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CONTRACTS - CONSIDERATION - EMPLOYER'S PENSION PLAN

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CONTRACTS — CONSIDERATION — EMPLOYER'S PENSION PLAN — The defendant corporation established a private pension system "for the purpose of promoting the welfare of the officers and employees" of the institution, and to "encourage long and faithful service." The terms and conditions of the system were distributed to all employees. They provided in substance, that all officers and employees who had attained the age of 65 years and who had served the institution honorably for twenty years would be entitled to a pension the amount of which was to be calculated by past salary and the number of years of service. The plaintiff was retired on a pension in 1929. In 1930 the defendant corporation attempted to decrease the amount of the pension and the plaintiff brought suit. The court *held* that the pension scheme constituted a binding contract and was not merely a gratuitous gesture on the part of the defendant to its employees. *Schofield v. Zion's Co-operative Mercantile Institution*, (Utah 1934) 39 P. (2d) 342.

Courts have little difficulty in finding consideration moving from the promisee in a case like the principal one, and the weight of authority is overwhelming in favor of holding that these pension and bonus plans are enforceable contracts. The more difficult problem is in pointing out just what is the consideration. "If a benevolent man says to a tramp,—'if you go around the corner to the clothing shop there, you may purchase an overcoat on my credit,' no reasonable person would understand that the short walk was requested as the consideration for the promise, but that in the event of the tramp going to the shop the promisor would make him a gift." [1] The walk is a detriment to the tramp, and the only reason why it is not consideration is because it was not requested as the price of the promise, but was merely a condition of a gratuitous promise. If the happening of such condition will be a benefit to the promisor, it is a fair inference that the happening was requested as the consideration,[2] and in case of doubt, where the promisee has incurred a detriment on the faith of the promise, courts will naturally be loath to regard the promise as a mere gratuity, and the detriment incurred as a mere condition.[3] In commenting upon whether or not an employee gives up any consideration for a pension it has been asked: "Was ever a pension awarded and paid to an industrial employee . . . unless and until that employee had furnished his employer with a substantial basis of *business* reasons for pensioning him?" [4] Applying the foregoing observations to some of the cases, the problem of locating the consideration — the "benefit" to the promisor and "detriment" to the promisee — is somewhat simplified. An employee may be allotted a pension upon retiring as long as he shall remain loyal to his employer and not seek employment in any competitive company,[5] or the employer may agree that if the employee remain in the discharge of his duties for a certain length of time his employer will

[1] 1 WILLISTON, CONTRACTS 232 (1931).

[2] 1 WILLISTON, CONTRACTS 233 (1931).

[3] 1 WILLISTON, CONTRACTS 233 (1931).

[4] Cloud, "Industrial Pensions — Are They 'Gifts' or 'Pay'?" 7 NAT. INCOME TAX MAG. 428 at 429 (1929). See this article for reasons why a pension should not be called a gift, and why a corporation normally cannot make a gift, but must confine itself to its corporate purposes of which making gifts is not one.

[5] Langer v. Superior Steel Corp., 105 Pa. Super. 579, 161 A. 571 (1932).

insure his life against death by accident occurring in and due to the performance of work for the employer.[6] The obvious "benefit" to the employer is loyalty to the firm and the increased efficiency as a result of long service of the same personnel;[7] and being loyal and not seeking employment elsewhere is the "detriment" to the employee. If no time is fixed for the duration of the contract of employment but the employee enters upon or continues in the employment under an offer of a bonus if he remains for a certain length of time, his remaining for the period constitutes an acceptance of the offer.[8] Upon acceptance it becomes a unilateral contract, and the principle of mutuality of obligations has no place in such contracts.[9] In a New York case, however, where a company set aside part of its income out of which pensions should be paid to employees when a committee *should so decide* "according to the rules" of the pension plan, the court held this was a gift not completed until actual payment of the money. A dissenting opinion argued that it was a contract and that if the employee fulfilled the requirements, the committee "according to the rules" would be bound to vote him a pension.[10] Of course, where the promise of a bonus is not predicated upon any act of the employee, i.e., where an employer promises to pay a bonus on termination of employment without regard to the duration of the employment, the promise is not supported by any consideration.[11] But even in such a situation the Washington court in a recent case showed a willingness to qualify the rule. Beginning in 1916, plaintiff worked for the defendant. In 1916 he got a bonus of fifty dollars, and a bonus every year thereafter in increasing amounts until he quit defendant's employ in 1929. He sued for his bonus and the court held that the regularity of giving out this bonus constituted an implied agreement to keep paying it as part of the salary (though admitting that the first one or two payments were "possibly" gratuitous).[12] This decision seems to go a bit far, but it serves to illustrate the marked tendency of the courts to enforce these pension plans, which from standpoints of established contractual principles, and of equitable result is desirable.

J. J. De L.

[6] McLemore v. Western Union Tel. Co., 88 Ore. 228, 171 P. 390 (1918); Cowles v. Morris & Co., 330 Ill. 11, 161 N. E. 150 (1928); Robertson v. Wise, 153 S. C. 459, 151 S. E. 87 (1929).

[7] Johnson v. Fuller & Johnson Mfg. Co., 183 Wis. 68, 197 N. W. 241 (1924).

[8] Zampatella v. Thompson-Crooker Shoe Co., 249 Mass. 37, 144 N. E. 82 (1924); Warren v. Mosher, 31 Ariz. 33, 250 P. 354 (1926); 28 A. L. R. 331 (1924).

[9] Wellington v. Con P. Curran Printing Co., 216 Mo. App. 358, 268 S. W. 396 (1925).

[10] McNevin v. Solvay Process Co., 32 App. Div. 610, 53 N. Y. S. 98 (1898), affd. 167 N. Y. 530, 60 N. E. 1115 (1901).

[11] Andrews v. Bellman, 50 S. D. 21, 208 N. W. 175 (1926).

[12] Powell v. Republic Creosoting Co., 172 Wash. 155, 19 P. (2d) 919 (1933). See collections of related cases, 44 L. R. A. (N. S.) 1214 (1913), Ann. Cas. 1914A 797 (1914).