

FIRST DIVISION

[G.R. NO. 152689, October 12, 2005]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
ENRIQUE D. PEREZ, RICARDO R. ZARATE, ISABELO A. FERIDO,
JR., AND RODOLFO R. SANTOS, PETITIONERS, VS. ALFREDO S.
PAGUIO, RESPONDENT.**

G.R. NO. 154072

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

D E C I S I O N

QUISUMBING, J.:

This petition for review on certiorari docketed as G.R. No. 152689, assails the **Decision**^[1] dated March 7, 2002 of the Court of Appeals in CA-G.R. SP No. 61528. It is consolidated with the **Motions for Reconsideration** of this Court's Decision^[2] dated December 3, 2002 in G.R. No. 154072.

The antecedent facts of the case are as follows:

Petitioner Philippine Long Distance Telephone Company, Inc. (PLDT) has 27 Exchanges in its Greater Metro Manila (GMM) Network. Alfredo S. Paguio was the Head of the Garnet Exchange.

In 1994, PLDT assessed the performance of the 27 Exchanges comprising the GMM Network. Upon receipt of the ratings, Paguio sent Rodolfo Santos, his immediate supervisor and the Assistant Vice-President of the GMM East Center, a letter criticizing the PLDT criteria for performance rating as unfair because they depended on manpower. He also suggested that the criteria failed to recognize that exchanges with new plants could easily meet the objectives of GMM compared to those with old plants. Despite Paguio's criticism, Garnet Exchange, the oldest plant in GMM, obtained the top rating in the GMM. Nevertheless, Paguio reiterated his letter to Santos and objected to the performance rating as it was based only on the attainment of objectives, without considering other relevant factors.

In June 1996, PLDT rebalanced the manpower of the East Center. Paguio wrote Santos and requested reconsideration of the manpower rebalancing, claiming it was unfair to Garnet Exchange because as the oldest exchange in the East Center, it was disallowed to use contractors for new installations and was not made beneficiary of the cut-over bonus. After Santos denied his request, Paguio elevated the matter to respondent Isabelo Ferido, Jr., the First Vice-President-GMM Network Services.

On January 17, 1997, Paguio was reassigned as Head for Special Assignment at the Office of the GMM East Center and asked to turn over his functions as Garnet Exchange Head to Tessie Go. Believing that his transfer was a disciplinary action, Paguio requested Ferido for a formal hearing of the charges against him and asked that his reassignment be deferred. He also filed a complaint against Santos for grave abuse of authority and manipulation of the East Center performance. As no action was taken by Ferido, Paguio elevated the matter to Enrique D. Perez, the Senior Executive Vice-President and Chief Operating Officer of PLDT, who advised him to await the resolution of his complaint.

Consequently, Ferido sent Paguio an inter-office memo stating that he found Paguio's reassignment in order as it was based on the finding that Paguio was not a team player and cannot accept decisions of management, which is short of insubordination. Ferido advised Paguio to transfer to any group in the company that may avail of his services. Likewise, Perez, thru an inter-office memo, informed Paguio that his transfer was not in the nature of a disciplinary action that required investigation and that he agreed with the reasons of the transfer.

Aggrieved, Paguio filed, before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC), a complaint for illegal dismissal with prayer for reinstatement and damages. He later amended his complaint to illegal demotion with prayer for reversion to old position, damages and attorney's fees. On November 27, 1998, the Labor Arbiter upheld the validity of Paguio's transfer and dismissed the complaint.^[3]

Paguio appealed to the NLRC, which reversed the Labor Arbiter's decision. The NLRC found the transfer unlawful, firstly, because Paguio's comments were done in good faith to help his team see their strong and weak points. According to the NLRC, this showed that he strove to improve his team and was, indeed, a team player. The NLRC noted that the company's manual emphasized the importance of communication and what Paguio did was merely to ventilate his opinions and observations. Secondly, Paguio's transfer involved a diminution of his salary, benefits and other privileges.^[4]

PLDT moved for reconsideration but the same was denied by the NLRC.^[5] Consequently, PLDT filed a petition for certiorari with the Court of Appeals. The appellate court affirmed the decision of the NLRC but deleted the monetary award representing the 16% monthly salary increase.^[6]

PLDT appealed directly to this Court. Its petition was docketed as **G.R. No. 152689**.

On the other hand, Paguio sought for partial reconsideration. Upon the appellate court's denial^[7] of his motion for reconsideration, Paguio elevated the case to this Court where it was docketed as **G.R. No. 154072**. On December 3, 2002, the Court rendered judgment in G.R. No. 154072 and held that Paguio was not entitled to the monetary award representing the 16% monthly salary increase. However, the Court awarded him moral and exemplary damages and attorney's fees.^[8]

Both Paguio and PLDT sought reconsideration. On February 26, 2003, the Court ordered the consolidation of G.R. No. 152689 and the motions for reconsideration in

In **G.R. No. 152689**, PLDT imputes the following errors to the appellate court:

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE NLRC'S DECISION AND RESOLUTION BY RULING THAT THE TRANSFER OR RE-ASSIGNMENT OF PRIVATE RESPONDENT PAGUIO WAS UNLAWFUL AND ILLEGAL.

THE HONORABLE COURT OF APPEALS' FINDING ON UNLAWFULNESS OF PAGUIO'S TRANSFER OR REASSIGNMENT CONSTITUTES A DRASTIC DEPARTURE OF THE INSTANCES CONSIDERED TO CONSTITUTE AN ILLEGAL TRANSFER AS RULED IN SETTLED JURISPRUDENCE INVOLVING SIMILAR CASES.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONSIDERING PETITIONERS' ACT OF CHANGING THE PRIVATE RESPONDENT'S ASSIGNMENT ON LEGITIMATE GROUNDS AS TANTAMOUNT TO AN ILLEGAL TRANSFER.

THE HONORABLE COURT OF APPEALS CONTRADICTED THE SETTLED JURISPRUDENCE ON THE MATTER WHEN IT ORDERED THE REINSTATEMENT OF PAGUIO.^[10]

In brief, the petitioner asks this Court to resolve now the legality of Paguio's transfer.

PLDT contends that the appellate court erred in lending more weight to the factual findings of the NLRC over those of the Labor Arbiter without stating its basis. Moreover, PLDT alleges that the NLRC ruling would allow a change of cause of action since the complaint alleged "illegal demotion" while the decision involved "illegal transfer." PLDT asserts that the reassignment of Paguio was not a demotion because it was merely a transfer to a position of equivalent rank and salary. According to PLDT, transfer, as a rule is allowed by law unless it is vitiated by improper motive or is used as a disguise to remove or punish the employee. It maintains that the appellate court failed to ascribe any illicit or improper motive behind the transfer of Paguio. Lastly, PLDT claims that the reinstatement of Paguio is no longer possible as his relationship with the company is already strained and that his position no longer exists due to a company-wide reorganization.

Paguio argues that his transfer was a demotion since he was assigned to a functionless position with neither office nor staff and deprived of the opportunity to be promoted as he would have no performance to speak of in his new post.

Prefatorily, we note from the records that there has been no change of cause of action from "illegal demotion" to "illegal transfer." Illegal demotion is a type of illegal transfer. Moreover, it is familiar and fundamental doctrine that it is not the title of the action but the allegations in the pleading that determines the nature of the action.^[11]

Now, on the crux of the matter, jurisprudence abounds that, except as limited by special laws, an employer is free to regulate, according to his own discretion and