abuse of discretion in not taking into consideration private respondent' s propensity to absence, tardiness and work undertime which is allegedly well-established in private respondent's daily time records (DTR).[15] It is claimed that a perusal of these DTRs[16] would show that private respondent had been absent or had worked undertime quite a number of times for the year 1992. This had been the case since private respondent got married.[17] Petitioner claims that private respondent's record of absences, tardiness and undertime work gives petitioner more than sufficient reason to impose some disciplinary action against private respondent.[18] However, despite his work attitude, private respondent was not dismissed but merely transferred by petitioner to another position.

Indeed, the DTRs annexed to the present petition would tend to establish private respondent's neglectful attitude towards his work duties as shown by repeated and habitual absences and tardiness and propensity for working undertime for the year 1992. But the problem with these DTRs is that they are neither originals nor certified true copies. They are plain photocopies of the originals, if the latter do exist. More importantly, they are not even signed by private respondent nor by any of the employer' s representatives. In all of the DTRs attached to the present petition, the space provided for the employee's signature is conspicuously blank. Hence, as pointed out by private respondent in his Comment,[19] these DTRs have not been established as pertaining to private respondent, thus raising the probability that these records may have been simulated to justify private respondent's demotion and transfer. At this juncture, it

should be noted that private respondent himself impugns the authenticity of these DTRs.[20]

According to petitioner, the subject DTRs are mere reproductions of the ones it annexed to its Position Paper which, along with its Urgent Motion for Reconsideration and Motion to Admit, were submitted to the Labor Arbiter below but was forwarded to the NLRC as an appeal.[21] As such, it is quite safe to conclude that the DTRs submitted to the NLRC were also not originals nor certified true copies. And like the ones attached to the petition filed with this Court, they were not signed by private respondent nor by any representative of the petitioner.

Moreover, as noted by the Solicitor General in its Comment,[22] these questioned daily time records do not conclusively establish private respondent's absenteeism, thus:

> "The blank spaces in private respondent' s daily time records, which petitioner pointed out as the days when he (private respondent) was absent, can be interpreted in various ways. One of which is that private respondent could have been on official leave of absence during some of those days. Or it may also be interpreted as the private respondent having forgot[ten] to punch in his time card during those days. The bottom line is that there is reasonable doubt in petitioner's interpretation of those blank spaces as the private respondent's incurring of absences. The company should have placed the word "absent" in the blank spaces in private respondent's time cards so as to leave no room for doubt. At any rate, it is an established rule in labor law that all doubts in labor cases should be resolved in favor of labor. There is no reason for this rule not to find application in the instant case."

It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases.[23] In fact, it is this same procedural rule which was presumably used by the NLRC as the legal basis for admitting petitioner's Urgent Motion for Reconsideration and Motion to Admit Position Paper. However, this procedural rule should not be misconstrued as a license to disregard certain fundamental

evidentiary rules. While the rules of evidence prevailing in courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. To admit an otherwise belatedly filed pleading or evidentiary document is one thing. To give credence and evidentiary weight thereto is quite another thing.

In view of the foregoing, public respondent could not have gravely abused its discretion in disregarding these DTRs, as it did in its decision[24] and resolution.[25] These DTRs are mere scraps of paper with doubtful or dubious probative value.

With respect to the second issue raised by petitioner, we do not believe that upholding the public respondent's affirmance of the labor arbiter's decision would result in a derogation of petitioner's management right to protect its business. Indeed, the employer generally has the right to transfer and reassign employees. In fact, in a number of cases, this Court has recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or a diminution of his salary, benefits and other privileges.[26] This is a privilege inherent in the employer's right to control and manage its enterprise effectively. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.[27] The right to transfer employees 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,[28] can hardly be disputed.

But like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.[29]

In the case at bar, petitioner failed to show substantial evidence to justify Tolentino's transfer and demotion from the position of a regular machine shop operator to that of transporting filling materials in petitioner's construction business. Petitioner insists that Tolentino's record of absenteeism, habitual tardiness and undertime work as evidenced by his DTRs for the year 1992 gives it more than sufficient ground to impose some form of disciplinary action against private respondent.[30] However, as discussed above, these DTRs have scant evidentiary weight. Hence, petitioner's claim that it was merely exercising a legitimate management prerogative in transferring Tolentino has no leg to stand on.

The case of Petrophil Corporation vs. NLRC[31] invoked by petitioner does not find application in the case at bar. Unlike in the present case, there was in the Petrophil case a factual finding at the level of the labor arbiter of the demoted and transferred employee's failure to observe proper diligence in his work, indolence, habitual tardiness and absences. Thus, in the Petrophil case, this Court sustained the management's prerogative to transfer, demote, discipline and even dismiss an employee to protect its business, provided it is not tainted with unfair labor practice.[32]

From the foregoing, it is not difficult to see that the labor arbiter and public respondent did not commit any abuse of discretion, much less a grave one, in declaring Tolentino's transfer from the position of a machine shop operator to a job involving construction works as a constructive dismissal.

As found by the labor arbiter,[33] Tolentino, on 12 January 1993, was initially suspended from work for a month after he incurred an unauthorized absence the previous day. But when he tried to reason out, Tolentino's employment was terminated. Two days later, petitioner informed him that he was just being transferred to petitioner's construction business to perform the job of transporting filling construction materials. When Tolentino refused, claiming that it was not related to his current job, he received invectives and humiliating words from petitioner. Thus, Tolentino left the shop premises as told and filed this illegal dismissal case against Jarcia.

Simply put, private respondent was compelled to quit his job with petitioner since he had been demoted without just cause. In Philippine Japan Active Carbon Corporation, et al. vs. NLRC, et al.,[34] constructive dismissal was defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. Despite petitioner' s claim that private respondent would be practically performing the task of a "delivery supervisor" and would be enjoying the trust and confidence of petitioner,[35] it cannot be denied that the transfer of Tolentino from the more or less technical position of a machinist to the mechanical position of delivering construction materials, a task he had never performed in his 16 years with petitioner, constitutes a demotion in rank. In fact, as pointed out by the Solicitor General, petitioner even explicitly considered such reassignment as a demotion.[36]

In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.[37] Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. In the case at bar, Tolentino's demotion was rightly declared by the Labor Arbiter and public respondent as an unlawful constructive dismissal, petitioner having failed to show substantial proof that Tolentino's demotion was for a valid and just cause.

Besides, even assuming arguendo that there was some basis for the demotion, as alleged by petitioner, the case records are bereft of any showing that private respondent was notified in advance of his impending transfer and demotion. Nor was he given an opportunity to refute the employer's grounds or reasons for said transfer and demotion. In Gaco vs. National Labor Relations Commission,[38] it was noted that:

> "While due process required by law is applied on dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should as in cases of dismissals, be given a chance to contest the same."

Since petitioner failed to comply with the legal requirements for the valid dismissal of an employee, Tolentino's constructive dismissal is rendered illegal on this additional ground. The award of backwages must, therefore, be upheld.

WHEREFORE, finding no grave abuse of discretion committed by public respondent NLRC, the present Petition is hereby **DISMISSED**. The questioned Decision and Resolution of public respondent promulgated on 23 November 1993 and 30 September 1994, respectively, are **AFFIRMED**, with the modification that the amount of backwages should be computed from the date of dismissal up to the date of finality of this decision. Costs against petitioner.

SO ORDERED.

Bellosillo, Vitug, Kapunan and Hermosisima, Jr., *JJ.*, concur.

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[1] NLRC Decision dated 23 November 1993, Rollo, pp. 20-24.
[2] Labor Arbiter's Decision dated 24 May 1993, Rollo, pp. 25-31.
[3] Id.
[4] Filed with the Sub-Regional Arbitrator Branch No. IV of the NLRC at San Pablo City.
[5] Id.
[6] Id.
[7] Id., pp. 26-27.
[8] Id., pp. 30-31.
[9] Rollo, p. 22.
[10] Petition, Rollo, p. 7.
[11] Rollo, p. 22.
[12] Id., pp. 23-24.

[13] NLRC Resolution dated 30 September 1994, p. 32.
[14] Petition, Rollo, p. 9.
[15] Petition, Rollo, p. 9.
[16] Rollo, pp. 9-11 and 52-55.
[17] Rollo, p. 5.
[18] Rollo, p. 11.
[19] Rollo, p. 118.
[20] Private Respondent's Comment dated 26 January 1995, Rollo, p. 117.
[21] Rollo, p 5.
[22] Solicitor General's Comment dated 2 May 1995, Rollo, p. 14.
[23] Article 221, Labor Code of the Philippines; Canete vs. NLRC, G.R. No. 114161, 23 November 1995, 250 SCRA 259.
[24] The NLRC Decision did not even mention these DTRs, Rollo, pp. 20-24.
[25] Rollo, pp. 32-33.
[26] Yuco Chemical Industries vs. Ministry of Labor, G.R. No. 75656, 28 May 1990, 185 SCRA 727.
[27] Id.
[28] Philippine Telegraph and Telephone Corp. vs. Laplana, et al., G.R. No. 76045, 23 July 1991, 199 SCRA 485.
[29] Id.
[30] Rollo, p. 11.
[31] G.R. No. 64048, 29 August 1986, 143 SCRA 700.
[32] Id.
[33] Labor Arbiter's Decision dated 24 May 1993, Rollo, p. 26.
[34] G.R. No. 83239, 8 March 1989, 171 SCRA 164.
[35] Petitioner's Reply to OSG's Comment dated 24 July 1995, Rollo, p. 161.
[36] OSG's Comment dated 2 May 1995, citing p. 14 of the Petition, Rollo, p. 143.
[37] Philippine-Japan Active Carbon Corp., et al. vs. NLRC, et al., G.R. No. 83239, 171 SCRA 164, 168.
[38] G.R. No. 104690, 23 February 1994, 230 SCRA 260.