Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ZENAIDA PAZ, Petitioner,	**G.R. No. 199554**
	Present:
-versus-	CARPIO, *J., Chairperson,* VELASCO, JR.* DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
NORTHERN TOBACCO REDRYING CO., INC., AND/OR ANGELO ANG, Respondents.	**Promulgated:** FEB 18 2015

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DECISION

LEONEN, *J.*:

Zenaida Paz filed this Petition[1] praying that "the computation of Petitioner's Retirement Pay as determined by the National Labor Relations Commission in its Decision dated 08 December 2008 be reinstated."[2]

Northern Tobacco Redrying Co., Inc. (NTRCI), a flue-curing and redrying of tobacco leaves business,[3] employs approximately 100 employees with seasonal workers "tasked to sort, process, store and transport tobacco leaves during the tobacco season of March to September."[4]

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* Designated acting member per S.O. No. 1910 dated January 12, 2015.

1 *Rollo*, pp. 8–24. The Petition was filed pursuant to Rule 45 of the Rules of Court.

2 Id. at 21.

3 Id. at 53.

4 Id. at 35.

NTRCI hired Zenaida Paz (Paz) sometime in 1974 as a seasonal sorter, paid ₱185.00 daily. NTRCI regularly re-hired her every tobacco season since then. She signed a seasonal job contract at the start of her employment and a pro-forma application letter prepared by NTRCI in order to qualify for the next season.[5]

On May 18, 2003,[6] Paz was 63 years old when NTRCI informed her that she was considered retired under company policy.[7] A year later, NTRCI told her she would receive ₱12,000.00 as retirement pay.[8]

Paz, with two other complainants, filed a Complaint for illegal dismissal against NTRCI on March 4, 2004.[9] She amended her Complaint on April 27, 2004 into a Complaint for payment of retirement benefits, damages, and attorney's fees[10] as ₱12,000.00 seemed inadequate for her 29 years of service.[11] The Complaint impleaded NTRCI's Plant Manager, Angelo Ang, as respondent.[12] The Complaint was part of the consolidated Complaints of 17 NTRCI workers.[13]

NTRCI countered that no Collective Bargaining Agreement (CBA) existed between NTRCI and its workers. Thus, it computed the retirement pay of its seasonal workers based on Article 287 of the Labor Code.[14]

NTRCI raised the requirement of at least six months of service a year for that year to be considered in the retirement pay computation. It claimed that Paz only worked for at least six months in 1995, 1999, and 2000 out of the 29 years she rendered service. Thus, Paz's retirement pay amounted to ₱12,487.50 after multiplying her ₱185.00 daily salary by 22½ working days in a month, for three years.[15]

The Labor Arbiter in his Decision[16] dated July 26, 2005 "[c]onfirm[ed] that the correct retirement pay of Zenaida M. Paz [was] ₱12,487.50."[17]

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5 Id.
6 Id. at 99.
7 Id. at 35.
8 Id.
9 Id. at 35 and 97.
10 Id. at 35, 54, and 99.
11 Id. at 35.
12 Id. at 36.
13 Id. at 35.
14 Id. at 36.
15 Id.
16 Id. at 52–70. The Decision was penned by Executive Labor Arbiter Irenarco R. Rimando.
17 Id. at 69.

The National Labor Relations Commission in its Decision[18] dated December 8, 2008 modified the Labor Arbiter's Decision. It likewise denied reconsideration. The Decision's dispositive portion reads:

> **WHEREFORE**, premises considered, the decision of the labor arbiter is hereby **MODIFIED**. Complainant Appellant Zenaida Paz['s] retirement pay should be computed pursuant to RA 7641 and that all the months she was engaged to work for respondent for the last twenty eight (28) years should be added and divide[d] by six (for a fraction of six months is considered as one year) to get the number of years [for] her retirement pay[.] Complainant Teresa Lopez is hereby entitled to her separation pay computed at one half month pay for every year of service, a fraction of six months shall be considered as one year, plus backwages from the time she was illegally dismissed up to the filing of her complaint.
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> The rest of the decision stays.
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> **SO ORDERED**.[19]

The Court of Appeals in its Decision[20] dated May 25, 2011 dismissed the Petition and modified the National Labor Relations Commission's Decision in that "financial assistance is awarded to . . . Zenaida Paz in the amount of □60,356.25":[21]

> **WHEREFORE**, the *Petition* is hereby **DISMISSED**. The *Decision* dated 8 December 2008 and *Resolution* dated 16 September 2009 of the National Labor Relations Commission in NLRC CA No. 046642-05(5) are **MODIFIED** in that (1) financial assistance is awarded to private respondent Zenaida Paz in the amount of □60,356.25; and (2) the dismissal of private respondent Teresa Lopez is declared illegal, and thus, she is awarded backwages and separation pay, in accordance with the foregoing discussion.
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> **SO ORDERED**.[22]

The Court of Appeals found that while applying the clear text of Article 287 resulted in the amount of □12,487.50 as retirement pay, "this amount [was] so meager that it could hardly support . . . Paz, now that she is weak and old, unable to find employment."[23] It discussed jurisprudence on financial assistance and deemed it appropriate to apply the formula: One-half-month pay multiplied by 29 years of service divided by two yielded

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18 Id. at 87–114. The Decision was penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino of the Second Division. Commissioner Angelita A. Gacutan took no part.

19 Id. at 113.

20 Id. at 34–48. The Decision was penned by Associate Justice Japar B. Dimaampao and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion of the First Division.

21 Id. at 47.

22 Id.

23 Id. at 41.

□60,356.25 as Paz's retirement pay.[24]

Paz comes before this court seeking to reinstate the National Labor Relations Commission's computation.[25] NTRCI filed its Comment,[26] and this court deemed waived the filing of a Reply.[27]

Petitioner Paz contends that respondent NTRCI failed to prove the alleged company policy on compulsory retirement for employees who reached 60 years of age or who rendered 30 years of service, whichever came first.[28] Consequently, Article 287, as amended by Republic Act No. 7641,[29] applies and entitles her to "retirement pay . . . equivalent to [at least] one-half month salary for every year of service, a fraction of at least six (6) months being considered as one whole year."[30] She adds that she was then 63 years old, and while one may opt to retire at 60 years old, the compulsory retirement age is 65 years old under Article 287, as amended.[31]

Petitioner Paz then argues respondent NTRCI's misplaced reliance on *Philippine Tobacco Flue-Curing & Redrying Corp. v. National Labor Relations Commission*[32] as that case involved separation pay computation.[33]

Lastly, petitioner Paz contends lack of legal basis that "an employee should have at least worked for six (6) months for a particular season for that season to be included in the computation of retirement pay[.]"[34] She submits that regular seasonal employees are still considered employees during off-season, and length of service determination should be applied in retiree's favor.[35]

Respondent NTRCI counters that in retirement pay computation this court should consider its ruling in *Philippine Tobacco* on computing separation pay of seasonal employees. It submits that the proviso "a fraction of at least six (6) months being considered as one (1) whole year" appears in both Article 287 on retirement pay and Articles 283 and 284 on separation pay.[36]

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24 Id. at 43–44.
25 Id. at 21.
26 Id. at 117–128.
27 Id. at 150.
28 Id. at 17–18.
29 Otherwise known as "An Act Amending Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment."
30 *Rollo*, p. 18.
31 Id.
32 360 Phil. 218 (1998) [Per J. Panganiban, First Division].
33 *Rollo*, p. 19.
34 Id. at 20.
35 Id.
36 Id. at 124.

Respondent NTRCI argues that unlike regular employees, seasonal workers like petitioner Paz can offer their services to other employers during off-season. Thus, the six-month rule avoids the situation where seasonal workers receive retirement pay twice — an even more favorable position compared with regular employees.[37]

Both parties appear to agree on petitioner Paz's entitlement to retirement pay. The issue before this court involves its proper computation. We also resolve whether there was illegal dismissal.

We affirm the Court of Appeals' decision with modification.

Regular seasonal employees

Article 280[38] of the Labor Code and jurisprudence identified three types of employees, namely: "(1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees."[39]

Jurisprudence also recognizes the status of regular seasonal employees.[40]

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37 Id. at 125.

38 LABOR CODE, art. 280 provides:
Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided,* That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

39 *Benares v. Pancho*, 497 Phil. 181, 189–190 (2005) [Per J. Tinga, Second Division], *citing Perpetual Help Credit Cooperative, Inc. v. Faburada*, 419 Phil. 147, 155 (2001) [Per J. Sandoval-Gutierrez, Third Division]. *See also Gapayao v. Fulo*, G.R. No. 193493, June 13, 2013, 698 SCRA 485, 498–499 [Per C.J. Sereno, First Division].

40 *Gapayao v. Fulo*, G.R. No. 193493, June 13, 2013, 698 SCRA 485, 499 [Per CJ. Sereno, First Division], *citing AAG Trucking v. Yuag*, G.R. No. 195033, October 12, 2011, 659 SCRA 91, 102 [Per J. Sereno (now C.J.), Second Division].

Mercado, Sr. v. National Labor Relations Commission[41] did not consider as regular employees the rice and sugar farmland workers who were paid with daily wages. This was anchored on the Labor Arbiter's findings that "petitioners were required to perform phases of agricultural work for a definite period, after which their services [were] available to any farm owner."[42]

This court explained that the proviso in the second paragraph of Article 280 in that "any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee" applies only to "casual" employees and not "project" and regular employees in the first paragraph of Article 280.[43]

On the other hand, the workers of La Union Tobacco Redrying Corporation in *Abasolo v. National Labor Relations Commission*[44] were considered regular seasonal employees since they performed services necessary and indispensable to the business for over 20 years, even if their work was only during tobacco season.[45] This court applied the test laid down in *De Leon v. National Labor Relations Commission*[46] for determining regular employment status:

> [T]he test of whether or not an employee is a regular employee has been laid down in *De Leon v. NLRC*, in which this Court held:
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> > The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity, and while such activity exists.
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> Thus, the nature of one's employment does not depend solely on the will or word of the employer. Nor on the procedure for hiring and the manner of designating the employee, but on the nature of the activities to be performed by the employee, considering the employer's nature of

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41 278 Phil. 345 (1991) [Per J. Padilla, Second Division].
42 Id. at 354.
43 Id. at 357.
44 400 Phil. 86 (2000) [Per J. De Leon, Jr., Second Division].
45 Id. at 103–104.
46 257 Phil. 626, 632–633 (1989) [Per C.J. Fernan, Third Division].

business and the duration and scope of work to be done.

In the case at bar, ***while it may appear that the work of petitioners is seasonal, inasmuch as petitioners have served the company for many years, some for over 20 years, performing services necessary and indispensable to LUTORCO's business, serve as badges of regular employment. Moreover, the fact that petitioners do not work continuously for one whole year but only for the duration of the tobacco season does not detract from considering them in regular employment*** since in a litany of cases this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during off-season are not separated from service in said period, but are merely considered on leave until re-employed.

Private respondent's reliance on the case of *Mercado v. NLRC* is misplaced considering that since in said case of *Mercado*, although the respondent company therein consistently availed of the services of the petitioners therein from year to year, it was clear that petitioners therein were not in respondent company's regular employ. Petitioners therein performed different phases of agricultural work in a given year. However, during that period, they were free to contract their services to work for other farm owners, as in fact they did. Thus, the Court ruled in that case that their employment would naturally end upon the completion of each project or phase of farm work for which they have been contracted.[47] (Emphasis supplied, citations omitted)

The sugarcane workers in *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*[48] were also considered as regular employees since they performed the same tasks every season for several years:

For respondents to be excluded from those classified as regular employees, it is not enough that they perform work or services that are seasonal in nature. They must have also been employed *only for the duration of one season*. . . . Evidently, petitioners employed respondents for more than one season. Therefore, the general rule of regular employment is applicable.

. . . .

The CA did not err when it ruled that *Mercado v. NLRC* was not applicable to the case at bar. In the earlier case, the workers were required to perform phases of agricultural work for a definite period of time, after which their services would be available to any other farm owner. They were not hired regularly and repeatedly for the same phase/s of agricultural work, but on and off for any single phase thereof. On the other hand, herein respondents, ***having performed the same tasks for petitioners every season for several years, are considered the latter's regular employees for their respective tasks.*** Petitioners' eventual refusal to use their services — even if they were ready, able and willing to

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47 *Abasolo v. National Labor Relations Commission*, 400 Phil. 86, 103–104 (2000) [Per J. De Leon, Jr., Second Division].

48 444 Phil. 587 (2003) [Per J. Panganiban, Third Division].

> perform their usual duties whenever these were available — and hiring of other workers to perform the tasks originally assigned to respondents amounted to illegal dismissal of the latter.[49] (Emphasis supplied, citation omitted)

Respondent NTRCI engaged the services of petitioner Paz as a seasonal sorter[50] and had been regularly rehired from 1974,[51] until she was informed in 2003 that she was being retired under company policy.[52]

The services petitioner Paz performed as a sorter were necessary and indispensable to respondent NTRCI's business of flue-curing and redrying tobacco leaves. She was also regularly rehired as a sorter during the tobacco seasons for 29 years since 1974. These considerations taken together allowed the conclusion that petitioner Paz was a regular seasonal employee, entitled to rights under Article 279[53] of the Labor Code:

> **Art. 279. Security of Tenure.** In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Illegal dismissal and backwages

Petitioner Paz initially filed a Complaint for illegal dismissal seeking separation pay, but later amended her Complaint into one for payment of retirement pay.[54] Despite the amendment, she maintained in her subsequent pleadings that she had been made to retire even before she reached the compulsory retirement age of 65 under Article 287, as amended.[55]

Petitioner Paz alleged that respondent NTRCI required her to report on March 18, 2003 for the 2003 tobacco season, but she suffered a mild stroke sometime in April. Nevertheless, respondent NTRCI extended her employment contract until May 18, 2003 when she was informed that she was retired under company policy.[56]

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49 Id. at 596–597.
50 *Rollo*, pp. 35 and 54.
51 Id. at 35.
52 Id. at 35 and 99.
53 As amended by Rep. Act No. 6715 (1989), sec. 34.
54 *Rollo*, pp. 54 and 108.
55 Id. at 18, 37, 59, and 99.
56 Id. at 14 and 98–99.

Since petitioner Paz was "unlearned and not knowledgeable in law, [she] just accepted such fact and waited to be paid her separation/retirement benefit as promised by . . . NTRCI."[57] Unfortunately, after a year of waiting, respondent NTRCI only offered her around □12,000.00 for all her services since 1974.[58]

The National Labor Relations Commission recognized that like the other complainants against respondent NTRCI, petitioner Paz "was at a loss in what cause of action to take — whether illegal dismissal or payment of retirement pay."[59]

Petitioner Paz's amendment of her Complaint was not fatal to her cause of action for illegal dismissal.

First, petitioner Paz never abandoned her argument that she had not reached the compulsory retirement age of 65 pursuant to Article 287, as amended, when respondent NTRCI made her retire on May 18, 2003.

Second, the National Labor Relations Commission found that respondent NTRCI failed to prove a valid company retirement policy, yet it required its workers to retire after they had reached the age of 60.[60] The Court of Appeals also discussed that while respondent NTRCI produced guidelines on its retirement policy for seasonal employees, it never submitted a copy of its Collective Bargaining Agreement and even alleged in its Position Paper that none existed.[61]

Petitioner Paz was only 63 years old on May 18, 2003 with two more years remaining before she would reach the compulsory retirement age of 65.

"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."[62] Article 287, as amended, allows for optional retirement at the age of at least 60 years old.

Consequently, if "the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge."[63]

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57 Id. at 99.
58 Id. at 15 and 99.
59 Id. at 108.
60 Id. at 111.
61 Id. at 40.
62 *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, 582 Phil. 118, 133 (2008) [Per J. Nachura, Third Division].
63 *Ariola v. Philex Mining Corporation*, 503 Phil. 765, 783 (2005) [Per J. Carpio, First Division], *citing*

The National Labor Relations Commission considered petitioner Paz's amendment of her Complaint on April 27, 2004 akin to an optional retirement when it determined her as illegally dismissed from May 18, 2003 to April 27, 2004, thus being entitled to full backwages from May 19, 2003 until April 26, 2004.[64]

Again, petitioner Paz never abandoned her argument of illegal dismissal despite the amendment of her Complaint. This implied lack of intent to retire until she reached the compulsory age of 65. Thus, she should be considered as illegally dismissed from May 18, 2003 until she reached the compulsory retirement age of 65 in 2005 and should be entitled to full backwages for this period.

An award of full backwages is "inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld. . . ."[65]

Backwages, considered as actual damages,[66] requires proof of the loss suffered. The Court of Appeals found "no positive proof of the total number of months that she actually rendered work."[67] Nevertheless, petitioner Paz's daily pay of ₱185.00 was established. She also alleged that her employment periods ranged from three to seven months.[68]

Since the exact number of days petitioner Paz would have worked between May 18, 2003 until she would turn 65 in 2005 could not be determined with specificity, this court thus awards full backwages in the amount of ₱22,200.00 computed by multiplying ₱185.00 by 20 days, then by three months, then by two years.

Due process and nominal damages

The Labor Code requires employers to comply with both procedural and substantive due process in dismissing employees. *Agabon v. National Labor Relations Commission*[69] discussed these rules and enumerated the four possible situations considering these rules:

De Leon v. National Labor Relations Commission, 188 Phil. 666, 674 (1980) [Per J. De Castro, First Division].

64 *Rollo*, pp. 109–110.

65 *See Bustamante v. National Labor Relations Commission*, 332 Phil. 833, 843 (1996) [Per J. Padilla, En Banc].

66 CIVIL CODE, art. 2199.

67 *Rollo*, p. 43.

68 Id. at 14 and 97.

69 485 Phil. 248 (2004) [Per J. Ynares-Santiago, En Banc].

> Dismissals based on just causes contemplate acts or omissions attributable to the employee while dismissals based on authorized causes involve grounds under the Labor Code which allow the employer to terminate employees. A termination for an authorized cause requires payment of separation pay. When the termination of employment is declared illegal, reinstatement and full backwages are mandated under Article 279. If reinstatement is no longer possible where the dismissal was unjust, separation pay may be granted.
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> Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.
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> From the foregoing rules four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.
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> In the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability.
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> In the second and third situations where the dismissals are illegal, Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.
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> In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held *liable for non-compliance with the procedural requirements of due process.*[70] (Emphasis in the original)

Agabon focused on the fourth situation when dismissal was for just or authorized cause, but due process was not observed.[71] *Agabon* involved a dismissal for just cause, and this court awarded ₱30,000.00 as nominal damages for the employer's non-compliance with statutory due process.[72] *Jaka Food Processing Corporation v. Pacot*[73] involved a dismissal for

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70 Id. at 280–281.

71 Id. at 286.

72 Id. at 291. *See also Bughaw, Jr. v. Treasure Island Industrial Corporation*, 573 Phil. 435, 450 (2008) [Per J. Chico-Nazario, Third Division].

73 494 Phil. 114 (2005) [Per J. Garcia, En Banc].

authorized cause, and this court awarded ₱50,000.00 as nominal damages for the employer's non-compliance with statutory due process.[74] The difference in amounts is based on the difference in dismissal ground.[75] Nevertheless, this court has sound discretion in determining the amount based on the relevant circumstances.[76] In *De Jesus v. Aquino,*[77] this court awarded ₱50,000.00 as nominal damages albeit the dismissal was for just cause.[78]

Petitioner Paz's case does not fall under the fourth situation but under the third situation on illegal dismissal for having no just or authorized cause and violation of due process.

Respondent NTRCI had considered petitioner Paz retired at the age of 63 before she reached the compulsory age of 65. This does not fall under the just causes for termination in Article 282 of the Labor Code, the authorized causes for termination in Article 283, or disease as a ground for termination in Article 284.

As regards due process, the Omnibus Rules Implementing the Labor Code provides:

> Section 2. *Standard of due process: requirements of notice.* – In all cases of termination of employment, the following standards of due process shall be substantially observed.
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> I. For termination of employment based on just causes as defined in Article 282 of the Code:
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> > (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
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> > (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
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> > (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination. . . .[79]

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74 Id. at 122–123.

75 *Mantle Trading Services, Inc. v. National Labor Relations Commission*, 611 Phil. 570, 580 (2009) [Per C.J. Puno, First Division].

76 *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 288 (2004) [Per J. Ynares-Santiago, En Banc], *citing Savellano v. Northwest Airlines*, 453 Phil. 342, 360 (2003) [Per J. Panganiban, Third Division].

77 G.R. No. 164662, February 18, 2013, 691 SCRA 71 [Per J. Bersamin, First Division].

78 Id. at 90–91.

79 Omnibus Rules Implementing the Labor Code, book V, rule XXIII, sec. 2(III) *as quoted in Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 209 [Per J. Velasco, Jr., Third Division].

There was no showing that respondent NTRCI complied with these due process requisites. Thus, consistent with jurisprudence,[80] petitioner Paz should be awarded □30,000.00 as nominal damages.

Retirement pay

An employer may provide for retirement benefits in an agreement with its employees such as in a Collective Bargaining Agreement. Otherwise, Article 287 of the Labor Code, as amended, governs.

Since respondent NTRCI failed to present a copy of a Collective Bargaining Agreement on the alleged retirement policy,[81] we apply Article 287 of the Labor Code, as amended by Republic Act No. 7641. This provides for the proper computation of retirement benefits in the absence of a retirement plan or agreement:[82]

> 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.[83] (Emphasis supplied)

Respondent NTRCI followed the formula in Article 287 and offered petitioner Paz the amount of □12,487.50[84] as retirement pay based on the three years she worked for at least six months in 1995, 1999, and 2000.[85]

The Labor Arbiter agreed with respondent NTRCI's computation based on these three years and reached the same amount as petitioner Paz's

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80 *See Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 216 [Per J. Velasco, Jr., Third Division].

81 *Rollo*, pp. 40 and 111.

82 *See Banco Filipino Savings and Mortgage Bank v. Lazaro*, G.R. No. 185346, June 27, 2012, 675 SCRA 307, 317–318 [Per J. Sereno (now C.J.), Second Division], *citing* Guidelines for the Effective Implementation of Rep. Act No. 7641, The Retirement Pay Law (1996) and *Salafranca v. Philamlife Village Homeowners Association, Inc.*, 360 Phil. 652, 667–668 (1998) [Per J. Romero, Third Division].

83 LABOR CODE, art. 287, pars. 3 and 4.

84 The sum of petitioner's one-half-month salary (□185.00 daily salary x 15 days) = □2,775.00, plus 1/12 of 13th month pay (□462.50), plus 5 days service incentive leave pay (□185.00 x 5 = □925.00) multiplied by 3 years.

85 *Rollo*, pp. 40–41.

retirement pay.[86]

On appeal, the National Labor Relations Commission found that petitioner Paz "became a regular seasonal employee by virtue of her long years of service and the repetitive hiring of her services by respondent NTRCI every season."[87] It then considered her as having worked for every tobacco season from 1974 to 2003 or for a total of 29 years.[88]

The National Labor Relations Commission discussed that "[i]t would be a great injustice if [petitioner Paz's] services which did not last long for six months be disregarded in computing her retirement pay especially so that it is upon the sole discretion of the respondent company on how long her services for a given season was required."[89] Thus, it explained that "Zenaida Paz's retirement pay should be computed pursuant to RA 7641 and that all the months she was engaged to work for respondent for the last twenty eight (28) years should be added and divide[d] by six (for a fraction of six months is considered as one year) to get the number of years her retirement pay should be computed."[90]

The National Labor Relations Commission also discussed that applying the computation of separation pay in *Philippine Tobacco* to this case "would render nugatory the very purpose of RA 7641, which seeks to reward employees of their long and dedicated service to their employer, as well as its humanitarian purpose to provide for the retiree's sustenance and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood."[91]

This court in *Philippine Tobacco* explained its computation of separation pay as follows:

> The amount of separation pay is based on two factors: the amount of monthly salary and the number of years of service. Although the Labor Code provides different definitions as to what constitutes "one year of service," Book Six does not specifically define "one year of service" for purposes of computing separation pay. However, Articles 283 and 284 both state in connection with separation pay that a fraction of at least six months shall be considered one whole year. Applying this to the case at bar, we hold that the amount of separation pay which respondent members of the Lubat and Luris groups should receive is one-half (1/2) their respective average monthly pay during the last season they worked multiplied by the number of years they actually rendered service, provided that they worked for at least six months during a given year.

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86 Id. at 41, 67, and 69.
87 Id. at 108.
88 Id. at 109.
89 Id. at 110.
90 Id. at 111.
91 *Rollo*, p. 109.

> The formula that petitioner proposes, wherein a year of work is equivalent to actual work rendered for 303 days, is both unfair and inapplicable, considering that Articles 283 and 284 provide that in connection with separation pay, a fraction of at least six months shall be considered one whole year. Under these provisions, an employee who worked for only six months in a given year — which is certainly less than 303 days — is considered to have worked for one whole year.
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> . . . . Finally, *Manila Hotel Company v. CIR* did not rule that seasonal workers are considered at work during off-season with regard to the computation of separation pay. Said case merely held that, in regard to seasonal workers, the employer-employee relationship is not severed during off-season but merely suspended.[92] (Citations omitted)

Philippine Tobacco considered Articles 283 and 284 of the Labor Code on separation pay, and these articles include the proviso "a fraction of at least six (6) months shall be considered one (1) whole year."

While the present case involves retirement pay and not separation pay, Article 287 of the Labor Code on retirement pay similarly provides that "a fraction of at least six (6) months being considered as one whole year."

Thus, this court's reading of this proviso in the Labor Code in *Philippine Tobacco* applies in this case. An employee must have rendered at least six months in a year for said year to be considered in the computation.

Petitions for review pursuant to Rule 45 of the Rules of Court can raise only questions of law.[93] Generally, this court accords great respect for factual findings by quasi-judicial bodies, even according such findings with finality when supported by substantial evidence.[94]

The Court of Appeals found "no positive proof o[n] the total number of months [petitioner Paz] actually rendered work [for respondent NTRCI]."[95] On the other hand, both the Labor Arbiter and the Court of Appeals established from the records that she rendered at least six months of service for 1995, 1999, and 2000 only.[96]

Based on these factual findings, retirement pay pursuant to Article 287 of the Labor Code was correctly computed at □12,487.50 and was awarded to petitioner Paz.

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92 360 Phil. 218, 244–245 (1998) [Per J. Panganiban, First Division].
93 RULES OF COURT, Rule 45, sec. 1.
94 *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, 582 Phil. 118, 133 (2008) [Per J. Nachura, Third Division].
95 *Rollo*, p. 43.
96 Id. at 41 and 67.

Financial assistance

In addition, this court agrees with the Court of Appeals' award of financial assistance in the amount of ₱60,356.25[97] by applying the following formula: one-half-month pay[98] multiplied by 29 years in service and then divided by 2.[99]

The amount of ₱12,487.50 is indeed too meager to support petitioner Paz who has become old, weak, and unable to find employment.[100]

Republic Act No. 7641 is a social legislation[101] with the purpose of "provid[ing] for the retiree's sustenance and hopefully even comfort, when he [or she] no longer has the stamina to continue earning his [or her] livelihood."[102]

The Court of Appeals recognized and emphasized petitioner Paz's three decades of hard work and service with respondent NTRCI. However, it disagreed with the National Labor Relations Commission's retirement pay computation for lack of factual basis:

> Private respondent Paz rendered almost three decades of dedicated service to petitioner, and to that, she gave away the prime of her life. In those long years of hard work, not a single transgression or malfeasance of any company rule or regulation was ever reported against her. Old age and infirmity now weaken her chances of employment. Veritably, We can call upon the same "social and compassionate justice" allowing financial assistance in special circumstances. These circumstances indubitably merit equitable concessions, *via* the principle of "compassionate justice" for the working class.
>
> ***In awarding retirement benefits, the NLRC deemed it proper to add all the months of service rendered by private respondent Paz, then divide it by six to arrive at the number of years of service. We cannot, however, subscribe to this computation because there is no positive proof of the total number of months that she actually rendered work***.[103] (Emphasis supplied, citations omitted)

At most, the Petition alleges that "[p]etitioner [was] regularly hired

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97 Id. at 47.

98 This means salary for 15 days plus 1/12 of 13th month pay and the cash equivalent of not more than 5 days of service incentive leave.

99 *Rollo*, p. 44.

100 Id. at 41.

101 *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, 582 Phil. 118, 131 (2008) [Per J. Nachura, Third Division], *citing Enriquez Security Services, Inc. v. Cabotaje*, 528 Phil. 603, 607 (2006) [Per J. Corona, Second Division].

102 *Philippine Scout Veterans Security & Investigation Agency, Inc. v. National Labor Relations Commission*, 330 Phil. 665, 677 (1996) [Per J. Panganiban, Third Division].

103 *Rollo*, p. 43.

every season by respondents, her employment periods ranging from three (3) to seven (7) months."[104] None of the lower courts, not even the National Labor Relations Commission that proposed the formula, made a factual determination on the total number of months petitioner Paz rendered actual service.

In any event, this court has awarded financial assistance "as a measure of social justice [in] exceptional circumstances, and as an equitable concession."[105]

In *Eastern Shipping Lines, Inc. v. Sedan*,[106] Sedan was granted equitable assistance equal to one-half-month pay for each year of his 23 years of service with no derogatory record.[107] This court discussed jurisprudence on the grant of financial assistance:

> We are not unmindful of the rule that financial assistance is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Neither are we unmindful of this Court's pronouncements in *Arc-Men Food Industries Corporation v. NLRC*, and *Lemery Savings and Loan Bank v. NLRC*, where the Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order.
>
> But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.
>
> In this instance, our attention has been called to the following circumstances: that private respondent joined the company when he was a young man of 25 years and stayed on until he was 48 years old; that he had given to the company the best years of his youth, working on board ship for almost 24 years; that in those years there was not a single report of him transgressing any of the company rules and regulations; that he applied for optional retirement under the company's non-contributory plan when his daughter died and for his own health reasons; and that it would appear that he had served the company well, since even the company said that the reason it refused his application for optional retirement was that it still needed his services; that he denies receiving the telegram asking him to report back to work; but that considering his age and health, he preferred to stay home rather than risk further working in a ship at sea.

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104 Id. at 14.

105 *Eastern Shipping Lines, Inc. v. Sedan,* 521 Phil. 61, 70 (2006) [Per J. Quisumbing, Third Division], *citing Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, 401 Phil. 776, 804 (2000) [Per J. De Leon, Jr., Second Division].

106 521 Phil. 61 (2006) [Per J. Quisumbing, Third Division].

107 Id. at 72.

> In our view, with these special circumstances, we can call upon the same "social and compassionate justice" cited in several cases allowing financial assistance. These circumstances indubitably merit equitable concessions, via the principle of "compassionate justice" for the working class. Thus, we agree with the Court of Appeals to grant financial assistance to private respondent.[108] (Citations omitted)

We agree with the Court of Appeals that petitioner Paz's circumstances "indubitably merit equitable concessions, *via* the principle of 'compassionate justice' for the working class."[109]

Petitioner Paz worked for respondent NTRCI for close to three decades. She had no record of any malfeasance or violation of company rules in her long years of service.[110] Her advanced age has rendered her weak and lessened her employment opportunities.

Eastern Shipping Lines awarded Sedan with financial assistance equal to one-half-month pay for every year of service. Sedan was hired as a 3rd marine engineer and oiler from 1973 until his last voyage in 1997.[111] On the other hand, petitioner Paz was a seasonal employee who worked for periods ranging from three to seven months a year.[112] This court thus finds the following Court of Appeals formula for financial assistance as equitable: one-half-month pay multiplied by 29 years in service and then divided by 2.

This court has discussed that "labor law determinations are not only *secundum rationem* but also *secundum caritatem.*"[113] The award of □60,356.25 as financial assistance will serve its purpose in providing petitioner Paz sustenance and comfort after her long years of service.

Finally, legal interest of 6% per annum shall be imposed on the award of full backwages beginning May 18, 2003 when petitioner Paz was deemed retired, until 2005 when she reached compulsory retirement age, in the amount of □2,664.00[114] Legal interest of 6% per annum shall also be imposed on the award of retirement pay beginning 2005 until full satisfaction.

WHEREFORE, the Court of Appeals Decision is **AFFIRMED** with **MODIFICATION** in that respondent Northern Tobacco Redrying Co., Inc.

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108 Id. at 70–71.
109 *Rollo*, p. 43.
110 Id.
111 *Eastern Shipping Lines, Inc. v. Sedan*, 521 Phil. 61, 63 (2006) [Per J. Quisumbing, Third Division]
112 *Rollo*, p. 14.
113 *Piñero v. National Labor Relations Commission*, 480 Phil. 534, 544 (2004) [Per J. Ynares-Santiago, First Division], *citing Almira v. B. F. Goodrich Philippines, Inc.*, 157 Phil. 110, 122 (1974) [Per J. Fernando, Second Division].
114 The amount was reached by multiplying the full backwages (□22,200.00) by 6% legal interest rate and then multiplied by 2 years.

is hereby ordered to pay petitioner Zenaida Paz the following:

(1) ₱22,200.00 as full backwages;

(2) ₱30,000.00 as nominal damages for non-compliance with due process;

(3) ₱12,487.50 as retirement pay;

(4) ₱60,356.25 as financial assistance; and

(5) ₱2,664.00 as legal interest for the award of full backwages, and legal interest of 6% per annum for the award of retirement pay beginning 2005 until full satisfaction.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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