

SECOND DIVISION

[G.R. No. 129843, September 14, 1999]

**BLUE DAIRY CORPORATION AND/OR EDISON T. AVIGUETERO
AND PEDRO G. MIGUEL, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION AND ELVIRA R. RECALDE,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

BLUE DAIRY CORPORATION, engaged in the processing of dairy and chocolate products, juices and vegetables, hired on 14 May 1994 private respondent Elvira R. Recalde as a food technologist in its laboratory with the following specific functions: microanalysis of toppings and syrup, onions and garlic, and liquid mixes (soft serve and milk shake); physical and chemical analysis of liquid mixes, including raw materials for toppings and syrup and its inspection; routine computation for liquid mixes and supervision while weighing the materials; performing chlorine test for lettuce, red onion, white onion and green pepper; preparation of forms for toppings and syrup; sensory evaluation of toppings and syrup; product development (assistant); and, preparation of food coloring for orange syrup production.^[1]

On 22 May 1994, a Sunday, Recalde reported for work but claimed that she was not given her premium pay.

On 21 October 1994 Recalde accompanied Production Manager Editha N. Nicolas in conducting a sensory evaluation of vanilla syrup in one of the outlets of a client. While on their way back to the office a post fell on the company vehicle they were riding due to a raging typhoon damaging the vehicle's windshield and side mirror.

On 3 December 1994 Recalde was transferred from the laboratory to the vegetable processing section where she cored lettuce, minced and repacked garlic and performed similar work, and was restricted from entering the laboratory. She was unhappy. She considered her new job humiliating and menial. On 14 December 1994 she stopped reporting for work. The following day she sent a letter to petitioner Edison T. Aviguetero, the President and Chairman of the Board of Director of Blue Dairy Corporation, reading -

I would like to inform you that I will no longer report for work because of your drastic and oppressive action. And besides, I have already filed a case against BLUE DAIRY CORPORATION and/or EDISON T. AVIGUETERO, PEDRO G. MIGUEL x x x x^[2]

On 16 December 1994 Recalde filed a complaint against petitioner Blue Dairy Corporation, Edison T. Aviguetero and Pedro G. Miguel^[3] for constructive dismissal and non-payment of premium pay. She also claimed overtime pay as well as moral

and exemplary damages plus attorney's fees.

Petitioners contended that Recalde was given a less sensitive assignment outside of the laboratory on account of her dishonesty which resulted in loss of trust and confidence. They seriously took into account the result of the investigation concerning the 21 October incident that Recalde was actually scouting for a new residence using company vehicle without prior permission from the General Manager and during office hours, in violation of par. IV, subpars. B and G, of the company's General Rules and Regulations. Petitioners accorded credence to the narrations of Rolando V. Flores, driver of the damaged vehicle, to that effect which act of dishonesty could even have merited dismissal from employment had they adhered simply to jurisprudential rule but took into account instead the spirit of the approaching Christmas season.

The Labor Arbiter was convinced that petitioners were guilty of constructive dismissal as he found the justification for Recalde's transfer unreasonable: first, the unofficial trip on the way back to the office on 21 October was undertaken through the bidding of the Production Manager; second, loss of trust and confidence must necessarily occur in the performance of duties; and third, the new position of Recalde was too humiliating and demeaning. The Labor Arbiter also found that petitioners failed to grant premium pay to Recalde for her work performed on 22 May 1994, a Sunday.

On 31 October 1996 petitioners were thus ordered to reinstate Recalde to her former position as food technologist assisting in the quality assurance processes of the company and performing laboratory work without loss of seniority rights and privileges, with full back wages as well as to grant her premium pay, initially computed thus -

Back Wages:

12/14/94 - 12/30/96 = 24.53 mos.

P183.33 x 30 days x 24.53 mos. - - - - - P134,912.54

Premium Pay for Rest Day:

(May 22, 1994): P183.33 x 30% = P55.00 - - - - -55.00

TOTAL AWARD: - - - - - P134,967.54

The other claims were dismissed for lack of merit.^[4]

On 30 April 1997 public respondent National Labor Relations Commission (NLRC) affirmed the ruling.^[5] On 19 June 1997 reconsideration was denied.^[6]

Petitioners insist that the transfer of Recalde from the laboratory to the vegetable processing section was effected in the exercise of management prerogative. It did not amount to a constructive dismissal as Recalde erroneously maintained. Moreover, petitioners submit that the coring of lettuce together with the other production jobs connected therewith is one of the most important aspects of the corporation's existence; in fact, those assigned to the vegetable processing section

are mostly professionals like teachers, computer secretaries and forestry graduates.

No grave abuse of discretion was committed by the NLRC. Indeed, it is the prerogative of management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualifications, aptitudes and competence, and in order to ascertain where he can function with maximum benefit to the company.^[7] This is a privilege inherent in the employer's right to control and manage his enterprise effectively. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.^[8]

But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.^[9] In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.^[10] Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay.^[11] Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.^[12]

In the present case, petitioners failed to justify Recalde's transfer from the position of food technologist in the laboratory to a worker in the vegetable processing section. We recall that what triggered Recalde's transfer was the 21 October incident where she was found to have allegedly utilized company vehicle in looking for a new residence during office hours without permission from management. In petitioners' view, she was dishonest such that they lost their trust and confidence in her. Yet, it does not appear that Recalde was provided an opportunity to refute the reason for the transfer. Petitioners merely relied on the narrations of the company driver. Nor was Recalde notified in advance of her impending transfer which was, as we shall elucidate later, a demotion in rank. In *Gaco v. NLRC*^[13] we noted -

While due process required by law is applied in dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should, as in cases of dismissals, be given a chance to contest the same.

Further, petitioners overstretched the effect of Recalde's claimed wrongdoing. We have ruled that breach of trust and confidence as a ground for dismissal from employment must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer.^[14] By analogy, breach of trust and confidence as a ground for reassignment must be