

THIRD DIVISION

[G.R. No. 168081, October 17, 2008]

**ARMANDO G. YRASUEGUI, PETITIONER, VS. PHILIPPINE
AIRLINES, INC., RESPONDENT.**

DECISION

REYES, R.T., J.:

THIS case portrays the peculiar story of an international flight steward who was dismissed because of his failure to adhere to the weight standards of the airline company.

He is now before this Court via a petition for review on *certiorari* claiming that he was illegally dismissed. To buttress his stance, he argues that (1) his dismissal does not fall under 282(e) of the Labor Code; (2) continuing adherence to the weight standards of the company is not a bona fide occupational qualification; and (3) he was discriminated against

because other overweight employees were promoted instead of being disciplined.

After a meticulous consideration of all arguments *pro* and *con*, We uphold the legality of dismissal. Separation pay, however, should be awarded in favor of the employee as an act of social justice or based on equity. This is so because his dismissal is not for serious misconduct. Neither is it reflective of his moral character.

The Facts

Petitioner Armando G. Yrasuegui was a former international flight steward of Philippine Airlines, Inc. (PAL). He stands five feet and eight inches (5'8") with a large body frame. The proper weight for a man of his height and body structure is from 147 to 166 pounds, the ideal weight being 166 pounds, as mandated by the Cabin and Crew Administration Manual^[1] of PAL.

The weight problem of petitioner dates back to 1984. Back then, PAL advised him to go on an extended vacation leave from December 29, 1984 to March 4, 1985 to address his weight concerns. Apparently, petitioner failed to meet the company's weight standards, prompting another leave without pay from March 5, 1985 to November 1985.

After meeting the required weight, petitioner was allowed to return to work. But petitioner's weight problem recurred. He again went on leave without pay from October 17, 1988 to February 1989.

On April 26, 1989, petitioner weighed 209 pounds, 43 pounds over his ideal weight. In line with company policy, he was removed from flight duty effective May 6, 1989 to July 3, 1989. He was formally requested to trim down to his ideal weight and

report for weight checks on several dates. He was also told that he may avail of the services of the company physician should he wish to do so. He was advised that his case will be evaluated on July 3, 1989.^[2]

On February 25, 1989, petitioner underwent weight check. It was discovered that he gained, instead of losing, weight. He was overweight at 215 pounds, which is 49 pounds beyond the limit. Consequently, his off-duty status was retained.

On October 17, 1989, PAL Line Administrator Gloria Dizon personally visited petitioner at his residence to check on the progress of his effort to lose weight. Petitioner weighed 217 pounds, gaining 2 pounds from his previous weight. After the visit, petitioner made a commitment^[3] to reduce weight in a letter addressed to Cabin Crew Group Manager Augusto Barrios. The letter, in full, reads:

Dear Sir:

I would like to guaranty my commitment towards a weight loss from 217 pounds to 200 pounds from today until 31 Dec. 1989.

From thereon, I promise to continue reducing at a reasonable percentage until such time that my ideal weight is achieved.

Likewise, I promise to personally report to your office at the designated time schedule you will set for my weight check.

Respectfully Yours,

F/S Armando Yrasuegui^[4]

Despite the lapse of a ninety-day period given him to reach his ideal weight, petitioner remained overweight. On January 3, 1990, he was informed of the PAL decision for him to remain grounded until such time that he satisfactorily complies with the weight standards. Again, he was directed to report every two weeks for weight checks.

Petitioner failed to report for weight checks. Despite that, he was given one more month to comply with the weight requirement. As usual, he was asked to report for weight check on different dates. He was reminded that his grounding would continue pending satisfactory compliance with the weight standards.^[5]

Again, petitioner failed to report for weight checks, although he was seen submitting his passport for processing at the PAL Staff Service Division.

On April 17, 1990, petitioner was formally warned that a repeated refusal to report for weight check would be dealt with accordingly. He was given another set of weight check dates.^[6] Again, petitioner ignored the directive and did not report for weight checks. On June 26, 1990, petitioner was required to explain his refusal to undergo weight checks.^[7]

When petitioner tipped the scale on July 30, 1990, he weighed at 212 pounds. Clearly, he was still way over his ideal weight of 166 pounds.

From then on, nothing was heard from petitioner until he followed up his case requesting for leniency on the latter part of 1992. He weighed at 219 pounds on August 20, 1992 and 205 pounds on November 5, 1992.

On November 13, 1992, PAL finally served petitioner a Notice of Administrative Charge for violation of company standards on weight requirements. He was given ten (10) days from receipt of the charge within which to file his answer and submit controverting evidence.^[8]

On December 7, 1992, petitioner submitted his Answer.^[9] Notably, he did not deny being overweight. What he claimed, instead, is that his violation, if any, had already been condoned by PAL since "no action has been taken by the company" regarding his case "since 1988." He also claimed that PAL discriminated against him because "the company has not been fair in treating the cabin crew members who are similarly situated."

On December 8, 1992, a clarificatory hearing was held where petitioner manifested that he was undergoing a weight reduction program to lose at least two (2) pounds per week so as to attain his ideal weight.^[10]

On June 15, 1993, petitioner was formally informed by PAL that due to his inability to attain his ideal weight, "and considering the utmost leniency" extended to him "which spanned a period covering a total of almost five (5) years," his services were considered terminated "effective immediately."^[11]

His motion for reconsideration having been denied,^[12] petitioner filed a complaint for illegal dismissal against PAL.

Labor Arbiter, NLRC and CA Dispositions

On November 18, 1998, Labor Arbiter Valentin C. Reyes ruled^[13] that petitioner was illegally dismissed. The dispositive part of the Arbiter ruling runs as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered, declaring the complainant's dismissal illegal, and ordering the respondent to reinstate him to his former position or substantially equivalent one, and to pay him:

- a. Backwages of Php10,500.00 per month from his dismissal on June 15, 1993 until reinstated, which for purposes of appeal is hereby set from June 15, 1993 up to August 15, 1998 at P651,000.00;
- b. Attorney's fees of five percent (5%) of the total award.

SO ORDERED.^[14]

The Labor Arbiter held that the weight standards of PAL are reasonable in view of the nature of the job of petitioner.^[15] However, the weight standards need not be complied with under pain of dismissal since his weight did not hamper the performance of his duties.^[16] Assuming that it did, petitioner could be transferred

to other positions where his weight would not be a negative factor.^[17] Notably, other overweight employees, i.e., Mr. Palacios, Mr. Cui, and Mr. Barrios, were promoted instead of being disciplined.^[18]

Both parties appealed to the National Labor Relations Commission (NLRC).^[19]

On October 8, 1999, the Labor Arbiter issued a writ of execution directing the reinstatement of petitioner without loss of seniority rights and other benefits.^[20]

On February 1, 2000, the Labor Arbiter denied^[21] the Motion to Quash Writ of Execution^[22] of PAL.

On March 6, 2000, PAL appealed the denial of its motion to quash to the NLRC.^[23]

On June 23, 2000, the NLRC rendered judgment^[24] in the following tenor:

WHEREFORE, premises considered[,], the Decision of the Arbiter dated 18 November 1998 as modified by our findings herein, is hereby **AFFIRMED** and that part of the dispositive portion of said decision concerning complainant's entitlement to backwages shall be deemed to refer to complainant's entitlement to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent instead of simply backwages, from date of dismissal until his actual reinstatement or finality hereof. Respondent is enjoined to manifests (*sic*) its choice of the form of the reinstatement of complainant, whether physical or through payroll within ten (10) days from notice failing which, the same shall be deemed as complainant's reinstatement through payroll and execution in case of non-payment shall accordingly be issued by the Arbiter. Both appeals of respondent thus, are **DISMISSED** for utter lack of merit.^[25]

According to the NLRC, "obesity, or the tendency to gain weight uncontrollably regardless of the amount of food intake, is a disease in itself."^[26] As a consequence, there can be no intentional defiance or serious misconduct by petitioner to the lawful order of PAL for him to lose weight.^[27]

Like the Labor Arbiter, the NLRC found the weight standards of PAL to be reasonable. However, it found as unnecessary the Labor Arbiter holding that petitioner was not remiss in the performance of his duties as flight steward despite being overweight. According to the NLRC, the Labor Arbiter should have limited himself to the issue of whether the failure of petitioner to attain his ideal weight constituted willful defiance of the weight standards of PAL.^[28]

PAL moved for reconsideration to no avail.^[29] Thus, PAL elevated the matter to the Court of Appeals (CA) via a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.^[30]

By Decision dated August 31, 2004, the CA reversed^[31] the NLRC:

WHEREFORE, premises considered, we hereby GRANT the petition. The assailed NLRC decision is declared NULL and VOID and is hereby SET ASIDE. The private respondent's complaint is hereby DISMISSED. No costs.

SO ORDERED.^[32]

The CA opined that there was grave abuse of discretion on the part of the NLRC because it "looked at wrong and irrelevant considerations"^[33] in evaluating the evidence of the parties. Contrary to the NLRC ruling, the weight standards of PAL are meant to be a continuing qualification for an employee's position.^[34] The failure to adhere to the weight standards is an analogous cause for the dismissal of an employee under Article 282(e) of the Labor Code in relation to Article 282(a). It is not willful disobedience as the NLRC seemed to suggest.^[35] Said the CA, "the element of willfulness that the NLRC decision cites is an irrelevant consideration in arriving at a conclusion on whether the dismissal is legally proper."^[36] In other words, "the relevant question to ask is not one of willfulness but one of reasonableness of the standard and whether or not the employee qualifies or continues to qualify under this standard."^[37]

Just like the Labor Arbiter and the NLRC, the CA held that the weight standards of PAL are reasonable.^[38] Thus, petitioner was legally dismissed because he repeatedly failed to meet the prescribed weight standards.^[39] It is obvious that the issue of discrimination was only invoked by petitioner for purposes of escaping the result of his dismissal for being overweight.^[40]

On May 10, 2005, the CA denied petitioner's motion for reconsideration.^[41] Elaborating on its earlier ruling, the CA held that the weight standards of PAL are a bona fide occupational qualification which, in case of violation, "justifies an employee's separation from the service."^[42]

Issues

In this Rule 45 petition for review, the following issues are posed for resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER'S OBESITY CAN BE A GROUND FOR DISMISSAL UNDER PARAGRAPH (e) OF ARTICLE 282 OF THE LABOR CODE OF THE PHILIPPINES;

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER'S DISMISSAL FOR OBESITY CAN BE PREDICATED ON THE "BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ) DEFENSE";

III.