

## FIRST DIVISION

[ G.R. No. 158606, March 09, 2004 ]

**BENGUET ELECTRIC COOPERATIVE AND GERARDO P. VERZOSA,  
PETITIONERS, VS. JOSEPHINE FIANZA, RESPONDENT.**

### *DECISION*

**YNARES-SATIAGO, J.:**

Josephine Fianza had been employed with petitioner Benguet Electric Cooperative (BENECO) since August 1, 1979.<sup>[1]</sup> She occupied various positions,<sup>[2]</sup> until, in 1991, she became Property Custodian under the Office of the General Manager, with a Salary Grade of 5.<sup>[3]</sup> By 1999, Fianza was receiving a monthly salary of P8,494.00.<sup>[4]</sup>

On June 29, 1999, BENECO's General Manager, petitioner Gerardo P. Versoza, issued Office Order No. 42, addressed to Fianza and another employee, Josephine B. Calinao.<sup>[5]</sup> The body of this Office Order reads:

In the exigency of the service and until further notice, effective July 16, 1999, you are hereby temporarily detailed to the Finance Department to assume the duties of a Bill Distributor without any change in salary rate. You are therefore directed to turn over all records and accountabilities related to your present assignment and report to the Officer-in-Charge, Finance Department, for further instructions.<sup>[6]</sup>

Fianza acknowledged receipt of the letter under protest.<sup>[7]</sup> On July 14, 1999, she wrote a letter to Versoza,<sup>[8]</sup> stating:

In response to your Office Order No. 42, I would like to take exception to my detail without cause to assume the details of a Bill Distributor albeit without change in salary grade. My job description is that of Property Custodian and [I] have been in service for almost twenty (20) years. The job being presently assigned to me amounts to a demotion and the working conditions of a Bill Distributor are totally different and more strenuous and expose me to unfavorable and dangerous circumstances and therefore not similarly situated as that of a Property Custodian.

I therefore express objection to my detail and will continue discharging my present assignment as I believe that my detail has been done without justifiable reason.<sup>[9]</sup>

In another letter to Versoza of the same date, Fianza reiterated that she did not accept the proposed transfer, and expressed hope of a dialogue between her and Versoza.<sup>[10]</sup>

In response, Versoza issued the following Memorandum dated July 19, 1999:[11]

To: Josephine D. Fianza  
From: The General Manager  
Subject: Non-Compliance of Office Order No. 42

Our Office Order No. 42 was issued in the exigency of the service and until further notice. Management has decided that, in the new temporary assignment, you would be more helpful in improving our overall productivity and efficiency and thereby help reduce our cost of operation. The position of Property Custodian may eventually be phased out upon approval of the already proposed Table of Organization as part of a sound business decision.

[If you fail] to comply therewith within three (3) days from receipt hereof, we will be constrained to charge you [with] insubordination. The other personnel given the same temporary assignment have already complied therewith. There is no reason why you should not.

We expect your due compliance in the interest of service and [to] turn over your responsibilities as Property Custodian.

Please be guided accordingly.[12]

Fianza received a copy of this Memorandum on July 20, 1999. The previous day, however, on July 19, 1999, she filed a complaint for constructive dismissal with the Regional Arbitration Branch, National Labor Relations Commission, Cordillera Administrative Region,[13] which was docketed as RAB-CAR-07-0348-99.

Meanwhile, Fianza continued to report for work as Property Custodian.[14] On July 22, 1999, Versoza issued another Memorandum, stating that Fianza should report to her new assignment; otherwise, she would be considered absent without leave, and her salary withheld until she report for work in her new assignment.[15]

On August 4, 1999, Versoza issued another Memorandum, the body of which reads:

To: Josephine D. Fianza  
From: The General Manager  
Subject: Duties and Responsibilities

Pursuant to Office Order No. 42 dated June 29, 1999, you are temporarily detailed to the Finance Department to be able to help more in our efforts to reduce our cost of operation. Therefore, you are no longer authorized to perform the duties and functions of a Property Custodian.

In view hereof, all documents prepared and signed by you effective July 16, 1999 are hereby cancelled. Please turn over all documents and records related to the function of a Property Custodian to the Administrative Officer as soon as possible.

On August 5, 1999, Fianza wrote a letter to Versoza about her salary from July 16, 1999 to July 30, 1999, claiming that she had been paid for only seven (7) days although she had never been absent during the said period.<sup>[16]</sup> On August 12, 1999, Fianza stopped reporting for work.<sup>[17]</sup>

In the proceedings before the Labor Arbiter, petitioners BENEKO and Verzosa averred that there was no constructive dismissal. They claimed that Fianza's transfer from Property Custodian to Bill Distributor was a valid exercise of management prerogative, exercised in the exigency of service. They pointed out that the position of Property Custodian under the Office of the General Manager has been abolished, and the functions thereof have been absorbed by other departments. In fact, they claimed that the proposed reorganization had been in effect well in advance of Fianza's transfer.<sup>[18]</sup>

Fianza maintained that there was a substantial demotion in rank from Property Custodian to Bill Distributor, which demotion negated management's claims of the validity of the transfer. Fianza pointed to the significant differences in the educational qualifications, work experience, skills and job description between the two positions, which differences allegedly pointed to the demotion.<sup>[19]</sup> In particular, Fianza claimed the following differences between the two positions:

	<b>Property Custodian</b>	<b>Bill Distributor</b>
<b>Education</b>	Graduate of BS Commerce, preferably major in accounting	Must have completed at least two (2) years college
<b>Experience</b>	Two (2) years in property and supply management or any related training	Not necessary but preferably have undergone training
<b>Skills</b>	Computer literate	Must know how to drive
<b>Duties and Responsibilities</b>	<p>Receives, accounts and records all procured office supplies and materials</p> <p>Issues office supplies and equipment to the different offices based on approved requests</p> <p>Cleans and maintains office supplies storage room</p> <p>Records all materials and supplies distributed for proper accounting</p>	<p>Withdraws assigned route/booklet of electric bills and/or disconnection notices from Head, Collection Section Safeguard booklets of electric bills and/or disconnection notices in their custody</p> <p>Sees to it that all electric bills and/or disconnection notices are properly distributed and acknowledged by the proper consumer and that all receiving</p>

	Prepares monthly office supplies inventory report  Prepares and submits request for purchase of office supplies and materials based on the requirements of the different departments  Performs other duties as may be assigned to him/her from time to time	copies are intact when returned back to the office  May receive, entertain and address problems, complaints and requests from member-consumers  Performs other duties as needed and/or assigned by superior
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On March 15, 2000, the Labor Arbiter rendered a Decision dismissing Fianza's complaint.<sup>[20]</sup> The Labor Arbiter found that (1) there was no demotion in rank, since both positions were ranked a grade level of "5"; (2) there was no change in salary rate, since Fianza would continue to receive the monthly salary of P8,494.00; (3) there was no significant disparity in the positions of Property Custodian and Bill Distributor; and (4) there was no showing or arbitrariness on the part of either BENEKO or Versoza. Accordingly, the Labor Arbiter ruled that Fianza's claim that she had been constructively dismissed was unmeritorious.<sup>[21]</sup>

Upon Fianza's appeal, the NLRC Third Division affirmed the Labor Arbiter's Decision.<sup>[22]</sup>

Fianza's Motion for Reconsideration was denied on December 22, 2000.<sup>[23]</sup> On April 2, 2001, Fianza filed a petition for *certiorari* with the Court of Appeals, alleging grave abuse of discretion on the part of the NLRC.<sup>[24]</sup> On November 29, 2002, the Court of Appeals rendered judgment reversing the resolution of the NLRC,<sup>[25]</sup> the dispositive portion of which reads:

WHEREFORE, the instant petition for *certiorari* is hereby granted. The assailed Resolutions of the NLRC dated September 18, 2000 and December 22, 2000 are hereby REVERSED AND SET ASIDE. The private respondents are directed to:

- a) Immediately reinstate the Petitioner to her previous position, without loss of seniority and other benefits;
- b) Pay all backwages and other benefits that she was not able to collect [by] reason of her illegal termination.

SO ORDERED.<sup>[26]</sup>

In reversing the NLRC, the Court of Appeals compared the duties and responsibilities of a Property Custodian and a Bill Distributor, and concluded that a comparison of the two positions would lead to the conclusion that there was indeed a demotion in

the rank of Fianza. The Court of Appeals characterized the job of a Property Custodian as clerical in nature, with duties more or less confined to the office; a Bill Distributor, on the other hand, would have to perform field work, necessitating skills in driving and travel from one place to another.<sup>[27]</sup> The Court of Appeals further reasoned thus:

What appears is that petitioner is demoted in rank. What could be more glaring than the fact that being a female employee, it is disadvantageous and strenuous to assign petitioner to distribute bills in the areas covered by private respondent. The nature of [the] job of bill distributor is tailor-made for male employees, as it involves traveling from one place to another. Noteworthy is the requirement that a bill distributor must know how to drive. Such a skill is not required of a property custodian. Certainly, it would be unbearable for petitioner to undertake such duties.

Contrary to the NLRC's observation, electric cooperatives do not utilize female bill distributors. It is because the nature of the job involved is taxing for female employees.<sup>[28]</sup>

Petitioners' Motion for Reconsideration<sup>[29]</sup> having been denied, the instant petition was filed on the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVIEWING, DISREGARDING AND CHANGING THE FINDINGS OF FACT OF THE LABOR ARBITER, WHICH FINDINGS WERE IN EFFECT AFFIRMED BY THE NLRC.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DECLARED THAT THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION "BY IGNORING THIS DISPARITY TANTAMOUNT TO A DEMOTION IN RANK."

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENT'S TRANSFER OF POSITION FROM A PROPERTY CUSTODIAN TO A BILL DISTRIBUTOR IS A CASE OF CONSTRUCTIVE DISMISSAL.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT BEING A FEMALE EMPLOYEE, IT IS DISADVANTAGEOUS AND STRENUOUS TO ASSIGN [FIANZA] TO DISTRIBUTE BILLS.

V.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONERS FAILED TO COMPLY WITH THE STANDARD LAID DOWN BY JURISPRUDENCE IN PROVING THAT RESPONDENT'S TRANSFER WAS A VALID MANAGEMENT PREROGATIVE.

VI.