

SECOND DIVISION

[G.R. No. 218984, January 24, 2018]

**ARMANDO M. TOLENTINO (DECEASED), HEREIN REPRESENTED
BY HIS SURVIVING SPOUSE MERLA F. TOLENTINO AND
CHILDREN NAMELY: MARIENELA, ALYSSA, ALEXA, AND AZALEA,
ALL SURNAMED TOLENTINO, PETITIONERS, VS. PHILIPPINE
AIRLINES, INC., RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioners^[1] Merla F. Tolentino, as the surviving spouse of Armando M. Tolentino (Tolentino), and Marienela, Alyssa, Alexa and Azalea, all surnamed Tolentino, as the children of Tolentino, challenge the 30 September 2014 Decision^[2] and 10 June 2015 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 132519 which affirmed the 28 June 2013 Decision^[4] and 27 August 2013 Resolution^[5] of the National Labor Relations Commission (NLRC) and the 14 March 2013 Decision^[6] of the Labor Arbiter.

The Facts

Tolentino was hired by respondent Philippine Airlines, Inc. (PAL) as a flight engineer on 22 October 1971. By 16 July 1999, Tolentino had the rank of A340/A330 Captain. As a pilot, Tolentino was a member of the Airline Pilots Association of the Philippines (ALPAP), which had a collective bargaining agreement (CBA) with PAL.

On 5 June 1998, ALPAP members went on strike. On 7 June 1998, the Secretary of Labor issued an Order requiring all striking officers and members of ALPAP to return to work within 24 hours from receipt of the Order and requiring PAL management to accept them under the same terms and conditions of employment prior to the strike. On 8 June 1998, the Secretary of Labor served the Order on the officers of ALPAP. While the union officers and members had until 9 June 1998 to comply with the directive of the Secretary of Labor, some pilots – including Tolentino – continued to participate in the strike.

On 26 June 1998, when Tolentino and other striking pilots returned to work, PAL refused to readmit these returning pilots. Thus, they filed a complaint for illegal lockout against PAL. On 20 July 1998, Tolentino reapplied for employment with PAL as a newly hired pilot, and thus voluntarily underwent the six months probationary period. After less than a year, Tolentino tendered his resignation effective 16 July

1999.

Meanwhile, on 1 June 1999, the Secretary of Labor issued a Resolution declaring the strike conducted by ALPAP on 5 June 1998 illegal for being procedurally infirm and in open defiance of the return-to-work order of 7 June 1998. Members and officers of ALPAP who participated in the strike in defiance of the 7 June 1998 return-to-work order were declared to have lost their employment status. This resolution was affirmed by this Court on 10 April 2002.

Tolentino worked for a foreign airline, and thereafter returned to the Philippines. Upon his return, he informed PAL of his intention of collecting his separation and/or retirement benefits under the CBA. PAL refused to pay Tolentino the separation and/or retirement benefits as stated in the CBA. Tolentino filed his complaint against PAL for non-payment of holiday pay, rest day pay, separation pay, and retirement benefits with prayer for the payment of damages and attorney's fees.

The Ruling of the Labor Arbiter

On 14 March 2013, the Labor Arbiter rendered his Decision dismissing the complaint of Tolentino. The Labor Arbiter found that Tolentino was not entitled to separation pay and other benefits as he was not illegally dismissed, having participated in the illegal strike and defied the return-to-work order of the Secretary of Labor. The Labor Arbiter also denied the claim for retirement benefits because Tolentino resigned from work less than a year after he was rehired by PAL. The Decision states in part:

Since it is admitted that complainant participated in a strike prohibited by the law and the Secretary of Labor's. Return To Work Order, he was validly dismissed and is therefore not entitled to separation pay. As for his claims for holiday pay and rest day pay, it should be emphasized that he was considered a new hire when he rejoined Philippine Airlines in July 1998. Complainant underwent the probationary period which ended only on January 25, 1999. Six [6] months later, he tendered his resignation effective July 16, 1999. Given these, complainant cannot tuck [sic] in whatever seniority or benefits he had prior to the cessation of his employment on June 9, 1998.^[7]

On 4 April 2013, petitioners appealed the Decision of the Labor Arbiter to the NLRC.^[8]

The Ruling of the NLRC

On 28 June 2013, the NLRC affirmed the Decision of the Labor Arbiter, finding that Tolentino was not entitled to holiday pay, rest day pay, separation pay, retirement benefits, and moral and exemplary damages.^[9] The NLRC found that (1) the severance of Tolentino's employment was not due to any of the authorized causes under the Labor Code of the Philippines; (2) Tolentino was validly terminated from

employment because of his participation in the illegal strike; and (3) when he resigned after he reapplied with PAL, he was not able to complete the required period of five years of continuous service under the CBA.

The Motion for Reconsideration^[10] was denied by the NLRC in its Resolution dated 27 August 2013.^[11] Thereafter, petitioners filed a petition for *certiorari* under Rule 65 before the CA on 4 November 2013.^[12]

The Ruling of the CA

In a Decision dated 30 September 2014, the CA affirmed, with modification, the 28 June 2013 Decision and 27 August 2013 Resolution of the NLRC. The CA found that under the CBA, Tolentino was entitled to the payment of his vacation time and days off earned but not taken. The CA held:

Considering the foregoing provisions, Tolentino's separation from work entitles him to payment of his vacation time and days off earned but not taken. Tolentino has rendered 25 continuous years of service to respondent company, hence, he is entitled to 27 calendar days of paid annual vacation leave. Furthermore, considering that the CBA only mentions separation from the company to justify the claim for vacation pay, but is silent on the forfeiture of the benefit upon valid termination of an employee from the service, we are constrained to grant the same, in light of the rule that in case of doubt, labor contracts shall be construed in favor of the worker.

WHEREFORE, the June 28, 2013 Decision and August 27, 2013 Resolution of the NLRC are AFFIRMED, with MODIFICATION, ordering private respondent Philippine Airlines, Inc. to pay Tolentino's accrued vacation leave equivalent to 27 calendar days of his salary.^[13]

Petitioners filed a Motion for Partial Reconsideration dated 1 November 2014 alleging that Tolentino was entitled to (1) the retirement benefits under the CBA; (2) the return of his equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan; and (3) the payment of moral and exemplary damages and attorney's fees.^[14]

On the other hand, PAL filed its Motion for Partial Reconsideration dated 3 November 2014. In its Motion, PAL argued that Tolentino was not entitled to his supposed accrued vacation leave pay considering that (1) the payment of his alleged benefits had already been dismissed by this Court; (2) he had never prayed for the payment of his vacation leave pay; and (3) the company's policy on forfeiture of benefits and privileges upon the dismissal of an employee prevails over the CBA.^[15]

In a Resolution dated 10 June 2015,^[16] the CA denied the Motion for Partial Reconsideration filed by petitioners. Hence, this petition.

The Issues

Petitioners seek a partial reversal of the decision of the CA and raise the following arguments:

[A.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it did not rule that petitioner-heirs are entitled to receive Capt. Tolentino's retirement benefits under the Collective Bargaining Agreement with respondent;

[B.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it failed to rule that petitioner-heirs are entitled to the return of Capt. Tolentino's equity in the retirement fund under the PAL Pilot[s'] Retirement Benefit Plan; and

[C.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it failed to award petitioner-heirs with payment for damages and attorney's fees.^[17]

The Ruling of the Court

We deny the petition.

An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act which is a just cause to dismiss the employee under Article 282 of the Labor Code. In *PAL, Inc. v. Acting Secretary of Labor*,^[18] we held:

A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption and/or certification is a prohibited activity and thus illegal. The union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act. Stated differently, from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. **The loss of employment status results from the striking employees' own act — an act which is illegal, an act in violation of the law and in defiance of authority.** (Emphasis supplied)

In fact, it has already been settled that those who participated in the 5 June 1998 strike of ALPAP are deemed to have lost their employment status with PAL.^[19] In *Rodriguez v. Philippine Airlines, Inc.*,^[20] we held:

In the *1st ALPAP case*, the Court upheld the DOLE Secretary's Resolution dated June 1, 1999 declaring that **the strike of June 5, 1998 was**

illegal and all ALPAP officers and members who participated therein had lost their employment status. The Court in the *2nd ALPAP case* ruled that even though the dispositive portion of the DOLE Secretary's Resolution did not specifically enumerate the names of those who actually participated in the illegal strike, such omission cannot prevent the effective execution of the decision in the *1st ALPAP case*. The Court referred to the records of the Strike and Illegal Lockout Cases, particularly, the logbook, which it unequivocally pronounced as a "crucial and vital piece of evidence." In the words of the Court in the *2nd ALPAP case*, "[t]he logbook with the heading 'Return-To-Work Compliance/Returnees' bears their individual signature[s] signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. x x x In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution." (Emphasis supplied)

Thus, Tolentino, who did not deny his participation in the strike and his failure to promptly comply with the return-to-work order of the Secretary of Labor, could not claim any retirement benefits because he did not retire – he simply lost his employment status.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.^[21] It is clear, therefore, Tolentino had not retired from PAL – it was not a result of a voluntary agreement. Tolentino lost his employment status because of his own actions.

Admittedly, Tolentino was hired again by PAL on 20 July 1998.^[22] This was after he reapplied with the company. He also voluntarily completed the probationary period of six months. It was made clear to Tolentino, and he certainly admitted, that he was rehired on the condition that his employment would be as a new hire.^[23] Reemployment, on the condition that the employee will be treated as a new employee, is a valid exercise of the employer's prerogative, as long as it is not done with anti-union motivation. In *Enriquez v. Zamora*,^[24] this Court held:

Enriquez and Ecarma were, therefore, new employees with entirely new seniority rankings when they were readmitted by PAL on January 18, 1971 and January 12, 1971, respectively. Certainly, PAL was merely exercising its prerogative as an employer when it imposed two conditions for the reemployment of petitioners inasmuch as hiring or rehiring policies are matters for the company's management to determine in the absence of an anti-union motivation.^[25]

On 16 July 1999, or less than one year after he was rehired as a new pilot, Tolentino resigned from PAL. In this instance, Tolentino had voluntarily resigned from work. However, the act of resignation alone does not entitle him to retirement benefits