

## THIRD DIVISION

[ G.R. No. 156644, July 28, 2008 ]

**UNIVERSAL ROBINA SUGAR MILLING CORPORATION  
(URSUMCO) AND/OR RENATO CABATI, AS MANAGER,  
PETITIONERS, VS. AGRIPINO CABALLEDA AND ALEJANDRO  
CADALIN, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated September 11, 2002 which modified the Decision<sup>[3]</sup> of the National Labor Relations Commission (NLRC) dated January 27, 2000.

#### *The Facts*

Petitioner Universal Robina Sugar Milling Corporation (URSUMCO) is a domestic corporation engaged in the sugar milling business and petitioner Renato Cabati<sup>[4]</sup> is URSUMCO's manager.

Respondent Agripino Caballeda (Agripino) worked as welder for URSUMCO from March 1989 until June 23, 1997 with a salary of P124.00 per day, while respondent Alejandro Cadalin (Alejandro) worked for URSUMCO as crane operator from 1976 up to June 15, 1997 with a salary of P209.30 per day.

On April 24, 1991, John Gokongwei, Jr., President of URSUMCO, issued a Memorandum<sup>[5]</sup> establishing the company policy on "Compulsory Retirement" (Memorandum) of its employees. The memorandum provides:

All employees corporate-wide who attain 60 years of age on or before April 30, 1991 shall be considered retired on May 31, 1991.

Henceforth, any employee shall be considered retired 30 days after he attains age 60.

Personnel department shall prepare the retirement notices to be co-signed and served by respective Department managers to employees concerned. The notices must be served as least 30 days before the designated retirement date. Reports of retiring/retired employees shall be submitted by the Personnel Department every end of the month to the President, copy furnished the Senior Vice-Presidents.

Employees who are retiring on May 11, 1991 shall continue reporting to work up to the middle of May. Thereafter, they may make use of their

remaining vacation leave credits. Similarly, employees considered retired 30 days after attainment of age 60 shall continue reporting for work during the first half of the 30-day period, then make use of available VL credits.

Vacation and sick leave credits remaining unused by the employee's designated retirement date shall be converted into cash (VL at 100%, SL at 50% or per CBA) and be included with the Final Accountability/Retirement Benefits. Accountability clearance shall be per SOP.

Engaging the services of any retiree after his retirement must first be cleared with the President or the Senior Vice-President concerned especially the terms and condition of such engagement. Retirees can be re-engaged only under a Retainer or Consultancy arrangement and only for a limited period of time.

Subsequently, on December 9, 1992, Republic Act (RA) No. 7641<sup>[6]</sup> was enacted into law, and it took effect on January 7, 1993,<sup>[7]</sup> amending Article 287 of the Labor Code, to read:

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

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

On April 29, 1993, URSUMCO and the National Federation of Labor (NFL), a legitimate labor organization and the recognized sole and exclusive bargaining representative of all the monthly and daily paid employees of URSUMCO, of which Alejandro was a member, entered into a Collective Bargaining Agreement (CBA).<sup>[8]</sup> Article XV of the said CBA particularly provided that the retirement benefits of the members of the collective bargaining unit shall be in accordance with law.<sup>[9]</sup>

Agripino and Alejandro (respondents), having reached the age of 60, were allegedly forced to retire by URSUMCO. Agripino averred that URSUMCO illegally dismissed him from employment on June 24, 1997 when he was forced to retire upon reaching the age of sixty (60) years old. Upon the termination of his employment, he accepted his separation pay and applied for retirement benefits with the Social Security System (SSS). Earlier, on April 15, 1997, Alejandro turned 60 years old. On May 28, 1997, he filed his application for retirement with URSUMCO, attaching his birth and baptismal certificates. On July 23, 1997, he accepted his retirement benefits and executed a quitclaim in favor of URSUMCO.

Thereafter, on August 6, 1997, Agripino filed a Complaint<sup>[10]</sup> for illegal dismissal, damages and attorney's fees before the Labor Arbiter (LA) of Dumaguete City. He alleged that his compulsory retirement was in violation of the provisions of Republic Act (R.A.) 7641 and, was in effect, a form of illegal dismissal.

On August 26, 1997, Alejandro likewise filed a Complaint<sup>[11]</sup> for illegal dismissal, underpayment of retirement benefits, damages and attorney's fees before the LA, alleging that he was given only 15 days per year of service by way of retirement benefits and further assails that his compulsory retirement was discriminatory considering that there were other workers over sixty (60) years of age who were allowed to continuously report for work.

### ***The LA's Ruling***

On September 30, 1998, the LA rendered a Decision,<sup>[12]</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, judgment is hereby rendered declaring the respondent guilty of illegal dismissal and thus ordered to pay complainants: Agripino Caballeda and Alejandro Cadalin their respective backwages from: June 23, 1997 and from June 15, 1997 up to the promulgation of this Decision. Also, the respondent is hereby ordered to reinstate the complainants to their former or equivalent positions without loss of seniority rights and privileges appurtenant thereto.

The computation of complainants' awards is shown below and forms as integral part of this Decision.

1.    **AGRIPINO CABALLEDA**  
      June 23, 1997 - Sept. 30, 1998  
      = 1 year and 3 months  
      = P124.00 x 26 days x 15 months . . P48,360.00

2. ALEJANDRO CADALIN  
June 15, 1997 - Sept. 30, 1998  
= 1 year and 3 months  
= 15 months  
= P209.00 x 26 x 15 months . . . . . P 81,627.00  
TOTAL . . . . . P129,987.00

A ten percent (10%) attorney's fees is also adjudicated from the aggregate award.

All other claims are Dismissed for lack of merit.

## SO ORDERED.

## ***The NLRC's Ruling***

Petitioners appealed to the NLRC. On January 27, 2000, the NLRC held that Alejandro voluntarily retired because he freely submitted his application for retirement together with his birth and baptismal certificates. Moreover, he had his clearance processed and he received the amount of P33,476.77 as retirement benefit. Nevertheless, the NLRC found that since Alejandro's retirement benefit was based merely on fifteen (15) days salary for every year of service, such benefit should be recomputed to conform to the provisions of Art. 287 of the Labor Code as amended. With respect to Agripino, the NLRC held that URSUMCO's claim that Agripino was a mere casual employee was obviously designed to avoid paying Agripino his retirement benefit. Thus, the NLRC ruled:

**WHEREFORE**, premises considered, the decision of the Labor Arbiter is hereby **SET ASIDE and VACATED** and a new one entered **DISMISSING** the complaint for illegal dismissal. Respondents are hereby ordered to pay complainants their retirement benefits computed as follows:

1. Alejandro Cadalin:  
Jan. 13/88 to June 15/97 = 9 years, 5 months & 3 days

a)  $P209.58/\text{day} \times 15$  days = P3,143.70

b) 1/12 of 13th Month Pay =	523.95
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c) 5 days SILP = 1,047.90  
P4,715.55

P4,715.55/year of service x 9 years = P42,439.95

Less: Retirement proceeds received (p. 107, records) 28,293.30

Retirement differential of Alejandro Cadalin =	P 14,146.65
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- ## 2. Agripino Caballada:

March 1989 to June 23/97 = 8 years, 3 months & 3 days

a) 124.00/day x 15 days =	1,860.00
b) 1/12 of 13th Month Pay =	310.00
c) 5 days SILP =	620.00
	P2,790.00

P2,790.00/year of service x 8 years =	
Retirement benefits of Agripino Caballeda	P 22,320.00

SO ORDERED.<sup>[13]</sup>

Respondents filed their Motion for Reconsideration<sup>[14]</sup> which the NLRC denied in its Resolution<sup>[15]</sup> dated May 22, 2000, on the ground that it was the respondents who voluntarily applied for retirement upon reaching the age of 60 pursuant to the CBA and established company policy.

Aggrieved, respondents went to the CA via a Petition for *Certiorari*.<sup>[16]</sup>

### ***The CA's Ruling***

The CA declared that URSUMCO illegally dismissed the respondents since the Memorandum unilaterally imposed upon the respondents compulsory retirement at the age of 60. The CA found that there is no existing CBA or employment contract between the parties that provides for early compulsory retirement. Hence, the CA held:

It is beyond doubt that [petitioner] violated the rights of the [respondents] [insofar] as the latter were not given the prerogative to choose for themselves to retire early or wait for the compulsory retirement age which is sixty[-five] (65) years. "If the intention to retire is not clearly established or if the retirement is involuntary, it is to be treated as discharge" (San Miguel Corporation vs. National Labor Relations Commission, 293 SCRA 13, 21[,], citing the case of De Leon vs. NLRC, 100 SCRA 691 [1980]). Corollary, such involuntary retirement on the part of [respondents] was in effect an illegal dismissal.<sup>[17]</sup>

However, the CA held that the NLRC properly computed the retirement benefits of the respondents. Thus:

WHEREFORE, premises considered, the assailed Decision dated January 27, 2000 of the National Labor Relations Commission, Fourth Division, Cebu City is hereby AMENDED as follows:

1. The respondents are hereby ordered to pay the petitioners their