



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JAYRALDIN F. EBUS,
Petitioner,

G.R. No. 244388

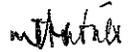
Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

THE RESULTS COMPANY, INC.,*
MICHAEL KALAW, SHERRA DE
GUZMAN,** SUMMER
DOMBROWSKI,** JAY MORENTE
AND FRANCIS LACUNA,
Respondents.

Promulgated:

MAR 03 2021 

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DECISION

CAGUIOA, J.:

This is a petition for review on *certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated June 13, 2018 and Resolution³ dated January 29, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 148300, which affirmed the National Labor Relations Commission's (NLRC) dismissal of petitioner Jayraldin Ebus's (Ebus) complaint for constructive dismissal.

Facts

Ebus has been an employee of respondent The Results Company, Inc. (TRCI), a business process outsourcing company, since August 13, 2012.⁴ He was hired as a sales representative and was promoted several times until

* Also appears as "The Results Companies" and "Results Manila, Inc." in some parts of the *rollo*.

** "Sierra De Guzman" in some parts of the *rollo*.

*** "Summer Dombroski" in some parts of the *rollo*.

¹ *Rollo*, pp. 3-44, excluding the Annexes.

² Id. at 46-57. Penned by Associate Justice Jose C. Reyes, Jr. (a retired Member of the Court), with Associate Justices Franchito N. Diamante and Maria Elisa Sempio Diy concurring.

³ Id. at 59-61. Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Franchito N. Diamante and Nina G. Antonio-Valenzuela concurring.

⁴ Id. at 47.

he became a Team Leader in 2014.⁵ As a Team Leader, Ebus had the duty of supervising agents assigned to a program handling TRCI's US-based telecommunication service provider.⁶ During Ebus's employment, he was recognized for his accomplishments and was given various awards and travel incentives.⁷

On December 30, 2014, Ebus received an email from John Christopher P. David (David), a consultant of TRCI, informing him of two company infractions allegedly committed by one of Ebus's agents — Ruby De Leon (De Leon).⁸ Allegedly, based on a quality call monitoring, De Leon incorrectly processed a customer's order and failed to fully apprise the customer of the products that TRCI offers. David recommended that coaching be provided to De Leon. Several program managers, one of whom was Operations Manager Summer Dombrowski (Dombrowski), were furnished a copy of the email.⁹

On the same day, Dombrowski replied to the group email that a final written warning must be given to De Leon, stating that De Leon's employment should be terminated if it would be later found out that the same process has become a trend in past transactions.¹⁰ However, the other program managers disagreed with Dombrowski and recommended only coaching as there seemed to have been no fraud committed.¹¹

One program manager — Maria Aguilar (Aguilar) — likewise recommended coaching, after having listened to the calls, but advised that De Leon would not be receiving her commission pursuant to TRCI's Zero Tolerance Policy (ZTP) which authorizes the imposition of automatic penalty. Ebus answered the email of Aguilar and clarified that De Leon did not have any intention to defraud and that her infraction is not covered by the ZTP.¹²

On January 1, 2015, Ebus issued a Notice to Explain to De Leon, pursuant to Dombrowski's instructions, but without mentioning any sanctions as Ebus was still awaiting the recommendation of Aguilar who was his immediate supervisor.¹³ He gave Aguilar a copy of the Notice to Explain and De Leon's explanation and informed Aguilar that he had yet to convey the sanction to De Leon as he was not yet sure of the corrective measure to impose.¹⁴

Later, Ebus was also handed a Notice to Explain with Preventive Suspension, stating that he committed the following acts inimical to TRCI:

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 47-48.

¹¹ See id. at 48.

¹² Id. at 48-49.

¹³ Id. at 49.

¹⁴ Id.



(1) failure to act on an infraction by a supervisor; (2) gross negligence in the performance of an assigned task; (3) willful disobedience of the orders of a superior; and (4) serious misconduct. The same notice placed him under preventive suspension for 30 days and summoned him to an administrative hearing.¹⁵

Ebus submitted his explanation, stating that all the support staff concurred that coaching was the sanction to be imposed on De Leon and that he was not grossly negligent as he fulfilled his duty to issue the Notice to Explain to De Leon.¹⁶

Administrative proceedings ensued on January 13, 2015.¹⁷ Subsequently, on February 9, 2015, TRCI issued a Notice of Decision, wherein Ebus was admonished with a warning that another similar violation of TRCI's Code of Discipline might lead to his dismissal. He was found to have committed insubordination for failing to issue a Notice to Explain to De Leon and to inform her that it should be deemed a final warning for the infractions she committed.¹⁸ The notice likewise informed Ebus that he would be re-profiled to another account. Hence, along with the Notice of Decision, the HR Department issued a Redeployment Notice, placing Ebus on temporary lay-off (TLO) until he was re-assigned to another account after being processed and after having qualified therefor. During the lay-off, which should not exceed six months, Ebus would not receive any compensation.¹⁹

Ebus thus filed a Complaint²⁰ for constructive dismissal and other monetary claims and damages on March 20, 2015 before the Labor Arbiter (LA).

LA Decision

In a Decision²¹ dated February 1, 2016, the LA found Ebus to have been constructively dismissed and ordered payment of full separation pay and backwages.²² According to the LA, respondents failed to establish any factual and legal basis for placing Ebus under preventive suspension and to issue the final written warning. Moreover, the transfer of Ebus to another program for re-profiling, characterized by uncertainty and indefiniteness, constitutes constructive dismissal.²³ The dispositive portion of the Decision states:

¹⁵ Id. at 49-50.

¹⁶ Id. at 51.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 62-63.

²¹ Id. at 247-272. Penned by Labor Arbiter Thomas T. Que, Jr.

²² Id. at 272.

²³ See id. at 260-261 and 268-269.



WHEREFORE, premises considered, judgment is hereby rendered declaring herein Complainant to have been constructively dismissed and, correspondingly, holding all herein Respondents jointly and severally liable to pay said Complainant his full separation pay and backwages counted from the time of his relief until finality of this Decision, plus moral and exemplary damages of P50,000 each and attorney's fees equal to 10% of the total judgment awards, as contained in the Computation and Examination Unit's schedule of computation herein adopted and attached as Annex "A".

All other claims are dismissed for lack of merit.

SO ORDERED.²⁴

Only respondents appealed to the NLRC.

NLRC Decision

In a Decision²⁵ dated July 29, 2016, the NLRC reversed and set aside the LA's Decision, ruling that the actions taken by TRCI were valid management prerogatives, as follows: (1) placing Ebus under preventive suspension to protect TRCI from further losses; (2) issuing several memoranda as disciplinary actions for Ebus's various violations of company rules and regulations; and (3) placing Ebus on a TLO status for a period not exceeding six months.²⁶ The dispositive portion of the NLRC Decision states:

WHEREFORE, premises considered, the Appeal dated 29 February 2016 is GRANTED. The assailed Decision dated 1 February 2016 is REVERSED AND SET ASIDE.

Complainant-appellee Jayraldin F. Ebus was not constructively dismissed, but validly placed under preventive suspension.

SO ORDERED.²⁷

Ebus filed a motion for reconsideration, which was denied in the NLRC's Resolution²⁸ dated September 9, 2016. Hence, Ebus filed a petition for *certiorari* with the CA.²⁹

CA Decision

In the assailed Decision, the CA denied Ebus's petition and affirmed the ruling of the NLRC.³⁰ According to the CA, Ebus failed to demonstrate

²⁴ Id. at 272.

²⁵ Id. at 95-113. Penned by Commissioner Leonard Vinz O. Ignacio, with Presiding Commissioner Grace M. Venus concurring while Commissioner Bernardino B. Julve was on leave.

²⁶ Id. at 52.

²⁷ Id. at 112.

²⁸ Id. at 115-123. Penned by Commissioner Leonard Vinz O. Ignacio, with Presiding Commissioner Grace M. Venus concurring while Commissioner Bernardino B. Julve took no part.

²⁹ Id. at 52.

³⁰ Id. at 57.



how he was demoted in rank or salaries by his transfer to a new account which may lead to the conclusion that he was constructively dismissed.³¹ The CA believed TRCI's argument that Ebus cannot claim to have been constructively dismissed since he would retain the same position, salary and benefits, and would not lose any seniority rights as a result of his transfer.³² According to the CA, it was not shown that respondents perpetrated acts of clear discrimination, insensibility or disdain that have become so unbearable that Ebus was compelled to sever his ties with the company.³³ As to his preventive suspension, the same was legal for it did not exceed 30 days pending investigation and that it was to protect the business of TRCI since Ebus held a position engaged in providing guidance, supervision, and leadership, and has strong influence on his subordinates whose performance will impact on TRCI's revenues.³⁴

The dispositive portion of the CA Decision states:

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated July 29, 2016 and the Resolution dated September 9, 2016 of the NLRC (Fourth Division) in NLRC LAC 03-000946-16/NLRC NCR Case No. 03-03497-15 are hereby **AFFIRMED**.

SO ORDERED.³⁵

Ebus moved for reconsideration but this was denied.

Hence, this Petition.

In due course, TRCI filed its Comment³⁶ and in turn, Ebus filed his Reply.³⁷

Issue

The only issue raised in the Petition is as follows:

THE [CA] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR x x x EXCESS OF ITS JURISDICTION IN CONCLUDING THAT [EBUS] WAS NOT CONSTRUCTIVELY DISMISSED.³⁸

The Court's Ruling

The Petition is granted.

³¹ Id. at 55.

³² Id. at 55-56.

³³ Id. at 55.

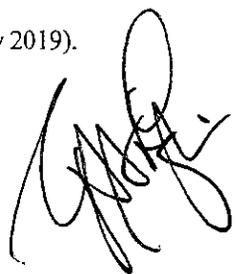
³⁴ Id. at 56.

³⁵ Id. at 57.

³⁶ Id. at 437-462. Denominated as Comment/Opposition (Re: Petition for Review dated 20 February 2019).

³⁷ Id. at 469-487.

³⁸ Id. at 21.



TRCI failed to prove the propriety of putting Ebus on TLO.

The Court's examination of a CA decision in a labor case elevated via a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to whether the CA correctly determined the existence of grave abuse of discretion on the part of the NLRC.³⁹

As defined, grave abuse of discretion may arise when the NLRC violates or contravenes the Constitution, the law or existing jurisprudence.⁴⁰ It is "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."⁴¹

It is with this lens that the Court examines this case.

To recall, TRCI, as a result of Ebus's transgressions, found it proper to penalize him with an admonition with a warning and re-profiling. It is the latter that gave rise to the issuance of the Redeployment Notice, which states:

REDEPLOYMENT NOTICE

Be this as it may, and pursuant to the Company's philosophy to retrain its employees, you are to be placed on Temporary Lay Off (TLO) until such time as you are reassigned to an account after being processed and qualified. Such TLO shall in no case be more than 6 months. Your TLO shall take effect x x x on Feb. 9, wherein which re-profiling opportunities will commence. In case you fail to qualify for an account within the period, we shall assess the most suitable opportunities available to you.

You are expected to exercise full cooperation, honesty and good faith to be re-profiled and transferred to other programs/department which shall be subject to applicable recruitment process and policies. Should you refuse to participate, fail to satisfy or comply with the requirements of the Recruitment Team, the same shall be deemed as an opportunity for you to be re-profiled.

You shall not be compensated while on TLO. You may, however, opt to file as Vacation Leave a certain number of days depending on your available vacation leave credits.

You are likewise advised that once re-profiled, the applicable training standards shall also apply to you.⁴² (*Italics omitted*)

³⁹ See *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, G.R. No. 200499, October 4, 2017, 842 SCRA 1, 10.

⁴⁰ See *id.* at 10.

⁴¹ *Id.* at 10-11, citing *Banal III v. Panganiban*, 511 Phil. 605, 614-615 (2005).

⁴² *Rollo*, pp. 27-28.

Ebus argues that he was constructively dismissed when he was issued his Redeployment Notice as it constituted a demotion,⁴³ his employment status was placed in a vague and indefinite status,⁴⁴ and the transfer was invalid.⁴⁵

On the other hand, TRCI argues that it was a valid exercise of management prerogative when it transferred, redeployed, and placed Ebus on TLO.⁴⁶ TRCI argues that it was only validly regulating the employment of Ebus and putting him on TLO was an opportunity for TRCI to assess Ebus's qualifications and re-assign him to other accounts, if needed.⁴⁷

The Court agrees with Ebus. The CA erred in ruling that the NLRC did not commit grave abuse of discretion when the NLRC's ruling contradicts settled jurisprudence on determining whether a transfer results in constructive dismissal.

The Court discussed in *Morales v. Harbour Centre Port Terminal, Inc.*⁴⁸ (*Morales*), that in cases of transfer of an employee, the employer has the burden to prove that its conduct is valid and legitimate and that it would not be prejudicial to the employee; otherwise, it will be deemed as constructive dismissal,⁴⁹ thus:

Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. In cases of a transfer of an employee, the rule is settled that the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity and that the transfer is not unreasonable, inconvenient or prejudicial to the employee. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.⁵⁰

Here, Ebus's infraction that led to his re-profiling was his failure to inform his subordinate of the penalty imposable on her because of her error during a call. But there is nothing on record to show that Ebus's infraction was detrimental to the account he was handling such that TRCI had no choice but to re-profile him.

⁴³ Id. at 28.

⁴⁴ Id. at 28, 30.

⁴⁵ Id. at 28, 31.

⁴⁶ See id. at 445-448.

⁴⁷ Id. at 446-447.

⁴⁸ G.R. No. 174208, January 25, 2012, 664 SCRA 110.

⁴⁹ Id. at 118.

⁵⁰ Id. at 117-118.



In fact, Ebus was in reality not even transferred to any account. Using TRCI's term, he was temporarily laid-off, and was treated like a new applicant where he would be assessed for other accounts to see if he was qualified. In the interim, Ebus's economic circumstances were murky. His salaries and benefits, save for accrued vacation leave, were all stopped for a period not to exceed six months as he awaited being accepted into a new account. Worse, he had no assurance whether he would be considered for another account.

Measured against the standard for a valid transfer as stated in *Morales*, the Court is convinced that TRCI failed to prove any valid and legitimate ground to re-profile Ebus as its drastic action was not commensurate to Ebus's transgressions. This action prejudiced Ebus as his salaries and benefits were stopped and he was treated like a new applicant. TRCI just made it appear on paper that Ebus was still its employee but in reality he received none of the benefits of one and was placed in such a situation without any legitimate ground. This is clearly a dismissal in disguise and is tantamount to constructive dismissal.

TRCI cannot hide behind the argument that its conduct was an exercise of management prerogative as its actions prejudiced Ebus and it failed to provide a legitimate ground to put him on TLO. Although the exercise of management prerogative will ordinarily not be interfered with,⁵¹ it is not absolute and it is limited by law, collective bargaining agreement, and general principles of fair play and justice.⁵² "Indeed, having the right should not be confused with the manner in which that right is exercised."⁵³

As a result of being constructively dismissed, Ebus should be entitled to reinstatement and backwages. Article 294⁵⁴ of the Labor Code states that an employee who is unjustly dismissed is entitled to reinstatement and to full backwages computed from the time his compensation is withheld until the time of his actual reinstatement. In instances where reinstatement is not viable, separation pay may be awarded in lieu of reinstatement.⁵⁵

However, reinstatement is no longer available to Ebus as the LA ruled that he is entitled to separation pay in lieu of reinstatement, and he did not question the LA Decision. This is therefore binding on Ebus as "[i]t is settled in our jurisprudence that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision."⁵⁶

⁵¹ Id. at 119-120, citing *Castillo v. National Labor Relations Commission*, G.R. No. 104319, June 17, 1999, 308 SCRA 326, 336.

⁵² Id. at 120, citing *Norkis Trading Co., Inc. v. National Labor Relations Commission*, G.R. No. 168159, August 19, 2005, 467 SCRA 461, 471.

⁵³ Id., citing *Emirate Security and Maintenance Systems, Inc. v. Menese*, G.R. No. 182848, October 5, 2011, 658 SCRA 712, 724.

⁵⁴ Previously Art. 279.

⁵⁵ *Seventh Fleet Security Services, Inc. v. Loque*, G.R. No. 230005, January 22, 2020, p. 10.

⁵⁶ *Manila Water Co. v. Del Rosario*, G.R. No. 188747, January 29, 2014, 715 SCRA 67, 73-74.

As to Ebus's backwages, he shall be entitled to full backwages computed from February 9, 2015, the date he was placed on TLO. Both separation pay and full backwages shall be computed until the finality of this Decision.⁵⁷

Ebus is likewise entitled to attorney's fees of ten percent (10%) of the monetary awards as he was indeed compelled to litigate in order to seek redress for his constructive dismissal.⁵⁸

Finally, consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,⁵⁹ interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary awards counted from the finality of this Decision until full payment.

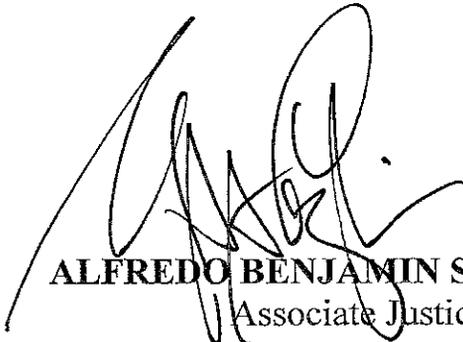
WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated June 13, 2018 and Resolution dated January 29, 2019 of the Court of Appeals in CA-G.R. SP No. 148300 are **REVERSED and SET ASIDE**. Respondent The Results Company, Inc. is **DIRECTED** to pay petitioner Jayraldin F. Ebus the following:

1. Full backwages computed from February 9, 2015 until the finality of this Decision;
2. Separation pay computed from the date petitioner commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year; and
3. Attorney's fees equivalent to ten percent (10%) of the total award.

The total monetary awards shall be subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.

Let the records of the case be remanded to the Labor Arbiter for proper computation of the award in accordance with this Decision.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵⁷ See *Seventh Fleet Security Services, Inc. v. Loque*, supra note 55, at 11.

⁵⁸ See *id.* at 10-11.

⁵⁹ G.R. No. 189871, August 13, 2013, 703 SCRA 439.

WE CONCUR:

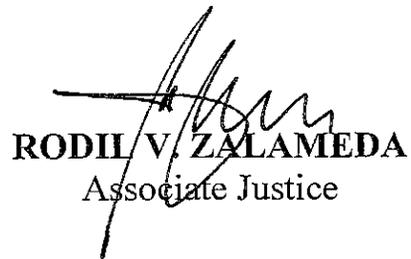


DIOSDADO M. PERALTA

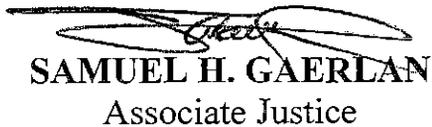
Chief Justice
Chairperson



ROSMARID. CARANDANG
Associate Justice



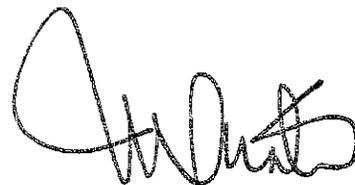
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA

Chief Justice

