

## THIRD DIVISION

[ G.R. No. 159687, April 24, 2009 ]

**GULF AIR, JASSIM HINDRI ABDULLAH AND RESTY AREVALO,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND ROBERTO J.C. REYES, RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision<sup>[1]</sup> dated April 23, 2003 of the Court of Appeals (CA) which modified the Decision<sup>[2]</sup> dated April 26, 1999 of the National Labor Relations Commission (NLRC); and the August 6, 2003 CA Resolution<sup>[3]</sup> denying the motion for reconsideration.

The relevant facts are of record.

Roberto J.C. Reyes (Reyes) had been employed with Gulf Air as Airport Manager for around ten years when he was dismissed on October 10, 1992 for serious misconduct and breach of trust and confidence<sup>[4]</sup> arising from the following incidents:

In an office memorandum dated June 29, 1992, Aquel Yousip Ishaq (Ishaq) of the Gulf Air Revenue Department instructed Reyes to investigate the acceptance without prior authorization of an Astro Airline ticket on FOC [free of charge] basis for travel from MNL-BAH on GF 155 on June 10, 1992, in violation of Gulf Air's Manual of Authority which provides that "no FOC tickets of other airline (OAL) should be honored for travel on GF without obtaining proper authority." Astro Airline has no interline agreement with Gulf Air.<sup>[5]</sup>

In reply,<sup>[6]</sup> Reyes clarified that he ordered the acceptance of the free ticket from Astro Airline to accommodate Philippine Civil Aeronautics Board Executive Director Silvestre Pascual<sup>[7]</sup> (Pascual) who had requested Gulf Air to assist Mr. Andy Queroz (Queroz), a Filipino consultant in the Middle East, during the latter's stay in Manila.<sup>[8]</sup>

On October 1, 1992, Gulf Air Area Manager-Philippines, Jassim Hindri Abdulla (Abdulla) required Reyes to explain in writing why he should not be dismissed for dishonesty, serious misconduct and willful breach of the trust and confidence reposed in him by Gulf Air in view of the following results of the investigation into the matter:

1. That [Reyes] had authorized free hotel accommodation for an overnight stay at Philippine Village Hotel in favor of MR. A. QUEROZ

on 08 May 1992 as per Meal Accommodation Transport Order No. 376677.

2. That subject passenger did not travel on Northwest Flight NO. 003/08 May 1992 to connect on GF155, and even if he did, the hotel accommodation should be the responsibility of delivering carrier which in this case is Northwest.
3. That the passenger traveled on GF155/10 May 1992 and not GF155/10 June 1992 as reported by [Reyes].
4. That the passenger was accepted using an Astro Airlines FREE TICKET not because of an oversight on the part of the GHA check-in staff but upon [Reyes'] direct instructions.
5. That [Reyes] did not conduct an investigation but rather had previous knowledge of the case. Thus, his reply to Revenue Department did not correct the actual departure date.
6. That based on the foregoing, it is clear that this is an accommodation on [Reyes'] part to provide free hotel and free travel to MR. QUEROZ at the expense of the Company and afterwards deliberately tried to cover it up.<sup>[9]</sup>

Pending submission of his explanation, Reyes was placed under preventive suspension.<sup>[10]</sup>

In his explanation letter, Reyes insisted that he acted "within the bounds of authority [he] believed he had in accommodating the request of [Pascual] to ASSIST AND ACCOMMODATE Mr. Andy Queroz x x x."<sup>[11]</sup>

Not satisfied with Reyes' explanation, Gulf Air terminated his employment.<sup>[12]</sup>

Reyes filed with the Labor Arbiter (LA) a complaint against Gulf Air, Abdulla and Gulf Air Area Financial Controller Resty Arevalo (hereinafter referred to as Gulf Air), alleging that he did not betray the trust and confidence of his employer when he granted certain privileges to Queroz upon the request of Pascual; rather, he acted in the exercise of his public relations duties as Airport Manager and in furtherance of Gulf Air's business interest.<sup>[13]</sup>

In their position paper, Gulf Air disclosed that Reyes was previously issued a stern warning for failing to coordinate closely with higher management;<sup>[14]</sup> and that in the incident which led to his dismissal, Reyes again failed to coordinate with higher management when he extended certain privileges to Queroz without seeking prior authorization as required under company policies.<sup>[15]</sup> Gulf Air further claimed that Reyes' conduct was tainted with malice for he attempted to cover it up by filing a Memorandum dated July 17, 1992<sup>[16]</sup> in which he denied knowledge of the incident.<sup>[17]</sup>

Reyes contested the authenticity of the July 17, 1992 Memorandum cited by Gulf Air.

[18] He obtained Questioned Document Report No. 338-598<sup>[19]</sup> issued on May 29, 1998 by the National Bureau of Investigation which states that, in comparison with the standard signature of Reyes, the signature appearing on the questioned document was not the same.

In a Decision dated August 7, 1998, the LA declared that Reyes was validly dismissed for he had no authority to extend privileges to Queroz. The LA doubted that Reyes accommodated Queroz upon the request of Pascual, the latter not having been presented to attest to such claim.<sup>[20]</sup> The LA made no finding on whether Reyes attempted to cover up the incident.

Reyes appealed<sup>[21]</sup> to the NLRC which, in a Decision dated April 26, 1999, reversed the LA decision, thus:

Wherefore, in view thereof, the assailed decision is hereby Reversed and Set Aside and new one entered finding the dismissal of complainant illegal.

Consequently, respondents are ordered to pay complainant's separation pay at the rate of one (1) month salary for every year of service.

Aside from this, backwages reckoned from the time of dismissal up to the promulgation of this judgment is also recoverable.

Likewise, the awards of P300,000.00 and P200,000.00 representing moral and exemplary damages, respectively, are proper because of the whimsical dismissal of complainant.

Ten percent of the total monetary award shall likewise be proper representing attorney's fees.

SO ORDERED.<sup>[22]</sup>

The NLRC held that based on Reyes' job description,<sup>[23]</sup> he was authorized to extend privileges to Queroz in order to maintain Gulf Air's public relations. At one time, Reyes accommodated a certain Mr. Sheikh M. Alkhalifa (Alkhalifa) and his entourage by providing them passage through Gulf Air even when said passengers were holding "Cathay Pacific (CX) free of charge (FOC or ID 90 [90% discount]) tickets which were non-endorseable to Gulf Airline or any other airlines and which were also non-refundable." Gulf Air did not rebuke or reprobate Reyes for such action; hence, there is no reason for it to suddenly reverse its policy and dismiss Reyes for extending the same treatment to Queroz. If in the meantime Gulf Air had changed its policy by requiring Reyes to obtain prior authorization from the Area Manager, then evidence of the policy change should have been presented. As it were, Gulf Air failed to prove the existence of such requirement; what it established was only a previous warning issued to Reyes in 1989, but which was hardly relevant to the present case, because said warning pertained to the handling of accounting documents.<sup>[24]</sup>

Gulf Air filed a Motion for Reconsideration but the NLRC denied the same.<sup>[25]</sup>

Upon Petition for Review on *Certiorari*<sup>[26]</sup> filed by Gulf Air, the CA rendered the decision assailed herein, the dispositive portion of which reads:

WHEREFORE, the instant petition is PARTIALLY GRANTED. The questioned decision is hereby MODIFIED, to the effect that the awards of moral and exemplary damages and attorney's fees are hereby DELETED. The same is hereby AFFIRMED in all other respects.

SO ORDERED.<sup>[27]</sup>

The CA denied Gulf Air's motion for partial reconsideration.<sup>[28]</sup>

Hence, the present petition by Gulf Air on the following grounds:

The Honorable Court of Appeals grossly erred in that -

I.

Contrary to its findings that there is allegedly no evidence on record that would show that an accommodation in Gulf Air Flights is exclusive to an airline which has an interline agreement with Gulf Air, the following undisputed evidence and admission of private respondent himself, to wit:

(a) Petitioner company's Finance Manual Volume III and Appendix XXVII (Annexes A and B of Petitioners' Memorandum and Annexes A and B of Petitioners' Reply to Private Respondent's Motion for Reconsideration filed with public respondent NLRC)

(b) Admission of private respondent himself on cross-examination

Established beyond doubt that only documents like free tickets of airlines with interline agreements with petitioner company are accepted in the latter's flights and subjected to the approval of the Area Manager.

II.

There is no evidence on record, except for the self-serving claim of private respondent, that would show that private respondent previously granted a similar accommodation on his own. On the other hand, unrebutted evidence on record clearly established that on matter of requests for accommodation of free passage, the prior approval of the Area Manager (private respondent's superior) is required as private respondent may only recommend.

III.

Contrary to the manifestly erroneous finding of the Honorable Court of Appeals, the matter subject of the present case is not private respondent's first offense that his actions were not tolerated as he had already been previously issued a warning regarding several irregularities pertaining to the grant of Meal Accommodation Transport Order (MATO);

lack of exercise of proper judgment on operational decision and close liaison with the Area Manager, as evidenced by the Memo addressed to him dated May 17, 1989 (Annex E to the Petition for *Certiorari*).

#### IV.

Private respondent who was occupying a managerial position as Airport Manager does not deserve any degree of sympathy in that despite his long years of service, the previous written warning given to him regarding the use of MATO and the clear rules on interline agreement of which he is fully aware, he willfully breached the trust and confidence demanded of his position.

#### V.

As managerial employee, private respondent is subject to a stricter standard than that applicable to rank and file employees in that a slight breach of trust reposed in him or the mere existence of a basis for believing that he has breached the trust of his employer is sufficient to dismiss him for loss of trust and confidence.

#### VI.

The Honorable Court of Appeals grossly erred in awarding separation pay and backwages to private respondent who had willfully breached the trust and confidence reposed in him as a managerial employee by his acts of gross dishonesty.<sup>[29]</sup>

The petition is partly meritorious.

The petition hinges on the question of whether Reyes (respondent) committed willful breach of trust when he accepted the Astro Airline ticket of Queroz and granted him a MATO without prior authorization from his superiors in petitioner Gulf Air. This is undoubtedly a question of fact the determination of which entails an evaluation of the evidence on record of the scope of the authority of respondent as Airport Manager and the nature of the privileges he granted to Queroz. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting factual findings of the LA on the one hand and the NLRC and the CA on the other, the Court is constrained to resolve the factual question at hand.<sup>[30]</sup>

Petitioners attribute to respondent two separate acts of breach of trust: one is the acceptance of the FOC Astro Airlines ticket of Queroz; and the other is the grant of MATO to Queroz. For either of these acts to constitute a valid cause for the dismissal of respondent, there must be substantial evidence that he committed said acts intentionally, knowingly, and purposely, without justifiable excuse, to flout Gulf Air's policy regarding acceptance of tickets issued by other airlines and prior warning against the arbitrary issuance of a MATO, to the prejudice of its business interest and in betrayal of its trust and confidence.<sup>[31]</sup>