

FIRST DIVISION

[G.R. No. 144412, November 18, 2003]

ALLIED BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND POTENCIANO L. GALANIDA, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the Decision^[2] of 27 April 2000 and the Resolution of 8 August 2000 of the Court of Appeals in CA-G.R. SP No. 51451. The Court of Appeals upheld the Decision^[3] of 18 September 1998 and the Resolution of 24 December 1998 of the National Labor Relations Commission ("NLRC") in NLRC Case No. V-000180-98. The NLRC modified the Decision dated 23 December 1997 of Labor Arbiter Dominador A. Almirante ("Labor Arbiter") in NLRC Case No. RAB VII-05-0545-94 holding that Allied Banking Corporation ("Allied Bank") illegally dismissed Potenciano L. Galanida ("Galanida"). The NLRC awarded Galanida separation pay, backwages, moral and exemplary damages, and other amounts totaling P1,264,933.33.

Antecedent Facts

For a background of this case, we quote in part from the Decision of the Court of Appeals:

Private respondent Potenciano Galanida was hired by petitioner Allied Banking Corporation on 11 January 1978 and rose from accountant-bookkeeper to assistant manager in 1991. His appointment was covered by a "Notice of Personnel Action" which provides as one of the conditions of employment the provision on petitioner's right to transfer employees:

"REGULAR APPOINTMENT: xxx It is understood that the bank reserves the right to transfer or assign you to other departments or branches of the bank as the need arises and in the interest of maintaining smooth and uninterrupted service to the public."

Private respondent was promoted several times and was transferred to several branches as follows:

- "a) January, 1978 to March, 1982 -
Tagbilaran City Branch
- "b) April, 1982 to May, 1984 -
Lapulapu City Branch
- "c) June, 1984 -

- Mandaue City Branch
- "d) July, 1984 to April, 1986 -
Tagbilaran City Branch
 - "e) May, 1986 to May, 1987 -
Dumaguete City Branch
 - "f) June, 1987 to August, 1987 -
Carbon Branch, Cebu City
 - "g) September, 1987 to Sept. 1989 -
Lapulapu City Branch, Cebu
 - "h) October, 1989 to Sept. 1992 -
Carbon Branch, Cebu City
 - "i) October 1992 to Sept. 1994 -
Jakosalem Regional Branch,
Cebu City" (Rollo, p. 47)

Effecting a rotation/movement of officers assigned in the Cebu homebase, petitioner listed respondent as second in the order of priority of assistant managers to be assigned outside of Cebu City having been stationed in Cebu for seven years already. Private respondent manifested his refusal to be transferred to Bacolod City in a letter dated 19 April 1994 citing as reason parental obligations, expenses, and the anguish that would result if he is away from his family. He then filed a complaint before the Labor Arbiter for constructive dismissal.

Subsequently, petitioner bank informed private respondent (Rollo, p. 86) that he was to report to the Tagbilaran City Branch effective 23 May 1994. Private respondent refused. In a letter dated 13 June 1994, petitioner warned and required of private respondent as follows:

"There is no discrimination in your transfer. In fact, among the officers mentioned, only you have refused the new assignment citing difficulty of working away from your family as if the other officers concerned do not suffer the same predicament. To exempt you from the officer transfer would result in favoritism in your favor and discrimination as against the other officers concerned.

"In furtherance of maintaining a smooth and uninterrupted service to the public, and in accordance with the Bank's order of priority of rotating its accountants' places of assignments, you are well aware that Roberto Isla, AM/Accountant, assigned in Cebu for more than ten (10) years, was, on February 14, 1994, reassigned to Iligan City Branch and then to Cagayan de Oro City Branch on June 8, 1994. Hence, your objection on the ground of your length of service is without merit.

xxx

"As discussed, your refusal to follow instruction concerning your transfer and reassignment to Bacolod City and to Tagbilaran City is penalized under Article XII of the Bank's Employee Discipline Policy and Procedure [which] provides:

`XII Transfer and Reassignment

Refusal to follow instruction concerning transfers and reassignments.

First and subsequent offenses -

The penalty may range from suspension to dismissal as determined by management. The employee shall be required to comply with the order of transfer and reassignment, if the penalty is not termination of employment.'

"In view of the foregoing, please explain in writing within three (3) days from receipt hereof why no disciplinary action should be meted against you for your having refused to follow instructions concerning the foregoing transfer and reassignment." xxx^[4]

On 16 June 1994, Galanida replied that "(w)hether the bank's penalty for my refusal be Suspension or Dismissal xxx it will all the more establish and fortify my complaint now pending at NLRC, RAB 7."^[5] In the same letter, he charged Allied Bank with discrimination and favoritism in ordering his transfer, thus:

xxx What I cannot decipher now under the headship of Mr. Olveda is management's discriminatory act of transferring only the long staying accountants of Cebu in the guise of its exercise of management prerogative when in truth and in fact, the ulterior motive is to accommodate some new officers who happen to enjoy favorable connection with management. How can the bank ever justify the transfer of Melinda T. Co, a new officer who had experienced being assigned outside of Cebu for more than a year only to Tabunok Branch? If the purpose is for check and balance, is management implying that Melinda Co can better carry out such function over Mr. Larry Sabelino, who is a seasoned and experienced accountant or any of the Metro Cebu accountants for that matter? Isn't this act of management an obvious display of favoritism? xxx^[6]

On 5 October 1994, Galanida received an inter-office communication^[7] ("Memo") dated 8 September 1994 from Allied Bank's Vice-President for Personnel, Mr. Leonso C. Pe. The Memo informed Galanida that Allied Bank had terminated his services effective 1 September 1994. The reasons given for the dismissal were: (1) Galanida's continued refusal to be transferred from the Jakosalem, Cebu City branch; and (2) his refusal to report for work despite the denial of his application for additional vacation leave. The salient portion of the Memo reads:

Therefore, your refusal to follow instruction concerning your transfer and reassignment to Bacolod City and to Tagbilaran City is without any justifiable reason and constituted violations of Article XII of the Bank's EDPP xxx

In view of the foregoing, **please be informed that the Bank has terminated your services effective September 1, 1994** and considered whatever benefit, if any, that you are entitled as forfeited in accordance with 04, V Administrative Penalties, page 6 of the Bank's EDPP which provides as follows:

"04. Dismissal.

Dismissal is a permanent separation for cause xxx

Notice of termination shall be issued by the Investigation Committee subject to the confirmation of the President or his authorized representative as officer/employee who is terminated for cause shall not be eligible to receive any benefit arising from her/his employment with the Bank or to termination pay."

It is understood that the termination of your service shall be without prejudice to whatever legal remedies which the Bank may have already undertaken and/or will undertake against you.

Please be guided accordingly. (Emphasis supplied)^[8]

The Ruling of the Labor Arbiter

After several hearings, the Labor Arbiter held that Allied Bank had abused its management prerogative in ordering the transfer of Galanida to its Bacolod and Tagbilaran branches. In ruling that Galanida's refusal to transfer did not amount to insubordination, the Labor Arbiter **misquoted** this Court's decision in ***Dosch v. NLRC***,^[9] thus:

As a general rule, the right to transfer or reassign an employee is recognized as an employer's exclusive right and the prerogative of management (Abbott Laboratories vs. NLRC, 154 SCRA 713 [1987]).

The exercise of this right, is not however, absolute. It has certain limitations. Thus, in Helmut Dosch vs. NLRC, et al. 123 SCRA 296 (1983), the Supreme Court, ruled:

"While it may be true that the right to transfer or reassign an employee is an employer's exclusive right and the prerogative of management, such right is not absolute. The right of an employer to freely select or discharge his employee is limited by the paramount police power xxx for the relations between capital and labor are not merely contractual but impressed with public interest. xxx And neither capital nor labor shall act oppressively against each other.

Refusal to obey a transfer order cannot be considered insubordination where employee cited reason for said refusal, such (sic) as that of being away from the family."^[10]
(Underscoring supplied by the Labor Arbiter)

The Labor Arbiter reasoned that Galanida's transfer was inconvenient and prejudicial because Galanida would have to incur additional expenses for board, lodging and travel. On the other hand, the Labor Arbiter held that Allied Bank failed to show any business urgency that would justify the transfer.

The Labor Arbiter also gave credence to Galanida's claim that Allied Bank gave Ms.

Co special treatment. The Labor Arbiter stated that Allied Bank deliberately left out Ms. Co's name from the list of accountants transferred to Cebu as contained in Allied Bank's letter dated 13 June 1994. However, Mr. Regidor Olveda, Allied Bank's Vice President for Operations Accounting, testified that the bank transferred Ms. Co to the Tabunok, Cebu branch within the first half of 1994.

Still, the Labor Arbiter declined to award Galanida back wages because he was not entirely free from blame. Since another bank had already employed Galanida, the Labor Arbiter granted Galanida separation pay in lieu of reinstatement. The dispositive portion of the Labor Arbiter's Decision of 23 December 1997 provides:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Allied Banking Corporation to pay complainant the aggregate total amount of Three Hundred Twenty Four Thousand Pesos (P324,000.00) representing the following awards:

a) Separation pay for P272,000.00; b) Quarter bonus for 1994 - P16,000.00; c) 13th month pay for 1994 - P16,000.00; d) Refund of contribution to Provident Fund - P20,000.00.

SO ORDERED.^[11]

The Ruling of the NLRC

On appeal, the NLRC likewise ruled that Allied Bank terminated Galanida without just cause. The NLRC agreed that the transfer order was unreasonable and unjustified, considering the family considerations mentioned by Galanida. The NLRC characterized the transfer as a demotion since the Bacolod and Tagbilaran branches were smaller than the Jakosalem branch, a regional office, and because the bank wanted Galanida, an assistant manager, to replace an assistant accountant in the Tagbilaran branch. The NLRC found unlawful discrimination since Allied Bank did not transfer several junior accountants in Cebu. The NLRC also held that Allied Bank gave Ms. Co special treatment by assigning her to Cebu even though she had worked for the bank for less than two years.

The NLRC ruled that Galanida's termination was illegal for lack of due process. The NLRC stated that Allied Bank did not conduct any hearing. The NLRC declared that Allied Bank failed to send a termination notice, as required by law for a valid termination. The Memo merely stated that Allied Bank would issue a notice of termination, but the bank did not issue any notice.

The NLRC concluded that Allied Bank dismissed Galanida in bad faith, tantamount to an unfair labor practice as the dismissal undermined Galanida's right to security of tenure and equal protection of the laws. On these grounds, the NLRC promulgated its Decision of 18 September 1998, the relevant portion of which states:

In this particular case, We view as impractical, unrealistic and no longer advantageous to both parties to order reinstatement of the complainant. xxx For lack of sufficient basis, We deny the claim for 1994 quarter bonus. Likewise, no attorney's fees is awarded as counsels for complainant-appellee are from the City Prosecutor's Office of Cebu.