

Isabela-I Electric Coop., Inc. represented by its General Manager, Engr. Virgilio L. Montano v. National Labor Relations Commission and Vicente B. Del Rosario, Jr.:

1. Decision dated December 21, 2015,² affirming the finding of the National Labor Relation Commission (NLRC) that respondent Vicente B. Del Rosario, Jr. was constructively dismissed; and
2. Resolution dated July 7, 2016,³ denying the motion for reconsideration⁴ of petitioner Isabela-I Electric Coop., Inc..

The Undisputed Facts

On January 29, 1996, petitioner Isabela-I Electric Cooperative, Inc. hired respondent Vicente B. Del Rosario, Jr. as Financial Assistant. The latter quickly rose from the ranks. After just three (3) months, on April 26, 1996, he got promoted as Acting Management Internal Auditor and on October 26, 1996, as Management Internal Auditor at petitioner's main office.⁵

As Management Internal Auditor, respondent was receiving a basic monthly salary of P30,979.00 exclusive of representation allowance and other emoluments and benefits.⁶ Petitioner never raised any issue regarding his performance and capacity to lead his department.⁷

In January 2011, petitioner approved a reorganization plan declaring all positions in the company vacant. Respondent, along with other employees signed a Manifesto to oppose the reorganization. Despite this opposition, petitioner proceeded to implement the reorganization in June 2011.⁸ Additionally, petitioner informed its employees in writing, that they were on a "hold-over capacity."⁹

Together with other employees, respondent was made to fill out a prescribed application form. There, respondent listed "Internal Auditor Manager A," his current position, as his first preference, and "Finance Services Department Manager A" as his second.¹⁰

² Penned by then Associate Justice, now CA Presiding Justice Romeo F. Barza, and concurred in by then CA Presiding Justice, now SC Associate Justice Andres B. Reyes, Jr., and Associate Justice Agnes Reyes-Carpio; *rollo*, pp. 34-41.

³ *Rollo*, pp. 42-43.

⁴ *Id.* at 80-89

⁵ *Id.* at 57-58.

⁶ *Id.* at 58.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

While on vacation leave in October 2012, respondent received two (2) letters from petitioner. The first referred to his appointment as probationary Area Operations Manager. The second contained four (4) office memoranda which (a) indicated his area of assignment; (b) ordered him to cease acting as petitioner's management internal auditor; (c) directed him to turn over his current post and pertinent documents to his successor; and (d) appointed his subordinate Arlene B. Boy as officer-in-charge of the Auditing Department.¹¹ Although respondent had issues about this new appointment, including the fact that his successor was not even a Certified Public Accountant (CPA) as he was the only CPA among petitioner's employees, he begrudgingly accepted his appointment.¹²

Three (3) months later, in January 2013, respondent sent a letter to petitioner's general manager Virgilio L. Montano, voicing out his concern that the new position given him was a demotion. In the same letter he requested to be reinstated to his former position, especially since he was the only CPA among petitioner's employees. Petitioner, however, did not act on his letter.¹³

The Complaint

On January 30, 2013, respondent filed the complaint below for illegal dismissal and damages. He claimed he was unlawfully demoted and was therefore constructively dismissed. He essentially averred:

(a) His former position as Management Internal Auditor had Salary Rank 20 (Php33,038.05), while his new position as Area Operations Management Department Manager came with Salary Rank 19 (Php30,963.95).¹⁴

(b) The job description contained in his undated appointment entailed lesser responsibilities than those pertaining to his former position. What he held before covered the entire province of Isabela while his new position was limited to Isabela South Sector.¹⁵

(c) Although his former position was not abolished, an incumbent of lesser qualifications than him was appointed thereto. Among all petitioner's employees, he is the only full-fledged CPA with a Master's Degree in Business Administration. He is the most qualified candidate for his former position.¹⁶

¹¹ *Id.* at 58-59.

¹² *Id.* at 59.

¹³ *Id.*

¹⁴ *Id.* at 97.

¹⁵ *Id.*

¹⁶ *Id.*



Respondent likewise accused petitioner of violating its own guidelines on the reorganization allegedly because:

(a) Petitioner's implementing guidelines on reorganization required two (2) postings on the results of the placement. Petitioner did not comply with the second posting and opted to release all new appointments instead.¹⁷

(b) Petitioner appointed him to a position with a salary rank lower than that attached to his former position. The guidelines specifically stated that employees who had been assigned lower ranks would not suffer diminution in salary.¹⁸

In its position paper,¹⁹ petitioner explained that under Republic Act No. 9136 (RA 9136) or the Electric Power Industry Reform Act of 2001, (EPIRA) distribution utilities like itself were required to reengineer their existing organization to suit the demands of time. National Electrification Administration (NEA) Memorandum No. 2004-024 provided for the model organizational structure to be adopted by all electric cooperatives. Thus, it structured a reorganizational plan which the NEA approved.²⁰

The Court sums up petitioner's submissions, *viz*:

Pursuant to the reorganization plan, it declared all positions vacant and subjected all employees to evaluation. The reorganization went smoothly although there was hesitation from some of its employees. Its accredited union did not consider any aspect of the reorganization as a violation of the Collective Bargaining Agreement (CBA).²¹

Respondent was appointed in October 2012 as South Area Operation Management Department Manager, a position different from the one he held before the reorganization. Although respondent was appointed to another position, he suffered no diminution in compensation. In fact, respondent immediately assumed his new position as South Area Operations Manager.²²

It was true respondent requested to be reappointed to his former position. But it was also equally true that respondent was given a fresh appointment since all positions in the company were declared vacant as a result of the reorganization.²³

Respondent's new appointment was based on a valid reorganization. The position given him was the result of the company's assessment of his qualifications, aptitude, and competence. He was appointed Area Operations

¹⁷ *Id.* at 98-99.

¹⁸ *Id.* at 99.

¹⁹ As stated by Labor Arbiter Ma. Lourdes R. Baricaua in her Decision dated August 29, 2013; *rollo*, pp. 59-61.

²⁰ *Id.* at 59-60.

²¹ *Id.* at 60.

²² *Id.*

²³ *Id.*

Management Department Manager because the company had ascertained that his assignment would produce maximum benefit to the operations of the company.²⁴

An employee did not have a vested right in his or her position, otherwise, the employer would be deprived of its prerogative to move an employee to another assignment where he would be most useful.²⁵ If the purpose of reorganization were to be achieved, changes in the positions and rankings of the employees should be expected. To insist on one's old position and ranking after the reorganization would render such endeavor ineffectual.²⁶

Respondent failed to appeal his new appointment as Area Operations Management Department Manager. The truth is he had no reason to complain because he continued to enjoy the same salary, rank, benefits, and privileges he had prior to the reorganization.²⁷

The Labor Arbiter's Ruling

By Decision dated August 29, 2013,²⁸ Labor Arbiter Ma. Lourdes R. Baricaua dismissed the complaint. She found no concrete evidence on record showing that petitioner undertook the process of reorganization for purposes other than its declared objective: to save cost and maximize productivity and in compliance with the NEA policy as mandated by RA 9136.²⁹

The NLRC Ruling

On appeal, the NLRC reversed through its Decision dated November 20, 2013.³⁰ It held that petitioner did not present any justifiable reason for not reappointing respondent to his former position, nor did it deny that respondent was the only licensed CPA among its employees. Too, the NLRC noted that respondent's new position carried a lower salary grade than that attached to his former position. The NLRC thus ruled:

WHEREFORE, the Appeal is GRANTED and the Labor Arbiter's Decision dated 29 August 2013 is SET ASIDE and a new one is issued declaring Complainant-Vicente B. Del Rosario, Jr. to have been illegally transferred and/or demoted resulting to his unlawful constructive dismissal and hereby ordering Respondent-Isabela-1 Electric Cooperative to immediately reinstate and/or restore the Complainant to his former

²⁴ *Id.* at 22.

²⁵ *Id.*

²⁶ *Id.* at 27.

²⁷ *Id.*

²⁸ *Id.* at 57-61.

²⁹ *Id.* at 61.

³⁰ *Id.* at 62-72.

position as Management Internal Auditor and to pay the Complainant the following:

1. Salary differential at the rate of Two Thousand Seventy Four Pesos and Ten Centavos [Php2,074.10] per month starting on October 2012, which to date amounted to Twenty Six Thousand Nine Hundred Sixty Three and Thirty Centavos [Php26,963.30];

2. Moral and exemplary damages of Twenty Five Thousand Pesos [Php25,000.00] each or a total amount of Fifty Thousand Pesos [Php50,000.00];

3. Attorney's fees of ten percent [10%] of the total award.

Other claims are dismissed for lack of merit.

SO ORDERED.³¹

Under Resolution dated January 21, 2014,³² the NLRC denied petitioner's motion for reconsideration.

The Court of Appeals' Ruling

Petitioner brought the case to the Court of Appeals which, by Decision dated December 21, 2015, affirmed but deleted the award of salary differential, *viz*:

WHEREFORE, in view of the foregoing premises, the instant petition is hereby **DISMISSED** for lack of merit. The assailed Decision and Resolution of the NLRC are hereby **AFFIRMED with MODIFICATION** in that the award representing the salary differential rate amounting to Twenty Six Thousand Nine Hundred Sixty Three Pesos and Thirty Centavos (Php26,963.30) is hereby **DELETED**.

SO ORDERED.³³

The Court of Appeals further denied petitioner's motion for reconsideration³⁴ under its Resolution dated July 7, 2016.³⁵

The Present Petition

Petitioner now seeks this Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. In

³¹ *Id.* at 70-71.

³² *Id.* at 73-75.

³³ *Id.* at 40.

³⁴ *Id.* at 80-89.

³⁵ *Id.* at 42-43.



support hereof, petitioner basically repeats the arguments presented and passed upon by the three (3) tribunals below.

In his Comment dated December 11, 2016, respondent similarly repleads his submissions below against petitioner's plea for affirmative relief.

Issue

Was respondent constructively dismissed when he got appointed to the new position of Area Operations Management Department Manager in lieu of his former position as Management Internal Auditor?

Ruling

The Court has been faced with charges of constructive dismissal. In several occasions, We have recognized management prerogative to effect the transfer of its employees. At other times, though, We have succored the worker's rights against arbitrary transfers which amount to constructive dismissal.

In *Philippine Industrial Security Agency Corporation vs. Percival Aguinaldo*,³⁶ We held that 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."³⁷ The Court then emphasized:

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 (San Miguel Brewery Sales vs. Ople, G.R. No. 53515, February 8, 1989), 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.³⁸ (Emphasis supplied)

Here, the NLRC and Court of Appeals correctly ruled that respondent was demoted without sufficient cause.

³⁶ 499 Phil. 215 (2005).

³⁷ *Id.* at 223.

³⁸ *Id.*, citing *PT&T v. Laplana*, 276 Phil. 527, 533-534 (1991).

Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.³⁹ This was exactly what happened to respondent.

Petitioner, nonetheless, argues that respondent was not demoted, but was appointed to a new position as a result of the company’s reorganization. There was allegedly no diminution in respondent’s rank because: (a) he is still a manager; (b) his functions were not diminished; (c) as the Court of Appeals held, there was no diminution in his salary; (d) there was no change in his place of work; and (e) there was no change in the benefits and privileges given to him.

We do not agree.

Diminution in rank

Contrary to petitioner’s claim, although respondent’s present position bears the appellation “manager,” the responsibilities he used to discharge as manager in his former position had been significantly reduced. We cite with concurrence the Court of Appeals’ relevant findings, viz:

x x x x Indeed, as correctly pointed out by the NLRC, the position of Management Auditor encompasses a more vast expanse in the Cooperative than the position of Area Manager/Head. Thus, the former position entails more responsibilities and requires a certain qualification that must be complied with as compared to the latter position. Based on the position description attached as “Annex C-1” to private respondent’s position paper with the Labor Arbiter, an Internal Audit Manager must be a **Certified Public Accountant (CPA) with at least 5 years experience in auditing procedures and a holder of a master’s degree in Management or Business Administration.** On the other hand, **such requirements are not mentioned in the position of Area Manager** as seen in private respondent’s appointment. Thus, a non-CPA or a non-holder of a master’s degree can hold the position of Area Manager. Moreover, the **Management Auditor covers the different financial aspects of the Cooperative while the Area Manager position given to private respondent is limited to collection and operation.** There is a palpable diminution of responsibilities.⁴⁰ (Emphasis supplied)

x x x

x x x

x x x

Too, the NLRC correctly observed:

³⁹ *Norkis Trading Co., Inc., et al. v. Melvin Gnilo*, 568 Phil. 256, 267 (2008).

⁴⁰ *Rollo*, p. 39.

x x x x Without question, as an Area Head his responsibilities are limited to a specific area, in contrast to his previous position where the coverage of his responsibilities involves the entire financial transaction of the Cooperative. Interestingly also, the position of Area Head, where he was appointed, does not match his qualification(s) as a licensed CPA since the responsibilities attached to it consist of supervision and implementation of activities on house connection, collection, disconnection, apprehension, maintenance and operations and consumer services in his area. Visibly, the Complainant was not only demoted but placed in a position where he cannot advance and exercise his full potential and qualification.⁴¹

x x x

x x x

x x x

So, what is in a name? Although respondent retained the appellation “manager,” his new rank was in fact a demotion from his former position.

More, petitioner has consistently admitted that respondent is the only licensed CPA among its employees. In addition, respondent holds a Master’s Degree in Business Administration. Petitioner also concedes that respondent has been working for the company as auditor continuously for fifteen (15) years before the reorganization. Respondent has all the qualifications to continue holding the position of Management Internal Auditor, which after the reorganization, was not abolished. For no apparent reason, petitioner opted to appoint, even in an acting capacity, a non-CPA as Management Internal Auditor. In fine, petitioner arbitrarily, sans any rhyme or reason peremptorily removed respondent from his post as Management Internal Auditor in the guise of a supposed reorganization and exercise of management prerogative.

Petitioner next claims that the “totality of circumstances rule” as enunciated in *Tinio v. Court of Appeals*⁴² shows that respondent did not actually suffer diminution.

Petitioner’s argument fails. In *Tinio*, the Court sustained the management’s decision to transfer Tinio to another position and area of assignment because the transfer could actually be considered a promotion. For Tinio’s transfer from the Cebu office to the Makati office entailed greater responsibilities because it would involve corporate accounts of top establishments in Makati which are significantly greater in value than the individual accounts in Visayas and Mindanao. The Court held that the transfer was even beneficial and advantageous since Tinio was being assigned the corporate accounts of the choice clients of SMART. More, the position was of the same level as Senior Manager since the skills and competencies required involved handling the accounts of top corporate clients being among the largest corporations in the country.⁴³

⁴¹ *Rollo*, p. 67.

⁴² 551 Phil. 972 (2007).

⁴³ *Id.* at 983.

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The situation in *Tinio* is not the case here. As thoroughly discussed by the NLRC and the Court of Appeals, respondent's new position entailed less responsibilities and less qualifications than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to no other conclusion than that respondent was in fact demoted.

Diminution in salary

We disagree with the Court of Appeals' finding that respondent did not suffer diminution in salary.

Records show that Management Internal Auditor carries Salary Rank 20, while the position of Area Operations Head, Salary Rank 19.

On this score, petitioner asserts that respondent is basically receiving the same amount of salary at P30,963.95, and therefore, there is no diminution in salary to speak of.

The evidence, however, would suggest that after the reorganization, there was restructuring of the salary ranks. Salary Rank 20 is paid P33,038.53,⁴⁴ while the compensation for Salary Rank 19 is fixed at P30,963.95. Hence, had petitioner been retained as Management Internal Auditor, he would already have received P33,038.53, and not just P30,963.95.

In any case, even if there was no diminution in salary, there has still been a demotion in terms of respondent's rank, responsibilities, and status. There is demotion when an employee is appointed to a position resulting to a diminution in duties, responsibilities, status or rank *which may or may not involve a reduction in salary*.⁴⁵

As for respondent's monetary awards, We deem it proper to grant salary differential. As correctly held by the NLRC, Article 279 of the Labor Code provides that an employee who is unjustly dismissed from employment shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to his actual reinstatement. Considering that respondent ought to be reinstated to his former position, he must also enjoy the salary that comes with it.

Undeniably, when petitioner moved or appointed respondent to a lower position without any justifiable cause, petitioner was deemed to have acted in bad faith. Consequently, the award of moral and exemplary damages to respondent is in order.

⁴⁴ *Rollo*, p. 114.

⁴⁵ *Virginia D. Bautista v. Civil Service Commission, et al.*, 639 Phil. 265, 268 (2010).

All told, the Court of Appeals did not err when it affirmed the NLRC's finding that respondent was demoted, hence, was considered to have been constructively dismissed. But for the reasons heretofore stated, We restore the award of salary differential to respondent.

ACCORDINGLY, the petition is **DENIED**. The Decision dated December 21, 2015 and Resolution dated July 7, 2016 of the Court of Appeals in CA-G.R. SP No. 134712 are **AFFIRMED with MODIFICATION**.

Vicente B. Del Rosario, Jr. is declared to have been illegally transferred and/or demoted. Isabela-1 Electric Coop., Inc. is ordered to immediately **reinstate and/or restore** the Vicente B. Del Rosario, Jr. to his former position as Management Internal Auditor and to pay the him the following amounts:

1. Salary differential at the rate of Two Thousand Seventy-Four Pesos and Ten Centavos [Php2,074.10] per month starting on October 2012 until actual reinstatement to his former position;
2. Twenty-Five Thousand Pesos (Php25,000.00) as moral damages;
3. Twenty-Five Thousand Pesos (Php25,000.00) as exemplary damages;
4. Attorney's fees of ten percent [10%] of the total award; and
5. Legal Interest of twelve per cent (12%) per annum of the total monetary awards, computed from October 2012 up to June 30, 2013, and thereafter, six percent (6%) per annum from July 1, 2013 until fully paid.⁴⁶

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

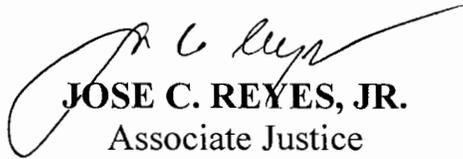

ANTONIO T. CARPIO
Associate Justice
Chairperson

⁴⁶ *ICT Marketing Services, Inc. v. Mariphil L. Sales*, 769 Phil. 498, 525 (2015).

(on Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

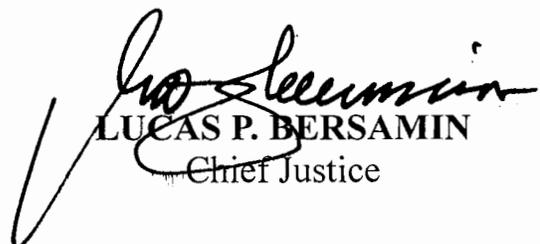
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



LUCAS P. BERSAMIN
Chief Justice

