

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**MIGUEL SINGSON,
*Petitioner,***

-versus-

**G.R. No. 122389
June 19, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION and PHILIPPINE
AIRLINES, INC. (PAL),
*Respondents.***

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D E C I S I O N

PUNO, J.:

Assailed in the Petition for Certiorari before us is the Resolution of the public respondent National Labor Relations Commission^[1] (hereinafter NLRC) reversing the Decision of the Labor Arbiter^[2] in NLRC-NCR Case No. 00-10-05750-91 finding the dismissal of petitioner Miguel Singson illegal and ordering his reinstatement. Petitioner filed a motion for reconsideration which was denied by the public respondent in an Order dated June 27, 1995.

The antecedent facts reveal that petitioner Singson was employed by private respondent Philippine Airlines, Inc. (hereinafter PAL) as Traffic Representative Passenger, Handling Division. His duty

consisted of checking in passengers and baggage for a particular flight. On June 7, 1991, petitioner was assigned to serve the check-in counter of Japan Air Lines (hereinafter JAL) for Flight 742. Among the passengers checked in by him was Ms. Lolita Kondo who was bound for Narita, Japan. After checking in, Ms. Kondo lodged a complaint alleging that petitioner required her to pay US \$200.00 for alleged excess baggage without issuing any receipt. A confrontation took place where petitioner was asked by the security officer to empty his pockets. The dollars paid by Ms. Kondo were not found in his possession. However, when the lower panel of the check-in counter he was manning was searched, the sum of two hundred sixty five dollars (US \$265) was found therein consisting of two (2) one hundred dollar bills, one (1) fifty dollar bill, one (1) ten dollar bill and one (1) five dollar bill. Petitioner was administratively charged and investigated by a committee formed by private respondent PAL.^[3]

In an affidavit presented to the investigators, Ms. Kondo declared that she was with three (3) Japanese friends when she checked in on June 7, 1991, for their flight to Narita, Japan. While in line, a man approached her and told her that she had excess baggage. She denied the allegation since the pieces of baggage did not only belong to her but also to her Japanese companions. The man did not believe that the Japanese were her companions and he charged that she just approached them at the airport. To settle the matter, he told her to give him two hundred dollars (US \$200) and he apologized for their argument. She gave him one (1) one hundred dollar bill and two (2) fifty dollar bills or a total of two hundred dollars (US \$200) as excess baggage fee. She placed the money at the side of his counter desk and he covered it with a piece of paper. He did not issue a receipt. She then reported the matter to JAL's representative. Ms. Kondo identified the employee who checked her in as the petitioner.^[4]

In his affidavit, petitioner admitted that he was the one who checked in Ms. Kondo and her Japanese companions. They checked in five (5) pieces of luggage which weighed 80 kilos and within the allowed limit for check-in baggage. He attached the claim checks to the jacket of their tickets, returned the tickets and passport to Ms. Kondo. He then heard an altercation involving a woman passenger with excess hand-carried baggage who was being charged for it; she was insisting she had paid for it in the counter but could not produce a receipt. The

passenger turned out to be Ms. Kondo and she was accusing Cocoy Gabriel as the one who charged her for excess baggage. Mr. Gabriel at that time was assigned at the THAI Airways counter, hence, it was impossible that a passenger for a JAL flight would pay him US \$200. Petitioner was talking to the JAL's representative when two PAL employees and Ms. Kondo approached them. He was told of Ms. Kondo's claim that she paid the excess baggage fee to him. Petitioner was surprised at the accusation since Ms. Kondo had no excess baggage when she checked in.^[5]

The investigation committee found petitioner guilty of the offense charged and recommended his dismissal. Private respondent PAL adopted the committee's recommendation and dismissed him from the service effective June 7, 1991.^[6]

On September 12, 1991, petitioner lodged a complaint against respondent PAL before the NLRC-NCR for illegal dismissal, attorney's fees and damages. The case was docketed as NLRC-NCR Case No. 00-10-05750-91 and raffled off to then Labor Arbiter Raul T. Aquino. Aquino found the evidence adduced by private respondent PAL in terminating petitioner's employment insufficient. Aquino declared petitioner's dismissal illegal and ordered his reinstatement with backwages. Respondent PAL appealed the decision of the Labor Arbiter. On May 19, 1995, the Second Division of public respondent NLRC, composed of Commissioners Victoriano R. Calaycay, Rogelio I. Rayala and Raul T. Aquino as presiding commissioner, promulgated its Resolution reversing the decision of then Labor Arbiter Aquino and dismissing the complaint against respondent PAL. Petitioner filed on June 5, 1995, a motion for the reconsideration of the aforementioned Resolution and an Amended Motion for Reconsideration on June 15, 1995. Public respondent NLRC, thru the Second Division with only two commissioners taking part, namely, Commissioners Calaycay and Rayala, denied the motion.

Hence, this petition for certiorari under Rule 65 of the Rules of Court where petitioner submits the following assignment of errors:

"I. Public respondent NLRC acted with grave abuse of discretion and/or in excess of jurisdiction when the Hon. Raul

T. Aquino, in his capacity as Presiding Commissioner of the Second Division of the NLRC and as a member thereof, participated actively in the promulgation of the aforesaid decision and in the consultation of the members thereof in reaching the conclusion before it was assigned to the ponente, Hon. Calaycay.

“II. Public respondent NLRC gravely abused its discretion as in fact it exceeded its jurisdiction when it declared the affidavit of Lolita Kondo sufficient to declare his dismissal from employment legal even without any cross-examination during the investigation conducted by Philippine Air Lines.

“III. Public respondent NLRC seriously and gravely erred amounting to abuse of discretion and/or in excess of its jurisdiction when it declared in the assailed decision that the quantum of evidence necessary to justify the supreme penalty of dismissal of the petitioner have been complied with, and in not imposing the burden of proving the legality of the dismissal of the petitioner.”

We find merit in this petition.

Petitioner assails the Resolution of the public respondent NLRC on account of Commissioner Raul T. Aquino’s participation in reviewing and reversing on appeal his own decision as labor arbiter in NLRC-NCR Case No. 00-10-05750-91. Respondents contend that Commissioner Aquino’s failure to inhibit himself is a harmless error that will not in firm the subject resolution. We do not agree. In the case of *Ang Tibay vs. Court of Industrial Relations*,^[7] we laid down the requisites of procedural due process in administrative proceedings, to wit: (1) the right to a hearing, which includes the right to present one’s case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body or any of its judges must act on its own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; (7) the

Board or body should, in all controversial questions, render its decision in such manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered. In addition, administrative due process includes (a) the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.^[8] It is self-evident from the ruling case law that the officer who reviews a case on appeal should not be the same person whose decision is the subject of review. Thus, we have ruled that "the reviewing officer must perforce be other than the officer whose decision is under review."^[9]

In the case at bar, we hold that petitioner was denied due process when Commissioner Aquino participated, as presiding commissioner of the Second Division of the NLRC, in reviewing private respondent PAL's appeal. He was reviewing his own decision as a former labor arbiter. Under Rule VII, Section 2 (b) of the New Rules of Procedure of the NLRC,^[10] each Division shall consist of one member from the public sector who shall act as the Presiding Commissioner and one member each from the workers and employers sectors, respectively. The composition of the Division guarantees equal representation and impartiality among its members. Thus, litigants are entitled to a review of three (3) commissioners who are impartial right from the start of the process of review. Commissioner Aquino can hardly be considered impartial since he was the arbiter who decided the case under review. He should have inhibited himself from any participation in this case.

Prescinding from this premise, the May 19, 1995 resolution of the respondent NLRC is void for the Division that handed it down was not composed of three impartial commissioners. The infirmity of the resolution was not cured by the fact that the motion for reconsideration of the petitioner was denied by two commissioners and without the participation of Commissioner Aquino. The right of

petitioner to an impartial review of his appeal starts from the time he filed his appeal. He is not only entitled to an impartial tribunal in the resolution of his motion for reconsideration. Moreover, his right is to an impartial review of three commissioners. The denial of petitioner's right to an impartial review of his appeal is not an innocuous error. It negated his right to due process.

IN VIEW WHEREOF, the Resolution of the Second Division of the NLRC dated May 19, 1995 and its Order dated June 27, 1995 in NLRC-NCR Case No. 00-10-05750-91 is **SET ASIDE**. The case is remanded to the NLRC for further proceedings. No Costs.

SO ORDERED.

**Regalado, Romero and Torres, Jr., JJ., concur.
Mendoza, J., took no part; daughter in PAL management.**

[1] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Rogelio I. Rayala of the Second Division, and promulgated on May 19, 1995.

[2] Penned by then Labor Arbiter Raul T. Aquino.

[3] Rollo, pp. 26-27, 72, 155-157.

[4] Id.

[5] Id.

[6] Id., p. 74.

[7] 69 Phil. 635 [1940].

[8] Air Manila, Inc. vs. Balatbat, 38 SCRA 489 [1971].

[9] Zambales Chromite vs. Court of Appeals, 94 SCRA 261 [1979]; Anzaldo vs. Clave, 119 SCRA 353 [1982].

[10] Promulgated on August 31, 1990 and took effect on October 9, 1990.