

PHILIPPINE AIRLINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, GASSIE C. SANGEL AND PHILIPPINE AIRLINES EMPLOYEES ASSOCIATION, RESPONDENTS.

G.R. No. 83834. June 30, 1989

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

Private respondent Gassie C. Sangel was an employee of Philippine Airlines Inc. (PAL) from May 1978 until June 25 1986. At the time of his dismissal, he was a Cargo Representative A with a basic monthly salary of P2,653 cost-of-living allowance of P270 per month and night shift differential of P200 monthly.

As Cargo Representative A at the PAL International Cargo Terminal his duties were:

1. To receive cargoes tendered by agents;
2. To check packing and documentation requirements;
3. To re-weigh cargoes being transferred by forwarders; and
4. To verify correctness of rates applied on airway bills.

In May 1986 Sangel received cargo for shipment to Stuttgart Germany under Airway Bill 079-0444-3681 dated May 1, 1986. The cargo was weighed in by Sangel at 2,334 kilograms. However, when the cargo was reweighed in Germany by PAL's employees there they discovered that it weighed 2734 kilos or 400 kilos more than Sangel had indicated. The discrepancy was reported to PAL's Manila office.

As a result Sangel was "interviewed" by Messrs. Avelino Zapanta, Estrada and Fulo of PAL. The minutes of the interview were transcribed. He was questioned about the underweighing of the Stuttgart cargo. He insisted, however, that he recorded on the airway bill only what the scales showed.

On June 14 1986, Sangel received some cargo for Copenhagen which he weighed. He recorded its weight on the airway bill as 2,520 kilos, but when the weight was entered in the logbook in the Manifesting Section, it was recorded as only 2,220 kgs. or 300 kgs. less. Sangel was not present when the re-weighing was done in the Manifesting Section. PAL's supervisor Virgilio Pasia, who noticed the discrepancy personally supervised the re-weighing and registered 2,560 kgs.

On June 24, 1986 a Notice of Administrative Charge was issued to Sangel by Avelino Zapanta. The notice placed

him under preventive suspension on the same day and directed him to submit evidence within ten (10) days. Sangel sent a reply dated July 1 1986.

On July 14, 1986, Zapanta and Leslie Espino jointly signed a Notice of Termination addressed to Sangel which reads:

"1. Upon examination and evaluation of documents/evidence submitted to this office in connection with the administrative charge filed against you, the committee investigating your case found you to have committed serious misconduct and breach of trust in the improprieties in your dealings with some cargo agents and forwarders. These were deemed most inimical to the best interest of the Company since the said acts resulted not only in losses in revenues but in jeopardizing the safety of the flights as well.

"2. In view of the above, the committee has recommended, and the undersigned has concurred, to terminate your services from the Company effective June 25, 1986 the date you were placed on preventive suspension." (p. 27, Rollo.)

Sangel filed a complaint for illegal dismissal with damages and attorney's fees against PAL. After the parties had filed their position papers and other pleadings the Labor Arbiter rendered a decision ordering the reinstatement of Sangel with full backwages but denied his claim for damages and attorney's fees.

On appeal, the National Labor Relations Commission affirmed the Labor Arbiter's decision but awarded damages and attorney's fees to Sangel thus:

"WHEREFORE, in view of all the foregoing, the decision of Labor Arbiter Evangeline S. Lubaton ordering the reinstatement of complainant-appellee to his former position with full backwages computed from June 24 1986 up to the time he is actually reinstated is hereby AFFIRMED with the following modifications to wit:

"a) Respondent-appellant Philippine Airlines Inc. is hereby ordered to pay complainant-appellee moral damages of P20,000.00 as well as exemplary damages of P10,000.00;

"b) Respondent-appellant Philippine Airlines Inc. is further ordered to pay complainant Gassie C. Sangel attorney's fees of P3,000.00." (p. 35, Rollo.)

In this petition for review PAL alleges that the NLRC gravely abused its discretion and erred:

1. in ruling that Sangel was dismissed without due process;
2. in finding that there was no just and valid cause for his dismissal;
3. in ruling that Sangel's dismissal was attended with malice and bad faith; and

4. in baselessly indicting some employees of PAL and in the Process freeing Sangel of responsibility.

The essential elements of due process in a labor dispute are: notice of the charge and a hearing where the employee is given an opportunity to defend himself (Century Textile Mills Inc., et al. vs. NLRC, et al., 161 SCRA 528: Wenphil Corp. vs. NLRC, et al., G.R. No. 80587, February 8 1989).

The Labor Arbiter and the NLRC erred in finding that Sangel was not given notice of the charge against him before he was dismissed. Sangel was informed of the said charge during the "fact-finding interview" (Annex F). Thus, the transcript of that interview shows:

“ZAPANTA: Do you know this business of underweighing Gassie?

“SANGEL: Wala akong alam sir.

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“ZAPANTA: Eh paano itong shipment ng Stuttgart? Ang ibig mong sabihin walang nag-imbestiga sa iyo tungkol dito?

“SANGEL: Sir, merong nagtanong sa akin nuong . . . last May tungkol sa mga timbangan sa ibaba ilinuro ko sa kanila ang ginagamit ko.

“ZAPANTA: Sino ang nagtanong sa iyo?

“SANGEL: Sir, si Jess Madrid.

“ZAPANTA: Si Jess Madrid, Iyon tang ang itinanong sa iyo? Kung anong timbangan mong ginagamit? Hindi sinabi sa iyo na merong kaso ng underweighing?

“SANGEL: Sir, eh sabi sa akin dahil meron daw silang sagot na imporlante kaya itinatanong sa akin iyong mga limbangang ginagamit ko.

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“ZAPANTA: Wala ka ring ibinigay na written reply? Eh. paano ito cstablisido na itong kargamento ng Stuttgart ikaw ang tumunggap. Natatandaan mo ba ito?

“SANGEL: Iyon nga, sir, ang sabi sa akin, ako daw ang tumanggap niyan sabi ni Jess Madrid. Kinakabahan na nga ako.

“ZAPANTA: At sa dalawang tonelada dito mahigit na 400 ang underweighing according to Frankfurt eksaktong 400 as a matter of fact. Paano mong i-explain iyan?

“SANGEL: Sir wala akong . . . kasi ang ano kasi. . . kung ano ang recorded na ano diyan sa TRM iyon ang isinusulat ko.

“ZAPANTA: Ibig mong sabihin ni-reweigh mo at iyon ang isinulat mo sa TRM?

“SANGEL: Yes, sir.

“ZAPANTA: Eh bakit may 400 underweighing?

“SANGEL: Ewan ko sir, dahil may guardia naman kasi kami sir. Nagta-tally naman kami ng guardia.

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“ZAPANTA: Gusto ko lang ipaliwanag sa iyo, Gassie, na itong denial mo hindi sapat dahil sa ang ebidensya ay maliwanag. Ang HA WB nagsasabi 2, 700, and MA WB mo 2,300. Eksaktong 400 ang underweighing. Ni-reweigh ng Customs sa Germany iyong shipment, ang kanilang reweighing eksakto duon sa HAWB 2700. So, maliwanag na niloko ang pagtanggap dito.

“SANGEL: Sir, so far na nalalaman ko, iyong timbang natin, iyon ang timbang na lumalabas duon sa weighing scale natin." (pp. 43-46 Rollo.)

Formal notice of the charge was also given him on June 24 1986 eleven (11) days after his interview or investigation on June 13,1986 (Annex F). He was placed under suspension and advised to submit evidence within ten (10) days but he did not submit any evidence to rebut the charge against him on the pretext that it would have been futile to do so because the investigating committee had already prejudged and pronounced him guilty. So, no further investigation or hearing was conducted by the Committee. What followed was a notice of his termination on July 14,1986.

Under the circumstances, it cannot be said that Sangel was dismissed without due process. If the process of investigation was not completed it was because he refused to submit to it.

There is no doubt that the Stuttgart shipment was underweighed by Sangel. Sangel's supervisor Jesus T. Madrid in his sworn statement (Annex N) declared that when he required Sangel to submit a handling report as required by

Ralph Duran Manager of the Export Division regarding the weight discrepancy — "Mr. Sangel verbally told me that he used one of the electronic weighing scales which according to him was defective at the time of the shipment." (Italics supplied; p. 65, Rollo.)

The use by Sangel of a weighing scale which he knew to be defective (possibly tampered) at the time of the shipment in order to benefit the shipper and defraud the airline, constituted serious misconduct and dishonesty justifying his dismissal from the service. With regard to the second airway bill where the recorded weight of 2,520 kilos was erased and substituted with 2,200 kilos (Annex L, Petition), Sangel's denial of having made the alteration (for he allegedly could have simply entered the understated weight of the cargo on the airway bill instead of recording the correct weight [2,520 kilos] and then changing the figures to 2,220 kilos) was shattered by Abundio the representative of the cargo forwarder, who stated in his affidavit (Annex R) that it was he not Sangel who typed the correct weight in the airway bill:

"4. That I personally typed the figure 2,520 kgs. at (sic) the airway bill (AWB-217-316 7572) and signed the same before I gave it to Mr. Sangel for counter-signature."

Evidently, the weight of the cargo had already been filled in the airway bill so all that had to be done was to change the "5" to "2" in order to lop off 300 kgs. from the true weight of the cargo.

Sangel lied when he alleged that it was he who recorded the correct weight of 2,520 in the airway bill and that someone else must have changed it in the Manifesting Section. The fact is that the underweighing was discovered precisely in the Manifesting Section.

We find ourselves unable to agree with the Commission's finding that PAL acted with malice and bad faith in conducting the "fact-finding interview" to fish for evidence against employees who were suspected of involvement in the underweighing anomalies at its International Cargo Terminal (p. 28, Rollo). PAL may not be accused of bad faith and malice for trying to ferret out the culprits responsible for the shenanigans in its international cargo department. The fraudulent underweighing of cargo not only robs PAL of substantial revenues from this particular field of its operations, but, more importantly, it endangers the safety of the airline's aircraft and passengers. PAL must be vigilant to protect its airplanes its passengers and its business for, as a carrier, it has the obligation to exercise extraordinary diligence to safely conduct its passengers and cargo to their destinations (Art. 1733, Civil Code). Its efforts to discharge that grave responsibility may not be characterized as malicious or in bad faith.

WHEREFORE, the petition for review is granted. The decisions of the Labor Arbiter and the NLRC in NLRC Case No. NCR-6-2532-36 are reversed and set aside. The private respondent's complaint for illegal dismissal is hereby dismissed. No pronouncement as to costs.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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