

FIRST DIVISION

[G.R. No. 128290, November 24, 1998]

ELISEO B. TAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, UNITED LABORATORIES INC., JULIO SISON, FRANCISCOPAMINTUAN, TAN WAN LIAN AND DELFIN SAMSON, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

The employer has the prerogative to transfer an employee when the interest of the business so requires. When the transfer is not unreasonable, discriminatory or attended by a demotion in rank or a diminution in pay, such transfer cannot be deemed a constructive dismissal. Furthermore, sanctions must be imposed upon an employer for failure to observe the requirements of due process in effecting a lawful dismissal.

Statement of the Case

These principles are applied by this Court in resolving this petition for certiorari under Rule 65 of the Rules of Court assailing the October 8, 1996 Decision^[1] of the National Labor Relations Commission^[2] (NLRC) in NLRC Case Nos. RAB-05-00063-91 and RAB 05-00474-92, which disposed as follows:

"WHEREFORE, the decision appealed from is hereby AFFIRMED. Let the instant appeal be, as it is, hereby DISMISSED for lack of merit."^[3]

Petitioner also challenges the NLRC Resolution dated November 29, 1996 denying reconsideration. The assailed Decision and Resolution affirmed Executive Labor Arbiter Vito C. Bose's March 29, 1996 Decision,^[4] which dismissed the complaint for lack of merit.

The Antecedent Facts

The facts, as found by Respondent NLRC, are as follows:

"Records disclose that complainant was a sales supervisor of respondent Unilab who was assigned to cover the Bicol Region accounts of respondent company. As such, he reported to and was under the direct supervision of Julio Sison, the Area Sales Manager and one of the respondents in this case. Records further disclose that in July 1990, complainant Tan upon recommendation of respondent Sison, was chosen to attend a six-month management training course which respondent Unilab sponsored for selected employees. The said training course was held in Manila, and since complainant would be away for some time, his covered route of assignment (Bicol Region) was assigned to other

salesmen then stationed in Bicol.

"Six (6) months thereafter, and complainant having completed the aforesaid management training course, he returned to Bicol and reported for work. It would appear, however, that Unilab's salesman assigned in Sorsogon, Ely Ruiz went on AWOL and Bert Agripa the other salesman designated to take over the Sorsogon account could not cope with such additional work causing the sales in Sorsogon to plunge. Hence, complainant, fresh from his management training course, was temporarily assigned in Sorsogon, presumably to arrest its deteriorating sales and revitalize its unfavorable market condition in the province.

"Complainant accepted the assignment and proceeded to Sorsogon to service the company's accounts. However, after a while, he complained that his temporary assignment thereat did not match his experience, training and capabilities. Shortly thereafter, complainant went on leave of absence for several days for the month of February and March 1991 and then starting 16 March 1991, stopped reporting for work altogether. Complainant instead, filed the instant complaint for constructive dismissal alleging, in the main, that his Sorsogon assignment resulted in the removal of his usual duties and responsibilities as sales supervisor. He charged that his assignment to the province of Sorsogon and the corresponding withdrawal of his supervisory functions were the handiwork of respondent Julio Sison, whom complainant claimed, had suspected him of spearheading a protest letter against Sison.

"A similar complaint was later filed by herein complainant before this Commission. This time however, one charging respondent Unilab in the main of illegal dismissal. Both cases were consolidated and xxx heard by the Executive Labor Arbiter a quo, who, after hearing the case on its merits, rendered a decision in this case in favor of herein respondent company.

"On appeal, complainant insists that the Executive Labor Arbiter below committed serious errors in his findings of facts and abused his discretion in rendering the appealed decision. In essence, he reiterates that his Sorsogon assignment resulted in the removal of his usual duties and responsibilities as Sales Supervisor as well as his contention that his assignment to the province of Sorsogon and the corresponding withdrawal of his supervisory functions were all part of a grand scheme plotted against him by individual respondents, more particularly Julio Sison, due to his union activities in forming and strengthening their ranks and that of Unilab's rank and file employees.

"It should be stated at the outset that this case had been heard below in an open and extensive trial on its merits. Certainly, under these circumstances, the findings of the Labor Arbiter cannot be simply disregarded in the absence of a clear and convincing evidence that he abused his discretion and seriously erred in the appreciation of the evidence presented before him during the proceedings. On the contrary, the same carry great weight and respect if found supported by facts and law.

"The Executive Labor Arbiter below, in rejecting complainant's accusations in this case traversed:

'We are not unaware of complainant's accusation that the Sorsogon assignment was respondent Sison's way of humiliating and harassing complainant out of vengeance for the letter-complaint against respondent Sison which was allegedly masterminded by complainant. But we cannot give credence to the charge. In the first place, it was not only complainant who signed the aforesaid letter. Almost all of the Bicol salesmen were involved therein hence, there is no palpable reason for respondent Sison to focus his ire on complainant alone, if revenge was indeed in respondent Sison's mind. In the second place, respondent Sison himself had recommended complainant to undergo the UMDP training in Manila, a coveted privilege he would have not logically conferred upon the alleged subject of his wrath. Thirdly, Unilab had already expressed its willingness to discuss with complainant the possibility of assignment in another area, a concession it would not have extended to an employee it intended to harass. Lastly, and more importantly, we noted that during the whole period of almost one year that complainant refused to report for work and to service Sorsogon as directed, Unilab religiously paid him his monthly salary and allowed complainant to retain possession of the company vehicle, a very unlikely situation if Unilab had truly intended to harass complainant. Surely, all of the foregoing circumstances negated very strongly complainant's claim of harassment.

'We have observed that at the first instance when complainant requested for a reconsideration of the decision to assign him temporarily to Sorsogon, he did not even mention the allegation that the same diminished his functions and responsibilities. Instead he lengthily dwelt on his own impression that such assignment did not 'match my experience, training, and capabilities', as he was allegedly used to 'handling big accounts'. To us, this indicated that complainant's principal reason for refusing his Sorsogon assignment was that the same, in his mind, appeared too small for his stature and that the fact that the company nonetheless fielded him to such small assignment might have hurt his ego. However, this does not appeal to us as a valid consideration especially so that the company precisely needed his experience, training, and capabilities to rehabilitate its flagging market in Sorsogon. We believe that when the survival of a part of the company is at stake, its welfare should take precedence over personal interest. As a senior salesman, complainant should have been the first to understand the predicament of the company instead of bicker over the smallness of the accounts. Moreover, the Sorsogon assignment was only temporary, a remedial measure that was to be implemented pending the hiring and training of a new salesman to be assigned to said province. Being just a temporary arrangement, and considering the financial boost complainant's experience and service [could] lend to the company insofar as Sorsogon was concerned, we really cannot see any acceptable reason why complainant should intensely oppose the assignment.

'What is evident from the above is that complainant's assignment to

Sorsogon did not take away from him any of his previous responsibilities. He retained his rank, and was designated to perform in Sorsogon the same functions as he always had while assigned in Naga. Neither can it be argued that he suffered a diminution in pay because his incentives, as before, were based on the sales performance of the whole Bicol region and not mainly on his Sorsogon accounts. Upon the other hand, it has been satisfactorily established herein that Unilab needed complainant in Sorsogon to recover its lost accounts in the area. This appeared to us to be a perfectly lawful and valid reason for complainant's temporary transfer to that province. Consequently, we cannot be persuaded to think that complainant's Sorsogon assignment constituted constructive dismissal."^[5]

Public Respondent's Ruling

The NLRC, in affirming the labor arbiter's Decision, ruled as follows:

"The above findings find support from the records and law in issue. There is no cogent reason for us to disturb the same. Complainant failed to sufficiently establish his accusations during the arbitral proceedings as well as in this appeal. On the contrary, the records show that the protest letter referred to by complainant Tan took place in May 1990, and which admittedly were patched up as Julio Sison had already shaken hands in peace with the employees involved. On the other hand, the fact that it was Sison himself who recommended him for a six-month management training course in Manila and even assisted him in the preparation of his theses, belie his bare assertions. But what particularly convinced us regarding the unreasonableness of complainant's accusation of harassment and grand plot was the way Unilab accommodated him during the time he refused to report for work, as directed, to Sorsogon. Certainly, with the stubborn and unjustified refusal of complainant to comply with respondent Unilab's instruction to report for work in Sorsogon, he had catered the justification for his termination. Yet, Unilab did not grab this opportunity as it would have, had it been true that the company had so maneuvered and plotted to ease complainant out of his job. Instead, Unilab, for about a year that complainant failed to work, tolerantly and generously continued to pay him his monthly salary. Not only did complainant receive his regular pay without rendering work, Unilab even allowed him to keep the company vehicle otherwise intended for work-related purposes only. On top of it all, as additional concession, Unilab even offered to discuss with complainant the possibility of assigning him to another area if he really did not want to work in Sorsogon (Exhibit "7"). The foregoing obviously are simply inconsistent with complainant's claim of harassment and a plot to ease him out his employment. To us, there is nothing illegal in his temporary transfer to Sorsogon. Unilab was encountering problems in the said province because the salesman handling it went on AWOL. Complaint appeared to be the most logical and appropriate choice to service Sorsogon and with his newly acquired management training skills he was expected to resuscitate Unilab's sales in the province. Such, we find, is a valid exercise of management prerogative in furtherance of the company's business interests.

"Along this same vein, we cannot agree with complainant's claim that simultaneously with his transfer to Sorsogon, he was stripped of his supervisory functions, i.e., to receive and evaluate weekly and monthly reports of the Bicol salesmen; to approve the latter's expense reports, as well as their entertainment and traveling expenses; to audit their accountabilities; and to plan, assign and review their territorial assignments. There is simply no evidence on the records to support these claims of complainant. The records are bereft of competent evidence to prove that complainant actually performed and exercised the functions he mentioned. On the contrary, the disclaimers of two (2) Bicol Salesmen, namely Carlito Santos and Rudy Yumul, attesting that they submit[ted] all their 'reports such as weekly coverages, collections, expenses and competitive activities directly to Mr. Sison, who in turn, evaluate[d] my performance' (Exhs. 54 and 55), negate complainants assertions. Moreover, the letter to the herein complainant from three Bicol salesmen (Joaquin Vallejo, Jose Zozobrado, and Rudy Yumul, Exh. 27) questioning his authority to ask them to submit to him their reports as "entirely new to us" simply is too thick to be brushed aside. Thus, between complainant's unsupported averments against the aforesaid statements of his colleagues, surely the latter, considering their preponderance and weight, there being nothing on records to even hint or suggest that they have been motivated by ill feelings towards complainant, must be given weight on its face value. x x x

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"The position of complainant as Sales Supervisor is unmistakably infused with [a] certain degree of trust and confidence and unlike ordinary rank and file employees, there is [a] more strict code of conduct required of him, such that a single act reflecting breach thereof is enough reason to terminate his employment. Complainant in this case was guilty, not of one but of a litany of offenses each of which is descriptive of the incongruity of his attitude with the demands of his fiduciary functions. x x x"[6]

Undaunted, petitioner filed a Motion for Reconsideration, which was denied for lack of merit by the public respondent in its Resolution dated November 29, 1996.[7] Hence, this petition.[8]

The Issues

Petitioner raises the following issues:

"I. W[h]ether or not the transfer of assignment of petitioner from Naga City to Sorsogon without his consent is tantamount to constructive dismissal.

II. Whether or not the termination of employment of petitioner is illegal.