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[G.R. No. 182216, December 04, 2009]

PLANTATION BAY RESORT AND SPA AND EFREN BELARMINO, PETITIONERS, VS. ROMEL S. DUBRICO, GODFREY D. NGUJO AND JULIUS D. VILLAFLOR, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Via petition for review on certiorari, petitioners Plantation Bay Resort and Spa (Plantation Bay) and Efren Belarmino (Belarmino) challenge the Court of Appeals August 30, 2007 Decision[1] and March 3, 2008 Resolution[2] dismissing their petition and affirming the March 24, 2006[3] and June 23, 2006[4] Resolutions of the National Labor Relations Commission (NLRC) in Case No. V-000366-2005 in favor of herein respondents.

Respondents are former employees of Plantation Bay located in Cebu, of which Belarmino is the Manager. On several dates in September 2004, after Plantation Bay issued a series of memoranda and conducted seminars[5] relative to its drug-free workplace policy,[6] Plantation Bay, in compliance with Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), conducted surprise random drug tests on its employees. The drug tests, said to have been carried out with the assistance of the Philippine National Police-Scene of Crime Operations (SOCO), were administered on about 122 employees by the Martell Medical Trade and Lab Services (Martell), a drug testing laboratory. And confirmatory tests were conducted by the Philippine Drug Screening Laboratory, Inc. (Phil. Drug), a Department of Health-accredited laboratory.

Respondent Romel Dubrico (Dubrico) failed to take the drug test conducted on September 14, 2004, hence, he was issued a memorandum[7] requiring him to appear in a mandatory conference on September 20, 2004. Before the scheduled conference or on September 19, 2004, Dubrico explained in writing[8] his failure to undergo the drug test, he averring that, *inter alia,* the procedure for the random drug testing was not followed such that he was not informed about his selection; and that he was at the appointed time and place for the pre-test meeting but that the duty manager was not around, hence, he left and failed to be tested.

Dubrico was later tested and found positive for use of methamphetamine hydrochloride (*shabu*).

Twenty other employees were found positive for use of *shabu* including herein respondents Godfrey Ngujo (Ngujo) and Julius Villaflor (Villaflor).

In compliance with separate memoranda[9] issued by the management of Plantation Bay, the employees submitted their explanations on the result of the tests, which explanations were found unsatisfactory, hence, Plantation Bay dismissed them

including herein respondents.

Respondents Dubrico, Ngujo and Villaflor and three others thereupon filed on November 18, 2004 their respective complaints[10] for illegal dismissal, questioning the conduct of the drug tests without the presence of the DOLE Regional Director or his representative.

By Decision[11] of April 18, 2005, Labor Arbiter Jose G. Gutierrez dismissed the employees' complaints, holding that in testing positive for the use of *shabu*, they were guilty of serious misconduct, hence, Plantation Bay validly terminated their employment; and that they were afforded due process, they having been issued memoranda as to the mandatory investigation and given the chance to, as they did refute the results of the drug tests by submitting results of *recent* drug tests.[12]

The Labor Arbiter discredited the drug test results presented by the employees as the tests were taken more than 72 hours *after* the conduct of the random drug tests.

On appeal, the NLRC, by Decision of October 26, 2005, affirmed the Decision of the Labor Arbiter. On respondents' motion for reconsideration, it, however, by Resolution of March 24, 2006, *reversed* its October 26, 2005 Decision and declared that respondents were illegally dismissed.

In finding for respondents, the NLRC held that the results of the *confirmatory* drug tests cannot be given credence since they were conducted *prior* to the conduct by the employer of the drug tests. It ratiocinated:

> Considering the indubitable documentary evidence on record notably submitted by respondents [petitioners herein] themselves, **we agree with complainants that either or both drug tests and confirmatory tests conducted on them were fabricated, farce or sham**. For **how could one "confirm" some thing which was yet to be established or discovered? Needless to say, the drug testing should always come ahead of the confirmatory testing, not the other way around.** We thus agree with complainants that if the drug tests against them were true, the supposed confirmatory tests conducted on them were not based on their urine samples that were the subject of the drug tests. Or that is the confirmatory tests were correct, these could not have been gotten from their urine samples which were yet to undergo drug testing. At any rate, there is not only doubt that on the version of respondents but also their conduct is highly suspicious based on their own evidence. **Thus, we now rule that respondents were not really into drugs.** (Emphasis and underscoring supplied)

On the issue of due process, the NLRC abandoned its earlier statement that it was the SOCO which conducted the drug tests, this time declaring that it was Martell which actually administered them. It added that respondents were not given the opportunity to examine the evidence and confront the witnesses against them through their counsel.

The NLRC accordingly reversed the Decision of the Labor Arbiter, disposing as follows:

> WHEREFORE, the Appeal is DISMISSED, and the assailed Decision is AFFIRMED in toto.
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> SO ORDERED.[13]

Its motion for reconsideration having been denied by Resolution of June 23, 2006, Plantation Bay appealed to the Court of Appeals, arguing that, *inter alia*, the veracity of the confirmatory tests was raised by respondents only when they filed a belated Motion for Reconsideration of the NLRC Decision, hence, the NLRC gravely abused its discretion when it reversed its findings based on such new issue.

The appellate court affirmed the NLRC March 24, 2006 Resolution with modification by deleting the award of damages. Hence, the present petition, petitioners reiterating the same issues raised in the appellate court. Additionally, they maintain that in terminating the services of respondents, they relied on the results of the random drug tests undertaken by an accredited and licensed drug testing facility, and if the results turned out to be questionable or erroneous, they should not be made liable therefor.

The petition is bereft of merit.

While it is a well-settled rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal,[14] there are exceptions thereto among which are for reasons of public policy or interest.

The NLRC did not err in considering the issue of the veracity of the confirmatory tests even if the same was raised only in respondents' Motion for Reconsideration of its Decision, it being crucial in determining the validity of respondents' dismissal from their employment.

Technical rules of procedure are not strictly adhered to in labor cases. In the interest of substantial justice, new or additional evidence may be introduced on appeal before the NLRC. Such move is proper, provided due process is observed, as was the case here, by giving the opposing party sufficient opportunity to meet and rebut the new or additional evidence[15] introduced.

The Constitution no less directs the State to afford full protection to labor. To achieve this goal, technical rules of procedure shall be liberally construed in favor of the working class in accordance with the demands of substantial justice.[16]

On the merits, the petition just the same fails. The importance of the confirmatory test is underscored in Plantation Bay's own "Policy and Procedures," in compliance with Republic Act No. 9165, requiring that a confirmatory test must be conducted if an employee is found positive for drugs in the Employee's Prior Screening Test, and that both tests must arrive at the same positive result.[17]