

EN BANC

[A.M. No. 11-10-1-SC, March 13, 2012]

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

R E S O L U T I O N

BRION, J.:

Before the Court is the administrative matter that originated from the letters dated September 13, 16, 20, and 22, 2011 of Atty. Estelito P. Mendoza regarding G.R. No. 178083 – *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., et al.*

For a full background of the matter, the antecedent developments are outlined below.

1. The July 22, 2008 Decision

On July 22, 2008, the Court's Third Division ruled to grant^[1] the petition for review on *certiorari* filed by the Flight Attendants and Stewards Association of the Philippines (FASAP), finding Philippine Airlines, Inc. (PAL) guilty of illegal dismissal. The July 22, 2008 Decision was penned by **Justice Consuelo Ynares-Santiago** who was joined by the other four Members of the **Third Division**. The Third Division was then composed of:

1. Justice Ynares-Santiago,
2. Justice Alicia Austria-Martinez,
3. Justice Minita Chico-Nazario,
4. Justice Antonio Eduardo Nachura, and
5. Justice Teresita Leonardo-De Castro (replacing Justice Ruben Reyes who inhibited himself from the case).

Justice Leonardo-De Castro was included to replace Justice Ruben Reyes who had inhibited himself from the case because he concurred in the Court of Appeals (CA) decision assailed by FASAP before the Court.^[2] Then Associate Justice Renato Corona was originally designated to replace Justice Ruben Reyes, but he likewise inhibited himself from participation on June July 14, 2008 due to his previous efforts in settling the controversy when he was still in Malacañan. Under Administrative Circular (AC) No. 84-2007, one additional Member needed be drawn from the rest of the Court to replace the inhibiting Member.^[3] In this manner, Justice Leonardo-De Castro came to participate in the July 22, 2008 Decision.

PAL subsequently filed its motion for reconsideration (*MR*) of the July 22, 2008 Decision. The motion was handled by the **Special Third Division** composed of:

1. Justice Ynares-Santiago,
2. Justice Chico-Nazario,
3. Justice Nachura,
4. Justice Diosdado Peralta (replacing Justice Austria-Martinez who retired on April 30, 2009), and
5. Justice Lucas Bersamin (replacing Justice Leonardo-De Castro who inhibited at the MR stage for personal reasons on July 28, 2009).

2. The October 2, 2009 Resolution

Justice Ynares-Santiago, as the *ponente* of the July 22, 2008 Decision, continued to act as the *ponente* of the case.^[4]

The Special Third Division^[5] **denied the MR** with finality on October 2, 2009.^[6] The Court further declared that “[n]o further pleadings will be entertained.”^[7] The other Members of the Special Third Division unanimously concurred with the denial of the motion.

To fully explain the movements in the membership of the division, the Special Third Division missed Justice Austria-Martinez (who was among those who signed the July 22, 2008 Decision) due to her intervening retirement on April 30, 2009. Justice Leonardo-De Castro also did not participate in resolving the 1st MR, despite having voted on the July 22, 2008 Decision, because of her own subsequent inhibition on July 28, 2009.^[8]

3. PAL’s 2nd MR

On November 3, 2009, PAL asked for leave of court to file (a) an MR of the October 2, 2009 Resolution, and (b) a 2nd MR of the July 22, 2008 Decision. Both rulings were anchored on the validity of PAL’s retrenchment program.

In view of the retirement of the *ponente*, Justice Ynares-Santiago (who retired on October 5, 2009), the Court’s Raffle Committee^[9] had to resolve the question of who would be the new *ponente* of the case.

Under **A.M. No. 99-8-09-SC** (*Rules on Who Shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court*, effective April 1, 2000), **if the *ponente* has retired, he/she shall be replaced by another Justice who shall be chosen by raffle from among the remaining Members of the Division:**

2. **If the *ponente* is no longer a member of the Court or is disqualified or has inhibited himself from acting on the motion, he shall be replaced by another Justice who shall be chosen by raffle from**

among the remaining members of the Division who participated and concurred in the rendition of the decision or resolution and who concurred therein. If only one member of the Court who participated and concurred in the rendition of the decision or resolution remains, he shall be designated as the *ponente*.

However, on November 11, 2009, the case was raffled, not to a Member of the Third Division that issued the July 22, 2008 Decision or to a Member of the Special Third Division that rendered the October 2, 2009 Resolution, but to **Justice Presbitero Velasco, Jr.** who was then a Member of the newly-constituted regular Third Division.^[10]

In raffling the case to Justice Velasco, the Raffle Committee considered the above-quoted rule inapplicable because of the express excepting qualification provided under A.M. No. 99-8-09-SC that states:

[t]hese rules shall **not apply to motions for reconsideration of decisions or resolutions already denied with finality.** [underscoring ours]

Stated otherwise, when the original *ponente* of a case retires, motions filed after the case has been denied with finality may be resolved by any Member of the Court to whom the case shall be raffled, not necessarily by a Member of the same Division that decided or resolved the case. *Presumably, the logic behind the rule is that no further change can be made involving the merits of the case, as judgment has reached finality and is thus irreversible, based on the Rules of Court provision that "[n]o second MR of a judgment or final resolution by the same party shall be entertained."*^[11] (The October 2, 2009 Resolution denying PAL's 1st MR further stated that "[n]o further pleadings will be entertained.") Thus, the resolution of post-decisional matters in a case already declared final may be resolved by other Members of the Court to whom the case may be raffled after the retirement of the original *ponente*.

Given the denial of PAL's 1st MR and the declaration of finality of the Court's July 22, 2008 Decision through the October 2, 2009 Resolution, **the Raffle Committee found it unnecessary to create a special Third Division.** Thus, it found nothing irregular in raffling the case to **Justice Velasco** (who did not take part in the deliberation of the Decision and the Resolution) of the **reorganized Third Division** for handling by a new regular division.

4. The acceptance of PAL's 2nd MR

On January 20, 2010 (or **while A.M. No. 99-8-09-SC was still in effect**), the new regular Third Division, through Justice Velasco, granted PAL's *Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated 2 October 2009 and 2nd Motion for Reconsideration of Decision dated 22 July 2008*. The Court's Third Division further required the respective parties to comment on PAL's motion and FASAP's Urgent Appeal dated November 23, 2009. This grant, which opened both the Decision and the Resolution penned by Justice Ynares-Santiago for review,

effectively opened the whole case for review on the merits.

The following were the Members of the Third Division that issued the January 20, 2010 Resolution:

1. Justice Antonio Carpio (*vice* Justice Corona who inhibited himself as of July 14, 2008),
2. Justice Velasco (*ponente*),
3. Justice Nachura,
4. Justice Peralta, and
5. Justice Bersamin.

Significantly, at the time leave of court was granted (which was effectively an acceptance for review of PAL's 2nd MR), the prohibition against entertaining a 2nd MR under Section 2, Rule 52^[12] (in relation with Section 4, Rule 56^[13]) of the Rules of Court applied. This prohibition, however, had been subject to various existing Court decisions that entertained 2nd MRs **in the higher interest of justice.**^[14] This liberalized policy was not formalized by the Court until the effectivity of the Internal Rules of the Supreme Court (IRSC) on May 4, 2010.^[15]

With the acceptance of PAL's 2nd MR, **the question that could have arisen (*but was not asked then*)** was whether the general rule under A.M. No. 99-8-09-SC (which was then still in effect) should have applied so that the case should have been transferred to the remaining Members of the Division that ruled **on the merits** of the case. In other words, with the re-opening of the case for review on the merits, the application of the excepting qualification under A.M. No. 99-8-09-SC that the Raffle Committee cited lost its efficacy, as the rulings of the Court were no longer final for having been opened for further review.

A **necessary implication** is that either the Clerk of Court or the Raffle Committee should have advised Justice Velasco that his Division should refer the case back to raffle for referral of the case to the original Justices who participated in the assailed Decision and Resolution under the terms of the general rule under A.M. No. 99-8-09-SC; the Justices who participated in the assailed Decision and Resolution were the best ones to consider the motion and to review their own rulings. **This was the first major error that transpired in the case and one that the Clerk of Court failed to see.**

Parenthetically, when PAL's 2nd MR was filed and when it was subsequently accepted, Justices Nachura, Peralta, and Bersamin were the only remaining Members of the Special Third Division that rendered the October 2, 2009 Resolution. Of these three Justices, only Justice Nachura was a Member of the original Third Division that issued the main decision on July 22, 2008. The case should have gone to Justice Nachura or, at the very least, to the two other remaining Justices. The re-raffle of the FASAP case to Justice Nachura (or to Justices Peralta and Bersamin) would have been consistent with the constitutional rule that **"[c]ases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon[.]"**^[16]

5. The Reorganization of the Court

In May 2010, **three developments** critical to the FASAP case transpired.

The *first* was the approval of the IRSC by the Court on May 4, 2010. The IRSC codified the procedural rules of the Court, heretofore existing under various separate and scattered resolutions. Its relevant terms took the place of A.M. No. 99-8-09-SC.

The *second* was the retirement of then Chief Justice Reynato Puno and the appointment as Chief Justice of then Associate Justice Corona.

The *third* was the reorganization of the divisions of the Court under Special Order No. 838 dated **May 17, 2010**. Justice Velasco was transferred from the Third Division to the First Division. Pursuant to the new IRSC, Justice Velasco brought with him the FASAP case so that the case went from the Third Division to the First Division:

RULE 2. THE OPERATING STRUCTURES

Section 9. *Effect of reorganization of Divisions on assigned cases.* – In the reorganization of the membership of Divisions, **cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves**, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.

Another significant development in the case came on January 17, 2011 (**or under the new regime of the IRSC**) when Justice Velasco, after acting on the FASAP case for almost one whole year, inhibited himself from participation “due to a close relationship to a party,” despite his previous action on the case. The pertinent provisions of the IRSC on the matter of **inhibition** state:

RULE 2. THE OPERATING STRUCTURES

Section 7. *Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed; creation of a Special Division.* – Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the *ponente* has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new *ponente* who shall be chosen [from]