

SECOND DIVISION

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

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

D E C I S I O N

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:

- | | |
|-------------------|-------------|
| 1. Separation pay | P75,600.00 |
| 2. 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 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. 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)