

CHINA AIRLINES, PETITIONER, VS. DANIEL CHIOK, RESPONDENT.

G.R. No. 152122. July 30, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A common carrier has a peculiar relationship with and an exacting responsibility to its passengers. For reasons of public interest and policy, the ticket-issuing airline acts as principal in a contract of carriage and is thus liable for the acts and the omissions of any errant carrier to which it may have endorsed any sector of the entire, continuous trip.

The Case

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, seeking to reverse the August 7, 2001 Decision[2] and the February 7, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 45832. The challenged Decision disposed as follows:

"WHEREFORE, premises considered, the assailed Decision dated July 5, 1991 of Branch 31, Regional Trial Court, National Capital Judicial Region, Manila, in Civil Case No. 82-13690, is hereby MODIFIED by deleting that portion regarding defendants-appellants' liabilities for the payment of the actual damages amounting to HK\$14,128.80 and US\$2,000.00 while all other respects are AFFIRMED. Costs against defendants-appellants."[4]

The assailed Resolution denied Petitioner's Motion for Partial Reconsideration.

The Facts

The facts are narrated by the CA[5] as follows:

"On September 18, 1981, Daniel Chiok (hereafter referred to as Chiok) purchased from China Airlines, Ltd. (CAL for brevity) airline passenger ticket number 297:4402:004:278:5 for air transportation covering Manila-Taipei-Hongkong-Manila. Said ticket was exclusively endorseable to Philippine Airlines, Ltd. (PAL for brevity).

"Subsequently, on November 21, 1981, Chiok took his trip from Manila to Taipei using [the] CAL ticket. Before he left for said trip, the trips covered by the ticket were pre-scheduled and confirmed by the former. When he arrived in Taipei, he went to the CAL office and confirmed his Hongkong to Manila trip on board PAL Flight No. PR 311. The CAL office attached a yellow sticker appropriately indicating that his flight status was OK.

"When Chiok reached Hongkong, he went to the PAL office and sought to reconfirm his flight back to Manila. The PAL office confirmed his return trip on board Flight No. PR 311 and attached its own sticker. On November 24, 1981, Chiok proceeded to Hongkong International Airport for his return trip to Manila. However, upon reaching the PAL counter, Chiok saw a poster stating that PAL Flight No. PR 311 was cancelled because of a typhoon in Manila. He was then informed that all the confirmed ticket holders of PAL Flight No. PR 311 were automatically booked for its next flight, which was to leave the next day. He then informed PAL personnel that, being the founding director of the Philippine Polysterene Paper Corporation, he

ha[d] to reach Manila on November 25, 1981 because of a business option which he ha[d] to execute on said date.

"On November 25, 1981, Chiok went to the airport. Cathay Pacific stewardess Lok Chan (hereafter referred to as Lok) ha[d] taken and received Chiok's plane ticket and his luggage. Lok called the attention of Carmen Chan (hereafter referred to as Carmen), PAL's terminal supervisor, and informed the latter that Chiok's name was not in the computer list of passengers. Subsequently, Carmen informed Chiok that his name did not appear in PAL's computer list of passengers and therefore could not be permitted to board PAL Flight No. PR 307.

"Meanwhile, Chiok requested Carmen to put into writing the alleged reason why he was not allowed to take his flight. The latter then wrote the following, to wit: 'PAL STAFF CARMEN CHAN CHKD WITH R/C KENNY AT 1005H NO SUCH NAME IN COMPUTER FOR 311/24 NOV AND 307/25 NOV.' The latter sought to recover his luggage but found only 2 which were placed at the end of the passengers line. Realizing that his new Samsonite luggage was missing, which contained cosmetics worth HK\$14,128.80, he complained to Carmen.

"Thereafter, Chiok proceeded to PAL's Hongkong office and confronted PAL's reservation officer, Carie Chao (hereafter referred to as Chao), who previously confirmed his flight back to Manila. Chao told Chiok that his name was on the list and pointed to the latter his computer number listed on the PAL confirmation sticker attached to his plane ticket, which number was 'R/MN62'.

"Chiok then decided to use another CAL ticket with No. 297:4402:004:370:5 and asked Chao if this ticket could be used to book him for the said flight. The latter, once again, booked and confirmed the former's trip, this time on board PAL Flight No. PR 311 scheduled to depart that evening. Later, Chiok went to the PAL check-in counter and it was Carmen who attended to him. As this juncture, Chiok had already placed his travel documents, including his clutch bag, on top of the PAL check-in counter.

"Thereafter, Carmen directed PAL personnel to transfer counters. In the ensuing commotion, Chiok lost his clutch bag containing the following, to wit: (a) \$2,000.00; (b) HK\$2,000.00; (c) Taipei \$8,000.00; (d) P2,000.00; (e) a three-piece set of gold (18 carats) cross pens valued at P3,500; (f) a Cartier watch worth about P7,500.00; (g) a tie clip with a garnet birthstone and diamond worth P1,800.00; and (h) a [pair of] Christian Dior reading glasses. Subsequently, he was placed on stand-by and at around 7:30 p.m., PAL personnel informed him that he could now check-in.

"Consequently, Chiok as plaintiff, filed a Complaint on November 9, 1982 for damages, against PAL and CAL, as defendants, docketed as Civil Case No. 82-13690, with Branch 31, Regional Trial Court, National Capital Judicial Region, Manila.

"He alleged therein that despite several confirmations of his flight, defendant PAL refused to accommodate him in Flight No. 307, for which reason he lost the business option aforementioned. He also alleged that PAL's personnel, specifically Carmen, ridiculed and humiliated him in the presence of so many people. Further, he alleged that defendants are solidarily liable for the damages he suffered, since one is the agent of the other."[6]

The Regional Trial Court (RTC) of Manila held CAL and PAL jointly and severally liable to respondent. It did not, however, rule on their respective cross-claims. It disposed as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants to jointly and severally pay:

- Actual damages in the amount of HK\$14,128.80 or its equivalent in Philippine Currency at the time of the loss of the luggage consisting of cosmetic products;
- US\$2,000.00 or its equivalent at the time of the loss of the clutch bag containing the money;

- P200,000.00 by way of moral damages;
- P50,000.00 by way of exemplary damages or corrective damages;
- Attorney[']s fees equivalent to 10% of the amounts due and demandable and awarded in favor of the plaintiff; and
- The costs of this proceedings."[7]

The two carriers appealed the RTC Decision to the CA.

Ruling of the Court of Appeals

Affirming the RTC, the Court of Appeals debunked petitioner's claim that it had merely acted as an issuing agent for the ticket covering the Hong Kong-Manila leg of respondent's journey. In support of its Decision, the CA quoted a purported ruling of this Court in *KLM Royal Dutch Airlines v. Court of Appeals*[8] as follows:

"Article 30 of the Warsaw providing that in case of transportation to be performed by various successive carriers, the passenger can take action only against the carrier who performed the transportation during which the accident or the delay occurred presupposes the occurrence of either an accident or delay in the course of the air trip, and does not apply if the damage is caused by the willful misconduct on the part of the carrier's employee or agent acting within the scope of his employment.

"It would be unfair and inequitable to charge a passenger with automatic knowledge or notice of a condition which purportedly would excuse the carrier from liability, where the notice is written at the back of the ticket in letters so small that one has to use a magnifying glass to read the words. To preclude any doubt that the contract was fairly and freely agreed upon when the passenger accepted the passage ticket, the carrier who issued the ticket must inform the passenger of the conditions prescribed in the ticket or, in the very least, ascertain that the passenger read them before he accepted the passage ticket. Absent any showing that the carrier's officials or employees discharged this responsibility to the passenger, the latter cannot be bound by the conditions by which the carrier assumed the role of a mere ticket-issuing agent for other airlines and limited its liability only to untoward occurrences in its own lines.

"Where the passage tickets provide that the carriage to be performed thereunder by several successive carriers 'is to be regarded as a single operation,' the carrier which issued the tickets for the entire trip in effect guaranteed to the passenger that the latter shall have sure space in the various carriers which would ferry him through the various segments of the trip, and the ticket-issuing carrier assumes full responsibility for the entire trip and shall be held accountable for the breach of that guaranty whether the breach occurred in its own lines or in those of the other carriers."[9]

On PAL's appeal, the appellate court held that the carrier had reneged on its obligation to transport respondent when, in spite of the confirmations he had secured for Flight PR 311, his name did not appear in the computerized list of passengers. Ruling that the airline's negligence was the proximate cause of his excoriating experience, the appellate court sustained the award of moral and exemplary damages.

The CA, however, deleted the RTC's award of actual damages amounting to HK\$14,128.80 and US\$2,000.00, because the lost piece of luggage and clutch bag had not actually been "checked in" or delivered to PAL for transportation to Manila.

On August 28, 2001, petitioner filed a Motion for Partial Reconsideration, contending that the appellate court had erroneously relied on a mere syllabus of *KLM v. CA*, not on the actual ruling therein. Moreover, it argued that respondent was fully aware that the booking for the PAL sector had been made only upon his request; and that only PAL, not CAL, was liable for the actual carriage of that segment. Petitioner likewise prayed for a ruling on its cross-claim against PAL, inasmuch as the latter's employees had acted negligently, as found by the trial court.

Denying the Motion, the appellate court ruled that petitioner had failed to raise any new matter or issue that would warrant a modification or a reversal of the Decision. As to the alleged misquotation, the CA held that while the portion it had cited appeared to be different from the wording of the actual ruling, the variance was "more apparent than real since the difference [was] only in form and not in substance." [10]

CAL and PAL filed separate Petitions to assail the CA Decision. In its October 3, 2001 Resolution, this Court denied PAL's appeal, docketed as GR No. 149544, for failure to serve the CA a copy of the Petition as required by Section 3, Rule 45, in relation to Section 5(d) of Rule 56 and paragraph 2 of Revised Circular No. 1-88 of this Court. PAL's Motion for Reconsideration was denied with finality on January 21, 2002.

Only the appeal of CAL [11] remains in this Court.

Issues

In its Memorandum, petitioner raises the following issues for the Court's consideration:

"1. The Court of Appeals committed judicial misconduct in finding liability against the petitioner on the basis of a misquotation from KLM Royal Dutch Airlines vs. Court of Appeals, et al., 65 SCRA 237 and in magnifying its misconduct by denying the petitioner's Motion for Reconsideration on a mere syllabus, unofficial at that.

"2. The Court of Appeals committed an error of law when it did not apply applicable precedents on the case before it.

"3. The Court of Appeals committed a non sequitur when it did not rule on the cross-claim of the petitioner." [12]

The Court's Ruling

The Petition is not meritorious.

First Issue:

Alleged Judicial Misconduct

Petitioner charges the CA with judicial misconduct for quoting from and basing its ruling against the two airlines on an unofficial syllabus of this Court's ruling in KLM v. CA. Moreover, such misconduct was allegedly aggravated when the CA, in an attempt to justify its action, held that the difference between the actual ruling and the syllabus was "more apparent than real." [13]

We agree with petitioner that the CA committed a lapse when it relied merely on the unofficial syllabus of our ruling in KLM v. CA. Indeed, lawyers and litigants are mandated to quote decisions of this Court accurately. [14] By the same token, judges should do no less by strictly abiding by this rule when they quote cases that support their judgments and decisions. Canon 3 of the Code of Judicial Conduct enjoins them to perform official duties diligently by being faithful to the law and maintaining their professional competence.

However, since this case is not administrative in nature, we cannot rule on the CA justices' administrative liability, if any, for this lapse. First, due process requires that in administrative proceedings, the respondents must first be given an opportunity to be heard before sanctions can be imposed. Second, the present action is an appeal from the CA's Decision, not an administrative case against the magistrates concerned. These two suits are independent of and separate from each other and cannot be mixed in the same proceedings.

By merely including the lapse as an assigned error here without any adequate and proper administrative case therefor, petitioner cannot expect the imposition of an administrative sanction.

In the case at bar, we can only determine whether the error in quotation would be sufficient to reverse or modify

the CA Decision.

Applicability of KLM v. CA

In KLM v. CA, the petitioner therein issued tickets to the Mendoza spouses for their world tour. The tour included a Barcelona-Lourdes route, which was serviced by the Irish airline Aer Lingus. At the KLM office in Frankfurt, Germany, they obtained a confirmation from Aer Lingus of their seat reservations on its Flight 861. On the day of their departure, however, the airline rudely off-loaded them.

When sued for breach of contract, KLM sought to be excused for the wrongful conduct of Aer Lingus by arguing that its liability for damages was limited only to occurrences on its own sectors. To support its argument, it cited Article 30 of the Warsaw Convention, stating that when transportation was to be performed by various successive carriers, the passenger could take action only against the carrier that had performed the transportation when the accident or delay occurred.

In holding KLM liable for damages, we ruled as follows:

"1. The applicability insisted upon by the KLM of article 30 of the Warsaw Convention cannot be sustained. That article presupposes the occurrence of either an accident or a delay, neither of which took place at the Barcelona airport; what is here manifest, instead, is that the Aer Lingus, through its manager there, refused to transport the respondents to their planned and contracted destination.

"2. The argument that the KLM should not be held accountable for the tortious conduct of Aer Lingus because of the provision printed on the respondents' tickets expressly limiting the KLM's liability for damages only to occurrences on its own lines is unacceptable. As noted by the Court of Appeals that condition was printed in letters so small that one would have to use a magnifying glass to read the words. Under the circumstances, it would be unfair and inequitable to charge the respondents with automatic knowledge or notice of the said condition so as to preclude any doubt that it was fairly and freely agreed upon by the respondents when they accepted the passage tickets issued to them by the KLM. As the airline which issued those tickets with the knowledge that the respondents would be flown on the various legs of their journey by different air carriers, the KLM was chargeable with the duty and responsibility of specifically informing the respondents of conditions prescribed in their tickets or, in the very least, to ascertain that the respondents read them before they accepted their passage tickets. A thorough search of the record, however, inexplicably fails to show that any effort was exerted by the KLM officials or employees to discharge in a proper manner this responsibility to the respondents. Consequently, we hold that the respondents cannot be bound by the provision in question by which KLM unilaterally assumed the role of a mere ticket-issuing agent for other airlines and limited its liability only to untoward occurrences on its own lines.

"3. Moreover, as maintained by the respondents and the Court of Appeals, the passage tickets of the respondents provide that the carriage to be performed thereunder by several successive carriers 'is to be regarded as a single operation,' which is diametrically incompatible with the theory of the KLM that the respondents entered into a series of independent contracts with the carriers which took them on the various segments of their trip. This position of KLM we reject. The respondents dealt exclusively with the KLM which issued them tickets for their entire trip and which in effect guaranteed to them that they would have sure space in Aer Lingus flight 861. The respondents, under that assurance of the internationally prestigious KLM, naturally had the right to expect that their tickets would be honored by Aer Lingus to which, in the legal sense, the KLM had indorsed and in effect guaranteed the performance of its principal engagement to carry out the respondents' scheduled itinerary previously and mutually agreed upon between the parties.

"4. The breach of that guarantee was aggravated by the discourteous and highly arbitrary conduct of an official of the Aer Lingus which the KLM had engaged to transport the respondents on the Barcelona-Lourdes segment of their itinerary. It is but just and in full accord with the policy expressly embodied in our civil law which

enjoins courts to be more vigilant for the protection of a contracting party who occupies an inferior position with respect to the other contracting party, that the KLM should be held responsible for the abuse, injury and embarrassment suffered by the respondents at the hands of a supercilious boor of the Aer Lingus." [15]

In the instant case, the CA ruled that under the contract of transportation, petitioner -- as the ticket-issuing carrier (like KLM) -- was liable regardless of the fact that PAL was to perform or had performed the actual carriage. It elucidated on this point as follows:

"By the very nature of their contract, defendant-appellant CAL is clearly liable under the contract of carriage with [respondent] and remains to be so, regardless of those instances when actual carriage was to be performed by another carrier. The issuance of a confirmed CAL ticket in favor of [respondent] covering his entire trip abroad concretely attests to this. This also serves as proof that defendant-appellant CAL, in effect guaranteed that the carrier, such as defendant-appellant PAL would honor his ticket, assure him of a space therein and transport him on a particular segment of his trip." [16]

Notwithstanding the errant quotation, we have found after careful deliberation that the assailed Decision is supported in substance by KLM v. CA. The misquotation by the CA cannot serve as basis for the reversal of its ruling.

Nonetheless, to avert similar incidents in the future, this Court hereby exhorts members of the bar and the bench to refer to and quote from the official repository of our decisions, the Philippine Reports, whenever practicable. [17] In the absence of this primary source, which is still being updated, they may resort to unofficial sources like the SCRA. [18] We remind them that the Court's ponencia, when used to support a judgment or ruling, should be quoted accurately. [19]

Second Issue:

Liability of the Ticket-Issuing Airline

We now come to the main issue of whether CAL is liable for damages. Petitioner posits that the CA Decision must be annulled, not only because it was rooted on an erroneous quotation, but also because it disregarded jurisprudence, notably *China Airlines v. Intermediate Appellate Court* [20] and *China Airlines v. Court of Appeals*. [21]

Jurisprudence Supports

CA Decision

It is significant to note that the contract of air transportation was between petitioner and respondent, with the former endorsing to PAL the Hong Kong-to-Manila segment of the journey. Such contract of carriage has always been treated in this jurisdiction as a single operation. This jurisprudential rule is supported by the Warsaw Convention, [22] to which the Philippines is a party, and by the existing practices of the International Air Transport Association (IATA).

Article 1, Section 3 of the Warsaw Convention states:

"Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this Convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party." [23]

Article 15 of IATA-Recommended Practice similarly provides:

"Carriage to be performed by several successive carriers under one ticket, or under a ticket and any conjunction ticket issued therewith, is regarded as a single operation."

In *American Airlines v. Court of Appeals*,^[24] we have noted that under a general pool partnership agreement, the ticket-issuing airline is the principal in a contract of carriage, while the endorsee-airline is the agent.

"x x x Members of the IATA are under a general pool partnership agreement wherein they act as agent of each other in the issuance of tickets to contracted passengers to boost ticket sales worldwide and at the same time provide passengers easy access to airlines which are otherwise inaccessible in some parts of the world. Booking and reservation among airline members are allowed even by telephone and it has become an accepted practice among them. A member airline which enters into a contract of carriage consisting of a series of trips to be performed by different carriers is authorized to receive the fare for the whole trip and through the required process of interline settlement of accounts by way of the IATA clearing house an airline is duly compensated for the segment of the trip serviced. Thus, when the petitioner accepted the unused portion of the conjunction tickets, entered it in the IATA clearing house and undertook to transport the private respondent over the route covered by the unused portion of the conjunction tickets, i.e., Geneva to New York, the petitioner tacitly recognized its commitment under the IATA pool arrangement to act as agent of the principal contracting airline, Singapore Airlines, as to the segment of the trip the petitioner agreed to undertake. As such, the petitioner thereby assumed the obligation to take the place of the carrier originally designated in the original conjunction ticket. The petitioner's argument that it is not a designated carrier in the original conjunction tickets and that it issued its own ticket is not decisive of its liability. The new ticket was simply a replacement for the unused portion of the conjunction ticket, both tickets being for the same amount of US\$ 2,760 and having the same points of departure and destination. By constituting itself as an agent of the principal carrier the petitioner's undertaking should be taken as part of a single operation under the contract of carriage executed by the private respondent and Singapore Airlines in Manila."^[25]

Likewise, as the principal in the contract of carriage, the petitioner in *British Airways v. Court of Appeals*^[26] was held liable, even when the breach of contract had occurred, not on its own flight, but on that of another airline. The Decision followed our ruling in *Lufthansa German Airlines v. Court of Appeals*,^[27] in which we had held that the obligation of the ticket-issuing airline remained and did not cease, regardless of the fact that another airline had undertaken to carry the passengers to one of their destinations.

In the instant case, following the jurisprudence cited above, PAL acted as the carrying agent of CAL. In the same way that we ruled against British Airways and Lufthansa in the aforementioned cases, we also rule that CAL cannot evade liability to respondent, even though it may have been only a ticket issuer for the Hong Kong-Manila sector.

Moral and Exemplary Damages

Both the trial and the appellate courts found that respondent had satisfactorily proven the existence of the factual basis for the damages adjudged against petitioner and PAL. As a rule, the findings of fact of the CA affirming those of the RTC will not be disturbed by this Court.^[28] Indeed, the Supreme Court is not a trier of facts. As a rule also, only questions of law -- as in the present recourse -- may be raised in petitions for review under Rule 45.

Moral damages cannot be awarded in breaches of carriage contracts, except in the two instances contemplated in Articles 1764 and 2220 of the Civil Code, which we quote:

"Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

x x x x x x x x

"Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith." (Italics supplied)

There is no occasion for us to invoke Article 1764 here. We must therefore determine if CAL or its agent (PAL) is guilty of bad faith that would entitle respondent to moral damages.

In *Lopez v. Pan American World Airways*,^[29] we defined bad faith as a breach of a known duty through some motive of interest or ill will.

In the case at bar, the known duty of PAL was to transport herein respondent from Hong Kong to Manila. That duty arose when its agent confirmed his reservation for Flight PR 311,^[30] and it became demandable when he presented himself for the trip on November 24, 1981.

It is true that due to a typhoon, PAL was unable to transport respondent on Flight PR 311 on November 24, 1981. This fact, however, did not terminate the carrier's responsibility to its passengers. PAL voluntarily obligated itself to automatically transfer all confirmed passengers of PR 311 to the next available flight, PR 307, on the following day.^[31] That responsibility was subsisting when respondent, holding a confirmed ticket for the former flight, presented himself for the latter.

The records amply establish that he secured repeated confirmations of his PR 311 flight on November 24, 1981. Hence, he had every reason to expect that he would be put on the replacement flight as a confirmed passenger. Instead, he was harangued and prevented from boarding the original and the replacement flights. Thus, PAL breached its duty to transport him. After he had been directed to pay the terminal fee, his pieces of luggage were removed from the weighing-in counter despite his protestations.^[32]

It is relevant to point out that the employees of PAL were utterly insensitive to his need to be in Manila on November 25, 1981, and to the likelihood that his business affairs in the city would be jeopardized because of a mistake on their part. It was that mistake that had caused the omission of his name from the passenger list despite his confirmed flight ticket. By merely looking at his ticket and validation sticker, it is evident that the glitch was the airline's fault. However, no serious attempt was made by PAL to secure the all-important transportation of respondent to Manila on the following day. To make matters worse, PAL allowed a group of non-revenue passengers, who had no confirmed tickets or reservations, to board Flight PR 307.^[33]

Time and time again, this Court has stressed that the business of common carriers is imbued with public interest and duty; therefore, the law governing them imposes an exacting standard.^[34] In *Singson v. Court of Appeals*,^[35] we said:

"x x x [T]he carrier's utter lack of care and sensitivity to the needs of its passengers, clearly constitutive of gross negligence, recklessness and wanton disregard of the rights of the latter, [are] acts evidently indistinguishable or no different from fraud, malice and bad faith. As the rule now stands, where in breaching the contract of carriage the defendant airline is shown to have acted fraudulently, with malice or in bad faith, the award of moral and exemplary damages, in addition to actual damages, is proper."^[36] (Italics supplied)

In *Saludo v. Court of Appeals*,^[37] the Court reminded airline companies that due to the nature of their business, they must not merely give cursory instructions to their personnel to be more accommodating towards customers, passengers and the general public; they must require them to be so.

The acts of PAL's employees, particularly Chan, clearly fell short of the extraordinary standard of care that the law requires of common carriers.^[38] As narrated in Chan's oral deposition,^[39] the manner in which the airline discharged its responsibility to respondent and its other passengers manifested a lack of the requisite diligence and

due regard for their welfare. The pertinent portions of the Oral Deposition are reproduced as follows:

"Q

Now you said that flight PR 311 on 24th November was cancelled due to [a] typhoon and naturally the passengers on said flight had to be accommodated on the first flight the following day or the first flight subsequently. [W]ill you tell the Honorable Deposition Officer the procedure followed by Philippine Airlines in the handling of passengers of cancelled flight[s] like that of PR 311 which was cancelled due to [a] typhoon?

A

The procedure will be: all the confirmed passengers from [PR] 311 24th November [are] automatically transfer[red] to [PR] 307, 25th November[,] as a protection for all disconfirmed passengers.

Q

Aside from this procedure[,] what do you do with the passengers on the cancelled flight who are expected to check-in on the flights if this flight is cancelled or not operating due to typhoon or other reasons[?] In other words, are they not notified of the cancellation?

A

I think all these passengers were not notified because of a typhoon and Philippine Airlines Reservation were [sic] not able to call every passenger by phone.

Atty. Fruto:

Q Did you say `were not notified?'

A I believe they were not, but believe me, I was on day-off.

Atty. Calica:

Q

Per procedure, what should have been done by Reservations Office when a flight is cancelled for one reason or another?

A

If there is enough time, of course, Reservations Office x x x call[s] up all the passengers and tell[s] them the reason. But if there [is] no time[,] then the Reservations Office will not be able to do that."[40]

x x x x x x x x

"Q

I see. Miss Chan, I [will] show you a ticket which has been marked as Exh. A and A-1. Will you please go over this ticket and tell the court whether this is the ticket that was used precisely by Mr. Chiok when he checked-in at [F]light 307, 25 November `81?

A [Are you] now asking me whether he used this ticket with this sticker?

Q No, no, no. That was the ticket he used.

A Yes, [are you] asking me whether I saw this ticket?

Atty. Fruto: Yes.

A I believe I saw it.

Q

You saw it, O.K. Now of course you will agree with me Miss Chan that this yellow stub here which has been marked as Exh. A-1-A, show[s] that the status on flight 311, 24th November, is O.K., correct?

A Yes.

Q

You agree with me. And you will also agree with me that in this ticket of flight 311, on this, another sticker Exh. A-1-B for 24 November is O.K.?

A

May I x x x look at them. Yes, it says O.K. x x x, but [there is] no validation.

Q

O.K. Miss Chan what do you understand by these entries here R bar M N 6 V?[41]

A This is what we call a computer reference.

Q

I see. This is a computer reference showing that the name of Mr. Chiok has been entered in Philippine Airline's computer, and this is his computer number.

A Yes.

Q

Now you stated in your answer to the procedure taken, that all confirmed passengers on flight 311, 24 November[,] were automatically transferred to 307 as a protection for the passengers, correct?

A Correct.

Q

So that since following the O.K. status of Mr. Chiok's reservation [on] flight 311, [he] was also automatically transferred to flight 307 the following day?

A Should be.

Q Should be. O.K. Now do you remember how many passengers x x x were transferred from flight 311, 24 November to flight 307, 25 November 81?

A

I can only give you a very brief idea because that was supposed to be air bus so it should be able to accommodate 246 people; but how many [exactly], I don't know."[42]

x x x x x x x x

"Q

So, between six and eight o'clock in the evening of 25 November `81, Mr. Chiok already told you that he just [came] from the Swire Building where Philippine Airlines had [its] offices and that he told you that his space for 311 25 November 81 was confirmed?

A Yes.

Q That is what he told you. He insisted on that flight?

A Yes.

Q And did you not try to call up Swire Building-- Philippine Airlines and verify indeed if Mr. Chiok was there?

A

Swire House building is not directly under Philippine Airlines. it is just an agency for selling Philippine Airlines ticket. And besides around six o' clock they're close[d] in Central.

Q

So this Swire Building is an agency authorized by Philippine Airlines to issue tickets for and on behalf of Philippine Airlines and also...

A Yes.

Q And also to confirm spaces for and on behalf of Philippine Airlines.

A Yes."[43]

Under the foregoing circumstances, we cannot apply our 1989 ruling in *China Airlines v. Intermediate Appellate Court*,^[44] which petitioner urges us to adopt. In that case, the breach of contract and the negligence of the carrier in effecting the immediate flight connection for therein private respondent was incurred in good faith.^[45] Having found no gross negligence or recklessness, we thereby deleted the award of moral and exemplary damages against it.^[46]

This Court's 1992 ruling in *China Airlines v. Court of Appeals*^[47] is likewise inapplicable. In that case, we found no bad faith or malice in the airline's breach of its contractual obligation.^[48] We held that, as shown by the flow of telexes from one of the airline's offices to the others, petitioner therein had exercised diligent efforts in assisting the private respondent change his flight schedule. In the instant case, petitioner failed to exhibit the same care and sensitivity to respondent's needs.

In *Singson v. Court of Appeals*,^[49] we said:

"x x x Although the rule is that moral damages predicated upon a breach of contract of carriage may only be recoverable in instances where the mishap results in the death of a passenger, or where the carrier is guilty of fraud or bad faith, there are situations where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith, in which case, the passenger likewise becomes entitled to recover moral damages."

In the present case, we stress that respondent had repeatedly secured confirmations of his PR 311 flight on November 24, 1981 -- initially from CAL and subsequently from the PAL office in Hong Kong. The status of this flight was marked "OK" on a validating sticker placed on his ticket. That sticker also contained the entry "RMN6V." Ms Chan explicitly acknowledged that such entry was a computer reference that meant that respondent's name had been entered in PAL's computer.

Since the status of respondent on Flight PR 311 was "OK," as a matter of right testified to by PAL's witness, he should have been automatically transferred to and allowed to board Flight 307 the following day. Clearly resulting from negligence on the part of PAL was its claim that his name was not included in its list of passengers for the November 24, 1981 PR 311 flight and, consequently, in the list of the replacement flight PR 307. Since he had

secured confirmation of his flight -- not only once, but twice -- by personally going to the carrier's offices where he was consistently assured of a seat thereon -- PAL's negligence was so gross and reckless that it amounted to bad faith.

In view of the foregoing, we rule that moral and exemplary[50] damages were properly awarded by the lower courts.[51]

Third Issue:

Propriety of the Cross-Claim

We now look into the propriety of the ruling on CAL's cross-claim against PAL. Petitioner submits that the CA should have ruled on the cross-claim, considering that the RTC had found that it was PAL's employees who had acted negligently.

Section 8 of Rule 6 of the Rules of Court reads:

"Sec. 8. Cross-claim. - A cross claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant."

For purposes of a ruling on the cross-claim, PAL is an indispensable party. In *BA Finance Corporation v. CA*,[52] the Court stated:

"x x x. An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

x x x x x x x x

"Without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality."

PAL's interest may be affected by any ruling of this Court on CAL's cross-claim. Hence, it is imperative and in accordance with due process and fair play that PAL should have been impleaded as a party in the present proceedings, before this Court can make a final ruling on this matter.

Although PAL was petitioner's co-party in the case before the RTC and the CA, petitioner failed to include the airline in the present recourse. Hence, the Court has no jurisdiction over it. Consequently, to make any ruling on the cross-claim in the present Petition would not be legally feasible because PAL, not being a party in the present case, cannot be bound thereby.[53]

WHEREFORE, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Corona, and Carpio-Morales, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

[1] Rollo, pp. 3-20.

[2] Id., pp. 21-37; Penned by Justice Mercedes Gozo-Dadole and concurred in by Presiding Justice Ma. Alicia

Austria-Martinez (now a member of this Court) and Justice Portia Aliño-Hormachuelos.

[3] Id., pp. 38-39.

[4] CA Decision, p. 16; rollo, p. 36.

[5] This narration was reproduced also in the Petition and in the Memoranda of both petitioner and respondent.

[6] Id., pp. 2-5; rollo, pp. 22-25. Citations omitted.

[7] RTC Decision, pp. 5-6; CA rollo, pp. 131-132. Penned by Judge Regino T. Veridiano II.

[8] 65 SCRA 237, July 22, 1975.

[9] CA Decision, p. 15; rollo, p. 35.

[10] CA Resolution, p. 2; rollo, p. 39.

[11] This case was deemed submitted for decision on October 18, 2002, upon the Court's receipt of respondent's Memorandum signed by Atty. Edgar S. Asuncion of Padilla Jimenez Kintanar & Asuncion. Petitioner's Memorandum, signed by Atty. Marcial O. T. Balgos of Balgos & Perez, was filed earlier on October 4, 2002.

[12] Petitioner's Memorandum, p. 7; rollo, p. 78. Original in upper case.

[13] See CA Resolution, p. 2; rollo, p. 39.

[14] Rule 10.02, Canon 10 of the Code of Professional Responsibility, provides:

"A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved."

[15] KLM v. CA, supra, pp. 243-244, per Castro, J.

[16] CA Decision, p. 16; rollo, p. 36.

[17] In the present case, Philippine Reports are cited whenever possible.

[18] Supreme Court Reports Annotated.

[19] French Oil Mill Machinery Co., Inc. v. Court of Appeals, 356 Phil. 780, September 11, 1998.

[20] 169 SCRA 226, January 17, 1989.

[21] 211 SCRA 897, July 29, 1992.

[22] Also known as the Convention for the Unification of Certain Rules Relating to International Transportation by Air. The Philippine adherence to the Convention on November 9, 1950, was made public through Proclamation No. 201, 51 OG 10, pp. 4933-4934.

[23] 51 OG 10, p. 5085.

[24] 384 Phil. 227, March 9, 2000.

[25] Id., pp. 238-239, per Gonzaga-Reyes, J.

[26] 285 SCRA 450, January 29, 1998.

[27] 238 SCRA 290, November 24, 1994.

[28] Guerrero v. Court of Appeals, 349 Phil. 605, January 30, 1998; Batingal v. Court of Appeals, 351 SCRA 60, February 1, 2001.

[29] 123 Phil. 256, 264-265, March 30, 1966.

[30] TSN, January 10, 1984, pp. 11-14.

[31] Id., pp. 16-18.

[32] Id., pp. 21-24; TSN, April 9, 1985, p. 40.

[33] Oral Deposition, pp. 45-48.

[34] British Airways v. Court of Appeals, supra.

[35] 346 Phil. 831, November 18, 1997.

[36] Id., p. 845, per Bellosillo, J.

[37] 207 SCRA 498, March 23, 1992.

[38] Article 1733 of the Civil Code.

[39] The oral deposition was taken before Consul Jesus I. Yabes at the Philippine Consulate General in Hong Kong on March 17, 1987. The deposition was thereafter admitted as Exhibit 5 for PAL.

[40] Deposition, March 17, 1987, pp. 4-5; folder of exhibits for PAL, pp. 8-9.

[41] Also referred to as R/MN62 in some parts of the record.

[42] Id., pp. 27-28 and 31-32.

[43] Id., pp. 41-42 and 45-46.

[44] Supra at 20.

[45] Id., p. 235.

[46] Id., p. 236.

[47] Supra at 21.

[48] Recently, in Savellano v. Northwest, GR No. 151783, July 8, 2003, the Court awarded nominal, not moral and exemplary, damages -- in the absence of bad faith, ill will, malice or wanton conduct in the breach of the carriage contract.

[49] 346 Phil. 831, 842, November 18, 1997, per Bellosillo, J.

[50] The Civil Code provides:

"Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

"Art. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner."

[51] Considering that the incident, subject of this case, happened more than 20 years ago, the Court believes that the amounts awarded are more than reasonable.

[52] BA Finance Corporation v. Court of Appeals, 327 Phil. 716, 727-728, July 5, 1996, per Vitug, J; citing Imson v. Court of Appeals, 239 SCRA 58, December 8, 1994, per Puno, J. (Cited in Bank of Philippine Islands v. Court of Appeals et al., GR No. 146923, April 30, 2003).

[53] Padilla v. Court of Appeals, 370 SCRA 208, November 22, 2001; Matuguina Integrated Wood Products, Inc. v. Court of Appeals, 331 Phil. 795, October 24, 1996; Buazon v. Court of Appeals, 220 SCRA 182, March 19, 1993.

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