

THIRD DIVISION

[G.R. No. 151370, December 04, 2002]

**ASIA PACIFIC CHARTERING (PHILS.) INC., PETITIONER, VS.
MARIA LINDA R. FAROLAN, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Before this Court is a ***Petition for Review*** under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Appeals 1) June 28, 2001 Decision^[1] which set aside the decision of the National Labor Relations Commission (NLRC) reversing that of the Labor Arbiter, and 2) January 9, 2002^[2] Resolution denying a reconsideration of its decision.

Petitioner Asia Pacific Chartering (Phils) Inc. was, until 1996, the general sales agent (GSA) of the Scandinavian Airline System (SAS), an off-line international airline company with license to do business in the Philippines. As GSA, petitioner sold passenger and cargo spaces for airlines operated by SAS.

Respondent Maria Linda R. Farolan was on December 16, 1992 hired as Sales Manager of petitioner for its passenger and cargo GSA operations for SAS, following her conformity to a December 10, 1992 letter-offer of employment^[3] from petitioner through its Vice President/Comptroller Catalino Bondoc. The pertinent portion of the letter-offer reads:

"Dear Ms. Farolan:

Confirming our previous discussions, ASIA-PACIFIC CHARTERING PHIL., INC. is pleased **to offer** you the position of Sales Manager of its Passenger and Cargo Operations for SCANDINAVIAN AIRLINES SYSTEM in the Philippines, commencing on December 16, 1992 on the following terms:

Basic Pay	Monthly P 22, 000.00
Housing Allowance	4,000.00
Transportation Allowance (200 liters of gas)	Cash Equivalent
Meal Allowance	750.00

Please affix your signature below if you find the foregoing acceptable and return to us a signed duplicate. Meanwhile, we certainly **look forward to your joining us and rest assured of our fullest support.**

xxx

(Sgd) Maria Linda R.
Farolan
Conforme:"
(Emphasis supplied).

It is gathered that Leslie Murray, the then Sales Manager of petitioner, talked to respondent into accepting the position after *verbally* briefing her on the nature of the position.

Soon after respondent assumed her post, she participated in a number of meetings/seminars^[4] including a Customer Service Seminar in Bangkok, Thailand, a Regional Sales Meeting on the technical aspects of airline commercial operations in February 1993, and a course on the highly technical airline computer reservations system called "Amadeus", all geared towards improving her marketing and sales skills.

In September of 1993, respondent, upon instruction of Bondoc, submitted a report^[5] "RE: OUR COMMENTS AND ACTIONS BEING TAKEN CONCERNING SAS' POOR P & L PERFORMANCE FOR JANUARY - JULY 1993" the pertinent portions of which read:

**"1 January to July 1993 Sales
x x x**

	1993	1992	CHANGE
Seaman	233	423	(190)
Expats/Tourists	503	716	(213)
PTAs	346	196	150
Refugees/IOM	53	864	(811)

x x x

Explanations.

1. International Organization for Migration (IOM)-both Vietnam and Scandinavian Governments have **terminated projects for refugees**; hence the tremendous decrease (94%). x x x.
2. Seaman's Fares-Rates not competitive enough.
3. Expats/Tourists-In a market where **on-line** carriers were **dropping rates drastically**, we were losing passengers to said carriers.

1 The present Market:

1. As SAS is **off-line**, we have no control over space and to an extent our rates are higher because of proration with delivering carriers.

2. On-lines do not prorate with other carriers therefore can dive fares
x x x.

I have convinced Mr. Jespersen to bring down the fares to be more competitive. The reason he did not do so earlier was because low-yield fares are low in priority for confirming seats. But now that SAS is considering increasing their frequencies ex-Hongkong before year-end, this will be advantageous to boosting our sales.

A. Measures to take remainder of 1993 and for 1994:

1. We have negotiated a lower fare for seamen (effective September) which is competitive. We are already getting positive response from agents. Since this(sic) low-yield sales, Hongkong did not adjust fare accordingly first half of 1993 because of space constraints.
2. As SAS still prefers high-yield sales, we have offered incentives to Ameco as Asian Development Bank (ADB) (effective 1st June for one year) with Mr. Jespersen's approval x x x.

In addition, ADB itself is willing to consider proposals we submit to them in the case of cost-savings. In exchange, they can endorse to SAS a relevant share of their Europe travel x x x.

3. We have also negotiated a lower net fare for Economy Class. This rate is also competitive and is in force.
4. Incentive Program for Agents-Using the points system similar to PAL's promo (PALs Smiles), to stimulate sales. We are at present fine-tuning mechanics for Hongkong's approval which we intend to launch before Christmas. This promo is self-sustaining (no significant expenses to be incurred)
5. We are currently pushing sales for Baltic area/Russia as we have the best rates. We have identified the agents who have passengers to these destinations and we are focusing on them x x x." (Emphasis and underscoring supplied).

As reflected in respondent's report, there was a drop in SAS' sales revenues which to her was attributable to market forces beyond her control.

Noting the marked decline in SAS' sales revenues, petitioner directed its high ranking officer Roberto Zozobrado in January 1994 to conduct an investigation on the matter and identify the problem/s and implement possible solutions.

Zozobrado thus informally took over some of respondent's marketing and sales responsibilities, albeit respondent retained her title as Sales Manager and continued to receive her salary as such.

By petitioner's claim, Zozobrado found out that respondent did not adopt any sales strategy nor conduct any sales meeting or develop other sources of revenue for SAS, she having simply let her sales staff perform their functions all by themselves; in 1994, Soren Jespersen, General Manager of SAS in Hongkong, Southern China, Taipei and the Philippines, came to the Philippines to assess the statistics on SAS'

sales revenues and SAS was convinced that respondent was not fit for the job of Sales Manager; and in view of the changes introduced by Zozobrado, SAS-GSA sales operations drew positive results.

On May 21, 1994, respondent received a message^[6] from Jespersen reading:

"Dear Linda and Bob [Zozobrado],

First of all congratulation to your sale result in April. You reached and exceeded the target by 50% In C/class (Fantastic!!!) and 1% In M/class. This is the second month in a row (and the last 2 first in more than a year) and hopefully the beginning of a new and positive trend.

x x x

As you can see May looks very good.

With the agreed focus on selling the M/class and all the activities initiated, I'm sure that the rest of the period will pick very soon.

x x x" (Underscoring supplied; Quoted *verbatim*).

On July 18, 1994,^[7] respondent received another message from Jespersen reading:

"Dear Linda,

The sales report for June 1994 did unfortunately not reach target in C/class but in M/class you managed very well. Totally 9% below target.

The pre bookings eff. 14 July looks very good and encouraging and with 2 weeks to go July should not be a problem. (enclosed)

Please send my regards to all the girls and tell them to keep up the good work.

Just for reason of clarification. Enclosed to your action list is a production report for Jan-May 1994. The figures I send to you is only your long-haul sales and do not include European sectors. The correct figure for the period will be 436,000 USD in target for long-haul (actual 362 TUSD) and 642 TUSD total with 514 TUSD achieved.

Please be so kind and inform Bob accordingly.

x x x

On even date, however, petitioner sent respondent a letter of termination^[8] on the ground of "loss of confidence." The letter reads:

"This confirms our ('Bob' Zozobrado and myself) July 4, 1994 verbal advice to you regarding Management's decision to terminate your Services as our GSA Manager for SCANDINAVIAN AIRLINES SYSTEM's Offline Operations in the Philippines, thirty (30) days upon receipt of this Notice, due to our **loss of confidence** in your Managerial and Marketing capabilities. As explained to you by Mr. Zozobrado and myself, records will show that under your Management (or lack of it), our SAS-GSA

performance is, as follows:

A. 1993 vs.
1992

Gross Revenue	-	29 %	<u>shortfall</u>
Operating Expenses	-	2%	over
Net Cash Flow	-	79%	<u>shortfall</u>

B. JAN-APR '94 vs. JAN-
APR '92

Revenues	-	34%	<u>shortfall</u>
Operating Expenses	-	6%	over
Net Cash Flow	-	94%	<u>shortfall</u>

Several times in the past, we have made you aware in the need to improve your sales performance and gain the respect of your staff which have openly expressed their concern on their lack of direction under your management. Even our principal (SAS) had negative comments about the way you handle urgent requirements of the Regional Office. SAS was also alarmed by the aforementioned dismal overall Performance of APC/SAS. All these prompted us to decide to replace you as our SAS GSA Manager to save the situation and our representation of the SAS-GSA in the Philippines.

x x x" (Quoted *verbatim*; Emphasis supplies).

Thus spawned the filing by respondent of a complaint for illegal dismissal against petitioner, Bondoc, Zozobrado and one Donald Marshall (the record indicates that he had ceased to be connected with petitioner when the case was pending before the Labor Arbiter), with prayer for damages and attorney's fees. In her complaint petitioner alleged that Bondoc and Zozobrado had asked her to tender her resignation as she was not the person whom SAS was looking for to handle the position of Sales Manager^[9] but that she refused, hence, she was terminated by the letter of July 18, 1994 letter.^[10]

The Labor Arbiter, after a detailed analysis of the evidence for both parties, found for respondent upon the following issues:

1. Whether or not complainant was validly terminated for cause;
2. Whether or not due process was observed when complainant was terminated; and
3. Whether or not any of the parties are entitled to damages,