

F/O AUGUSTUS Z. LEDESMA, PETITIONER, VS. COURT OF APPEALS, AIR TRANSPORTATION OFFICE AND CIVIL AERONAUTICS BOARD, RESPONDENTS.*G.R. No. 166780. December 27, 2007*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166780/>**TINGA, J.:**

This is a Petition for Review on Certiorari[1] under the 1997 Rules of Civil Procedure assailing the Decision[2] and Resolution[3] dated 29 September 2004 and 18 January 1995, respectively, of the Court of Appeals in CA-G.R. SP No. 79414 that affirmed the resolutions of the Air Transportation Office (ATO) and the Civil Aeronautics Board (CAB) and denied petitioner's motion for reconsideration. The CAB resolution affirmed the ATO's order revoking petitioner's airman license and banning him from taking any theoretical examination in the future.

The antecedent facts are as follows:

Petitioner was a commercial airline pilot holding the rank of Second Officer on the Boeing 747-400 aircraft of the Philippine Airlines (PAL). To become a First Officer, petitioner must acquire an Airline Transport Pilot License (ATPL). Pursuant to Civil Air Regulation Administrative Order No. 60, series of 1956, petitioner must accomplish the following to secure from the ATO the issuance of the ATPL: (1) 1,200 hours of accumulated flight and/or command time, including at least 300 hours of accumulated night/instrument flight/command time; (2) a successful completion of the written theoretical examination; (3) Airmen Examination Board (AEB) Certification of Official Release evidencing that he has successfully hurdled 6 (six) examination subjects, namely, Civil Air Regulations, Theory of Flight, Navigation, Meteorology, Air Traffic Control and Weight and Balance; (4) a first-class medical examination; and (5) Proficiency Flight/Simulator Check.[4]

Between 1998 and 2000, petitioner took the examination on the six subjects. In particular, petitioner took the test in Theory of Flight on 18 May 2000. Petitioner passed the tests in Navigation, Meteorology, Air Traffic Control and Civil Air Regulations. After taking the test in Theory of Flight, a certain Mr. Borja summoned petitioner and told him that he obtained a grade of 26% in said subject. Petitioner complained and, thereafter, Mr. Borja clarified that he actually scored 55% on the subject. Petitioner again took the examination in Theory of Flight and in Weight and Balance on 27 July 2000. On 02 August 2000, a certain Leopoldo Areopagita issued an ATO-AEB certification of Official Release to petitioner which the latter submitted to PAL and ATO for purposes of obtaining a simulator training schedule and a check ride permit for the B747-400 training. Petitioner underwent training at the GECAT/CX Training Center in Hong Kong.[5]

On 17 August 2000, petitioner received a subpoena requiring him to appear and testify before the five-member panel of the ATO which was then investigating the alleged fabrication of the AEB examination results. The ATO directed petitioner to bring the original copy of the ATO-AEB certification in his possession. Petitioner informed the ATO that his copy of the Certificate of Official Release was missing and that he would not appear at the hearings without the presence of counsel.

On 30 January 2001, the ATO investigating committee issued a resolution[6] finding that the control number on petitioner's ATO-AEB certification dated 31 July 2000 was exactly the same control number previously issued to a certain Ernest Stephen V. Pante. The committee further revealed a disparity in the examination results entered in the ATO-AEB certification presented by petitioner and in the entries of examination grades in the ATO-AEB Index Card kept in the ATO records. Petitioner also admitted that he paid Areopagita P25,000.00 to protect his grades from tampering.

The committee recommended the banning of petitioner from taking theoretical examination in the future, to wit:

In view of the above, it is recommended that all the airmen licenses of F/O Ledesma be revoked and that he be banned from taking any theoretical examination in the future at the Airmen Examination Board, without prejudice to the filing of appropriate criminal charges against him, and those who later on will be found to have participated, directly or indirectly, in the fabrication of the questioned document, subject matter of this case.

With regard to Mr. Leopoldo Areopagita and Capt. Rommel Cadingan, the investigation will be continued, as far as they are concerned, considering that there are still other pending cases involving their names.

For ASEC's concurrence/approval of the recommendation.[7]

Petitioner filed a motion for reconsideration[8] of the resolution, raising the following arguments: (1) that he was not fully accorded the opportunity to comprehend the accusation against him; (2) that he was not given the opportunity to adduce evidence on his behalf; (3) that the ATO investigating committee sweepingly concluded that his ATO-AEB certification was spurious; and (4) that one of the members of the said committee, Captain Octavio Sunga, signed the spurious ATO-AEB certification but did not inhibit himself from the proceedings.

In a letter[9] dated 21 September 2001, Assistant Secretary Adelberto F. Yap informed petitioner's counsel of the denial of the motion for reconsideration. Petitioner appealed to the CAB.[10] In Resolution No. 164[11] dated 26 July 2002, the CAB denied petitioner's appeal for lack of merit. Thus, petitioner elevated the case to the Court of Appeals via a petition for review[12] arguing that: (1) the ATO failed to observe administrative due process in the conduct of the investigation; (2) the Board and the ATO erred in concluding that petitioner paid Areopagita in exchange for securing the spurious ATO-AEB certification; (3) the CAB erred in ruling that petitioner's motion for reconsideration cleared any irregularities in the proceedings before the ATO; and (4) the ATO should have allowed petitioner to retake the examination in Weight and Balance.[13]

In the assailed Decision dated 29 September 2004,[14] the Court of Appeals affirmed the resolutions of the Board. It also denied petitioner's motion for reconsideration. The appellate court disregarded petitioner's allegation that certain requirements of administrative due process were not observed in the investigation before the ATO because, according to the court, it was shown that petitioner was informed of the accusation against him through the subpoena, his counsel was allowed to manifest in writing his observations on the proceedings albeit he was barred from intervening therein, and any irregularity in the proceedings was cured by petitioner's motion for reconsideration. It also affirmed the finding that petitioner had paid Areopagita P25,000.00 in exchange for his services in securing the spurious ATO-AEB certification.

The instant petition attributes the following errors to the Court of Appeals:

I

THE AIRMEN LICENSE GRANTED TO PETITIONER HAS EVOLVED INTO A PROPERTY RIGHT THAT CANNOT BE TAKEN AWAY CAPRICIOUSLY AND WHIMSICALLY BY THE AIR TRANSPORTATION OFFICE AND CIVIL AERONAUTICS BOARD WITHOUT DUE PROCESS OF LAW.

II

THE COURT OF APPEALS ERRED IN [THE] RULING THAT PETITIONER WAS NOT DEPRIVED OF HIS RIGHT TO BE INFORMED OF THE NATURE OF CAUSE OF ACCUSATION AGAINST HIM AND HIS RIGHT TO COUNSEL.

III

THE COURT OF APPEALS ERRED IN RULING THAT A MOTION FOR RECONSIDERATION FILED BY PETITIONER CURED ANY DEFECTS OR IRREGULARITIES DURING THE AIR TRANSPORTATION OFFICE AND CIVIL AERONAUTICS BOARD PROCEEDINGS.

IV

THE COURT OF APPEALS ERRED IN HASTILY CONCLUDING THAT THE CERTIFICATION OF RELEASE ISSUED IN FAVOR OF PETITIONER WAS TAMPERED.

V

THE COURT OF APPEALS ERRED IN RULING THAT THE ADMISSION OF PETITIONER IN GIVING [P]25,000 WAS A BRIBE TO SECURE A FICTITIOUS CERTIFICATE OF RELEASE.

VI

THE ATO SHOULD HAVE ORDERED PETITIONER TO TAKE ANOTHER EXAM IN WEIGHT AND BALANCE IN ORDER TO FULLY DETERMINE HIS CAPACITY AND KNOWLEDGE OVER THE SAID SUBJECT MATTER.[15]

Essentially, the assigned errors raise three major arguments, namely: denial of due process in the proceedings before the ATO and the CAB; the undue weight accorded to petitioner's giving of P25,000.00 to a "middleman" operating at the ATO; and the alleged harshness of the penalty imposed on petitioner.

The issue of due process in the proceedings before the ATO had already been raised and passed upon by the CAB and the Court of Appeals. The petitioner merely reiterates the same arguments in support of this position. These arguments relate to the right to be informed of the charge, the requirements of administrative due process and the right to counsel and the nature of the license in relation to due process.

The tribunals below correctly concluded that the minimum requirements of administrative due process have been complied with. Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[16] The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[17]

Petitioner's complaint that he did not fully appreciate the nature of the charges against him because the ATO even without an ostensible complainant against him failed to state or announce that petitioner was being charged with falsification, is incorrect. The subpoena issued to him clearly stated that petitioner should appear before the panel investigating his "alleged falsification of the AEB examination results." [18]

The absence of a complainant also did not affect the regularity of the investigation. As opposed to a regular trial court, an administrative agency, vested with quasi-judicial functions, may investigate an irregularity on its own

initiative. Particularly in the instant case, the overriding considerations of public safety warranted the investigation of the falsification of the subject ATO-AEB certification, which allowed petitioner to undergo training despite his lack of qualifications.

Concerning the right to representation, it is sufficient that petitioner's counsel of choice was allowed to submit in writing his observations on the investigation. Petitioner's counsel even filed a memorandum before the CAB. What is frowned upon is the absolute deprivation of the right to counsel. The counsel's participation in a proceeding similar to that of a courtroom trial is not required. Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.[19]

Petitioner contends that his airman license has become a property right protected by due process and could not be taken away capriciously. Petitioner argues that due process and fair play demand that there must be a determination of his capacity by allowing him to take another examination in Weight and Balance.

As already discussed above, the ATO has complied with the minimum standards of administrative due process in investigating petitioner on the fabrication of his ATO-AEB certification and the conclusions arrived at by the ATO were supported by evidence on record and affirmed by the CAB and the Court of Appeals. Thus, the revocation of petitioner's airman license was imposed in accordance with the requirements of due process. Moreover, petitioner's airman license cannot be considered a property right, it is but a mere privilege, subject to the restrictions imposed by the ATO and its revocation if warranted.

In any event, the Court of Appeals is correct in ruling that whatever irregularity in the ATO proceedings was cured by petitioner's filing of a motion for reconsideration.

Petitioner insists that the denial of the motion for reconsideration was issued hastily because the motion pointed out irregularities in the conduct of the investigation, hence, the motion for reconsideration did not cure the irregularity in the ATO proceedings.

That petitioner appears to have been singled out by the Investigating Committee does not negate its finding that he was guilty of securing a tampered ATO-AEB certification by buying off the middleman, Areopagita. Notwithstanding the perceived irregularity and impartiality of the investigating committee, the truth of the matter is that the ATO's finding on petitioner's participation in the falsification of the ATO-AEB certification is supported by evidence on record.

Significantly, petitioner seeks redress even though since day one, he has already fully realized he is not entitled to it, as he comes to court with unclean hands and admitted that he paid Areopagita P25,000.00 to allegedly protect his test results from tampering. Aside from petitioner's admission, there is adequate evidence proving that petitioner's ATO-AEB certification was falsified. It is undisputed that the test result on Weight and Balance was tampered. Both the ATO and the CAB found that petitioner knew about the tampering for he paid P25,000.00 to Areopagita. Petitioner's pretense that the money was given merely to ensure that his grade would be protected is absurd and flimsy.

The Court has reviewed the findings of the ATO and fully concurs with its conclusion. In reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These

principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.[20]

On the propriety of the penalty of revocation of petitioner's license, the Court finds the penalty commensurate with petitioner's infraction.

Under Executive Order No. 125, Sec. 12,[21] the ATO is vested with the function to establish and prescribe rules and regulations for the issuance of license to qualified airmen. Corollary to this function is the power to impose sanctions on erring airmen. The Court cannot fault the ATO for the revocation of petitioner's airman license because it is the bounden duty of the ATO to order the revocation of licenses when warranted by public safety considerations.

WHEREFORE, the instant petition for review on certiorari is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 79414 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 10-55.

[2] Id. at 60-74; penned by Justice Eugenio S. Labitoria, Chairperson, Special Fourth Division, and concurred in by Justices. Rebecca De Guia-Salvador and Rosalinda Asuncion-Vicente.

[3] Id. at 76-77.

[4] Id. at 14-15.

[5] Id. at 16-17.

[6] Id. at 131-134.

[7] Id. at 133-134.

[8] Id. at 135-145.

[9] Id. at 148.

[10] Id. at 149-162.

[11] Id. at 122-124.

[12] CA rollo, pp. 10-52.

[13] Id. at 18-19.

[14] Supra note 2.

[15] Rollo, p. 21.

[16] Cayago v. Lina, G.R. No. 149539, 19 January 2005, 449 SCRA 29, 44-45.

[17] Libres v. NLRC, 367 Phil. 181, 190 (1999).

[18] Rollo, p. 128.

[19] Montemayor v. Bundalian, 453 Phil. 158, 166-167 (2003).

[20] Id. at 167.

[21] Entitled, "Reorganization Act of the Ministry of Transportation and Communications," dated January 30, 1987.

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