EASTERN SHIPPING LINES, INC., AND/OR ERWIN L. CHIONGBIAN, PETITIONERS, VS. DIOSCORO D. SEDAN, RESPONDENT.

G.R. NO. 159354. April 07, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] and Resolution,[2] dated February 14, 2003 and August 7, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 70836, which reversed the October 4, 2001[3] Resolution of the National Labor Relations Commission affirming the Labor Arbiter's Decision of June 15, 2000.[4]

The antecedent facts, as culled from the records, are as follows:

On December 30, 1973, petitioners hired on a per-voyage basis private respondent Dioscoro[5] Sedan as 3rd marine engineer and oiler in one of the vessels owned by petitioners. His last voyage was on July 27, 1997 on board the vessel M/V Eastern Universe. His monthly pay was P22,000.[6] Additionally, after each voyage his earned leave credits are monetized and paid in cash. He said he was disembarking because he was going to take the board examinations for marine engineers.

Two months later, on September 27, 1997, Sedan sent a letter to petitioners applying for optional retirement, citing as reason the death of his only daughter, hence the retirement benefits he would receive would ease his financial burden. However, petitioners deferred action on his application for optional retirement since his services on board ship were still needed. Nonetheless, according to petitioners, the company expressed intention to extend him a loan in order to defray the costs incurred for the burial and funeral expenses of his daughter.

On October 28, 1997, Sedan sent petitioners another letter[7] insisting on the release of half of his optional retirement benefits. Later, he said that he no longer wanted to continue working on board a vessel for reasons of health.[8]

On December 1, 1997, Sedan sent another letter to petitioners threatening to file a complaint if his application was not granted. In reply, according to petitioners, the company management sent a telegram on December 9, 1997 informing Sedan that his services were needed on board a vessel and that he should report immediately for work as there was no available replacement. Sedan claims he did not receive the telegram, nor was this fact proved by the company before the Labor Arbiter or the NLRC.

Sedan proceeded to file a complaint with the Labor Arbiter against petitioners, docketed as NLRC-NCR CASE NO. 00-12-08578-97, demanding payment of his retirement benefits, leave pay, 13[th] month pay and attorney's fees. The Labor Arbiter ruled in favor of Sedan, as follows:

> WHEREFORE, premises all considered, judgment is hereby rendered as follows:
>
> 1. Ordering respondents to pay complainant retirement gratuity/separation pay of P253,000.00 (23 yrs. x P22,000.00 at ½ month for every year of service).

> 2. Ordering respondents to pay complainant 10% of the total monetary award by way of attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

Petitioners appealed the said decision to the National Labor Relations Commission. However, the NLRC found the factual findings of the Labor Arbiter consistent with the evidence on record. Hence, the NLRC dismissed the appeal for lack of merit. Petitioners' motion for reconsideration was likewise denied.

Dissatisfied, petitioners filed a special civil action for certiorari with the Court of Appeals anchored on the following grounds:

> 1. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING RETIREMENT GRATUITY/SEPARATION PAY TO THE PRIVATE RESPONDENT BY HOLDING THAT THERE WAS NO EVIDENCE TO SHOW THAT PRIVATE RESPONDENT WAS INFORMED/NOTIFIED OF PETITIONERS' NEED FOR HIS SERVICES OR DIRECTING HIM TO REPORT FOR WORK, INCLUDING [ACTION] ON HIS APPLICATION FOR OPTIONAL RETIREMENT.
>
> 2. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING ATTORNEY'S FEES TO THE PRIVATE RESPONDENT CONSIDERING THAT PETITIONERS ACTED IN GOOD FAITH IN REFUSING THE SUBJECT CLAIM.[10]

The Court of Appeals granted the petition and ruled that the retirement gratuity and attorney's fees awarded by the Labor Arbiter and the NLRC had no basis in fact or law since pursuant to the Agreement between the company and the employees, the granting of optional retirement is the exclusive prerogative of the employer, herein petitioners. Unless such prerogative was exercised arbitrarily or capriciously, private respondent cannot demand it as a right. Nonetheless, the Court of Appeals ordered petitioners to pay private respondent P200,000 as financial assistance, to wit:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is GRANTED. The assailed Decision dated October 4, 2001 and the Resolution dated April 22, 2002 of public respondent National Labor Relations Commission in NLRC NCR Case No. 00-12-08578-97/NLRC CA No. 026697-00 entitled, "Dioscoro D. Sedan, complainant-appellee vs. Eastern Shipping Lines, Inc. and/or Erwin L. Chiongbian, respondents-appellants" are hereby reversed and set aside for having been rendered/issued with grave abuse of discretion amounting to lack or in excess of jurisdiction and, in lieu thereof, petitioners are hereby ordered to pay respondent Dioscoro D. Sedan the amount of Two Hundred Thousand (P200,000.00) Pesos as financial assistance.
>
> SO ORDERED.[11]

Petitioners filed a motion for reconsideration, but it was denied by the Court of Appeals.

Hence, the instant petition raising as sole issue:

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN GIVING THE RESPONDENT PHP200,000.00 AS FINANCIAL ASSISTANCE WHEN IN FACT IT WAS THE RESPONDENT WHO REFUSED TO REPORT FOR WORK.[12]

Petitioners contend that by refusing to report for work and insisting on applying for optional retirement, private respondent wrongly assumed that he was justified in abandoning his job. Petitioners maintain that private respondent's refusal to report back to work, despite being duly notified of the need for his service, is tantamount to

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voluntary resignation. Therefore, petitioners contend, the respondent should not be entitled to any financial assistance.

Moreover, granting arguendo that private respondent was entitled to financial assistance, petitioners protest the amount of the financial assistance awarded by the Court of Appeals for being disproportionately excessive. Petitioners cite Manggagawa ng Komunikasyon sa Pilipinas v. NLRC,[13] where the employee was given only P10,000 as financial assistance.

In his Comment, private respondent argues that the Court of Appeals awarded him P200,000 for equity consideration. Private respondent claims that the retirement policy of the company, which states that "[i]t will be the exclusive prerogative and sole option of this company to retire any covered employee,"[14] must be interpreted in favor of the working class. Otherwise, private respondent laments, he will be placed at the mercy of the company, contrary to the constitutional mandate to afford full protection to labor.

At the outset, we rule for petitioners on the matter of optional retirement benefits.

Private respondent is not entitled to retirement benefits. The pertinent law governing retirement is found in the Labor Code, which provides:

> 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.

x x x

The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under the aforecited article of the Labor Code, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years.

In the instant case, there is an agreement[15] between petitioner shipping company and its employees. The agreement states:

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. Such employee shall be entitled to a Retirement Gratuity which shall be computed in accordance with the following table:

Years of Service Monthly Basic Pay
(Percentage)

15 years 55%

16 years 56%

17 years 57%

18 years 58%

19 years 59%

20 years 60%

21 years 63%

22 years 66%

23 years 69%

24 years 72%

25 years 75%

26 years 80%

27 years 85%

28 years 90%

29years 95%

30years 100%

The computation of the benefit shall be based on the final basic pay, for every year of credited service, a fraction of at least six (6) months being considered as one whole year but shall be exclusive of fringe benefits and other special emoluments.[16]

x x x

Clearly, the eligibility age for optional retirement is set at 60 years.[17] However, employees of herein petitioners who are under the age of 60 years, but have rendered at least 3650 days (10 years) on board ship or fifteen (15) years of service for land-based employees may also avail of optional retirement, subject to the exclusive prerogative and sole option of petitioner company.[18]

Records show that private respondent was only 48 years old[19] when he applied for optional retirement. Thus he cannot claim optional retirement benefits as a matter of right. His application for optional retirement was subject to the exclusive prerogative and sole option of the shipping company pursuant to the abovecited agreement

between the workers and the company. In this regard, no error was committed by the appellate court when it set aside the ruling of the Labor Arbiter and the NLRC granting herein private respondent P253,000 retirement gratuity/separation pay.

So now we come to the grant of financial assistance by the appellate court. We are not unmindful of the rule that financial assistance is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[20] Neither are we unmindful of this Court's pronouncements in Arc-Men Food Industries Corporation v. NLRC,[21] and Lemery Savings and Loan Bank v. NLRC,[22] where the Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order.

But we must stress that this Court did allow, in several instances, the grant of financial assistance.[23] 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.[24] 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.[25]

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 company's 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.

In our view, with these special circumstances, we can call upon the same "social and compassionate justice" cited in several cases[26] allowing financial assistance. These circumstances indubitably merit equitable concessions, via the principle of "compassionate justice" for the working class. Thus, we agree with the Court of Appeals to grant financial assistance to private respondent. The only catch is whether, as the shipping company alleges, the amount of P200,000 that the Court of Appeals granted him is "arbitrary and excessive".

The propriety of awarding financial assistance has long been tackled by this Court. In Philippine Long Distance Telephone Co. v. NLRC,[27] we laid down the rule that henceforth separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. A contrary rule, we said would have the effect of rewarding rather than punishing an erring employee.

Subsequent to PLDT, in the 2004 case of Piñero v. NLRC,[28] Piñero who was dismissed for an illegal strike was granted one-half (½) month's pay for the 29 years of his service. His infraction was deemed not so reprehensible nor unscrupulous as to warrant complete disregard of his long years of service with no derogatory record. In Aparente, Sr. v. NLRC,[29] for blatant disobedience of company rules, one-half (½) month's pay for every year of service was also deemed equitable. In the 1998 case of Salavarria v. NLRC,[30] for the teacher who had previously been meted with a two week suspension for the same offense, illegally soliciting contributions from students, the Court granted one month's salary for every year of service because, said the Court, she never took custody of the illegally solicited funds.

Considering the doctrine in the abovecited NLRC cases and taking into account equitable results in those cases,

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we find the grant of two hundred thousand pesos (P200,000) by the Court of Appeals, neither arbitrary nor excessive. Private respondent who has no derogatory record in his 23 years of service should be granted equitable assistance equal to one-half month's pay for each of his 23 years of service.

To conclude, in the instant case, private respondent has no claim against petitioners for retirement benefits. We agree with the appellate court, however, that financial assistance could be awarded him but only as an equitable concession under the special circumstances of this case.

WHEREFORE, the petition is DENIED. The decision of the Court of Appeals granting assistance to private respondent in the amount of two hundred thousand pesos (P200,000) is AFFIRMED. No pronouncement as to cost.

SO ORDERED.

Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] Rollo, pp. 73-80. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices B.A. Adefuin-de la Cruz, and Mariano C. del Castillo concurring.

[2] Id. at 82.

[3] Id. at 194-196.

[4] Id. at 151-155.

[5] "Dioscorro" in some parts of the records.

[6] Rollo, p. 320.

[7] Id. at 147.

[8] Id. at 74.

[9] Id. at 230.

[10] Id. at 12.

[11] Id. at 15-16.

[12] Id. at 57.

[13] G.R. No. 90964, February 10, 1992, 206 SCRA 109.

[14] Rollo, p. 281.

[15] Nominated as "Retirement Gratuity", Rollo, pp. 280-282.

[16] Rollo, pp. 280-281.

[17] Id. at 280.

[18] Id. at 281.

[19] Id. at 320.

[20] Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, G.R. Nos. 143013-14, December

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18, 2000, 348 SCRA 565, 590.

[21] G.R. No. 127086, August 22, 2002, 387 SCRA 560, 568-569.

[22] G.R. No. 96439, January 27, 1992, 205 SCRA 492, 499.

[23] Piñero v. National Labor Relations Commission, G.R. No. 149610, August 20, 2004, 437 SCRA 112, 120 citing Salavarria v. Letran College, G.R. No. 110396, September 25, 1998, 296 SCRA 184 and Aparente, Sr. v. National Labor Relations Commission, G.R. No. 117652, April 27, 2000, 331 SCRA 82, 93.

[24] Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, supra at 590.

[25] Calalang v. Williams, 70 Phil. 726 (1940).

[26] Supra note 23.

[27] No. L-80609, August 23, 1988, 164 SCRA 671, 682.

[28] Supra note 23.

[29] Ibid.

[30] Ibid.

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