Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MANILA HOTEL CORPORATION, **G.R. No. 219774**
Petitioner,

Present:

LEONARDO-DE CASTRO, *J.*,*
Acting Chairperson,
DEL CASTILLO,
JARDELEZA,
TIJAM, and
GESMUNDO, *JJ.***

- versus -

Promulgated:

ROSITA DE LEON,
Respondent.

JUL 23 2018

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DECISION

TIJAM, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court over the Decision[2] dated March 19, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 132576, which set aside the Decision[3] dated June 10, 2013 and Resolution[4] dated September 4, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 01-000432-13 reversing the Decision[5] dated December 10, 2012 of the Labor Arbiter (LA) in NLRC-NCR Case No. 08-12795-11, dismissing

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* Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.
** Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.
[1] *Rollo*, pp. 17-40.
[2] Penned by Associate Justice Marlene Gonzales-Sison, concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz; *rollo*, pp. 314-336.
[3] Penned by Commissioner Numeriano D. Villena, concurred in by Commissioners Angelo Ang Palaña and Herminio V. Suelo; id. at 161-178.
[4] Id. at 214-216.
[5] Penned by Labor Arbiter Lilia S. Savari; id. at 129-143.

Rosita De Leon's (respondent) complaint for illegal dismissal and the CA Resolution[6] dated July 31, 2015 which denied Manila Hotel Corporation's (petitioner) Motion for Partial Reconsideration.[7]

The Facts

Respondent began working for petitioner on September 1, 1976 as a Restaurant and Bar Cashier. She was promoted to Front Office Cashier in October 1977, as Front Office Cashier's Shift Leader in August 1986, and as Head Cashier in January 1988. In March 1989, she assumed the post of Income Auditor. Seven years later, she accepted the position of Assistant Credit and Collection Manager. In March 2000, petitioner turned over to her the functions of the General Cashier who had resigned.[8]

On June 7, 2011, respondent received petitioner's June 6, 2011 letter, captioned as a Notice of Compulsory Retirement (Notice),[9] which read:

> Re: **Notice of Compulsory Retirement**
>
> Dear **Ms. De Leon**:
>
> Following your verbal conversation with the Vice President of Human Resources and Security, P/SSupt Felipe H. Buena Jr. (Ret), the undersigned would like to formally inform you of the intention of the Management to exercise its prerogative to compulsorily retire you having been rendered 35 years in service from the Hotel [sic] effective at the close of office hours of June 10, 2011. You shall, however, be paid your retirement pay accordingly.
>
> We thank you and wish you good luck in your future endeavors. (Emphasis in the original)

At the time she received said Notice, respondent was 57 years old[10] and held the position of Assistant Credit and Collection Manager/Acting General Cashier.[11] She had by then rendered 34 years of service to petitioner.[12]

Respondent subsequently filed against petitioner and its Chairman, President, Vice President for Finance and Human Resources Assistant Director (officers),[13] a Complaint for illegal dismissal, underpayment of salaries and 13th month pay, non-payment of service charges, transportation allowance and other related benefits, and illegal deductions, with prayer for

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[6] Id. at 356-357.
[7] Id. at 337-353.
[8] Id. at 64-66 and 315.
[9] Id. at 42-A.
[10] Id. 20.
[11] Id. at 20, 66, 122 and 315.
[12] Id. at. 20.
[13] Emilio Yap, Rogelio Quiambao, Cecilia Go and Aurora Caday who eventually became Human Resources Director; id. at 46-47 and 64.

reinstatement without loss of seniority rights, backwages, actual, moral and exemplary damages and attorney's fees.[14]

Respondent claimed that she had been forced to retire without due process. She averred that petitioner gave no rational basis for her retirement or dismissal and merely relied on management prerogative which, she stressed, could not be utilized to circumvent the law and the public policy on labor and social justice.[15]

Petitioner countered that there was no dismissal because respondent voluntarily accepted its offer to avail the compulsory retirement program under the Collective Bargaining Agreement (CBA) between petitioner and its rank-and-file employees.[16] Under the CBA, an employee's retirement is compulsory when he or she reaches the age of 60 or has rendered 20 years of service, whichever comes first.[17]

Petitioner averred that when respondent received the Notice, she went directly to the Human Resources Director to inquire about her retirement pay, and upon learning that the same would amount to ₱1.5 Million, she graciously accepted the retirement offer and even personally and eagerly processed her Personnel Clearance. However, when notified that the release of her retirement pay at ₱1,510,757.92 had been approved, respondent refused to get her check and instead maliciously sued petitioner for illegal dismissal.[18]

Petitioner pointed out that respondent already rendered 14 years in excess of the 20-year cut-off period for compulsory retirement, thus, it allegedly had all the right to terminate her services. According to petitioner, that respondent was only 57 years of age and still willing to serve, or that her services had been extended for 14 years, would not bar its exercise of the management prerogative to terminate her employment, stressing that labor law discourages interference with an employer's judgment in conducting its business.[19]

Petitioner explained that it was implementing a cost-cutting program to avoid heavy losses caused by the worldwide economic crisis, and the exigencies for the continuation of respondent's employment, which it alone could determine, no longer existed.[20]

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[14] Id. at 64.
[15] Id. at 70 and 73.
[16] Id. at 51.
[17] Id. at 52.
[18] Id. at 48-49 and 51.
[19] Id. at 52-54.
[20] Id. at 55.

In any case, petitioner argued, respondent could be compulsorily retired under the CBA, being a rank-and-file employee. It averred that respondent's work, the most crucial aspect of which was merely to count and keep petitioner's money, was routinary and did not involve the exercise of any discretion. Petitioner added that respondent was not a supervisory employee as she had no staff to supervise. Furthermore, respondent had supposedly been receiving benefits under the CBA.[21]

Petitioner, in addition, denied liability for respondent's money claims.[22]

Respondent, however, decried petitioner's claim that she graciously accepted its retirement offer, asserting that she questioned her dismissal from the beginning, and that her signing of the Personnel Clearance only indicated an intention to clear all her accountabilities.[23]

Respondent also contended that petitioner's CBA with the rank-and-file employees did not apply to her because she held a managerial or supervisory position as shown no less by her job title. To further prove that she was a managerial or supervisory employee, she averred that: the Performance Appraisal Sheet for Supervisory Positions was used to rate her; she was awarded Model Supervisor in 1992; as early as 1994, she was entitled to the Officer's Check Privilege which was exclusively enjoyed by employees holding managerial and supervisory positions; and the 50% discount she enjoyed in all outlets/restaurants was a privilege given only to petitioner's officers or managers.[24]

Respondent also submitted office memorandums purportedly negating petitioner's claim that she did not exercise discretion or independent judgment in discharging her functions. Pointing to documents submitted by petitioner itself as proof that she was not a rank-and-file employee, she argued that: the Regular Payroll Journal showed her as a confidential employee from 1996, when she assumed the position of Assistant Credit and Collection Manager, until June 10, 2011; the Payroll Register included her name under "CONFI-MANA" which stood for Confidential-Manager; and the Travelling Allowance and Certification Report applied only to managers.[25]

Ruling of the LA

Ruling in respondent's favor, the LA held that respondent was a managerial employee, as evinced by the Personnel Status Form and

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[21] Id. at 84-86.
[22] Id. at 90-92.
[23] Id. at 121-122.
[24] Id. at 122 and 125-126.
[25] Id. at 126-127.

Appraisal Sheets she submitted and based on her responsibilities and duties and the benefits and privileges that came with her post. The LA, thus, concluded that the CBA did not apply to respondent and her compulsory retirement resultantly constituted constructive dismissal.[26]

The LA found merit in respondent's claims for attorney's fees and illegal deductions but denied her claims for salary differentials and damages.[27]

The dispositive portion of the LA Decision[28] dated December 10, 2012 reads:

> WHEREFORE, a Decision is hereby rendered declaring that [respondent] was illegally dismissed. Corollarily, [petitioner] are hereby ordered to reinstate [respondent] to her former position without loss of seniority rights and other privileges and to pay her backwages from the time of dismissal up to actual reinstatement, which is only up to the retirable age of 60, for which a retirement pay is hereby also ordered to be paid by the [petitioner].
>
> In addition, [petitioner] are hereby ordered to return the amount illegally deducted from the [respondent]. An [sic] attorney's fees equivalent to ten (10%) of the total award is hereby granted. Computation is as follows:
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> a) BACKWAGES
>
> 6/10/11 – 12[/]10/12 – 16.06 mos.
> P24,749.00 x 16.06 = 397,468.94
>
> 13th MONTH PAY
>
> P397,468.94/12 = 33,122.41
>
> SERVICE INCENTIVE LEAVE PAY
>
> P24,749/26 x 5/12 x 16.06 6,369.00. 430,961.04
>
> b) ILLEGAL DEDUCTION (given) 72,616.77
> 509,577.81
> 10% Attorney's fees 50,957.78
> Total P560,535.59
>
> SO ORDERED.[29]

[26] Id. at 317.
[27] Id. at 317-318.
[28] Id. at 129-143.
[29] Id. at 142-143.

Ruling of the NLRC

On June 10, 2013, the NLRC, in its Decision[30] granted the appeal interposed by petitioner and its officers, disposing as follows:

> **WHEREFORE**, premises considered, the appealed decision dated December 10, 2012 is reversed and set aside. Accordingly, the complaint for illegal constructive dismissal is dismissed for lack of merit.
>
> However, [petitioner] is ordered to pay [respondent] the amount of P72,616.77 representing its illegal deductions as previously granted and the amount of P7,261.67 which is equivalent to 10% of the monetary award for and by way of attorney's fees.
>
> Likewise, [petitioner] is ordered to immediately pay [respondent] her retirement pay and benefits based on law and the [CBA].
>
> **SO ORDERED**.[31]

According to the NLRC, while managerial employees are ordinarily outside the scope of CBA, nothing prevents employers from granting them benefits equal to or higher than those given to union members. It held that in extending the retirement benefits under the CBA to respondent, petitioner was merely exercising a management prerogative, and by immediately processing her retirement requirements, including the Personnel Clearance, respondent accepted petitioner's offer of retirement. The NLRC noted that respondent, as a managerial employee, was presumed to be well-educated and to have understood the import of the Personnel Clearance when she signed it.[32]

The NLRC thus concluded that petitioner's offer of retirement and respondent's acceptance thereof constituted a bilateral agreement – the "applicable employment contract" on retirement sanctioned under Article 287[33] of the Labor Code, the existence of which rendered unimportant the issue of whether respondent was a managerial employee or not. The NLRC

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[30] Id. at 161-178.

[31] Id. at 177.

[32] Id. at 319.

[33] 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 establishmert, 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.

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held that having assented to her compulsory retirement, respondent was already estopped from contesting the same.[34]

The NLRC approved petitioner's computation of respondent's retirement pay. It also sustained the award of attorney's fees since respondent was compelled to litigate. Because petitioners did not challenge the award for illegal deductions, the NLRC retained the same but held that all adjudged liabilities shall be borne by petitioner alone.[35]

Both parties moved for reconsideration, petitioner insofar only as the NLRC sustained the award for illegal deductions and attorney's fees.[36]

Respondent, for her part, maintained that she never assented to sever her employment with petitioner and that she had in fact questioned the basis for her compulsory retirement. Respondent, in particular, denied that she personally processed her Personnel Clearance, alleging that it was the staff from petitioner's Human Resources Division who went to the different departments and to her own office to have the clearance signed.

On September 4, 2013, the NLRC, in its Resolution[37] denied both parties' motions for reconsideration.

Ruling of the CA

Granting respondent's petition for *certiorari*, the CA rendered its Decision[38] dated March 19, 2015, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the **PETITION** is **GRANTED.** The assailed 10 June 2013 Decision of the NLRC, and its assailed Resolution promulgated on 4 September 2013, in so far as these hold that [respondent] had been validly compulsorily retired and dismissing [respondent's] complaint for illegal dismissal, are hereby **ANNULLED** and **SET ASIDE.**
>
> [Petitioner] is hereby **ORDERED** to pay [respondent] her backwages from the termination of her employment on 10 June 2011, her last day at work, until the date when [respondent] has turned sixty (60) years of age, and thereupon, to immediately pay her retirement benefits in accordance with law.
>
> [Petitioner] is likewise **ORDERED** to pay [respondent] the amount of Php72,616.77, representing illegal deductions, as held by the NLRC and uncontested by [petitioner], as well as Php7,261.67, representing attorney's fees of 10% of the amount unlawfully withheld.

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[34] *Rollo*, p. 319.
[35] Id. at 319-320.
[36] Id. at 179-185 and 207-212.
[37] Id. at 214-215.
[38] Id. at 314-336.

SO ORDERED.[39]

In its Motion for Partial Reconsideration,[40] petitioner asked that the NLRC's ruling be affirmed. However, it was denied in the Resolution[41] dated July 31, 2015.

Hence, this petition seeking the annulment of the CA's decision and the reinstatement of the NLRC's resolution.

Petitioner insists that respondent was not illegally dismissed because she voluntarily accepted her inclusion in its compulsory retirement program, and that by such acceptance, she made the CBA provision on retirement applicable to her.[42]

Ruling of the Court

The petition lacks merit.

The CA held that respondent is a managerial employee, as found by the LA and the NLRC – a finding "which (petitioner) never bothered to contest."[43] There is, thus, no issue as to the managerial position held by respondent in petitioner's hotel.

Because respondent is a managerial employee, petitioner's CBA with its rank-and-file employees does not apply to her. Furthermore, as the CA held, there is nothing in petitioner's submissions showing that respondent had assented to be covered by the CBA's retirement provisions.

In *United Pepsi-Cola Supervisory Union v. Judge Laguesma*,[44] this Court ruled:

> Nor is the guarantee of organizational right in Art. III, §8 infringed by a ban against managerial employees forming a union. The right guaranteed in Art. III, §8 is subject to the condition that its exercise should be for purposes "not contrary to law." In the case of Art. 245, there is a rational basis for prohibiting managerial employees from forming or joining labor organizations. As Justice Davide, Jr., himself a constitutional commissioner, said in his *ponencia* in *Philips Industrial Development, Inc. v. NLRC*:
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> > In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5)

[39] Id. at 335.
[40] Id. at 337-353.
[41] Id. at 356-357.
[42] Id. at 24.
[43] Id. at 329.
[44] 351 Phil. 244 (1998).

> previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. **By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations**. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.
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> In *Bulletin Publishing Co., Inc. v. Hon. Augusto Sanchez*, this Court elaborated on this rationale, thus:
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> > ". . . **The rationale for this inhibition has been stated to be, because if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.**"
>
> To be sure, the Court in *Philips Industrial* was dealing with the right of confidential employees to organize. But the same reason for denying them the right to organize justifies even more the ban on managerial employees from forming unions. After all, **those who qualify as top or middle managers are executives who receive from their employers information that not only is confidential but also is not generally available to the public, or to their competitors, or to other employees.** It is hardly necessary to point out that to say that the first sentence of Art. 245 is unconstitutional would be to contradict the decision in that case.[45] (Citations omitted and emphasis ours)

Thus, in the absence of an agreement to the contrary, managerial employees cannot be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer.[46]

Accordingly, the fact that respondent had rendered more than 20 years of service to petitioner will not justify the latter's act of compulsorily retiring her at age 57, absent proof that she agreed to be covered by the CBA's retirement clause.

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[45] Id. at 279-280.

[46] *Martinez v. NLRC*, 358 Phil. 288, 297 (1998).

As amended by Republic Act No. 7641,[47] Article 287 of the Labor Code, in pertinent part, provides:

> Art. 287. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining agreement 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.
>
> 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.
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> x x x x

"Undoubtedly, under this provision, the retirement age is primarily determined by the existing agreement or employment contract."[48] "By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years."[49] Absent such an agreement, the retirement age shall be that fixed by law, and the above-cited law mandates that the compulsory retirement age is 65 years, while the minimum age for optional retirement is set at 60 years.[50]

Petitioner maintains that it had an implied agreement with respondent for the latter's compulsory retirement, which constitutes a retirement contract sanctioned under Article 287 of the Labor Code.[51] According to petitioner, this agreement was perfected when respondent verbally accepted

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[47] 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. Approved on December 9, 1992.

[48] *Obusan v. Philippine National Bank*, 639 Phil. 554, 562 (2010).

[49] *Jaculbe v. Silliman University*, 547 Phil. 352, 3456 (2007).

[50] *Obusan v. Philippine National Bank*, supra at 562.

[51] *Rollo*, p. 37.

its retirement offer as provided in its June 6, 2011 letter, and when she personally and voluntarily processed her Personnel Clearance.[52]

The Court is not persuaded.

A cursory reading of petitioner's June 6, 2011 letter will readily reveal that it was not an offer for compulsory retirement. The letter, to begin with, was a Notice, which indicates that it merely served to notify respondent of a decision to retire her services. It was clearly not a notice to avail of the retirement provisions under the CBA. As said caption suggests, the retirement was compulsory and not optional as to give respondent the choice to decline.

The body of the letter, too, signifies that retirement was no longer a choice or a decision to be made by respondent, as the termination of her services was already *fait accompli* – an accomplished or consummated act. *First*, the Notice specified the effectivity date of respondent's retirement, *i.e.*, at "close of office hours of June 10, 2011," or barely three days from the time she received the Notice. *Second*, it also stated that the management was exercising its prerogative to compulsorily retire respondent. Thus, petitioner was invoking its *exclusive* judgment and *discretion* in terminating respondent's employment through compulsory retirement. *Third*, petitioner thanked respondent for her services and wished her luck in her future endeavors, which indicates that from petitioner's perspective, cessation of employment was certain and final, and respondent's future was no longer as its employee.

Indeed, the Notice gave respondent no opportunity to explore a mere possibility or option of retirement. In fact, there is nothing in the Notice asking respondent to express her conformity to any retirement plan or offer or suggesting that management was willing to discuss her retirement. Thus, contrary to petitioner's claim, the Notice was not a proposal, but a management decision, to retire respondent who then had not yet reached the age of compulsory retirement under Article 287 of the Labor Code.

By all indications, therefore, petitioner's June 6, 2011 letter was a notice of severance or termination of employment through compulsory retirement. It was not, as petitioner would have this Court believe, an offer which respondent was free to accept or decline. Petitioner had unilaterally made a decision to retire respondent and by its Notice, imposed such decision on her.

The conversations between respondent and petitioner's Vice President of Human Resources and Security, P/SSupt Felipe H. Buena Jr. (Ret) (Buena), also show that respondent had no intention to quit her job or to

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[52] Id. at 28-29.

retire, and that she questioned petitioner's decision to compulsorily retire her. In her Position Paper,[53] respondent narrated:

> 18. On June 3, 2011, P/SSupt. Felipe H. Buena, Jr., V.P.-HRD & Security required [respondent] to come to his office. During the middle of the conversation, he suddenly commented *"You know Rose I resigned effective June 5, 2011 because I am not happy with my boss anymore; so same thing with you. Why don't you just resign?* With conviction he uttered, ***"Rose, you have to resign.***
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> 19. [Respondent] stated in response, ***"I am not yet planning to resign nor retire since I am the sole breadwinner of the family and my son will continue his studies in college for two (2) more years, which mainly [sic] my primary reasons why I am maintaining love, concern, good working relationship, being hardworking employee [sic], above all my honesty and integrity for almost 35 years of continues [sic] dedication to the company."***
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> 20. On **June 4, 2011**, P/SSupt. Felipe H. Buena asked [respondent] to see him in his office. Right away he informed [respondent] that management decided to compulsory [sic] retire her. The same was manifested by respondent Aurora Caday, Asst. Director to HR-Legal.
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> 21. [Respondent] asked him what was the reason and why? He said that *management opted to apply what is stated in the CBA of the employees-"**20 years of service or 50 years old whichever comes first**" and he added that this applied to all".* [Respondent] simply commented *that if its [sic] true that it applies to all, how come that there are lots of rank & file employees, supervisors and managers/officers who are older than her and working for more than 35 years of service, are [sic] still with the company?*[54] (Emphasis in the original)

These conversations were never denied by petitioner.[55] It bears noting, too, that petitioner itself acknowledged in its June 6, 2011 letter that Buena had discussed with respondent her compulsory retirement, lending credence to the above-cited exchanges. As the CA found, the June 4, 2011 exchange between respondent and Buena establish that "the information regarding respondent's retirement was not an offer at all, but an order, and that respondent had questioned her coverage in the CBA."[56]

Petitioner has not likewise denied that after receiving the Notice, respondent approached its President asking for an explanation and possibly a better package, but the latter simply answered: "*Ok na yon pahinga ka na* and besides that was the decision of the management."[57] This clearly belies petitioner's claim that there was a "meeting of the minds"[58] between its management and respondent as regards her early retirement. In this regard,

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[53] Id. at 63-79.
[54] Id. at 67-68.
[55] Id. at 329.
[56] Id. at 327.
[57] Id. at 69 and 316.
[58] Id. at 28.

it bears to reiterate that "company retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period."[59]

The Court cannot subscribe to petitioner's argument that respondent's act of signing and processing her Personnel Clearance amounts to indubitable proof that she accepted its retirement offer. To reiterate, there was no such offer that respondent was at liberty to consider, accept or reject; petitioner already resolved to compulsorily retire respondent when Buena informed her of such decision and when it formally served upon her its Notice. Furthermore, faced with unemployment, respondent would naturally want to have her last pay released and this requires the accomplishment of the Personnel Clearance. As the CA aptly explained:

> It is a familiar axiom that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. It cannot be ignored that [respondent] has only six days before she is deemed "compulsorily retired." She has appealed the decision of [petitioner] but its representatives remained adamant. Therefore, it is unsurprising that [respondent] would process her clearances; after all, without such clearance, her retirement pay would not be released, and she would still be out of work. Hence, it was not out of eagerness, excitement, and acceptance that she attended to her retirement requirements, but only out of sheer necessity and to assure the release of her retirement pay.[60]

Furthermore, the CA correctly observed that respondent's refusal to accept her retirement pay and her objections to being retired early, as well as the filing of her complaint for illegal dismissal, confirm that she did not consent to her compulsory retirement.[61] Apropos is the following pronouncement in *Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabatt v. Caballeda, et al.*:[62]

> Furthermore, the fact that respondents filed a complaint for illegal dismissal against petitioners completely negates their claim that respondents voluntarily retired. To note, respondents vigorously pursued this case against petitioners, all the way up to this Court. Without doubt, this is a manifestation that respondents had no intention of relinquishing their employment, wholly incompatible to petitioners' assertion that respondents voluntarily retired.[63]

Contrary to petitioner's assertion, the exercise of management prerogative cannot justify its compulsory retirement of respondent's services. There can be no debate that the exercise of management

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[59] *Obusan v. Philippine National Bank*, supra note 48, at 565.
[60] *Rollo*, pp. 328-329.
[61] Id. at 328.
[62] 582 Phil. 118 (2008).
[63] Id. at 137.

prerogatives cannot trounce the requirements of the law which, in this case, demand the employee's unequivocal agreement to an early retirement. The Court has held:

> It is true that an employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. **But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker**. In this light, the management prerogative will be upheld for as long as it is **not wielded as an implement to circumvent the laws and oppress labor**.[64] (Citations omitted and emphasis ours)

All told, an employee in the private sector who did not expressly agree to an early retirement cannot be retired from the service before he reaches the age of 65 years.[65] "Acceptance by the employee of an early retirement age option must be explicit, voluntary, free and uncompelled."[66] "The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure."[67] Thus, We held that "[r]etirement 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."[68]

In the instant case, respondent's early retirement arose not from a bilateral act but a unilateral decision on the part of petitioner. Respondent's consent was neither sought nor procured by petitioner in deciding to prematurely retire her services. For this reason, respondent's compulsory retirement, as imposed by petitioner in its June 6, 2011 letter, constitutes illegal dismissal. As this Court recently held in *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*:[69]

> Although the employer could be free to impose a retirement age lower than 65 years for as long its employees consented, **the retirement of the employee whose intent to retire was not clearly established, or whose retirement was involuntary is to be treated as a discharge**.[70] (Citations omitted and emphasis ours)

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[64] *Dongon v. Rapid Movers and Forwarders Co., Inc., et al.*, 716 Phil. 533, 545 (2013).

[65] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, G.R. No. 205813, January 10, 2018.

[66] *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 612 (2010).

[67] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, supra.

[68] *Cercado v. UNIPROM, Inc.*, supra at 608.

[69] G.R. No. 205813, January 10, 2018.

[70] Id.

Having been unjustly dismissed, respondent is entitled to the reliefs under Article 279 of the Labor Code which provides:

> Article 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.[71]

In *ICT Marketing Services, Inc. v. Sales*,[72] the Court held that:

> The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[73]

The CA held that reinstatement was no longer feasible as it would not work to the best interest of the parties. It found that petitioner had consistently objected to respondent's return to work and concluded that reintroducing her into the workplace may initiate conflicts which would ultimately hamper the efficient management of petitioner's hotel and foster ill feelings and enmity between respondent and her former superiors.[74] In this light, We hold that separation pay in lieu of actual reinstatement should be awarded. Indeed, "[t]he accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties."[75]

Accordingly, respondent is entitled to backwages and all other benefits from June 10, 2011, when her employment was terminated,[76] until the finality of this Decision, with interest at twelve percent (12%) *per annum* from June 10, 2011 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.[77] Respondent shall also receive separation pay, in lieu of reinstatement, equivalent to one (1) month

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[71] Id.

[72] 769 Phil. 498 (2015).

[73] Id. at 524-525, citing *Aliling v. Feliciano, et al.*, 686 Phil. 889, 917 (2012).

[74] *Rollo*, p. 332.

[75] *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 501 (2009) citing *Velasco v. NLRC*, 525 Phil. 749, 761 (2006).

[76] *Rollo*, p. 335.

[77] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, supra note 65, citing *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281 (2013); *ICT Marketing Services, Inc. v. Sales*, supra at 525.

salary for every year of service,[78] which shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment.[79] Both the separation pay and backwages shall be computed up to the finality of the Decision as it is at that point that the employment relationship is effectively ended.[80]

WHEREFORE, the Petition is **DENIED**. The Decision dated March 19, 2015 and Resolution dated July 31, 2015 of the Court of Appeals in CA-G.R. SP No. 132576 are **AFFIRMED with MODIFICATIONS** in that petitioner Manila Hotel Corporation is ordered to pay respondent Rosita De Leon:

(a) backwages and all other benefits due from June 10, 2011 until the finality of this Decision, plus interest at twelve percent (12%) *per annum* from June 10, 2011 to June 30, 2013, and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction; and

(b) separation pay, in lieu of reinstatement, from September 1, 1976 until the finality of this Decision, equivalent to one (1) month pay for every year of service, plus interest at six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

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[78] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, supra note 65; *ICT Marketing Services, Inc. v. Sales*, supra at 525.

[79] *Nacar v. Gallery Frames, et al.*, supra at 283.

[80] *Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, 721 Phil. 84, 102 (2013).

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)