

## SECOND DIVISION

**[ G.R. No. 117394, February 21, 1997 ]**

**HINATUAN MINING CORPORATION AND/OR THE MANAGER,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND MARGOT BATISTER RESPONDENTS.  
D E C I S I O N**

**PUNO, J.**

This case stemmed from a complaint filed by private respondent MARGOT BATISTER for separation pay with prayer for moral and exemplary damages against her employer, petitioner HINATUAN MINING CORPORATION.

The records show that private respondent was employed by petitioner on July 20, 1981. She rose from the ranks to become the company's chief chemist. Her duty was to examine and analyze the nickel content of ores in petitioner's mine site in Hinatuan, Talavera, Surigao del Norte, before they are shipped to Japan.

In November and December, 1991, petitioner sent private respondent on a training grant to Japan to enhance her skills. Her training cost 175,000.00. After the training, private respondent returned to the Philippines and resumed working for petitioner.

On January 25, 1993, a year after her training, private respondent tendered her resignation effective February 15, 1993. As reason therefor, she declared that "the need to be with my family always compel me to take this action."<sup>[1]</sup>

Petitioner reminded private respondent that she had to stay with the company for three (3) more years in exchange for the expenses it incurred for her training in Japan. Private respondent was unmoved. She proceeded with her resignation and asked for separation pay. Petitioner denied her request and instead offered to give her financial assistance in the amount of 20,000.00.

Private respondent thus filed a complaint with the labor arbiter claiming separation pay and damages against petitioner. She alleged that pursuant to the existing collective bargaining agreement (CBA) in the company, she could have availed of the optional retirement plan considering her eleven and a half (11 ½) years of continuous service, but she chose to resign since she would get a higher compensation in the form of separation pay. She cited the cases of her former co-employees, Marcial P. Lor and Rizalino Alcantara, who were both given separation pay by petitioner despite their voluntary resignation.

Petitioner opposed private respondent's claim for separation benefits on the grounds that: (1) the provisions regarding retirement or separation benefits under the CBA do not apply to managerial officers and non-union members like private respondent; (2) private respondent is not entitled to separation pay for she voluntarily resigned

from service; (3) she did not comply with the 30-day advance notice when she tendered her resignation on January 25, 1993, and; (4) petitioner spent P175,000.00 for her training in Japan and as per the company's policy, private respondent, as beneficiary of a training grant, should work with the company for at least four (4) years.

In a Decision, dated August 10, 1993, Labor Arbiter Marissa Macaraig-Guiller dismissed the complaint and ruled that private respondent, as resigning employee, is not entitled to severance benefits. She held that there was no company policy to this effect.<sup>[2]</sup>

Private respondent appealed to the National Labor Relations Commission and invoked a 1990 NLRC decision in the case of Rizalino Alcantara v. Hinatuan Mining Corporation.<sup>[3]</sup> In said case, Alcantara occupied the position of property officer when he voluntarily resigned from petitioner company on July 30, 1988. He was thus a managerial employee and a non-union member (like private respondent) when his resignation took effect. Alcantara demanded that he be paid the same severance benefits as given to former Administrative Manager Colonel Acuba and former Resident Mine Manager Engineer Rogelio Bayutas, both of whom also voluntarily resigned from the company. When his request was denied, Alcantara filed a complaint with the labor arbiter who ruled in his favor. Alcantara was awarded severance pay after finding that there was a company practice to this effect. The NLRC affirmed this decision on appeal.

In line with its ruling in Alcantara, public respondent NLRC reversed the labor arbiter's decision and adjudged petitioner liable to private respondent for the payment of: (1) separation pay (of 122,748.00) equivalent to one month salary per year of service; (2) attorney's fees equivalent to 10% of the aforesaid monetary award or 12,274.00; and (3) moral and exemplary damages in the amount of 50,000.00 and 25,000.00, respectively.<sup>[4]</sup>

Petitioner's motion for reconsideration was denied. Hence this petition.

We affirm the judgment of public respondent NLRC, with modification.

It is well to note that there is no provision in the Labor Code which grants separation pay to voluntarily resigning employees. Separation pay may be awarded only in cases when the termination of employment is due to: (a) installation of labor saving devices, (b) redundancy, (c) retrenchment, (d) closing or cessation of business operations,<sup>[5]</sup> (e) disease of an employee and his continued employment is prejudicial to himself or his co-employees,<sup>[6]</sup> or (f) when an employee is illegally dismissed but reinstatement is no longer feasible.<sup>[7]</sup> In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay,<sup>[8]</sup> except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy.<sup>[9]</sup>

In the case at bar, it has been shown beyond doubt that there is an established employer practice of awarding separation pay to resigning employees. Private respondent is similarly situated as Alcantara who was also a managerial employee of petitioner company and a non-union member when he voluntarily resigned from the