

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**OSS SECURITY & ALLIED SERVICES,
INC., JUAN MIGUEL M. VASQUEZ and
MA. VICTORIA M. VASQUEZ,
*Petitioners,***

-versus-

**G.R. No. 112752
February 9, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION and EDEN LEGASPI,
*Respondents.***

X-----X

D E C I S I O N

DE LEON, JR., J.:

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul the Decision^[1] and the Resolution^[2] of the National Labor Relations Commission (NLRC), Second Division, dated October 20, 1993 and November 23, 1993, respectively, which affirmed the Decision^[3] dated February 25, 1993 of the Labor Arbiter declaring that the transfer of assignment of private respondent Eden Legaspi as effected by petitioner OSS Security & Allied Services, Inc. was illegal tantamount to unjust dismissal.^[4]

The facts of the case are the following:

Private respondent worked as a lady security guard of OSS Security Agency from June 16, 1985 to January 16, 1986. On January 17, 1986 petitioner acquired the assets and properties of OSS Security Agency and absorbed some of its personnel, including private respondent. As a lady security guard she was assigned to render security services to the different clients of petitioner.^[5] She was last assigned at the Vicente Madrigal Condominium II located in Ayala Avenue, Makati.^[6]

In a Memorandum^[7] dated July 30, 1991 addressed to petitioner's company President, retired General Honesto Isleta, the Building Administrator of VM Condominium II, Licerio E. Bugayong, complained of the laxity of the guards in enforcing security measures. The memorandum reads as follows:

“For the reason that in the past few months the Building Administrator has observed —

- (1) laxity in the discipline of your guards;
- (2) falsification of their log book by stating that they are present (especially on Saturdays and Holidays) when in fact they have not reported for work;^[8]
- (3) lack of proper coordination and cooperation among themselves; and
- (4) disseminating intrigues by and among themselves.

May I request that you reorganize the men and women assigned to the building to instill more discipline and proper decorum by changing, if need be, some of the personnel, replacing, if possible, on a temporary basis, the women complement, to find out if it would improve the service.

It would be noted that I have not approved the renewal of your contract which will all depend on the outcome of this request.”^[9]

In compliance therewith,^[10] petitioner issued Duty Detail Order No. 00446^[11] on August 1, 1991 relieving private respondent and another

lady security guard, Digna Suelan, of their assignment at VM Condominium II effective August 2, 1991 for reassignment to other units or detachments where vacancy exists.

On August 3, 1991, petitioner issued Duty Detail Order No. 00601,^[12] which detailed private respondent to the Minami International Corporation in Taytay, Rizal from August 3 to September 2, 1991 to replace lady security guard Susan Tan who filed her vacation leave for August 1991. However, it appears that private respondent did not report for duty at her new assignment.^[13]

On August 6, 1991 private respondent filed her complaint^[14] for underpayment and constructive dismissal. On February 25, 1993, Labor Arbiter Oswald B. Lorenzo rendered his decision upholding private respondent's position and declared that private respondent's transfer was not sanctioned by law, hence illegal and tantamount to unjust dismissal.^[15] The decretal portion of the Labor Arbiter's decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered adjudging respondents herein guilty of illegal dismissal and thus ordered to reinstate complainant to her former position without loss of seniority rights. Backwages for eighteen (18) months is hereby ordered paid by respondents to be reckoned from date of dismissal up to 03 February 1993, in the amount of FIFTY FIVE THOUSAND TWO HUNDRED TWENTY FOUR AND 25/100 (P55,224.25), which amount is based on twenty-six days work per month x P118.00 x eighteen (18) months.

In addition money claims in the amount of SEVEN THOUSAND SEVEN HUNDRED TWENTY FOUR AND 20/100 (P7,724.20) is hereby awarded in favor of complainant plus ten (10) per cent attorney's fees based on the total awards herein or P6,294.85.

All other unsubstantiated claims by respondent are hereby ordered dismissed.

SO ORDERED.”^[16]

Private respondent then appealed the decision of the Labor Arbiter to the public respondent NLRC where it was assigned to the Second Division. In a Decision^[17] dated October 20, 1993, the NLRC affirmed the decision of the Labor Arbiter. Petitioner sought reconsideration of the said decision but the same was denied in a Resolution^[18] dated November 23, 1993.

Hence, this petition.

The NLRC out-and-out adopted the following findings of the Labor Arbiter:

“This Office after a judicious calibration of the positions taken by the contending parties is of the finding that the transfer of the complainant and Digna Suelan were not sanctioned by law, hence, illegal and tantamount to unjust dismissal. As can be gleaned from the records it could readily be seen that these two (2) Lady Security Guards were discriminated against by reason of their being women. No reason was given why they were re-assigned, subject to availability of vacancy, except of being (the women complement). Besides, there is nothing on record to show complainant [sic] do not possess “discipline and proper decorum”.

Based on Annex “A” of the POSITION PAPER/AFFIDAVIT FOR THE COMPLAINANT, there indeed, appears no reason for the relief of LEGASPI, except that it was effected on the “decease [sic] of top management”.

It would be worthy of note, that a day before Duty Detail Order No. 00446, (Annex “A”), was given to complainant LEGASPI, there was a letter Annex “1” dated 30 July 1991, which was written by one LICERIO L. [sic] BUGAYONG, the Building Administrator of Madrigal Condominium Corporation II and addressed to GENERAL HONESTO ISLETA (RET.) whereby [sic] it was a “REQUEST FOR MORE DISCIPLINED SERVICE.”

Considering the one (1) day gap of Duty Detail Order No. 00446 relieving complainant and the receipt of respondent firm of

their Annex “1”, and without the benefit of investigation afforded to the former, the inevitable conclusion is that her relief was precipitately effected by the latter firm.”^[19]

The issue, therefore, in the case at bench is whether public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming and embracing the Labor Arbiter’s ruling that the transfer of assignment of private respondent by petitioner was illegal tantamount to unjust dismissal.^[20]

We answer in the affirmative.

Service-oriented enterprises, such as petitioner’s business of providing security services, generally adhere to the business adage that “the customer or client is always right”. To satisfy the interests, conform to the needs, and cater to the whims and wishes of its clients, along with its zeal to gain substantial returns on its investments, employers adopt means designed towards these ends. These are called management prerogatives in which the free will of management to conduct its own affairs to achieve its purpose, takes form. Accordingly, an employer can regulate, generally without restraint, according to its own discretion and judgment, every aspect of business.^[21]

In the employment of personnel, the employer can prescribe the hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work, subject only to limitations imposed by laws.^[22]

Thus, the transfer of an employee ordinarily lies within the ambit of management prerogatives.^[23] However, a transfer amounts to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and it involves a demotion in rank or diminution of salaries, benefits and other privileges.^[24] In the case at bench, nowhere in the record does it show that that the transfer of private respondent was anything but done in good faith, without grave abuse of discretion, and in the best interest of the business enterprise.

First. No malice should be imputed from the fact that private respondent was relieved of her assignment and, a day later, assigned a new post. We must bear in mind that, unlike other contracts of service, the availability of assignment for security guards is primarily at heart subservient to the contracts entered into by the security agency with its client-third parties. As such, being sidelined temporarily is a standard stipulation in employment contracts.^[25] When a security guard is placed “off detail” or on “floating” status, in security agency parlance, it means “waiting to be posted.”^[26] Private respondent has not even been “off detail” for a week when she filed her complaint.

Second. Evidence is wanting to support the Labor Arbiter’s conclusion that petitioner discriminated against private respondent when it ordered her relief and transfer of assignment. Petitioner proved that such transfer was effected in good faith to comply with the reasonable request^[27] of its client, Madrigal Condominium Corporation Incorporated (MCCI), for a more disciplined service of the security guards on detail. The renewal of the contract of petitioner with MCCI hinged on the action taken by the former on the latter’s request.^[28] Most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. Besides, a relief and transfer order in itself does not sever employment relationship between a security guard and her agency.^[29] Neither was the transfer for any ulterior design, such as to rid itself of an undesirable worker or to penalize an employee for his union activities and thereby defeat his right to self-organization.^[30]

Third. It appears that private respondent declined the post assigned to her inasmuch as she considered it “a booby trap of crippling and dislocating private respondent from her employment”.^[31] Private respondent lived in V. Mapa, Sta. Mesa, Manila,^[32] and her new assigned post is in Taytay, Rizal, as against her previous post at VM Condominium II in Makati. Her new assigned post would entail changes in her routine, something that she was not agreeable with. But the mere fact that it would be inconvenient for her, as she has been assigned to VM Condominium II for a number of years, does not by itself make her transfer illegal.^[33] Even private respondent admitted^[34] that she was assigned to render security service to the

different clients of petitioner. An employee has a right to security of tenure, but this does not give her such a vested right in her position as would deprive petitioner of its prerogative to change her assignment or transfer her where her service, as security guard, will be most beneficial to the client.^[35] Thus, there was no basis to order reinstatement and back wages inasmuch as private respondent was not constructively dismissed. Neither is private respondent entitled to the award of money claims for underpayment, absent evidence to substantiate the same.

Finally, the public respondent erred when it failed to note the absence of any employer-employee relationship between private respondent and petitioners Juan Miguel M. Vasquez and Ma. Victoria M. Vasquez. Petitioner Juan Miguel M. Vasquez is the Project Manager of MCCI which owns and operates VM Condominium II, while petitioner Ma. Victoria M. Vasquez is the former's sister and merely has her business office at VM Condominium II.^[36] Thus, no liability can be imposed on them.

WHEREFORE, the petition is hereby **GRANTED**, and the challenged Decision and Resolution of public respondent NLRC dated October 20, 1993 and November 23, 1993, respectively, are hereby **REVERSED** and **SET ASIDE**. The complaint dated August 6, 1991 filed by private respondent Eden Legaspi against petitioners is hereby **DISMISSED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and Buena, JJ., concur.

[1] Penned by Commissioner Rogelio I. Rayala and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Domingo H. Zapanta, Annex "A" of the Petition, Rollo, pp. 27-33.

[2] Annex "B" of the Petition, Id., p. 34.

[3] Penned by Labor Arbiter Oswald B. Lorenzo, NLRC Arbitration Branch-NCR Manila in Case No. NCR-00-08-04601-91, Annex "C" of the Petition, Id., pp. 36-42.

[4] Rollo, p. 37.

[5] Annex "I" of the Petition, Id., p. 51.

[6] Annex "G" of the Petition, Id., p. 45.

- [7] Annex “E” of the Petition, Id., p. 43.
- [8] Gen. Isleta noted on the right hand side: “This is a very serious charge”.
- [9] See Note No. 7, supra. Emphasis supplied.
- [10] On the bottom left side portion of the memorandum, Gen. Isleta wrote:
“To: TCM/FMM
Pls. institute reorgn.
Replace the two LG
w/ all SGs. ASAP
Eff/2 Aug. 91”.
- [11] Annex “D” of the Petition, Rollo, p. 42-b.
- [12] Annex “F” of the Petition, Id., p. 44.
- [13] On the bottom left hand portion of Duty Detail Order No. 00601 Romeo U. Legaspi, Operations Officer wrote on August 4, 1991, “Subject LG did not report for duty of this date”.
- [14] See Note No. 6, supra.
- [15] See Note No. 4, supra.
- [16] See Note No. 3, supra at pp. 41-42.
- [17] See Note No. 1, supra.
- [18] See Note No. 2, supra.
- [19] See Note No. 1, supra at pp. 30-31.
- [20] Id., p. 28.
- [21] Castillo vs. NLRC, G.R. No. 104319, June 17, 1999; Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, 514 (1994); National Federation of Labor Unions vs. NLRC, 202 SCRA 346, 355 (1991).
- [22] Consolidated Food Corporation vs. NLRC, G.R. No. 118647, September 23, 1999; Arellano, Jr. vs. NLRC, 278 SCRA 296, 302 (1997); Manila Electric Company vs. NLRC, 263 SCRA 531, 538 (1996).
- [23] Escobin vs. NLRC, 289 SCRA 48, 70 (1998); Autobus Worker’s Union (AWU) vs. NLRC, 291 SCRA 219, 229 (1998); Isabelo vs. NLRC, 276 SCRA 141, 146 (1997).
- [24] Garcia vs. NLRC, G.R. No. 116568, September 3, 1999; Ledesma vs. NLRC, 246 SCRA 47, 51 (1995).
- [25] Sentinel Security Agency, Inc. vs. NLRC, 295 SCRA 123, 131-132 (1998); Superstar Agency vs. National Labor Relations Commission, 184 SCRA 74, 77 (1990); Agro Commercial Security Services, Inc. vs. NLRC, 175 SCRA 790, 797 (1989).
- [26] Sentinel Security Agency, Inc. vs. NLRC, supra.
- [27] See Note No. 7, supra.
- [28] Ibid.
- [29] Sentinel Security Agency, Inc. vs. NLRC, supra.
- [30] Castillo vs. NLRC, supra; Blue Dairy Corporation vs. NLRC, G.R. No. 129843, September 14, 1999.
- [31] Annex “K” of the Petition, Rollo, p. 69.
- [32] See Note No. 6, supra.
- [33] Asis vs. NLRC, 252 SCRA 379, 385 (1996).
- [34] See Note No. 5, supra.

- [35] Westin Philippine Plaza Hotel vs. NLRC, G.R. No. 121621, May 3, 1999; Tan vs. NLRC, 299 SCRA 169, 180 (1998).
- [36] Petition, p. 2, Rollo, pp. 3-4.

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