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SECOND DIVISION

[G.R. Nos. 141702-03, August 02, 2001]

CATHAY PACIFIC AIRWAYS, LTD., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MARTHA Z. SINGSON, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This petition for review on *certiorari* seeks to set aside the 20 September 1999 Decision[1] of the Court of Appeals declaring respondent Martha Z. Singson illegally dismissed by petitioner Cathay Pacific Airways, Ltd., and thus should be reinstated with full back wages and awarded moral as well as exemplary damages.

This petition traces its origin to two (2) petitions for certiorari under Rule 65 initially filed with the Supreme Court: *Martha Z. Singson v. National Labor Relations Commission (NLRC) and Cathay Pacific Airways Ltd., SP Case No. 52104, and Cathay Pacific Airways, Ltd. v. National Labor Relations Commission and Martha Z. Singson,* SP Case No. 52105, which were consolidated[2] and referred[3] to the Court of Appeals in consonance with the St. Martin Funeral Homes doctrine.

Cathay Pacific Airways, Ltd. (CATHAY), is an international airline company engaged in providing international flight services while Martha Z. Singson was a cabin attendant of CATHAY hired in the Philippines on 24 September 1990 with home base in Hongkong.

On 26 August 1991 Singson was scheduled on a five (5)-day flight to London but was unable to take the flights as she was feeling fatigued and exhausted from her transfer to a new apartment with her husband. On 29 August 1991 she visited the company doctor, Dr. Emer Fahy, who examined and diagnosed her to be suffering from a moderately severe asthma attack. She was advised to take a Ventolin nebulizer and increase the medication she was currently taking, an oral Prednisone (steroid). Dr Fahy thereafter conveyed to Dr. John G. Fowler, Principal Medical Officer, her findings regarding Singson's medical condition as a result of which she was evaluated as unfit for flying due to her medical condition.

On 3 September 1991 Singson again visited Dr. Fahy during which time the latter declared her condition to have vastly improved. However, later that day, Cabin Crew Manager Robert J. Nipperess informed Singson that CATHAY had decided to retire her on medical grounds effective immediately based on the recommendation of Dr. Fowler and Dr. Fahy.

Martha Z. Singson was surprised with the suddenness of the notification but

nonetheless acknowledged it. Later, she met with Nipperess and inquired of possible employment that entailed only ground duties within the company. She was advised to meet with certain personnel who knew of the employment requirements in other departments in the company, and to await a possible offer from the company.

On 20 December 1991 Singson filed before the Labor Arbiter a complaint against CATHAY for illegal dismissal, with prayer for actual, moral and exemplary damages and attorney's fees. Efforts on initial settlement having failed, trial followed.

Robert J. Nipperress and Dr. John G. Fowler appeared as witnesses for CATHAY. Nipperess confirmed that the decision to retire respondent was made upon the recommendation of Dr. Fowler. In turn, Dr. Fowler testified that the affliction of respondent with asthma rendered her unfit to fly as it posed aviation risks, i.e., asthma disabled her from properly performing her cabin crew functions, specifically her air safety functions.

On the other hand, Singson presented herself and Dr. Benjamin Lazo, a doctor in the country specializing in internal medicine and pulmonary diseases. She denied being afflicted with asthma at any point in her life, while Dr. Lazo confirmed the same declaring that at the time of his examination of Singson he found her to be of normal condition.

On the basis of the evidence presented before him, Labor Arbiter Pablo C. Espiritu Jr. declared CATHAY liable for illegal dismissal and ordered the airline to pay Singson HK$531,150.80 representing full back wages and privileges, HK$54,137.70 for undisputed benefits due her, HK$100,000.00 as actual damages, HK$500.00 as moral damages, HK$500.00 as exemplary damages, and HK$168,528.85 as attorney's fees. Furthermore, CATHAY was ordered to reinstate Singson to her former position as airline stewardess without loss of seniority rights, benefits and privileges.

On 19 March 1993 CATHAY appealed the decision of the Labor Arbiter to the National Labor Relations Commission. On 29 December 1994 the NLRC reversed the decision of the Labor Arbiter and declared valid Singson's dismissal from service.[4] Relying on the testimony of Dr. Fowler and the affidavit and medical records submitted by Dr. Fahy, admitted as newly-discovered evidence, the NLRC found Singson to be indeed afflicted with asthma that rendered her unfit to fly and perform cabin crew functions. Consequently, the NLRC withdrew the back wages, moral and exemplary damages awarded to Singson for lack of factual or legal basis. It however ordered CATHAY to retain her services as ground stewardess, with salaries and benefits, noting that she had been reinstated therein since 12 March 1993. In turn, Singson was granted the option to continue her employment with CATHAY.

Thereafter, both parties filed their respective motions for reconsideration[5] before the NLRC which on 31 August 1995 were denied for lack of merit. Petitions for certiorari under Rule 65 were subsequently filed by both parties before the Supreme Court which, after consolidation, were referred to the Court of Appeals for resolution.[6]

Meanwhile, pursuant to the decision of the NLRC, Singson was reinstated as cabin

stewardess with ground duties on 12 March 1993 pending the resolution of the petitions.

On 20 September 1999 the Court of Appeals reversed the ruling of the NLRC and reinstated the decision of the Labor Arbiter declaring Singson to have been illegally terminated. The appellate court anchored its judgment on the following findings: *First,* Dr. Fowler's opinion about Singson's medical condition was based on the personal examination of Dr. Fahy, and not his own. The appellate court held that a personal and prolonged examination of a patient was necessary and crucial before he or she could be properly diagnosed as afflicted with asthma,[7] and thus Dr. Fowler's expert opinion was unreliable and mere hearsay. *Second,* CATHAY disregarded Sec. 8, Rule I, Book VI, of the *Omnibus Rules Implementing the Labor Code*[8] which requires a certification by a competent public health authority when disease is the reason for an employee's separation from service, since it relied merely on the diagnosis of its company doctors, Dr. Fowler and Dr. Fahy. *Third,* the NLRC erroneously relied on the affidavit executed by Dr. Fahy since she was not personally presented as a witness to identify and testify on its contents. Fourth, respondent passed the medical examination required of prospective flight cabin attendants, the International Labor Organization's Occupational Health and Safety in Civil Aviation examination, prior to her employment and found to be fit for flight-related service. *Fifth,* CATHAY failed to adequately prove the health standards required in aviation, particularly the non-qualification of flight attendants afflicted with asthma to flight-related service.[9]

Consequently, the appellate court awarded respondent full back wages with reinstatement, as well as moral exemplary damages, while deleting the award of actual damages reasoning that no undue damage inured to her since her husband nonetheless remained in Hongkong managing two (2) corporations. The appellate court however declared the option given to respondent to continue her employment as a ground stewardess with CATHAY to have been erroneously issued and consequently nullified the same.

CATHAY now argues that the Court of Appeals should have confined its inquiry to issues of want or excess of jurisdiction and grave abuse of discretion and not into the factual findings of the NLRC since the petition before it was made under Rule 65.

This Court is not persuaded. CATHAY's petition for certiorari filed before the Court of Appeals assailed specifically the judgment of the NLRC granting respondent the choice to continue her employment with CATHAY as ground stewardess as, in fact, she had been reinstated as such since 12 March 1993. On the other hand, respondent's petition attacked the NLRC decision declaring her dismissal valid and nullifying the award of damages in her favor on the basis of Dr. Fowler's testimony and not Dr. Lazo's. Consequently, it was inevitable for the Court of Appeals to examine the evidence anew to determine whether the factual findings of the NLRC were supported by the evidence presented and the conclusions derived therefrom accurately ascertained. As pointed out by the appellate court, this became even more essential in view of the fact that there was a conflict of decision between the Labor Arbiter and the NLRC. We thus find no error in the appellate court's evaluation of the evidence despite the pleadings being petitions for certiorari under Rule 65.

CATHAY next argues that the Court of Appeals erred in not admitting as evidence the affidavit of Dr. Fahy. We agree. The appellate court may have overlooked the principle in labor cases that the rules of evidence prevailing in courts of law or equity are not always controlling.[10] It is not necessary that affidavits and other documents presented conform to the technical rules of evidence as the Court maintains a liberal stance regarding procedural deficiencies in labor case.[11] Section 3, Rule V, of the *New Rules of procedure of the NLRC* specifically allows parties to submit position papers accompanied by all supporting documents including affidavits of their respective witnesses which take the place of their testimonies.[12] Thus, the fact that Dr. Fahy was not presented as witness to identify and testify on the contents of her affidavit was not a fatal procedural flaw that affected the admissibility of her affidavit as evidence.

The non-presentation of Dr. Fahy during the trial was duly explained - she was no longer connected with CATHAY and had transferred residence to Ireland. It is for this same reason that we find no error in the NLRC's admission of Dr. Fahy's written medical notes as newly-discovered evidence. Moreover, the submission of additional evidence before the NLRC is not prohibited by the *New Rule of Procedure of the NLRC*, such submissions not being prejudicial to the party for the latter could submit counter-evidence.[13]

Notwithstanding the foregoing, we find Singson to have been illegally dismissed from the service. Granting without admitting that indeed respondent was suffering from asthma, this alone would not be valid ground for CATHAY to dismiss her summarily. Section 8, Rule I, Book VI, of the *Omnibus Rules Implementing the Labor Code* requires a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.

In the instant case, no certification by competent public health authority was presented by CATHAY. It dismissed Singson based only on the recommendation of its company doctors who concluded that she was afflicted with asthma. It did not likewise show proof that Singson's asthma could not be cured in six (6) months even with proper medical treatment. On the contrary, when Singson returned to the company clinic on 3 September 1991 or five (5) days after her initial examination on 29 August 1991, Dr. Fahy diagnosed her condition to have vastly improved.

CATHAY could not take refuge in Clause 22 of the *Conditions of Service* it entered into with Singson. Although a certification by a competent public health authority is not required, still CATHAY is obliged to follow several steps under the *Conditions of Service* before terminating its employee. The pertinent part of Clause 22 thereof provides -

> Clause 22. Sick Leave. - xxxx In case of serious illness the Company will grant sick leave with full pay for the first three months and with 2/3 of pay for the fourth month. Consideration will be given to granting the cabin crew further sick leave, either with pay or off pay up to a further two months, or retiring the cabin crew on medical ground xxxx

Thus, even on the assumption that asthma is a serious illness, this again would not excuse CATHAY from ignoring procedure specified in its employment contract with Singson. Under the contract, Cathay must first allow Singson to take a leave of absence and not to terminate her services right there and then. It is only after the employee has enjoyed four (4) months of sick leave that the option to retire the employee based on medical ground arises. In the instant case, Singson went to the company clinic on 29 August 1991. On 3 September 1991 she returned to the company clinic only to be told that "effective immediately" she was dismissed on medical grounds.

We agree with the Court of Appeals in its award of moral and exemplary damages to respondent. CATHAY summarily dismissed Singson from the service based only on the recommendation of its medical officers, in effect, failing to observe the provision of the Labor Code which requires a certification by a competent public health authority. Notably, the decision to dismiss Singson was reached after a single examination only. CATHAY's medical officers recommended Singson's dismissal even after having diagnosed her condition to have vastly improved. It did not make even a token offer for Singson to take a leave of absence as what it provided in its Contract of Service. CATHAY is presumed to know the law and the stipulation in its Contract of Service with Singson.

WHEREFORE, the Decision of the Court of Appeals dated 20 September 1999 declaring the dismissal of respondent Martha Z. Singson by petitioner CATHAY PACIFIC AIRWAYS, LTD. as illegal and ordering her reinstatement to her former or an equivalent position without loss of seniority rights, with full back wages and benefits, and to pay her HK$500.00 as moral damages, HK$500.00 as exemplary damages plus ten percent (10%) of the total monetary award as attorney's fees, is **AFFIRMED.** The amounts received by respondent representing her six (6) months retirement gratuity and one (1) month pay in lieu of notice should be **DEDUCTED** from respondent's computed back wages, with costs against petitioner.

SO ORDERED.

Mendoza, (Acting Chairman), Quisumbing, and *De Leon, Jr., JJ.,* concur.
Buena, J., abroad on official business.

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[1] Decision penned by Associate Justice Jose L. Sabio, Jr., concurred in by Associate Justices Hector L. Hofileña and Omar U. Amin, Fifteenth Division.

[2] SC Resolution dated 29 May 1996.

[3] SC Resolution dated 25 January 1999.

[4] Decision penned by Commissioner Rogelio I. Rayala and concurred in by Presiding

Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, Second Division.

[5] Records, pp. 310-324.

[6] *Id*., p. 440, SC Resolution dated 25 January 1999.

[7] *Rollo*, p. 18, citing Labor Arbiter's Decision referring to par. 16 of the affidavit of Dr. Benjamin Lazo, witness for respondent Martha Z. Singson.

[8] SEC. 8. Disease as a ground for dismissal. - Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his-co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature or at a such stage it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health. (Book VI, Labor Code Omnibus Implementing Rules).

[9] *Rollo*, pp. 12-26.

[10] Canete *v*. NLRC, G.R. No. 130425, 30 September 1999; Salonga *v*. NLRC, G.R. No. 118120, 23 February 1996, 254 SCRA 11, citing Cagampan *v*. NLRC, G.R. Nos. 85122-24, 28 March 1991, 195 SCRA 533; Panlilio *v*. NLRC, G.R. No. 117459, 17 October 1997.

[11] *Ibid*.

[12] *Ibid*.

[13] NFD International Manning Agents *v*. NLRC, G.R. No. 116629, 16 January 1998, 284 SCRA 239.
