Supreme Court E-Library

FIRST DIVISION

[G.R. No. 208053. October 18, 2017]

MEATWORLD INTERNATIONAL, INC., *petitioner, vs.* **DOMINIQUE A. HECHANOVA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; A SECRETARY'S CERTIFICATE ATTESTING THAT A PERSON NAMED THEREIN IS DULY AUTHORIZED BY THE BOARD OF DIRECTORS TO SIGN THE NECESSARY PLEADINGS, VERIFICATION, AND CERTIFICATE OF NON-FORUM SHOPPING ON BEHALF OF THE CORPORATION IS SUFFICIENT PROOF OF AUTHORITY.—** Under the Corporation Code, a corporation exercises its powers and transacts its business through its board of directors or trustees. Its corporate officers and agents, therefore, cannot exercise any corporate power pertaining to the corporation without authority from the board of directors. Corollarily, in order for a person to represent a corporation in a suit, a board resolution authorizing the former to represent the latter is necessary. In several instances, however, the Court has considered a Secretary's Certificate sufficient proof of authority for a person named in it to represent a corporation in a suit. In this case, no board resolution was attached to the Petition for *Certiorari*. However, in lieu thereof, petitioner attached a Secretary's Certificate attesting that Alcoreza was duly authorized by the Board of Directors to sign the necessary pleadings, verification, and certificate of non-forum shopping on behalf of the corporation. This, under prevailing jurisprudence, is sufficient proof of authority.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE EMPLOYER BEARS THE BURDEN OF PROVING THAT THE EMPLOYEE'S TERMINATION WAS FOR A VALID OR AUTHORIZED CAUSE; CONSTRUCTIVE DISMISSAL, DEFINED; WHEN EXISTS.—** In illegal dismissal cases, the employer bears the burden of proving that the employee's termination

Supreme Court E-Library

was for a valid or authorized cause. This rule, however, presupposes that the employee was dismissed from service. x x x. After a careful review of the instant Petition, the Court finds that although there was no actual dismissal, the failure of petitioner to assign respondent to a specific branch without any justifiable reason constituted illegal constructive dismissal. Constructive dismissal is defined as a "cessation of work because continued employment is rendered impossible, unreasonable or unlikely." Similarly, there is constructive dismissal "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." Simply put, it is a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not."

3. ID.; ID.; ID.; ID.; THE EMPLOYER SHOULD BEAR THE BURDEN OF PROVING THAT THERE ARE NO POSTS AVAILABLE TO WHICH THE EMPLOYEE TEMPORARILY OUT OF WORK CAN BE ASSIGNED. — It bears stressing that "[d]ue to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned." Thus, in this case, it was incumbent upon petitioner to prove that respondent was banned at SM Hypermarket Muntinlupa, Market Market, and all Puregold supermarkets, and that there was no available branch for respondent. Unfortunately, petitioner failed to prove both.

4. ID.; ID.; ID.; AN ILLEGALLY DISMISSED "EMPLOYEE " IS ENTITLED TO BACKWAGES AND SEPARATION PAY.— x x x [C]ontrary to the claim of petitioner, respondent's act of seeking help from Tulfo was not the primary consideration of the NLRC in finding the existence of illegal dismissal. It was only one of the many circumstances, which the NLRC took into consideration. Petitioner's failure to assign respondent to an outlet without any justifiable reason, as well as the apparent disdain of petitioner towards respondent as can be seen through the acts of Alcoreza, the immediate response of respondent to seek help from Tulfo, and the antecedent events, were all considered in determining the existence of illegal dismissal. Accordingly, the Court finds no error on the part of the Labor Arbiter and the NLRC in ruling that respondent was illegally dismissed, and thus entitled to backwages and separation pay.

5. ID.; ID.; ID.; WHILE THE COURT RECOGNIZES THAT THE MANAGEMENT HAS THE DISCRETION AND PREROGATIVE TO REGULATE ALL ASPECTS OF EMPLOYMENT, THE EXERCISE OF POWER IS NOT ABSOLUTE AS IT MUST BE EXERCISED IN GOOD FAITH AND WITH DUE REGARD TO THE RIGHTS OF LABOR, AND MAY NOT BE USED AS A SUBTERFUGE BY THE EMPLOYER TO RID HIMSELF OF AN UNDESIRABLE WORKER.— x x x [W]hile the Court recognizes that the management has the discretion and prerogative to regulate all aspects of employment, which includes the transfer of employees, work assignments, discipline, dismissal and recall of workers, the exercise of power is not absolute as "it must be exercised in good faith and with due regard to the rights of labor." More important, "management prerogative may not be used as a subterfuge by the employer to rid himself of an undesirable worker."

APPEARANCES OF COUNSEL

Padlan Sutton & Associates for petitioner.
Jose Evangelista for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action were for valid and legitimate grounds."[1]

Before the Court is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the September 12, 2012[3] and July 3, 2013[4] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 125953.

---

[1] *Diamond Taxi v. Llamas, Jr.*, 729 Phil. 364, 383 (2014).

[2] *Rollo*, pp. 8-40.

[3] *Id*. at 42-44; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

[4] *Id*. at 46-47.

Supreme Court E-Library

Factual Antecedents

On September 6, 2006, petitioner Meatworld International, Inc., a corporation engaged in the business of selling fresh meat under the brand name of "Mrs. Garcia's Meats" in different outlets located in different malls or markets,[5] hired respondent Dominique A. Hechanova as a head butcher.[6] At the time of his termination; respondent was assigned at the outlet of Robinsons Place Mall, Ermita, Manila (Robinsons Place Manila), with a salary of ₱10,600 a month.[7]

On March 2, 2011, respondent filed a Complaint[8] for Illegal Dismissal with claim for reinstatement and backwages against petitioner and/or Joyce Alcoreza (Alcoreza),[9] Vice-President[10] of petitioner. Respondent alleged that on November 10-19, 2010, he was suspended for violating the regulation of SM Hypermarket, Muntinlupa, prohibiting employees of concessionaires from tasting food peddled by some promodizers;[11] that after his suspension, he reported to the office of petitioner for his reassignment but he was informed by the Employee Relation Supervisor Junel Romadia (Romadia), that there was no available outlet yet;[12] that on December 9, 2010, respondent was assigned at Robinsons Place Manila;[13] that on

---

[5] *Id*. at 11 and CA *rollo*, p. 135.

[6] CA *rollo*, p. 46.

[7] *Id*. at 46 and 135.

[8] *Id*. at 120-121.

[9] Referred to as "Jocelyn B. Alcoreza" in the instant Petition for Review and the attached Verification and Certification of Non-Forum Shopping, and Secretary's Certificate (*rollo*, pp. 8, 38 and 39); as "Joyce Alcoresa" in the Complaint filed before the NLRC (CA *rollo*, p. 120); and as "Joyce Alloresa" in respondent's Position Paper and Reply filed before the NLRC (*Id*. at 134 and 140).

[10] *Rollo*, pp. 38-39.

[11] CA *rollo*, p. 135.

[12] *Id*. at 136.

[13] *Id*.

Supreme Court E-Library

January 5, 2011, he was relieved from his assignment and was told to report to the office on January 6, 2011 for his performance evaluation;[14] that when he reported to the office on January 6, 2011, he was told to come back on January 10, 2011;[15] that on January 10, 2011, Romadia asked him to leave his cellphone number so she could text him when to come back;[16] that on January 12, 2011, respondent *via* text message asked Romadia when he could report for work;[17] that Romadia replied that he could report for work anytime;[18] that on January 13, 2011, respondent reported to the office at around 1 PM but was scolded by Alcoreza for not arriving in the morning;[19] that respondent explained to Alcoreza that he came in the afternoon because he knew the office personnel were very busy in the morning;[20] that Alcoreza retorted, "*Magresign ka na lang or tanggalin ka namin*;"[21] that respondent pleaded to her but she left without saying a word;[22] that Romadia approached him and told him to wait for her text;[23] that on January 17, 2011, he decided to ask the help of Mr. Raffy Tulfo (Tulfo) since he had not received any text message from petitioner;[24] that Tulfo gave him a referral letter to the Department of Labor and Employment (DOLE) - CAMANAVA;[25] that on the same day, he went to the DOLE-CAMANAVA and filled-out a Single-Entry Approach (SENA) Form for illegal constructive dismissal alleging that he was

---

[14] *Id*. at 136 and 141.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 136 and 142.

[21] *Id*.

[22] *Id*. at 137 and 142.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 142.

Supreme Court E-Library

not given any work assignment and was being forced to resign;[26] and that the case was forwarded to the National Labor Relations Commission (NLRC).[27]

In response, petitioner claimed that it did not dismiss respondent as he was the one who failed to report for work.[28] Petitioner alleged that in April 2010, respondent was banned from working at all Puregold outlets because a personnel of Puregold BF caught him urinating in the storage room where fresh food items were kept;[29] that respondent was suspended from November 18-25, 2010 for leaving his workplace without permission on November 5, 2010 and for being under time for the dates October 31 and November 1, 2010;[30] that respondent was placed on preventive suspension on November 27-30, 2010 for eating food products or sample items of another concessionaire in the cold room storage area;[31] that respondent was banned from working at the SM Hypermarket Muntinlupa branch because of the incident;[32] that respondent was temporarily assigned at that Robinsons Place Manila;[33] that his assignment ended on January 5, 2011;[34] that respondent was told to report to the office on January 6, 2011 for his new assignment but since he arrived late he was told by his supervisor to return the following day as there was a long queue at the Human Resources (HR) Department;[35] that since respondent failed to report on January 6, 2011, the vacancy which he was supposed to fill

---

[26] *Id*.

[27] *Id*. at 137.

[28] *Id*. at 129-132.

[29] *Id*. at 124-125.

[30] *Id*. at 96 and 126.

[31] *Id*. at 95 and 125-126.

[32] *Id*. at 125.

[33] *Id*. at 126.

[34] *Id*. at 97.

[35] *Id*. at 98.

was no longer available;[36] that on January 10, 2011, respondent barged in at the HR Department and made a demand for his new assignment;[37] that he was told to return in the morning of January 13, 2011;[38] that on said date, he arrived late giving Romadia the impression that he was no longer interested to work;[39] that on the same day, he received a Memorandum asking him to explain in writing why no disciplinary action should be taken against him for failing to report to the HR Department as scheduled;[40] that after the said date, he never reported back to work;[41] and that on January 18, 2011, petitioner sent a Memorandum dated January 17, 2011, asking respondent to submit a written explanation and to report to the HR Department on January 24, 2011 at 3:00 PM.[42]

Ruling of the Labor Arbiter

On January 10, 2012, the Labor Arbiter rendered a Decision[43] declaring respondent to have been illegally dismissed. The Labor Arbiter gave no credence to petitioner's theory, that respondent failed to return to work for fear of being investigated for his violations of company rules and regulations, for lack of evidence.[44] The Labor Arbiter also found petitioner's accusations against respondent to be untrue and without basis.[45] However, considering that the work environment would no longer be healthy, the Labor Arbiter ordered the payment of separation

---

[36] *Id*. at 105.

[37] *Id*. at 109.

[38] *Id*. at 105-106.

[39] *Id*.at 106.

[40] *Id*.

[41] *Id*. at 107.

[42] *Id*. at 98 and 107-108.

[43] *Id*. at 87-90; penned by Labor Arbiter Romelita N. Rioflorido.

[44] *Id*. at 88-89.

[45] *Id*. at 89.

Supreme Court E-Library

pay in lieu of reinstatement.[46] In the absence of any factual or legal basis, the Labor Arbiter relieved Alcoreza of any liability.[47] Thus:

> WHEREFORE, a decision is hereby rendered declaring [respondent] to have been illegally dismissed. [Petitioner] Meatworld International is directed to pay complainant ₱116,600.00 as backwages and ₱42,400.00 as separation pay. Other claims are dismissed.
>
> SO ORDERED.[48]

Ruling of the National Labor Relations Commission

Petitioner appealed the case to the NLRC.

On March 30, 2012, the NLRC rendered a Decision,[49] affirming the findings of the Labor Arbiter that respondent was illegally dismissed and thus entitled to backwages and separation pay. The NLRC ruled that petitioner's allegation that it was respondent who refused to report for work was belied by the latter's "immediate action to seek help from Raffy Tulfo."[50] As to the alleged infraction of respondent of urinating in the storage room, the NLRC considered it as a fabricated infraction as no document was presented to support this.[51] The NLRC even considered the two previous suspensions of respondent as proof that petitioner was giving respondent a hard time.[52] It also gave credence to the statement of respondent that he was told to resign by Alcoreza.[53] All these taken together led the NLRC to conclude that respondent was illegally dismissed.

---

[46] *Id*. at 89-90.

[47] *Id*. at 90.

[48] *Id*.

[49] *Id*. at 51-58; penned by Commissioner Numeriano D. Villena and concurred in by Commissioner Angelo Ang Palaña and Presiding Commissioner Herminio V. Suelo.

[50] *Id*. at 56.

[51] *Id*.

[52] *Id*. at 55-56.

[53] *Id*. at 56-57.

Supreme Court E-Library

Petitioner moved for reconsideration but the NLRC denied the same in its June 15, 2012 Resolution.[54]

Ruling of the Court of Appeals

Unfazed, petitioner elevated the matter to the CA *via* a Petition for *Certiorari*[55] under Rule 65 of the Rules of Court.

On September 12, 2012, the CA dismissed the Petition due to the following infirmities:

1. there was no proper proof of service of the Petition to the adverse party and the agency a quo. While petitioners filed the Affidavit of Service and incorporated registry receipts, [petitioner] still failed to comply with the requirement on proper proof of service. Post office receipt is not the required proof of service by registered mail. Section 10, Rule 13 of the 1997 Rules of Civil Procedure specifically stated that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered as sufficient proof of service; they are merely evidence of mail matter by the post office to the addressee; and

2. there was no competent evidence regarding the identity of Jocelyn B. Alcoreza as the alleged authorized representative of co-petitioner Meatworld International on the attached Verification and Certification Against Non-Forum Shopping as required by Section 12, Rule II of the 2004 Rules on Notarial Practice. Further, there was no board resolution empowering Jocelyn B. Alcoreza to represent petitioner corporation in this case. The Supreme Court was emphatic when it ruled that in the absence of authority from the board of directors, no person[,] not even the officers[,] can bind the corporation. It stressed that any suit filed on behalf of the corporation wanting the required board resolution should be dismissed, since the power of the corporation to sue and be sued in any

---

[54] *Id*. at 61-64.

[55] *Id*. at 3-44.

Supreme Court E-Library

> court is lodged with the board of directors that exercises its corporate powers. Thus, only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. In addition, the Court has required that proof of said authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.[56]

Petitioner sought reconsideration contending that it complied with the proof of service requirement and that the Secretary's Certificate attached to the Petition is sufficient proof of the authority of Alcoreza to file the said Petition.[57]

In its July 3, 2013 Resolution,[58] the CA conceded that petitioner complied with the proof of service requirement, however, it maintained that petitioner failed to present the Board Resolution and the competent evidence of identity of the affiant.

Hence, petitioner filed the instant Petition for Review on *Certiorari*, raising the following errors:

A. THE FINDING OF THE [CA] THAT THERE WAS NO COMPETENT EVIDENCE OF IDENTITY AND BOARD RESOLUTION AUTHORIZING THE VICE PRESIDENT OF PETITIONER COMPANY TO FILE THE PETITION IS CONTRARY TO FACTS.

B. THE [CA] ERRED IN DECLARING THAT A COPY OF THE BOARD RESOLUTION ITSELF, AUTHORIZING THE PERSON ACTING IN ITS BEHALF SHOULD BE APPENDED TO THE PETITION.

C. THE [CA] ERRED IN NOT RESOLVING THE CASE ON THE MERITS AND:

---

[56] *Rollo*, pp. 42-44.

[57] *Id*. at 48-61.

[58] *Id*. at 46-47.

Supreme Court E-Library

1. NOT DECLARING THAT RESPONDENT WAS NOT DISMISSED, MUCH LESS ILLEGALLY DISMISSED BY THE PETITIONER COMPANY FROM EMPLOYMENT; AND

2. UPHOLDING THE FINDING OF THE NLRC IN AWARDING BACKWAGES AND SEPARATION PAY IN FAVOR OF RESPONDENT.[59]

Petitioner's Arguments

Petitioner contends that the CA erred in insisting that a copy of the Board Resolution is required to be attached to the Petition for *Certiorari*.[60] It claims that under prevailing jurisprudence, a copy of the Secretary's Certificate, attesting that petitioner authorized Alcoreza to file the said Petition for *Certiorari* suffices.[61] Moreover, contrary to the findings of the CA, Alcoreza submitted competent proof of identity before the notary public.[62] In any case, even if there were defects in the Petition for *Certiorari*, these were excusable, and thus, the CA still should have resolved the case on the merits.[63]

As to the merits of the case, petitioner insists that it did not dismiss respondent from employment.[64] Rather, it was respondent who failed to report for work because he erroneously assumed that he was being terminated.[65] Petitioner likewise puts in question the CA's reliance on respondent's act of seeking help from Tulfo as proof of dismissal.[66]

---

[59] *Id*. at 20.

[60] *Id*. at 100-101.

[61] *Id*. at 101.

[62] *Id*. at 98-100.

[63] *Id*. at 101-102.

[64] *Id*. at 103-114.

[65] *Id*.

[66] *Id*. at 103-105.

Supreme Court E-Library

Respondent's Arguments

Respondent, however, argues that the instant case has been rendered moot as the judgment has been satisfied by the release of the appeal bond by the NLRC Cashier to the respondent[67] In any case, respondent maintains that the CA did not err in dismissing the Petition for *Certiorari* due to technicalities.[68] Respondent likewise asserts that the factual findings of the Labor Arbiter and the NLRC are in accord with the facts and evidence on record.[69]

Ruling

The Petition must fail.

There were no procedural defects in the Petition for Certiorari.

Under the Corporation Code, a corporation exercises its powers and transacts its business through its board of directors or trustees.[70] Its corporate officers and agents, therefore, cannot exercise any corporate power pertaining to the corporation without authority from the board of directors.[71] Corollarily, in order for a person to represent a corporation in a suit, a board resolution authorizing the former to represent the latter is necessary. In several instances, however, the Court has considered a Secretary's Certificate sufficient proof of authority for a person named in it to represent a corporation in a suit.[72]

In this case, no board resolution was attached to the Petition for *Certiorari*. However, in lieu thereof, petitioner attached a

---

[67] *Id*. at 68-69.

[68] *Id*. at 139-140.

[69] *Id*. at 140-141.

[70] CORPORATION CODE, Section 23.

[71] *Manila Metal Container Corporation v. Philippine National Bank*, 540 Phil. 451, 474 (2006).

[72] *LBL Industries, Inc. v. City of Lapu-Lapu*, 718 Phil. 11, 18-19 (2013).

Supreme Court E-Library

Secretary's Certificate attesting that Alcoreza was duly authorized by the Board of Directors to sign the necessary pleadings, verification, and certificate of non-forum shopping on behalf of the corporation. This, under prevailing jurisprudence, is sufficient proof of authority.

In addition, contrary to the CA's finding, Alcoreza presented "competent evidence of identity" as she presented before the notary public her valid Philippine Passport.[73]

In view of the foregoing, the Court agrees with petitioner that there were no procedural defects to warrant the dismissal of the Petition for *Certiorari* by the CA. However, while there were no procedural defects, the Court finds that the instant petition is still dismissible on the merits.

Respondent was illegally dismissed.

In illegal dismissal cases, the employer bears the burden of proving that the employee's termination was for a valid or authorized cause.[74] This rule, however, presupposes that the employee was dismissed from service.[75]

In this case, records show that in November 2010 respondent was suspended for one week because of his undertime on October 31, 2010 and November 5, 2010 and his absence on November 1, 2010. Immediately after his suspension, he was placed on preventive suspension for three days for sampling food products. After his preventive suspension, respondent reported to the office but was told that there was no available outlet. After more than a week of making follow-ups, respondent was assigned at Robinsons Place Manila. Less than a month later, petitioner told respondent to report to the office on January 6, 2011 as his assignment at Robinsons Place Manila was only temporary. Respondent reported to the office on January 6, 10, and 13, 2011 but was told that there was no available outlet. On January

---

[73] CA *rollo*, p. 43.

[74] *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).

[75] *Id*.

Supreme Court E-Library

13, 2011, the last time respondent went to the office of petitioner, he was scolded by Alcoreza for arriving late and was told to resign, otherwise, he would be dismissed. All these factual circumstances, taken together, led the NLRC to conclude that petitioner was giving respondent a hard time in order to make his employment unbearable, and eventually, force him to resign. Unfortunately, instead of resigning, respondent sought the help of Tulfo who referred him to DOLE. With these findings, the NLRC sustained the ruling of the Labor Arbiter that respondent was illegally dismissed.

Petitioner, however, insists that respondent was not dismissed from employment. Instead, it was respondent who failed to report for work because he erroneously assumed that he was being terminated.

After a careful review of the instant Petition, the Court finds that although there was no actual dismissal, the failure of petitioner to assign respondent to a specific branch without any justifiable reason constituted illegal constructive dismissal.

Constructive dismissal is defined as a "cessation of work because continued employment is rendered impossible, unreasonable or unlikely."[76] Similarly, there is constructive dismissal "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."[77] Simply put, it is a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not."[78]

In this case, petitioner admits that after relieving respondent from his assignment at Robinsons Place Manila on January 5, 2011, it failed to assign him to a new branch. However, to justify its failure, petitioner claims that there was no available post as

---

[76] *Galang v. Malasugui*, 683 Phil. 590, 603 (2012).

[77] *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999).

[78] *Galang v. Malasugui*, *supra*.

the vacancy which respondent was supposed to fill was no longer available since he failed to report on January 6, 2011. Petitioner later clarified that respondent did report to the office on January 6, 2011 but that he arrived late, and thus was not given the assignment Petitioner also claims it was having a hard time finding a new branch as respondent was already banned at SM Hypermarket Muntinlupa, Market Market, and all Puregold supermarkets.

The Court finds petitioner's justification unacceptable.

It bears stressing that "[d]ue to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned."[79] Thus, in this case, it was incumbent upon petitioner to prove that respondent was banned at SM Hypermarket Muntinlupa, Market Market, and all Puregold supermarkets, and that there was no available branch for respondent. Unfortunately, petitioner failed to prove both. Except for a Memorandum from SM Hypermarket stating that respondent was no longer allowed to be assigned at the Muntinlupa branch, no other evidence was presented by petitioner to show that respondent was also banned at Market Market and at all Puregold supermarkets and that all posts were indeed taken. Petitioner could have easily asked its HR Department for a list of all its branches together with the list of all its employees assigned thereat to prove its allegation that there are no available posts for respondent. But it did not. Instead, it argued that respondent's various infractions made it difficult for petitioner to assign respondent to a new assignment. As evidence, petitioner submitted several memoranda it issued against respondent. These, however, do not prove petitioner's allegation that there are no available posts for respondent. If at all, it only shows that petitioner considered respondent an undesirable employee due to his various infractions. Such infractions, however, are not sufficient to prove that there are no available posts for respondent.

---

[79] *Pido v. National Labor Relations Commission*, 545 Phil. 507, 516 (2007) and *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 523 (2015).

Supreme Court E-Library

Moreover, contrary to the claim of petitioner, respondent's act of seeking help from Tulfo was not the primary consideration of the NLRC in finding the existence of illegal dismissal. It was only one of the many circumstances, which the NLRC took into consideration. Petitioner's failure to assign respondent to an outlet without any justifiable reason, as well as the apparent disdain of petitioner towards respondent as can be seen through the acts of Alcoreza, the immediate response of respondent to seek help from Tulfo, and the antecedent events, were all considered in determining the existence of illegal dismissal. Accordingly, the Court finds no error on the part of the Labor Arbiter and the NLRC in ruling that respondent was illegally dismissed, and thus entitled to backwages and separation pay.

In closing, while the Court recognizes that the management has the discretion and prerogative to regulate all aspects of employment, which includes the transfer of employees, work assignments, discipline, dismissal and recall of workers, the exercise of power is not absolute as "it must be exercised in good faith and with due regard to the rights of labor."[80] More important, "management prerogative may not be used as a subterfuge by the employer to rid himself of an undesirable worker."[81]

WHEREFORE, the Petition is hereby **DENIED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Jardeleza, JJ.*, concur.

Tijam, J., on official leave.

---

[80] *Intec Cebu, Inc. v. Court of Appeals*, G.R. No. 189851, June 22, 2016, 794 SCRA 266, 273-274.

[81] *Peckson v. Robinsons Supermarket Corporation*, 713 Phil. 471, 483 (2013).