




Republic of the Philippines
Supreme Court
 Manila

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 WILFREDO V. LAPID
 Division Clerk of Court
 Third Division
 FEB 15 2016

THIRD DIVISION

**ECHO 2000 COMMERCIAL
 CORPORATION, EDWARD N.
 ENRIQUEZ, LEONORA K.
 BENEDICTO and ATTY. GINA
 WENCESLAO,**

Petitioners,

- versus -

G.R. No. 214092

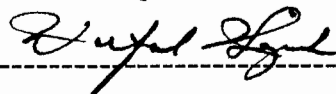
Present:

VELASCO, JR., *J.*,
Chairperson,
 PERALTA,
 VILLARAMA, JR.,
 REYES, and
 JARDELEZA, *JJ.*

**OBRERO FILIPINO-ECHO 2000
 CHAPTER-CLO, ARLO C.
 CORTES and DAVE SOMIDO,**

Respondents.

Promulgated:
January 11, 2016



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DECISION

REYES, J.:

Before the Court is the petition for review on *certiorari*¹ filed by Echo 2000 Commercial Corporation (Echo) to assail the Decision² rendered on September 24, 2013 and Resolution³ issued on March 28, 2014 by the Court of Appeals (CA) in CA-G.R. SP No. 121393. The CA affirmed the Decision⁴ dated April 15, 2011 of the National Labor Relations Commission's (NLRC) Fifth Division, which declared that Arlo C. Cortes (Cortes) and Dave Somido (Somido) (respondents) were illegally dismissed from employment by Echo. Edward N. Enriquez (Enriquez), Leonora K.

¹ Rollo, pp. 8-41.
² Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. concurring; id. at 42-51.
³ Id. at 52-53.
⁴ Penned by Presiding Commissioner Leonardo L. Leonida, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring, id. at 149-159.

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Benedicto (Benedicto) and Atty. Gina Wenceslao (Atty. Wenceslao) used to be Echo's General Manager, Operations and Human Resources Officer, and External Counsel, respectively (Echo and the three officers are to be referred collectively as the petitioners). The CA and NLRC's rulings reversed the Decision⁵ of Labor Arbiter (LA) Renaldo O. Hernandez (Hernandez), who found the respondents' termination from service as valid.

Antecedents

Echo is a provider of warehousing management and delivery services.

King 8 Commercial Corporation (King 8), Echo's predecessor, initially employed Cortes on September 17, 2002, and Somido, on October 12, 2004. Echo thereafter absorbed the respondents as employees on April 1, 2005. In 2008, Somido was made a Warehouse Checker, while Cortes, a Forklift Operator.⁶

In January of 2009, the respondents and their co-workers formed Obrero Pilipino-Echo 2000 Commercial Chapter (Union). Cortes was elected as Vice-President while Somido became an active member. The respondents claimed that the Union's President, Secretary and one of the board members were subsequently harassed, discriminated and eventually terminated from employment by Echo.⁷

In May of 2009, Echo received information about shortages in peso value arising from the movement of products to and from its warehouse. After an immediate audit, Echo suspected that there was a conspiracy among the employees in the warehouse. Since an uninterrupted investigation was necessary, Echo, in the exercise of its management prerogative, decided to re-assign the staff. The respondents were among those affected.⁸

On July 7, 2009, Enriquez issued a memorandum informing the respondents of their transfer to the Delivery Section, which was within the premises of Echo's warehouse. The transfer would entail no change in ranks, status and salaries.⁹

On July 14, 2009, Somido wrote Echo a letter¹⁰ indicating his refusal to be promoted as a "Delivery Supervisor." He explained that he was already happy as a Warehouse Checker. Further, he was not ready to be a

⁵ Id. at 120-148.

⁶ Id. at 150.

⁷ Id.

⁸ Id. at 152-153.

⁹ Id. at 153.

¹⁰ Id. at 274.



Delivery Supervisor since the position was sensitive and required more expertise and training, which he did not have.

Cortes similarly declined Echo's offer of promotion claiming that he was contented in his post then as a Forklift Operator. He also alleged that he would be more productive as an employee if he remained in his post. He also lacked prior supervisory experience.¹¹

On July 16, 2009, Enriquez, *sans* consent of the respondents, informed the latter of their assignments/designations, effective July 17, 2009, as Delivery Supervisors with the following duties: (a) act as delivery dispatchers of booked and planned deliveries for the day; (b) ensure the early loading of goods to the delivery trucks to avoid late take-offs; (c) man delivery teams for the trucks; (d) check the operational and cleanliness conditions of the trucks; (e) attend to delivery concerns of account specialists of their outlets; and (f) call the attention of other warehouse personnel and report the same to the Human Resources Department regarding absences/tardiness, incomplete uniforms, appearances, refusal to accept delivery trips and other matters affecting warehouse productivity.¹²

Echo alleged that the respondents did not perform the new duties assigned to them. Hence, they were each issued a memorandum, dated July 16, 2009, requiring them to explain in writing their failure to abide with the new assignments.¹³

On July 18, 2009, Echo clarified through a memo that the respondents were designated as "Delivery Coordinators" and not "Supervisors."¹⁴

Thereafter, successive memoranda were issued by Echo to the respondents, who refused to acknowledge receipt and comply with the directives therein. The Memoranda¹⁵ dated July 20, 2009 suspended them without pay for five days for their alleged insubordination. The Memoranda¹⁶ dated August 8, 2009 informed them of their termination from employment, effective August 15, 2009, by reason of their repeated refusal to acknowledge receipt of Echo's memoranda and flagrant defiance to assume the duties of Delivery Coordinators.

¹¹ Id. at 264.

¹² Id. at 207-208, 263.

¹³ Id. at 204-205.

¹⁴ Id. at 210-211.

¹⁵ Id. at 216-217.

¹⁶ Id. at 237-240.

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The Proceedings Before the LA

On August 17, 2009, the respondents filed before the NLRC a complaint against Echo for unfair labor practice, illegal dismissal, illegal suspension, illegal deductions and payment of money claims, damages and attorney's fees.¹⁷ The respondents claimed that they were offered promotions, which were mere ploys to remove them as rank-and-file employees, and oust them as Union members.¹⁸

The petitioners, on the other hand, insisted that the respondents were merely transferred, and not promoted. Further, the respondents arrogantly refused to comply with Enriquez's directives. Their insubordination constituted just cause to terminate them from employment.¹⁹

On April 20, 2010, LA Hernandez dismissed the respondents' complaint for reasons stated below: (a) the claims of union-busting, harassment and discrimination were not supported by evidence;²⁰ (b) no promotions occurred as the duties of the Delivery Supervisors/Coordinators were merely reportorial in nature and not indicative of any authority to hire, fire or change the status of other employees;²¹ and (c) Echo properly exercised its management prerogative to order the transfer, and this was done without intended changes in the ranks, salaries, status or places of assignment of the respondents.²²

The Proceedings Before the NLRC

The respondents filed an appeal assailing LA Hernandez's ruling. The dispositive portion of the NLRC's Decision dated April 15, 2011 is quoted below:

WHEREFORE, premises considered, the appeal is **GRANTED**. The appealed decision of the [LA] dated April 20, 2010 is **REVERSED and SET ASIDE** and a new one is entered declaring [the petitioners] guilty of unfair labor practice and illegal dismissal of the [respondents]. [The petitioners] are ordered to immediately reinstate [the respondents] to their previous positions without loss of seniority rights and other privileges/benefits and to pay [the respondents] the following:

1. full backwages from the time of their dismissal up to their actual reinstatement;
2. the sum of P20,000.00 as moral damages[;]

¹⁷ Id. at 44.

¹⁸ Id. at 45.

¹⁹ Id.

²⁰ Id. at 139.

²¹ Id. at 140.

²² Id. at 142.

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3. the sum of P20,000.00 as exemplary damages; and ten [percent (10%)] of the monetary award as attorney's fees.

All other monetary claims are dismissed for lack of substantiation.

SO ORDERED.²³

In sustaining the respondents' arguments, the NLRC explained that at the time of the former's dismissal, they had been employed by Echo for several years since 2002 and 2004, respectively. There were no prior untoward incidents. However, things changed when the Union was formed. When the two did not agree to be transferred, they were terminated for insubordination, a mere ploy to lend a semblance of legality to a pre-conceived management strategy.²⁴

The NLRC denied the petitioners' motion for reconsideration.²⁵

The Proceedings Before the CA

The petitioners thereafter filed a Petition for *Certiorari*.²⁶ In the herein assailed Decision dated September 24, 2013, the CA affirmed *in toto* the NLRC's ruling citing the following as grounds:

A transfer is a movement from one position to another which is of equivalent rank, level or salary, without break in service. Promotion, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.

x x x There is no doubt that said position of Delivery Supervisor/Coordinator entails great duties and responsibilities of overseeing ECHO's business and involves discretionary powers. x x x What is important is the change in the nature of work which resulted in an upgrade of their work condition and increase of duties and responsibilities which constitute promotion and not a mere transfer.

A transfer that results in promotion cannot be done without the employee's consent since there is no law that compels an employee to accept a promotion for the reason that a promotion is in the nature of a gift or reward, which a person has a right to refuse. When [the respondents] refused to accept their promotion as Delivery Supervisors/Coordinators, they were exercising a right and they cannot be punished for it. He who uses his own legal right injures no one. Thus, [the respondents'] refusal to be promoted was not a valid cause for their dismissal.

²³ Id. at 157-158.

²⁴ Id. at 156-157.

²⁵ Id. at 161-163.

²⁶ Id. at 54-118.

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Anent the award of moral damages, exemplary damages and attorney's fees, We agree with the NLRC that [the respondents] are entitled to the same.

x x x x

x x x We agree with the NLRC that the dismissal of [the respondents] was tainted with bad faith as they were dismissed by ECHO for refusing to accept their promotion as Delivery Supervisor[s]/Coordinator[s]. x x x The NLRC also found that ECHO's act of transferring [the respondents] from Forklift Operator and Warehouse Checker x x x to Delivery Supervisors/Coordinators was aimed to remove them among the rank-and-file employees which amounts to union interference. Without the leadership of Cortes, as Vice-President, and Somido, as an active member, the union would be severely weakened, especially since most of its officers were already terminated by ECHO. x x x.²⁷ (Citations omitted)

The petitioners filed a motion for reconsideration, which the CA denied through the Resolution²⁸ dated March 28, 2014.

Issues

Unperturbed, the petitioners are now before the Court raising the issues of whether or not:

- (1) the respondents were illegally suspended and terminated, hence, entitled to payment of their money claims, damages and attorney's fees;
- (2) Echo and its officers are guilty of unfair labor practice; and
- (3) Echo's officers, who are sued as nominal parties, should be held liable to pay the respondents their money claims.²⁹

In support thereof, the petitioners claim that the respondents' refusal to comply with the management's transfer order constitutes just cause to terminate the latter from employment. Echo also points out that before it closed shop on July 6, 2011, the Union continued existing despite the respondents' dismissal from service. Hence, there is no factual basis in the NLRC and CA's ruling that the respondents' termination is intertwined with union-busting.³⁰

²⁷ Id. at 48-50.

²⁸ Id. at 52-53.

²⁹ Id. at 22-23.

³⁰ Id. at 24-25.

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The petitioners further argue that the respondents failed to establish by substantial evidence that Echo's officers, namely, Enriquez, Benedicto and Atty. Wenceslao, acted with malice. Thus, they cannot be held liable as well.³¹

Corollarily, the dismissal being valid, there is no ground to grant the respondents' prayer for reinstatement and payment of money claims and damages.³²

In their Comment,³³ the respondents reiterate that their transfer/promotion was conceived to pave the way for their eventual termination from employment. Moreover, even before the respondents could convey their acceptance or refusal to the transfer/promotion, they were promptly replaced by newly-hired contractual employees.

Ruling of the Court

The Court partially grants the instant petition.

The first two issues, being interrelated, shall be discussed jointly.

The offer of transfer is, in legal contemplation, a promotion, which the respondents validly refused. Such refusal cannot be the basis for the respondents' dismissal from service. The finding of unfair labor practice and the award of moral and exemplary damages do not however follow solely by reason of the dismissal.

Article 212(13) of the Labor Code distinguishes from each other as follows the concepts of managerial, supervisory and rank-and-file employees:

"Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. *Supervisory employees* are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such

³¹ Id. at 36.

³² Id. at 31-34.

³³ Id. at 299-311.

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authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered *rank-and-file employees* for purposes of this Book. (Italics ours)

As to the extent of management prerogative to transfer/promote employees, and the differences between transfer on one hand, and promotion, on the other, *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*³⁴ is instructive, viz:

[L]abor laws discourage interference in employers' judgment concerning the conduct of their business.

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. x x x.

x x x In the case of *Blue Dairy Corporation v. National Labor Relations Commission*, we described in more detail the limitations on the right of management to transfer employees:

x x x [I]t 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.
x x x.

x x x x

A *transfer* is a movement from one position to another which is of equivalent rank, level or salary, without break in service. Promotion, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Conversely, *demotion* involves a situation where 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.³⁵ (Citations omitted and emphasis and underscoring ours)

For promotion to occur, there must be an advancement from one position to another or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but

³⁴ 646 Phil. 587 (2010).

³⁵ Id. at 607-611.

never determinative of whether or not a promotion is bestowed upon an employee.³⁶

An employee is not bound to accept a promotion, which is in the nature of a gift or reward. Refusal to be promoted is a valid exercise of a right.³⁷ Such exercise cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer, hence, it cannot be the basis of an employee's dismissal from service.³⁸

In the case at bench, a Warehouse Checker and a Forklift Operator are rank-and-file employees. On the other hand, the job of a Delivery Supervisor/Coordinator requires the exercise of discretion and judgment from time to time. Specifically, a Delivery Supervisor/Coordinator assigns teams to man the trucks, oversees the loading of goods, checks the conditions of the trucks, coordinates with account specialists in the outlets regarding their delivery concerns, and supervises other personnel about their performance in the warehouse. A Delivery Supervisor/Coordinator's duties and responsibilities are apparently not of the same weight as those of a Warehouse Checker or Forklift Operator. Hence, despite the fact that no salary increases were effected, the assumption of the post of a Delivery Supervisor/Coordinator should be considered a promotion. The respondents' refusal to accept the same was therefore valid.

Notwithstanding the illegality of the respondents' dismissal, the Court finds no sufficient basis to award moral and exemplary damages.

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just or authorized cause.³⁹

In the instant case, the right not to accept an offered promotion pertained to each of the respondents. However, they exhibited disrespectful behavior by their repeated refusal to receive the memoranda issued by Echo and by their continued presence in their respective areas without any work output.⁴⁰ The Court thus finds that although the respondents' dismissal from service for just cause was unwarranted, there is likewise no basis for the award of moral and exemplary damages in their favor. Echo expectedly

³⁶ *Phil. Telegraph & Telephone Corporation v. CA*, 458 Phil. 905, 919 (2003), citing *Homeowners Savings and Loan Association v. NLRC*, 330 Phil. 979, 994 (1996).

³⁷ Please see *Erasmó v. Home Insurance & Guaranty Corporation*, 436 Phil. 689, 697 (2002).

³⁸ Supra note 36.

³⁹ *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*, 639 Phil. 1, 15-16 (2010).

⁴⁰ Please see Memoranda dated July 20, 2009, *rollo*, pp. 216-217; Information Reports dated July 27, and 28, 2009, *id.* at 218-219.

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imposed disciplinary penalties upon the respondents for the latter's intransigence. Albeit the Court is not convinced of the character and extent of the measures taken by Echo, bad faith cannot be inferred solely from the said impositions.

Anent the NLRC and CA's conclusion that Echo committed unfair labor practice, the Court disagrees.

Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.⁴¹

The respondents allege that their transfer/promotion was intended to deprive the Union of leadership and membership. They claim that other officers were already dismissed. The foregoing, however, lacks substantiation. Unfair labor practice is a serious charge, and the respondents failed to show that the petitioners conclusively interfered with, restrained, or coerced employees in the exercise of their right to self-organization.

Enriquez, Benedicto and Atty. Wenceslao cannot be held personally liable for the respondents' money claims.

*Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*⁴² expounds on the liabilities of corporate officers to illegally dismissed employees. The Court declared:

As a general rule, only the employer-corporation, partnership or association or any other entity, and not its officers, which may be held liable for illegal dismissal of employees or for other wrongful acts. This is as it should be because a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. It is settled that in the absence of malice and bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. They are only solidarily liable with the corporation for the illegal

⁴¹ LABOR CODE OF THE PHILIPPINES, Article 247.

⁴² 639 Phil. 1 (2010).

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termination of services of employees if they acted with malice or bad faith. In *Philippine American Life and General Insurance v. Gramaje*, bad faith is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.⁴³ (Citations omitted and underlining ours)

In the instant petition, the respondents failed to specify and sufficiently prove the alleged acts of Enriquez, Benedicto and Atty. Wenceslao from which malice or bad faith can be concluded. Hence, there is no reason to invoke the exception to the general rule on non-liability of corporate officers.

In lieu of actual reinstatement, the respondents are entitled to separation pay.

“In cases of illegal dismissal, the accepted doctrine is that separation pay is available in *lieu* of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.”⁴⁴

The Court notes that the respondents were terminated from service on August 15, 2009, or more than six years ago. Their reinstatement will not be practical and to the best interest of the parties. The Court thus finds more prudence in awarding separation pay to the respondents equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this Decision.

An annual interest of six percent (6%) is imposed on the monetary award.

In accordance with *Nacar v. Gallery Frames*,⁴⁵ the Court now imposes an interest on the monetary awards at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 121393, dated September 24, 2013 and March 28, 2014, respectively, are

⁴³ Id. at 14.

⁴⁴ *Cheryll Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.

⁴⁵ G.R. No. 189871, August 13, 2013, 703 SCRA 439.

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MODIFIED.

The petitioner, Echo 2000 Commercial Corporation, is hereby declared guilty of illegal dismissal. In addition to the National Labor Relations Commission's award of attorney's fees, Echo 2000 Commercial Corporation is likewise **ORDERED to pay** the respondents, Arlo C. Cortes and Dave Somido, the following:

- (a) separation pay in *lieu* of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the time of the dismissal up to the finality of this Decision;
- (b) full backwages from the time of the illegal dismissal up to the finality of this Decision; and
- (c) interest on all monetary awards at the rate of 6% *per annum* from the finality of this Decision until full payment.

The amounts awarded as moral and exemplary damages by the National Labor Relations Commission to Arlo C. Cortes and Dave Somido are however deleted for lack of basis.

The case is **REMANDED** to the Labor Arbiter, who is hereby **DIRECTED to COMPUTE** the monetary benefits awarded in accordance with this Decision.


SO ORDERED.



BIENVENIDO L. REYES

Associate Justice

WE CONCUR:




PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



DIOSDADO M. PERALTA
 Associate Justice


MARTIN S. VILLARAMA, JR.
 Associate Justice


FRANCIS H. JARDEZA
 Associate Justice

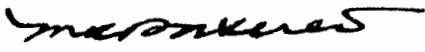
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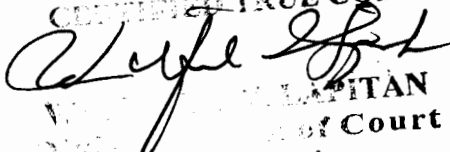
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

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

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 Court
 Division

FEB 15 2016