SUPREME COURT
SECOND DIVISION

PLACIDO O. URBANES, JR., operating under the name and style of Catalina Security Agency,
***Petitioner*,**

-versus-

G.R. No. 138379
November 25, 2004

COURT OF APPEALS and JERRY G. RILLES,
***Respondents*.**
x----------x

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals dated February 11, 1999, and the Resolution[2] dated April 22, 1999, denying petitioner's motion for reconsideration.

The facts are as follows:

Jerry Rilles started working as a security guard in petitioner's agency on March 29, 1984. On June 24, 1994, the agency's contract with the Social Security System (SSS) in Buendia, Makati, where he was

assigned, expired. He then reported to petitioner's office on several occasions for a new assignment, to no avail.

On March 28, 1995, Rilles filed a complaint before the National Labor Relations Commission (NLRC), National Capital Region, Manila, against petitioner and his agency for illegal dismissal, illegal deduction, underpayment of wages, non-payment of premium pay for holiday, rest day, holiday pay, service incentive leave pay, 13th month pay, back wages and attorney's fees.[3]

In the position paper he submitted to the NLRC dated June 8, 1995, Rilles alleged that: after his assignment with SSS Buendia, he was informed by Mr. Bacal, a former supervisor, that there was a vacant position in the National Home Mortgage Finance Corporation; when he reported on July 26, 1994, as instructed by the personnel department, however, a certain Melody of the department said that there was no post available for him; on October 3, 1994, the agency offered him a post in Bataan which he rejected as he was residing in Manila; on December 15, 1994, he again asked for an assignment but was unsuccessful; on March 27, 1995, a post in Manila was finally offered to him but with the condition that he sign a termination contract first; he refused such offer.[4]

Petitioner and his agency, as respondents a quo, contend that: Rilles was not given the run-around by the agency since there was really a vacant post, as referred to by Mr. Bacal, but such post was filled up on July 6, 1994; on October 3, 1994, he offered Rilles a vacant post in Bataan, where Rilles was assigned in 1984 and where there are stay-in quarters free of charge, but Rilles refused; it is not true that Rilles was offered a post in Manila on March 27, 1995 with the condition that he must sign a termination contract; it is also not true that Rilles reported to the agency on December 15, 1994, because if he did, he would have been given an assignment since there were several vacancies in the Public Estates Authority in Pasay and in the MWSS Caloocan; even now there are several vacancies in Metro Manila where Rilles could be assigned if only he would accept.[5]

On October 31, 1995, Labor Arbiter Jose G. de Vera rendered his decision the dispositive portion of which reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to pay the complainant the total sum of P26,076.85, as separation pay and refund of his cash bond, plus ten percent (10%) thereof as attorney's fees.
>
> All other claims of the complainant are hereby dismissed for lack of merit.
>
> SO ORDERED.[6]

He explained that:

> This Arbitration Branch is inclined to uphold the complainant in his charge of illegal dismissal. While it is true that complainant was validly relieved from his post at the SSS Makati, it is still the duty of the respondents to provide a reassignment to the complainant considering that his relief from his last post does not constitute a severance of employer-employee relationship. The record shows that when complainant was relieved on June 24, 1994, there were no more assignments given to him, notwithstanding the fact as claimed by the respondents, there were numerous vacant posts available in Metro Manila. If it were true that complainant did not report for reassignment or even refused to accept any assignment, it is still incumbent on the part of the respondents to notify the complainant in writing at his last known address to report for work under pain of disciplinary action. The failure of an employee to report for work or to accept any assignment does not ipso facto result in abandonment for the law particularly Rule XIV, Section 2, Book V of the Omnibus Implementing Rules and Regulations of the Labor Code specifically enjoins the employer to send a written notice to the concerned employee at his last known address. This written notice that respondents could have sent to the complainant should have included a Duty Detail Order if indeed there were vacant posts available for the complainant. There were no such Duty Detail Orders issued by the respondents, or if one is indeed issued, there is no evidence that complainant refused to accept his assignment. Further, if indeed the respondents are really inclined to give any

assignment to the complainant, they could have offered one during the initial conferences of the instant case. None of such sort was done by the respondents.

From June 25, 1994 when the complainant was relieved from his last post until the filing of this suit for illegal dismissal on March 28, 1995, or a period of more than six (6) months, there were no assignments given to the complainant. Neither were there notices sent to the complainant requiring him to report for his reassignment. These circumstances clearly indicated constructive illegal dismissal which entitled the complainant to his prayer for separation pay at the rate of one-half month pay for every year of service.

At the prevailing minimum wage rate of P145.00 per day, the complainant's monthly pay rate should be P4,723.37 computed as follows: P145.00 multiplied by 390.9 days divided by 12 months. Thus, at one-half month pay for every year of service, complainant's separation pay amounts to P23,616.85 (P4,723.37 divided by 2 times 10 years).

The complainant's claim of P20.00 per month deduction as bond is duly supported by the payslips he presented in evidence. Accordingly, this must be refunded to him. Thus, from March 29, 1984 up to June 24, 1994, or a total of 123 months, the complainant had accumulated a total deduction of P2,460.00. This claim for refund is not subject to the prescriptive period of three (3) years, since it is the complainant's own money which is involved which was merely deposited with the respondents during the duration of his employment.

Regarding the complainant's claim for underpayment of wages, there were no payslips submitted by him covering the prescriptive period of three (3) years prior to the filing of the complaint. On the other hand, the respondents submitted in evidence payrolls for the period and it appears therein that complainant was duly paid at the rate of P118.00 per day which is in accordance with the prevailing minimum wage rates. Further, the payrolls show that complainant was duly paid of

> his legal holiday pay and premium pay for his rest days and special holidays. Respondents were also able to show by the payrolls submitted in evidence that complainant was duly paid of his overtime pay, service incentive pay, and 13th month pay during the subject period.[7]

Petitioner appealed and the NLRC on January 28, 1998 affirmed the decision of the Labor Arbiter, to wit:

> WHEREFORE, in the light of the foregoing, the appeal is hereby DENIED for lack of merit. The assailed DECISION dated October 31, 1995 is hereby AFFIRMED.
>
> SO ORDERED.[8]

Petitioner's motion for reconsideration likewise failed.[9]

Petitioner then filed a petition for certiorari with this Court on June 12, 1998, which was referred, however, to the Court of Appeals on December 9, 1998, following this Court's ruling in St. Martin Funeral Home vs. NLRC.[10]

On February 11, 1999, the Court of Appeals rendered its decision the fallo of which reads:

> WHEREFORE, the petition for certiorari is hereby DENIED for lack of merit. Accordingly, the Resolution of January 28, 1998 is AFFIRMED in toto.[11]

Hence the present petition where it is claimed that:

> PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER DESPITE THE FACT THAT THE DECISION OF THE LATTER IS CONTRARY TO LAW AND JURISPRUDENCE AND IS NOT SUPPORTED BY THE EVIDENCE ADDUCED.[12]

Petitioner argues that: while the Constitution is committed to the policy of social justice and the protection of the working class, management also has its own rights which are entitled to respect and enforcement in the interest of justice and fair play;[13] in this case, the last assignment of respondent Rilles at SSS Buendia ended with the expiration of the security service contract with petitioner; respondent was continuously offered an assignment in Bataan, where he was previously assigned, but which respondent refused on the ground that he lives in Manila; respondent was not placed on "stand-by," instead, it was he who did not report regularly to petitioner's headquarters since he did not have the patience, diligence and earnestness in getting an assignment; and the findings and conclusions of the Labor Arbiter that private respondent Rilles was not given any assignment from June 25, 1994, the date of his relief from SSS Buendia, until the filing of this case were merely based on respondent's bare and self-serving allegations in his position paper.[14]

In his comment, respondent avers that: the present petition is based on questions of fact and not of law; the factual issues being questioned here were resolved by the Labor Arbiter on the basis of substantial evidence; and the factual findings of the NLRC which coincide with those of the Labor Arbiter should be accorded respect especially since such findings were affirmed in toto by the Court of Appeals when it said that there is substantial evidence on record to support the same.[15]

In his reply, petitioner insists that: his petition is based on questions of law and not on fact; if the applicable law and jurisprudence are faithfully applied to the facts in this case, the consequence would be opposed to the findings and conclusions of the Court of Appeals; factual review is also necessary since the factual findings of the Court of Appeals are devoid of support by the evidence on record; respondent was offered an assignment in Bataan on the third month following his relief from SSS Buendia; and since there is no dismissal, constructive or otherwise, no separation pay or back wages are payable.[16]

To resolve this case, only one question needs to be answered, i.e., whether or not respondent Rilles was illegally dismissed by petitioner.

We find that he was.

It is axiomatic that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on this Court unless patently erroneous. This is because it is not the function of this Court to analyze or weigh all over again the evidence already considered in the proceedings below; or reevaluate the credibility of witnesses; or substitute the findings of fact of an administrative tribunal which has expertise in its special field.[17]

In this case, we defer to the factual findings of the labor arbiter, who is deemed to have acquired expertise in matters within his jurisdiction[18] specially since his findings were affirmed in toto by the NLRC and the Court of Appeals.

However, certain clarifications need to be made.

The Labor Arbiter in his decision stated that when Rilles was relieved by petitioner's agency on June 24, 1994, there were no more assignments given him.[19] Rilles, in his position paper dated June 8, 1995, meanwhile, admitted that:

> On October 3, 1994, respondent (agency) advised (him) to report to Office and he was offered a vacant post in Bataan. However, such offer was rejected by (him) because he was residing in Manila.[20] (Emphasis supplied)

Thus the issue that should have been threshed out below is not just whether or not Rilles was illegally dismissed, but whether or not the assignment offered to him in Bataan was unreasonable and prejudicial to his interest which is tantamount to a constructive dismissal.

As a general rule, the right to transfer or reassign employees is recognized as an employer's right and the prerogative of management.[21] As the exigency of the business may require, an employer, in the exercise of his prerogative may transfer an employee, provided that said transfer does not result in a demotion in rank or diminution in salary, benefits and other privileges of the employee; or

is not unreasonable, inconvenient or prejudicial to the latter; or is not used as a subterfuge by the employer to rid himself of an undesirable worker.[22]

As we explained in OSS Security and Allied Services, Inc. vs. NLRC:[23]

> 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.[24] (Emphasis supplied)

In Philippine Industrial Security Agency Corp. vs. Dapiton,[25] we also noted that -

> Transfers can be effected pursuant to a company policy to transfer employees from one place of work to another place of work owned by the employer to prevent connivance among them. Likewise, we have affirmed the right of an employer to transfer an employee to another office in the exercise of what it took to be sound business judgment and in accordance with pre-determined and established office policy and practice. Particularly so when no illicit, improper or underhanded purpose can be ascribed to the employer and the objection to the transfer was grounded solely on the personal inconvenience or hardship that will be caused to the employee by virtue of the transfer. In security services, the transfer connotes a changing of guards or exchange of their posts, or their reassignment to other posts. However, all are considered given their respective posts.[26]

However, as in all other rights, there are limits. The management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. There must be no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.[27]

As we explained in Globe Telecom, Inc. vs. Florendo-Flores:[28]

> In constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for just and valid grounds such as genuine business necessity. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee. It must not involve a demotion in rank or a diminution of salary and other benefits. If the employer cannot overcome this burden of proof, the employee's demotion shall be tantamount to unlawful constructive dismissal.[29]

Thus, it is clear that while petitioner has the prerogative to transfer its guards pursuant to business exigencies, he has the burden, however, to show that the exercise of such prerogative was not done with grave abuse of discretion or contrary to justice and fair play.

This petitioner failed to do. He argues in his present petition that respondent Rilles was continuously offered an assignment in Bataan, and it is only Rilles who refuses, thus there cannot be any constructive dismissal. In the position paper submitted before the NLRC, however, petitioner claimed that there were many posts available in Manila where Rilles could be posted if only Rilles would agree. Thus, instead of adequately showing the necessity of such transfer to Bataan, petitioner cast doubt as to the urgency of such decision. The Labor Arbiter also noted that while petitioner claimed that there are many posts in Manila which it could give to respondent if only respondent would agree, no offer was ever made by petitioner in the conferences conducted before his office. Also, if such offer of an assignment in Manila was actually made, there would have been no need for Rilles to institute the complaint before the NLRC.

While transfer of assignment which may occasion hardship or inconvenience is allowed, this Court however shall not countenance a transfer that is unnecessary, inconvenient and prejudicial to employees.[30]

Thus, we hold that respondent Rilles was constructively removed and illegally dismissed by petitioner. He is entitled to reinstatement and back wages as a necessary consequence of petitioner's acts.[31] Back

wages are paid as part of the penalty petitioner has to pay for illegally dismissing respondent. It is computed from the time of respondent's dismissal, in this case June 25, 1994, the day after the expiration of his last assignment, up to the time of his reinstatement,[32] less whatever amount petitioner may prove that the respondent might have earned in the interim.[33] Petitioner is also liable to refund respondent's cash bond, in the amount of P2,460.00 as found by the Labor Arbiter, and 10% of the total amount to be received by respondent, as attorney's fees, since respondent was compelled to litigate and incur expenses to enforce and protect his rights.[34]

The Labor Arbiter ordered petitioner to give respondent separation pay. Separation pay, as a rule however, is given whenever reinstatement is no longer feasible due to strained relations.[35] Absent any showing that reinstatement is no longer feasible in this case, we hold that respondent should be reinstated instead.

WHEREFORE, the petition is **DENIED** and the decision of the Court of Appeals is **AFFIRMED** with the modification that petitioner is ordered to reinstate respondent Jerry Rilles and to pay him back wages from June 25, 1994 up to the date of his reinstatement. This case is remanded to the NLRC for computation of back wages to be paid by petitioner to respondent, in addition to the refund of P2,460.00 as cash bond and ten percent (10%) of the total amount to be received by respondent as attorney's fees.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Callejo, Sr., Tinga, and Chico-Nazario, *JJ.*, concur.

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[1] Penned by Associate Justice Artemio G. Tuquero and concurred in by Associate Justices Eubulo G. Verzola and Mariano M. Umali, Rollo, pp. 59-62.
[2] Rollo, p. 65.
[3] Id., p. 82.
[4] Id., p. 85.
[5] Rollo, pp. 91-96.
[6] Id., p. 126.
[7] Rollo, pp. 123-126.

[8] Id., p. 177.
[9] Id., p. 196.
[10] G.R. No. 130866, September 16, 1998, 295 SCRA 494; Rollo, p. 61.
[11] Id., p. 62.
[12] Id., p. 42.
[13] Id., p. 44.
[14] Id., pp. 48-51.
[15] Id., pp. 226-226a.
[16] Id., pp. 231-238.
[17] Metro Transit Organization, Inc. vs. NLRC, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 239.
[18] Abalos vs. Philex Mining Corporation, G.R. No. 140374, November 27, 2002, 393 SCRA 134, 142.
[19] Rollo, pp. 123-124.
[20] Id., p. 85.
[21] Abbott Laboratories (Phils.), Inc., vs. NLRC, No. L-76959, October 12, 1987, 154 SCRA 713, 717.
[22] Sentinel Security Agency, Inc. vs. NLRC, G.R. No. 122468, September 3, 1998, 295 SCRA 123, 133.
[23] G.R. No. 112752, February 9, 2000, 325 SCRA 157.
[24] Id., p. 164.
[25] G.R. No. 127421, December 8, 1999, 320 SCRA 124.
[26] Id., pp. 135-136.
[27] Yuco Chemical Industries, Inc. vs. MOLE, G.R. No. 75656, 185 SCRA 727, 730.
[28] G.R. No. 150092, September 27, 2002, 390 SCRA 201.
[29] Id., p. 213.
[30] Asis vs. NLRC, G.R. No. 107378, January 25, 1996, 252 SCRA 379, 384.
[31] Sentinel Security Agency, Inc. vs. NLRC, supra, p. 135.
[32] Philippine Industrial Security Agency vs. Dapiton, supra, p. 138.
[33] Asis vs. NLRC, supra, p. 385.
[34] Paguio vs. Philippine Long Distance Telephone Co., Inc., G.R. No. 154072, December 3, 2002, 393 SCRA 379, 388.
[35] Sentinel Security Agency, Inc. vs. NLRC, supra, p. 135.