

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PHILIPPINE AIRLINES, INC. and
CAPT. JAIME H. MANZANO,**
Petitioners,

-versus-

**G.R. No. L-62961
September 2, 1983**

**NATIONAL LABOR RELATIONS
COMMISSION and SALVADOR
GEMPIS,**
Respondents.

X-----X

DECISION

RELOVA, J.:

Philippine Airlines, Inc. (PAL) and Captain Jaime H. Manzano seek to annul the decision promulgated by respondent National Labor Relations Commission, dated November 29, 1982, affirming the decision of the Labor Arbiter Teodorico Dogelio in Case No. AB-11-9118-80 (NCRSTF-11-6503-80) entitled "Salvador Gempis vs. Philippine Airlines, et al.," as follows:

"WHEREFORE, responsive to the foregoing consideration, judgment is hereby rendered:

- a) Denying respondent's application for clearance to terminate complainant's services; the penalty of six (6) months demotion being enough to appear in complainant's employment file; and
- b) Ordering respondent to effect immediate reinstatement of complainant to his position as YS-11 Captain, with back wages for a period of six (6) months corresponding to said position."

Records show that on November 3, 1980, private respondent, Salvador Gempis, a YS-11 pilot of PAL with the rank of captain, filed with the Ministry of Labor, National Capital Region, a complaint against PAL for illegal suspension and dismissal. The next day, November 4, 1980, PAL filed with the same office an application for clearance to terminate the employment of Gempis on the grounds of (1) serious misconduct and (2) violation of the liquor ban and company policies.

The charge of petitioners against Gempis was "serious misconduct (abuse of authority)" for forcing First Officers A. Barcebal and J. Ranches to drink on February 27, 1980, at 10:30 in the evening at the coffee shop of the Triton Hotel at Cebu, six (6) bottles of beer each, within thirty minutes. Unable to consume the bottles of beer within the time limit set by private respondent Salvador Gempis, the two pilots were ordered to stand erect and were hit on the stomach by private respondent. The petition alleged that "the incident occurred with the full knowledge of private respondent that the two (2) affected co-pilots have flight duties the next day with initial assignments as early as 0710 H (7:10 a.m.) and as late as 1200H (12:00 p.m.)." (pp. 4-5, Rollo)

We quote the decision of respondent National Labor Relations Commission (NLRC) which based its finding on the decision of the labor arbiter as follows:

"Under the foregoing circumstances, the specific issue for resolution is whether or not the complainant Salvador Gempis is being dismissed for a just and valid cause.

“We find the decision of the Committee on appeal which recommended the termination which is an increase in the original penalty of demotion in rank and pay of complainant, unjustified and oppressive if not void, for being violative of Sec. XIII Part B 2(b) requiring a unanimous vote of all three (3) members thereof. To impose the penalty of dismissal for violation of the liquor ban which is applicable to all pilots of Company, the Committee should have likewise recommended the investigation of all personnel involved in the drinking session on 27 February 1980. While this alleged offense forms part or is related to the original one (abuse of authority), the committee, in justice to the complainant should have remanded the case to the investigating Committee so as to include the more serious offense considering that the earlier investigation dealt mainly on complainant’s alleged gross misconduct committed against his subordinates.

“Moreover, we do not clearly see that the presence of a complainant posed a serious and imminent threat to the property of respondent firm in order to justify the preventive suspension imposed upon the former effective November 1, 1980 when it applied for clearance to terminate the petitioner’s services.

“Nevertheless, we find every piece of evidence on record to be more in support that complainant did commit abuse of authority amounting to gross misconduct when he forced F/O’s A. Barcebal and J. Ranches to each consume three (3) bottles of beer within thirty (30) minutes and when they failed, they were ordered to stand erect and boxed on their stomachs, at about 8:30 P.M. on 27, February 1980.

“It is highly improbable that with such a report containing a charge of a more or less serious incident, would be reaching management, though belatedly, if the same did not occur. We see no reason for management, much less its officers, to concoct such an incident if only to harass complainant when no reasonable basis therefor existed. The records do not show the complainant is involved in any previous incident incurring management’s ire or disfavor or of having participated in any

labor dispute or activities as a member (sic) of the ALPAP, as a basis for such harassment.

“Finally, there was the investigation conducted by the investigating Committee, the constitution of and procedure in which was never questioned before hand. As it appears, the investigation was conducted in a most impartial and regular manner wherein complainant was given the opportunity to explain his side, examine reports and confront witnesses. We see no impartiality in the conduct of hearing.

“While we agree with the finding of the Labor Arbiter that the complainant did commit abuse of authority amounting to gross misconduct when he forced F/O’s A. Barcebal and J. Ranches to each consume three (3) bottles of beer within thirty (30) minutes and when they failed, they were ordered to stand erect and boxed on their stomachs, we find that the penalty of demotion for a period of six (6) months at the most which the Labor Arbiter imposed is the commensurate and equitable penalty.” (pp. 23-25, Rollo)

On the basis of the above findings of facts by respondent NLRC, We fully agree with the position of herein petitioner that —

“It would be grossly unfair to order petitioners to reinstate him back to his work as pilot. The nature of employment of herein private respondent necessitates that he should not violate the liquor ban as provided for in the Basic Operations Manual in order to protect not only the interest of the company but the public as well. Private respondent is a risk and liability rather than an asset to petitioner PAL.

“The private respondent and those persons he abused (F/Os A. Barcebal and J. Ranches) are pilots. The foremost consideration called for by their position as pilots is the safety of the passengers. This is so because the duties of a pilot consist of handling controls of the aircraft and to ensure that the flight is conducted safely and economically.

“The respondent Commission committed a grave abuse of discretion amounting to lack of jurisdiction in not imposing the appropriate penalty of dismissal as called for not only by company regulations (BOM) but also by the CAA, when as borne by its own (NLRC) findings, private respondent did commit the offense complained of. Under these facts, clearance to terminate should have been given for the dismissal of private respondent.” (pp. 15-19, Rollo)

The business of petitioner Philippine Airlines is such that whenever a passenger dies or is injured the presumption is, it is at fault notwithstanding the fact that it has exercised due diligence of a good father of a family in the selection and supervision of its employees. Thus, extraordinary measures and diligence should be exercised by it for the safety of its passengers and their belongings. Needless to state, a pilot must be sober all the time for he may be called upon to fly a plane even before his regular scheduled hours, otherwise so many lives will be in danger if he is drunk. It would be unjust for an employer like herein petitioner PAL to be compelled to continue with the employment of a person whose continuance in the service is obviously inimical to its interests.

ACCORDINGLY, the decision of respondent National Labor Relations Commission dated November 29, 1982, is **SET ASIDE** and petitioners’ application for clearance to terminate private respondent Salvador Gempis from employment is hereby **APPROVED**.

SO ORDERED.

Teehankee, C.J., (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.