

SPECIAL THIRD DIVISION

[G.R. No. 178083, October 02, 2009]

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), PETITIONER, VS. PHILIPPINE AIRLINES, INC., PATRIA CHIONG AND COURT OF APPEALS, RESPONDENTS.

RESOLUTION

YNARES-SANTIAGO, J.:

For resolution is respondent Philippine Airlines, Inc.'s (PAL) *Motion for Reconsideration*^[1] of our Decision of July 22, 2008, the dispositive portion of which provides:

WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:

1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
2. ORDERING Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;
3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

SO ORDERED.

In its Motion for Reconsideration, PAL maintains that it was suffering from financial distress which justified the retrenchment of more than 1,400 of its flight attendants. This, it argued, was an established fact. Furthermore, FASAP never assailed the economic basis for the retrenchment, but only the allegedly discriminatory and baseless manner by which it was carried out.

PAL asserts that it has presented proof of its claimed losses by attaching its petition for suspension of payments, as well as the June 23, 1998 Order of the Securities and Exchange Commission (SEC) approving the said petition for suspension of payments, in its *Motion to Dismiss and/or Consolidation of Case* filed with the Labor Arbiter in NLRC-NCR Case No. 06-05100-98, or the labor case subject of the herein petition. Also attached to the petition for suspension of payments were its audited financial statements for its fiscal year ending March 1998, and interim financial statements as of the end of the month prior to the filing of its petition for suspension of payments, as well as:

- a) A summary of its debts and other liabilities;
- b) A summary of its assets and properties;
- c) List of its equity security shareholders showing the name of the security holder and the kind of interest registered in the name of each holder;
- d) A schedule which contains a full and true statement of all of its debts and liabilities, together with a list of all those to whom said debts and liabilities are due;
- e) An inventory which contains an accurate description of all the real and personal property, estate and effects of PAL, together with a statement of the value of each item of said property, estate and effects, their respective location and a statement of the encumbrances thereon.

In the instant *Motion for Reconsideration*, PAL attached a copy of its audited financial statements for fiscal years 1996, 1997 and 1998. It justifies the submission before the Court of Appeals of its 2002-2004, and not the 1996-1998, audited financial statements, to show that as of the time of their submission with the Court of Appeals, PAL was still under rehabilitation, and not for the purpose of establishing its financial problems during the retrenchment period.

PAL asserts further that the Court should have accorded the SEC's findings as regards its financial condition respect and finality, considering that said findings were based on the financial statements and other documents submitted to it, which PAL now submits, albeit belatedly, *via* the instant *Motion for Reconsideration*. It cites the case of *Clarion Printing House Inc. v. National Labor Relations Commission*,^[2] where the Court declared that the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia*, a company possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due and there is imminent danger of dissipation,

loss, wastage or destruction of assets or other properties or paralyzation of business operations. On the other hand, it claims that in *Rivera v. Espiritu*,^[3] the Court made a finding that as a result of the pilots' three-week strike that began on June 5, 1998, PAL's financial situation went from bad to worse and it was faced with bankruptcy, requiring it to seek rehabilitation and downsize its labor force by more than one-third; and that said pilots' strike was immediately followed by another four-day employee-wide strike on July 22, 1998, which involved 1,899 union^[4] members.

PAL likewise cites previous decisions of the Court which declared a suspension of claims against it in light of pending rehabilitation proceedings and the issuance of a stay order in the enforcement of all claims, whether for money or otherwise, which is effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.^[5] Moreover, it claims that the infusion of \$200 million in PAL in June 1999 is proof of the airline's financial distress, and was a condition *sine qua non* if PAL's Amended and Restated Rehabilitation Plan were to be approved by the SEC, and if the absolute closure of PAL were to be averted.

PAL underscores that its situation in 1998 was unique, as it had to contend with -

the very distinct possibility that its losses would eventually result in default on its payments to creditors for its aircraft leases. If that happened, creditors could have immediately seized all its leased planes and that would have spelled PAL's demise. The petition for rehabilitation and suspension of payments was precisely intended to avoid PAL's collapse and eventual liquidation.^[6]

Exercising its management prerogative and sound business judgment, it decided to cut its fleet of aircraft in order to minimize its operating losses and rescue itself from "total downfall;" which meant that a corresponding company-wide reduction in manpower necessarily had to be made. As a result, 5,000 PAL employees (including the herein 1,400 cabin attendants) were retrenched.

Further, PAL argues that aside from the confluence of simultaneous unfortunate events that occurred during the time, like successive strikes, peso depreciation and the Asian currency crisis, there was a serious drop in passenger traffic which necessitated the closure of PAL's entire European, Australian, and Middle East operations and numerous Asian stations, as well as some of its domestic stations. Consequently, its 27 international routes were reduced to only 7, and its 37 domestic routes to just 17.

PAL claims that it did not act with undue haste in effecting the mass retrenchment of cabin attendants since, as early as February 17, 1998, consultations were being held in connection with the proposed retrenchment, and that twice-weekly meetings between the union and the airline were being held since February 12, 1998. It claims that it took PAL four months before the retrenchment scheme was finally implemented.

With regard to the implementation of Plan 22 instead of the original Plan 14, PAL asserts that, in so doing, it should not be found guilty of bad faith. It sets out the

chronology of events that led it to implement Plan 22 instead of Plan 14, thus:

The initial plan was, indeed, to reduce PAL's fleet from 54 planes to 14. With a smaller fleet, PAL necessarily had to reduce manpower accordingly, and this was the basis for the retrenchment. The retrenchment was done on the basis of the conditions and circumstances existing at that time. However, a series of events ensued -

PAL was placed under corporate rehabilitation by the SEC on June 23, 1998.

Later, on July 22, 1998, the rank-and-file employees belonging to PALEA staged a strike.

Then, on August 28, 1998, President Joseph Ejercito Estrada issued Administrative Order No. 16 creating Inter-Agency Task Force to aid PAL and its employees in solving the problem.

On September 4, 1998, PAL submitted an offer to the Task Force of a plan to transfer shares of stocks to its employees with a request to suspend existing Collective Bargaining Agreements, which was later rejected by the employees.

On September 23, 1998, PAL ceased operations.

Then, President Estrada intervened again through the request of PAL employees. PALEA made an offer, which was rejected by PAL. Finally, PALEA made an offer again which was successfully ratified by the employees on October 2, 1998 and accepted by PAL.

Subsequently, PAL partially resumed domestic operations on October 7, 1998 believing that the mutually beneficial terms of the suspension agreement could possibly redeem PAL. Later, it partially resumed its operations internationally (Los Angeles and San Francisco, United States).

True enough, with some degree of relief as a result of the suspension of payment and rehabilitation proceedings in the SEC and the suspension of the CBA, PAL began to see slow but steady improvements. Also, airline industry experts who were commissioned by PAL to assist in drafting its Amended and Restated Rehabilitation Plan came to a conclusion that PAL had to increase its fleet of planes to improve its financial and operational viability. This advice was adopted by PAL in its Amended and Restated Rehabilitation Plan, which was eventually approved by the SEC.

With these supervening events, PAL decided to implement Plan 22 upon reevaluation and optimistic future projection for its operations. The decision to abandon Plan 14 was not done with precipitate haste. The Honorable Court should appreciate that the chain of unfolding events after the retrenchment encouraged PAL, in the exercise of its sound business discretion, to implement Plan 22. This was not a capricious

decision. In fact, the SEC approved PAL's Amended and Restated Rehabilitation Plan, which includes, among others, PAL's Fleet Plan composed of 22 planes.

Neither does it show that PAL was uncertain of its financial condition when it retrenched based on Plan 14. PAL would not have even petitioned the SEC for its rehabilitation were it not certain of its dire financial state. The decision to later abandon Plan 14 was a business judgment that PAL made in good faith upon the advice of foreign airline industry experts and in light of the supervening circumstances explained above.

In this regard, this Honorable Court has once held that -

"Questions of policy or of management are left solely to the honest decision of the board as the business manager of the corporation, and the court is without authority to substitute its judgment for that of the board, and as long as it acts in good faith and in the exercise of honest judgment in the interest of the corporation, its orders are not reviewable by the courts."

On the basis of Plan 22, PAL decided to recall/rehire some of the retrenched employees.

With due respect, this Honorable Court is mistaken in its ruling that PAL acted in bad faith simply because it later on decided to recall or rehire the employees it initially retrenched. The decision to recall/rehire was a logical consequence of PAL's decision to increase its fleet from 14 to 22 planes, which as discussed earlier, was a business judgment exercised in good faith by PAL after a series of significant events.

PAL did not even have any legal obligation to rehire the employees who have already been paid their separation pay and who have executed valid quitclaims. PAL, instead of being accused of bad faith for rehiring these employees, should in fact be commended. That the retrenched employees were given priority in hiring is certainly not bad faith. Noteworthy is the fact that PAL never hired **NEW** employees until November 2000 or more than 2 years after the 1998 retrenchment.

It is respectfully submitted that the legality of the retrenchment could not be made to depend on the fact that PAL recalled/rehired some of the employees after five months without taking into account the supervening events. At the exact time of retrenchment, PAL was not in a position to know with certainty that it could actually recover from the precarious financial problem it was facing and, if so, when.

The only thing PAL knew at that exact point in time was that it was in its most critical condition - when its liabilities amounted to about Php 85,109,075,351.00, while its assets amounted to only about Php 90,642,330,919.00 aggravated by many other circumstances as explained earlier. At the time of the retrenchment in June 1998, PAL was