

THIRD DIVISION

[G.R. No. 171764, June 08, 2007]

ALBERT O. TINIO, PETITIONER, VS. COURT OF APPEALS, SMART COMMUNICATIONS, INC., ALEX O. CAEG AND ANASTACIO MARTIREZ, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for review on *certiorari* seeks to annul and set aside the Decision and Resolution of the Court of Appeals dated October 25, 2005^[1] and March 2, 2006,^[2] respectively, in CA-G.R. SP No. 90677 which reversed and set aside the Decision of the National Labor Relations Commission (NLRC) dated July 30, 2004,^[3] and its Resolution dated April 20, 2005,^[4] for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court reinstated the Decision of the Labor Arbiter dated December 9, 2003^[5] which dismissed petitioner's complaint for lack of merit.

On December 1, 2002, Smart Communications, Inc. (SMART) employed petitioner Albert O. Tinio as its General Manager for Visayas/Mindanao (VISMIND) Sales and Operations based in Cebu.^[6]

On May 14, 2003, private respondent Alex O. Caeg, Group Head, Sales and Distribution of SMART, under the supervision of co-respondent Anastacio Martirez, informed petitioner of his new assignment as Sales Manager for Corporate Sales in SMART's Head Office in Makati City, effective June 1, 2003. However, petitioner deferred action on his assignment until he had been apprised of the duties and responsibilities of his new position and the terms and conditions of his relocation. In a memorandum dated May 26, 2003, Caeg informed petitioner that his transfer was for the greater business interest of the company; that petitioner is expected to meet at least 80% of his sales and collection targets; and that financial assistance shall be provided for his physical transfer to Manila.

On June 2, 2003, petitioner reported to SMART's Head Office in Makati and discussed with Ann Margaret V. Santiago, HRD Group Head, his job description, functions, responsibilities, salary and benefits, as well as options for relocation/transfer of his family to Manila. The Department Head for Corporate Business Group, VIP Accounts Management and Marketing PR, Julie C. Carceller, likewise explained to him details of his new assignment such as job description, scope of the position, objectives and goals of the department, key responsibilities as well as targets and expectations of SMART from the Corporate Business Group. The next day, June 3, 2003, petitioner and Caeg met to discuss further details of petitioner's new position.^[7]

Thereafter, petitioner did not report for work. He instead filed a complaint for constructive dismissal with claims for moral and exemplary damages and attorney's fees against SMART and private respondents Caeg and Martirez. On June 16, 2003, Caeg required petitioner to explain his continuing refusal to transfer to his new assignment, but instead of giving an explanation, petitioner referred Caeg to his complaint for constructive dismissal.^[8] Private respondents also scheduled a hearing on June 23, 2003 but petitioner failed to attend. Thus, private respondents terminated petitioner's employment effective June 25, 2003 for insubordination.^[9]

On December 9, 2003, the Labor Arbiter rendered judgment finding that petitioner was not constructively or illegally dismissed; hence, the complaint was ordered dismissed. But the Labor Arbiter awarded financial assistance to petitioner in the amount of P235,400.00.^[10]

On appeal, the NLRC reversed the Labor Arbiter's decision and declared that petitioner was illegally dismissed, awarded him full backwages, including the corresponding 13th month pay, moral and exemplary damages, as well as attorney's fees. Private respondents' motion for reconsideration was denied.^[11]

On a petition for *certiorari* under Rule 65 to the Court of Appeals, private respondents alleged that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that: (1) the transfer of Tinio resulted in a demotion in rank; (2) the transfer was not a valid exercise of management prerogative; (3) SMART did not comply with the procedural requirements of due process, and Tinio's termination was made with malice and in bad faith; and (4) Tinio is entitled to reinstatement and full backwages.^[12]

On October 25, 2005, the Court of Appeals reversed and set aside the Decision of the NLRC and reinstated the Decision of the Labor Arbiter dismissing the complaint for lack of merit.^[13] Petitioner's motion for reconsideration was denied; hence, this appeal.^[14]

The twin issues for resolution are: (1) whether private respondents' act of transferring petitioner to its Head Office in Makati was a valid exercise of management prerogative; and (2) whether petitioner was constructively dismissed.

This Court has consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or a diminution of salary, benefits and other privileges.^[15] As a rule, the Court will not interfere with an employer's prerogative to regulate all aspects of employment which include among others, work assignment, working methods and place and manner of work. Labor laws discourage interference with an employer's judgment in the conduct of his business.^[16]

The doctrine is well-settled that it is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company.^[17] This is a privilege inherent in the employer's right to control and manage his

enterprise effectively. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.^[18]

An employee's right to security of tenure does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.^[19]

But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which the right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges, and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution of pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego his continued employment.^[20]

A transfer is a "movement from one position to another which is of equivalent rank, level or salary, without break in service." Promotion, on the other hand, is the "advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary."^[21] Conversely, demotion involves a situation where an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.

The burden of proof in constructive dismissal cases is on the employer to establish that the transfer of an employee is for valid and legitimate grounds, *i.e.*, that the transfer is not *unreasonable, inconvenient or prejudicial to the employee*; nor does it involve a demotion in rank or a diminution of salaries, privileges and other benefits.

Hence, it may be gleaned from the foregoing discourse that a transfer is deemed to be constructive dismissal when three conditions concur: *first*, when the transfer is *unreasonable, inconvenient or prejudicial* to the employee; *second*, when the transfer involves a demotion in rank or diminution of salaries, benefits and other privileges; and *third*, when the employer performs a clear act of discrimination, insensibility, or disdain towards the employee, which forecloses any choice by the latter except to forego his continued employment.

In the instant case, the transfer from Cebu to Makati was not unreasonable, inconvenient or prejudicial to the petitioner considering that it was a transfer from