

THIRD DIVISION

[G.R. No. 208735, July 19, 2017]

**BDO UNIBANK, INC. (FORMERLY EQUITABLE PCI BANK),
PETITIONER, VS. NESTOR N. NERBES AND ARMENIA F.
SURAVILLA, RESPONDENTS.**

DECISION

TIJAM, J.:

Assailed in this Petition for Review^[1] under Rule 45 are the Decision^[2] dated May 9, 2012 and Resolution^[3] 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 Decision^[4] 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.

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 that Nerbes himself filed a complaint^[12] 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 Decision^[15] 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 Decision^[17] 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]

The bank appealed to the NLRC. In its Decision^[19] 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 Reconsideration^[21] likewise having been denied in the NLRC Resolution^[22] dated January 30, 2009, Nerbes and Suravilla filed a *certiorari* petition^[23] 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 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 Reconsideration^[25] was similarly rebuked by the CA, in its Resolution^[26] 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 771100 (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.

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 x^[28] (Emphasis omitted)

Attached to said motion are plain copies of the Compromise Agreement with Undertaking^[29] executed by and between the bank and Suravilla; and Release Waiver and Quitclaim^[30] 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 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: