

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**RAFAEL ENRIQUEZ and VIRGILIO
ECARMA,**

Petitioners,

-versus-

**G.R. No. L-51382
December 29, 1986**

**THE HONORABLE RONALDO B.
ZAMORA, THE HONORABLE BLAS F.
OPLE, NATIONAL LABOR RELATIONS
COMMISSION, ARBITER NESTOR LIM,
PHILIPPINE AIR LINES PILOT
ASSOCIATION OF THE PHILIPPINES
and ORTIZ' GROUP,^[*]**

Respondents.

X-----X

DECISION

FERNAN, J.:

In this Petition for *Certiorari* and mandamus, pilots Rafael Enriquez and Virgilio Ecarma seek the restoration of their seniority rights and other privileges which the Philippine Air Lines [PAL] declared as forfeited by the pilots who joined the mass retirement/resignation of the members of the Air Lines Pilot Association of the Philippines

[ALPAP] to protest the dismissal of their president, Captain Felix Gaston.

Enriquez and Ecarma were employed by PAL on October 2, 1961 and March 3, 1966, respectively. Consequently, they became members of ALPAP. On October 3, 1970, Philippine Air Lines Employees Association [PALEA] and ALPAP staged a strike against PAL to demand pay increases, better working conditions on the Manila-Karachi and Rome-Amsterdam flights, and a better retirement plan.

Pursuant to Section 10 of Republic Act No. 875, the President of the Philippines certified the strike to the Court of Industrial Relations [CIR]. Said court, through Associate Judge Ansberto Paredes, issued an order dated October 7, 1970 directing the officers and members of PALEA and ALPAP to call off the strike, lift the picket lines in all places of operation of PAL, and return to work not later than Friday, October 9, 1970. PAL management, on the other hand, was ordered to admit the striking employees “back to work under the same terms and conditions of employment existing before the strikes” and “not to suspend, dismiss or lay-off any employee as a result” of said strikes. The CIR further stated that failure to comply with its order would constitute contempt of court and “the employee failing or refusing to return to work by October 9, 1970, without justifiable cause, shall immediately be replaced by PAL, and may not be reinstated without prior Court order and on justifiable grounds” [Rollo, pp. 33-34].

The strikers moved for a reconsideration of the order but after it was denied by the court, they returned to work on October 22, 1970. Five days later or on October 27, 1970, PAL dismissed strike leader Captain Gaston.

On October 30, 1970, the board of directors of ALPAP adopted a resolution condemning PAL’s alleged “continued acts of harassment and other unfair labor practices” against the ALPAP such as the attempted lockout of ten members, the actual lockout of three other members, the forced retirement of Captain Regino Masias [Macias] and the dismissal of ALPAP leader Captain Gaston. The board resolved to undertake the grounding of all PAL planes and the filing of applications for “protest retirement” of members who had completed five years of continuous service, and “protest resignation”

for those who had rendered less than five years of service in the company [Rollo, pp. 36-37].

On November 9, 1970, the said board of directors adopted another resolution calling on all union members to accomplish their respective “protest retirement” or “protest resignation” forms on or before November 17, 1970. To implement said resolution, Captain Gaston issued on November 12, 1970, a circular setting the deadline for the submission of retirement/resignation papers on November 17, 1970 at 2400H [Rollo, pp. 38-39].

Upon learning that many members of the ALPAP had signed their respective “protest retirement/resignation” papers, and that ALPAP would submit them en masse to PAL at a time to coincide with the then forthcoming Papal visit, PAL filed with the CIR an ex-parte urgent motion to enjoin ALPAP officers and members from retiring or resigning en masse from PAL [Annex “B” to Petition, Rollo, p. 35].

Acting on said motion, the Court of Industrial Relations issued an order on November 26, 1970 which states:

“WHEREFORE, pending hearing of the subject motion, the petitioner, its members and officers, and respondents and its officers are hereby ordered to maintain status quo; the members and officers of said petitioner ALPAP, and ALPAP itself, are ordered not to strike or in any way cause any stoppage in the operation and service of PAL, under pain of dismissal and forfeiture of rights and privileges accruing to their respective employments should they disregard this Order; and PAL is also ordered not to lockout any of such members and officers of ALPAP under pain of contempt and cancellation of its franchise.” [Rollo, p. 142]

Notwithstanding this order, some of the officers and majority of the members of ALPAP submitted their respective retirement or resignation letters to PAL on December 12, 1970. The pilots tendered their retirement or resignation individually. Their similarly worded retirement or resignation letters read as follows:

“Gentlemen:

“In vigorous protest to your provocative harassments, unfair labor tactics, the contemptuous lockout of our co-members and your vicious and vindictive attitude towards labor most exemplified by the illegal termination of the services of our President, Capt. Felix C. Gaston, we, the undersigned, are hereby retiring from our employment in accordance with Par. [b] of Section 1 of Article VI of the Retirement Plan effective immediately upon receipt hereof.

“We expect payment of the benefits due us within seventy-two [72] hours from receipt hereof.

“Very truly yours,

[SGD].” Rollo, pp. 235 & 367]

PAL acknowledged receipt of said letters through its own letter which reads in part:

“We acknowledge receipt of your letter dated December 12, 1970, informing us that you ‘are hereby retiring from our employment . . . effective immediately upon receipt’ hereof. We have accordingly dropped you from our payrolls as of 130 P.M. December 14, 1970, the time and date we received the letter from ALPAP. However, since your ‘retirement’ was in pursuance of a conspiracy and in violation of the Order dated November 26, 1970 promulgated by the Court of Industrial Relations in CIR Case No. 101-IPA[B], you are not entitled to any of the benefits claimed by you under the Retirement Plan nor to any of the other rights, benefits and privileges to which you may otherwise be entitled by reason of your former employment with PAL, you having committed acts resulting in the forfeiture of the same.

“You are hereby requested to report immediately to the Industrial Relations Department in order to secure the necessary clearances and to settle any account you may have with the company.” [Rollo, pp. 236, 367-368].

Among the pilots whose “protest resignation/retirement” was accepted by PAL were petitioners Enriquez and Ecarma. However, on January 12, 1971, Ecarma returned to PAL after having been away for thirty days. Enriquez, who had not reported to work for thirty-six days, followed suit on January 18, 1971.

Before their readmission, PAL required them to accept two conditions, namely: that they sign conformity to PAL’s letter of acceptance of their retirement and/or resignation and that they submit an application for employment as new employees without protest or reservation [Rollo, p. 6].

On March 17, 1971, PAL issued a new seniority list for pilots. Enriquez’s and Ecarma’s new seniority dates were listed as January 18, 1971 and January 12, 1971, respectively. Thus, Enriquez and Ecarma respectively lost their almost 10-year’ and 5-year seniority, and started from zero seniority.

Aggrieved by this action of PAL, Enriquez and Ecarma, together with twenty-three other pilots, filed before the CIR a petition to restore their seniority and other privileges [Rollo, p. 46]. They alleged therein that they had not been apprised by the union of the legal consequences of their respective retirement or resignation for they were merely told to obey, otherwise they would be expelled from the union, and that, in fact, they were expelled by ALPAP on February 12, 1971.

PAL opposed the petition. It alleged that the mass retirement/resignation of the pilots constituted contempt of court and that the returning pilots, who had filed applications for employment as new pilots, “were accepted on probationary basis for a period of six months”. PAL added that as the pilots’ retirement or resignation violated the November 26, 1970 order of the Court of Industrial Relations, said pilots lost whatever privileges or benefits they had acquired as employees of PAL [Rollo, pp. 52-55].

Some members of ALPAP under the leadership of Captain Ben Hur Gomez who chose not to retire or resign, filed a manifestation stating that they would submit to any final ruling of the court on the matter [Rollo, pp. 62-63].

Another group of pilots, headed by Captain Carlos Ortiz, who were hired by PAL as a result of ALPAP's mass action, intervened in the case. They averred that they had earned their seniority on a first-come-first-serve basis and would be prejudiced should the petition of Enriquez's group be granted [Rollo, pp. 63-64].

During the pendency of the petition, the Court of Industrial Relations was abolished, and the case was turned over to the National Labor Relations Commission [NLRC] for adjudication. On March 31, 1975, Acting Labor Arbiter Nestor C. Lim issued an order denying the petition for restoration of seniority and other privileges [Rollo, pp. 58-171]. Said order stated that the seniority ranking on March 17, 1971 should be respected to avoid injustice and demoralization in the ranks of the pilots and to forestall the disruption of the smooth operation of PAL. To eliminate sources of irritants between PAL and its employees and "by way of mitigating the penalty" on the returning pilots, they were allowed to receive "fifty percent [50%] or one-half of the retirement benefits which they would have received under the PAL-ALPAP Retirement Plan, were it not for the fact that their retirement/resignation was in violation of a court order" [Rollo, p. 167].

Both PAL and the Enriquez group appealed to the NLRC en banc. On August 15, 1975, at the conference-hearing held before said commission, the parties entered into a compromise agreement whereby the following were stipulated and agreed upon:

- "A) The parties shall recognize the termination of the employee-employer relationship between PAL and the pilots who joined the mass retirement/resignation in December 1970 and the consequent loss by the said pilots of their seniority accruing to their old employment.
- "B) By way of compromise and to temper the penalty of forfeiture of all privileges decreed in the Order of November 26, 1970 of the Court of Industrial Relations for those who joined the aforesaid mass retirement/resignation, PAL shall pay to the aforesaid pilots who reapplied as new pilots and who were already

taken in as such by PAL, eighty-five [85%] per cent of their retirement pay under the PAL-ALPAP Retirement Plan in effect in December 1970. With respect to pilots not entitled to any retirement pay under the said plan, they shall be paid eighty-five [85%] per cent of their separation pay under the Termination Pay Act in effect in December 1970.

“C) With the payment of the aforementioned 85% of their retirement/separation pay, the pilots shall release PAL from any demand, claim or claims of whatever nature or kind, arising from or connected with all the matters alleged in their ‘Petition for Restoration of Seniority and Other Privileges.’” [Rollo, pp. 187-188]

On September 16, 1975, said compromise agreement was approved by the NLRC en banc and the case was dismissed “with prejudice”. [Rollo, pp. 172-173]

Eight of the eleven petitioners approved the compromise agreement while one, N. Salgado, was absent. Enriquez and Ecarma did not conform to the compromise agreement. They appealed to the then Secretary of Labor on the ground that the resolution approving the compromise agreement was “not in accordance with law and contrary to the constitutional guarantees of non-deprivation of property without due process, as well as the labor and social justice protection in the constitution”. [Rollo, p. 184]

On August 3, 1976, then Secretary of Labor Blas F. Ople issued an order ruling that as far as Enriquez, Ecarma and Salgado are concerned, the NLRC should not have dismissed the case but decided it on the merits, However, finding the compromise agreement to be beneficial to appellants, he affirmed the decision of Labor Arbiter Lim and directed Enriquez, Ecarma and Salgado to comply with its terms. [Rollo, pp. 181-185]

Enriquez and Ecarma then filed with this Court a motion for an extension of time to file a petition for review on certiorari. On September 16, 1976, they filed a manifestation stating that they would not file said petition for they intended to exhaust administrative remedies. Accordingly, that case was archived [G.R. No. L-44452,

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Enriquez and Ecarma elevated the case to the Office of the President. On October 10, 1977, Presidential Assistant for Legal Affairs Ronaldo B. Zamora affirmed the order of the Secretary of Labor. He noted that by extending the benefits of the compromise agreement to Enriquez and Ecarma, the Secretary of Labor was following the “constitutional mandate for the state to protect labor” [Rollo, p. 214].

Enriquez and Ecarma were able to obtain a copy of the decision of the Office of the President on August 24, 1979 or almost two years later. Whereupon, they filed the instant petition for mandamus and *certiorari*.

Petitioners submit that the issues involved in this petition are: whether by their employment, they are entitled to the restoration of their seniority rights and whether the “mass strike” on December 12, 1970 was a concerted action protected by law [Memorandum, p. 26; Rollo, p. 425].

In their petition, Enriquez and Ecarma contend that it is beyond the coercive and punitive powers of the Court of Industrial Relations [now the National Labor Relations Commission] to order the forfeiture of their seniority rights and other privileges. They assert that seniority is a vested right which they cannot be deprived of without due process of law. They believe that PAL’s refusal to reinstate them unless they give up their seniority rights, constitutes an unfair labor practice [Rollo, p. 24].

Petitioners’ contentions are unmeritorious.

An employee has no inherent right to seniority. He has only such rights as may be based on a contract, a statute, or an administrative regulation relative thereto [51 C.J.S. 586 citing Trailmobile Co. vs. Whirls, 67 S. Ct. 982, 331 U.S. 40, 91 L. Ed. 1328 and other cases]. Seniority rights, which are acquired by an employee through long-time employment, are contractual and not constitutional. Hence, the discharge of such employee, thereby terminating such rights, would

not violate the Constitution [51 C.J.S. 587 citing *Wicks vs. Southern Pacific Co.*, 121 F. Supp. 454].

When the pilots tendered their respective retirement or resignation and PAL immediately accepted them, both parties mutually terminated the contractual employment relationship between them thereby curtailing whatever seniority rights and privileges the pilots had earned through the years. Hence, contrary to petitioners' contention, loss of seniority rights was not a penalty for their precipitate retirement or resignation. Rather, it was the expected consequence of the acceptance of their retirement or resignation.

The pilots' mass action was not a strike because employees who go on strike do not quit their employment. Ordinarily, the relationship of employer and employee continues until one or the other of the parties acts to sever the relationship or they mutually act to accomplish that purpose [Words and Phrases, Vol. 40, 1964 ed., p. 465 quoting *Kitchen vs. G.R. Herberger's Inc.*, 114 N.W. 2d 64, 67, 262 Minn. 135]. As they did not assume the status of strikers, their "protest retirement/resignation" was not a concerted activity which was protected by law [*First National Bank of Omaha vs. N.L.R.B.*, 413 F. 2d 921]. Petitioners cannot, therefore, validly claim that PAL committed an unfair labor practice because, having voluntarily terminated their employment relationship with PAL, they were not dismissed.

Moreover, the issue of whether the retirement/resignation of ALPAP members on December 12, 1970 was a concerted activity protected by law was put to rest in *Chavez vs. Martinez*, L-35206 which was decided by this Court on April 15, 1977 together with *Air Line Pilots Association of the Philippines vs. Court of Industrial Relations*, L-33705. We pronounced therein that:

"Parenthetically, contrary to ALPAP [Gaston's] argument that the pilots' retirement/resignation was a legitimate concerted activity, citing Section 2[1] of the Industrial Peace Act which defines 'Strike' as 'any temporary stoppage of work by the concerted action of employees as a result of an industrial dispute', it is worthwhile to observe that as the law defines it, a strike means only a 'temporary stoppage of work'. What the

mentioned pilots did, however, cannot be considered in the opinion of this Court, as mere 'temporary stoppage of work'. What they contemplated was evidently a permanent cut-off of employment relationship with their erstwhile employer, the Philippine Air Lines. In any event, the dispute below having been certified as existing in an industry indispensable to the national interest, the said pilots' rank disregard for the compulsory orders of the industrial court and their daring and calculating venture to disengage themselves from that court's jurisdiction, for the obvious purpose of satisfying their narrow economic demands to the prejudice of the public interest, are evident badges of bad faith.

"A legitimate concerted activity is a matter that cannot be used to circumvent judicial orders or be tossed around like a plaything. Definitely, neither employers nor employees should be allowed to make of judicial authority a now-you've-got-it-now-you-don't affair. The courts cannot hopefully effectuate and vindicate the sound policies of the Industrial Peace Act and all our labor laws if employees, particularly those who on account of their highly advanced technical background and relatively better life status are far above the general working class spectrum, will be permitted to defy and invoke the jurisdiction of the courts whenever the alternative chosen will serve to feather their pure and simple economic demands." [76 SCRA 274, 293]

Petitioners asseverate that their retirement or resignation was a "sham" for there was "no honest or genuine desire to terminate the employee relationship with PAL" [Rollo, p. 533]. We perceive, however, that the unorthodox manner by which the pilots aired their demands against PAL, even if it was allegedly only a bluff calculated to bring favorable results, exposed them to the risk that PAL would act accordingly and take their "sham" retirement or resignation seriously, as what happened in this case.

Petitioners' insistence that they were not advised of the legal consequences of their "protest retirement/resignation" cannot hold water considering that they are highly educated. Enriquez obtained his Bachelor of Science degree from the Philippine Military Academy

and took two years of graduate studies in Business Administration at the University of the Philippines [Rollo, p. 77]. Expert legal advice was available to him as his father is a retired justice of the Court of Appeals who also appears as one of petitioners' counsel in this case. On the other hand, Ecarma took three years and one semester of a commerce course and went through a two-year course in the Philippine Air Force Flying School [Rollo, p. 92]. Verily, they are not the ordinary, illiterate laborers that they purport to be in this case.

The employment relationship between petitioners and PAL having been terminated, Enriquez, who worked as pilot for 9 years, 2 months and 12 days before his retirement, is entitled as a matter of right, to the full benefits under the company's retirement plan, Ecarma, who was a pilot for 4 years, 9 months and 11 days and who apparently tendered his resignation in accordance with the October 30, 1970 resolution of the ALPAP, should also be granted the full separation pay under the Termination Pay Act in force at the time of his resignation. Thus, as to petitioners, the compromise agreement of August 15, 1975 which gave retiring or resigning pilots only 85% of their respective retirement or separation benefits, should be considered inapplicable.

We take exception to the Labor arbiter's opinion that "to grant in full the reliefs prayed for by petitioning pilots Enriquez, et. al. would amount to giving premium to willful disobedience to a lawful order issued by the CIR and would unjustifiably punish the other pilots in the employ of PAL who elected to remain and obey the Court" [Rollo, p. 164]. By granting to petitioners full retirement and separation benefits, this Court is not in any way condoning the mass action undertaken by the pilots. We are only granting to them what by law they are entitled to receive even if their course of action was the result of their erroneous collective judgment.

The issue of whether forfeiture of seniority and other privileges is within the coercive and punitive powers of the Court of Industrial Relations and, after its dissolution, of the labor arbiter and the National Labor Relations Commission, is of no moment in this case considering that petitioners lost their seniority rights not by virtue of the labor arbiter' order and its affirmance by the National Labor

Relations Commission, the Secretary of Labor and the Office of the President but by the operative act of their retirement or resignation.

Enriquez and Ecarma were, therefore, new employees with entirely new seniority rankings when they were readmitted by PAL on January 18, 1971 and January 12, 1971, respectively. Certainly, PAL was merely exercising its prerogative as an employer when it imposed two conditions for the reemployment of petitioners inasmuch as hiring or rehiring policies are matters for the company's management to determine in the absence of an anti-union motivation [Metropolitan Life Ins. Co. vs. N.L.R.B., 371 F. 2d 573].

WHEREFORE, the petition for certiorari and mandamus is hereby dismissed. The public respondents' orders and decision are hereby affirmed subject to the modification that petitioners are granted full retirement and separation benefits with legal interest from their accrual until petitioners are fully paid. No costs.

SO ORDERED.

Feria, Alampay, Paras and Feliciano,^[] JJ., concur.
Gutierrez, Jr., J., took no part.**

[*] In compliance with the resolution of August 26, 1981, petitioners amended their petition to implead the group of pilots headed by Captain Carlos Ortiz [Rollo, pp. 475 & 477].

[**] Designated additional member per Special Order No. 50.