Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ERNESTO GALANG and MA. OLGA JASMIN CHAN,
Petitioners,

-versus-

BOIE TAKEDA CHEMICALS, INC. and/or KAZUHIKO NOMURA,
Respondents.

G.R. No. 183934

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

July 20, 2016

x - x

DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by Ernesto M. Galang and Ma. Olga Jasmin Chan (petitioners) from the Court of Appeals' (CA) Decision[2] dated February 26, 2008 (CA Decision) and the Resolution[3] dated July 28, 2008 (collectively, Assailed Decision) in CA-G.R. SP No. 96861. In the Assailed Decision, the CA affirmed the National Labor Relations Commission (NLRC) Decision[4] dated March 7, 2006 reversing the Labor Arbiter's ruling that petitioners were illegally dismissed, *viz*:

> **WHEREFORE**, premises considered, the instant Petition is hereby **DENIED**. Accordingly, the assailed March 7, 2006 Decision of the NLRC as well as the October 25, 2006 Resolution denying Petitioners' Motion for Reconsideration are **AFFIRMED**.
>
> **SO ORDERED**.[5] (Emphases in the original.)

---

[1] *Rollo*, pp. 12-76.

[2] *Id.* at 78-93. Penned by Associate Justice Enrico A. Lanzanas, with the concurrence of Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente.

[3] *Id.* at 95-98. Penned by Associate Justice Rosalinda Asuncion-Vicente, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Rebecca De Guia-Salvador.

[4] *Id.* at 137-156.

[5] *Id.* at 92.

Statement of Facts

Respondent pharmaceutical company Boie Takeda Chemicals, Inc. (BTCI) hired petitioners Ernesto Galang and Ma. Olga Jasmin Chan in August 28, 1975 and July 20, 1983, respectively.[6] Through the years, petitioners rose from the ranks and were promoted to Regional Sales Managers in 2000. Petitioners held these positions until their separation from BTCI on May 1, 2004.[7]

As Regional Sales Managers, they belong to the sales department of BTCI. They primarily managed regional sales budget and target, and were responsible for market share and company growth within their respective regions. Within the organizational hierarchy, they reported to the National Sales Director.[8] In 2002, when the National Sales Director position became vacant (after the retirement of Melchor Barretto), petitioners assumed and shared (with the general manager) the functions and responsibilities of this higher position, and reported directly to the General Manager.[9]

In February 2003, the new General Manager, Kazuhiko Nomura (Nomura), asked petitioners to apply for the position of National Sales Director.[10] Simultaneously, Nomura also asked Edwin Villanueva (Villanueva) and Mimi Escarte, both Group Product Managers in the marketing department, to apply for the position of Marketing Director. All four employees submitted themselves to interviews with the management. In the end, Nomura hired an outsider from Novartis Company as Marketing Director, while the position of National Sales Director remained vacant.[11]

Later, however, petitioners were informed that BTCI promoted Villanueva as National Sales Director effective May 1, 2004.[12] BTCI explained that the appointment was pursuant to its management prerogative, and that it arrived at such decision only "after careful assessment of the situation, the needs of the position and the qualifications of the respective candidates."[13] The promotion of Villanueva as the National Sales Director caused ill-feelings on petitioners' part.[14] They believed that Villanueva did not apply for the position; has only three years of experience in sales; and was reportedly responsible for losses in the marketing department.[15] Petitioners further resented Villanueva's appointment because they heard that the appointment was made only because he threatened to leave the office along with the company's top cardio-medical doctors.[16]

---

6 *Id.* at 80.
7 *Id.* at 79-80.
8 *Id.* at 79.
9 *Id.* at 139.
10 *Id.* at 79.
11 *Id.*
12 *Rollo*, p. 80.
13 *Id.* at 81.
14 *Id.* at 80.
15 *Id.* at 23.
16 *Id.* at 80.

After Villanueva's promotion, petitioners claimed that Nomura threatened to dismiss them from office if they failed to perform well under the newly appointed National Sales Director.[17] This prompted petitioners to inquire if they could avail of early retirement package due to health reasons. Specifically, they requested Nomura if they could avail of the early retirement package of 150% plus 120% of monthly salary for every year of service tax free, and full ownership of service vehicle tax free.[18] They claimed that this is the same retirement package given to previous retirees namely, former Regional Sales Director Jose Sarmiento, Jr. (Sarmiento), and former National Sales Director Melchor Barretto.[19] Nomura, however, insisted that such retirement package does not exist[20] and Sarmiento's case was exceptional since he was just a few years shy from the normal retirement age.[21]

On April 28, 2004, petitioners intimated their intention to retire in a joint written letter of resignation[22] dated April 28, 2002 (*sic*) to Nomura, effective on April 30, 2004. Thereafter, petitioners received their retirement package and other monetary pay from BTCI. Chan received two checks[23] in the total amount of ₱2,187,236.64[24] computed as follows:

1) Retirement pay (P70,000.00 x 120% x 21years) =	P1,764,000.00
2) Salaries from May to December 2004 (P70,000.00 x 8 mos.) =	P560,000.00
3) Allowances (from May to December 2004) =	P69,328.00
4) Rice Subsidy (April-December) =	P6,000.00
5) Conversion of Leave Credits (138 days) =	P461,833.00
6) 13th month pay (pro-rata) =	P35,000.00
[Gross Amount]	P2,896,161.00
Less: Accountabilities	P595,952.76
Taxes	P110,971.00
[Net Amount]	P2,187,236.64[25]

Galang received checks[26] in the total amount of ₱3,754,306.56[27] computed as follows:

1) Retirement Pay (P70,000 x 160% x 29 years) =	P3,248,000.00
2) Salaries [from] May [to] Dec. 2004 =	P560,000.00
3) Allowances (May to December 2004) =	P69,328.00
4) Rice Subsidy (April to December) =	P6,000.00
5) Conversion of Leave Credits (35 days) =	P117,131.00
6) 13th month pay (pro-rata) =	P35,000.00
Gross Amount	P4,035,459.00

17 *Id.*
18 *Rollo,* pp. 80, 140.
19 *Id.* at 23-24.
20 *Id.*
21 CA *rollo,* p. 370.
22 *Rollo,* pp. 81, 321-322.
23 *Id.* at 81-82, 323-324.
24 *Id.* at 81-82, 325. Chan received two checks from BTCI on May 13, 2004.
25 *Id.* at 81-82.
26 *Id.* at 82, 326-328.
27 *Id.* at 82, 329.

Less: Accountabilities	P275,553.63
Taxes	P5,598.81
[Net Amount]	P3,754,306.56[28]

Upon petitioners' retirement, the positions of Regional Sales Manager were abolished, and a new position of Operations Manager was created.[29]

On October 20, 2004, petitioners filed the complaint for constructive dismissal and money claims before the NLRC Regional Arbitration Branch.[30]

In a Decision dated May 16, 2005 (LA Decision),[31] the Labor Arbiter ruled that petitioners were constructively dismissed.[32] The Labor Arbiter explained that petitioners were forced to retire because Villanueva's appointment constituted an abuse of exercise of management prerogative; and that subsequent events, such as the abolition of the positions of Regional Sales Managers and the creation of the position of the Operations Manager show that petitioners' easing out from service were orchestrated. It also found that petitioners were discriminated as to their retirement package. The dispositive portion of the decision stated, thus:

> WHEREFORE, premises considered, judgment is hereby rendered, declaring complainants' dismissal from their employment to be illegal. Accordingly, respondents are jointly and severally liable:
>
> 1) To pay complainants the amounts opposite their respective names:
>
> | | **Backwages** | **Separation Pay/ Differential Pay** | **Salary Differentials** |
> |---|---|---|---|
> | E. Galang | P398,854.16 | 189,000.00 | 830,000.00 |
> | | | 3,045,000.00 | 680,000.00 |
> | Ma. OJ Chan | 398,954.16 | 189,000.00 | 830,000.00 |
> | | | 2,205,000.00 | 680,000.00 |
>
> 2) To pay complainants, the amount P227,164.10 for Olga Chan and the sum of P27,374.85 for Ernesto Galang, representing the refund of the deducted car loan;
>
> 3) To pay complainants the amount of P500,000.00 each, representing moral damages, and the amount of P500,000.00 each, as for exemplary damages;

---

28 *Id.* at 82.
29 *Id.* at 26, 225.
30 *Id.* at 291.
31 *Id.* at 99-122.
32 *Id.* at 114.

> 4) To pay complainant the amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.
>
> SO ORDERED.[33]

On June 30, 2005, BTCI appealed the LA Decision with the NLRC.[34]

Petitioners allegedly received a Notice of Decision[35] dated March 10, 2006 from the NLRC. The notice informed petitioners that a decision was promulgated by the NLRC on February 7, 2006. The attached decision in the notice, however, was dated March 7, 2006. The decision dated March 7, 2006[36] (March Decision) ***reversed and set aside*** the LA Decision, and dismissed the complaint. In said decision, the NLRC ruled that petitioners failed to prove that they were constructively dismissed.

Petitioners filed a motion to declare the March Decision null and void by way of motion for reconsideration[37] dated March 22, 2006. Petitioners alleged that prior to the Notice of Decision, they personally received a decision allegedly promulgated on February 7, 2006[38] (February Decision) which ***affirmed*** the LA Decision, but with modification as to the amount of moral and exemplary damages. Petitioners pointed out that the March Decision: (1) lacked one signature in page 19; (2) contained two different specimens signature for Commissioner Gacutan; (3) had pages which do not contain the initials of the one preparing it; (4) was printed in higher quality paper; (4) merely lifted the arguments of BTCI in contrast to the NLRC's February Decision which directly reviewed the findings of the Labor Arbiter; and (5) was attached to a notice signed by merely a Labor Arbiter Associate, and not by the Executive Clerk of the Division.[39] Petitioners also reiterated that BTCI dismissed them under the guise of management prerogative, and that Villanueva's appointment as National Sales Director was an abuse of exercise of such prerogative. They also claimed that their departure from the office was not voluntary but was prompted by the circumstances after the BTCI preferred Villanueva's application over theirs.[40]

On October 25, 2006, the NLRC issued a Resolution[41] which denied petitioners' motion for reconsideration, and therefore upheld the NLRC's March Decision. The NLRC clarified that the official decision is the March Decision, and that the February Decision cannot be considered as the official decision because it was merely a draft decision.

---

33 *Id.* at 122.
34 *Id.* at 291.
35 *Id.* at 136.
36 *Id.* at 137-156.
37 *Id.* at 157-166; CA *rollo*, pp. 110-120.
38 *Rollo*, pp. 123-135, 157-158.
39 *Id.* at 158-160.
40 *Id.* at 162-165.
41 *Id.* at 203-208.

Petitioners filed a petition for *certiorari*[42] under Rule 65 of the Revised Rules of Court with the CA, which denied the petition in the Assailed Decision. The CA said that the "NLRC having thus chosen to uphold its Decision dated March 7, 2006 as the authentic one, this Court must therefore, consider the same as the version herein submitted for review."[43] The CA also found that the March Decision was more in tune with law and jurisprudence.[44] It reviewed and reassessed the facts and evidence on record and made a finding that the NLRC did not commit grave abuse of discretion.

Thus, petitioners filed before this Court a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court. They allege that the CA erred in sustaining the decision of the NLRC.

The Arguments

Petitioners argue that they were constructively dismissed because of the acts of BTCI's General Manager Nomura. They claim that they were forced into resigning because instead of promoting them to the position of National Sales Directors, BTCI hired Villanueva who only had three years of service in the company, who has no background or experience in sales to speak of, and who was allegedly responsible for almost the bankruptcy of the company. They allege that Nomura threatened to dismiss them if they do not perform well under the newly-appointed National Sales Director.

Petitioners also argue that the retirement package given to them is lower compared to others who were holding the similar position at the time of their retirement. By way of example, petitioners cite the case of one Sarmiento, who was promoted with them to the same position, and who opted for early retirement in 2001. Sarmiento allegedly received a more generous package of 150% of his monthly salary for every year of service on top of the 120% retirement package for his 22 years of service. Petitioners contend that this was the same retirement package given to other employees such as Anita Ducay, Marcielo Rafael, Rolando Arada, Sarmiento, and Melchor Barretto.[45]

For its part, BCTI claims that the complaint is only an attempt to extort additional benefits from the company.

BTCI denies having constructively dismissed petitioners. It argues that no constructive dismissal can occur because there was no movement or transfer of position or diminution of salaries or benefits. Neither was there any circumstance that would make petitioners' continued employment

---

42 CA *rollo*, pp. 2-24.
43 *Rollo*, p. 87.
44 *Id.* at 88.
45 *Id.* at 58-60.

unreasonable or impossible.[46] The appointment of Villanueva was within the sphere of management's prerogatives, and was arrived at after careful consideration. It did not have any adverse effect on petitioners' positions as Regional Sales Managers. According to BTCI, petitioner's decision to retire was voluntary and of their own volition.[47]

As to the payment of retirement benefits, BTCI insists that petitioners have been paid according to the Collective Bargaining Agreement (CBA) between BTCI and BTCI Supervisory Union. Although petitioners are managers (and are not covered by the CBA), BTCI by practice grants the same retirement benefits to managers. BTCI admits that it gave Sarmiento additional financial assistance because of serious health problems, and because he was merely three years away from normal retirement. Other employees cited by petitioners all received retirement benefits computed on the CBA provisions.[48]

Issues

Thus, the issues before this Court are the following:

I. Whether petitioners were constructively dismissed from service; and

II. Whether petitioners are entitled to a higher retirement package.

Our Ruling

We deny the petition.

In its Resolution dated October 25, 2006, the NLRC denied petitioners' motion for reconsideration, and declared the March Decision as the official decision. It ruled that the February Decision (in petitioners' possession) is merely a draft decision.[49] This Court recognizes that it is common practice that more than one decision may be drafted because more often, members of a collegiate body change their positions during deliberations.[50] This finding of the NLRC, coupled by the fact that the March Decision is complete in form and substance pursuant to Section 4(c) and Section 13 of Rule VII of the 2005 NLRC Rules of Procedure, cannot be characterized as an exercise of grave abuse of discretion amounting to lack or excess of jurisdiction. The issue of which between the two decisions is the correct one delves into the substantive arguments of the case, which the CA

---

46 *Id.* at 301.
47 *Id.* at 287.
48 *Id.* at 394-398.
49 *Id.* at 205-206.
50 See concurring opinion of Justice Hugo Gutierrez, Jr. in *People v. Caruncho, Jr.*, G.R. No. L-57804, January 23, 1984, 127 SCRA 16, 48-49.

has already decided after review and reassessment of the facts and evidence of the entire records.

I. Petitioners voluntarily retired from the service, thus were not constructively dismissed.

Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not."[51] It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign.[52] Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment.

In this case, petitioners were neither demoted nor did they receive a diminution in pay and benefits. Petitioners also failed to show that employment is rendered impossible, unreasonable or unlikely.

Petitioners admitted that they have previously intended to retire and were actually the ones who requested to avail of an early retirement.[53] More, the circumstances which petitioners claim to have forced them into early retirement are not of such character that rendered their continued employment with BTCI as impossible.

Petitioners allege that Nomura appointed Villanueva in order to ease them out from the company. Petitioners claim that Villanueva was unqualified for the position compared to their experiences; that Villanueva did not apply for the position of National Sales Director; and that he lacked the experience for the job. Such arguments only affirm the NLRC and CA's finding that petitioners' resignation was prompted by their general disagreement with the appointment of Villanueva, and not by the acts of discrimination by the management.

Our labor laws respect the employer's inherent right to control and manage effectively its enterprise and do not normally allow interference with the employer's judgment in the conduct of his business.[54] Management

---

[51] See *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236.

[52] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 555.

[53] *Rollo*, p. 23.

[54] *Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, G.R. No. 125038, November 6, 1997, 281 SCRA 509, 519.

has exclusive prerogatives to determine the qualifications and fitness of workers for hiring and firing, promotion or reassignment.[55] It is only in instances of unlawful discrimination, limitations imposed by law and collective bargaining agreement can this prerogative of management be reviewed.[56]

The reluctance to interfere with management's prerogative in determining who to promote all the more applies when we consider that the position of National Sales Director is a managerial position. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers.[57] The promotion of employees to managerial or executive positions rests upon the discretion of management.[58] Thus, we have repeatedly reminded that the Labor Arbiters, the different Divisions of the NLRC, and even courts, are not vested with managerial authority.[59] The employer's exercise of management prerogatives, with or without reason, does not *per se* constitute unjust discrimination, unless there is a showing of grave abuse of discretion.[60] In this case, there is none.

Petitioners did not present any evidence showing BTCI's adopted rules and policies laying out the standards of promotion of an employee to National Sales Director. They did not present the qualification standards (which BTCI did not allegedly follow) needed for the position. Petitioners merely assumed that one of them was better for the job compared to Villanueva. Mere allegations without proof cannot sustain petitioners' claim. In any case, a perusal of Villanueva's resume shows that he has combined experiences in both sales and marketing.[61] The NLRC also found that an independent consulting agency, K Search Asia Consulting, was engaged by BTCI to determine who to appoint as National Sales Director.[62] The consulting agency recommended Villanueva to the position.[63] In the absence of any qualification standards that BTCI allegedly gravely abused to refuse to follow, we cannot substitute our own judgment on the qualifications of Villanueva.

Petitioners' allegation that Villanueva was appointed only because of the threats the latter made to management militates against their claim. If BTCI management was merely forced to appoint Villanueva, petitioners cannot claim that BTCI intentionally and maliciously orchestrated their easement from the company.

---

55 *Id.*
56 *Id.*
57 *Bulletin Publishing Corporation v. Sanchez*, G.R. No. L-74425, October 7, 1986, 144 SCRA 628, 641.
58 *Id.*
59 *National Federation of Labor Unions v. NLRC*, G.R. No. 90739, October 3, 1991, 202 SCRA 346, 353.
60 *National Federation of Labor Unions v. NLRC*, *supra* at 355.
61 *Rollo*, pp. 349-351.
62 *Id.* at 184.
63 *Id.*

Petitioners cannot also argue that BTCI's caution to dismiss them if they do not perform well under the newly-appointed National Sales Director constituted a threat to their employment. This is merely a warning for them to cooperate with the new National Sales Director. Such warning is expected of management as part of its supervision and disciplining power over petitioners given their unwelcoming reactions to Villanueva's appointment.

The other acts of discrimination complained of by petitioners refer to post-employment matters, or those that transpired after their retirement. These include payment of alleged "lesser" retirement package, and the abolition of the positions of Regional Sales Manager. These events transpired only after they voluntary availed of the early retirement. We stress, however, that the circumstances contemplated in constructive dismissal cases are clear acts of discrimination, insensibility or disdain which necessarily *precedes* the apparent "voluntary" separation from work. If they happened after the fact of separation, it could not be said to have contributed to employee's decision to involuntary resign, or in this case, retire.

It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[64] However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence.[65] Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause.[66] The logic is simple—if there is no dismissal, there can be no question as to its legality or illegality.[67]

In *Portuguez v. GSIS Family Bank (Comsavings Bank),*[68] we were confronted with the same facts where an employee who opted for voluntary retirement claimed that he was constructively dismissed. In that case, we ruled that it is the employee who has the *onus* to prove his allegation that his availment of the early voluntary retirement program was, in fact, done involuntarily:

> Again, we are not persuaded. We are not unaware of the statutory rule that in illegal dismissal cases, the employer has the *onus probandi* to show that the employee's separation from employment is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. It bears stressing, however, that this legal principle presupposes that there is indeed an involuntary separation from

---

64 *MZR Industries v. Colambot*, G.R. No. 179001, August 28, 2013, 704 SCRA 150, 157.
65 *Id.*
66 *Id.*
67 *Id.*, citing *Philippine Rural Reconstruction Movement v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.
68 G.R. No. 169570, March 2, 2007, 517 SCRA 309.

> employment and the facts attendant to such forced separation was clearly established.
>
> This legal principle has no application in the instant controversy for as we have succinctly pointed above, petitioner failed to establish that indeed he was discriminated against and on account of such discrimination, he was forced to sever his employment from the respondent bank. What is undisputed is the fact that petitioner availed himself of respondent bank's early ***voluntary*** retirement program and accordingly received his retirement pay in the amount of ₱1.324 Million under such program. Consequently, the burden of proof will not vest on respondent bank to prove the legality of petitioner's separation from employment but aptly remains with the petitioner to prove his allegation that his availment of the early voluntary retirement program was, in fact, done involuntarily.
>
> As we have explicitly ruled in *Machica v. Roosevelt Service Center, Inc.:*
>
> > "The rule is that **one who alleges a fact has the burden of proving it**; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. **It must be stressed that the evidence to prove this fact must be clear, positive and convincing.** The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners."
>
> Verily, petitioner did not present any clear, positive or convincing evidence in the present case to support his claims. Indeed, he never presented any evidence at all other than his own self-serving declarations. We must bear in mind the legal dictum that, "**he who asserts, not he who denies, must prove.**"[69] (Citations omitted, emphases in the original.)

Here, records show that petitioners failed to establish the fact of their dismissal when they failed to prove that their decision to retire is involuntary. Consequently, no constructive dismissal can be found.

II. Petitioners were not discriminated against in terms of their retirement package.

The entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or

---

[69] *Id.* at 324-325.

employment contract, or an established employer policy.[70] Based on both parties' evidence, petitioners are not covered by any agreement. There is also no dispute that petitioners received more than what is mandated by Article 287[71] of the Labor Code. Petitioners, however, claim that they should have received a larger pay because BTCI has given more than what they received to previous retirees. In essence, they claim that they were discriminated against because BTCI did not give them the package of 150% of monthly salary for every year of service on top of the normal retirement package.

In *Vergara v. Coca-Cola Bottlers Philippines, Inc.*,[72] we explained that the burden of proof that the benefit has ripened into company practice, *i.e.*, giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately, rests with the employee:

> To be considered as a regular company practice, **the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately**. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. **It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof.** In

---

[70] *Kimberly-Clark Philippines, Inc. v. Dimayuga*, G.R. No. 177705, September 18, 2009, 600 SCRA 648, 653.

[71] 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 therein.

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.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

(Renumbered to Article 302 pursuant to Republic Act No. 10151.)

[72] G.R. No. 176985, April 1, 2013, 694 SCRA 273.

> sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[73] (Citations omitted, emphases supplied.)

We agree with the CA when it ruled that "[t]his concession given to such an employee was not proved (*sic*) to be company practice or policy such that petitioners can demand of it over and above what has been specified in the collective bargaining agreement."[74]

To prove that their claim on the additional grant of 150% of salary, petitioners presented evidence showing that Anita Ducay,[75] Rolando Arada,[76] Marcielo Rafael,[77] and Sarmiento,[78] received significantly larger retirement benefits. However, the cases of Ducay, Arada, and Rafael cannot be used as precedents to prove this specific company practice because these employees were not shown to be similarly situated in terms of rank, nor are the applicable retirement packages corresponding to their ranks alike. Also, these employees, including Sarmiento, all retired in the same year of 2001, or only within a one-year period. Definitely, a year cannot be considered long enough to constitute the grant of retirement benefits to these employees as company practice.

In fact, the affidavit[79] of Anita Ducay affirms BTCI's position that in practice, the CBA provisions govern the employees' retirement pay. And while it may also support petitioners' allegation that in some cases, a more generous package is given to retiring employees higher than that provided in the CBA, the affidavit candidly states that the retirement package given to Sarmiento, Melchor Barreto, Marcielo Rafael, and Rolando Arada was not in accordance with standard of merit or company practice.

It cannot therefore be disputed that petitioners already received the benefits as specified in the CBA between BTCI and BTCI Supervisory Union.[80] Petitioner Chan, for her 21 years of service, received a total of

---

73 *Id.* at 279-280.
74 *Rollo*, p. 92.
75 CA *rollo*, p. 332.
76 *Id.* at 121-122.
77 *Id.* at 123-124.
78 *Rollo*, pp. 210-211.
79 *Id.* at 273.
80 *Id.* at 330. Section 2, Article XV, of the CBA provides:

> **SECTION 2. RETIREMENT BENEFIT** – Retirement benefits in the form of percentage of Monthly [B]asic Salary shall be paid to regular employees upon completion of the following length of service:
>
> | LENGTH OF SERVICE | RATE IN PERCENT OF THE BASIC PAY |
> |---|---|
> | 1. 5 TO 8 YEARS | 60% |
> | 2. 9 TO 11 YEARS | 65% |
> | 3. 12 TO 14 YEARS | 75% |
> | 4. 15 TO 17 YEARS | 90% |
> | 5. 18 TO 20 YEARS | 105% |

₱1,764,000.00 as retirement benefits following the formula of ₱70,000.00 x 120% x 21 years. Petitioner Galang, for his 29 years of service, received a total of ₱3,248,000.00 as retirement benefits following the formula of ₱70,000.00 x 160% x 29 years.

In sum, we hold that petitioners voluntarily retired from service and received their complete retirement package and other monetary claims from BTCI.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** No costs.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

---

6. 21 TO 23 YEARS 120%
7. 24 TO 26 YEARS 130%
8. 27 and OVER 160%

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILLIAM D. V. LAPITAN
Division Clerk of Court
Third Division
AUG 16 2016