



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

**THE ORCHARD GOLF  
 AND COUNTRY CLUB,**  
*Petitioner,*

**G.R. No. 178125**

Present:

- versus -

CARPIO, *Chairperson,*  
 BRION,  
 DEL CASTILLO,  
 PEREZ, *and*  
 PERLAS-BERNABE, *JJ.*

**AMELIA R. FRANCISCO,**  
*Respondent.*

Promulgated:

MAY 18 2007

*Handwritten signature*

X -----

DECISION

**DEL CASTILLO, J.:**

Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

Assailed in this Petition for Review<sup>1</sup> is the January 25, 2007 Decision<sup>2</sup> of the Court of Appeals (CA) which dismissed the Petition in CA-G.R. SP No. 80968 and affirmed the November 19, 2002 Resolution<sup>3</sup> of the National Labor Relations Commission (NLRC). Likewise assailed is the May 23, 2007 CA Resolution<sup>4</sup> denying petitioner's Motion for Reconsideration. *Mdm*

<sup>1</sup> *Rollo*, pp. 3-23.

<sup>2</sup> *CA rollo*, pp. 580-594; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong.

<sup>3</sup> *Id.* at 29-46; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

<sup>4</sup> *Id.* at 637; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Edgardo P. Cruz and Regalado E. Maambong.

### *Factual Antecedents*

Petitioner, The Orchard Golf and Country Club (the Club), operates and maintains two golf courses in Dasmariñas, Cavite for Club members and their guests. The Club likewise has a swimming pool, bowling alley, cinema, fitness center, courts for tennis, badminton and basketball, restaurants, and function rooms.

On March 17, 1997, respondent Amelia R. Francisco (Francisco) was employed as Club Accountant, to head the Club's General Accounting Division and the four divisions under it, namely: 1) Revenue and Audit Division, 2) Billing/Accounts Receivable Division, 3) Accounts Payable Division, and 4) Fixed Assets Division. Each of these four divisions has its own Supervisor and Assistant Supervisor. As General Accounting Division head, respondent reports directly to the Club's Financial Comptroller, Jose Ernilo P. Famy (Famy).

On May 18, 2000, Famy directed Francisco to draft a letter to SGV & Co. (SGV), the Club's external auditor, inquiring about the accounting treatment that should be accorded property that will be sold or donated to the Club. Francisco failed to prepare the letter, even after Famy's repeated verbal and written reminders, the last of which was made on June 22, 2000.

On June 27, 2000, Famy issued a memorandum<sup>5</sup> requiring Francisco's written explanation, under pain of an insubordination charge, relative to her failure to prepare the letter. Instead of complying with the memorandum, Francisco went to the Club's General Manager, Tomas B. Clemente III (Clemente), and personally explained to the latter that due to the alleged heavy volume of work that needed her attention, she was unable to draft the letter. Clemente assured her that he would discuss the matter with Famy personally. On this assurance, Francisco did not submit the required written explanation. For this reason, Famy issued a June 29, 2000 memorandum<sup>6</sup> suspending Francisco without pay for a period of 15 days. The memorandum reads, as follows:

Considering the fact that you did [sic] explain in writing within 24 hours from the date and time of my memorandum to you dated June 27, 2000 the reason why you should not be charged with "Insubordination" as specified in Rule 5 Section 2a of our handbook, it has been found that:

Findings: You willfully refused to carry out a legitimate and reasonable instruction of your Department Head.

Act/Offense: Insubordination

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<sup>5</sup> *Rollo*, p. 25.

<sup>6</sup> *Id.* at 26.

Under the circumstances and pursuant to the rules and regulations of the Club, you are hereby suspended for 15 working days without pay. Effective dates of which shall be determined by the undersigned depending on the exigency of your work.

(Signed)  
Nilo P. Famy<sup>7</sup>

On July 1, 2000, Famy issued another memorandum<sup>8</sup> informing Francisco that her suspension shall be effective from July 3 to 19, 2000. On July 3, 2000 Francisco wrote to the Club's General and Administrative Manager, Ma. Irma Corazon A. Nuevo (Nuevo), questioning Famy's act of charging, investigating, and suspending her without coursing the same through the Club's Personnel Department. Pertinent portions of her memorandum to Nuevo read:

This has reference to the [memoranda] of the Financial Controller, Mr. Ernilo Famy of June 27, June 29 & July 1, 2000 x x x. I would like to know under what authority x x x a department head [could] issue a memorandum and make decisions without the intervention of the [P]ersonnel [D]epartment.

I believe that if ever a department head or superior has complaints against his subordinate then he has to course them through the [P]ersonnel [D]epartment [which] will be the one to initiate and conduct an inquiry and investigation. A mere furnishing of the memorandum to the [P]ersonnel [D]epartment does not substitute [sic] the actual authority and functions of the [P]ersonnel [D]epartment because there will be no due process x x x. Nilo Famy decided on his own complaint without merit (sic) x x x. Also I believe x x x Nilo Famy abuse [sic] his authority as superior with full disregard of the Personnel Department because he acted as the complainant, the investigator and the judge, **all by himself. For this I would like to file this complaint against him for abuse of authority** x x x.

x x x During our departmental meetings listed in his letter, I always made him aware of the lined-up priorities that need to be given attention first and pending works which during the year-end audit by the auditors [were] put on hold and [were] not x x x finish[ed] by the assigned staff. In fact, he commented that I should do something about the pending work. Also, if he really feels [sic] the importance of that letter and [sic] cognizant of my present work load, then why [did] he went [sic] on leave from June 23 until June 26. (his leave was cut because of the board meeting. His leave [sic] supposed to be until June 30) x x x.

Also, I would like to formally inform you that whenever we have some disagreement or he has dissatisfaction [sic] he is creating [sic] a feeling of job insecurity; it is very easy for Mr. Nilo Famy to directly tell me and the staff to resign. The last time we had a talk prior to this issue, he made it clear that he can transfer me to lower positions like the position of the cashier, cost controller and the like. He is confident he can do it because he had done it to the former Club Accountant. What do you think is the kind of authority you expect from him if

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<sup>7</sup> Id.

<sup>8</sup> Id. at 27.

you always hear these wordings [sic].<sup>9</sup>

That very same day, Nuevo replied,<sup>10</sup> exonerating Famy and justifying the latter's actions as falling within his power and authority as department head. Nuevo said that Francisco was accorded due process when she was given the opportunity to explain her side; that she deliberately ignored her superior's directive when she did not submit a written explanation, which act constitutes insubordination; that Famy acted prudently though he did not course his actions through the Personnel Department, for ultimately, he would decide the case; and that she was consulted by Famy and that she gave her assent to Famy's proposed actions, which he later carried out. Nuevo likewise brushed aside Francisco's accusation of abuse of authority against Famy, and instead blamed Francisco for her predicament.

On July 5, 2000, Francisco wrote a letter<sup>11</sup> to Clemente requesting an investigation into Famy's possible involvement in the commission in 1997 of alleged fraudulent and negligent acts relative to the questionable approval and release of Club checks in payment of Bureau of Internal Revenue (BIR) taxes, in which her counter-signature though required was not obtained. Famy belied Francisco's claims in a reply memorandum, saying the charges were baseless and intended to malign him.

On July 20, 2000, or a day after Francisco's period of suspension expired, Famy issued separate memoranda<sup>12</sup> to Francisco and Clemente informing them of Francisco's transfer, without diminution in salary and benefits, to the Club's Cost Accounting Section while the investigation on Famy's alleged illegal activities is pending. Relevant portions of these memoranda state:

#### **MEMORANDUM TO CLEMENTE**

In view of the recent developments, i.e. the suspension of Ms. Amelia Francisco and her letter of July 5, 2000 x x x, I would like to formally inform you that effective today, July 20, 2000, Ms. Francisco shall be temporarily given a new assignment in my department pending the result of the investigation she lodged against the undersigned.

x x x. She shall remain directly reporting to the Financial Comptroller (Famy).<sup>13</sup>

#### **MEMORANDUM TO FRANCISCO**

This is to inform you that effective today, July 20, 2000, Management has approved your temporary transfer of assignment pending the completion of

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<sup>9</sup> Id. at 28-29. Emphasis in the original.

<sup>10</sup> Id. at 30.

<sup>11</sup> Id. at 31-32.

<sup>12</sup> Id. at 39-40.

<sup>13</sup> Id. at 39.

the investigation you lodged against the undersigned.

You shall be handling the Cost Accounting Section together with six (6) Accounting Staffs and shall remain reporting directly to the undersigned.<sup>14</sup>

Yet again, in another memorandum<sup>15</sup> dated August 1, 2000 addressed to Nuevo, Famy sought an investigation into Francisco's alleged insubordination, this time for her alleged unauthorized change of day-off from July 30 to August 4, 2000, and for being absent on said date (August 4, 2000) despite disapproval of her leave/offset application therefor. In an August 2, 2000 memorandum,<sup>16</sup> Francisco was required to explain these charges. In another memorandum<sup>17</sup> dated August 5, 2000, Francisco was asked to submit her explanation on the foregoing charges of insubordination, negligence, inefficiency and violation of work standards relative to the unauthorized change of day-off and disapproved offset/leave. To these, Francisco replied on August 8, 2000 claiming that her presence on July 30, 2000 which was a Sunday and supposedly her day-off, was nonetheless necessary because it was the Club's scheduled month-end inventory, and she was assigned as one of the officers-in-charge thereof. She added that her actions were in accord with past experience, where she would take a leave during the first week of each month to make payments to Pag-Ibig, and Famy very well knew about this. She accused Famy of waging a personal vendetta against her for her seeking an inquiry into claimed anomalies embodied in her July 5, 2000 letter. She also took exception to her transfer to Cost Accounting Section, claiming that the same was humiliating and demeaning and that it constituted constructive dismissal, and threatened to take legal action or seek assistance from Club members to insure that Famy's impropriety is investigated.<sup>18</sup>

On August 11, 2000, Francisco filed a Complaint for illegal dismissal against the Club, impleading Famy, Clemente and Nuevo as additional respondents. The case was docketed as NLRC Case No. RAB-IV-812780-00-C. She prayed, among others, for damages and attorney's fees.

On August 16, 2000, Francisco received another memorandum requiring her to explain why she should not be charged with betrayal of company trust, allegedly for the act of one Ernie Yu, a Club member, who was seen distributing copies of Francisco's letter to the Club's Chairman of the Board of Directors.<sup>19</sup> On August 18, 2000, Francisco submitted her written explanation to the charges.<sup>20</sup> On August 19, 2000, with the Club finding no merit in her explanation, Clemente handed her a Notice of Disciplinary Action<sup>21</sup> dated August 16, 2000 relative to her

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<sup>14</sup> Id. at 40.

<sup>15</sup> Id. at 41.

<sup>16</sup> Id. at 42.

<sup>17</sup> Id. at 53.

<sup>18</sup> Id. at 43-45, 54-56.

<sup>19</sup> Id. at 134.

<sup>20</sup> Id.

<sup>21</sup> Id. at 57.

July 30, 2000 unauthorized change of day-off and her August 4, 2000 unauthorized leave/absence. She was suspended for another fifteen days, or from August 21 to September 6, 2000.<sup>22</sup>

Francisco amended her illegal dismissal Complaint to one for illegal suspension. Meanwhile, she continued to report for work.

On September 7, 2000, or a day after serving her suspension, Francisco again received a September 6, 2000 memorandum from Nuevo, duly noted and approved by Clemente, this time placing her on forced leave with pay for 30 days, or from September 7, 2000 up to October 11, 2000, for the alleged reason that the case filed against her has strained her relationship with her superiors.<sup>23</sup> On even date, Francisco wrote a letter to Nuevo seeking clarification as to what case was filed against her, to which Nuevo immediately sent a reply memorandum stating that the case referred to her alleged “betrayal of company trust”.<sup>24</sup>

After the expiration of her forced leave, or on October 12, 2000, Francisco reported back to work. This time she was handed an October 11, 2000 memorandum<sup>25</sup> from Clemente informing her that, due to strained relations between her and Famy and the pending evaluation of her betrayal of company trust charge, she has been permanently transferred, without diminution of benefits, to the Club’s Cost Accounting Section effective October 12, 2000. Notably, even as Clemente claimed in the memorandum that Francisco’s transfer was necessary on account of the strained relations between her and Famy, Francisco’s position at the Cost Accounting Section was to remain under Famy’s direct supervision. The pertinent portion of the memorandum in this regard reads:

Because of the strained relationship between you and your department head, Mr. Ernilo Famy, we deem it necessary to transfer you permanently to Cost Accounting effective October 12, 2000. You shall however continue to receive the same benefits and **shall remain under the supervision of Mr. Famy.** x x x<sup>26</sup>

In an October 13, 2000 memorandum<sup>27</sup> to Clemente, Francisco protested her permanent transfer, claiming that it was made in bad faith. She also bewailed Clemente’s inaction on her July 5, 2000 letter charging Famy with irregularities relative to BIR tax payments. Likewise, on account of her transfer, Francisco once more amended her Complaint to include illegal/constructive dismissal. And in her prayer, she sought to be reinstated to her former position as Club Accountant.

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<sup>22</sup> Id.

<sup>23</sup> Id. at 134.

<sup>24</sup> Id. at 134-135.

<sup>25</sup> Id. at 58, 135.

<sup>26</sup> Id. at 58. Emphasis supplied.

<sup>27</sup> Id. at 59.

On October 17, 2000, Clemente issued a memorandum<sup>28</sup> addressed to Francisco denying that her transfer was done in bad faith, and affirming instead that it was made in the proper exercise of management prerogative. In addition, Clemente clarified the matter of Famy's alleged wrongdoing, thus:

Secondly, I would also like to correct your assumptions that the case of Mr. Famy has not yet been acted upon. For your information, the Committee composed of Club members and myself tasked by the Board of Directors to investigate the case and make the necessary recommendations [has] already concluded [its] investigation and has made [its] recommendations to the Board. The Board, likewise, has acted on the Committee's recommendation x x x the results of which have been given to Mr. Famy. Whatever that decision was, it is a matter between the Board and Mr. Famy.<sup>29</sup>

### ***Ruling of the Labor Arbiter***

After considering the parties' respective Position Papers and evidence, Labor Arbiter Enrico Angelo C. Portillo issued a Decision<sup>30</sup> dated August 23, 2001 dismissing Francisco's Complaint for lack of merit. The Labor Arbiter noted the "belligerence and animosity" between Francisco and Famy, making short shrift of Francisco's accusations against her superior and dismissing them as nothing more than attempts to get back at Famy for his reproach at her failure to draft the SGV letter. The Labor Arbiter further admonished Francisco, reminding her that –

x x x [A] workplace is not a "bed of roses". While employers are expected to show respect and courtesy to its employees, words and actions expectedly tend to get somewhat disrespectful, if not outright insulting, when work remains undone. Common experience tells us that the scolding and trash talk bites harder as one climbs higher in the organization ladder commensurate to the additional responsibility attached to the position. It is at these times, when the fact [sic] and professionalism of an employee, particularly a managerial employee, is put to test. x x x<sup>31</sup>

The Labor Arbiter further upheld Francisco's two suspensions as valid exercises of the Club's management prerogative, justifying the measures taken as reasonable and necessary penalties for Francisco's failure to draft the SGV letter and her taking a leave with full awareness yet in disregard of her superior Famy's disapproval of her leave application. He added that in the conduct of proceedings leading to the decision to suspend Francisco, the proper procedure was taken, and Francisco was afforded ample opportunity to defend herself.

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<sup>28</sup> Id. at 60.

<sup>29</sup> Id.

<sup>30</sup> Id. at 128-142.

<sup>31</sup> Id. at 140.

The Labor Arbiter likewise found Francisco's claim of constructive dismissal to be baseless. On the contrary, he found Francisco's transfer as necessary and in furtherance of the Club's interests. He also noted that the transfer was lateral, or to a position of the same rank and pay scale based on the Club's Organizational Chart.<sup>32</sup> Both Club Accountant and Cost Controller positions belonged to the same pay scale "9" and are rated as "Supervisor V".

Finally, the Labor Arbiter held that the fact that Francisco continued to report for work belies her claim of constructive dismissal.

### ***Ruling of the National Labor Relations Commission***

On September 17, 2001, Francisco appealed the Labor Arbiter's Decision to the NLRC, which took a contrary view. Thus, in its November 19, 2002 Resolution,<sup>33</sup> the NLRC held that while Francisco's suspensions were valid, her subsequent permanent transfer on the ground of strained relations to the Club's Cost Accounting Section as Cost Controller on October 12, 2000 was without just cause. It resulted in Francisco's demotion, since the position of Cost Controller was merely of a supervisory character, while the position of Club Accountant was of managerial rank. Besides, by admission of herein petitioner, Francisco held the rank of "Manager 3" with her position as Club Accountant, while the Cost Controller is only a Supervisor position and is precisely under the direct supervision and control of the Club Accountant.<sup>34</sup> This unwarranted demotion, according to the NLRC, is equivalent to constructive dismissal.

The NLRC added that strained relationship is not a valid ground for termination of employment under the Labor Code. It ordered Francisco's reinstatement to her former position as Club Accountant and awarded her attorney's fees in the amount of ₱50,000.00. However, the NLRC absolved Famy, Nuevo and Clemente of wrongdoing. It also held that Francisco was not entitled to moral and exemplary damages because she failed to show proof that her constructive dismissal was attended by bad faith. Thus, the NLRC held:

WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby MODIFIED. It is hereby declared that Complainant's transfer resulted [in] a demotion in level/rank, which is considered as illegal constructive dismissal. Respondent the Orchard Golf & Country Club, Inc. is hereby ordered to immediately reinstate Complainant to her former position as Club Accountant without loss of seniority rights and other privileges and to pay her attorney's fees in the amount of ₱50,000.00

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<sup>32</sup> Id. at 24.

<sup>33</sup> CA *rollo*, pp. 29-46.

<sup>34</sup> Id. at 43.

SO ORDERED.<sup>35</sup>

Petitioner moved for reconsideration, to no avail. Francisco moved for partial reconsideration of the NLRC's Resolution with respect to its ruling declaring her suspensions as valid and the denial of her claim for damages. Her motion was denied as well.

### ***Ruling of the Court of Appeals***

Petitioner went up to the CA *via* Petition for *Certiorari*,<sup>36</sup> while respondent Francisco no longer took issue with the denial of her motion.

In its January 25, 2007 Decision, the CA sustained the NLRC ruling. It held that while petitioner had the right or prerogative to transfer the respondent from one office to another within the Club, there should be no demotion in rank, salary, benefits and other privileges. The CA added that the right may not be used arbitrarily to rid the employer of an undesirable worker. Proper notification and an opportunity to be heard or contest the transfer must be given to the employee whose transfer is sought, conditions which were not observed in Francisco's case. She was notified only of the Club's decision to permanently transfer her, without giving her the opportunity to contest the same. The CA characterized Francisco's permanent transfer as a demotion in the guise of a lateral transfer.

The CA sustained as well the award of attorney's fees, saying that Francisco was forced to litigate and hire the services of counsel to protect her rights.

Thus, the Petition for *Certiorari* was dismissed. Petitioner filed a Motion for Reconsideration,<sup>37</sup> which was subsequently denied.

### **Issues**

Hence, this Petition raising the following issues:

#### **I**

WHETHER X X X THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT HELD THAT THE TRANSFER OF RESPONDENT FROM THE POSITION OF CLUB

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<sup>35</sup> Id. at 45-46.

<sup>36</sup> Id. at 2-29.

<sup>37</sup> Id. at 604-612.

ACCOUNTANT TO COST ACCOUNTANT WAS TANTAMOUNT TO A DEMOTION.

## II

WHETHER X X X THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT AWARDED ATTORNEY'S FEES TO RESPONDENT IN THE AMOUNT OF FIFTY THOUSAND PESOS (₱50,000.00).<sup>38</sup>

### *Petitioner's Arguments*

In seeking the annulment and setting aside of the CA Decision, petitioner insists that respondent Francisco's transfer did not amount to a demotion, and that she suffered no diminution in rank, salary, benefits, and position because the position of Club Accountant and Cost Controller/Accountant are of equal rank. Both positions belong to pay grade "9" and rated as "Supervisor V"; a transfer from one of the positions to the other is merely a lateral transfer and within the prerogative of Club management. Petitioner directs the Court's attention to its Organizational Chart<sup>39</sup> which should bolster its claim in this regard.

Petitioner adds that Francisco's transfer to the Cost Accounting Section was done in good faith, noting that the deteriorating relationship between Famy and Francisco placed the Club's business at risk. It had no choice but to address this problem in order not to further jeopardize the Club's day-to-day operations. Petitioner claims further that Francisco's transfer did not prejudice her. She continues to report to Famy and receive the same benefits and privileges as the Club Accountant. It is of no consequence that as Cost Controller, she has a lesser number of employees/staff (six) under her or that she is relegated to a very small office space, as opposed to the position of Club Accountant, which has 32 employees under it and holds office at the bigger offices reserved for use by the Club's executives.

On the issue of constructive dismissal, petitioner claims that it did not commit any act which forced Francisco to quit; she continues to be employed by the Club, and in fact continues to report for work.

Finally, petitioner argues that Francisco is not entitled to attorney's fees, in the absence of an award of exemplary damages and in the wake of the NLRC's finding that she is not entitled to such damages. It believes that if no exemplary damages are adjudged, then no attorney's fees may be awarded as well. It adds that Francisco could only blame herself for the fate she suffered, knowing very

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<sup>38</sup> *Rollo*, p. 651.

<sup>39</sup> *Id.* at 24.

well that she is not entitled to her claims; she should bear her own litigation expenses.

### ***Respondent's Arguments***

Francisco insists that the issues raised in the Petition have been sufficiently addressed by the NLRC and the CA, and their findings should bind the Court. Francisco stresses that petitioner's own actions betrayed the fact that the position of Cost Controller/Accountant is a mere Supervisor position and the same is directly under the supervision of the Club Accountant. A reassignment from Club Accountant to Cost Controller is clearly an unwarranted demotion in rank. She adds that per the Club's latest actions, she has suffered not only a demotion in rank, but also a diminution in salary and benefits. Petitioner illegally withheld her accrued salary differential, merit increases and productivity bonuses since 2001.

### **Our Ruling**

The Petition lacks merit.

At the outset, it must be emphasized that Francisco's two suspensions, *i.e.*, for her failure to draft the SGV letter and for being absent without prior leave, is no longer at issue before this Court. Records show that after the NLRC declared the same as valid in its November 19, 2002 Resolution, Francisco moved for reconsideration but to no avail. After the denial of her motion, Francisco no longer brought the issue or appealed the same to the CA. Hence, the only issues for our resolution are the propriety of Francisco's transfer to the position of Cost Controller and the award of attorney's fees.

*There was constructive dismissal when Francisco was transferred to the Cost Accounting Section.*

We agree with the NLRC and the CA that Francisco's transfer to the position of Cost Controller was without valid basis and that it amounted to a demotion in rank. Hence, there was constructive dismissal.

Records show that when Francisco returned to work on July 20, 2000 fresh from her first suspension, she was unceremoniously transferred by Famy, via his July 20, 2000 memorandum, to the Club's Cost Accounting Section. Famy stated the reason for her transfer:

This is to inform you that effective today, July 20, 2000, Management has approved your **temporary transfer of assignment pending the completion**

**of the investigation you lodged against the undersigned.**

x x x x<sup>40</sup>

His memorandum of even date to his superior Clemente reveals the same cause:

**In view of** the recent developments, i.e. the suspension of Ms. Amelia Francisco and **her letter of July 5, 2000** x x x, I would like to formally inform you that effective today, July 20, 2000, **Ms. Francisco shall be temporarily given a new assignment in my department pending the result of the investigation she lodged against the undersigned.**

x x x x<sup>41</sup>

In other words, the cause of Francisco's temporary transfer on July 20, 2000 was her pending complaint against Famy.

And then again, on September 6, 2000, Nuevo issued another memorandum duly noted and approved by Clemente, and personally delivered at Francisco's residence on September 7, 2000 informing her this time that she has been placed on forced leave with pay for 30 days, or from September 7, 2000 up to October 11, 2000, for the reason that the case filed against her has strained her relationship with her superiors.

And just when her forced leave expired on October 11, or on October 12, 2000, Francisco was once more handed an October 11, 2000 memorandum from Clemente informing her that, due to strained relations between her and Famy and pending evaluation of her betrayal of company trust charge, she has been permanently transferred, without diminution of benefits, to the Club's Cost Accounting Section effective October 12, 2000.

The Court shares the CA's observation that when Francisco was placed on forced leave and transferred to the Cost Accounting Section, not once was Francisco given the opportunity to contest these company actions taken against her. It has also not escaped our attention that just when one penalty has been served by Francisco, another would instantaneously take its place. And all these happened even while the supposed case against her, the alleged charge of "betrayal of company trust", was still pending and remained unresolved. In fact, one of the memoranda was served even at Francisco's residence.

Not even the claim that her relations with her superiors have been strained

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<sup>40</sup> Id. at 40. Emphasis supplied.

<sup>41</sup> Id. at 39. Emphasis supplied.

could justify Francisco's transfer to Cost Accounting Section. Indeed, it appears that her charge was never resolved. And if Famy, Nuevo and Clemente truly believed that their relations with Francisco have been strained, then it puzzles the Court why, despite her transfer, she continues to remain under Famy's direct supervision. Such is the tenor of the memoranda relative to her temporary and subsequently, permanent, transfer to the Cost Accounting Section:

**JULY 20, 2000 MEMORANDUM OF FAMY TO CLEMENTE**

In view of the recent developments, i.e. the suspension of Ms. Amelia Francisco and her letter of July 5, 2000 x x x, I would like to formally inform you that effective today, July 20, 2000, **Ms. Francisco shall be temporarily given a new assignment in my department** pending the result of the investigation she lodged against the undersigned.

x x x. **She shall remain directly reporting to the Financial Comptroller (Famy).**<sup>42</sup>

**JULY 20, 2000 MEMORANDUM OF FAMY TO FRANCISCO**

This is to inform you that effective today, July 20, 2000, Management has approved your temporary transfer of assignment pending the completion of the investigation you lodged against the undersigned.

You shall be handling the Cost Accounting Section together with six (6) Accounting Staffs and **shall remain reporting directly to the undersigned.**<sup>43</sup>

**OCTOBER 11, 2000 MEMORANDUM OF CLEMENTE TO FRANCISCO**

**Because of the strained relationship between you and your department head, Mr. Ernilo Famy,** we deem it necessary to transfer you permanently to Cost Accounting effective October 12, 2000. You shall however continue to receive the same benefits **and shall remain under the supervision of Mr. Famy.**<sup>44</sup>

Interestingly, Francisco's transfer was occasioned not by a past infraction or a present one which has just been committed, but by her act of filing a complaint for impropriety against Famy.

For this reason, Francisco's July 20, 2000 temporary transfer and her October 12, 2000 permanent transfer to Cost Accounting Section must be invalidated. For one, there was no valid reason to temporarily transfer Francisco to Cost Accounting Section on July 20, 2000. She had already served her penalty for her failure to draft the SGV letter, through the 15-day suspension period which she just completed on July 20, 2000. Secondly, the transfer was not even rooted in

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<sup>42</sup> Id. at 39. Emphases supplied.

<sup>43</sup> Id. at 40. Emphasis supplied.

<sup>44</sup> Id. at 58. Emphasis supplied.

any new infraction she is accused of committing. There was thus an absolute lack of basis for her July 20, 2000 temporary transfer.

As for her October 12, 2000 permanent transfer, the same is null and void for lack of just cause. Also, the transfer is a penalty imposed on a charge that has not yet been resolved. Definitely, to punish one for an offense that has not been proved is truly unfair; this is deprivation without due process. Finally, the Court sees no necessity for Francisco's transfer; on the contrary, such transfer is outweighed by the need to secure her office and documents from Famy's possible intervention on account of the complaint she filed against him.

We also agree with the findings of the NLRC, as affirmed by the CA, that Francisco's transfer constituted a demotion, *viz*:

x x x We however, hold that Complainant's transfer resulted to a demotion in her level/rank. The level of Club Accountant is not "Supervisor V" but "Managerial-3" as indicated in the Notice of Personnel Action issued to Complainant on July 20, 2000, signed by her immediate superior Jose Ernilo P. Famy, Department Head of Respondent company on July 10, 2000, and approved by Tomas B. Clemente III, Acting GM & COOO on July 11, 2000 x x x. Obviously, the alleged August 15, 1998 Company's Organizational Chart showing the Club Accountant and the Cost Controller occupying the same job grade level, which was attached to Respondent's February 21, 2001 Reply x x x was never implemented, otherwise, the Department Head and the Acting GM & COO would not have specifically indicated "Managerial-3" for Complainant's position of Club Accountant in the Notice of Personnel Action issued to Complainant on July 10, 2000 or two (2) years after the date of the alleged Organizational Chart. Clearly, Complainant was a manager when she occupied the position of Club Accountant. However, when management transferred her to the position of Cost Controller/Accountant, she was demoted to a mere supervisor.

Moreover, in Complainant's December 3, 1997 Job Description as Club Accountant prepared by Jose Ernilo P. Famy and approved by Ian Paul Gardner and Atty. Stellamar C. Flores of HR, it is specifically indicated therein that as Club Accountant, Complainant directly supervises the Cost Controller x x x. Notably, Complainant was never issued any amendment to her December 3, 1997 Job Description, which would have removed from her supervision the Cost Controller. In fact, Respondents do not refute Complainant's allegation that as Club Accountant, she was responsible for the rating of the Cost Controller's performance for the years 1998 to 2000. It becomes clearer now that the alleged August 15, 1998 Company's Organizational Chart showing the Club Accountant and the Cost Controller occupying the same job grade level, which was attached to Respondent's February 22, 2001 Reply x x x was, indeed, never implemented, otherwise, management would have issued Complainant an amendment to her December 3, 1997 Job Description effectively removing from her supervision the position of Cost Controller/Accountant and management would not have let Complainant rate the performance of the Cost Controller/Accountant for the years 1998 to 2000. It is obvious, therefore, that Complainant's position of Club Accountant is higher in level/rank than that of Cost Controller/Accountant.

Patently, Complainant's transfer from the position of Club Accountant to the position of Cost Accountant resulted to her demotion in level/rank. Complainant's transfer resulting to her demotion is, therefore, tantamount to constructive dismissal. x x x<sup>45</sup>

The fact that Francisco continued to report for work does not necessarily suggest that constructive dismissal has not occurred, nor does it operate as a waiver. Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

“[A]n employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work. While the law recognizes and safeguards this right of an employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The company's prerogatives must be exercised in good faith and with due regard to the rights of labor. *A priori*, they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice. The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. x x x. Such right, however, is subject to regulation by the State, basically in the exercise of its paramount police power. Thus, the dismissal of employees must be made within the parameters of the law and pursuant to the basic tenets of equity, justice and fair play. It must not be done arbitrarily and without just cause.”<sup>46</sup>

*The award of attorney's fees is proper.*

With respect to the award of attorney's fees, we find the same to be due and owing to respondent given the circumstances prevailing in this case as well as the fact that this case has spanned the whole judicial process from the Labor Arbiter to the NLRC, the CA and all the way up to this Court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation other than judicial costs may be recovered if the claimant is compelled to litigate with third persons or to incur

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<sup>45</sup> CA rollo, pp. 42-44.

<sup>46</sup> *Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission*, 343 Phil. 284, 290-293 (1997).

expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought,<sup>47</sup> and where the courts deem it just and equitable that attorney's fees and expenses of litigation should be recovered.

As for petitioner's argument that in the absence of an award of exemplary damages, attorney's fees may not be granted, the Court finds this unavailing. An award of attorney's fees is not predicated on a grant of exemplary damages. Given the circumstances of this case, it is regretful that the Labor Arbiter and the NLRC failed to award moral and exemplary damages prayed for by the respondent. But because respondent did not appeal the denial, the Court may no longer modify the ruling in this regard.

*Respondent is entitled to receive her accrued salary differential, merit increases and productivity bonuses since 2001.*

Respondent raises the side issue pertaining to petitioner's alleged withholding of her accrued salary differential, merit increases and productivity bonuses since 2001.<sup>48</sup> She claims that during the pendency of this case, petitioner effected salary adjustments, merit increases and productivity bonuses to other employees. As proof, she submitted the Notice of Personnel Action-Salary Adjustment<sup>49</sup> of Arsenio Rodrigo Neyra, the former Cost Accountant which position she now occupies, and pertinent portions of the Collective Bargaining Agreement.<sup>50</sup> She now seeks payment of these amounts.

Notably, petitioner does not refute its grant of salary increases, merit increases and productivity bonuses to other employees. In its attempt to rebuff Francisco's claim, petitioner merely argues that the same should no longer be entertained because it was never raised before the proceedings below.<sup>51</sup> Interestingly, it never categorically denied that such salary increases, merit increases and productivity bonuses have indeed been given to the other employees.

At this juncture, it must be stressed that "[t]echnical rules of procedure are not binding in labor cases. The application of technical rules of procedure may be relaxed to serve the demands of substantial justice."<sup>52</sup> "[I]t is more in keeping with the objective of rendering substantial justice if we brush aside technical rules

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<sup>47</sup> See *Valiant Machinery and Metal Corporation v. Court of Appeals*, 322 Phil. 407, 417 (1996).

<sup>48</sup> *Rollo*, pp. 593-594.

<sup>49</sup> *Id.* at 603.

<sup>50</sup> *Id.* at 608-610.

<sup>51</sup> *Id.* at 617-618, 656-657.

<sup>52</sup> *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission*, 381 Phil. 254, 264 (2000).

rather than strictly apply its literal reading. There [being] no objective reason to further delay this case by insisting on a technicality when the controversy could now be resolved.”<sup>53</sup> Moreover, “there is no need to remand this case to the Labor Arbiter for further proceedings, as the facts are clear and complete on the basis of which a decision can be made.”<sup>54</sup> Based on the foregoing, we find no reason to deprive herein respondent of the accrued salary differential, merit increases and productivity bonuses due her since 2001.

**WHEREFORE**, the Petition is **DENIED** for lack of merit. The January 25, 2007 Decision and May 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 80968 are **AFFIRMED**. Petitioner, The Orchard Golf and Country Club, is **ORDERED**:

1. To immediately reinstate respondent Amelia R. Francisco to her former position as Club Accountant without loss of seniority rights and other privileges;

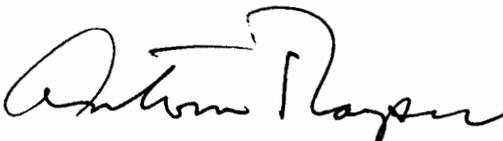
2. Within 15 days from receipt of this Decision, to return and/or pay to the respondent, all her accrued salary differential, merit increases and productivity bonuses due her, with 12% *per annum* interest<sup>55</sup> on outstanding balance from finality of this Decision until full payment; and

3. Within the same period, to pay the respondent attorney’s fees in the amount of ₱50,000.00.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

<sup>53</sup> *Tiu v. Pasaol*, 450 Phil. 370, 378 (2003).

<sup>54</sup> *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission*, supra note 52 at 265.

<sup>55</sup> See *Blue Sky Trading Company, Inc. v. Blas*, G.R. No. 190559, March 7, 2012, 667 SCRA 727, 752.

  
**ARTURO D. BION**  
*Associate Justice*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

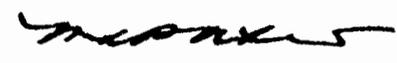
**ATTESTATION**

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*

