*EN BANC*

**G.R. No. 243259 – PATRICIA HALAGUEÑA, MA. ANGELITA L. PULIDO, MA. TERESITA P. SANTIAGO, MARIANNE V. KATINDIG, BERNADETTE A. CABALQUINTO, LORNA R. TUGAS, MARY CHRISTINE A. VILLARETE, CYNTHIA A. STEHMEIER, ROSE ANNA G. VICTA, NOEMI R. CRESENCIO and other female flight attendants of PHILIPPINE AIRLINES,** *Petitioners*, v. **PHILIPPINE AIRLINES, INC.,** *Respondent.*

Promulgated:

January 10, 2023

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## SEPARATE CONCURRING OPINION

**SINGH, *J*:**

I concur with the *ponencia* that the stipulation providing for compulsory retirement of female cabin attendants at 55 years old and at 60 years old for male cabin attendants in the collective bargaining agreement (**CBA**) subject of this case discriminates against women and is void for being contrary to law and public policy.

The subject of this dispute is the CBA between the Philippine Airlines, Inc. (**PAL**) and the Flight Attendants and Stewards Association of the Philippines (**FASAP**), the sole and exclusive bargaining representative of PAL's flight attendants, stewards, and pursers.[1] The CBA incorporates the terms and conditions of the employment of cabin attendants for the years 2000 to 2005.[2]

Section 144, Part A of the CBA provides in part:

> A. For the Cabin Attendants hired before 22 November 1996:
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> . . . .
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> 3. Compulsory Retirement

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1 Decision, p. 2.
2 *Id.*

> Subject to the grooming standards provisions of this Agreement, compulsory retirement shall be fifty-five (55) for females and sixty (60) for males.[3]

The petitioners, Patricia Halagueña, Ma. Angelita L. Pulido, Ma. Teresita P. Santiago, Marianne V. Katindig, Bernadette A. Cabalquinto, Lorna B. Tugas, Mary Christine A. Villarete, Cynthia A. Stehmeier, Rose Ana G. Victa, Noemi R. Cresencio and other female flight attendants of PAL (collectively, the **Petitioners**), challenge the validity of this provision.[4] They assert that the provision which mandates a compulsory retirement age for female flight attendants that is five years earlier than their male counterparts, discriminates against women and is therefore void for being contrary to the Constitution, laws, and international conventions.[5]

While the Regional Trial Court of Makati City, Branch 147 (**RTC**) ruled in favor of the Petitioners and nullified the assailed CBA provision, the Court of Appeals, in its Decision, dated May 13, 2018 (**CA Decision**), reversed the RTC on appeal and held that the CBA provision is valid.

The *ponencia* correctly granted the Petitioners' appeal and ruled definitively that the CBA provision discriminates against women and is thus contrary to law and public policy.

The CA Decision primarily relied on the fact that the assailed provision is found in the CBA, which is, in turn, mutually agreed upon by PAL and the FASAP. According to the CA Decision, the provision "cannot be said to be void or discriminatory because FASAP was free to accept or refuse the same."[6]

I agree with the *ponencia* that the mere fact that the CBA was agreed upon by PAL and the FASAP does not guarantee that none of its provisions may be held void. Indeed, it is fundamental that while parties are free to stipulate on such terms and conditions as they may deem convenient and that courts will generally respect the will of the parties to a contract, this is always subject to a definite exception.[7] Courts may nullify a contractual provision or even an entire contract if it is "contrary to law, morals, good customs, public order, or customs of the place."[8]

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3 CA Decision, p. 2.
4 Decision, p. 2.
5 *Id.* at 6.
6 CA Decision, p. 15.
7 CIVIL CODE OF THE PHILIPPINES, art. 1306.
8 CIVIL CODE OF THE PHILIPPINES, art. 1306.

This is even more true in instances where a CBA is involved. As aptly explained in the *ponencia*, Article 1700 of the Civil Code of the Philippines provides that the relations between capital and labor are not merely contractual. The relationship between employers and employees are impressed with public interest.[9] Thus, this Court has consistently pronounced that provisions in a CBA and in contracts involving labor may be nullified if they are contrary to law, public morals, or public policy.[10]

In addition to this, the view that the assailed CBA provision cannot be discriminatory to women and thus invalid simply because PAL and the FASAP agreed to include it in the CBA is myopic and ignores the very nature of discrimination based on gender.

It is a fact that women have been historically discriminated against. This is why numerous laws have been passed to promote gender equality and to end the discrimination of women. Thus, that PAL and FASAP have historically agreed to compel female flight attendants to retire years earlier than their male counterparts is no indication that the assailed CBA provision is not discriminatory. Instead, the persistent inclusion of this type of provision in the CBAs of PAL and FASAP, without any reasonable justification (as will be discussed more extensively below), only shows that the CBA has been used as a tool to perpetuate gender-based discrimination.

That FASAP and its members agreed to the assailed CBA provision does not prove that the Petitioners here, as well as the other female flight attendants of PAL who are similarly situated, consented to this type of discrimination. A CBA is entered into by an employer and a labor union. Labor unions are majoritarian institutions whose purpose is to promote the interests of all its members. The interests of the majority of labor union members do not always coincide with the unique interests of women employees and other minorities. An agreement that is founded on the protection and promotion of the interests of the majority cannot be relied upon to similarly protect and promote the interests of groups of employees which have been traditionally disadvantaged because of characteristics unique to them, such as gender. Precisely because women are historically disadvantaged and do not have access to the kind of power granted to men, majoritarian institutions and even the instruments of the State have often functioned to perpetuate discrimination or have passively remained idle while women suffer.

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9 CIVIL CODE OF THE PHILIPPINES, art. 1700: The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

10 See *Halagueña v. Philippine Airlines, Inc.*, 617 Phil. 502 (2009) and *Pakistan International Airlines Corporation v. Ople*, 268 Phil. 92 (1990).

This is why laws were enacted to correct this inequality. This is when courts must step in to enforce the Constitution and its fundamental precept that men and women are equal. Thus, a court that is conscious of its role in fostering equality must analyze gender-related issues carefully and must explain its analysis in a manner that respects and promotes the empowerment of women instead of reinforcing gender stereotypes that reinforce the oppression of women.

Here, the better analysis of the issue should have focused on the purpose of the assailed CBA provision which imposes an earlier compulsory retirement age for female flight attendants as compared to male flight attendants. The provision on its face creates a distinction between men and women with the intended effect that women are compelled to leave their work five years earlier than men. The provision does not cite a reason for this distinction. It appears to base the difference in the treatment between male and female flight attendants solely on gender.

In the United States, the United States Supreme Court (**US SC**) has had the opportunity to rule on similar types of employment qualifications involving gender discrimination. In *United Automobile Workers v. Johnson Controls* (***Johnson Controls***),[11] the US SC ruled that an employer cannot enforce a policy that prohibits all female employees of child-bearing age from lead-exposed jobs because it believed that exposing women to these types of jobs could jeopardize their ability to reproduce. The US SC ruled that the employment policy can be justified if it can be considered as a bona fide occupational qualification (**BFOQ**). According to the US SC, pregnancy is a BFOQ that would warrant a different treatment as opposed to male employees if it can be shown gender relates to the "essence" or to the "central mission of the employer's business."[12] An employer "cannot discriminate against a woman because of her capacity to get pregnant unless her reproductive potential prevents her from performing the duties of the job."[13] In the case of *Johnson Controls*, it failed to show that gender and the ability to bear a child affect a woman's ability to perform the job of making batteries. The US SC ruled:

> Concern for a woman's existing or potential offspring historically has been the excuse for denying women equal employment opportunities. See, e.g., Muller v. Oregon, 208 U. S. 412 (1908). Congress in the PDA prohibited discrimination on the basis of a woman's ability to become pregnant. We do no more than hold that the Pregnancy Discrimination Act means what it says.

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11 499 U.S. 187 (1991).
12 *Id.*
13 *Id.*

> It is no more appropriate for the courts than it is for individual employers to decide whether a woman's reproductive role is more important to herself and her family than her economic role. Congress has left this choice to the woman as hers to make.[14]

The concept of BFOQs is also recognized in this jurisdiction. In *Star Paper Corp. v. Simbol*,[15] the Court ruled:

> The concept of a *bona fide occupational qualification is not foreign in our jurisdiction. We employ the standard of* **reasonableness** of the company policy which is parallel to the *bona fide occupational qualification requirement.* In the recent case of Duncan Association of Detailman-PTGWO and Pedro Tecson v. Glaxo Wellcome Philippines, Inc., we passed on the validity of the policy of a pharmaceutical company prohibiting its employees from marrying employees of any competitor company. We held that Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors. We considered the prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees **reasonable** under the circumstances because relationships of that nature might compromise the interests of Glaxo. In laying down the assailed company policy, we recognized that Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.
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> The requirement that a company policy must be **reasonable** under the circumstances to qualify as a valid exercise of management prerogative was also at issue in the 1997 case of **Philippine Telegraph and Telephone Company v. NLRC**. In said case, the employee was dismissed in violation of petitioner's policy of disqualifying from work any woman worker who contracts marriage. We held that the company policy violates the right against discrimination afforded all women workers under Article 136 of the Labor Code, but established a permissible exception, *viz.*:
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> > [A] requirement that a woman employee must remain unmarried could be justified as a **"bona fide occupational qualification," or BFOQ, where the particular requirements of the job would justify the same, but not on the ground of a general principle, such as the desirability of spreading work in the workplace. A requirement of that nature would be valid provided it reflects an inherent quality reasonably necessary** for satisfactory job performance. (*Emphases supplied.*)
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> The cases of **Duncan** and **PT&T** instruct us that the requirement of reasonableness must be **clearly** established to uphold the questioned employment policy. The employer has the burden to prove the existence of

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14 *Id.*

15 521 Phil. 364 (2006).

> a reasonable business necessity. The burden was successfully discharged in Duncan but not in PT&T. (Emphases in the original; citations omitted)

The assailed CBA provision is akin to a BFOQ in that for female flight attendants, it imposes a different condition for continued employment as opposed to male flight attendants – *i.e.*, women can only continue working until the age of 55 while men can remain gainfully employed until the age of 60. PAL, therefore, had the burden of proving the existence of a reasonable business necessity for this employment policy. As the *ponencia* observed, the RTC concluded that PAL "failed to prove any difference between male and female cabin attendants justifying the implementation of the assailed provision."[16] In other words, PAL presented no evidence that would establish the existence of a reasonable business necessity that would justify its policy of compelling women to retire at the age of 55 while male attendants can continue with their employment until the age of 60.

The CA ought to have relied on this factual finding of the RTC. However, the CA Decision instead disregarded the RTC finding and, in making its own conclusion, relied not on the evidence and the facts on record, but on its own surmises, conjectures, and speculations and worse, on gender stereotypes that further reinforce discrimination against women.

Specifically, the CA Decision said:

> In this regard, the CBA provision on early retirement for female flight attendants must be viewed in the context of PAL's obligation to guarantee the safety of its passengers taking into account the obvious biological difference between male and female. It must be remembered that the task of a cabin crew or flight attendant is not limited to serving meals or attending to the whims and caprices of the passengers. The most important activity of the cabin crew is to care for the safety of passengers and the evacuation of the aircraft when an emergency occurs. Passenger safety goes to the core of the job of a cabin attendant. Truly, airlines need cabin attendants who have the necessary strength to open emergency doors, the agility to attend to passengers in cramped working conditions, and the stamina to withstand grueling flight schedules.[17] (Citations omitted)

In stating that PAL can validly take into account the "obvious biological difference between male and female"[18] in performing its obligation to guarantee the safety of its passengers, the CA Decision implies that female flight attendants, especially those who are close to the mandated retirement age under the CBA, are weaker and less able to provide safety to PAL's passengers. There is no empirical basis for this assertion. While there are biological differences between the anatomy of a man and a woman, there is

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16 Decision, p. 16.
17 CA Decision, p. 18.
18 *Id.*

no evidence on record, or any authority cited in the CA Decision, that can confirm that women of a certain age, and women in general, perform less in jobs that require them to ensure the security of other people.

Further, the CA Decision also quotes the case *Yrasuegui v. PAL* (***Yrasuegui***)[19] to support its view that female flight attendants can be made to retire earlier than male flight attendants because "airlines need cabin attendants who have the necessary strength to open emergency doors, the agility to attend to passengers in cramped working conditions, and the stamina to withstand grueling flight schedules."

*Yrasuegui* involved a male flight attendant who was dismissed from employment because he was overweight. In this case, the Court ruled that PAL's weight requirement is a BFOQ because it was justified by the need to ensure the passengers' safety. The Court explained:

> On board an aircraft, the body weight and size of a cabin attendant are important factors to consider in case of emergency. Aircrafts have constricted cabin space, and narrow aisles and exit doors. Thus, the arguments of respondent that "[w]hether the airline's flight attendants are overweight or not has no direct relation to its mission of transporting passengers to their destination" ;and that the weight standards "has nothing to do with airworthiness of respondent's airlines", must fail.
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> . . . .
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> Given the cramped cabin space and narrow aisles and emergency exit doors of the airplane, any overweight cabin attendant would certainly have difficulty navigating the cramped cabin area.
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> In short, there is no need to individually evaluate their ability to perform their task. That an obese cabin attendant occupies more space than a slim one is an unquestionable fact which courts can judicially recognize without introduction of evidence. It would also be absurd to require airline companies to reconfigure the aircraft in order to widen the aisles and exit doors just to accommodate overweight cabin attendants like petitioner.
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> The biggest problem with an overweight cabin attendant is the possibility of impeding passengers from evacuating the aircraft, should the occasion call for it. The job of a cabin attendant during emergencies is to speedily get the passengers out of the aircraft safely. Being overweight necessarily impedes mobility. Indeed, in an emergency situation, seconds are what cabin attendants are dealing with, not minutes. Three lost seconds can translate into three lost lives. Evacuation might slow down just because a wide-bodied cabin attendant is blocking the narrow aisles. These possibilities are not remote.[20] (Emphases in the original; citations omitted)

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19 590 Phil. 490 (2008).

20 *Id.*

The Court found in *Yrasuegui* that an overweight cabin attendant's ability to perform their job is significantly hampered and thus would pose danger to PAL's passengers. The Court's ruling was based on facts relating to the cramped cabin space and narrow aisles in airplanes and the likelihood that overweight flight attendants can impede the mobility of passengers in times of emergency.

The CA Decision, in quoting *Yrasuegui* and in relying on this case to justify the assailed CBA provision, implicitly suggests that more mature women, solely because of their gender, are less able to perform their jobs as flight attendants; that they are akin to flight attendants who fail to meet the weight requirement; and that they, therefore, pose danger to the lives of passengers in times of emergency. There is no factual basis for such a conclusion. Indeed, one need only look at women police officers, women soldiers, women security guards, to confirm that women are no less capable of performing jobs related to the safety and security of other people. The CA Decision reinforces stereotypes against women as the "weaker sex" in concluding, in the face of a dearth of evidence, that women flight attendants may be made to retire earlier than men because they lose their competence to perform their jobs at a much earlier age.

The CA Decision also attempts to justify the assailed CA provision by stating that early retirement can be considered as a "reward for services rendered since it enables an employee to reap the fruits of his labor – particularly retirement benefits, whether lump-sum or otherwise – at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer."[21] If it is true that early retirement is a "reward" granted to employees, there is all the more reason for it to apply equally to all employees regardless of gender. There is no reasonable justification for such a "reward" to be made available to women only.

Moreover, the CA Decision states that providing an early retirement age for female flight attendants "does not necessarily place them at a great disadvantage." According to the CA Decision:

> For one, early retirement creates a great window of opportunity to make positive lifestyle changes and restore a well-balanced life. Here, petitioners-appellees will have more time to spend with their families and friends as well as the opportunity to pursue activities and hobbies that they may not have had the time to do in the past. Early retirement can also potentially improve their physical and mental health, which in turn can help them live a longer and happier life.[22]

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21 CA Decision, p. 18.

22 *Id.*

These statements are replete with romantic paternalism and gender stereotypes. They imply that a career woman or a woman who chooses to work leads a negative lifestyle and does not have a well-balanced life. Thus, the CA Decision suggests, that early retirement should be welcomed because women can only achieve a well-balanced life in the absence of work or a career. The subtext of statements like these is that women are ultimately better off not working too hard and that employers (and the State, through the courts) have the authority to make choices about how women should spend their lives.

Certainly, the women's movement has fought too long and too hard for the Court to allow this type of reasoning to prevail in cases involving discrimination against women.

Ultimately, the question here is simple: should PAL be allowed to discriminate against women by forcing them to retire five years earlier than their male counterparts? The answer is a resounding no. There is no reasonable business necessity for this difference in treatment. There is no evidence on record showing that women who reach the age of 55 are less competent than male flight attendants of the same age. There is no authority to confirm that women should be made to retire early if an airline intends to maintain a high level of service and safety for its passengers. To reiterate, the CA Decision is based on stereotypes, not facts nor science, in making its conclusions.

The struggle of women in this country for equality has not been easy and the road to progress continues to be difficult. And yet, as is the case here, what women aspire for is fairly simple. It is simply equality before the law – that women be afforded the same rights, freedoms, and opportunities as are granted to men. Arguing before the US SC when she was still a lawyer advocating for women's rights, US SC Supreme Court Justice Ruth Bader Ginsburg said it best when she pleaded, "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks."

All things considered, I vote to grant the Petition.

**MARIA FILOMENA D. SINGH**
Associate Justice