

THIRD DIVISION

[G.R. No. 152329, April 22, 2003]

**ALEJANDRO ROQUERO, PETITIONER, VS. PHILIPPINE AIRLINES,
INC., RESPONDENT.**

DECISION

PUNO, J.:

Brought up on this Petition for Review is the decision of the Court of Appeals dismissing Alejandro Roquero as an employee of the respondent Philippine Airlines, Inc.

Roquero, along with Rene Pabayo, were ground equipment mechanics of respondent Philippine Airlines, Inc. (PAL for brevity). From the evidence on record, it appears that Roquero and Pabayo were caught red-handed possessing and using *Methamphetamine Hydrochloride* or shabu in a raid conducted by PAL security officers and NARCOM personnel.

The two alleged that they did not voluntarily indulge in the said act but were instigated by a certain Jojie Alipato who was introduced to them by Joseph Ocul, Manager of the Airport Maintenance Division of PAL. Pabayo alleged that Alipato often bragged about the drugs he could smuggle inside the company premises and invited other employees to take the prohibited drugs. Alipato was unsuccessful, until one day, he was able to persuade Pabayo to join him in taking the drugs. They met Roquero along the way and he agreed to join them. Inside the company premises, they locked the door and Alipato lost no time in preparing the drugs to be used. When they started the procedure of taking the drugs, armed men entered the room, arrested Roquero and Pabayo and seized the drugs and the paraphernalia used.^[1] Roquero and Pabayo were subjected to a physical examination where the results showed that they were positive of drugs. They were also brought to the security office of PAL where they executed written confessions without the benefit of counsel.^[2]

On March 30, 1994, Roquero and Pabayo received a "notice of administrative charge"^[3] for violating the PAL Code of Discipline. They were required to answer the charges and were placed under preventive suspension.

Roquero and Pabayo, in their "reply to notice of administrative charge,"^[4] assailed their arrest and asserted that they were instigated by PAL to take the drugs. They argued that Alipato was not really a trainee of PAL but was placed in the premises to instigate the commission of the crime. They based their argument on the fact that Alipato was not arrested. Moreover, Alipato has no record of employment with PAL.

In a Memorandum dated July 14, 1994, Roquero and Pabayo were dismissed by PAL.^[5] Thus, they filed a case for illegal dismissal.^[6]

In the Labor Arbiter's decision, the dismissal of Roquero and Pabayo was upheld. The Labor Arbiter found both parties at fault – PAL for applying means to entice the complainants into committing the infraction and the complainants for giving in to the temptation and eventually indulging in the prohibited activity. Nonetheless, the Labor Arbiter awarded separation pay and attorney's fees to the complainants.^[7]

While the case was on appeal with the National Labor Relations Commission (NLRC), the complainants were acquitted by the Regional Trial Court (RTC) Branch 114, Pasay City, in the criminal case which charged them with "conspiracy for possession and use of a regulated drug in violation of Section 16, Article III of Republic Act 6425," on the ground of instigation.

The NLRC ruled in favor of complainants as it likewise found PAL guilty of instigation. It ordered reinstatement to their former positions but without backwages.^[8] Complainants did not appeal from the decision but filed a motion for a writ of execution of the order of reinstatement. The Labor Arbiter granted the motion but PAL refused to execute the said order on the ground that they have filed a Petition for Review before this Court.^[9] In accordance with the case of *St. Martin Funeral Home vs. NLRC and Bienvenido Aricayos*,^[10] PAL's petition was referred to the Court of Appeals.^[11]

During the pendency of the case with the Court of Appeals, PAL and Pabayo filed a Motion to Withdraw/Dismiss the case with respect to Pabayo, after they voluntarily entered into a compromise agreement.^[12] The motion was granted in a Resolution promulgated by the Former Thirteenth Division of the Court of Appeals on January 29, 2002.^[13]

The Court of Appeals later reversed the decision of the NLRC and reinstated the decision of the Labor Arbiter insofar as it upheld the dismissal of Roquero. However, it denied the award of separation pay and attorney's fees to Roquero on the ground that one who has been validly dismissed is not entitled to those benefits.^[14]

The motion for reconsideration by Roquero was denied. In this Petition for Review on Certiorari under Rule 45, he raises the following issues:

1. Whether or not the instigated employee shall be solely responsible for an action arising from the instigation perpetrated by the employer;
2. Can the executory nature of the decision, more so the reinstatement aspect of a labor tribunal's order be halted by a petition having been filed in higher courts without any restraining order or preliminary injunction having been ordered in the meantime?
3. Would the employer who refused to reinstate an employee despite a writ duly issued be held liable to pay the salary of the subject employee from the time that he was ordered reinstated up to the time that the reversed decision was handed down?^[15]

I

There is no question that petitioner Roquero is guilty of serious misconduct for possessing and using shabu. He violated Chapter 2, Article VII, section 4 of the PAL Code of Discipline which states:

"Any employee who, while on company premises or on duty, takes or is under the influence of prohibited or controlled drugs, or hallucinogenic substances or narcotics shall be dismissed."^[16]

Serious misconduct is defined as "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 mere error in judgment."^[17] For serious misconduct to warrant the dismissal of an employee, it (1) must be serious; (2) must relate to the performance of the employee's duty; and (3) must show that the employee has become unfit to continue working for the employer.^[18]

It is of public knowledge that drugs can damage the mental faculties of the user. Roquero was tasked with the repair and maintenance of PAL's airplanes. He cannot discharge that duty if he is a drug user. His failure to do his job can mean great loss of lives and properties. Hence, even if he was instigated to take drugs he has no right to be reinstated to his position. He took the drugs fully knowing that he was on duty and more so that it is prohibited by company rules. Instigation is only a defense against criminal liability. It cannot be used as a shield against dismissal from employment especially when the position involves the safety of human lives.

Petitioner cannot complain he was denied procedural due process. PAL complied with the twin-notice requirement before dismissing the petitioner. The twin-notice rule requires (1) the notice which apprises the employee of the particular acts or omissions for which his dismissal is being sought along with the opportunity for the employee to air his side, and (2) the subsequent notice of the employer's decision to dismiss him.^[19] Both were given by respondent PAL.

II

Article 223 (3rd paragraph) of the Labor Code,^[20] as amended by Section 12 of Republic Act No. 6715,^[21] and Section 2 of the NLRC Interim Rules on Appeals under RA No. 6715, Amending the Labor Code,^[22] provide that an order of reinstatement by the Labor Arbiter is immediately executory even pending appeal. The rationale of the law has been explained in **Aris (Phil.) Inc. vs. NLRC**:^[23]

"In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.

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These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully