SECOND DIVISION

BERNARDO B. JOSE, JR., G.R. No. 169606
Petitioner,
Present:

CARPIO, *J.*, Chairperson,
LEONARDO-DE CASTRO,*
- versus - BRION,
DEL CASTILLO, and
ABAD, *JJ.*

MICHAELMAR PHILS., INC.
and MICHAELMAR SHIPPING Promulgated:
SERVICES, INC.,
Respondents. November 27, 2009
x- x

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 11 May 2005 Decision[2] and 5 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 83272. The Court of Appeals set aside the 19 January[4] and 22 March[5] 2004 Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036666-03 and reinstated the 18 June 2003 Decision[6] of the Labor Arbiter in NLRC NCR OFW Case No. (M)02-12-3137-00.

The Facts

Michaelmar Philippines, Inc. (MPI) is the Philippine agent of Michaelmar Shipping Services, Inc. (MSSI). In an undertaking[7] dated 2 July 2002 and an employment contract[8] dated 4 July 2002, MSSI through MPI engaged the services of Bernardo B. Jose, Jr. (Jose, Jr.) as oiler of M/T Limar. The employment contract stated:

> That the employee shall be employed on board under the following terms and conditions:
>
> 1.1 Duration of Contract EIGHT (8) MONTHS
> Position OILER
> Basic Monthly Salary US$ 450.00 & US$ 39.00 TANKER ALLOWANCE
> Hours of Work 48 HOURS/WEEK
> Overtime US$ 386.00 FIXED OT. 105 HRS/ MOS.
> Vacation Leave with Pay US$ 190.00 & US$ 150 OWNERS BONUS
> Point of Hire MANILA, PHILIPPINES[9]

In connection with the employment contract, Jose, Jr. signed a declaration[10] dated 10 June 2002 stating that:

> In order to implement the Drug and Alcohol Policy on board the managed vessels the following with [sic] apply:
>
> All alcoholic beverages, banned substances and unprescribed drugs including but not limited to the following: Marijuana Cocaine Phencyclidine Amphetamines Heroin Opiates are banned from Stelmar Tankers (Management) Ltd. managed vessels.
> Disciplinary action up to and including dismissal will be taken against any employee found to be in possession of or impaired by the use of any of the above mentioned substances.
>
> A system of random testing for any of the above banned substances will be used to enforce this policy. Any refusal to submit to such tests shall be deemed as a serious breach of the employment contract and shall result to the seamans dismissal due to his own offense.
>
> Therefore any seaman will be instantly dismissed if:
> x x x
> They are found to have positive trace of alcohol or any of the banned substances in any random testing sample.

Jose, Jr. began performing his duties on board the M/T Limar on 21 August 2002. On 8 October 2002, a random drug test was conducted on all officers and crew members of

M/T Limar at the port of Curacao. Jose, Jr. was found positive for marijuana. Jose, Jr. was informed about the result of his drug test and was asked if he was taking any medication. Jose, Jr. said that he was taking Centrum vitamins.

Jose, Jr. was allowed to continue performing his duties on board the M/T Limar from 8 October to 29 November 2002. In the Sea Going Staff Appraisal Report[11] on Jose Jr.s work performance for the period of 1 August to 28 November 2002, Jose, Jr. received a 96% total rating and was described as very hardworking, trustworthy, and reliable.

On 29 December 2002, M/T Limar reached the next port after the random drug test and Jose, Jr. was repatriated to the Philippines. When Jose, Jr. arrived in the Philippines, he asked MPI that a drug test be conducted on him. MPI ignored his request. On his own, Jose, Jr. procured drug tests from Manila Doctors Hospital,[12] S.M. Lazo Medical Clinic, Inc.,[13] and Maritime Clinic for International Services, Inc.[14] He was found negative for marijuana.

Jose, Jr. filed with the NLRC a complaint against MPI and MSSI for illegal dismissal with claim for his salaries for the unexpired portion of the employment contract.

The Labor Arbiters Ruling

In her 18 June 2003 Decision, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter held that:

> **Based from the facts and evidence, this office inclined [sic] to rule in favor of the respondents: we find that complainants termination from employment was valid and lawful. It is established that complainant, after an unannounced drug test conducted by the respondent principal on the officers and crew on board the vessel, was found positive of marijuana, a prohibited drug. It is a universally known fact the menace that drugs bring on the user as well as to others who may have got on his way. It is noted too that complainant worked on board a tanker vessel which carries toxic materials such as fuels, gasoline and other combustible materials which require delicate and careful handling and being an oiler, complainant is expected to be in a proper disposition. Thus, we agree with respondents that immediate repatriation of complainant is warranted for the safety of the vessel as well as to complainants co-workers on board. It is therefore a risk that should be**

avoided at all cost. Moreover, under the POEA Standard Employment Contract as cited by the respondents (supra), violation of the drug and alcohol policy of the company carries with it the penalty of dismissal to be effected by the master of the vessel. It is also noted that complainant was made aware of the results of the drug test as per Drug Test Certificate dated October 29, 2002. He was not dismissed right there and then but it was only on December 29, 2002 that he was repatriated for cause.

As to the complainants contention that the ship doctors report can not be relied upon in the absence of other evidence supporting the doctors findings for the simple reason that the ship doctor is under the control of the principal employer, the same is untenable. On the contrary, the findings of the doctor on board should be given credence as he would not make a false clarification. Dr. A.R.A Heath could not be said to have outrageously contrived the results of the complainants drug test. We are therefore more inclined to believe the original results of the unannounced drug test as it was officially conducted on board the vessel rather than the subsequent testing procured by complainant on his own initiative. The result of the original drug test is evidence in itself and does not require additional supporting evidence except if it was shown that the drug test was conducted not in accordance with the drug testing procedure which is not obtaining in this particular case. [H]ence, the first test prevails.

We can not also say that respondents were motivated by ill will against the complainant considering that he was appraised to be a good worker. For this reason that respondents would not terminate [sic] the services of complainant were it not for the fact that he violated the drug and alcohol policy of the company. [T]hus, we find that just cause exist [sic] to justify the termination of complainant.[15]

Jose, Jr. appealed the Labor Arbiters 18 June 2003 Decision to the NLRC. Jose, Jr. claimed that the Labor Arbiter committed grave abuse of discretion in ruling that he was dismissed for just cause.

The NLRCs Ruling

In its 19 January 2004 Resolution, the NLRC set aside the Labor Arbiters 18 June 2003 Decision. The NLRC held that Jose, Jr.s dismissal was illegal and ordered MPI and MSSI to pay Jose, Jr. his salaries for the unexpired portion of the employment contract. The NLRC held that:

Here, a copy of the purported drug test result for Complainant indicates, among others, the following typewritten words Hoofd: Drs. R.R.L. Petronia Apotheker and THC-COOH POS.; the handwritten word Marihuana; and the stamped words Dr. A.R.A. Heath, MD, SHIPS

DOCTOR and 29 OKT. 2002. However, said test result does not contain any signature, much less the signature of any of the doctors whose names were printed therein (Page 45, Records). Verily, the veracity of this purported drug test result is questionable, hence, it cannot be deemed as substantial proof that Complainant violated his employers no alcohol, no drug policy. In fact, in his November 14, 2002 message to Stelmar Tanker Group, the Master of the vessel where Complainant worked, suggested that another drug test for complainant should be taken when the vessel arrived [sic] in Curacao next call for final findings (Page 33, Records), which is an indication that the Master, himself, was in doubt with the purported drug test result. Indeed there is reason for the Master of the vessel to doubt that Complainant was taking in the prohibited drug marihuana. The Sea Going Staff Appraisal Report signed by Appraiser David A. Amaro, Jr. and reviewed by the Master of the vessel himself on complainants work performance as Wiper from August 1, 2002 to November 28, 2002 which included a two-month period after the purported drug test, indicates that out of a total score of 100% on Safety Consciousness (30%), Ability (30%), Reliability (20%) and Behavior & Attitude (20%), Complainant was assessed a score of 96% (Pages 30-31, Records). Truly, a worker who had been taking in prohibited drug could not have given such an excellent job performance. Significantly, under the category Behavior & Attitude (20%), referring to his personal relationship and his interactions with the rest of the ships staff and his attitude towards his job and how the rest of the crew regard him, Complainant was assessed the full score of 20% (Page 31, Records), which belies Respondents insinuation that his alleged offense directly affected the safety of the vessel, its officers and crew members. Indeed, if Complainant had been a threat to the safety of the vessel, officers and crew members, he would not be been [sic] allowed to continue working almost three (3) months after his alleged offense until his repatriation on December 29, 2002. Clearly, Respondents failed to present substantial proof that Complainants dismissal was with just or authorized cause.

Moreover, Respondents failed to accord Complainant due process prior to his dismissal. There is no showing that Complainants employer furnished him with a written notice apprising him of the particular act or omission for which his dismissal was sought and a subsequent written notice informing him of the decision to dismiss him, much less any proof that Complainant was given an opportunity to answer and rebut the charges against him prior to his dismissal. Worse, Respondents invoke the provision in the employment contract which allows summary dismissal for cases provided therein. Consequently, Respondents argue that there was no need for him to be notified of his dismissal. Such blatant violation of basic labor law principles cannot be permitted by this Office. Although a contract is law between the parties, the provisions of positive law which regulate such contracts are deemed included and shall limit and govern the relations between the parties (Asia World Recruitment, Inc. vs. NLRC, G.R. No. 113363,

August 24, 1999).

Relative thereto, it is worth noting Section 10 of Republic Act No. 8042, which provides that In cases of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.[16]

MPI and MSSI filed a motion for reconsideration. In its 22 March 2004 Resolution, the NLRC denied the motion for lack of merit. MPI and MSSI filed with the Court of Appeals a petition[17] for certiorari under Rule 65 of the Rules of Court. MPI and MSSI claimed that the NLRC gravely abused its discretion when it (1) reversed the Labor Arbiters factual finding that Jose, Jr. was legally dismissed; (2) awarded Jose, Jr. his salaries for the unexpired portion of the employment contract; (3) awarded Jose, Jr. $386 overtime pay; and (4) ruled that Jose, Jr. perfected his appeal within the reglementary period.

The Court of Appeals Ruling

In its 11 May 2005 Decision, the Court of Appeals set aside the 19 January and 22 March 2004 Resolutions of the NLRC and reinstated the 18 June 2003 Decision of the Labor Arbiter. The Court of Appeals held that:

> The POEA standard employment contract adverted to in the labor arbiters decision to which all seamens contracts must adhere explicitly provides that the failure of a seaman to obey the policy warrants a penalty of dismissal which may be carried out by the master even without a notice of dismissal if there is a clear and existing danger to the safety of the vessel or the crew. That the petitioners were implementing a *no-alcohol, no drug* policy that was communicated to the respondent when he embarked is not in question. He had signed a document entitled *Drug and Alcohol Declaration* in which he acknowledged that alcohol beverages and unprescribed drugs such as marijuana were banned on the vessel and that any employee found possessing or using these substances would be subject to instant dismissal. He undertook to comply with the policy and abide by all the relevant rules and guidelines, including the system of random testing that would be employed to enforce it.
>
> We can hardly belabor the reasons and justification for this policy. The safety of the vessel on the high seas is a matter of supreme and unavoidable concern to all the owners, the crew and the riding public. In the ultimate analysis, a vessel is only as seaworthy as the men who sail it, so that it is necessary to maintain at every moment the efficiency and

> competence of the crew. Without an effective *no alcohol, no drug* policy on board the ship, the vessels safety will be seriously compromised. The policy is, therefore, a reasonable and lawful order or regulation that, once made known to the employee, must be observed by him, and the failure or refusal of a seaman to comply with it should constitute *serious misconduct or willful disobedience* that is a just cause for the termination of employment under the Labor Code (Aparente vs. National Labor Relations Commission, 331 SCRA 82). As the labor arbiter has discerned, the seriousness and earnestness in the enforcement of the ban is highlighted by the provision of the POEA Standard Employment Contract allowing the ship master to forego the *notice of dismissal* requirement in effecting the repatriation of the seaman violating it.
> x x x x
>
> Under legal rules of evidence, not all unsigned documents or papers fail the test of admissibility. There are kinds of evidence known as *exceptions to the hearsay rule* which need not be invariably signed by the author if it is clear that it issues from him because of necessity and under circumstances that safeguard the trustworthiness of the paper. A number of evidence of this sort are called *entries in the course of business*, which are transactions made by persons in the regular course of their duty or business. We agree with the labor arbiter that the drug test result constitutes entries made in the ordinary or regular course of duty of a responsible officer of the vessel. The tests administered to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ships physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case.

The regularity of the procedure observed in the administration and reporting of the tests is the very assurance of the reports admissibility and credibility under the laws of the evidence. We see no reason why it cannot be considered substantial evidence, which, parenthetically, is the lowest rung in the ladder of evidence. It is from the fact that a report or entry is a part of the regular routine work of a business or profession that it derives its value as legal evidence.

Then the respondent was notified of the results and allowed to explain himself. He could not show any history of medication that could account for the traces of drugs in his system. Despite his lack of plausible excuses, the ship captain came out in support of him and asked his superiors to give him another chance. These developments prove that the respondent was afforded due process consistent with the exigencies of his service at sea. For the NLRC to annul the process because he was somehow not furnished with written notice is already being pedantic. What is the importance to the respondent of the difference between a written and verbal notice when he was actually given the opportunity to be heard? x x x

The working environment in a seagoing vessel is *sui generis* which amply justifies the difference in treatment of seamen found guilty of serious infractions at sea. The POEA Standard Employment Contract allows the ship master to implement a repatriation for just cause without a notice of dismissal if this is necessary to avoid a clear and existing danger to the vessel. The petitioners have explained that that [sic] it is usually at the next port of call where the offending crewman is made to disembark. In this case, a month had passed by after the date of the medical report before they reached the next port. We may not second-guess the judgment of the master in allowing him to remain at his post in the meantime. It is still reasonable to believe that the proper safeguards were taken and proper limitations observed during the period when the respondent remained on board.

Finally, the fact that the respondent obtained negative results in subsequent drug tests in the Philippines does not negate the findings made of his condition on board the vessel. A drug test can be negative if the user undergoes a sufficient period of abstinence before taking the test. Unlike the tests made at his instance, the drug test on the vessel was unannounced. The credibility of the first test is, therefore, greater than the subsequent ones.[18]

Jose, Jr. filed a motion[19] for reconsideration. In its 5 August 2005 Resolution, the Court of Appeals denied the motion for lack of merit. Hence, the present petition.

In a motion[20] dated 1 August 2007, MPI and MSSI prayed that they be substituted by OSG Ship Management Manila, Inc. as respondent in the present case. In a Resolution[21] dated 14 November 2007, the Court noted the motion.

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The Issues

In his petition dated 13 September 2005, Jose, Jr. claims that he was illegally dismissed from employment for two reasons: (1) there is no just cause for his dismissal because the drug test result is unsigned by the doctor, and (2) he was not afforded due process. He stated that:

> 2. The purported drug test result conducted to petitioner indicates, among others, the following: [sic] typwritten words Hool: Drs. R.R.L.. [sic] Petronia Apotheker [sic] and :THC-COOH POS. [sic]; the handwritten word Marihuana; and the stamped words Dr. A.R.A Heath, MD, SHIPS DOCTOR and 29 OKT. 2002. However, said test result does not contain any signature, much less the signature of any of the doctors whose name [sic] were printed therein. This omission is fatal as it goes to the veracity of the said purported

drug test result. Consequently, the purported drug test result cannot be deemed as substantial proof that petitioner violated his employers no alcohol, no drug policy [sic].

x x x x

Even assuming *arguendo* that there was just cause, respondents miserably failed to show that the presence of the petitioner in the vessel constitutes a clear and existing danger to the safety of the crew or the vessel. x x x

x x x x

It is a basic principle in Labor Law that in termination disputes, the burden is on the employer to show that the dismissal was for a just and valid cause. x x x

x x x x

x x x [T]he Honorable Labor Arbiter as well as the Honorable Court of Appeals clearly erred in ruling that there was just cause for the termination of petitioners employment. Petitioners employment was terminated on the basis only of a mere allegation that is unsubstantiated, unfounded and on the basis of the drug test report that was not even signed by the doctor who purportedly conducted such test.

5. Moreover, respondents failed to observe due process in terminating petitioners employment. There is no evidence on record that petitioner was furnished by his employer with a written notice apprising him of the particular act or omission which is the basis for his dismissal. Furthermore, there is also no evidence on record that the second notice, informing petitioner of the decision to dismiss, was served to the petitioner. There is also no proof on record that petitioner was given an opportunity to answer and rebut the charges against him prior to the dismissal.[22]

The Courts Ruling

In its 11 May 2005 Decision, the Court of Appeals held that there was just cause for Jose, Jr.s dismissal. The Court of Appeals gave credence to the drug test result showing that Jose, Jr. was positive for marijuana. The Court of Appeals considered the drug test result as part of entries in the course of business. The Court of Appeals held that:

Under legal rules of evidence, not all unsigned documents or papers fail the test of admissibility. There are kinds of evidence known as *exceptions to the hearsay rule* which need not be invariably signed by the author if it is clear that it issues from him because of necessity and under circumstances that safeguard the trustworthiness of the paper. A number of evidence of this sort are called *entries in the course of business*, which are transactions made by persons in the regular course of their duty or business. We agree with the labor arbiter that **the drug test result constitutes entries made in the ordinary or regular course of duty of a responsible officer of the vessel. The tests administered**

> **to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ships physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case**.[23] (Emphasis supplied)

Jose, Jr. claims that the Court of Appeals erred when it ruled that there was just cause for his dismissal. The Court is not impressed. In a petition for review on certiorari under Rule 45 of the Rules of Court, a mere statement that the Court of Appeals erred is insufficient. The petition must state the law or jurisprudence and the particular ruling of the appellate court violative of such law or jurisprudence. In *Encarnacion v. Court of Appeals*,[24] the Court held that:

> Petitioner asserts that there is a question of law involved in this appeal. We do not think so. The appeal involves an appreciation of facts, i.e., whether the questioned decision is supported by the evidence and the records of the case. In other words, did the Court of Appeals commit a reversible error in considering the trouble record of the subject telephone? Or is this within the province of the appellate court to consider? Absent grave abuse of discretion, this Court will not reverse the appellate courts findings of fact.
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> **In a petition for review under Rule 45, Rules of Court, invoking the usual reason, i.e., that the Court of Appeals has decided a question of substance not in accord with law or with applicable decisions of the Supreme Court, a mere statement of the ceremonial phrase is not sufficient to confer merit on the petition. The petition must specify the law or prevailing jurisprudence on the matter and the particular ruling of the appellate court violative of such law or previous doctrine laid down by the Supreme Court**. (Emphasis supplied)

In the present case, Jose, Jr. did not show that the Court of Appeals ruling is violative of any law or jurisprudence. Section 43, Rule 130, of the Rules of Court states:

> SEC. 43. *Entries in the course of business*. Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be

> received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

In *Canque v. Court of Appeals*,[25] the Court laid down the requisites for admission in evidence of entries in the course of business: (1) the person who made the entry is dead, outside the country, or unable to testify; (2) the entries were made at or near the time of the transactions to which they refer; (3) the person who made the entry was in a position to know the facts stated in the entries; (4) the entries were made in a professional capacity or in the performance of a duty; and (5) the entries were made in the ordinary or regular course of business or duty.

Here, all the requisites are present: (1) Dr. Heath is outside the country; (2) the entries were made near the time the random drug test was conducted; (3) Dr. Heath was in a position to know the facts made in the entries; (4) Dr. Heath made the entries in his professional capacity and in the performance of his duty; and (5) the entries were made in the ordinary or regular course of business or duty.

The fact that the drug test result is unsigned does not necessarily lead to the conclusion that Jose, Jr. was not found positive for marijuana. In *KAR ASIA, Inc. v. Corona*,[26] the Court admitted in evidence unsigned payrolls. In that case, the Court held that:

> Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court. It is therefore incumbent upon the respondents to adduce clear and convincing evidence in support of their claim. Unfortunately, respondents naked assertions without proof in corroboration will not suffice to overcome the disputable presumption.

In disputing the probative value of the payrolls for December 1994, the appellate court observed that the same contain only the signatures of Ermina Daray and Celestino Barreto, the paymaster and the president, respectively. It further opined that the payrolls presented were only copies of the approved payment, and not copies disclosing actual payment.

The December 1994 payrolls contain a computation of the amounts payable to the employees for the given period, including a breakdown of the allowances and deductions on the amount due, but **the signatures of the respondents are conspicuously missing. Ideally, the signatures of the respondents should appear in the payroll as evidence of actual payment. However, the absence of such signatures does not necessarily lead to the conclusion that the December 1994 COLA was not received**. (Emphasis supplied)

In the present case, the following facts are established (1) random drug tests are regularly conducted on all officers and crew members of M/T Limar; (2) a random drug test was conducted at the port of Curacao on 8 October 2002; (3) Dr. Heath was the authorized physician of M/T Limar; (4) the drug test result of Jose, Jr. showed that he was positive for marijuana; (5) the drug test result was issued under Dr. Heaths name and contained his handwritten comments. The Court of Appeals found that:

> The tests administered to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ships physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case.[27]

Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the Court of Appeals factual findings.[28] In *Encarnacion*,[29] the Court held that, unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence. Jose, Jr. failed to show that the Court of Appeals gravely abused its discretion.

Article 282(a) of the Labor Code states that the employer may terminate an employment for serious misconduct. Drug use in the premises of the employer constitutes serious misconduct. In *Bughaw, Jr. v. Treasure Island Industrial Corporation*,[30] the Court held that:

> **The charge of drug use inside the companys 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 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**. (Emphasis supplied)

Jose, Jr. claims that he was not afforded due process. The Court agrees. There are two requisites for a valid dismissal: (1) there must be just cause, and (2) the employee must be afforded due process.[31] To meet the requirements of due process, the employer must furnish the employee with two written notices a notice apprising the employee of the particular act or omission for which the dismissal is sought and another notice informing the employee of the employers decision to dismiss. In *Talidano v. Falcon Maritime & Allied Services, Inc.*,[32] the Court held that:

> [R]espondent failed to comply with the procedural due process required for terminating the employment of the employee. Such requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to mans innate sense of justice. The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. This is especially true in the case of a vessel on the ocean or in a foreign port. **The minimum requirement of due process termination proceedings, which must be complied with even with respect to seamen on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct, which led to the managements decision to terminate. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, i.e., (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employers decision to dismiss him.** (Emphasis supplied)

In the present case, Jose, Jr. was not given any written notice about his dismissal. However, the propriety of Jose, Jr.s dismissal is not affected by the lack of written notices. When the dismissal is for just cause, the lack of due process does not render the dismissal ineffectual but merely gives rise to the payment of ₱30,000 in nominal damages.[33]

WHEREFORE, the petition is **DENIED**. The 11 May 2005 Decision and 5 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 83272 are **AFFIRMED** with the **MODIFICATION** that OSG Ship Management Manila, Inc. is ordered to pay Bernardo B. Jose, Jr. ₱30,000 in nominal damages.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION MARIANO C. DEL CASTILLO
ASSOCIATE JUSTICE ASSOCIATE JUSTICE

ROBERTO A. ABAD
ASSOCIATE JUSTICE

ATTESTATION

I ATTEST THAT THE CONCLUSIONS IN THE ABOVE DECISION HAD BEEN REACHED IN CONSULTATION BEFORE THE CASE WAS ASSIGNED TO THE WRITER OF THE OPINION OF THE COURTS DIVISION.

ANTONIO T. CARPIO
Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO
Chief Justice

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[*] Designated additional member per Special Order No. 776.

[1] *Rollo, pp. 9-24.*

[2] Id. at 30-38. Penned by Associate Justice Mario L. Guaria III, with Associate Justices Rebecca de Guia-Salvador and Santiago Javier Ranada, concurring.

[3] Id. at 40.

[4] Id. at 49-60. Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring.

[5] Id. at 62-63.

[6] Id. at 42-48. Penned by Labor Arbiter Roma C. Asinas.

[7] Id. at 65.
[8] Id. at 66.
[9] Id.
[10] CA *rollo*, p. 75.
[11] *Rollo*, pp. 67-68.
[12] Id. at 69-70.
[13] Id. at 71.
[14] Id. at 72.
[15] *Id. at 46-47.*
[16] *Id. at 56-58.*
[17] CA *rollo*, pp. 2-13.
[18] *Rollo, pp. 33-37.*
[19] CA *rollo*, pp. 125-130.
[20] *Rollo, pp. 154-156.*
[21] Id. at 159.
[22] Id. at 16-20.
[23] Id. at 35.
[24] G.R. No. 101292, 8 June 1993, 223 SCRA 279, 282-283.
[25] 365 Phil. 124, 131 (1999).
[26] 480 Phil. 627, 636 (2004).
[27] *Rollo*, p. 35.
[28] *Encarnacion v. Court of Appeals, supra note 24, at 282.*
[29] Id. at 284.
[30] G.R. No. 173151, 28 March 2008, 550 SCRA 307, 319.
[31] *Talidano v. Falcon Maritime & Allied Services, Inc., G.R. No. 172031, 14 July 2008, 558 SCRA 279, 293.*
[32] Id. at 297-298.
[33] *Merin v. National Labor Relations Commission, G.R. No. 171790, 17 October 2008, 569 SCRA 576, 582-583.*