

**AIR MANILA, INC., PETITIONER, VS. HON. MARCELO S. BALATBAT,
DIRECTOR NILO DE GUIA, DR. GREGORIO Y. ZARA, AND COL. JUAN
B. GUEVARRA AS MEMBERS OF THE CIVIL AERONAUTICS BOARD
AND ...**

G.R. No. L-29064. April 29, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for certiorari filed by Air Manila, Inc., to determine the validity of Resolution No. 139 (68) of the Civil Aeronautics Board in CAB Case No. 1414, allegedly issued without or in excess of jurisdiction.

There is no dispute as to the facts of this case.

On 1 April 1968, the Philippine Air Lines, hereafter referred to as PAL, petitioned the Civil Aeronautics Board, referred to hereafter as the Board, for approval of a proposed schedule introducing seven flights -- F515/516, F555/556, F561/562, F531/532, F591/338, F527/528, and F211/212 -- and the adjustment of the flight schedule that may thus be affected (CAB Case No. 1414). On 15 April 1968, action on the petition was deferred for further study.

On 22 April 1968, the Board passed Resolution No. 109 (68), referring PAL's petition to a hearing examiner for economic justification. Accordingly, the designated hearing officer set the initial hearing thereof for 30 April 1968.

On 29 April 1968, PAL moved for reconsideration of Resolution No. 109(68). By resolution of 6 May 1968, the Board deferred action on this later motion, until PAL shall have resumed its DC-3 services in certain airports named therein.

On 9 May 1968, PAL filed another motion, this time for reconsideration of the Board resolution of 6 May 1968, on the ground that the new flights which it was proposing to operate in Case No. EP-1414 will be serviced by jet-prop or pure jet equipment only, thus, the order for resumption of DC-3 services in said resolution was improper and should be deleted. In its Resolution No. 131 (68) of 20 May 1968, the Board deferred action on this motion for reconsideration.

It appears, however, that on 15 May 1968, PAL filed an Urgent Petition for approval of a consolidated schedule of jet and jet prop flights, with an interim DC-3 schedule to different secondary and feeder points (DTS-35). On 28 May 1968, the Board issued its Resolution No. 139 (68), approving DTS-35 for a period of 30 days, effective 1 June 1968 up to 30 June 1968, subject to the conditions that (a) the flight between Manila and San Fernando, La Union, F210/211 of the same timetable, be operated daily instead of twice a week as proposed, and (b) that all schedules under DTS-35, for which no previous approval has been granted by the Board, are to be referred to a hearing examiner for reception of evidence on its economic justification. After the examiner's report, several of the proposed flights were approved for 30 days from 31 July 1968.

On 31 May 1968, Air Manila, Inc., filed the instant petition claiming that the respondent Board acted without or in excess of jurisdiction and/or with grave abuse of discretion in issuing its Resolution No. 139 (68). It is petitioner's allegation that the proposed new schedule, involving an increase of frequencies, would not only saturate the routes served also by petitioner, but would also affect its schedule; that the Board's approval of said Domestic Traffic Schedule without receiving the evidence of the parties constituted a deprivation of petitioner's right to be heard; and that such authorization to PAL to operate the proposed schedule without economic justification amounted to a capricious and whimsical exercise by the Board of its power amounting to lack of jurisdiction.

There is no merit to the contention of petitioner. It has been correctly said that administrative proceedings are not exempt from the operation of certain basic and fundamental procedural principles, such as the due process requirements in investigations and trials.[1] And this administrative due process is recognized to include (a) the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal rights; (b) reasonable opportunity to appear and defend his rights, introduce witnesses and relevant evidence in his favor, (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (4) a finding or decision by that tribunal supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected.[2]

In the present case, it can not truthfully be said that the provisional approval by the Board of PAL's proposed DTS-35 violates the requisites of administrative due process. Admittedly, after PAL's proposal to introduce new Mercury night flights (in CAB Case No. EP-1414) had been referred to a hearing examiner for economic justification, PAL submitted a so-called consolidated schedule of flights, DTS-35, that included the same Mercury night flights involved in Case EP-1414, and this was allowed by Board Resolution No. 139(68). According to respondents, however, the Board's action was impelled by the circumstance that at the time, the authorizations of certain flight schedules previously allowed but were incorporated in DTS-35 were about to expire; thus, the consolidated schedule had to be approved temporarily if the operations of the flights referred to were not to be suspended. In short, the temporary permit was issued to prevent the stoppage or cessation of services in the affected areas. This point petitioner has failed to refute.

Neither can the provisional authorization of DTS-35 be said to have done away with the requisite hearing and investigation of the new flight schedules and, consequently, to have deprived the petitioner of its right to be heard. Note that in allowing the operation or effectivity of PAL's consolidated flight schedule, it was precisely prescribed that "all schedules under the DTS-35 for which no previous approval has been granted by the Board, are hereby referred to a hearing examiner for reception of evidence on its economic justification." [3] It has not been denied that such hearings were actually conducted by the hearing examiner and a report on the result thereof was submitted to the Board. And the Board, considering the report of the hearing examiner, passed Resolution No. 190 (68)[4] approving, for a period of 30 days starting 31 July 1968, only three or four frequencies of the seven proposed new flights (F338, F591, F531/532, F555/556, F527/528, F561/562, and F515/516). There is no proof, not even allegation, that in all those hearings petitioner was not notified or given opportunity to adduce evidence in support of its opposition.

It may be true that the temporary approval of DTS-35 resulted in the immediate operation of the opposed flights before the existence of economic justification therefor has been finally determined. But this fact alone would not work against the validity of the provisional authorization thus issued. For, under the law, the Civil Aeronautics Board is not only empowered to grant certificates of public convenience and necessity; it can also issue, deny, revise, alter, modify, cancel suspend or revoke, in whole or in part, any temporary operating permit, upon petition or complaint of another or even at its own initiative.[5] The exercise of the power, of course, is supposed to be

conditioned upon the paramount consideration of public convenience and necessity, and nothing has been presented in this case to prove that the disputed action by the Board has been prompted by a cause other than the good of the service.

It may be also pointed out that the new schedule objected to by petitioner will affect its services in six routes in the following manner:

(a) Route - MANILA-MACTAN-MANILA

F515/516 - Seven (7) additional flights a week and vice-versa; schedule is timed just ahead of Air Manila's schedule.

(b) Route - MANILA-DAVAO-MANILA

F555/556 - Seven (7) additional flights a week and vice-versa; schedule is timed just ahead of Air Manila's schedule.

(c) Route - MANILA-BACOLOD-MANILA

F531/532 - Seven (7) additional flights a week and vice-versa; timed just ahead of Air Manila's schedule.

(d) Route - MACTAN-TACLOBAN-MACTAN

F527/528 - Seven (7) additional flights a week and vice-versa.

(e) Route - TACLOBAN-MACTAN-TACLOBAN

F391/392 - Flight schedule revised as to make it just ahead of Air Manila's schedule.

(f) Route - MACTAN-DAVAO-MACTAN

F579/580 - PAL's old schedule revised to adversely affect Air Manila's schedule in this route.

Respondents disclosed, however, and this has not been denied by petitioner, that the schedule of flights provisionally approved in Resolution No. 139(68) was subsequently readjusted by the Board in order to conform with its established policy on separation time between flights.[6] While the aforementioned readjustment of the schedule was secured by the Filipinas Orient Airways and, therefore, may not particularly improve petitioner's situation, the resolution indicated that relief can still be obtained from the Board, thus precluding resort at once to the relief afforded by a certiorari proceeding in this Tribunal.[7] Likewise, the records show that by Resolution No. 190 (68) in the same Case No. EP-1414, the Board allowed only three or four frequencies of the proposed seven new flights, such authorization terminating after 30 days from 31 July 1968.

It is evident from the foregoing facts that not only has the resolution subject of the present petition been modified, but its effectivity had been fixed up to 30 September 1968. There being no proof that the situation existing when Resolution No. 139 (68) was issued still persists, the issue herein presented apparently has become moot and academic.

FOR THE FOREGOING CONSIDERATIONS, the petition in this case is hereby dismissed, with costs against the petitioner.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] *Asprec vs. Itchon*, L-21685, 30 April 1966, 16 SCRA 921.

[2] Garcia vs. Executive Secretary, L-19748, 13 September 1962, 6 SCRA 1, Concurring Opinion; also Ang Tibay vs. CIR, 69 Phil. 635.

[3] Annex R, Petition for Certiorari.

[4] Respondent Board's Answer, page 8.

[5] Section 10 (C) (1), Republic Act No. 776.

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