



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 25 November 2020 which reads as follows:*

**“G.R. No. 243855 (*Pat C. Samson and Paul Philip M. Baena vs. Central Azucarera De Bais, Inc. represented by Paulino G. Garcia, Jr.*). —** The petition fails to show that the Court of Appeals committed reversible error in issuing its assailed dispositions to warrant the Court’s exercise of its discretionary appellate jurisdiction.

*First.* In *Nacague v. Sulpicio Lines, Inc.*,<sup>1</sup> the Court explained how Department Order No. 53-03 (D.O. No. 53-03) should be enforced in the workplace, thus:

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

---

<sup>1</sup> 641 Phil. 377, 386 (2010).

Department Order No. 53-03 further provides:

Drug Testing Program for Officers and Employees

- iii. Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) ([www.doh.gov.ph](http://www.doh.gov.ph)). Only drug testing centers accredited by the DOH shall be utilized. A list of accredited centers may be accessed through the OSHC website ([www.oshc.dole.gov.ph](http://www.oshc.dole.gov.ph)).
- iv. Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test turn positive. The employee concerned must be informed of the test results whether positive or negative.

In *Social Justice Society v. Dangerous Drugs Board*, we explained:

**As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, i.e., the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the tests shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody. (Emphasis supplied)**

Here, the Court of Appeals categorically found that D.O. No. 53-03 was duly observed by respondent Central Azucarera De Bais, Inc. (CAB). The screening tests were conducted by Metro Dumaguete Diagnostic & Laboratory Services and the confirmatory test was conducted by Labtox Analytical Laboratory. Both laboratories are Department of Health (DOH)-accredited. Petitioners' unsubstantiated allegations of frame-up do not in any way negate the veracity of the test results showing they were positive for drug use.

***Second.*** Drug use amounts to serious misconduct. *Bughaw, Jr. v. Treasure Island Industrial Corp.*<sup>2</sup> is apropos:

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. 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

<sup>2</sup> 573 Phil. 435, 444 (2008).

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.

Further, D.O. No. 53-03 provides for the consequences if an officer or employee is found positive for drug use:

#### F. CONSEQUENCES OF POLICY VIOLATIONS

1. Any officer or employee who uses, possesses, distributes, sells or attempts to sell, tolerates, or transfers dangerous drugs or otherwise commits other unlawful acts as defined under Article II of RA 9165 and its Implementing Rules and Regulations shall be subject to the pertinent provisions of the said Act.
2. **Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively in accordance with the provisions of Article 282 of Book VI of the Labor Code and under RA 9165.** (Emphasis supplied)

Article 282, now renumbered to Article 297<sup>3</sup> of the Labor Code enumerates the grounds for justified dismissal, one of them is serious misconduct. Since drug use amounts to serious misconduct, respondent CAB was justified in dismissing petitioners.

*Third.* On procedural due process aspect, the employer must comply with the two-notice rule, as mandated under the Implementing Rules of Book VI of the Labor Code. The employer must serve the erring employee a first notice which details the ground/s for termination, giving the employee a reasonable opportunity to explain his side. In practice, this is commonly referred to as the notice to explain (NTE). The second notice pertains to the written notice of termination indicating that upon due consideration of all circumstances, the employer has decided to dismiss the employee.<sup>4</sup>

Here, the National Labor Relations Commission (NLRC), as affirmed by the Court of Appeals, categorically found that procedural due process was strictly observed. The NLRC noted that petitioners were duly furnished a NTE dated April 9, 2014. Petitioner Pat C. Samson submitted two (2) Letters of Explanation dated April 16 and April 21, 2014. Meanwhile, petitioner Paul

---

<sup>3</sup> 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 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 representatives; and  
(e) Other causes analogous to the foregoing.

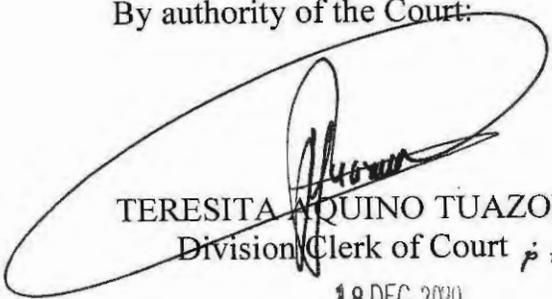
<sup>4</sup> *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019.

Phillip M. Baena wrote his explanation on his own copy of the NTE. Petitioners were also given the option to attend a conference for the purpose of further ventilating their defenses but they refused. Finding a valid cause for dismissal, the CAB, on April 22, 2014,<sup>5</sup> served its notices of termination on petitioners. This is procedural due process in action.

**WHEREFORE**, the Petition is **DENIED**, and the Decision dated February 12, 2018 and the Resolution dated November 28, 2018 of the Court of Appeals in CA-G.R. SP No. 09606, **AFFIRMED**.

**SO ORDERED.**" (Rosario, J., designated additional member per S.O. 2797, dated November 5, 2020)

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court p 12/18  
18 DEC 2020

ATTY. KIM P. DIOCOS (reg)  
Counsel for Petitioners  
101 San Jose Extension, Dumaguete City  
6200 Negros Oriental

SIGUION REYNA MONTECILLO &  
ONGSIAKO (reg)  
Counsel for Respondent  
4<sup>th</sup> & 6<sup>th</sup> Floors, Citibank Center Building  
8741 Paseo de Roxas, Makati City

NATIONAL LABOR  
RELATIONS COMMISSION (reg)  
5<sup>th</sup> Floor, DOLE VII Building  
cor. Gen. Maxilom and Gorordo Ave.  
Cebu City  
(NLRC Case No. VAC-05-000264-2015;  
SCRAB Case No. VII-05-0063-14-D)

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

COURT OF APPEALS (reg)  
Visayas Station  
Cebu City  
CA-G.R. CEB SP No. 09606

*Please notify the Court of any change in your address.*  
GR243855. 11/25/2020(119)URES

<sup>5</sup> Rollo, pp. 104-105.