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issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[20]

WHEREFORE, the petition for review on *certiorari* is DENIED and the judgment of the Intermediate Appellate Court subject thereof, sustaining that of the Regional Trial Court, is AFFIRMED. Costs against petitioner.

Cruz, Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

THIRD DIVISION

[G.R. No. 80502. May 7, 1990]

ENRIQUE RAZON, JR. and METROPORT SERVICES, INC., *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and NICOLAS S. GARZOTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RETIREMENT PLAN; QUALIFICATIONS THEREFOR; MANAGEMENT DISCRETION MAY NOT BE EXERCISED ARBITRARILY OR CAPRICIOUSLY. — It is the perception of petitioners that management is vested with discretion to approve or disapprove an employee's claim for retirement benefits. They anchor this view of Article II (B) of the Retirement Plan which states that "(a)ny official and employee who is 65 years old, and *upon discretion of management,* shall be qualified or subject to compulsory retirement from the company with benefits as provided in this plan." Thus, when petitioners

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[20] Secs. 1 and 3, Rule 34, Rules of Court; *Garcia, et al. v. C.A.*, G.R. No. 82282-83. Nov. 24, 1988; *Arradaza, et al. v. C.A.*, G.R. No. 50422, Feb. 8, 1989.

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discovered the loss of vital books of account while in private respondent's custody and found him "guilty of breach of trust as chief accountant," they claim to have a valid ground to terminate private respondent's services and as a consequence to deny his claim for retirement pay. It must be stressed that the words "upon the discretion of management" are not synonymous with absolute or unlimited discretion. In other words, management discretion may not be exercised arbitrarily or capriciously especially with regards to the implementation of the retirement plan. We believe that upon acceptance of employment, a contractual relationship was established giving private respondent an enforceable vested interest in the retirement fund. Verily, the retirement scheme became an integral part of his employment package and the benefits to be derived therefrom constituted as it were a continuing consideration for services rendered, as well as an effective inducement for remaining with the firm. Having rendered twenty years of service with Metroport Services, Inc., it can be said that private respondent has already acquired a vested right to the retirement fund, a right which can only be withheld upon a clear showing of good and compelling reasons.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; LOSS OF CONFIDENCE AS A GROUND FOR TERMINATION, NOT ESTABLISHED IN CASE AT BAR.** — In the case at bar, petitioners' rejection of the subject claim cannot be justifiably sustained. The reported loss of confidence was due to the disappearance of certain books of account which petitioners directly attributed to private respondent. Petitioners were convinced that simply because private respondent could not produce the needed books on demand, he was no longer worthy of their trust and confidence. They abruptly dismissed him without giving him a chance to explain his side. In short, there was not the slightest pretense at fair play. Had petitioners been less hasty and conducted an investigation, they would have found out that on November 30, 1982, a fire gutted the western portion of petitioners' warehouse in front of Pier 5, destroying records, books, vouchers and general ledgers. The circumstances surrounding the fire were duly investigated and reported to the Commissioner of Internal Revenue. But whatever documents might have been salvaged from that conflagration were subsequently lost during the flood on July 25, 1985.

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3. **ID.; ID.; ID.; RETIREMENT BENEFITS; SEEKING EMPLOYMENT ELSEWHERE NOT A HINDRANCE FROM CLAIMING BENEFITS; CASE AT BAR.** — In further support of their refusal to give private respondent his retirement benefits, petitioners argued that the discharged employee impliedly withdrew his intention to retire when he joined Marina Port Services, Inc. The fact that private respondent sought employment elsewhere should not hinder him from claiming his retirement benefits. It is an inexorable fact that at 65 years, he reached the mandatory age for retirement and, therefore, qualified to retire. We have here an ironic situation where instead of enjoying the fruits of his retirement, private respondent was forced to seek reemployment for his survival. Surely, private respondent does not deserve such a pathetic end to his long and faithful service with petitioners.

4. **COMMERCIAL LAW; CORPORATIONS; OFFICERS GUILTY OF GROSS NEGLIGENCE OR BAD FAITH, SOLIDARILY LIABLE.** — Under Sec. 31 of the Corporation Code, "directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members or other persons." The manner of dismissal of private respondent by petitioner Enrique Razon, Jr. smacks of high-handedness, caprice and arbitrariness. No regard was given to private respondent's long and faithful service to the corporation, nor opportunity afforded him to explain the loss imputed to him through a properly-conducted investigation. The willingness and alacrity on the part of petitioner Enrique Razon, Jr. to terminate the services of private respondent without taking into consideration private respondent's service to the company and without affording him his right to due process, to our mind, suffice to taint the act complained of with bad faith.

APPEARANCES OF COUNSEL

Nicanor B. Jimeno for petitioners.
Apolo P. Geminde for private respondent.

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DECISION

FERNAN, *C.J.*:

In this petition for *certiorari*, petitioners Enrique Razon, Jr. and Metroport Services, Inc. seek to set aside the resolution dated August 28, 1987 of the National Labor Relations Commission affirming the decision of the Labor Arbiter which ordered petitioners to pay private respondent Nicolas S. Garzota his retirement pay, loyalty bonus and cash conversion of accrued vacation leave in the total amount of ₱131,400.00.

Since 1966, private respondent had been employed by petitioner company then known as E. Razon, Inc. Sometime in 1979, Alfredo Romualdez, the youngest brother of the then First Lady, Imelda R. Marcos, acquired control of E. Razon, Inc. and renamed it Metroport Services, Inc.[1]

On February 26, 1986, after the February Revolution, petitioners regained control of the company.[2]

On February 28, 1986, because of failing health and having qualified for compulsory retirement at age 65, private respondent, then the company's chief accountant, submitted a letter request for retirement. Petitioners withheld action on said request pending completion of the audit of company books undertaken by the accounting firm of Sycip, Gorres and Velayo.[3]

In the course of such audit, petitioners discovered that the following books of account allegedly in the custody of private respondent as chief accountant were missing: [a] general ledgers for the years 1981 and 1983; [b] cash disbursement books for 1981 to 1983; [c] cash receipt books for 1981 to 1983; [d] bills register for 1981 to 1983; [e] cash vouchers for 1981 to 1984; [f] journal vouchers for 1981 to 1984; and [g] sales register for 1983 to 1984.[4]

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[1] *Rollo*, p. 43.

[2] *Ibid.*

[3] *Rollo*, p. 27.

[4] *Rollo*, pp. 43-44.

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As a consequence thereof, petitioner Enrique Razon, Jr. issued on March 19, 1986 a memorandum terminating the services of private respondent on the ground of loss of trust and confidence.

Meanwhile, the Philippine Ports Authority awarded the management and operation of the arrastre services at the South Harbor to a new company, the Marina Port Services, Inc., which hired private respondent. The latter has since been connected with said firm.

Acting on private respondent's complaint for illegal dismissal and unpaid retirement benefits, the Labor Arbiter, on January 30, 1987, rendered the following decision:

"WHEREFORE, premises considered, respondent Metro Port Services, Inc. or Enrique Razon, Jr., in case of the company's failure to pay, is hereby ordered to pay complainant Nicolas S. Gartoza the following amounts:

₱60,000.00	–	for retirement pay
60,000.00	–	for loyalty bonus
11,400.00	–	cash conversion of accrued vacation leave, or a total of ₱131,400.00."[5]

On appeal, the National Labor Relations Commission sustained the Labor Arbiter in its resolution of August 28, 1987.[6] Hence, the instant petition.

Petitioners contend that the NLRC gravely abused its discretion when it sustained the grant of retirement benefits to private respondent and held Enrique Razon, Jr. solidarily liable with Metroport Services, Inc. for the payment thereof.

It is the perception of petitioners that management is vested with discretion to approve or disapprove an employee's claim for retirement benefits. They anchor this view of Article II (B) of the Retirement Plan which states that "(a)ny official

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[5] *Rollo*, p. 32.

[6] *Rollo*, p. 42.

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and employee who is 65 years old, and *upon discretion of management*, shall be qualified or subject to compulsory retirement from the company with benefits as provided in this plan." Thus, when petitioners discovered the loss of vital books of account while in private respondent's custody and found him "guilty of breach of trust as chief accountant," they claim to have a valid ground to terminate private respondent's services and as a consequence to deny his claim for retirement pay.[7]

It must be stressed that the words "upon the discretion of management" are not synonymous with absolute or unlimited discretion. In other words, management discretion may not be exercised arbitrarily or capriciously especially with regards to the implementation of the retirement plan. We believe that upon acceptance of employment, a contractual relationship was established giving private respondent an enforceable vested interest in the retirement fund. Verily, the retirement scheme became an integral part of his employment package and the benefits to be derived therefrom constituted as it were a continuing consideration for services rendered, as well as an effective inducement for remaining with the firm.[8]

Having rendered twenty years of service with Metroport Services, Inc., it can be said that private respondent has already acquired a vested right to the retirement fund, a right which can only be withheld upon a clear showing of good and compelling reasons.

In the case at bar, petitioners' rejection of the subject claim cannot be justifiably sustained. The reported loss of confidence was due to the disappearance of certain books of account which petitioners directly attributed to private respondent. Petitioners were convinced that simply because private respondent could not produce the needed books on demand, he was no longer worthy of their trust and confidence. They abruptly dismissed him without giving him a chance to explain his side. In short,

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[7] *Rollo*, pp. 10 & 24; Italics supplied.

[8] *See*: *Wilson v. Rudolph Wurlitzer*, 194 NE 441.

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there was not the slightest pretense at fair play. Had petitioners been less hasty and conducted an investigation, they would have found out that on November 30, 1982, a fire gutted the western portion of petitioners' warehouse in front of Pier 5, destroying records, books, vouchers and general ledgers. The circumstances surrounding the fire were duly investigated and reported to the Commissioner of Internal Revenue. But whatever documents might have been salvaged from that conflagration were subsequently lost during the flood on July 25, 1985.[9]

Thus, the resulting dismissal of private respondent was in itself marked by arbitrariness and lack of due process. Petitioners cannot now be allowed to use that as their legal excuse for denying the employee's legitimate claim for retirement pay.

In further support of their refusal to give private respondent his retirement benefits, petitioners argued that the discharged employee impliedly withdrew his intention to retire when he joined Marina Port Services, Inc.[10]

The fact that private respondent sought employment elsewhere should not hinder him from claiming his retirement benefits. It is an inexorable fact that at 65 years, he reached the mandatory age for retirement and, therefore, qualified to retire. We have here an ironic situation where instead of enjoying the fruits of his retirement, private respondent was forced to seek reemployment for his survival. Surely, private respondent does not deserve such a pathetic end to his long and faithful service with petitioners.

As to the issue of whether petitioner Enrique Razon, Jr. in his capacity as president and majority stockholder should be held solidarily liable with co-petitioner Metroport Services, Inc. for the payment of the disputed retirement claim, we rule in the affirmative.

Under Sec. 31 of the Corporation Code, "directors or trustees who willfully and knowingly vote for or assent to patently unlawful

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[9] *Rollo*, pp. 28-30.

[10] *Rollo*, p. 5.

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acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members or other persons." The manner of dismissal of private respondent by petitioner Enrique Razon, Jr. smacks of high-handedness, caprice and arbitrariness. No regard was given to private respondent's long and faithful service to the corporation, nor opportunity afforded him to explain the loss imputed to him through a properly-conducted investigation. The willingness and alacrity on the part of petitioner Enrique Razon, Jr. to terminate the services of private respondent without taking into consideration private respondent's service to the company and without affording him his right to due process, to our mind, suffice to taint the act complained of with bad faith.

WHEREFORE, the assailed resolution of the National Labor Relations Commission dated August 20, 1987 is hereby AFFIRMED *in toto*. Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and *Cortes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 81144. May 7, 1990]

MEYCAUAYAN COLLEGE, *petitioner, vs.* **HONORABLE FRANKLIN M. DRILON, in his capacity as Secretary of the Department of Labor and Employment and MEYCAUAYAN COLLEGE FACULTY AND PERSONNEL ASSOCIATION (MCFPA),** *respondents.*