

## THIRD DIVISION

[ G.R. No. 119868, July 28, 1997 ]

**PHILIPPINE AIRLINES, INC (PAL), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ERNESTO F. CARREON, AND JESUS G. IBARRA RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

This special civil action for certiorari under Rule 65 of the Rules of Court assails: (1) the decision<sup>[1]</sup> of 14 December 1994 of the National Labor Relations Commission (NLRC), Fourth Division, in NLRC Case No. V-0249-94 RAB 07-08-0655-93, which affirmed the decision<sup>[2]</sup> of 24 June 1994 of Labor Arbiter Ernesto F. Carreon in RAB-VII-08-0655-93; and (2) the NLRC Resolution of 3 April 1995,<sup>[3]</sup> denying herein petitioner's motion for reconsideration of the former.

Petitioner Philippine Airlines, Inc. (hereafter PAL) hired private respondent Dr. Jesus G. Ibarra (hereafter IBARRA) as a Flight Surgeon on 22 September 1983. Through a letter/Notice of Decision dated 12 July 1993 but received by IBARRA on 16 August 1993, PAL dismissed him for alleged misuse of the reduced rate travel privilege and for incurring absences without leave (AWOL) on 4 January 1993 and 1 and 2 February 1993.<sup>[4]</sup> More particularly, said letter of dismissal stated:

A Notice of Administrative Charge was issued against you, which notice you received last April 16, 1993.

You were given an opportunity to be heard at the clarificatory hearing held in the Office of the Personnel Manager -- Southern Philippines at the Mactan Airport last June 9, 1993.

Reviewing the testimonies and documentary evidence presented, we find the following:

You were absent without leave (AWOL) for three days. Records do not show any approved application for leave of absence or authority/clearance for sick leave when you were absent on January 4, 1993 and February 1 and 2, 1993. You claim that you were sick on January 4, 1993, however, there is no showing that you reported and was later on cleared for sick leave. On February 1 and 2, 1993, you cannot be considered to be on official business as you were in fact attending to your personal concerns. On February 3, 1993 though, you are not considered AWOL for having reported back to work.

We find you culpable of misuse of reduced rate travel privilege by allowing a certain Lyn Ibarra to use your daughter Teresita's travel benefit. There is no Lyn Ibarra among your listed dependents with our department.

While you vehemently deny such misuse to the extent of even denying knowing a Lyn Ibarra, such denial cannot overcome the positive identification made by Mr. Apolinario A. Cruz, Asst. Supervisor, Mactan Airport Ticket Office that Lyn Ibarra was your companion on flight PR841 (MNL-CEB) on January 4, 1993. Moreover, as per statement of Investigating Agent, Jaime Arturo L. Viola, you admitted to him that this Lyn Ibarra was your companion during subject flight. The affidavits you submitted to support your defense that it was your daughter Teresita who was with you at that time cannot be given credence considering that three were made by your relatives particularly Teresita and two (2) sons-in-law and the others by personnel of Philippine Air Force (where you were long-time connected with.)

The foregoing case is enough to warrant the termination of your services from the Company as the same constitutes fraud. We therefore do not find the necessity at this time to dwell on the other equally serious charge levelled against you. Our Security Department has in fact uncovered more irregularities principally your utilization of Company time and premises for private gain, timekeeping violations and further misuse of your dependents' travel privileges.

Be advised therefore that you are DISMISSED from the services of the Company in accordance with the Company's Code of Discipline effective immediately upon receipt of this notice.

(signed)

GODOFREDO B. BANZON

Director - - Medical

As a result, on 17 August 1993, IBARRA filed with the Regional Arbitration Branch VII of the NLRC in Cebu City a complaint<sup>[5]</sup> for illegal dismissal, non-payment of 13th month pay, service incentive leave, allowances, separation pay, back wages, moral damages and attorney's fees against PAL.

In his Position Paper,<sup>[6]</sup> IBARRA argued that his dismissal on the charges that he went AWOL for three days on the said dates in question and that he misused the reduced rate travel privilege were without basis. He asserted that he had an authority/clearance for his sick leave on 4 January 1993 as shown by PAL Form No. F-0035 duly signed and approved by the Chief of Mactan Medical Services, Dr. Manolo Espedido.<sup>[7]</sup> As to his absences on 1 & 2 February 1993, Dr. Ibarra claimed these were due to official business as shown by PAL Form No. F-00214 duly signed and approved by Dr. Manolo Espedido.<sup>[8]</sup>

IBARRA likewise denied petitioner's charge that he misused the reduced rate travel privilege by allowing a certain Lyn Dizon, his alleged live-in partner, to use the travel benefits of his daughter, Teresita Ibarra- Villarín. He maintained that it was his daughter who accompanied him on Flight PR841 from Manila to Cebu on 4 January 1993 as established by the affidavits of Victoriano Casul of the MCIAA Intelligence I.D. and Pass Control Division, Mamerta Jamila of the Air Intelligence Reconnaissance Division of the Philippine Air Force (PAF), Sgt. Rogelio Ybañez of the Philippine Air Force, IBARRA's sons-in-law, Ramon Abundo, and Glicerio Villarín, and

IBARRA's daughter, Teresita Ibarra-Villarin.<sup>[9]</sup>

Petitioner, on the other hand, asserted that IBARRA was dismissed "for just cause after due process" and was therefore not entitled to the various claims listed in his complaint.<sup>[10]</sup>

The Labor Arbiter then conducted hearings on the case with the parties presenting their witnesses.<sup>[11]</sup>

On 24 June 1994, the Labor Arbiter rendered his decision<sup>[12]</sup> in favor of private respondent, the dispositive portion of which reads as follows:

WHEREFORE. premises considered, judgment is hereby rendered ordering the respondent Philippine Airlines, Inc. to reinstate the complainant to his former position or equal position without loss of seniority rights and benefits and to pay him the following:

Backwages -----P164,266.64

Attorney's Fees----- 16,426.66

|       |             |
|-------|-------------|
| Total | P180,693.30 |
|-------|-------------|

The other claims are dismissed for lack of merit.

SO ORDERED.

The back wages were computed "from August 16, 1993 until the date of the decision on the basis of the last salary rate of the complainant."

The Labor Arbiter gave more weight to IBARRA's arguments, finding them to be amply supported by convincing evidence. He likewise concluded that IBARRA could not be held liable for incurring absences without leave on the pertinent dates as these absences were authorized by Dr. Espedido, his immediate superior, who admitted giving permission to private respondent for his sick leave and leave for official business. As to Dr. Espedido's alleged lack of authority to grant such leave, the Labor Arbiter resolved that:

In spite of the submission of the respondent that Dr. Manolo Espedido was not authorized to grant the leave yet, We still find that the authority of the good Doctor for the complainant to make the absences still stand[s] as [a] shield which protects him from the charge of AWOL because the said authority was the one that impelled him to be absent.

Withal, it strained Our imagination why Dr. Manolo Espedido who had been in the service of the respondent for quite a time would grant authority to the complainant to make absences if he was not empowered to do so.

In any case, We hold that the complainant utmost was in good faith in absenting himself therefore should not be meted a penalty of dismissal because of such misdeed if at all it is one.<sup>[13]</sup>

As to PAL's claim of IBARRA's misuse of the reduced rate travel privilege, the Labor Arbiter gave more weight to the version of IBARRA, thus:

The complainant had presented witnesses who convincingly testified that he was with his daughter Teresita Ibarra Villarin when he got off from flight PR 841 on January 4, 1993. In spite of the extensive cross-examination made by the respondent's counsel, the said witnesses never wavered and stucked [sic] to their testimonies that what they saw with the complainant at the airport in the afternoon of January 4, 1993 was the latter's daughter and not Lyn Dizon as what respondent would impress upon Us.<sup>[14]</sup>

In so doing, the Labor Arbiter discredited the declaration of Apolinario Cruz, Jr., PAL's former assistant supervisor at the Mactan Airport ticket office, as Cruz had "an ax to grind against the complainant whom he (Apolinario Cruz, Jr.) [thought] was fooling around with his wife who was a nurse under the complainant."<sup>[15]</sup>

PAL appealed from the decision to the NLRC and invoked the following grounds in support thereof:

- 1) The Labor Arbiter acted with grave abuse of discretion by deciding the case only on the basis of conjectures and presumptions and completely disregarding and ignoring the facts established by evidence.
- 2) The Labor Arbiter committed serious error and grave abuse of discretion in ordering the reinstatement of complainant-appellee with back wages and attorney's fees despite the fact that the evidence presented shows valid causes for his dismissal.<sup>[16]</sup>

On 14 December 1994, the NLRC rendered its decision<sup>[17]</sup> the dispositive portion reading:

WHEREFORE, the appeal is hereby DISMISSED and the decision of the Labor Arbiter is hereby AFFIRMED.

The NLRC conducted a thorough evaluation of the evidence as presented to arrive at its conclusion that IBARRA's dismissal was illegal.

As to IBARRA's leave, the NLRC quoted portions of the testimony of Dr. Manolo Espedido's, PAL's witness, then concluded:

From the foregoing, it is evident that the approved leave of complainant was final. It was not his fault that the form used was somehow different from what should have been used. It was the fault of respondent PAL acting through its Chief Medical Services at PAL Mactan Station, when it allowed the use of a different form for O.B. in the case of complainant who is a Doctor of Medicine.

The NLRC also carefully assayed the evidence of PAL on the charge of misuse of the reduced rate travel privilege, thus:

With respect to the charge of misuse of reduced rate travel privilege (company trip pass), respondents relied on the testimonies of (1) Dr. Manolo S. Espedido, complainant's immediate superior at the Mactan

Medical Clinic, (2) Mr. Apolinario A. Cruz, Assistant Supervisor, Mactan Airport Station Office; and Jaime L. Viola, Investigating Agent, Security and Travel Sub-Department. (see p. 9 Respondents' Position Paper, p. 74, rollo).

In his affidavit (p. 94 rollo), Dr. Espedido deposed and stated that he is the Chief Medical Services, PAL Mactan Station and Dr. Ibarra (complainant) was under his administrative supervision; that Dr. Ibarra filed for a trip pass and reduced rates application on 8 December 1992 for his daughter, Teresita Ibarra for CEBU-MLA.-CEBU routing which he approved for which a flight coupon was consequently issued; and that he does not remember having issued any vacation leave, sick leave and official leave on any other written permission for Dr. Ibarra to officially proceed to Manila on January 4 and February 1 to 3, 1993.

But the testimony of Dr. Espedido on January 22, 1994, shows otherwise, thus:

"HON. LABOR ARBITER:

I will ask the question.

Q You admitted that you signed this authorization to leave company premises on official business. What is the significance of your signature in this particular authorization?

WITNESS:

A Well, as stated, that is how it means.

HON. LABOR ARBITER:

Q Do you mean that you approved this leave?

WITNESS:

A That's correct, but then there is a system involved, PAL is highly centralized organization, not all that I approved in my level is final within Manila. I mean, Manila has the final say.

On the part of Mr. Apolinario A. Cruz, a disposition upon oral examination was taken at the Philippine Consulate General, Toronto, Ontario, Canada on 18 April 1994 by consul Ruth Morales Prada (see pp. 213-215 Rollo). In his said Deposition (pp. 226-229 Rollo), Mr. Cruz simply reiterated what he stated in a Sworn Statement (pp. 220-221, rollo) which he executed before Notary Public, Francisco M. Senerpida, on September 30, 1993, at Lapulapu City.

In said Sworn Statement, Mr. Cruz deposed that, on 23 November 1992, he reported to the SVP-Sales that Dr. Ibarra (complainant) and one of his dependents took the PR 848 flight on 20 December 1992 without bothering to cancel their confirmed seats on two other flights; that when