

FOURTEENTH DIVISION

[CA-G.R. SP NO. 89732, September 13, 2006]

**JOJET V. MAGSIPOC, PETITIONER, VS. PHILIPPINE AIRLINES,
INC., AND NATIONAL LABOR RELATIONS COMMISSION,
RESPONDENTS.**

D E C I S I O N

VIDAL, M.D., J.:

Before Us is a *Petition for Certiorari*¹ under Rule 65 of the Revised Rules of Court seeking to annul the Decision² dated 18 January 2005 of the public respondent National Labor Relations Commission (hereinafter NLRC), Third Division in NLRC NCR CA No. 038926-04 (NCR-00-07-08150-2003) entitled "*Jojet V. Magsipoc v. Philippine Airlines*" for *Illegal Dismissal* ruling in favor of the Respondent Philippine Airlines and its subsequent Resolution³ dated 17 February 2005 denying the Motion for Reconsideration filed by Petitioner JOJET V. MAGSIPOC (hereinafter Petitioner).

THE FACTS

The root of the controversy is the complaint for illegal dismissal lodged by the Petitioner against the Respondent.

The Respondent is a domestic corporation duly organized and existing under the Philippine laws, with office and business address at PAL, Inc., Ground Floor, PAL Center, Legaspi Street, Legaspi Village, Makati City.

Petitioner joined the Respondent when he was hired as Customer Service Agent on 16 January 1997. As such, he attended to the different aspects of checking-in passengers, including the weighing and recording of the number of pieces of baggage.

Petitioner was on duty as Customer Service Agent on 10 January 2003 at the Terminal 2, Manila Station Domestic and was assigned at Counter No. 31 to check-in Cebu Business Class Passengers. Airport Security Supervisor WILFREDO MOPAS (hereinafter MOPAS) was also on duty on that day to monitor the going-on at the check-in counter premises.

At around six o'clock in the morning on that day, Security Supervisor MOPAS noticed a lady passenger pushing a baggage cart loaded with several pieces of baggage passing through the first X-ray area. She was met by the Petitioner and another Customer Service Agent. Without their knowledge, MOPAS discreetly observed the two employees. The Petitioner had the lady passenger, Ms. HEIDI GABINETE (hereinafter GABINETE), checked-in at Counter 31 although she was not a Cebu Business Class passenger nor was she bound for Cebu. She was bound for Puerto Princesa with Counters 8 and 9 as the assigned check-in counters.

After weighing and tagging the eight (8) pieces of baggage checked-in by GABINETE, these were returned to the baggage cart and were brought to the conveyor of Counter Nos. 8 and 9. Since her pieces of baggage apparently would exceed the 20-kilo free baggage allowance, MOPAS expected GABINETE to proceed to the cashier to pay for the corresponding excess baggage charges. Surprisingly, GABINETE proceeded to the Terminal Fee Counter. Suspecting that there was something irregular with the transaction, MOPAS followed GABINETE and requested to see her flight coupon wherein it was indicated that the passenger was bound for Puerto Princesa with five other companions, carrying the total of eight pieces of baggage weighing 138 kilograms.

Still MOPAS continued to discreetly monitor the movement of GABINETE. It was only a little later after speaking with the Petitioner that GABINETE was seen paying at the Cahier's Counter. MOPAS learned that GABINETE only paid for 18 kilograms of excess baggage which prompted him to report the matter to his superior and PAL Duty Manager FELICISIMO VIVENCIO (hereinafter VIVENCIO).

Acting on said report, VIVENCIO checked the data entered in the computer by the Petitioner regarding GABINETE and discovered that she was just traveling alone with eight (8) pieces of baggage weighing 108 kilograms.

VIVENCIO confronted the Petitioner regarding the matter to which the latter insisted that GABINETE was traveling with five (5) companions on said flight. However, verification of the records disclosed that the alleged companions of GABINETE had their own checked-in pieces of baggage and that they never checked-in as a group. In reaction, the Petitioner suggested that the concerned passengers be summoned and asked to pay the proper excess baggage fee. This, however, was turned down by the Duty Manager as the transaction was already consummated and the flight was about to depart. Suspicious that the Petitioner was trying to cover up an irregularity, VIVENCIO directed the Petitioner to submit a Handling Report.

On same day, Mr. PASCUAL D. DE LOS SANTOS (hereinafter DE LOS SANTOS), Manager of the Passenger Handling Domestic Division requested the Petitioner to submit a written explanation⁴ which was complied with by the latter on 15 January 2003.⁵ Likewise, MOPAS and VIVENCIO were requested to appear and give their statements regarding the subject of the investigation.

The explanation of the Petitioner was found to be unacceptable by DE LOS SANTOS. Thence the Notice of Administrative Charge⁶ dated 18 February 2003 for violation of safety rules, fraud against the company and falsification, was served upon the Petitioner on 4 March 2003. A ten-day period was given to the Petitioner for him to submit his answer to the charges as well as the affidavits of his witnesses, if any. He was placed under preventive suspension, pending investigation.

The Petitioner was also afforded additional opportunity to explain his side in clarificatory hearings had on 24 March 2003 and 31 March 2003. Thereafter, the case was submitted for decision and on 16 June 2003, a decision was rendered finding the Petitioner liable as charged and was meted the penalty of dismissal from the service, notice⁷ thereof was served on the Petitioner on 24 June 2003.

On 14 July 2003, the Petitioner filed a complaint⁸ for illegal dismissal. In his position paper⁹ submitted to the Labor Arbiter, the Petitioner never denied GABINETE's total checked-in baggage weight was 138 kilograms. He also maintained that the safety of the flight was foremost in his mind when he persuaded the passengers to check-in their baggage consisting of bags and boxes. He also stressed that there could not have been an under weighing of baggage nor illegal pooling of baggage as every passenger is entitled to a 20-kilo free baggage allowance. The excess of 18 kilos was accordingly charged its excess baggage fee. In his position paper, the Petitioner stated that at most, he admitted there was merely an error of judgment by not correcting the boarding card number sequence of the passengers and by not checking-in all of them in his assigned counter. He also asseverated that even if the charges against him were true, the penalty of dismissal was too severe considering that he had no derogatory record since the day he was hired by the Respondent.

On the other hand, the Respondent in its Position Paper¹⁰ filed with the Labor Arbiter maintained that the charges against the Petitioner had been adequately shown and proved by substantial evidence. It added that the offenses of under weighing and illegal pooling of baggage did not only constitute serious misconduct and willful breach of trust and confidence reposed on him which are valid grounds for terminating employment under Article 282 of the Labor Code but also a clear transgression of the company's Code of Discipline which incidentally metes out the same punishment as the Labor Code. The Respondent added that the acts of the Petitioner in under weighing and pooling the pieces of baggage willfully deprived it of its rightful revenue and that it seriously jeopardized the safety of the flight. The Respondent concluded that the deprivation of its revenue was tantamount to theft.

On the basis of the position papers submitted by the parties, the Labor Arbiter rendered a Decision¹¹ on 24 November 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.¹²

Displeased with the aforecited Decision, the Petitioner interposed an appeal to the NLRC which in its Decision¹³ of 18 January 2005 dismissed the appeal for lack of merit. The Petitioner's Motion for Reconsideration, *supra*, was denied by the NLRC in its Resolution¹⁴ dated 17 February 2005.

Feeling aggrieved thereby, the Petitioner now comes to this Court raising the sole issue:

THE ASSAILED DECISION AND RESOLUTION OF THE PUBLIC RESPONDENT, NATIONAL LABOR RELATIONS COMMISSION, ARE NOT IN ACCORD WITH THE FACTS AND EVIDENCE AND THE LAWS AND JURISPRUDENCE APPLICABLE THERETO, HENCE RENDERED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT DUE PROCESS OF LAW[;]¹⁵

Otherwise put, the issue for Our consideration is whether or not the NLRC committed grave abuse of discretion when it rendered the assailed Decision and Resolution.