



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

CANDIDO S. GEMINA, JR.,
 Petitioner,

G.R. No. 175365

Present:

SERENO, *C.J.*,
Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, *JJ.*

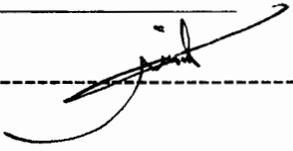
-versus-

BANKWISE, INC. (Thrift Bank),
LAZARO LL. MADARA, PERFECTO
M. PASCUA and OSMENIO R.
GALAPATE,
 Respondents.

Promulgated:

OCT 23 2013

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DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court, assailing the Decision² dated July 17, 2006 and Resolution³ dated November 7, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 89343. In the assailed decision, the CA affirmed the Decision⁴ dated December 29, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-02-02298-2003.

¹ *Rollo*, pp. 19-37.

² Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Andres B. Reyes (now Presiding Justice of Court of Appeals) and Hakim S. Abdulwahid, concurring; *id.* at 84-92.

³ *Id.* at 101.

⁴ Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; *id.* at 50-59.

A

Factual Antecedents

On August 9, 2002, petitioner Candido S. Gemina, Jr. (Gemina) signed an employment contract⁵ with respondent Bankwise, Inc. (Bankwise) as Marketing Officer with the rank of Senior Manager, with an annual salary of ₱750,000.00 based on a fifteen-month scheme or ₱50,000.00 per month and a service vehicle for his field work. The same contract stipulated for a fund level commitment of ₱100,000,000.00 for the first six (6) months of employment.

In his Memorandum,⁶ Gemina alleged that during his first three (3) months at work, he had a satisfactory performance and was able to bring in new and former clients to Bankwise. However, when Bankwise was embroiled in a controversy involving the deposits of Foreign Retirees Association, he started to experience difficulty in soliciting new depositors. To alleviate the situation, he suggested innovations in Bankwise's marketing strategies to his immediate superiors, respondents Perfecto Pascua (Pascua) and Osmenio Galapate (Galapate), who then worked out promotional schemes without his participation. The schemes, however, failed to materialize and he was blamed for the failure. Thereafter, he was subjected to several forms of harassment by some officers of Bankwise by forcing him to file an indefinite leave of absence, demanding for the return of his service vehicle and intentionally delaying the release of his salaries and allowances.⁷

When the acts of harassment became intolerable, Gemina went on leave for eleven (11) days from January 17 to January 31, 2003. Upon his return to work, however, his salary for the period of his leave was withheld and was released only after he confronted Pascua and Galapate on the matter.⁸ Subsequently, his salary for the payroll period of February 1 to 15, 2003 was again withheld and was released only on March 23, 2003, but only half of the amount he was entitled to, or ₱12,411.67 instead of ₱25,000.00.⁹

On February 17, 2003, Bankwise, through Pascua and Galapate, wrote a letter to Gemina, directing him to turn over the service vehicle provided to him by the company to Mr. Joselito Hogar, Head of the Corporate Services Department.¹⁰

On February 19, 2003, Gemina filed a complaint¹¹ for constructive dismissal against Bankwise.

⁵ Id. at 111-113.

⁶ Id. at 146-165.

⁷ Id. at 147.

⁸ Id. at 43.

⁹ Id. at 148.

¹⁰ Id. at 109.

¹¹ Id. at 41.

For its part, Bankwise pointed out that Gemina's employment contract stipulated for a fund level commitment of ₱100,000,000.00 for the first six (6) months of employment. It also contained a provision stating that his performance relative to his ability to generate deposits shall be monitored monthly starting from his 6th month. As of December 27, 2002, after almost five (5) months from his employment, Gemina had the lowest performance level among the members of the fund management group, contributing only ₱2,915,282.97 of deposits out of the ₱100,000,000.00 stipulated fund level commitment. Thus, Bankwise, through its concerned officers called his attention.¹²

In January 2003, Gemina's supervisors sternly warned him that his inability to perform his commitment under the employment contract constitutes a breach or violation of his contractual obligation. Notwithstanding this warning, Gemina went on leave for eleven (11) days from January 17 to 31, 2003. Thereafter, he incurred absences without leave from February 1 to 15, 2003 and did not bother to inform the bank regarding the reason therefor. Pascua and Galapate tried to contact him to inquire about the reason of his long absence and requested him to return the company vehicle but to no avail.¹³

On February 17, 2003, Pascua and Galapate formally issued a memorandum, ordering Gemina to turn over the service vehicle assigned to him. Still, he refused to heed. On the following day, he submitted to Pascua his call report, reflecting his work schedule for the period of February 1 to 18, 2003. Even then, he did not report back to work and instead filed a complaint for illegal dismissal against Bankwise.¹⁴

The Ruling of the Labor Arbiter

On April 30, 2004, the Labor Arbiter (LA) rendered a Decision¹⁵ holding that Gemina was illegally dismissed. The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed. Accordingly, respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights and benefits and payment of backwages from date of dismissal until actual reinstatement which up to the date of this decision already amounts to ₱725,000.00 plus 10% attorney's fees of the total monetary awards due to the complainant.

¹² Id. at 190-191.

¹³ Id. at 191-192.

¹⁴ Id. at 192-193.

¹⁵ Issued by LA Jaime M. Reyno; id. at 42-49.

All other claims are dismissed.

SO ORDERED.¹⁶

The LA held that the officers of Bankwise performed acts of harassment constituting constructive dismissal against Gemina by: (1) depriving him of his duties, benefits and privileges; (2) delaying the release of his salary; and (3) demanding for the return of his service vehicle, in order to make him feel uncomfortable and unwanted in the company.¹⁷ It was also ruled that the fund level commitment stated in Gemina's employment contract was merely a standard by which the latter's performance shall be evaluated. It is not the basis of his employment.

The Ruling of the NLRC

On appeal, the NLRC reversed the decision of the LA in its Decision¹⁸ dated December 29, 2004, holding that Gemina was not constructively dismissed but rather abandoned his employment. The pertinent portions of the decision read:

Anent the alleged delay and/or refusal in the payment of salary, [Gemina] claim[s] that he was not paid his salary for the second quincina of January 2003 (January 17 to 31, 2003) as well as his salary for the period of February 1 to 15, 2003.

In this case, [Gemina] filed a leave of absence for eleven (11) days from January 17 to 31, 2003. Appellants clearly pointed out that during that period, [Gemina's] salary was still on process because the personnel department has yet to determine whether there were remaining available accrued leave credits. The plausible reason therefor was, if there were no remaining available leave credits, consequently [Gemina] is not entitled to the salary covering the said period. x x x.

As regards [Gemina's] salary for the period February 1 to 15 2003, it has been shown that after his leave of absence for the period January 17 to 31, 2003, he started to incur absences without leave (AWOL). x x x.

Relative to the appellant[s'] demand to [Gemina] to surrender the service vehicle, we note that the said vehicle was temporarily assigned to [Gemina's] care as a service unit in the performance of [his] duties (Annex "2", Memorandum dated 04 October 2002). As aptly stressed upon by the appellants, the demand to return the service vehicle was made at that time that [Gemina] has no attendance record and went on AWOL. x x x.

x x x x

¹⁶ Id. at 48-49.

¹⁷ Id. at 46.

¹⁸ Id. at 50-59.

Anent the finding that the fund level commitment in [Gemina's] contract of employment is not a contractual duty on his part, the same is untenable. One crucial fact to consider is that the fund level commitment is part and parcel of the employment contract (ANNEX "1"). Apropos, [Gemina] has the contractual obligation to fulfill and accomplish the said fund level commitment. We note that [Gemina] was hired by respondent bank as Marketing Officer with the rank of Senior Manager in view of his representation that he has a deposit portfolio of more than One Hundred Million Pesos (P100,000,000.00) and was [to] further generate deposits. It appears that after several months, [Gemina] has not delivered his premised (sic) deposit portfolio of more than [P]100M. x x x

x x x x

There is no occasion, therefore, to delve into the question whether there was a constructive dismissal because there was never even any dismissal in the first place. [Gemina's] situation only constitutes a pure and clear case of abandonment of work. Although clear grounds existed to definitely cause the termination of [Gemina], it was [Gemina] who disassociate himself from respondent bank. Hence, there can be no substance to his present claim that he was constructively dismissed. In effect, [Gemina] is deemed to have abandoned his work.

x x x x

WHEREFORE, premises considered, the appealed decision dated 30 April 2004 is hereby **REVERSED** and **SET ASIDE** and a new one entered **DISMISSING** this case.

SO ORDERED.¹⁹

The Ruling of the CA

Undeterred, Gemina filed a petition for *certiorari* with the CA, praying that the Decision dated December 29, 2004 of the NLRC be annulled and set aside. However, in its Decision²⁰ dated July 17, 2006, the CA denied the petition. The CA held:

The Contract of Employment, to which [Gemina] had agreed to be bound, specified as a condition therefor the fund level commitment of P100,000,000.00 for the first six months from the date of employment. The pertinent section thereof further provides that [Gemina's] performance relative to his ability to generate deposits shall be monitored monthly and reviewed on the sixth month. As of December 27, 2002, or on his fifth month at work, [Gemina] had the lowest performance level among the fund management group. He was able to generate only the amount of P2,915,282.97.

¹⁹ Id. at 54-59.

²⁰ Id. at 84-92.

Upon the foregoing premises, it cannot be said that the warnings received by [Gemina] from his immediate supervisors vis-à-vis his deposit portfolio were calculated to harass him. His performance was merely monitored pursuant to the Contract. Unquestionably however, [Gemina] failed to deliver his fund level commitment. The fact that not one among the marketing managers attained the ₱100-million mark is of no moment. Having agreed to commit himself to generate that much deposits, [Gemina] cannot now be heard to complain about the impossibility of fulfillment thereof.

Neither can [Gemina] claim that his salary for the period of February 1 to 15, 2003 was intentionally withheld from him. By his own admission, the personnel[-]in-charge received his Daily Time Record and Attendance Record for the said period only on February 18, 2003. [Gemina], however, filed the complaint *a quo* on February 19, 2003 without giving private respondent sufficient opportunity to compute his salary on the basis of his attendance and to credit the same to his account.
x x x

x x x x

WHEREFORE, premises considered, the instant petition for certiorari is hereby **DENIED**.

SO ORDERED.²¹ (Citations omitted)

On July 31, 2006, Gemina filed a Motion for Reconsideration²² of the foregoing decision but the CA denied the same in its Resolution²³ dated November 7, 2006.

On January 2, 2007, Gemina filed the instant petition for review on *certiorari* with this Court. He contends that the CA erred in finding that he was not constructively dismissed despite the circumstances demonstrating that he had been subjected to several forms of harassment by some officers of Bankwise to make his employment unbearable. To cite a few instances, he claims that Bankwise deleted his name from the organizational chart as early as January 2003 while the names of other officers who also failed to comply with their respective deposit portfolio of ₱100,000,000.00 in six (6) months were retained. Further, his salaries for months of January and February were withheld. He was also ordered to return his service vehicle for no apparent reason at all.²⁴

Gemina further argues that the CA erred in ruling that the fund level commitment of ₱100,000,000.00 stipulated in his employment contract is a condition for employment. He rebuffs the CA's insinuation that he left his

²¹ Id. at 88-89, 92.

²² Id. at 94-100.

²³ Id. at 101.

²⁴ Id. at 34.

employment and filed a complaint for illegal dismissal in order to preempt his termination.²⁵

Meanwhile, in 2008, Bankwise was declared insolvent and the Philippine Deposit Insurance Corporation (PDIC) was designated as its receiver. Subsequently, on February 29, 2008, the PDIC entered its appearance on behalf of Bankwise.

The Ruling of this Court

The fund level commitment is a condition for Gemina's employment.

One of the points in which the LA had a conflicting resolution with the NLRC and the CA is the nature of the stipulation about the fund level commitment of ₱100,000,000.00 in Gemina's employment contract. The LA opined that the mentioned stipulation was not the basis of Gemina's employment such that he cannot be said to have breached a contractual duty when he failed to generate the stated amount of funds. If at all, it was only a measure by which Gemina's performance relative to his ability to generate deposits shall be gauged.²⁶ On the other hand, the NLRC believed that the fund level commitment was the main basis for Gemina's employment. It asseverated that it is the contractual duty of Gemina to fulfill the said fund level commitment considering that he was hired by Bankwise in view of his representation that he can generate said amount of funds for the latter.²⁷ For its part, the CA stressed that the fund level commitment to which Gemina had agreed to be bound in his contract of employment is a condition which he must fulfill. Having agreed to commit himself to generate that much amount of deposits, he cannot now complain about the impossibility of fulfillment thereof.²⁸

The subject stipulation in Gemina's contract of employment states, thus:

Dear Mr. Gemina:

We are pleased to inform about your appointment effective **August 1, 2002 as Marketing Officer with the rank of Senior Manager** subject to the following terms and conditions:

²⁵ Id. at 33.
²⁶ Id. at 48.
²⁷ Id. at 56.
²⁸ Id. at 88-89.

1. Fund Level Commitment (ADB) from date of employment

Month 1	-	Month 6	= PHP 100 M
Month 7	-	Month 12	= PHP 200 M

Your performance relative to your ability to generate deposits shall be monitored monthly and reviewed on your 6th month.²⁹

Indeed, a fund level commitment was stipulated as a term or condition on Gemina's contract of employment. Though not *per se* a ground for dismissal, it is the standard by which Gemina's performance will be evaluated by Bankwise's management. Thus, the contract states, "[y]our performance relative to your ability to generate deposits shall be monitored monthly and reviewed on your 6th month." The stated amount of funds sets the goal or target amount of funds which Gemina should strive to generate within a specific number of months.

It must be clear, however, that the fund level commitment is not the sole basis of Gemina's employment. In the same manner, the failure to comply with this undertaking does not automatically lead to dismissal from employment. Gemina will still be subjected to the management's evaluation to determine his performance based on the amount of funds he was able to bring in to the coffers of Bankwise. Even then, Gemina may not conveniently brush aside compliance with the fund level commitment, thinking that it does not have any implication on employment. It bears stressing that while not an automatic ground for dismissal, the failure to generate the funds translates to a poor performance rating which may ultimately jeopardize his continued employment. Depending on the results of the periodic evaluation undertaken by the management, the failure to comply with the fund level commitment may eventually justify his dismissal from employment. Thus, Gemina must put forth all his efforts in order to fulfill his fund level commitment.

There was no constructive dismissal.

There is constructive dismissal when "there is cessation of work, because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."³⁰

²⁹ Id. at 111.

³⁰ *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 555, citing *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117-118.

As correctly held by the NLRC and the CA, Gemina's claim of constructive dismissal is not supported by the facts of the case. Both tribunals ruled that the circumstances mentioned by Gemina do not partake of discriminatory acts calculated to force him to leave employment. The acts complained of merely pertain to the legitimate exercise of management prerogatives.

“[S]ettled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”³¹ “The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.”³²

A close scrutiny of the facts of the case will bear out that Gemina indeed failed to state circumstances substantiating his claim of constructive dismissal. To begin with, he does not claim to have suffered a demotion in rank or diminution in pay or other benefits. What he claims is that he had been subjected to several acts of harassment by some of the officers of Bankwise by way of (1) asking him to take a forced leave of absence, (2) demanding for the return of his service vehicle, and (3) delaying the release of his salaries and allowances in order to compel him to quit employment.

It is a well-settled rule, however, that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.³³

In the instant case, the records are bereft of substantial evidence that will unmistakably establish a case of constructive dismissal. An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment. Here, the circumstances relayed by Gemina were not clear-cut indications of

³¹ *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 324, citing *Philippine Veterans Bank v. NLRC*, G.R. No. 188882, March 30, 2010, 617 SCRA 204.

³² *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686, SCRA 676, 684, citing *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541.

³³ *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.

bad faith or some malicious design on the part of Bankwise to make his working environment insufferable.

Moreover, Bankwise was able to address the allegations of harassment hurled against its officers and offered a plausible justification for its actions. It explained that the delay in the release of Gemina's salary was not intentional. It pointed out that Gemina went on leave for eleven (11) days from January 17 to 31, 2003 and reported back to work only in February. Considering that he had only worked the company for less than six (6) months, the personnel department needed some time to compute his salary, taking into account his accrued leave credits and assessing if the same is enough to cover the number of days he went on leave. After determining that Gemina's leave of absence can be charged to his accrued leave credits, his salary was immediately credited to his account. As regards the delay in the release of his salary for February 1 to 15, 2003, it was shown that Gemina incurred absences without leave within the said payroll period and failed to submit his attendance record. The procedure for monitoring the attendance of employees on field work, like Gemina, requires the accomplishment of an attendance form, duly signed by the certifying officer and noted by their immediate supervisors.³⁴ However, Gemina failed to submit his attendance report promptly, hence, the delay in the release of his salary.

The Court also finds Bankwise's order to return the service vehicle assigned to Gemina inadequate to warrant his claim of constructive dismissal. It bears noting that the service vehicle was only temporarily assigned for Gemina's use. Nonetheless, it remains the property of the Bank and therefore may be disposed of or utilized by the company in the manner that it deems more beneficial for its interests. This is plainly an exercise of management prerogative. The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment and the only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable.³⁵

It must be noted that the service vehicle was assigned to Gemina in order to facilitate his field work. However, in January 2003, he went on official leave for almost two (2) weeks, thereby stalling his field work. Thereafter, he incurred absences without leave in the first two (2) weeks of February 2003. Believing that the service vehicle was not being put to its intended use, the management of Bankwise decided to re-assign the service

³⁴ *Rollo*, p. 55.

³⁵ *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398-399.

vehicle to the marketing department so that it can instead be used as a car pool for the unit's increasing manpower.³⁶ The order to return the service vehicle came in only on February 17, 2003, after Gemina incurred absences without leave and ultimately stopped reporting for work. Even then, he refused to surrender the possession of the service vehicle and instead filed a complaint for illegal dismissal two (2) days after receiving the notice to return.

Finally, as regards Gemina's allegation that he was verbally being compelled to go on leave, enough it is to say that there was no evidence presented to prove the same. There was not a single letter or document that would corroborate his claim that he was being forced to quit employment. He even went on leave in January 2003 and never claimed that it was prompted by the management's prodding but did so out of his own volition.

Without substantial evidence to support his claim, Gemina's claim of constructive dismissal must fail. It is an inflexible rule that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process.³⁷

WHEREFORE, in view of the foregoing disquisition, the instant petition for review on *certiorari* is **DENIED**. The Decision dated July 17, 2006 and Resolution dated November 7, 2006 of the Court of Appeals in CA-G.R. SP No. 89343 are **AFFIRMED**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

³⁶ *Rollo*, p. 191.

³⁷ *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 505.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice