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SECOND DIVISION

[G.R. No. 175558, February 08, 2012]

SKIPPERS UNITED PACIFIC, INC. AND SKIPPERS MARITIME SERVICES, INC., LTD., PETITIONERS, VS. NATHANIEL DOZA, NAPOLEON DE GRACIA, ISIDRO L. LATA, AND CHARLIE APROSTA, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a Petition for Review under Rule 45 assailing the 5 July 2006 Decision^[1] and 7 November 2006 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 88148.^[3]

This arose from consolidated labor case^[4] filed by seafarers Napoleon De Gracia (De Gracia), Isidro L. Lata (Lata), Charlie Aprosta (Aprosta), and Nathaniel Doza (Doza) against local manning agency Skippers United Pacific, Inc. and its foreign principal, Skippers Maritime Services, Inc., Ltd. (Skippers) for unremitted home allotment for the month of December 1998, salaries for the unexpired portion of their employment contracts, moral damages, exemplary damages, and attorney's fees. Skippers, on the other hand, answered with a claim for reimbursement of De Gracia, Aprosta and Lata's repatriation expenses, as well as award of moral damages and attorney's fees.

De Gracia, Lata, Aprosta and Doza's (De Gracia, et al.) claims were dismissed^[5] by the Labor Arbiter for lack of merit.^[5] The Labor Arbiter also dismissed Skippers' claims.^[6] De Gracia, et al. appealed^[7] the Labor Arbiter's decision with the National Labor Relations Commission (NLRC), but the First Division of the NLRC dismissed the appeal for lack of merit.^[8] Doza, et al.'s Motion for Reconsideration was likewise denied by the NLRC,^[9] so they filed a Petition for Certiorari with the Court of Appeals (CA).^[10]

The CA granted the petition, reversed the Labor Arbiter and NLRC Decisions, and awarded to De Gracia, Lata and Aprosta their unremitted home allotment, three months salary each representing the unexpired portion of their employment contracts and attorney's fees.^[11] No award was given to Doza for lack of factual basis.^[12] The CA denied Skippers' Motion for Partial Reconsideration.^[13] Hence, this Petition.

The Facts

Skippers United Pacific, Inc. deployed, in behalf of Skippers, De Gracia, Lata, and

Aprosta to work on board the vessel MV Wisdom Star, under the following terms and conditions:

Name: Napoleon O. De Gracia
Position: 3rd Engineer
Contract Duration: 10 months
Basic MonthlyUS\$800.00
Salary:
Contract Date: 17 July 1998^[14]
Name: Isidro L. Lata
Position: 4th Engineer
Contract Duration: 12 months
Basic MonthlyUS\$600.00
Salary:
Contract Date: 17 April 1998^[15]
Name: Charlie A. Aprosta
Position: Third Officer
Contract Duration: 12 months
Basic MonthlyUS\$600.00
Salary:
Contract Date: 17 April 1998^[16]

Paragraph 2 of all the employment contracts stated that: "The terms and conditions of the Revised Employment Contract Governing the Employment of All Seafarers approved per Department Order No. 33 and Memorandum Circular No. 55, both series of 1996 shall be strictly and faithfully observed."^[17] No employment contract was submitted for Nathaniel Doza.

De Gracia, et al. claimed that Skippers failed to remit their respective allotments for almost five months, compelling them to air their grievances with the Romanian Seafarers Free Union.^[18] On 16 December 1998, ITF Inspector Adrian Mihalcioiu of the Romanian Seafarers Union sent Captain Savvas of Cosmos Shipping a fax letter, relaying the complaints of his crew, namely: home allotment delay, unpaid salaries (only advances), late provisions, lack of laundry services (only one washing machine), and lack of maintenance of the vessel (perforated and unrepaired deck).^[19] To date, however, Skippers only failed to remit the home allotment for the month of December 1998.^[20] On 28 January 1999, De Gracia, et al. were unceremoniously discharged from MV Wisdom Stars and immediately repatriated.^[21] Upon arrival in the Philippines, De Gracia, et al. filed a complaint for illegal dismissal with the Labor Arbiter on 4 April 1999 and prayed for payment of their home allotment for the month of December 1998, salaries for the unexpired portion of their contracts, moral damages, exemplary damages, and attorney's fees.^[22]

Skippers, on the other hand, claims that at around 2:00 a.m. on 3 December 1998, De Gracia, smelling strongly of alcohol, went to the cabin of Gabriel Oleszek, Master of MV Wisdom Stars, and was rude, shouting noisily to the master.^[23] De Gracia left the

master's cabin after a few minutes and was heard shouting very loudly somewhere down the corridors.^[24] This incident was evidenced by the Captain's Report sent via telex to Skippers on said date.^[25]

Skippers also claims that at 12:00 noon on 22 January 1999, four Filipino seafarers, namely Aprosta, De Gracia, Lata and Doza, arrived in the master's cabin and demanded immediate repatriation because they were not satisfied with the ship.^[26] De Gracia, et al. threatened that they may become crazy any moment and demanded for all outstanding payments due to them.^[27] This is evidenced by a telex of Cosmship MV Wisdom to Skippers, which however bears conflicting dates of 22 January 1998 and 22 January 1999.^[28]

Skippers also claims that, due to the disembarkation of De Gracia, et al., 17 other seafarers disembarked under abnormal circumstances.^[29] For this reason, it was suggested that Polish seafarers be utilized instead of Filipino seamen.^[30] This is again evidenced by a fax of Cosmship MV Wisdom to Skippers, which bears conflicting dates of 24 January 1998 and 24 January 1999.^[31]

Skippers, in its Position Paper, admitted non-payment of home allotment for the month of December 1998, but prayed for the offsetting of such amount with the repatriation expenses in the following manner:^[32]

Seafarer	Repatriation Expense	Home Allotment	Balance
De Gracia	US\$1,340.00	US\$900.00	US\$440.00
Aprosta	US\$1,340.00	US\$600.00	US\$740.00
Lata	US\$1,340.00	US\$600.00	US\$740.00

Since De Gracia, et al. pre-terminated their contracts, Skippers claims they are liable for their repatriation expenses^[33] in accordance with Section 19(G) of Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 55, series of 1996 which states:

G. A seaman who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. The employer may, in case of compassionate grounds, assume the transportation cost of the seafarer's replacement.

Skippers also prayed for payment of moral damages and attorney's fees.^[34]

The Decision of the Labor Arbiter

The Labor Arbiter rendered his Decision on 18 February 2002, with its dispositive

portion declaring:

WHEREFORE, judgment is hereby rendered dismissing herein action for lack of merit. Respondents' claim for reimbursement of the expenses they incurred in the repatriation of complainant Nathaniel Doza is likewise dismissed.

SO ORDERED.^[35]

The Labor Arbiter dismissed De Gracia, et al.'s complaint for illegal dismissal because the seafarers voluntarily pre-terminated their employment contracts by demanding for immediate repatriation due to dissatisfaction with the ship.^[36] The Labor Arbiter held that such voluntary pre-termination of employment contract is akin to resignation,^[37] a form of termination by employee of his employment contract under Article 285 of the Labor Code. The Labor Arbiter gave weight and credibility to the telex of the master of the vessel to Skippers, claiming that De Gracia, et al. demanded for immediate repatriation.^[38] Due to the absence of illegal dismissal, De Gracia, et. al.'s claim for salaries representing the unexpired portion of their employment contracts was dismissed.^[39]

The Labor Arbiter also dismissed De Gracia et al.'s claim for home allotment for December 1998.^[40] The Labor Arbiter explained that payment for home allotment is "in the nature of extraordinary money where the burden of proof is shifted to the worker who must prove he is entitled to such monetary benefit."^[41] Since De Gracia, et al. were not able to prove their entitlement to home allotment, such claim was dismissed.^[42]

Lastly, Skippers' claim for reimbursement of repatriation expenses was likewise denied, since Article 19(G) of POEA Memorandum Circular No. 55, Series of 1996 allows the employer, in case the seafarer voluntarily pre-terminates his contract, to assume the repatriation cost of the seafarer on compassionate grounds.^[43]

The Decision of the NLRC

The NLRC, on 28 October 2002, dismissed De Gracia, et al.'s appeal for lack of merit and affirmed the Labor Arbiter's decision.^[44] The NLRC considered De Gracia, et al.'s claim for home allotment for December 1998 unsubstantiated, since home allotment is a benefit which De Gracia, et al. must prove their entitlement to.^[45] The NLRC also denied the claim for illegal dismissal because De Gracia, et al. were not able to refute the telex received by Skippers from the vessel's master that De Gracia, et al. voluntarily pre-terminated their contracts and demanded immediate repatriation due to their dissatisfaction with the ship's operations.^[46]

The Decision of the Court of Appeals

The CA, on 5 July 2006, granted De Gracia, et al.'s petition and reversed the decisions of the Labor Arbiter and NLRC, its dispositive portion reading as follows:

WHEREFORE, the instant petition for certiorari is GRANTED. The Resolution dated October 28, 2002 and the Order dated August 31, 2004 rendered by the public respondent NLRC are ANNULLED and SET ASIDE. Let another judgment be entered holding private respondents jointly and severally liable to petitioners for the payment of:

1. Unremitted home allotment pay for the month of December, 1998 or the equivalent thereof in Philippine pesos:
 - a. De Gracia = US\$900.00
 - b. Lata = US\$600.00
 - c. Aprosta = US\$600.00

2. Salary for the unexpired portion of the employment contract or for 3 months for every year of the unexpired term, whichever is less, or the equivalent thereof in Philippine pesos:
 - a. De Gracia = US\$2,400.00
 - b. Lata = US\$1,800.00
 - c. Aprosta = US\$1,800.00

3. Attorney's fees and litigation expenses equivalent to 10% of the total claims.

SO ORDERED.^[47]

The CA declared the Labor Arbiter and NLRC to have committed grave abuse of discretion when they relied upon the telex message of the captain of the vessel stating that De Gracia, et al. voluntarily pre-terminated their contracts and demanded immediate repatriation.^[48] The telex message was "a self-serving document that does not satisfy the requirement of substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion that petitioners indeed voluntarily demanded their immediate repatriation."^[49] For this reason, the repatriation of De Gracia, et al. prior to the expiration of their contracts showed they were illegally dismissed from employment.^[50]

In addition, the failure to remit home allotment pay was effectively admitted by Skippers, and prayed to be offset from the repatriation expenses.^[51] Since there is no proof that De Gracia, et al. voluntarily pre-terminated their contracts, the repatriation expenses are for the account of Skippers, and cannot be offset with the home allotment pay for December 1998.^[52]

No relief was granted to Doza due to lack of factual basis to support his petition.^[53] Attorney's fees equivalent to 10% of the total claims was granted since it involved an action for recovery of wages or where the employee was forced to litigate and incur expenses to protect his rights and interest.^[54]

The Issues

Skippers, in its Petition for Review on Certiorari, assigned the following errors in the CA Decision:

- a) The Court of Appeals seriously erred in not giving due credence to the master's telex message showing that the respondents voluntarily requested to be repatriated.
- b) The Court of Appeals seriously erred in finding petitioners liable to pay backwages and the alleged unremitted home allotment pay despite the finding of the Labor Arbiter and the NLRC that the claims are baseless.
- c) The Court of Appeals seriously erred in awarding attorney's fees in favor of respondents despite its findings that the facts attending in this case do not support the claim for moral and exemplary damages.^[55]

The Ruling of this Court

We deny the petition and affirm the CA Decision, but modify the award.

For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.^[56]

Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice appries the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.^[57]

Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.

In this case, there was no written notice furnished to De Gracia, et al. regarding the cause of their dismissal. Cosmship furnished a written notice (telex) to Skippers, the

local manning agency, claiming that De Gracia, et al. were repatriated because the latter voluntarily pre-terminated their contracts. This telex was given credibility and weight by the Labor Arbiter and NLRC in deciding that there was pre-termination of the employment contract "akin to resignation" and no illegal dismissal. However, as correctly ruled by the CA, the telex message is "a biased and self-serving document that does not satisfy the requirement of substantial evidence." If, indeed, De Gracia, et al. voluntarily pre-terminated their contracts, then De Gracia, et al. should have submitted their written resignations.

Article 285 of the Labor Code recognizes termination by the employee of the employment contract by "serving written notice on the employer at least one (1) month in advance." Given that provision, the law contemplates the requirement of a written notice of resignation. In the absence of a written resignation, it is safe to presume that the employer terminated the seafarers. In addition, the telex message relied upon by the Labor Arbiter and NLRC bore conflicting dates of 22 January 1998 and 22 January 1999, giving doubt to the veracity and authenticity of the document. In 22 January 1998, De Gracia, et al. were not even employed yet by the foreign principal. For these reasons, the dismissal of De Gracia, et al. was illegal.

On the issue of home allotment pay, Skippers effectively admitted non-remittance of home allotment pay for the month of December 1998 in its Position Paper. Skippers sought the repatriation expenses to be offset with the home allotment pay. However, since De Gracia, et al.'s dismissal was illegal, their repatriation expenses were for the account of Skippers and could not be offset with the home allotment pay.

Contrary to the claim of the Labor Arbiter and NLRC that the home allotment pay is in "the nature of extraordinary money where the burden of proof is shifted to the worker who must prove he is entitled to such monetary benefit," Section 8 of POEA Memorandum Circular No. 55, series of 1996, states that the allotment actually constitutes **at least eighty percent (80%) of the seafarer's salary:**

The seafarer is required to make an allotment which is payable once a month to his designated allottee in the Philippines through any authorized Philippine bank. The master/employer/agency shall provide the seafarer with facilities to do so at no expense to the seafarer. The allotment shall be **at least eighty percent (80%)** of the seafarer's monthly basic salary including backwages, if any. (Emphasis supplied)

Paragraph 2 of the employment contracts of De Gracia, Lata and Aprosta incorporated the provisions of above Memorandum Circular No. 55, series of 1996, in the employment contracts. Since said memorandum states that home allotment of seafarers actually constitutes at least eighty percent (80%) of their salary, home allotment pay is not in the nature of an extraordinary money or benefit, but should actually be considered as salary which should be paid for services rendered. For this reason, such non-remittance of home allotment pay should be considered as unpaid salaries, and Skippers shall be liable to pay the home allotment pay of De Gracia, et al.

for the month of December 1998.

Damages

As admitted by Skippers in its Position Paper, the home allotment pay for December 1998 due to De Gracia, Lata and Aprosta is:

Seafarer	Home Allotment Pay
De Gracia	US\$900.00
Aprosta	US\$600.00
Lata	US\$600.00

The monthly salary of De Gracia, according to his employment contract, is only US\$800.00. However, since Skippers admitted in its Position Paper a higher home allotment pay for De Gracia, we award the higher amount of home allotment pay for De Gracia in the amount of US\$900.00. Since the home allotment pay can be considered as unpaid salaries, the peso equivalent of the dollar amount should be computed using the prevailing rate at the time of termination since it was due and demandable to De Gracia, et al. on 28 January 1999.

Section 10 of Republic Act No. 8042 (Migrant Workers Act) provides for money claims in cases of unjust termination of employment contracts:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

The Migrant Workers Act provides that salaries for the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less, shall be awarded to the overseas Filipino worker, in cases of illegal dismissal. However, in 24 March 2009, *Serrano v. Gallant Maritime Services and Marlow Navigation Co. Inc.*,^[58] the Court, in an En Banc Decision, declared unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" and awarded the entire unexpired portion of the employment contract to the overseas Filipino worker.

On 8 March 2010, however, Section 7 of Republic Act No. 10022 (RA 10022) amended Section 10 of the Migrant Workers Act, and once again reiterated the provision of awarding the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less.

Nevertheless, since the termination occurred on January 1999 before the passage of the amendatory RA 10022, we shall apply RA 8042, as unamended, without touching

on the constitutionality of Section 7 of RA 10022.

The declaration in March 2009 of the unconstitutionality of the clause "or for three months for every year of the unexpired term, whichever is less" in RA 8042 shall be given retroactive effect to the termination that occurred in January 1999 because an unconstitutional clause in the law confers no rights, imposes no duties and affords no protection. The unconstitutional provision is inoperative, as if it was not passed into law at all. [59]

As such, we compute the claims as follows:

Seafarer	Contract Term	Contract Date	Repatriation Date	Unexpired Term	Monthly Salary	Total Claims
De Gracia	10 months	17 Jul. 1998	28 Jan. 1999	3 months & 20 days	US\$800	US\$2933.34
Lata	12 months	17 Apr. 1998	28 Jan. 1999	2 months & 20 days	US\$600	US\$1600
Aprosta	12 months	17 Apr. 1998	28 Jan. 1999	2 months & 20 days	US\$600	US\$1600

Given the above computation, we modify the CA's imposition of award, and grant to De Gracia, et al. salaries representing the unexpired portion of their contracts, instead of salaries for three (3) months.

Article 2219 of the Civil Code of the Philippines provides for recovery of moral damages in certain cases:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

Article 2229 of the Civil Code, on the other hand, provides for recovery of exemplary damages:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

In this case, we agree with the CA in not awarding moral and exemplary damages for lack of factual basis.

Lastly, Article 2208 of the Civil Code provides for recovery of attorney's fees and expenses of litigation:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Article 111 of the Labor Code provides for a maximum award of attorney's fees in cases of recovery of wages:

Art. 111. Attorney's fees.

- a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
- b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Since De Gracia, et al. had to secure the services of the lawyer to recover their unpaid salaries and protect their interest, we agree with the CA's imposition of attorney's fees in the amount of ten percent (10%) of the total claims.

WHEREFORE, we **AFFIRM** the Decision of the Court of Appeals dated 5 July 2006 with **MODIFICATION**. Petitioners Skippers United Pacific, Inc. and Skippers Maritime Services Inc., Ltd. are jointly and severally liable for payment of the following:

1) Unremitted home allotment pay for the month of December 1998 in its equivalent rate in Philippine Pesos at the time of termination on 28 January 1999:

- a. De Gracia = US\$900.00
- b. Lata = US\$600.00
- c. Aprosta = US\$600.00

2) Salary for the unexpired portion of the employment contract or its current equivalent in Philippine Pesos:

- a. De Gracia = US\$2,933.34
- b. Lata = US\$1,600.00
- c. Aprosta = US\$1,600.00

3) Attorney's fees and litigation expenses equivalent to 10% of the total claims.

SO ORDERED.

Brion, Perez, Sereno, and Reyes, JJ., concur.

[1] *Rollo*, pp. 31-40. Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Justice) with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid concurring.

[2] *Id.* at 41. Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Justice) with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid concurring.

[3] Id. at 11-29.

[4] *CA rollo*, p. 77.

[5] Id. at 81.

[6] Id.

[7] Id. at 82-95.

[8] Id. at 126-131.

[9] Id. at 132-134.

[10] Id. at 1-24.

[11] *Rollo*, pp. 31-40.

[12] Id. at 38.

[13] Id. at 41.

[14] *CA rollo*, p. 60.

[15] Id. at 61.

[16] Id. at 62.

[17] Id. at 60-62.

[18] Id. at 50.

[19] Id. at 63.

[20] Id. at 48.

[21] Id. at 50.

[22] Id. at 57.

[23] Id. at 65.

[24] Id.

[25] Id. at 73.

[26] Id. at 65.

[27] Id. at 74.

[28] Id.

[29] Id. at 75.

[30] Id.

[31] Id.

[32] Id. at 68.

[33] Id.

[34] Id. at 70.

[35] Id. at 81.

[36] Id. at 80.

[37] Id. at 79.

[38] Id. at 80.

[39] Id. at 81.

[40] Id.

[41] Id. at 80.

[42] Id. at 80-81.

[43] Id. at 81.

[44] Id. at 131.

[45] Id. at 130.

[46] Id.

[47] *Rollo*, pp. 39-40.

[48] *Id.* at 36.

[49] *Id.*

[50] *Id.* at 37.

[51] *Id.* at 38.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 39.

[55] *Id.* at 19.

[56] *Quirico Lopez v. Alturas Group of Companies and/or Marlito Uy*, G.R. No. 191008, 11 April 2011, citing *Tirazona v. Court of Appeals*, G.R. No. 169712, 14 March 2008, 548 SCRA 560.

[57] *New Puerto Commercial v. Lopez*, G.R. No. 169999, 26 July 2010, 625 SCRA 422, citing *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, 14 August 2007, 530 SCRA 132, 140-141.

[58] G.R. No. 167614, 24 March 2009, 582 SCRA 254.

[59] *Yap v. Thenamaris Ship's Management and Intermare Maritime Agencies, Inc.*, G.R. No. 179532, 30 May 2011.



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