

SPECIAL THIRD DIVISION

[G. R. No. 166996, September 03, 2008]

PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV, PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D. ABUYUAN, PETITIONERS, VS. BERNARDIN J. ZAMORA, RESPONDENT.

R E S O L U T I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, which seeks to set aside the 13 August 2004 *Decision*^[1] and 1 February 2005 *Amended Decision*^[2] of the Court of Appeals in CA-G.R. SP No. 68795 entitled, "Bernardin J. Zamora v. National Labor Relations Commission, et al." In the assailed decisions, the Court of Appeals annulled and set aside the 27 April 2001^[3] *Resolution* and 31 October 2001^[4] *Decision* of the Third Division of the National Labor Relations Commission (NLRC) in CA No. 013358-97, (a) ordering the Labor Arbiter to forthwith issue a Writ of Execution stating that "(1) complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000"^[5]; and b) suspending the proceedings of the case in view of the ongoing rehabilitation of Philippine Airlines, Inc. (PAL) and accordingly referring the particular case to the permanent rehabilitation receiver.

This case stemmed from a labor *Complaint*^[6] filed by respondent Bernardin J. Zamora (Zamora) against petitioners Philippine Airlines, Incorporated (PAL) and Francisco X. Yngente IV (Yngente), *Assistant Vice-President*, PAL Cargo Sales and Services; Pag-asa C. Ramos (Ramos), *Manager*, PAL Payroll and Timekeeping Department; Jesus Federico V. Viray (Viray), *Operations Director for International Cargo*, PAL Import Division; Ricardo D. Abuyuan (Abuyuan), *Supervisor for International Cargo*, PAL Import Division; and Gerardo V. Ignacio (Ignacio), *Manager*, PAL Import Operations Division, for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. The complaint was docketed as NLRC NCR Case No. 00-03-01672-96.

From the records of the case, the following have been alleged:

On 9 February 1981, Zamora started his employment at PAL as a Cargo Representative at its International Cargo Operations-Import Operations Division (ICO-IOD). He alleged that sometime in December 1993, Abuyuan, Supervisor of the IOD, instructed him to alter some entries in the Customs Boatnote to conceal smuggling and pilferage activities; and that when he (Zamora) refused to follow said order, Abuyuan filed an administrative case against the former based on false or

concocted charges of insubordination and neglect of customers.

On 6 November 1995, Zamora received a Memorandum directing him to report to PAL's Domestic Cargo Operations starting 13 November 1995. Zamora refused to obey the transfer order for the following reasons: (1) that there was no valid and legal reason for his transfer; (2) that the transfer was in violation of the provision of the Collective Bargaining Agreement (CBA) existing at that time between PAL and its employees, which states that no employee shall be transferred without just and proper cause; and (3) that the transfer did not comply with the 15-day prior notice rule likewise embodied in the CBA.

Thereafter, Zamora came into possession of a telex message originating from Honolulu, Hawaii, addressed to Abuyuan with a handwritten notation by Ignacio, Manager, IOD, instructing him to "intercept" a particular cargo. Using the communication as evidence, Zamora wrote PAL management and exposed the supposed illegal activities at the IOD; and requested that an investigation be done to shed light on the matter.

Acting on the exposé, the management of PAL invited Zamora to several conferences to substantiate the serious allegations. Zamora claimed that during the conferences, he was directed to continue reporting to ICO-IOD and observe the activities therein. Starting 15 December 1995, however, his salaries were withheld for no apparent reason.

Quite the opposite, PAL, *et al.*, countered that Zamora's dismissal was for cause anchored on the following facts: that sometime in December 1993, he was administratively charged with Insubordination and Neglect of Customers for his (Zamora) refusal to amend a Customs Boatnote and Inbound Handling Report that was based on an erroneous CPM message; that in October 1995, Zamora had an altercation with Abuyuan, which almost resulted in a fistfight; that he was made to explain his side of the incident but his explanation was considered unsatisfactory; and that Zamora was temporarily transferred to the Domestic Cargo Operations (DCO) in order to diffuse the tension between him and his supervisor, Abuyuan. Zamora, however, refused to heed said order and insisted on reporting to the IOD instead. PAL, *et al.*, also alleged that Zamora similarly ignored the instruction to explain in writing his continued absence from the DCO.

On 22 February 1996, PAL notified Zamora of the administrative charge against him for Absence Without Official Leave (AWOL). Subsequently, he was advised of the termination of his employment due to insubordination, neglect of customer, disrespect for authority and absence without official leave.

On 12 March 1996, Zamora filed a complaint against PAL and Yngente^[7] before the NLRC for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. Subsequently, Ramos, Viray, Abuyuan and Ignacio were also made respondents thereto.

On 28 September 1998, the Labor Arbiter^[8] rendered a Decision^[9] dismissing Zamora's complaint for lack of merit.

In dismissing the complaint, the Labor Arbiter considered Zamora's transfer as an

exercise of PAL's management prerogative; and that his refusal to report to the DCO was a clear case of insubordination to and disregard of management directive. Zamora expectedly appealed the foregoing decision to the NLRC.

On 26 July 1999, the NLRC (1) reversed^[10] the aforequoted decision and ordered Zamora's immediate reinstatement to his former position, but (2) denied the latter's prayer for damages and attorney's fees. The Commission held that PAL, Yngente, Ramos, Viray, Abuyuan and Ignacio (PAL, *et al.*) "failed to substantiate that complainant's (respondent Zamora) transfer was for a just and proper cause."^[11]

Zamora filed a *Motion for Partial Reconsideration*^[12] of the above-quoted decision, but was denied^[13] for lack of merit.

What occurred thereafter was an exchange of a barrage of pleadings.^[14]

Meanwhile, on 16 September 1999 and 25 November 1999, the NLRC denied Zamora's partial motion for reconsideration and PAL, *et al.*'s motion for reconsideration of its 26 July 1999 decision, respectively.

Aggrieved, PAL, *et al.*, filed a *Petition for Certiorari*^[15] before the Court of Appeals on 11 December 1999. The petition was **docketed as CA- G.R. SP No. 56428**.^[16]

In the interim, Zamora moved anew for the execution of the part of the 26 July 1999 NLRC Decision ordering his reinstatement and payment of monetary benefits.^[17] And later, he again filed another pleading, this time before the Labor Arbiter asking that PAL, *et al.*, be held in contempt of the Commission for the airline's refusal to physically reinstate him to his former position, or, at the very least, in the payroll, considering that the order of reinstatement was immediately executory in nature. PAL, *et al.*, opposed the motion.^[18]

On 8 January 2001, the Labor Arbiter^[19] held that PAL, *et al.*, were guilty of indirect contempt for failing to reinstate Zamora as directed.

PAL, *et al.*, appealed the above-mentioned Order to the NLRC and included therein a prayer for the suspension of the proceedings since the airline, at that time, was undergoing rehabilitation.^[20]

In a Resolution^[21] dated 27 April 2001, the NLRC (1) partially *reversed* the 8 January 2001 Labor Arbiter Order by setting aside the finding of indirect contempt; but affirmed the portion which ordered the issuance of the writ of execution. More importantly, it partially *amended* its 26 July 1999 Decision by ordering the payment of separation pay in lieu of reinstatement.

Both parties moved for the partial reconsideration thereof.

On 31 October 2001, the NLRC denied Zamora's motion for partial reconsideration but granted that of PAL by suspending the proceedings of the case in view of the airline's ongoing rehabilitation.