SUPREME COURT
SECOND DIVISION

WESTIN PHILIPPINE PLAZA HOTEL,
***Petitioner*,**

-versus-

G.R. No. 121621
May 3, 1999

NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) and LEN RODRIGUEZ,
***Respondents*.**
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D E C I S I O N

QUISUMBING, *J.*:

Petitioner seeks to annul the Decision[1] of the Third Division of the National Labor Relations Commission dated March 29, 1995 in NLRC NCR Case No. 00-07-04820-93, and its Resolution dated June 22, 1995 denying petitioner's motion for reconsideration.

Private respondent was continuously employed by petitioner in various capacities from July 1, 1977 until his dismissal on February 16, 1993. Initially hired as pest controller, he was later posted as room attendant. Next he served as bellman, until he was finally assigned as doorman in November, 1981, and stayed in that position until his employment was terminated by petitioner.

On December 28, 1992, private respondent received a memorandum from the management transferring him from doorman to linen room attendant in the Housekeeping Department effective December 29, 1992. The position of doorman is categorized as guest-contact position while linen room attendant is a non-guest contact position. The transfer was allegedly taken because of the negative feedback on the manner of providing service to hotel guests by private respondent. This assessment was primarily based on the report of professional shoppers engaged by petitioner to evaluate and review the various services of the hotel and its personnel. Earlier, private respondent had figured in altercations with drivers of taxicabs servicing petitioner's guests.

Instead of accepting his new assignment, private respondent went on vacation leave from December 29, 1992, to January 16, 1993. In the meantime, the President of the National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) appealed to management concerning private respondent's transfer. In her response, Ms. Merceditas Santos, petitioner's director for human resources development, clarified that private respondent's transfer is merely a lateral movement. She explained that management believed that private respondent was no longer suited to be in a guest-contact position, but there was no demotion in rank or pay.

When private respondent reported back to work, he still did not assume his post at the linen room. Notwithstanding several reminders from the personnel department and even his union, private respondent refused to report to his new work station.

Thus, on February 11, 1993, private respondent was served with a memorandum asking him to explain in writing why no disciplinary action should be taken against him for insubordination. The memorandum noted that while private respondent regularly came to the hotel everyday, he just stayed at the union office. Private respondent was again reminded to report to his new job otherwise he would be clearly defying a lawful order. In his reply private respondent, however, merely questioned the validity of his transfer without giving the required explanation.

On February 16, 1993, petitioner terminated private respondent's employment on the ground of insubordination. Feeling aggrieved, private respondent filed with the Department of Labor and Employment which later indorsed to the NLRC for appropriate action a complaint for illegal dismissal against petitioner. In a decision dated June 16, 1994, the labor arbiter declared that the dismissal was legal. Accordingly, the complaint was dismissed for lack of merit.

On appeal, public respondent reversed the judgment of the labor arbiter. In its decision, it declared that the intended transfer was in the nature of a disciplinary action.[2] It held that there was no just cause in dismissing private respondent and disposed of the case as follows:

> "WHEREFORE, premises considered, the appealed decision is hereby VACATED and a new one entered with the following dispositions:
>
> a) Respondent is hereby ordered to pay backwages from February 16, 1993 to the date of this decision; and
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> b) To pay complainant separation pay equivalent to one (1) month pay for every year of service, in lieu of reinstatement.
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> All other claims are dismissed for lack of merit.
>
> SO ORDERED."[3]

Its motion for reconsideration having been denied, petitioner filed this instant petition.

The fundamental issue to be resolved in this case is whether or not public respondent gravely abused its discretion in ruling that there was no just and valid cause for dismissing private respondent. And the pivotal query is whether private respondent was guilty of insubordination or not?

Petitioner contends that private respondent's continued refusal to report to his new work assignment constituted gross insubordination.

It avers that the transfer of private respondent was a valid exercise of its management prerogative.

The contention of petitioner is meritorious. The labor arbiter's decision, dated June 16, 1994, is amply supported by substantial evidence and prevailing jurisprudence. It is error as well as grave abuse of discretion on public respondent's part to hold otherwise.

Under Article 282 (a) of the Labor Code, as amended, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. But disobedience to be a just cause for dismissal envisages the concurrence of at least two (2) requisites: (a) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and, (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he has been engaged to discharge.[4]

In the present case, the willfulness of private respondent's insubordination was shown by his continued refusal to report to his new work assignment. Thus, upon receipt of the order of transfer, private respondent simply took an extended vacation leave. Then, when he reported back to work, he did not discharge his duties as linen room attendant despite repeated reminders from the personnel office as well as his union. Worse, while he came to the hotel everyday, he just went to the union office instead of working at the linen room. More than that, when he was asked to explain why no disciplinary action should be taken against him, private respondent merely questioned the transfer order without submitting the required explanation. Based on the foregoing facts, private respondent's intransigence was very evident.

On the issue of legality and reasonableness of the order of transfer, it must be emphasized that 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. This is a privilege inherent in the employer's right to control and manage its enterprise effectively.[5] Besides, it is the

employer's prerogative, based on its assessment and perception of its employee's qualifications, aptitudes and competence, to move him around in the various areas of its business operations in order to ascertain where the employee will function with utmost efficiency and maximum productivity or 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.[6]

Indeed, petitioner is justified in reassigning private respondent to the linen room. Petitioner's right to transfer is expressly recognized in the collective bargaining agreement between the hotel management and the employees union as well as in the hotel employees handbook. The transfer order was issued in the exercise of petitioner's management prerogative in view of the several negative reports *vis-à-vis* the performance of private respondent as doorman. It was a lateral movement as the positions of doorman and linen room attendant are equivalent in rank and compensation. It was a reasonable relocation from a guest contact area to a non-guest contact area. Thus, public respondent's observation that private respondent was demoted because the position of doorman is "more glamorous" than that of a linen room attendant is pure conjecture. Public respondent's conclusion that the transfer was punitive in character could not be sustained for lack of substantial basis.

Finally it must be stressed that 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.[7] In the case at bar, private respondent was repeatedly reminded not only by management but also by his union to report to his work station but to no avail. His continued refusal to follow a legal

order brought on the fit consequence of dismissal from his position for which management could not be justly faulted.

WHEREFORE, the Petition is hereby **GRANTED**. The assailed decision of the National Labor Relations Commission is hereby **SET ASIDE**. The decision of the Labor Arbiter dated June 16, 1994, is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Puno, Mendoza and Buena, *JJ.*, concur.

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[1] Penned by Commissioner Joaquin A. Tanodra, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo.
[2] Rollo, p. 31.
[3] Id., at 33.
[4] Tomas Lao Construction vs. NLRC, 278 SCRA 716, 731 (1997).
[5] Yuco Chemical Industries Inc. vs. Ministry of Labor and Employment, 185 SCRA 727, 730 (1990).
[6] Isabelo vs. NLRC, 276 SCRA 141, 146 (1997) citing Philippine Japan Active Carbon Corp. vs. NLRC, 171 SCRA 164 (1989).
[7] GTE Directories Corporation vs. Sanchez, 197 SCRA 452, 467 (1991).
