

**NICANOR T. MALUBAY, ENRIQUE DAZA AND SAMSON DELOS REYES,
PETITIONERS, VS, NATIONAL LABOR RELATIONS COMMISSION, L R
MEDICAL AND X-RAY CLINIC AND/OR ANTONIETA LOPEZ ROMUA,
RESPOND...***SP No. 109096, July 13, 2010*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3a7dd3622bb4/>**Court of Appeals**

This is a petition for certiorari[1] seeking to nullify the Resolution[2] of the National Labor Relations Commission (NLRC) which affirmed the Decision[3] of the Labor Arbiter in NLRC NCR Case No. 07-07934-07. Also challenged is the Resolution.[4] denying reconsideration thereof.

The Facts:[5]

Nicanor Malubay[6], Enrique Daza[7], and Samson delos Reyes[8] (collectively, Petitioners) were employees of LR Medical & X-Ray Clinic[9] (LR Medical), operated by the registered owner and proprietress, Dr. Antonieta Lopez Romua (Dr. Romua). They were paid a daily wage rate of Three Hundred Fifty Pesos (PhP350.00) and were allowed by management to stay in the premises of LR Medical since they acted as security personnel at night.

On June 5, 2007, Dr. Romua conducted a clean-up activity of the cabinets located near the entrance door and discovered several paraphernalia and chemicals related to the use of Methamphetamine Hydrochloride or shabu. The next day, LR Medical issued a directive for the conduct of random drug tests on its employees. The results thereof revealed that the specimens submitted by the Petitioners were positive for shabu.[10] The integrity of the said results were verified by the confirmatory drug tests conducted by Speed Drug Testing Center (Speed Drug) on the same specimens.[11] On June 18, 2007, Nicanor Malubay and Enrique Daza received a notice from Dr. Romua informing them of the results of their drug tests and requiring them to explain within twenty-four(24) hours from receipt thereof why they should not be terminated for violating company policy.[12] In the meantime, they were placed under preventive suspension for a period of thirty(30) days. On June 23, 2007, Samson delos Reyes also received a notice with the same directive.[13]

On July 5, 2007, the Petitioners were informed that a hearing would be conducted on July 11, 2007 at LR Medical's clinic to afford them the opportunity to present their evidence and rebut the charges against them with the assistance of their own counsel, if they desired; and, that their suspension will be extended for another thirty (30) days until August 6, 2007.[14] Thereafter, they received a notice, dated July 16, 2007, informing them of their termination from employment effective July 18, 2007 for illegal use of prohibited drugs within the company premises.[15]

On July 25, 2007, the Petitioners filed a complaint for illegal dismissal, reinstatement, payment of full backwages or separation pay in lieu of reinstatement, overtime pay, moral and exemplary damages, and attorney's fees before the Labor Arbiter against LR Medical and/or Dr. Romua (Private Respondents).

In support of their complaint, the Petitioners claim that they were illegally dismissed on the day the drug tests

were conducted because they were not allowed to report for work thereafter; that the charge of illegal use of shabu and violation of company policy was a "planted evidence" and used to further the Private Respondents' premeditated intention to terminate them; that the confirmatory drug test report conducted by Speed Drug was fraudulent since they did not submit to it any urine specimen for drug testing; and, that the random drug test was discriminatory since they were the only ones subjected to it.

Moreover, in order to refute the charges against them, the Petitioners submitted themselves to another drug test on July 10, 2007 and the results of the drug test report from Lakambini Diagnostic Center (Lakambini) showed that they were negative for use of illegal drugs, contrary to the drug test reports conducted by the Private Respondents. Despite their submission of the negative results on the July 11, 2007 hearing, the said results were not given any credit by the latter. In addition, they were not afforded due process since the Private Respondents failed to comply with the twin-notice requirement. They also assert that their preventive suspension was constitutive of illegal dismissal for having been extended beyond the allowable thirty (30)-day period. Thus, they pray for reinstatement without loss of seniority rights and full payment of backwages, or separation pay in lieu of reinstatement, and payment of damages and attorney's fees.

On the other hand, the Private Respondents counter that the Petitioners were legally dismissed based on a just cause. They also contend that they complied with the due process requirements since appropriate notices were sent to and received by the Petitioners, a hearing and an investigation were conducted, and the latter were terminated after a finding that they were guilty of using prohibited drugs within the premises. Furthermore, they point out that the Petitioners were all aware of the company's policy against prohibited drugs and substance abuse, such that an employee found to be positive of the same shall be automatically terminated. Thus, the Private Respondents pray for dismissal of the complaint.

On March 7, 2008, the Labor Arbiter dismissed the complaint for lack of merit but ordered Private Respondent Dr. Romua to pay the Petitioners their salaries during the extended period of preventive suspension, viz:

WHEREFORE, premises considered, decision is hereby rendered dismissing the instant case for lack of merit. However, respondent Antonieta Lopez Romua is hereby ordered to pay each complainant the sum of P5,250.00 or a total of P15,750.00 representing complainants' salary during the extended period of preventive suspension.

SO ORDERED.[16]

Aggrieved, the Petitioners appealed to the NLRC.[17] On June 10, 2009, the NLRC rendered judgment affirming the disposition of the Labor Arbiter.[18] Their motion for reconsideration having been denied, they filed the present recourse.[19]

The Issues:

In their Petition, the Petitioners raise the following errors:

1. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN[sic] EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER, EDUARDO J. CARPIO[,] AND ACCORDINGLY DISMISSED THE APPEAL FOR LACK OF MERIT AS COMPLAINANTS WERE ILLEGALLY TERMINATED FROM THEIR EMPLOYMENT EFFECTIVE JUNE 6, 2007[,] AFTER HAVING HAD [sic] UNDERGONE THE DRUG TEST[,] WITHOUT HAVING BEEN ACCORDED THE BENEFIT OF THE TWIN NOTICES AND DUE PROCESS, A SERIOUS REVERSIBLE ERROR AND A CLEAR VIOLATION OF THE CARDINAL PRINCIPLES OF ADMINISTRATIVE DUE PROCESS. THE CLEAN UP DRIVE OF DRA. ANTONIETA LOPEZ ROMUA AND[sic] RESULTED IN THE FINDING OF SOME CHEMICALS FOUND[sic] IN SOME OF THE CABINETS WAS[sic] A PLANTED EVIDENCE[,] CONSIDERING THAT

IT WAS NOT ALL REPORTED TO THE POLICE[,] AND WHICH WAS NOT AT ALL DISCUSSED IN THE APPEALED DECISION BY THE LABOR ARBITER AND IN THE ASSAILED RESOLUTION OF THE PUBLIC RESPONDENT[,] AND THUS RESULTED IN THE LOSS OF TRUST AND CONFIDENCE TO THE PRIVATE RESPONDENTS.

2. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN[sic] EXCESS OF JURISDICTION WHEN IT PREEMPTORILY CONSIDERED THE POSITIVE FINDINGS OF THE LR MEDICAL AND X-RAY CLINIC[,] A RESPONDENT AND INTERESTED PARTY TO THE CASE AND OWNED BY RESPONDENT[sic] DRA. ANTONIETA LOPEZ ROMUA[,] DESPITE VIGOROUS OPPOSITION OF PETITIONERS AS [A] GROUND IN THE TERMINATION OF THE PETITIONERS FROM THEIR EMPLOYMENT AND THE GROUND FOR THE DISMISSAL OF THE PETITIONERS['] COMPLAINT AS LR MEDICAL AND X-RAY CLINIC AND DRA. ANTONIETA LOPEZ ROMUA WERE BOTH RESPONDENTS AND INTERESTED PARTIES TO THE CASE. BOTH ACCUSERS AND ARBITERS OR JUDGE IN THE DISMISSAL OF THE PETITIONERS. DISREGARDED THE NEGATIVE FINDING OF THE LAKAMBINI DIAGNOSTIC CENTER. AN INDEPENDENT AND DISINTERESTED THIRD PARTY TO THE CASE.

3. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN[sic] EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER AND ACCORDINGLY DISMISSED[sic] THE APPEALED DECISION FOR LACK OF MERIT WHEN PETITIONERS WERE PREVENTIVELY SUSPENDED FOR MORE THAN THIRTY (30) DAYS BY EXTENDING THE SAME FOR ANOTHER THIRTY (30) DAYS EXTENSION[sic] AND THEREAFTER DISMISSED[sic] THEM FROM THEIR EMPLOYMENT[sic] AND STATED[sic] IN THE ASSAILED RESOLUTION THAT THE RULE OF TWIN NOTICES AND DUE PROCESS WAS COMPLIED WITH BUT WAS NOT AS[sic] SHOWN BY THE INTER[-]OFFICE MEMO NO. 2007-046[sic] MARKED AS ANNEXES "A TO C"[sic] ATTACHED TO COMPLAINANTS-PETITIONERS' POSITION PAPER.[sic]

4. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN[sic] EXCESS OF JURISDICTION WHEN THE AFFIDAVIT OF ONE RAYMUNDO AMAT, JR. WAS ADMITTED IN EVIDENCE[,] SUBMITTED IN THE FORM OF SUPPLEMENT BY COUNSEL FOR RESPONDENTS[,] DESPITE VIGOROUS WRITTEN OPPOSITION THERETO BY THE PETITIONERS AFTER THE CASE AND THE PARTIES HAVE ALREADY AGREED THAT THE CASE WAS ALREADY SUBMITTED FOR DECISION IN VIOLATION OF THE 2005 RULES OF PROCEDURE OF THE NLRC.[20]

This Court's Ruling:

The Petitioners asseverate that the NLRC committed grave abuse of discretion in affirming the decision of the Labor Arbiter, which declared that they were legally terminated for use of prohibited drugs and were afforded due process considering that the Private Respondents complied with the twin-notice rule before terminating them. Furthermore, they also maintain that it was grave abuse of discretion on the part of the NLRC when it failed to rule that the extension of their preventive suspension beyond the thirty (30)-day period provided by law is tantamount to illegal dismissal.

We find the Petitioners' contentions to be without merit.

Well-entrenched is the rule that an appellate court's jurisdiction to review a decision of the NLRC in a petition for certiorari is limited to issues of jurisdiction or grave abuse of discretion. Being an extraordinary remedy, a writ of certiorari is available only in truly exceptional cases. Its sole office is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not

include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. Thus, a party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of certiorari will lie.[21]

At bench, nothing in the instant petition provides Us with any acceptable demonstration that the NLRC acted with grave abuse of discretion or without or in excess of its jurisdiction. Hence, We see no reason to look into the correctness of the evaluation of evidence which supports the Labor Arbiter's findings of fact.

We explain.

It bears mentioning that, before a dismissal of an employee can be considered lawful, it must comply with the two-fold requirement of substantive and procedural due process provided under the Labor Code. Therefore, not only must the dismissal be for a just or authorized cause, the requirements of notice and hearing must also be observed before an employee may be dismissed. Without the concurrence of the two, the termination would, in the eyes of the law, be illegal for employment is a property right that cannot be deprived without due process of law.[22]

Said otherwise, the two (2) aspects of a valid termination of employment are: (a)the legality of the act of dismissal, i.e., the dismissal must be under any of the just causes provided under Article 282[23] of the Labor Code: and, (b)the legality of the manner of dismissal, which means that there must be observance of the requirements of due process, otherwise known as the two-notice rule.[24]

The facts of the case, as found by the Labor Arbiter and as affirmed by the NLRC, reveal that when Dr. Romua conducted a clean-up activity of the cabinets located near the entrance door, she discovered several paraphernalia and chemicals related to the use of shabu. As a result thereof, random drug tests were conducted on the Private Respondents' employees which included the Petitioners. The former's drug test reports[25] revealed that the urine specimens submitted by the latter tested positive for shabu. Even after they were sent to Speed Drug for confirmatory drug tests, the specimens yielded the same results.[26] The positive findings were strengthened by the Petitioners' apologies in their written explanations. Thus, the Private Respondents notified them of the results of their drug tests and the violation of company's policy to maintain a drug-free environment.[27]

From the foregoing considerations, it is clear that the reason behind the Petitioners' dismissal was due to the fact that the drug tests conducted on their urine specimens were positive for shabu. The company's Personnel Handbook categorically stated therein that an employee found to be positive for prohibited drugs on his body fluids shall be automatically terminated.[28] From the beginning, they were well aware of the Private Respondents' policy on prohibited drugs since they received copies thereof.[29] Nevertheless, they violated it when they were found positive for dangerous drugs during a random drug test.

Employers have the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct of their business, to provide certain disciplinary measures in order to implement said rules, and to assure that the same would be complied with. They enjoy a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of their employees. It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition. Thus, in the implementation of their rules and policies, they have the choice to do so strictly or not, since this is inherent in their right to control and manage their business effectively.[30] Therefore, when the Private Respondents decided to terminate the Petitioners they were acting well within their rights as employers.

Moreover, drug use constitutes serious misconduct which is a justifiable ground for termination under Article

282(a) of the Labor Code. Misconduct is an improper or wrong conduct. It is the 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 of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[31] It is of judicial notice that drug abuse can damage the mental faculties of the user. It is beyond question, therefore, that any employee under the influence of drugs cannot possibly continue doing his duties without posing a serious threat to the lives and property of his co-workers and even his employer.[32] Thus, the Petitioners' allegation of grave abuse of discretion on

The Petitioners question the NLRC's reliance on the Private Respondents' drug test reports for being dubious and biased since these tests were conducted by the same investigators who found them guilty of drug use and caused their termination from employment. We cannot overemphasize that the NLRC, in affirming the Labor Arbiter's findings, not only relied on the Private Respondents' drug test reports but also considered Speed Drug's confirmatory drug test reports in concluding that the Petitioners were indeed guilty of use of prohibited drugs. Even assuming that the former's reports were dubious and biased for being conducted by an interested party, the same cannot be gainsaid of the latter's reports since they were obviously made by an independent and disinterested third party.

Furthermore, the Petitioner's belief that the results of their subsequent drug tests with Lakambini, which showed negative findings, should have been given more weight and credit, deserves scant consideration. A Health and Human Services Medical Review Officer Manual (HHS MRO Manual) states that [a] single therapeutic dose of amphetamine or methamphetamine can produce a positive urine for about 24 hours depending upon urine pH and individual metabolic differences. High dose abusers may continue to generate positive urine specimens for 2 to 4 days after last use.[33] In other words, Methamphetamine Hydrochloride or shabu stays in a person's system for a minimum of one (1) to four (4) days depending on whether or not he is a single dose user or a high dose user. Accordingly, drug tests taken several weeks after the last use will produce a negative result.

Consequently, even if We were to assume that the Petitioners were high dose users, the maximum number of days their urine specimens would continue to produce positive results would be four (4) days. Thus, the subsequent drug tests reports of Lakambini which were based on urine specimens taken almost a month after the conduct of the first drug tests would definitely yield a negative result, especially since they would have had a sufficient period of abstinence. If the Petitioners were indeed innocent of any drug use, they would have immediately subjected themselves to another drug test the same day their urine specimens were taken by the Private Respondents, and not choose to wait several weeks before subjecting themselves to another drug test. To Our mind, the NLRC correctly relied on the reports from the Private Respondents and Speed Drug instead of the ones from Lakambini.

With regard to the Petitioners' preventive suspension of more than thirty (30) days, Sec. 9 of Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code provides that, [n]o preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.[34] A reading of the said provision clearly belies the Petitioner's allegation that the extension of their preventive suspension beyond thirty (30) days is tantamount to illegal dismissal since the rule plainly states that, if the suspension exceeds the 30-day period, the employer must reinstate the employee or extend the

period of suspension, provided the employee's wages and benefits are paid in the interim.

In the case at bench, the Petitioners were notified that their suspension would be extended from July 3, 2007 to August 6, 2007. They, however, were terminated from employment on July 18, 2007. Hence, the Labor Arbiter was correct in holding that the Petitioners are entitled to their salaries for fifteen (15) days, or an equivalent of Five Thousand Two Hundred Fifty Pesos (PhP5,250.00) each, for the extension of their preventive suspension for more than thirty (30) days.

Now, as to the admission of the affidavit of Raymundo Amat, Jr., suffice it to say that the findings of the Labor Arbiter and the NLRC would have been the same even without it, as the existing evidence of the Private Respondents were already enough to sustain a finding of illegal use of dangerous drugs; and, the statements therein were only used to corroborate the same.

The Petitioners cannot claim that they were denied due process. In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the employee with two (2) written notices before termination of employment can be legally effected: (1) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought; and, (2) a subsequent notice informing the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in a opportunity to be heard, and not that an actual hearing should always and indispensably be held.[35]

The records of the instant case show that the Private Respondents complied with the twin-notice requirement. The Petitioners received a notice informing them of the results of their drug tests and directing them to explain within twenty-four (24) hours why they should not be terminated for violating company policy.[36] Thereafter, they received another notice telling them that a hearing would be conducted on July 11, 2007 at the clinic to give them the opportunity to present their evidence and to rebut the charges against them with the assistance of their own counsel, if they desired.[37] On said date, the Petitioners were given the opportunity to submit their written explanations and express their apologies. Subsequently, they received another notice informing them of their termination from employment effective July 18, 2007 for illegal use of prohibited drugs within the company premises.[38] Given the foregoing, it is clear that the required procedural due process for their termination was strictly complied with. Indubitably, there is no denial of due process to speak of.

All told, We find no grave abuse of discretion on the part of the NLRC.

WHEREFORE, the petition is DENIED. The assailed dispositions of the National Labor Relations Commission are AFFIRMED. Costs against the Petitioners.

SO ORDERED.

Baltazar-Padilla[*] and Ayson, JJ., concur.

Petition denied. Decision of the NLRC affirmed.

[1] Filed on June 11, 2009, under Rule 65 of the 1997 Revised Rules of Court; Rollo, pp. 3-28.

[2] Dated June 5, 2008; Id., pp. 40-52.

[3] Dated March 7, 2008; Id., pp. 63-71.

[4] Dated March 31, 2009; Id., pp. 29-30.

[5] As culled from the rollo.

[6] Of legal age, Filipino, married, a security guard and liaison officer, and a resident of 416 Tripa de Gallena St., Pasay City; Rollo, pp. 115-116.

[7] Of legal age, Filipino, married, a utility man, and a resident of 2181-P. Dandan, Pasay City; Ibid.

[8] Of legal age, Filipino, married, a utility man, and a resident of 2268 Leonardo St., Pasay City; Ibid.

[9] A single proprietorship engaged in the medical and diagnostic examination of prospective applicants for deployment abroad with clinic and office address at 2938 Finlandia St., cor. Bautista St., San Isidro, Makati City; Id., p. 115.

[10] Annexes "3" to "5", Reply, dated October 18, 2007; Id., pp. 301-303.

[11] Annexes "6" to "8", Reply, dated October 18, 2007; Rollo, pp. 304-306.

[12] Annexes "B" and "C", Complainant's Reply, dated October 11, 2007; Id., pp. 104-105.

[13] Annex "D", Complainant's Reply, dated October 11, 2007; Id., p. 106.

[14] Complainant's Position Paper, dated September 13, 2007; Id., pp. 268, 271, and 274 respectively.

[15] Complainant's Position Paper, dated September 13, 2007; Id., pp. 269, 272, and 275 respectively.

[16] Supra, Note 3 at 71.

[17] Dated May 23, 2008; Rollo, pp. 53-62.

[18] Supra, Note 2.

[19] Supra, Note 4.

[20] Rollo, pp. 12-13. Bracketed insertions Ours.

[21] *Odango v. National Labor Relations Commission*, G.R. No. 147420, June 10, 2004.

[22] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008.

[23] ART. 282. Termination by employer.—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 his 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.

[24] Supra, Note 22.

[25] Supra, Note 10.

[26] Supra, Note 11.

[27] Supra, Note 12 and 13.

[28] Annex "8", Private Respondent's Position Paper, dated September 12, 2007; Decision, dated March 7, 2008, p. 4; Rollo p. 66.

[29] Annex "9", Private Respondent's Position Paper, dated September 12, 2007; Ibid.

[30] San Miguel Corporation, et. al., v. National Labor Relations Commission, G.R. No. 146121-22, April 16, 2008.

[31] Samson v. National Labor Relations Commission, 386 Phil. 669, 682 (2000). Emphasis Ours.

[32] Jose, Jr. v. Michaelmar Phils. Inc., et al., G.R. No. 169606, November 27, 2009 citing Bughaw, Jr. v. Treasure Island Industrial Corporation; Supra, Note 22. the part of the NLRC in declaring that they were legally dismissed from work, has no leg to stand on.

[33] Annex "I", Rejoinder, dated November 13, 2007; Rollo, p. 81, Emphasis and bracketed insertion Ours.

[34] Emphasis Ours.

[34] Emphasis Ours.

[35] Baron, et al. v. National Labor Relations Commission, et al., G.R. No. 182299, February 22, 2010.

[36] Supra, Note 12 and 13.

[37] Supra, Note 14.

[38] Supra, Note 15.

[*] Vice J. Amelita G. Tolentino who is on wellness leave, per raffle conducted on July 1, 2010.

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