

BRITISH AIRWAYS, INC., PETITIONER, VS. THE HON. COURT OF APPEALS, TWELFTH DIVISION, AND FIRST INTERNATIONAL TRADING AND GENERAL SERVICES, RESPONDENTS.

G.R. No. 92288, February 09, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari to annul and set aside the decision dated November 15, 1989 of the Court of Appeals[1] affirming the decision of the trial court[2] in ordering petitioner British Airways, Inc. to pay private respondent First International Trading and General Services actual damages, moral damages, corrective or exemplary damages, attorney's fees and the costs as well as the Resolution dated February 15, 1990[3] denying petitioner's Motion for Reconsideration in the appealed decision.

It appears on record that on February 15, 1981, private respondent First International Trading and General Services Co., a duly licensed domestic recruitment and placement agency, received a telex message from its principal ROLACO Engineering and Contracting Services in Jeddah, Saudi Arabia to recruit Filipino contract workers in behalf of said principal.[4]

During the early part of March 1981, said principal paid to the Jeddah branch of petitioner British Airways, Inc. airfare tickets for 93 contract workers with specific instruction to transport said workers to Jeddah on or before March 30, 1981.

As soon as petitioner received a prepaid ticket advice from its Jeddah branch to transport the 93 workers, private respondent was immediately informed by petitioner that its principal had forwarded 93 prepaid tickets. Thereafter, private respondent instructed its travel agent, ADB Travel and Tours, Inc., to book the 93 workers with petitioner but the latter failed to fly said workers, thereby compelling private respondent to borrow money in the amount of P304,416.00 in order to purchase airline tickets from the other airlines as evidenced by the cash vouchers (Exhibits "B", "C" and "C-1 to C-7") for the 93 workers it had recruited who must leave immediately since the visas of said workers are valid only for 45 days and the Bureau of Employment Services mandates, that contract workers must be sent to the jobsite within a period of 30 days.

Sometime in the first week of June, 1981, private respondent was again informed by the petitioner that it had received a prepaid ticket advice from its Jeddah branch for the transportation of 27 contract workers. Immediately, private respondent instructed its travel agent to book the 27 contract workers with the petitioner but the latter was only able to book and confirm 16 seats on its June 9, 1981 flight. However, on the date of the scheduled flight only 9 workers were able to board said flight while the remaining 7 workers were rebooked to June 30, 1981 which bookings were again cancelled by the petitioner without any prior notice to either private respondent or the workers. Thereafter, the 7 workers were rebooked to the July 4, 1981 flight of petitioner with 6 more workers booked for said flight. Unfortunately, the confirmed bookings of the 13 workers were again cancelled and rebooked to July 7, 1981.

On July 6, 1981, private respondent paid the travel tax of the said workers as required by the petitioner but when the receipt of the tax payments was submitted, the latter informed private respondent that it can only confirm the seats of the 12 workers on its July 7, 1981 flight. However, the confirmed seats of said workers were again cancelled without any prior notice either to the private respondent or said workers. The 12 workers were finally able to leave for Jeddah after private respondent had bought tickets from the other airlines.

As a result of these incidents, private respondent sent a letter to petitioner demanding compensation for the damages it had incurred by the latter's repeated failure to transport its contract workers despite confirmed bookings and payment of the corresponding travel taxes.

On July 23, 1981, the counsel of private respondent sent another letter to the petitioner demanding the latter to pay the amount of P350,000.00 representing damages and unrealized profit or income which was denied by the petitioner.

On August 8, 1981, private respondent received a telex message from its principal cancelling the hiring of the remaining recruited workers due to the delay in transporting the workers to Jeddah.[5]

On January 27, 1982, private respondent filed a complaint for damages against petitioner with the Regional Trial Court of Manila, Branch 1 in Civil Case No. 82-4653.

On the other hand, petitioner alleged in its Answer with counterclaims that it received a telex message from Jeddah on March 20, 1981 advising that the principal of private respondent had prepaid the airfares of 100 persons to transport private respondent's contract workers from Manila to Jeddah on or before March 30, 1981. However, due to the unavailability of space and limited time, petitioner had to return to its sponsor in Jeddah the prepaid ticket advice consequently not even one of the alleged 93 contract workers were booked in any of its flights.

On June 5, 1981, petitioner received another prepaid ticket advice to transport 16 contract workers of private respondent to Jeddah but the travel agent of the private respondent booked only 10 contract workers for petitioner's June 9, 1981 flight. However, only 9 contract workers boarded the scheduled flight with 1 passenger not showing up as evidenced by the Philippine Airlines' passenger manifest for Flight BA-020 (Exhibit "7", "7-A", "7-B" & "7-C").[6]

Thereafter, private respondent's travel agent booked seats for 5 contract workers on petitioner's July 4, 1981 flight but said travel agent cancelled the booking of 2 passengers while the other 3 passengers did not show up on said flight.

Sometime in July 1981, the travel agent of the private respondent booked 7 more contract workers in addition to the previous 5 contract workers who were not able to board the July 4, 1981 flight with the petitioner's July 7, 1981 flight which was accepted by petitioner subject to reconfirmation.

However on July 6, 1981, petitioner's computer system broke down which resulted to petitioner's failure to get a reconfirmation from Saudi Arabia Airlines causing the automatic cancellation of the bookings of private respondent's 12 contract workers. In the morning of July 7, 1981, the computer system of the petitioner was reinstalled and immediately petitioner tried to reinstate the bookings of the 12 workers with either Gulf Air or Saudi Arabia Airlines but both airlines replied that no seat was available on that date and had to place the 12 workers on the wait list. Said information was duly relayed to the private respondent and the 12 workers before the scheduled flight.

After due trial on August 27, 1985, the trial court rendered its decision, the dispositive portion of which reads

as follows:

"WHEREFORE, in view of all the foregoing, this Court renders judgment:

- "1. Ordering the defendant to pay the plaintiff actual damages in the sum of P308,016.00;
- "2. Ordering defendant to pay moral damages to the plaintiff in the amount of P20,000.00;
- "3. Ordering the defendant to pay to the plaintiff P10,000.00 by way of corrective or exemplary damages;
- "4. Ordering the defendant to pay the plaintiff 30% of its total claim for and as attorney's fees; and
- "5. To pay the costs."[7]

On March 13, 1986, petitioner appealed said decision to respondent appellate court after the trial court denied its Motion for Reconsideration on February 28, 1986.

On November 15, 1989, respondent appellate court affirmed the decision of the trial court, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby AFFIRMED with costs against the appellant."[8]

On December 9, 1989, petitioner filed a Motion for Reconsideration which was also denied.

Hence, this petition.

It is the contention of petitioner that private respondent has no cause of action against it there being no perfected contract of carriage existing between them as no ticket was ever issued to private respondent's contract workers and, therefore, the obligation of the petitioner to transport said contract workers did not arise. Furthermore, private respondent's failure to attach any ticket in the complaint further proved that it was never a party to the alleged transaction.

Petitioner's contention is untenable.

Private respondent had a valid cause of action for damages against petitioner. A cause of action is an act or omission of one party in violation of the legal right or rights of the other.[9] Petitioner's repeated failures to transport private respondent's workers in its flight despite confirmed booking of said workers clearly constitutes breach of contract and bad faith on its part. In resolving petitioner's theory that private respondent has no cause of action in the instant case, the appellate court correctly held that:

"In dealing with the contract of common carriage of passengers, for purpose of accuracy, there are two (2) aspects of the same, namely: (a) the contract 'to carry (at some future time),' which contract is consensual and is necessarily perfected by mere consent (See Article 1356, Civil Code of the Philippines); and (b) the 'contract of carriage' or 'of common carriage' itself which should be considered as a real contract for not until the carrier is actually used can the carrier be said to have already assumed the obligation of a carrier. (Paras, Civil Code Annotated, Vol. V, p.429, Eleventh Ed.)

"In the instant case, the contract 'to carry' is the one involved, which is consensual and is perfected by the mere consent of the parties.

"There is no dispute as to the appellee's consent to the said contract 'to carry' its contract workers from Manila to Jeddah. The appellant's consent thereto, on the other hand, was manifested by its acceptance of the PTA or prepaid ticket advice that ROLACO Engineering has prepaid the airfares of the appellee's contract workers advising the appellant that it must transport the contract workers on or before the end of March, 1981 and the other batch in June, 1981.

"Even if a PTA is merely an advice from the sponsors that an airline is authorized to issue a ticket and thus no ticket was yet issued, the fact remains that the passage had already been paid for by the principal of the appellee, and the appellant had accepted such payment. The existence of this payment was never objected to nor questioned by the appellant in the lower court. Thus, the cause or consideration which is the fare paid for the passengers exists in this case.

"The third essential requisite of a contract is an object certain. In this contract 'to carry', such an object is the transport of the passengers from the place of departure to the place of destination as stated in the telex.

"Accordingly, there could be no more pretensions as to the existence of an oral contract of carriage imposing reciprocal obligations on both parties.

"In the case of appellee, it has fully complied with the obligation, namely, the payment of the fare and its willingness for its contract workers to leave for their place of destination.

"On the other hand, the facts clearly show that appellant was remiss in its obligation to transport the contract workers on their flight despite confirmation and bookings made by appellee's travelling agent.

"x x x.

"Besides, appellant knew very well that time was of the essence as the prepaid ticket advice had specified the period of compliance therewith, and with emphasis that it could only be used if the passengers fly on BA. Under the circumstances, the appellant should have refused acceptance of the PTA from appellee's principal or to at least inform appellee that it could not accommodate the contract workers.

"x x x .

"While there is no dispute that ROLACO Engineering advanced the payment for the airfares of the appellee's contract workers who were recruited for ROLACO Engineering and the said contract workers were the intended passengers in the aircraft of the appellant, the said contract 'to carry' also involved the appellee for as recruiter he had to see to it that the contract workers should be transported to ROLACO Engineering in Jeddah thru the appellant's transportation. For that matter, the involvement of the appellee in the said contract 'to carry' was well demonstrated when the appellant upon receiving the PTA immediately advised the appellee thereof."[10]

Petitioner also contends that the appellate court erred in awarding actual damages in the amount of P308,016.00 to private respondent since all expenses had already been subsequently reimbursed by the latter's principal.

In awarding actual damages to private respondent, the appellate court held that the amount of P308,016.00 representing actual damages refers to private respondent's second cause of action involving the expenses incurred by the latter which were not reimbursed by ROLACO Engineering. However, in the Complaint[11] filed by private respondent, it was alleged that private respondent suffered actual damages in the amount of P308,016.00 representing the money it borrowed from friends and financiers which is P304,416.00 for the 93 airline tickets and P3,600.00 for the travel tax of the 12 workers. It is clear therefore that the actual damages private respondent seeks to recover are the airline tickets and travel taxes it spent for its workers which were already reimbursed by its principal and not for any other expenses it had incurred in the process of recruiting said contract workers. Inasmuch as all expenses including the processing fees incurred by private respondent had already been paid for by the latter's principal on a staggered basis as admitted in open court by its managing director, Mrs Bienvenida Brusellas,[12] We do not find anymore justification in the appellate court's decision in granting actual damages to private respondent.

Thus, while it may be true that private respondent was compelled to borrow money for the airfare tickets of its contract workers when petitioner failed to transport said workers, the reimbursements made by its principal to

private respondent failed to support the latter's claim that it suffered actual damages as a result of petitioner's failure to transport said workers. It is undisputed that private respondent had consistently admitted that its principal had reimbursed all its expenses.

Article 2199 of the Civil Code provides that:

"Except as provided by law or by stipulations, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

Furthermore, actual or compensatory damages cannot be presumed, but must be duly proved, and proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof.[13]

However, private respondent is entitled to an award of moral and exemplary damages for the injury it suffered as a result of petitioner's failure to transport the former's workers because of the latter's patent bad faith in the performance of its obligation. As correctly pointed out by the appellate court:

"As evidence had proved, there was complete failure on the part of the appellant to transport the 93 contract workers of the appellee on or before March 30, 1981 despite receipt of the payment for their airfares, and acceptance of the same by the appellant, with specific instructions from the appellee's principal to transport the contract workers on or before March 30, 1981. No previous notice was ever registered by the appellant that it could not comply with the same. And then followed the detestable act of appellant in unilaterally cancelling, booking and rebooking unreasonably the flight of appellee's contract workers in June to July, 1981 without prior notice. And all of these actuations of the appellant indeed constitute malice and evident bad faith which had caused damage and besmirched the reputation and business image of the appellee." [14]

As to the alleged damages suffered by the petitioner as stated in its counterclaims, the record shows that no claim for said damages was ever made by the petitioner immediately after their alleged occurrence therefore said counterclaims were mere afterthoughts when private respondent filed the present case.

WHEREFORE, the assailed decision is hereby **AFFIRMED** with the **MODIFICATION** that the award of actual damages be deleted from said decision.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Rollo, pp. 48-61. Ponente: Justice Gloria C. Paras with the concurrence of Justice Venancio D. Aldecoa, Jr. and Justice Regina G. Ordoñez-Benitez.

[2] *Id.*, at pp. 176-181. Penned by Judge Rosalio C. Segundo.

[3] *Id.*, at pp. 90-94.

[4] Exhibit "B," Original Records, p. 48.

[5] Exhibit "E," Original Records, at p. 58.

[6] Folder of Exhibits, pp. 21-24.

[7] Rollo, pp. 180-181.

[8] Id., at p. 60.

[9] Rebolledo vs. Court of Appeals, 170 SCRA 800 [1989].

[10] Rollo, pp. 54-57.

[11] Original Record, pp. 1-6.

[12] T.S.N., July 5, 1985, pp. 11-19.

[13] Dichoso vs. Court of Appeals, 192 SCRA 169 [1990].

[14] Rollo, p. 59.

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