

SECOND DIVISION

[G.R. No. 154072, December 03, 2002]

**ALFREDO S. PAGUIO, PETITIONER, VS. PHILIPPINE LONG
DISTANCE TELEPHONE CO., INC., ENRIQUE D. PEREZ, RICARDO
P. ZARATE, ISABELO FERIDO, AND RODOLFO R. SANTOS,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari of the decision,^[1] dated March 7, 2002, and resolution,^[2] dated June 25, 2002, Court of Appeals, affirming with modification a decision of the National Labor Relations Commission (NLRC) finding that petitioner had been demoted by respondent PLDT but deleting the award to petitioner of P384,000.00 representing salary increase from January 1997.

The facts are as follows:

Petitioner Alfredo S. Paguio was appointed Head of PLDT's Garnet Exchange on October 1, 1994. He reported to the Head of the Greater Metro Manila (GMM) East Center, Rodolfo R. Santos, one of the respondents herein. At about this time, PLDT implemented the Greater Metro Manila Network Performance Assessment program covering 27 exchanges of the 5 centers. Petitioner wrote respondent Santos a memorandum, dated January 27, 1995, criticizing the 1994 performance ranking of the GMM Exchanges. He pointed out that the old historical data applicable to a fifty-year old facility should not be used in determining the performance of a division with newly installed facilities because of the discrepancies between old and new facilities in terms of output, performance, and manpower required. According to petitioner, a newly-installed facility has less trouble and requires less manpower than an old facility, as a result of which divisions operating on newly installed facilities would appear to have performed better than divisions with old facilities, thereby causing inequality between these two in their performance rating.^[3] Ironically, despite these observations, petitioner's Garnet Exchange, the oldest plant in the GMM East Center, placed in the top 10 Exchanges and ranked number one in the GMM performance assessment for November 1995. Nonetheless, petitioner again sent a memorandum to respondent Santos criticizing the 1995 East Exchanges performance ranking for being based only on the attainment of objectives, without considering other relevant factors that contributed to the attainment of the same.^[4]

In June 1996, respondent PLDT implemented the East Center OPSIM Manpower Rebalancing. Petitioner again wrote respondent Santos requesting reconsideration, claiming that the scheme was not fair to an old exchange like Garnet. Respondent Santos denied petitioner's request and instructed petitioner to submit the rebalancing schedules. Petitioner thus elevated the matter to respondent Ferido, the FVP-GMM Network Services, through a memorandum.^[5]

In January 1997, respondent Santos announced the 1996 performance assessment rating of the Exchanges. Petitioner wrote respondent Santos, complaining that the rating and ranking of the Exchanges were unfair. He reiterated his observation regarding the variance between the old and the new Exchanges. Respondent Santos furnished petitioner with a blank assessment sheet with instruction to rate his own performance during the period covered. Petitioner gave himself an "outstanding" rating with a total statistical points of 976 based on Garnet's performance, but respondent Santos reduced it to 958, in turn lowering Garnet's rank to number 4.^[6]

On January 17, 1997, respondent Santos issued a memorandum reassigning petitioner to a position in the Office of the GMM East Center Head for Special Assignments effective February 1, 1997.^[7] Protesting the said transfer, petitioner asked respondent Ferido for a formal hearing on the charges against him and for the deferment of his re-assignment pending resolution of the charges.^[8] Petitioner also filed with respondent Ferido a complaint against respondent Santos for grave abuse of discretion and manipulation.^[9] As no immediate action was taken by respondent Ferido, petitioner elevated the matter to respondent Enrique Perez, Senior Executive Vice-President and Chief Operating Officer of PLDT.^[10]

In his memorandum to petitioner dated May 5, 1997, respondent Ferido affirmed the action of respondent Santos transferring him to any group in the company that may need his services. Respondent Ferido further indicated that the reassignment is based on respondent Santos' "well-founded conclusion that [petitioner is] not a team player and cannot accept decisions of management already arrived at, short of insubordination."^[11] In a memorandum dated May 23, 1997, respondent Perez affirmed the action taken by respondent Ferido and explained to petitioner that his transfer was not in the nature of a disciplinary action that required compliance with the process of "investigation, confrontation, and evaluation" before it can be implemented and that the same was not done in bad faith.^[12]

As a result, petitioner filed a complaint for illegal demotion and damages against respondents. The Labor Arbiter dismissed the complaint on the ground that petitioner's transfer was an exercise of a management prerogative and there was no showing that the same amounted to a demotion in rank and privileges. The Labor Arbiter said:^[13]

As we have earlier pointed out, in the operation of its business, respondent possessed the prerogative to move around its employees in such manner as the company might deem beneficial to its business, subject to the limitation that such action be in good faith. In this case, however, we have not found any other motivating factor in respondent's action of transferring complainant, than to eliminate conflict and even hostility at the Garnet Exchange, and consequently, effect a smooth relay and implementation of policies and decisions emanating from higher management.

. . . .

We have considered complainant's accusations that by his transfer, he had suffered a demotion in rank and privileges. But there is no evidence on record to substantiate that claim. It appeared that complainant maintained his previous salary and status as Manager. In regard to salary

increases, even in his previous position, complainant did not have any demandable right thereto as the same was, as he himself admitted, dependent on the general standards of performance and efficiency. In his present position, complainant, as Manager, is subject to the same measure of merits. Thus, he cannot, therefore, complain of being no longer entitled to salary increases.

In light of the foregoing, we hereby find the transfer of complainant to be valid.

WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of merit.

SO ORDERED.

Petitioner appealed to the NLRC, which reversed the decision of the Labor Arbiter and ruled:^[14]

First, the alleged ground therefor, that is, Mr. Paguio's opposition to company business decision in his submitted Comment on the performance rating of his division, is not just. The truth of the matter is that he was just presenting in good faith his criticism on the way the performance of his division was rated and ranked. His purpose in doing so was just to help his team see its deficiencies and point the way to improvement. Thus, he was then building teammanship, not destroying it as opined by his superior respondent-appellant Rodolfo Santos.

. . . .

Secondly, his transfer involves a diminution of his salary, benefits and other privileges. On account of his transfer, he was assigned a functionless position. As a consequence, he was deprived of the opportunity to get promoted or to be entitled to wage increase equivalent to sixteen percent (16%) of his salary starting January 1997, as he could not have any performance to speak of in his present designation there being no work assigned to him. It bears to stress that salary increase in the company is periodically granted to employees based on performance and accomplishments.

Thus, the NLRC ordered:^[15]

WHEREFORE, premises considered, the Appeal is PARTIALLY GRANTED. Accordingly, the Decision appealed is hereby modified to the effect that complainant-appellant Alfredo S. Paguio was illegally transferred; and that respondent-appellee PLDT is DIRECTED to reassign him to his former position without loss of seniority rights and other privileges and to pay him the amount of Three Hundred Eighty Four Thousand Pesos (P384,000.00) equivalent to sixteen percent (16%) of his monthly salary representing wage increase starting January, 1997. As to other aspects, the Decision is SUSTAINED.

SO ORDERED.

As the NLRC likewise denied its motion for reconsideration, respondent PLDT filed a special civil action for certiorari in the Court of Appeals, seeking a reversal of the decision of the NLRC. The appeals court upheld the NLRC decision that petitioner's transfer was not justified by the circumstances. It noted that petitioner was well intentioned in criticizing the management of the company and that even as he criticized the management decisions petitioner nevertheless complied with them. As regards petitioner's transfer, the appeals court said: [16]

While it is true that private respondent's re-assignment did not involve a diminution of salary, however, petitioners have not disputed that he was actually placed on a "frozen status," as he was assigned to a functionless position, with no office and staff, and without any opportunity to get any promotion or wage increase as he does not have any performance to speak of because there is no work assigned to him. On the other hand, as Senior Manager or Head of Garnet Exchange, private respondent supervised the installation and repairs of telephone lines in Ortigas Complex, Valle Verde, Capitolyo and nearby residential areas.

Petitioners argue that reinstatement of private respondent to his former position is no longer feasible because the same was abolished on August 16, 1998 as a result of the consolidation of the Garnet and Cubao Exchanges to form the Ortigas Exchange. Considering the fact that the transfer of private respondent was illegal, petitioners are obliged to reinstate private respondent to an equivalent position of Senior Manager with the same salary, rank, privileges and other benefits.

Nonetheless, the Court of Appeals found no basis for the award of salary increases to petitioner. It ruled: [17]

However, we agree with petitioners that private respondent is not entitled to the amount of P348,000.00, equivalent to 16% of his monthly salary representing wage increases starting January 1997. Private respondent himself admits that the salary increase is periodically granted to employees based on performance and accomplishments. The fact that private respondent had previously been granted salary increases by reason of his outstanding performance does not automatically give rise to the presumption that if he was allowed to stay as Head of Garnet Exchange, his performance would continue to be outstanding.

Hence, the Court of Appeals ordered: [18]

WHEREFORE, the Decision of the National Labor Relations Commission finding that private respondent was illegally transferred is AFFIRMED, with Modification by ordering his reinstatement to his former or equivalent position with the same salary, rank, privileges and other benefits, and deleting the award of P348,000.00 equivalent to 16% of his monthly salary increase starting January 1997.

SO ORDERED.

Petitioner moved for reconsideration, but the Court of Appeals denied his motion. Petitioner now seeks review of the decision of the Court of Appeals, insofar as it deleted the original award of P384,000.00 to him representing his salary increase.