

THIRD DIVISION

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

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

D E C I S I O N

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