

PHILIPPINE AIRLINES, INC. (PAL), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ISABEL P. ORTI-GUERRA, AND PHILIPPINE AIRLINES EMPLOYEES ASSOCIATION (PALEA)...

G.R. No. 85985. August 13, 1993

Ponente: MELO, J.

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MELO, J.:

In the instant petition for certiorari, the Court is presented the issue of whether or not the formulation of a Code of Discipline among employees is a shared responsibility of the employer and the employees.

On March 15, 1985, the Philippine Airlines, Inc. (PAL) completely revised its 1966 Code of Discipline. The Code was circulated among the employees and was immediately implemented, and some employees were forthwith subjected to the disciplinary measures embodied therein.

Thus, on August 20, 1985, the Philippine Airlines Employees Association (PALEA) filed a complaint before the National Labor Relations Commission (NLRC) for unfair labor practice (Case No. NCR-7-2051-85) with the following remarks: "ULP with arbitrary implementation of PAL's Code of Discipline without notice and prior discussion with Union by Management" (Rollo, p. 41). In its position paper, PALEA contended that PAL, by its unilateral implementation of the Code, was guilty of unfair labor practice, specifically Paragraphs E and G of Article 249 and Article 253 of the Labor Code. PALEA alleged that copies of the Code had been circulated in limited numbers; that being penal in nature the Code must conform with the requirements of sufficient publication, and that the Code was arbitrary, oppressive, and prejudicial to the rights of the employees. It prayed that implementation of the Code be held in abeyance; that PAL should discuss the substance of the Code with PALEA; that employees dismissed under the Code be reinstated and their cases subjected to further hearing; and that PAL be declared guilty of unfair labor practice and be ordered to pay damages (pp. 7-14, Record.)

PAL filed a motion to dismiss the complaint, asserting its prerogative as an employer to prescribe rules and regulations regarding employees' conduct in carrying out their duties and functions, and alleging that by implementing the Code, it had not violated the collective bargaining agreement (CBA) or any provision of the Labor Code. Assailing the complaint as unsupported by evidence, PAL maintained that Article 253 of the Labor Code cited by PALEA referred to the requirements for negotiating a CBA which was inapplicable as indeed the current CBA had been negotiated.

In its reply to PAL's position paper, PALEA maintained that Article 249 (E) of the Labor Code was violated when PAL unilaterally implemented the Code, and cited provisions of Articles IV and I of Chapter II of the Code as defective for, respectively, running counter to the construction of penal laws and making punishable any offense within PAL's contemplation. These provisions are the following:

Section 2. Non-exclusivity. - This Code does not contain the entirety of the rules and regulations of the

company. Every employee is bound to comply with all applicable rules, regulations, policies, procedures and standards, including standards of quality, productivity, and behaviour, as issued and promulgated by the company through its duly authorized officials. Any violations thereof shall be punishable with a penalty to be determined by the gravity and/or frequency of the offense.

Section 7. Cumulative Record. - An employee's record of offenses shall be cumulative. The penalty for an offense shall be determined on the basis of his past record of offenses of any nature or the absence thereof. The more habitual an offender has been, the greater shall be the penalty for the latest offense. Thus, an employee may be dismissed if the number of his past offenses warrants such penalty in the judgment of management even if each offense considered separately may not warrant dismissal. Habitual offenders or recidivists have no place in PAL. On the other hand, due regard shall be given to the length of time between commission of individual offenses to determine whether the employee's conduct may indicate occasional lapses (which may nevertheless require sterner disciplinary action) or a pattern of incorrigibility.

Labor Arbiter Isabel P. Ortiguerra handling the case called the parties to a conference but they failed to appear at the scheduled date. Interpreting such failure as a waiver of the parties' right to present evidence, the labor arbiter considered the case submitted for decision. On November 7, 1986, a decision was rendered finding no bad faith on the part of PAL in adopting the Code and ruling that no unfair labor practice had been committed. However, the arbiter held that PAL was "not totally fault free" considering that while the issuance of rules and regulations governing the conduct of employees is a "legitimate management prerogative" such rules and regulations must meet the test of "reasonableness, propriety and fairness." She found Section 1 of the Code aforequoted as "an all embracing and all encompassing provision that makes punishable any offense one can think of in the company"; while Section 7, likewise quoted above, is "objectionable for it violates the rule against double jeopardy thereby ushering in two or more punishment for the same misdemeanor." (pp. 38-39, Rollo.)

The labor arbiter also found that PAL "failed to prove that the new Code was amply circulated." Noting that PAL's assertion that it had furnished all its employees copies of the Code is unsupported by documentary evidence, she stated that such "failure" on the part of PAL resulted in the imposition of penalties on employees who thought all the while that the 1966 Code was still being followed. Thus, the arbiter concluded that "(t)he phrase ignorance of the law excuses no one from compliance ... finds application only after it has been conclusively shown that the law was circulated to all the parties concerned and efforts to disseminate information regarding the new law have been exerted." (p. 39, Rollo.) She thereupon disposed:

WHEREFORE, premises considered, respondent PAL is hereby ordered as follows:

1. Furnish all employees with the new Code of Discipline;
2. Reconsider the cases of employees meted with penalties under the New Code of Discipline and remand the same for further hearing; and
3. Discuss with PALEA the objectionable provisions specifically tackled in the body of the decision.

All other claims of the complainant union (is) [are] hereby dismissed for lack of merit.

SO ORDERED. (p. 40, Rollo.)

PAL appealed to the NLRC. On August 19, 1988, the NLRC through Commissioner Encarnacion, with Presiding Commissioner Bonto-Perez and Commissioner Maglaya concurring, found no evidence of unfair labor practice committed by PAL and affirmed the dismissal of PALEA's charge. Nonetheless, the NLRC made the following observations:

Indeed, failure of management to discuss the provisions of a contemplated code of discipline which shall

govern the conduct of its employees would result in the erosion and deterioration of an otherwise harmonious and smooth relationship between them as did happen in the instant case. There is no dispute that adoption of rules of conduct or discipline is a prerogative of management and is imperative and essential if an industry has to survive in a competitive world. But labor climate has progressed, too. In the Philippine scene, at no time in our contemporary history is the need for a cooperative, supportive and smooth relationship between labor and management more keenly felt if we are to survive economically. Management can no longer exclude labor in the deliberation and adoption of rules and regulations that will affect them.

The complainant union in this case has the right to feel isolated in the adoption of the New Code of Discipline. The Code of Discipline involves security of tenure and loss of employment - a property right! It is time that management realizes that to attain effectiveness in its conduct rules, there should be candidness and openness by Management and participation by the union, representing its members. In fact, our Constitution has recognized the principle of "shared responsibility" between employers and workers and has likewise recognized the right of workers to participate in "policy and decision-making process affecting their rights ..." The latter provision was interpreted by the Constitutional Commissioners to mean participation in "management" (Record of the Constitutional Commission, Vol. II).

In a sense, participation by the union in the adoption of the code of conduct could have accelerated and enhanced their feelings of belonging and would have resulted in cooperation rather than resistance to the Code. In fact, labor-management cooperation is now "the thing." (pp. 3-4, NLRC Decision ff. p. 149, Original Record.)

Respondent Commission thereupon disposed:

WHEREFORE, premises considered, we modify the appealed decision in the sense that the New Code of Discipline should be reviewed and discussed with complainant union, particularly the disputed provisions [...] [T]hereafter, respondent is directed to furnish each employee with a copy of the appealed Code of Discipline. The pending cases adverted to in the appealed decision if still in the arbitral level, should be reconsidered by the respondent Philippine Air Lines. Other dispositions of the Labor Arbiter are sustained.

SO ORDERED. (p. 5, NLRC Decision.)

PAL then filed the instant petition for certiorari charging public respondents with grave abuse of discretion in: (a) directing PAL "to share its management prerogative of formulating a Code of Discipline"; (b) engaging in quasi-judicial legislation in ordering PAL to share said prerogative with the union; (c) deciding beyond the issue of unfair labor practice, and (d) requiring PAL to reconsider pending cases still in the arbitral level (p. 7, Petition; p. 8, Rollo.)

As stated above, the principal issue submitted for resolution in the instant petition is whether management may be compelled to share with the union or its employees its prerogative of formulating a code of discipline.

PAL asserts that when it revised its Code on March 15, 1985, there was no law which mandated the sharing of responsibility therefor between employer and employee.

Indeed, it was only on March 2, 1989, with the approval of Republic Act No. 6715, amending Article 211 of the Labor Code, that the law explicitly considered it a State policy "(t)o ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare." However, even in the absence of said clear provision of law, the exercise of management prerogatives was never considered boundless. Thus, in *Cruz vs. Medina* (177 SCRA 565 [1989]), it was held that management's prerogatives must be without abuse of discretion.

In *San Miguel Brewery Sales Force Union (PTGWO) vs. Ople* (170 SCRA 25 [1989]), we upheld the company's

right to implement a new system of distributing its products, but gave the following caveat:

So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them. (at p. 28.)

All this points to the conclusion that the exercise of managerial prerogatives is not unlimited. It is circumscribed by limitations found in law, a collective bargaining agreement, or the general principles of fair play and justice (*University of Sto. Tomas vs. NLRC*, 190 SCRA 758 [1990]). Moreover, as enunciated in *Abbott Laboratories (Phil.), Inc. vs. NLRC* (154 SCRA 713 [1987]), it must be duly established that the prerogative being invoked is clearly a managerial one.

A close scrutiny of the objectionable provisions of the Code reveals that they are not purely business-oriented nor do they concern the management aspect of the business of the company as in the *San Miguel* case. The provisions of the Code clearly have repercussions on the employees' right to security of tenure. The implementation of the provisions may result in the deprivation of an employee's means of livelihood which, as correctly pointed out by the NLRC, is a property right (*Callanta vs. Carnation Philippines, Inc.*, 145 SCRA 268 [1986]). In view of these aspects of the case which border on infringement of constitutional rights, we must uphold the constitutional requirements for the protection of labor and the promotion of social justice, for these factors, according to Justice Isagani Cruz, tilt "the scales of justice when there is doubt, in favor of the worker" (*Employees Association of the Philippine American Life Insurance Company vs. NLRC*, 199 SCRA 628 [1991] 635).

Verily, a line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of the employees. In treating the latter, management should see to it that its employees are at least properly informed of its decisions or modes of action. PAL asserts that all its employees have been furnished copies of the Code. Public respondents found to the contrary, which finding, to say the least is entitled to great respect.

PAL posits the view that by signing the 1989-1991 collective bargaining agreement, on June 27, 1990, PALEA in effect recognized PAL's "exclusive right to make and enforce company rules and regulations to carry out the functions of management without having to discuss the same with PALEA and much less, obtain the latter's conformity thereto" (pp. 11-12, Petitioner's Memorandum; pp. 180-181, Rollo.) Petitioner's view is based on the following provision of the agreement:

The Association recognizes the right of the Company to determine matters of management policy and Company operations and to direct its manpower. Management of the Company includes the right to organize, plan, direct and control operations, to hire, assign employees to work, transfer employees from one department to another, to promote, demote, discipline, suspend or discharge employees for just cause; to lay-off employees for valid and legal causes, to introduce new or improved methods or facilities or to change existing methods or facilities and the right to make and enforce Company rules and regulations to carry out the functions of management.

The exercise by management of its prerogative shall be done in a just, reasonable, humane and/or lawful manner.

Such provision in the collective bargaining agreement may not be interpreted as cession of employees' rights to participate in the deliberation of matters which may affect their rights and the formulation of policies relative thereto. And one such matter is the formulation of a code of discipline.

Indeed, industrial peace cannot be achieved if the employees are denied their just participation in the discussion of matters affecting their rights. Thus, even before Article 211 of the Labor Code (P.D. 442) was amended by

Republic Act No. 6715, it was already declared a policy of the State: "(d) To promote the enlightenment of workers concerning their rights and obligations ... as employees." This was, of course, amplified by Republic Act No. 6715 when it decreed the "participation of workers in decision and policy making processes affecting their rights, duties and welfare." PAL's position that it cannot be saddled with the "obligation" of sharing management prerogatives as during the formulation of the Code, Republic Act No. 6715 had not yet been enacted (Petitioner's Memorandum, p. 44; Rollo, p. 212), cannot thus be sustained. While such "obligation" was not yet founded in law when the Code was formulated, the attainment of a harmonious labor-management relationship and the then already existing state policy of enlightening workers concerning their rights as employees demand no less than the observance of transparency in managerial moves affecting employees' rights.

Petitioner's assertion that it needed the implementation of a new Code of Discipline considering the nature of its business cannot be overemphasized. In fact, its being a local monopoly in the business demands the most stringent of measures to attain safe travel for its patrons. Nonetheless, whatever disciplinary measures are adopted cannot be properly implemented in the absence of full cooperation of the employees. Such cooperation cannot be attained if the employees are restive on account of their being left out in the determination of cardinal and fundamental matters affecting their employment.

WHEREFORE, the petition is DISMISSED and the questioned decision AFFIRMED. No special pronouncement is made as to costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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