

THIRD DIVISION

[G.R. No. 200658, June 23, 2021]

SALVACION A. LAMADRID, PETITIONER, VS. CATHAY PACIFIC AIRWAYS LIMITED AND VIVIAN LO, RESPONDENTS.

DECISION

Hernando, J.:

This Petition for Review on *Certiorari*^[1] assails the September 16, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114964, which reversed and set aside the February 24, 2010 Decision^[3] and the April 20, 2010 Resolution^[4] of the National Labor Relations Commission in NLRC LAC No. 07-001814-09.

The appellate court found petitioner's dismissal from employment as valid and thus, dismissed her complaint for illegal dismissal lodged against respondents Cathay Pacific Airways Limited (Cathay) and Vivian Lo (Lo).

The Antecedents:

In 1990, Cathay hired Salvacion A. Lamadrid (Lamadrid) as a cabin crew. Cathay's Conditions of Service^[5] stipulated that all its cabin crew shall be based in Hong Kong. Prior to her termination in 2007, Lamadrid had rendered about 17 years of service in Cathay, and held the position of Senior Purser with a monthly salary of HK\$26,613.00.^[6] Her duties as a flight attendant consisted as follows:

- (a) [Providing] support to the In-flight Service Manager.
- (b) Ensuring that in-flight information received during the Section leaders' briefing is fully conveyed to the Cabin Crew working in their assigned area.
- (c) Ensuring that the service provided to passengers is carried out in accordance with the service plan and is consistent with the company service philosophy of Service Straight from the Heart.
- (d) Ensuring that the Cabin Crew in their assigned area are competent in safety, security and service procedure since Senior Pursers are responsible for the performance and behavior of crew in their respective area.
- (e) Ensuring that the In-flight Service Manager is informed of any crew or passenger related problems, irregularities, cabin defects, defective or missing equipment.^[7]

On May 19, 2007, Donald Lal (Lal), Airport Services Officer of Cathay in Sydney Airport, received a report from Customer Officer Mary Greiss (Mary) that some crew members of Cathay flight CX 139, including Lamadrid, were caught in possession of goods after alighting from the aircraft. Mary handed to Lal a plastic bag containing a 1.5 liter Evian water bottle and a pile of magazines confiscated from Lamadrid as well as the photocopy of the latter's passport. The confiscated items were turned over to Cindy Lowe (Lowe), the Airport Services Supervisor, who then finally surrendered the items to Brian Davis (Davis), Cathay's Airport Services Manager in Sydney Airport, after Lowe recorded the confiscated items on Lamadrid's passport.^[8]

On May 21, 2007, Lamadrid and a certain Yvette Tsang (Tsang) met with Davis and pleaded him not to report the incident to their Hong Kong office. They also mentioned their 17 years of service with Cathay. Davis, however, responded that a report was already relayed and the confiscated items had already been sent to Hongkong via flight CX 100.^[9]

In a letter^[10] dated May 22, 2007, Cathay requested Lamadrid to submit a written explanation regarding the May 19, 2007 incident aboard flight CX 139 and to show cause why no disciplinary action should be imposed against her since removal of company property without authorization is considered a serious misconduct. On May 28, 2007, Lamadrid submitted her reply-letter^[11] denying the allegations against her. She claimed that the Hello magazine which was confiscated from her was not Cathay's property. As regards the other items, she claimed that another cabin crew already admitted having taken those items.

In another letter^[12] dated June 21, 2007, Cathay once again informed Lamadrid that it received reports that she was found to have taken a large bottle of Evian water and a pile of magazines during flight CX 139 on May 19, 2007. She was again requested to explain her side. Consequently, Lamadrid sent a reply-letter^[13] dated June 23, 2007 clarifying that she brought and declared the bottle of Evian water as her own. She denied having committed serious misconduct, and demanded that the items taken from her be preserved following a fair and transparent investigation.

On July 10, 2007, Cathay informed Lamadrid of the termination of her services effective immediately for committing serious misconduct by removing company property without authorization.^[14] According to Cathay, it could no longer repose its trust and confidence on petitioner considering the seriousness of her violation.

Hence, Lamadrid instituted a complaint for illegal dismissal and money claims against Cathay and Lo.

In her Position Paper,^[15] Lamadrid insisted that her termination was without just cause because she bought the Evian water from Hong Kong. Granting that she took the bottle, the act was not prohibited by Cathay. She also contended that the penalty of termination was too harsh considering her 17 years of service and her clean record. Lamadrid prayed for reinstatement, payment of backwages, damages and attorney's fees.

In their Position Paper,^[16] Cathay and Lo initially asserted that the Labor Arbiter had no jurisdiction to hear the dispute since the incident occurred in a foreign jurisdiction involving foreign nationals. Also, they maintained that Lamadrid had no cause of action against them because they complied with the requirements of substantive and procedural due process in labor cases. They further insisted that petitioner's position was imbued with trust and confidence, and her violation justified the termination of her services on the basis of loss of trust and confidence.

Ruling of the Labor Arbiter:

In a Decision^[17] dated April 29, 2009, the Arbiter ruled that it has jurisdiction over the case since Cathay, even if a foreign corporation, is licensed and is actually doing business in the Philippines. Moreover, the employment contract between Lamadrid and Cathay was executed in the Philippines as well. It was also resolved that Lamadrid could not be considered a managerial employee based on her duties and responsibilities. Thus, there was no sufficient basis for the airline to terminate the worker's employment on the ground of loss of trust or confidence. It was also emphasized that the employee's outright dismissal was too harsh a penalty in view of her untarnished service record of 17 years. Finally, the Arbiter deemed it proper that separation pay be awarded in lieu of reinstatement in view of the parties' strained relations.

The *fallo* of the Decision reads in this wise:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring respondents guilty of illegal dismissal.

Respondent CATHAY PACIFIC AIRWAYS LIMITED is hereby ordered to pay complainant, as per attached computation from Computation and Examination Unit of this office.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.^[18]

Both Lamadrid and Cathay elevated the case to the NLRC by filing their Partial Appeal Memorandum and Memorandum of Appeal, respectively.

Lamadrid argued that there was no showing of strained relationship between her and Cathay, and that she was entitled to damages since her termination was attended with bad faith.^[19] On the other hand, respondents maintained that the Arbiter had no jurisdiction over the case. They argued that the Arbiter erred in ruling that Lamadrid was not a managerial employee and in finding that the termination was a harsh penalty. They alleged that the amount received by Lamadrid in the course of her separation should have been taken into consideration.^[20]

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

In its Decision^[21] dated February 24, 2010, the NLRC sustained the jurisdiction of the Labor Arbiter over the case. It anchored its ruling on Section 10 of the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act No. 8042 (RA 8042). It declared that the Arbiter has jurisdiction over claims arising from employer-employee relationship of Overseas Filipino Workers (OFW) deployed abroad. Lamadrid never became a permanent resident of Hong Kong.^[22] The NLRC likewise did not give credence to Cathay's position that Lamadrid's employment did not pass through any Philippine placement agency. Hence, as she was an OFW based in Hong Kong at the time, the Arbiter properly took cognizance of her complaint.

The NLRC concurred as well with the arbiter that the penalty of dismissal was too harsh considering the worker's untarnished record of 17 years, the value of property stolen, and Cathay's failure to establish that Lamadrid was holding a managerial or a position of trust.^[23]

Finding no strained relations between Lamadrid and her employer, the NLRC ruled for the reinstatement of Lamadrid to her previous position as Senior Purser instead of payment of separation pay.^[24] Lastly, it held that Lamadrid is not entitled to damages since there was no showing of bad faith on the part of the respondents. However, the benefits and bonuses she received during her separation amounting to HK\$622,077.54 should be deducted from the final monetary award that would be given to her.^[25]

The decretal portion of the NLRC's Decision reads:

WHEREFORE, premises considered, the appealed Decision is AFFIRMED with modification as follows:

(1) Respondent CATHAY PACIFIC AIRWAYS LIMITED is ordered to immediately reinstate complainant Salvacion Lamadrid to her former position without loss of seniority rights within ten (10) days from receipt hereof; and

(2) Respondent CATHAY PACIFIC AIRWAYS LIMITED is ordered to pay complainant Salvacion Lamadrid the amount of Six Thousand Six Hundred Seventy[-]Five and 41/100 Hong Kong Dollars, or its Peso equivalent at the time of payment, plus ten percent (10%) thereof as attorney's fees.

SO ORDERED.^[26]

Cathay's Motion for Reconsideration was denied by the NLRC in its Resolution^[27] dated April 20, 2010. Thus, Cathay filed a Petition for *Certiorari* (With Urgent Application for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)^[28] before the CA raising the following issues, to wit:

I.

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION. UNDER REPUBLIC ACT 8042[.] THE NLRC HAS NO JURISDICTION OVER LABOR CLAIMS BY OVERSEAS WORKERS WHO ARE PERMANENT RESIDENTS OF A FOREIGN COUNTRY.

II.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL FILED BY CATHAY. PRIVATE RESPONDENT LAMADRID WAS NOT THE SUBJECT OF ILLEGAL DISMISSAL. THE PUBLIC RESPONDENT FAILED TO CONSIDER PETITIONER CATHAY'S EVIDENCE IN THE PROCEEDINGS A QUO, WHICH WOULD HAVE ESTABLISHED THAT:

1.) LAMADRID'S PILFERAGE AND SUBSEQUENT UNTRUSTWORTHY BEHAVIOR WERE PROVEN BY SUBSTANTIAL EVIDENCE. THUS, PETITIONER CATHAY WAS WELL WITHIN ITS RIGHTS WHEN IT DECIDED TO TERMINATE HER EMPLOYMENT.

2.) HER JOB DESCRIPTION, DUTIES AND RESPONSIBILITIES CLEARLY SHOW THAT SHE WAS AT LEAST A CONFIDENTIAL EMPLOYEE, WHOSE POSITION WAS VESTED WITH TRUST AND CONFIDENCE. SHE WAS NOT A MERE RANK-AND-FILE EMPLOYEE.

3.) CONSEQUENTLY, THE ACT SHE PERPETRATED, PILFERAGE, IS INHERENTLY PUNISHABLE AND REPREHENSIBLE REGARDLESS OF THE VALUE OF THE PROPERTY OR THE LENGTH OF SERVICE OF THE EMPLOYEE.

4.) THE DIRECTIVE TO REINSTATE LAMADRID TO HER FORMER POSITION IS NOT JUSTIFIED UNDER THE CIRCUMSTANCES. THE RELATIONSHIP BETWEEN THE PARTIES IS SO STRAINED AS TO FORECLOSE REINSTATEMENT. THE NLRC HAD ABSOLUTELY NO BASIS FOR REVERSING THE LABOR ARBITER'S FINDING OF STRAINED RELATIONS.^[29]

Ruling of the Court of Appeals:

In its September 16, 2011 Decision,^[30] the appellate court granted Cathay's