EN BANC

G.R. No. 243259 – 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 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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CONCURRENCE

LAZARO-JAVIER, *J.:*

Age is certainly not just a number in this case.

Petitioners were female flight attendants of respondent Philippine Airlines, Inc. (PAL) and members of Flight Attendants and Stewards Association of the Philippines (FASAP) who were considered retired at the age of 55 pursuant to PAL and FASAP's Collective Bargaining Agreement (PAL FASAP 2000-2005 CBA) which mandated "*compulsory retirement shall be fifty-five (55) for females and sixty (60) for males*."[1] Petitioners assailed the aforesaid provision for being discriminatory to female flight attendants. Respondent, on the other hand, maintained that the subject policy is not discriminatory since female flight attendants belong to a special class of occupation requiring special standards for retirement.

I **concur** with the erudite *ponencia* of Senior Associate Justice Mario Marvic Victor F. Leonen that the compulsory retirement age here **discriminates** against women and is **void** for being contrary to the Constitution, law, and public policy. Allow me though to adduce a few more reasons in support of the grant of the petition.

First. The Constitution, cognizant of the disparity in rights between men and women in almost all phases of social and political life, provides a gamut of protective provisions, among them:

a) Section 14, Article II on the Declaration of Principles and State Policies, expressly recognizes the role of women in nation-building and

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[1] Section 144 (A) of the PAL FASAP 2000-2005 CBA.

commands the State to ensure, at all times, the fundamental equality before the law of women and men;

b) Section 3 of Article XIII requires the State to afford full protection to labor and to promote full employment and equality of employment opportunities for all, including an assurance of entitlement to tenurial security of all workers; and

c) Section 14 of Article XIII mandates that the State shall protect working women through provisions for opportunities that would enable them to reach their full potential.[2]

Article 135 of the Labor Code, on the other hand, recognizes a woman's right against discrimination with respect to terms and conditions of employment on account simply of sex.

Second. Another ground to find the subject provision on compulsory retirement age void is Republic Act No. 10911 or the **Anti-Age Discrimination in Employment Act**.[3]

Republic Act No. 10911 seeks to promote equal opportunities in employment for everyone. Thus, the State shall (i) promote employment of individuals on the basis of their abilities, knowledge, skills, and qualifications rather than their age; (ii) prohibit arbitrary age limitations in employment; and (iii) promote the right of all employees and workers, regardless of age, to be treated equally in terms of compensation, benefits, promotion, training, and other employment opportunities.[4]

Section 5 of Republic Act No. 10911 provides:

> **Section 5.** *Prohibition of Discrimination in Employment on Account of Age* –
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> (a) It shall be unlawful for an employer to:
>
> x x x
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> (7) Impose early retirement on the basis of such employee's or worker's age.

The law, however, admits certain exceptions including if "**age is a bona fide occupational qualification reasonably necessary in the normal operation of a particular business or where the differentiation is based on reasonable factors other than age.**"[5] This is known as the bona fide occupational qualification (BFOQ) exception.

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2 See *Philippine Telegraph and Telephone Company Co. v. NLRC*, 338 Phil. 1093, 1099-1100 (1997).

3 An Act Prohibiting Discrimination Against Any Individual in Employment on Account of Age and Providing Penalties Therefor; Approved on July 21, 2016.

4 Section 2 of RA 10911.

5 Section 6 (a) of RA 10911.

BFOQ are employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees.[6] The qualification should relate to an essential job duty and is considered necessary for operation of the particular business.

To justify a BFOQ, the employer must prove that: (1) the employment qualification is reasonably related to the essential operation of the job involved; and (2) that there is factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job.[7]

In *Star Paper Corporation v. Simbol*,[8] the Court explained that the standard employed here is **reasonableness** of the company policy which is parallel to the bona fide occupational qualification requirement, *viz.*:

> x x x 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.
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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

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[6] https://definitions.uslegal.com/b/bona-fide-occupational-qualification/#:~:text=Bona%20fide%20occupational%20qualifications%20(BFOQ,operation%20of%20the%20particular%20business

[7] *Star Paper Corporation v. Simbol*, 521 Phil. 364, 375 (2006).

[8] *Id.*

> employment policy. The employer has the burden to prove the existence of a reasonable business necessity. x x x[9] (Citations omitted, emphasis in the original).

Too, in *Yrasuegui v. Pilippine Airlines, Inc.*,[10] this Court held that a BFOQ is valid "provided it reflects an inherent quality reasonably necessary for satisfactory job performance."[11]

Here, respondent merely claims, without more, that female flight attendants belong to a special class of occupation requiring special standards for retirement. The Court of Appeals agreed with respondent, thus:

> 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. xxx 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.[12]

This clearly falls short of the requirement of proving **reasonable business necessity**.

While it is true that aging generally entails the slowing down of all bodily functions, there is no reasonable connection to one's age and his or her sex vis-à-vis capacity to perform his or her duties as flight attendant. To be sure, both female and male cabin attendants are exposed to same tasks, work demands, stress, and dangers.

Thus, applying the doctrine in *Star Paper Corporation*, if the questioned provision here is upheld without valid justification, then PAL can just create policies based on an **unproven presumption** of a perceived danger at the expense of petitioners' and PAL's future female flight attendants' right to security of tenure.[13]

More, *Philippine Telegraph and Telephone Company Co. v. NLRC*[14] held:

> We cannot agree to the respondent's proposition that termination from employment of flight attendants on account of marriage is a fair and reasonable standard designed for their own health, safety, protection and welfare, as no basis has been laid therefor. Actually, respondent claims that its concern is not so much against the continued employment of the flight

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9 *Id.* at 376-377.
10 590 Phil. 490 (2008)
11 *Id.* at 513, citing *Philippine Telegraph and Telephone Company Co. v. NLRC*, *supra* note 2.
12 Rollo, p. 64.
13 521 Phil. 364, 377 (2006).
14 338 Phil. 1093 (1997).

> attendant merely by reason of marriage as observed by the Secretary of Labor, but rather on the consequence of marriage-pregnancy. x x x[15]

For respondent's failure to present proof of a reasonable business necessity, the subject policy providing the retirement of petitioners at 55 years of age is void.

Finally. Evidently, the compulsory retirement age of Philippine Airlines, Inc.'s female flight attendants is but a scheme to force them to leave based not only on their age but also on their gender.

ACCORDINGLY, I vote to **GRANT** the petition.

AMY C. LAZARO-JAVIER
Associate Justice

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[15] *Id.* at 1109.