

## SECOND DIVISION

**[ G.R. No. 164267, November 23, 2007 ]**

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. HEIRS OF  
BERNARDIN J. ZAMORA,\* RESPONDENTS.**

### RESOLUTION

**QUISUMBING, J.:**

Before us is a petition for review of the Decision<sup>[1]</sup> dated April 27, 2004, as well as the Resolution<sup>[2]</sup> dated June 29, 2004 of the Court of Appeals in CA-G.R. SP No. 56428 dismissing petitioner's appeal from the Decision<sup>[3]</sup> dated July 26, 1999, of the National Labor Relations Commission (NLRC) which ordered Bernardin J. Zamora's immediate reinstatement to his former position as cargo representative and the payment of his backwages and allowances.

Zamora was a cargo representative assigned at the International Cargo Operations - Import Operations Division (ICO-IOD) of petitioner Philippine Airlines, Inc. He alleged that sometime in December 1993, his immediate supervisor, Ricardo D. Abuyuan, instructed him to alter some entries in the Customs Boatnote and Inbound Handling Report to conceal Abuyuan's smuggling and pilferage activities. When he refused to follow this order, Abuyuan concocted charges of insubordination and neglect of customers against him.

On November 6, 1995, Zamora received a Memorandum informing him of his temporary transfer to the Domestic Cargo Operations (DCO) effective November 13, 1995. Zamora refused to follow the directive because: *first*, there was no valid and legal reason for his transfer; *second*, the transfer violated the collective bargaining agreement between the management and the employees union that no employee shall be transferred without just and proper cause; and *third*, the transfer did not comply with the 15-day prior notice rule.

Meantime, Zamora wrote to the management requesting that an investigation be conducted on the smuggling and pilferage activities. He disclosed that he has a telex from Honolulu addressed to Abuyuan to prove Abuyuan's illegal activities.<sup>[4]</sup> As a result, the management invited Zamora to several conferences to substantiate his allegations. Zamora claimed that during these conferences, he was instructed to continue reporting to the ICO-IOD to observe the activities therein. Even so, his salaries were withheld starting December 15, 1995.

For its part, petitioner Philippine Airlines, Inc. claimed that sometime in October 1995, Zamora had an altercation with Abuyuan to the point of a fistfight. The management requested Zamora to explain in writing the incident. It found his explanation unsatisfactory.<sup>[5]</sup>

To diffuse the tension between the parties, the management decided to temporarily transfer Zamora to the DCO. It issued several directives informing Zamora of his transfer. However, Zamora refused to receive these and continued reporting to the ICO-IOD. Consequently, he was reported absent at the DCO since November 13, 1995. His salaries were subsequently withheld. He also ignored the management's directive requiring him to explain in writing his continued absence.

Meanwhile, the management acted on Zamora's letter exposing the smuggling and pilferage activities. Despite several notices, however, Zamora failed to appear during the conferences.

On February 22, 1996, the management served Zamora a Notice of Administrative Charge for Absence Without Official Leave (AWOL). Then on January 30, 1998, he was informed of his termination due to Insubordination/Neglect of Customer, Disrespect to Authority, and AWOL.

On March 12, 1996, Zamora filed an action for illegal dismissal, unfair labor practice, non-payment of wages, and damages.<sup>[6]</sup>

On September 28, 1998, the Labor Arbiter dismissed the complaint for lack of merit.<sup>[7]</sup> He ruled that Zamora's transfer was temporary and intended only to diffuse the tension between Zamora and Abuyuan. He also said that the 15-day prior notice did not apply to Zamora since it is required only in transfers involving change of domicile. He further ruled that Zamora's refusal to report to the DCO was a clear case of insubordination and utter disregard of the management's directive. Thus, the Labor Arbiter ordered Zamora to report to his new assignment at the DCO.<sup>[8]</sup>

On July 26, 1999, the NLRC reversed the Labor Arbiter's decision and declared Zamora's transfer illegal.<sup>[9]</sup> It ruled that there was no valid and legal reason for the transfer other than Zamora's report of the smuggling and pilferage activities. The NLRC disposed as follows:

WHEREFORE, in the light of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated September 28, 1998 is hereby ordered SET ASIDE and a new one is hereby entered declaring complainant's transfer at the Domestic Cargo Operations on November 13, 1996 illegal.

Moreover, respondents are hereby ordered to immediately reinstate complainant Bernardin J. Zamora to his former position as Cargo Representative at the Import Operations Division of respondent PAL without loss of seniority rights and other privileges and to pay him salaries and backwages beginning December 15, 1995 until his actual reinstatement, inclusive of allowances and other benefits and increases thereto.

All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.

SO ORDERED.<sup>[10]</sup>

On appeal, the Court of Appeals affirmed the decision of the NLRC. In the instant petition, petitioner Philippine Airlines, Inc. raises the following issues:

THE PROCEDURAL ISSUES:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE 26 JULY 1999 NLRC DECISION BECAME FINAL AND EXECUTORY BASED SOLELY ON THE CERTIFICATIONS ISSUED BY THE DEPUTY EXECUTIVE CLERK OF THE NLRC.

II.

WHETHER OR NOT THE NLRC MAY TAKE COGNIZANCE OF A SEASONABLY FILED MOTION FOR RECONSIDERATION FROM A DECISION A COPY OF WHICH WAS PREVIOUSLY STAMPED "MOVED" AND "RETURN TO SENDER" BUT WAS THEREAFTER OFFICIALLY SERVED AND OFFICIALLY RECEIVED BY THE PARTY SEEKING RECONSIDERATION.

III.

MAY A COUNSEL FOR JUSTIFIABLE REASON DEFER THE FILING OF A NOTICE OF CHANGE OF ADDRESS.

THE SUBSTANTIVE ISSUES[:]

I.

MAY AN EMPLOYER BE REQUIRED TO STATE IN WRITING THE REASON FOR TRANSFERRING AN EMPLOYEE DESPITE THE ABSENCE OF SUCH REQUIREMENT IN THE CBA.

II.

MAY AN EMPLOYER BE REQUIRED TO OBSERVE A 15-DAY PRIOR NOTICE BEFORE EFFECTING AN EMPLOYEE TRANSFER NOTWITHSTANDING THE FACT THAT UNDER THE CBA SAID NOTICE IS REQUIRED ONLY IN CASE THE TRANSFER INVOLVES A CHANGE IN DOMICILE.

III.

MAY AN EMPLOYER SEEKING TO TRANSFER AN EMPLOYEE FOR THE PURPOSE OF DIFFUSING ESCALATING HOSTILITY BETWEEN AN EMPLOYEE AND HIS SUPERVISOR BE REQUIRED TO WAIT FOR FIFTEEN (15) DAYS BEFORE EFFECTING THE EMPLOYEE TRANSFER.

IV.

MAY A COURT VALIDLY ORDER THE REINSTATEMENT OF AN EMPLOYEE AS WELL AS GRANT MONETARY AWARD NOTWITHSTANDING THE