

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**PHILIPPINE AIRLINES INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 126805  
March 16, 2000**

**NATIONAL LABOR RELATIONS  
COMMISSION (3rd Division) and  
MARCELITO PESCANTE,  
*Respondents.***

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**D E C I S I O N**

**QUISUMBING, J.:**

This Special Civil Action for Certiorari seeks to annul the Decision of National Labor Relations Commission (NLRC) promulgated on June 20, 1996, in NLRC NCR Case No. 00-05-04118-94, and its Resolution dated September 12, 1996, which denied petitioner's motion for reconsideration.

On January 19, 1993, private respondent Marcelito Pescante and another PAL employee, Edgar Vicente, were assigned to handle petitioner's flight PR 841 bound for Cebu as load controller and check-in clerk, respectively. As load controller, private respondent's main task is to manifest the baggage of passengers with reference to

their respective weights and to determine the proper load balance of the aircraft. As check-in clerk, Vicente's duty is to check-in the passengers and place the corresponding tags on their luggage. The check-in clerk takes down the weight of the passenger's baggage, then reflects the same on the tickets that are eventually passed on to the load controller who uses the same as the basis in determining the load of the aircraft. As a policy, load controllers are prohibited from assisting in the checking-in of passengers to prevent collusion with the check-in clerks.

On that same day, a passenger named Myla Cominero checked in for the flight. She was escorted by Sgt. Jose Tompong, the police assistance officer assigned at the domestic airport. The events of that day were best narrated by Sgt. Tompong, in his statement dated January 25, 1993, submitted by both parties as their common evidence.

“Q. Can you recall any incident that happened last January 19, 1993?

A. There was no unusual incident, except that a certain woman who greeted me she presented to me her ticket. At this point, I guided her to the Check-in Counter. Later, I came to know her as Ms. Cominero.

Q. Upon reaching the check-in counter, what happened?

A. She presented her ticket to CIC Pelayo and when asked how many pieces of baggage she was carrying, she said, seven pieces of baggage.

Q. Did you see the seven (7) pieces of baggage checked-in by said passenger?

A. Yes, when CIC Pelayo was about to check-in her baggage, preparing the seven pieces of baggage tags, CIC Edgar Vicente arrived and said ‘Ako na ang bahala diyan.’

Q. What happened next?

A. After the weighing of baggage, Ed Vicente talked to the passenger because the weight of her seven (7) pieces of baggage was more than 100 kgs.

Q. What did you hear about (sic) their conversation?

A. Sabi ni Ed, magbabayad ka rito ng more than P1,000.00, kaya bale kinontrata na niya ang pasahero at ako ay lumayo na sa counter.

Q. What happened next?

A. Noong bumalik ako sa entrance gate, sabi sa akin ng pasahero, 'Kuya, pakibigay mo nga itong pera doon sa kausap kong lalaki na nag check in sa akin.'

Q. What did you answer?

A. Tinanong ko kung para saan ito at ang sabi niya para doon sa excess baggage ko. Nakatipid ako ng kaunti.

Q. Magkano naman ang pera na ibinigay sa iyo?

A. Naka roll ang pera at nalaman kong isang libo (P1,000.00).

x x x

Q. Ano naman ang ginawa mo sa pera na ibinigay sa iyo ng pasahero?

A. Noong mga 1500H na, kinuha sa akin in Ed Vicente ang pera.

Q. Saan mo banda ibinigay ang pera?

A. Doon, malapit sa telephone booth ng terminal 2. Pagkatapos nalaman ko nahuli pala ang pasahero bumalik at sumakay sa eroplano.

- Q. Noong sinamahan mo ang pasahero na mag check-in sa counter, may dala ba siyang ibang ticket or kaya ay may mga kasama?
- A. Nag check-in ang nasabing pasahero at walang kasama at isang ticket ang hawak na inabot kay Ed Vicente.
- Q. Ayon sa aking pagtatanong, nasa iyo daw ang pera noong hindi dumating ang pasahero sa eroplano noong boarding time na, tutoo ba ito?
- A. Hindi po tutuo iyan. Kung sa akin ang pera, bakit si Ed Vicente ang nag-atubiling magbayad ng excess charges ng pasahero ng malaman niyang bulilyaso na. At ang masama rito ay tinuruan pa ako ni Ed na gumawa ng scenario.
- Q. Anong klaseng scenario?
- A. Sabihin ko raw na humingi ng tulong sa akin si Ms. Cominero para hanapan ng pasaherong walang bagahe.
- Q. Ano naman ang sagot mo?
- A. Sinabi ko Pare huwag. Kasi hindi ko naman ito ginawa at pati ako isasabit pa ninyo diyan.
- Q. Okay wala na akong itatanong. Mayroon ka bang gustong sabihin sa pagtatanong na ito?
- A. Ang masasabi ko lang po ay ito. Kaya ako nagbigay ng statement ay sa kadahilanan na nais kong bigyan ng katarungan ang aking pangalan.”<sup>[1]</sup>

It appears that Vicente reflected a lighter weight of baggage on Cominero’s ticket to make it appear that the same was within the allowable level. Cominero’s excess baggage was pooled with other passengers with lesser baggage weight or no baggage at all. After checking-in, Cominero left.

On boarding time, Cominero failed to show up. Hence, preparations were made to off-load her baggage. A check with the passenger manifest prepared by private respondent showed that Cominero was presumably travelling with three companions since her ticket was pooled with boarding passes numbers fifteen (15) to seventeen (17). To verify whether Cominero was taking the flight or not, PAL ramp agent Danilo Baniqued talked to Cominero's supposed travelling companions. But to his surprise, all denied knowing Cominero. Then, Cominero arrived during the final call for boarding and before the actual off-loading of her baggage. When questioned, Cominero insisted that she had paid one thousand (P1,000.00) pesos as excess baggage charges at the check-in counter although she was not issued any receipt. Informed of this incident, the duty manager instructed the station control to call Cebu to intercept Cominero and collect the corresponding excess baggage fee. Thereafter, an investigation was conducted.

When the anomaly was discovered, Vicente hastily went to the cashier, Loreto Condez, to pay the excess baggage fee. Condez' statement submitted by both parties as their common evidence, attests to these events:

“20 Jan. '93

To : Atty. R. Neri  
From : L. B. Condez  
Subject : Handling Details of Issuance

EBT # 2834095-5 PR 841 19 Jan. '93

1. That on or about 5:30 in the afternoon, Mr. Ed Vicente handed me a piece of paper indicating five pieces of bge weighing 88 kilos minus 18 kilos, 70 kilos excess bge. The amount of P983.50 paid to me by Ed Vicente.
2. I instructed Ed Vicente to get the flight coupon and indicate the number of pieces, weight, bge tag number. When he presented the ticket taken from the LCC room, that was the only time I issued EBT.

3. Submitted as requested.

SIGNED

Loreto B. Condez

20 Jan. '93"<sup>[2]</sup>

Despite said payment by Vicente in the amount of P983.50 representing excess baggage, Cominero further paid the sum of P672.95 representing her excess baggage fee upon arrival in her port of destination in Cebu.

In his report dated January 23, 1993, Vicente implicated private respondent in the aforementioned anomaly. He explained that:

- “9. I was in this situation sensing something is wrong, when LCP Pescante approached me and told me the best thing for me to do is to call his friend in Cebu with a name Buloy Benabaye also an LCD to intercept said passenger because he learned that those baggage will be withheld in Cebu until further questioning of said passenger. I immediately followed him because I was at a loss on what to do. I called up Cebu and learned said LCD is on off duty. I realized that there was no sense in calling the person since he is not involve[d] with the situation.
10. When I was about to go back to the counter, he approached me again and suggested that the last resort I could (sic) do is that he will get the money from the one in white polo barong. After a few minutes, he came with PASCOM Sgt. Tompong and then he handed me P1,000.00. He asked me to have it issued an Excess Baggage Receipt.”<sup>[3]</sup>

In addition, CSA Alfredo Pelayo submitted a written explanation dated February 22, 1993 regarding the incident, which reads:

- “2. When I was at the Cebu check-in counter PNP Sgt. Tompong approached the counter and presented a ticket. I noticed LCD Brando Pescante standing beside me at the counter and told me to please check-in the ticket. Then LCD Pescante told me ‘Sige na pare, okay lang yan’ and then I responded

‘Ayoko nga’ and then he told me (LCD Pescante) ‘Pare, ang laki naman yata ng daga mo sa dibdib.’ (pointing to my chest). And then I insisted, ‘Pagsinabi kong ayoko, AYOKO!’. Then he said ‘O sige, di bale na lang pare.’“

3. I was standing at the Cashier’s counter when I heard Mr. Pescante calling CIC Ed Vicente who was at the moment checking in passengers at the other end of the counter at the Davao check in counter. He yelled, “Ed, sandali lang pare!” and Mr. Vicente responded “Sandali lang, pare!” And after a few minutes he (Vicente) went to Mr. Pescante’s call.”<sup>[4]</sup>

On January 29, 1993, petitioner filed an administrative case against private respondent and Vicente with “fraud against the company”<sup>[5]</sup> as defined under petitioner’s Code of Discipline. Accordingly, private respondent and Vicente submitted their respective affidavits in answer to the charge. After several hearings, both were found guilty as charged and were meted the penalty of dismissal from the service.<sup>[6]</sup> Private respondent elevated his case to petitioner’s Step III Grievance, but the same was denied.

On May 27, 1994, private respondent filed before the labor arbiter, a complaint for illegal dismissal with prayer for reinstatement and payment of backwages, damages and attorney’s fees. On July 31, 1995, the labor arbiter ruled that private respondent had direct involvement in the illegal pooling of baggage, which is a scheme to obtain secret profits for himself and that such act of attempting to defraud petitioner of its revenues warranted the termination of private respondent from the service. The labor official thus decreed:

“WHEREFORE, foregoing premises considered, the complaint is, as it is hereby DISMISSED for lack of merit and the dismissal of the complaint is declared to be for a valid and for just and lawful cause.

However, since complainant has served the respondent company for almost eight (8) years without adverse records and on ground of equitable consideration, we hereby adjudge an award of P5,000.00 by way of financial assistance.

SO ORDERED.”<sup>[7]</sup>

Dissatisfied with the decision, private respondent appealed to the NLRC, which in its assailed decision dated June 20, 1996, reversed the labor arbiter’s decision. In justifying the reversal, the NLRC declared that the alleged defrauding of petitioner’s excess baggage revenue was not the handiwork of private respondent. The labor tribunal further held that petitioner failed to show that it suffered losses in revenues as a consequence of private respondent’s questioned act. It then disposed of the case as follows:

“WHEREFORE, in view of the foregoing considerations, the Decision appealed from is hereby set aside and another one entered reinstating the complainant with full backwages less earnings elsewhere, if any.

SO ORDERED.”<sup>[8]</sup>

Its motion for reconsideration having been denied, petitioner filed the instant petition before us, raising the following issues:

I

“WHETHER OR NOT THE FINDING OF PUBLIC RESPONDENT NLRC THAT “THE DEFRAUDING OF RESPONDENT COMPANY OF EXCESS BAGGAGE REVENUE WAS NOT THE HANDIWORK OF THE HEREIN COMPLAINANT” IS SUPPORTED BY EVIDENCE ON RECORD.

II

WHETHER OR NOT PUBLIC RESPONDENT WAS LEGALLY JUSTIFIED IN DISREGARDING AND GIVING NO PROBATIVE VALUE TO THE STATEMENTS OF ED VICENTE AND ALFRED PELAYO.

### III

WHETHER OR NOT MATERIAL DAMAGE IS NECESSARY FOR THE VALIDITY AND LEGALITY OF DISMISSAL DUE TO LOSS OF TRUST AND CONFIDENCE.

### IV

WHETHER OR NOT PUBLIC RESPONDENT WAS JUSTIFIED IN ORDERING THE REINSTATEMENT OF PRIVATE RESPONDENT WITH FULL BACKWAGES.”<sup>[9]</sup>

More appropriately phrased, the issue for our consideration is whether or not the NLRC committed grave abuse of discretion in reversing and setting aside the labor arbiter’s decision finding private respondent’s dismissal to be valid and for just cause.

To begin with, we reiterate the rule that in certiorari proceedings under Rule 65, this Court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and public respondent NLRC based their decisions. Our query is limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed decisions.<sup>[10]</sup> But when the findings of the NLRC contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, must of necessity review the records of the case to determine which findings should be preferred as more conformable to the evidentiary facts, as in this case.<sup>[11]</sup>

The core of petitioner’s evidence against private respondent is the incident report of Vicente and the written explanation of Pelayo. Unfortunately, Vicente’s report was not accorded probative value by the public respondent on the ground that Vicente appears to be the real and actual culprit. Similarly, Pelayo’s statement was not given credence on the belief that it was biased. We think, public respondent gravely erred on this point.

It is erroneous to discredit the statement of Vicente just because he appears guilty too. Rather, Vicente’s declaration must be weighed side by side the testimonies of other witnesses regarding the incident. As

to Pelayo's statement, it should not be considered biased in the absence of proof showing that the declarant was actuated by ill motive. Save for his bare denials, private respondent did not give any plausible reason, much less presented evidence, to show that his co-workers were moved by ill will in testifying against him. Verily, the testimonies of persons not shown to be harboring any motive to depose falsely against an employee must be given due credence, particularly where no rational motive is shown why the employer would single out private respondent for dismissal unless the latter were truly guilty of serious offense.<sup>[12]</sup>

That the statements of Vicente and Pelayo are credible is shown by the fact that these are replete with essential details, which interlock with the declarations of other witnesses. Thus, Sgt. Tompong declared that at around 5 p.m. private respondent retrieved from him the money earlier given by Vicente because a problem cropped up. Next, another PAL employee, Irene Cancio in her sworn statement, asserted that private respondent ordered the alterations in the flight coupons so as to reflect the true charges on excess baggage of Cominero. Then, Condez averred that Vicente paid the excess baggage fee of Cominero long after the aircraft had departed, after which, private respondent ordered Vicente to photocopy the excess baggage receipt and send a copy to Cebu via flight PR 839.

In the case at bar, there is substantial evidence showing that private respondent had direct involvement in the illegal pooling of baggage. First, private respondent urged Pelayo to check-in Cominero by proxy. Failing to convince Pelayo, he chided the latter by saying "Pare ang laki naman yata ng daga mo sa dibdib", and then called Vicente who in turn willingly cooperated in checking-in Cominero. Second, when the anomaly was uncovered, private respondent approached Sgt. Tompong and said, "Sarge, pakibalik mo na lang ang pera dahil mayroon itong problema". Third, private respondent handed the money amounting to P1,000.00 to Vicente, which the latter used to pay the excess baggage fee. Fourth, private respondent instructed Vicente to call a fellow load controller in Mactan airport to intercept Cominero and fix the matter. Fifth, private respondent did not report the matter to his supervisors although it is the practice whenever one is confronted with situation of the same nature.

Surely, had the irregularity not been accidentally discovered, private respondent would have enriched himself at the expense of petitioner. Worth mentioning at this point is the failure of the private respondent to refute the oral testimony of Vicente during the clarificatory hearing on March 25, 1993, conducted by the Administrative Panel, which convincingly shows the actual participation of the private respondent in the commission of fraud against the petitioner.

Obviously, private respondent's act is inexcusable as it constitutes a serious offense under petitioner's Code of Discipline, which reads:

“Section 2. Fraud against the Company

Any employee who makes a false or fraudulent claim against the company, or knowingly initiates or takes part in any action intended to defraud the Company or to obtain a payment, benefit, or gain from the Company to which he is not entitled, or knowingly honors a forged signature for his own benefit or that of another person; or gives due course or approval to a document knowing it to be false erroneous shall suffer the penalty of dismissal.”<sup>[13]</sup> (*Emphasis supplied*)

The fact that petitioner failed to show it suffered losses in revenue as a consequence of private respondent's questioned act is immaterial. It must be stressed that actual defraudation is not necessary in order that an employee may be held liable under the aforementioned rule. That private respondent attempted to deprive petitioner of its lawful revenue is already tantamount to fraud against the company, which warrants dismissal from the service.

Since private respondent's dismissal was for just and valid cause, the order of public respondent for the reinstatement of private respondent with award of backwages has no factual and legal basis. Neither could we allow the award of P5,000.00 as financial assistance on equitable consideration as decreed by the labor arbiter. As we have consistently held in previous cases,<sup>[14]</sup> such monetary award is justified only in those instances where the employee is validly dismissed for causes other than serious misconduct or those adversely affecting his moral character. Thus, if the reason for the

valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft, fraud, falsification or illicit sexual relations with a fellow worker, separation pay or financial assistance, or by whatever other name it is called, may not be allowed.

**WHEREFORE**, the petition is **GRANTED**. The assailed Decision of NLRC is hereby SET ASIDE. Accordingly, the Decision of the Labor Arbiter is **REINSTATED** with **MODIFICATION** in that the award therein of P5,000.00 financial assistance is deleted for lack of factual and legal basis.

**SO ORDERED.**

**Bellosillo, Mendoza, Buena and De Leon, Jr., JJ., concur.**

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[1] Rollo, pp. 80-81.

[2] Id. at 75.

[3] Id. at 79.

[4] Id. at 86.

[5] Id. at 82-83.

[6] Id. at 106-107.

[7] Id. at 54.

[8] Id. at 38.

[9] Id. at 11.

[10] Industrial Timber Corporation vs. NLRC (5th Division), 273 SCRA 200, 209 (1997).

[11] Arboleda vs. NLRC, 303 SCRA 38, 44 (1999).

[12] Dyne-Sem Electronics Corporation vs. NLRC, 226 SCRA 824, 837 (1993).

[13] Rollo, p. 20.

[14] Santos, Jr. vs. NLRC, 287 SCRA 117, 128 (1998); Philippine Airlines Inc. vs. NLRC, 282 SCRA 536, 542 (1997); United South Dockhandlers Inc. vs. NLRC, 267 SCRA 401, 405 (1997); Chua vs. NLRC, 218 SCRA 545, 549 (1993); Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC, 206 SCRA 109, 116 (1992); Philippine Long Distance Telephone Company vs. NLRC, 164 SCRA 671, 682 (1988).