SUPREME COURT
THIRD DIVISION

ORLANDO M. ESCAREAL,
***Petitioner*,**

-versus-

G.R. No. 99359
September 2, 1992

NATIONAL LABOR RELATIONS COMMISSION, HON. MANUEL P. ASUNCION, Labor Arbiter, NLRC, National Capital Region, PHILIPPINE REFINING COMPANY, INC., CESAR BAUTISTA and GEORGE B. DITCHING,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

Petitioner seeks to set aside the Decision[1] dated 14 January 1991 and the Resolution[2] dated 13 May 1991 of the respondent National Labor Relations Commission (hereinafter, NLRC) in NLRC Case No. 00-08-03412-88 entitled Orlando M. Escareal vs. Philippine Refining Company, Inc. The said Decision affirmed with modification the 19 February 1990 Decision[3] of the respondent Labor Arbiter Manuel P. Asuncion while the Resolution denied the motion for a reconsideration of the former.

The dispositive portion of the respondent Labor Arbiter's Decision reads:

> "WHEREFORE, the respondent is hereby ordered to pay the complainant his redundancy pay in accordance with existing company policy on the matter. This is without prejudice to the grant of additional benefits offered by the respondent during the negotiation stage of the case, though it never materialized for failure of the parties to reach an agreement.
>
> SO ORDERED."

The controversy stemmed from the dismissal of the petitioner from the private respondent Philippine Refining Company, Inc. (hereinafter, PRC) after almost eleven (11) years of gainful employment.

Petitioner was hired by the PRC for the position of Pollution Control Manager effective on 16 September 1977 with a starting monthly pay of P4,230 00;[4] the employment was made permanent effective on 16 March 1978.[5] The contract of employment provides, inter alia, that his "retirement date will be the day you reach your 60th birthday, but there is provision (sic) for voluntary retirement when you reach your 50th birthday. Bases for the hiring of the petitioner are Letter of Instruction (LOI) No. 588 implementing the National Pollution Control Decree, P.D No. 984, dated 19 August 1977, the pertinent portion of which reads:

> "1. All local governments, development authorities, government-owned or controlled corporations, industrial, commercial and manufacturing establishments, and all other public and private entities, whose functions involve the discharge or emission of pollutants into the water, air and/or land resources or the operation, installation or construction of any anti-pollution device, treatment work or facility, sewerage or sewerage disposal system, shall each appoint and/or designate a Pollution Control Officer."

and Memorandum Circular No. 02,[6] dated 3 August 1981 and implementing LOI No. 588, which amended Memorandum Circular No. 007, Series of 1977, issued by the National Pollution Control Commission (NPCC), the pertinent portions of which read:

> "Section 3. Appointment/Designation of Pollution Control Officer. — All local governments, development authorities, government-owned or controlled corporations, industrial and manufacturing establishments, and public and private entities falling within the purview of Letter of Instruction No. 588, shall each appoint and/or designate a Pollution Control Officer.
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> x x x
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> Section 6. Employment Status-In the employment of Pollution Control Officer, the following additional requirements shall be observed:
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> x x x
>
> (b) Private Entities —
>
> 1. Industrial and Manufacturing establishment and other private entities with capitalization of one million pesos and above shall employ a full time pollution control officer.
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> x x x
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> Section 9. Accreditation of Pollution Control Officer. — A (sic) duly appointed and/or designated pollution control officers shall submit copies of their designation and/or appointments to the Commission within thirty (30) days from the date of such designation/appointment together with their biodata and curriculum vitae for accreditation purposes. In case of the termination of the appointment/designation of a pollution control officer for any reason whatsoever, it shall be the responsibility of his employer to inform the Commission of the same immediately to appoint/designate his successor within thirty (30) days after said termination. (Emphasis supplied)"

On 1 April 1979, petitioner was also designated as Safety Manager pursuant to Article 162 of the Labor Code (P.D. 442, as amended) and the pertinent implementing rule thereon. At the time of such designation, petitioner was duly accredited as a Safety Practitioner by the Bureau of Labor Standards, Department of Labor and Employment (DOLE) and the Safety Organization of the Philippines. Article 162 of the Labor Code, as amended, provides:

> "ARTICLE 162. Safety and Health Standard. — The Secretary of Labor shall, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new, and update existing, programs to ensure safe and healthful working conditions in all places of employment."

In addition, the pertinent rules on Occupational Health and Safety implementing the Labor Code provide for the designation of full-time safety men to ensure compliance with the safety requirements prescribed by the Bureau of Labor Standards.[7] Consequently, petitioner's designation was changed to Pollution Control and Safety Manager.

In the course of his employment, petitioner's salary was regularly upgraded; the last pay hike was granted on 28 March 1988 when he was officially informed[8] that his salary was being increased to P23,100.00 per month effective 1 April 1988. This last increase is indisputably a far cry from his starting monthly salary of P4,230.00.

Sometime in the first week of November 1987, private respondent George B. Ditching, who was then PRC's Personnel Administration Manager, informed petitioner about the company's plan to declare the position of Pollution Control and Safety Manager redundant. Ditching attempted to convince petitioner to accept the redundancy offer or avail of the company's early retirement plan. Petitioner refused and instead insisted on completing his contract as he still had about three and a half (3 ½) years left before reaching the mandatory retirement age of sixty (60).

On 15 June 1988, Jesus P. Javelona, PRC's Engineering Department Manager and petitioner's immediate superior, formally informed the petitioner that the position of "Safety and Pollution Control Manager will be declared redundant effective at the close of work hours on 15th July 1988."[9] Petitioner was also notified that the functions and duties of the position to be declared redundant will be absorbed and integrated with the duties of the Industrial Engineering Manager; as a result thereof, the petitioner "will receive full separation benefits provided under the PRC Retirement Plan and additional redundancy payment under the scheme applying to employees who are 50 years old and above and whose jobs have been declared redundant by Management."

Petitioner protested his dismissal via his 22 June 1988 letter to Javelona.[10] This notwithstanding, the PRC unilaterally circulated a clearance[11] dated 12 July 1988, to take effect on 15 July 1988, indicating therein that its purpose is for the petitioner's "early retirement" — and not redundancy. Petitioner confronted Javelona; the latter, in his letter dated 13 July 1988, advised the former that the employment would be extended for another month, or up to 15 August 1988.[12] Petitioner responded with a letter dated 25 July 1988 threatening legal action.[13]

Subsequently, or on 14 July 1988, Bernardo N. Jambalos III, respondent company's Industrial Relations Manager, sent a Notice of Termination[14] to the Ministry of Labor and Employment (MOLE) informing the latter that the petitioner was being terminated on the ground of redundancy effective 15 August 1988.

On 5 August 1988, petitioner had a meeting with private respondent Cesar Bautista and Dr. Reynaldo Alejandro, PRC's President and Corporate Affairs Director, respectively. To his plea that he be allowed to finish his contract of employment as he only had three (3) years left before reaching the mandatory retirement age, Bautista retorted that the termination was final.

On 8 August 1988, petitioner presented to Javelona a computation[15] showing the amount of P2,436,534.50 due him (petitioner) by way of employee compensation and benefits.

On the date of the effectivity of his termination, petitioner was only fifty-seven (57) years of age. He had until 21 July 1991, his sixtieth (60th) birth anniversary, before he would have been compulsorily retired.

Also, on the date of effectivity of petitioner's termination, 16 August 1988, Miguelito S. Navarro, PRC's Industrial Engineering Manager, was designated as the Pollution Control and Safety Officer. Such appointment is evidenced by two (2) company correspondences. In its letter dated 6 September 1988 to the Laguna Lake Development Authority, 16 PRC informed the said Authority, to wit:

> "With effect from 16 August 1988 the functions and duties of our Safety and Pollution Control Officer has (sic) been integrated and absorbed with those of our Industrial Engineering Manager.
>
> x x x
>
> The main tasks of our Industrial Engineering Manager, Mr. Miguelito S. Navarro, now includes (sic) safety and pollution control.
>
> Attached to (sic) the bio-data of Mr. Navarro for your accreditation as our designated Pollution Control Officer."

In its letter to the Safety Organization of the Philippines[17] dated 14 December 1988, PRC articulated Mr. Miguelito S. Navarro's designation as "Safety Officer of Phil. Refining Company."

In view of all this, petitioner filed a complaint for illegal dismissal with damages against the private respondent PRC before the Arbitration Branch, NLRC, National Capital Region; the case was docketed as NLRC-NCR Case No. 00-08-03412-88.[18] After trial, respondent Labor Arbiter Manuel P. Asuncion rendered a decision dated 19 February 1990, the dispositive portion of which was quoted earlier.

Petitioner appealed the said Decision to the NLRC which, in its Decision of 14 January 1991, made the following findings:

"Respondent contended that complainant Orlando M. Escareal was employed as Safety and Pollution Control Engineer on September 16, 1977; that as part of the Company's policy to streamline the work force and to keep the Organization more effective, it allegedly declared redundant several positions from all levels and departments of the company; that the position of 'Safety and Pollution Control Manager' which the herein complainant was holding at the time of dismissal, is one of those that were affected; that the functions of Mr. Escareal were fused with the Industrial Engineering Department, the latter being under the control and supervision of Mr. Miguelito S. Navarro; that no replacement and/or new appointment to said questioned position have (sic) been made; that respondent terminated complainant on the ground of redundancy and offered him P458,929.00 a separation pay; and that the above mentioned amount, is far above what complainant can get under the Labor Code, as amended.

x x x

The determination as to the usefulness of a particular department or section as an integral aspect of company prerogative, may not be questioned, the objective of which being to (sic) achieve profitability. (Special Events Control Shipping Office Workers Union vs. San Miguel Corporation, 122 SCRA 557).

x x x

To submit to the argument of herein Complainant that there is no basis in the management's decision to declare his position redundant is to deny the company of its inherent prerogative, without due process of law.

x x x

Turning to another issue of whether or not a fixed period of employment has been concluded, suffice it to say that it lacks legal and factual basis.

x x x

> If indeed, a fixed period of contract of employment has been concluded under the circumstances, the complainant would not have acceded to have undergone a probationary period. The (sic) latter being a condition sine-qua non before he became a regular worker. Consequently, the averment of breach of Contract pursuant to Article 1159, 1306 and 1308 of the New Civil Code of the Phils., is not in point. Additionally, to subscribe to the protestation of herein complainant that the reference of the retirement age at 60 in the company's letter dated August 22, 1977 meant fixed duration is to tie the hands of management in doing what is necessary to meet the exigencies of the business."

and then ruled that:

> "WHEREFORE, the appealed decision is hereby Affirmed, with modification ordering respondent-company to pay complainant his retirement pay in accordance with the company policy and other benefits granted to him thereunder, less outstanding obligations of the complainant with the company at the time of his dismissal."[19]

Undaunted by this second setback, the petitioner filed a Motion for Reconsideration[20] of this decision on 25 January 1991. Private respondent PRC also filed its own motion for reconsideration on the ground that petitioner is entitled to only one (1) benefit, and not to both. In a Resolution promulgated on 13 May 1991, the NLRC's First Division[21] ruled as follows:

> "WHEREFORE, in view thereof, the complainant's motion for reconsideration other than his pecuniary interest is hereby Dismissed for lack of merit. Accordingly, respondent-company (PRC) is ordered to pay Mr. Escareal's redundancy benefits in accordance with the company policy on the matter as follows:
>
> (a) Retirement credit of 1.5 months pay for every year of service in the amount of P363,825.00; and

(b) Ex-gratia, amounting to:

	P81,496.80
TOTAL	P445,321.80"
	=========

As a consequence thereof, the instant petition was filed on 29 May 1991.[22] Private respondent PRC filed its Comment on 21 August 1991[23] while the public respondent, through the Office of the Solicitor General, filed its Comment on 10 October 1991.[24]

On 16 October 1991,[25] this Court resolved, inter alia, to give due course to the petition and require the parties to file their respective Memoranda Petitioner complied with this Resolution on 12 December 1991;[26] public respondent NLRC, on the other hand, filed its Memorandum only on 24 March 1992.[27]

In his thorough and exhaustive Memorandum, herein petitioner makes the following assignment of errors:

"I

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN (sic) EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE RESPONDENT LABOR ARBITER THAT PETITIONER'S TERMINATION AS POLLUTION CONTROL AND SAFETY MANAGER OF RESPONDENT PRC ON THE GROUND OF REDUNDANCY WAS VALID — TOTALLY IGNORING THE FACT THAT PETITIONER'S POSITION WAS NEVER ABOLISHED BUT WAS MERELY GIVEN TO ANOTHER EMPLOYEE (MIGUELITO S. NAVARRO) WHO WAS IMMEDIATELY DESIGNATED AS A REPLACEMENT.

II

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN (sic) EXCESS OF JURISDICTION IN DECLARING THAT PETITIONER'S WRITTEN CONTRACT OF EMPLOYMENT WITH

RESPONDENT PRC WAS NOT FOR A DEFINITE PERIOD, AND THAT IT IS NOT VIOLATED NOTWITHSTANDING THE FACT THAT RESPONDENT PRC PREMATURELY SHORTENED PETITIONER'S RETIREMENT AGE AT 57 INSTEAD OF 60.

III

RESPONDENT NLRC COMMITTED A VERY SERIOUS ERROR AMOUNTING TO LACK OR IN (sic) EXCESS OF JURISDICTION IN DECLARING THAT THE PETITIONER IS NOT ENTITLED TO ANY SEPARATION PAY SUCH AS CASH EQUIVALENT OF HIS ACCUMULATED VACATION AND SICK LEAVE CREDITS, REDUNDANCY PAY, BONUSES, ETC., BUT ONLY TO HIS RETIREMENT BENEFITS UNDER THE PRC RETIREMENT PLAN UP TO AUGUST 16, 1988 (DATE OF HIS TERMINATION).

IV

RESPONDENT NLRC SERIOUSLY ERRED IN DECLARING THAT PETITIONER IS NOT ENTITLED TO DAMAGES, NOTWITHSTANDING RESPONDENT PRC'S AND ITS OFFICERS' EVIDENT BAD FAITH, WANTON AND PATENT VIOLATION OF PETITIONER'S WRITTEN CONTRACT OF EMPLOYMENT.

V

RESPONDENT NLRC GRAVELY ERRED IN NOT AWARDING PETITIONER AN AMOUNT FOR ATTORNEY'S FEE EQUIVALENT TO TEN (10%) PERCENT OF THE AMOUNT DUE, NOTWITHSTANDING THAT PETITIONER WAS COMPELLED TO LITIGATE BY REASON OF HIS ILLEGAL DISMISSAL AND OF RESPONDENT PRC'S AND ITS OFFICERS' MALICIOUS AND WANTON ACTS."[28]

We find for the petitioner.

Article 283 of the Labor Code provides:

> "ARTICLE 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher A fraction of at least six (6) months shall be considered one (1) whole year."

In Wiltshire File Co., Inc. vs. NLRC,[29] this Court held that redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise; a position is redundant when it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as the overhiring of workers, a decreased volume of business or the dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[30] Redundancy in an employer's personnel force, however, does not necessarily or even ordinarily refer to duplication of work. That no other person was holding the same position which the dismissed employee held prior to the termination of his services does not show that his position had not become redundant.

Private respondent PRC had no valid and acceptable basis to declare the position of Pollution Control and Safety Manager redundant as the same may not be considered as superfluous; by the express mandate of the provisions earlier cited, said positions are required by

law. Thus, it cannot be gainsaid that the services of the petitioner are in excess of what is reasonably required by the enterprise. Otherwise, PRC would not have allowed ten (10) long years to pass before opening its eyes to that fact; neither would it have increased the petitioner's salary to P23,100.00 a month effective 1 April 1988. The latter by itself is an unequivocal admission of the specific and special need for the position and an open recognition of the valuable services rendered by the petitioner. Such admission and recognition are inconsistent with the proposition that petitioner's positions are redundant. It cannot also be argued that the said functions were duplicative, and hence could be absorbed by the duties pertaining to the Industrial Engineering Manager. If indeed they were, and assuming that the Industrial Engineering department of the PRC had been created earlier, petitioner's positions should not have been created and filled up. If, on the other hand, the department was created later, and there is no evidence to this effect, and it was to absorb the petitioner's positions, then there would be no reason for the unexplained delay in its implementation, the restructuring then should have been executed long before the salary increases in petitioner's favor. That petitioner's positions were not duplicitous is best evidenced by the PRC's recognition of their imperative need thereof, this is underscored by the fact that Miguelito S. Navarro, the company's Industrial Engineering Manager, was designated as Pollution Control and Safety Manager on the very same day of petitioner's termination. While the petitioner had over ten (10) years of experience as a pollution control and safety officer, Navarro was a virtual greenhorn lacking the requisite training and experience for the assignment. A cursory perusal of his bio-data[31] reveals that it was only several months after his appointment that he attended his first Occupational Safety & Health Seminar (14-17 November 1988), moreover, it was only after his second seminar (Loss Control Management Seminar — 6-9 December 1988) that the PRC requested his accreditation with the Safety Organization of the Philippines.[32] In trying to prop up Navarro's competence for the position, PRC alleges that the former finished from the University of the Philippines with a degree in Chemical Engineering, took some units in pollution in the process and had "undergone job training in pollution in cement firms through the Bureau of Mines."[33] Compared to the training and experience of the petitioner, Navarro's orientation would seem to pale.

The private respondent alleges further[34] that its decision to declare petitioner's position as redundant "stemmed from its well-considered view that in order for the corporation's safety and pollution program to be more effective, such program would have to be tied up with the functions of the Industrial Engineering Manager." It is further posited that since the job of safety and pollution engineer "requires coordination with operating departments, knowledge of the manufacturing processes, and adequate presence in plant areas, a task which the company's safety and pollution control officer would not be up to as he works singlehandedly, it is only the Industrial Engineer, commanding a department of five (5) engineers and one (1) clerk, who can live up to corporate expectations. Indeed, the proposition that a department manned by a number of engineers presumably because of the heavy workload, could still take on the additional responsibilities which were originally reposed in an altogether separate section headed by the petitioner, is difficult to accept. It seems more reasonable to view the set-up which existed before the termination as being more conducive to efficient operations. And even if We were to sustain PRC's explanation, why did it so suddenly incorporate functions after the separate position of Pollution and Safety Control Manager had existed for over ten (10) years? No effort whatsoever was undertaken to gradually integrate both functions over this span of time. Anent this specific point, all that the private respondent has to say is that the declaration of redundancy was made pursuant to its continuing program, which has been ongoing for the past ten (10) years, of streamlining the personnel complement and maintaining a lean and effective organization.[35]

Furthermore, if PRC felt that either the petitioner was incompetent or that the task could be performed by someone more qualified, then why is it that the person designated to the position hardly had any experience in the field concerned? And why reward the petitioner, barely five (5) months before the dismissal, with an increase in salary? Assuming PRC's good faith, it would still seem quite surprising that it did not at least provide a transition period wherein the Industrial Engineering Manager would be adequately trained for his new assignment; such reckless conduct is not the expected behavior of a well-oiled and progressive multinational company.

Petitioner himself could have very well supervised a training and familiarization program which could have taken the remaining three (3) years of his employment. But no such move was initiated. Instead, a clever scheme to oust the petitioner from a position held for so long was hatched and implemented. On the very same day of petitioner's termination, the position vacated was resurrected and reconstituted as a component of the position of Industrial Engineering Manager. After more than ten (10) years of unwavering service and loyalty to the company, the petitioner was so cruelly and callously dismissed.

What transpired then was a substitution of the petitioner by Miguelito S. Navarro. If based on the ground of redundancy, such a move would be invalid as the creation of said position is mandated by the law; the same cannot therefore be declared redundant. If the change was effected to consolidate the functions of the pollution control and safety officer with the duties of the Industrial Engineering Manager, as private respondent postulates, such substitution was done in bad faith for as had already been pointed out, Miguelito S. Navarro was hardly qualified for the position. If the aim was to generate savings in terms of the salaries that PRC would not be paying the petitioner any more as a result of the streamlining of operations for improved efficiency, such a move could hardly be justified in the face of PRC's hiring of ten (10) fresh graduates for the position of Management Trainee[36] and advertising for vacant positions in the Engineering/Technical Division at around the time of the termination.[37] Besides, there would seem to be no compelling reason to save money by removing such an important position. As shown by their recent financial statements, PRC's year-end net profits had steadily increased from 1987 to 1990.[38] While concededly, Article 283 of the Labor Code does not require that the employer should be suffering financial losses before he can terminate the services of the employee on the ground of redundancy, it does not mean either that a company which is doing well can effect such a dismissal whimsically or capriciously. The fact that a company is suffering from business losses merely provides stronger justification for the termination.

The respondent NLRC[39] relied on Wiltshire File Co., vs. NLRC[40] in declaring that the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its

business. Aside from the fact that in the case at bar, there was no compelling reason to dismiss the petitioner as the company was not incurring any losses, the position declared redundant in the Wiltshire case was that of a Sales Manager, a management created position. In the case at bar, petitioner's position is one created by law.

The NLRC adds further that the termination was effected in the exercise of management prerogative and that account should also be taken of the "life of the company which is an active pillar of our economy and upon whose existence still depends the livelihood of a great number of workers."[41] It goes on to observe that "[t]he records are bereft of proof which could have been the basis of vengeful termination other than the company's legitimate objective to trim its work force."[42] In the face of the circumstances surrounding the dismissal, this Court finds it extremely difficult to give credence to such conclusions.

Thus, it is evident from the foregoing that petitioner's right to security of tenure was violated by the private respondent PRC. Both the Constitution (Section 3, Article XIII) and the Labor Code (Article 279, P.D. 442, as amended) enunciate this right as available to an employee. In a host of cases, this Court has upheld the employee's right to security of tenure in the face of oppressive management behavior and management prerogative.[43] Security of tenure is a right which may not be denied on mere speculation of any unclear and nebulous basis.[44]

In this regard, it could be concluded that the respondent PRC was merely in a hurry to terminate the services of the petitioner as soon as possible in view of the latter's impending retirement; it appears that said company was merely trying to avoid paying the retirement benefits the petitioner stood to receive upon reaching the age of sixty (60). PRC acted in bad faith.

Both the Labor Arbiter and the respondent NLRC clearly acted with grave abuse of discretion in disregarding the facts and in deliberately closing their eyes to the unlawful scheme resorted to by the PRC.

We cannot, however, subscribe to the theory of petitioner that his employment was for a fixed definite period to end at the celebration

of his sixtieth (60th) birthday because of the stipulation as to the retirement age of sixty (60) years. The Solicitor General's refutation, to wit:

> "A perusal of the provision in the August 22, 1977 letter cited by petitioner merely informs him of the company policy which pegs the compulsory retirement age of its employees at 60 and which commences on the date of the employee's 60th birthday. It likewise informs him that the company recognizes the right of the employee to retire voluntarily, which option can be availed of when the employee reaches his 50th birthday. Clearly, the cited provision is limited solely to the pertinent issue of retirement."[45]

is correct.

An examination of the contents of the contract of employment[46] yields the conclusion arrived at by the Solicitor General. There is no indication that PRC intended to offer uninterrupted employment until the petitioner reached the mandatory retirement age, it merely informs the petitioner of the compulsory retirement age and the terms pertaining to the retirement.

In Brent School, Inc. vs. Zamora,[47] this Court, in upholding the validity of a contract of employment with a fixed or specific period, declared that the "decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be 'that which must necessarily come, although it may not 'be known when.'"[48] The term period was further defined to be, "Length of existence; duration. A point of time marking a termination as of a cause or an activity; an end, a limit, a bound; conclusion; termination. A series of years, months or days in which something is completed. A time of definite length the period from one fixed date to another fixed date."[49]

The letter to the petitioner confirming his appointment does not categorically state when the period of employment would end. It

stands to reason then that petitioner's employment was not one with a specific period.

Coming to the third assigned error, since We have concluded that the petitioner's dismissal was illegal and can not be justified under a valid redundancy initiative, Article 283 of the Labor Code, as amended, on the benefits to be received by the dismissed employee in the case of redundancy, retrenchment to prevent losses, closure of business or the installation of labor saving devices, is not applicable. Instead, We apply Article 279 thereof which provides, in part, that 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."

In Torillo vs. Leagardo, Jr.,[50] an amplification was made on Article 279 of the Labor Code and the distinction between separation pay and backwages. Citing the case of Santos vs. NLRC,[51] We held in the former:

> "The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement.
>
> x x x
>
> Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other.
>
> x x x
>
> Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful

> dismissal, separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job."

Reinstatement then of the petitioner would have been proper. However, since he reached the mandatory retirement age on 21 July 1991, reinstatement is no longer feasible. He should thus be awarded his backwages from 16 August 1988 to 21 July 1991, inclusive of allowances and the monetary equivalent of the other benefits due him for that period, plus retirement benefits under the PRC's compulsory retirement scheme which he would have been entitled to had he not been illegally dismissed.

Finally, anent the last two (2) assigned errors, this Court notes that in his complaint and the attached Affidavit-Complaint,[52] petitioner does not mention any claim for damages and attorney s fees; furthermore, no evidence was offered to prove them. An award therefor would not be justified.

WHEREFORE, judgment is hereby rendered **GRANTING** the Petition, **SETTING ASIDE** the Decision and Resolution of respondent National Labor Relations Commission, dated 14 January 1991 and 13 May 1991, respectively in Labor Case No. NLRC-NCR-00-08-03412-88 and **ORDERING** private respondent Philippine Refining Co., Inc. to pay petitioner Orlando M. Escareal his backwages from 16 August 1988 to 21 July 1991 inclusive of allowances and the monetary equivalent of other benefits due him for that period, as well as his retirement pay and other benefits provided under the former's compulsory retirement scheme. The respondent Labor Arbiter or his successor is hereby directed to make the appropriate computation of these awards within twenty (20) days from receipt of a copy of this Decision, which respondent Philippine Refining Co., Inc. shall pay to the petitioner within ten (10) days from notice thereof.

Costs against private respondent Philippine Refining Co., Inc.

SO ORDERED.

Gutierrez, Jr., Bidin and Romero, *JJ*., concur.

Feliciano, *J.*, is on leave.

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[1] Annex "O" of Petition; Rollo, 143.
[2] Annex "Q", Id.; Id., 172.
[3] Annex "M", Id.; Id., 108.
[4] Copy of the Contract of Employment is attached as Annex "A" of Petition; Rollo, 48.
[5] Annex "A-1", Id.; Id., 51.
[6] Petition, 6-7.
[7] Sections 3 and 5, Rule II, Book IV on Occupational Health and Safety implementing the Labor Code.
[8] Annex "C" of Petition; Rollo, 53.
[9] Annex "D", Id.; Id., 54.
[10] Annex "E" of Petition; Rollo, 55.
[11] Annex "F", Id.; Id., 57.
[12] Annex "G", Id.; Id., 58.
[13] Annex "G-1", Id.; Id., 59.
[14] Annex "H", Id.; Id., 60.
[15] Annex "I" of Petition; Rollo, 61.
[16] Annex "J", Id.; Id., 69.
[17] Annex "J-1" of Petition; Rollo, 70.
[18] Annex "K", Id.; Id., 72.
[19] Annex "O" of Petition; Rollo, 143.
[20] Annex "P", Id.; Id., 153.
[21] Per Commissioner Romeo B. Putong and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso.
[22] Rollo, 2.
[23] Id., 202.
[24] Id., 250.
[25] Id., 273.
[26] Id., 282.
[27] Id., 339.
[28] Rollo, 293-294.
[29] 193 SCRA 665 [1991].
[30] Id., citing, in this connection, F.M. BACUNGAN, The Security of Tenure Law in the Philippines (1976).
[31] Annex "J-2" of Petition; Rollo, 71.
[32] Annex "J-1", Id.; Id., 70.
[33] Id., 218.
[34] Id., 206.
[35] Rollo, 219.
[36] Annex "D" of Petition; Rollo, 186.
[37] Annex "S-3", Id.; Id., 189.
[38] Annexes "R", "R-1", "R-2", Id.; Id., 179-185.
[39] Resolution, 3; Id., 174.

[40] Supra.
[41] Rollo, 148.
[42] Id., 149.
[43] Dosch vs. NLRC, 123 SCRA 296 [1983]; Tolentino vs. NLRC, 152 SCRA 717 [1987]; Cebu Royal Plant vs. Deputy Minister of Labor, 153 SCRA 38 [1987]; PT&T vs. NLRC, 183 SCRA 451 [1990]; Filipinas Manufacturers Bank vs. NLRC, 182 SCRA 848 [1990]; Batongbacal vs. Associated Bank, 168 SCRA 600 [1988]; International Harvester Macleod vs. NLRC, 149 SCRA 641 [1987]; Remerco Garments vs. Minister of Labor, 135 SCRA 167 [1985]; Cebu Royal Plant vs. Deputy Minister of Labor, 153 SCRA 38 [1987]; Llosa-Tan vs. Silahis Int'l. Hotel, 181 SCRA 738 [1990].
[44] Tolentino vs. NLRC, supra.
[45] Rollo, 262.
[46] Annex "A", supra.
[47] 181 SCRA 702 [1990].
[48] Id., citing Article 1193 (third paragraph), Civil Code.
[49] Id., citing Capiral vs. Manila Electric Co., 119 Phil. 124 [1963], cited in MORENO, Philippine Law Dictionary, 3rd Ed.
[50] 197 SCRA [1991].
[51] 154 SCRA 166 [1987].
[52] Annex "K" of Petition; Rollo, 72-77.