SUPREME COURT
SPECIAL FIRST DIVISION

DOUGLAS MILLARES and ROGELIO LAGDA,
***Petitioners*,**

-versus-

G.R. No. 110524
July 29, 2002

NATIONAL LABOR RELATIONS COMMISSION, TRANS-GLOBAL MARITIME AGENCY, INC. and ESSO INTERNATIONAL SHIPPING CO., LTD.,
***Respondents*.**
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R E S O L U T I O N

KAPUNAN, *J.*:

On March 14, 2000, the Court promulgated its decision in the above-entitled case, ruling in favor of the petitioners. The dispositive portion reads, as follows:

> WHEREFORE, premises considered, the assailed Decision, dated June 1, 1993, of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered ordering the private respondents to:

(1) Reinstate petitioners Millares and Lagda to their former positions without loss of seniority rights, and to pay full backwages computed from the time of illegal dismissal to the time of actual reinstatement;

(2) Alternatively, if reinstatement is not possible, pay petitioners Millares and Lagda separation pay equivalent to one month's salary for every year of service; and

(3) Jointly and severally pay petitioners One Hundred Percent (100%) of their total credited contributions as provided under the Consecutive Enlistment Incentive Plan.

SO ORDERED.[1]

A motion for reconsideration was consequently filed[2] by the private respondents to which petitioners filed an Opposition thereto.[3]

In a Minute Resolution dated June 28, 2000, the Court resolved to deny the motion for reconsideration with finality.[4]

Subsequently, the Filipino Association for Mariners Employment, Inc. (FAME) filed a Motion for Leave to Intervene and to Admit a Motion for Reconsideration in Intervention.

Private respondents, meanwhile, also filed a Motion for Leave to File a Second Motion for Reconsideration of our decision.

In both motions, the private respondents and FAME respectively pray in the main that the Court reconsider its ruling that "Filipino seafarers are considered regular employees within the context of Article 280 of the. Labor Code." They claim that the decision may establish a precedent that will adversely affect the maritime industry.

The Court resolved to set the case for oral arguments to enable the parties to present their sides.

To recall, the facts of the case are, as follows:

Petitioner Douglas Millares was employed by private respondent ESSO International Shipping Company LTD. (Esso International, for brevity) through its local manning agency, private respondent Trans-Global Maritime Agency, Inc. (Trans-Global, for brevity) on November 16, 1968 as a machinist. In 1975, he was promoted as Chief Engineer which position he occupied until he opted to retire in 1989. He was then receiving a monthly salary of US $1,939.00.

On June 13, 1989, petitioner Millares applied for a leave of absence for the period July 9 to August 7, 1989. In a letter dated June 14, 1989, Michael J. Estaniel, President of private respondent Trans-Global, approved the request for leave of absence. On June 21, 1989, petitioner Millares wrote G.S. Hanly, Operations Manager of Exxon International Co., (now Esso International) through Michael J. Estaniel, informing him of his intention to avail of the optional retirement plan under the Consecutive Enlistment Incentive Plan (CEIP) considering that he had already rendered more than twenty (20) years of continuous service. On July 13, 1989 respondent Esso International, through W.J. Vrints, Employee Relations Manager, denied petitioner Millares' request for optional retirement on the following grounds, to wit: (1) he was employed on a contractual basis; (2) his contract of enlistment (COE) did not provide for retirement before the age of sixty (60) years; and (3) he did not comply with the requirement for claiming benefits under the CEIP, i.e., to submit a written advice to the company of his intention to terminate his employment within thirty (30) days from his last disembarkation date.

On August 9, 1989, petitioner Millares requested for an extension of his leave of absence from August 9 to 24, 1989. On August 19, 1989, Roy C. Palomar, Crewing Manager, Ship Group A, Trans-Global, wrote petitioner Millares advising him that respondent Esso International "has corrected the deficiency in its manpower requirement specifically in the Chief Engineer rank by promoting a First Assistant Engineer to this position as a result of (his) previous leave of absence which expired last August 8, 1989. The adjustment in said rank was required in order to meet manpower schedules as a result of (his) inability."

On September 26, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Millares that in view of his absence without leave, which is equivalent to abandonment of his position, he had been dropped from the roster of crew members effective September 1, 1989.

On the other hand, petitioner Lagda was employed by private respondent Esso International as wiper/oiler in June 1969. He was promoted as Chief Engineer in 1980, a position he continued to occupy until his last COE expired on April 10, 1989. He was then receiving a monthly salary of US$1,939.00.

On May 16, 1989, petitioner Lagda applied for a leave of absence from June 19, 1989 up to the whole month of August 1989. On June 14, 1989, respondent Trans-Global's President, Michael J. Estaniel, approved petitioner Lagda's leave of absence from June 22, 1989 to July 20, 1989 and advised him to report for re-assignment on July 21, 1989.

On June 26, 1989, petitioner Lagda wrote a letter to G.S. Stanley, Operations Manager of respondent Esso International, through respondent Trans-Global's President Michael J. Estaniel, informing him of his intention to avail of the optional early retirement plan in view of his twenty (20) years continuous service in the complaint.

On July 13, 1989, respondent Trans-Global denied petitioner Lagda's request for availment of the optional early retirement scheme on the same grounds upon which petitioner Millares request was denied.

On August 3, 1989, he requested for an extension of his leave of absence up to August 26, 1989 and the same was approved. However, on September 27, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Lagda that in view of his "unavailability for contractual sea service," he had been dropped from the roster of crew members effective September 1, 1989.

On October 5, 1989, petitioners Millares and Lagda filed a complaint-affidavit, docketed as POEA (M) 89-10-9671, for illegal dismissal and

non-payment of employee benefits against private respondents Esso International and Trans-Global, before the POEA.[5]

On July 17, 1991, the POEA rendered a decision dismissing the complaint for lack of merit.

On appeal to the NLRC, the decision of the POEA was affirmed on June 1, 1993 with the following disquisition:

The first issue must be decided in the negative. Complainants-appellants, as seamen and overseas contract workers are not covered by the term "regular employment" as defined under Article 280 of the Labor Code. The POEA, which is tasked with protecting the rights of the Filipino workers for overseas employment to fair and equitable recruitment and employment practices and to ensure their welfare, prescribes a standard employment contract for seamen on board ocean-going vessels for a fixed period but in no case to exceed twelve (12) months (Part 1, Sec. c). This POEA policy appears to be in consonance with the international maritime practice. Moreover, the Supreme Court in Brent School, Inc. vs. Zamora 181 SCRA 702, had held that a fixed term is essential and natural appurtenance of overseas employment contracts to which the concept of regular employment with all that it implies is not applicable, Article 280 of the Labor Code notwithstanding. There is, therefore, no reason to disturb the POEA Administrator's finding that complainants-appellants were hired on a contractual basis and for a definite period. Their employment is thus governed by the contracts they sign each time they are re-hired and is terminated at the expiration of the contract period.[6]

Undaunted, the petitioners elevated their case to this Court[7] and successfully obtained the favorable action, which is now vehemently being assailed.

At the hearing on November 15, 2000, the Court defined the issues for resolution in this case, namely:

I. ARE PETITIONERS REGULAR OR CONTRACTUAL EMPLOYEES WHOSE EMPLOYMENTS ARE

TERMINATED EVERYTIME THEIR CONTRACTS OF EMPLOYMENT EXPIRE?

II. ASSUMING THAT PETITIONERS ARE REGULAR EMPLOYEES, WERE THEY DISMISSED WITHOUT JUST CAUSE SO AS TO BE ENTITLED TO REINSTATEMENT AND BACKWAGES, INCLUDING PAYMENT OF 100% OF THEIR TOTAL CREDITED CONTRIBUTIONS TO THE CONSECUTIVE ENLISTMENT INCENTIVE PLAN (CEIP)?

III. DOES THE PROVISION OF THE POEA STANDARD CONTRACT FOR SEAFARERS ON BOARD FOREIGN VESSELS (SEC. C., DURATION OF CONTRACT) PRECLUDE THE ATTAINMENT BY SEAMEN OF THE STATUS OF REGULAR EMPLOYEES?

IV. DOES THE DECISION OF THE COURT IN G.R. NO. 110524 CONTRAVENE INTERNATIONAL MARITIME LAW, ALLEGEDLY PART OF THE LAW OF THE LAND UNDER SECTION 2, ARTICLE II OF THE CONSTITUTION?

V. DOES THE SAME DECISION OF THE COURT CONSTITUTE A DEPARTURE FROM ITS RULING IN COYOCA VS. NLRC (G.R. NO. 113658, MARCH 31, 1995)?[8]

In answer to the private respondents' Second Motion for Reconsideration and to FAME'S Motion for Reconsideration in Intervention, petitioners maintain that they are regular employees as found by the Court in the March 14, 2000 Decision. Considering that petitioners performed activities which are usually necessary or desirable in the usual business or trade of private respondents, they should be considered as regular employees pursuant to Article 280, Par. 1 of the Labor Code[9] Other justifications for this ruling include the fact that petitioners have rendered over twenty (20) years of service, as admitted by the private respondents;[10] that they were recipients of Merit Pay which is an express acknowledgment by the private respondents that petitioners are regular and not just

contractual employees;[11] that petitioners were registered under the Social Security System (SSS).

The petitioners further state that the case of Coyoca vs. NLRC[12] which the private respondents invoke is not applicable to the case at bar as the factual milieu in that case is not the same. Furthermore, private respondents' fear that our judicial pronouncement will spell the death of the manning industry is far from real. Instead, with the valuable contribution of the manning industry to our economy, these seafarers are supposed to be considered as "Heroes of the Republic" whose rights must be protected.[13] Finally, the first motion for reconsideration has already been denied with finality by this Court and it is about time that the Court should write finis to this case.

The private respondents, on the other hand, contend that: (a) the ruling holding petitioners as regular employees was not in accord with the decision in Coyoca vs. NLRC, 243 SCRA 190; (b) Art. 280 is not applicable as what applies is the POEA Rules and Regulations Governing Overseas Employment; (c) seafarers are not regular employees based on international maritime practice; (d) grave consequences would result on the future of seafarers and manning agencies if the ruling is not reconsidered; (e) there was no dismissal committed; (f) a dismissed seafarer is not entitled to back wages and reinstatement, that being not allowed under the POEA rules and the Migrant Workers Act; and, (g) petitioners are not entitled to claim the total amount credited to their account under the CEIP.[14]

Meanwhile, Intervenor Filipino Association of Mariners Employment (FAME) avers that our decision, if not reconsidered, will have negative consequences in the employment of Filipino Seafarers overseas which, in turn, might lead to the demise of the manning industry in the Philippines. As intervenor FAME puts it:

x x x

> 7.1 Foreign principals will start looking for alternative sources for seafarers to man their ships. As reported by the BIMCO/ISF study, "there is an expectancy that there will be an increasing demand for (and supply of) Chinese seafarers, with some commentators suggesting that this may be a long-term

alternative to the Philippines." Moreover, "the political changes within the former Eastern Bloc have made new sources of supply available to the international market." Intervenor's recent survey among its members shows that 50 Philippine manning companies had already lost some 6,300 slots to other Asian, East Europe and Chinese competition for the last two years;

7.2 The Philippine stands to lose an annual foreign income estimated at U.S. DOLLARS TWO HUNDRED SEVENTY FOUR MILLION FIVE HUNDRED FORTY NINE THOUSAND (US$ 274,549,000.00) from the manning industry and another US DOLLARS FOUR BILLION SIX HUNDRED FIFTY MILLION SEVEN HUNDRED SIX THOUSAND (US$ 4,650,706,000.00) from the land-based sector if seafarers and equally situated land-based contract workers will be declared regular employees;

7.3 Some 195,917 (as of 1998) deployed overseas Filipino seafarers will be rendered jobless should we lose the market;

7.4 Some 360 manning agencies (as of 30 June 2000) whose principals may no longer be doing business with them will close their shops;

7.5. The contribution to the Overseas Worker's Welfare Administration by the sector, which is USD 25.00 per contract and translates to US DOLLARS FOUR MILLION (US$ 4,000,000.00) annually, will be drastically reduced. This is not to mention the processing fees paid to POEA, Philippine Regulatory Commission (PRC), Department of Foreign Affairs (DFA) and Maritime Industry Authority (MARINA) for the documentation of these seafarers;

7.6 Worst, some 195,917 (as of 1998) families will suffer socially and economically, as their breadwinners will be rendered jobless; and

7.7 It will considerably slow down the government's program of employment generation, considering that, as expected

> foreign employers will now avoid hiring Filipino overseas contract workers as they will become regular employees with all its concomitant effects.[15]

Significantly, the Office of the Solicitor General, in a departure from its original position in this case, has now taken the opposite view. It has expressed its apprehension in sustaining our decision and has called for a re-examination of our ruling.[16]

Considering all the arguments presented by the private respondents, the Intervenor FAME and the OSG, we agree that there is a need to reconsider our position with respect to the status of seafarers which we considered as regular employees under Article 280 of the Labor Code. We, therefore, partially grant the second motion for reconsideration.

In Brent School Inc. vs. Zamora,[17] the Supreme Court stated that Article 280 of the Labor Code does not apply to overseas employment.

In the light of the foregoing description of the development of the provisions of the Labor Code bearing on term or fixed-period employment that the question posed in the opening paragraph of this opinion should now be addressed. Is it then the legislative intention to outlaw stipulations in employment contracts laying down a definite period therefor? Are such stipulations in essence contrary to public policy and should not on this account be accorded legitimacy?

On the other hand, there is the gradual and progressive elimination of references to term or fixed-period employment in the Labor Code, and the specific statement of the rule that:

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 employee 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 actually exists.

There is, on the other hand, the Civil Code, which has always recognized, and continues to recognize, the validity and propriety of contracts and obligations with a fixed or definite period, and imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object, be it specific, goods or services, except the general admonition against stipulations contrary to law, morals, good customs, public order or public policy. Under the Civil Code, therefore, and as a general proposition, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by natural seasonal or for specific projects with predetermined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.

Some familiar examples may be cited of employment contract which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied. Article 280 of the Labor Code notwithstanding also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. Similarly, despite the provisions of Article 280, Policy Instructions. No. 8 of the Minister of Labor implicitly recognize that certain company officials may be elected for what would amount to fix periods, at the expiration of which they would have to stand down, in providing that these officials, may lose their jobs as president, executive vice-president or vice-president, etc. because the

stockholders or the board of directors for one reason or another did not reelect them.
There can of course be no quarrel with the proposition that where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregard as contrary to public policy, morals, etc. But where no such intent to circumvent the law is shown, or stated otherwise, where the reason for the law does not exist, e.g., where it is indeed the employee himself who insists upon a period or where the nature of the engagement is such that, without being seasonal or for a specific project, a definite date of termination is a sine qua non, would an agreement fixing a period be essentially evil or illicit, therefore anathema? Would such an agreement come within the scope of Article 280 which admittedly was enacted "to prevent the circumvention of the right of the employee to be secured in his employment.

As it is evident from even only the three examples already given that Article 280 of the Labor Code, under a narrow and literal interpretation, not only fails to exhaust the gamut of employment contracts to which the lack of a fixed period would be an anomaly, but would also appear to restrict, without reasonable distinctions, the right of an employee to freely stipulate within his employer the duration of his engagement, it logically follows that such a literal interpretation should be eschewed or avoided. The law must be given a reasonable interpretation, to preclude absurdity in its application. Outlawing the whole concept of term employment and subverting to boot the principle of freedom of contract to remedy the evil of employer's using it as a means to prevent their employees from obtaining security of tenure is like cutting off the nose to spite the face or, more relevantly, curing a headache by lopping of the head.

It is a salutary principle in statutory construction that there exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences."

Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or unreasonable consequences. That is a principle that goes back to In Re Allen decided on October 27, 1902, where it was held that a literal interpretation is to be rejected if it would be unjust or lead to absurd results. That is a strong argument against its adoption. The words of Justice Laurel are particularly apt. Thus: "the appellants would lead to an absurdity is another argument for rejecting it."

We have, here, then a case where the true intent of the law is clear that calls for the application of the cardinal rule of statutory construction that such intent of spirit must prevail over the letter thereof, for whatever is within the spirit of a statute is within the statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out; agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.

Again, in Pablo Coyoca vs. NLRC,[18] the Court also held that a seafarer is not a regular employee and is not entitled to separation

pay. His employment is governed by the POEA Standard Employment Contract for Filipino Seamen.

In this connection, it is important to note that neither does the POEA standard employment contract for Filipino seamen provide for such benefits.

As a Filipino seaman, petitioner is governed by the Rules and Regulations Governing Overseas Employment and the said Rules do not provide for separation or termination pay. What is embodied in petitioner's contract is the payment of compensation arising from permanent partial disability during the period of employment. We find that private respondent complied with the terms of the contract when it paid petitioner P42,315.00 which, in our opinion, is a reasonable amount, as compensation for his illness.

Lastly, petitioner claims that he eventually became a regular employee of private respondent and thus falls within the purview of Articles 284 and 95 of the Labor Code. In support of this contention, petitioner cites the case of Worth Shipping Service, Inc., et al. vs. NLRC et al., wherein we held that the crew members of the shipping company had attained regular status and thus, were entitled to separation pay. However, the facts of said case differ from the present. In Worth, we held that the principal and agent had "operational control and management" over the MV Orient Carrier and thus, were the actual employers of their crew members.

From the foregoing cases, it is clear that seafarers are considered contractual employees. They can not be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.[19] We need not depart from the rulings of the Court in the two

aforementioned cases which indeed constitute stare decisis with respect to the employment status of seafarers.

Petitioners insist that they should be considered regular employees, since they have rendered services which are usually necessary and desirable to the business of their employer, and that they have rendered more than twenty (20) years of service. While this may be true, the Brent case has, however, held that there are certain forms of employment which also require the performance of usual and desirable functions and which exceed one year but do not necessarily attain regular employment status under Article 280.[20] Overseas workers including seafarers fall under this type of employment which are governed by the mutual agreements of the parties.

In this jurisdiction and as clearly stated in the Coyoca case, Filipino seamen are governed by the Rules and Regulations of the POEA. The Standard Employment Contract governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels of the POEA, particularly in Part I, Sec. C specifically provides that the contract of seamen shall be for a fixed period. And in no case should the contract of seamen be longer than 12 months. It reads:

> ***Section C. Duration of Contract***
>
> The period of employment shall be for a fixed period but in no case to exceed 12 months and shall be stated in the Crew Contract. Any extension of the Contract period shall be subject to the mutual consent of the parties.
>
> Moreover, it is an accepted maritime industry practice that employment of seafarers are for a fixed period only. Constrained by the nature of their employment which is quite peculiar and unique in itself, it is for the mutual interest of both the seafarer and the employer why the employment status must be contractual only or for a certain period of time. Seafarers spend most of their time at sea and understandably, they can not stay for a long and an indefinite period of time at sea.[21] Limited access to shore society during the employment will have an adverse impact on the seafarer. The national, cultural

> and lingual diversity among the crew during the COE is a reality that necessitates the limitation of its period.[22]

Petitioners make much of the fact that they have been continually re-hired or their contracts renewed before the contracts expired (which has admittedly been going on for twenty (20) years). By such circumstance they claim to have acquired regular status with all the rights and benefits appurtenant to it.

Such contention is untenable. Undeniably, this circumstance of continuous re-hiring was dictated by practical considerations that experienced crew members are more preferred. Petitioners were only given priority or preference because of their experience and qualifications but this does not detract the fact that herein petitioners are contractual employees. They can not be considered regular employees. We quote with favor the explanation of the NLRC in this wise:

> The reference to "permanent" and "probationary" masters and employees in these papers is a misnomer and does not alter the fact that the contracts for enlistment between complainants-appellants and respondent-appellee Esso International were for a definite periods of time, ranging from 8 to 12 months. Although the use of the terms "permanent" and "probationary" is unfortunate, what is, really meant is "eligible for-re-hire". This is the only logical conclusion possible because the parties cannot and should not violate POEA's requirement that a contract of enlistment shall be for a limited period only; not exceeding twelve (12) months.[23]

From all the foregoing, we hereby state that petitioners are not considered regular or permanent employees under Article 280 of the Labor Code. Petitioners' employment have automatically ceased upon the expiration of their contracts of enlistment (COE). Since there was no dismissal to speak of, it follows that petitioners are not entitled to reinstatement or payment of separation pay or backwages, as provided by law.

With respect to the benefits under the Consecutive Enlistment Incentive Plan (CEIP), we hold that the petitioners are still entitled to

receive 100% of the total amount credited to him under the CEIP. Considering that we have declared that petitioners are contractual employees, their compensation and benefits are covered by the contracts they signed and the CEIP is part and parcel of the contract.

The CEIP was formulated to entice seamen to stay long in the company. As the name implies, the program serves as an incentive for the employees to renew their contracts with the same company for as long as their services were needed. For those who remained loyal to them, they were duly rewarded with this additional remuneration under the CEIP, if eligible. While this is an act of benevolence on the part of the employer, it can not, however, be denied that this is part of the benefits accorded to the employee's for services rendered. Such right to the benefits is vested upon them upon their eligibility to the program.

The CEIP provides that an employee becomes covered under the Plan when he completes thirty-six (36) months or an equivalent of three (3) years of credited service with respect to employment after June 30, 1973.[24] Upon eligibility, an amount shall be credited to his account as it provides, among others:

III. Distribution of Benefits

A. Retirement, Death and Disability

When the employment of an employee terminates because of his retirement, death or permanent and total disability, a percentage of the total amount credited to his account will be distributed to him (or his eligible survivor(s) in accordance with the following:

	Reason for Termination	*Percentage*
a)	Attainment of mandatory retirement age of 60.	100%
b)	Permanent and total disability, while under contract, that is not due to accident or misconduct.	100%

c)	Permanent and total disability, while under contract, that is due to accident, and not due to misconduct.	100%

x x x

B. Voluntary Termination

When an employee voluntary terminates his employment with at least 36 months of credited service without any misconduct on his part, 18 percent of the total amount credited to his account, plus an additional ½ of one percent for each month (up to a maximum of 164 months of credited service in excess of 36, will be distributed to him provided (1) the employee has completed his last Contract of Enlistment and (2) employee advises the company in writings within 30 days, from his last disembarkation date, of his intention to terminate his employment, (To advise the Company in writing means that the original letter must be sent to the Company's agent in the Philippines, a copy sent to the Company in New York).

x x x

C. Other Termination

When the employment of an employee is terminated by the Company for a reason other than one in A and B above, without any misconduct on his part, a percentage of the total amount credited to his account will be distributed to him in accordance with the following.

Credited Service	Percentage
36 months	50%
48 "	75%
60 "	100%

When the employment of an employee is terminated due to his poor-performance, misconduct, unavailability, etc., or if employee is not offered re-engagement for similar reasons, no distribution of any portion of employee's account will ever be made to him (or his eligible survivors).

It must be recalled that on June 21, 1989, Millares wrote a letter to his employer informing his intention to avail of the optional retirement plan under the CEIP considering that he has rendered more than twenty (20) years of continuous service. Lagda, likewise, manifested the same intention in a letter dated June 26, 1989. Private respondent, however, denied their requests for benefits under the CEIP since: (1) the contract of enlistment (COE) did not provide for retirement before 60 years of age; and that (2) petitioners failed to submit a written notice of their intention to terminate their employment within thirty (30) days from the last disembarkation date pursuant to the provision on Voluntary Termination of the CEIP. Petitioners were eventually dropped from the roster of crew members and on grounds of "abandonment" and "unavailability for contractual sea service", respectively, they were disqualified from receiving any benefits under the CEIP.[25]

In our March 14, 2000 Decision, we, however, found that petitioners Millares and Lagda were not guilty of "abandonment" or "unavailability for contractual sea service," as we have stated:

> The absence of petitioners was justified by the fact that they secured the approval of private respondents to take a leave of absence after the termination of their last contracts of enlistment. Subsequently, petitioners sought for extensions of their respective leaves of absence. Granting arguendo that their subsequent requests for extensions were not approved, it cannot be said that petitioners were unavailable or had abandoned their work when they failed to report back for assignment as they were still questioning the denial of private respondents of their desire to avail of the optional early retirement policy, which they believed in good faith to exist.[26]

Neither can we consider petitioners guilty of poor performance or misconduct since they were recipients of Merit Pay Awards for their exemplary performances in the company.

Anent the letters dated June 21, 1989 (for Millares) and June 26, 1989 (for Lagda) which private respondent considered as belated written notices of termination, we find such assertion specious. Notwithstanding, we could conveniently consider the petitioners eligible under Section III-B of the CEIP (Voluntary Termination), but this would, however, award them only a measly amount of benefits which to our mind, the petitioners do not rightfully deserve under the facts and circumstances of the case. As the CEIP provides:

> III. Distribution of Benefits
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> x x x
>
> E. Distribution of Accounts
>
> When an employee terminates under conditions that would qualify for a distribution of more than one specified in A, B or C above, the largest single amount, only, will be distributed.
>
> Since petitioners' termination of employment under the CEIP do not fall under Section III-A (Retirement, Death and Disability) or Section III-B (Voluntary Termination), nor could they be considered under the second paragraph of Section III-C, as earlier discussed; it follows that their termination falls under the first paragraph of Section III-C for which they are entitled to 100% of the total amount credited to their accounts. The private respondents can not now renege on their commitment under the CEIP to reward deserving and loyal employees as the petitioners in this case.

In taking cognizance of private respondent's Second Motion for Reconsideration, the Court hereby suspends the rules to make them conformable to law and justice and to subserve an overriding public interest.

IN VIEW OF THE FOREGOING, the Court Resolved to Partially **GRANT** Private Respondent's Second Motion for Reconsideration and Intervenor **FAMES'** Motion for Reconsideration in Intervention. The Decision of the National Labor Relations Commission dated June 1, 1993 is hereby **REINSTATED** with **MODIFICATION**. The Private Respondents, Trans-Global Maritime Agency, Inc. and Esso International Shipping Co., Ltd. are hereby jointly and severally **ORDERED** to pay petitioners One Hundred Percent (100%) of their total credited contributions as provided under the Consecutive Enlistment Incentive Plan (CEIP).

SO ORDERED.

Davide, Jr., *C.J.*, Puno, and Ynares-Santiago, *JJ.*, concur. Austria-Martinez, *J.*, no part. Did not participate in the decision.

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[1] 328 SCRA 79(2000). Rollo, p. 1026.
[2] Id., at 1032.
[3] Id., at 1074.
[4] Id., at 1110.
[5] Id., at 1010-1012.
[6] Rollo, p. 99.
[7] A Petition for Certiorari was filed on August 4, 1993, docketed as G.R. No. 110524.
[8] Id., at 1245.
[9] Id., at 2178.
[10] Id., at 1279.
[11] Id., at 2180.
[12] Supra.
[13] Id., at 2206.
[14] Id., at 1740.
[15] Id., at 1695-1697.
[16] Id, at 2258.
[17] 181 SCRA 702 (1990).
[18] 243 SCRA 190 (1995).
[19] Article 280, Labor Code.
[20] Rollo, p. 2258.
[21] Id., at 1723.
[22] Id., at 2270.
[23] Rollo, p. 102.
[24] CEIP, Par. I. Eligibility.

[25] Second paragraph under Section III-C on Other Terminations.
[26] Decision, p, 13.

SUPREME COURT
FIRST DIVISION

DOUGLAS MILLARES and ROGELIO LAGDA,
***Petitioners*,**

-versus-

G.R. No. 110524
March 14, 2000

NATIONAL LABOR RELATIONS COMMISSION, TRANS-GLOBAL MARITIME AGENCY, INC. and ESSO INTERNATIONAL SHIPPING CO., LTD.,
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

Petitioners Douglas Millares and Rogelio Lagda seek the nullification of the Decision, dated June 1, 1993, of the public respondent National Labor Relations Commission (NLRC) rendered in POEA Case (M) Adj 89-10-961 entitled "Douglas Millares and Rogelio Lagda vs. Trans-Global Maritime Agency, Inc. and ESSO International Shipping Co., Ltd., et. al." dismissing for lack of merit petitioners' appeal and motion for new trial and affirming the decision, dated July 17, 1991,

rendered by the Philippine Overseas Employment Administration (POEA).

The antecedent facts of the instant case are as follows:

Petitioner Douglas Millares was employed by private respondent ESSO International Shipping Company Ltd. (Esso International, for brevity) through its local manning agency, private respondent Trans-Global Maritime Agency, Inc. (Trans-Global, for brevity) on November 16, 1968 as a machinist. In 1975, he was promoted as Chief Engineer which position he occupied until he opted to retire in 1989. He was then receiving a monthly salary of US $1,939.00.[1]

On June 13, 1989, petitioner Millares applied for a leave of absence for the period July 9 to August 7, 1989. In a letter dated June 14, 1989, Michael J. Estaniel, President of private respondent Trans-Global, approved the request for leave of absence.[2] On June 21, 1989, petitioner Millares wrote G.S. Hanly, Operations Manager of Exxon International Co., (now Esso International) through Michael J. Estaniel, informing him of his intention to avail of the optional retirement plan under the Consecutive Enlistment Incentive Plan (CEIP) considering that he had already rendered more than twenty (20) years of continuous service. On July 13, 1989 respondent Esso International, through W. J. Vrints, Employee Relations Manager, denied petitioner Millares' request for optional retirement on the following grounds, to wit: (1) he was employed on a contractual basis; (2) his contract of enlistment (COE) did not provide for retirement before the age of sixty (60) years; and (3) he did not comply with the requirement for claiming benefits under the CEIP, i.e., to submit a written advice to the company of his intention to terminate his employment within thirty (30) days from his last disembarkation date.[3]

On August 9, 1989, petitioner Millares requested for an extension of his leave of absence from August 9 to 24, 1989. On August 19, 1989, Roy C. Palomar, Crewing Manager, Ship Group A, Trans-Global, wrote petitioner Millares advising him that respondent Esso International "has corrected the deficiency in its manpower requirements specifically in the Chief Engineer rank by promoting a First Assistant Engineer to this position as a result of (his) previous

leave of absence which expired last August 8, 1989. The adjustment in said rank was required in order to meet manpower schedules as a result of (his) inability."[4]

On September 26, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Millares that in view of his absence without leave, which is equivalent to abandonment of his position, he had been dropped from the roster of crew members effective September 1, 1989.[5]

On the other hand, petitioner Lagda was employed by private respondent Esso International as wiper/oiler in June 1969. He was promoted as Chief Engineer in 1980, a position he continued to occupy until his last COE expired on April 10, 1989. He was then receiving a monthly salary of US $1,939.00.[6]

On May 16, 1989, petitioner Lagda applied for a leave of absence from June 19, 1989 up to the whole month of August 1989. On June 14, 1989, respondent Trans-Global's President, Michael J Estaniel, approved petitioner Lagda's leave of absence from June 22, 1989 to July 20, 1989[7] and advised him to report for re-assignment on July 21, 1989.

On June 26, 1989, petitioner Lagda wrote a letter to G.S. Stanley, Operations Manager of respondent Esso International, through respondent Trans-Global's President Michael J Estaniel, informing him of his intention to avail of the optional early retirement plan in view of his twenty (20) years continuous service in the company. [8]

On July 13, 1989, respondent Trans-Global denied petitioner Lagda's request for availment of the optional early retirement scheme on the same grounds upon which petitioner Millares' request was denied.[9]

On August 3, 1989, he requested for an extension of his leave of absence up to August 26, 1989 and the same was approved[10] However, on September 27, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Lagda that in view of his "unavailability for contractual sea service," he had been dropped from the roster of crew members effective September 1, 1989.[11]

On October 5, 1989, petitioners Millares and Lagda filed a complaint-affidavit, docketed as POEA (M) 89-10-9671, for illegal dismissal and non-payment of employee benefits against private respondents Esso International and Trans-Global, before the POEA.

On July 17, 1991, the POEA rendered a decision dismissing the complaint for lack of merit.[12]

Petitioners appealed the decision to the NLRC. On June 1, 1993, public respondent NLRC rendered the assailed decision dismissing petitioners' appeal and denying their motion for new trial for lack of merit.[13]

Hence, the instant petition for certiorari based on the following grounds:

I. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT REGULAR EMPLOYEES.

II. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID, DESPITE THE ABSENCE OF ANY JUST OR AUTHORIZED CAUSE FOR DISMISSAL.

III. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID, DESPITE THE FACT THAT PETITIONERS WERE NOT GIVEN AN OPPORTUNITY TO BE HEARD PRIOR TO THEIR TERMINATION.

IV. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT ENTITLED TO ANY RETIREMENT BENEFIT UNDER THE OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS.

V. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE THAT, EVEN IN

THE ABSENCE OF AN OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS, PETITIONERS WERE STILL ENTITLED TO RECEIVE 100% OF THEIR TOTAL CREDITED CONTRIBUTIONS TO THE CEIP, AS EXPRESSLY PROVIDED IN PARS. 2 (g) AND 2 (h) OF THE LETTER MEMORANDUM DATED MARCH 9, 1977 (ANNEX E OF ANNEX C-PETITION) AND PAR. III, SEC. (c) AND PAR III, SEC (b) OF THE CEIP (ANNEX D-PETITION) WHICH WERE ISSUED BY RESPONDENTS.

VI. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY FOR DAMAGES OF RESPONDENTS FOR HAVING WRONGFULLY AND MALICIOUSLY CAUSED THE NAME OF PETITIONER MILLARES TO BE PLACED IN THE POEA WATCHLIST AND THEREBY PREVENTING HIS TIMELY DEPARTURE.

VII. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY OF RESPONDENTS FOR PAYMENT OF MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES AND COSTS OF LITIGATION.[14]

Petitioners contend that public respondent NLRC gravely abused its discretion in ruling that they are not regular employees but are merely contractual employees whose employments are terminated every time their contracts of employment expire. Petitioners further aver that after rendering twenty (20) consecutive years of service, performing activities which were necessary and desirable in the trade or business of private respondents, they should be considered regular employees under Article 280 of the Labor Code. Consequently, they may only be dismissed for any of the just or authorized causes for dismissal provided by law. Furthermore, petitioners asseverate that their dismissal was unlawful for failure of private respondents to comply with the twin requirements of due process, i.e., notice and hearing. Petitioners allege that they were not given any opportunity to be heard by private respondents prior to their termination.

Petitioners further contend that public respondent gravely abused its discretion in not giving evidentiary weight to the affirmation of eleven (11) former employees, as well as three (3) other witnesses as to the existence of the optional early retirement policy. Said witnesses were allegedly present when Captain Estaniel announced the optional early retirement policy under the CEIP. On the other hand, while the 11 former employees were not actually present at the announcement thereof, they attested to the fact that they were informed of said policy by the officers of private respondents. Petitioners point out that these former employees did not stand to benefit from the policy; thus, in the absence of any vested interest on their part, their affidavits should have been given more weight than the self-serving denials of private respondents' officers.

Petitioners also invoke the principle of estoppel. According to petitioners, estoppel bars a party who has, by his own declaration, act or omission, led another to believe a particular thing to be true, and to act upon such belief, from denying his own acts and representations to the prejudice of the other party who relied upon them. In the instant case, petitioners allege that since they relied in good faith and acted on the basis of the representations of private respondents that an optional early retirement plan indeed existed, the principle of estoppel in pais is clearly applicable to them.

Petitioners, likewise, maintain that public respondent NLRC seriously erred in invoking the parol evidence rule against them as there is no written agreement to speak of on optional retirement so as to make this rule applicable. Petitioners declare that "nowhere in the contract (of enlistment) is there any mention of the specific terms of the CEIP, particularly the provisions on the extent of benefits to be received by the seamen" but rather, the "specific details are contained in a separate document which is in the nature of an inter-office memorandum that is unilaterally issued by private respondents."

Petitioners further claim that public respondent NLRC abused its discretion in failing to consider that even in the absence of the optional early retirement policy, petitioners are still entitled to receive 100% of their total credited contributions to the CEIP either under Sec. III, par. (c) of the CEIP, or par. 2 (h) of the Letter-Memorandum dated March 9, 1977. Said memorandum which was

signed by the then President/Chairman of Trans-Global, Inocencio P Estaniel (now deceased), itemized the benefits that may be availed of by eligible employees. Paragraph 2 (h) thereof allegedly guarantees that an employee who is terminated for any reason, other than misconduct on his part, will be given 100% of the Total Credited CEIP Contributions for sixty (60) months of credited service.

On the other hand, Section III, paragraph (c) of the Consecutive Enlistment Incentive Plan provides:

III. Distribution of Benefits

x x x

C. Other Terminations

When the employment of an employee is terminated by the Company for a reason other than one in A, without any misconduct on his part, a percentage of the total amount credited to his account will be distributed to him in accordance with the following.

Credited Service	*Percentage*
36 months	50%
48 months	75%
60 months	100%

When the employment of an employee is terminated due to his poor performance, misconduct, unavailability, etc., or if employee is not offered re-engagement for similar reasons, no distribution of any portion of employee's account will ever be made to him (or his eligible survivor/s). A determination of poor performance, misconduct and unavailability shall be made by the Company.

Misconduct shall include acts and offenses as defined in the Contract of Enlistment and Company Manuals.

x x x[15]

Petitioners claim that since both of them had rendered at least twenty (20) years, or 240 months, of faithful service to private respondents, they are entitled to receive 100% of the total credited contributions, pursuant to the aforesaid provisions. Contrary to the findings of public respondent, petitioners argue that they were not guilty of "poor performance" for petitioner Millares, in fact, qualified for the Merit Pay Program"[16] of private respondents at least 5 times in the years 1977, 1984, 1985, 1986 and 1987 in recognition of his above-average performance as ship officer. On the other hand, petitioner Lagda qualified for the Merit Pay Program for 3 consecutive years, i.e., in 1986, 1987 and 1988, likewise, in view of his above-average performance.

Petitioner Millares further contends that public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it failed to rule that private respondents should pay actual damages in the amount of P770,000.00 for having wrongfully caused his name to be placed in the POEA watchlist.[17] Such wrongful act allegedly prevented petitioner Millares' from leaving the Philippines to report on time to his new employer, NAESS Shipping Corporation. Anent petitioner, public respondent failed to consider the evidence presented by petitioner Millares on this issue.

Finally, petitioners aver that public respondent erred in not granting them moral and exemplary damages, as well as attorney's fees and costs of litigation.

At this juncture, it is worthy to note that the Solicitor General, in his Manifestation and Motion in Lieu of Comment, manifested that he is not opposing the instant petition and that he, in fact, finds the contentions of petitioners meritorious in part.

Article 280 of the Labor Code, as amended, defines regular employment as follows:

> ARTICLE 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 services 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.
>
> The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.[18]

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 one year, even if the performance is not continuous or merely intermittent, the law deems the 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 also considered regular, but only with respect to such activity and while such activity exists.[19]

In the case at bar, it is undisputed that petitioners were employees of private respondents until their services were terminated on September 1, 1989. They served in their capacity as Chief Engineers, performing activities which were necessary and desirable in the business of private respondents Esso International, a shipping

company; and Trans-Global, its local manning agency which supplies the manpower and crew requirements of Esso International's vessels.

It is, likewise, clear that petitioners had been in the employ of private respondents for 20 years. The records reveal that petitioners were repeatedly re-hired by private respondents even after the expiration o their respective eight-month contracts. Such repeated re-hiring which continued for 20 years, cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioners' service to the private respondents' business or trade.

Verily, as petitioners had rendered 20 years of service, performing activities which were necessary and desirable in the business or trade of private respondents, they are, by express provision of Article 280 of the Labor Code, considered regular employees.

Being regular employees, petitioners may not be dismissed except for a valid or just cause under Article 282 of the Labor Code.[20] In the instant case, clearly ,there was no valid cause for the termination of petitioners. It will be recalled, that petitioner Millares was dismissed for allegedly having "abandoned" his post; and petitioner Lagda, for his alleged "unavailability for contractual sea service." However, that petitioners did not abandon their jobs such as to justify the unlawful termination of their employment is borne out by the records.

To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[21]

In this case, private respondents failed to discharge this burden. They did not adduce any proof of some overt act of the petitioners that clearly and unequivocally show their intention to abandon their posts. On the contrary, the petitioners lost no time in filing the case for illegal dismissal against private respondents, taking them only about a month from the time their termination became effective on

September 1, 1989 to the filing of their complaint on October 5, 1989. They cannot, by any reasoning, be said to have abandoned their work, for as we have also previously ruled, the filing by an employee of a complaint for illegal dismissal is proof enough of his desire to return to work, thus negating the employer's charge of abandonment.[22]

Furthermore, the absence of petitioners was justified by the fact that they secured the approval of private respondents to take a leave of absence after the termination of their last contracts of enlistment. Subsequently, petitioners sought for extensions of their respective leaves of absence. Granting arguendo that their subsequent requests for extensions were not approved, it cannot be said that petitioners were unavailable or had abandoned their work when they failed to report back for assignment as they were still questioning the denial of private respondents of their desire to avail of the optional early retirement policy, which they believed in good faith to exist.

Clearly, petitioners' termination is illegal. Thus, under Article 279[23] of the Labor Code, petitioners are entitled to reinstatement without loss of seniority rights and other privileges and to their full backwages, inclusive of allowances, and to their other benefits or the monetary equivalent thereof computed from the time their compensation was withheld from them up to the time of their actual reinstatement. Should reinstatement not be possible, private respondents are ordered to pay petitioners separation pay as provided by law.

Anent petitioners' contention that they are entitled to retirement benefits under the optional retirement policy, we are constrained to uphold the findings of public respondent NLRC. A perusal of the records will reveal that the NLRC did not err in denying petitioners' claim under the optional retirement policy allegedly announced by Captain Inocencio Estaniel at the General Assembly held at the Army and Navy Club sometime in 1977. The evidence of petitioners regarding the supposed announcement by Captain Estaniel of the controverted optional retirement plan which consisted merely of the affidavits of petitioners and their witnesses was successfully rebutted by the evidence adduced by private respondents. Furthermore, nowhere in the CEIP[24] is there a reference to the alleged optional

retirement plan, nor is there a provision for retirement upon service of 20 years in the company.

Having failed to substantiate their allegation that indeed Captain Estaniel announced this company policy on early retirement in 1977, petitioners cannot, thus, successfully invoke the doctrine of estoppel against private respondents.

Regarding petitioners' allegation that public respondent NLRC seriously erred in invoking the parol evidence rule against petitioners as there is no written agreement on optional retirement so as to make this rule applicable, we find the same to be without merit. Contrary to the allegations of petitioners, provisions on retirement benefits are specifically embodied in the CEIP which was part and parcel of the contract of enlistment signed by the petitioners Moreover, we note that petitioners are in fact anchoring their claim for retirement benefits, in the alternative, under Section III, paragraph (c) of this same CEIP. Hence, they cannot validly deny the existence of the provisions on retirement benefits, and rely merely on the alleged unilateral issuance of private respondents.

The above notwithstanding, petitioners call nevertheless properly claim 100% of the total amount credited to their account under Section III of the CEIP,[25] as well as paragraph 2 (h) of the Memorandum dated March 9, 1977.[26] The Consecutive Enlistment Incentive Plan or CEIP provides, among others (a) that when the employment of an employee terminates because of his retirement [with sixty (60) years being the mandatory retirement age], death or permanent and total disability, 100% of the total amount credited to his account will be distributed to him (or his eligible survivor/s); (b) that when an employee voluntarily terminates his employment (regardless of the reason) no distribution of any portion of the employee's account will ever be made to him (or to his eligible survivor/s); and, (c) that when the termination is for a reason other than retirement, death or permanent and total disability, without any misconduct on his part, he shall be entitled to 50% (for 36 months credited service), 75% (48 months) and 100% (60 months) of the total amount credited to his account. The CEIP, further, provides that when the employment is terminated due to his poor performance, misconduct, unavailability, etc., or if the employee is not offered re-

engagement for similar reasons, no distribution of any portion of the employee's account will ever be made to him.

As discussed above, petitioners did not voluntarily terminate their employment with private respondents. They merely expressed their desire to avail of the optional early retirement plan in the mistaken belief that such plan existed and that they would still receive the benefits due them under the CEIP. Neither were they dismissed for any of the causes, i.e., poor performance, misconduct, unavailability, etc., which would result in forfeiture of the aforesaid retirement benefits. Rather, their dismissal was without just cause and, therefore, deemed illegal under the law. Hence, having been in the employ of private respondents for a good 20 years or 240 months, petitioners are entitled to the retirement benefits under Section III, paragraph (c) of the CEIP.[27]

Anent petitioner Millares' contention that he is entitled to an award of actual damages in the amount of P770,000 00, we find the same to be bereft of merit. Actual or compensatory damages is the term used for compensation for pecuniary loss — in trade business, property, profession, job or occupation. The same must be proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given.[28]

Petitioner Millares failed to substantiate his claim that the placing of his name on the POEA watchlist cost him his new job with NAESS Shipping Corporation and that he incurred losses in the sum of P770,000.00. On the contrary, private respondents, despite their admission that the placing of petitioner Millares' name on the watchlist was a mistake, were able to prove that he was able to leave the Philippines notwithstanding such mistake.

Finally, on the issue of whether or not private respondents are liable to pay moral and exemplary damages, attorney's fees and costs, the Court rules in the negative. The records reveal that petitioners failed to establish that they suffered diverse injuries such as mental anguish, besmirched reputation, wounded feelings and social humiliation on account of private respondents' wrongful act or omission such as to entitle them to an award of moral damages under the Civil Code. The award of moral damages cannot be justified solely upon the premise that the employer fired his employee without just

cause or due process. Likewise, petitioners failed to establish that their dismissal was effected in a wanton, oppressive or malevolent manner to justify an award of exemplary damages. Hence, no moral or exemplary damages may be awarded to the petitioners. Consequently, neither can they claim attorney's fees or costs of litigation.

WHEREFORE, premises considered, the assailed Decision, dated June 1, 1993, of the National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE** and a new judgment is hereby rendered ordering the private respondents to:

(1) Reinstate petitioners Millares and Lagda to their former positions without loss of seniority rights, and to pay full backwages computed from the time of illegal dismissal to the time of actual reinstatement;

(2) Alternatively, if reinstatement is not possible, pay petitioners Millares and Lagda separation pay equivalent to one month's salary for every year of service;

(3) Jointly and severally pay petitioners One Hundred Percent (100%) of their total credited contributions as provided under the Consecutive Enlistment Incentive Plan.

SO ORDERED.

Davide, Jr., *C.J.*, Puno, Pardo and Ynares-Santiago, *JJ.*, concur.

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[1] Rollo, p. 531.
[2] Ibid.
[3] Id., at 533.
[4] Id., at 532.
[5] Id.
[6] Id.
[7] Id.
[8] Rollo, p. 621.
[9] Ibid.
[10] Id., at 532.

[11] Id., at 62 1 -622.
[12] Id., at 531.
[13] Id., at 95.
[14] Id., 30-31.
[15] Id., at 172.
[16] Merit Pay Program Objective. — Eligible are Masters and Chief Engineers who are permanent (and are not in Probationary Status anymore). However not every eligible officer receives Merit Pay. The philosophy underlying the Merit Pay Program is recognition of "extra effort." With this philosophy in mind, an eligible officer who does what is expected in the execution of his duties receives his normal pay. It is those Officers whose performance is above just what is expected that are recognized for their extra effort. *(Emphasis supplied)*
[17] Rollo, p. 85.
[18] De Leon vs. National Labor Relations Commission, 176 SCRA 615 (1989).
[19] Id., at 621.
[20] Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders or his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing.
[21] Artemio Labor, et al vs. NLRC and Gold City Commercial Complex, Inc., and Rudy Uy, 248 SCRA 183 (1995).
[22] Id., at 98.
[23] Art. 279. Security of Tenure. — In cases of regular employment the employer shall not terminate the services of an employee except for 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.
[24] Rollo, pp. 170-173.
[25] supra.
[26] supra.
[27] supra.
[28] Rubio vs. Court of Appeals, 141 SCRA 488 (1986).