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**SECOND DIVISION**

[G.R. No. 174364. July 30, 2009]

**NORTHWEST AIRLINES,** *petitioner, vs.* **DELFIN S. CATAPANG,** *respondent.*

## SYLLABUS

**1. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR; EXPLAINED. —** Petitioner's breach in this case was aggravated by the undenied treatment received by respondent when he tried to rebook his ticket. Instead of civilly informing respondent that his ticket could not be rebooked, petitioner's agent in New York exhibited rudeness in the presence of respondent's brother-in-law and other customers, insulting respondent by telling him that he could not understand English. Passengers have the right to be treated by a carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is that any discourteous conduct on the part of these employees toward a passenger gives the latter an action for damages against the carrier. The award of moral and exemplary damages to respondent is thus justified.

**2. ID.; ID.; INCLUSION OF FILING FEES AS PART OF THE ACTUAL DAMAGES IS SUPERFLUOUS, IF NOT ERRONEOUS, THE SAME BEING CHARGEABLE TO THE COST OF SUIT. —** The inclusion of filing fees as part of the **actual damages** is superfluous, if not erroneous, the same being chargeable to the **"cost of suit"** awarded by the trial court and affirmed by the appellate court. Sections 8 and 10, Rule 142 of the Rules of Court enlighten: SEC. 8. *Costs, how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given

Supreme Court E-Library



by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution. x x x SEC. 10. *Costs in Courts of First Instance.* — In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other: x x x a) For the complaint or answer, fifteen pesos; b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos; c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees; d) For each deposition lawfully taken by him, and produced in evidence, five pesos; e) For original documents, deeds, or papers of any kind produced by him, nothing; f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies; x x x g) **The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.**"

**3. ID.; ID.; AWARD OF ATTORNEY'S FEES, NOT PROPER.** — As for the award of attorney's fees, the trial court did not state the factual and legal basis thereof. The transcript of stenographic notes of the lower court's proceedings do not show that respondent adduced proof to sustain his general averment of a retainer agreement in the amount of ₱200,000.00. The award must thus be deleted.

**APPEARANCES OF COUNSEL**

*Quisumbing Torres* for petitioner.
*D.S. Catapang, Jr. Law Office* for respondent.

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## D E C I S I O N

**CARPIO MORALES**, ***J.*:**

Delfin S. Catapang (respondent), a lawyer and, at the time material to the case at bar, Assistant Vice President and Head of the Special Projects Department, Corporate Services Division of the United Coconut Planters Bank (UCPB), was directed by UCPB to go to Paris on a business trip. As he intended to proceed, after his trip to Paris, to the United States to visit his siblings, he requested First United Travel, Inc. (FUT) to issue him a ticket that would allow rebooking or rerouting of flights within the United States.

Complying with respondent's requirement, FUT informed him, via telephone, that Northwest Airlines, Inc. (petitioner) was willing to accommodate his request provided he would pay an additional US$50 for every rebooking or rerouting of flight. Respondent agreed with the condition, hence, FUT, as petitioner's authorized agent, issued respondent a ticket covering the New York to Los Angeles via Detroit and the Los Angeles to Manila segments of his travel, indicating thereon the following details of his itinerary:

x x x x x x x x x

12MAR LV NYC/LAGUARDIA 0935 NORTHWEST
AR LOS ANGELES 1433
VIA DETROIT MI

x x x x x x x x x

The rebooking/rerouting scheme was annotated on the restriction portion of the ticket issued to respondent bearing No. 012 6832392670 5 as follows:

No end./7 days adv. Purchase
US$50 – rebooking/re-routing/cancellation fee (Underscoring supplied)

On respondent's arrival in New York, he called up by telephone petitioner's office which informed him that his ticket was not

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"rebookable or reroutable." He was, nevertheless, advised to go to petitioner's nearest branch office.

Respondent thus proceeded on March 10, 1992 to petitioner's ticket office at the World Trade Center where he was treated in a rude manner by an employee who informed him that his ticket was not rebookable or reroutable since it was of a "restricted type," and that unless he upgraded it by paying US$644.00, he could not rebook. Left with no choice, respondent paid that amount for rebooking.

Upon his return to the Philippines, respondent, by letter of March 24, 1992, wrote petitioner:

> At about 9:30 in the morning of March 11, 1992, I went to the sales office in the World Trade Center where I explained to your black woman representative my predicament. Your representative **rudely told me** that my ticket is the restrictive type and that my flight can not be rebooked or rerouted. I explained that the only restriction on my ticket is that I should pay US$50.00 if I have to rebook or reroute my flight and asked your representative to read the restriction. Your representative **rudely and impolitely retorted** that I could not understand English and that unless I pay the amount of US$644.00, I cannot get a rebooking and rerouting. Despite my appeal and protestation, she did not reconsider her decision. As I was badly needed in Detroit on the evening of the same day and had to be back in Manila on the 14th of March, I was compelled to pay, under protest, the amount of US$644.00 using my American Express Card as my cash was insufficient to cover the amount. It was only then that I was issued ticket no. 012:4488:504:099.
>
> Considering that my ticket was cleared with you prior to its issuance and that FUT is your duly accredited agent, you are bound by the terms of the ticket issued by FUT in your behalf. You have no right to unilaterally change the tenor of your contract during its effectivity without my consent.
>
> Your airline's willful breach of the terms and conditions of my ticket and the shabby treatment that I received from your personnel hurt my feeling, humiliated and embarrassed me in the presence of my brother-in-law and other people nearby who witnessed the incident. The fact that your employee did that to a bank officer and a lawyer

Supreme Court E-Library



like me only shows that your airline can also do the same to others, not to mention the poor and hapless persons.

Because I could not bear my wounded feeling, the shabby treatment, the humiliation and the embarrassment that I received from your employee, I asked for the cancellation and refund of my ticket covering my trip from Los Angeles to the Philippines for which I was given a refund application slip no. 012 0230189256 3 by your ticket counter at the Los Angeles airport on March 12, 1992.

To compensate me for the expenses that I incurred, and the wounded feeling, humiliation and embarrassment that were caused by your airline's willful breach of contract with me, I demand that you pay me damages in the amount of ₱1,000,000.00 within a period of five (5) days from your receipt hereof. Otherwise, I shall have no alternative but to seek redress from our court of justice and to hold you liable for all other expenses attendant thereto.[1] (Underscoring supplied)

Respondent's letter of demand remained unanswered, unheeded, drawing him to file on July 1, 1992 with the Regional Trial Court (RTC) of Makati a complaint for damages against petitioner.

Petitioner claimed in its Answer that respondent's ticket was a discounted one, subject to the rules which petitioner's agents have to abide by. Thus, with respect to the annotation on respondent's ticket of the US$50.00 rebooking charge, petitioner explained that the same was subject to the "rules of applicability," which rules could not be reflected on the ticket.

By Decision of October 5, 2000,[2] Branch 56 of the RTC Makati faulted petitioner for breach of contract of carriage, disposing as follows:

WHEREFORE, all the foregoing considered, this Court declares defendant liable to pay plaintiff and orders the latter to pay him the following sums:

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[1] Records, pp. 11-12.

[2] *Rollo*, pp. 145-153.

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1. US$ 823.00 or its Peso equivalent at the time of the payment with legal interest and Php7,372.50 for filing fees as actual damages;
2. ₱800,000.00 as moral damages;
3. ₱100,000.00 as exemplary damages;
4. ₱200,000.00 as and for attorney's fees; and
5. Cost of suit.

SO ORDERED.[3]

On appeal, the Court of Appeals, by Decision of June 30, 2006[4] affirmed the trial court's Decision with modification, thus:

WHEREFORE, except for the reduction of the award of moral damages from ₱800,000.00 to ₱400,000.00, the appealed Decision dated October 5, 2000 is affirmed in all other respects.

SO ORDERED.[5] (Underscoring supplied)

Hence, the present petition which assails the award to respondent of moral damages, petitioner positing that it was not guilty of breach of contract. In any event, it assails the award to respondent of exemplary damages, it positing that the same is not recoverable in cases of breach of contract of carriage unless the carrier is guilty of wanton, fraudulent, reckless, oppressive or malevolent conduct of which it is not, so it claims.

Additionally, petitioner assails 1) the award of attorney's fees, positing that under Article 2208 of the Civil Code, attorney's fees and expenses of litigation cannot, as a general rule, be recovered, and of actual damages for respondent did not suffer any pecuniary loss; 2) the order for reimbursement of filing fees there being no basis; and 3) the award of a total of ₱700,000.00 in damages for being excessive and unprecedented.

The petition is bereft of merit.

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[3] *Id.* at 153.

[4] Penned by Associate Justice Fernanda Lampas-Peralta with the concurrence of Associate Justices Eliezer R. Delos Santos and Myrna Dimaranan-Vidal.

[5] *Rollo,* p. 65.

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When respondent inquired from petitioner's agent FUT if he would be allowed to rebook/reroute his flight, FUT advised him that he could, on the condition that he would pay $50 for every rebooking. He was not told by FUT and the ticket did not reflect it that the ticket being issued to him was a "restricted type" to call for its upgrading before a rebooking/rerouting.

Petitioner's reservation supervisor, Amelia Merris, in fact admitted that, as the above-quoted entry on the restriction portion of the ticket reads, the only restriction on respondent's ticket pertains only to non-endorsement.

ATTY. CATAPANG

Q. x x x Is it a fact that the only restriction on the first line is that no end./7days advance purchase, is that correct? And what does that phrase no.end/7days purchase means?

A. "No end," means non endorsable, sir.

Q. When you say non endorsable you cannot transfer it to another airline?

A. That is right, sir.

x x x x x x x x x

Q. Based on the restriction, there is no such restriction?

A. Yes, sir.[6] (Underscoring supplied)

Petitioner's breach in this case was aggravated by the undenied treatment received by respondent when he tried to rebook his ticket. Instead of civilly informing respondent that his ticket could not be rebooked, petitioner's agent in New York exhibited rudeness in the presence of respondent's brother-in-law and other customers, insulting respondent by telling him that he could not understand English.

Passengers have the right to be treated by a carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is

[6] TSN, March 5, 1993, pp. 32-33.

Supreme Court E-Library



that any discourteous conduct on the part of these employees toward a passenger gives the latter an action for damages against the carrier.[7]

The award of moral and exemplary damages to respondent is thus justified.

The inclusion of filing fees as part of the **actual damages** is superfluous, if not erroneous, the same being chargeable to the **"cost of suit"** awarded by the trial court and affirmed by the appellate court. Sections 8 and 10, Rule 142 of the Rules of Court enlighten:

> SEC. 8. *Costs, how taxed.* — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.
>
> x x x x x x x x x
>
> SEC. 10. *Costs in Courts of First Instance.* — In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other:
>
> a) For the complaint or answer, fifteen pesos;
>
> b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;
>
> c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;
>
> d) For each deposition lawfully taken by him, and produced in evidence, five pesos;

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[7] *Korean Airlines Co. Ltd. vs. Court of Appeals*, G.R. Nos. 114061-113842, August 3, 1994, 234 SCRA 717, 723.

Supreme Court E-Library



e) For original documents, deeds, or papers of any kind produced by him, nothing;

f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;

g) **The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.** (Emphasis and underscoring supplied)

As for the award of attorney's fees, the trial court did not state the factual and legal basis thereof.[8] The transcript of stenographic notes of the lower court's proceedings do not show that respondent adduced proof to sustain his general averment of a retainer agreement in the amount of ₱200,000.00. The award of actual damages of ₱7,372.50. The award must thus be deleted.

**WHEREFORE,** the Court of Appeals decision of June 30, 2006 is *AFFIRMED* with *MODIFICATION* in that the award of attorney's fees is deleted for lack of basis. And the award of actual damages of ₱7,372.50 representing filing fees is deleted.

**SO ORDERED.**

*Quisumbing (Chairperson), Chico-Nazario, Leonardo-de Castro,* and *Peralta,*[*] *JJ.,* concur.

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[18] *Car Cool Philippines, Inc. vs. Ushio Realty and Development Corporation,* G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.

* Additional member per Special Order No. 664 dated July 15, 2009.