

43 Phil. 320

[ G. R. No. 18027. April 25, 1922 ]

**FRANK RAY, PLAINTIFF AND APPELLEE, VS. G. E. CARPENDER AND PUNTA FLECHA LUMBER CO., DEFENDANTS. G. E. CARPENDER, APPELLANT.**

**D E C I S I O N**

STATEMENT

The defendant Carpende had a Government license for the cutting and removal of 20,000 cubic meters of timber in Baganian Peninsula on the southern coast of Mindanao. For the purpose of manufacturing it into lumber and converting it into money, and on the 2d day of June, 1920, Carpende entered into a written contract with the plaintiff, which, among other things, provided that Carpende would finance the proposition and should dispose of the lumber. That the plaintiff should "devote his entire time and energy in furthering the mutual interests of both parties, exclusively on the cutting license of said party of the first part." That he should "furnish a weekly report to said party of the first part of all expenses and of the amount of work accomplished," That he should be responsible for all the machinery and supplies, and should account for them. That he should have a salary of P500 per month, "and 10 per cent of the net profits accruing from the sale of products handled by said party of the second part, etc." The agreement was to continue in force to December 31, 1921, and provided that, in case of a renewal of the cutting license, the contract would automatically be extended for two years. Further, that "the party of the first part may remove the party of the second part for lawful cause, or drunkenness, inefficiency or negligence, and terminate this agreement." The contract was signed by both parties in Manila, and the plaintiff left at once for the premises, with a view of cutting the timber into logs, preparing a mill site and making all the preparations for the manufacture of the timber into lumber upon the arrival of the machinery, and employing the necessary labor for such purpose. Carpende remained in Manila, purchased a saw mill and a tractor for logging purposes, and negotiated for a small electric light plant, so that the mill when installed could be operated twenty- four

hours per day. The plaintiff made reports for the first two weeks after his arrival, and failed to make any further reports, and, as a matter of fact, did but very little, if anything, by way of preparation to carry out the spirit and intent of the contract. Meanwhile, the defendant, assuming that the plaintiff was acting in good faith, made all of the necessary preparations to carry out his part of the contract, and advanced money and incurred liabilities to the extent of several thousand pesos.

July 12, 1920, Carpenter wrote the plaintiff:

“As soon as you start in logging, let me know what results you get with the tractor,” and on July 18, he wired the plaintiff:

“Are you working? Rush reply.”

July 23:

“It is all a matter of logs and until I know just what you can do in getting them out with the present equipment, it is very hard for me to decide on this electric light plant.”

August 2, defendant telegraphed plaintiff:

“Are you logging—wire reply.”

The answer to this last telegram was the first information for a month which Carpenter had received from the plaintiff, and was the first intimation that he received that the plaintiff was loafing on the job and had done but very little, if anything. Carpenter on receipt of an answer to this last wire, went to the timber land and promptly discharged plaintiff, who later commenced this action to recover from him and Punta Flecha Lumber Company P12,000 as damages for a breach of the contract. Meanwhile Carpenter had organized this company with a capital stock of P100,000, and assigned his interests, and for such reason the company was made a party.

For answer, defendants plead the terms and provisions of the contract, and alleged that the

plaintiff "was inefficient and negligent, and failed and refused to comply with his duties under the terms of said contract." "That plaintiff failed and refused to devote his entire time and energy in furthering the interests of said defendant, and repeatedly and for long periods of time absented himself from defendant's cutting license where his work was situated, all in violation of the terms of said contract." "That plaintiff failed and refused to furnish defendant with a weekly report of his expenses and of the amount of work accomplished." That he failed and refused to obey the orders and instructions of the defendant.

After the testimony was taken, the lower court rendered judgment for the plaintiff for P612.81, the amount due him at the time of his discharge, and the further sum of P8,216.58, as damages, from which the defendants appealed, claiming that the court erred in finding that plaintiff was excused from rendering weekly reports, and that he had devoted all of his time and energy to the interests of his employer, and that his discharge was wrongful, and that he was entitled to recover the wages he would have earned during the full period of the contract, and in overruling defendants' motion for a new trial.

Johns, J.:

Standing alone, Carpenter's Government license to cut timber was of no value to him. To make it of value, it was necessary that the timber should be cut and manufactured into lumber and converted into money. It was to that end and for that purpose that he entered into the contract with the plaintiff. It was contemplated that he would furnish the money and sell the lumber, and that the plaintiff would employ the men, superintend the logging, construction of the mill, and the manufacture of the logs into lumber, and have a general supervision of everything on that end of the line. Mutual cooperation was necessary to the success of the enterprise. The timber was of no commercial value without a saw mill, and the saw mill was of no value without saw logs. Carpenter in good faith performed his part of the contract. The plaintiff was employed at an agreed salary of P500 per month, which Carpenter personally agreed to pay.

Regardless of blank forms or anything said in the contract, good faith and fair business dealing required that the plaintiff should keep Carpenter fully advised and make reports to him as to what he was personally doing. Without such reports Carpenter would be in the dark and would not know what was necessary or best for him to do at his end of the line. We must assume that for his salary of P500 per month, the plaintiff was to do something to earn the money, and that it was his duty to further and promote the interests of the scheme, to which he was a party and from which he was to receive 10 per cent of the net profits. There

would not be any profits until such time as the timber was cut into saw logs and the saw mill constructed and in operation, and the logs manufactured into lumber, and, under the terms of the contract, that was what plaintiff was to do and the purpose for which he was employed, and for which he was to receive P500 per month.

Without regard to blank forms, it would have been a very easy matter for him to have written a letter at least once a week to Carpenter, advising him of what he was doing and the progress of the work. By virtue of his employment, he owed that duty to his employer, and he failed to perform it. He was employed and was to receive a salary for the purpose of carrying out the purpose and intent of the contract at his end of the line.

It is a matter of common knowledge that when a man agrees to pay another a salary of P500 per month, he expects him to render some service and to do something to earn his salary.

In the instant case, the purpose and intent was very apparent, and the plaintiff knew when he accepted the position what he was expected to do for his salary.

The evidence in this case is conclusive that the plaintiff was both inefficient and negligent, and that Carpenter was fully justified in terminating the contract.

The judgment of the lower court in favor of the plaintiff and against the defendants for P8,216.58 is reversed, and one will be entered here in favor of the plaintiff and against the defendants for the sum of P612.81 only, with legal interest from August 18, 1920, and the cost of the action in the lower court, and the defendants to have judgment for costs on appeal against the plaintiff. So ordered.

*Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.*