

SECOND DIVISION

[G.R. No. 170369, June 16, 2010]

**KOREAN AIR CO., LTD. AND SUK KYOO KIM, PETITIONERS, VS.
ADELINA A.S. YUSON, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition^[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 28 June 2005 Decision^[2] and 3 November 2005 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 86762. The Court of Appeals set aside the 30 July 2004 Resolution^[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034928-03, affirming the 31 January 2003 Decision^[5] of Labor Arbiter Ariel Cadiente Santos (Labor Arbiter Santos) in NLRC-NCR S Case No. 30-11-05543-01.

The Facts

In July 1975, Korean Air Co., Ltd. (Korean Air) hired Adelina A.S. Yuson (Yuson) as reservations agent. Korean Air promoted Yuson to assistant manager in 1993, and to passenger sales manager in 1999.

Korean Air had an International Passenger Manual (IPM) which contained, among others, travel benefit to its employees. However, Korean Air never implemented the travel benefit under the manual. Instead, Korean Air granted all its employees travel benefit as contained in the collective bargaining agreement (CBA). Yuson availed of the travel benefit under the CBA during her stay in the company.

In 2000, Korean Air suffered a net loss of over \$367,000,000. Consequently, Korean Air reduced its budget for 2001 by 10 percent.

In April 2001, Yuson requested Korean Air that she be transferred from the passenger sales department to the cargo department. Yuson wanted to be exposed to the operations of the cargo department because she intended to pursue a cargo agency business after her retirement. On 4 June 2001, Korean Air temporarily transferred Yuson to the cargo department as "cargo dispatch." Yuson continued to receive the same compensation and exercise the same authority as passenger sales manager.

In order to cut costs, Korean Air offered its employees an early retirement program (ERP). In a memorandum^[6] dated 21 August 2001, Korean Air stated that:

The results of operation of Korean Air for the Year 2000, was [sic] bad. The Company suffered a net loss of over THREE HUNDRED SIXTY SEVEN MILLION DOLLARS, (USD367,000,000.00). For this reason, the budget for the Year 2001 was reduced by 10%. Accordingly, to prevent further losses, Head Office recently implemented an early retirement program not only for Head Office staffs but throughout all Korean Air branches abroad. Unfortunately, in Head Office alone, 500 positions will be affected. This program is being offered before finally conducting a retrenchment program.

In compliance with Head Office instruction, MNLSM Management, on its discretion, is hereby offering the said early retirement program to its staff. Availing employees shall be given ONE AND A HALF MONTHS (1.50%) [sic] salary for every year of service and other benefits. This rate is 50% higher than the retrenchment pay prevailing in the CBA.

Please accept our deepest regrets.^[7]

In a letter^[8] dated 23 August 2001 and addressed to Korean Air's Philippine general manager Suk Kyoo Kim (Suk), Yuson accepted the offer for early retirement.

In a letter^[9] dated 24 August 2001, Suk informed Yuson that she was excluded from the ERP because she was retiring on 8 January 2002. Suk stated that:

Please be informed that you are excluded from the "Early Retirement Program". The program is intended to staffs, upon discretion of management, who still have long years left with the Company before reaching retirement age. You are already due for retirement on January 8, 2002. This program is being implemented by the Company as a cost saving tool to prevent further losses.^[10]

In a letter^[11] dated 1 September 2001 and addressed to Suk, Yuson claimed that Korean Air was bound by the perfected contract and accused the company of harassment and discrimination. Yuson stated that:

Korean Air offered the "Early Retirement Program" through its memo under MNLSM#01-13 dated 21 August 2001. I accepted this offer under my letter dated 23 August 2001. With this Offer and Acceptance, a Contract has been legally perfected between Korean Air and myself.

x x x x

Not too long ago, you tried to demote me from my position as Passenger Sales Manager to Cargo Dispatch, a clerical position. This was not only done internally but also communicated with other airlines. This has caused me undue embarrassment and humiliation. x x x

Your unilateral decision to exclude me from the "early Retirement

Program" which Head Office has stated as (and I quote) "..... [sic] not only for Head Office staffs but THROUGHOUT ALL KOREAN AIR BRANCHES ABROAD" is another case of harassment and discrimination. It is very clear that the Program does not allow for discretion on the part of Korean Air -- MNL Manager to harass or discriminate against any employee for any reason whatsoever, be it age, gender or nationality.

I therefore request that Korean Air perform its obligation arising out of a Contract legally perfected with the Offer of 21 August 2001 and Acceptance of 23 August 2001. I sincerely hope I will not have to engage the services of counsel to enforce performance of our Contract as this will subject me to further distress and mental anguish, plus a considerable amount of expenditure, which can be the basis for additional claim for damages.^[12]

In a letter^[13] dated 12 September 2001 and addressed to Yuson, Suk stated that:

1. The "Early Retirement Program" ("ERP") is a plan by the Head Office for the purpose of reducing the workforce of Korean Air (the "Company") due to substantial losses prior to undertaking a retrenchment program. Contrary to your assertion, my letter dated 21 August 2001 was not an absolute offer but rather an invitation to possible qualified employees to consider the ERP subject to the approval and acceptance by the Company, through the Head Office, in the exercise of its discretion. x x x
2. This explains the Company's position stated in my letter-response dated 24 August 2001 wherein the ERP is supposedly for employees who have still a number of years to serve the Company in order to prevent further losses. It is, therefore, clear why you are disqualified under the ERP since you are scheduled to retire on 08 January 2002. There is no closure of business contemplated herein but merely a reduction of personnel to prevent further losses to the Company.
3. x x x x
4. It is unfortunate that you invoke the afore-said [sic] announcement knowing that as early as April 2001, your request for payment of one and one-half 1 and 1/2 months for every year of service retirement benefit was denied by our SSG, Mr. Lee. As unmistakably explained to you, you cannot avail of the ERP since you are due to retire on 08 January 2002. As a cost-saving measure, it would be contrary to this objective of the Company to include you simply because "you accept the offer for early retirement."
5. On the other hand, you have also been informed that since you have less than one (1) year from your retirement date, you have the option to retire before such date. x x x

6. Also, as in previous ERPs implemented by the Company, you very well know as Sales Manager that the Head Office does the acceptance and approval of any ERP application. In fact, in the case of your staff, I even consult your opinion before forwarding MNLSM's recommendation on the matter to the Head Office. x x x
7. x x x x
8. For the record, your supposed transfer from Passenger Sales Department to the Cargo Department on June 4, 2001 was upon your own request in April 2001 since, as you mentioned to me, you intend to pursue a cargo agency business with your sister upon your retirement. x x x
9. Lest you forgot our discussion on the matter, you were never demoted from your position as Sales Manager, whether in terms of your compensation or scope of authority. As agreed upon, your transfer was temporary for you to learn the particulars involving cargo operations. In fact, I never appointed a new Sales Manager to replace you.
10. The term "Cargo Dispatch", again as known to you, is a phrase peculiar to the Company referring to the Cargo Department. I, for instance, while assigned as Regional Sales Manager of Manila, if temporarily assigned to Hongkong [sic] Cargo, would be referred to as "HKGRH Cargo Dispatch". This position, despite the title, is obviously not clerical or derogatory of my rank and authority.
11. Everybody in our Office can attest to the truth that you yourself requested the temporary transfer to cargo. I am saddened, therefore, to hear, especially from you, of your accusation that I have tried to demote and/or discriminate against you. For your information, before your transfer, I even instructed SSF, Mr. Kim, to extend his full support to you in your desire to learn cargo operations.^[14]

In a memorandum^[15] dated 20 September 2001, Korean Air informed its employees that application for the ERP ended on 15 September 2001 and that only the applications of eligible employees shall be forwarded to the head office for approval.

In a letter^[16] dated 22 September 2001 and addressed to Suk, Yuson reiterated her claims that (1) Korean Air's offer for early retirement and her acceptance of the offer constituted a perfected contract; (2) Korean Air unjustly transferred her from passenger sales department to cargo department; and (3) the transfer caused her embarrassment.

In a letter^[17] dated 10 October 2001 and addressed to Yuson, Suk stated that:

1. We believe that the Company's position regarding the Early Retirement Program ("ERP") has been fully explained to you in our

letters dated 21 September 2001 and 24 August 2001, respectively.

2. You complained of "injustice", "undue embarrassment and humiliation", in relation to your transfer to Cargo. However, in our meeting on 04 October 2001, with SSG, Tito Cosico and Chito Cajucom, you informed us to "forget about the issue on discrimination concerning Cargo Dispatch, since you just included it when you were excluded from the ERP". Furthermore, you also stated "I like to be in Cargo, I love working in Cargo, I have no regrets".^[18]

In a letter^[19] dated 6 November 2001 and addressed to Suk, a certain Patricia A. Galang, representing Yuson, followed up and made a final demand for Yuson's benefit under the ERP. In another letter^[20] dated 27 November 2001 and addressed to Suk, Yuson applied for travel benefit under the IPM. Chapter 14, Section 2.14.3.4 of the manual states:

2.14.3.4 Retired Officers or Employees

Retired officers or employees may be granted free transportation on the following basis provided that the application therefore shall be submitted to the office which he/she belonged just before retirement for approval not later than maximum five years from the date of retirement:

x x x x

b) Employees who terminated their employment after having served ten consecutive years or more and their immediate families be favored with their Points (if any) not later than three years from the date of retirement.

c) Officers who completed their term of services or employees who reached full retirement status and their immediate families may be favored with their Points (if any) not later than five years from the date of retirement.^[21]

On 28 November 2001, Yuson filed with the arbitration branch of the NLRC a complaint against Korean Air and Suk for payment of benefit under the ERP, moral damages, exemplary damages, and attorney's fees.

In a letter^[22] dated 29 November 2001, Suk informed Yuson that the points system as contained in the IPM had never been practiced in the Philippines. Suk stated that:

The points system of earning travel benefits you referred to under Chapter 14 of the International Passenger Manual (IPM) is not applicable in your case since the Company follows the system as agreed upon between MNLSM staffs and Management. You are aware that in our 26 years of operation in Manila, we never used point system in this regard.