Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ICT MARKETING SERVICES, INC. (now known as SYKES MARKETING SERVICES, INC.), *Petitioner,*	**G.R. No. 202090** Present:
- versus -	CARPIO, *Chairperson,* DEL CASTILLO, MENDOZA, LEONEN, *and* JARDELEZA,* *JJ.*
MARIPHIL L. SALES, *Respondent.*	Promulgated: 09 SEP 2015

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails: 1) the January 10, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 109860 nullifying and setting aside the February 16, 2009[3] and May 20, 2009[4] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC CN. 07-002404-08(7)/(8) and reinstating with modification the April 30, 2008 Decision[5] of the Labor Arbiter in NLRC-NCR Case No. 10-11004-07; and 2) the CA's May 28, 2012 Resolution[6] denying petitioner's Motion for Reconsideration[7] of the herein assailed Decision.

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* Per Special Order No. 2166 dated September 9, 2015.

1 *Rollo*, pp. 15-63.

2 Id. at 66-72; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan-Castillo.

3 Id. at 377-381.

4 Id. at 408-409.

5 Id. at 304-314.

6 Id. at 74-77; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Ramon M. Bato, Jr.

7 Id. at 78-103.

Factual Antecedents

Petitioner ICT Marketing Services, Inc. (ICT) – now known as Sykes Marketing Services, Inc. – is a duly registered domestic corporation engaged in the business of providing outsourced customer relations management and business process outsourcing solutions to various clients in government and in the financial services, insurance, telecommunications, health care, information technology, media, energy, and hospitality industries.

On February 22, 2006, petitioner hired respondent Mariphil L. Sales as its Customer Service Representative (CSR) or Telephone Service Representative (TSR), and assigned her to its Capital One account. On August 21, 2006, respondent became a regular employee, and her monthly base salary was increased to ₱16,350.00 and she was given monthly transportation and meal allowances.

On February 21, 2007, respondent was assigned to the Washington Mutual account, where she was awarded with a certificate for being the "Top Converter/Seller (Second Place)" for the month of April 2007.[8]

On July 3, 2007, respondent wrote to Glen Odom (Odom) – petitioner's Vice President – complaining about supposed irregularities in the handling of funds entrusted to petitioner by Washington Mutual which were intended for distribution to outstanding Washington Mutual CSRs and TSRs as prizes and incentives. However, no action appears to have been taken on her complaint.

Respondent was then transferred to the Bank of America account on July 30, 2007. Without prior notice to respondent, petitioner scheduled her for training from July 30 to August 6, 2007 on the very same day of her transfer. On the third day of training (August 1), respondent was unable to attend. When she reported for training the next day, respondent was informed that she could not be certified to handle calls for Bank of America due to her failure to complete the training. From then on, respondent was placed on "floating status" and was not given any work assignment.

In a September 28, 2007 letter[9] to petitioner's Human Resource (HR) Manager, respondent tendered her resignation from work, effective upon receipt of the letter. Respondent wrote:

> I was forced to resign due to the reason that my employment was made on "floating status" effective August 4, 2007 and up to present (almost two months)

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8 Id. at 173.

9 Id. at 147-148.

> I haven't receive [sic] any notice from you or the HR department to report for work despite my repeated follow-up [with] your office thru telephone and mobile phone text messages. Hence, I consider your inaction to my follow-up as an indirect termination of my work with ICT.
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> The reason I was placed [on] floating status is that, I was absent during the third day of my training with Bank of America, the account to which I was transferred from Washington Mutual (WaMu). However, my absence during such period was justified by the fact that I was sick and I need [sic] to undergo a medical check-up on that date.
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> Furthermore, I see my transfer from WaMu Account to Bank of America and the continued floating status of my work was prompted by the fact that I lodged a complaint against managers/supervisors assigned in WaMu account regarding irregularities in the handling of funds given by ICT clients which were supposed to be distributed as prizes to TSR's assigned with WaMu. After the filing of the said complaint, through your office, I was transferred to another account (Bank of America) for no apparent reason. I was not even included in the original list of those who were supposed to be transferred because my performance record with WaMu is satisfactory as proven by the fact that I was even awarded with a certificate as "top converter (seller)" for the month of April and was supposed to be included again in the top three highest converter[s] for the month of May, but unfortunately irregularities were committed, that is why I filed the aforementioned complaint [with] your office.
>
> On August 1, 2007, a few days after my transfer [to] Bank of America, my coach, angelo [sic], informed me that I will be having a training on that same day with Bank of America which is really unexpected. I was not given a notice in advance about the training. My coach informed me only three hours before the said training. Later on during my training with Bank of America I was [placed on floating status] indefinitely due to a single absence even though I am a regular employee having worked in ICT for almost two years. Another instance [of] discrimination [sic] and bad faith on the part of ICT management is that, all my fellow agents who were [placed on floating status] for the same reason were all ordered to return to work except me [sic]. Moreover, ICT is continuously hiring TSR's which only shows that there are still accounts open or work available in ICT. However despite the availability of work, I was still on floating status.
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> Based on the aforementioned facts and circumstance[s], it is very clear that the harassment, pressure, and indefinite floating of my employment with ICT are retaliatory acts perpetrated by the company because of my complaint/ request for investigation on the irregularities being committed by certain company officials.
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> Thus, I can no longer bear the above-mentioned abuses and discrimination committed against me by ICT management. Therefore, I have no option but to sever my relationship with the company, as my continued floating status had already prejudiced me emotionally and financially.[10]

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[10] Id.

Ruling of the Labor Arbiter

On October 2, 2007, respondent filed a complaint for constructive dismissal against petitioner and Odom before the NLRC NCR, Quezon City, docketed as NLRC-NCR Case No. 10-11004-07.

In her Position Paper,[11] Reply,[12] Rejoinder,[13] and Surrejoinder,[14] respondent claimed that for complaining about the supposed irregularities in the Washington Mutual account, petitioner discriminated against her and unduly punished her. Although she was not included in the original list of CSRs/TSRs for program transfer, she was transferred to another account, and then placed on "floating status," which is tantamount to suspending her indefinitely without due process, despite her satisfactory performance. Respondent averred that petitioner's claim of multiple absences is not true, because not once was she penalized therefor, assuming such charge is true. Respondent also alleged that her one-day absence during the training for the Bank of America program cannot justify her being placed on a "floating status" because the "no-absence during training" requirement cited by petitioner – using her employment contract[15] and the "New Hire Training Bay"[16] as bases – applies only to new hires on probationary status, and not to regularized employees. In any case, the "New Hire Training Bay" used by petitioner was for the Capital One program. She also pointed out that during her indefinite suspension or "floating status," petitioner continued to hire new CSRs, as shown by its newspaper advertisements during the period.[17] Finally, she asserted that her resignation was not voluntary, but was forced upon her by petitioner as a result of its unlawful acts. Thus, respondent prayed for the recovery of backwages, separation pay, ₱100,000.00 combined moral and exemplary damages, and attorney's fees equivalent to 10 *per cent* (10%) of the total award.

In its Position Paper,[18] Reply,[19] Rejoinder,[20] and Surrejoinder,[21] petitioner prayed for the dismissal of the complaint, arguing that respondent was transferred from the Washington Mutual account as an exercise of management initiative or prerogative, and due to infractions[22] committed by her, as well as attendance and

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11 Id. at 149-162.
12 Id. at 203-223.
13 Id. at 251-269.
14 Id. at 286-302.
15 Id. at 127-132.
16 Id. at 133-137.
17 Id. at 232-236.
18 Id. at 104-126.
19 Id. at 183-196.
20 Id. at 237-248.
21 Id. at 270-278.
22 a) June 23, 2006 – respondent was issued a Formal Written Warning for giving misleading information to a customer on June 22, 2006.
b) July 12, 2006 – she was again warned for selling to the wrong person on June 27, 2006.
c) Another written warning on March 20, 2007 for wrong disposition of a call.

punctuality issues that arose. It claimed that respondent could not be certified for the Bank of America account for failing to complete the training. It maintained that respondent was placed on standby status only, and not suspended or constructively dismissed. In fact, she was directed to report to its HR department, but she did not do so. It also insisted that respondent resigned voluntarily. It denied committing any act of discrimination or any other act which rendered respondent's employment impossible, unreasonable or unlikely. Finally, it claimed that prior notice of her transfer to the Bank of America account was made through an electronic mail message sent to her; and that respondent has no cause of action since she resigned voluntarily, and thus could not have been illegally dismissed.

On April 30, 2008, the Labor Arbiter rendered a Decision[23] finding complainant to have been constructively dismissed and awarding separation pay, moral and exemplary damages, and attorney's fees to respondent. The Labor Arbiter held:

> x x x Complainant was indeed constructively dismissed from her employment and she quitted [sic] because her continued employment thereat is rendered impossible, unreasonable or unlikely.
>
> Complainant's resignation was sparked by her transfer of assignment and eventual placing her [sic] by the respondent company of [sic] a "on floating" status.
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> x x x [T]here was no x x x evidence x x x that complainant's transfer was due to the request of a client. Further, if complainant was indeed remised of [sic] her duties due to her punctuality and attendance problem of committing twelve (12) absences alone incurred in July 2007 [sic], why was there no disciplinary action taken against her like reprimand or warning[?]
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> x x x x
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> And its effect, complainant is entitled to her claim of separation pay, moral and exemplary damages of ₱50,000.00 pesos [sic] including an award of attorney's fees.
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> WHEREFORE, premises considered, judgment is rendered ordering the respondents to pay complainant of [sic] one month pay per year of service as separation pay in the total amount of ₱32,700.00, ₱50,000.00 moral and exemplary damages plus 10% of the award as attorney's fees, hereunder computed:
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> I Separation Pay
> 2/21/06 – 8/4/07 = 2 yrs.
> ₱16,350.00 x 2 yrs. = ₱32,700.00

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[23] Id. at 304-314; penned by Labor Arbiter Antonio R. Macam.

II	Damages	~~₱~~50,000.00
		~~₱~~82,700.00
	10% Attorney's Fees	~~₱~~8,270.00
		~~₱~~90,970.00

SO ORDERED.[24]

Ruling of the National Labor Relations Commission

Petitioner appealed before the NLRC arguing that the Labor Arbiter erred in ruling that respondent was constructively dismissed. It also argued that Odom was not personally liable as he was merely acting in good faith and within his authority as corporate officer.

Respondent likewise interposed an appeal[25] arguing that the award of backwages should be computed from the date of her dismissal until finality of the Labor Arbiter's Decision; and that the proportionate share of her 13th month pay should be paid to her as well.

On February 16, 2009, the NLRC issued a Resolution,[26] declaring as follows:

> We reverse.
>
> Upon an examination of the pleadings on file, We find that in the past the complainant had been transferred from one program to another without any objection on her part. Insofar as the instant case is concerned, it appears that the complainant, aside from having been given a warning for wrong disposition of a call, had been absent or usually late in reporting for work, constraining the respondent ICT to transfer her to another program/account. Required of the complainant was for her to undergo Product Training for the program from July 30 to August 6, 2007, and the records indicate that she attended only two (2) days of training on July 30 and 31, 2007, did not report on August 1, 2007 and again reported for training on August 2, 2007. It was then that ICT's Operations Subject Matter Expert, Ms. Suzette Lualhati, informed the complainant that she cannot be certified for the program because she failed to complete the number of training days, and there was a need for her to report to Human Resources for further instructions. As the complainant did not report to Human Resources, and due to her derogatory record, the respondent company could not find another program where the complainant could be transferred.
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> From what has been narrated above, We come to the conclusion that the respondent company cannot be faulted for placing the complainant on "floating status." And there does not appear to be any ill will or bad faith that can be

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24 Id. at 312-314.

25 Id. at 348-355.

26 Id. at 377-381; penned by Commissioner Gregorio O. Bilog III and concurred in by Commissioner Pablo C. Espiritu, Jr.

attributed to the respondent.

Finally, it is well to emphasize that the complainant tendered her resignation on October 1, 2007. There is no evidence that the complainant has presented that would indicate that duress or force has been exerted on her.

All told, We are of the opinion that the findings of the Labor Arbiter are in stark contrast to the evidence on record.

WHEREFORE, in view of the foregoing, the decision appealed from is hereby reversed and set aside. Addordingly [sic], a new one is entered dismissing the complaint for lack of merit.

SO ORDERED.[27]

Respondent filed a Motion for Reconsideration,[28] but in a May 20, 2009 Resolution,[29] the motion was denied.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[30] filed with the CA and docketed as CA-G.R. SP No. 109860, respondent sought a reversal of the February 16, 2009 and May 20, 2009 Resolutions of the NLRC.

Petitioner filed its Comment,[31] to which respondent interposed a Reply.[32]

On January 10, 2012, the CA issued the assailed Decision containing the following pronouncement:

This Court finds the petition meritorious.

While it is true that management has the prerogative to transfer employees, the exercise of such right should not be motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. When the transfer is unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee, it already amounts to constructive dismissal. In constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for just and valid grounds, such as genuine business necessity. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.

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27 Id. at 380-381.
28 Id. at 382-404.
29 Id. at 408-409; penned by Commissioner Gregorio O. Bilog III and concurred in by Commissioner Pablo C. Espiritu, Jr.
30 Id. at 411-447.
31 Id. at 451-491.
32 Id. at 492-528.

In the case at bench, private respondent corporation failed to discharge this burden of proof considering the circumstances surrounding the petitioner's July 2007 transfer to another account. Prior to her reassignment, petitioner's annual performance merited increase in her salary effective February 2007 and was also awarded a certificate of achievement for performing well in April 2007. Her transfer was also abrupt as there was no written transfer agreement informing her of the same and its requirements unlike her previous transfer from Capital One to Washington Mutual account. It is therefore difficult to see the reasonableness, urgency, or genuine business necessity to transfer petitioner to a new account. While it may be true that petitioner has attendance and punctuality issues, her over-all performance as a CSR/TSR cannot be said to be below par given the annual merit increase and the certificate of achievement awarded to her. If indeed, private respondent corporation had trouble transferring the petitioner to another post because of her derogatory record, the corporation could just have dismissed her for cause.

After petitioner's unjustified transfer, she was informed by private respondent corporation that she could not be "certified" or allowed to handle calls for the new account because of her absence during training. She was later placed on a floating status and was not given another post.

The Court considers placing the petitioner on a floating status as another unjustified action of the private respondent corporation prejudicial to petitioner as employee. In this case, except for private respondent corporation's bare assertion that petitioner no longer reported to the human resources department as instructed, no proof was offered to prove that petitioner intended to sever the employer-employee relationship. Private respondent corporation also offered no credible explanation why it failed to provide a new assignment to petitioner. Its assertion that it is petitioner's derogatory record which made it difficult for the corporation to transfer her to another account despite its efforts is not sufficient to discharge the burden of proving that there are no posts or no accounts available or willing to accept her.

In Nationwide Security and Allied Services, Inc. vs. Valderama,[33] the Supreme Court declared that due to the grim economic consequences to the employee of being placed on a floating status, 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.

These acts by the private respondent corporation, of transferring petitioner to another account without sufficient cause and proper notice and its subsequent failure to provide a new post for her for two months without credible explanation, constitute unjustified actions prejudicial to the petitioner as an employee, making it unbearable for her to continue employment.

Thus, petitioner opted to resign, albeit involuntarily. The involuntariness of her resignation is evident in her letter which states categorically:

> "I was forced to resign due to the reason that my employment was made on 'floating status' effective August 4, 2007 and up to the present (almost two months) I haven't receive [sic] any notice from you or the HR department to report for

[33] 659 Phil. 362 (2011).

> work despite my repeated follow-up to your office thru telephone and mobile phone text messages. Hence, I consider your inaction to my follow-up as an indirect termination of my work with ICT."

Further, petitioner immediately filed a complaint for illegal dismissal. Resignation, it has been held, is inconsistent with the filing of a complaint. Thus, private respondent corporation's mere assertion that petitioner voluntarily resigned without offering convincing evidence to prove it, is not sufficient to discharge the burden of proving such assertion. It is worthy to note that the fact of filing a resignation letter alone does not shift the burden of proof and it is still incumbent upon the employer to prove that the employee voluntarily resigned.

Therefore, we believe and so hold that petitioner was constructively dismissed from employment. Constructive dismissal exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. The test for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. With the decision of the private respondent corporation to transfer and to thereafter placed [sic] her on floating status, petitioner felt that she was being discriminated and this perception compelled her to resign. It is clear from her resignation letter that petitioner felt oppressed by the situation created by the private respondent corporation, and this forced her to surrender her position.

Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

As petitioner did not pray for reinstatement but only sought payment of money claims, the labor arbiter is correct in awarding separation pay equivalent to one month pay for every year of service. We also do not find any cogent reason to disturb the award of damages and attorney's fees since we have found bad faith on the part of the private respondent corporation to abruptly [sic] transfer and place the petitioner on floating status. Individual respondent Glen Odom is however, exonerated from any liability as there was no clear finding that he acted with malice or bad faith. Backwages and other monetary benefits must also be included in compliance with the above-mentioned provision of labor law which shall be reckoned from the time her constructive dismissal took effect until the finality of this decision.

WHEREFORE, premises considered, the Resolutions dated February 16, 2009 and May 20, 2009 respectively, issued by the public respondent National Labor Relations Commission (NLRC) in NLRC CA No. 07-002404-08 are REVERSED and SET ASIDE. The decision of the Labor Arbiter dated April 30, 2008 is REINSTATED with MODIFICATION that the petitioner Mariphil L. Sales, be awarded backwages and other monetary benefits from the date of her constructive dismissal up to the finality of this Decision.

SO ORDERED.[34]

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[34] *Rollo*, pp. 68-71.

Petitioner filed a Motion for Reconsideration, but the same was denied in a May 28, 2012 Resolution. Hence, the present Petition.

In a November 11, 2013 Resolution,[35] this Court resolved to give due course to the Petition.

Issues

Petitioner submits that –

A.
THE COURT OF APPEALS ERRED WHEN IT HELD THAT RESPONDENT'S TRANSFER WAS UNJUSTIFIED NOTWITHSTANDING EVIDENCE TO SHOW THAT RESPONDENT WAS NOT DEMOTED AND WAS EVEN GIVEN THE SAME RANK AND PAY.

B.
THE COURT OF APPEALS ERRED WHEN IT HELD THAT RESPONDENT'S PLACEMENT UNDER FLOATING STATUS WAS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL AS THIS IS CONTRARY TO NUMEROUS DECISIONS OF THE HONORABLE COURT.

C.
THE COURT OF APPEALS ERRED WHEN IT REINSTATED LABOR ARBITER MACAM'S DECISION DATED 30 APRIL 2008 WHICH DECLARED THAT RESPONDENT WAS CONSTRUCTIVELY DISMISSED, NOTWITHSTANDING EVIDENCE THAT CLEARLY SHOWS THAT RESPONDENT VOLUNTARILY RESIGNED.

D.
THE COURT OF APPEALS ERRED IN AWARDING RESPONDENT SEPARATION PAY, BACKWAGES, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[36]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that the NLRC's February 16, 2009 and May 20, 2009 Resolutions be reinstated instead, petitioner maintains in the Petition and Reply[37] that respondent's transfer to another account was done as a valid exercise of management prerogative, which allows it to regulate all aspects of employment. Her transfer was done in good faith, and without diminution in rank and salary. It contends that respondent knew very well

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35 Id. at 704-705.
36 Id. at 33.
37 Id. at 753-770.

that any CSR/TSR may be transferred to another program/account anytime for business reasons; in fact, respondent herself was transferred from Capital One to Washington Mutual, and she did not complain. Moreover, she knew as well that "schedule adherence" or attendance/punctuality is one of the "metrics" or standards by which the performance of a CSR is measured, and that she failed to comply in this regard. It claims that the decision to place her on "floating status" instead of dismissing her was an accommodation and should not be treated as an illegal or unjustified act; that being on "floating status" is not tantamount to constructive dismissal, and the failure to place or transfer respondent to another account was due to her derogatory record, and not petitioner's bad faith or inaction. It insists that the placing of an employee on "floating status" for up to six months is allowed in the event of a *bona fide* suspension of the operations or undertaking of a business.[38] In any event, respondent's voluntary resignation prior to the expiration of the allowable six-month "floating status" period cannot constitute constructive dismissal, and her immediate filing of the labor case thereafter is thus premature. Finally, petitioner posits that since there is no illegal dismissal but rather a voluntary relinquishment of respondent's post, then there is no basis for the pecuniary awards in her favor.

Respondent's Arguments

In her Comment[39] praying for dismissal of the Petition and the corresponding affirmance of the assailed dispositions, respondent insists that she was illegally dismissed. She reiterates that her transfer to the Bank of America account was an undue penalty for her complaining about supposed anomalies in the Washington Mutual account. She avers that the documentary evidence of her supposed unauthorized absences were manufactured to support petitioner's false allegations and mislead this Court into believing that she was delinquent at work. She argues that assuming that these absences were true, then they should have merited her dismissal for cause – yet the fact is she was not dismissed nor punished for these supposed absences. She asserts that petitioner's claim that she was transferred on the recommendation of a client is untrue and self-serving, and is unjustified since the client has no authority to order or recommend her transfer. She maintains that her being placed on "floating status" was illegal, since a) there is no evidence to prove her alleged "attendance and punctuality issues," and b) there was no *bona fide* suspension of petitioner's business or undertaking for a period not exceeding six months, as prescribed under Article 286 of the Labor Code,[40] which would justify the suspension of her employment for up to six

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38 Citing *Nippon Housing Phil., Inc. v. Leynes*, 670 Phil. 495 (2011); *Malig-on v. Equitable General Services, Inc.*, 636 Phil. 330 (2010); and *Nationwide Security and Allied Services, Inc. v. Valderama*, supra note 33.

39 *Rollo*, pp. 720-744.

40 Art. 286. When employment not deemed terminated. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.

In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

months. As enunciated in the *Philippine Industrial Security Agency Corp. v. Dapiton*[41] case which petitioner itself cited, Article 286 applies only when there is a *bona fide* suspension of the employer's operation or undertaking for a period not exceeding six months, due to dire exigencies of the business that compel the employer to suspend the employment of its workers. Respondent points out that petitioner continued with its business, and worse, it in fact continued to hire new CSRs/TSRs during the period of respondent's suspension from work. In fine, respondent alleges that she was constructively dismissed and forced to resign, rather than continue to subject herself to petitioner's discrimination, insensibility, harassment, and disdain; and that for such illegal acts, she is entitled to indemnity from petitioner.

Our Ruling

The Court denies the Petition.

Respondent's Transfer

> Under the doctrine of management prerogative, every employer has the inherent right to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.
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> While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct and loyalty. In fact, the Labor Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.
>
> Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.[42]

While the prerogative to transfer respondent to another account belonged to petitioner, it wielded the same unfairly. The evidence suggests that at the time

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41 377 Phil. 951 (1999).

42 *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 624-625 (2007).

respondent was transferred from the Washington Mutual account to the Bank of America program, petitioner was hiring additional CSRs/TSRs.[43] This simply means that if it was then hiring new CSRs/TSRs, then there should be no need to transfer respondent to the Bank of America program; it could simply train new hires for that program. Transferring respondent – an experienced employee who was already familiar with the Washington Mutual account, and who even proved to be outstanding in handling the same – to another account means additional expenses for petitioner: it would have to train respondent for the Bank of America account, and train a new hire to take her place in the Washington Mutual account. This does not make sense; quite the contrary, it is impractical and entails more expense on petitioner's part. If respondent already knew her work at the Washington Mutual account very well, then it is contrary to experience and logic to transfer her to another account which she is not familiar with, there to start from scratch; this could have been properly relegated to a new hire.

There can be no truth to petitioner's claim either that respondent's transfer was made upon request of the client. If she was performing outstanding work and bringing in good business for the client, there is no reason – indeed it is beyond experience and logic – to conclude that the client would seek her transfer. Such a claim could only be fabricated. Truly,

> Experience which is the life of the law — as well as logic and common sense — militates against the petitioners' cause.[44]

Moreover, as the appellate court correctly observed, even if respondent had attendance and punctuality issues, her overall performance as a CSR/TSR was certainly far from mediocre; on the contrary, she proved to be a top performer. And if it were true that respondent suddenly became lax by way of attendance in July 2007, it is not entirely her fault. This may be attributed to petitioner's failure to properly address her grievances relative to the supposed irregularities in the handling of funds entrusted to petitioner by Washington Mutual which were intended for distribution to outstanding Washington Mutual CSRs and TSRs as prizes and incentives. She wrote petitioner about her complaint on July 3, 2007; however, no explanation was forthcoming from petitioner, and it was only during these proceedings – or after a case had already been filed – that petitioner belatedly and for no other useful purpose attempted to address her concerns. This may have caused a bit of disillusionment on the part of respondent, which led her to miss work for a few days in July 2007. Her grievance should have been addressed by petitioner; after all, they were serious accusations, and have a bearing on the CSRs/TSRs' overall performance in the Washington Mutual account.

Respondent's work as a CSR – which is essentially that of a call center

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43 *Rollo*, pp. 232-236.

44 *Spouses Rongavilla v. Court of Appeals*, 355 Phil. 721, 740 (1998).

agent – is not easy. For one, she was made to work the graveyard shift – that is, from late at night or midnight until dawn or early morning. This certainly takes a toll on anyone's physical health. Indeed, call center agents are subjected to conditions that adversely affect their physical, mental and emotional health; exposed to extreme stress and pressure at work by having to address the customers' needs and insure their satisfaction, while simultaneously being conscious of the need to insure efficiency at work by improving productivity and a high level of service; subjected to excessive control and strict surveillance by management; exposed to verbal abuse from customers; suffer social alienation precisely because they work the graveyard shift – while family and friends are at rest, they are working, and when they are at rest, family and friends are up and about; and they work at a quick-paced environment and under difficult circumstances owing to progressive demands and ambitious quotas/targets set by management. To top it all, they are not exactly well-paid for the work they have to do and the conditions they have to endure. Respondent's written query about the prizes and incentives is not exactly baseless and frivolous; the least petitioner could have done was to timely address it, if it cared about its employee's welfare. By failing to address respondent's concerns, petitioner exhibited an indifference and lack of concern for its employees – qualities that are diametrically antithetical to the spirit of the labor laws, which aim to protect the welfare of the workingman and foster harmonious relations between capital and labor. By its actions, petitioner betrayed the manner it treats its employees.

Thus, the only conceivable reason why petitioner transferred respondent to another account is the fact that she openly and bravely complained about the supposed anomalies in the Washington Mutual account; it is not her "derogatory record" or her "attendance and punctuality issues", which are insignificant and thus irrelevant to her overall performance in the Washington Mutual account. And, as earlier stated, respondent's "attendance and punctuality issues" were attributable to petitioner's indifference, inaction, and lack of sensitivity in failing to timely address respondent's complaint. It should share the blame for respondent's resultant delinquencies.

Thus, in causing respondent's transfer, petitioner clearly acted in bad faith and with discrimination, insensibility and disdain; the transfer was effected as a form of punishment for her raising a valid grievance related to her work. Furthermore, said transfer was obviously unreasonable, not to mention contrary to experience, logic, and good business sense. This being the case, the transfer amounted to constructive dismissal.

> **The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play**. Having the right should not be confused with the manner in which that right is exercised. **Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the**

> **employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal**, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. **Likewise, constructive dismissal exists 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**.[45] (Emphasis and underscoring supplied)

The instant case can be compared to the situation in *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*,[46] where the employee concerned – a security guard who was brave enough to complain about his employer's failure to remit its employees' Social Security System premiums – was "tossed around" and finally placed on floating status for no valid reason. Taking the poor employee's side, this Court declared:

> True, it is the inherent prerogative of an employer to transfer and reassign its employees to meet the requirements of its business. Be that as it may, the prerogative of the management to transfer its employees must be exercised without grave abuse of discretion. The exercise of the prerogative should not defeat an employee's right to security of tenure. The employer's privilege to transfer its employees to different workstations cannot be used as a subterfuge to rid itself of an undesirable worker.
>
> **Here, riled by respondent's consecutive filing of complaint against it for nonpayment of SSS contributions, VSAI had been tossing respondent to different stations thereafter**. From his assignment at University of Santo Tomas for almost a year, he was assigned at the OWWA main [o]ffice in Pasig where he served for more than three years. After three years at the OWWA main office, he was transferred to the OWWA Pasay City parking lot knowing that the security services will end forthwith. VSAI even concocted the reason that he had to be assigned somewhere because his spouse was already a lady guard assigned at the OWWA main office. Inasmuch as respondent was single at that time, this was obviously a mere facade to [get] rid of respondent who was no longer in VSAIs good graces.
>
> **The only logical conclusion from the foregoing discussion is that the VSAI constructively dismissed the respondent**. This ruling is in rhyme with the findings of the Court of Appeals and the NLRC. Dismissal is the ultimate penalty that can be meted to an employee. Inasmuch as petitioners failed to adduce clear and convincing evidence to support the legality of respondent's dismissal, the latter is entitled to reinstatement and back wages as a necessary consequence. However, reinstatement is no longer feasible in this case because of the palpable strained relations, thus, separation pay is awarded in lieu of reinstatement.

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45 *Peckson v. Robinsons Supermarket Corporation*, G.R. No. 198534, July 3, 2013, 700 SCRA 668, 681, citing *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999).

46 514 Phil. 488 (2005).

x x x x

> **Indeed, the Court ought to deny this petition lest the wheels of justice for aggrieved workingmen grind to a halt. <u>We ought to abate the culture of employers bestowing security of tenure to employees, not on the basis of the latter's performance on the job, but on their ability to toe the line set by their employer and endure in silence the flagrant incursion of their rights</u>, zealously protected by our labor laws and by the Constitution, no less**.[47] (Emphasis and underscoring supplied)

Respondent's Floating Status

In placing respondent on "floating status," petitioner further acted arbitrarily and unfairly, making life unbearable for her. In so doing, it treated respondent as if she were a new hire; it improperly disregarded her experience, status, performance, and achievements in the company; and most importantly, respondent was illegally deprived of her salary and other emoluments. For her single absence during training for the Bank of America account, she was refused certification, and as a result, she was placed on floating status and her salary was withheld. Clearly, this was an act of discrimination and unfairness considering that she was not an inexperienced new hire, but a promising and award-winning employee who was more than eager to succeed within the company. This conclusion is not totally baseless, and is rooted in her outstanding performance at the Washington Mutual account and her complaint regarding the incentives, which only proves her zeal, positive work attitude, and drive to achieve financial success through hard work. But instead of rewarding her, petitioner unduly punished her; instead of inspiring her, petitioner dashed her hopes and dreams; in return for her industry, idealism, positive outlook and fervor, petitioner left her with a legacy of, and awful examples in, office politicking, intrigue, and internecine schemes.

In effect, respondent's transfer to the Bank of America account was not only unreasonable, unfair, inconvenient, and prejudicial to her; it was effectively a demotion in rank and diminution of her salaries, privileges and other benefits. She was unfairly treated as a new hire, and eventually her salaries, privileges and other benefits were withheld when petitioner refused to certify her and instead placed her on floating status. Far from being an "accommodation" as petitioner repeatedly insists, respondent became the victim of a series of illegal punitive measures inflicted upon her by the former.

Besides, as correctly argued by respondent, there is no basis to place her on "floating status" in the first place since petitioner continued to hire new CSRs/TSRs during the period, as shown by its paid advertisements and placements in leading newspapers seeking to hire new CSRs/TSRs and other

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[47] Id. at 500-505.

employees.[48] True enough, the placing of an employee on "floating status" presupposes, among others, that there is less work than there are employees;[49] but if petitioner continued to hire new CSRs/TSRs, then surely there is a surplus of work available for its existing employees: there is no need at all to place respondent on floating status. If any, respondent – with her experience, knowledge, familiarity with the workings of the company, and achievements – should be the first to be given work or posted with new clients/accounts, and not new hires who have no experience working for petitioner or who have no related experience at all. Once more, experience, common sense, and logic go against the position of petitioner.

The CA could not be more correct in its pronouncement that placing an employee on floating status presents dire consequences for him or her, occasioned by the withholding of wages and benefits while he or she is not reinstated. To restate what the appellate court cited, "[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."[50] However, petitioner has failed miserably in this regard.

Resignation

While this Court agrees with the appellate court's observation that respondent's resignation was involuntary as it became unbearable for her to continue with her employment, expounding on the issue at length is unnecessary. Because she is deemed constructively dismissed from the time of her illegal transfer, her subsequent resignation became unnecessary and irrelevant. There was no longer any position to relinquish at the time of her resignation.

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48 *Rollo*, pp. 232-236.

49 See *Salvaloza v. National Labor Relations Commission*, 650 Phil. 543, 557 (2010), stating that –

> Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, **resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster**. (Emphasis supplied)

In *Nippon Housing Phil., Inc. v. Leynes*, supra note 38 at 506, this Court declared that the concept of "floating status" under the Labor Code applies not only to security guards but to "other industries" as well. Thus:

> x x x Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client, Article 286 of the Labor Code has been applied to other industries when, as a consequence of the *bona fide* suspension of the operation of a business or undertaking, an employer is constrained to put employees on floating status for a period not exceeding six months. x x x

50 *Nationwide Security and Allied Services, Inc. v. Valderama*, supra note 33 at 370, citing *Pido v. National Labor Relations Commission*, 545 Phil. 507, 516 (2007).

Pecuniary Awards

With the foregoing pronouncements, an award of indemnity in favor of respondent should be forthcoming. In case of constructive dismissal, the employee is entitled to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, as well as separation pay in lieu of reinstatement. The readily determinable amounts, as computed by the Labor Arbiter and correspondingly reviewed and corrected by the appellate court, should be accorded finality and deemed binding on this Court.

> Settled is the rule that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper.
>
> Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.
>
> In the case of *Alilling v. Feliciano*, citing *Golden Ace Builders v. Talde*, the Court explained:
>
> > Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
> >
> > The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[51]

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[51] *Reyes v. RP Guardians Security Agency, Inc.*, G.R. No. 193756, April 10, 2013, 695 SCRA 620, 625-627.

WHEREFORE, the Petition is **DENIED**. The assailed January 10, 2012 Decision and May 28, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 109860 are **AFFIRMED**, with **MODIFICATIONS**, in that petitioner ICT Marketing Services, Inc., now known as Sykes Marketing Services, Inc., is ordered to **PAY** respondent Mariphil L. Sales the following:

1) Backwages and all other benefits from July 30, 2007 until finality of this Decision;

2) Separation pay equivalent to one (1) month salary for every year of service;

3) Moral and exemplary damages in the amount of ₱50,000.00;

4) Attorney's fees equivalent to ten percent (10%) of the total monetary award; and

5) Interest of twelve per cent (12%) *per annum* of the total monetary awards, computed from July 30, 2007 up to June 30, 2013, and thereafter, six per cent (6%) *per annum* from July 1, 2013 until their full satisfaction.

The appropriate Computation Division of the National Labor Relations Commission is hereby ordered to **COMPUTE** and **UPDATE** the award as herein determined **WITH DISPATCH**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
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

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