

## SECOND DIVISION

[ G.R. No. 126805, March 16, 2000 ]

**PHILIPPINE AIRLINES INC., PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION (3RD DIVISION) AND MARCELITO  
PESCANTE, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This special civil action for *certiorari* seeks to annul the Decision of National Labor Relations Commission (NLRC) promulgated on June 20, 1996, in NLRC NCR Case No. 00-05-04118-94, and its Resolution dated September 12, 1996, which denied petitioner's motion for reconsideration.

On January 19, 1993, private respondent Marcelito Pescante and another PAL employee, Edgar Vicente, were assigned to handle petitioner's flight PR 841 bound for Cebu as load controller and check-in clerk, respectively. As load controller, private respondent's main task is to manifest the baggage of passengers with reference to their respective weights and to determine the proper load balance of the aircraft. As check-in clerk, Vicente's duty is to check-in the passengers and place the corresponding tags on their luggage. The check-in clerk takes down the weight of the passenger's baggage, then reflects the same on the tickets that are eventually passed on to the load controller who uses the same as the basis in determining the load of the aircraft. As a policy, load controllers are prohibited from assisting in the checking-in of passengers to prevent collusion with the check-in clerks.

On that same day, a passenger named Myla Cominero checked in for the flight. She was escorted by Sgt. Jose Tompong, the police assistance officer assigned at the domestic airport. The events of that day were best narrated by Sgt. Tompong, in his statement dated January 25, 1993, submitted by both parties as their common evidence.

"Q. Can you recall any incident that happened last January 19, 1993...?

A. There was no unusual incident, except [that] a certain woman who [greeted] me ... she presented to me her ticket. At this point, I guided her [to] the Check-in Counter. Later, I came to know her as Ms. Cominero.

Q. Upon reaching the check-in counter, what happened?

A. She presented her ticket to CIC Pelayo and when asked how many pieces of baggage she was carrying, she said, seven pieces of baggage.

Q. Did you see the seven (7) pieces of baggage [checked-in] by said passenger?

A. Yes, when CIC Pelayo was about to check-in her baggage, preparing the seven pieces of baggage tags, CIC Edgar Vicente arrived and said 'Ako na ang bahala diyan.'

Q. What happened next?

A. After the weighing of baggage, Ed Vicente talked to the passenger because the weight of her seven (7) pieces of baggage was more than 100 kgs.

Q. What did you hear about (sic) their conversation?

A. Sabi ni Ed, magbabayad ka rito ng more than P1,000.00, kaya bale kinontrata na niya ang pasahero at ako ay lumayo na sa counter.

Q. What happened next?

A. Noong bumalik ako sa entrance gate, sabi sa akin ng pasahero, 'Kuya, pakibigay mo nga itong pera doon sa kausap kong lalaki na nag check in sa akin.'

Q. What did you answer?

A. Tinanong ko kung para saan ito at ang sabi niya para doon sa excess baggage ko. Nakatipid ako ng kaunti.

Q. Magkano naman ang pera na ibinigay sa iyo?

A. Naka roll ang pera at nalaman kong isang libo (P1,000.00)

x x x

Q. Ano naman ang ginawa mo sa pera na [ibinigay] sa iyo ng pasahero?

A. Noong mga 1500H na, kinuha sa akin in Ed Vicente ang pera.

Q. Saan mo banda ibinigay ang pera?

A. Doon[,] malapit sa telephone booth ng terminal 2. Pagkatapos nalaman ko nahuli pala ang pasahero bumalik at sumakay sa eroplano.

Q. Noong sinamahan mo ang pasahero na mag check-in sa counter, may dala ba siyang ibang ticket or kaya ay may mga kasama?

A. Nag check[-]in ang nasabing pasahero at walang kasama at isang ticket ang hawak na inabot kay Ed Vicente.

Q. Ayon sa aking pagtatanong, nasa iyo daw ang pera noong hindi

dumating ang pasahero sa eroplano noong boarding time na, tutoo ba ito?

A. Hindi po tutuo iyan. Kung sa akin ang pera, bakit si Ed Vicente ang nag-atubiling magbayad ng excess charges ng pasahero ng malaman niyang bulilyaso na. At ang masama rito ay tinuruan pa ako in Ed na gumawa ng scenario.

Q. Anong klaseng scenario?

A. Sabihin ko raw na humingi ng tulong sa akin si Ms. Cominero para hanapan ng pasaherong walang bagahe.

Q. Ano naman ang sagot mo?

A. Sinabi ko Pare huwag. Kasi hindi ko naman ito ginawa at pati ako isasabit pa ninyo diyan.

Q. Okay wala na akong itatanong. Mayroon ka bang gustong sabihin sa pagtatanong na ito?

A. Ang masasabi ko lang po ay ito. Kaya ako nagbigay ng statement ay sa kadahilanan na nais kong bigyan ng katarungan ang aking pangalan."<sup>[1]</sup>

It appears that Vicente reflected a lighter weight of baggage on Cominero's ticket to make it appear that the same was within the allowable level. Cominero's excess baggage was pooled with other passengers with lesser baggage weight or no baggage at all. After checking-in, Cominero left.

On boarding time, Cominero failed to show up. Hence, preparations were made to off-load her baggage. A check with the passenger manifest prepared by private respondent showed that Cominero was presumably travelling with three companions since her ticket was pooled with boarding passes numbers fifteen (15) to seventeen (17). To verify whether Cominero was taking the flight or not, PAL ramp agent Danilo Baniqued talked to Cominero's supposed travelling companions. But to his surprise, all denied knowing Cominero. Then, Cominero arrived during the final call for boarding and before the actual off-loading of her baggage. When questioned, Cominero insisted that she had paid one thousand (P1,000.00) pesos as excess baggage charges at the check-in counter although she was not issued any receipt. Informed of this incident, the duty manager instructed the station control to call Cebu to intercept Cominero and collect the corresponding excess baggage fee. Thereafter, an investigation was conducted.

When the anomaly was discovered, Vicente hastily went to the cashier, Loreto Condez, to pay the excess baggage fee. Condez' statement submitted by both parties as their common evidence, attests to these events:

"20 Jan. '9<sup>[3]</sup>

To : Atty. R. Neri

From : L. B. Condez

Subject: Handling Details of Issuance

1. That on or about 5:30 in the afternoon, Mr. Ed Vicente handed me a piece of paper indicating five pieces of bge weighing 88 kilos minus 18 kilos, 70 kilos excess bge. The amount of P983.50 paid to me by Ed Vicente.
2. I instructed Ed Vicente to get the flight coupon and indicate the number of pieces, weight, bge tag number. When he presented [the] ticket taken from the LCC room, that was the only time I issued EBT.
3. Submitted as requested.

SIGNED Loreto B. Condez 20 Jan. 93"[2]

Despite said payment by Vicente in the amount of P983.50 representing excess baggage, Cominero further paid the sum of P672.95 representing her excess baggage fee upon arrival in her port of destination in Cebu.

In his report dated January 23, 1993, Vicente implicated private respondent in the aforementioned anomaly. He explained that:

"9. I was in this situation sensing something is wrong, when LCP Pescante approached me and told me the best thing for me to do is to call his friend in Cebu with a name Buloy Benabaye also an LCD to intercept said passenger because he learned that those baggage will be withheld in Cebu until further questioning of said passenger. I immediately followed him because I was at a loss on what to do ... I called up Cebu ... and learned said LCD is on off duty. ... I realized that there was no sense in calling the person since he is not involve[d] with the situation.

10. When I was about to go back to the counter, he approached me again and suggested that the last resort I could (sic) do is that he will get the money from the one in white polo barong. After a few minutes, he came with PASCOM Sgt. Tompong and then he handed me P 1,000.00. He asked me to have It issued an Excess Baggage Receipt ...."[3]

In addition, CSA Alfredo Pelayo submitted a written explanation dated February 22, 1993 regarding the incident, which reads:

"2. When I was at the Cebu check-in counter PNP Sgt. Tompong approached the counter and presented a ticket. I noticed LCD Brando Pescante standing beside me at the counter and told me to please check-in the ticket, ...Then LCD Pescante told me `Sige na pare, okay lang yan' and then I responded `Ayoko nga' and then he told me (LCD Pescante) `Pare, ang laki naman yata ng daga mo sa dibdib.' (pointing to my chest). And then I insisted, 'Pagsinabi kong ayoko, AYOKO!'. Then he said 'O sige, di bale na lang pare'...."

3. I was standing at the Cashier's counter when I heard Mr. Pescante