

EDUARDO BUGHAW, JR., Petitioner, vs. TREASURE ISLAND INDUSTRIAL CORPORATION, Respondent.

G.R. No. 173151. March 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Eduardo Bughaw, Jr., seeking to reverse and set aside the Decision,[1] dated 14 June 2005 and the Resolution,[2] dated 8 May 2006 of the Court of Appeals in CA-G.R. SP No. 85498. The appellate court reversed the Decision dated 28 August 2003 and Resolution dated 27 February 2004 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000231-02 that found the petitioner to be illegally dismissed from employment by respondent Treasure Island Industrial Corporation. The dispositive portion of the assailed appellate court's Decision thus reads:

WHEREFORE, discussion considered, the decision dated August 28, 2003 of the National Labor Relations Commission, Fourth Division, Cebu City, in NLRC Case No. V-000231-02 (RAB VII-06-1171-01), is hereby VACATED and SET ASIDE en toto.

The award of money claims to [herein petitioner] is NULLIFIED and RECALLED.[3]

The factual and procedural antecedents of the instant Petition are as follows:

Sometime in March 1986, petitioner was employed as production worker by respondent. Respondent was receiving information that many of its employees were using prohibited drugs during working hours and within the company premises.[4]

On 5 June 2001, one of its employees, Erlito Loberanes (Loberanes) was caught in flagrante delicto by the police officers while in possession of shabu. Loberanes was arrested and sent to jail. In the course of police investigation, Loberanes admitted the commission of the crime. He implicated petitioner in the crime by claiming that part of the money used for buying the illegal drugs was given by the latter, and the illegal drugs purchased were for their consumption for the rest of the month.[5]

In view of Loberanes's statement, respondent, on 29 June 2001, served a Memo for Explanation[6] to petitioner requiring him to explain within 120 hours why no disciplinary action should be imposed against him for his alleged involvement in illegal drug activities. Petitioner was further directed to appear at the office of respondent's legal counsel on 16 June 2001 at 9:00 o'clock in the morning for the hearing on the matter. For the meantime, petitioner was placed under preventive suspension for the period of 30 days effective upon receipt of the Notice.

Notwithstanding said Memo, petitioner failed to appear before the respondent's legal counsel on the scheduled hearing date and to explain his side on the matter.

On 19 July 2001, respondent, through legal counsel, sent a second letter[7] to petitioner directing him to attend another administrative hearing scheduled on 23 July 2001 at 11:00 o'clock in the morning at said legal counsel's

office but petitioner once again failed to show up.

Consequently, respondent, in a third letter[8] dated 21 August 2001 addressed to petitioner, terminated the latter's employment retroactive to 11 June 2001 for using illegal drugs within company premises during working hours, and for refusal to attend the administrative hearing and submit written explanation on the charges hurled against him.

On 20 July 2001, petitioner filed a complaint[9] for illegal dismissal against respondent and its President, Emmanuel Ong, before the Labor Arbiter. Petitioner alleged that he had been working for the respondent for 15 years and he was very conscientious with his job. He was suspended for 30 days on 11 June 2001 based on the unfounded allegation of his co-worker that he used illegal drugs within company premises. When petitioner reported back to work after the expiration of his suspension, he was no longer allowed by respondent to enter the work premises and was told not to report back to work.

On 8 January 2002, the Labor Arbiter rendered a Decision[10] in favor of petitioner since the respondent failed to present substantial evidence to establish the charge leveled against the petitioner. Apart from Loberanes's statements on petitioner's alleged illegal drug use, no other corroborating proof was offered by respondent to justify petitioner's dismissal. Further, respondent failed to comply with due process when it immediately suspended petitioner and eventually dismissed him from employment. Petitioner's immediate suspension was not justified since no evidence was submitted by the respondent to establish that petitioner's continued employment pending investigation poses a serious and imminent threat to respondent's life or property or to the life or property of petitioner's co-workers. Finally, the Labor Arbiter observed that the notices of hearing sent by respondent to petitioner were not duly received by the latter. The Labor Arbiter was not swayed by respondent's explanation that the reason therefor was that petitioner refused to receive said notices. The Labor Arbiter thus ruled:

WHEREFORE, premises considered, judgment is hereby rendered ordering [herein respondent] to pay [herein petitioner] the following:

1. Separation pay

P 74,100.00

2. Backwages

P 27,550.00

3. Unpaid wages

P 4,940.00

Total

P 106,590.00

The case against respondent Emmanuel Ong is dismissed for lack of merit.[11]

On appeal, the NLRC affirmed the Labor Arbiter's Decision in its Decision dated 28 August 2003. The NLRC decreed that respondent failed to accord due process to petitioner when it dismissed him from employment. The use of illegal drugs can be a valid ground for terminating employment only if it is proven true. An accusation of illegal drug use, standing alone, without any proof or evidence presented in support thereof, would just remain an accusation.[12]

The Motion for Reconsideration filed by respondent was denied by the NLRC in a Resolution[13] dated 27 February 2004.

Resolving respondent's Petition for Certiorari, the Court of Appeals reversed the Decisions of the Labor Arbiter and NLRC on the grounds of patent misappreciation of evidence and misapplication of law. The appellate court found that petitioner was afforded the opportunity to explain and defend himself from the accusations against him when respondents gave him notices of hearing, but petitioner repeatedly ignored them, opting instead to file an illegal dismissal case against respondent before the Labor Arbiter. The essence of due process in administrative proceedings is simply an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. Due process is not violated where one is given the opportunity to be heard but he chooses not to explain his side.[14]

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the Court of Appeals in its Resolution[15] dated 8 May 2006.

Hence, this instant Petition for Review on Certiorari[16] under Rule 45 of the Revised Rules of Court filed by petitioner impugning the foregoing Court of Appeals Decision and Resolution, and raising the sole issue of:

WHETHER OR NOT PETITIONER WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

Time and again we reiterate the established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts[17] and does not routinely undertake the reexamination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and are binding upon this Court,[18] when supported by substantial evidence.[19]

The Labor Arbiter and the NLRC both ruled that petitioner was illegally dismissed from employment and ordered the payment of his unpaid wages, backwages, and separation pay, while the Court of Appeals found otherwise. The Labor Arbiter and the NLRC, on one hand, and the Court of Appeals, on the other, arrived at divergent conclusions although they considered the very same evidences submitted by the parties. It is, thus, incumbent upon us to determine whether there is substantial evidence to support the finding of the Labor Arbiter and the NLRC that petitioner was illegally dismissed. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[20]

Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural aspects. Not only must the dismissal be for a just[21] or authorized cause,[22] the rudimentary requirements of due process - notice and hearing[23] - must, likewise, 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,[24] for employment is a property right of which one cannot be deprived of without due process.[25]

Hence, the two (2) facets 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 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.[26]

Article 282 of the Labor Code enumerates the just causes for terminating the services of an employee:

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.

The charge of drug abuse inside the company's premises and during working hours against petitioner constitutes serious misconduct, which is one of the just causes for termination. Misconduct is 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 merely an error in judgment. The misconduct to be serious within the meaning of the Act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless, in connection with the work of the employee, constitute just cause for his separation.[27] This Court took judicial notice of scientific findings 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.

Loberanes's statements given to police during investigation is evidence which can be considered by the respondent against the petitioner. Petitioner failed to controvert Loberanes' claim that he too was using illegal drugs. Records reveal that respondent gave petitioner a first notice dated 11 June 2001, giving him 120 hours within which to explain and defend himself from the charge against him and to attend the administrative hearing scheduled on 16 June 2001. There is no dispute that petitioner received said notice as evidenced by his signature appearing on the lower left portion of a copy thereof together with the date and time of his receipt.[28] He also admitted receipt of the first notice in his Memorandum before this Court.[29] Despite his receipt of the notice, however, petitioner did not submit any written explanation on the charge against him, even after the lapse of the 120-day period given him. Neither did petitioner appear in the scheduled administrative hearing to personally present his side. Thus, the respondent cannot be faulted for considering only the evidence at hand, which was Loberanes' statement, and conclude therefrom that there was just cause for petitioner's termination.

We thus quote with approval the disquisition of the Court of Appeals:

The [NLRC] did not find substantial evidence in order to establish the charge leveled against [herein petitioner] claiming that the statement of Loberanes is legally infirm as it was an admission made under custodial investigation; and there has been no corroborating evidence. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. Xxx It is sufficient that [herein petitioner] was implicated in the use of illegal drugs and, more importantly, there is no counter-statement from [herein petitioner] despite opportunities granted to him submit to an investigation.[30]

It was by petitioner's own omission and inaction that he was not able to present evidence to refute the charge against him.

Now we proceed to judge whether the manner of petitioner's dismissal was legal; stated otherwise, whether petitioner was accorded procedural due process.

In *Pastor Austria v. National Labor Relations Commission*,^[31] the Court underscored the significance of the two-notice rule in dismissing an employee:

The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected. (Emphases supplied.)

While there is no dispute that respondent fully complied with the first-notice requirement apprising petitioner of the cause of his impending termination and giving him the opportunity to explain his side, we find that it failed to satisfy the need for a second notice informing petitioner that he was being dismissed from employment.

We cannot give credence to respondent's allegation that the petitioner refused to receive the third letter dated 21 August 2001 which served as the notice of termination. There is nothing on record that would indicate that respondent even attempted to serve or tender the notice of termination to petitioner. No affidavit of service was appended to the said notice attesting to the reason for failure of service upon its intended recipient. Neither was there any note to that effect by the server written on the notice itself.

The law mandates that it is incumbent upon the employer to prove the validity of the termination of employment.^[32] Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal.^[33] Unsubstantiated claims as to alleged compliance with the mandatory provisions of law cannot be favored by this Court. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of our labor laws and Constitution.^[34]

The burden therefore is on respondent to present clear and unmistakable proof that petitioner was duly served a copy of the notice of termination but he refused receipt. Bare and vague allegations as to the manner of service and the circumstances surrounding the same would not suffice. A mere copy of the notice of termination allegedly sent by respondent to petitioner, without proof of receipt, or in the very least, actual service thereof upon petitioner, does not constitute substantial evidence. It was unilaterally prepared by the petitioner and, thus, evidently self-serving and insufficient to convince even an unreasonable mind.

We cannot overemphasize the importance of the requirement on the notice of termination, for we have ruled in a number of cases^[35] that non-compliance therewith is tantamount to deprivation of the employee's right to due process.

This is not the first time that the Court affirmed that there was just cause for dismissal, but held the employer liable for non-compliance with the procedural due process. In *Agabon v. National Labor Relations Commission*,^[36] we found that the dismissal of the employees therein was for valid and just cause because their abandonment of their work was firmly established. Nonetheless, the employer therein was held liable because it was proven that it did not comply with the twin procedural requirements of notice and hearing for a legal dismissal. However, in lieu of payment of backwages, we ordered the employer to pay indemnity to the dismissed employees in the form of nominal damages, thus:

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.... We believe this form of damages

would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[37]

The above ruling was further clarified in *Jaka Food Processing Corporation v. Pacot*.[38]

In *Jaka*, the employees were terminated because the corporation was financially distressed. However, the employer failed to comply with Article 283 of the Labor Code which requires the employer to serve a written notice upon the employees and the Department of Labor and Employment (DOLE) at least one month before the intended date of termination. We first distinguished the case from *Agabon*, to wit:

The difference between *Agabon* and the instant case is that in the former, the dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code.

x x x x

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e., the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e., when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.[39]

Then we elucidated on our ruling in *Agabon* in this wise:

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[40]

The *Agabon* doctrine enunciates the rule that if the dismissal was for just cause but procedural due process was not observed, the dismissal should be upheld. Where the dismissal is for just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal or render it illegal or ineffectual. However, the employer should indemnify the employee for the violation of his right to procedural due process. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano*[41] ruling. In *Agabon*[42] the nominal damages awarded was P30,000.00.

Conformably, the award of backwages by the Labor Arbiter and the NLRC should be deleted and, instead, private respondent should be indemnified in the amount of P30,000.00 as nominal damages.[43]

WHEREFORE, premises considered, the instant Petition is DENIED. The Court of Appeals Decision dated 14 June 2005 is hereby AFFIRMED WITH MODIFICATION in the sense that while there was a valid ground for dismissal, the procedural requirements for termination as mandated by law and jurisprudence were not observed. Respondent Treasure Island Corporation is ORDERED to pay the amount of P30,000.00 as nominal damages. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga[*], Nachura, and Reyes, JJ., concur.

[*]Per Special Order No. 497, dated 14 March 2008, signed by Chief Justice Reynato S. Puno designating Associate Justice Dante O. Tinga to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program and assigning Associate Justice Alicia Austria-Martinez as Acting Chairperson.

[1] Penned by Associate Justice Vicente L. Yap with Associate Justices Isaias Dicdican and Enrico Lanzas, concurring. Rollo, pp. 31-37.

[2] Rollo, p. 69-70.

[3] Id. at 36.

[4] Id. at 38-43.

[5] Id.

[6] Id. at 119.

[7] Id. at 120.

[8] Id. at 121.

[9] Id. at 113-114.

[10] Id. at 39-43.

[11] Id. at 42.

[12] Id. at 44-46.

[13] Id.

[14] Id. at 31-37.

[15] Id. at 69-70.

[16] Id. at 12-36.

[17]Exceptions: a) the conclusion is a finding of fact grounded on speculations, surmises and conjectures; b) the inferences made are manifestly mistaken, absurd or impossible; c) there is a grave abuse of discretion; d) there is misappreciation of facts; and e) the court, in arriving in its findings went beyond the issues of the case and the same are contrary to the admission of the parties or the evidence presented. (OSM Shipping Phil., Inc. v. De la Cruz, G.R. No. 159146, 28 January 2005, 449 SCRA 525, 534).

[18] Cosep v. National Labor Relations Commission, 353 Phil. 148, 156 (1998).

[19] Abalos v. Philex Mining Corporation, 441 Phil. 386, 396 (2002).

[20] Vertudes v. Buenaflor, G.R. No. 153166, 16 December 2005, 478 SCRA 210, 230.

[21] 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.

[22] ART. 283. Closure of establishment and reduction of 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, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

ART. 284. Disease as ground for termination. -

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[23] Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, 8 November 2005, 474 SCRA 356, 363-364.

[24] Vinoya v. National Labor Relations Commission, 381 Phil. 460, 482-483 (2000).

[25] JMM Promotion and Management, Inc. v. Court of Appeals, 329 Phil. 87, 99-100 (1996).

[26] Orlando Farms Growers Association v. National Labor Relations Commission, 359 Phil. 693, 700-701 (1998).

[27] Department of Labor Manual, Sec. 4343.01.

[28] Rollo, p. 120.

[29] Id. at 91.

[30] Rollo, pp. 35-36.

[31] 371 Phil 340, 357 (1999).

[32] Times Transportation Co., Inc. v. National Labor Relations Commission, G.R. Nos. 148500-01, 29 November 2006, 508 SCRA 435, 443.

[33] Gabisay v. National Labor Relations Commission, 366 Phil. 593, 601 (1999).

[34] Mendoza v. National Labor Relations Commission, 369 Phil. 1113, 1131 (1999).

[35] Phil. Carpet Employees Association (PHILCEA) v. Sto. Tomas, G.R. No. 168719, 22 February 2006, 483 SCRA 128, 140-141; Ariola v. Philex Mining Corporation, G.R. No. 147756, 9 August 2005, 466 SCRA 152, 171.

[36] G.R. No. 158693, 17 November 2004, 442 SCRA 573, as cited in DAP Corporation v. Court of Appeals, G.R. No. 165811, 14 December 2005, 477 SCRA 792.

[37] Id. at 617.

[38] G.R. No. 151378, 28 March 2005, 454 SCRA 119, as cited in DAP Corporation v. Court of Appeals, *supra* note 36.

[39] Id. at 125-125.

[40] DAP Corporation v. Court of Appeals, *supra* note 36 at 799-800.

[41] Serrano v. National Labor Relations Commission, 380 Phil. 416 (2000).

In Serrano, petitioner was employed by Isetann Department Store as a security checker but was eventually dismissed in view of employer's cost-cutting measure without observance of the two-notice rule as mandated by the Labor Code. In this case, this court ruled that employer's failure to comply with the notice requirement does not constitute a denial of due process but mere failure to observe a procedure for termination of employment which makes the termination ineffectual.

[42] Agabon v. National Labor Relations Commission, *supra* note 36.

[43] Electro System Industries Corporation v. National Labor Relations Commission, G.R. No. 165282, 5 October 2005, 472 SCRA 199, 205.

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