

SECOND DIVISION

[G.R. NO. 137863, March 31, 2005]

**BANK OF THE PHILIPPINE ISLANDS EMPLOYEES UNION AND
ZENAIDA UY, PETITIONERS, VS. BANK OF THE PHILIPPINE
ISLANDS, CARLOS FRAGANTE, DELFIN SANTOS, ALBERTO JUGO
AND/OR OSCAR CONTRERAS, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules on Civil Procedure, as amended, seeks to partially reverse the Decision^[1] of 28 October 1998 and the Resolution^[2] of 08 March 1999 of the Court of Appeals, in CA-G.R. SP No. 47363, which affirmed with modification the Decision^[3] rendered by the Accredited Voluntary Arbitrator dated 31 December 1997, in VA Case No. 08-001-97. The case before the Voluntary Arbitrator was for illegal transfer and termination, with the latter ruling in favor of the petitioners herein.

The facts as narrated by the Court of Appeals are quoted hereunder:

On 26 October 1995, respondent^[4] Zenaida V. Uy, former teller of the Escolta Branch of BPI, shouted at her Senior Manager, petitioner^[5] Delfin D. Santos (Santos for brevity). Uy was told to go to the office of the petitioner Carlos B. Fragante, BPI's area head and Assistant Vice President, to discuss her complaint. On the same date, AVP Fragante told Uy to transfer to the nearby Plaza Cervantes Branch of BPI and report to its operations manager to defuse (sic) the tense situation prevailing at the Escolta Branch. On 27 October 1995, AVP Fragante received the report of the Escolta Branch Manager (Santos) on the shouting incident, together with the written letter-reports of some branch personnel. On the same day, AVP Fragante ordered Uy to transfer to the Plaza Cervantes Branch. Upon receipt of the order, Uy commented that she will not transfer and will await the result of the grievance meeting. The respondent BPI Employees Union initiated a grievance proceeding against the BPI Management for the transfer of Uy to the Plaza Cervantes Branch. A meeting was set for 30 October 1995. On 30 October 1995, AVP Fragante sent Uy a letter . . . directing her to explain within 24 hours why no disciplinary action should be taken against her for insubordination, for not paying heed to the order to transfer. Uy sent a reply on the same date . . . explaining that she could not transfer from Escolta Branch because there was no proper turnover of her accountabilities; that she was not able to do so on October 27, 1995 because she was not allowed to open (as a teller); and, that since then she has been barred from entering the bank premises. On the same day, a meeting was held to hear Uy's grievance relative to her transfer, but no

agreement was reached. On 31 October 1995, AVP Fragante sent Uy another letter . . . asking her to explain why no disciplinary action should be taken against her for uttering disrespectful, discourteous, insulting and unbecoming language to her superior, Senior Manager Delfin Santos. Uy sent an undated reply thereto . . . reiterating why she could just not leave her position at the Escolta Branch, and requesting that she be considered on leave starting November 2, 1995. On 13 November 1995, AVP Fragante wrote Uy another letter . . . directing her to show cause on or before 16 November 1995 why no disciplinary action, including possible termination, should be taken against her for the October 26, 1995 incident, for insubordination or defiance to the transfer order, and for going on absence without leave. A copy thereof was furnished the Union. Uy sent a reply letter dated November 20, 1995, asking for particulars relative to the alleged "highly disrespectful, discourteous, insulting, threatening, and unbecoming language and behavior towards your Manager, Delfin Santos" and on the alleged "past instances when she was involved with quarrels with your co-employees," and alleging that she felt "*binabastos mo ako*" (I was being sexually harassed) when he uttered "*Dito ka na lang, marami and [ang] lalaki dito*" (You just stay here, there are plenty of men here), and when she answered "*Hindi ako mahilig sa lalaki*" (I am not fond of men), he retorted, "*Maski dito ka na lang sa kuwarto ko*" (You may just stay here in my room . . .). The union asked for a suspension of the grievance machinery and for investigation of the "sexual harassment" charge. On November 24, 1995, Uy requested Management through Mr. Oscar L. Cervantes, for transfer to the Taft Avenue Branch to save on gasoline expenses. Two meetings were held between the union side and the management side, represented by Mr. Fragante's superior, Senior Vice President Alberto Jugo and Senior Manager Efren Tuble. When no agreement was reached, the management advised Uy and the Union as well as their counsel that the management had no choice but to terminate Uy. Both the union and Uy were sent copies of the Notice of Termination . . . dated December 8, 1995, which had the following tenor:

NOTICE OF TERMINATION

Dear Ms. Uy:

This is to advise you of the termination of your employment effective December 14, 1995 on the grounds of gross disrespect/discourtesy towards an officer, insubordination and absence without leave.

It has been established that you used highly disrespectful, discourteous, insulting, threatening and unbecoming language and behavior towards your branch manager, Delfin Santos, last October 26. Despite being given the chance to explain or justify your actions, you chose to skirt the issue by pointing out that I am in no position to make a conclusion as I was not around when the incident happened. You know fully well that as Sales Director of North Manila area having supervision over Escolta Branch, such incident was reported to me. Mr. Delfin Santos appropriately inhibited himself from conducting the investigation for obvious reasons. We disagree with you when you dismissed the incident

as trivial. Moreover, the explanations you gave at our Head Office were found wanting in circumstances that would absolve you or mitigate your wrongdoing as said explanations in fact confirmed the findings at the branch level. With regard to quarrels with your officemates, you can be considered as recidivist. You can of course recall your quarrels, using very strong and insulting words, with your co-employees Ms. Teresa Manalang last year and with Jocelyn Ng this year.

You refused to follow the transfer instruction to report to Cervantes Branch last October 27 alleging failure to properly turn over your accountabilities despite being in the branch for practically the whole day on October 27. We have adequate procedure for the opening of 'pico' boxes in the presence of witnesses in cases of refusal and AWOL.

In a further manifestation of your contempt towards managerial authority, you went on absence without leave starting October 30. After refusing to receive all communications sent to your residence, you tried to rectify this AWOL by sending an undated letter received by us last November 6 wherein you declared yourself to be on leave beginning November 2. You have since refused to report for work.

Under the circumstances, you left us with no alternative but to terminate your employment with us.

(SGD.) CARLOS B. FRAGANTE
Asst. Vice President

Uy filed a case for illegal transfer and termination. On June 29, 1996, Labor Arbiter Manuel R. Caday who initially heard and decided the case issued a decision declaring the dismissal of Uy as illegal and ordering her reinstatement with full backwages and 10% attorney's fees ... BPI appealed the said decision to the National Labor Relations Commission (NLRC) which rendered a decision on May 28, 1997, setting aside the Labor Arbiter's Decision for lack of jurisdiction, and ruling that the case falls under the jurisdiction of a Voluntary Arbitrator.

The case was raffled to respondent Arbitrator Entuna, who requested the parties to submit their respective position papers.^[6]

The Voluntary Arbitrator, in his disputed Decision of 31 December 1997, adjudged:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant Zenaida Uy as illegal and ordering the respondent Bank of the Philippine Islands to immediately reinstate her to her position as bank teller of the Escolta Branch without loss of seniority rights and with full backwages computed from the time she was dismissed on December 14, 1995 until she is actually reinstated in the service, and including all her other benefits which are benefits under their Collective Bargaining Agreement (CBA).

For reasonable attorney's fees, respondent is also ordered to pay

complainant the equivalent of 10% of the recoverable award in this case.

[7]

The Motion for Reconsideration of the herein respondents BPI, et al., was subsequently denied.

Aggrieved, they then filed a Petition for Review before the Court of Appeals assailing the aforestated decision.

On 28 October 1998, the Court of Appeals issued the assailed decision affirming the finding of the Voluntary Arbitrator that indeed Uy's employment was illegally terminated. The appellate court, however, modified the award for backwages by limiting it to three years as well as finding that there was strained relations between the parties, to wit:

WHEREFORE, the judgment appealed from is *AFFIRMED* with the *MODIFICATION* that instead of reinstatement, the petitioner Bank of the Philippine Islands is *DIRECTED* to pay Uy back salaries not exceeding three (3) years and separation pay of one month for every year of service. The said judgment is *AFFIRMED* in all other respects.[8]

Both parties seasonably filed their respective motions for partial reconsideration of the aforesaid decision but the appellate court denied them in a Resolution dated 08 March 1999.

Hence, the parties individually went to this Court via a Petition for Review on *Certiorari*.

The petition[9] filed by herein respondents BPI, et al., however, was denied for their failure to submit a certification duly executed by themselves that no other action or proceeding involving the same issues raised in this case has been filed or is pending before this Court, the Court of Appeals, or in the different divisions thereof, or in any other tribunal or quasi-judicial agency, with the undertaking to inform the Court of any similar case filed or pending in any court, tribunal or quasi-judicial agency that may thereafter come to their knowledge in accordance with Section 4(e), Rule 45 in relation to Section 5, Rule 7, Section 2, Rule 42, and Sections 4 and 5(d), Rule 56 of the Rules of Court. The corresponding Entry of Judgment[10] was entered in the Book of Entries of Judgments on 22 September 1999.

For the reason above stated, only the following errors imputed by herein petitioners Bank of the Philippine Islands Employees Union (BPIEU) and Uy to the appellate court are in issue:

I

WITH DUE RESPECT, THE QUESTIONED RESOLUTION AND DECISION OF THE HONORABLE COURT OF APPEALS ARE CONTRARY TO LAW INsofar AS THEY LIMITED THE AWARD OF BACKWAGES TO THREE (3) YEARS; AND

II

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT STRAINED RELATIONS EXIST BETWEEN THE BANK AND PETITIONER UY DESPITE THE FACT THAT THE SHOUTING INCIDENT IS NOT SO SERIOUS AND IT INVOLVED ONLY PETITIONER UY AND RESPONDENT DELFIN SANTOS.^[11]

Anent the first issue, the petitioners contend that the decision of the appellate court limiting the award of backwages to three (3) years is contrary to law and jurisprudence.

The petition is meritorious.

The rule providing for the entitlement of an illegally dismissed employee to only three years backwages "without deduction or qualification" to obviate the need for further proceedings in the course of execution, otherwise known as the "Mercury Drug Rule,"^[12] has long been abandoned.

In a long line of cases,^[13] we have stated that the case of *Mercury Drug, Co., Inc. v. CIR*,^[14] is no longer applicable. To preclude the recurrence of the situation where the employee, with folded arms, remains inactive in the expectation that windfall would come to him and to speed up the process of execution, the aforementioned Mercury Drug case provided a remedy by ruling that an employee whose illegal termination had lasted some years was entitled to backwages for a fixed period "without further qualifications," i.e., without need of taking account of whatever he might have earned during such period, and deducting it from the amount of recovery, by providing a base period of three years. The three-year-limit doctrine has been consistently and uniformly applied by this Court over many years until the promulgation of Republic Act No. 6715 which amended Article 279 of the Labor Code in 1989.

With the new law before us, we clarified the computation of backwages due an employee on account of his illegal dismissal from employment in the case of *Osmalik Bustamante, et al. v. NLRC and Evergreen Farms, Inc.*^[15] We held that the passing of Republic Act No. 6715,^[16] particularly Section 34,^[17] which took effect on 21 March 1989, amended Article 279 of the Labor Code, which now states in part:

ART. 279. Security of Tenure. - ... 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.

Verily, the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, is that the backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and his family. Corollary thereto, full backwages have to be paid by the employer as part of the price or