

SECOND DIVISION

[G.R. Nos. 141702-03, August 02, 2001]

**CATHAY PACIFIC AIRWAYS, LTD., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND MARTHA Z. SINGSON,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This petition for review on *certiorari* seeks to set aside the 20 September 1999 Decision^[1] of the Court of Appeals declaring respondent Martha Z. Singson illegally dismissed by petitioner Cathay Pacific Airways, Ltd., and thus should be reinstated with full back wages and awarded moral as well as exemplary damages.

This petition traces its origin to two (2) petitions for *certiorari* under Rule 65 initially filed with the Supreme Court: *Martha Z. Singson v. National Labor Relations Commission (NLRC) and Cathay Pacific Airways Ltd., SP Case No. 52104*, and *Cathay Pacific Airways, Ltd. v. National Labor Relations Commission and Martha Z. Singson*, SP Case No. 52105, which were consolidated^[2] and referred^[3] to the Court of Appeals in consonance with the St. Martin Funeral Homes doctrine.

Cathay Pacific Airways, Ltd. (CATHAY), is an international airline company engaged in providing international flight services while Martha Z. Singson was a cabin attendant of CATHAY hired in the Philippines on 24 September 1990 with home base in Hongkong.

On 26 August 1991 Singson was scheduled on a five (5)-day flight to London but was unable to take the flights as she was feeling fatigued and exhausted from her transfer to a new apartment with her husband. On 29 August 1991 she visited the company doctor, Dr. Emer Fahy, who examined and diagnosed her to be suffering from a moderately severe asthma attack. She was advised to take a Ventolin nebulizer and increase the medication she was currently taking, an oral Prednisone (steroid). Dr. Fahy thereafter conveyed to Dr. John G. Fowler, Principal Medical Officer, her findings regarding Singson's medical condition as a result of which she was evaluated as unfit for flying due to her medical condition.

On 3 September 1991 Singson again visited Dr. Fahy during which time the latter declared her condition to have vastly improved. However, later that day, Cabin Crew Manager Robert J. Nipperess informed Singson that CATHAY had decided to retire her on medical grounds effective immediately based on the recommendation of Dr. Fowler and Dr. Fahy.

Martha Z. Singson was surprised with the suddenness of the notification but nonetheless acknowledged it. Later, she met with Nipperess and inquired of possible employment that entailed only ground duties within the company. She was

advised to meet with certain personnel who knew of the employment requirements in other departments in the company, and to await a possible offer from the company.

On 20 December 1991 Singson filed before the Labor Arbiter a complaint against CATHAY for illegal dismissal, with prayer for actual, moral and exemplary damages and attorney's fees. Efforts on initial settlement having failed, trial followed.

Robert J. Nipperress and Dr. John G. Fowler appeared as witnesses for CATHAY. Nipperress confirmed that the decision to retire respondent was made upon the recommendation of Dr. Fowler. In turn, Dr. Fowler testified that the affliction of respondent with asthma rendered her unfit to fly as it posed aviation risks, i.e., asthma disabled her from properly performing her cabin crew functions, specifically her air safety functions.

On the other hand, Singson presented herself and Dr. Benjamin Lazo, a doctor in the country specializing in internal medicine and pulmonary diseases. She denied being afflicted with asthma at any point in her life, while Dr. Lazo confirmed the same declaring that at the time of his examination of Singson he found her to be of normal condition.

On the basis of the evidence presented before him, Labor Arbiter Pablo C. Espiritu Jr. declared CATHAY liable for illegal dismissal and ordered the airline to pay Singson HK\$531,150.80 representing full back wages and privileges, HK\$54,137.70 for undisputed benefits due her, HK\$100,000.00 as actual damages, HK\$500.00 as moral damages, HK\$500.00 as exemplary damages, and HK\$168,528.85 as attorney's fees. Furthermore, CATHAY was ordered to reinstate Singson to her former position as airline stewardess without loss of seniority rights, benefits and privileges.

On 19 March 1993 CATHAY appealed the decision of the Labor Arbiter to the National Labor Relations Commission. On 29 December 1994 the NLRC reversed the decision of the Labor Arbiter and declared valid Singson's dismissal from service.^[4] Relying on the testimony of Dr. Fowler and the affidavit and medical records submitted by Dr. Fahy, admitted as newly-discovered evidence, the NLRC found Singson to be indeed afflicted with asthma that rendered her unfit to fly and perform cabin crew functions. Consequently, the NLRC withdrew the back wages, moral and exemplary damages awarded to Singson for lack of factual or legal basis. It however ordered CATHAY to retain her services as ground stewardess, with salaries and benefits, noting that she had been reinstated therein since 12 March 1993. In turn, Singson was granted the option to continue her employment with CATHAY.

Thereafter, both parties filed their respective motions for reconsideration^[5] before the NLRC which on 31 August 1995 were denied for lack of merit. Petitions for certiorari under Rule 65 were subsequently filed by both parties before the Supreme Court which, after consolidation, were referred to the Court of Appeals for resolution.^[6]

Meanwhile, pursuant to the decision of the NLRC, Singson was reinstated as cabin stewardess with ground duties on 12 March 1993 pending the resolution of the petitions.

On 20 September 1999 the Court of Appeals reversed the ruling of the NLRC and reinstated the decision of the Labor Arbiter declaring Singson to have been illegally terminated. The appellate court anchored its judgment on the following findings: First, Dr. Fowler's opinion about Singson's medical condition was based on the personal examination of Dr. Fahy, and not his own. The appellate court held that a personal and prolonged examination of a patient was necessary and crucial before he or she could be properly diagnosed as afflicted with asthma,^[7] and thus Dr. Fowler's expert opinion was unreliable and mere hearsay. Second, CATHAY disregarded Sec. 8, Rule I, Book VI, of the *Omnibus Rules Implementing the Labor Code*^[8] which requires a certification by a competent public health authority when disease is the reason for an employee's separation from service, since it relied merely on the diagnosis of its company doctors, Dr. Fowler and Dr. Fahy. Third, the NLRC erroneously relied on the affidavit executed by Dr. Fahy since she was not personally presented as a witness to identify and testify on its contents. Fourth, respondent passed the medical examination required of prospective flight cabin attendants, the International Labor Organization's Occupational Health and Safety in Civil Aviation examination, prior to her employment and found to be fit for flight-related service. Fifth, CATHAY failed to adequately prove the health standards required in aviation, particularly the non-qualification of flight attendants afflicted with asthma to flight-related service.^[9]

Consequently, the appellate court awarded respondent full back wages with reinstatement, as well as moral exemplary damages, while deleting the award of actual damages reasoning that no undue damage inured to her since her husband nonetheless remained in Hongkong managing two (2) corporations. The appellate court however declared the option given to respondent to continue her employment as a ground stewardess with CATHAY to have been erroneously issued and consequently nullified the same.

CATHAY now argues that the Court of Appeals should have confined its inquiry to issues of want or excess of jurisdiction and grave abuse of discretion and not into the factual findings of the NLRC since the petition before it was made under Rule 65.

This Court is not persuaded. CATHAY's petition for certiorari filed before the Court of Appeals assailed specifically the judgment of the NLRC granting respondent the choice to continue her employment with CATHAY as ground stewardess as, in fact, she had been reinstated as such since 12 March 1993. On the other hand, respondent's petition attacked the NLRC decision declaring her dismissal valid and nullifying the award of damages in her favor on the basis of Dr. Fowler's testimony and not Dr. Lazo's. Consequently, it was inevitable for the Court of Appeals to examine the evidence anew to determine whether the factual findings of the NLRC were supported by the evidence presented and the conclusions derived therefrom accurately ascertained. As pointed out by the appellate court, this became even more essential in view of the fact that there was a conflict of decision between the Labor Arbiter and the NLRC. We thus find no error in the appellate court's evaluation of the evidence despite the pleadings being petitions for certiorari under Rule 65.

CATHAY next argues that the Court of Appeals erred in not admitting as evidence the affidavit of Dr. Fahy. We agree. The appellate court may have overlooked the