JEFFREY NACAGUE, PETITIONER, VS. SULPICIO LINES, INC., RESPONDENT.

G.R. No. 172589. August 08, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the 23 January 2006 Decision[2] and 19 April 2006 Resolution[3] of the Court of Appeals in CA-G.R. CEB SP No. 01065. In its 23 January 2006 Decision, the Court of Appeals dismissed the petition for certiorari filed by petitioner Jeffrey Nacague (Nacague) and affirmed the 21 March 2005 Decision[4] and 31 May 2005 Resolution[5]of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000481-04. In its 19 April 2006 Resolution, the Court of Appeals denied Nacague's motion for reconsideration.

The Facts

On 15 June 1995, respondent Sulpicio Lines, Inc. (Sulpicio Lines) hired Nacague as "hepe de viaje" or the representative of Sulpicio Lines on board its vessel M/V Princess of the World (the ship).

On 25 January 2003, Sulpicio Lines received an anonymous letter reporting the use of illegal drugs on board the ship.[6] On 14 February 2003, Ceasar T. Chico, a housekeeper on the ship, submitted a report regarding the drug paraphernalia found inside the Mopalla[7] Suite Room and the threat on his life made by Nacague and Chief Mate Reynaldo Doroon after he found the drug paraphernalia.[8]

On 15 February 2003, Sulpicio Lines sent a notice of investigation to Nacague informing him of the charges against him for use of illegal drugs and threatening a co-employee.[9]

When the ship docked in the port of Manila on 18 February 2003, some crew members of the ship, together with Nacague, were subjected to a random drug test. They were taken to S.M. Lazo Medical Clinic (S.M. Lazo Clinic) and were required to submit urine samples. The result of the random drug test revealed that Nacague was positive for methamphetamine hydrochloride or shabu.[10]

On 20 February 2003, Sulpicio Lines subjected Nacague to a formal investigation. Nacague denied using illegal drugs.[11]

On 23 February 2003, Nacague went to Chong Hua Hospital in Cebu City to undergo a voluntary drug test. The drug test with Chong Hua Hospital yielded a negative result. [12] Nacague submitted this test result to Sulpicio Lines.

However, on 7 March 2003, Sulpicio Lines sent a memorandum to Nacague terminating him from the service. The memorandum reads:

> After a careful consideration of your case with the evidence available, including your explanation, and with the positive drug test result, management finds you culpable of grave misconduct and loss of trust and confidence.
>
> In view thereof, the company is constrained to terminate your employment effective today, March 7, 2003.[13]

Feeling aggrieved, Nacague filed a complaint for illegal suspension, illegal dismissal and for reinstatement with backwages.

On 12 November 2003, Labor Arbiter Ernesto F. Carreon rendered a decision in favor of Nacague and declared that Sulpicio Lines illegally dismissed Nacague. [14] The dispositive portion of the Labor Arbiter's 12 November 2003 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Sulpicio Lines, Inc. to pay complainant Jeffrey Nacague the following:
>
> - Separation pay P75,600.00
>
> - Backwages P77,415.00
>
> Total P153,015.00
>
> The other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

According to the Labor Arbiter, the termination of employment of employees found positive for using illegal drugs should not be exercised indiscriminately and thoughtlessly. The Labor Arbiter agreed with Nacague that the drug test result from S.M. Lazo Clinic was questionable because the clinic is not accredited by the Dangerous Drug Board and not under its supervision. The Labor Arbiter gave more weight to the drug test performed by Chong Hua Hospital because it was accredited by the Dangerous Drug Board. The Labor Arbiter said that doubts must be resolved in favor of the employee. The Labor Arbiter also ruled that reinstatement is no longer viable due to the strained relations between Nacague and Sulpicio Lines and, thus, awarded separation pay to Nacague.

Dissatisfied with the Labor Arbiter's Decision, Sulpicio Lines appealed to the NLRC. In its 21 March 2005 Decision, the NLRC reversed the Labor Arbiter's decision and dismissed Nacague's complaint for lack of merit.

According to the NLRC, since Nacague, who was performing a task involving trust and confidence, was found positive for using illegal drugs, he was guilty of serious misconduct and loss of trust and confidence. The NLRC added that Sulpicio Lines' Code of Conduct[16] specified that the penalty for the use and illegal possession of prohibited drugs is dismissal. The NLRC also said that there is a presumption that S.M. Lazo Clinic is an accredited drug testing center and that it was incumbent upon Nacague to show otherwise.

Nacague filed a motion for reconsideration. In its 31 May 2005 Resolution, the NLRC denied Nacague's motion.

Nacague filed a petition for certiorari with the Court of Appeals. Nacague alleged that the NLRC gravely abused its discretion when it declared that Sulpicio Lines validly terminated his employment.

The Ruling of the Court of Appeals

According to the Court of Appeals, Sulpicio Lines complied with both the procedural and substantive requirements of the law when it terminated the employment of Nacague. The Court of Appeals said that the positive result of the S.M. Lazo Clinic drug test was the main basis of Sulpicio Lines in terminating Nacague's employment. The Court of Appeals declared that the evidence presented by Sulpicio Lines was sufficient to justify the conclusion that Nacague committed serious misconduct and a breach of trust and confidence

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warranting his dismissal from employment. The Court of Appeals agreed with the NLRC that Nacague failed to prove his allegation that S.M. Lazo Clinic lacks accreditation. On the procedural requirements, the Court of Appeals found that Sulpicio Lines complied with the twin-notice requirements and conducted a formal hearing.

Nacague filed a motion for reconsideration. In its 19 April 2006 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Issue

Nacague raises the sole issue of whether the Court of Appeals erred in ruling that his termination from employment was valid.

The Ruling of the Court

The petition is meritorious.

Nacague maintains that the S.M. Lazo Clinic drug test was not credible because Sulpicio Lines failed to show that S.M. Lazo Clinic is an authorized drug testing center. Nacague also alleges that the urine samples were gathered carelessly without proper labels to identify their owners and that S.M. Lazo Clinic did not ask Nacague if he was taking any medication that might alter the results of the drug test. [17]Nacague adds that Republic Act No. 9165[18] (R.A. No. 9165) and the Department of Labor and Employment Order No. 53-03[19] (Department Order No. 53-03) require two drug tests -- a screening test and a confirmatory test. Nacague maintains that, since only a screening test was conducted, he was illegally dismissed based on an incomplete drug test. Nacague argues that Sulpicio Lines failed to discharge its burden of proving that the termination of his employment was legal.

On the other hand, Sulpicio Lines questions the belated attempt of Nacague to question the credibility of S.M. Lazo Clinic. Sulpicio Lines also argues that since Nacague knew that the residue of the drug would no longer be detectable in his body after five days, Nacague underwent another drug test with the Chong Hua Hospital. Sulpicio Lines insists that the most accurate drug test is the random drug test conducted by S.M. Lazo Clinic and that the test with Chong Hua Hospital was a "planned" test.

Under Article 279[20] of the Labor Code, an employer may terminate the services of an employee for just causes[21] or for authorized causes.[22] Furthermore, under Article 277(b)[23] of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the causes for termination and must give the employee the opportunity to be heard and to defend himself. Thus, to constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.[24]

Contrary to Sulpicio Lines' allegation, Nacague was already questioning the credibility of S.M. Lazo Clinic as early as the proceedings before the Labor Arbiter. In fact, the Labor Arbiter declared that the S.M. Lazo Clinic drug test result was doubtful since it is not under the supervision of the Dangerous Drug Board.[25]

The NLRC and the Court of Appeals ruled that Sulpicio Lines validly terminated Nacague's employment because he was found guilty of using illegal drugs which constitutes serious misconduct and loss of trust and confidence. However, we find that Sulpicio Lines failed to clearly show that Nacague was guilty of using illegal drugs. We agree with the Labor Arbiter that the lack of accreditation of S.M. Lazo Clinic made its drug test results doubtful.

Section 36 of R.A. No. 9165 provides that drug tests shall be performed only by authorized drug testing centers.

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Moreover, Section 36 also prescribes that drug testing shall consist of both the screening test and the confirmatory test. Section 36 of R.A. No. 9165 reads:

> SEC. 36. Authorized Drug Testing. Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test. x x x (Emphasis supplied)

Department Order No. 53-03 further provides:

> Drug Testing Program for Officers and Employees
>
> iii. Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) (www.doh.gov.ph). Only drug testing centers accredited by the DOH shall be utilized. A list of accredited centers may be accessed through the OSHC website (www.oshc.dole.gov.ph).
>
> iv. Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test turn positive. The employee concerned must be informed of the test results whether positive or negative. (Emphasis supplied)

In Social Justice Society v. Dangerous Drugs Board,[26] we explained:

> As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, i.e., the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the tests shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody.[27]

The law is clear that drug tests shall be performed only by authorized drug testing centers. In this case, Sulpicio Lines failed to prove that S.M. Lazo Clinic is an accredited drug testing center. Sulpicio Lines did not even deny Nacague's allegation that S.M. Lazo Clinic was not accredited. Also, only a screening test was conducted to determine if Nacague was guilty of using illegal drugs. Sulpicio Lines did not confirm the positive result of the screening test with a confirmatory test. Sulpicio Lines failed to indubitably prove that Nacague was guilty of using illegal drugs amounting to serious misconduct and loss of trust and confidence. Sulpicio Lines failed to clearly show that it had a valid and legal cause for terminating Nacague's employment. When the alleged valid cause for the termination of employment is not clearly proven, as in this case, the law considers the matter a case of illegal dismissal.

We agree with the Labor Arbiter that Nacague's reinstatement is no longer feasible due to strained relations between Nacague and Sulpicio Lines and that Nacague should instead be granted separation pay.

WHEREFORE, we GRANT the petition. We SET ASIDE the 23 January 2006 Decision and the 19 April 2006 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 01065. We REINSTATE the 12 November 2003 Decision of the Labor Arbiter.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

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[1] Under Rule 45 of the Rules of Civil Procedure.

[2] Rollo, pp. 23-31. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring.

[3] Id. at 33-34.

[4] CA rollo, pp. 83-87. Penned by Commissioner Aurelio D. Menzon, with Presiding Commissioner Gerardo C. Nogreles and Commissioner Oscar S. Uy, concurring.

[5] Id. at 94-98.

[6] Id. at 41.

[7] Sometimes appears as "Mapalla Room."

[8] Rollo, pp. 88-89.

[9] CA rollo, p. 46.

[10] rollo, p. 90.

[11] CA rollo, p. 22.

[12] Id. at 23.

[13] Id. at 50.

[14] Id. at 59-63.

[15] Id. at 63.

[16] Rollo, p. 85.

[17] Nacague was under medication for high blood pressure, a spot on the lungs and heart enlargement.

[18] Entitled "An Act Instituting The Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known As The Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, And For Other Purpose." Also known as the "Comprehensive Dangerous Drugs Act of 2002." Effective 7 June 2002.

[19] Entitled "Guidelines for the Implementation of a Drug Free Workplace Policies and Programs for the Private Sector."

[20] ART. 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 compensation was withheld from him up to the time of his actual reinstatement.

[21] ART. 282. termination by employer.- an employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

- Gross and habitual neglect by the employee of his duties;

- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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- 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

- Other causes analogous to the foregoing.

[22] ART. 283. Closure of establishment and reduction pf personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title x x x.

[23] ART. 277. Miscellaneous provisions. - x x x
(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of providing that the termination was for a valid or authorized cause shall rest on the employer. x x x

[24] Century Canning Corporation v. Court of Appeals, G.R. No. 152894, 17 August 2007, 530 SCRA 501.

[25] CA rollo, p. 61.

[26] G.R. No. 157870, 3 November 2008, 570 SCRA 410.

[27] Id. at 433-434.

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