THIRTEENTH DIVISION

[CA-G.R. SP No. 121121, March 19, 2014]

IRM AVIATION SECURITY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND JONEL E. ANDUTAN, RESPONDENTS.

D E C I S I O N

YBAÑEZ, J.:

Before Us is a Petition for *Certiorari* filed by petitioner IRM Aviation, Inc. pursuant to Rule 65 of the Revised Rules of Court seeking to annul and set aside the Decision rendered on 06 May 2011 by the Second Division of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000323-11 (NLRC NCR-00-05-07029-10), as well as the Resolution promulgated on 14 June 2011 denying the Motion for Reconsideration thereof.

The Facts

On 20 May 2010, private respondent Jonel E. Andutan filed with the Labor Arbiter a complaint for illegal dismissal, unfair labor practice, damages and attorney's fees[1] against petitioner IRM Aviation, Inc.

The parties were required by the Labor Arbiter to submit their respective position papers after the preliminary mandatory conference with them yielded no positive results.

In his Position Paper[2], private respondent alleged that, sometime in February 2008, he was employed by petitioner company as security guard for a compensation of P4,982.00, payable every fifteen (15) days. However, he was dismissed on 16 May 2010 for two omissions, *viz*: (1) failure to detect a baggage that was wrongly loaded into the Royal Brunei Aircraft on 02 June 2009; and (2) failure to conduct the proper aircraft search during a Transport Security Administration (TSA) Audit on the Hawaiian Airlines on 21 November 2009.

Respondent denied the first infraction on 02 June 2009 where he allegedly failed to detect a baggage that was wrongly loaded into the Royal Brunei Aircraft, since he claimed that he was not the assigned guard who was overseeing the loading of the baggage into the said aircraft, as it was a certain Romulo Delima who was assigned in that area.

As regards the 21 November 2009 incident, respondent insisted that his omission was not a grave offense. He narrated that, in one of the seats he inspected, he tapped the life vest below the seat but did not pull out the vest. The Transport Security Audit (TSA) Personnel then told him he had to pull out the vest, and instructed him to repeat the inspection. He obeyed at once and was given a thumbs up sign in approval by the TSA personnel.

Respondent argued that he served the thirty (30)-day suspension for the alleged first infraction on 02 June 2009 without giving him first the opportunity to explain his side. He stressed that the only notices to explain which he received were those dated 06 January 2009[3] and 02 March 2010[4].

Respondent argued that if he indeed committed a wrong, he should have first been given an opportunity to explain, and that dismissal is too harsh a penalty to impose on him. He contended that the only reason he could think of for his dismissal is his active involvement in the newly-organized union, where he was elected as Press Relations Officer.

Petitioner company, on the other hand, countered that, prior to respondent's dismissal on 16 May 2010, he was formally investigated relative to the incident on 21 November 2009, where he failed to conduct the proper aircraft search during a spot audit report conducted by the Transport Security Administration (TSA) on Hawaiian Airlines. In order to give respondent a full opportunity to explain his side, a first notice to explain dated 06 January 2009[5] was served upon him, which was duly received by him on 07 January 2010, as shown by respondent's signature thereon. Thereafter, a second notice to explain dated 02 March 2010[6] was served upon him giving him an extended period to submit his written explanation. Respondent complied with above notices and submitted his written explanation[7] dated 04 March 2010. Moreover, an administrative hearing[8] was conducted on 02 March 2010 to give respondent the opportunity to explain his side.

However, given the critical nature of the aviation security industry where respondent was a part of, the management of petitioner company arrived at the conclusion to terminate respondent, especially since the 21 November 2009 incident was not his first infraction. Thus, a Notice of Termination[9] dated 15 April 2010 was issued to respondent.

On 28 October 2010, the Labor Arbiter rendered his Decision[10] holding that respondent's dismissal was valid and was not due to his alleged union activities. As regards the first infraction committed on 02 June 2009, the Labor Arbiter rejected respondent's explanation that he was not the assigned guard who had the duty to watch the proper loading of the baggage, since respondent actually saw the incident and it was still his responsibility to prevent the improper loading of the same. The Labor Arbiter further established respondent's second wrongful act committed on 21 November 2009, since respondent admitted his misconduct during the said aircraft search. Lastly, the Labor Arbiter ruled that petitioner properly complied with procedural due process in effecting respondent's termination.

Aggrieved with the said ruling, respondent appealed from the said Decision to the NLRC[11], which rendered the assailed Decision[12] on 06 May 2011 reversing the Labor Arbiter's findings. The NLRC ratiocinated that, while indeed respondent was guilty of the two infractions committed by him, the supreme penalty of dismissal is not justified. The NLRC noted that respondent started his employment with petitioner only in February 2008 and the incidents happened the following year, or in June and November 2009. While respondent failed to level up to the standards of aviation in the two incidents, said failure may not be considered as gross negligence or serious misconduct, but may merely be construed as lack of skill in the job due to a short period of exposure to its occurrences. The NLRC further held that there is an absence of a clear and convincing showing that the June incident was all due to

respondent's fault, since Mr. Romulo Delima monitored the loading of the baggage without calling the attention of the operator who transported the same. Thus, the NLRC declared that the 21 November 2009 incident may not be considered habitual and gross which would warrant the supreme penalty of dismissal. The dispositive portion[13] of said Decision reads as follows, viz:

> "**WHEREFORE**, premises considered, the Decision appealed from is hereby **REVERSED** and **SET ASIDE** and a new one entered declaring the dismissal of complainant is not valid, thus he should be reinstated to his former position without loss of seniority rights and other privileges but without backwages; and there is no entitlement to other reliefs he prays for.
>
> **SO ORDERED**."

Aggrieved, petitioner filed a Motion for Reconsideration[14] of the said Decision, while respondent also filed a Partial Motion for Reconsideration[15] questioning the NLRC's denial of his claim for payment of backwages.

Both motions were denied by the NLRC in the assailed Resolution[16] promulgated on 14 June 2011.

Hence, the instant petition[17] anchored on a sole assigned error[18] purportedly committed by respondent NLRC, viz:

> AS FOUND BY HEREIN PUBLIC RESPONDENT NLRC- SECOND DIVISION AND LABOR ARBITER A QUO, PETITIONERS HAVE PRESENTED SUFFICIENT EVIDENCE SHOWING THAT THE PRIVATE RESPONDENT WAS VALIDLY AND LEGALLY DISMISSED WITH DUE PROCESS, HENCE, THERE WAS A CLEAR GRAVE ABUSE OF DISCRETION ON THE PART OF THE PUBLIC RESPONDENT NLRC-SECOND DIVISION IN HOLDING THAT THERE WAS ILLEGAL DISMISSAL AND ORDERING HEREIN PETITIONER IRM TO REINSTATE RESPONDENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES BUT WITHOUT PAYMENT OF BACKWAGES

In support of said assigned error, petitioner claims that respondent's dismissal was for just cause and was made after compliance with procedural due process. Petitioner insists that respondent's infraction constitutes serious misconduct and gross negligence which are grounds for dismissal, since respondent failed to properly inspect the life vest and, had it been left uninspected, put the life of passengers, and the name and goodwill of the airline and security agency at risk. Moreover, it contends that the length of time that respondent was employed with petitioner should have worked against him, since his length of service with petitioner company should have given him enough time and competence to carry out the basic functions of a ramp agent, which he failed to do.

The Issue