

## THIRD DIVISION

[ G.R. No. 197557, October 05, 2016 ]

**MAUREEN P. PEREZ, PETITIONER, VS. COMPARTS INDUSTRIES, INC., RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court questioning the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CEB-SP. No. 05473 which affirmed the Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NLRC VAC-VAC-02-000085-2010 granting the appeal of respondent Comparts Industries, Inc. (CII) and dismissing the complaint of petitioner Maureen P. Perez for optional retirement pay. Previously, the NLRC Regional Arbitration Branch No. VII granted the complaint of Perez and awarded her a total of Php422,195.84 representing her optional retirement benefits and ten percent (10%) attorney's fees.<sup>[3]</sup>

The facts are fairly summarized by the appellate court:

[Perez] started her employment with [CII] on 16 July 1988 and became a regular employee thereof on 01 September 1988. After years of working and after several promotions, she was eventually appointed as Marketing Manager. She held this position from 1998 up to 10 January 2009, the date when she resigned from her work.

[CII] has a retirement program for its managerial employees or officers covered by "Comparts Industries, Inc. Employees Retirement Plan" (Retirement Plan) which took effect on 01 June 1999 and was amended on 25 January 2001. Included therein are provisions relating to optional or early retirement and optional retirement benefits.

Prior to her resignation, [Perez] manifested to [CII] sometime in November 2007 her intention to avail of the optional retirement program since she was already qualified to retire under it. Her application was denied. In January 2008, while vacationing in the United States of America (USA), she again filed an application for optional retirement to take advantage of a job offered to her in the said country. Still, her application was denied. [CII] justified its denial of [Perez's] application saying that, under the Retirement Plan, it has the option to grant or deny her application for optional retirement and considering that it is experiencing financial crisis, it has no choice but to disallow her intention.

In April 2008, [Perez] asked for reconsideration of the denial of her

application for optional retirement. She also requested to be included in the retrenchment that [CII] was planning to implement. Again, her application was declined and she was not one of those employees who were retrenched. In December 2008, [Perez] needed to go to the USA to attend to her mother who suffered a mild stroke. Thus, she applied for optional retirement again to be effective on 10 January 2009. She also claimed the benefits concomitant to it as provided by the Retirement Plan.

In response, [Perez] was informed by [CII] that it could only give her Php100,000.00 as gratuity for her twenty years of service as this was the only amount it could afford. [Perez] refused the offer.

On 08 January 2001, [Perez] received a letter from [CII] which contained the, acceptance of her resignation effective 10 January 2009. The letter likewise contained [CII's] denial of [Perez's] claim for optional retirement benefits or separation pay for the following reasons: 1) [CII] has no policy or rules on optional retirement benefits; 2) [CII] has been so affected by the global crisis and has been suffering financial losses; 3) there is no provision in the Labor Code which grants separation pay to voluntarily resigning employees; and 4) [Perez] cannot invoke the provisions of the Collective Bargaining Agreement (CBA) on optional retirement benefits because the CBA is for rank-and-file employees.

[Perez] e-mailed [CII] on 09 January 2009 to counter the latter's reasons and she cited therein rulings of the Supreme Court which supposedly supported her claim for optional retirement benefits or separation pay. [CII] was not persuaded. She, again e-mailed [CII] to reconsider its stand and she cited names of former employees of [CII] who were allowed to optionally retire and who were given separation pays even if they were managerial employees. Still, [CII] was not convinced.<sup>[4]</sup>

At this point, Perez filed a Complaint with the NLRC-RAB No. VII for discrimination, moral damages and attorney's fees against CII praying for separation pay in the form of optional retirement benefits, either under the Retirement Plan for CII officers or under the Collective Bargaining Agreement (CBA) for rank-and-file employees. On the whole, Perez asked for payment of separation pay under all circumstances of severance of employment, including separation pay due to a retrenchment.<sup>[5]</sup>

After exchange of pleadings, the NLRC RAB No. VII favored the complainant, finding that:

1. Perez is entitled to optional retirement benefits under the CII Retirement Plan having rendered service to CII for more than twenty (20) years; and
2. Seven (7) CII managerial/middle management employees with accompanying affidavits attached to Perez's Position Paper have received separation pay and/or benefits either pursuant to optional retirement or retrenchment.

CII then forthwith appealed to the NLRC which, as previously adverted to, reversed

and set aside the ruling of the NLRC-RAB No. VII on the following grounds: g

1. Four (4) out of the five (5) employees received optional retirement benefits prior to the effectivity of the Retirement Plan in 1999, as amended in 2001. At their instance, these managerial/middle management employees were actually allowed optional retirement benefits pursuant to the CBA;
2. Under the Retirement Plan for CII (Officers, CII has the option to allow or disallow the application of a member-employee for optional retirement. While Perez may be qualified to elect; optional retirement with her years of service to CII beyond the 15-year service period minimum requirement, the provision in the Retirement Plants prefaced by a qualifier that the election is done "[w]ith the consent of [CII];"
3. In fact, both the Retirement Plan for CII Officers and the CBA for CII rank-and-file employees require the consent and approval of CII before any payment of optional retirement benefits to qualified employees- members is made;
4. The receipt by employees of optional retirement benefits as stated in the affidavits of retired managerial/middle management employees did not ripen into voluntary company practice. These managerial employees had to request, and obtain consent from, CII to elect optional retirement as provided under the CBA;
5. The circumstances obtaining in the years 1995, 1997, 1998, and 2005, when certain employees were allowed to avail of optional retirement under the CBA, were far different from the circumstances obtaining in 2008. when the global financial crisis specifically hit the exporting business of CII and the latter had to undertake a retrenchment program where two (2) managerial employees who likewise executed affidavits received separation pay thereunder. Thus, CII validly disallowed Perez's application for optional retirement based thereon; and
6. Lastly, to further demonstrate the absence of established company practice, in the grant of optional retirement benefits to managerial employees, in 2008, when CII was already incurring net losses, it denied two (2) other employees' application for payment of optional retirement benefits.

Nonetheless, the NLRC ordered CII to pay Perez the amount of Php 100,000.00 as gratuity, CII having previously offered such in consideration for past services.

Not unexpectedly, Perez filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals alleging grave abuse of discretion in the NLRC's reversal of the NLRC-RAB No. VII ruling and dismissal of her complaint.

The appellate court dismissed the petition and sustained the rulings of the NLRC that:

1. Under the CII Retirement Plan which is the plan applicable to Perez as a managerial employee, the allowance and grant of optional retirement benefits to Perez must be with consent of CII;
2. Citing the case of *Eastern Shipping Lines, Inc. v. Antonio*,<sup>[6]</sup> Perez did not acquire a vested right to payment of optional retirement benefits despite having completed the minimum number of years of service to CII. Completion of the minimum number

of years of service and the subsequent availment of optional retirement benefits is not a matter of right but remains management prerogative to grant or Withhold; otherwise, such, "would not have been termed as optional, as the foregoing would make the retirement mandatory and compulsory;"

3. The grant of optional retirement benefits to other managerial/middle management employees in the instances stated in the affidavits of former employees-members was undertaken before the effectivity of the Retirement Plan in 1999. On the contrary, no company practice can be gleaned from a single managerial employee availing of optional retirement benefits under the CBA after effectivity of the Retirement Plan for CII Officers; and

4. All the affidavits of the managerial employees proffered into evidence by Perez point to their respective requests' and application for their availment of optional retirement benefits under the CBA and the corresponding consent thereto of CII before they were paid the benefits.

Hence, this appeal by *certiorari* of Perez positing that the appellate court seriously erred in ruling that she is not entitled to optional retirement benefits. Perez maintains that she is entitled to separation pay: (1) primarily through the optional retirement program under the Retirement Plan having rendered more than twenty (20) years of service to CII, (2) through a similar optional retirement program under the CBA which has been likewise extended to other managerial/middle management employees in several instances, or (3) a retrenchment program undertaken by CII because of the global financial crisis.

We do not find error, much less grave error, in the appellate court's ruling.

At the outset, we note that Perez intended to end her employment desiring, however, to receive separation pay in any form and from any source, thus persistently asking for either availment of an optional retirement scheme whether under the Retirement Plan for CII Officers, or the CBA. Covering all scenarios to ensure her receipt of a separation package, she even requested inclusion in CII's retrenchment plan. Essentially, Perez exercised her right to terminate the employment relationship by resigning, simultaneously invoking a hodgepodge of provisions from the Retirement Plan, CBA, from the retrenchment provisions of the Labor Code, from well-settled jurisprudence, and from the supposed company practice for the payment of optional retirement benefits to managerial employees.

First and foremost, we emphasize that termination of employment by the employee, as in this instance, does not entitle the employee to separation pay.<sup>[7]</sup> Separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283<sup>[8]</sup> and 284<sup>[9]</sup> of the Labor Code or in illegal dismissal cases when reinstatement is not feasible.<sup>[10]</sup>

Second, in the matter of Perez's entitlement to optional retirement benefits, we agree with the NLRC and the appellate court that as a managerial employee, she is covered by the Retirement Plan for CII Officers which took effect in 1999 and was

amended in 2001. The Retirement Plan provides in pertinent part:

COMPARTS INDUSTRIES, INC.  
EMPLOYEES RETIREMENT PLAN  
RULES AND REGULATIONS

X X X X

ARTICLE III

MEMBERSHIP

Section 1. Membership.

Membership in the Plan shall be automatic for all officers and employees of the Company who are considered having Regular Employment Status,  
X X X.

X X X X

ARTICLE V

RETIREMENT DATES AND BENEFITS

Section 1. NORMAL RETIREMENT

The Normal Retirement Date of a member shall be the first day of the month coincident with or next following his (60<sup>th</sup>) birthday provided he was served the Company for at least five (5) years of Credited Service. The Member's Normal Retirement Benefit shall be sum equal to 22.5 days Pay for every year of Credited Service in accordance with the Collective Bargaining Agreement, whichever is greater.

X X X X

Section 2. OPTIONAL/EARLY RETIREMENT

With the consent of the Company, a member may elect to retire prior to his Normal Retirement Date provided he has completed at least fifteen (15) years of Credit Service. The Member's Early Retirement Benefit shall be an amount equivalent to a Number of days Pay for every year of Credited Service in accordance with the schedule below or with the Collective Bargaining Agreement whichever is greater: (Effective January 25, 2001)

Years of Service	Number of Days Pay Per Year of Service
Less than 15 years	None
15 but less than 20	10 days