



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MICHELLE T. TUASON,

Petitioner,

G.R. No. 192076

Present:

VELASCO, JR., J., *Chairperson*,
DEL CASTILLO,*
ABAD,
PEREZ,** and
MENDOZA, JJ.

- versus -

BANK OF COMMERCE,
RAUL B. DE MESA AND
MARIO J. PADILLA,

Respondents.

Promulgated:

21 November 2012

X -----X

DECISION

MENDOZA, J.:

This Petition for Review on *Certiorari* under Rule 45 seeks to vacate, reverse and set aside the March 31, 2010 Decision¹ of the Court of Appeals (CA), in CA-G.R. SP No. 111956, reversing the April 30, 2009 Decision² and October 27, 2009 Resolution³ of the National Labor Relations Commission (NLRC) which earlier ruled in favor of the petitioner.

* Designated acting member, per Special Order No. 1352, dated November 7, 2012.

** Designated acting member, per Special Order No. 1229, dated August 28, 2012.

¹ *Rollo*, pp. 45-55. Penned by Associate Justice Stephen C. Cruz with Associate Justice Bienvenido L. Reyes (now Associate Justice of the Supreme Court) and Associate Justice Celia C. Librea-Leagogo, concurring.

² *Id.* at 57-64.

³ *Id.* at 65-66.

The Facts:

Petitioner Michelle T. Tuason (*Tuason*) was hired by respondent Bank of Commerce (*BOC*) on January 1, 2002 to head the Marketing Department of its Property Management Group (*PMG*) with the rank of Assistant Vice President. On May 2, 2002, she was designated the officer-in-charge of the whole PMG. On January 2, 2003, she was officially appointed as the head of PMG. Tuason's duties included developing and proposing ways of disposing BOC's real and acquired properties and assets (*ROPOA*), "in the soonest possible time with the least possible cost, and with the best possible price."⁴

Tuason's problems started on February 28, 2005 when she was administratively charged with irregularities regarding the sale of ROPOA properties to a certain Ana Liza Cuizon. On September 9, 2005, through its committee on Fraud, Shortages, and Overages, BOC found Tuason to have violated its Code of Discipline on Work Performance, and imposed on her a 30-day suspension. Then, in 2006, BOC gave her a sixty-three (63%) percent overall performance rating.⁵

On July 5, 2007, Tuason wrote a letter to her sector head, Mario Padilla (*Padilla*). In that letter, she referred to the latter's previous phone call requesting her to resign and manifested that she had no intention of resigning as she described herself as very much happy with her work. In the same letter, however, she made known her being stressed and uncomfortable with the situation and "in order to diffuse the otherwise tensed situation" requested for a leave of absence from July 6-17, 2007, as paid vacation leave, and from July 18 to August 17, 2007, as leave without pay.⁶

⁴ Id. at 46.

⁵ Id.

⁶ Id. at 25.

On July 6, 2007, the head of BOC's Human Resources Management and Development Group (HRMDG), Susan R. Alcala-Uranza (*Uranza*), informed Tuason that her request for leave of absence was disapproved. Instead, she advised Tuason to go back to work and report to BOC's EVP Arturo Manuel (*Manuel*). Another letter⁷ was sent to Tuason on July 13, 2007 reiterating the directive to report for work on July 16, 2007. This time though, she was asked to report to Padilla.⁸

On July 16, 2007, Tuason wrote Uranza, pointing out that she did go to the office on July 9, 2007 and that she even met with her (Uranza) and Manuel. The said meeting ended with talks on her supposed "graceful exit" from BOC's PMG. She likewise pointed out that in addition to receiving a second return to work order for July 16, 2007, she also received a BOC-wide flyer welcoming a new PMG Head effective also on July 16, 2007. For Tuason, these developments were contrary to the earlier planned "graceful exit" and were causing her stress and anxiety. For this reason, Tuason reiterated her request to continue her leave.⁹

On July 18, 2007, Tuason sent another letter to Uranza inquiring about the status of her employment as she was effectively relieved of her position with the designation of another person to head PMG. The following day, Tuason sent a similar letter manifesting her desire to continue her leave as she awaited BOC's answer to the query regarding her status.¹⁰

On July 26, 2007, Uranza informed Tuason that her application for leave from July 6, 2007 to August 17, 2007 was finally approved but she was to report to Padilla on August 20, 2007 to discuss her "new assignment." When Tuason failed to report for work, on August 23, 2007,

⁷ Id. at 257.

⁸ Id. at 25-26.

⁹ Id. at 26-27.

¹⁰ Id. at 47.

Uranza sent a letter informing the former to get in touch with Padilla otherwise she would be deemed to have lost interest in her employment.¹¹

On August 24, 2007, Tuason informed Uranza that she was confused by the five letters sent by BOC. In any event, she had already filed a case for constructive dismissal against it. In reply, Uranza wrote that BOC had not taken any definitive steps against her and that her non-reporting for work would be considered unauthorized leave of absence.¹²

The Labor Arbiter (*LA*) dismissed Tuason's complaint for lack of merit.¹³ On appeal, the National Labor Relations Commission (*NLRC*) found that there was constructive dismissal and, thus, reversed and set aside the *LA*'s decision.¹⁴ The *NLRC* decision reads:

WHEREFORE, premises considered, the appeal filed by complainant is GRANTED. The Decision of Labor Arbiter Jovencio Ll. Mayor, Jr. dated January 31, 2008 is REVERSED and SET ASIDE, and a NEW ONE is rendered finding that complainant have been constructively dismissed by respondents. Accordingly, respondents are hereby ordered, jointly and severally, to pay complainant the following:

1. Separation pay computed from January 1, 2002 (date of employment) up to the finality of the Decision; and
2. Full backwages inclusive of allowances and other benefits computed from July 16, 2007 (date of dismissal) up to the finality of the Decision;

All other claims are DISMISSED for lack of merit.

SO ORDERED.¹⁵

With the denial of its motion for reconsideration, BOC went to the CA via Rule 65. This time, the CA found that Tuason's reassignment was a valid exercise of management prerogative on the part of BOC thereby

¹¹ Id. at 48; 259 and 260.

¹² Id. at 48; 261-262.

¹³ Id. at 116.

¹⁴ Id. at 63.

¹⁵ Id. at 63-64.

reversing and setting aside the NLRC's decision and further upholding that of the LA's.¹⁶ The CA decision¹⁷ reads:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated April 30, 2009 and the Resolution dated October 27, 2009, respectively, promulgated by the National Labor Relations Commission (First Division) in NLRC NCR CASE NO. 08-08774-07; NLRC LAC NO. 03-00-1058-08 are hereby REVERSED and SET ASIDE. Accordingly, the Decision of the Labor Arbiter dated January 31, 2008 is REINSTATED.

SO ORDERED.

Before this Court, Tuason raises this lone issue for consideration:

The basic issue to consider is whether or not the pressure exerted upon petitioner (Tuason) to resign without reason, as well as the belated feigned transfer of petitioner to another assignment constitutes constructive dismissal.

Foremost in the assailed CA decision is its finding that there was no evidence to prove Tuason's "barren" claim that she was asked to resign.¹⁸

The Court finds Itself unable to agree.

Had the CA rigorously and thoroughly examined the records at hand, as it claimed it did,¹⁹ it would have found otherwise. BOC, acting through Padilla, was consistently exerting pressure on Tuason to resign as early as June 19, 2007. This was documented in the **July 5, 2007 Office Memo**²⁰ of Tuason addressed and sent to Padilla, a copy of which was sent to Uranza. The letter chronicled the exchanges between Padilla and Tuason regarding her employment with BOC. Tuason first mentioned that Padilla had already hired someone to head the PMG. Then she said that she had been asked to resign without any explanation as to why. Save for the offer of consultancy

¹⁶ Id. at 54-55.

¹⁷ Id.

¹⁸ Id. at 51.

¹⁹ Id. at 51.

²⁰ Id. at 291.

work after her resignation, she was never offered a transfer or movement within BOC. The above-mentioned developments being stressful on her, Tuason then wrote that she would be filing for a leave of absence in order to diffuse the situation.

However, due to the stressful and uncomfortable working environment this situation has caused me, I am filing for a leave of absence as follows: July 6-17, 2007 as paid vacation leave, July 18-August 17, 2007 as leave without pay, in order to diffuse the otherwise tense situation. We can then discuss the situation when I report back to work on August 20, 2007. x x x.²¹

The probative/ evidentiary value of this Memo was, in turn, considered and discussed by the NLRC in its decision in this wise:

In the case at bar, we are persuaded that complainant was indeed asked to resign by respondent Padilla as respondents opted to keep silent by not replying to complainant's memorandum dated July 5, 2007 addressed to respondent Padilla, depicting the act of respondent Padilla in requiring complainant to file her courtesy resignation and have a graceful exit to save face and avoid embarrassment due to the hiring of Maximo V. Estrada as her replacement. Considering respondent's continued silence on the said memo, there can be no other conclusion that can be drawn therefrom, except that the contents of the said memo are true and actually transpired. Stated otherwise, we view such silence as respondent Padilla's undoubted admission of the contents of the said memo. As such, by requiring complainant to resign from her position without respondents offering any valid reason therefor only reveals and confirms the fact that respondents' offer of complainant's reassignment to the Business Segment, which came after when she refused to resign, was a mere afterthought to cover up respondents' disdainful treatment towards complainant.²²

The Court notes that in the exhaustive exchanges of memos and letters between Tuason and BOC, this was one instance that it chose not to refute, reply or even offer some clarification over this serious charge of Tuason.

²¹ Id.

²² Id. at 61-62.

After this July 5, 2007 memo of Tuason, Uranza wrote her a letter the next day, **July 6, 2007**,²³ but the letter only touched on her application for leave which was disallowed with the directive to report to Manuel.

We were requested by your immediate supervisor, Mr. Mario J. Padilla/ EVP, to reiterate that your leave of absence, which you applied for to start on July 6, was disapproved.²⁴

Uranza wrote another letter to Tuason on **July 13, 2007** reiterating the “disapproval” of her leave application. This time though, she was asked to report to Padilla.²⁵ What was clear in these two letters of Uranza was that her leave application was denied and that there had been no mention at all of any new assignment for her.

Next, the **July 16, 2007** letter of Tuason to Uranza recounted anew the meeting between her, Uranza and Manuel held on July 9, 2007. After sharing her plight with Uranza and Manuel, the two offered to spare her the embarrassment by allowing her not to return for the turnover of her responsibilities to her “replacement.”²⁶ Tuason also mentioned getting hold of a BOC wide memo/news announcement heralding the “new PMG Head effective Monday, July 16.”²⁷ These developments clearly intensified the pressure to resign. Ironically, her replacement was scheduled to take over the PMG on July 16, 2007, the very same day that she was directed to report back to work. Up to this point, there was still no mention of any transfer or reassignment being offered to her.

On **July 18, 2007**, Tuason reported for work. She personally saw the flyers announcing the appointment of Maximo V. Estrada (*Estrada*) as the new head of PMG posted in the elevators and the common areas of the

²³ All dates with double underscoring refer to the letters from Uranza/BOC.

²⁴ *Rollo*, p. 292.

²⁵ *Id.* at 293.

²⁶ *Id.* at 294.

²⁷ *Id.* at 295.

office. And when she got to her office, Estrada was occupying it and having a meeting with her officers and staff. This was documented in another letter addressed and sent to Uranza on even date. As BOC never formally informed her that she had been replaced, she also sought clarification in that letter regarding her employment status.²⁸

The following day, **July 19, 2007**, Tuason wrote Uranza again. Aside from the repeat of her narration about her replacement, she again mentioned her request to continue her leave while awaiting BOC's position on her status.²⁹

In response, Uranza wrote a letter on **July 20, 2007**. She informed Tuason that her request for leave had been formally endorsed to Padilla. In the same letter, Uranza clarified that Tuason did not strictly comply with her July 13, 2007 directives. First, Tuason came to the office only on July 18. Second, Tuason only went to Uranza and did not report to Padilla. Thus, Uranza again directed Tuason to report to Padilla the "soonest, so he can discuss his plans" for her.³⁰ Again, there was no mention of any transfer or reassignment.

On **July 26, 2007**, Uranza wrote another letter to Tuason. According to Uranza, Padilla agreed to consider Tuason's absences from July 6 to July 19, 2007 as "paid vacation leave" while her leave from July 20 to August 17, 2007 would be "leave without pay." The Court takes note that this was almost the same proposal found in Tuason's July 5, 2007 memo. Back to the July 26, 2007 letter, Uranza then enjoined Tuason to report to Padilla on August 20, 2007 to discuss her "assignment in the Business Segment."³¹ It was the first time that a new assignment in the Business Segment was mentioned. Significantly, a good ten days had lapsed from the day Estrada

²⁸ Id. at 296.

²⁹ Id. at 297.

³⁰ Id. at 298.

³¹ Id. at 299.

took over and replaced Tuason as head of PMG to the time that BOC mentioned about an assignment in the Business Segment. This could only mean that she had been replaced or booted out of her position before any transfer or even the suggestion of a transfer was made or offered to her.

After Tuason failed to report for work on August 21, 2007,³² Uranza sent another letter to her on **August 23, 2007**. Aside from mentioning her now approved leave application, Uranza reminded Tuason once again to report to or at least communicate with Padilla by August 28, 2007, otherwise, BOC would consider her failure to do so as loss of interest to work with BOC. Expectedly, Tuason replied to this letter the following day, **August 24, 2007**, and in her letter, she expressed her confusion in the contradicting letters of BOC. First, she pointed out the disapproval and then the endorsement and eventual approval of her application for leave by Padilla. Next, she mentioned about the directive to return to work while a new PMG head was already occupying her office. She then added that Padilla, Manuel or Uranza never offered her any new assignment or any other position in BOC. Finally, she told her (Uranza) that she had already filed a case for constructive dismissal.³³ BOC, through Uranza, replied to this on **August 29, 2007**. Uranza said that they found Tuason's reaction to their attempt to place her in a new assignment regrettable. She pointed out, however, that BOC had "not taken any definite action against (her), to date."³⁴

This cannot be any farther from the truth. The exchange of memos and letters above readily shows that Tuason's July 5, 2007 memo spoke the truth. BOC wanted her out. They sought her resignation. When this was not forthcoming, and instead of offering her some viable options or alternatives for her exit, BOC simply proceeded to install Estrada as the head of PMG.

³² August 20, 2007 was declared a special non-working holiday; id. at 300.

³³ Id. at 301.

³⁴ Id. at 302.

BOC's act of hiring Estrada and having him take over the position of Tuason on July 16, 2007 was certainly a definitive act, categorical and complete in itself, to effectively oust her from her post.

Next, the CA held that Tuason's reassignment to BOC's Business Segment was a valid exercise of management prerogative.³⁵ It also added that BOC never dismissed her and that it was she who "adamantly refused to accept her new appointment in the Business Segment."³⁶

Again, the Court cannot agree.

Even though transfers or reassignments per se are indeed valid and fall within the ambit of management prerogatives, the exercise of these rights must remain within the boundaries of justice and fair play. Thus, the Court has previously held that

While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers, and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal.³⁷

In this case, BOC submitted that in 2005, Tuason was administratively charged and eventually meted out a 30-day suspension. This, however, happened two years earlier. Besides, she had paid her dues for that infraction. She was suspended. BOC then mentioned that in 2006, Tuason got a poor 63% performance rating. Unfortunately for BOC, it failed to present or establish any connection that it was taking proper steps to either

³⁵ Id. at 52.

³⁶ Id. at 54.

³⁷ *Philippine Industrial Security Agency Corporation v. Percival Aguinaldo*, 499 Phil. 215, 223 (2005).

transfer/reassign or sever Tuason's services altogether because of this dismal rating.

Instead, BOC totally shied away from owning up the attempts to convince Tuason to resign. There was no offer or even mention of a transfer or reassignment until July 26, 2007. By this time, it was too late. BOC had hired Estrada to head the PMG. Estrada had assumed the functions of the post and taken over her office on July 16, 2007. This all happened while Tuason was on leave, without a formal or official communication or advice if she was fired, transferred or reassigned. Worse, at the time that this was happening, Tuason went to the office upon Uranza's several directives. At the office, she saw for herself the flyers boldly announcing the appointment and assumption of Estrada to the very same position that she was still occupying. Still, what was more embarrassing and painful for Tuason was when she saw Estrada already occupying her office and meeting with her subordinate officers and staff.

This is clearly a case of constructive dismissal. Like Tuason, any reasonable person similarly situated would have felt compelled to give up her post as she was, in fact, stripped of it considering that someone else was already discharging her functions and occupying her office. Thus, in *Dimagan v. Dacworks United, Inc.*, the Court held,

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.³⁸

Contrary to the CA's summation, on July 16, 2007, when Estrada assumed Tuason's position and functions, there was still no new

³⁸ *Dimagan v. Dacworks United, Inc.*, G.R. No. 191053, November 28, 2011, 661 SCRA 438.

appointment or assignment clearly and categorically offered to her that she “adamantly refused.” At this point, Tuason was on leave, eagerly awaiting the approval of the same by BOC. Without any official or formal communication that she had been replaced by Estrada, she still intended to return to her old position after her leave of absence. Unfortunately there was no more position to go back to as Estrada had already taken over. Simply put, she was just left in the cold, left to find out that she had been replaced. Worst, she was left without any option or choice. Undoubtedly, she was constructively dismissed. With her future uncertain, she should not be faulted for filing this case for constructive dismissal as any reasonable person would have done so. With this, the assailed CA decision must be discarded and the NLRC decision revived.

The Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play.³⁹

WHEREFORE, the petition is **GRANTED**. The March 31, 2010 Decision of the Court of Appeals, in CA-G.R. SP No. 111956, is **REVERSED** and **SET ASIDE**. In its place, the April 30, 2009 NLRC Decision, in NLRC NCR Case No. 08-08774-2007, is **REINSTATED**.

SO ORDERED.

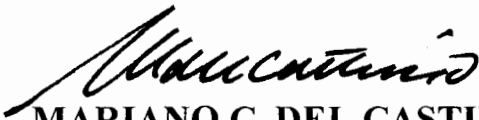

JOSE CATRAL MENDOZA
Associate Justice

³⁹ *Philippine Industrial Security Agency Corporation v. Percival Aguinaldo*, supra note 35.

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson


MARIANO C. DEL CASTILLO

Associate Justice



ROBERTO A. ABAD

Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION


I attest 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.


PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


MARIA LOURDES P. A. SERENO
Chief Justice