

**EN BANC**

**[ G.R. No. 190120, November 11, 2014 ]**

**CIVIL AVIATION AUTHORITY OF THE PHILIPPINES EMPLOYEES' UNION (CAAP-EU) FORMERLY AIR TRANSPORTATION EMPLOYEES' UNION (ATEU), PETITIONER, VS. CIVIL AVIATION AUTHORITY OF THE PHILIPPINES (CAAP); HON. LEANDRO R. MENDOZA, SECRETARY, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, IN HIS CAPACITY AS EX-OFFICIO CAAP CHAIRMAN OF THE BOARD; RUBEN F. CIRON, PHD, ACTING DIRECTOR GENERAL, IN HIS CAPACITY AS CAAP EX-OFFICIO VICE CHAIRMAN; HON. AGNES VST. DEVANADERA, ACTING SECRETARY, DEPARTMENT OF JUSTICE, HON. MARGARITO B. TEVES, SECRETARY, DEPARTMENT OF FINANCE, HON. ALBERTO G. ROMULO, SECRETARY, DEPARTMENT OF FOREIGN AFFAIRS, HON. RONALDO V. PUNO, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, HON. MARIANITO D. ROQUE, SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT, AND HON. JOSEPH ACE H. DURANO, SECRETARY, DEPARTMENT OF TOURISM, IN THEIR CAPACITY AS EX-OFFICIO MEMBERS CAAP BOARD OF DIRECTORS; DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); HON. ROLANDO C. ANDAYA, JR., IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; CIVIL SERVICE COMMISSION (CSC); HON. CESAR D. BUENAFLORES AND HON. MARY Z. FERNANDEZ-MENDOZA, IN THEIR CAPACITY AS COMMISSIONERS OF THE CIVIL SERVICE COMMISSION; EDUARDO E. KAPUNAN, JR., IN HIS CAPACITY AS DEPUTY DIRECTOR GENERAL FOR ADMINISTRATION OF CAAP AND AS CHAIRMAN, CAAP SELECTION COMMITTEE; AND ROLANDO P. MANLAPIG, IN HIS CAPACITY AS CHAIRMAN, CAAP SPECIAL SELECTION COMMITTEE, RESPONDENTS.**

**D E C I S I O N**

**VILLARAMA, JR., J.:**

Before this Court is an Amended Petition<sup>[1]</sup> for Prohibition with prayer for the issuance of a Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction filed by petitioner Civil Aviation Authority of the Philippines Employees' Union (CAAP-EU) formerly Air Transportation Employees' Union (ATEU) (petitioner) – a legitimate union of employees of respondent Civil Aviation Authority of the Philippines (CAAP). Petitioner prays that the Court direct all respondents to desist from promulgating and implementing Authority Orders, Memoranda and all other issuances relating to the filling up of positions within the CAAP whether existing or newly created, and praying that the Court nullify and set aside the following:

- a. Authority Order No. 77-08;<sup>[2]</sup>
- b. Authority Order No. 118-08;<sup>[3]</sup>
- c. Authority Order No. 139-08;<sup>[4]</sup>
- d. Authority Order No. 163-08;<sup>[5]</sup>
- e. Authority Order No. 172-08;<sup>[6]</sup>
- f. Authority Order No. 173-08;<sup>[7]</sup>
- g. Authority Order No. 181-08;<sup>[8]</sup>
- h. Authority Order No. 81-09;<sup>[9]</sup>
- i. Authority Order No. 82-09;<sup>[10]</sup> and
- j. Authority Order No. 83-09<sup>[11]</sup>

all issued by respondent Ruben F. Ciron, former Acting Director General of the CAAP allegedly with grave abuse of discretion amounting to lack of or in excess of jurisdiction. Petitioner asserts that such grave abuse of discretion was shown by the issuances of said Authority Orders and Memoranda which resulted in the classification and treatment of the incumbent personnel of the Air Transportation Office (ATO), now of CAAP, into "hold-over" status, thus violating the provisions of Republic Act (R.A.) No. 9497<sup>[12]</sup> otherwise known as the Civil Aviation Authority Act of 2008 and the security of tenure of government employees guaranteed by the 1987 Constitution and R.A. No. 6656.<sup>[13]</sup>

A brief historical background of the CAAP is in order.<sup>[14]</sup>

On November 20, 1931, the Philippine Legislature passed Act No. 3909<sup>[15]</sup> providing that the Secretary of the Department of Commerce and Communications has the duty, among others, to foster air commerce, encourage the establishment of airports, civil airways and other navigation facilities and investigate causes of air mishaps. As such, said Secretary has the power to administer and enforce air traffic rules, issue or revoke licenses and issue regulations necessary to execute his vested functions.

On December 5, 1932, Act No. 3996<sup>[16]</sup> amended Act No. 3909 as to matters concerning the licensing of airmen and aircraft, inspection of aircraft, air traffic rules, schedules and rates and enforcement of aviation laws.

On December 9, 1932, Act No. 4033<sup>[17]</sup> was approved, providing, among others, that no aviation public service, including those of foreign aircrafts, shall operate in the Philippines without having first secured from the Philippine Legislature a franchise to operate an air service.<sup>[18]</sup>

CAAP narrated that from 1932 to 1936, there were no standard procedures as to the licensing of airmen, registration of aircraft and recording of various aeronautical activities connected with commercial aviation. There were attempts made to register planes and their owners without ascertaining their airworthiness and to record names of pilots, airplane mechanics and other details. It was also narrated that in 1933, the office of Technical Assistant of Aviation Matters was expanded into the Aeronautics Division under the Department of Commerce and Industry, the functions of which were embodied in Administrative Order No. 309, a joint Bulletin issued by

the Department of Public Works and Communications and the Department of Finance.<sup>[19]</sup>

On November 12, 1936, the National Assembly passed Commonwealth Act No. 168,<sup>[20]</sup> otherwise known as the Civil Aviation Law of the Philippines, creating the Bureau of Aeronautics and organizing the same under the Department of Public Works and Communications.<sup>[21]</sup> After the liberation of the Philippines in March 1945, the Bureau was reorganized and placed under the Department of National Defense. Among its functions was to promulgate civil aviation regulations.<sup>[22]</sup>

On October, 1947, Executive Order (E.O.) No. 94 which reorganized the government, transferred the Bureau of Aeronautics to the newly created Department of Commerce and Industry and renamed the same as the Civil Aeronautics Administration (CAA).<sup>[23]</sup>

On June 5, 1948, R.A. No. 224<sup>[24]</sup> created the National Airports Corporation, serving as an agency of the Republic of the Philippines for the development, administration, operation and management of government-owned landing fields in the country<sup>[25]</sup> except for those controlled and/or operated by the Armed Forces.

On November 10, 1950, the National Airports Corporation was abolished by E.O. No. 365<sup>[26]</sup> and was replaced by the CAA.<sup>[27]</sup>

On June 20, 1952, R.A. No. 776,<sup>[28]</sup> otherwise known as the Civil Aeronautics Act of the Philippines, was passed, reorganizing the Civil Aeronautics Board and the CAA, defining their respective powers and duties, making adjustments as to the funds and personnel and regulating civil aeronautics. Under R.A. No. 776, the CAA was charged with the duty of planning, designing, constructing, equipping, expanding, improving, repairing or altering aerodromes or such other structures, improvements or air navigation facilities.<sup>[29]</sup>

On October 19, 1956, former President Ramon Magsaysay issued E.O. No. 209,<sup>[30]</sup> transferring *in toto* the CAA to the Department of Public Works, Transportation and Communications from the Department of Commerce and Industry.<sup>[31]</sup>

On January 20, 1975, Letter of Instruction No. 244, series of 1975,<sup>[32]</sup> directed that all funds for the preliminary engineering, construction and maintenance of all national airports appropriated for the fiscal year 1974-75 be transferred and/or released to the Department of Public Highways. The responsibilities related to location, planning design and funding were later returned to the CAA.<sup>[33]</sup>

On July 23, 1979, former President Ferdinand E. Marcos issued E.O. No. 546,<sup>[34]</sup> renaming the CAA as the Bureau of Air Transportation (BAT) and placing the same under the Ministry of Transportation and Communications.<sup>[35]</sup>

Subsequently, BAT, though reorganized, was maintained under E.O. No. 125<sup>[36]</sup> issued by former President Corazon C. Aquino (President Aquino) on January 30, 1987. Shortly thereafter or on April 13, 1987, President Aquino issued E.O. No. 125-

A<sup>[37]</sup> renaming BAT to ATO which would be headed by the Assistant Secretary of the Office of Air Transportation.<sup>[38]</sup> Section 12<sup>[39]</sup> of said E.O. No. 125 which contained the proviso concerning BAT was deleted by Section 2<sup>[40]</sup> of E.O. No. 125-A.

As duly claimed by petitioner, sometime in the middle of 1995, the Philippine civil aviation safety oversight capability was downgraded by the United States of America (USA) through her Federal Aviation Administration (FAA) International Aviation Safety Assessment (IASA) into a Category 2<sup>[41]</sup> status. A Category 2 rating means a country either lacks laws or regulations necessary to oversee air carriers in accordance with minimum international standards, or that its civil aviation authority – equivalent to the FAA for aviation safety matters – is deficient in one or more areas, such as technical expertise, trained personnel, record keeping or inspection procedures. Correlatively, a Category 1 rating means a country's civil aviation authority complies with the International Civil Aviation Organization<sup>[42]</sup> (ICAO) standards, thus, her air carriers can add flights and services to the USA and carry the code of USA carriers.<sup>[43]</sup> Petitioner attested that sometime in the first quarter of 1997, the Category 1 status was regained by the Philippines as it was successfully initiated by the organic/incumbent personnel of the defunct ATO.

However, sometime in January 2008, the FAA reverted the Philippines to its 1995 air safety rating of Category 2 from Category 1 because of air safety regulations, practices and personnel that fell below the standards of the ICAO.<sup>[44]</sup>

Thus, on March 4, 2008, R.A. No. 9497 was passed, whereby ATO was replaced by CAAP, to be headed by the Director General of Civil Aviation. Pursuant to Sections 4<sup>[45]</sup> and 85<sup>[46]</sup> thereof, the ATO was abolished, and all its powers were transferred to the CAAP. To ensure the smooth transition from ATO to CAAP, Section 86<sup>[47]</sup> of R.A. No. 9497 directed the Assistant Secretary of the ATO to continue to hold office and assume the powers of the CAAP Director General until his successor shall have been appointed and inducted into office in accordance with said law. Likewise, retirement packages were provided to ATO employees who were willing to retire from the service.

On July 2, 2008, former President Gloria Macapagal-Arroyo appointed Ruben F. Ciron as Acting Director General of the CAAP.<sup>[48]</sup> Immediately upon assumption of office, Ciron issued orders and memoranda for the active participation of incumbent and organic personnel of the defunct ATO along with his hired consultants in the crafting and formulation of the Implementing Rules and Regulations (IRR) of R.A. No. 9497, the new Organizational Structure and Staffing Pattern (OSSP) and the Qualification Standards (QS) for the proposed new plantilla of positions within the CAAP.

Accordingly, the Board of Directors of CAAP prepared its OSSP and the IRR of R.A. No. 9497, both of which were approved in Board Resolution No. 08-001<sup>[49]</sup> dated July 30, 2008. Pursuant to Section 90<sup>[50]</sup> of R.A. No. 9497, the IRR was formulated and was subsequently published in two newspapers of general circulation.<sup>[51]</sup> Pertinently, Section 60 (a) of the IRR provides that the incumbent personnel of the former ATO shall continue to hold office in hold-over capacity until such time as the new Staffing Pattern and Manning shall have been approved by the Board and implemented by the CAAP Director General. Thereafter, the management of CAAP

endorsed its OSSP for the approval of respondent Department of Budget and Management (DBM) in view of the latter's authority to review reorganization details of government agencies. The OSSP was approved on July 20, 2009.<sup>[52]</sup> However, petitioner lamented, among others, that the IRR, OSSP and QS approved by the CAAP Board of Directors were different from that agreed upon by the incumbent ATO personnel and Director General Ciron and his consultants.

Subsequently, Senate Concurrent Resolution No. 10<sup>[53]</sup> and House Concurrent Resolution No. 27<sup>[54]</sup> were issued, which clarified, among others, the intent of the lawmakers as regards the abolition of ATO; the hold-over status of qualified employees of ATO and the preferential status of the said employees with respect to the filling up of CAAP plantilla positions.

Aggrieved, on November 20, 2009, petitioner filed the Original Petition for Prohibition<sup>[55]</sup> directly before this Court. Said petition was subsequently amended on November 25, 2009. It assails the aforementioned Authority Orders, Memoranda and other issuances related to the selection and filling up of positions issued by Director General Ciron and seeks the nullification thereof including the IRR of R.A. No. 9497, the OSSP and QS for the employees of CAAP.

Petitioner invokes the following grounds:

I.

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING AND IMPLEMENTING AUTHORITY ORDERS, MEMORANDA AND ALL OTHER ISSUANCES RELATED TO THE SELECTION AND FILLING UP OF POSITIONS IN THE CAAP, WHETHER EXISTING OR NEWLY CREATED, CONSIDERING THE ABSENCE OF POSITIONS, ITEM NUMBERS, QUALIFICATION STANDARDS AND PUBLICATION, WHICH ARE INDISPENSABLE REQUIREMENTS PRIOR TO THE SELECTION AND APPOINTMENT TO ANY GOVERNMENT POST [; AND]

II.

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN EXPANDING THE APPLICABILITY OF THE "HOLD-OVER" STATUS IN THE IMPLEMENTING RULES AND REGULATIONS OF R.A. 9497, THUS VIOLATING THE EXPRESS PROVISIONS OF R.A. 9497 AND THE SECURITY OF TENURE OF GOVERNMENT EMPLOYEES GUARANTEED BY THE 1987 CONSTITUTION AND R.A. 6656.<sup>[56]</sup>

Petitioner explains that it directly sought recourse from this Court because there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Even if there would be any remedy, petitioner submits that such would be ineffective given the brazenness of respondents' official actions. Petitioner also claims that it sought redress from the different agencies of the government but its