

SECOND DIVISION

[G.R. NO. 160798, June 08, 2005]

**JUANITO A. GARCIA AND ALBERTO J. DUMAGO, PETITIONERS,
VS. PHILIPPINE AIRLINES, INC., RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review of the Resolution^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59826, dismissing the petition for *certiorari* of the petitioners Juanito A. Garcia and Alberto J. Dumago, as well as the Resolution^[2] denying the motion for reconsideration thereof.

The petition at bench stemmed from the following backdrop:

Garcia was employed by the Philippine Airlines, Inc. (PAL) on December 3, 1973. By 1995, he was already an inspector at the Aircraft Inspection Division of the PAL Technical Center. Dumago, on the other hand, was employed by PAL on April 18, 1983, and was, by 1995, a Lead Master "C" Upholsterer assigned at the Aircraft Furnishing Safety Section of the Maintenance and Engineering Department.^[3]

At 1:30 p.m. on July 24, 1995, the petitioners were at the PAL Technical Center inside the Toolroom Section of the Plant Equipment and Maintenance Division (PEMD). With them were their co-employees Ronaldo Broas, Roberto Buan, Almario Titco and Rodrigo Arcenas, Jr.^[4] Momentarily, an incident ensued, thereafter to be the subject of different versions: that of the petitioners; Carmelo Villacete, then manager of the PAL Security and Investigation Division; and Field Agents Antonio P. Ramos and Ramoncito Villar, also of the PAL Security and Investigation Division. Rodrigo Arcenas, Jr. also gave his own version of the incident.

According to Villacete, Ramos and Villar, they barged into the Toolroom Section and caught the petitioners with Broas, Arcenas, Buan, and Titco sniffing shabu. The security officers found and seized from them several grams of the prohibited drug, including aluminum foil, a burner and lighter. The security officers then searched the locker of Broas and found more of the drug, and shabu paraphernalia, including P23,000.00 in cash. All this was witnessed by Jose S. Herrera and Remebito F. Gorospe, representatives of the Philippine Airlines Employee's Association (PALEA). Eliseo Maravillas of the Office of the Vice-President for Maintenance and Engineering also witnessed the search and seizure.^[5] Photographs were taken of the raid. Ramos made an inventory of the items and substances that were found and seized from Rack B747-400 at the PEMD Toolroom, as follows:

1. (one) 1 plastic sachet containing undetermined amount of white substance suspected as shabu
2. (four) 4 aluminum foils containing U.A.S. suspected to be shabu

3. (one) 1 aluminum foil strip (containing) with residue of substance suspected to be shabu
4. (one) 1 improvised tooter with residue susp. to be shabu
5. (one) 1 plastic sachet containing residue of susp. shabu
6. (one) 1 strip (aluminum) containing granules + white substances susp. to be shabu
7. (one) 1 PAL giveaway kit containing one plastic tube
8. (one) 1 improvised burner with extra needle
9. (four) 4 pcs. crumpled aluminum foils with residue susp. to be shabu
10. (five) 5 pcs. aluminum strips
11. (six) 6 pcs. aluminum foil
12. (one) 1 plastic sachet containing undetermined quantity of white substance susp. to be shabu placed inside improvised metal container
13. (two) 2 plastic sachets cont. residue of white substances susp. to be shabu
14. (one) 1 lighter (disposable)
15. (seventeen) 17 aluminum strips with residue of substances susp. to be shabu
16. (two) 2 strips of aluminum foils.^[6]

Ramos also prepared an inventory of the items found and seized in Broas' locker, to wit:

ITEM (QUANTITY)	DESCRIPTION
1. (one) 1	Plastic sachet containing undetermined amount of white substance suspected as shabu contained in a blue cloth with a letter.
2. (one) 1	Plastic sachet containing undetermined amount of white substance suspected as shabu. ^[7]

The security officers secured urine samples from the petitioners and Arcenas, Broas and Titco, which they turned to the Forensic and Chemistry Division of the National Bureau of Investigation (NBI). The company, through Luis T. Castro, Jr., turned over/submitted to the NBI the paraphernalia found in the locker of Broas.^[8] The men were, likewise, turned over to the NBI for investigation.^[9] The security officers also prepared and signed Security Report No. SFPD95/07-453 dated July 25, 1995.

Forensic Chemist Salud M. Rosales signed Dangerous Drugs Report No. DD-95-1554 stating that the samples gave positive results for methamphetamine hydrochloride.^[10] She also signed Toxicology Report Nos. TDD-95-759 and 95-760 indicating that the urine samples given by the petitioners tested **positive** for amphetamine, a metabolite of methamphetamine which is a regulated drug.^[11] Rosales also signed Toxicology Report No. TDD-95-757^[12] where she stated that the urine sample of Rodrigo Arcenas yielded **negative** result for the presence of amphetamine.

In the signed statement^[13] he gave to Villacete on July 25, 1995, Arcenas alleged that he was on duty at the Toolroom Section of the PEMD that fateful day of July 24, 1995. At about 1:30 p.m., he saw the petitioners with Titco and Buan playing cards. Broas, who was beside the B747-400 tool bin, then took a white substance from a small cellophane sachet, placed the substance in a foil and lighted it with a small burner. The other men then approached Broas as the latter sniffed the substance twice and passed it around to the others who did the same. Arcenas claimed that he did not sniff the white substance. Momentarily, three persons barged into the toolroom and the men tried to escape. Additional security then arrived and helped in the inventory of the substances and materials found and seized from the men.^[14]

Petitioners Garcia and Dumago, for their part, admitted that they were in the toolroom section of PEMD on the day in question. Garcia had wanted to ask someone where he could take the Tracster's wheel for vulcanizing, while Dumago went there to request for an "Allen Wrench" from Titco. Suddenly, a PAL security officer armed with a handgun barged into the toolroom. He was accompanied by a video cameraman. Buan, Broas, and Titco were then each subjected to a body search and were forced to give urine specimen. Their lockers were also searched.^[15]

The petitioners denied that they used the prohibited drug, alleging that the door to the toolroom was even open. They claimed that they were in the toolroom because they were on duty, and that the NBI agents only arrived at the scene after the security guards had already confiscated the items and paraphernalia allegedly found in the toolroom and in Broas' locker.^[16]

A criminal complaint against the petitioners, including Buan, Broas and Titco, for violation of Section 16 of Republic Act No. 6425, as amended by Rep. Act No. 7659 was then filed with the Department of Justice, docketed as I.S. No. 95-492. Arcenas was not included in the charge.^[17]

On July 26, 1995, the petitioners were charged with violation of Section 6, Article 46, and Section 6, Article 48 of Chapter II of the PAL Revised Code of Discipline, as follows:

1. Violation of Law/Government Regulations-Chapter II, Section 6, Article 46

"Any employee who by substantial evidence presented at an administrative hearing is found to have violated or attempted to violate existing laws, decrees, regulations, or orders issued by the Philippine or other governments, and their agencies and instrumentalities, which violation involves moral turpitude is work-related, or which involves the safety, welfare, reputation, or standing of the company in the community, shall be penalized as prescribed in the schedule of penalties under Article 14 of this Code, depending upon the gravity and/or frequency of the offense. Where such violation constitutes serious misconduct or breach of trust, the penalty of dismissal shall be imposed."

2. Prohibited Drugs-Chapter II, Section 6, Article 48

"Any employee who, while on Company premises or on duty, is found in the possession of, or uses, or is under the influence of prohibited or controlled drugs, or hallucinogenic substances or narcotics shall suffer the penalty of dismissal."^[18]

A formal investigation ensued during which Arcenas testified. On October 9, 1995, the Grievance Committee rendered a Decision^[19] finding petitioners Garcia and Dumago guilty as charged; both of them were meted the penalty of dismissal.

On October 30, 1997, the petitioners instituted separate complaints^[20] for illegal dismissal against private respondent PAL and its Vice-President for Maintenance and Engineering, Jacinto F. Ortega, Jr.^[21] In its reply to the position paper of the complainants, PAL declared that:

(a) Complainants were caught by PAL personnel *in flagrante delicto* in the act of sniffing shabu. This is attested to by the Joint Affidavit of Messrs. Carmelo Villacete, Antonio Ramos and Ramoncito Villar, the security personnel who caught them in the act.

(b) An eyewitness, in the person of Rodrigo Arcenas, [Jr.] confirmed that the complainants (together with three other employees) indeed sniffed shabu inside the Toolroom of the Plant Equipment [and] Maintenance Division.

(c) The National Bureau of Investigation confirmed that the white crystalline substance found in the possession of the apprehended employees was "*Methamphetamine Hydrochloride*" or shabu, in ordinary parlance.

(d) Drug test conducted by the National Bureau of Investigation revealed that the complainants were positive for "AMPHETAMINE."^[22]

On February 11, 1999, Labor Arbiter Ramon Valentin C. Reyes rendered a Decision, finding that the private respondent was guilty of illegal dismissal, thus:

WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:

Alberto J. Dumago	-P409,500.00 backwages as of 1/10/99 P34,125.00 for 13th month pay
Juanito A. Garcia	- P1,290,744.00 backwages as of 1/10/99 P107,562.00 for 13th month pay

The amounts of P100,000.00 and P50,000.00 to each complainant as and by way of moral and exemplary damages; and

The sum equivalent to ten percent (10%) of the total award as and for attorney's fees.

Respondents are directed to immediately comply with the reinstatement aspect of this Decision. However, in the event that reinstatement is no longer feasible, respondents are hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for every year of service.

SO ORDERED.^[23]

The Labor Arbiter ruled that the NBI Toxicology Report on the urine samples of the complainants were not admissible in evidence. And even if they were, being positive for amphetamine does not constitute as a violation of the law.^[24] The private respondent appealed the decision.

On January 31, 2000, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter and dismissed the case for lack of merit.^[25] The NLRC ruled that the joint affidavit of the three PAL security personnel, the joint affidavit of the four NBI Narcotics Division personnel, the sworn statement of Arcenas, and the NBI toxicology reports constituted substantial evidence that the petitioners had, indeed, used shabu within the private respondent's premises during working hours. It held that the acts of the petitioners amounted to serious misconduct that justified their dismissal from employment. The petitioners moved for a reconsideration of the decision, on the ground that the urine samples were obtained from them without the assistance of counsel; hence the said samples and the Toxicology Report of the NBI Field Agents Division were inadmissible in evidence.^[26] The NLRC denied the said motion for lack of merit.^[27]

Dissatisfied, the petitioners filed a petition for *certiorari* with the CA based on the following grounds:

6.1 The public respondent NLRC erred and committed grave abuse of discretion amounting to lack of jurisdiction in:

- (a) Reversing the decision of the labor arbiter;
- (b) Concluding that the petitioners were caught sniffing shabu;
- (c) Disregarding the petitioners' Constitutional rights to counsel and due process of law.

6.2 The contradictory findings and conclusions of the labor arbiter and the NLRC provide strong and compelling reasons to warrant judicial review of the instant case to prevent a miscarriage of justice.

6.3 There is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.^[28]

On August 10, 2000, the CA dismissed the petition for failure to append copies of the material documents referred to therein, such as (a) the petitioners' complaint for illegal dismissal and damages; (b) the private respondent's position paper filed