Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAUREEN P. PEREZ, Petitioner,	**G.R. No. 197557**
	Present:
	VELASCO, JR., *J.* *Chairperson,*
- versus -	PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.*
COMPARTS INDUSTRIES, INC., Respondent.	Promulgated: October 5, 2016

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DECISION

PEREZ, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court questioning the Decision[1] of the Court of Appeals in CA-G.R. CEB-SP. No. 05473 which affirmed the Decision[2] of the National Labor Relations Commission (NLRC) in NLRC VAC-VAC-02-000085-2010 granting the appeal of respondent Comparts Industries, Inc. (CII) and dismissing the complaint of petitioner Maureen P. Perez for optional retirement pay. Previously, the NLRC Regional Arbitration Branch No. VII granted the complaint of Perez and awarded her a total of Php422,195.84 representing her optional retirement benefits and ten percent (10%) attorney's fees.[3]

The facts are fairly summarized by the appellate court:

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1 *Rollo*, pp. 64-76; Penned by Associate Justice Pampio A. Abarintos with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles concurring.

2 Id. at 47-61.

3 Id. at 38-46.

[Perez] started her employment with [CII] on 16 July 1988 and became a regular employee thereof on 01 September 1988. After years of working and after several promotions, she was eventually appointed as Marketing Manager. She held this position from 1998 up to 10 January 2009, the date when she resigned from her work.

[CII] has a retirement program for its managerial employees or officers covered by "Comparts Industries, Inc. Employees Retirement Plan" (Retirement Plan) which took effect on 01 June 1999 and was amended on 25 January 2001. Included therein are provisions relating to optional or early retirement and optional retirement benefits.

Prior to her resignation, [Perez] manifested to [CII] sometime in November 2007 her intention to avail of the optional retirement program since she was already qualified to retire under it. Her application was denied. In January 2008, while vacationing in the United States of America (USA), she again filed an application for optional retirement to take advantage of a job offered to her in the said country. Still, her application was denied. [CII] justified its denial of [Perez's] application saying that, under the Retirement Plan, it has the option to grant or deny her application for optional retirement and considering that it is experiencing financial crisis, it has no choice but to disallow her intention.

In April 2008, [Perez] asked for reconsideration of the denial of her application for optional retirement. She also requested to be included in the retrenchment that [CII] was planning to implement. Again, her application was declined and she was not one of those employees who were retrenched. In December 2008, [Perez] needed to go to the USA to attend to her mother who suffered a mild stroke. Thus, she applied for optional retirement again to be effective on 10 January 2009. She also claimed the benefits concomitant to it as provided by the Retirement Plan.

In response, [Perez] was informed by [CII] that it could only give her Php100,000.00 as gratuity for her twenty years of service as this was the only amount it could afford. [Perez] refused the offer.

On 08 January 2001, [Perez] received a letter from [CII] which contained the acceptance of her resignation effective 10 January 2009. The letter likewise contained [CII's] denial of [Perez's] claim for optional retirement benefits or separation pay for the following reasons: 1) [CII] has no policy or rules on optional retirement benefits; 2) [CII] has been so affected by the global crisis and has been suffering financial losses; 3) there is no provision in the Labor Code which grants separation pay to voluntarily resigning employees; and 4) [Perez] cannot invoke the provisions of the Collective Bargaining Agreement (CBA) on optional retirement benefits because the CBA is for rank-and-file employees.

[Perez] e-mailed [CII] on 09 January 2009 to counter the latter's reasons and she cited therein rulings of the Supreme Court which supposedly supported her claim for optional retirement benefits or separation pay. [CII] was not persuaded. She again e-mailed [CII] to reconsider its stand and she cited names of former employees of [CII] who

were allowed to optionally retire and who were given separation pays even if they were managerial employees. Still, [CII] was not convinced.[4]

At this point, Perez filed a Complaint with the NLRC-RAB No. VII for discrimination, moral damages and attorney's fees against CII praying for separation pay in the form of optional retirement benefits, either under the Retirement Plan for CII officers or under the Collective Bargaining Agreement (CBA) for rank-and-file employees. On the whole, Perez asked for payment of separation pay under all circumstances of severance of employment, including separation pay due to a retrenchment.[5]

After exchange of pleadings, the NLRC RAB No. VII favored the complainant, finding that:

1. Perez is entitled to optional retirement benefits under the CII Retirement Plan having rendered service to CII for more than twenty (20) years; and

2. Seven (7) CII managerial/middle management employees with accompanying affidavits attached to Perez's Position Paper have received separation pay and/or benefits either pursuant to optional retirement or retrenchment.

CII then forthwith appealed to the NLRC which, as previously adverted to, reversed and set aside the ruling of the NLRC-RAB No. VII on the following grounds:

1. Four (4) out of the five (5) employees received optional retirement benefits prior to the effectivity of the Retirement Plan in 1999, as amended in 2001. At their instance, these managerial/middle management employees were actually allowed optional retirement benefits pursuant to the CBA;

2. Under the Retirement Plan for CII Officers, CII has the option to allow or disallow the application of a member-employee for optional retirement. While Perez may be qualified to elect optional retirement with her years of service to CII beyond the 15-year service period minimum requirement, the provision in the Retirement Plan is prefaced by a qualifier that the election is done "[w]ith the consent of [CII];"

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4 Id. at 65-66.

5 See Article 283 of the Labor Code.

3. In fact, both the Retirement Plan for CII Officers and the CBA for CII rank-and-file employees require the consent and approval of CII before any payment of optional retirement benefits to qualified employees-members is made;

4. The receipt by employees of optional retirement benefits as stated in the affidavits of retired managerial/middle management employees did not ripen into voluntary company practice. These managerial employees had to request, and obtain consent from, CII to elect optional retirement as provided under the CBA;

5. The circumstances obtaining in the years 1995, 1997, 1998, and 2005, when certain employees were allowed to avail of optional retirement under the CBA, were far different from the circumstances obtaining in 2008 when the global financial crisis specifically hit the exporting business of CII and the latter had to undertake a retrenchment program where two (2) managerial employees who likewise executed affidavits received separation pay thereunder. Thus, CII validly disallowed Perez's application for optional retirement based thereon; and

6. Lastly, to further demonstrate the absence of established company practice in the grant of optional retirement benefits to managerial employees, in 2008, when CII was already incurring net losses, it denied two (2) other employees' application for payment of optional retirement benefits.

Nonetheless, the NLRC ordered CII to pay Perez the amount of Php100,000.00 as gratuity, CII having previously offered such in consideration for past services.

Not unexpectedly, Perez filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals alleging grave abuse of discretion in the NLRC's reversal of the NLRC-RAB No. VII ruling and dismissal of her complaint.

The appellate court dismissed the petition and sustained the rulings of the NLRC that:

1. Under the CII Retirement Plan which is the plan applicable to Perez as a managerial employee, the allowance and grant of optional retirement benefits to Perez must be with consent of CII;

2. Citing the case of *Eastern Shipping Lines, Inc. v. Antonio*,[6] Perez did not acquire a vested right to payment of optional retirement benefits despite having completed the minimum number of years of service to CII. Completion of the minimum number of years of service and the subsequent availment of optional retirement benefits is not a matter of right but remains management prerogative to grant or withhold; otherwise, such "would not have been termed as optional, as the foregoing would make the retirement mandatory and compulsory;"

3. The grant of optional retirement benefits to other managerial/middle management employees in the instances stated in the affidavits of former employees-members was undertaken before the effectivity of the Retirement Plan in 1999. On the contrary, no company practice can be gleaned from a single managerial employee availing of optional retirement benefits under the CBA after effectivity of the Retirement Plan for CII Officers; and

4. All the affidavits of the managerial employees proferred into evidence by Perez point to their respective requests and application for their availment of optional retirement benefits under the CBA and the corresponding consent thereto of CII before they were paid the benefits.

Hence, this appeal by *certiorari* of Perez positing that the appellate court seriously erred in ruling that she is not entitled to optional retirement benefits. Perez maintains that she is entitled to separation pay: (1) primarily through the optional retirement program under the Retirement Plan having rendered more than twenty (20) years of service to CII, (2) through a similar optional retirement program under the CBA which has been likewise extended to other managerial/middle management employees in several instances, or (3) a retrenchment program undertaken by CII because of the global financial crisis.

We do not find error, much less grave error, in the appellate court's ruling.

At the outset, we note that Perez intended to end her employment desiring, however, to receive separation pay in any form and from any source, thus persistently asking for either availment of an optional retirement scheme whether under the Retirement Plan for CII Officers, or the CBA.

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6 618 Phil. 601 (2009).

Covering all scenarios to ensure her receipt of a separation package, she even requested inclusion in CII's retrenchment plan. Essentially, Perez exercised her right to terminate the employment relationship by resigning, simultaneously invoking a hodgepodge of provisions from the Retirement Plan, CBA, from the retrenchment provisions of the Labor Code, from well-settled jurisprudence, and from the supposed company practice for the payment of optional retirement benefits to managerial employees.

First and foremost, we emphasize that termination of employment by the employee, as in this instance, does not entitle the employee to separation pay.[7] Separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283[8] and 284[9] of the Labor Code or in illegal dismissal cases when reinstatement is not feasible.[10]

Second, in the matter of Perez's entitlement to optional retirement benefits, we agree with the NLRC and the appellate court that as a managerial employee, she is covered by the Retirement Plan for CII Officers which took effect in 1999 and was amended in 2001. The Retirement Plan provides in pertinent part:

COMPARTS INDUSTRIES, INC.
EMPLOYEES RETIREMENT PLAN

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7 Article 285 of the Labor Code and See *Goodyear Philippines, Inc. v. Angus*, G.R. No. 185449, 12 November 2014, 740 SCRA 24.

8 Art. 283. *Closure of establishment and reduction of personnel.* The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

9 Art. 284. *Disease as ground for termination.* An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

10 Id.

RULES AND REGULATIONS

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ARTICLE III

MEMBERSHIP

Section 1. Membership.

Membership in the Plan shall be automatic for all officers and employees of the Company who are considered having Regular Employment Status. x x x.

x x x x

ARTICLE V

RETIREMENT DATES AND BENEFITS

Section 1. NORMAL RETIREMENT

The Normal Retirement Date of a member shall be the first day of the month coincident with or next following his (60^{th}) birthday provided he was served the Company for at least five (5) years of Credited Service. The Member's Normal Retirement Benefit shall be sum equal to 22.5 days Pay for every year of Credited Service in accordance with the Collective Bargaining Agreement, whichever is greater.

x x x x

Section 2. OPTIONAL/EARLY RETIREMENT

With the consent of the Company, a member may elect to retire prior to his Normal Retirement Date provided he has completed at least fifteen (15) years of Credit Service. The Member's Early Retirement Benefit shall be an amount equivalent to a Number of days Pay for every year of Credited Service in accordance with the schedule below or with the Collective Bargaining Agreement whichever is greater: (Effective January 25, 2001)

Years of Service	Number of Days Pay Per Year of Service
Less than 15 years	None
15 but less than 20	10 days
20 years and over	16 days[11]

[11] *Rollo,* pp. 43-44. (Underlining omitted)

On this score, the appellate court specifically ruled that:

> A Retirement Plan in a company partakes the nature of a contract, with the employer and the employee as the contracting parties. It creates a contractual obligation in which the promise to pay retirement benefits is made in consideration of the continued faithful service of the employee for the requisite period. Being a contract, the employer and employee may establish such stipulations, clauses, terms and conditions as they may deem convenient.
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> Observably, as stipulated in the Retirement Plan, it is not enough that an employee of [CII] who wants to optionally retire meets the conditions for optional retirement. [CII] has to give its consent for the optional retirement to operate. In this case, [Perez's] application for optional retirement was denied several times as CII still needs her services. [Perez's] unilateral act of retiring without the consent of [CII] does not bind the latter with the provisions of the Retirement Plan. Therefore, [CII] is not liable to give [Perez] the optional retirement benefits provided therein.
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> [Perez] contends that as she had already completed the minimum number of years to avail of the optional retirement, she has acquired a vested right to her optional retirement benefits. Such contention is misplaced. In the case of Eastern Shipping Lines, Inc. v. Ferrer D. Antonio, the Supreme Court upheld a stipulation on optional retirement that it is the employer's exclusive prerogative and sole option 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 a vessel for shipboard personnel. It further pronounced that even if shipboard personnel may have rendered 3,650 days of service on board a vessel, optional retirement does not become a matter of right x x x.[12]

However, despite the foregoing, Perez insists that:

> [U]nder [CII's] Employees Retirement Plan, the Normal Retirement (or mandatory/compulsory age) is 60 years old. And its Optional/Early Retirement is determined not by the age of the employee but on his/her number of years of Credited Service. In the subject Employees Retirement Plan, an employee (whether managerial or rank-and-file) is qualified for optional early retirement if he is already 20 years or over in the service. x x x [Peres's] optional/early retirement had become a vested right.[13] (Emphasis and underlining omitted)

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12 Id. at 72-73.

13 Id. at 26.

Moreover, Perez likewise cites the two cases cited by the NLRC and the appellate court, *Eastern Shipping Lines, Inc. v. Sedan*[14] and *Eastern Shipping Lines, Inc. v. Antonio,*[15] to argue that the retirement plan therein differs from the herein subject Retirement Plan in that: (1) the optional retirement age in the *Eastern Shipping* cases is set at sixty (60) years old while none was specified in CII's Retirement Plan, and (2) the provision in the *Eastern Shipping* Retirement Plan uses the following clause "pertains to the exclusive and sole/option consent of the employer" as opposed to the "with the consent of the company" clause in the herein subject Retirement Plan. Perez points out that the *Eastern Shipping* cases actually bolster her case since these cases relied on a required minimum age of sixty (60) years old for optional retirement and specified that availment thereof to be within the exclusive and sole prerogative of the employer. In all, by the sole fact that she had rendered more than twenty (20) years of service, Perez asserts that she ought to be mandatorily and automatically retired under the optional retirement plan of CII.

At once, we see contrariness in Perez's mandatory claim under an optional retirement scheme.

We find incorrect the reliance of Perez on her self-serving reading of our ruling in the two (2) *Eastern Shipping* cases.

In *Eastern Shipping v. Antonio,*[16] we specifically distinguished provisions on optional retirement at the election of the employee upon reaching the minimum age of sixty (60) years from the exercise of the option to retire exclusively lodged with the employer when the employee has rendered the required minimum number of years of service coupled with manifestation of intent to retire, thus:

> Respondent is not entitled to optional retirement benefits. Under the Labor Code, it is provided that:
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> > ART. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
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> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any

14 521 Phil. 61 (2006).
15 Supra note 6.
16 Id.

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.

Clearly, the age of retirement is primarily determined by the existing agreement or employment contract. In the absence of such agreement, the retirement age shall be fixed by law. Under the aforecited law, the mandated compulsory retirement age is set at 65 years, while the minimum age for optional retirement is set at 60 years.

In the case at bar, there is a retirement gratuity plan between the petitioner and the respondent, which provides the following:

Retirement Gratuity

x x x x

B. Retirement under the Labor Code:

Any employee whether land-based office personnel or shipboard employee who shall reach the age of sixty (60) while in active employment with this company may retire from the service upon his written request in accordance with the provisions of Art. 277 of the Labor Code and its Implementing Rules, Book 6, Rule 1, Sec. 13 and he shall be paid termination pay equivalent to fifteen (15) days pay for every year of service as stated in said Labor Code and its Implementing Rules. However, the company may at its own volition grant him a higher benefit which shall not exceed the benefits provided for in the Retirement Gratuity table mentioned elsewhere in this policy.

C. Optional Retirement:

It will be the exclusive prerogative and sole option of this company to retire any covered employee who shall have rendered at least fifteen (15) years of credited service for land-based employees and 3,650 days actually on board vessel for shipboard personnel. x x x

Under Paragraph B of the plan, a shipboard employee, upon his written request, may retire from service if he has reached the eligibility age of 60 years. In this case, the option to retire lies with the employee.

Records show that respondent was only 41 years old when he applied for optional retirement, which was 19 years short of the required eligibility age. Thus, he cannot claim optional retirement benefits as a matter of right.

In Eastern Shipping Lines, Inc. v. Sedan, respondent Dioscoro Sedan, a 3rd Marine Engineer and Oiler in one of the vessels of Eastern Shipping Lines, after several voyages, applied for optional retirement. Eastern Shipping Lines deferred action since his services on board ship were still needed. Despite several demands for his optional retirement, the requests were not acted upon. Thus, Sedan filed a complaint before the LA demanding payment of his retirement benefits. This Court ruled that the eligibility age for optional retirement was set at 60 years. Since respondent was only 48 years old when he applied for optional retirement, he cannot claim optional retirement benefits as a matter of right. We further added that employees who are under the age of 60 years, but have rendered at least 3,650 days (10 years) on board ship may also apply for optional retirement, but the approval of their application depends upon the exclusive prerogative and sole option of petitioner company. In that case, the retirement gratuity plan is the same as in the case at bar.

The aforecited Paragraph B is different from Paragraph C on optional retirement. The difference lies on who exercises the option to retire. Unlike in Paragraph B, the option to retire in Paragraph C is exclusively lodged in the employer. Although respondent may have rendered at least 3,650 days of service on board a vessel, which qualifies him for optional retirement under Paragraph C, however, he cannot demand the same as a matter of right.

If an employee upon rendering at least 3,650 days of service would automatically be entitled to the benefits of the gratuity plan, then it would not have been termed as optional, as the foregoing scenario would make the retirement mandatory and compulsory.

Due to the foregoing findings of facts of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts which, if properly considered, will justify a different conclusion and when the judgment of the CA is premised on misapprehension of facts.

The CA erred in affirming the rulings of the LA and the NLRC, as the availment of the optional retirement benefits is subject to the exclusive prerogative and sole option of the petitioner.[17] (emphasis supplied)

Clearly, contrary to the stance of Perez, she has not acquired a vested right to optional retirement benefits by the mere fact of her rendering at least fifteen (15) years of credited service. Further, while Section 2 on

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17 Id. at 609-611.

Optional/Early Retirement of CII's Retirement Plan did not use the specific language of the Retirement Plan in the *Eastern Shipping* cases, *i.e.* exclusive prerogative and sole option of the employer, the provision in the herein subject Retirement Plan still contained a condition for the allowance and grant of optional retirement benefits—consent of the Company. Perez cannot disregard the stipulated condition.

Adamantly, Perez alternatively argues that she is entitled to payment of optional/early retirement benefits based on company practice:

> [Perez] has established by evidence (through the affidavits of Dante Feriols, Felicisimo Pepito, Leopoldo Mendoza and Basilio Mendoza) that although they were managerial employees, [CII] approved their application for optional/early retirement with corresponding benefits, based on the provisions of the Collective Bargaining Agreement. And these were done from 1995 to 1998 — or a period of three years. And [Perez] has proven by evidence that four (4) other employees of [CII], namely: Josefa Senerpida, Jose Perales, Nestor Laurita and Romeo Collimate—were granted retirement benefits in 2005, 2006, 2008 and 2009, respectively. While it is true that the said former employees of [CII] were separated or terminated through the retrenchment program, it is established by [CII's] own evidence on record that they were granted the same benefits as if they had been granted optional/early retirement.[18]

Perez's own assertions themselves defeat her claim: she admits that four (4) of the employees were approved optional retirement benefits based on the CBA prior to the effectivity of the Retirement Plan in 1999, and four (4) other employees actually received separation pay caused by their retrenchment. These isolated and random payments to managerial employees of either optional retirement benefits under the CBA or separation pay due to retrenchment cannot be deemed as company practice that would render the withholding of the benefit to Perez as a diminution of benefits.[19]

In the case of *Metropolitan Bank and Trust Company v. NLRC*[20] invoked by Perez and likewise cited by the NLRC and the appellate court, we ruled that:

> To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to

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18 *Rollo*, pp. 27-28.

19 Article 100 Labor Code: *Prohibition against elimination or diminution of benefits.* Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

20 607 Phil. 359 (2009).

> have been consistent and deliberate. The test or rational of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[21]

The factual antecedents occurring in *Metrobank* established the company practice of paying improved benefits to the bank officers for over a decade where after each conclusion of CBA with the rank-and-file employees, Metrobank specifically issued a Memorandum granting similar improved benefits to all its officers retroactive on the 1st of January for that year. However, in the year 1998 when the respondents therein asked Metrobank for the application of the improved benefits to them, Metrobank **for the first time** included a condition that the managerial employee or bank officer must still be employed with the bank as of a certain date. We then ruled that the sudden and first time inclusion of such a condition, breaking the pattern in Metrobank's voluntary issuance of a Memorandum specifically including managerial employees and bank officers in the improved benefits coverage of the CBA, was a diminution in the giving of benefits which had ripened into company practice.

In contrast, from the evidence preferred by Perez, there is no element of consistency or pattern in the employees granted optional retirement benefits by CII in the years prior to the effectivity of the Retirement Plan. In addition, CII did not voluntarily grant the benefits and only did so upon application and request of the employee, unlike in *Metrobank* where the bank itself issued the Memoranda and specifically included managerial employees and bank officers in the coverage of the CBA. We here re-state the factual findings of the Court of Appeals that the grant of optional retirement benefits to other managerial/middle management employees in the instances stated in the affidavits of former employees-members was undertaken before the effectivity of the Retirement Plan in 1999. On the contrary, no company practice can be gleaned from a single managerial employee availing of optional retirement benefits under the CBA after effectivity of the Retirement Plan for CII Officers.

We now address the insistence of Perez that other managerial employees had received separation pay from a retrenchment program of CII which were equivalent to retirement benefits.

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21 Id. at 370.

We clarify that retrenchment to prevent losses is an authorized cause for termination by the employer;[22] it is management prerogative to reduce personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company.[23] It is not an option of an employee in substitution for a disapproved early retirement.

The complete designation of this authorized cause is **retrenchment to prevent losses precisely to save a financially ailing business establishment from eventually collapsing.**[24] Without the purpose to prevent losses, the termination becomes illegal. However, the employer or the company need not be incurring losses already; the requirement is that there may be impending losses hence the resort to retrenchment:

> [T]he three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher.[14] In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus:
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> (1) the losses incurred are substantial and not de minimis; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.[25]

Plainly, the option to undertake the retrenchment is the employer's prerogative to serve the interest of the establishment. It is not for the benefit of an employee who has opted to sever the employment relations.

We quote with favor the NLRC's disquisition thereon:

> [Perez] however argues that the grant of optional retirement benefits to Feriol, Pepito, Senerpide and to the two Mendozas have become an established company practice. In Metropolitan Bank & Trust Company vs. NLRC, et al., the Supreme Court said:

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22 Article 283 of the Labor Code.

23 *Sanoh Fulton Phils., Inc. v. Bernardo*, 716 Phil. 378, 388 (2013) citing *J.A.T General Services v. NLRC*, 465 Phil. 785, 794 (2004).

24 Article 283 of the Labor Code.

25 *Sanoh Fulton Phils., Inc. v. Bernardo*, supra note 23 at 387-388.

> To be considered a company practice. The giving of the benefits should have been done over a long period of time and must be shown to have been consistent and deliberate. The teat or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.

In the case at bar, [Perez's] witnesses testified that they availed of the optional retirement benefits under the CBA after applying for it. [It] shows that said benefits were not voluntarily or deliberately given but was given only after they had to apply for the same pursuant to the CBA. [CII's] approval and consent were still indispensable. Hence, it cannot be taken as voluntary employer practice.

There have even been cases where the requests for optional retirement benefits were denied. On 18 June 2008, Leonisa N. Siaton applied for optional retirement benefits but which was denied verbally by [CII]. Moreover, on 30 September 2008, Cora H. Honoridez, HR Assistant, also applied for optional retirement benefits but which was denied as well.

Thus, the requirement for [CII's] consent and approval so that optional retirement benefits may be granted is not a toothless provision that has been overrun by company practice. It was actually the other way around, where optional retirement had to be applied and approved for as per the affidavits presented by [Perez].

Besides, the financial condition of [CII] at the time [Perez] applied for optional retirement was different from the time her witnesses were granted optional retirement. Thus a careful examination of [CII's] duly audited financial statements will show that its gross profit decreased from 13% in 1995 to 1.38% in 2008. It will also show that net profits decreased from 1.13% in 1995 to negative 7.66% in 2008 due to the decrease in volume sales in the recent years, the gross profit is not enough to cover operating expenses.

In 1995, 1997, 1998 and 2005, it will be observed that [CII] was still good in financial condition because it was still profitable. This was the time when Dante Feriol, Felicisimo Pepito, Josefa Senerpida, Leopoldo Mendoza and Basilio Mendoza allegedly availed of and were granted optional retirement benefits under the Collective Bargaining Agreeement.

However, in 2007 and 2008, [CII] incurred net losses, which made it financially incapable to grant optional retirement benefits to its employees. This was approximately the start of the occurrence of the current global economic crisis, which even constrained [CII] to undertake a retrenchment program.

> Indeed, [Perez's] own evidence confirmed [CII's] financial troubles. In their respective affidavits, Nestor C Laurito and Jose D. Perales attested that they were separated from [CII] on July 2008 and February 2006, respectively, when they availed of the Retrenchment Program xxx. Under Article 283 of the Labor Code, retrenchment requires financial losses, otherwise, it becomes illegal. Thus by stating that they availed of the Retrenchment Program, the two aforenamed affiants confirmed the fact of the problems of [CII].
>
> Thus, taking into consideration the financial losses and dire situation of [CII] over the past two years, it was indeed a valid, responsible, and reasonable exercise of its management prerogative to deny [Perez's] optional retirement benefits request but still offered her a substantial amount in the form of gratis that was almost equivalent to the entire balance that remained in the retirement fund.[26]

In all, we agree with the NLRC and the appellate court's finding that: (1) Perez is not entitled to optional retirement benefits without the consent thereto of CII to the grant under the Retirement Plan; (2) neither is she entitled to the same benefits under the CBA where there is no established company practice on such benefit; and (3) Perez is likewise not entitled to separation pay due to a retrenchment of personnel.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CEB SP. No. 05473 is **AFFIRMED**. No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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26 *Rollo*, pp. 58-60.

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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.

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
NOV 14 2016

ANTONIO T. CARPIO
Acting Chief Justice