

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. JAIME M. RAMOS,
NILDA RAMOS, ERLINDA ILANO, MILAGROS ILANO, DANIEL ILANO
AND FELIPA JAVALERA, RESPONDENTS.**

G.R. No. 92740, March 23, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to reverse the decision of the Court of Appeals dated March 15, 1990 affirming in toto the decision of the Regional Trial Court of Imus, Cavite, Branch 21, directing the Philippine Airlines, Inc. (PAL, for short) to pay the private respondents the amounts specified therein as actual, moral and temperate damages as well as attorney's fees and expenses of litigation.

The antecedent facts are briefly recounted by the appellate court, as follows:

"Plaintiffs Jaime Ramos, Nilda Ramos, Erlinda Ilano, Milagros Ilano, Daniel Ilano and Felipa Javalera, are officers of the Negros Telephone Company who held confirmed tickets for PAL Flight No. 264 from Naga City to Manila on September 24, 1985, scheduled to depart for Manila at 4:25 p.m. The tickets were bought sometime in August 1985. Among the conditions included in plaintiffs' tickets is the following:

'1. CHECK-IN TIME - Please check in at the Airport Passenger check-in counter at least one hour before PUBLISHED departure time of your flight. We will consider your accommodation forfeited in favor of waitlisted passengers if you fail to check-in at least 30 minutes before PUBLISHED departure time. Exh. (1-A-A, 2-A-1, S-A, O-A-1, tsn, Nov. 23, 1987, p. 8).'

"Plaintiffs claim in their Complaint that they went to the check-in counter of the defendant's Naga branch at least one (1) hour before the published departure time but no one was at the counter until 30 minutes before departure, but upon checking-in and presentation of their tickets to the employee/clerk who showed up, their tickets were cancelled and the seats awarded to chance passengers; plaintiffs had to go to Manila by bus, and seek actual, moral and exemplary damages, and attorney's fees for breach of contract of carriage.

"Defendant disclaims any liability, claiming that the non-accommodation of plaintiffs on said flight was due to their having check-in (sic) late for their flight. It is averred that even if defendant is found liable to the plaintiffs such liability is confined to, and limited by, the CAB Economic Regulations No. 7 in conjunction with P.D. 589.

"The trial court rendered judgment finding defendant guilty of breach of contract of carriage in bumping-off the plaintiffs from its F264 flight of September 24, 1985, and ordered defendant to pay:

"1) P1,250.20 - the total value of the tickets;

"2) P22.50 - the total value of airport security fees and terminal fees;

"3) P20,000.00 - for each of the plaintiffs for moral and temperate damages; and

“4) P5,000.00 - for attorney’s fees and expenses of litigation.” (Rollo, pp. 35-36)

PAL appealed to the Court of Appeals. On March 15, 1990, the appellate court rendered a decision, the dispositive portion of which, reads:

“WHEREFORE, the decision appealed from is AFFIRMED in toto, with costs against appellant.

“SO ORDERED.” (Rollo, p. 42)

Hence, this present petition with the following legal questions:

“1. Can the Honorable Court of Appeals validly promulgate the questioned decision by the simple expedient of adopting in toto the trial court’s finding that defendant-appellant is liable for damages on the sole issue of credibility of witnesses without considering the material admissions made by the plaintiffs and other evidence on record that substantiate the defense of defendant-appellant.

“2. Can the Honorable Court award legally moral and temperate damages plus attorneys fees of P5,000.00 contrary to the evidence and established jurisprudence.” (Rollo, p. 9)

Under Section 1, Rule 131 of the Rules of Court, each party in a case is required to prove his affirmative allegations. In civil cases, the degree of evidence required of a party in order to support his claim is preponderance of evidence or that evidence adduced by one party which is more conclusive and credible than that of the other party (*Stronghold Insurance Company, Inc. v. Court of Appeals, et al.*, G.R. No. 83376, May 29, 1989, 173 SCRA 619, 625).

The case at bar presents a simple question of fact: Whether or not the private respondents were late in checking-in for their flight from Naga City to Manila on September 24, 1985. It is immediately apparent from the records of this case that the claims of the parties on this question are dramatically opposed. As a rule, the determination of a question of fact depends largely on the credibility of witnesses unless some documentary evidence is available which clearly substantiates the issue and whose genuineness and probative value is not disputed (*Legarda v. Miaile*, 88 Phil. 637, 642). The exception to the rule now runs true in this case.

We reverse. This case once more illustrates Our power to re-weigh the findings of lower courts when the same are not supported by the record or not based on substantial evidence (see *Cruz v. Villarin*, G.R. No. 75679, January 12, 1990, 181 SCRA 53, 61).

It is an admitted fact that the private respondents knew of the required check-in time for passengers. The time requirement is prominently printed as one of the conditions of carriage on their tickets, i.e., that the airport passenger should check-in at least one hour before published departure time of his flight and PAL shall consider his accommodation forfeited in favor of waitlisted passengers if he fails to check-in at least 30 minutes.

We note that while the aforementioned condition has always been applied strictly and without exception (TSN, December 16, 1987, p. 11), the station manager, however, may exercise his discretion to allow passengers who checked-in late to board provided the flight is not fully booked and seats are available (*ibid.*, pp. 17-18). On September 24, 1985, flight 264 from Naga to Manila was fully booked owing to the Peñafrancia Festival (TSN, January 25, 1988, p. 5). In addition, PAL morning flights 261 and 262 were cancelled resulting in a big number of waitlisted passengers. (TSN, November 23, 1987, p. 6).

The private respondents claim that they were on time in checking-in for their flight; that no PAL personnel attended to them until much later which accounted for their late check-in; that PAL advanced the check-in time and the departure of their flight resulting in their non-accommodation; and that they suffered physical difficulties, anxieties and business losses.

The evidence on record does not support the above contentions. We note that there were two other confirmed passengers who came ahead of the private respondents but were refused accommodation because they were late. Edmundo Araquel, then the check-in-clerk, testified on this point, as follows:

“Atty. Marcelino C. Calica, counsel for PAL

Q Before the plaintiffs arrive (sic) at the check-in counter, do you recall if there were other passengers who arrived at the counter and they were advised that they were late?

A Yes, sir.

Q Who were those persons?

A My former classmates at Ateneo, sir, Rose Capati and Go, Merly.

Q Were these two passengers also confirmed passengers on this flight?

A Yes, sir.

Q I show to you a document which is entitled ‘Passenger Manifest of flight 264, September 24, 1985,’ which we request to be marked as Exh. ‘5’ you said earlier that aside from the plaintiffs here there were two other passengers who also checked in but they were also late and you mentioned the names of these passengers as Capati and Go, please point to us that entry which will show the names of Go and Capati?

A Here, sir, numbers 13 and 14 of the Manifest.

“ATTY. CALICA: We request that passengers 13 and 14 be marked in evidence, Go for 13 and Capati for 14 as Exh. ‘5-A.’

Q You said that these two passengers you mentioned were also similarly denied accommodations because they checked in late, did they check in before or after the plaintiffs?

A Before, sir.

Q What time did they appear at the counter?

A 4:01 p.m., sir.

Q What happened when they checked in at 4:01?

A I told them also that they were late so they cannot be accommodated and they tried to protest, but they decided later on just to refund the ticket.” (TSN of November 23, 1987, pp. 11-12)

Shortly after, the private respondents followed the aforesaid two passengers at the counter. At this juncture, Araquel declared, thus:

“Q Now, you said that you met the plaintiffs in this case because they were passengers of Flight 264 on September 24, 1985 and they were not accommodated because they checked in late, what time did these plaintiffs check in?

A Around 4:02 p.m., sir.

Q Who was the clerk at the check in counter who attended to them?

A I was the one, sir.

x x x.

Q You said when you were presented the tickets of the plaintiffs in this case and noting that they were late for

checking in, immediately after advising them that they were late, you said you made annotation on the tickets?

A Yes, sir.

Q I am showing to you Exhs. 'A,' 'B,' 'C,' and 'D,' which are the tickets of Mr. & Mrs. Jaime Ramos for Exh. 'A,' Exh. 'B' ticket of Mr. & Mrs. Daniel Ilano, 'C' ticket of Felipa Javalera and 'D' ticket of Erlinda Ilano, will you please go over the same and point to us the notations you said you made on these tickets?

A This particular time, sir. (Witness pointing to the notation 'Late' and the time '4:02' appearing at the upper right-hand of the tickets Exhs. 'A,' 'B,' 'C,' and 'D'.)

Q How long did it take after the tickets were tendered to you for checking in and before you made this notation?

A It was just seconds, sir.

Q On the tickets being tendered for check-in and noting that they were late, you mean to say you immediately made annotations?

A Yes, sir. That is an S.O.P. of the office.

Q So on what time did you base that 4:02?

A At the check-in counter clock, sir.

Q At the time you placed the time, what was the time reflected at the counter clock?

A 4:02, sir." (ibid, pp. 8-11)

The private respondents submitted no controverting evidence. As clearly manifested above, the intervening time between Capati and Go and the private respondents took only a mere second. If indeed, the private respondents were at the check-in counter at 3:30 p.m., they could have been the first ones to be attended to by Araquel than Capati and Go. They could have also protested if they were the earliest passengers at the counter but were ignored by Araquel in favor of Go and Capati. They did not.

It is likewise improbable that not a single PAL personnel was in attendance at the counter when the check-in counter was supposed to be opened at 3:25 p.m. It must be remembered that the morning flight to Manila was cancelled and hence, it is not farfetched for Us to believe that the PAL personnel then have their hands full in dealing with the passengers of the morning flight who became waitlisted passengers. Moreover, the emphatic assertions of private respondent Daniel Javalora Ilano regarding the absence of a PAL personnel lost its impact during the cross examination:

"ATTY. CALICA?

Q- So, you maintain therefore that for all the time that you waited there for the whole twenty (20) minutes the check-in counter and other PAL Offices there - the whole counter was completely unmanned? I am referring to the whole area there where it is enclosed by a counter.

I will describe to you, for the benefit of the court.

When you approach the counter at Naga Airport, the counter is enclosed, I mean, you cannot just go inside the PAL office, right? there is some sort of counter where you deal with the PAL personnel and you approximate this counter to be five (5) to six (6) meters. Now, this space after the counter, did you observe what fixtures or enclosures are contained there inside the enclosed space?

A- I am not sure whether there are offices or enclosures there.

Q- You have been travelling and had opportunity to check-in your tickets so many times. Everytime that you check-in, how many personnel are manning the check-in counter?

A- There are about three (3) or four (4), sir.

Q- Everytime, there are three (3) or four (4)?

A- Everytime but not that time.

Q- I am referring to your previous trips, I am not referring to this incident.

On previous occasions when you took the flight with Pili Airport and you see three (3) or four (4) personnel everytime, are all these three (3) or four (4) personnel at the counter or some are standing at the counter or others are seated on the table doing something or what? Will you describe to us?

A- Some are handling the baggages and some are checking-in the tickets.

Q- So, on most occasions when you check-in and say, there were at least three (3) or four (4) people at the check-in counter, one would attend to the tickets, another to the check in baggage, if any. Now, do you notice if somebody evade when you check-in your ticket. This other person would receive the flight coupon which is detached from your ticket and record it on what we call passenger manifest?

A- That's true.

Q- Now, it is clear one would attend to the baggage, another person would receive the ticket, detach the coupon and one would record it on the passenger manifest. What about the fourth, what was he doing, if you recall?

A- I think, putting the identification tags on the baggages (sic)." (TSN, November 17, 1986, p. 38)

Ilano's declaration becomes even more patently unreliable in the face of the Daily Station Report of PAL dated September 24, 1985 which contained the working hours of its personnel from 0600 to 1700 and their respective assignments, as follows:

"ATTY. CALICA

Q Normally upon opening of the check-in counter, how many PAL personnel are assigned to man the counter?

"EDMUNDO ARAQUEL

A A total of four personnel with the assistance of others.

Q Who are these personnel assigned to the counter and what specific duties they performed?

A Mr. Oropesa handled the cargo, Mr. Espiritu handled the ticketing, Mr. Valencia and me handled the checking in of passengers.

Q Are you referring to this particular flight 264 on September 24, 1985?

A Yes, sir.

Q Who was assigned as check-in clerk that particular time?

A I was the one with Mr. Valencia, sir.

Q What was Mr. Valencia doing?

A He assisted me, sir.

Q How?

A If a group of passengers simultaneously check in, we divided the work between us. (TSN, November 23, 1987, p. 7)

“x x x.

Q When the plaintiffs testified in this case particularly plaintiff Daniel Ilano and Felipa Javalera at the previous hearings said plaintiffs stated that they arrived at the check-in counter at about 3:25 or 3:30 and there was nobody in the counter, what can you say to that?

A We cannot leave the counter, sir. That was always manned from 3:25 up to the last minute. We were there assigned to handle the checking in of passengers.

Q You mentioned earlier that aside from you there were other personnel assigned to the check-in counter and you even mentioned about a certain Valencia assisting you, do you have any evidence to show said assignment of personnel at the airport?

A Yes, sir.

Q I show to you a daily station report for 24 September 1985 covering working hours 0600 to 1700, will you please go over the same and thereafter tell us from the personnel listed in this Daily Station Report what were the name (sic) of the personnel assigned to man the check-in counter at that time?

A There (sic) persons assigned were Mr. Oropesa, Mr. Espiritu, Mr. Medevilla, myself and Mr. Valencia.

Q You mentioned about Mr. Espiritu, what was his specific task at that time?

A He was handling the ticketing, sir.

Q What about Mr. Medevilla?

A He was taking care of the ramp handling.

Q And Mr. Oropesa?

A He was handling the incoming cargo.

“ATTY. CALICA: We request that this Daily Station Report be marked Exh. ‘6’ and the portion of the Report which shows the deployment of personnnel of PAL Naga Station on September 24, 1985 as ‘6-A.’

Q Plaintiffs in this case testified that when they checked in there was nobody manning the counter and they had to wait for twenty minutes before someone came in to the counter, what can you say to that?

A It is not true because all the time we were there from the start, an hour before the flight we were there because we were assigned there.

Q Plaintiff Daniel Ilano testified that he went to the counter twice, first at 3:25 and it was only at 4:00 p.m. that somebody went to the counter and attended to him and while he expected his boarding pass he was told instead that plaintiffs could not be accommodated because they were late, what can you say to that?

A The truth is we were always there and we never left the counter from the start of the check-in time of 3:25 we were all there, we never left the counter.

Q Until what time did you remain at the check-in counter?

A At around 4:15 p.m., sir.

Q You said that the check-in counter was closed at 3:55, for what purpose were you still manning the check-in counter?

A To attend to the passengers who are late in checking in because they also need assistance in explaining to them the situation.

Q So it was for that purpose you were there?

A Yes, sir." (ibid, pp. 16-18)

It is significant to note that there were no other passengers who checked-in late after the private respondents (TSN, November 23, 1987, p. 13). In the absence of any controverting evidence, the documentary evidence presented to corroborate the testimonies of PAL'S witnesses are prima facie evidence of the truth of their allegations. The plane tickets of the private respondents, exh. "1," "2," "3," "4," (with emphasis on the printed condition of the contract of carriage regarding check-in time as well as on the notation "late 4:02" stamped on the flight coupon by the check-in clerk immediately upon the check-in of private respondents) and the passenger Manifest of Flight PR 264, exh. "5," (which showed the non-accommodation of Capati and Go and the private respondents) are entries made in the regular course of business which the private respondents failed to overcome with substantial and convincing evidence other than their testimonies. Consequently, they carry more weight and credence. A writing or document made contemporaneously with a transaction in which are evidenced facts pertinent to an issue, when admitted as proof of those facts, is ordinarily regarded as more reliable proof and of greater probative force than the oral testimony of a witness as to such facts based upon memory and recollection (20 Am Jur S 1179, 1029 cited in Francisco, Revised Rules of Court in the Philippines Annotated, 1973 Edition, Volume VII, Part II, p. 654). Spoken words could be notoriously unreliable as against a written document that speaks a uniform language (Spouses Vicente and Salome de Leon v. CA, et al., G.R. No. 95511, January 30, 1992). This dictum is amply demonstrated by the diverse allegations of the private respondents in their complaint (where they claimed that no one was at the counter until thirty (30) minutes before the published departure time and that the employee who finally attended to them marked them late, Records, p. 2) and in their testimonies (where they contended that there were two different PAL personnel who attended to them at the check-in counter, TSNs of November 17, 1986, pp. 41-45 and of May 18, 1987, pp. 5-6). Private respondents' only objection to these documents is that they are self-serving cannot be sustained. The hearsay rule will not apply in this case as statements, acts or conduct accompanying or so nearly connected with the main transaction as to form a part of it, and which illustrate, elucidate, qualify or characterize the act, are admissible as part of the *res gestae* (32 C.J.S., S. 411, 30-31). Based on these circumstances, We are inclined to believe the version of PAL. When the private respondents purchased their tickets, they were instantaneously bound by the conditions of the contract of carriage particularly the check-in time requirement. The terms of the contract are clear. Their failure to come on time for check-in should not militate against PAL. Their non-accommodation on that flight was the result of their own action or inaction and the ensuing cancellation of their tickets by PAL is only proper.

Furthermore, We do not find anything suspicious in the fact that PAL flight 264 departed at 4:13 p.m. instead of 4:25 p.m. Apart from their verbal assertions, the private respondents did not show any evidence of irregularity. It being clear that all the passengers have already boarded, there was no sense in keeping them waiting for the scheduled time of departure before the plane could take flight.

ACCORDINGLY, the petition is GRANTED. The questioned decision of the Court of Appeals dated March 15, 1990 is hereby ANNULLED and SET ASIDE. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Griño-Aquino, JJ., concur.
Bellosillo, J., on leave.

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