



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES JESUS FERNANDO and
ELIZABETH S. FERNANDO,
Petitioners,

G.R. No. 212038

- versus -

NORTHWEST AIRLINES, INC.
Respondent.

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NORTHWEST AIRLINES, INC.
Petitioner,

G.R. No. 212043

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
JARDELEZA,* JJ.

- versus -

SPOUSES JESUS FERNANDO
and ELIZABETH S. FERNANDO,
Respondents.

Promulgated:

08 FEB 2017

X-----X

DECISION

PERALTA, J.:

Before us are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ dated August 30, 2013, and Resolution² dated March 31, 2014 of the Court of Appeals (CA) in CA-

* Designated Additional Member per Special Order No. 2416, dated January 4, 2017.
¹ Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon, concurring; *rollo* (G.R No. 212038), pp. 31-57.
² *Id.* at 59-60.

G.R. CV No. 93496 which affirmed the Decision³ dated September 9, 2008 of the Regional Trial Court (RTC), Branch 97, Quezon City in Civil Case No. Q-N-02-46727 finding Northwest Airlines, Inc. (*Northwest*) liable for breach of contract of carriage.

The spouses Jesus and Elizabeth S. Fernando (*Fernandos*) are frequent flyers of Northwest Airlines, Inc. and are holders of Elite Platinum World Perks Card, the highest category given to frequent flyers of the carrier.⁴ They are known in the musical instruments and sports equipments industry in the Philippines being the owners of JB Music and JB Sports with outlets all over the country. They likewise own the five (5) star Hotel Elizabeth in Baguio City and Cebu City, and the chain of Fersal Hotels and Apartelles in the country.⁵

The Fernandos initiated the filing of the instant case which arose from two (2) separate incidents: *first*, when Jesus Fernando arrived at Los Angeles (LA) Airport on December 20, 2001; *second*, when the Fernandos were to depart from the LA Airport on January 29, 2002. The factual antecedents are as follows:

Version of Spouses Jesus and Elizabeth S. Fernando:

a.) The arrival at Los Angeles Airport on December 20, 2001

Sometime on December 20, 2001, Jesus Fernando arrived at the LA Airport *via* Northwest Airlines Flight No. NW02 to join his family who flew earlier to the said place for a reunion for the Christmas holidays.⁶

When Jesus Fernando presented his documents at the immigration counter, he was asked by the Immigration Officer to have his return ticket verified and validated since the date reflected thereon is August 2001. So he approached a Northwest personnel who was later identified as Linda Puntawongdaycha, but the latter merely glanced at his ticket without checking its status with the computer and peremptorily said that the ticket has been used and could not be considered as valid. He then explained to the personnel that he was about to use the said ticket on August 20 or 21, 2001 on his way back to Manila from LA but he could not book any seat because of some ticket restrictions so he, instead, purchased new business class ticket on the said date.⁷ Hence, the ticket remains unused and perfectly valid.

³ Penned by Judge Bernelito R. Fernandez; *id.* at 98-112.

⁴ *Rollo*, p. 33.

⁵ *Id.* at 24.

⁶ *Id.*

⁷ *Id.* at 177.

To avoid further arguments, Jesus Fernando gave the personnel the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline's computer and for her to see that the ticket is still valid. But Linda Puntawongdaycha refused to check the validity of the ticket in the computer but, instead, looked at Jesus Fernando with contempt, then informed the Immigration Officer that the ticket is not valid because it had been used.⁸

The Immigration Officer brought Jesus Fernando to the interrogation room of the Immigration and Naturalization Services (INS) where he was asked humiliating questions for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States (US), instead of the usual six (6) months.⁹

When Jesus Fernando was finally able to get out of the airport, to the relief of his family, Elizabeth Fernando proceeded to a Northwest Ticket counter to verify the status of the ticket. The personnel manning the counter courteously assisted her and confirmed that the ticket remained unused and perfectly valid. To avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando.¹⁰

Since Jesus Fernando was granted only a twelve (12)-day stay in the US, his scheduled plans with his family as well as his business commitments were disrupted. He was supposed to stay with his family for the entire duration of the Christmas season because his son and daughter were then studying at Pepperton University in California. But he was forced to fly back to Manila before the twelve (12)-day stay expired and flew back to the US on January 15, 2002. The Fernandos were, likewise, scheduled to attend the Musical Instrument Trade Show in LA on January 17, 2002 and the Sports Equipment Trade Show in Las Vegas on January 21 to 23, 2002 which were both previously scheduled. Hence, Jesus Fernando had to spend additional expenses for plane fares and other related expenses, and missed the chance to be with his family for the whole duration of the Christmas holidays.¹¹

b.) The departure from the Los Angeles Airport on January 29, 2002.

On January 29, 2002, the Fernandos were on their way back to the Philippines. They have confirmed bookings on Northwest Airlines NW Flight No. 001 for Narita, Japan and NW 029 for Manila. They checked in with their luggage at the LA Airport and were given their respective

⁸ *Id.* at 33-34.

⁹ *Id.* at 178.

¹⁰ *Id.* at 34.

¹¹ *Id.* at 35.



boarding passes for business class seats and claim stubs for six (6) pieces of luggage. With boarding passes, tickets and other proper travel documents, they were allowed entry to the departure area and joined their business associates from Japan and the Philippines who attended the Musical Instrument Trade Show in LA on January 17, 2002 and the Sports Equipment Trade Show in Las Vegas on January 21 to 23, 2002. When it was announced that the plane was ready for boarding, the Fernandos joined the long queue of business class passengers along with their business associates.¹²

When the Fernandos reached the gate area where boarding passes need to be presented, Northwest supervisor Linda Tang stopped them and demanded for the presentation of their paper tickets (*coupon type*). They failed to present the same since, according to them, Northwest issued electronic tickets (attached to the boarding passes) which they showed to the supervisor.¹³ In the presence of the other passengers, Linda Tang rudely pulled them out of the queue. Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number. But Linda Tang arrogantly told them that if they wanted to board the plane, they should produce their credit cards and pay for their new tickets, otherwise Northwest would order their luggage off-loaded from the plane. Exasperated and pressed for time, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. They were assisted by Northwest personnel Jeanne Meyer who retrieved their control number from her computer and was able to ascertain that the Fernandos' electronic tickets were valid and they were confirmed passengers on both NW Flight No. 001 for Narita Japan and NW 029 for Manila on that day. To ensure that the Fernandos would no longer encounter any problem with Linda Tang, Jeanne Meyer printed coupon tickets for them who were then advised to rush back to the boarding gates since the plane was about to depart. But when the Fernandos reached the boarding gate, the plane had already departed. They were able to depart, instead, the day after, or on January 30, 2002, and arrived in the Philippines on January 31, 2002.¹⁴

Version of Northwest Airlines, Inc.:

- a.) The arrival at the Los Angeles Airport on December 20, 2001.

Northwest claimed that Jesus Fernando travelled from Manila to LA on Northwest Airlines on December 20, 2001. At the LA Airport, it was

¹² *Id.* at 35.

¹³ *Id.* at 36.

¹⁴ *Id.* at 36-37.



revealed that Jesus Fernando's return ticket was dated August 20 or 21, 2001 so he encountered a problem in the Immigration Service. About an hour after the aircraft had arrived, Linda Puntawongdaycha, Northwest Customer Service Agent, was called by a US Immigration Officer named "Nicholas" to help verify the ticket of Jesus Fernando. Linda Puntawongdaycha then asked Jesus Fernando to "show" her "all the papers." Jesus Fernando only showed her the passenger receipt of his ticket without any ticket coupon attached to it. The passenger receipt which was labelled "Passenger Receipt" or "Customer Receipt" was dated August 2001. Linda Puntawongdaycha asked Jesus Fernando several times whether he had any other ticket, but Jesus Fernando insisted that the "receipt" was "all he has", and the passenger receipt was his ticket. He failed to show her any other document, and was not able to give any other relevant information about his return ticket. Linda Puntawongdaycha then proceeded to the Interline Department and checked Jesus Fernando's Passenger Name Record (*PNR*) and his itinerary. The itinerary only showed his coming from Manila to Tokyo and Los Angeles; nothing would indicate about his flight back to Manila. She then looked into his record and checked whether he might have had an electronic ticket but she could not find any. For failure to find any other relevant information regarding Fernando's return ticket, she then printed out Jesus Fernando's *PNR* and gave the document to the US Immigration Officer. Linda Puntawongdaycha insisted that she did her best to help Jesus Fernando get through the US Immigration.¹⁵

b.) The departure from the Los Angeles Airport on January 29, 2002.

On January 29, 2002, the Fernandos took Northwest for their flight back to Manila. In the trip, the Fernandos used electronic tickets but the tickets were dated January 26, 2002 and August 21, 2001. They reached the boarding gate few minutes before departure. Northwest personnel Linda Tang was then the one assigned at the departure area. As a standard procedure, Linda Tang scanned the boarding passes and collected tickets while the passengers went through the gate. When the Fernandos presented their boarding passes, Linda Tang asked for their tickets because there were no tickets stapled on their boarding passes. She explained that even though the Fernandos had electronic tickets, they had made "several changes on their ticket over and over". And when they made the booking/reservation at Northwest, they never had any ticket number or information on the reservation.¹⁶

When the Fernandos failed to show their tickets, Linda Tang called Yong who was a supervisor at the ticket counter to verify whether the Fernandos had checked in, and whether there were any tickets found at the

¹⁵ *Id.* at 37-38.

¹⁶ *Id.* at 38-39.



ticket counter. Upon verification, no ticket was found at the ticket counter, so apparently when the Fernandos checked in, there were no tickets presented. Linda Tang also checked with the computer the reservation of the Fernandos, but again, she failed to see any electronic ticket number of any kind, and/or any ticket record. So as the Fernandos would be able to get on with the flight considering the amount of time left, she told them that they could purchase tickets with their credit cards and deal with the refund later when they are able to locate the tickets and when they reach Manila. Linda Tang believed that she did the best she could under the circumstances.¹⁷

However, the Fernandos did not agree with the solution offered by Linda Tang. Instead, they went back to the Northwest ticket counter and were attended to by Jeanne Meyer who was “courteous” and “was very kind enough” to assist them. Jeanne Meyer verified their bookings and “printed paper tickets” for them. Unfortunately, when they went back to the boarding gate, the plane had departed. Northwest offered alternative arrangements for them to be transported to Manila on the same day on another airline, either through Philippine Airlines or Cathay Pacific Airways, but they refused. Northwest also offered them free hotel accommodations but they, again, rejected the offer¹⁸ Northwest then made arrangements for the transportation of the Fernandos from the airport to their house in LA, and booked the Fernandos on a Northwest flight that would leave the next day, January 30, 2002. On January 30, 2002, the Fernandos flew to Manila on business class seats.¹⁹

On April 30, 2002, a complaint for damages²⁰ was instituted by the Fernandos against Northwest before the RTC, Branch 97, Quezon City. During the trial of the case, the Fernandos testified to prove their claim. On the part of Northwest, Linda Tang-Mochizuki and Linda Puntawongdaycha testified through oral depositions taken at the Office of the Consulate General, Los Angeles City. The Northwest Manager for HR-Legal Atty. Cesar Veneracion was also presented and testified on the investigation conducted by Northwest as a result of the letters sent by Elizabeth Fernando and her counsel prior to the filing of the complaint before the RTC.²¹

On September 9, 2008, the RTC issued a Decision, the dispositive portion of which states, thus:

WHEREFORE, in view of the foregoing, this Court rendered judgment in favor of the plaintiffs and against defendant ordering defendant to pay the plaintiffs, the following:

¹⁷ *Id.* at 180.

¹⁸ *Id.* at 40

¹⁹ *Id.*

²⁰ *Rollo* (G.R No. 212043), pp. 61-69.

²¹ *Rollo* (G.R No. 212038), pp. 103-109.



1. Moral damages in the amount of Two Hundred Thousand Pesos (₱200,000.00);
2. Actual or compensatory damages in the amount of Two Thousand US Dollars (\$2,000.00) or its corresponding Peso equivalent at the time the airline ticket was purchased;
3. Attorney's fees in the amount of Fifty Thousand pesos (₱50,000.00); and,
4. Cost of suit.

SO ORDERED.²²

Both parties filed their respective appeals which were dismissed by the CA in a Decision dated August 30, 2013, and affirmed the RTC Decision.

The Fernandos and Northwest separately filed motions for a reconsideration of the Decision, both of which were denied by the CA on March 31, 2014.

The Fernandos filed a petition for review on *certiorari*²³ before this court docketed as G.R. No. 212038. Northwest followed suit and its petition²⁴ was docketed as G.R. No. 212043. Considering that both petitions involved similar parties, emanated from the same Civil Case No. Q-N-02-46727 and assailed the same CA judgment, they were ordered consolidated in a Resolution²⁵ dated June 18, 2014.

In G.R. No. 212038, the Fernandos raised the following issues:

WHETHER OR NOT THE ACTS OF THE PERSONNEL AND THAT OF DEFENDANT NORTHWEST ARE WANTON, MALICIOUS, RECKLESS, DELIBERATE AND OPPRESSIVE IN CHARACTER, AMOUNTING TO FRAUD AND BAD FAITH;

WHETHER OR NOT PETITIONER SPOUSES ARE ENTITLED TO MORAL DAMAGES IN AN AMOUNT MORE THAN THAT AWARDED BY THE TRIAL COURT;

WHETHER OR NOT DEFENDANT NORTHWEST IS LIABLE TO PETITIONER SPOUSES FOR EXEMPLARY DAMAGES; [AND]

WHETHER OR NOT THE PETITIONER SPOUSES ARE ENTITLED TO ATTORNEY'S FEES IN AN AMOUNT MORE THAN THAT AWARDED BY THE TRIAL COURT.²⁶

²² *Id.* at 112.

²³ *Id.* at 8-28.

²⁴ *Rollo* (G.R. No. 212043), pp. 57-92.

²⁵ *Rollo* (G.R. No. 212038), p. 317.

²⁶ *Id.* at 14-15.

In G.R. No. 212043, Northwest anchored its petition on the following assigned errors:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST COMMITTED A BREACH OF CONTRACT OF CARRIAGE;

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST IS LIABLE FOR DAMAGES AND THE AWARDS FOR MORAL DAMAGES AND ATTORNEY'S FEES ARE APPROPRIATE;

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST IS NOT ENTITLED TO RECOVER ON ITS COUNTERCLAIMS.²⁷

The Issues

The arguments proffered by the parties can be summed up into the following issues: (1) whether or not there was breach of contract of carriage and whether it was done in a wanton, malevolent or reckless manner amounting to bad faith; (2) whether or not Northwest is liable for the payment of moral damages and attorney's fees and whether it is liable to pay more than that awarded by the RTC; (3) whether or not Northwest is liable for the payment of exemplary damages; and (4) whether or not Northwest Airlines is entitled to recover on its counterclaim.

In their petition, the Fernandos contended that it was the personal misconduct, gross negligence and the rude and abusive attitude of Northwest employees Linda Puntawongdaycha and Linda Tang which subjected them to indignities, humiliation and embarrassment. The attitude of the aforesaid employees was wanton and malevolent allegedly amounting to fraud and bad faith. According to the Fernandos, if only Linda Puntawongdaycha had taken the time to verify the validity of the ticket in the computer, she would have not given the wrong information to the Immigration Officer because the August 2001 return ticket remained unused and valid for a period of one (1) year, or until August 2002. The wrong information given by Linda Puntawongdaycha aroused doubts and suspicions on Jesus Fernando's travel plans. The latter was then subjected to two (2) hours of questioning which allegedly humiliated him. He was even suspected of being an "illegal alien". The negligence of Linda Puntawongdaycha was allegedly so gross and reckless amounting to malice or bad faith.

²⁷

Rollo (G.R. No. 212043), pp. 66-67.

As to the second incident, the Fernandos belied the accusation of Northwest that they did not present any tickets. They presented their electronic tickets which were attached to their boarding passes. If they had no tickets, the personnel at the check-in counter would have not issued them their boarding passes and baggage claim stubs. That's why they could not understand why the coupon-type ticket was still demanded by Northwest.

On the award of moral damages, the Fernandos referred to the testimony of Elizabeth Fernando that she could not sleep and had a fever the night after the second incident. Thus, the Fernandos demanded that they should be given more than the "token amount" granted by the RTC which was affirmed by the CA. They stated that their status in the society and in the business circle should also be considered as a factor in awarding moral damages. They averred that they are well-known in the musical instruments and sports equipment industry in the country being the owners of JB Music and JB Sports with outlets all over the country. They own hotels, a chain of apartelles and a parking garage building in Indiana, USA. And since the breach of contract allegedly amounted to fraud and bad faith, they likewise demanded for the payment of exemplary damages and attorney's fees more than the amount awarded by the RTC.

On the other hand, Northwest stated in its petition that Linda Puntawongdaycha tried her best to help Jesus Fernando get through the US Immigration. Notwithstanding that Linda Puntawongdaycha was not able to find any relevant information on Jesus Fernando's return ticket, she still went an extra mile by printing the PNR of Jesus Fernando and handling the same personally to the Immigration Officer. It pointed out that the Immigration Officer "noticed in the ticket that it was dated sometime August 20 or 21, 2001, although it was already December 2001."

As to the incident with Linda Tang, Northwest explained that she was only following Northwest standard boarding procedures when she asked the Fernandos for their tickets even if they had boarding passes. Thus, the conduct cannot be construed as bad faith. The dates indicated on the tickets did not match the booking. Elizabeth Fernando was using an electronic ticket dated August 21, 2001, while the electronic ticket of Jesus Fernando was dated January 26, 2002. According to Northwest, even if the Fernandos had electronic tickets, the same did not discount the fact that, on the face of the tickets, they were for travel on past dates. Also, the electronic tickets did not contain the ticket number or any information regarding the reservation. Hence, the alleged negligence of the Fernandos resulted in the confusion in the procedure in boarding the plane and the eventual failure to take their flight.



Northwest averred that the award of moral damages and attorney's fees were exorbitant because such must be proportionate to the suffering inflicted. It argued that it is not obliged to give any "special treatment" to the Fernandos just because they are good clients of Northwest, because the supposed obligation does not appear in the contract of carriage. It further averred that it is entitled to its counterclaim in the amount of ₱500,000.00 because the Fernandos allegedly acted in bad faith in prosecuting the case which it believed are baseless and unfounded.

In the Comment²⁸ of Northwest, it insisted that assuming a mistake was committed by Linda Tang and Linda Puntawongdaycha, such mistake alone, without malice or ill will, is not equivalent to fraud or bad faith that would entitle the Fernandos to the payment of moral damages.

In the Reply²⁹ of the Fernandos, they asserted that it was a lie on the part of Linda Puntawongdaycha to claim that she checked the passenger name or PNR of Jesus Fernando from the computer and, as a result, she was not allegedly able to find any return ticket for him. According to Jesus Fernando, Linda Puntawongdaycha merely looked at his ticket and declared the same to be invalid. The Fernandos reiterated that after Jesus Fernando was released by the US Immigration Service, Elizabeth Fernando proceeded to a Northwest Ticket counter to verify the status of the ticket. The personnel manning the counter courteously assisted her and confirmed that the ticket remained unused and perfectly valid. The personnel merely punched the Elite Platinum World Perks Card number of Jesus Fernando and was able to verify the status of the ticket. The Fernandos further argued that if there was a discrepancy with the tickets or reservations, they would not have been allowed to check in, and since they were allowed to check in then they were properly booked and were confirmed passengers of Northwest.

Our Ruling

We find merit in the petition of the Spouses Jesus and Elizabeth Fernando.

The Fernandos' cause of action against Northwest stemmed from a breach of contract of carriage. A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established.³⁰

²⁸ *Rollo* (G.R. No. 212038), pp. 327-337.

²⁹ *Id.* at 371-379.

³⁰ *Cathay Pacific Airways, Ltd., v. Spouses Daniel Vazquez, et al.*, 447 Phil. 306, 319 (2003).



A contract of carriage is defined as one whereby a certain person or association of persons obligate themselves to transport persons, things, or goods from one place to another for a fixed price. Under Article 1732 of the Civil Code, this "persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public" is called a common carrier.³¹ Undoubtedly, a contract of carriage existed between Northwest and the Fernandos. They voluntarily and freely gave their consent to an agreement whose object was the transportation of the Fernandos from LA to Manila, and whose cause or consideration was the fare paid by the Fernandos to Northwest.³²

In *Alitalia Airways v. CA, et al.*,³³ We held that when an airline issues a ticket to a passenger confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.³⁴

When Northwest confirmed the reservations of the Fernandos, it bound itself to transport the Fernandos on their flight on 29 January 2002. We note that the witness³⁵ of Northwest admitted on cross-examination that based on the documents submitted by the Fernandos, they were confirmed passengers on the January 29, 2002 flight.³⁶

In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier.³⁷ As the aggrieved party, the Fernandos only had to prove the existence of the contract and the fact of its non-performance by Northwest, as carrier, in order to be awarded compensatory and actual damages.³⁸

Therefore, having proven the existence of a contract of carriage between Northwest and the Fernandos, and the fact of non-performance by Northwest of its obligation as a common carrier, it is clear that Northwest breached its contract of carriage with the Fernandos. Thus, Northwest opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.³⁹

³¹ *Cathay Pacific Airways v. Juanita Reyes, et al.*, 712 Phil. 398, 413 (2013).

³² *Cathay Pacific Airways, Ltd. v. Spouses Daniel Vazquez, et al.*, *supra* note 30, at 319-320.

³³ 265 Phil. 791, 798 (1990).

³⁴ *China Airlines, Ltd. v. Court of Appeals et al.*, 453 Phil. 959, 977 (2003).

³⁵ Northwest Manager for HR-Legal Atty. Cesar Veneracion.

³⁶ Rollo, p. 179 (G.R. No. 212038).

³⁷ *Philippine Airlines, Inc., v. Francisco Lao Lim, et al.*, 697 Phil. 497, 507 (2012).

³⁸ *Northwest Airlines, Inc. v. Chiong*, 567 Phil. 289, 304 (2008).

³⁹ *Supra*, at 304-305.

Moreover, Article 1733 of the New Civil Code provides that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. Also, Article 1755 of the same Code states that a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

We, thus, sustain the findings of the CA and the RTC that Northwest committed a breach of contract “in failing to provide the spouses with the proper assistance to avoid any inconvenience” and that the actuations of Northwest in both subject incidents “fall short of the utmost diligence of a very cautious person expected of it”. Both ruled that considering that the Fernandos are not just ordinary passengers but, in fact, frequent flyers of Northwest, the latter should have been more courteous and accommodating to their needs so that the delay and inconveniences they suffered could have been avoided. Northwest was remiss in its duty to provide the proper and adequate assistance to them.

Nonetheless, We are not in accord with the common finding of the CA and the RTC when both ruled out bad faith on the part of Northwest. While We agree that the discrepancy between the date of actual travel and the date appearing on the tickets of the Fernandos called for some verification, however, the Northwest personnel failed to exercise the utmost diligence in assisting the Fernandos. The actuations of Northwest personnel in both subject incidents are constitutive of bad faith.

On the first incident, Jesus Fernando even gave the Northwest personnel the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline’s computer for her to see that the ticket is still valid. But Linda Puntawongdaycha refused to check the validity of the ticket in the computer. As a result, the Immigration Officer brought Jesus Fernando to the interrogation room of the INS where he was interrogated for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States (US), instead of the usual six (6) months.⁴⁰

As in fact, the RTC awarded actual or compensatory damages because of the testimony of Jesus Fernando that he had to go back to Manila and then return again to LA, USA, two (2) days after requiring him to purchase another round trip ticket from Northwest in the amount of \$2,000.00 which was not disputed by Northwest.⁴¹ In ignoring Jesus Fernando’s pleas to

⁴⁰ *Rollo* (G.R. No. 212038), p. 178.

⁴¹ *Id.* at 111.

check the validity of the tickets in the computer, the Northwest personnel exhibited an indifferent attitude without due regard for the inconvenience and anxiety Jesus Fernando might have experienced.

Passengers do not contract merely for transportation. They have a right to be treated by the 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 rule or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.⁴²

In requiring compliance with the standard of extraordinary diligence, a standard which is, in fact, that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property.⁴³

Notably, after the incident, the Fernandos proceeded to a Northwest Ticket counter to verify the status of the ticket and they were assured that the ticket remained unused and perfectly valid. And, to avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando. The failure to promptly verify the validity of the ticket connotes bad faith on the part of Northwest.

Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud. A finding of bad faith entitles the offended party to moral damages.⁴⁴

As to the second incident, there was likewise fraud or bad faith on the part of Northwest when it did not allow the Fernandos to board their flight for Manila on January 29, 2002, in spite of confirmed tickets. We need to stress that they have confirmed bookings on Northwest Airlines NW Flight No. 001 for Narita, Japan and NW 029 for Manila. They checked in with their luggage at LA Airport and were given their respective boarding passes for business class seats and claim stubs for six (6) pieces of luggage. With boarding passes and electronic tickets, apparently, they were allowed entry to the departure area; and, they eventually joined the long queue of business class passengers along with their business associates.

⁴² *Air France v. Carrasco*, 653 Phil. 138 (2010).

⁴³ *Zulueta v. Pan American World Airways, Inc.*, 150 Phil. 465, 489-490 (1972).

⁴⁴ *China Airlines, Ltd. v. Court of Appeals et al.*, *supra* note 34.



However, in the presence of the other passengers, Northwest personnel Linda Tang pulled the Fernandos out of the queue and asked for paper tickets (*coupon type*). Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number. Again, the Northwest personnel refused to do so; she, instead, told them to pay for new tickets so they could board the plane. Hence, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. They were assisted by Northwest personnel Jeanne Meyer who retrieved their control number from her computer and was able to ascertain that the Fernandos' electronic tickets were valid, and they were confirmed passengers on both NW Flight No. 001 for Narita Japan and NW 029 for Manila on that day.

In *Ortigas, Jr. v. Lufthansa German Airlines*,⁴⁵ this Court declared that "(i)n contracts of common carriage, in attention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passengers to the award of moral damages in accordance with Article 2220 of the Civil Code."

In *Pan American World Airways, Inc. v. Intermediate Appellate Court*,⁴⁶ where a would-be passenger had the necessary ticket, baggage claim and clearance from immigration, all clearly and unmistakably showing that she was, in fact, included in the passenger manifest of said flight, and *yet was denied accommodation in said flight*, this Court did not hesitate to affirm the lower court's finding awarding her damages on the ground that the breach of contract of carriage amounted to bad faith.⁴⁷ For the indignity and inconvenience of being refused a confirmed seat on the last minute, said passenger is entitled to an award of moral damages.⁴⁸

In this case, We need to stress that the personnel who assisted the Fernandos even printed coupon tickets for them and advised them to rush back to the boarding gates since the plane was about to depart. But when the Fernandos reached the boarding gate, the plane had already departed. They were able to depart, instead, the day after, or on January 30, 2002.

In *Japan Airlines v. Jesus Simangan*,⁴⁹ this Court held that the acts committed by Japan Airlines against Jesus Simangan amounted to bad faith, thus:

⁴⁵ G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

⁴⁶ G.R. No. 74442, 153 SCRA 521.

⁴⁷ *Spouses Cesar v. Court of Appeals*, G.R. No. 104235, November 18, 1993.

⁴⁸ *Alitalia Airways v. CA, et al.*, *supra* note 33.

⁴⁹ 575 Phil. 359, 376 (2008).

x x x JAL did not allow respondent to fly. **It informed respondent that there was a need to first check the authenticity of his travel documents with the U.S. Embassy.** As admitted by JAL, "the flight could not wait for Mr. Simangan because it was ready to depart."

Since JAL definitely declared that the flight could not wait for respondent, it gave respondent no choice but to be left behind. The latter was unceremoniously bumped off despite his protestations and valid travel documents and notwithstanding his contract of carriage with JAL. **Damage had already been done when respondent was offered to fly the next day on July 30, 1992. Said offer did not cure JAL's default.**⁵⁰

Similarly, in *Korean Airlines Co., Ltd. v. Court of Appeals*,⁵¹ where private respondent was not allowed to board the plane because her seat had already been given to another passenger even before the allowable period for passengers to check in had lapsed **despite the fact that she had a confirmed ticket** and she had arrived on time, this Court held that petitioner airline acted in bad faith in violating private respondent's rights under their contract of carriage and is, therefore, liable for the injuries she has sustained as a result.⁵²

Under Article 2220⁵³ of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith.⁵⁴ Clearly, in this case, the Fernandos are entitled to an award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action.⁵⁵

We note that even if both the CA and the RTC ruled out bad faith on the part of Northwest, the award of "some moral damages" was recognized. Both courts believed that considering that the Fernandos are good clients of Northwest for almost ten (10) years being Elite Platinum World Perks Card holders, and are known in their business circle, they should have been given by Northwest the corresponding special treatment.⁵⁶ They own hotels and a chain of apartelles in the country, and a parking garage building in Indiana, USA. From this perspective, We adopt the said view. We, thus, increase the award of moral damages to the Fernandos in the amount of ₱3,000,000.00.

⁵⁰ *Supra* at 373-374. (Emphasis ours.)

⁵¹ G.R. No. 61418, 154 SCRA 211.

⁵² *Spouses Cesar v. Court of Appeals*, G.R. No. 104235, November 18, 1993. (Emphasis ours)

⁵³ *Article 2220*. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

⁵⁴ *Cathay Pacific Airways v. Juanita Reyes, et al.*, *supra* note 31.

⁵⁵ *Air France v. Gillego*, *supra* note 42.

⁵⁶ *Rollo* (G.R. 212038), p. 112.

As held in *Kierulf v. Court of Appeals*,⁵⁷ the social and financial standing of a claimant may be considered if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.

In *Trans World Airlines v. Court of Appeals*,⁵⁸ this Court considered the social standing of the aggrieved passenger:

At the time of this unfortunate incident, the private respondent was **a practicing lawyer, a senior partner of a big law firm in Manila. He was a director of several companies and was active in civic and social organizations in the Philippines.** Considering the circumstances of this case and the **social standing of private respondent in the community,** he is entitled to the award of **moral and exemplary damages.** x x x This award should be reasonably sufficient to **indemnify private respondent for the humiliation and embarrassment that he suffered and to serve as an example to discourage the repetition of similar oppressive and discriminatory acts.**⁵⁹

Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.⁶⁰ They are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior.⁶¹ Hence, given the facts and circumstances of this case, We hold Northwest liable for the payment of exemplary damages in the amount of ₱2,000,000.00.

In the case of *Northwest Airlines, Inc. v. Chiong*,⁶² Chiong was given the run-around at the Northwest check-in counter, instructed to deal with a man in *barong* to obtain a boarding pass, and eventually barred from boarding a Northwest flight to accommodate an American passenger whose name was merely inserted in the Flight Manifest, and did not even personally check-in at the counter. Under the foregoing circumstances, the award of moral and exemplary damages was given by this Court.

Time and again, We have declared that a contract of carriage, in this case, air transport, is primarily intended to serve the traveling public and thus, imbued with public interest. The law governing common carriers consequently imposes an exacting standard of conduct.⁶³ A contract to

⁵⁷ 336 Phil. 414, 427 (1997).

⁵⁸ No. L-78656, August 30, 1988, 165 SCRA 143.

⁵⁹ *Trans World Airlines v. Court of Appeals*, *supra*, at 147-148. (Emphasis ours)

⁶⁰ *Cathay Pacific Airways, Ltd., v. Spouses Daniel Vazquez, et al.*, *supra* note 29.

⁶¹ *Japan Airlines v. Jesus Simangan*, *supra* note 49.

⁶² 567 Phil. 289, 304 (2008).

⁶³ *Northwest Airlines, Inc. v. Chiong*, *supra* note 38.

transport passengers is quite different in kind and degree from any other contractual relation because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.⁶⁴

As to the payment of attorney's fees, We sustain the award thereof on the ground that the Fernandos were ultimately compelled to litigate and incurred expenses to protect their rights and interests, and because the Fernandos are entitled to an award for exemplary damages. Pursuant to Article 2208 of the Civil Code, attorney's fees may be awarded when exemplary damages are awarded, or a party is compelled to litigate or incur expenses to protect his interest, or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

Records show that the Fernandos demanded payment for damages from Northwest even before the filing of this case in court. Clearly, the Fernandos were forced to obtain the services of counsel to enforce a just claim, for which they should be awarded attorney's fees.⁶⁵ We deem it just and equitable to grant an award of attorney's fees equivalent to 10% of the damages awarded.

Lastly, the counterclaim of Northwest in its Answer⁶⁶ is a compulsory counterclaim for damages and attorney's fees arising from the filing of the complaint. This compulsory counterclaim of Northwest arising from the filing of the complaint may not be granted inasmuch as the complaint against it is obviously not malicious or unfounded. It was filed by the Fernandos precisely to claim their right to damages against Northwest. Well-settled is the rule that the commencement of an action does not *per se* make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate.⁶⁷

WHEREFORE, the Decision dated August 30, 2013 and the Resolution dated March 31, 2014 of the Court of Appeals, in CA-G.R. CV No. 93496 are hereby **AFFIRMED WITH MODIFICATION**. The award of moral damages and attorney's fees are hereby increased to ₱3,000,000.00 and ten percent (10%) of the damages awarded, respectively. Exemplary

⁶⁴ *Air France v. Carrascoso*, *supra* note 42.

⁶⁵ CA Decision, *rollo*, p. 47; *Northwest Airlines, Inc. v. Chiong*, *supra* note 40.

⁶⁶ *Rollo* (G.R. 212043), pp. 211-218.

⁶⁷ *Japan Airlines v. Jesus Simangan*, *supra* note 49.

damages in the amount of ₱2,000,000.00 is also awarded. Costs against Northwest Airlines.

The total amount adjudged shall earn legal interest at the rate of twelve percent (12%) *per annum* computed from judicial demand or from April 30, 2002 to June 30 2013, and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.

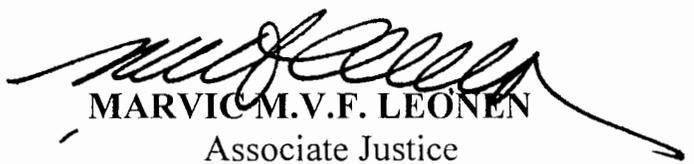
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

