

## THIRD DIVISION

**[ G.R. No. 114280, July 26, 1996 ]**

**PHILIPPINE AIRLINES, INC. (PAL), PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND AIRLINE PILOTS  
ASSOCIATION OF THE PHILIPPINES (ALPAP), RESPONDENTS.**

**[G.R. NO. 115224. JULY 26, 1996]**

**AIRLINE PILOTS ASSOCIATION OF THE PHILIPPINES (ALPAP),  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND PHILIPPINE AIRLINES, INC. (PAL), RESPONDENTS.**

### D E C I S I O N

**FRANCISCO, J.:**

For refusing to pay its pilots their thirteenth (13th) month pay, a complaint [docketed as NLRC Case No. 00-09-005598-91] for unfair labor practice was filed against Philippine Airlines, Inc. (PAL) by the Airline Pilots Association of the Philippines (ALPAP). The Labor Arbiter ruled in favor of ALPAP and ordered PAL to pay its pilots belonging to ALPAP their thirteenth month pay from 1988 to 1990. Both parties appealed to the National Labor Relations Commission which in turn affirmed with modifications the decision of the Labor Arbiter. Their motions for reconsideration having been denied, PAL and ALPAP proceeded to this Court with their respective petitions for certiorari assailing the Resolutions promulgated by the NLRC on November 23, 1993 and February 28, 1994 in NLRC Case No. 003480-92.

In G.R. No. 114280, petitioner PAL takes exception to the findings of the NLRC holding it liable to the members of ALPAP for non-payment of their thirteenth month pay from 1988 to 1990. On the other hand, in G. R. No. 115224, petitioner ALPAP disputes the deletion of the award of moral and exemplary damages in its favor, as well as the non-imposition of legal interest in the payment of the amounts due them from PAL. Upon motion of ALPAP's counsel, the court ordered the consolidation of both petitions.<sup>[1]</sup>

ALPAP filed its complaint<sup>[2]</sup> on September, 1991, charging PAL of violating Presidential Decree No. 851, its Implementing Rules and Regulations and Memorandum Order No. 28 issued by then President Corazon C. Aquino, for unlawfully refusing and failing to pay the pilots their thirteenth month pay from 1988 to 1990. Aside from their accumulated thirteenth month pay, ALPAP prayed for an award of P500,000.00 as moral damages and P100,000.00 as exemplary damages to each of their pilots, plus attorney's fees equivalent to ten percent (10%) of the total awards adjudged. Subsequently however, ALPAP expanded the coverage of its claim from 1986 to 1990 upon filing its position paper.<sup>[3]</sup>

In answer to the complaint, PAL denied any liability to ALPAP and maintained that it

was not obliged to give its pilots a thirteenth month pay under P.D. 851 as it was already paying said employees the equivalent of a thirteenth month pay in the form of a year-end bonus. PAL invokes that under Section 2 of P.D. 851 and its Implementing Rules and Regulations, "employers already paying their employees a 13th month pay or more in a calendar year or its equivalent at the time of this issuance," are not covered by P.D. 851.<sup>[4]</sup> Additionally, PAL contends that there is no demandable obligation in the absence of any contractual stipulation or a legal provision requiring it to give its pilots a thirteenth month pay aside from the year-end bonus that the latter are already receiving.<sup>[5]</sup>

Disputing PAL's contention, ALPAP argued that the payment of the year-end bonus cannot be equated with the thirteenth month pay since the payment of the former is conditional in character and not fixed in its amount, while that of the thirteenth month pay is mandatory in character and definite in its amount.<sup>[6]</sup>

On May 29, 1992, judgment was rendered by the Labor Arbiter in ALPAP's favor and ordered PAL to pay the following amounts:

"WHEREFORE, judgment is hereby rendered in this case, declaring respondent Philippine Airlines (PAL) guilty of non-payment of the 13th month pay. Respondent is therefore ordered to pay members of complainant Airlines Pilots Association of the Philippines (ALPAP) the following sums of money:

13th month pay....P69,167,244.00  
Moral and Exemplary  
Damages..... 6,948,000.00  
Attorney's fees.... 7,611,524.00  
Grand Total.....P83,726,768.00

All other claims are denied for lack of legal or factual basis."<sup>[7]</sup>

In the aforecited decision, the Labor Arbiter discarded PAL's contentions and took note of the fact that the payment of the year-end bonus is conditional and uncertain. PAL's argument that it is exempted from the coverage of P.D. 851 was ruled out because it was shown that except for the pilots, all other employees of PAL were receiving both the thirteenth month pay and the year-end bonus. However, the coverage of the award for thirteenth month pay was confined to 1988 until 1990, excluding those from 1986 and 1987, due to ALPAP's failure to amend its complaint.

Not satisfied, both parties appealed to the NLRC which in turn promulgated the assailed resolution on November 23, 1993<sup>[8]</sup> and ruled in this wise:

WHEREFORE, premises considered, the decision of (sic) dated 29 May 1992 is hereby AFFIRMED with the modification that respondent PAL also pay the 13th month pay to the ALPAP pilots for the years 1986 and 1987; the dismissal of the claim for moral and exemplary damages; the payment of PAL of legal interest from the dates the 13th-month pay of the ALPAP pilots accrued up to the time of actual payment; and the payment of attorney's fees of 10% of the total award.

SO ORDERED.<sup>[9]</sup>

Still dissatisfied, the parties sought reconsideration which, however, were both denied by the NLRC in its resolution dated February 28, 1994.<sup>[10]</sup> The NLRC also reduced the award of attorney's fees to five percent (5%) and deleted the payment of legal interest for lack of basis.<sup>[11]</sup>

Hence, these petitions.

The pivotal issue in this petition is whether or not the NLRC committed grave abuse of discretion in holding PAL liable to the members of ALPAP for non-payment of their thirteenth month pay from 1988 to 1990, notwithstanding that, as claimed by PAL, there is no legal basis for the said finding.

PAL's contention is premised on the following arguments:

1) Payment of the thirteenth month pay under P.D. 851 and Memorandum Order No. 28 covers only rank and file employees. Pilots are excluded from the coverage because they are not rank and file employees but rather supervisory employees. Hence, they are not entitled to any thirteenth month pay.

2) There is no contractual obligation to pay the pilots any thirteenth month pay in the absence of any provision in their CBA. And even assuming that they are entitled to a thirteenth month pay, the payment of a year-end bonus is already equivalent to a thirteenth month pay.

Anent the first argument, PAL cites Memorandum Order No. 28 which provides as follows:

"Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank and file employees a 13th month pay not later than December 24 of every year."

PAL maintains that pilots cannot be classified as rank and file employees since the nature of their job includes the exercise of supervision over the cabin crew and the power to recommend disciplinary actions over the latter.<sup>[12]</sup>

Interestingly, however, the contention was raised by PAL rather belatedly and invoked for the first time on appeal. Worse, this issue was not even discussed in PAL's original Memorandum and was raised only much later when PAL filed a Supplemental Memorandum on Appeal through a new counsel. In fact, in denying PAL's appeal, the NLRC did not even bother to consider the new issue raised by PAL. This precludes us from taking cognizance of and resolving the aforementioned issue with respect to the employment status of the pilots as it would be violative of the proscription against the presentation of new issues on appeal. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal<sup>[13]</sup> because this would be offensive to the basic rules of fair play, justice and due process.<sup>[14]</sup> By invoking the alleged supervisory status of the pilots only during the pendency of its

appeal and raising the issue only later in their Supplemental Memorandum, it was evident that this was a last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result. This, however, is the pernicious practice that has consistently been rejected. Thus, PAL is now barred from claiming that their pilots are not rank and file employees.

The other argument of PAL is that there is no provision in the CBA of ALPAP which obligates the former to pay the members of the latter any thirteenth month pay. PAL contends that it is of no moment that its other employees, namely, the flight attendants belonging to the Flight Attendants' and Stewards' Association of the Philippines (FASAP) and the other rank and file employees belonging to Philippine Airlines Employees' Association (PALEA), are being granted both the thirteenth month pay and the year-end bonus because the payment of the said benefits were the result of contractual negotiations in their respective CBA's. The absence of such contractual grant to the members of ALPAP only shows that there was no intention to give the pilots the same benefits. Furthermore, PAL argues that even assuming that the pilots are legally entitled to a thirteenth month pay, the law exempts them from compliance with the same because the payment of a year-end/Christmas bonus is already equivalent to the thirteenth month pay. To bolster this claim, PAL relies on the doctrine laid down by this Court in the cases of *National Federation of Sugar Workers (NFSW) vs. Ovejera*, [114 SCRA 354 (1982)], *Dole Philippines, Inc. vs. Leogardo, Jr.*, [117 SCRA 938 (1982)] and *Brokenshire Memorial Hospital vs. NLRC* [143 SCRA 564 (1986)], which was crystallized as follows:

"Clearly, from the discussions in *National Federation of Sugar Workers (NFSW)*, *Dole* and *Brokenshire*, what the law wants to prevent is the imposition of a 'double burden' upon the employer who is already paying the equivalent of a 13th month pay. The law exempts from the payment of the 13th month pay employers who are already giving its equivalent. Otherwise the goal of uniformly providing employees with additional income will not be met. Another inequity will result; while most employees will be paid thirteen (13) months salary, some by virtue of P.D. No. 851, will be receiving salary for fourteen (14) months."<sup>[15]</sup>

ALPAP however disputes the abovementioned contentions of PAL and maintains that the grant of a thirteenth month pay being statutory, the same is mandatory in character and need not be embodied in any written agreement because it is deemed incorporated therein. It is therefore inconsequential if the payment of the thirteenth month pay is not expressly provided in the CBA. ALPAP also doubts the applicability of the cases invoked by PAL considering the difference in the factual background of this case. According to ALPAP what is squarely applicable herein are the pronouncements in the cases of *United CMC Textile Workers Union vs. Labor Arbiter*, 149 SCRA 424 (1987), *Universal Corn Products v. NLRC*, 153 SCRA 191 (1987) and *UST Faculty Union vs. NLRC*, 190 SCRA 215 (1990), which uniformly ruled that where the purpose for the giving of a Christmas bonus is not the same as the reasons for the granting of a thirteenth month pay under P.D. 851, which is to uniformly provide employees with additional income, then the employer is still obligated to give the thirteenth month pay in addition to the bonus. ALPAP also decries the fact that it is only their pilots who are deprived of both the thirteenth month pay and the year-end bonus, as opposed to the rest of PAL's employees belonging to FASAP and PALEA who are enjoying both benefits.