

THIRD DIVISION

[G.R. No. 178083, July 23, 2008]

**FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF
THE PHILIPPINES (FASAP), PETITIONER, VS. PHILIPPINE
AIRLINES, INC., PATRIA CHIONG AND COURT OF APPEALS,
RESPONDENTS.**

DECISION

YNARES-SATIAGO, J.:

This petition for review on certiorari assails the Decision^[1] of the Court of Appeals (CA) dated August 23, 2006 in CA-G.R. SP No. 87956 which affirmed the National Labor Relations Commission's (NLRC) decision setting aside the Labor Arbiter's findings of illegal retrenchment and ordering the reinstatement of the retrenched Philippine Airlines, Inc. (PAL) employee-members of petitioner Flight Attendants and Stewards Association of the Philippines (FASAP), with payment of backwages, moral and exemplary damages, and attorney's fees. Also assailed is the May 29, 2007 Resolution^[2] denying the motion for reconsideration.

Petitioner FASAP is the duly certified collective bargaining representative of PAL flight attendants and stewards, or collectively known as PAL cabin crew personnel. Respondent PAL is a domestic corporation organized and existing under the laws of the Republic of the Philippines, operating as a common carrier transporting passengers and cargo through aircraft.

On June 15, 1998, PAL retrenched 5,000 of its employees, including more than 1,400 of its cabin crew personnel, to take effect on July 15, 1998. PAL adopted the retrenchment scheme allegedly to cut costs and mitigate huge financial losses as a result of a downturn in the airline industry brought about by the Asian financial crisis. During said period, PAL claims to have incurred P90 billion in liabilities, while its assets stood at P85 billion.^[3]

In implementing the retrenchment scheme, PAL adopted its so-called "Plan 14" whereby PAL's fleet of aircraft would be reduced from 54 to 14, thus requiring the services of only 654 cabin crew personnel.^[4] PAL admits that the retrenchment is wholly premised upon such reduction in fleet,^[5] and to "the strike staged by PAL pilots since this action also translated into a reduction of flights."^[6] PAL claims that the scheme resulted in "savings x x x amounting to approximately P24 million per month - savings that would greatly alleviate PAL's financial crisis."^[7]

Prior to the full implementation of the assailed retrenchment program, FASAP and PAL conducted a series of consultations and meetings and explored all possibilities of cushioning the impact of the impending reduction in cabin crew personnel. However, the parties failed to agree on how the scheme would be implemented. Thus PAL

unilaterally resolved to utilize the criteria set forth in Section 112 of the PAL-FASAP Collective Bargaining Agreement^[8] (CBA) in retrenching cabin crew personnel: that is, that retrenchment shall be based on the individual employee's **efficiency rating** and **seniority**.

PAL determined the cabin crew personnel efficiency ratings through an evaluation of the individual cabin crew member's overall performance for the year 1997 **alone**.^[9] Their respective performance during previous years, *i.e.*, the whole duration of service with PAL of each cabin crew personnel, was not considered. The factors taken into account on whether the cabin crew member would be retrenched, demoted or retained were: 1) the existence of excess sick leaves; 2) the crew member's being physically overweight; 3) seniority; and 4) previous suspensions or warnings imposed.^[10]

While consultations between FASAP and PAL were ongoing, the latter began implementing its retrenchment program by initially terminating the services of 140 probationary cabin attendants only to rehire them in April 1998. Moreover, their employment was made permanent and regular.^[11]

On July 15, 1998, however, PAL carried out the retrenchment of its more than 1,400 cabin crew personnel.

Meanwhile, in June 1998, PAL was placed under corporate rehabilitation and a rehabilitation plan was approved per Securities and Exchange Commission (SEC) Order dated June 23, 1998 in SEC Case No. 06-98-6004.^[12]

On September 4, 1998, PAL, through its Chairman and Chief Executive Officer (CEO) Lucio Tan, made an offer to transfer shares of stock to its employees and three seats in its Board of Directors, on the condition that all the existing Collective Bargaining Agreements (CBAs) with its employees would be suspended for 10 years, but it was rejected by the employees. On September 17, 1998, PAL informed its employees that it was shutting down its operations effective September 23, 1998,^[13] despite the previous approval on June 23, 1998 of its rehabilitation plan.

On September 23, 1998, PAL ceased its operations and sent notices of termination to its employees. Two days later, PAL employees, through the Philippine Airlines Employees Association (PALEA) board, sought the intervention of then President Joseph E. Estrada. PALEA offered a 10-year moratorium on strikes and similar actions and a waiver of some of the economic benefits in the existing CBA. Lucio Tan, however, rejected this counter-offer.^[14]

On September 27, 1998, the PALEA board again wrote the President proposing the following terms and conditions, subject to ratification by the general membership:

1. Each PAL employee shall be granted 60,000 shares of stock with a par value of P5.00, from Mr. Lucio Tan's shareholdings, with three (3) seats in the PAL Board and an additional seat from government shares as indicated by His Excellency;
2. Likewise, PALEA shall, as far as practicable, be granted adequate representation in committees or bodies which deal with matters

affecting terms and conditions of employment;

3. To enhance and strengthen labor-management relations, the existing Labor-Management Coordinating Council shall be reorganized and revitalized, with adequate representation from both PAL management and PALEA;
4. To assure investors and creditors of industrial peace, PALEA agrees, subject to the ratification by the general membership, (to) the suspension of the PAL-PALEA CBA for a period of ten (10) years, provided the following safeguards are in place:
 - a. PAL shall continue recognizing PALEA as the duly certified bargaining agent of the regular rank-and-file ground employees of the Company;
 - b. The 'union shop/maintenance of membership' provision under the PAL-PALEA CBA shall be respected.
 - c. No salary deduction, with full medical benefits.
5. PAL shall grant the benefits under the 26 July 1998 Memorandum of Agreement forged by and between PAL and PALEA, to those employees who may opt to retire or be separated from the company.
6. PALEA members who have been retrenched but have not received separation benefits shall be granted priority in the hiring/rehiring of employees.
7. In the absence of applicable Company rule or regulation, the provisions of the Labor Code shall apply.^[15]

In a referendum conducted on October 2, 1998, PAL employees ratified the above proposal. On October 7, 1998, PAL resumed domestic operations and, soon after, international flights as well.^[16]

Meanwhile, in November 1998, or five months after the June 15, 1998 mass dismissal of its cabin crew personnel, PAL began recalling to service those it had previously retrenched. Thus, in November 1998^[17] and up to March 1999,^[18] several of those retrenched were called back to service. To date, PAL claims to have recalled 820 of the retrenched cabin crew personnel.^[19] FASAP, however, claims that only 80 were recalled as of January 2001.^[20]

In December 1998, PAL submitted a "stand-alone" rehabilitation plan to the SEC by which it undertook a recovery on its own while keeping its options open for the entry of a strategic partner in the future. Accordingly, it submitted an amended rehabilitation plan to the SEC with a proposed revised business and financial restructuring plan, which required the infusion of US\$200 million in new equity into the airline.

On May 17, 1999, the SEC approved the proposed "Amended and Restated Rehabilitation Plan" of PAL and appointed a permanent rehabilitation receiver for the latter.^[21]

On June 7, 1999, the SEC issued an Order confirming its approval of the "Amended and Restated Rehabilitation Plan" of PAL. In said order, the cash infusion of US\$200 million made by Lucio Tan on June 4, 1999 was acknowledged.^[22]

On October 4, 2007, PAL officially exited receivership; thus, our ruling in *Philippine Air Lines v. Kurangking*^[23] no longer applies.

On June 22, 1998, FASAP filed a Complaint^[24] against PAL and Patria T. Chiong^[25] (Chiong) for unfair labor practice, illegal retrenchment with claims for reinstatement and payment of salaries, allowances and backwages of affected FASAP members, actual, moral and exemplary damages with a prayer to enjoin the retrenchment program then being implemented. Instead of a position paper, respondents filed a Motion to Dismiss and/or Consolidation with NCMB Case No. NS 12-514-97 pending with the Office of the Secretary of the Department of Labor and Employment and/or Suspension and Referral of Claims to the interim rehabilitation proceedings (motion to dismiss).^[26]

On July 6, 1998, FASAP filed its Comment to respondents' motion to dismiss. On July 23, 1998, the Labor Arbiter issued an Order^[27] denying respondents' motion to dismiss; granting a writ of preliminary injunction against PAL's implementation of its retrenchment program with respect to FASAP members; setting aside the respective notices of retrenchment addressed to the cabin crew; directing respondents to restore the said retrenched cabin crew to their positions and PAL's payroll until final determination of the case; and directing respondents to file their position paper.

Respondents appealed to the NLRC which reversed the decision of the Labor Arbiter. The NLRC directed the lifting of the writ of injunction and to vacate the directive setting aside the notices of retrenchment and reinstating the dismissed cabin crew to their respective positions and in the PAL payroll.^[28]

FASAP filed its Position Paper^[29] on September 28, 1999. On November 8, 1999, respondents filed their Position Paper^[30] with counterclaims against FASAP, to which FASAP filed its Reply.^[31] Thereafter, the parties were directed to file their respective Memoranda.^[32]

Meanwhile, instead of being dismissed in accordance with the *Kurangking* case, the FASAP case (NLRC-NCR Case No. 06-05100-98) was consolidated with the following cases:

1. Ramon and Marian Joy Camahort v. PAL, et al. (NLRC-NCR Case No. 00-07-05854-98);
2. Erlinda Arevalo and Chonas Santos v. PAL, et al. (NLRC-NCR Case No. 00-07-09793-98); and
3. Victor Lanza v. PAL, et al. (NLRC-NCR Case No.00-04-04254-99).

On July 21, 2000, Labor Arbiter Jovencio Ll. Mayor rendered a Decision,^[33] the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, this Office renders judgment declaring that Philippine Airlines, Inc., illegally retrenched One Thousand Four Hundred (1,400) cabin attendants including flight pursers for effecting the retrenchment program in a despotic and whimsical manner. Philippine Airlines, Inc. is likewise hereby ordered to:

1. Reinstate the cabin attendants retrenched and/or demoted to their previous positions;
2. Pay the concerned cabin attendants their full backwages from the time they were illegally dismissed/retrenched up to their actual reinstatements;
3. Pay moral and exemplary damages in the amount of Five Hundred Thousand Pesos (P500,000.00); and
4. Ten (10%) per cent of the total monetary award as and by way of attorney's fees.

SO ORDERED.^[34]

Respondents appealed to the NLRC. Meanwhile, FASAP moved for the implementation of the reinstatement aspect of the Labor Arbiter's decision. Despite respondents' opposition, the Labor Arbiter issued a writ of execution with respect to the reinstatement directive in his decision. Respondents moved to quash the writ, but the Labor Arbiter denied the same. Again, respondents took issue with the NLRC.

Meanwhile, on May 31, 2004, the NLRC issued its Decision^[35] in the appeal with respect to the Labor Arbiter's July 21, 2000 decision. The dispositive portion thereof reads:

WHEREFORE, premises considered, the Decision dated July 21, 2000 is hereby SET ASIDE and a new one entered DISMISSING the consolidated cases for lack of merit.

With respect to complainant Ms. Begonia Blanco, her demotion is hereby declared illegal and respondent PAL is ordered to pay her salary differential covering the period from the time she was downgraded in July 1998 up to the time she resigned in October 1999.

Respondent PAL is likewise ordered to pay the separation benefits to those complainants who have not received their separation pay and to pay the balance to those who have received partial separation pay.

The Order of the Labor Arbiter dated April 6, 2000 is also SET ASIDE and the Writ of Execution dated November 13, 2000 is hereby quashed.

Annexes "A" and "B" are considered part of this Decision.