

SECOND DIVISION

[G.R. No. 175170, September 05, 2012]

**MISAMIS ORIENTAL II ELECTRIC SERVICE COOPERATIVE
(MORESCO II), PETITIONER, VS. VIRGILIO M. CAGALAWAN,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

In labor cases, strict adherence with the technical rules is not required.^[1] This liberal policy, however, should still conform with the rudiments of equitable principles of law. For instance, belated submission of evidence may only be allowed if the delay is adequately justified and the evidence is clearly material to establish the party's cause.^[2]

By this Petition for Review on *Certiorari*,^[3] petitioner Misamis Oriental II Electric Service Cooperative (MORESCO II) assails the Decision^[4] dated July 26, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84991, which reversed and set aside the Resolutions dated February 27, 2004^[5] and April 26, 2004^[6] of the National Labor Relations Commission (NLRC), and thereby reinstated the Labor Arbiter's Decision^[7] dated September 30, 2003 pronouncing respondent Virgilio M. Cagalawan (Cagalawan) to have been constructively dismissed from employment. Also assailed is the CA Resolution^[8] dated September 6, 2006 which denied MORESCO II's Motion for Reconsideration and granted Cagalawan's Partial Motion for Reconsideration.

Factual Antecedents

On September 1, 1993, MORESCO II, a rural electric cooperative, hired Cagalawan as a Disconnection Lineman on a probationary basis. On March 1, 1994 Cagalawan was appointed to the same post this time on a permanent basis.^[9] On July 17, 2001, he was designated as Acting Head of the disconnection crew in Area III sub-office of MORESCO II in Balingasag, Misamis Oriental (Balingasag sub-office).^[10] In a Memorandum^[11] dated May 9, 2002, MORESCO II General Manager Amado B. Ke-e (Ke-e) transferred Cagalawan to Area I sub-office in Gingoog City, Misamis Oriental (Gingoog sub-office) as a member of the disconnection crew. Said memorandum stated that the transfer was done "in the exigency of the service."

In a letter^[12] dated May 15, 2002, Cagalawan assailed his transfer claiming he was effectively demoted from his position as head of the disconnection crew to a mere member thereof. He also averred that his transfer to the Gingoog sub-office is inconvenient and prejudicial to him as it would entail additional travel expenses to and from work. He likewise sought clarification on what kind of exigency exists as to justify his transfer and why he was the one chosen to be transferred.

In a Memorandum^[13] dated May 16, 2002, Ke-e explained that Cagalawan's transfer was not a demotion since he was holding the position of Disconnection Head only by mere designation and not by appointment. Ke-e did not, however, state the basis of the transfer but instead advised Cagalawan to just comply with the order and not to question management's legitimate prerogative to reassign him.

In reply, Cagalawan claimed that he was transferred because he executed an Affidavit^[14] in support of his co-employee Jessie Rances, who filed an illegal dismissal case against MORESCO II.^[15] He emphasized though that his action was not an act of disloyalty to MORESCO II, contrary to what was being accused of him. Nonetheless, Cagalawan still reported for work at Gingoog sub-office on May 27, 2002 but reserved his right to contest the legality of such transfer.^[16]

Meanwhile and in view of Cagalawan's transfer, Ke-e issued an order^[17] recalling the former's previous designation as Acting Head of the disconnection crew of the Balingasag sub-office.

Cagalawan eventually stopped reporting for work. On July 1, 2002, he filed a Complaint for constructive dismissal before the Arbitration branch of the NLRC against MORESCO II and its officers, Ke-e and Danilo Subrado (Subrado), in their capacities as General Manager and Board Chairman, respectively.

Proceedings before the Labor Arbiter

When the Labor Arbiter, in an Order^[18] dated September 13, 2002, directed the parties to submit their respective verified position papers, only Cagalawan complied.^[19] He alleged that his transfer was unnecessary and was made only in retaliation for his having executed an affidavit in favor of a co-worker and against MORESCO II. In support of his contention, Cagalawan submitted a certification^[20] executed by the Head of the disconnection crew of the Gingoog sub-office, Teodoro Ortiz (Ortiz), attesting that the said sub-office was not undermanned. In fact, when Cagalawan stopped working, no other employee was transferred or hired in his stead, a proof that there were enough disconnection crew members in Gingoog sub-office who can very well handle the assigned tasks. Moreover, Cagalawan claimed that his transfer constituted a demotion from his position as Acting Head of the disconnection crew which he had occupied for almost 10 months. As such, he should be considered regular in that position and entitled to its corresponding salary.

Cagalawan further alleged that his transfer from Balingasag to Gingoog sub-office was tantamount to illegal constructive dismissal for being prejudicial and inconvenient as he had to spend an additional amount of P197.00^[21] a day, leaving him nothing of his salary. He therefore had no choice but to stop working.

Aside from reinstatement and backwages, Cagalawan sought to recover damages and attorney's fees because to him, his transfer was effected in a wanton, fraudulent, oppressive or malevolent manner. Apart from MORESCO II, he averred that Ke-e and Subrado should also be held personally liable for damages since the two were guilty of bad faith in effecting his transfer. He believed that Subrado had a hand in his arbitrary transfer considering that he is the son-in-law of Subrado's

opponent in the recent election for directorship in the electric cooperative. In fact, Subrado even asked a certain Cleopatra Moreno Manuel to file a baseless complaint against him as borne out by the declaration of Bob Abao in an affidavit.^[22]

In view of MORESCO II's failure to file a position paper, Cagalawan filed a Motion^[23] for the issuance of an order to declare the case submitted for decision. This was granted in an Order^[24] dated March 14, 2003.

On September 30, 2003, the Labor Arbiter rendered a Decision^[25] declaring that Cagalawan's transfer constituted illegal constructive dismissal. Aside from finding merit in Cagalawan's uncontroverted allegation that the transfer became grossly inconvenient for him, the Labor Arbiter found no sufficient reason for his transfer and that the same was calculated to rid him of his employment, impelled by a vindictive motive after he executed an Affidavit in favor of a colleague and against MORESCO II.

Thus, the Labor Arbiter ordered Cagalawan's reinstatement to the position of Collector and awarded him backwages from the date of his transfer on May 16, 2002 up to his actual reinstatement. However, the Labor Arbiter denied his prayer for regularization as head of the disconnection crew since the period of six months which he claimed as sufficient to acquire regular status applies only to probationary employment. Hence, the fact that he was acting as head of the disconnection crew for 10 months did not entitle him to such position on a permanent basis. Moreover, the decision to promote him to the said position should only come from the management.

With respect to damages, the Labor Arbiter found Ke-e to have acted capriciously in effecting the transfer, hence, he awarded moral and exemplary damages to Cagalawan. Attorney's fees was likewise adjudged in his favor.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is rendered declaring the transfer of complainant as tantamount to constructive dismissal and ordering respondent[s] to reinstate complainant to his position as collector in Balingasag, Misamis Oriental without loss of seniority rights and to pay complainant the following:

1. Backwages	- P189,096.00
2. Exemplary damages	- P 10,000.00
3. Moral damages	- P 20,000.00
4. Attorney's fee 10%	- P <u>21,909.60</u>
GRAND TOTAL AWARD	<u>P241,005.60</u>

SO ORDERED.^[26]

Proceedings before the National Labor Relations Commission

MORESCO II and Cagalawan both appealed the Labor Arbiter's Decision.

In its Memorandum on Appeal,^[27] MORESCO II invoked the liberal application of the rules and prayed for the NLRC to admit its evidence on appeal. MORESCO II denied that Cagalawan's transfer was done in retaliation for executing an affidavit in favor of a co-worker. MORESCO II explained that the transfer was in response to the request of the area manager in Gingoog sub-office for additional personnel in his assigned area. To substantiate this, it submitted a letter^[28] dated May 8, 2002 from Gingoog sub-office Area Manager, Engr. Ronel B. Canada (Engr. Canada), addressed to Ke-e. In said letter, Engr. Canada requested for two additional disconnection linemen in order to attain the collection quota allocated in his area. MORESCO II then averred that as against this letter of Engr. Canada who is a managerial employee, the certification issued by Ortiz should be considered as incompetent since the latter is a mere disconnection crew. Moreover, Cagalawan's claim of additional expenses brought about by his transfer, specifically for meal and transportation, deserves no appreciation at all since he would still incur these expenses regardless of his place of assignment and also considering that he was provided with a rented motorcycle with fuel and oil allowance.

Also, MORESCO II intimated that it has no intention of removing Cagalawan from its employ especially since his father-in-law was its previous Board Member. In fact, it was Cagalawan himself who committed an act of insubordination when he abandoned his job.

In his Reply^[29] to MORESCO II's Memorandum of Appeal, Cagalawan averred that the latter cannot present any evidence for the first time on appeal without giving any valid reason for its failure to submit its evidence before the Labor Arbiter as provided under the NLRC rules. Further, the evidence sought to be presented by MORESCO II is not newly discovered evidence as to warrant its admission on appeal. In particular, he claimed that the May 8, 2002 letter of Engr. Canada should have been submitted at the earliest opportunity, that is, before the Labor Arbiter. MORESCO II's failure to present the same at such time thus raises suspicion that the document was merely fabricated for the purpose of appeal. Moreover, Cagalawan claimed that if there was indeed a request from the Area Manager of Gingoog sub-office for additional personnel as required by the exigency of the service, such reason should have been mentioned in Ke-e's May 16, 2002 Memorandum. In this way, the transfer would appear to have a reasonable basis at the outset. However, no such mention was made precisely because the transfer was without any valid reason.

Anent Cagalawan's partial appeal,^[30] he prayed that the decision be modified in that he should be reinstated as Disconnection Lineman and not as Collector.

The NLRC, through a Resolution^[31] dated February 27, 2004, set aside and vacated the Decision of the Labor Arbiter and dismissed Cagalawan's complaint against MORESCO II. The NLRC admitted MORESCO II's evidence even if submitted only on appeal in the interest of substantial justice. It then found said evidence credible in showing that Cagalawan's transfer to Gingoog sub-office was required in the

exigency of the cooperative's business interest. It also ruled that the transfer did not entail a demotion in rank and diminution of pay as to constitute constructive dismissal and thus upheld the right of MORESCO II to transfer Cagalawan in the exercise of its sound business judgment.

Cagalawan filed a Motion for Reconsideration^[32] but the same was denied by the NLRC in a Resolution^[33] dated April 26, 2004.

Proceedings before the Court of Appeals

Cagalawan thus filed a Petition for *Certiorari*^[34] with the CA. In a Decision^[35] dated July 26, 2005, the CA found the NLRC to have gravely abused its discretion in admitting MORESCO II's evidence, citing Section 3, Rule V of the NLRC Rules of Procedure^[36] which prohibits the parties from making new allegations or cause of action not included in the complaint or position paper, affidavits and other documents. It held that what MORESCO II presented on appeal was not just an additional evidence but its entire evidence after the Labor Arbiter rendered a Decision adverse to it. To the CA, MORESCO II's belated submission of evidence despite the opportunities given it cannot be countenanced as such practice "defeats speedy administration of justice" and "smacks of unfairness."

The dispositive portion of the CA Decision reads:

IN VIEW THEREOF, the petition is **GRANTED**. The Decision of the Labor Arbiter is reinstated with the modification that if reinstatement of petitioner is not feasible, he should be paid separation pay in accordance with law.

SO ORDERED.^[37]

MORESCO II filed a Motion for Reconsideration^[38] insisting that it may present evidence for the first time on appeal as the NLRC is not precluded from admitting the same because technical rules are not binding in labor cases. Besides, of paramount importance is the opportunity of the other party to rebut or comment on the appeal, which in this case, was afforded to Cagalawan.

Cagalawan, for his part, filed a Partial Motion for Reconsideration,^[39] seeking modification of the Decision by ordering his reinstatement to the position of Disconnection Lineman instead of Collector.

In a Resolution^[40] dated September 6, 2006, the CA maintained its ruling that MORESCO II's unexplained failure to present evidence or submit a position paper before the Labor Arbiter for almost 12 months from receipt of Cagalawan's position paper is intolerable and cannot be permitted. Hence, it denied its Motion for Reconsideration. With respect to Cagalawan's motion, the same was granted by the CA, *viz*: