

SECOND DIVISION

[G.R. No. 121621, May 03, 1999]

**WESTIN PHILIPPINE PLAZA HOTEL, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION (THIRD DIVISION) AND LEN
RODRIGUEZ, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

Petitioner seeks to annul the Decision^[1] of the Third Division of the National Labor Relations Commission dated March 29, 1995 in NLRC NCR Case No. 00-07-04820-93, and its Resolution dated June 22, 1995 denying petitioner's motion for reconsideration.

Private respondent was continuously employed by petitioner in various capacities from July 1, 1977 until his dismissal on February 16, 1993. Initially hired as pest controller, he was later posted as room attendant. Next he served as bellman, until he was finally assigned as doorman in November, 1981, and stayed in that position until his employment was terminated by petitioner.

On December 28, 1992, private respondent received a memorandum from the management transferring him from doorman to linen room attendant in the Housekeeping Department effective December 29, 1992. The position of doorman is categorized as guest-contact position while linen room attendant is a non-guest contact position. The transfer was allegedly taken because of the negative feedback on the manner of providing service to hotel guests by private respondent. This assessment was primarily based on the report of professional shoppers engaged by petitioner to evaluate and review the various services of the hotel and its personnel. Earlier, private respondent had figured in altercations with drivers of taxicabs servicing petitioner's guests.

Instead of accepting his new assignment, private respondent went on vacation leave from December 29, 1992, to January 16, 1993. In the meantime, the President of the National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) appealed to management concerning private respondent's transfer. In her response, Ms. Merceditas Santos, petitioner's director for human resources development, clarified that private respondent's transfer is merely a lateral movement. She explained that management believed that private respondent was no longer suited to be in a guest-contact position, but there was no demotion in rank or pay.

When private respondent reported back to work, he still did not assume his post at the linen room. Notwithstanding several reminders from the personnel department and even his union, private respondent refused to report to his new work station.

Thus, on February 11, 1993, private respondent was served with a memorandum asking him to explain in writing why no disciplinary action should be taken against him for insubordination. The memorandum noted that while private respondent regularly came to the hotel everyday, he just stayed at the union office. Private respondent was again reminded to report to his new job otherwise he would be clearly defying a lawful order. In his reply private respondent, however, merely questioned the validity of his transfer without giving the required explanation.

On February 16, 1993, petitioner terminated private respondent's employment on the ground of insubordination. Feeling aggrieved, private respondent filed with the Department of Labor and Employment which later indorsed to the NLRC for appropriate action a complaint for illegal dismissal against petitioner. In a decision dated June 16, 1994, the labor arbiter declared that the dismissal was legal. Accordingly, the complaint was dismissed for lack of merit.

On appeal, public respondent reversed the judgment of the labor arbiter. In its decision, it declared that the intended transfer was in the nature of a disciplinary action.^[2] It held that there was no just cause in dismissing private respondent and disposed of the case as follows:

"WHEREFORE, premises considered, the appealed decision is hereby VACATED and a new one entered with the following dispositions:

- a) Respondent is hereby ordered to pay backwages from February 16, 1993 to the date of this decision; and
- b) To pay complainant separation pay equivalent to one (1) month pay for every year of service, in lieu of reinstatement.

All other claims are dismissed for lack of merit.

SO ORDERED."^[3]

Its motion for reconsideration having been denied, petitioner filed this instant petition.

The fundamental issue to be resolved in this case is whether or not public respondent gravely abused its discretion in ruling that there was no just and valid cause for dismissing private respondent. And the pivotal query is whether private respondent was guilty of insubordination or not?

Petitioner contends that private respondent's continued refusal to report to his new work assignment constituted gross insubordination. It avers that the transfer of private respondent was a valid exercise of its management prerogative.

The contention of petitioner is meritorious. The labor arbiter's decision, dated June 16, 1994, is amply supported by substantial evidence and prevailing jurisprudence. It is error as well as grave abuse of discretion on public respondent's part to hold otherwise.

Under Article 282 (a) of the Labor Code, as amended, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of