THIRD DIVISION

EASTERN SHIPPING LINES, INC., Petitioner,	**G.R. No. 171587**
	Present:
- *versus* -	CARPIO, *J., Chairperson,* CHICO-NAZARIO, VELASCO, JR., NACHURA, and PERALTA, *JJ.*
	Promulgated:
FERRER D. ANTONIO, Respondent.	October 13, 2009

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DECISION

PERALTA, *J.:*

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Before this Court is a Petition for Review on *Certiorari,* under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] dated December 1, 2005, and the Resolution[2] dated February 21, 2006 of the Court of Appeals (CA) in CA-G.R. SP. No. 75701 which affirmed with modification the Resolutions rendered by the National Labor Relations Commission (NLRC), Second Division, dated September 19, 2002 and January 30, 2003, respectively, in NLRC NCR CA NO. 029121-01, ordering petitioner to pay respondent his optional retirement benefit, plus moral damages and attorney's fees.

Petitioner Eastern Shipping Lines is a domestic corporation doing business in the Philippines. Respondent was hired by petitioner to work as a seaman on board its various vessels. Respondent started as an Apprentice Engineer on December 12, 1981 and worked in petitioner's various vessels where he was assigned to different positions. The last position he held was that of 3rd Engineer on board petitioner's vessel *M/V Eastern Venus*, where he worked

until February 22, 1996. In January 1996, respondent took the licensure examinations for 2nd Engineer while petitioners vessel was dry-docked for repairs. On February 13, 1996, while in Yokohama, Japan and in the employ of petitioner, he suffered a fractured left transverse process of the fourth lumbar vertebra. He consulted a doctor in Ogawa Hospital in Osaka, Japan and was advised to rest for a month. He was later examined by the company doctor and declared fit to resume work. However, he was not admitted back to work. Being in dire financial need at that time to support his family, he applied for an optional retirement on January 16, 1997.[3] Petitioner, in a letter[4] dated February 10, 1997, disapproved his application on the ground that his shipboard employment history and track record as a seaman did not meet the standard required in granting the optional retirement benefits. For refusing to heed his repeated requests, respondent filed a complaint for payment of optional retirement benefits against petitioner before the Industrial Relations Division of the Department of Labor and Employment (DOLE). For their failure to reach an amicable settlement, the complaint was forwarded to the National Labor Relations Commission (NLRC) for proper proceedings.

In its defense, petitioner alleged that sometime in January 1996, respondent filed a vacation leave to take the licensure examinations for 2nd Engineer while his vessel was dry-docked for repairs. The following month, respondent, while waiting for the results of his licensure examinations, filed another vacation leave for an alleged medical check-up. Having passed the licensure examinations for 2nd Engineer, he signified his intention to petitioner that he be assigned to a vessel for the said position. In the meantime, since there was still no vacancy in the desired position, respondent was instructed to undergo medical examinations as a prerequisite for boarding a vessel. He was found to be medically fit. Respondent, however, for unknown reasons, failed to report to petitioner after undergoing the medical examinations. He did not even bother to verify whether he had a voyage assignment for his new position as 2nd Engineer. On January 16, 1997, respondent suddenly went to the office and decided to avail himself of the company's retirement gratuity plan by formally applying for payment of his optional retirement benefits due to financial reasons. Petitioner denied his application ratiocinating that his shipboard employment history and track record as a seaman did not meet the standard required in granting the optional retirement benefits.

The Labor Arbiter (LA), in his Decision[5] dated April 18, 2001, rendered judgment in favor of the respondent. It found that respondent was forced to file his optional retirement due to

petitioner's failure to give him any work assignment despite that he had already recovered from his injury and was declared fit to work. The LA found that petitioner's actuations amounted to constructive dismissal and, hence, ordered the payment of respondent's optional retirement benefits, as well as moral and exemplary damages, and attorney's fees. The dispositive portion of LAs Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered as follows:
>
> Ordering respondent to pay complainant his optional retirement benefit of US$4,014.84 (55% x 608.30 x 12 yrs = 4,104.84) or its peso equivalent computed at the rate of exchange at the time of actual payment; Ordering respondents to pay complainant moral damages in the amount of ₱150,000.00 and exemplary damages in the amount of ₱75,000.00; and to pay complainant ten (10%) percent of the total monetary award by way of attorney's fees.
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> SO ORDERED.[6]

Dissatisfied with the LA's finding, petitioner appealed to the NLRC on grounds of serious errors which would cause grave or irreparable damage or injury to petitioner and for grave abuse of discretion. It alleged that the LA erred in ruling that respondent was entitled to the optional retirement benefits, as well as to the payment of moral and exemplary damages, and attorney's fees.

The NLRC, Second Division, in its Resolution[7] dated September 19, 2002, affirmed the findings of the LA and dismissed petitioner's appeal. It held that petitioners denial of respondent's application for optional retirement benefits was arbitrary and illegal.

Petitioner filed a motion for reconsideration,[8] which the NLRC denied in a Resolution[9] dated January 30, 2003.

Undaunted, petitioner filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding the retirement gratuity/separation pay to the respondent in the amount of US$4,104.84, plus moral and exemplary damages, and attorney's fees.

The CA, in its Decision dated December 1, 2005, affirmed the resolutions of the NLRC, but modified the award of moral damages in the reduced amount of PhP25,000.00 and deleted the award of exemplary damages. The CA ruled that the affirmance by the NLRC of the LA's ruling was supported by substantial evidence. Judicial prudence dictates that the NLRC's

exercise of discretion in affirming the LA's factual findings should be accorded great weight and respect. The CA ruled that while it acknowledged that the company's optional retirement benefits were in the form of a gratuity, which may or may not be awarded at the company's discretion, such exercise of discretion must still comply with the basic and common standard reason may require. Since respondent had complied with the minimum requirement provided in the gratuity plan, *i.e.*, actual rendition of 3,650 days on board petitioner's vessel, thus, petitioner's denial of the optional retirement benefits of the respondent was arbitrary and illegal.

Petitioner filed a motion for reconsideration,[10] which the CA denied in a Resolution[11] dated February 21, 2006.

Hence, the instant petition raising this sole assignment of error:

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING THE RESPONDENT THE OPTIONAL RETIREMENT BENEFIT BEING APPLIED FOR IN US DOLLARS UNDER THE GRATUITY PLAN OF HEREIN PETITIONER.[12]

The petition is meritorious.

Respondent is not entitled to optional retirement benefits. Under the Labor Code, it is provided that:

> ART. 287. *Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract*.
>
> 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 agreement and other agreements: *Provided, however*, That an employees retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.[13]

Clearly, the age of retirement is primarily determined by the existing agreement or employment contract. In the absence of such agreement, the retirement age shall be fixed by law. Under the aforecited law, the mandated compulsory retirement age is set at 65 years, while the minimum

age for optional retirement is set at 60 years.

In the case at bar, there is a retirement gratuity plan between the petitioner and the respondent, which provides the following:

> Retirement Gratuity
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> x x x x
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> B. Retirement under the Labor Code:
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> Any employee whether land-based office personnel or shipboard employee who shall reach the age of sixty (60) while in active employment with this company may retire from the service upon his written request in accordance with the provisions of Art. 277 of the Labor Code and its Implementing Rules, Book 6, Rule 1, Sec. 13 and he shall be paid termination pay equivalent to fifteen (15) days pay for every year of service as stated in said Labor Code and its Implementing Rules. However, the company may at its own volition grant him a higher benefit which shall not exceed the benefits provided for in the Retirement Gratuity table mentioned elsewhere in this policy.
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> C. Optional Retirement:
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> It will be the exclusive prerogative and sole option of this company to retire any covered employee who shall have rendered at least fifteen (15) years of credited service for land-based employees and 3,650 days actually on board vessel for shipboard personnel. x x x

Under Paragraph B of the plan, a shipboard employee, upon his written request, may retire from service if he has reached the eligibility age of 60 years. In this case, the option to retire lies with the employee.

Records show that respondent was only 41 years old when he applied for optional retirement, which was 19 years short of the required eligibility age. Thus, he cannot claim optional retirement benefits as a matter of right.

In *Eastern Shipping Lines, Inc. v. Sedan,*[14] respondent Dioscoro Sedan, a 3rd Marine Engineer and Oiler in one of the vessels of Eastern Shipping Lines, after several voyages, applied for optional retirement. Eastern Shipping Lines deferred action since his services on board ship were still needed. Despite several demands for his optional retirement, the requests were not acted upon. Thus, Sedan filed a complaint before the LA demanding payment of his retirement benefits. This Court ruled that the eligibility age for optional retirement was set at 60 years. Since respondent was only 48 years old when he applied for optional retirement, he cannot claim optional retirement benefits as a matter of right. We further added that employees

who are under the age of 60 years, but have rendered at least 3,650 days (10 years) on board ship may also apply for optional retirement, but the approval of their application depends upon the exclusive prerogative and sole option of petitioner company. In that case, the retirement gratuity plan is the same as in the case at bar.

The aforecited Paragraph B is different from Paragraph C on optional retirement. The difference lies on who exercises the option to retire. Unlike in Paragraph B, the option to retire in Paragraph C is exclusively lodged in the employer. Although respondent may have rendered at least 3,650 days of service on board a vessel, which qualifies him for optional retirement under Paragraph C, however, he cannot demand the same as a matter of right.

If an employee upon rendering at least 3,650 days of service would automatically be entitled to the benefits of the gratuity plan, then it would not have been termed as optional, as the foregoing scenario would make the retirement mandatory and compulsory.

Due to the foregoing findings of facts of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts which, if properly considered, will justify a different conclusion and when the judgment of the CA is premised on misapprehension of facts.[15]

The CA erred in affirming the rulings of the LA and the NLRC, as the availment of the optional retirement benefits is subject to the exclusive prerogative and sole option of the petitioner.

It is also worth to note that respondent, being a seaman, is not entitled to the payment of separation pay. *In Millares v. National Labor Relations Commission,*[16] we ruled that:

> x x x [I]t is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose
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> employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of 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. We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers.

x x x x

> From all the foregoing, we hereby state that petitioners are not considered regular or permanent employees under Article 280 of the Labor Code. Petitioners employment have automatically ceased upon the expiration of their contracts of enlistment (COE). Since there was no dismissal to speak of, ***it follows that petitioners are not entitled to reinstatement or payment of separation pay or backwages***, as provided by law.[17]

The CA affirmed the award of moral damages due to the refusal of the petitioner to reemploy respondent after he had recovered from his injury and was declared fit to work, forcing him to apply instead for optional retirement benefit.

We rule that the award of moral damages is not proper. Moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive.[18] Further, moral damages are recoverable only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[19]

In the present case, there was no contractual obligation on the part of the petitioner to mandatorily reemploy respondent. The reason, as provided in the *Millares* case, is that their employment is contractually fixed for a certain period of time and automatically ceased upon the expiration of their contract. Records will show that respondent's last employment with the petitioner ended on February 22, 1996.[20] Thereafter, no new contract was executed between the parties. Thus, upon the expiration of the contract on February 22, 1996, respondent's employ with the petitioner also ended.

In *Gu-Miro v. Adorable*,[21] this Court said that:

> Thus, even with the continued re-hiring by respondent company of petitioner to serve as Radio Officer on board Bergesens different vessels, this should be interpreted not as a basis for regularization but rather a series of contract renewals sanctioned under the doctrine set down by the second *Millares* case. If at all, petitioner was preferred because of practical considerations - namely, his experience and qualifications. However, this does not alter the status of his employment from being contractual.

> With respect to the claim for backwages and separation pay, it is now well settled that the award of backwages and separation pay in lieu of reinstatement are reliefs that are awarded to an employee who is unjustly dismissed. ***In the instant case, petitioner was separated from his employment due to the termination of an impliedly renewed contract with respondent company***. Hence, there is no illegal or unjust dismissal.[22]

Clearly, after the termination of the renewed contract with the petitioner, respondent cannot force the petitioner to reemploy him as a matter of right. The employment ends at the precise time the contract ends. Hence, there was no illegal or unjust dismissal, or even a constructive dismissal.

Nonetheless, although respondent's entitlement to optional retirement pay is wanting and despite petitioner's non-obligation to mandatorily rehire him, the grant of financial assistance is in order as an equitable concession under the circumstances of the case.

In the aforecited case of *Eastern*,[23] this Court affirmed the CA's grant of financial assistance to the respondent therein. In that case, we said that:

> But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.
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> In this instance, our attention has been called to the following circumstances: that private respondent joined the company when he was a young man of 25 years and stayed on until he was 48 years old; that he had given to the company the best years of his youth, working on board ship for almost 24 years; that in those years there was not a single report of him transgressing any of the company rules and regulations; that he applied for optional retirement under the companys non-contributory plan when his daughter died and for his own health reasons; and that it would appear that he had served the company well, since even the company said that the reason it refused his application for optional retirement was that it still needed his services; that he denies receiving the telegram asking him to report back to work; but that considering his age and health, he preferred to stay home rather than risk further working in a ship at sea.
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> In our view, with these special circumstances, we can call upon the same social and compassionate justice cited in several cases allowing financial assistance. These circumstances indubitably merit equitable concessions, via the principle of compassionate justice for the working class. x x x[24]

In the present case, respondent had been employed with the petitioner for almost twelve (12) years. On February 13, 1996, he suffered from a fractured left transverse process of fourth

lumbar vertebra, while their vessel was at the port of Yokohama, Japan. After consulting a doctor, he was required to rest for a month. When he was repatriated to Manila and examined by a company doctor, he was declared fit to continue his work. When he reported for work, petitioner refused to employ him despite the assurance of its personnel manager. Respondent patiently waited for more than one year to embark on the vessel as 2rd Engineer, but the position was not given to him, as it was occupied by another person known to one of the stockholders. Consequently, for having been deprived of continued employment with petitioner's vessel, respondent opted to apply for optional retirement. In addition, records show that respondent's seaman's book, as duly noted and signed by the captain of the vessel was marked *Very Good,* and *recommended for hire.* Moreover, respondent had no derogatory record on file over his long years of service with the petitioner.

Considering all of the foregoing and in line with *Eastern*, the ends of social and compassionate justice would be served best if respondent will be given some equitable relief. Thus, the award of ₱100,000.00 to respondent as financial assistance is deemed equitable under the circumstances.

WHEREFORE, the petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, dated December 1, 2005 and February 21, 2006, respectively, in CA-G.R. SP. No. 75701, are **REVERSED** and **SET ASIDE**. Respondent is awarded financial assistance in the amount of ₱100,000.00.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MINITA V. CHICO-NAZARIO **PRESBITERO J. VELASCO, JR.**
Associate Justice Associate Justice

ANTONIO EDUARDO B. NACHURA
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 Courts Division.

ANTONIO T. CARPIO
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairpersons Attestation, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

LEONARDO A. QUISUMBING
Acting Chief Justice

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; *rollo,* pp. 40-47.

[2] *Id*. at 24-25.

[3] Records, p. 92.

[4] *Id*. at 91.

[5] *Rollo*, pp. 142-149.

[6] *Id*. at 148-149.

[7] Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring; *rollo*, pp. 109-118.

[8] *Rollo*, pp. 96-107.

[9] *Id*. at 94-95.

[10] *Rollo*, pp. 29-38.

[11] *Id*. at 24-25.

[12] *Id*. at 10.

[13] Emphasis ours.

[14] G.R. No. 159354, April 7, 2006, 486 SCRA 565.

[15] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997).

[16] 434 Phil. 524 (2002).

[17] *Id*. at 538-540. (Emphasis ours.)

[18] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 260.

[19] *Rutaquio v. National Labor Relations Commission,* 375 Phil. 405, 416-417 (1999).

[20] Records, p. 94.

[21] 480 Phil. 597 (2004).

[22] *Id*. at 608. (Emphasis ours.)

[23] *Supra* note 14.

[24] *Id*. at 574-575.