

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**OSCAR LEDESMA AND COMPANY and  
ARTURO LEDESMA,**  
*Petitioners,*

*-versus-*

**G.R. No. 110930  
July 13, 1995**

**NATIONAL LABOR RELATIONS  
COMMISSION (Fourth Division) and  
ORLANDO ONDON,**  
*Respondents.*

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**DECISION**

**QUIASON, J.:**

This is a Petition for *Certiorari* under the Rule 65 of the Revised Rules of Court to set aside the Decision of the Fourth Division of the National Labor Relations Commission (NLRC) in Case No. V-0340-92 and its Resolution dated June 14, 1993, which denied petitioner's Motion for Reconsideration.

**I**

Private respondent was employed as a security guard by petitioner company in 1984 at its Hacienda Teresa situated in Barangay

Alicante, E.B. Magalona, Negros Occidental, under the management of petitioner Arturo Ledesma. The said hacienda is covered by the Comprehensive Agrarian Reform Program(CARP).

On February 8, 1992, a team from the Department of Agrarian Reform visited the hacienda and conducted a meeting to explain to the workers their options under the said law: namely, actual land distribution or stock distribution. After the said meeting, private respondent campaigned actively for actual land distribution plan while petitioner company campaigned for the stock distribution plan.

On February 9, 1992, private respondent led a walkout after petitioner company insisted that the workers at Hacienda Balarang, one of the haciendas also owned by it, be allowed to vote in the referendum.

On February 10, 1992, private respondent was prevented from reporting for work by the hacienda administrator, Ceferino Nunez, and was told to wait for petitioner Arturo Ledesma.

On February 18, 1992, petitioner Ledesma told private respondent that he did not want him to work in the hacienda anymore as private respondent's loyalty was with the workers and not with the petitioner company.

On February 27, 1992, private respondent filed with the Regional Arbitration Branch No. VI, Bacolod City, a complaint for illegal dismissal, underpayment of wages and non-payment of service incentive leave and night shift differential against petitioners.

On November 3, 1992, the Labor Arbiter ruled that private respondent was not dismissed but was merely given a new assignment and that his act of refusing to report for work in his new assignment constituted abandonment. Furthermore, he ruled that the change of private respondent's assignment from security guard to laborer was justified as respondent breached the trust and confidence of his employer by maintaining a stand contrary to that of management.

The Labor Arbiter also denied the claim for overtime pay and nighttime premium for lack of sufficient basis, but granted the claims for service incentive leave in the amount of P1,102.50 and salary differential in the amount of P2,814.62.

On appeal, NLRC reversed the decision of the labor Arbiter and ruled that respondent was illegally dismissed. NLRC found that petitioners failed to overcome private respondent's claim that he was dismissed by petitioner Ledesma, who failed to submit an affidavit to refute said claim. Likewise, NLRC dismissed petitioners' claim that private respondent was merely assigned in good faith to a new position and that the transfer did not involve a diminution in salary. NLRC ruled that the transfer of private respondent from the position of a security guard to the position of a laborer was a demotion.

Moreover, it ruled that private respondent's refusal to accept the transfer did not amount to abandonment of work for he immediately filed his complaint for illegal dismissal.

However, due to the strained relations between the parties, NLRC, in lieu of reinstatement ordered that private respondent be given separation pay equivalent to one month for every year of service and awarded back wages for three years. NLRC also increased the amount of salary differential from P2,814.62 to P8,736.86 and awarded attorney's fees.

Hence, this petition.

## II

Petitioners raise the following issues: (1) whether NLRC committed grave abuse of discretion in declaring that private respondent was illegally dismissed; and (2) whether NLRC erred in awarding back wages equivalent to three years.

NLRC ruled:

“While the law and jurisprudence recognizes the inherent privilege of employers to transfer an employee from one position to another and in justifiable cases even to demote an

employee, yet like all other rights, there are limits to its exercise. It ‘cannot be used as a subterfuge by the employer to rid himself of an undesirable worker, nor when the real reason is to penalize an employee for his union activities and thereby defeat his right to self organization.’ This is what analogically happened to the complainant-appellant. While working for his and the interest of his co-employees, the management disliked him and eventually got rid of him by verbally dismissing him.”

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“The right of the employer to transfer the employees in the interest of the efficient and economic operation of its business cannot be seriously challenged. That is its prerogative. The only limitation on the discretion of management in this regard is mala fides. The only time the employer cannot exercise this right is that where it is vitiated by improper motive and is merely a disguised attempt to remove or punish the employee sought to be transferred” (Rollo, pp. 31-32).

There is a constructive dismissal when the reassignment of an employee involves a demotion in rank or a diminution in pay (Lemery Savings and Loan Bank vs. National Labor Relations Commission, 205 SCRA 492 [1992]; Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission, 171 SCRA 164 [1989]).

In the case at bench, the demotion of private respondent is tantamount to a constructive dismissal. One does not need to stretch his imagination to distinguish the work of a security guard and that of a common agricultural laborer in a sugar plantation. Likewise, there was a diminution of salary, for a security guard is paid on a monthly basis while a laborer in the sugar plantation is paid either on a daily or piece work basis. Laborers do not work year round but only when needed and on off-season months, they are not required to work at all.

Settled is the rule that factual issues are not a proper subject *certiorari*, as the power of the Supreme Court to review labor cases is limited to the issue of jurisdiction and grave abuse of discretion

(Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 654 [1994]). We do not find NLRC to have acted with grave abuse of discretion.

Anent the second assigned error, we respect NLRC's finding that there is now a strained relationship between the parties and so, instead of reinstatement, it ordered petitioners to give separation pay and back wages to private respondent. As the illegal dismissal happened in February 1992, after the effectivity of R.A. No. 6715, private respondent is entitled to full back wages from the time his compensation was withheld from him up to the finality of our decision (Gaco vs. National Labor Relations Commission, 230 SCRA 260 [1994]).

**WHEREFORE**, the Petition is **DISMISSED**. The Decision in question is **AFFIRMED** with the **MODIFICATION** that the back wages should be paid from February 1992 up to the finality of this Decision. The Temporary Restraining Order is **LIFTED**.

**SO ORDERED.**

**Padilla, Davide Jr., Bellosillo and Kapunan, JJ ., concur.**