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EN BANC

[G.R. No. 178083, March 13, 2018]

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

[A.M. No. 11-10-1-SC]

IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 - FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) VS. PHILIPPINE AIRLINES, INC., ET AL.

R E S O L U T I O N

BERSAMIN, J.:

In determining the validity of a retrenchment, judicial notice may be taken of the financial losses incurred by an employer undergoing corporate rehabilitation. In such a case, the presentation of audited financial statements may not be necessary to establish that the employer is suffering from severe financial losses.

Before the Court are the following matters for resolution, namely:

(a) *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by respondents Philippine Airlines, Inc. (PAL) and Patria Chiong;[1] and

(b) *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[2] of petitioner Flight Attendants and Stewards Association of the Philippines (FASAP).

Antecedents

To provide a fitting backgrounder for this resolution, we first lay down the procedural antecedents.

Resolving the appeal of FASAP, the Third Division of the Court[3] promulgated its decision on July 22, 2008 reversing the decision promulgated on August 23, 2006 by the Court of Appeals (CA) and entering a new one finding PAL guilty of unlawful retrenchment,[4] disposing:

> **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:
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> 1. **FINDING** respondent Philippine Airlines, Inc. **GUILTY** of illegal dismissal;
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> 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;
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> 3. **ORDERING** Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.
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> Costs against respondent PAL.
>
> **SO ORDERED.**[5]

The Third Division thereby differed from the decision of the Court of Appeals (CA), which had pronounced in its appealed decision promulgated on August 23, 2006[6] that the remaining issue between the parties concerned the manner by which PAL had carried out the retrenchment program.[7] Instead, the Third Division disbelieved the veracity of PAL's claim of severe financial losses, and concluded that PAL had not established its severe financial losses because of its non-presentation of audited financial statements. It further concluded that PAL had implemented the retrenchment program in bad faith, and had not used fair and reasonable criteria in selecting the employees to be retrenched.

After PAL filed its *Motion for Reconsideration*,[8] the Court, upon motion,[9] held oral arguments on the following issues:

WHETHER THE GROUNDS FOR RETRENCHMENT WERE ESTABLISHED

II

WHETHER PAL RESORTED TO OTHER COST-CUTTING MEASURES BEFORE IMPLEMENTING ITS RETRENCHMENT PROGRAM

III

WHETHER FAIR AND REASONABLE CRITERIA WERE FOLLOWED IN IMPLEMENTING THE RETRENCHMENT PROGRAM

IV

WHETHER THE QUITCLAIMS WERE VALIDLY AND VOLUNTARILY EXECUTED

Upon conclusion of the oral arguments, the Court directed the parties to explore a possible settlement and to submit their respective memoranda.[10]

Unfortunately, the parties did not reach any settlement; hence, the Court, through the Special Third Division,[11] resolved the issues on the merits through the resolution of October 2, 2009 denying PAL's motion for reconsideration,[12] thus:

> **WHEREFORE**, for lack of merit, the Motion for Reconsideration is hereby **DENIED** with **FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.
>
> No further pleadings will be entertained.
>
> **SO ORDERED.**[13]

The Special Third Division was unconvinced by PAL's change of theory in urging the June 1998 Association of Airline Pilots of the Philippines (ALPAP) pilots' strike as the reason behind the immediate retrenchment; and observed that the strike was a temporary occurrence that did not require the immediate and sweeping retrenchment of around 1,400 cabin crew.

Not satisfied, PAL filed the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008*.[14]

On October 5, 2009, the writer of the resolution of October 2, 2009 Justice Consuelo Ynares-Santiago, compulsorily retired from the Judiciary. Pursuant to A.M. No. 99-8-09-SC,[15] G.R. No. 178083 was then raffled to Justice Presbitero J. Velasco, Jr., a Member of the newly-constituted regular Third Division.[16] Upon the Court's subsequent reorganization,[17] G.R. No. 178083 was transferred to the First Division where Justice Velasco, Jr. was meanwhile re-assigned. Justice Velasco, Jr. subsequently inhibited himself from the case due to personal reasons.[18] Pursuant to SC Administrative Circular No. 84-2007, G.R. No. 178083 was again re-raffled to Justice Arturo D. Brion, whose membership in the Second Division resulted in the transfer of G.R. No. 178083 to said Division.[19]

On September 7, 2011, the Second Division denied with finality PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.[20]

Thereafter, PAL, through Atty. Estelito P. Mendoza, its collaborating counsel, sent a series of letters inquiring into the propriety of the successive transfers of G.R. No. 178083.[21] His letters were docketed as A.M. No. 11-10-1-SC.

On October 4, 2011, the Court *En Banc* issued a resolution:[22] (*a*) assuming jurisdiction over G.R. No. 178083; (*b*) recalling the September 7, 2011 resolution of the Second Division; and (*c*) ordering the re-raffle of G.R. No. 178083 to a new Member-in-Charge.

Resolving the issues raised by Atty. Mendoza in behalf of PAL, as well as the issues raised against the recall of the resolution of September 7, 2011, the Court *En Banc* promulgated its resolution in A.M. No. 11-10-1-SC on March 13, 2012,[23] in which it summarized the intricate developments involving G.R. No. 178083, *viz*.:

> To summarize all the developments that brought about the present dispute-expressed in a format that can more readily be appreciated in terms of the Court *en banc's* ruling to recall the September 7, 2011 ruling - the FASAP case, as it developed, was attended by special and unusual circumstances that saw:
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> (a) the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution;
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> (b) the change in the governing rules-from the A.M.s to the IRSC regime-which transpired during the pendency of the case;
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> (c) the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-De Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-De Castro are the four most senior Members

of the Court;

(d) the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division;

(e) the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and

(f) finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date.

All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court *en banc*.[24]

In the same resolution of March 13, 2012, the Court *En Banc* directed the re-raffle of G.R. No. 178083 to the remaining Justices of the former Special Third Division who participated in resolving the issues pursuant to Section 7, Rule 2 of the *Internal Rules of the Supreme Court*, explaining:

On deeper consideration, the majority now firmly holds the view that Section 7, Rule 2 of the IRSC should have prevailed in considering the raffle and assignment of cases after the 2nd MR was accepted, as advocated by some Members within the ruling Division, as against the general rule on inhibition under Section 3, Rule 8. The underlying constitutional reason, of course, is the requirement of Section 4(3), Article VIII of the Constitution already referred to above.

The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized, as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other.

Applying these rules by reconciling the two provisions under consideration, **Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge.This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR**. At that point, when the situation calls for the ***review of the merits*** of the decision or the signed resolution made by a *ponente* (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to **Section 7, Rule 2 of the IRSC which contemplates a situation when the *ponente* is no longer available, and calls for the referral of the case for raffle among the remaining Members of the Division who acted on the decision or on the signed resolution**. This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation.

To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review *on the merits* of an already issued decision or resolution and the *ponente* or writer is no longer available to act on the matter. On this basis, the *ponente*, on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.[25]

This last resolution impelled FASAP to file the *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*, praying that the September 7, 2011 resolution in G.R. No. 178083 be reinstated.[26]

We directed the consolidation of G.R. No. 178083 and A.M. No. 11-10-1-SC on April 17, 2012.[27]

Issues

PAL manifests that the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* is its first motion for reconsideration vis-a-vis the October 2, 2009 resolution, and its second as to the July 22, 2008 decision. It states therein that because the Court did not address the issues raised in its previous motion for reconsideration, it is re-submitting the same, *viz*.:

I

xxx THE HONORABLE COURT ERRED IN NOT GIVING CREDENCE TO THE FOLLOWING COMPELLING EVIDENCE AND CIRCUMSTANCES CLEARLY SHOWING PALS; DIRE FINANCIAL CONDITION AT THE TIME OF THE RETRENCHMENT: (A) PETITIONER'S ADMISSIONS OF PAL'S FINANCIAL LOSSES; (B) THE UNANIMOUS FINDINGS OF THE SECURITIES AND EXCHANGE COMMISSION (SEC), THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS CONFIRMING PAL'S FINANCIAL CRISIS; (C) PREVIOUS CASES DECIDED BY THE HONORABLE COURT RECOGNIZING PAL'S DIRE FINANCIAL STATE; AND (D) PAL BEING PLACED BY THE SEC UNDER SUSPENSION OF PAYMENTS AND CORPORATE REHABILITATION AND RECEIVERSHIP

II

xxx THERE IS NO SUFFICIENT BASIS FOR THE HONORABLE COURT'S CONCLUSION THAT PAL DID NOT EXERCISE

GOOD FAITH [IN] ITS PREROGATIVE TO RETRENCH EMPLOYEES

III

THE HONORABLE COURT'S RULING THAT PAL DID NOT USE FAIR AND REASONABLE CRITERIA IN ASCERTAINING WHO WOULD BE RETRENCHED IS CONTRARY TO ESTABLISHED FACTS, EVIDENCE ON RECORD AND THE FINDINGS OF THE NLRC AND THE COURT OF APPEALS[28]

PAL insists that FASAP, while admitting PAL's serious financial condition, only questioned before the Labor Arbiter the alleged unfair and unreasonable measures in retrenching the employees;[29] that FASAP categorically manifested before the NLRC, the CA and this Court that PAL's financial situation was not the issue but rather the manner of terminating the 1,400 cabin crew; that the Court's disregard of FASAP's categorical admissions was contrary to the dictates of fair play;[30] that considering that the Labor Arbiter, the NLRC and the CA unanimously found PAL to have experienced financial losses, the Court should have accorded such unanimous findings with respect and finality;[31] that its being placed under suspension of payments and corporate rehabilitation and receivership already sufficiently indicated its grave financial condition;[32] and that the Court should have also taken judicial notice of the suspension of payments and monetary claims filed against PAL that had reached and had been consequently resolved by the Court.[33]

PAL describes the Court's conclusion that it was not suffering from tremendous financial losses because it was on the road to recovery a year after the retrenchment as a mere *obiter dictum* that was relevant only in rehabilitation proceedings; that whether or not its supposed "stand-alone" rehabilitation indicated its ability to recover on its own was a technical issue that the SEC was tasked to determine in the rehabilitation proceedings; that at any rate, the supposed track to recovery in 1999 and the capital infusion of $200,000,000.00 did not disprove the enormous losses it was sustaining; that, on the contrary, the capital infusion accented the severe financial losses suffered because the capital infusion was a condition precedent to the approval of the amended and restated rehabilitation plan by the Securities and Exchange Commission (SEC) with the conformity of PAL's creditors; and that PAL took nine years to exit from rehabilitation.[34]

As regards the implementation of the retrenchment program in good faith, PAL argues that it exercised sound management prerogatives and business judgment despite its critical financial condition; that it did not act in due haste in terminating the services of the affected employees considering that FASAP was being consulted thereon as early as February 17, 1998; that it abandoned "Plan 14" due to intervening events, and instead proceeded to implement "Plan 22" which led to the recall/rehire of some of the retrenched employees;[35] and that in selecting the employees to be retrenched, it adopted a fair and reasonable criteria pursuant to the collective bargaining agreement (CBA) where performance efficiency ratings and inverse seniority were basic considerations.[36]

With reference to the Court's resolution of October 2, 2009, PAL maintains that:

I

PAL HAS NOT CHANGED ITS POSITION THAT THE REDUCTION OF PAL'S LABOR FORCE OF ABOUT 5,000 EMPLOYEES, INCLUDING THE 1,423 FASAP MEMBERS, WAS THE RESULT OF A CONFLUENCE OF EVENTS, THE EXPANSION OF PAL'S FLEET, THE ASIAN FINANCIAL CRISIS OF 1997, AND ITS CONSEQUENCES ON PAL'S OPERATIONS, AND THE PILOT'S STRIKE OF JUNE 1998, AND THAT PAL SURVIVED BECAUSE OF THE IMPLEMENTATION OF ITS REHABILITATION PLAN (LATER "AMENDED AND RESTATED REHABILITATION PLAN") WHICH INCLUDED AMONG ITS COMPONENT ELEMENTS, THE REDUCTION OF LABOR FORCE

II

THE HONORABLE COURT SHOULD HAVE UPHELD PAL'S REDUCTION OF THE NUMBER OF CABIN CREW IN ACCORD WITH ITS ENTRY INTO REHABILITATION AND THE CONSEQUENT TERMINATION OF EMPLOYMENT OF CABIN CREW PERSONNEL AS A VALID EXERCISE OF MANAGEMENT PREROGATIVE

III

PAL HAS SUFFICIENTLY ESTABLISHED THE SEVERITY OF ITS FINANCIAL LOSSES, SO AS TO JUSTIFY THE ENTRY INTO REHABILITATION AND THE CONSEQUENT REDUCTION OF CABIN CREW PERSONNEL

IV

THE HONORABLE COURT ERRED IN HOLDING THAT THERE WAS NO SUFFICIENT BASIS FOR PAL TO IMPLEMENT THE RETRENCHMENT OF CABIN CREW PERSONNEL

V

UNDER THE CIRCUMSTANCES, THE PRIOR IMPLEMENTATION OF LESS DRASTIC COST-CUTTING MEASURES WAS NO LONGER POSSIBLE AND SHOULD NOT BE REQUIRED FOR A VALID RETRENCHMENT; IN ANY EVENT, PAL HAD IMPLEMENTED LESS DRASTIC COST-CUTTING MEASURES BEFORE IMPLEMENTING THE DOWNSIZING PROGRAM

VI

QUITCLAIMS WERE VALIDLY EXECUTED[37]

PAL contends that the October 2, 2009 resolution focused on an entirely new basis that of PAL's supposed change in theory. It denies having changed its theory, however, and maintains that the reduction of its workforce had resulted from a confluence of several events, like the flight expansion; the 1997 Asian financial crisis; and the ALPAP pilots' strike.[38] PAL explains that when the pilots struck in June 1998, it had to decide quickly as it was then facing closure in 18 days due to serious financial hemorrhage; hence, the strike came as the final blow.

PAL posits that its business decision to downsize was far from being a hasty, knee-jerk reaction; that the reduction of cabin crew personnel was an integral part of its corporate rehabilitation, and, such being a management decision, the Court could not supplant the decision with its own judgment' and that the inaccurate depiction of the strike as a temporary disturbance was lamentable in light of its imminent financial collapse due to the concerted action.[39]

PAL submits that the Court's declaration that PAL failed to prove its financial losses and to explore less drastic cost-cutting measures did not at all jibe with the totality of the circumstances and evidence presented; that the consistent findings of the Labor Arbiter, the NLRC, the CA and even the SEC, acknowledging its serious financial difficulties could not be ignored or disregarded; and that the challenged rulings of the Court conflicted with the pronouncements made in *Garcia v. Philippine Airlines, Inc.*[40] and related cases[41] that acknowledged PAL's grave financial distress.

In its comment,[42] FASAP counters that a second motion for reconsideration was a prohibited pleading; that PAL failed to prove that it had complied with the requirements for a valid retrenchment by not submitting its audited financial statements; that PAL had immediately terminated the employees without prior resort to less drastic measures; and that PAL did not observe any criteria in selecting the employees to be retrenched.

FASAP stresses that the October 4, 2011 resolution recalling the September 7, 2011 decision was void for failure to comply with Section 14, Article VIII of the 1987 Constitution; that the participation of Chief Justice Renato C. Corona who later on inhibited from G.R. No. 178083 had further voided the proceedings; that the 1987 Constitution did not require that a case should be raffled to the Members of the Division who had previously decided it; and that there was no error in raffling the case to Justice Brion, or, even granting that there was error, such error was merely procedural.

The issues are restated as follows:

Procedural

I

IS THE RESOLUTION DATED OCTOBER 4, 2011 IN A.M. NO. 11-10-1-SC (RECALLING THE SEPTEMBER 7, 2011 RESOLUTION) VOID FOR FAILURE TO COMPLY WITH SECTION 14, RULE VIII OF THE 1987 CONSTITUTION?

II

MAY THE COURT ENTERTAIN THE SECOND MOTION FOR RECONSIDERATION FILED BY THE RESPONDENT PAL?

Substantive

I

DID PAL LAWFULLY RETRENCH THE 1,400 CABIN CREW PERSONNEL?

A

DID PAL PRESENT SUFFICIENT EVIDENCE TO PROVE THAT IT INCURRED SERIOUS FINANCIAL LOSSES WHICH JUSTIFIED THE DOWNSIZING OF ITS CABIN CREW?

B

DID PAL OBSERVE GOOD FAITH IN IMPLEMENTING THE RETRENCHMENT PROGRAM?

C

DID PAL COMPLY WITH SECTION 112 OF THE PAL-FASAP CBA IN SELECTING THE EMPLOYEES TO BE RETRENCHED?

III

ASSUMING THAT PAL VALIDLY IMPLEMENTED ITS RETRENCHMENT PROGRAM, DID THE RETRENCHED EMPLOYEES SIGN VALID QUITCLAIMS?

Ruling of the Court

After a thorough review of the records and all previous dispositions, we **GRANT** the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by PAL and Chiong; and **DENY** the *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[43] of FASAP.

Accordingly, we **REVERSE** the July 22, 2008 decision and the October 2, 2009 resolution; and **AFFIRM** the decision promulgated on August 23, 2006 by the CA.