

BANCO DE ORO UNIBANK, INC., PETITIONER, VS. GUILLERMO C. SAGAYSAY, RESPONDENT.*G.R. No. 214961. September 16, 2015*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-214961/>**MENDOZA, J.:**

This is a petition for review on certiorari seeking to reverse and set aside the March 31, 2014 Decision[1] and the October 8, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 126586, which reversed and set aside the February 29, 2012 Decision[3] and the June 25, 2012 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstated the July 19, 2011 Decision[5] of the Labor Arbiter (LA) in NLRC Case No. RAB II 02-0067-11.

The Facts

On May 16, 2006, respondent Guillermo Sagaysay (Sagaysay) was hired by petitioner Banco De Oro Unibank, Inc., (BDO) as Senior Accounting Assistant 5 in its San Jose, Nueva Ecija, branch as a result of a merger with United Overseas Bank (UOB), with BDO as the surviving bank. Sagaysay was previously employed in UOB from 2004 to 2006 or for two (2) years. Prior thereto, he worked for Metropolitan Bank and Trust Co. (Metrobank) from 1976 to 2004 for a period of twenty-eight (28) years.

In a letter,[6] dated January 8, 2010, BDO informed Sagaysay that, pursuant to the retirement policy of the bank which mandated its retirement age to be sixty (60), he would be formally retired effective September 1, 2010, a few days after his 60[th] birthday. The normal or compulsory retirement age of the bank was based on its retirement plan[7] which was implemented on July 1, 1994, Section 1, Article V of which reads:

Section 1. Normal Retirement

The Normal Retirement Date of each member shall be the first day of the month coincident with or next following his sixtieth (60[th]) birthday. The Member's Normal Retirement Benefit shall be a sum determined in accordance with the Retirement Benefit Schedule stated in Section 4 of this Article as of his retirement date.[8]

In an e-mail,[9] dated July 27, 2010, Sagaysay wrote that, although the time had come that the BDO Retirement Program would be implemented to those reaching the age of sixty (60), he requested that his services be extended because he had an outstanding loan and his children were still in college. He assured BDO that he was healthy and could still perform his duties in the branch. BDO denied Sagaysay's request.

In another e-mail,[10] dated August 19, 2010, Sagaysay appealed to BDO to extend his service for 8.5 months or up to May 16, 2011 so that he could render at least five (5) years of employment which would entitle him to 50% of his basic pay for every year of service upon his retirement. BDO denied Sagaysay's appeal and retired him on September 1, 2010. As of his last day of work, he was earning a monthly salary of P28,048.00.

Sagaysay then signed Release, Waiver and Quitclaim[11] (quitclaim), dated October 22, 2010, for and in consideration of P98,376.14. The quitclaim stated, among others, that in consideration of the foregoing payment,

Sagaysay released and discharged the bank, its affiliates and its subsidiaries from any action, suit, claim or demand in connection with his employment.

On January 10, 2011, Sagaysay filed a complaint^[12] for illegal dismissal with prayer for reinstatement and payment of backwages, moral damages, exemplary damages, and attorney's fee against BDO before the Labor Arbiter (LA). He claimed that despite his appeal, BDO compulsorily retired him on September 1, 2010. As a result, he and his family suffered damages in the amount of P2,225,403.00 which he would have received if he was made to retire at the age of sixty-five (65).

For its part, BDO countered that after the bank denied Sagaysay's request for extension of services, he was paid the amount of P98,376.14 representing the full and final settlement of his compensation, allowances, benefits and other emoluments. BDO stressed that he was not dismissed but was retired from the service.

The LA Ruling

In a decision, dated July 19, 2011, the LA ruled that Sagaysay was illegally dismissed because he was forced to avail of an optional retirement at the age of sixty (60) which was contrary to the provisions of Article 287 of the Labor Code.^[13] The LA opined that he was terminated on the basis of a provision in a retirement plan to which he did not freely assent. BDO took advantage of his predicament and made him sign a quitclaim in exchange for a small consideration. The decretal portion of the LA decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring that complainant GUILLERMO C. SAGAYSAY was illegally dismissed from work. Hence, respondent BDO UNIBANK, INC. is ordered to REINSTATE complainant to his former position as Senior Accounting Assistant 5 without loss of seniority rights and privileges and to pay him backwages in the sum of P280,480.00 as of July 7, 2011, plus ten percent (10%) thereof as attorney's fees or a total of P308,528.00.

The reinstatement aspect is immediately executory, even pending appeal. Respondent is hereby ordered to show proof that it complied with the reinstatement of complainant within ten (10) calendar days from receipt hereof.

Respondents [are] also ordered to pay complainant P50,000.00 each as moral and exemplary damages.

SO ORDERED.^[14]

Aggrieved, BDO appealed to the NLRC arguing chiefly that Sagaysay freely assented to its retirement plan.

The NLRC Ruling

On February 29, 2012, the NLRC reversed and set aside the ruling of the LA. The NLRC explained that BDO's retirement plan, which mandated a normal or compulsory retirement date at the age of sixty (60), was effective as early as June 1, 1994. The plan was renamed Banco de Oro Multiemployer Retirement Plan on July 1, 2004, but the compulsory retirement age of sixty (60) was preserved. When Sagaysay was employed on May 16, 2006, the retirement plan was already in full force and effect. Thus, the NLRC concluded that when he accepted his employment with BDO, he assented to the provisions of the retirement plan.

The NLRC found it difficult to believe that Sagaysay started his employment with BDO without familiarizing himself with the bank's retirement policy considering that he had previously retired from two (2) other banks. Further, the NLRC stated that a more concrete proof of his acceptance of BDO's retirement plan was his execution of a quitclaim where he declared that he had no cause of action against the bank and its agents. The dispositive portion of the NLRC decision states:

WHEREFORE, the appeal is GRANTED. The Decision of Labor Arbiter Ma. Lourdes R. Baricaua dated July

19, 2011 is REVERSED and SET ASIDE and a new one entered DISMISSING the complaint.

SO ORDERED.[15]

Sagaysay filed a motion for reconsideration, but it was denied by the NLRC in its Resolution, dated June 25, 2012.

Undaunted, Sagaysay filed a petition for certiorari[16] before the CA contending that it was neither stated in his employment contract nor stipulated in the collective bargaining agreement (CBA) between BDO and its employees that the compulsory retirement age was sixty (60) years old.

The CA Ruling

On March 31, 2014, the CA rendered the assailed decision which reversed the NLRC ruling. The appellate court explained that while the cases of *Pantranco North Express, Inc., v. NLRC*[17] and *Philippine Airlines v. Airline Pilots Association of the Philippines*[18] affirmed that the employer may provide an earlier retirement age, the retirement plans therein were the result of negotiations and agreement between employer and employee. The CA continued that, in this case, the retirement plan was not a result of a mutual agreement of employer and employee. This was affirmed by the BDO Memorandum,[19] dated June 1, 2009, stating that the retirement plan was to be implemented in the merged bank. Citing *Cercado v. UNIPROM Inc.*[20] (*Cercado*), the CA ruled that a retirement plan with no voluntary acquiescence on the part of the employee was ineffective.

The CA stated that Sagaysay was forced to participate in the retirement plan. Equally, the quitclaim he executed was not given credence because his subsequent filing of a complaint for illegal dismissal manifested that he had no intention to relinquish his employment. Nonetheless, the CA deleted the awards of moral and exemplary damages for lack of basis. The appellate court disposed the case in this wise:

WHEREFORE, the petition is GRANTED. The Decision dated February 29, 2012 and the Resolution dated June 25, 2012 of the National Labor Relations Commission are REVERSED and SET ASIDE. The July 19, 2011 Decision of the Labor Arbiter is REINSTATED, with MODIFICATION that the awards of moral and exemplary damages are DELETED for lack of basis.

SO ORDERED.[21]

BDO moved for reconsideration, but the motion was denied by the CA in the assailed resolution, dated October 8, 2014.

Hence, this petition.

The issues presented can be summarized as follows:

I

WHETHER THE RETIREMENT PLAN IS VALID AND EFFECTIVE AND, CONSEQUENTLY, THE MANDATORY RETIREMENT AGE OF 60 YEARS OLD IS ALSO BINDING.

II

WHETHER THE EXECUTION OF A RELEASE, WAIVER AND QUITCLAIM BY RESPONDENT IS VALID.

BDO principally argues that the retirement plan has been valid and effective since June 1, 1994; that having been in place for such a long period, the retirement plan is deemed to have been written into Sagaysay's employment contract, executed on May 16, 2006; that he even asked for an extension to become eligible to avail of the benefits under the same retirement plan; and that the 2005-2010 CBA stated, "[t]he Bank shall continue to grant retirement

pay," showing that the CBA likewise recognized the existing retirement plan.

BDO also contends that the CA erred in citing Cercado because in that case, the retirement plan was executed only after the employment of petitioner therein. Moreover, Sagaysay, as a veteran banker, fully knew the effects of the release, waiver and quitclaim when he signed it.

In his Comment,[22] Sagaysay countered that he was retired by BDO against his will; that there was no provision in any CBA that employees who reached sixty (60) years of age could be compulsorily retired; that there was no agreement either between Sagaysay and BDO that he would be retired upon reaching sixty (60); and that the quitclaim was invalid because BDO took undue advantage of his situation and dire financial problems to obtain his signature therein.

In its Reply,[23] BDO reiterated that the retirement plan was not forced upon Sagaysay; and that at the time he was employed by BDO in 2006, he had every opportunity to refuse employment if he disagreed with the retirement policy of the bank.

The Court's Ruling

The Court finds the petition meritorious.

The petition essentially centers on whether the June 1, 1994 retirement plan is valid and effective against Sagaysay. To resolve this issue, a review of the relevant laws and jurisprudence regarding the compulsory retirement age is warranted.

Laws and jurisprudence on early age of retirement

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.[24] Article 287 of the Labor Code is the primary provision which governs the age of retirement and states:

Art. 287. Retirement. xxx

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.

[Emphasis Supplied]

Doubtless, under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Only in the absence of such an agreement shall the retirement age be fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years.[25]

Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not per se repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.[26]

Jurisprudence is replete with cases discussing the employer's prerogative to lower the compulsory retirement age subject to the consent of its employees. In *Pantranco North Express, Inc. v. NLRC*,^[27] the Court upheld the retirement of the private respondent therein pursuant to a CBA allowing the employer to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court held that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age. The Court also stressed that "[p]roviding in a CBA for compulsory retirement of employees after twenty-five (25) years of service is legal and enforceable so long as the parties agree to be governed by such CBA."^[28]

In *Progressive Development Corporation v. NLRC*,^[29] the retirement plan, which allowed the employer to retire employees who had rendered more than 20 years of service, was declared valid and enforceable even though it was not embodied in a CBA. In that case, the Court concluded that the employees, who were hired before the execution of the employer's retirement plan on April 1, 1980, were bound by it because the retirement plan was expressly made known and accepted by them.

In contrast, the case of *Jaculbe v. Silliman University*^[30] did not allow the application of a lower retirement age. The petitioner in the said case was employed sometime in 1958 while the retirement plan, which automatically retired its members upon reaching the age of 65 or after 35 years of uninterrupted service to the university, came into being in 1970. The said retirement plan was not applied to the petitioner because there was no agreement to which the latter assented.

Similarly, the case of *Cercado*, which was heavily relied on by the CA, involved a non-contributory retirement plan which provided that any employee with twenty (20) years of service, regardless of age, may be retired at his option or at the option of the company. The said plan was adopted on April 1, 1980 while the petitioner therein was employed earlier on December 15, 1978. When respondent UNIPROM retired the petitioner pursuant to its retirement plan, the latter objected stating that she did not consent to it. The Court ruled in favor of the petitioner because there was no voluntary acquiescence to UNIPROM's early retirement age option on her part. It elucidated that:

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.^[31]

On the other hand, in *Obusan v. Philippine National Bank*^[32] (*Obusan*), the petitioner therein, who was hired by PNB in 1979, was deemed covered by its retirement plan adopted on December 22, 2000. It mandated that the employee should retire when he attained the age of sixty (60), regardless of his length of service, or when he had rendered thirty (30) years of service, regardless of age, whichever of the said conditions came first. Considering that on February 21, 2001, PNB had informed all of its officers and employees about the said retirement plan, the said plan was then registered with the B1R and was later recognized by the Philnabank Employees Association in its CBA. Despite the proper dissemination of information, no one questioned the retirement plan. Hence, the Court deemed it valid and effective as due notice of the employer's decision to retire an employee was adequately provided.

A scrutiny of the above-discussed cases reveals that the retirement plan was adopted after the employees were hired by their employer. This is in stark contrast with the case at bench wherein the adoption of the retirement plan came before the hiring of Sagaysay. Thus, the present petition portrays a unique predicament on whether a

retirement plan adopted before the employment of an employee is deemed binding on the latter.

Sagaysay was sufficiently

informed of the retirement plan

After a judicious study of records, the Court is convinced that Sagaysay was undeniably informed and had consented to the retirement plan of BDO before his compulsory retirement on September 1, 2010 based on the following:

First, the retirement plan was established as early as July 1, 1994. The purpose of the plan was to create a BDO employee's retirement trust fund which would provide for retirement and other benefits for all employees of the bank. It was also intended to support the funding of the benefits indicated in the CBA.[33] The retirement plan provided several retirement options such as normal retirement, early retirement, late retirement, and disability retirement. Normal or compulsory retirement was mandated at the first day of the month following the employee's sixtieth (60th) birthday, while early or optional retirement age was pegged at the age of fifty (50) with at least 10 years of credited service. It also discussed the different benefits that an employee could be entitled to upon retirement, resignation or separation.

It was renamed on June 1, 2004, but its provision on the normal retirement age was retained. Twelve (12) years after the adoption of the retirement plan, Sagaysay was employed by the bank. From its inception until his hiring, no employee had earnestly questioned the retirement plan. By then, it was unquestionably an established policy within the BDO, applied to each and every worker of the bank.

Second, by accepting the employment offer of BDO, Sagaysay was deemed to have assented to all existing rules, regulations and policy of the bank, including the retirement plan. Likewise, he consented to the CBA[34] between BDO and the National Union of Bank Employees Banco De Oro Chapter. Section 2 of Article XVII of the CBA provides that "[t]he Bank shall continue to grant retirement/gratuity pay xxx." Notably, both the retirement plan and the CBA recognize that the bank has a continued and existing practice of granting the retirement pay to its employees.

Third, on June 1, 2009, BDO issued a memorandum[35] regarding the implementation of its retirement program, reiterating that the normal retirement date was the first day of the month following the employee's sixtieth (60th) birthday. Similar to the case of Obusan, the memorandum was addressed to all employees and officers. By that time, Sagaysay was already an employee and he did not deny being informed of such memorandum.

For four years, from the time he was employed until his retirement, and having actual knowledge of the BDO retirement plan, Sagaysay had every opportunity to question the same, if indeed he knew it would not be beneficial to him. Yet, he did not express his dissent. As observed in Obusan, "[t]his deafening silence eloquently speaks of [his] lack of disagreement with its provisions." [36]

Lastly, perhaps the most telling detail indicative of Sagaysay's assent to the retirement plan was his e-mails to the bank, dated July 27, 2010 and August 19, 2010. In these communications, albeit having been informed of his upcoming retirement, Sagaysay never opposed the company's compulsory age of retirement. In fact, he recognized that "the time has come that BDO Retirement Program will be implemented to those reaching the age of sixty (60)." [37]

Glaringly, he even requested that his services be extended, at least until May 16, 2011, so that he could render five (5) years of service.[38] Sagaysay's request reflects the late retirement option where an employee may be allowed by the bank to continue to work on a yearly extension basis beyond his normal retirement date.[39] The late

retirement option is embodied in the same retirement plan, of which, ironically, he claimed to be unaware. With such inconsistent stance, the Court can only conclude that Sagaysay was indeed notified and had accepted the provisions of the retirement plan. It was only when his request for late retirement was denied that he suddenly became oblivious to the said plan.

The case of Cercado is

not applicable

The case of Cercado is not applicable in the present case as it has a different factual milieu. First, in Cercado, the petitioner was employed on December 15, 1978, which was almost two (2) years before the adoption of the employer's retirement plan on April 1, 1980. The Court explained that, logically, her employment contract did not include the retirement plan, much less the early retirement age option contained therein.

In the case at bench, Sagaysay was employed on May 16, 2006, which was almost twelve (12) years after the adoption of retirement plan on July 1, 1994. Accordingly, from the moment that Sagaysay accepted his employment, he was deemed to have consented to all existing company rules and regulations, including the policy on the early age retirement.

Second, in Cercado, the retirement plan was implemented when the petitioner therein was already employed. The Court held that because of the automatic application of the retirement plan to the current employees without their voluntary conformity, "[p]etitioner was forced to participate in the plan, and the only way she could have rejected the same was to resign or lose her job." Necessarily, it undermined the petitioner's security of tenure.

The ruling in Cercado cannot be applied to this case as Sagaysay was not yet employed when the retirement plan was adopted. When he was offered employment by the bank in 2006, the established retirement plan was not forced upon him. Sagaysay had the free will whether to undertake the employment and accept the bank's corresponding policies or look for a job elsewhere. Corollarily, no security of tenure had yet attached at that specific moment.

In other words, the evil sought to be prevented in Cercado does not exist in the present case as Sagaysay was given the opportunity to accept or reject the lower retirement age policy.

Third, the petitioner in Cercado refused the early retirement package in the amount of P171,982.90 from her employer. From the very beginning, she was adamant that she did not consent to the retirement plan of her employer.

The opposite can be observed in the present case. It has been uncontroverted that Sagaysay earlier acknowledged the retirement program of BDO and even requested for an extension of service. Moreover, he signed a quitclaim for and in consideration of P98,376.14 which discharged the bank, its affiliates and its subsidiaries from any action, suit, claim or demand in connection with his employment.

Generally, a quitclaim is frowned upon. As an exception, a quitclaim, with clear and unambiguous contents and executed for a valid consideration received in full by the employee who signed the same, cannot be later invalidated because its signatory claims that he was pressured into signing it on account of his dire financial need. When it is shown that the person executing the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim was credible and reasonable, the transaction must be recognized as a valid and binding undertaking.^[40]

Here, the Court is of the view that the quitclaim was validly executed. For the consideration of the quitclaim, Sagaysay received the amount of P98,376.14. As admitted by him, the amount was based on a liquidation data

sheet which showed the computation of benefits and emoluments of a rank and file employee.[41] Understandably, the amount given would not reflect the retirement benefits he demanded because he did not qualify under the retirement plan of BDO for he had not completed five (5) years of service upon his compulsory retirement. Thus, the consideration provided in the quitclaim was justified and reasonable.

Further, it has been duly proven that Sagaysay was a seasoned banker, spending thirty-four (34) years of his career in different banking establishments. He was learned in his profession and even experienced separation from his previous employments. Consequently, it cannot be said that he was naive in dealing with his employer and that he failed to exercise his free and voluntary will when faced with the documents relating to his retirement. Not an iota of evidence showed that BDO exerted undue influence against him to acquire his consent. In fine, absent any doubt to the contrary, his quitclaim must stand.

Extension of service

Finally, on Sagaysay's request to extend his length of service despite the compulsory retirement age of sixty (60) which was denied by BDO and eventually sparked the present controversy, the Court holds that BDO had the management prerogative to deny the extension of service. It is important to state that upon the compulsory retirement of an employee or official in the public or private service his employment is deemed terminated. The matter of extension of service of such employee or official is addressed to the sound discretion of the employer. It is a privilege only the employer can grant.[42]

Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[43]

WHEREFORE, the petition is GRANTED. The March 31, 2014 Decision and the October 8, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 126586 are REVERSED and SET ASIDE, and the February 29, 2012 Decision and the June 25, 2012 Resolution of the National Labor Relations Commission in NLRC LAC No. 08-002069-11 are REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez,[*] and Leonen, JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2191, dated September 16, 2015.

[1] Penned by Associate Justice Ramon A. Cruz with Associate Justice Hakim S. Abdulwahid and Associate Justice Romeo F. Barza, concurring; rollo, pp. 37-47.

[2] Id. at pp. 49-50.

[3] Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap, concurring; id. at 94-100.

[4] Id. at 101-103.

[5] Penned by Labor Arbiter Ma. Lourdes R. Baricaua; CA rollo, pp. 35-42.

[6] Rollo, p. 59.

[7] Id. at 51-53.

- [8] Id. at 52.
- [9] Id. at 60.
- [10] Id. at 61.
- [11] Id. at 62-63.
- [12] CA rollo, pp. 43-44.
- [13] Now Article 293 of the Labor Code.
- [14] CA rollo, p. 42.
- [15] Rollo, p. 100.
- [16] CA rollo, pp. 3-21.
- [17] 328 Phil. 470 (1996).
- [18] 424 Phil. 356 (2002).
- [19] Rollo, pp. 57-58.
- [20] 647 Phil. 603 (2010).
- [21] Rollo, p. 45.
- [22] Id. at 173-185.
- [23] Id. at 187-205.
- [24] Paz v. Northern Tobacco Redrying Co., Inc., G.R. No. 199554, February 18, 2015.
- [25] Obusan v. Philippine National Bank, 639 Phil. 554, 562 (2010).
- [26] Id. at 564-565.
- [27] 328 Phil. 470 (1996).
- [28] Id. at 485.
- [29] 398 Phil. 433 (2000).
- [30] 547 Phil. 352 (2007).
- [31] Supra note 20, at 612.
- [32] Supra note 25.
- [33] Rollo, p. 51.
- [34] Id. at 168-170.
- [35] Id. at 57-58.
- [36] Supra note 25, at 566.
- [37] Rollo, p. 60.
- [38] Id. at 61.

[39] Id. at 52.

[40] Hotel Enterprises of the Phil, Inc. v. Samahan ng mga Mcmggagawa sa Hyatt-NUWHRAIN, 606 Phil. 490, 512-513 (2009).

[41] CA rollo, p. 16.

[42] UST Faculty Union v. NLRC, 226 Phil. 441, 445 (1990).

[43] Philippine Transmarine Carriers, Inc. v. Legaspi, G.R. No. 202791, June 10, 2013, 698 SCRA 280, 293.

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