

**ROSITA DC. DE LEON[], PETITIONER, VS. DEPARTMENT OF LABOR,
NATIONAL LABOR RELATIONS COMMISSION, MANILA HOTEL
CORPORATION, ROGELIO QUIAMBAO, CECILIA GO, MA. AURORA
CADAY, RESPOND...**

Ponente: GONZALES-SISON, M., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b1f401443222/>

GONZALES-SISON, M., J.:

Before Us is petitioner Rosita C. De Leon's ("petitioner") petition for certiorari[1] under Rule 65 of the Rules of Court, praying for the nullification of the Decision[2] of the Fourth Division of the public respondent National Labor Relations Commission ("NLRC"), in NLRC LAC No. 01-000432-13 promulgated on 10 June 2013, which reversed the Decision[3] of the Labor Arbiter, as well as the Resolution[4] of the NLRC denying petitioner's Motion for Reconsideration from the assailed Decision, promulgated on 4 September 2013.

The antecedents are as follows:

In her Position Paper[5], petitioner alleged that she started working for respondent Manila Hotel Corporation ("Manila Hotel" or the "Hotel") on 1 September 1976 and rendered almost thirty-five (35) years of service, or until 11 June 2011. She alleged that she was first hired as a Restaurant and Bar Cashier, a rank and file employee; that in 1977, she was promoted to Front Office Cashier, another rank and file position; that in August 1986, she was promoted to the supervisory position of Front Office Cashier Shift Leader, which she handled until January 1988, during which she climbed up to Head Cashier.

Petitioner alleged that in March 1989, she also assumed the post of Income Auditor, another supervisory position, which she held for seven (7) years. In March 1996, she accepted the position of Assistant Credit and Collection Manager, and was provided all its privileges, such as officer's check privilege/dining at hotel restaurants, discounts, allowances, salary adjustments and flexible time. She alleged that she was competent in her work, and was even featured in a magazine. Sometime in March 2000, Manila Hotel allegedly turned over to her the post of General Cashier, albeit it was unclear whether she held the same in an acting capacity or concurrently. Thus, when she separated from respondent Hotel's employ, she occupied the office of Assistant Credit and Collection Manager/Acting General Cashier.

During her stint, petitioner alleged that she was beset with illness because of her work. She claimed that Manila Hotel subjected her salary to deductions, and that her salary was never raised even as her responsibilities stacked and as she rose up the ranks, respondent Manila Hotel even changed her official position to General Cashier without formal notice and confirmation.

In January 2011, petitioner alleged to have suffered illness for which she was treated for more than four months. However, her salary was not processed during her absence because her superior, respondent Cecilia Go, did not act on her request for vacation leave. The same superior, she asserted, subjected her to different forms of harassment.

Events started to come to a head beginning 3 June 2011, when the Vice President of Security, P/SSupt. Felipe H. Buena (“Buena”), summoned petitioner to his office, where he allegedly told her “Rose you have to resign.”, to which petitioner replied that she had no plans yet to do so.

Petitioner alleged that on 4 June 2011, Buena called her back and verbally informed her that the management of Manila Hotel had decided to compulsorily retire her, citing the Hotel's Collective Bargaining Agreement (“CBA”) with its employees.

On 6 June 2011, petitioner received a Notice of Compulsory Retirement[6] from the respondent Manila Hotel. She approached private respondent Quiambao, the Hotel's President, on 8 June 2011, asking for an explanation and possibly, a better package, but was told that her retirement was the decision of management. Petitioner then processed all the necessary requirements for her clearance. Consequently, following the completion of the documentary formal requirements, respondent Manila Hotel tendered to her a check covering her retirement pay, for Php 1,510,757.92. Petitioner refused to receive it, and instead filed for illegal dismissal[7].

In respondents' Position Paper[8], they asserted that petitioner was not dismissed, but only retired pursuant to a CBA. Respondents emphasized that petitioner even eagerly processed her requirements, which implied that she had accepted respondent Hotel's decision, and which estopped her from assailing the same. They also argued that assuming that she was retired against her will, respondent Manila Hotel had acted legally, within the purview of management prerogative, having only carried out a provision in the existing CBA mandating that “retirement from the service of the Hotel shall be compulsory upon the officer or employee's reaching his/her sixty (60) years of age or twenty (20) years of service whichever comes first”. Even if such provision allows an extension, the respondents alleged that the exigencies which had justified petitioner's extension of service had ceased, and so the Hotel could now retire her.

Respondents also averred that petitioner had been paid all salaries and wages due her, and that she only filed the case for illegal dismissal with the same bad faith that attended her refusal to accept her resignation pay. They posit that Manila Hotel's corporate officers must be dropped as respondents.

Respondents then filed a Supplemental Position Paper[9] and a Reply, wherein they asserted that petitioner was bound by the CBA because she was a rank and file employee.

Petitioner, in refutation, filed a Reply[10] and Rejoinder[11].

After hearing the parties, the Labor Arbiter, eventually ruled in favor of petitioner.

According to the Labor Arbiter, petitioner was a managerial employee; such conclusion was supported by Personnel Status Forms,[12] Appraisal Sheets[13], her responsibilities and duties in the Hotel, and the benefits and privileges that came with her post.

This being the case, the Labor Arbiter held, her compulsory retirement has no basis as the CBA does not apply to her. As a result, her compulsory retirement constituted constructive dismissal, considering that petitioner had not yet reached sixty (60) years of age.

With respect to her monetary claims, the Labor Arbiter recognized that her claim for illegal deductions, arising from tardiness, deserved merit since, as a managerial employee, she was not covered by the provision on working hours provided in the Labor Code. The Labor Arbiter, however, denied her claim for salary differentials and damages for lack of basis, but awarded attorney's fees.

The Labor Arbiter disposed:

“ WHEREFORE, a Decision is hereby rendered declaring that Complainant was illegally dismissed.

Corollarily, Respondents are hereby ordered to reinstate Complainant to her former position without loss of seniority rights and other privileges and to pay her backwages from the time of dismissal up to actual reinstatement, which is only up to the retireable age of 60, for which a retirement pay is hereby also ordered to be paid by the Respondents.

In addition, Respondents are hereby ordered to return the amount illegally deducted from the Complainant. An attorney's fees equivalent to ten (10%) of the total award is hereby granted. Computation is as follows:

a) BACKWAGES

6/10/11-12/10/12 (sic) – 16.06 mos.

P24,749.00 x 16.06 =

397,468.94

13[th] MONTH PAY

P397,468.94/12 =

33,122.41

SERVICE INCENTIVE LEAVE PAY

P24,749/26 x 5/12 x 16.06 6,369.00

436,961.04

b) ILLEGAL DEDUCTION (given)

72,616.77

509,577.81

10% Attorney's fees

—

50,957.78

Total

P 560,535.59

SO ORDERED.”

Respondents appealed to the NLRC,[14] which ruled in their favor.

The NLRC held that while managerial employees are ordinarily outside the scope of CBAs, nothing prevents the employer from granting benefits equal to or higher than those afforded to union members.[15]

The NLRC observed that indeed there was an applicable CBA mandating compulsory retirement for employees who have reached the age of sixty (60) or have rendered at least twenty (20) years of service, whichever came first. It noted that petitioner was compulsorily retired pursuant to such clause, and that petitioner signed a Personnel Clearance[16] requesting for Severance Clearance.

With these circumstances, the NLRC concluded that respondent Manila Hotel was merely exercising a management prerogative when it extended this benefit in favor of petitioner. On the other hand, the NLRC held that petitioner had already accepted the offer, as she had immediately started processing her retirement requirements. In this regard, the NLRC noted that petitioner, being a managerial employee, presupposes that she is well-educated and understood the import of the Personnel Clearance when she signed the same.

The NLRC also ruled that the offer by the management and petitioner's acceptance constituted a bilateral agreement regarding petitioner's retirement, that “applicable employment contract” under Art. 287 of the Labor Code, the existence of which renders unimportant the issue of whether petitioner was a managerial employee or not. Having assented to the same, petitioner is now estopped from contesting it.

The NLRC then held that there was no illegal dismissal, and also, that the computation of petitioner's retirement pay was valid.

With respect to petitioner's monetary claims, the NLRC ruled that since respondents did not assail the award granted for illegal deductions, the same shall stay. It retained the award of attorney's fees since petitioner was compelled to litigate. Finally, the NLRC held that such liabilities shall be borne by respondent Manila Hotel Corporation alone.

The assailed Decision disposed:

“WHEREFORE, premises considered, the appealed decision dated December 10, 2012 is reversed and set aside. Accordingly, the complaint for illegal constructive dismissal is dismissed for lack of merit.

However, respondent Manila Hotel Corporation is ordered to pay complainant the amount of P72,616.77 representing its illegal deductions as previously granted and the amount of P7,261.67 which is equivalent to 10% of the monetary award for and by way of attorney's fees.

Likewise, respondent Manila Hotel Corporation is ordered to immediately pay complainant her retirement pay and benefits based on law and the Collective Bargaining Agreement.

SO ORDERED.”

Both parties filed Motions for Reconsideration, but both were denied in the assailed Resolution promulgated on 4 September 2013.

Hence, this petition.

Petitioner raised the following grounds:

FIRST- THAT RESPONDENT HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC

FOR BREVITY) ACTED WITHOUT AND/OR IN EXCESS OF ITS JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE DECISION PROMULGATED ON JUNE 10, 2013 AND RESOLUTION DATED SEPTEMBER 4, 2013 REVERSING AND SETTING ASIDE THE DECISION DATED DECEMBER 10, 2012 OF THE HONORABLE LABOR ARBITER LILIA S. SAVARI DECLARING PETITIONER TO BE ILLEGALLY DISMISSED AND AWARDING HER THE TOTAL AMOUNT OF P560,535.59 REPRESENTING BACKWAGES IN THE AMOUNT OF P436,961.04 AND (B) ATTORNEY'S FEES IN THE AMOUNT OF P50,957.78.

SECOND- THAT RESPONDENT HONORABLE NLRC ACTED WITHOUT AND/OR IN EXCESS OF ITS JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL AND REINSTATING INSTEAD THE HONORABLE LABOR ARBITER'S AWARD IN THE AMOUNT OF P72,616.77 REPRESENTING ILLEGAL DEDUCTIONS MADE BY PRIVATE COMPLAINANT PLUS P7,261 REPRESENTING 10% ATTORNEY'S FEES.

THIRD- THAT RESPONDENT HONORABLE NLRC ACTED WITHOUT AND/OR IN EXCESS OF JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT HELD THAT PETITIONER ASSENTED TO THE COMPULSORY RETIREMENT PACKAGE BEING OFFERED BY THE PRIVATE RESPONDENT CORPORATION HENCE, NO ILLEGAL DISMISSAL TO SPEAK OF.

FOURTH – THAT THE QUESTIONED DECISION PROMULGATED ON JUNE 10, 2013 AND RESOLUTION PROMULGATED ON SEPTEMBER 4, 2013 IS CONTRARY TO THE ESTABLISHED FACTS AND JURISPRUDENCE.

Petitioner disagrees with the NLRC that she consented to her retirement and that there was no illegal dismissal. She asserts that the application of the compulsory retirement clause in the CBA was only a mere guise, the truth being that she was forced to retire on no justifiable ground, hence constructively and illegally dismissed.

Petitioner argues that her filing of a complaint for illegal dismissal was inconsistent with the acceptance of respondent Manila Hotel's decision to retire her. She stresses that she had contested the same from the very start, and her processing of clearances was only intended to clear her account with the Hotel.

She faults the NLRC for applying the CBA to her and ignoring her status as a managerial employee. She invokes jurisprudence[17] that managerial employees cannot be members of a Union, and emphasizes that the Hotel has no CBA with its managerial and supervisory employees. Thus, her compulsory retirement was actually a dismissal. She then contends that the dismissal was not justified by any just or authorized ground, and furthermore, that the Hotel did not observe the two-notice requirement in termination provided by law.

Having been illegally dismissed, petitioner prays for reinstatement with full backwages and benefits, for moral damages, and for this Court to nullify the assailed Decision and Resolution of the NLRC.

Respondents filed their Comment[18] on 10 July 2014. They contend that the petition must be dismissed since petitioner has not established that the NLRC exercised grave abuse of discretion and only raised questions of fact. Respondents also contend that the NLRC correctly reversed the Labor Arbiter and ruled that petitioner was not illegally dismissed, but only retired compulsorily under a CBA, which is the law between respondent Manila Hotel and petitioner. They stress that petitioner even agreed to the decision of the respondent Manila Hotel because she signed the personnel clearance and processed the requirements for retirement, which weakens her claim that her filing for illegal dismissal showed that she disagreed with decision to retire her.

Respondents also argue that respondent Manila Hotel can still opt to apply the CBA compulsory retirement clause

in petitioner's favor, despite her position. She has rendered more than 20 years of service, and thus, the decision of the Hotel to consider her as retired, even after her extra years of service after she had reached the aforesaid 20-year limit, was a valid management prerogative already beyond judicial interference.

Thus, respondents posit, there being no illegal dismissal or bad faith established by the petitioner, the latter's claims for damages and attorney's fees have no basis and must be denied. Finally, respondents again argue that respondents Quiambao, Go, and Caday must be dropped as respondents and the petition against them be dismissed, on the ground that they merely acted in their official capacities and did not commit illegal acts.

On 30 October 2014, respondents filed their Memorandum[19] in support of their position. On 10 November 2014, petitioner filed hers.[20]

Before delving into the substantial matters, We first resolve the procedural argument raised by the respondents.

In *St. Martin Funeral Homes v. NLRC*[21], and as consistently held in later cases[22], the proper remedy from final orders, decisions, and resolutions of the NLRC is by a petition for certiorari under Rule 65 of the Labor Code, even if it raises questions of fact.[23] Thus, petitioner only resorted to the correct measure when she filed her petition.

We now move to the substantial matters.

After a thorough study, We rule in favor of the petitioner. We elaborate below.

The first issue to resolve is whether or not petitioner, held to be a managerial employee, can be extended the compulsory retirement clause in the company CBA.

Under Art. 245 of the Labor Code, managerial employees cannot join labor organizations. As a consequence, they generally cannot share in the benefits obtained by collective negotiation. However, *Martinez v. NLRC*[24], cited by the NLRC, discusses the exception to the rule:

“Accordingly, managerial employees cannot, in the absence of an agreement to the contrary, be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer.

However, there is nothing to prevent the employer from granting benefits to managerial employees equal to or higher than those afforded to union members. There can be no conflict of interest where the employer himself voluntarily agrees to grant such benefits to managerial employees. In the case at bar, at the beginning of petitioner's employment, he was told that those who are not covered by the CBA would nevertheless be entitled to benefits which would be, if not higher, at least equivalent to those provided in the CBA.”
(Underlining Ours.)

Logically, then, the next question to ask is whether a retirement clause which possibly lowers the age of retirement, by including years of service as a consideration for compulsory retirement, is a benefit.

The Supreme Court, in *Pantranco North Express, Inc. v. NLRC and Suniga*[25] answered the question in the positive, to wit:

“We agree with petitioner and the Solicitor General. Art. 287 of the Labor Code as worded permits employers and employees to fix the applicable retirement age at below 60 years. Moreover, providing for early retirement does not constitute diminution of benefits. In almost all countries today, early retirement, i.e., before age 60, is considered a reward for services rendered since it enables an employee to reap the fruits of his labor - particularly retirement benefits, whether lump-sum or otherwise - at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer.”

Given the above precedents, there is legal authority sanctioning respondent Manila Hotel's action of choosing to extend the CBA benefit of compulsory retirement to managerial employees. It is therefore embraced in respondent Hotel's management prerogative.

Regardless, a closer scrutiny of the circumstances surrounding petitioner's compulsory retirement, however, nudges Us to rule that respondent Manila Hotel's compulsorily retiring petitioner is not valid and in accord with the recognized exception. Moreover, as the action resulted in petitioner being expelled from the workplace, the same constitutes illegal dismissal. We explain.

The controlling provision with respect to retirement is Art. 287 of the Labor Code, which states:

“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 agreement 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.”

In the case before Us, a CBA provides for the conditions when an employee may be deemed retired: a) when the employee or officer reaches the age of sixty; or b) when the employee or officer's years of service reaches twenty years. Thus, pursuant to Art. 287, this shall bind the employer and its rank and file employees.

According to the NLRC and respondents, Martinez clarifies that the benefit can be extended to managerial employees. In this assertion, they are correct. However, petitioner's compulsory retirement does not match the retirement affirmed in Martinez, thus the latter case is not exactly on all fours with the case before Us.

There are two significant considerations in Martinez which mandate a different treatment of petitioner's retirement.

First, in Martinez, the managerial employee assented to be covered by the CBA and its optional retirement clause; in that case, the employment contract engaging the services of the managerial employee had already stated that managerial employees are entitled to benefits equal to, if not higher than, that granted by the CBA; consequently, both management and the employee signed that employment contract.

Second, in Martinez, it was the employee who offered to the employer to be optionally retired, which was accepted.

Such consent of the managerial employee to be bound by the CBA provision on compulsory retirement, however, is not present here.

Nothing in the submissions of the parties shows that petitioner had been offered, and that petitioner had assented, to be covered by the pertinent CBA provisions which the respondent Hotel had signed with its rank-and-file employees prior the verbal notice on 4 June 2011.

Respondents have never denied that petitioner had only been informed of her impending compulsory retirement pursuant to the CBA, a mere six days (counting from 4 June 2011, the date when she was verbally informed that management decided to retire her) from her last day, and that the information regarding petitioner's retirement was not an offer at all, but an order, and that petitioner had questioned her coverage in the CBA. They have also never denied that they have allowed petitioner to work in excess of the twenty-year period of service stipulated in the CBA, and have never explained to petitioner why they have chosen to apply this to her only now, and particularly, why, every year, they have extended her employment.

According to Sec. 11 of Rule 8 of the Rules of Court, which suppletorily applies in labor cases, the failure to mount a specific denial against a material averment amounts to an admission.[26] Thus, their noted failure to deny the matters mentioned above amounts to admitting that petitioner's compulsory retirement pursuant to the CBA was a complete surprise to her, and that, upon being informed of being embraced by the Agreement, she did not assent to its retirement clause.

Further militating against respondents is that the petitioner never accepted her retirement pay. In *Capili v. NLRC and University of Mindanao*[27], the Supreme Court treated the employee's acceptance of retirement benefits as a sign that he has acceded to his retirement. Here, in contrast, petitioner did not accept her retirement pay, such refusal, coupled with her consistent objection to being retired early and suddenly, as well her filing of a complaint, persuade Us that she did not consent to respondents' offer to compulsorily retire her under the CBA.

What about petitioner's processing of her retirement papers and signing of her clearance? The NLRC held that these indicate that petitioner has accepted the offer of retirement. We do not agree.

It is a familiar axiom that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer[28]. It cannot be ignored that petitioner has only six days before she is deemed "compulsorily retired". She has appealed the decision of respondent Manila Hotel but its representatives remained adamant. Therefore, it is unsurprising that petitioner would process her clearances; after all, without such clearance, her retirement pay would not be released, and she would still be out of work. Hence, it was not out of eagerness, excitement, and acceptance that she attended to her retirement requirements, but only out of sheer necessity and to assure the release of her retirement pay.

Significantly, another circumstance persuades that not even respondent Manila Hotel intended to apply its CBA to its managerial employees. As gleaned from the meeting between petitioner and Buena, which respondents never refuted, respondent Manila Hotel's decision to apply the CBA to petitioner is due to its belief that it could apply the CBA to all its employees. In the proceedings before the Labor Arbiter, respondents modified the approach by claiming that petitioner belonged to the rank-and-file, and thus, is covered by the CBA.

Considering that the Labor Arbiter and the NLRC held that petitioner was a managerial employee, which respondents never bothered to contest, it becomes clear that there was never any intent on its part to offer the CBA retirement clause to managerial employees, or more particularly, to petitioner. What resulted, thus, was a misplaced belief on its part that it could apply the CBA blindly to its employees, regardless of their position, and thus could justify petitioner's retirement under such clause. Here, as judicial authorities show, they are mistaken; absent any contract or consent on the part of the managerial employee to be bound by the CBA, the benefits of the CBA, particularly retirement, cannot be extended to the managerial employee, whom the law has insulated from receiving such advantages.

With these findings, We so hold that the NLRC erred in concluding that petitioner assented to be retired under the CBA, and in finding that the resulting separation of petitioner from work, ostensibly arising from such retirement, resulted from a bilateral agreement of the parties here. The absence of petitioner's consent to be bound by any

agreement with her employer, as to being covered by the retirement plan in the CBA, or any agreement concerning retirement, is fatal to respondents' position.

To emphasize, in *Jaculbe v. Siliman University*[29], the Court held that a retirement plan providing for a lower age of retirement requires the consent of both the employer and the employee. If the employee does not consent, and is “retired” anyway pursuant to the retirement plan, the retirement constitutes illegal dismissal. The Court held:

“Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age agrees to sever his or her employment with the former. In *Pantranco North Express, Inc. v. NLRC*, to which both the CA and respondent refer, the imposition of a retirement age below the compulsory age of 65 was deemed acceptable because this was part of the CBA between the employer and the employees. The consent of the employees, as represented by their bargaining unit, to be retired even before the statutory retirement age of 65 was laid out clearly in black and white and was therefore in accord with Article 287.

In this case, neither the CA nor the respondent cited any agreement, collective or otherwise, to justify the latter's imposition of the early retirement age in its retirement plan, opting instead to harp on petitioner's alleged “voluntary” contributions to the plan, which was simply untrue. The truth was that petitioner had no choice but to participate in the plan, given that the only way she could refrain from doing so was to resign or lose her job. It is axiomatic that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. This was clearly just such an instance.

x x x x x x x x

As already stated, an employer is free to impose a retirement age less than 65 for as long as it has the employees' consent. Stated conversely, employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her, respondent was guilty of illegal dismissal.” (Emphasis Ours.)

If only to dispel any doubt, We elaborate on another basis why We hold that petitioner's compulsory retirement was not valid, and was actually a case of illegal dismissal.

Relevantly, respondent Hotel has argued that it had only allowed petitioner to work beyond the 20-year service limitation only because certain exigencies required it, and now has to sever her employment by retirement due to heavy losses due to the world's economic crisis[30]. Such general and unsubstantiated excuses are unavailing. Respondents have not shown that the services specifically coming from petitioner allowed it to weather such exigencies or heavy losses, assuming these afflicted the respondent Hotel; significantly, respondents have not even shown that petitioner's station was abolished. In fact, such excuses only work to the detriment of respondents.

In view of this explanation, We revisit *Villena v. NLRC*[31]. In *Villena*, the Supreme Court ruled that the compulsory retirement of a managerial employee, pursuant to a CBA, and allegedly to curb losses, constituted illegal dismissal. Ruled the Court in *Villena*:

“ Why *Villena* was singled out for compulsory retirement when he was only 57 years old and after having served thirty-two (32) years in the company, has not been explained. While the purpose was allegedly to carry out a retrenchment program to cut losses, the legal procedure for the retrenchment of personnel was not followed, to wit: (1) one-month prior notice to the employee as prescribed by law was not given (Art. 283, Labor Code of the Philippines, as amended); Sec. 5, Rule XIV, B.P. 130); (2) no fair and reasonable criteria

were used in carrying out the retrenchment program, such as (a) less-preferred status (i.e., temporary employees), (b) efficiency rating, and (c) seniority (*Asiaworld Publishing House v. Ople*, 152 SCRA 219); and (3) no proof of the alleged financial losses suffered by the company was produced (*Columbia Development Corp. v. Minister of Labor and Employment*, 146 SCRA 421). It appears, therefore, that the so-called “compulsory retirement” was a scheme employed by the company to terminate Villena's employment without complying with the due process requirements of the law and without regard for his right to security of tenure.

While the law recognizes the right of an employer to dismiss an employee in justifiable cases, it frowns upon the arbitrary and whimsical exercise of that prerogative when the employee's right to due process is violated.”

We observe the same pattern here, and similarly, strike the strategy down, for being a subtle strategy by the employer to rid itself of an unwanted employee.

The above cited authorities plainly unmask petitioner's compulsory retirement as a termination without just or authorized cause. Whether as an extension of a CBA-negotiated retirement clause or as a measure of cost-cutting, the same constitutes illegal dismissal. There being illegal dismissal, petitioner is therefore entitled to backwages, inclusive of allowances, other benefits or their monetary equivalent, and reinstatement[32].

With respect to reinstatement, it appears the same is no longer feasible considering that the same would not work to the best interest of the parties[33]. Respondents have consistently objected to petitioner's return to work. Thus, reintroducing petitioner into the workplace may initiate conflicts which would ultimately hamper the efficient management of Manila Hotel, and likewise foster ill feelings and enmity between petitioner and her former superiors. Additionally, by this time, petitioner has already reached the age of sixty years, which the law recognizes as the age of retirement absent any CBA or applicable employment contract.

Hence, with the above considerations, We adopt the Supreme Court's approach in *Equitable Banking Corporation, et al. v. NLRC, et al.*[34], wherein the Court awarded backwages computed from the employee's last day at work, until he reaches the age of sixty, and thereupon, ordered the employer to pay retirement benefits pursuant to law.

We now proceed to determine petitioner's other monetary claims. In her Petition, petitioner only alleges her right to, and prays for, moral damages.

We deny the same. In order for moral damages to be awarded, as a rule, the dismissal of the employee must be 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.[35] Petitioner, however, has not shown that such bad faith or fraud attended her illegal dismissal, and the records persuasively show that while respondents persistently applied the CBA compulsory retirement clause, the same arose only out of a mistaken appreciation of the state of law and applicable jurisprudence.

However, anent the order of the NLRC for respondent Manila Hotel Corporation to pay respondent the amount of Php72,616.77 for illegal deductions, and Php7,261.167 as attorney's fees, the same is retained. Respondents never bothered to contest these awards before this Court via a separate petition.

In *Siliman University v. Fontelo-Paalan*[36] clarified that:

“ Irrefragably, the Resolution of the NLRC dated 19 April 2004, denying petitioner's Motion for Reconsideration of the earlier NLRC Resolution dated 18 December 2003, which ordered petitioner to pay respondent the balance of her retirement benefits, already became final and executory. By failing to file a Petition for Certiorari after the receipt of the 19 April 2004 Resolution, petitioner is deemed to have acquiesced to the adverse judgment. Further, it cannot be convincingly argued that the Petition for Certiorari filed by the respondent also inured to the benefit of the petitioner, for not only are their interests separate and distinct, but they are completely in conflict with each other.

To further underscore the significance of timely assailing an adverse decision, we have thus ruled in *Itogon-Suyoc Mines Inc. v. National Labor Relations Commission*, that:

The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof, for in such case, he must appeal.

Stated differently, a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment. Since the petitioner in the case at bar failed to question the finding of the NLRC that it was still liable for the balance of respondent's retirement benefits, the same had therefore long become final and executory and it can no longer impugn the same in this action.” (Emphasis by the Supreme Court.)

Hence, for failure of respondents to assail the award, We sustain the same.

Finally, with respect to the liability of respondents Quiambao, Go, and Caday, We clarify that they cannot be held liable merely because respondent Manila Hotel Corporation is liable. The prevailing rule still respects the separate personality of a corporation from its stockholders and officers. As a result, in cases of illegal dismissal, the corporate officers are not solidarily liable with the corporation, except if such officers acted with malice or with bad faith, or in excess of their authority.[37] Petitioner has not, unfortunately, established how respondents acted with bad faith when they applied to her the CBA provision on compulsory retirement.

Hence, for the foregoing reasons, the Petition is GRANTED.

WHEREFORE, premises considered, the PETITION is GRANTED. The assailed 10 June 2013 Decision of the NLRC, and its assailed Resolution promulgated on 4 September 2013, in so far as these hold that petitioner had been validly compulsorily retired, and dismissing petitioner's complaint for illegal dismissal, are hereby ANNULLED and SET ASIDE.

Respondent Manila Hotel Corporation is hereby ORDERED to pay petitioner her backwages from the termination of her employment on 10 June 2011, her last day at work, until the date when petitioner has turned sixty (60) years of age, and thereupon, to immediately pay her retirement benefits in accordance with law.

Respondent Manila Hotel Corporation is likewise ORDERED to pay petitioner the amount of Php72,616.77, representing illegal deductions, as held by the NLRC and uncontested by respondents, as well as Php7,261.67, representing attorney's fees of 10% of the amount unlawfully withheld.

SO ORDERED.

Salazar-Fernando, R.A., Chairperson, and Cruz, R.A., JJ., concur.

[*] Also referred to as “Rosita D.C. De Leon” and “Rosita C. De Leon” in the proceedings.

[1] Rollo, pp. 3-28.

[2] Rollo, pp. 217-234.

[3] Rollo, pp. 187-202.

[4] Rollo, pp. 272-275.

[5] Rollo, pp. 35-51.

- [6] Rollo, p. 100.
- [7] See Complaints at rollo, pp. 32-34.
- [8] Rollo, pp. 101-115.
- [9] Rollo, pp. 376-415.
- [10] Rollo, pp. 416-419.
- [11] Rollo, pp. 420-422.
- [12] Rollo, pp. 423-429.
- [13] Rollo, pp. 430-436.
- [14] Rollo, pp. 204-216.
- [15] Citing *Martinez v. NLRC*, G.R. No. 118743, 12 October 1998.
- [16] Rollo, p. 339.
- [17] *Bulletin Publishing Co. Inc. v. Hon. Sanchez*, cited as 144 SCRA 628.
- [18] Rollo, pp. 313-336.
- [19] Rollo, pp. 552-575.
- [20] Rollo, pp. 581-605.
- [21] G.R. No. 130866, 16 September 1998.
- [22] See *NFL v. Hon. Laguesma, et al.*, G.R. No. 123246, 10 March 1999 and *PAL v. NLRC and Quijano*, G.R. No. 123294, 20 October 2010.
- [23] See *Century Iron Works, Inc. and Chua v. Banas*, G.R. No. 184116, 19 June 2013, wherein the Court affirmed that unlike petitions for review on certiorari under Rule 45 of the Rules of Court, the petitioner in a petition for certiorari under Rule 65 can raise mixed questions of fact and law.
- [24] G.R. No. 118743, 12 October 1998.
- [25] G.R. No. 95940, 24 July 1996.
- [26] See *Masonic Inc. and Balais/Reyes v. Madjos, et al.*, G.R. No. 185094, 25 November 2009.
- [27] G.R. No. 120802, 17 June 1997.
- [28] *Jaculbe v. Siliman University*, G.R. No. 156934, 16 March 2007.
- [29] See fn. 22.
- [30] See Respondents' Position Paper, p. 5 at rollo, p. 345 and p. 10 at rollo, p. 350.
- [31] G.R. No. 90664, 7 February 1991.
- [32] Art. 279 of the Labor Code.
- [33] See *Bani Rural Bank, Inc. v. De Guzman, et al.*, G.R. No. 170904, 13 November 2013.
- [34] G.R. No. 102467, 13 June 1997.

[35] Mayon Hotel and Restaurant, et al., v. Adana, G.R. No. 157634, 16 May 2005.

[36] G.R. No. 170948, 26 June 2007.

[37] See EEMI and Go v. Samahang Manggagawa ng Ever Electrical, G.R. No. 194795, 13 June 2012; Equitable Banking Corporation, et al. v. NLRC, et al., see fn. 28.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.