

LOADSTAR SHIPPING CO. INC. v. ROMEO MESANO

G.R. No. 138956, 07 August 2003, Third Division (Sandoval-Gutierrez, J.)

To constitute a valid dismissal two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.

Loadstar Shipping hired Romeo Mesano as bosun/boatswain in charge of the care and custody of M/V Beaver, one of its vessels. The company investigated Mesano after he brought out from the vessel a TV set and telescope in January 1995. Mesano immediately submitted a voluntary explanation asking for forgiveness. He claimed that he intended to have the TV set repaired but when it could not be done he returned it to the vessel.

On February 24, 1995, Loadstar handed Mesano a disembarkation order terminating his services effective February 28, 1995. Aggrieved, Mesano filed with the Labor Arbiter a complaint for illegal dismissal. The Labor Arbiter dismissed the complaint. The NLRC affirmed but the Court of Appeals reversed and ruled in Mesano's favor.

Loadstar appealed to the SC, alleging Mesano was not deprived of his right to due process since it gave Mesano the opportunity to present his side through his written explanation where he pleaded for forgiveness. Loadstar Shipping further claimed that Mesano failed to live up to the standard of responsibility and honesty called for by his position. Hence, measured by moral standards, his termination was lawful.

ISSUE:

Whether or not Loadstar Shipping unlawfully dismissed Mesano?

HELD:

To constitute a valid dismissal two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.

Simply put, the twin requirements of due process, substantive and procedural must be complied with before a dismissal can be considered valid."

In Cruz vs. NLRC, the Court said:

"The law requires that an employee sought to be dismissed must be served two written notices before termination of employment:(a) First notice - to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; (b) Second notice – to inform the employee of the employer's decision to dismiss him. Failure to comply with the

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requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void.”

The mandatory first notice is absent in the case at bar. Before respondent’s termination from service, he was neither apprised of the particular acts for which his dismissal is sought, nor was he directed to explain why he should not be dismissed for taking out from the vessel company property. While Mesano indeed voluntarily submitted his written explanation, nonetheless, he did not expressly acknowledge that he committed any offense. In fact, being in charge of the company’s vessel and its accessories and cargo, his intention in taking the TV set was to have it repaired.

Even granting that by submitting his written explanation, he was deemed to have been notified of the charge, still there was no investigation or hearing conducted wherein he could have submitted evidence to adequately defend himself.