SUPREME COURT
SECOND DIVISION

ZEL T. ZAFRA and EDWIN B. ECARMA,
***Petitioners*,**

-versus-

G.R. No. 139013
September 17, 2002

HON. COURT OF APPEALS, PHILIPPINE LONG DISTANCE TELEPHONE CO., INC., AUGUSTO COTELO, and ERIBERTO MELLIZA,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

For Review on *Certiorari* is the Decision[1] of the Court of Appeals dated December 22, 1998, in CA-G.R. SP. No. 48578, reversing that of the voluntary arbitrator which ordered respondent Philippine Long Distance Telephone Co. (PLDT) to reinstate petitioners. Also impugned is the resolution dated May 24, 1999, denying petitioners' motion for reconsideration.

The undisputed facts, as set forth in the decision of the Court of Appeals, are as follows:

Petitioner Zel T. Zafra was hired by PLDT on October 1, 1984 as Operations Analyst II with a monthly salary of P14,382 while co-petitioner Edwin B. Ecarma was hired as Junior Operations Analyst I on September 16, 1987 at a monthly rate of P12,032. Both were regular rank-and-file employees assigned at the Regional Operations and Maintenance Control Center (ROMCC) of PLDT's Cebu Provincial Division. They were tasked to maintain the operations and maintenance of the telephone exchanges in the Visayas and Mindanao areas.[2]

In March 1995, petitioners were chosen for the OMC Specialist and System Software Acceptance Training Program in Germany in preparation for "ALCATEL 1000 S12," a World Bank-financed PLDT project in line with its Zero Backlog Program. ALCATEL, the foreign supplier, shouldered the cost of their training and travel expenses. Petitioners left for Germany on April 10, 1995 and stayed there until July 21, 1995.[3]

On July 12, 1995, while petitioners were in Germany, a certain Mr. R. Relucio, SwitchNet Division Manager, requested advice, through an inter-office memorandum, from the Cebu and Davao Provincial Managers if any of the training participants were interested to transfer to the Sampaloc ROMCC to address the operational requirements therein. The transfer was to be made before the ALCATEL exchanges and operations and maintenance center in Sampaloc would become operational.

Upon petitioners' return from Germany, a certain Mr. W.P. Acantillado, Senior Manager of the PLDT Cebu Plant, ;informed them about the memorandum. They balked at the idea, but PLDT, through an inter-office memorandum dated December 21, 1995, proceeded to transfer petitioners to the Sampaloc ROMCC effective January 3, 1996.[4]

Petitioners left Cebu for Manila on December 27, 1995 to air their grievance to PLDT and to seek assistance from their union head office in Mandaluyong. PLDT ordered petitioners to report for work on January 16, 1996, but they asked for a deferment to February 1, 1996. Petitioners reported for work at the Sampaloc office on January 29, 1996. Meanwhile PLDT moved the effectivity date of their transfer to

March 1, 1996. On March 13, 1996, petitioners again appealed to PLDT to no avail. And, because all their appeals fell on deaf ears, petitioners, while in Manila, tendered their resignation letters on March 21, 1996. Consequently, the expenses for their training in Germany were deducted from petitioners' final pay.

On September 11, 1996, petitioners filed a complaint with the National Labor Relations Commission Regional Arbitration Branch No. 7 for alleged constructive dismissal and non-payment of benefits under the Collective Bargaining Agreement.[5] In an order dated November 10, 1996, the presiding labor arbiter referred the complaint to the National Conciliation and Mediation Board, Cebu City, for appropriate action.[6] On January 17, 1997, the parties agreed to designate lawyer Rolando M. Lim as their voluntary arbitrator.[7]

In their complaint, petitioners prayed that their dismissal from employment be declared illegal. They also asked for reinstatement with full backwages, refund of unauthorized deductions from their final pay, including damages, costs of litigation, and attorney's fees.[8]

Respondent PLDT, for its part, averred that petitioners agreed to accept any assignment within PLDT in their application for employment[9] and also in the undertaking[10] they executed prior to their training in Germany. It prayed that petitioners' complaint be dismissed.

After submission of their respective position papers and admission of facts, the case was set for hearing. Petitioners presented their witnesses and made their formal offer of documentary evidence. PLDT, however, requested for a re-setting of the hearing from October 9 and 10, 1997 to November 10 and 11, 1997.[11] But on those dates PLDT did not appear. Nor did it file any notice of postponement or motion to cancel the hearings.[12]

Upon petitioners' motion and pursuant to Article 262-A of the Labor Code,[13] the voluntary arbitrator issued an order admitting all documentary exhibits offered in evidence by petitioners and. submitting the case for resolution.[14] In said order, PLDT was declared to have waived its right to present evidence on account of its unjustified failure to appear in the November 10 to 11 hearings.

On December 1, 1997, the voluntary arbitrator issued a decision which reads:

> IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in the above case, in favor of complainants Zel Zafra and Edwin Ecarma and against respondent PLDT, as follows:
>
> 1. Declaring that complainants were illegally dismissed by reason of the forced resignations or constructive discharge from their respective employment with PLDT;
>
> 2. Ordering the reinstatement of complainants without loss of seniority rights and other privileges, and granting the award of full backwages from April 22, 1996, inclusive of allowances granted in the CBA or their monetary equivalent computed from the time complainants' compensation were withheld up to the time of their actual reinstatement, or in lieu thereof, ordering the payment of separation pay with full backwages;
>
> 3. Ordering the refund of P35,721.81 to complainant Zafra and P24,186.67 to complainant Ecarma, which amounts constitute as unauthorized deductions from their final pay;
>
> 4. Ordering payment of P50,000.00 as moral damages; P20,000.00 as exemplary damages and P20,000.00 as refund for litigation expenses;
>
> 5. Ordering payment of 10% Attorney's Fees computed on all adjudicated claims.
>
> SO ORDERED.[15]

PLDT's motion for reconsideration of the above decision was denied on July 10, 1998.[16] On August 7, 1998, PLDT initiated a special civil

action for *certiorari* with the Court of Appeals,[17] which was treated as a petition for review.[18] On December 22, 1998, the CA ruled in favor of PLDT and reversed the voluntary arbitrator's decision, in this wise:

> WHEREFORE, the instant petition is hereby given due course. Accordingly, the assailed Order is hereby REVERSED with the exception of the refund, which is hereby ordered, of the amount of P35,721.81 to respondent Zafra and P24,186.67 to respondent Ecarma representing unauthorized deductions from their final pay.
>
> SO ORDERED.[19]

Zafra and Ecarma as respondents below moved for reconsideration of the CA decision which, however, was denied on May 24, 1999.[20]

Petitioners now anchor their petition on the following grounds:

> I. THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN THE RESPONDENTS' PETITION IN A WAY PROBABLY NOT IN ACCORD WITH THE LAW OR THE APPLICABLE DECISIONS OF THE SUPREME COURT.
>
> A. THE COURT A QUO, INSTEAD OF RESOLVING ERRORS OF JURISDICTION ALLEGED IN THE RESPONDENTS' PETITION ERRED IN RENDERING THE DECISION ON ITS MERITS, IN EFFECT NOT ACCORDING RESPECT AND SETTING ASIDE THE VOLUNTARY ARBITRATOR'S EVALUATION OF THE EVIDENCE AND FACTUAL FINDINGS BASED THEREON.
>
> B. THE COURT A QUO, IN GIVING DUE COURSE TO THE RESPONDENTS' PETITION ERRED IN PROCEEDING TO RESOLVE THE SAME ON THE MERITS, WITHOUT FIRST REVIEWING THE ENTIRE RECORD OF THE PROCEEDINGS OF THE VOLUNTARY ARBITRATOR.

II. THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR AN EXERCISE OF THE HONORABLE SUPREME COURT'S SUPERVISION.

A. THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE DECISION THROUGH ITS UTTER DISREGARD OF THE APPROPRIATE MODE OF APPEAL TO BE TAKEN BY THE RESPONDENTS FROM THE JUDGMENT OF THE VOLUNTARY ARBITRATOR.

B. THE COURT A QUO COMMITTED GRAVE ABUSE OF ITS DISCRETION IN TREATING JOINTLY THE RESPONDENTS' PETITION EITHER AS AN APPEAL UNDER RULE 43, OR IN THE ALTERNATIVE, A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65.

C. THE COURT A QUO COMMITTED GRAVE ABUSE OF ITS DISCRETION IN FAILING TO DISMISS THE RESPONDENTS' PETITION FOR *CERTIORARI* OUTRIGHTLY FOR FAILURE TO COMPLY WITH THE STRICT REQUIREMENTS IN THE FILING THEREOF.[21]

Briefly, the issues in this case may be restated as follows: (1) whether or not the CA erred in treating the special civil action for *certiorari* filed by respondent as a petition for review, and (2) whether or not the CA erred in its appreciation of facts and the decision it rendered.

Petitioners invoke Luzon Development Bank vs. Association of Luzon Development Bank Employees, et al.[22] and Rule 43 of the 1997 Rules of Civil Procedure[23] in arguing that an appeal and not a petition for *certiorari* should be the proper remedy to question the decision or award of the voluntary arbitrator. Even assuming that Rule 65 applies, petitioners argue that PLDT, nevertheless, erred in not including the voluntary arbitrator as one of the respondents in the petition and in not serving him a copy thereof.[24] These procedural

flaws, they aver, merit the outright dismissal by the CA of the petition.[25]

A perusal of the petition before the CA shows that the mode chosen by PLDT was a petition for review under Rule 43 and not a special civil action for *certiorari* under Rule 65. While it was captioned as a petition for *certiorari*, it is not the caption of the pleading but the allegations therein that determine the nature of the action.[26] The appellate court was not precluded from granting relief as warranted by PLDT's allegations in the petition and the evidence it had presented to support the petition.

A perusal of the petition before the CA discloses the following: First, under the heading "Nature of the Action", the PLDT averred it was "a petition for review on *certiorari* of the Decision dated December 1, 1997 and Order dated July 10, 1998 of Voluntary Arbitrator Atty. Rolando M. Lim."[27] Second, while the assigned errors alleged that the voluntary arbitrator acted with grave abuse of discretion, nevertheless, the issue set forth was whether or not there existed sufficient evidence to show that complainants [herein petitioners] were constructively dismissed, and whether they were entitled to reinstatement, back wages and other monetary awards.[28] Clearly, the issue was factual and not limited to questions of jurisdiction and grave abuse of discretion. Third, the petition was filed within the 15-day period to perfect an appeal and did not implead the voluntary arbitrator as a respondent. All of these indicate that the petition below was indeed one for review.

Moreover, contrary to petitioners' contention that the voluntary arbitrator was not furnished a copy of the petition, the records reveal otherwise. Attached to the petition filed before the appellate court was a registry receipt of the copy sent to the voluntary arbitrator.[29]

Coming now to the substantive merits of the petition before us. Considering that the CA's findings of fact clash with those of the voluntary arbitrator, with contradictory results, this Court is compelled to go over the records of the case as well as the submissions of the parties. Having done so carefully, we are not convinced that the voluntary arbitrator erred in his factual conclusions so as to justify reversal thereof by the appellate court. We

are persuaded to rule in favor of the complaining workers, herein petitioners, following the well-established doctrine in labor-management relations that in case of doubt, labor should prevail.

The fact that petitioners, in their application for employment,[30] agreed to be transferred or assigned to any branch[31] should not be taken in isolation, but rather in conjunction with the established company practice in PLDT.

The standard operating procedure in PLDT is to inform personnel regarding the nature and location of their future assignments after training abroad. This prevailing company practice is evidenced by the inter-office memorandum[32] of a certain PLDT's First Vice President (Reyes), dated May 3, 1996 to PLDT's Chief Operating Officer (Perez), duly-acknowledged by private respondents:

x x x

To	:	Atty. E.D. Perez, SEVP & COO
Thru	:	J.P. de Jesus, EVP — Meet Demand Group
From	:	FVP — Program Planning & Engineering Sector
Subject	:	NON-ASSIGNABLE TRAINED PERSONNEL

During the Group Head's Meeting on 03 April 1996, Mr. R.R. Zarate reported on the case of some provincial personnel who had foreign training for functions intended for Manila Operations but refused to be relocated and assigned to Manila, and who eventually resigned on account of the said transfer. In view of this situation, two (2) issues were raised as follows:

1. Network Services to be involved in the planning of facilities, specially when this involves trainees from Network.

2. Actual training to be undertaken only after the sites where such training will be utilized have been determined.

x x x

A total of 53 slots (for the Exchange O&M, System Software/Acceptance Engineering and OMC Specialist Courses) were allocated to Network Services by the Steering Committee composed of representatives from ProgPlan and TechTrain. The O&M slots were equally distributed to Provincial Operations on the basis where Alcatel switches will be geographically installed. With regards to NSC, since the contract has defined its location to be in Sampaloc and considering that its monitoring function would focus on provincial exchanges, slots were opened both for Provincial and Metro Manila Operations. Please note that all these relevant informations were disseminated to concerned parties as inputs, to enable them to recommend the appropriate training participants.

The choice of trainees were made by Network and therefore, it is incumbent upon them to brief the participants or trainees they selected on the nature and assignment of their employment after training.

To prevent similar instances in the future, we strongly recommend the following:

1. Prior to the training, all concerned groups should conform with the standard practice of informing personnel regarding the nature and/or location of their future assignments after the training.

2. The contractual obligation of the trainees should include a provision on their willingness and commitment to perform the related training functionalities required by the company.

x x x (Emphasis supplied.)

The want of notice of transfer to petitioners was the subject of another inter-office memorandum dated November 24, 1995, from one Mr. Relucio, SwitchNet Division Manager, to a certain Mr. Albania, First Vice President-Regional & Toll Network. It states:

> As the cheaper option is to relocate personnel who have attended the training already, we have solicited the desire of the

> Cebu and Davao-based provincial personnel to transfer to SwitchNet Sampaloc ROMCC which they declined. We should note that these personnel were not made aware prior to start of training that they will be transferred to Manila.[33]

A third inter-office memorandum dated November 29, 1995 confirmed this procedural flaw, thus:

> Alternative 1: Require the four Jones and Davao ROMCC personnel to transfer [to] the Sampaloc ROMCC, as service requirement. This is the least cost alternative. We should note however, that these personnel were not aware that they would relocate after training.[34]

Under these circumstances, the need for the dissemination of notice of transfer to employees before sending them abroad for training should be deemed necessary and later to have ripened into a company practice or policy that could no longer be peremptorily withdrawn, discontinued, or eliminated by the employer. Fairness at the workplace and settled expectations among employees require that we honor this practice and commend this policy.

The appellate court's justification that petitioners' transfer was a management prerogative did not quite square with the preceding evidence on record, which are not disputed. To say that petitioners were not constructively dismissed inasmuch as the transfer was effected without demotion in rank or diminution of salary benefits is, to our mind, inaccurate. It is well to remember that constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefits, and privileges. For an act of clear discrimination, insensibility, or disdain by an employer may become so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[35] The insensibility of private respondents is at once deducible from the foregoing circumstances.

Despite their knowledge that the lone operations and maintenance center of the 33 ALCATEL 1000 S12 Exchanges would be "homed" in Sampaloc,[36] PLDT officials neglected to disclose this vital piece of information to petitioners before they acceded to be trained abroad.

On arriving home, they did not give complaining workers any other option but placed them in an either/or straightjacket, that appeared too oppressive for those concerned.

As pointed out in the abovementioned inter-office memorandum by Mr. Reyes:

> All sites where training will be utilized are already pre-determined and pinpointed in the contract documents and technical protocols signed by PLDT and the contractor. Hence, there should be no reason or cause for the misappointment of the training participants.[37]

Needless to say, had they known about their pre-planned reassignments, petitioners could have declined the foreign training intended for personnel assigned to the Manila office. The lure of a foreign trip is fleeting while a reassignment from Cebu to Manila entails major and permanent readjustments for petitioners and their families.

We are not unaware that the transfer of an employee ordinarily lies within the ambit of management prerogatives. However, a transfer amounts to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and involves a demotion in rank or diminution of salaries, benefits, and other privileges.[38] In the present case, petitioners were unceremoniously transferred, necessitating their families' relocation from Cebu to Manila. This act of management appears to be arbitrary without the usual notice that should have been done even prior to their training abroad. From the employees' viewpoint, such action affecting their families are burdensome, economically and emotionally. It is no exaggeration to say that their forced transfer is not only unreasonable, inconvenient, and prejudicial, but to our mind, also in defiance of basic due process and fair play in employment relations.

WHEREFORE, this Petition for Review is **GRANTED.** The decision of the Court of Appeals in CA-G.R. SP No. 48578; dated December 22, 1998, is **REVERSED** and **SET ASIDE**. The decision of the Voluntary Arbitrator dated December 1, 1997, is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Mendoza, Austria-Martinez and Callejo, Jr., *JJ.*, concur.

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[1] Rollo, pp. 36-43.
[2] Id. at 37.
[3] Ibid.
[4] Id. at 37-38.
[5] Id. at 36-37.
[6] Id. at 37.
[7] Ibid.
[8] Id. at 38.
[9] CA Rollo, pp. 49-50.
[10] Id. at 45 and 47.
[11] Rollo, p. 38.
[12] Id. at 39.
[13] Article 262-A, Labor Code. Procedures. —

x x x

Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of the submission of the dispute to voluntary arbitration.

x x x

[14] CA Rollo, p. 42.
[15] Rollo, pp. 77-78.
[16] CA Rollo, p. 41.
[17] Id. at 2.
[18] Rollo, p. 36.
[19] Id. at 43.
[20] Id. at 56-A.
[21] Id. at 20-21.
[22] 249 SCRA 162, 170 (1995).
[23] SEC. 5, Rule 43, 1997 Rules of Court. How appeal taken. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency a quo. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. (Emphasis ours.)

x x x

[24] SEC. 5, Rule 65, 1997 Rules of Court. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person,

the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. (Emphasis ours.)

x x x

[25] Rollo, pp. 22-23.
[26] Almuete, et al. vs. Andres, et al., G.R. No. 122276, November 20, 2001, p. 9.
[27] Rollo, p. 80; CA Rollo, p. 3.
[28] Id. at 90.
[29] CA Rollo, p. 24.
[30] Id. at 45-48.
[31] Id. at 49-50.
[32] Id. at 51-52.
[33] Rollo, p. 73.
[34] Id. at 74.
[35] Litonjua Group of Companies, et al. vs. Vigan, G.R. No. 143723, June 28, 2001, p. 12. Stress supplied.
[36] Rollo, pp. 193-194.
[37] CA Rollo, p. 51.
[38] OSS Security & Allied Services, Inc., et al. vs. NLRC, et al., 325 SCRA 157, 165 (2000). Stress supplied.