

## THIRD DIVISION

**[ G.R. No. 120507, September 26, 1997 ]**

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION (4TH DIVISION), AND VICENTE O.  
SATOR, JR., RESPONDENTS.  
D E C I S I O N**

**ROMERO, J.:**

Shakespeare's lines must have been the furthest thing from the mind of the National Labor Relations Commission when, reversing the Labor Arbiter, it declared that the respondent worker should not have been dismissed for having been found guilty of stealing a purse when the petitioner Philippine Airlines, Inc. (PAL) had accused him of stealing a billfold.

The issue thus posed is: Does it matter if an employee, on first notice, is informed of an administrative charge for pilfering a billfold but after investigation is notified of his dismissal on the ground of taking a lady's purse instead? The National Labor Relations Commission (NLRC) believes it does. Petitioner Philippine Airlines, Inc., however, disagrees. Hence, PAL files the instant petition for certiorari impugning the NLRC's<sup>[2]</sup> December 8, 1994 decision<sup>[3]</sup> and its May 22, 1995 resolution <sup>[4]</sup> which found private respondent Vicente O. Sator, Jr.'s termination illegal because the aforementioned basis for dismissing him did not accord with PAL's accusation.

We chronicle the pertinent facts below.

Private respondent commenced working for PAL on April 1, 1991 and he was dismissed by the latter effective November 19, 1993. Prior to his dismissal, he was designated as a Ramp Equipment Operator (REO) whose assigned task was to drive the airstairs at PAL's branch in Mactan International Airport, Lapu-lapu City.

On November 15, 1993, at about 8:40 P.M., private respondent and two other station loaders were ordered to handle the loading of cargoes and pieces of baggage in PAL Flight PR 838 bound for Manila where two security guards, namely, Rogelio Dasoc and Reynaldo Amodia, were posted at the time. As the loading operation took place, Dasoc allegedly noticed private respondent taking something from one of the loaded baggage and wrapping the same in his PAL service polo shirt. His suspicion aroused, Dasoc attempted to conduct an inspection of the person of the private respondent. However, before he had even commenced, the latter hastily boarded the airstair, tossed the shirt he was holding into the right side of the front seat and immediately rushed out therefrom. Dasoc then seized this opportunity to open the right side door to retrieve the shirt but private respondent quickly grappled for possession of the same and attempted to free himself from Dasoc who managed to him by the shoulder. But as he dashed towards Mactan Air Base, Dasoc and his companion gave chase and cried out to Sergeants Renato Penafiel and Nathaniel Dungog who were then manning the base for help. Upon order of the two base

guards, private respondent finally halted but not before he allegedly threw something into a nearby canal which, when later retrieved, turned out to be a lady's wallet.

The said incident was promptly reported in the blotter of the Philippine Air Force Security Command (PAFSECOM) and with the Mactan Cebu International Airport Authority (MCIAA) police where the two guards and the base personnel executed their sworn statements regarding the matter. Information about the same was also relayed to PAL through its Assistant Vice President, Jose de la Rosa, who immediately placed private respondent under preventive suspension and directed a thorough investigation of the incident. Meanwhile, PAL sent a notice<sup>[5]</sup> dated November 17, 1993, to private respondent charging the latter with serious misconduct on account of the alleged filching of a billfold from a baggage of a passenger. This act of private respondent, according to PAL, violated Section 2, Chapter 2, Article VIII of PAL's Code of Discipline on theft, pilferage and embezzlement of baggage or cargo, among others.

Private respondent duly filed his answer to the charge after which PAL conducted a clarificatory hearing<sup>[6]</sup> on December 10, 1993, where he was duly represented and assisted by a labor lawyer of his union. Thereafter, on the basis of the findings made during the investigation, PAL declared him guilty of pilferage of a lady's purse for which he was meted out the penalty of dismissal for cause.<sup>[7]</sup>

Private respondent, on the other hand, belied PAL's version of the incident. He recalled that on November 15, 1993, he was actually assigned to load cargoes and pieces of baggage at the rear compartment of the aircraft but denied having pilfered anything therefrom. According to him, he was then disengaging the airstair from the aircraft when Dasoc allegedly followed him and, for an unknown reason, demanded to search his person. He acceded to the demand but requested that it be done in the presence of his Ramp Superior Officer, Nicolas Sia, and a co-employee, Ramiro San Juan, who were just within the vicinity. As nothing was found on his person during said search, he returned to the airstair to continue his work. However, Dasoc and Amodia ganged up on him again on the pretext of conducting yet another search. Suspecting that the guards merely wanted to plant incriminatory evidence, he resisted the search and struggled to free himself from their grip. He then sprinted towards the nearby base but security personnel of the Philippine Air Force stopped him and at gun point, conducted another search. They only released him when no incriminatory item was found in his possession. Despite this, private respondent was still investigated by PAL although the wallet which he allegedly pilfered and threw into a canal was not even offered in evidence. In his opinion, PAL's failure to present the stolen item rendered its accusation absolutely baseless.

The Labor Arbiter, however, gave credence to PAL's account of the incident and explained in the main that, as against the negative assertion of the complainant that he did not commit the offense charged, the positive allegations of the witnesses pointing to him as the culprit should be given more evidentiary weight. He, therefore, adjudged private respondent's termination from employment valid and, accordingly, dismissed the complaint.

On appeal, the NLRC reversed and set aside the Labor Arbiter's decision after reconsidering its earlier action to remand the case for further proceedings. It

declared that the offense charged --- that of stealing a billfold --- was not proved by PAL inasmuch as what eventually became the basis for dismissing private respondent was that of taking a lady's purse or wallet, thus:

However, in all the pleadings of respondent, it was alleged that what complainant threw into the canal turned out to be a lady's wallet. In fact, the Certification issued by SPO3 Franklin Begaso (pp. 86, Rollo), the Certification of Desk Officer Napoleon Bebanco (p. 87, Rollo); Affidavit of S/G Basilio Dasoc (p. 88, Rollo), Affidavit of S/G Reynaldo Amodia (p. 89, Rollo); Affidavit of Sgt. Renato Penafiel (p. 90, Rollo) and Affidavit of Nathaniel Bungag, (p. 91, Rollo) all claim that what was allegedly thrown by complainant to the canal was a lady's wallet. The same lady's wallet was mentioned in the Supplemental Affidavit by SS Dasoc (pp. 132-133, Rollo).

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As We have heretofore stated, complainant was charged of pilferage of a BILLFOLD. (See Notice of Administrative Charge, pp. 92-92, Rollo), but he was dismissed for having pilfered a LADY'S PURSE. (See Dismissal for Cause, pp. 98-99, Rollo). Clearly, the offense charged - pilferage of a BILLFOLD - has not been proven. What is more, the alleged stolen item which was purportedly recovered from the canal was never presented. This renders the respondent's position more dubious. Since the cause for complainant's dismissal - pilferage of a Lady's Purse - was not the offense charged complainant's right to be informed of the charges against him before dismissal has been violated and the cause for his dismissal is false.

Under such circumstances, We can only conclude that the dismissal of complainant was without just or authorized cause and without due process. Such dismissal is, therefore, illegal."<sup>[8]</sup> (Italics supplied).

We do not subscribe to the NLRC's forced attempt at ratiocination.

It is indeed axiomatic that in all termination cases, strict compliance by the employer with the demands of both procedural and substantive due process is a condition sine qua non for the same to be declared valid.<sup>[9]</sup> This means that the employer is enjoined to terminate the services of an employee only upon such causes or grounds authorized by law and, even then, only after the employee is served with the required notices and accorded ample opportunity to defend himself. Likewise, the employer bears the burden of proving just and valid cause for dismissing an employee, the object of which is to give flesh and blood to the guarantee of security of tenure granted the employee by the Constitution and the Labor Code.<sup>[10]</sup> In this regard, we believe that these standards have been satisfactorily met by PAL and, hence, there is really no basis for declaring that the penalty of dismissal it imposed upon private respondent was tainted with infirmity.

From the language of the NLRC's resolution finding the dismissal defective, it is

obvious that it was under a misapprehension that there was a difference between the "Notice of Administrative Charge"<sup>[11]</sup> and the "Dismissal for Cause"<sup>[12]</sup> with respect to the appropriate denomination of the item allegedly purloined. Actually, in the notice, the terms "billfold" and "lady's purse" were being used interchangeably. In any case, the distinction, in our opinion, is more apparent than real and overlooks the substance of PAL's charge. While the basic tenets of justice and fair play indispensably require that an employee be properly apprised of the charge against him and that he be dismissed only on the specific ground charged, this rule, however, finds no application in the case at bar where the variance between the accusation and the stated cause of dismissal involves a simple matter of nomenclature that merely skims the essence of the charge or the ground for the dismissal eventually proved.

What the NLRC lost sight of in the course of its review is the fact that private respondent was charged with and finally dismissed on the basis of the act of pilferage alone and nothing else. There was no undue surprise upon him as the evidence adduced by PAL did not depart from, and were all in support of, the charge of which he stands accused. Even a cursory examination of his affidavit, reveals that he was fully aware of the accusation against him as his statements therein were all intended to negate the act of pilferage. We do not have here a case where private respondent was informed of a charge based on a certain set of facts and then was instead investigated and dismissed on another ground. That would unquestionably be a denial of due process and an invalid act on the part of the employer.

What the Court finds apropos is our disquisition in *Segismundo v. National Labor Relations Commission*<sup>[13]</sup> whose factual milieu is similar to the case at bar, viz:

We uphold the finding of the public respondent that petitioners' dismissal was for a just cause. The public respondent's findings on this score are fully supported by the results of the investigation conducted by private respondent regarding the pilferages (sic), and these results were presented before the Labor Arbiter. The conclusion that petitioners were involved in the pilferages (sic) was solidly premised on the tabulated complaints of consignees, the records of pilfered packages delivered by petitioner's team and delivery receipts. No evidence was presented to show that private respondent was motivated by ill feeling or bad faith in dismissing the petitioners. Xxx It is thus clear that private respondent's decision to terminate petitioners' services was prompted by the necessity to protect its good name and interests.

Private respondent's documentary evidence showing the culpability of petitioners should prevail over petitioners' uncorroborated explanations and self-serving denials regarding their involvement in the pilferages (sic). All administrative determinations require only substantial proof and not clear and convincing evidence (*Manalo v. Roldan-Confesor*, 215 SCRA 808). Proof beyond reasonable doubt of the employee's misconduct is not required, it being sufficient that there is some basis for the same or that the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position. (*Riker v. Ople*, 155 SCRA 85). Xxx." (Underscoring supplied).