

FIRST DIVISION

[G.R. NO. 148931, September 12, 2006]

**CATHAY PACIFIC AIRWAYS, LIMITED, PETITIONER, VS. PHILIP
LUIS F. MARIN AND THE HON. COURT OF APPEALS (FORMER
FIRST DIVISION), RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50884, which granted the petition filed by respondent Philip Luis F. Marin and reversed the ruling of the Labor Arbiter and affirmed by the National Labor Relations Commission (NLRC) dismissing his complaint for illegal dismissal; likewise assailed is the Resolution of the CA denying the motion for reconsideration thereof.

Marin used to work for Saudia Airlines as a ticketing agent. When he applied for employment as a Reservation Officer in Cathay Pacific Airways, Ltd. (Cathay), he was interviewed by the following: Senior Supervisor Nenita Montallana, Reservations Manager Elizabeth Leviste, Staff and Administrative Supervisor M.A. Canizares, and Country Manager (Philippines) Peter W. Foster.

In a letter^[2] dated March 30, 1992, Foster confirmed Marin's appointment as Reservations Officer effective April 6, 1992 for a probationary period of six months. He was to receive a monthly salary of P5,334.00, including holidays and rest days, with a promise of a salary review upon satisfactory completion of the probationary period. The letter also stated that Cathay reserved the right to "terminate [Marin's] services during the probationary period if [his] performance proves to be unsatisfactory, in which case, [he] will receive the salary due [him] at the time of the termination of [his] services." It was also understood that Marin "had accepted the [recognized] terms of employment," and that he would be "reconfirmed as a member of [the] regular staff upon completion of the probationary period."^[3]

On October 2, 1992, Marin received the following letters from Foster:

02 October 1992

Mr. Philip Luis Marin
Cathay Pacific Airways, Ltd.
Manila
Dear Philip,

It is with regret that we accept your resignation as Reservations Officer with effect 03 October 1992.

We wish you success in your endeavors.

Yours sincerely,
(Sgd.)
PETER FOSTER
Manager, Philippines [4]

x x x x

02 October 1992

Mr. Philip Luis Marin
Cathay Pacific Airways, Ltd.
Manila
Dear Philip,

After a thorough review of your performance during the past six months, we found that it is unsatisfactory. We are, therefore, terminating your services with effect from 03 October 1992.

Yours sincerely,
(Sgd.)
PETER FOSTER
Manager, Philippines [5]

On October 15, 1992, Marin filed a complaint [6] for illegal dismissal against Cathay and Foster before the NLRC. The complaint was later amended to include claims for 13th month pay, moral and exemplary damages, and attorney's fees. [7]

The Case for Complainant

Marin insisted that he was dismissed from employment without cause, and that the same was arbitrary and capricious. Although he was a probationary employee, he was entitled to security of tenure. He claimed that he never received any letters or documents informing him of Cathay's employment standards. When he assumed office, he was never briefed regarding his duties and functions as reservation officer and started working without knowing Cathay's rules and regulations. [8] He was briefed only on April 13, 1992 on the rules regarding phone calls, break time, and others. [9] He also came to know of the rules and regulations of the company on his own initiative. [10]

Marin pointed out that he did not commit any infraction during his probationary employment, and that those alleged by Gozun and Montallana were mere fabrications and "products of afterthought." As shown by his performance ratings during the months from May to July 1992, his work performance was good. [11] While he received copies of some documents which were to be used to evaluate his performance, he was not briefed on what the documents were about. He likewise never received any memorandum calling his attention to any such infraction. He was not furnished a copy of the October 14, 1991 Memorandum [12] of M.A. Canizares, as well as the staff assessment [13] made by Gozun.

Marin also denied having resigned from employment. He claimed that, on October 2, 1992, Leviste gave him two white bond papers and asked him to make a letter of

resignation. When he refused, he was given another letter terminating his probationary employment allegedly due to unsatisfactory performance.^[14] Marin claimed that he suffered sleepless nights and depression, humiliation and embarrassment on account of his illegal and capricious dismissal from employment; hence, he was entitled to moral damages.^[15]

The Case for Respondents

For their part, respondents claimed that, as reservation officer, Marin was tasked to book passengers, answer queries related to their itinerary in the telesales area, and respond to telexes from one port to another.^[16] He was prohibited from receiving or making personal calls in the telesales area^[17] and had to use the lounge during coffee breaks.^[18] There was a separate room and telephone which could be used for personal calls. During the first three (3) months, Marin's performance was below than what was expected of him as reservation officer, as can be gleaned from the staff assessments conducted by Gozun, who had direct supervision over Marin, and that of Reservation Supervisor Montallana. The assessments dated July 6, 1992 and September 30, 1992 were duly noted by the Reservations Manager.^[19] Thus, since Marin failed to meet the standards of Cathay for the position of reservation officer, it was decided that a regular employment contract would not be extended to Marin.

Montallana testified that Marin was not furnished with a copy of the pink-colored documents containing the standards of contract, nor was the latter briefed on Cathay's rules and regulations. However, upon instruction of Foster and as mandated in the October 14, 1991 Memorandum of M.A. Canizares, she briefed Marin on the standards and expectations of Cathay for probationary employees, as well as its rules and regulations. She informed Marin of the work expected of him: he had to have 25 calls per hour from the public and should be able to satisfy queries of the traveling public; aside from regular attendance, he should likewise be open to suggestions, constructive criticism, as well as being given instructions by his supervisors; and gossiping and chatting while on duty were strictly prohibited. Marin was also enjoined to follow the rules and regulations issued by Cathay to the staff of the Reservation Department.

According to Gozun, Marin's direct supervisor, the latter was caught conversing noisily with co-employee Aileen Lao during office hours^[20] (Marin and Lao were seated back-to-back in a cubicle). Consequently, Gozun called their attention and told them that they were a little bit noisy. They were then instructed to go back to work.^[21]

On June 26, 1992, Gozun again found Marin conversing noisily with a co-employee during office hours, distracting other employees and leaving several calls unattended. Marin repeated his infractions twice in July 1992 in the telesales area. He was advised by Montallana and Leviste of the results of the staff assessment on July 6, 1992, and was told to stop his disruptive conduct in his work station and to mend his ways.

However, in August 1992, Marin was found taking his coffee break at the telesales area which was used exclusively for receiving and entertaining calls from the public. He was again found chatting noisily with his co-employees, in fine disrupting their

work; and even received personal calls from the telesales area on September 18, 1992, thus, blocking customers' calls. Taking into account his repeated infractions and the recommendation in the staff assessments, Cathay decided not to extend regular employment to Marin.^[22]

On the other hand, Leviste testified that, after her vacation, the staff supervisors informed her that Marin had already been briefed on the standards, rules and regulations of the company. When she asked Marin if he had already been briefed by the supervisors, Marin replied in the affirmative, and confirmed that the standards, rules and regulations were "okay" with him.^[23] She likewise claimed to have briefed Marin on the staff assessment made by Gozun on July 6, 1992 in the presence of Montallana. After the briefing, she advised him to continue with his good points but to improve on his distractive behavior. Marin even asked what she meant by distractive behavior, and she replied that she was referring to Gozun's observations that he (Marin) had been chatting noisily around the telesales area and that he had left his working area, leaving calls from the public unattended. Sometime in August 1992, Gozun called her attention about Marin, who was again seen chatting with his co-employees in the work area during breaktime; she directed Marin to attend to his work.

On October 2, 1992, Gozun and Montallana submitted to Leviste the staff assessment report of Marin dated September 30, 1992. They later had a conference, during which Gozun and Montallana recommended that the probationary employment of Marin be terminated. She agreed with the recommendation. She then informed Marin of the staff assessment, the recommendation of the reservation supervisors, as well as Cathay's decision not to regularize his employment on account of his "below normal work performance." So as not to prejudice his chance for employment in other companies, Leviste suggested that Marin had the option to voluntarily resign from Cathay, and showed him the two letters signed by Foster dated October 2, 1992, one accepting his voluntary resignation, and the other terminating his probationary employment. Marin opted to seek advice from Foster and talked to him on October 5, 1992. Foster rejected Marin's request to be extended regular employment, and told Marin that Cathay had given him all the chances and opportunities but that he failed to live up to the standards and expectations of the company. Foster suggested that Marin would be better off resigning voluntarily his probationary employment. However, Marin threatened to take legal action against Cathay, to which Foster replied that Cathay would then have to take the appropriate legal recourse. Foster never demanded that Marin resign from his employment.^[24]

To rebut the testimony of Marin, Gozun, Montallana and Leviste testified that Marin was briefed on April 13, 1992 by Montallana on Cathay's standards and expectations for new employees, specifically for the position he was hired. Marin was again briefed regarding the company standards and expectations on July 6, 1992.^[25]

In their comment on Marin's formal offer of evidence, Cathay offered in evidence a copy of the House Rules in the Reservation Department^[26] which it was claimed that Marin was briefed on when he started working in Cathay.

On September 28, 1995, the Labor Arbiter rendered judgment ordering the dismissal of the complaint, holding that Marin had admitted to knowing the rules

and regulations of the company.^[27] Marin's below normal performance was evidenced by the two staff assessments of Gozun and Montallana;^[28] hence, there was factual basis for the termination of his probationary employment.

Marin appealed the decision to the NLRC. He alleged that the Labor Arbiter erred in finding that he was apprised of the requisites and standards related to the performance of his duties and that he committed infractions of company rules and regulations while at work. He averred that respondents merely presented Gozun, Montallana and Leviste, and their staff assessment, but failed to present any of the employees of respondent Cathay who were allegedly distracted by his behavior. His co-employees, Marin alleged, are the best witnesses to testify on his alleged infractions. He insisted that Gozun and Montallana were themselves busy in their work and could not have observed him; hence, their separate accounts had no factual basis. He claimed that he was deprived of his right to be notified of the staff assessments against him and his right to controvert the same.

On July 31, 1998, the NLRC issued a Resolution^[29] dismissing the appeal and affirming the decision of the Labor Arbiter. The NLRC ratiocinated that Gozun, Montallana, and Leviste were tasked to supervise and assess Cathay's employees, which necessarily included watching their actuations. There was no need to corroborate their alleged testimonies by those of Marin's former co-employees. Moreover, these officers testified on matters of their own personal knowledge; thus, the fact that they were actually busy with the performance of their functions when Marin was observed to have committed infractions is irrelevant.

The NLRC further declared that the option of who to present as witness lies on the party offering the same, not on the opposing party. It was erroneous for Marin to assume that the employees with whom he conversed were the best witnesses on the conversation, as the employees would certainly not testify that they were chatting so noisily and that others were disturbed by Marin's behavior. The NLRC noted that, for her disruptive conversation with Marin, Aileen Lao's attention was called and was subjected to company rules and regulations. Marin was served a written notice of the particular acts for which his dismissal was sought, and was afforded the opportunity to be heard and defend himself. He was served a written notice of the decision to dismiss him and the cause thereof. With the two appraisals made on his over-all performance at the end of the third and sixth month, including the discussion between him and his supervisors, Marin could not claim lack of prior hearing. The NLRC further noted that two assessments of Marin's performance was conducted, as evidenced by the staff assessment form indicating that his over-all performance was short of normal, which was clearly explained by Gozun and Montallana during the hearing of the case.^[30]

Marin filed a motion for reconsideration which the NLRC denied. He forthwith filed a petition for *certiorari* in the CA for the nullification of the NLRC ruling, alleging that:

1. IN DECLARING THAT PETITIONER WAS SERVED OR FURNISHED THE REQUIRED WRITTEN NOTICE WHICH APPRISED HIM OF HIS PARTICULAR ACTS OR OMISSIONS FOR WHICH HIS DISMISSAL WAS SOUGHT WHEN ABSOLUTELY NOTHING IN THE RECORDS WOULD SUPPORT SUCH CONCLUSION.