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SECOND DIVISION

[G.R. No. 148415. July 14, 2008]

RICARDO G. PALOMA, *petitioner, vs.* **PHILIPPINE AIRLINES, INC. and THE NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

[G.R. No. 156764. July 14, 2008]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **RICARDO G. PALOMA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; PHILIPPINE AIRLINES, INC. (PAL) NEVER CEASED TO BE OPERATED AS A PRIVATE CORPORATION, AND WAS NOT SUBJECTED TO THE CIVIL SERVICE LAW.— The Court can allow that PAL, during the period material, was a government-controlled corporation in the sense that the GSIS owned a controlling interest over its stocks. One stubborn fact, however, remains: Through the years, PAL functioned as a private corporation and managed as such for profit. Their personnel were never considered government employees. It may perhaps not be amiss for the Court to take judicial notice of the fact that the civil service law and rules and regulations have not actually been made to apply to PAL and its employees. Of governing application to them was the Labor Code. Consider: (a) Even during the effectivity of the 1973 Constitution but prior to the promulgation on January 17, 1985 of the decision in No. 64313 entitled *National Housing Corporation v. Juco*, the Court no less recognized the applicability of the Labor Code to, and the authority of the NLRC to exercise jurisdiction over, disputes involving discipline, personnel movements, and dismissal in GOCCs, among them PAL; (b) Company policy and collective bargaining agreements (CBAs), instead of the civil service law and rules, govern the terms and conditions of employment in PAL. In fact, former Labor Secretary, Blas Ople rhetorically asked how PAL can be covered by the civil service law when, at one time, there were three (3) CBAs in PAL, one

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for the ground crew, one for the flight attendants, and one for the pilots; and (c) When public sector unionism was just an abstract concept, labor unions in PAL with the right to engage in strike and other concerted activities were already active. Not to be overlooked of course is the 1964 case of *Phil. Air Lines Employees' Assn.*, wherein the Court stated that "the Civil Service Law has not been actually applied to PAL."

2. ID.; ID.; ID.; EXECUTIVE ORDER (EO) 1077; NOT APPLICABLE TO PAL EMPLOYEE; CASE AT BAR.— Paloma cannot plausibly be accorded the benefits of EO 1077 which, to stress, was issued to narrow the gap between the leave privileges between the members of the judiciary, on one hand, and other government officers and employees in the **civil service**, on the other. That PAL and Paloma may have, at a time, come within the embrace of the civil service by virtue of the 1973 Constitution is of little moment at this juncture. As held in *National Service Corporation v. National Labor Relations Commission (NASECO)*, the issue of whether or not a given GOCC falls within the ambit of the civil service subject, *vis-à-vis* disputes respecting terms and conditions of employment, to the jurisdiction of the Civil Service Commission or the NLRC, as the case may be, resolves itself into the question of which between the 1973 Constitution, which does not distinguish between a GOCC with or without an original charter, and the 1987 Constitution, which does, is in place. To borrow from the 1988 *NASECO* ruling, it is the 1987 Constitution, which delimits the coverage of the civil service, that should govern this case because it is the Constitution in place at the time the case was decided, even if, incidentally, the cause of action accrued during the effectivity of the 1973 Constitution. This has been the consistent holding of the Court in subsequent cases involving GOCCs without original charters. It cannot be overemphasized that when Paloma filed his complaint for commutation of sick leave credits, private interests already controlled, if not owned, PAL. Be this as it may, Paloma, when he filed said complaint, cannot even assert being covered by the civil service and, hence, entitled to the benefits attached to civil service employment, such as the right under EO 1077 to accumulate and commute leave credits without limit. In all, then, Paloma, while with PAL, was never a government employee covered by the civil service law. As such, he did not acquire any vested rights on the retirement benefits accorded by

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EO 1077. What governs Paloma's entitlement to sick leave benefits and the computation and commutation of creditable benefits is not EO 1077, as the labor arbiter and originally the NLRC correctly held, but PAL's company policy on the matter which took effect in 1990.

APPEARANCES OF COUNSEL

De la Cuesta De las alas & Tantuico for R.G. Paloma.
Bienvenido T. Jamoralin, Jr. for PAL, Inc.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us are these two consolidated petitions for review under Rule 45 separately interposed by Ricardo G. Paloma and Philippine Airlines, Inc. (PAL) to nullify and set aside the Amended Decision[1] dated May 31, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 56429, as effectively reiterated in its Resolution[2] of January 14, 2003.

The Facts

Paloma worked with PAL from September 1957, rising from the ranks to retire, after 35 years of continuous service, as senior vice president for finance. In March 1992, or some nine (9) months before Paloma retired on November 30, 1992, PAL was privatized.

By way of post-employment benefits, PAL paid Paloma the total amount of PhP 5,163,325.64 which represented his separation/retirement gratuity and accrued vacation leave pay. For the benefits thus received, Paloma signed a document denominated *Release and Quitclaim*[3] but inscribed the following

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[1] *Rollo* (G.R. No. 148415), pp. 55-65. Penned by Associate Justice Renato C. Dacudao (now retired) and concurred in by Associate Justices Bennie A. Adefuin-de la Cruz and Eliezer R. de los Santos.

[2] *Rollo* (G.R. No. 156764), pp. 56-57.

[3] *Id*. at 83.

reservation therein: "Without prejudice to my claim for further leave benefits embodied in my aide memoire transmitted to Mr. Roberto Anonas covered by my 27 Nov. 1992 letter x x x."

The leave benefits Paloma claimed being entitled to refer to his 450-day accrued sick leave credits which PAL allegedly only paid the equivalent of 18 days. He anchored his entitlement on Executive Order No. (EO) 1077[4] dated January 9, 1986, and his having accumulated a certain number of days of sick leave credits, as acknowledged in a letter of Alvia R. Leaño, then an administrative assistant in PAL. Leaño's letter dated November 12, 1992 pertinently reads:

> At your request, we are pleased to confirm herewith the balance of your sick leave credits as they appear in our records: 230 days.
>
> According to our existing policy, an employee is entitled to accumulate sick leave with pay only up to a maximum of 230 days.
>
> Had there been no ceiling as mandated by Company policy, your sick leave credits would have totaled 450 days to date.[5]

Answering Paloma's written demands for conversion to cash of his accrued sick leave credits, PAL asserted having paid all of Paloma's commutable sick leave credits due him pursuant to company policy made applicable to PAL officers starting 1990.

The company leave policy adverted to grants PAL's regular ground personnel a graduated sick leave benefits, those having rendered at least 25 years of service being entitled to 20 days of sick leave for every year of service. An employee, under the policy, may accumulate sick leaves with pay up to **230 days**. Subject to defined qualifications, sick leave credits in excess of 230 days shall be commutable to cash at the employee's option and shall be paid in lump sum on or before **May 31st** of the following year they were earned.[6] Per PAL's records, Paloma

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[4] "Revising the Computation of Creditable Vacation and Sick Leaves of Government Officers and Employees."

[5] *Rollo* (G.R. No. 148415), pp. 63-64.

[6] *Rollo* (G.R. No. 148415), pp. 45-46.

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appears to have, for the period from 1990 to 1992, commuted 58 days of his sick leave credits, broken down as follows: 20 days each in 1990 and 1991 and 18 days in 1992.

Subsequently, Paloma filed before the Arbitration Branch of the National Labor Relations Commission (NLRC) a Complaint[7] for *Commutation of Accrued Sick Leaves Totaling 392 days.* In the complaint, docketed as NLRC-NCR-Case No. 00-08-05792-94, Paloma alleged having accrued sick leave credits of **450 days** commutable upon his retirement pursuant to EO 1077 which allows retiring government employees to commute, without limit, all his accrued vacation and sick leave credits. And of the 450-day credit, Paloma added, he had commuted only 58 days, leaving him a **balance of 392 days** of accrued sick leave credits for commutation.

Ruling of the Labor Arbiter

Issues having been joined with the filing by the parties of their respective position papers,[8] the labor arbiter rendered on June 30, 1995 a Decision[9] dispositively reading:

> WHEREFORE, premises considered, respondent PHILIPPINE AIRLINE[S], INC. is hereby ordered to pay within ten (10) days from receipt hereof herein complainant Ricardo G. Paloma, the sum of Six Hundred Seventy Five Thousand Pesos (₱675,000.00) representing his one Hundred sixty two days [162] accumulated sick leave credits, plus ten (10%) percent attorney's fees of ₱67,500.00, or a total sum of ₱742,500.00.
>
> SO ORDERED.

The labor arbiter held that PAL is not covered by the civil service system and, accordingly, its employees, like Paloma, cannot avail themselves of the beneficent provision of EO 1077. This executive issuance, per the labor arbiter's decision, applies

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[7] *Id*. at 59-60, dated August 5, 1994.

[8] *Rollo* (G.R. No. 156764), pp. 61-73, Position Paper for Complainant, dated September 28, 1994; *id*. at 74-82, Position Paper for Respondent, dated October 24, 1994.

[9] *Id*. at 67-75, per Labor Arbiter Felipe T. Garduque II.

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only to government officers and employees covered by the civil service, exclusive of the members of the judiciary whose leave and retirement system is covered by a special law.

However, the labor arbiter ruled that Paloma is entitled to a commutation of his alternative claim for 202 accrued sick leave credits less 40 days for 1990 and 1991. Thus, the grant of commutation for 162 accrued leave credits.

Both parties appealed[10] the decision of the labor arbiter to the NLRC.

Ruling of the NLRC in NLRC NCR CA No. 009652-95 (NLRC-NCR-Case No. 00-08-05792-94)

On November 26, 1997, the First Division of the NLRC rendered a Decision affirming that of the labor arbiter, thus:

WHEREFORE, as recommended, both appeals are DISMISSED. The decision of Labor Arbiter Felipe T. Garduque II dated June 30, 1995 is AFFIRMED.

SO ORDERED.[11]

Both parties moved for reconsideration. In its Resolution of November 10, 1999, the NLRC, finding Paloma to have, upon his retirement, commutable accumulated sick leave credits of 230 days, modified its earlier decision, disposing as follows:

In view of all the foregoing, our decision dated November 26, 1997, be modified by increasing the sick leave benefits of complainant to be commuted to cash from 162 days to 230 days.

SO ORDERED.[12]

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[10] *Id*. at 102-115, PAL's Appeal to NLRC, dated August 15, 1995; *id*. at 123-137, Paloma's Memorandum on Appeal, dated August 16, 1995.

[11] *Id*. at 149-160. Penned by Commissioner Vicente S.E. Veloso and concurred in by Commissioner Alberto R. Quimpo.

[12] *Id*. at 88-94. Penned by Commissioner Alberto R. Quimpo and concurred in by then Presiding Commissioner Rogelio I. Rayala. Commissioner Vicente S.E. Veloso did not take part.

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From the above modificatory resolution of the NLRC, PAL went to the CA on a petition for *certiorari* under Rule 65, the recourse docketed as CA-G.R. SP No. 56429.

Ruling of the CA in its April 28, 2000 Decision

By a Decision dated April 28, 2000, the CA found for PAL, thus:

WHEREFORE, the petition is granted. Public respondent's November 10, 1999 Resolution is set aside. And the complaint of Ricardo Paloma is hereby DISMISSED. Without costs.

SO ORDERED.[13]

In time, Paloma sought reconsideration.[14]

The May 31, 2001 Amended Decision

On May 31, 2001, the CA issued the assailed Amended Decision reversing its April 28, 2000 Decision. The *fallo* of the Amended Decision reads:

WHEREFORE, premises considered, our Judgment, dated 28 April 2000 is hereby vacated and, set aside, and another one entered reinstating the Resolution, dated 10 November 1999, issued by the public respondent National Labor Relations Commission in NLRC NCR Case No. 00-08-05792-94 [NLRC NCR CA No. 009652-95], entitled *Ricardo G. Paloma v. Philippine Airlines, Incorporated,* with the only modification that the total sums granted by Labor Arbiter Felipe T. Garduque II (₱742,500.00, inclusive of the ten percent (10%) attorney's fees), as affirmed by public respondent National Labor Relations Commission, First Division, in said NLRC Case No. 00-08-05792-94, shall earn legal interest from the date of the institution of the complaint until fully paid/discharged. (Art. 2212, New Civil Code).

SO ORDERED.[15]

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[13] *Id*. at 222-231. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Bennie A. Adefuin-de la Cruz.

[14] *Id*. at 233-243, dated June 8, 2000.

[15] *Id*. at 64.

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Justifying its amendatory action, the CA stated that EO 1077 applies to PAL and necessarily to Paloma on the following rationale: Section 2(1) of Article IX(B) of the 1987 Constitution applies prospectively and, thus, the expressed limitation therein on the applicability of the civil service law only to government-owned and controlled corporations (GOCCs) with original charters does not preclude the applicability of EO 1077 to PAL and its then employees. This conclusion, the CA added, becomes all the more pressing considering that PAL, at the time of the issuance of EO 1077, was still a GOCC and that Paloma had already 29 years of service at that time. The appellate court also stated that since PAL had then no existing retirement program, the provisions of EO 1077 shall serve as a retirement program for Paloma who had meanwhile acquired vested rights under the EO pursuant to Arts. 100[16] and 287[17] of the Labor Code.

Significantly, despite affirmatively positing the applicability of EO 1077, the Amended Decision still deferred to PAL's existing policy on the 230-day limit for accrued sick leave with pay that may be credited to its employees. Incongruously, while the CA reinstated the November 10, 1999 Resolution of the NLRC, it decreed the implementation of the labor arbiter's Decision dated June 30, 1995. As may be recalled, the NLRC, in its November 10, 1999 Resolution, allowed a 230-day sick leave commutation, up from the 162 days granted under the June 30, 1995 Decision of the labor arbiter.

Paloma immediately appealed the CA's Amended Decision via a Petition for Review on *Certiorari* under Rule 45, docketed as **G.R. No. 148415**. On the other hand, PAL first sought

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[16] Art. 100. *PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS.* Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[17] Art. 287. *RETIREMENT.*

x x x x x x x x x

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreements x x x.

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reconsideration of the Amended Decision, coming to us after the CA, per its January 14, 2003 Resolution, denied the desired reconsideration. In net effect then, PAL's Petition for Review on *Certiorari*, docketed as **G.R. No. 156764**, assails both the Amended Decision and Resolution of the CA.

The Issues

In **G.R. No. 148415**, Paloma raises the sole issue of:

WHETHER OR NOT THE [CA], IN HOLDING THAT E.O. NO. 1077 IS APPLICABLE TO PETITIONER AND YET APPLYING COMPANY POLICY BY AWARDING THE CASH EQUIVALENT OF ONLY 162 DAYS SICK LEAVE CREDITS INSTEAD OF THE 450 DAYS SICK LEAVE CREDITS PETITIONER IS ENTITLED TO UNDER E.O. NO. 1077, DECIDED A QUESTION OF SUBSTANCE IN A MANNER CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE.[18]

In **G.R. No. 156764**, PAL raises the following issues for our consideration:

1. May an employee of a non-government corporation [invoke EO] 1077 which the then President Ferdinand E. Marcos issued on January 9, 1986, solely for the benefit of government officers and employees covered by the civil service?

2. Can a judicial body modify or alter a company policy by ordering the commutation of sick leave credits which, under company policy is non-commutable?[19]

The issues submitted boil down to the question of whether or not EO 1077, before PAL's privatization, applies to its employees, and corollarily, whether or not Paloma is entitled to a commutation of his accrued sick leave credits. Subsumed to the main issue because EO 1077 applies only to government employees subject to civil service law is the question of whether or not PAL—which, as early as 1960 until its privatization, had been considered as a government-controlled corporation—is covered by and subject to the limitations peculiar under the civil service system.

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[18] *Rollo* (G.R. No. 148415), p. 236.

[19] *Rollo* (G.R. No. 156764), p. 13.

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There can be no quibbling, as a preliminary consideration, about PAL having been incorporated as a private corporation whose controlling stocks were later acquired by the GSIS, which is wholly owned by the government. Through the years before GSIS divested itself of its controlling interests over the airline, PAL was considered a government-controlled corporation, as we said as much in *Phil. Air Lines Employees' Assn. v. Phil. Air Lines, Inc.*,[20] a case commenced in August 1958 and finally resolved by the Court in 1964. The late Blas Ople, former Labor Secretary and a member of the 1986 Constitutional Commission, described PAL and other like entities spun off from the GSIS as "second generation corporations functioning as private subsidiaries."[21] Before the coming into force of the 1973 Constitution, a subsidiary of a wholly government-owned corporation or a government corporation with original charter was covered by the Labor Code. Following the ratification of the 1973 Constitution, these subsidiaries theoretically came within the pale of the civil service on the strength of this provision: "[T]he civil service embraces every branch, agency, subdivision and instrumentality of the Government, including every [GOCC] x x x."[22] Then came the 1987 Constitution which contextually delimited the coverage of the civil service only to a GOCC "with original charter."[23]

The Court's Ruling

Considering the applicable law and jurisprudence in the light of the undisputed factual milieu of the instant case, the setting aside of the assailed amended decision and resolution of the CA is indicated.

Core Issue: Applicability of EO 1077

Insofar as relevant, EO 1077 dated January 9, 1986, entitled *Revising the Computation of Creditable Vacation and Sick Leaves of Government Officers and Employees*, provides:

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[20] No. L-18559, June 30, 1964, 11 SCRA 387.

[21] *National Service Corporation v. NLRC*, Nos. 69870 & 70295, November 29, 1988, 168 SCRA 122, 135.

[22] Art. II-B, Sec. I(1) of the 1973 Constitution.

[23] Art. IX-B, Sec. 2(1) of the 1987 Constitution.

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WHEREAS, under existing law and civil service regulations, the number of days of vacation and sick leaves creditable to a government officer or employee is limited to 300 days;

WHEREAS, by special law, members of the judiciary are not subject to such restriction;

WHEREAS, it is the continuing policy of the government to institute to the extent possible a uniform and equitable system of compensation and benefits and to enhance the morale and performance in the civil service.

x x x x x x x x x

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct the following:

Section 1. Any officer [or] employee of the government who retires or voluntary resigns or is separated from the service through no fault of his own and whose leave benefits are not covered by special law, shall be entitled to the commutation of all the accumulated vacation and/or sick leaves to his credit, exclusive of Saturdays, Sundays, and holidays, **without limitation as to the number of days of vacation and sick leaves that he may accumulate**. (Emphasis supplied.)

Paloma maintains that he comes within the coverage of EO 1077, the same having been issued in 1986, before he severed official relations with PAL, and at a time when the applicable constitutional provision on the coverage of the civil service made no distinction between GOCCs with original charters and those without, like PAL which was incorporated under the Corporation Code. Implicit in Paloma's contention is the submission that he earned the bulk of his sick leave credits under the aegis of the 1973 Constitution when PAL, being then a government-controlled corporation, was under civil service coverage.

The contention is without merit.

PAL never ceased to be operated as a private corporation, and was not subjected to the Civil Service Law

The Court can allow that PAL, during the period material, was a government-controlled corporation in the sense that the

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GSIS owned a controlling interest over its stocks. One stubborn fact, however, remains: Through the years, PAL functioned as a private corporation and managed as such for profit. Their personnel were never considered government employees. It may perhaps not be amiss for the Court to take judicial notice of the fact that the civil service law and rules and regulations have not actually been made to apply to PAL and its employees. Of governing application to them was the Labor Code. Consider: (a) Even during the effectivity of the 1973 Constitution but prior to the promulgation on January 17, 1985 of the decision in No. 64313 entitled *National Housing Corporation v. Juco*,[24] the Court no less recognized the applicability of the Labor Code to, and the authority of the NLRC to exercise jurisdiction over, disputes involving discipline, personnel movements, and dismissal in GOCCs, among them PAL;[25] (b) Company policy and collective bargaining agreements (CBAs), instead of the civil service law and rules, govern the terms and conditions of employment in PAL. In fact, Ople rhetorically asked how PAL can be covered by the civil service law when, at one time, there were three (3) CBAs in PAL, one for the ground crew, one for the flight attendants, and one for the pilots;[26] and (c) When public sector unionism was just an abstract concept, labor unions in PAL with the right to engage in strike and other concerted activities were already active.[27]

Not to be overlooked of course is the 1964 case of *Phil. Air Lines Employees' Assn.*, wherein the Court stated that "the Civil Service Law has not been actually applied to PAL."[28]

Given the foregoing considerations, Paloma cannot plausibly be accorded the benefits of EO 1077 which, to stress, was

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[24] 134 SCRA 172.

[25] *National Service Corporation, supra* note 21, at 133; citing *Philippine Airlines, Inc. v. NLRC,* No. 62961, September 2, 1983, 124 SCRA 583.

[26] RECORD OF THE CONSTITUTIONAL COMMISSION, Vol. I, pp. 583-585; cited in *National Service Corporation, supra.*

[27] *Phil. Air Lines Employees' Assn., supra* note 20.

[28] *Supra* at 397.

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issued to narrow the gap between the leave privileges between the members of the judiciary, on one hand, and other government officers and employees in the **civil service**, on the other. That PAL and Paloma may have, at a time, come within the embrace of the civil service by virtue of the 1973 Constitution is of little moment at this juncture. As held in *National Service Corporation v. National Labor Relations Commission (NASECO)*,[29] the issue of whether or not a given GOCC falls within the ambit of the civil service subject, *vis-à-vis* disputes respecting terms and conditions of employment, to the jurisdiction of the Civil Service Commission or the NLRC, as the case may be, resolves itself into the question of which between the 1973 Constitution, which does not distinguish between a GOCC with or without an original charter, and the 1987 Constitution, which does, is in place. To borrow from the 1988 *NASECO* ruling, it is the 1987 Constitution, which delimits the coverage of the civil service, that should govern this case because it is the Constitution in place at the time the case was decided, even if, incidentally, the cause of action accrued during the effectivity of the 1973 Constitution. This has been the consistent holding of the Court in subsequent cases involving GOCCs without original charters.[30]

It cannot be overemphasized that when Paloma filed his complaint for commutation of sick leave credits, private interests already controlled, if not owned, PAL. Be this as it may, Paloma, when he filed said complaint, cannot even assert being covered by the civil service and, hence, entitled to the benefits attached to civil service employment, such as the right under EO 1077 to accumulate and commute leave credits without limit. In all, then, Paloma,

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[29] *Supra* note 21.

[30] See *Postigo v. Philippine Tuberculosis Society, Inc.*, G.R. No. 155146, January 24, 2006, 479 SCRA 628; *Juco v. NLRC*, G.R. No. 98107, August 18, 1997, 277 SCRA 528; *Davao City Water District v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991, 201 SCRA 593; *PNOC-Energy Development Corporation v. NLRC*, G.R. No. 79182, September 11, 1991, 201 SCRA 487; *PNOC-Energy Development Corporation v. Leogardo*, G.R. No. 58494, July 5, 1989, 175 SCRA 26; *Trade Union of the Philippines and Allied Services (TUPAS) v. National Housing Corporation*, G.R. No. 49677, May 4, 1989, 173 SCRA 33; *Lumanta v. NLRC*, G.R. No. 82819, February 8, 1989, 170 SCRA 79.

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while with PAL, was never a government employee covered by the civil service law. As such, he did not acquire any vested rights on the retirement benefits accorded by EO 1077.

Paloma not entitled to the benefits granted in EO 1077; existing company policy on the matter applies

What governs Paloma's entitlement to sick leave benefits and the computation and commutation of creditable benefits is not EO 1077, as the labor arbiter and originally the NLRC correctly held, but PAL's company policy on the matter which, as found below, took effect in 1990. The text of the policy is reproduced in the CA's April 28, 2000 Decision and sets out the following pertinent rules:

POLICY

Regular employees shall be entitled to a yearly period of sick leave with pay, the exact number of days to be determined on the basis of the employee's category and length of service in the company.

RULES

A. For ground personnel

2. Sick leave shall be granted only upon certification by a company physician that an employee is incapable of discharging his duties due to illness or injury x x x.

x x x x x x x x x

3. Sick leave entitlement accrues from the date of an employee's regular employment x x x.

In case of direct conversion from temporary/daily/project/contract to regular status, regular employment shall be deemed to have begun on the date of the employee's conversion as a regular employee.

x x x x x x x x x

4. **An employee may accumulate sick leave with pay up to Two Hundred Thirty (230) days**;

An employee who has accumulated seventy-five (75) days sick leave credit at the end of each year may, at his option, commute

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seventy-five percent (75%) of his current sick leave entitlement to cash and the other twenty-five percent (25%) to be added to his accrued sick leave credits up to two hundred thirty (230) calendar days.

The seventy-five percent (75%) commutable to cash as above provided, shall be paid up in lump sum on or before May 31st of the following year.

Sick leave credits in excess of two hundred thirty (230) days shall be commutable to cash at the employee's option, and shall be paid in lump sum on or before May 31st of the following year it was earned.[31] (Emphasis ours.)

As may be gathered from the records, accrued sick leave credits in excess of 230 days were not, if earned before 1990 when the above policy took effect, commutable to cash; they were simply forfeited. Those earned after 1990, but still subject to the 230-day threshold rule, were commutable to cash to the extent of 75% of the employee's current entitlement, and payable on or before May 31st of the following year, necessarily implying that the privilege to commute is time-bound.

It appears that Paloma had, as of 1990, more than 230 days of accrued sick leave credits. Following company policy, Paloma was deemed to have forfeited the monetary value of his leave credits in excess of the 230-day ceiling. Now, then, it is undisputed that he earned additional accrued sick leave credits of 20 days in 1990 and 1991 and 18 days in 1992, which he duly commuted pursuant to company policy and received with the corresponding cash value. Therefore, PAL is correct in contending that Paloma had received whatever was due on the commutation of his accrued sick leave credits in excess of the 230 days limit, specifically the 58 days commutation for 1990, 1991, and 1992.

No commutation of 230 days accrued sick leave credits

The query that comes next is how the 230 days accrued sick leave credits Paloma undoubtedly had when he retired are to be treated. Is this otherwise earned credits commutable to cash? These should be answered in the negative.

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[31] *Rollo* (G.R. No. 148415), pp. 45-46.

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The labor arbiter granted 162 days commutation, while the NLRC allowed the commutation of the maximum 230 days. The CA, while seemingly affirming the NLRC's grant of 230 days commutation, actually decreed a 162-day commutation. We cannot sustain any of the dispositions thus reached for lack of legal basis, for PAL's company policy upon which either disposition was predicated did not provide for a commutation of the first 230 days accrued sick leave credits employees may have upon their retirement. Hence, the NLRC and the CA, by their act of allowing commutation to cash, erred as they virtually read in the policy something not written or intended therein. Indeed, no law provides for commutation of unused or accrued sick leave credits in the private sector. Commutation is allowed by way of voluntary endowment by an employer through a company policy or by a CBA. None of such medium presently obtains and it would be incongruous if the Court fills up the vacuum.

Confronted with a similar situation as depicted above, the Court, in *Baltazar v. San Miguel Brewery, Inc.*, declared as follows:

> In connection with the question of whether or not appellee is entitled to the cash value of six months accumulated sick leave, it appears that while under the last paragraph of Article 5 of appellant's Rules and Regulations of the Health, Welfare and Retirement Plan (Exhibit 3), unused sick leave may be accumulated up to a maximum of six months, the same is not commutable or payable in cash upon the employee's option.
>
> In our view, the only meaning and import of said rule and regulation is that if an employee does not choose to enjoy his yearly sick leave of thirty days, he may accumulate such sick leave up to a maximum of six months and enjoy this six months sick leave at the end of the sixth year but may not commute it to cash.[32]

In fine, absent any provision in the applicable company policy authorizing the commutation of the 230 days accrued sick leave credits existing upon retirement, Paloma may not, as a matter of enforceable right, insist on the commutation of his sick leave credits to cash.

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[32] No. L-23076, February 27, 1969, 27 SCRA 71, 74-75.

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As PAL's senior vice-president for finance upon his retirement, Paloma knew or at least ought to have known the company policy on accrued sick leave credits and how it was being implemented. Had he acted on that knowledge in utmost good faith, these proceedings would have not come to pass.

WHEREFORE, the petition under *G.R. No. 148415* is hereby *DISMISSED* for lack of merit, while the petition under *G.R. No. 156764* is hereby *GIVEN DUE COURSE*. The Amended Decision dated May 31, 2001 of the CA in CA-G.R. SP No. 56429 and its Resolution of January 14, 2003 are hereby *ANNULLED* and *SET ASIDE*, and the CA Decision dated April 28, 2000 is accordingly *REINSTATED*.

Costs against Ricardo G. Paloma.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 148444. July 14, 2008]

ASSOCIATED BANK (now UNITED OVERSEAS BANK [PHILS.]), *petitioner, vs.* **SPOUSES RAFAEL and MONALIZA PRONSTROLLER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FINDINGS OF TRIAL COURT AFFIRMED BY APPELLATE COURT, RESPECTED.— Well-settled is the rule that the findings of the RTC, as affirmed by the appellate court, are binding on this Court. In a petition for review on *certiorari* under Rule 45 of the Rules of Court, as in this case, this Court may not review the findings of fact all over again. It must be stressed that this Court is not a