

## SECOND DIVISION

[ G.R. No. 112752, February 09, 2000 ]

**OSS SECURITY & ALLIED SERVICES, INC., JUAN MIGUEL M. VASQUEZ AND MA. VICTORIA M. VASQUEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EDEN LEGASPI, RESPONDENTS.**

### 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<sup>[1]</sup> and the Resolution<sup>[2]</sup> of the National Labor Relations Commission (NLRC), Second Division, dated October 20, 1993 and November 23, 1993, respectively, which affirmed the Decision<sup>[3]</sup> 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.<sup>[4]</sup>

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.<sup>[5]</sup> She was last assigned at Vicente Madrigal Condominium II located in Ayala Avenue, Makati.<sup>[6]</sup>

In a memorandum<sup>[7]</sup> 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;<sup>[8]</sup>
- (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."*<sup>[9]</sup>

In compliance therewith<sup>[10]</sup>, petitioner issued Duty Detail Order No. 00446<sup>[11]</sup> on August 1, 1991 relieving private respondent and another lady security guard, Digna Suelan, of their assignment in 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<sup>[12]</sup>, which detailed private respondent to 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.<sup>[13]</sup>

On August 6, 1991 private respondent filed her complaint<sup>[14]</sup> 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.<sup>[15]</sup> 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."<sup>[16]</sup>

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<sup>[17]</sup> dated October 20, 1993, the NLRC affirmed the decision of the Labor Arbiter. Petitioner sought for reconsideration of the said decision but the same was denied in a Resolution<sup>[18]</sup> 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 "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