

SECOND DIVISION

[G.R. No. 198656, September 08, 2014]

**NANCY S. MONTINOLA, PETITIONER, VS. PHILIPPINE AIRLINES,
RESPONDENT.**

DECISION

LEONEN, J.:

Illegally suspended employees, similar to illegally dismissed employees, are entitled to moral damages when their suspension was attended by bad faith or fraud, oppressive to labor, or done in a manner contrary to morals, good customs, or public policy.

Petitioner Nancy S. Montinola (Montinola) comes to this court via a petition for review on certiorari under Rule 45 of the Rules of Court. She assails the decision^[1] of the Court of Appeals^[2] dated June 28, 2011 and its resolution^[3] dated September 20, 2011 in *Philippine Airlines v. National Labor Relations Commission and Nancy S. Montinola*.^[4] The Court of Appeals affirmed the finding of the National Labor Relations Commission that petitioner was suspended illegally but deleted the award of moral and exemplary damages and attorney's fees.^[5]

The deletion of the award of attorney's fees and moral and exemplary damages is the subject of this petition.

Montinola was employed as a flight attendant of Philippine Airlines (PAL) since 1996.^[6] On January 29, 2008, Montinola and other flight crew members were subjected to custom searches in Honolulu, Hawaii, USA. Items from the airline were recovered from the flight crew by customs officials. Nancy Graham (Graham), US Customs and Border Protection Supervisor, sent an email to PAL regarding the search. The email^[7] contained a list of PAL flight crew members involved in the search:

FP CHUIDIAN, JUAN DE GUZMAN
FS CARTAGENA, REGINALD
FS NAVA, PETER DE GUZMAN
FS PADILLA, ANGELITO
FA CRUZ, MARIA
FA MONTINOLA, NANCY
FA VICTA, ROSE ANN (Emphasis supplied)

Another email^[8] enumerated the list of items taken from the crew members:

Katie,

Here is the list.

Flight Crew Blitz in gate area 10 crew. Seven of the 10 crew members had items removed from the aircraft on their possession. Two additional bags were found on jet-way after blitz. No bonded items were found but crew removed food items as listed:

- 18 bags Doritos
- 15 bags Banana Chips
- 5 pkg instant chocolate
- 5 bars Granola
- 18 bars Kit Kat
- 34 Chocolate flavored Goldilocks
- 16 Regular Goldilocks cakes
- 9 1st class Bulgari Kits
- 2 magazines
- 6 rolls toilet paper
- 9 cans soda
- 16 bottles of water
- 1 yogurt
- 12 small ice creams
- 2 jars salsa
- 2 bottles Orange Juice
- 1 bottle Cranberry Juice
- 1 bottle smoothie

All items returned to Philippine Airlines.

Nancy I. Graham
Supervisory CBPO
A-TCET Air
Honolulu Hi

PAL conducted an investigation. Montinola was among those implicated because she was mentioned in Graham's email.^[9] On February 1, 2008, PAL's Cabin Services Sub-Department required Montinola to comment on the incident.^[10] She gave a handwritten explanation three days after, stating that she did not take anything from the aircraft. She also committed to give her full cooperation should there be any further inquiries on the matter.^[11]

On February 22, 2008, PAL's International Cabin Crew Division Manager, Jaime Roberto A. Narciso (Narciso), furnished Montinola the emails from the Honolulu customs official.^[12] This was followed by a notice of administrative charge^[13] which Narciso gave Montinola on March 25, 2008. On April 12, 2008, there was a clarificatory hearing.^[14] The clarificatory hearing was conducted by a panel of PAL's Administrative Personnel, namely, Senior Labor Counsel Atty. Crisanto U. Pascual (Atty. Pascual), Narciso, Salvador Cacho, June Mangahas, Lina Mejias, Carolina Victorino, and Ruby Manzano.^[15]

Montinola alleged that her counsel objected during the clarificatory hearing regarding PAL's failure to specify her participation in the alleged pilferage.^[16] Atty. Pascual threatened Montinola that a request for clarification would result in a waiver of the clarificatory hearing.^[17] This matter was not reflected in the transcript of the hearing.^[18] Despite her counsel's objections, Montinola allowed the clarificatory hearings to proceed because she "wanted to extend her full cooperation [in] the investigation[s]."^[19]

During the hearing, Montinola admitted that in Honolulu, US customs personnel conducted a search of her person. At that time, she had in her possession only the following food items: cooked *camote*, 3-in-1 coffee packs, and Cadbury hot chocolate.^[20]

PAL, through Senior Assistant Vice President for Cabin Services Sub-Department Sylvia C. Hermosisima, found Montinola guilty of 11 violations^[21] of the company's Code of Discipline and Government Regulation. She was meted with *suspension* for one (1) year without pay.^[22] Montinola asked for a reconsideration.^[23] Hermosisima, however, denied her motion for reconsideration a month after.^[24]

Montinola brought the matter before the Labor Arbiter.^[25] The Labor Arbiter^[26] found her suspension illegal,^[27] finding that PAL never presented evidence that showed Montinola as the one responsible for any of the illegally taken airline items.^[28] The Labor Arbiter ordered Montinola's reinstatement with backwages, inclusive of allowances and benefits amounting to P378,630.00.^[29]

In addition, the Labor Arbiter awarded moral damages in the amount of P100,000.00 and exemplary damages amounting to P100,000.00 for the following reasons:^[30]

This Office observes that the records are replete with substantial evidence that the circumstances leading to complainant's one-year suspension without pay are characterized by arbitrariness and bad faith on the part of respondents. The totality of respondents' acts clearly shows that complainant had been treated unfairly and capriciously, for which complainant should be awarded moral damages in the amount of One Hundred Thousand Pesos (P100,000.00) and exemplary damages also in the amount of One Hundred Thousand Pesos (P100,000.00).^[31]

The Labor Arbiter also awarded *attorney's fees* to Montinola because she was "forced to litigate and incur expenses to protect [her] rights."^[32]

PAL appealed the Labor Arbiter's decision to the National Labor Relations Commission (NLRC).^[33] During the pendency of the appeal, PAL submitted new evidence consisting of an affidavit executed by Nancy Graham, the Customs and Border Protection Supervisor who witnessed the January 29, 2008 search in Honolulu.^[34] This affidavit enumerated the names of the flight crew members

searched by the Honolulu customs officials. However, the National Labor Relations Commission observed that "it was categorically admitted in the said declaration that Ms. Graham did not know which items were attributable to each of the seven crew members whom she identified and there was no individual inventories (sic)."^[35]

Through the resolution^[36] dated June 9, 2009, the National Labor Relations Commission^[37] affirmed the decision of the Labor Arbiter. PAL appealed the Commission's decision to the Court of Appeals through a petition for certiorari.^[38]

The Court of Appeals affirmed the decisions of the Labor Arbiter and National Labor Relations Commission in finding the suspension illegal.^[39] However, the Court of Appeals modified the award:

WHEREFORE, premises considered, the petition is **DENIED**. Respondent NLRC's Decision in NLRC LAC No. 01000263-09 (NLRC NCR CN 08-11137-08), dated June 9, 2009, is **AFFIRMED** with **MODIFICATION** in that *the award of moral and exemplary damages and attorney's fees to private respondent are deleted*.^[40] (Emphasis supplied)

The Court of Appeals deleted the moral and exemplary damages and attorney's fees stating that:

Relevant to the award of moral damages, not every employee who is illegally dismissed or suspended is entitled to damages. Settled is the rule that moral damages are recoverable only where the dismissal or suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Bad faith does not simply mean negligence or bad judgment. It involves a state of mind dominated by ill will or motive. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or some moral obliquity. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith.

In the case at bar, there is no showing that PAL was moved by any ill will or motive in suspending private respondent. It is evident that petitioner gave private respondent every opportunity to refute the charges against her and to present her side as part of due process. These negate the existence of bad faith on the part of petitioner. Under the circumstances, we hold that private respondent is not entitled to moral damages and exemplary damages. Furthermore, the Court finds the award of attorney's fees improper. The award of attorney's fees was merely cited in the dispositive portion of the decision without the RTC [sic] stating any legal or factual basis for said award. ^[41] (Citations omitted)

Montinola filed a partial motion for reconsideration,^[42] praying that the award of moral and exemplary damages and attorney's fees be reintegrated into the decision.

PAL also filed a motion for reconsideration,^[43] but its motion sought a complete reversal of the decision.

The Court of Appeals denied both motions.^[44] Only Montinola sought to continue challenging the Court of Appeals' decision through a petition for review on certiorari^[45] brought to this court.

The sole issue in this case is whether Montinola's illegal suspension entitled her to an award of moral and exemplary damages and attorney's fees.

Montinola claims that she is entitled to moral damages because her illegal suspension was attended by bad faith, causing her to suffer "mental anguish, fright, serious anxiety, and moral shock."^[46] Furthermore, the illegal suspension tarnished her good standing.^[47] Prior to this incident and in her 12 years of service, she was never charged administratively.^[48] The illegal suspension likewise affected her family because it created "a state of uncertainty and adversity."^[49]

Montinola underscores that the investigation against her was conducted in a "hasty, impetuous, harsh and unjust"^[50] manner. She was not properly apprised of the charges against her.^[51] She requested for proper notice of the acts violative of PAL's Code of Discipline. Instead of giving proper notice, PAL threatened that she would be waiving her right to a clarificatory hearing if she insisted on her request.^[52]

Montinola likewise alleges that PAL violated its own rules by not applying the same penalty uniformly.^[53] Flight Purser Juan Chuidian III was involved in the same incident and was likewise suspended. However, on motion for reconsideration, PAL allowed him to retire early without serving the penalty of suspension.^[54]

The claim for exemplary damages is anchored on Montinola's belief that such damages "are designed to permit the courts to mould behaviour that has socially deleterious consequences, and their imposition is required by public policy to suppress the wanton acts of the offender."^[55] In Montinola's view, PAL suspended her in a "wanton, oppressive, and malevolent manner."^[56]

Finally, Montinola argues that she is entitled to attorney's fees because she was forced to litigate. In Article 2208, paragraph (2) of the Civil Code, individuals forced to litigate may ask for attorney's fees.

On the other hand, PAL argues that moral damages are only recoverable when "the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy."^[57] The company believes that Montinola failed to present clear and convincing proof of bad faith.

PAL stands by how it investigated the alleged pilferage of the in-flight items in the January 29, 2008 flight. It believes that it afforded due process to Montinola and the other implicated crew members. From PAL's point of view, she was given an opportunity to explain her side and was even assisted by counsel of her choice.^[58]