

THIRD DIVISION

[G.R. No. 171587, October 13, 2009]

EASTERN SHIPPING LINES, INC., PETITIONER, VS. FERRER D. ANTONIO, RESPONDENT.

DECISION

PERALTA, J.:

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 petitioner's 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 LA's 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 ($55\% \times 608.30 \times 12 \text{ yrs} = 4,104.84$) 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 P150,000.00 and exemplary damages in the amount of P75,000.00; and to pay complainant ten (10%) percent of the total monetary award by way of attorney's fees.

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 petitioner's 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 employee's 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

x x x x

B. Retirement under the Labor Code:

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.

C. Optional Retirement:

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