



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY

Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 14 2017

THIRD DIVISION

**BDO UNIBANK, INC. (formerly
EQUITABLE PCI BANK),**

Petitioner,

G.R. No. 208735

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
JARDELEZA,
TIJAM, and
REYES, JR., JJ.

- versus -

**NESTOR N. NERBES AND
ARMENIA F. SURAVILLA,**

Respondents.

Promulgated:

July 19, 2017

Wilfredo V. Lapitan

X-----X

DECISION

TIJAM, J.:

Assailed in this Petition for Review¹ under Rule 45 are the Decision² dated May 9, 2012 and Resolution³ dated August 15, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 108317 which reversed the decision of the National Labor Relations Commission (NLRC) and reinstated the Decision⁴ dated August 26, 2005 of the Labor Arbiter (LA) in NLRC NCR Case No. 00-11-12543-04, finding respondents Nestor N. Nerbes (Nerbes) and Armenia F. Suravilla (Suravilla) to have been illegally dismissed and thus ordered their reinstatement and payment of backwages, or in lieu thereof, payment of separation pay.

¹ *Rollo*, pp. 1-36.

² Penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser; id. at 41-56.

³ Id. at 58-61.

⁴ Issued by Labor Arbiter Arthur L. Amansec; id. at 340-347.

W

The Factual Antecedents

Respondents Nerbes and Suravilla were employees of Equitable PCI Bank (now BDO Unibank, Inc.) (bank) and members of Equitable PCI Bank Employees Union (EPCIBEU), a legitimate labor union and the sole and exclusive bargaining representative of the rank and file employees of the bank.⁵

On February 4, 2004, an election of officers of EPCIBEU was held under the supervision of the Labor Relations Division of the National Capital Region Regional Office of the Department of Labor and Employment (DOLE-NCR). Nerbes and Suravilla won as President and Executive Vice President, respectively, and were proclaimed as winners thru a Resolution issued by the OIC Regional Director of the DOLE-NCR on March 19, 2004. The protest of the losing candidates was effectively dismissed.⁶

After taking their oath on March 22, 2004, Nerbes and Suravilla notified the bank of their decision to exercise their privilege under Section 10[d][3], Article IV of the Collective Bargaining Agreement (CBA) which allows the President and the Executive Vice President to be on full-time leave for the duration of their term of office in order to devote their time in maintaining industrial peace. Nerbes and Suravilla anchored their right to immediately assume their respective positions on Rule XV, Section 5 of Department Order No. 09, Series of 1997 which, in part, provides that "*Upon resolution of the protest, the committee shall immediately proclaim the winners and the latter may assume their positions immediately.*"⁷ Thus, Nerbes took his leave beginning March 22, 2004, while Suravilla took hers beginning April 1, 2004.⁸

On April 1, 2004, the losing candidates appealed to the Bureau of Labor Relations (BLR) the DOLE-NCR's Resolution dated March 19, 2004.⁹

Because of the pendency of said appeal, the bank disapproved Nerbes and Suravilla's union leaves and were directed to refrain from being absent and to report back to work. Nerbes and Suravilla failed to comply.¹⁰

Consequently, the bank issued show cause Memoranda on May 28, 2004 directing Nerbes and Suravilla to explain why no disciplinary action should be imposed against them for violation of the bank's Code of Conduct on attendance and punctuality, and obedience and cooperation.¹¹ It appears

5

Id. at 128-129.

⁶ Id. at 129-130.

⁷ Id. at 130-131.

⁸ Id. at 157-158.

⁹ Id. at 155.

¹⁰ Id. at 160-161.

¹¹ Id. at 161.

that Nerbes himself filed a complaint¹² for unfair labor practice (ULP) against the bank. Thus, Nerbes was additionally asked to explain his alleged falsification of public document and perjury pertaining to his submission of a position paper in the ULP case which was purportedly signed by his lawyer but who later on denied having signed the same.¹³

Administrative hearings were then conducted and on October 22, 2004, the bank found Nerbes and Suravilla guilty of serious misconduct and willful disobedience and imposed upon them the penalty of dismissal.¹⁴ Nerbes and Suravilla then filed before the LA a complaint for ULP, illegal dismissal and money claims.

Meantime, in the proceedings before the BLR, the appeal filed by the losing candidates was initially dismissed. However, on motion for reconsideration, the BLR, in its November 4, 2004 Decision¹⁵ reversed itself and nullified the election held on February 4, 2004. As a result, the BLR ordered a special election of officers. A special election was then held on April 13, 2005 wherein Nerbes and Suravilla's opponents were proclaimed as winners.¹⁶

On August 26, 2005, the LA rendered a Decision¹⁷ in favor of Nerbes and Suravilla's reinstatement, the dispositive part of which reads:

WHEREFORE, judgment is hereby made finding [Nerbes and Suravilla's] dismissal for insubordination a valid exercise of management prerogative but considering that [Nerbes and Suravilla's] defiance is anchored on law, ordering the [bank] to reinstate them to their former or equivalent positions in the [bank], without loss of seniority rights, with one (1) year backwages or, at the option of [Nerbes and Suravilla], to accept from the [bank], in lieu of reinstatement and backwages, a separation pay computed at thirty (30) days pay for every year of service, a fraction of at least six (6) months to be considered a full year or an applicable separation pay under the subsisting [CBA], whichever is higher.

Subject to any subsequent developments involving the leadership of the [EPCIBEU] or a final decision of an administrative body and/or superior court, the [bank] are hereby ordered to allow [Nerbes and Suravilla], within the context of the [CBA], to go on paid union leaves and exercise their other rights as the duly elected President and Executive Vice President of the union.

The charge of unfair labor practice and other claims are dismissed for lack of merit.

SO ORDERED.¹⁸

¹² Docketed as NLRC Case No. 00-04-04718-04; id. at 169.

¹³ Id. at 14-15.

¹⁴ Id. at 15-16.

¹⁵ Id. at 228-232.

¹⁶ Id. at 413-416.

¹⁷ Id. at 340-347.

¹⁸ Id. at 346-347.

The bank appealed to the NLRC. In its Decision¹⁹ dated November 11, 2008, the NLRC reversed the ruling of the LA and dismissed Nerbes and Suravilla's complaint. The NLRC disposed as follows:

WHEREFORE, premises considered, the Decision dated August 26, 2005 of [LA] Amansec is VACATED and SET ASIDE, and a NEW ONE rendered dismissing the case for lack of merit.

SO ORDERED.²⁰

Their Motion for Reconsideration²¹ likewise having been denied in the NLRC Resolution²² dated January 30, 2009, Nerbes and Suravilla filed a *certiorari* petition²³ before the CA.

The Ruling of the CA

The CA framed the issue to be resolved as to whether Nerbes and Suravilla were illegally dismissed from employment, the resolution of which is, in turn, anchored on whether their refusal to return to work amounts to willful disobedience.

The CA held that while Nerbes and Suravilla disobeyed the bank's order to return to work, such disobedience was not characterized by a wrongful or perverse attitude. The CA noted that their refusal to return to work was brought by their honest belief that as elected officers, they were entitled to be on full-time leave. As such, the CA reasoned, their offense was disproportionate to the ultimate penalty of dismissal.

Anent the charge of falsification of public document and perjury against Nerbes, the CA noted that this was a mere retaliatory move on the part of the bank which had nothing to do with the latter's work. In any case, the CA observed that Nerbes' counsel already acknowledged having notarized the questioned document.

In disposal, the CA pronounced:

WHEREFORE, in view of the foregoing considerations, the Petition for Certiorari is **GRANTED**. The Decision of the [NLRC] in NLRC NCR CA No. 047601-06 dated November 11, 2008 and its subsequent Resolution dated January 30, 2009 are **ANNULLED AND SET ASIDE**. The Decision of the [LA] dated August 26, 2005 is **REINSTATED** insofar as it ordered private respondent Equitable PCI Bank (Now Banco De Oro) to reinstate [Nerbes and Suravilla] to their former or equivalent positions in the bank, without loss of seniority rights, with one (1) year backwages or, at the option of [Nerbes and Suravilla], to accept

¹⁹ Id. at 94-105.

²⁰ Id. at 105.

²¹ Id. at 106-123.

²² Id. at 125-126.

²³ Id. at 63-90.

from [the bank], in lieu of reinstatement and backwages, a separation pay computed at thirty (30) days pay for every year of service, a fraction of at least six (6) months to be considered a full year or an applicable separation pay under the subsisting [CBA], whichever is higher.

SO ORDERED.²⁴

The bank's Motion for Reconsideration²⁵ was similarly rebuked by the CA, in its Resolution²⁶ dated August 15, 2013. Undaunted, the bank filed the instant petition.

Pending Incidents

Pending resolution of the instant petition, the bank moved for the withdrawal of its petition as regards Suravilla in view of the parties' Compromise Agreement.²⁷ Part of said Compromise Agreement is Suravilla's undertaking to release the bank from any and all claims arising from or related to the instant petition. The pertinent provisions of the Compromise Agreement state:

x x x x

2. Within five working days from the signing of this agreement, BDO, shall release to Ms. Suravilla the amount of PESOS: THREE MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED TWELVE AND 77/100 (Php3,487,512.77) and Statement of Account, representing her separation pay net of her accountabilities on loans, insurance, and credit cards if any. The Bank shall likewise release to Ms. Suravilla, her BIR Form 2316.

3. Upon receipt of the check with the foregoing amount, Ms. Suravilla will acknowledge the same as the full satisfaction of the separation benefits due her in connection with her employment with the BDO, as well as any and all claims or court case she may have against the Bank.

4. Furthermore, Ms. Armenia F. Suravilla, her heirs, successors and assigns, hereby unconditionally release, remiss, waive and forever discharge BDO Unibank, Inc., its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants from any and all actions, whether civil, criminal, administrative or otherwise, or from any claim of any kind or character arising directly from, incidental to, or in any manner related to her employment with the Bank, as well as the release of her separation benefits and retirement claims in the amount quoted above.

²⁴ Id. at 55.

²⁵ Id. at 613-625.

²⁶ Id. at 58-61.

²⁷ Id. at 700-701.

5. More particularly, Ms. Armenia F. Suravilla, her heirs, successors and assigns, likewise unconditionally release, remiss, waive and forever discharge BDO Unibank, Inc., its affiliates, subsidiaries, and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants from ALL claims of any kind or character arising directly from, incidental to, or in any manner related with the case entitled “BDO Unibank, Inc. vs. Nestor Nerbes and Armenia Suravilla”, pending with the Supreme Court of the Philippines, and docketed as SC GR NO. 208735.

6. By virtue of the release of the said amount under this Compromise Agreement, Ms. Armenia F. Suravilla hereby affirms that she has no further cause of action, demand, complaint, case or grievance whatsoever against BDO, its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants in respect of any matter arising out of the said separation benefits and retirement claims; and further affirms that this present agreement serves as the FULL SATISFACTION of the judgment in any and all claims she has against the Bank, specifically in the case “BDO Unibank, Inc. vs. Nestor Nerbes and Armenia Suravilla”, pending with the Supreme Court of the Philippines, and docketed as SC GR No. 208735.

x x x x²⁸ (Emphasis omitted)

Attached to said motion are plain copies of the Compromise Agreement with Undertaking²⁹ executed by and between the bank and Suravilla; and Release Waiver and Quitclaim³⁰ executed by Suravilla.

Consequently, Atty. Emmanuel R. Jabla (Atty. Jabla) of Jabla Brigola Bagas & Sampior Law Offices, counsel for Nerbes and Suravilla, moved to intervene.³¹ Atty. Jabla alleged that said Compromise Agreement was wrung from Suravilla without his knowledge and consent, as a result of which, he was deprived of his professional fee supposed to be payable upon full recovery of her monetary claims. He alleged that there was a verbal agreement between him and Suravilla for the latter to pay a contingent fee of 10% of all money recovered. He prayed that the bank and Suravilla be held solidarily liable as joint tortfeasors to pay his professional fee equivalent to 10% of the amount received by Suravilla, or PhP 348,751.27 and that a lien upon all judgments for the payment of money and executions issued in pursuance of such judgments be granted in his favor.³²

The Issues

We divide the issues raised in this petition into two: one, concerning the validity of Nerbes and Suravilla’s dismissal which is the main issue

²⁸ Id.

²⁹ Id. at 701-704.

³⁰ Id. at 705-708.

³¹ Id. at 715-728.

³² Id. at 725.

raised in the petition; and the other, the bank's motion to withdraw the petition with respect to Suravilla and Atty. Jabla's motion to intervene.

Otherwise stated, the issues for our consideration and determination are: (a) whether Nerbes and Suravilla's refusal to report to work despite the bank's order for them to do so constitutes disobedience of such a willful character as to justify their dismissal from service; (b) whether there is merit in the bank's motion to withdraw its petition with respect to Suravilla; and (c) whether the motion for intervention to protect attorney's rights can prosper and, if so, how much is counsel entitled to recover.

The Ruling of this Court

We deny the petition.

We begin by first emphasizing the following rules that guide the Court in disposing of petitions filed under Rule 45 which seek a review of a CA decision rendered under Rule 65, thus:

[I]n a Rule 45 review (of the CA decision rendered under Rule 65), the question of law that confronts the Court is the legal correctness of the CA decision - *i.e.*, whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct.

Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:

(1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and

(2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law.³³

Given this narrow scope of review, the ultimate question to be addressed by the Court is whether or not the CA erred in finding that the NLRC gravely abused its discretion in holding that Nerbes and Suravilla were dismissed for cause.

³³ *Stanley Fine Furniture, et al. v. Gallano, et al.*, G.R. No. 190486, November 26, 2014, 743 SCRA 306, 319.

Further, We stress that the Court in a Rule 45 petition, as a rule, does not try facts and does not analyze and again weigh the evidence presented before the lower tribunals.³⁴ However, the conflicting findings of the administrative bodies exercising quasi-judicial functions and the CA in this case warrants an independent finding of facts from this Court.³⁵

The present case likewise brings to fore the perennial task of balancing of interests between labor on one hand, and management, on the other. The law and jurisprudence consistently echo the commitment to protect the working class in keeping with the principle of social justice. In not a few instances, the Court struck down employer acts, even at the guise of exercise of management prerogative, which undermine the worker's right to security of tenure. Nevertheless, the law, in aiming to protect the rights of workers, does not thereby authorize the oppression or self-destruction of the employer.³⁶

With these basic postulates in mind, the Court thus proceeds to resolve the issues raised in the instant petition.

Refusal to return to work was not characterized by a wrongful and perverse attitude to warrant dismissal

Petitioner bank essentially argues that it validly dismissed Nerbes and Suravilla from employment because they committed serious misconduct and willful disobedience when they failed to return to work despite orders for them to do so. Nerbes and Suravilla counter that as duly-elected officers of the union they are entitled to be on full-time leave. According to Nerbes and

³⁴ The Court held in *Chevron (Phils.), Inc. v. Galit, et al.*, G.R. No. 186114, October 7, 2015:

It is settled that this Court is not a trier of facts, and this applies with greater force in labor cases. Corollary thereto, this Court has held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. However, it is equally settled that the foregoing principles admit of certain exceptions, to wit: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioners main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Citations omitted)

Here, the Court gives due course to the instant petition considering that the findings of fact and conclusions of law of the NLRC differ from those of the CA.

³⁵ See *Rowena A. Santos v. Integrated Pharmaceutical, Inc. and Katheryn Tantiansu*, G.R. No. 204620, July 11, 2016; *Convoy Marketing Corp. v. Albia*, G.R. No. 194969, October 7, 2015; and *United Tourist Promotions (UTP), et al. v. Kemplin*, 726 Phil. 337, 349 (2014).

³⁶ *Mercury Drug Corporation v. NLRC, et al.*, G.R. No. 75662, September 15, 1989, 177 SCRA 580, 586-587.

14

Suravilla, Department Order No. 09 allows them to immediately assume their respective positions upon resolution of the election protests of the losing candidates and that the appeal to the BLR filed by their opponents could not have stayed the execution of their proclamation as such appeal is not the appeal contemplated under Department Order No. 09.

In siding with Nerbes and Suravilla, the LA held that their refusal to return to work, being anchored on the text of Department Order No. 09, does not constitute serious misconduct or willful disobedience. The CA, while finding that the bank's order for Nerbes and Suravilla to return to work was lawful and reasonable and that they refused to comply with said order, nevertheless found that their refusal to do so was not characterized by a wrongful and perverse attitude to warrant the supreme penalty of dismissal.

We agree.

Article 282,³⁷ now Article 296, of the Labor Code enumerates the just causes for the termination of the employment of an employee. Under Article 282(a), serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work is a just cause for dismissal.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.³⁸ To be a valid cause for dismissal, such misconduct must be of grave and aggravated character and not merely trivial or unimportant.³⁹ The misconduct must also be related to the performance of the employee's duties showing him to be unfit to continue working for the employer⁴⁰ and that the employee's act or conduct was performed with wrongful intent.⁴¹

On the other hand, valid dismissal on the ground of willful disobedience requires the concurrence of twin requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being

³⁷ART. 282. Termination of Employer. x x x

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 of 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.

³⁸ *Yabut v. Manila Electric Company, et al.*, G.R. No. 190436, January 16, 2012, 663 SCRA 92, 105.

³⁹ *Caltex (Philippines), Inc., et al. v. Agad, et al.*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 213.

⁴⁰ *Tomada, Sr. v. RFM Corporation-Bakery Flour Division, et al.*, G.R. No. 163270, September 11, 2009, 599 SCRA 381, 391.

⁴¹ *Id.*

W

characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.⁴²

As correctly held by the CA, the return to work order made by the bank is reasonable and lawful, and the act required for Nerbes and Suravilla relates to the performance of their duties. The point of contention is whether their refusal to return to work was willful or intentional and, if so, whether such willful or intentional conduct is attended by a wrongful and perverse attitude.

In this case, Nerbes and Suravilla's failure to report for work despite the disapproval of their application for leave was clearly intentional. However, though their refusal to do so may have been intentional, such was not characterized by a wrongful and perverse attitude or with deliberate disregard of their duties as such. At the time Nerbes and Suravilla notified the bank of their intent to avail of their union leaves, they were already proclaimed as winners and in fact took their respective oaths of office. Following the terms of the parties' CBA, which has the strength of law as between them, Nerbes and Suravilla, as duly-elected union officers, were entitled to take their union leaves. That Nerbes and Suravilla were indeed entitled to such privilege is tacitly recognized by the bank itself when it continued to pay them their full salaries, despite not reporting for work, from March 22, 2004 until June 15, 2004.⁴³

Nerbes and Suravilla's belief that they are entitled to immediately assume their positions as union officers and thereby entitled to union leaves is not completely bereft of basis. For one, they based the exercise of such privilege on the existing CBA, the terms of which the bank has not demonstrated to be inapplicable. For another, it was only upon being proclaimed as winners did they assume their respective positions which, under Department Order No. 09, take place immediately.

On the other hand, the bank's disapproval of union leaves and return to work order were essentially based on the pendency of the appeal filed by Nerbes and Suravilla's opponents before the BLR. To the bank, the appeal before the BLR defeated the immediately executory nature of Nerbes and Suravilla's proclamation. Even then, their failure to report for work can hardly be equated as a perverse defiance of the bank's orders as they believed that such appeal could not have stayed their immediate proclamation and assumption to office for, after all, a doubtful or difficult question of law may be the basis of good faith. As to which interpretation is correct is beside the point and, hence, should be addressed at a more appropriate forum at a proper time.

⁴² *Micro Sales Operation Network, et al. v. NLRC, et al.*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.

⁴³ *Rollo*, p. 132.

So too, the Court finds that the penalty of dismissal in this case is harsh and severe. Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense.⁴⁴ It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too severe a penalty, if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity.⁴⁵ We note that aside from the subject incident, Nerbes and Suravilla were not previously charged with any other offense or irregularity. Considering the surrounding facts, termination of Nerbes and Suravilla's services was a disproportionately heavy penalty.

**Compromise Agreement between
petitioner bank and respondent
Suravilla is approved; counsel's
right to compensation is protected**

It is settled that a client may enter into a compromise agreement with the adverse party to terminate the litigation before a judgment is rendered therein,⁴⁶ and if the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order.⁴⁷ There being no impediment to the court's approval of the Compromise Agreement between the bank and Suravilla, the court accordingly approves the same and grants the bank's motion to withdraw its petition with respect to Suravilla.

Be that as it may, the grant of the bank's motion to withdraw the petition as regards Suravilla and the approval of their Compromise Agreement does not affect counsel's right to compensation. On this score, the Court's disquisition in *Malvar v. Kraft Foods Philippines, Inc., et al.*,⁴⁸ resonates with relevance and is thus quoted extensively:

On considerations of equity and fairness, the Court disapproves of the tendencies of clients compromising their cases behind the backs of their attorneys for the purpose of unreasonably reducing or completely setting to naught the stipulated contingent fees. Thus, the Court grants the Intervenor's Motion for Intervention to Protect Attorney's Rights as a measure of protecting the Intervenor's right to its stipulated professional fees that would be denied under the compromise agreement. The Court does so in the interest of protecting the rights of the practicing Bar rendering professional services on contingent fee basis.


⁴⁴ *Montallana v. La Consolacion College Manila, et al.*, G.R. No. 208890, December 8, 2014, 744 SCRA 163, 175.

⁴⁵ See *Samson v. NLRC, et al.*, 386 Phil. 669, 686 (2000).

⁴⁶ *Aro v. Nañawa*, No. L-24163, April 28, 1969, 27 SCRA 1090.

⁴⁷ *Republic v. CA, et al.*, G.R. No. 143108-09, September 26, 2001, 366 SCRA 87, 90.

⁴⁸ G.R. No. 183952, September 9, 2013.



Nonetheless, the claim for attorney's fees does not void or nullify the compromise agreement between Malvar and the respondents. There being no obstacles to its approval, the Court approves the compromise agreement. The Court adds, however, that the Intervenor is not left without a remedy, for the payment of its adequate and reasonable compensation could not be annulled by the settlement of the litigation without its participation and conformity. It remains entitled to the compensation, and its right is safeguarded by the Court because its members are officers of the Court who are as entitled to judicial protection against injustice or imposition of fraud committed by the client as much as the client is against their abuses as her counsel. In other words, the duty of the Court is not only to ensure that the attorney acts in a proper and lawful manner, but also to see to it that the attorney is paid his just fees. Even if the compensation of the attorney is dependent only on winning the litigation, the subsequent withdrawal of the case upon the client's initiative would not deprive the attorney of the legitimate compensation for professional services rendered.⁴⁹ (Citations omitted)

In this case, We find that Atty. Jabla adequately and sufficiently represented Suravilla and prepared all the required pleadings⁵⁰ on her behalf before the LA, the NLRC, the CA and this Court. Despite the absence of a written agreement as to the payment of fees, his entitlement to reasonable compensation may still be fairly ascertained. In this regard, Section 24 of Rule 138 of the Rules of Court should be observed in determining Atty. Jabla's compensation which provides:

SEC. 24. *Compensation of attorney's; agreement as to fees.* — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

As well, the criteria found in the Code of Professional Responsibility are considered in assessing the proper amount of compensation that a lawyer should receive. Canon 20, Rule 20.01 provides:

CANON 20 – A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

⁴⁹ Id.

⁵⁰ Consisting of a petition for certiorari, *rollo*, pp. 63-87; motion for reconsideration to the NLRC decision, *rollo*, pp. 106-121; Nerbes and Suravilla's position paper, *rollo*, pp. 127-147; reply to the bank's position paper; *rollo*, pp. 208-216, motion for reconsideration to the decision dated April 22, 2004, *rollo*, pp. 324-333; supplemental motion for reconsideration, *rollo*, pp. 335-337; and answer to bank's appeal, *rollo*, pp. 426-442.

M

- (a) The time spent and the extent of the services rendered or required;
- (b) The novelty and difficulty of the question involved;
- (c) The importance of the subject matter;
- (d) The skill demanded;
- (e) The probability of losing other employment as a result of acceptance of the proffered case;
- (f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
- (g) The amount involved in the controversy and the benefits resulting to the client from the service;
- (h) The contingency or certainty of compensation;
- (i) The character of the employment, whether occasional or established; and
- (j) The professional standing of the lawyer.

Taking into account the foregoing, the Court finds that the amount equivalent to 10% of the settlement amount received by Suravilla, or PhP 348,751.27 is reasonable compensation for the skill and services rendered by Atty. Jabla.

However, the Court cannot easily hold the bank solidarily liable with Suravilla for the payment of said attorney's fees in the absence of proof that the bank acted in connivance with Suravilla to deprive Atty. Jabla of the fees reasonably due him. As held in *Malvar*,⁵¹ the opposing party would be liable if they were shown to have connived with the client in the execution of the compromise agreement, with the intention of depriving the intervenor of its attorney's fees. In such case, the opposing party would be solidarily liable with the client for the attorney's fees under the theory that they unfairly and unjustly interfered with the counsel's professional relationship with his client. Such was not shown to be the case here.

An illegally dismissed employee is entitled to reinstatement and backwages; in lieu of reinstatement, separation pay is awarded

Having found that Nerbes was illegally dismissed, he is necessarily entitled to reinstatement to his former position without loss of seniority and the payment of backwages pursuant to Section 279 of the Labor Code which reads:

Article 279. *Security of Tenure.* - In cases of regular employment, the employer shall not terminate the services of an employee except for a 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.

⁵¹ *Malvar v. Kraft Foods Philippines, Inc., et al.*, supra note 48.



Interpreting this provision, the Court held in *Bustamante, et al. v. NLRC, et al.*,⁵² that illegally dismissed employees are entitled to full backwages without conditions or limitations. The CA's award of backwages that is limited to only one (1) year is thus without basis.

Moreover, the CA's award of separation pay in lieu of both reinstatement and backwages is incorrect. Reinstatement and backwages are two separate reliefs available to an illegally dismissed employee. Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal. Separation pay, on the other hand, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.⁵³

Hence, instead of limiting the payment of backwages to just one year and awarding separation pay in lieu of both the reinstatement aspect and the payment of backwages, the correct award, as is consistent with prevailing jurisprudence, is reinstatement and the payment of full backwages from the time of dismissal until finality of the decision. It is however understood that if Nerbes had, in the meantime, been reinstated on payroll and paid his corresponding salaries, such amounts should be deducted from the award of backwages consistent with the rule against double recovery.

However, since 13 years had passed since Nerbes was dismissed, it is no longer reasonable for the Court to direct him to return to work and for the bank to accept him.⁵⁴ It is therefore just and equitable to award separation pay, in lieu of reinstatement, in an amount equivalent to one month salary for every year of service, computed up to the time of Nerbes' dismissal on October 22, 2004.

WHEREFORE, the petition is **DENIED**. The Decision dated May 9, 2012 and Resolution dated August 15, 2013 of the Court of Appeals in CA-G.R. SP No. 108317 are **AFFIRMED** insofar as it declared respondents Nestor N. Nerbes and Armenia F. Suravilla to have been illegally dismissed.

The Compromise Agreement between petitioner BDO Unibank, Inc. (formerly Equitable PCI Bank) and respondent Suravilla is **APPROVED** and the motion to withdraw petition with respect to respondent Suravilla is accordingly **GRANTED**.

Respondent Suravilla is **ORDERED** to pay to movant-intervenor Jabla Brigola Bagas & Sampior Law Offices, as represented by Atty. Emmanuel R. Jabla, the attorney's fees equivalent to 10% of the amount received by respondent Suravilla, or PhP 348,751.27.

⁵² 265 Phil. 61 (1996).

⁵³ *Wenphil Corporation v. Abing, et al.*, G.R. No. 207983, April 7, 2014.


⁵⁴ See *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, G.R. No. 212096, October 14, 2015.

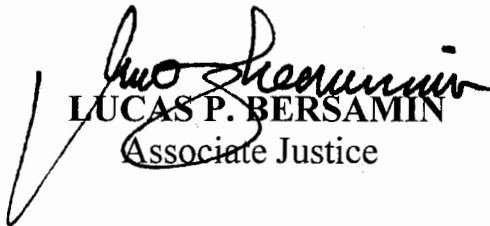
The Labor Arbiter is **DIRECTED** to recompute the proper amount of backwages and separation pay due to respondent Nerbes in accordance with this decision.

SO ORDERED.

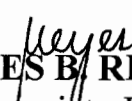

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

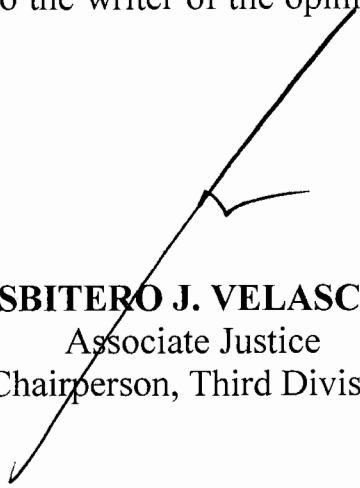

LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

A T T E S T A T I O N

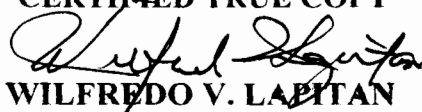
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division


MARIA LOURDES P. A. SERENO
Chief Justice

SEP 14 2017