PIO

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TELUS INTERNATIONAL PHILIPPINES, INC. and MICHAEL SY,
Petitioners,

- *versus* -

HARVEY DE GUZMAN,
Respondent.

G.R. No. 202676

Present:

PERLAS-BERNABE.,* *J.*,
REYES, A., JR.,**
Acting Chairperson,
HERNANDO,
INTING, and
ZALAMEDA,*** *JJ.*

Promulgated:

04 DEC 2019

x - x

DECISION

HERNANDO, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by petitioner Telus International Philippines, Inc. (Telus) and Michael Sy assailing the March 15, 2012 Decision[2] and the July 9, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 114574 which reversed the ruling of the National Labor Relations Commission[4] (NLRC) and reinstated the ruling of the Labor Arbiter finding respondent Harvey de Guzman constructively dismissed.[5]

---

* On official business.
** Per Special Order No. 2750 dated November 27, 2019.
*** Designated additional member per Special Order No. 2727 dated October 25, 2019; on official leave.
[1] *Rollo*, pp. 10-40.
[2] Id. at 42-55; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr.
[3] Id. at 57-58; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Apolinario D. Bruselas, Jr.
[4] CA *rollo*, pp. 44-58.
[5] *Id.* at 60-75.

Factual Antecedents

Petitioners' Version

Telus asserted that it first hired respondent Harvey De Guzman (De Guzman) sometime in September 2004 as Inbound Sales Associate.[6] His last post prior to the controversy was Senior Quality Analyst for DELL After Point of Sale (DELL, APoS).[7]

On August 2, 2008, Telus received an escalation complaint[8] from Jeanelyn Flores (Flores), Team Captain of DELL APoS, charging De Guzman of disrespect and ridicule towards a person.

The escalation complaint alleged that on July 31, 2008, Flores, while in the process of checking the work progress of all the agents to determine if coaching was required to improve their performance, sent a chat message to Quality Analysts (QA) directing them to do coaching. She messaged: *"QAs there are tons of avails, do your coaching."*[9]

De Guzman who was among the QAs who received the message, replied: *"that is good, you can now do your huddle for your team."*[10] Flores was offended when the other QAs exited the conversation and by De Guzman's reply as she felt that he was implying that she has no time for her team.

Later on, she chanced upon the August 1, 2008 IP switch conversation between De Guzman and a fellow agent, Rally Boy Sy (Rally Boy), wherein De Guzman made disrespectful remarks against her,[11] thus:

> rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
> [rallyboy]: *dami* avail
> [rallyboy]: do your coaching
> harvey.deguzman / QAA E&A 10th Raffles QA Lab ext 3580
> [harveydeguzman]: that is good
> [harveydeguzman]: you can now do a huddle for your team
> [harveydeguzman]: hahaha
> [rallyboy]: hahaha
> [rallyboy]: *sabihin ko nalang* avail you face
> harveydeguzman: hahaha
> [rallyboy]: *may* upload *pa kami*?
> harveydeguzman: wait *lang*
> [rallyboy]: *tang ina ah gugulpihin ko talaga yan*
> [harveydeguzman]: *di pa maka gawa si nino*[12]

---

[6] *Id.* at 96-100.
[7] *Id.* at 106-107.
[8] *Id.* at 135.
[9] *Id.* at 45.
[10] *Id.* at 135.
[11] *Rollo*, pp. 15-16.
[12] CA *rollo*, p. 211.

Acting on the complaint of Flores, Telus, on August 4, 2008, issued a Due Process form to De Guzman on charges of "[i]nsulting or showing discourtesy, disrespect, or arrogance towards superiors or co-team members [and a]busive behavior language which is outside the bounds of morality"[13] in violation of Section 2, Disorderly Conduct, Items 60 and 61 of Telus' Code of Conduct. At the same time, De Guzman was placed on preventive suspension and was directed to submit a written explanation to answer the charges on or before August 7, 2008. De Guzman complied and submitted his written explanation.[14]

On August 11, 2008, Telus conducted an administrative hearing on the matter. Upon termination of the investigation, Telus found De Guzman not liable for the offenses charged and did not impose any disciplinary sanction against him. Accordingly, De Guzman's preventive suspension was lifted and he was fully compensated during the period.[15]

Telus, however, decided to remove De Guzman from his current designation and transfer him to another *practice*. On August 20, 2008, the Director of Contact Center Operation confirmed and requested the transfer of De Guzman citing operations reasons.[16] The day after, De Guzman applied for paid vacation leave from August 21 to September 26, 2008 or 26 days citing "Personal Reason[s]."[17]

Meanwhile, Telus scheduled De Guzman for a profile interview on September 16, 2008 which coincided with his leave of absence. On the said date, De Guzman notified his supervisor that he will not be able to attend the interview. When asked for the reason of his inability to attend, De Guzman failed to give an answer.[18]

Telus once again tried to schedule De Guzman for a profile interview on October 13, 2008 but he again failed to show up or even acknowledge such scheduled interview.[19]

Hence, Telus sent De Guzman a Return to Work Order dated October 13, 2008.[20] Later on, Telus found out that as early as September 15, 2008, De Guzman already filed a complaint for constructive dismissal with monetary claims before the NLRC notwithstanding that he was still on paid vacation leave and was receiving all benefits during the said period.[21] Telus claimed that De Guzman was not at all dismissed from employment and was in fact scheduled for profile interviews to facilitate his transfer. Considering,

---

[13] *Id.* at 102.
[14] *Id.* at 103.
[15] *Id.* at 213.
[16] *Id.* at 214.
[17] *Id.* at 215.
[18] *Id.* at 216-217.
[19] *Id.* at 220.
[20] *Id.* at 221.
[21] *Id.* at 18.

-4

however, his refusal to report for the interviews, he was not given any account and was placed on "floating status" allegedly because there was yet no available account for him.[22]

Respondent's Version

De Guzman, on the other hand, averred that he was a regular employee in good standing of Telus and had been with the company for the last four years since 2004. He was hired as a call center agent and eventually rose from the ranks; he was promoted to Junior Quality Analyst and, later on, to his last post as Senior Quality Analyst (SQA).[23]

As SQA, he supervised two teams composed of six agents. He was tasked to monitor and evaluate the calls taken by the agents and to ensure that the quality of handling the calls were met. He was required to make a report and submit the same to the Quality Analyst Supervisor, his immediate superior.[24]

On July 31, 2008, during his night shift, De Guzman received from Flores an office chat message through the intranet system that can be shared and accessed by those in the company. The message states: *"QAs there are tons of avails, do your coaching."* De Guzman thus replied *"That's good, you can do a huddle for your team."*[25]

"QA" in call center parlance translates to Quality Analyst and "avails" means a decrease in the volume of calls received by agents and they may be coached and rated on a specific call for their improvement. Meanwhile, "Coaching/Huddle" means informing the agents on the quality of their performance during a telephone conversation and teaching them how to rectify their errors.[26]

Notably, Flores, as Team Captain, cannot order QAs to do coaching as her authority was limited only to her specific team. Hence, De Guzman excused himself by adding: *"Got to go."* No further messages were exchanged between the two of them.[27]

The following day, August 1, 2008, Rally Boy, a Junior Quality Analyst and a friend, initiated an exchange of messages via the same office intranet messaging. Since Rally Boy and De Guzman utilized the office intranet messaging system, Flores chanced upon the conversation which became the subject of her escalation complaint. She thus sent De Guzman an excerpt of

---

[22] *Id.* at 48.
[23] *Id.* at 9.
[24] *Id.* at 9-10.
[25] *Id.* at 10.
[26] *Id.*
[27] *Id.* at 10-11.

the conversation and added "NICE!!!!!!!". De Guzman no longer replied to the message.[28] The excerpt reads:

> rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
> [rallyboy]: *dami* avail
> [rallyboy]: do your coaching
> harvey.deguzman / QAA E&A 10th Raffles QA Lab ext 3580
> [harveydeguzman]: that is good
> [harveydeguzman]: you can now do a huddle for your team
> [harveydeguzman]: hahaha
> [rallyboy]: hahaha
> [rallyboy]: *sabihin ko nalang* avail you face
> harveydeguzman: hahaha
>
> **NICE!!!!!!!!!!!!!!!!!!!!!!!!**[29]

On August 5, 2008, De Guzman received a call from his immediate QA Supervisor, Alfelyn "Joey" Caspellan (Joey), asking him to report to Michael Sy (Sy), Telus' Quality Analyst Manager. When he went to Sy's office, Sy gave him a copy of the Incident Report for the alleged issue that transpired on August 1, 2008. He was directed to give an answer on or before August 7, 2008. He was also informed right then and there that he was placed on indefinite preventive suspension effective immediately.[30]

De Guzman was shocked that he was being penalized for the exchange of messages he shared with Rally Boy without first affording him any opportunity to give his side of the story. To him, there was nothing wrong with his actions. It did not constitute any company violation to even merit an immediate preventive suspension.[31]

On August 7, 2008, De Guzman submitted his Reply[32] insisting that he did not in any way refer to Flores and his remark "you can now do your huddle for your team" was directed towards Rally's team's accountability. He also questioned his preventive suspension since based on the policies set in the company handbook, the action taken by the company was uncalled for. The relevant portion of his reply reads:

> On the employee handbook, Sec (2) 60-61 both states that the disciplinary action are "Written Warning and may lead to Termination". Furthermore, on page 2 of the said document, it states that the rationale for imposing preventive suspension is that, "the continued service of the team member poses an imminent threat to the lives and properties of the Company, his family and representatives as well as the offender's co-team members". For this reason may we ask for a written explanation why we are put in preventive suspension. As a Telus employee we believe that we also deserve fair due process. We can't see any reason why our stay in the company will

---

[28] *Id.* at 12.
[29] *Id.* at 211.
[30] *Id.* at 12.
[31] *Id.* at 12-13.
[32] *Id.* at 103.

> bring any threat to our team members, co-workers nor the company because we don't have anything against any person in the company. Again the accusation is based on their assumptions.[33]

Feeling aggrieved, De Guzman filed a complaint before the Department of Labor and Employment (DOLE) for illegal suspension.[34] DOLE summoned Telus and De Guzman to come up with an amicable settlement, but the same failed. On August 17, 2008, after the termination of the proceedings in the DOLE, De Guzman received a text message from Joey telling him to report to Sy to know the status of his preventive suspension.[35]

On the evening of August 20, 2008, De Guzman, together with Rally Boy, went to Sy's office. Thereat, they were told that their suspension was lifted and that they were not liable for the incident that transpired on August 1, 2008. Nonetheless, they will be transferred to a different account and they were to report the next day in Market Market, BGC Branch.[36]

Thinking that everything was in order, they eagerly reported to their night shift schedule in Market Market. They waited, as per advise of Sy, for Director Charlene Briones. However, at around one o'clock in the morning they received a text message from Joey asking them to report to the Ortigas office instead. Despite the inconvenience, they left Market Market and went to the Ortigas office. Thereat, they were told by Joey that Sy made a mistake in instructing them to report for work and that Sy would still need to find an account for them. Hence, they did not have any work yet despite the lifting of their suspension.[37]

De Guzman was then forced to apply for a vacation leave, while Sy was still looking for an account for them. In his desire to keep his job and to receive his salary, he exhausted his earned vacation leaves and used up 26 days from August 22 to September 26, 2008.[38]

On September 28, 2008, after all his vacation leaves were spent and a month after his preventive suspension, De Guzman inquired from Sy when he can report for work. He was told that he would still report to him but since there was no endorsement yet for another program, he was not yet required to return to work. As it is, he was considered as a "floater" and he will not get paid unless his floating status has been lifted. De Guzman was devastated and was surprised that he was suddenly considered as a "floater."[39]

On October 10, 2008, De Guzman received a message from Sy that there was a temporary endorsement in the Quality Analyst Core and he should

---

[33] *Id.* at 158.
[34] *Id.* at 104.
[35] *Id.* at 14.
[36] *Id.*
[37] *Id.* at 14-15.
[38] *Id.* at 15.
[39] *Id.* at 16-17.

report on October 11, 2008 for a profiling interview and that it was necessary to pass the same in order for him to get the position. De Guzman asked Sy why he needed to undergo such interview considering that he was not a new hire or a job applicant. Sy responded that passing the interview is a must as he was already considered a "floater." He was told that during his "floating" status he will not be compensated.[40]

Believing that he need not undergo such process and that he must be reinstated to his former position immediately, De Guzman did not report for the interviews. He alleged that he was already considered a regular employee having been with the company for four years with an impeccable record and even promoted several times prior to such incident.[41]

The foregoing series of events led to De Guzman's filing of a complaint before the NLRC for constructive dismissal, money claims and damages against petitioners.[42]

The Ruling of the Labor Arbiter

The Labor Arbiter, in his Decision[43] dated June 30, 2009, adjudged Telus guilty of constructively dismissing De Guzman. The dispositive portion of the Decision reads:

> **WHEREFORE**, the foregoing premises considered, judgment is hereby rendered finding the respondents liable for illegally (constructively) dismissing the complainant. They are hereby ORDERED to pay, jointly and severally, the complainant his *separation pay, full backwages, moral and exemplary damages, and attorney's fees.*
>
> A detailed computation of the monetary awards, as of the date of this **Decision**, is embodied in Annex "A" which is hereby made an integral part hereof.
>
> All other claims of the parties are DENIED for lack of factual and legal bases.
>
> **SO ORDERED**.[44] (Emphasis and italics in the original.)

The Labor Arbiter held that since De Guzman was not immediately reinstated to his former position after his preventive suspension despite a finding that he was not guilty of the offense charged, coupled with the fact that he was transferred and had to undergo and pass the profile interview before he may be given a new account, conclusively supported the finding of constructive dismissal on the part of Telus.[45]

---

[40] *Id.*
[41] *Id.* at 17.
[42] *Id* at 106-109.
[43] *Id.* at 60-74.
[44] *Id.* at 74.
[45] *Id.* at 70-72.

Since there was already strained relations between the parties foreclosing the possibility of reinstatement, De Guzman was adjudged entitled to separation pay in lieu of reinstatement.[46]

Aggrieved by the Decision of the Labor Arbiter, Telus filed its Memorandum of Appeal before the NLRC.[47]

The Ruling of the NLRC

Upon review, the NLRC overturned the ruling of the Labor Arbiter.[48] The NLRC found that De Guzman failed to prove by substantial evidence that he was constructively dismissed. As borne out by the records, there was no termination that transpired. Telus was planning to reinstate De Guzman to his former position as QA Analyst after his preventive suspension. Hence, for all intents and purposes, De Guzman was still connected to Telus after the lifting of the suspension order.[49]

Contrary to the findings of the Labor Arbiter, it was De Guzman who ceased working with Telus after he opted not to report after the expiration of his vacation leave and because of his refusal to undergo the profiling interview for his new account/*practice*. Telus' decision to transfer him to another account and to require him to undergo profile interviews were valid exercises of management prerogative.

Considering too that the transfer was not for a lower rank, it was indeed a transfer in good faith. Moreover, Telus' justification of "operations purposes" in order to avoid any untoward incident between De Guzman and Flores was acceptable. The fact that such move to transfer resulted in De Guzman being a "floater" or on "floating status" was not a form of discrimination on the part of Telus.[50]

The NLRC noted that in Telus' line of business, the availability of assignment of personnel depends on contracts entered by it with its client-third parties. Hence, some agents, like De Guzman, may be sidelined temporarily until such time that he is assigned to a new account. The same can be compared to being "off-detail" or "waiting to be posted" which are allowed by labor laws. All in all, there was no finding of constructive dismissal but a mere exercise of management prerogative.[51]

Thus, the dispositive portion of the January 22, 2010 Decision of the NLRC states:

---

[46] *Id.* at 72-73.
[47] *Id.* at 260-290.
[48] *Id.* at 58.
[49] *Id.* at 52.
[50] *Id.* at 52-53.
[51] *Id.* at 54-55.

> **WHEREFORE**, in view of the foregoing disquisitions, the appeal is **GRANTED.**
>
> Accordingly, the Decision dated 30 June 2009 is **REVERSED** and **SET ASIDE** and a new one is entered **DISMISSING** the complaint for illegal suspension, illegal dismissal and money claims for lack of merit.
>
> **SO ORDERED**.[52] (Emphasis in the original.)

Unsatisfied with the ruling of the NLRC, De Guzman filed a Motion for Reconsideration[53] but it was denied in the NLRC's Resolution[54] dated March 24, 2010. Thus, he filed a Petition for *Certiorari*[55] before the Court of Appeals.

The Ruling of the Court of Appeals

In its assailed judgment, the CA found that the NLRC committed grave abuse of discretion when it adjudged Telus not guilty of illegally dismissing De Guzman. It agreed with the findings of the Labor Arbiter that indeed De Guzman was constructively dismissed. The appellate court ratiocinated that the failure of Telus to immediately reinstate De Guzman to his former position after his exoneration marked his constructive dismissal. Worse, he was placed on floating status which was a discriminatory act that buttressed the act of dismissal by Telus.[56]

The series of harsh and unfair acts of Telus towards De Guzman were the following: 1) putting De Guzman on preventive suspension and failing to reinstate him to his former position after exonerating him; 2) initially advising De Guzman to report for work in Market Market and then taking it back as there was no account yet available to him; 3) putting him on floating status after all his leave credits were consumed and after a month from his exoneration; and 4) requiring him to undergo profiling interview and passing it to gain a new account clearly made his employment condition uncongenial, averse and intolerable. The prevailing discriminatory and hostile working environment hoisted by Telus against De Guzman clearly justified De Guzman's refusal to attend the profile interviews as the foregoing constituted constructive dismissal.[57]

De Guzman cannot also be considered to have abandoned his job as his acts before and after the cessation of work, especially the filing of the illegal dismissal complaint negated the same.[58]

---

[52] *Id.* at 57-58.
[53] *Id.* at 80-95.
[54] *Id* .at 77-79.
[55] *Id.* at 3-42.
[56] *Rollo*, pp. 50-51.
[57] *Id.*
[58] *Id.* at 52-53.

In fine, the CA found that De Guzman was constructively dismissed. The dispositive portion of the judgment reads:

> **WHEREFORE**, the foregoing considered, the petition is **GRANTED**. The assailed Decision dated 22 January 2010 and Resolution dated 24 March 2010 of the NLRC are hereby **REVERSED** and **SET ASIDE**. The Decision dated 30 June 2009 of Labor Arbiter Ligerio V. Ancheta is **REINSTATED**. The case is **REMANDED** to the Labor Arbiter for the recomputation of the total monetary benefits awarded and due to the petitioner in accordance with the decision.
>
> **SO ORDERED.**[59]

Unsatisfied with the conclusion of the CA, Telus filed its Motion for Reconsideration but it was denied.[60] Hence, this Petition for Review[61] on *Certiorari* before this Court.

Our Ruling

The instant Petition for Review on *Certiorari* is **denied**.

Petitioner Telus interposes that the CA erred in taking into account the alleged inconveniences caused to De Guzman brought about by Telus' management's actions without considering the primordial issue of whether or not the company had the legal right to implement such actions. It argues that Telus' acts of transferring De Guzman to another *practice* or account, of requiring him to undergo profile interviews, and placing him on floating status pending his transfer to another *practice* or account, were all made in the exercise of management prerogatives. Telus merely exercised its rights and so, any inconvenience or injury that De Guzman may have suffered is *damnum absque injuria* that cannot legally give rise to a cause of action for constructive dismissal.[62]

Telus also submits that the CA erred in admitting the Petition for *Certiorari* filed therein considering that the accompanying Verification and Certification of Non-Forum shopping was defective which merits the outright dismissal of the Petition.

The arguments raised by Telus deserve scant consideration.

Exceptions to Questions of Law

At this juncture, We emphasize that questions of fact are generally beyond the domain of a Petition for Review under Rule 45 of the Rules of

---

[59] *Id.* at 54.
[60] *Id.* at 57-58.
[61] *Id.* at 10-40.
[62] *Id.* at 20-21.

Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein this Court expands the coverage of a Petition for Review to include a resolution of questions of fact. One of those exceptions is when the lower court committed misapprehension of facts or when relevant facts not disputed by the parties were overlooked which, if properly considered, would justify a different conclusion.[63] Such exception finds application in the instant case considering that the findings of facts and conclusion by the NLRC differed from that of the Labor Arbiter as affirmed by the CA. This Court is thus compelled to take a second look at the facts of the case to determine whether the respondent was constructively dismissed or not.

Constructive Dismissal against Security of Tenure

Our labor laws and the Constitution afford security of tenure to employees that one may have a reasonable expectation that they are secured in their work and that management prerogative, although unilaterally wielded, will not harm them.[64] Employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process.

Similarly, labor laws and the Constitution recognize the right of the employers to regulate, according to his/her own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.[65]

After a judicious review of the facts of the case, this Court finds that De Guzman's security of tenure was disregarded and his employment was illegally terminated by Telus. The series of acts by the company seriously flouted De Guzman's right as a tenured employee.

In *Sumifru Philippines Corporation v. Baya*,[66] this Court explained what constitutes constructive dismissal:

> **"Constructive dismissal exists where there is cessation of work, because 'continued employment is rendered impossible, unreasonable**

---

[63] *Ico v. Systems Technology Institute, Inc.*, 738 Phil. 641, 665-666 (2014).

[64] *See* Article XVIII, Section 3 of the 1987 Constitution and Art. 3 of the Labor Code: Art. 3. *Declaration of basic policy*. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[65] *See Philippine Span Asia Carriers Corporation. v. Pelayo*, G.R. No. 212003, February 28, 2018, 856 SCRA 583.

[66] 808 Phil. 365, 644 (2017).

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." *In Peckson v. Robinsons Supermarket Corp.*, the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal, *viz.*:

> **In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such 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.** Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. (Emphasis Ours, citations omitted)

Based on the foregoing, the series of actions done by Telus manifests that De Guzman was terminated in disguise and such actions amount to constructive dismissal. We cite with approval the findings of the appellate court, to wit:

> Furthermore, it can easily be discerned that the series of harsh and unfair acts of the private respondents have made the employment condition of petitioner uncongenial, averse, and intolerable. ***First***, after finding petitioner not liable for the offense charged, respondents did not immediately reinstate petitioner to his former position. ***Second***, private respondents informed petitioner that he was being transferred to a new account and directed to report to the Telus' branch office at Market, Market, Global City, Taguig City. However, after a few hours, respondents asked petitioner to just go home and wait since they needed time to search for his account. While waiting for the promised new account, petitioner was compelled to utilize his leave credits. ***Third***, after his leave credits were consumed, private respondents placed petitioner on a floating status. It bears stressing that after more than one (1) month from his exoneration and the lifting of the suspension, private respondents have not assigned petitioner a new account. ***Finally***, respondents required petitioner to undergo a profile interview supposedly to determine which account would he would best fit in. In this connection, while it was stressed that such profile interview was not a pre-qualification requirement for employment, petitioner nonetheless received a text message from his manager, respondent Michael Sy, informing him that he should pass the interview in order to be endorsed to a new account.[67]

---

[67] *Rollo*, pp. 50-51.

The conclusion is all too clear that Telus fostered a working environment that was hostile, discriminatory, unreasonable, and inequitable that naturally compelled De Guzman to give up his employment thereat to avoid the difficulties he had to face just to keep his employment. The actions of Telus show that De Guzman was actually subsequently penalized with a much graver consequence than the supposed preventive suspension that he had undergone.

If at all, Telus conveniently used "management prerogative" to mask its adverse actions and washed its hands by conveniently claiming that it timely lifted the preventive suspension of De Guzman. It maintained that it did not at all penalize De Guzman and in fact exonerated him and paid his salaries. It denied dismissing him and further contended that it actually desired De Guzman to be reinstated to his former post but had to transfer him because of operation requirements. Telus handily turned the tables on De Guzman and made it appear that it was due to his hardheaded refusal that barred his reinstatement.[68]

It should be noted that a mere desire to reinstate an employee to his/her former position does not satisfy the requirement of the law. Such cannot amount to substantial compliance on the part of the employer nor will it effectively negate the idea that the employee was not being dismissed after the period of preventive suspension. To allow "desire to reinstate," especially when there is no bar at all to actual reinstatement, as substantial compliance to the need to revert the employee to his/her former post without diminution in rank or in pay would defeat the very essence of the constitutional guarantee of security of tenure. Employees who had undergone preventive suspension and were found innocent of the offense charged would be at the mercy of the employer to be brought back to his/her former working post and status when in the first place, he/she had a vested right to the position from which he/she was ousted.

Validity of Transfer and Floating Status vis-à-vis Management Prerogative

Prescinding from the above, this Court cannot likewise subscribe to the argument of the company that placing De Guzman on "floating status" was perfectly acceptable under the labor laws. Telus compared De Guzman's circumstances to that of security guards on "off detail" and insists that the call center industry is on all fours with that of a security agency or bus companies to their drivers wherein placing the employees on floating status without salaries or financial benefit for an indefinite time is a valid recourse so long as it does not exceed six months.[69]

---

[68] *Id.* at 26-30.
[69] *Id.* at 30-33.

Contrary to the stance of Telus, the floating status principle does not find application in the instant case. While it may be argued that the nature of the call center business is such that it is subject to seasonal peaks and troughs because of client pullouts, changes in clients' requirements and demands, and a myriad other factors,[70] still, the necessity to transfer De Guzman to another *practice*/account does not depend on Telus' third party-client/contracts. When the controversy arose, Telus had several clients in its roster to which it can easily assign De Guzman as Quality Analyst without any hindrance. As earlier admitted by Telus, profiling interviews were not a condition precedent to the transfer. Moreover, as established before the Labor Arbiter, after the lifting of the preventive suspension of De Guzman by Telus, the company had several job vacancy postings for the position of Quality Analysts, the very position previously occupied by De Guzman.[71]

While there is no specific provision in the Labor Code which governs the "floating status" or temporary "off detail" of workers employed by agencies, it is implicitly recognized in Article 301 of the Labor Code which speaks of situations of temporary retrenchment or lay-off due to valid operation issues.[72]

Article 301 (formerly Article 286) of the Labor Code, provides:

> ART. 301. [286] *When Employment not Deemed Terminated.* The bonafide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

This situation applies not only in security services but also in other industries. Relevantly, it has been held that "[i]n all cases however, the temporary lay-off wherein the employees cease to work should not exceed six months, in consonance with Article 301 of the Labor Code. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law. Otherwise, the employees are considered as constructively dismissed from work and the agency can be held liable for such dismissal."[73]

Moreover, this Court has held that placing employees in a valid "floating status" presupposes that there are more employees than work. In

---

[70] Temporary lay-off: A concern in call centers, September 26, 2012, Joseph D. Angel, Business World Online.Website:http://www.bworldonline.com/content.php?section=Opinion&title=Temporary%20layoff:%20A%20concern%20in%20call%20centers&id=59070. Last visited November 6, 2019.
[71] CA *rollo*, p. 136.
[72] *Excocet Security and Allied Services Corp. v. Serrano*, 744 Phil. 403, 412 (2014).
[73] *Superior Maintenance Services, Inc. v. Bermeo*, G.R. No. 203185, December 5, 2018.

ICT Marketing Services, Inc. v. Sales,[74] We elaborated on the concept of "floating status," to wit:

> **In placing respondent on "floating status," petitioner further acted arbitrarily and unfairly, making life unbearable for her. In so doing, it treated respondent as if she were a new hire; it improperly disregarded her experience, status, performance, and achievements in the company; and most importantly, respondent was illegally deprived of her salary and other emoluments.** For her single absence during training for the Bank of America account, she was refused certification, and as a result, she was placed on floating status and her salary was withheld. **Clearly, this was an act of discrimination and unfairness considering that she was not an inexperienced new hire, but a promising and award-winning employee who was more than eager to succeed within the company.** This conclusion is not totally baseless, and is rooted in her outstanding performance at the Washington Mutual account and her complaint regarding the incentives, which only proves her zeal, positive work attitude, and drive to achieve financial success through hard work. But instead of rewarding her, petitioner unduly punished her; instead of inspiring her, petitioner dashed her hopes and dreams; in return for her industry, idealism, positive outlook and fervor, petitioner left her with a legacy of, and awful examples in, office politicking, intrigue, and internecine schemes.
>
> In effect, respondent's transfer to the Bank of America account was not only unreasonable, unfair, inconvenient, and prejudicial to her; it was effectively a demotion in rank and diminution of her salaries, privileges and other benefits. She was unfairly treated as a new hire, and eventually her salaries, privileges and other benefits were withheld when petitioner refused to certify her and instead placed her on floating status. Far from being an "accommodation" as petitioner repeatedly insists, respondent became the victim of a series of illegal punitive measures inflicted upon her by the former.
>
> **Besides, as correctly argued by respondent, there is no basis to place her on "floating status" in the first place since petitioner continued to hire new CSRs/TSRs during the period, as shown by its paid advertisements and placements in leading newspapers seeking to hire new CSRs/TSRs and other employees. True enough, the placing of an employee on "floating status" presupposes, among others, that there is less work than there are employees; but if petitioner continued to hire new CSRs/TSRs, then surely there is a surplus of work available for its existing employees: there is no need at all to place respondent on floating status. If any, respondent – with her experience, knowledge, familiarity with the workings of the company, and achievements – should be the first to be given work or posted with new clients/accounts, and not new hires who have no experience working for petitioner or who have no related experience at all. Once more, experience, common sense, and logic go against the position of petitioner.**
>
> **The CA could not be more correct in its pronouncement that placing an employee on floating status presents dire consequences for him or her, occasioned by the withholding of wages and benefits while**

[74] 769 Phil. 498, 521-523 (2015).

> **he or she is not reinstated. To restate what the appellate court cited, "[d]ue to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned." However, petitioner has failed miserably in this regard.** (Emphasis ours, citations omitted)

In the instant case, Telus did not provide any valid justification or presented proof that there was indeed a deficit of account that bars the immediate transfer of De Guzman or that the company was sustaining losses that would justify placing De Guzman on floating status. Hence, the unwarranted acts of Telus evidently constitute proof of the constructive dismissal of De Guzman.

To say that Telus merely exercised its rights and that any inconvenience or injury that De Guzman may have suffered resulted merely in *damnum absque injuria* which cannot legally give rise to a cause of action for constructive dismissal, is abhorrent considering the fact that his being placed on a "floating status" without valid reasons violated his security of tenure and resulted in unfavorable economic consequences to De Guzman.

Validity of Verification and Certification of Non-Forum Shopping

Telus insists that De Guzman did not submit a duly executed Verification and Certification of Non-Forum Shopping when he filed his Petition for *Certiorari* before the CA. It alleged that his signature therein was forged and the same may easily be ascertained when compared with his signatures in the previous pleadings. Telus insisted that this issue was raised before the appellate court but it was not passed upon. Hence, the Petition for *Certiorari* ought to have been dismissed outright. Notably, up until now, De Guzman refused to acknowledge or validate the authorship of the assailed signature. Due to the foregoing, Telus insists that it was deprived of due process.[75]

In *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*,[76] the Court restated the jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The**

---

[75] *Rollo*, pp. 591-593.
[76] 614 Phil. 222, 231-232 (2009).

Court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (Emphasis Ours)

The issue as to alleged defective Verification and Certification of Non-Forum Shopping appended to the Petition for *Certiorari* filed before the appellate court is rendered moot given the full resolution of the said Petition. We find that said court properly dispensed with the issue of the alleged defective Verification and Certification of Non-Forum Shopping given the overriding merits of the case. Indeed, per jurisprudence, strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

Moreover, We agree with De Guzman that a mere allegation of forgery will not suffice to declare the petition as defective. It is De Guzman's own lookout to assail the alleged forgery and as manifested, he is willing to attest to the authenticity of the signature if so required.[77]

Pecuniary Awards

Finally, with the foregoing pronouncements, an award of indemnity in favor of De Guzman is warranted. We have held that in case of constructive dismissal, the employee is entitled to full back wages,

---

[77] *Rollo*, pp. 573-575.

inclusive of allowances, and other benefits or their monetary equivalent, as well as separation pay in lieu of reinstatement if the same is no longer feasible.[78] Finally, interest at the rate of twelve percent (12%) per *annum* must be imposed from the time his salary and other benefits were withheld until June 30, 2013, and at the rate of six percent (6%) per *annum* from July 1, 2013 until the date of finality of this judgment. All these monetary awards shall earn interest at six percent (6%) per *annum* from the date of finality of this judgment until full payment.[79]

All told, this Court finds no reason to overturn the ruling of the CA as to its finding that Harvey De Guzman was constructively dismissed. All the substantive and procedural issues raised in this Petition were squarely addressed in the assailed judgment in accord with law and existing jurisprudence and with due regard to extant facts and evidence.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit. The March 15, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 114574 is hereby **AFFIRMED with MODIFICATION** in that petitioner Telus International Philippines, Inc. and Michael Sy are ordered to **PAY** respondent Harvey De Guzman the following:

1) Full backwages, inclusive of allowances and all other legally earned and accrued benefits from the time the same were withheld until finality of this Decision;

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

3) Moral and exemplary damages in the amount of ₱25,000.00 each; and

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

Moreover, the total monetary award shall **EARN** legal interest at twelve percent (12%) per *annum* from the time his salary and other benefits were withheld until June 30, 2013 and at the rate of six percent (6%) per *annum* from July 1, 2013 until the date of finality of this judgment. All the said monetary awards shall be subject of legal interest of six percent (6%) per *annum* from the date of finality of this judgment until full payment.

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

---

[78] *ICT Marketing Services, Inc. v. Sales*, supra note 74, at 523-524.
[79] *See Nacar v. Gallery Frames*, 716 Phil. 267, 278-283 (2013).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

On official business
ESTELA M. PERLAS-BERNABE
Associate Justice

ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

On official leave
RODIL V. ZALAMEDA
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.

ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

DIOSDADO M. PERALTA
Chief Justice