Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ASIAN MARINE TRANSPORT CORPORATION, Petitioner,	**G.R. No. 212082** Present:
-versus-	LEONEN, *J.*, *Chairperson*, CARANDANG, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
ALLEN P. CASERES, EMILYN O. TUDIO, JESSIE LADICA, and VERMELYN PALOMARES, Respondents.	**Promulgated:** November 24, 2021

x----------x

DECISION

LEONEN, *J.*:

Management has a wide latitude to conduct its own affairs, so long as it exercises its management prerogative in good faith for the advancement of its interest and not to defeat or circumvent employee rights under the law or valid agreements. Its management prerogative must likewise not be used in a way that is unreasonable, inconvenient, or prejudicial to the employees involved.[1]

This Court resolves a Petition for Review on Certiorari[2] assailing the

---

1 *See San Miguel Corporation v. Ubaldo*, *San Miguel Corporation v. Ubaldo*, 291-A Phil. 317 (1993) [Per J. Campos, Jr., Second Division]; and *Philippine Industrial Security Agency Corp. v. Aguinaldo*, 499 Phil. 215 (2005) [Per J. Sandoval-Gutierrez, Third Division].

2 *Rollo*, pp. 9–33.

Court of Appeals Decision[3] and Resolution[4] reversing the labor tribunals' ruling that Asian Marine Transport Corporation's (Asian Marine) transfer or reshuffle of its employees was a valid and legitimate exercise of its management prerogative.

On May 1, 2003 and May 1, 2004, Asian Marine hired Jessie F. Ladica (Ladica) and Allen P. Caseres (Caseres) as quartermaster and seaman, respectively. Then, on August 1, 2005 and October 12, 2006, Asian Marine hired Vermelyn B. Palomares (Palomares) and Emilyn O. Tudio (Tudio) as ticketing clerk and purser, respectively.[5]

Ladica and Tudio were dispatched to MV Super Shuttle Ferry-1, while Palomares and Caseres were assigned to MV Super Shuttle Ferry-6.[6]

On December 8, 2007,[7] Asian Marine transferred six employees, including Ladica, Tudio, Palomares, and Caseres (Ladica, et al.) to other workstations effective December 17, 2007. However, Ladica, et al. refused their transfer. They claimed it would lead to additional living expenses and a diminution of their pay, since Asian Marine would not provide them with relocation assistance benefits.[8]

Asian Marine then dismissed Ladica, et al. on different dates due to abandonment of their duties. This prompted them to file their respective complaints for illegal dismissal with money claims against Asian Marine.[9]

Aside from their reduced salaries due to the transfer, Ladica, et al. also claimed that the transfer was done as a retaliatory measure against them since they: (1) joined other workers in filing a complaint against Asian Marine for violating labor standard laws; and (2) refused to sign a compromise agreement with the company.[10]

Asian Marine, on the other hand, denied that the transfer was done in bad faith and emphasized that it was done in the ordinary course of its

---

3 Id. at 224–237. The June 28, 2013 Decision in CA-G.R. SP No. 03178-MIN was penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Renato C. Francisco and Jhosep Y. Lopez (now a member of this Court) of the Special Twenty-First Division, Court of Appeals, Cagayan de Oro City.

4 Id. at 245–247. The March 7, 2014 Resolution in CA-G.R. SP No. 03178-MIN was penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Renato C. Francisco and Jhosep Y. Lopez (now a member of this Court) of the Special Twenty-First Division, Court of Appeals, Cagayan de Oro City.

5 Id. at 37.

6 Id.

7 Id. at 92.

8 Id. at 38.

9 Id.

10 Id. at 38–39.

business.[11] It likewise pointed out that Ladica, et al.'s money claims were pending in a separate case and that on October 9, 2007,[12] the Department of Labor and Employment issued a Compliance Order directing Asian Marine to pay wage differentials and benefits to 23 crew members, including Ladica, et al.[13]

On September 29, 2008,[14] Labor Arbiter Bario-Rod M. Talon dismissed Ladiaca, et al.'s complaint.

The Labor Arbiter found that the transfers were done as part of Asian Marine's management prerogative and that it was not motivated by bad faith, since Asian Marine did it in the exercise of its legitimate business interest.

The Labor Arbiter likewise dismissed Ladica, et al.'s money claims, as they were already the subject of a pending complaint for money claims before Department of Labor and Employment Regional Office No. 10.[15]

The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, judgment is rendered Dismissing the above complaint for constructive or illegal dismissal for lack of merit.
>
> The money claims are likewise Dismissed for reason stated above.
>
> SO ORDERED.[16]

Ladica, et al. appealed the Labor Arbiter's Decision, but their appeal was dismissed by the National Labor Relations Commission in its April 30, 2009 Resolution.[17]

The National Labor Relations Commission concurred with the Labor Arbiter that the transfer—which was temporary in nature and did not involve a demotion in rank or salary diminution—was Asian Marine's customary practice and company policy, hence, it was done in the exercise of its valid

---

11 Id. at 40.
12 Id. at 90–91.
13 Id. at 41.
14 Id. at 37–43. The Decision in NLRC Case Nos. RAB-10-01-00089-2008, RAB-10-01-00090-2008, RAB-10-01-00091-2008, and RAB-10-01-00092-2008 was penned by Executive Labor Arbiter Bario-Rod M. Talon.
15 Id. at 43.
16 Id.
17 Id. at 45–51. The National Labor Relations Commission's Resolution in NLRC Case No. MAC 12-010592-2008 (NLRC Case Nos. RAB-10-01-00089-2008, RAB-10-01-00090-2008, RAB-10-01-00091-2008, and RAB-10-01-00092-2008) was penned by Commissioner Dominador B. Medroso, Jr. and concurred in by Commissioners Salic B. Dumarpa and Proculo T. Sarmen of the National Labor Relations Commission, Fifth Division, Cagayan de Oro City.

management prerogative. It held that Ladica, et al.'s willful disobedience in refusing to follow Asian Marine's transfer order was just cause for the termination of their employment.[18]

The dispositive portion of the National Labor Relations Commission's Resolution reads:

> WHEREFORE, the assailed Decision dated 29 September 2008 is AFFIRMED.
>
> SO ORDERED.[19]

Ladica, et al. moved for a reconsideration of the National Labor Relations Commission's Resolution, but their motion was denied on June 30, 2009.[20]

They then filed a Petition for Certiorari[21] before the Court of Appeals, which granted their petition in its June 28, 2013 Decision.[22]

The Court of Appeals held that Asian Marine, as the employer, failed to prove that the transfer "was required by the exigencies of its business,"[23] making it tantamount to constructive dismissal.[24]

Ruling on the evidence presented, the Court of Appeals pointed out that Asian Marine's Special Permits to Navigate did not support its claim that it implemented a regular work rotation program.[25] Additionally, the Court of Appeals stressed that since only Ladica, et al. were the ones transferred out of the 23 employees who filed a complaint against Asian Marine, this substantiated their claims of discrimination and constructive dismissal.[26]

The Court of Appeals then ruled that Ladica, et al.'s failure to report to work was caused by Asian Marine's unjust order and could not be construed as abandonment.[27]

---

18 Id. at 49.
19 Id. at 50.
20 Id. at 63–64. The Resolution was penned by Commissioner Dominador B. Medroso, Jr. and concurred in by Commissioners Salic B. Dumarpa and Proculo T. Sarmen of the National Labor Relations Commission, Fifth Division, Cagayan de Oro City.
21 Id. at 65–86.
22 Id. at 224–237.
23 Id. at 231.
24 Id.
25 Id. at 232.
26 Id. at 232–233, in relation to p. 41.
27 Id. at 234.

The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the Decision dated 29 September 2008 of the Labor Arbiter, and the Resolution dated 30 April 2009 of public respondent National Labor Relations Commission (NLRC) are REVERSED and SET ASIDE and a new one is entered as follows:
>
> 1. Declaring that petitioners were constructively, nay, illegally dismissed from employment;
> 2. Ordering private respondent to reinstate petitioners to their former positions, however, if reinstatement is no longer feasible because of strained relations or supervening events, private respondent is ORDERED to pay each of the petitioners SEPARATION PAY equivalent to one-month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year;
> 3. Ordering private respondent to pay each of the petitioners BACKWAGES computed from the time of their dismissal up to the finality of this decision, and
> 4. Ordering private respondent to pay petitioners' attorney's fees amounting to 10% of the award and the cost of this suit.
>
> For this purpose, this case is hereby REMANDED to the Labor Arbiter for the computation of the amounts due the petitioners.
>
> SO ORDERED.[28]

Asian Marine moved for the reconsideration[29] of the Court of Appeals Decision, but its motion was denied in the Court of Appeals' March 7, 2014 Resolution.[30]

On May 5, 2014, Asian Marine filed a Verified Petition for Review on Certiorari[31] before this Court.

Petitioner Asian Marine posits that it has long been its established practice and company policy to move or reassign its vessels, crewmembers, and ticketing clerks from one port to another.[32] It denies that the transfer was done in bad faith, reiterating that the reassignment of vessels naturally results in the transfer of workstations of crewmembers. It also avers that ticketing clerks are regularly reshuffled to different ports because, from its experience and observation, employees in these positions tend to give undue favors to their relatives and friends.[33]

---

28 Id. at 235–236.
29 Id. at 238–242.
30 Id. at 245–247.
31 Id. at 9–32.
32 Id. at 27.
33 Id. at 15.

Moreover, petitioner maintains that respondents Ladica, et al. were the only employees who questioned their reassignment, unlike the other two transferred employees[34] who assumed their positions without protest.[35] Additionally, petitioner underscores that not all of the employees who refused to sign the compromise agreement were transferred, which belies respondents' allegation that the transfer was a retaliatory act.[36]

Finally, petitioner emphasizes that respondents admitted that it has been a long time practice in the maritime industry to transfer and reshuffle employees, and that respondents only anchored their Petition for Certiorari before the Court of Appeals on the transfer's invalidity on the ground of economic prejudice.[37] Thus, the Court of Appeals' finding that the transfer was not a valid exercise of management prerogative was devoid of factual basis and contrary to respondents' admissions, thereby rendered with grave abuse of discretion.[38]

In their Comment,[39] respondents assert that the Court of Appeals did not err in finding that their transfer or reassignment was motivated by bad faith.[40] They likewise highlight that the Court of Appeals' conclusion that they were constructively dismissed was supported by the requisite substantial evidence.[41]

In its Reply,[42] petitioner reiterates that the Court of Appeals failed to consider that respondents were not singled out and were not the only ones who refused to sign the compromise agreement, yet they were the only ones among that group who were transferred. Further, petitioner points out that the transfer happened five months after its employees were interviewed by the Labor Standards Inspector, which again negates respondents' assertion that the transfer was a retaliatory act.[43]

Petitioner then underscores that the transferring or reshuffling of "vessels, ferryboats and/or crewmembers to different ports" was part of the usual course of its business, and that respondents did not dispute this fact.[44]

---

34 Id. The other two transferred employees were Ariel Javier and Danilo Ilut.
35 Id.
36 Id. at 25–26.
37 Id. at 28–29.
38 Id. at 30–32.
39 Id. at 282–285.
40 Id. at 282–283.
41 Id. at 284.
42 Id. at 293–297.
43 Id. at 293–294.
44 Id. at 295–296.

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in reversing the labor tribunals' unanimous finding that the disputed transfer of employees was a valid and legitimate exercise of petitioner's management prerogative.

The petition must fail.

Jurisprudence recognizes the exercise of management prerogative, or a company's freedom to conduct its business as it sees fit. *San Miguel Brewery Sales Force Union v. Ubalde*[45] states that management has a wide latitude to conduct its own affairs so long as it exercises its management prerogative "in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements."[46]

The transfer or assignment of employees in good faith is one of the acknowledged valid exercises of management prerogative "and will not, in and of itself, sustain a charge of constructive dismissal."[47] *Tan v. National Labor Relations Commission*[48] expounds:

> [T]he transfer of an employee from one area of operation to another is a management prerogative and is not constitutive of constructive dismissal, when the transfer is based on sound business judgment, unattended by demotion in rank or a diminution of pay or bad faith. Thus, in *Philippine Japan Active Carbon Corp. v. NLRC*, the Court ruled:
>
> > "It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal."[49] (Citations omitted)

---

45 *San Miguel Corporation v. Ubaldo, San Miguel Corporation v. Ubaldo*, 291-A Phil. 317 (1993) [Per J. Campos, Jr., Second Division].

46 Id. at 325.

47 *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 382 (2018) [Per J. Leonen, Second Division].

48 359 Phil. 499 (1998) [Per J. Panganiban, First Division].

49 Id. at 511–512.

Hence, management prerogative is not absolute, and a company "cannot exercise its prerogative in a cruel, repressive, or despotic manner."[50]

Manalo v. Ateneo de Naga University[51] instructs that in a case for constructive dismissal brought about by the transfer of employees, this Court must decide if, given the facts of the case, the employer acted fairly in making use of its right of management prerogative.[52] Thus:

> At the core of the issue of constructive dismissal is the matter of whether an employer's action is warranted. Not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure sustains a finding of constructive dismissal.[53]

Here, the Labor Arbiter found that the transfer order was legal and that it was a valid exercise of petitioner's management prerogative, since: (1) it would not result in a diminution in pay; and (2) its marine business' nature called for the reshuffling of vessels and crewmembers in order to keep up with the demand in sea travel.[54]

The National Labor Relations Commission also upheld the transfer's legality, agreeing with the Labor Arbiter that it was customary practice for a common carrier like petitioner to rotate its employees to different posts in order to adjust to the riding public's needs. It likewise did not find the transfer to have been tainted with bad faith due to the time element, and because it did not transfer all of those who complained, which belies respondents' claims that they were singled out for speaking against petitioner.[55]

In reversing the labor tribunals, the Court of Appeals concurs that the assailed transfers neither involved a demotion in rank nor a diminution in pay, yet it counters that petitioner nonetheless failed to justify the transfer as necessary in the conduct of its business. It stressed that the "Special Permits to Navigate" granted to petitioner could not be construed to mean that it utilizes a rotation program for its employees; hence, it found that the transfer was tainted with bad faith.[56]

Constructive dismissal arises "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility[,] or disdain

---

50 *Andrada v. National Labor Relations Commission*, 565 Phil. 821, 839 (2007) [Per J. Velasco, Jr., Second Division].
51 772 Phil. 366 (2015) [Per J. Leonen, Second Division].
52 *Manalo v. Ateneo De Naga University*, 772 Phil. 366, 383 (2015) [Per J. Leonen, Second Division].
53 Id. at 369.
54 *Rollo*, pp. 41–42.
55 Id. at 49–50.
56 Id. at 231–232.

by an employer becomes unbearable to the employee."[57] In effect, constructive dismissal is involuntary resignation[58] due to the situation's impossibility or unreasonableness, leaving an employee with no other option but to forego continued employment rather than trying to put up with an unbearable working environment.[59]

A transfer is tantamount to constructive dismissal when it is "unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee."[60] The employer has the burden of proving that the transfer was for just and valid grounds, and that it was compelled by a genuine business necessity. Failure to overcome this burden of proof taints the transfer, making it constructive dismissal.[61]

Petitioner attached several different Special Permits to Navigate[62] from the Maritime Industry Authority to support its assertion that it was its customary practice to reshuffle its employees to address the exigencies of its maritime travel business.

Petitioner fails to convince.

A careful review of the permits shows that the temporary permits were only for a single voyage and allowed particular vessels to travel on a different route for no more than two days. One of the special permits attached to the Petition reads:

SPECIAL PERMIT TO NAVIGATE

PERMISSION IS HEREBY GRANTED to MV "SUPER SHUTTLE FERRY 10" owned/operated by Asian Marine Transport Corporation to navigate during fair weather from Port of Lipata, Surigao City to Balingoan, Misamis Oriental, subject to the following conditions:

1. That the vessel shall not carry passengers;
2. That the vessel shall not load any cargo/ dangerous cargoes [sic];
3. That the vessel shall be manned, as follows:
   (a) Please refer to Minimum Safe Manning Certificate
   (b) xxxx
   (c) xxxx
   (d) xxxx
   (e) xxxx
4. That in case of accident, damage or loss, the registered owner of

---

57 *Tan v. National Labor Relations Commission*, 359 Phil. 499, 511 (1998) [Per J. Panganiban, First Division].

58 *Philippine Industrial Security Agency Corp. v. Aguinaldo*, 499 Phil. 215, 226 (2005) [Per J. Sandoval-Gutierrez, Third Division].

59 *Manalo v. Ateneo De Naga University*, 772 Phil. 366, 369 (2015) [Per J. Leonen, Second Division].

60 *Philippine Industrial Security Agency v. Aguinaldo*, 499 Phil. 215, 226 (2005) [Per J. Sandoval-Gutierrez, Third Division].

61 Id.

62 *Rollo*, pp. 158–163 and 168.

> the vessel shall assume full risk and responsibility for all the consequences arising from such negligence, disregard or violation; and
> 5. That the owner of the said vessel be held answerable for any negligence, disregard or violation of conditions herein imposed and for any consequences arising from such negligence, disregard or violation.
>
> Issued at Cagayan de Oro City on 13th day of March 2008.
>
> This License is valid from March 17, 2008 to March 19, 2008.
>
> This **PERMIT** shall be valid for one voyage only.[63]

The other attached Permits[64] pertained to different vessels and had different issuance dates, however, they were all only valid for one voyage and were all only good for two days. Thus, contrary to what petitioner claimed, it cannot be deduced from the permits that there was a real need to transfer or reshuffle employees, or that these had long been established as a company practice. As observed by the Court of Appeals:

> [T]hese pieces of evidence cannot in any way be considered as competent evidence to prove that it has regular work rotation program. These permits do not prove anything in relation to the alleged practice of reshuffling crewmembers. They merely show that a particular vessel is authorized to navigate a certain route for a single voyage and nothing more. At best, respondent could have at least presented previous memorandum ordering the reshuffling of its employees.[65]

In *Zafra v. Court of Appeals*,[66] this Court held that while Philippine Long Distance Telephone Co.'s management prerogative includes the right to transfer employees to any branch, which their employees also agreed to in their application for employment, the employer's right to transfer should not be taken in isolation, but rather, in conjunction with the established company practice of notifying the employees of the transfer first before sending them abroad for training.[67]

Zafra found that it was the telecom's company practice or standard operating procedure to "inform personnel regarding the nature and location of their future assignments after training abroad[,]"[68] as evidenced by several inter-office memoranda which stressed the dissemination of notice of transfer to employees before they are sent abroad for training, thereby giving their employees an opportunity to refuse the offered training.[69]

---

63 Id. at 158.
64 Id. at 159–163 and 168.
65 Id. at 232.
66 437 Phil. 766 (2002) [Per J. Quisumbing, Second Division].
67 *Zafra v. Court of Appeals*, 437 Phil. 766, 767 (2002) [Per J. Quisumbing, Second Division].
68 Id. at 769.
69 Id.

Here, no similar evidence was presented to support the claim of a prevailing company practice of transferring employees. Instead of submitting "previous memorandum ordering the reshuffling of its employees"[70] or analogous evidence, petitioner merely attached several Special Permits to Navigate issued by the Maritime Industry Authority. These special temporary permits allowed particular vessels to travel on a different route for a few days at a time, and cannot be construed, by any stretch of mind, to support an assertion of an established company practice to transfer or reshuffle its employees.

With petitioner's failure to prove its supposed company practice of transferring employees, the transfer becomes arbitrary and is no longer within the ambit of management prerogative.

Additionally, constructive dismissal does not always involve or is not just limited to "forthright dismissal or diminution in rank, compensation, benefits, and privileges."[71] A transfer that is unreasonable, inconvenient, or prejudicial to employees may also be seen as constructive dismissal if continued employment becomes unbearable and oppressive, affording the employee with no other option but to terminate their employment.[72]

Here, respondents decried their transfer since their new assignments meant that they would be far from their families and that they would either need to spend extra on living expenses or bring their families with them, leading to a diminution of their pay, as petitioner would not provide them with relocation assistance benefits.[73]

Generally, an objection to a transfer grounded solely on personal inconvenience or hardship cannot be seen as a "valid reason to disobey"[74] a transfer order, however, the assailed transfer here was arbitrary, as well as discriminatory and marked with bad faith, as found by the Court of Appeals:

> Even assuming *arguendo* that the reassignment of petitioners was pursuant to an existing company practice, We cannot help but wonder why only the petitioners out of the 23 employees of the private respondent were singled out. Evidently, private respondent's act smacks of arbitrariness and discrimination. We emphasize that constructive dismissal may 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 continue employment.

---

70 *Rollo*, p. 232.
71 *Zafra v. Court of Appeals*, 437 Phil. 766, 781 (2002) [Per J. Quisumbing, Second Division].
72 Id.
73 *Rollo*, p. 38.
74 *Herida v. F&C Pawnshop and Jewelry Store*, 603 Phil 385, 392 (2009) [Per J. Quisumbing, Second Division].

> Private respondent tries to justify its action by pointing out that petitioners' reassignment was only temporary in nature, however, the order contained no indication at all that the transfer was indeed momentary. Furthermore, private respondent argues that the supposed transfer of the petitioners was "to give way for their short job training in relation to their position which will be sponsored by the company and to be held in Cebu City." That being the case, it baffles Us no end why Palomares have (sic) to be transferred in Liloan, Leyte and Tudio to Hagnaya, Cebu if the training is indeed to be held in Cebu City? This, to Our mind, was a mere afterthought on the part of the private respondent to justify its action.
>
> Altogether, there is a strong basis for petitioners' allegation that their reassignment was not prompted by legitimate reasons. On the contrary, the move was apparently motivated by an illicit or underhanded purpose – to punish petitioners.[75] (Emphasis in the original)

Clearly, respondents' transfer cannot be said to have been a valid exercise of petitioner's management prerogative.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

---

75 *Rollo*, pp. 232–233.

WE CONCUR:

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
MAY 12 2022