FIRST DIVISION

[G.R. No. 110524. March 14, 2000]

DOUGLAS MILLARES and ROGELIO LAGDA, *petitioners*, *vs.* NATIONAL LABOR RELATIONS COMMISSION, TRANS-GLOBAL MARITIME AGENCY, INC. and ESSO INTERNATIONAL SHIPPING CO., LTD., *respondents*.

D E C I S I O N

KAPUNAN, *J.*:

Petitioners Douglas Millares and Rogelio Lagda seek the nullification of the decision, dated June 1, 1993, of the public respondent National Labor Relations Commission (NLRC) rendered in POEA Case (M) Adj 89-10-961 entitled "Douglas Millares and Rogelio Lagda v. Trans-Global Maritime Agency, Inc. and ESSO International Shipping Co., Ltd., et. al." dismissing for lack of merit petitioners' appeal and motion for new trial and affirming the decision, dated July 17, 1991, rendered by the Philippine Overseas Employment Administration (POEA).

The antecedent facts of the instant case are as follows:

Petitioner Douglas Millares was employed by private respondent ESSO International Shipping Company Ltd. (Esso International, for brevity) through its local manning agency, private respondent Trans-Global Maritime Agency, Inc. (Trans-Global, for brevity) on November 16, 1968 as a machinist. In 1975, he was promoted as Chief Engineer which position he occupied until he opted to retire in 1989. He was then receiving a monthly salary of US $1,939.00.1[1]

On June 13, 1989, petitioner Millares applied for a leave of absence for the period July 9 to August 7, 1989. In a letter dated June 14, 1989, Michael J. Estaniel, President of private respondent Trans-Global, approved the request for leave of absence.2[2] On June 21, 1989, petitioner Millares wrote G.S. Hanly, Operations Manager of Exxon International Co., (now Esso International) through Michael J. Estaniel, informing him of his intention to avail of the optional retirement plan under the Consecutive Enlistment Incentive Plan (CEIP) considering that he had already rendered more than twenty (20) years of continuous service. On July 13, 1989 respondent Esso International, through W.J. Vrints, Employee Relations Manager, denied petitioner Millares' request for

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1[1] *Rollo*, p. 531.

2[2] *Ibid*.

optional retirement on the following grounds, to wit: (1) he was employed on a contractual basis; (2) his contract of enlistment (COE) did not provide for retirement before the age of sixty (60) years; and (3) he did not comply with the requirement for claiming benefits under the CEIP, i.e., to submit a written advice to the company of his intention to terminate his employment within thirty (30) days from his last disembarkation date.3[3]

On August 9, 1989, petitioner Millares requested for an extension of his leave of absence from August 9 to 24, 1989. On August 19, 1989, Roy C. Palomar, Crewing Manager, Ship Group A, Trans-Global, wrote petitioner Millares advising him that respondent Esso International "has corrected the deficiency in its manpower requirements specifically in the Chief Engineer rank by promoting a First Assistant Engineer to this position as a result of (his) previous leave of absence which expired last August 8, 1989. The adjustment in said rank was required in order to meet manpower schedules as a result of (his) inability."4[4]

On September 26, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Millares that in view of his absence without leave, which is equivalent to abandonment of his position, he had been dropped from the roster of crew members effective September 1, 1989.5[5]

On the other hand, petitioner Lagda was employed by private respondent Esso International as wiper/oiler in June 1969. He was promoted as Chief Engineer in 1980, a position he continued to occupy until his last COE expired on April 10, 1989. He was then receiving a monthly salary of US$1,939.00.6[6]

On May 16, 1989, petitioner Lagda applied for a leave of absence from June 19,1989 up to the whole month of August 1989. On June 14, 1989, respondent Trans-Globals President, Michael J. Estaniel, approved petitioner Lagdas leave of absence from June 22, 1989 to July 20, 19897[7] and advised him to report for re-assignment on July 21, 1989.

On June 26, 1989, petitioner Lagda wrote a letter to G.S. Stanley, Operations Manager of respondent Esso International, through respondent Trans-Globals President Michael

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3[3] *Id*., at 533.

4[4] *Id*., at 532.

5[5] *Id*.

6[6] *Id*.

7[7] *Id*.

J. Estaniel, informing him of his intention to avail of the optional early retirement plan in view of his twenty (20) years continuous service in the company.[8]

On July 13, 1989, respondent Trans-Global denied petitioner Lagdas request for availment of the optional early retirement scheme on the same grounds upon which petitioner Millares request was denied.[9]

On August 3, 1989, he requested for an extension of his leave of absence up to August 26, 1989 and the same was approved.[10] However, on September 27, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Lagda that in view of his "unavailability for contractual sea service," he had been dropped from the roster of crew members effective September 1, 1989.[11]

On October 5, 1989, petitioners Millares and Lagda filed a complaint-affidavit, docketed as POEA (M) 89-10-9671, for illegal dismissal and non-payment of employee benefits against private respondents Esso International and Trans-Global, before the POEA.

On July 17, 1991, the POEA rendered a decision dismissing the complaint for lack of merit.[12]

Petitioners appealed the decision to the NLRC. On June 1, 1993, public respondent NLRC rendered the assailed decision dismissing petitioners appeal and denying their motion for new trial for lack of merit.[13]

Hence, the instant petition for *certiorari* based on the following grounds:

> I. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT REGULAR EMPLOYEES.
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> II. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID,

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8[8] *Rollo*, p. 621.

9[9] *Ibid*.

10[10] *Id*., at 532.

11[11] *Id*., at 621-622.

12[12] *Id*., at 531.

13[13] *Id*., at 95.

DESPITE THE ABSENCE OF ANY JUST OR AUTHORIZED CAUSE FOR DISMISSAL.

III. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID, DESPITE THE FACT THAT PETITIONERS WERE NOT GIVEN AN OPPORTUNITY TO BE HEARD PRIOR TO THEIR TERMINATION.

IV. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT ENTITLED TO ANY RETIREMENT BENEFIT UNDER THE OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS.

V. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE THAT, EVEN IN THE ABSENCE OF AN OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS, PETITIONERS WERE STILL ENTITLED TO RECEIVE 100% OF THEIR TOTAL CREDITED CONTRIBUTIONS TO THE CEIP, AS EXPRESSLY PROVIDED IN PARS. 2 (g) AND 2 (h) OF THE LETTER MEMORANDUM DATED MARCH 9, 1977 (ANNEX E OF ANNEX C-PETITION) AND PAR. III, SEC. (c) AND PAR. III, SEC. (b) OF THE CEIP (ANNEX D-PETITION) WHICH WERE ISSUED BY RESPONDENTS.

VI. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY FOR DAMAGES OF RESPONDENTS FOR HAVING WRONGFULLY AND MALICIOUSLY CAUSED THE NAME OF PETITIONER MILLARES TO BE PLACED IN THE POEA WATCHLIST AND THEREBY PREVENTING HIS TIMELY DEPARTURE.

VII. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY OF RESPONDENTS FOR PAYMENT OF MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEYS FEES AND COSTS OF LITIGATION.[14][14]

Petitioners contend that public respondent NLRC gravely abused its discretion in ruling that they are not regular employees but are merely contractual employees whose employments are terminated every time their contracts of employment expire. Petitioners further aver that after rendering twenty (20) consecutive years of service, performing activities which were necessary and desirable in the trade or business of private respondents, they should be considered regular employees under Article 280 of the Labor Code. Consequently, they may only be dismissed for any of the just or authorized causes for dismissal provided by law. Furthermore, petitioners asseverate

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[14][14] *Id.*, at 30-31.

that their dismissal was unlawful for failure of private respondents to comply with the twin requirements of due process, i.e., notice and hearing. Petitioners allege that they were not given any opportunity to be heard by private respondents prior to their termination.

Petitioners further contend that public respondent gravely abused its discretion in not giving evidentiary weight to the affirmation of eleven (11) former employees, as well as three (3) other witnesses as to the existence of the optional early retirement policy. Said witnesses were allegedly present when Captain Estaniel announced the optional early retirement policy under the CEIP. On the other hand, while the 11 former employees were not actually present at the announcement thereof, they attested to the fact that they were informed of said policy by the officers of private respondents. Petitioners point out that these former employees did not stand to benefit from the policy; thus, in the absence of any vested interest on their part, their affidavits should have been given more weight than the self-serving denials of private respondents officers.

Petitioners also invoke the principle of estoppel. According to petitioners, estoppel bars a party who has, by his own declaration, act or omission, led another to believe a particular thing to be true, and to act upon such belief, from denying his own acts and representations to the prejudice of the other party who relied upon them. In the instant case, petitioners allege that since they relied in good faith and acted on the basis of the representations of private respondents that an optional early retirement plan indeed existed, the principle of estoppel *in pais* is clearly applicable to them.

Petitioners, likewise, maintain that public respondent NLRC seriously erred in invoking the parol evidence rule against them as there is no written agreement to speak of on optional retirement so as to make this rule applicable. Petitioners declare that "nowhere in the contract (of enlistment) is there any mention of the specific terms of the CEIP, particularly the provisions on the extent of benefits to be received by the seamen" but rather, the "specific details are contained in a separate document which is in the nature of an inter-office memorandum that is unilaterally issued by private respondents."

Petitioners further claim that public respondent NLRC abused its discretion in failing to consider that even in the absence of the optional early retirement policy, petitioners are still entitled to receive 100% of their total credited contributions to the CEIP either under Sec. III, par. (c) of the CEIP, or par. 2 (h) of the Letter-Memorandum dated March 9, 1977. Said memorandum which was signed by the then President/Chairman of Trans-Global, Inocencio P. Estaniel (now deceased), itemized the benefits that may be availed of by eligible employees. Paragraph 2 (h) thereof allegedly guarantees that an employee who is terminated for any reason, other than misconduct on his part, will be given 100% of the Total Credited CEIP Contributions for sixty (60) months of credited service.

On the other hand, Section III, paragraph (c) of the Consecutive Enlistment Incentive Plan provides:

III. Distribution of Benefits

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C. Other Terminations

When the employment of an employee is terminated by the Company for a reason other than one in A, without any misconduct on his part, a percentage of the total amount credited to his account will be distributed to him in accordance with the following.

Credited Service	Percentage
36 months	50%
48 months	75%
60 months	100%

When the employment of an employee is terminated due to his poor performance, misconduct, unavailability, etc., or if employee is not offered re-engagement for similar reasons, no distribution of any portion of employees account will ever be made to him (or his eligible survivor/s). A determination of poor performance, misconduct and unavailability shall be made by the Company.

Misconduct shall include acts and offenses as defined in the Contract of Enlistment and Company Manuals.

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Petitioners claim that since both of them had rendered at least twenty (20) years, or 240 months, of faithful service to private respondents, they are entitled to receive 100% of the total credited contributions, pursuant to the aforesaid provisions. Contrary to the findings of public respondent, petitioners argue that they were not guilty of "poor performance" for petitioner Millares, in fact, qualified for the Merit Pay Program[16] of

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[15] *Id.*, at 172.

[16] Merit Pay Program Objective. - Eligible are Masters and Chief Engineers who are permanent (and are not in Probationary Status anymore). However, not every eligible officer receives Merit Pay. The philosophy underlying the Merit Pay Program is recognition of "extra effort." With this philosophy in mind, an eligible officer who does what is expected in the execution of his duties receives his normal pay. It is those Officers whose performance is above "just what is expected" that are recognized for their extra effort. (underscoring supplied)

private respondents at least 5 times in the years 1977, 1984, 1985, 1986 and 1987 in recognition of his above-average performance as ship officer. On the other hand, petitioner Lagda qualified for the Merit Pay Program for 3 consecutive years, i.e., in 1986, 1987 and 1988, likewise, in view of his above-average performance.

Petitioner Millares further contends that public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it failed to rule that private respondents should pay actual damages in the amount of P770,000.00 for having wrongfully caused his name to be placed in the POEA watchlist.17[17] Such wrongful act allegedly prevented petitioner Millares from leaving the Philippines to report on time to his new employer, NAESS Shipping Corporation. Anent petitioner, public respondent failed to consider the evidence presented by petitioner Millares on this issue.

Finally, petitioners aver that public respondent erred in not granting them moral and exemplary damages, as well as attorneys fees and costs of litigation.

At this juncture, it is worthy to note that the Solicitor General, in his Manifestation and Motion in Lieu of Comment, manifested that he is not opposing the instant petition and that he, in fact, finds the contentions of petitioners meritorious in part.

Article 280 of the Labor Code, as amended, defines regular employment as follows:

> Art. 280. *Regular and casual employment.* - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph. Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual

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17[17] *Rollo*, p. 85.

business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.18[18]

The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.19[19]

In the case at bar, it is undisputed that petitioners were employees of private respondents until their services were terminated on September 1, 1989. They served in their capacity as Chief Engineers, performing activities which were necessary and desirable in the business of private respondents Esso International, a shipping company; and Trans-Global, its local manning agency which supplies the manpower and crew requirements of Esso Internationals vessels.

It is, likewise, clear that petitioners had been in the employ of private respondents for 20 years. The records reveal that petitioners were repeatedly re-hired by private respondents even after the expiration of their respective eight-month contracts. Such repeated re-hiring which continued for 20 years, cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioners service to the private respondents business or trade.

Verily, as petitioners had rendered 20 years of service, performing activities which were necessary and desirable in the business or trade of private respondents, they are, by express provision of Article 280 of the Labor Code, considered regular employees.

Being regular employees, petitioners may not be dismissed except for a valid or just cause under Article 282 of the Labor Code.20[20] In the instant case, clearly ,there was no valid cause for the termination of petitioners. It will be recalled, that petitioner

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18[18] De Leon vs. National Labor Relations Commission, 176 SCRA 615 (1989)

19[19] *Id.*, at 621.

20[20] Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing.

Millares was dismissed for allegedly having "abandoned" his post; and petitioner Lagda, for his alleged "unavailability for contractual sea service." However, that petitioners did not abandon their jobs such as to justify the unlawful termination of their employment is borne out by the records.

To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.21[21]

In this case, private respondents failed to discharge this burden. They did not adduce any proof of some overt act of the petitioners that clearly and unequivocally show their intention to abandon their posts. On the contrary, the petitioners lost no time in filing the case for illegal dismissal against private respondents, taking them only about a month from the time their termination became effective on September 1, 1989 to the filing of their complaint on October 5, 1989. They cannot, by any reasoning, be said to have abandoned their work, for as we have also previously ruled, the filing by an employee of a complaint for illegal dismissal is proof enough of his desire to return to work, thus negating the employers charge of abandonment.22[22]

Furthermore, the absence of petitioners was justified by the fact that they secured the approval of private respondents to take a leave of absence after the termination of their last contracts of enlistment. Subsequently, petitioners sought for extensions of their respective leaves of absence. Granting *arguendo* that their subsequent requests for extensions were not approved, it cannot be said that petitioners were unavailable or had abandoned their work when they failed to report back for assignment as they were still questioning the denial of private respondents of their desire to avail of the optional early retirement policy, which they believed in good faith to exist.

Clearly, petitioners termination is illegal. Thus, under Article 279[23] of the Labor Code, petitioners are entitled to reinstatement without loss of seniority rights and other

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21[21] Artemio Labor, et. al. vs. NLRC and Gold City Commercial Complex, Inc., and Rudy Uy, 248 SCRA 183 (1995)

22[22] *Id*., at 198.

23[23] Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

privileges and to their full backwages, inclusive of allowances, and to their other benefits or the monetary equivalent thereof computed from the time their compensation was withheld from them up to the time of their actual reinstatement. Should reinstatement not be possible, private respondents are ordered to pay petitioners separation pay as provided by law.

Anent petitioners contention that they are entitled to retirement benefits under the optional retirement policy, we are constrained to uphold the findings of public respondent NLRC. A perusal of the records will reveal that the NLRC did not err in denying petitioners claim under the optional retirement policy allegedly announced by Captain Inocencio Estaniel at the General Assembly held at the Army and Navy Club sometime in 1977. The evidence of petitioners regarding the supposed announcement by Captain Estaniel of the controverted optional retirement plan which consisted merely of the affidavits of petitioners and their witnesses was successfully rebutted by the evidence adduced by private respondents. Furthermore, nowhere in the CEIP[24][24] is there a reference to the alleged optional retirement plan, nor is there a provision for retirement upon service of 20 years in the company.

Having failed to substantiate their allegation that indeed Captain Estaniel announced this company policy on early retirement in 1977, petitioners cannot, thus, successfully invoke the doctrine of estoppel against private respondents.

Regarding petitioners allegation that public respondent NLRC seriously erred in invoking the parol evidence rule against petitioners as there is no written agreement on optional retirement so as to make this rule applicable, we find the same to be without merit. Contrary to the allegations of petitioners, provisions on retirement benefits are specifically embodied in the CEIP which was part and parcel of the contract of enlistment signed by the petitioners. Moreover, we note that petitioners are in fact anchoring their claim for retirement benefits, in the alternative, under Section III, paragraph (c) of this same CEIP. Hence, they cannot validly deny the existence of the provisions on retirement benefits, and rely merely on the alleged unilateral issuance of private respondents.

The above notwithstanding, petitioners can nevertheless properly claim 100% of the total amount credited to their account under Section III of the CEIP,[25][25] as well as paragraph 2 (h) of the Memorandum dated March 9, 1977.[26][26] The Consecutive Enlistment Incentive Plan or CEIP provides, among others: (a) that when the employment of an employee terminates because of his retirement (with sixty (60) years being the mandatory retirement age) , death or permanent and total disability, 100% of

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24[24] *Rollo*, pp. 170-173.

25[25] *supra*.

26[26] *supra*.

the total amount credited to his account will be distributed to him (or his eligible survivor/s); (b) that when an employee voluntarily terminates his employment (regardless of the reason) no distribution of any portion of the employees account will ever be made to him (or to his eligible survivor/s); and, (c) that when the termination is for a reason other than retirement, death or permanent and total disability, without any misconduct on his part, he shall be entitled to 50% (for 36 months credited service), 75% (48 months) and 100% (60 months) of the total amount credited to his account. The CEIP, further, provides that when the employment is terminated due to his poor performance, misconduct, unavailability, etc., or if the employee is not offered re-engagement for similar reasons, no distribution of any portion of the employees account will ever be made to him.

As discussed above, petitioners did not voluntarily terminate their employment with private respondents. They merely expressed their desire to avail of the optional early retirement plan in the mistaken belief that such plan existed and that they would still receive the benefits due them under the CEIP. Neither were they dismissed for any of the causes, i.e., poor performance, misconduct, unavailability, etc., which would result in forfeiture of the aforesaid retirement benefits. Rather, their dismissal was without just cause and, therefore, deemed illegal under the law. Hence, having been in the employ of private respondents for a good 20 years or 240 months, petitioners are entitled to the retirement benefits under Section III, paragraph (c) of the CEIP.27[27]

Anent petitioner Millares contention that he is entitled to an award of actual damages in the amount of P770,000.00, we find the same to be bereft of merit. Actual or compensatory damages is the term used for compensation for pecuniary loss - in trade, business, property, profession, job or occupation. The same must be proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given.28[28]

Petitioner Millares failed to substantiate his claim that the placing of his name on the POEA watchlist cost him his new job with NAESS Shipping Corporation and that he incurred losses in the sum of P770,000.00. On the contrary, private respondents, despite their admission that the placing of petitioner Millares name on the watchlist was a mistake, were able to prove that he was able to leave the Philippines notwithstanding such mistake.

Finally, on the issue of whether or not private respondents are liable to pay moral and exemplary damages, attorneys fees and costs, the Court rules in the negative. The records reveal that petitioners failed to establish that they suffered diverse injuries such as mental anguish, besmirched reputation, wounded feelings and social humiliation on account of private respondents wrongful act or omission such as to entitle them to an award of moral damages under the Civil Code. The award of moral damages cannot be

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27[27] *supra*.

28[28] Rubio vs. Court of Appeals, 141 SCRA 488 (1986)

justified solely upon the premise that the employer fired his employee without just cause or due process. Likewise, petitioners failed to establish that their dismissal was effected in a wanton, oppressive or malevolent manner to justify an award of exemplary damages. Hence, no moral or exemplary damages may be awarded to the petitioners. Consequently, neither can they claim attorneys fees or costs of litigation.

WHEREFORE, premises considered, the assailed Decision, dated June 1, 1993, of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered ordering the private respondents to:

(1) Reinstate petitioners Millares and Lagda to their former positions without loss of seniority rights, and to pay full backwages computed from the time of illegal dismissal to the time of actual reinstatement;

(2) Alternatively, if reinstatement is not possible, pay petitioners Millares and Lagda separation pay equivalent to one months salary for every year of service; and,

(3) Jointly and severally pay petitioners One Hundred Percent (100%) of their total credited contributions as provided under the Consecutive Enlistment Incentive Plan.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and *Ynares-Santiago, JJ.,* concur.

Pardo, J., on official business abroad.