

**DAMASO P. PEREZ, PETITIONER, VS. COURT OF APPEALS AND
ARMANDO HERRADURA, RESPONDENTS.***G.R.No. L-20238. January 30, 1965*

Ponente: BARRERA, J.

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From the decision of the Court of Appeals affirming with modification the decision of the Court of First Instance of Manila (in Civil Case No. 41080), Damaso P. Perez filed, the instant petition for review, contesting the correctness of the ruling ordering him to pay to respondent Armando Herradura P600.00 for unpaid salaries, P400.00 separation pay, and P1,000.00 as moral damages.

On August 1, 1958, respondent Herradura was appointed by petitioner as manager of the D. P. Perez Insurance Agency with a monthly salary of P400.00. Respondent forthwith discharged the functions thereof. However, in a letter dated January 15, 1959, petitioner Damaso Perez informed respondent that because respondent failed to produce the promised amount of business, the agency would no longer be in a position to continue with his services under the original arrangement and, consequently, the latter was being appointed, effective that date, as manager of its Non-Life department with compensation on commission basis only. As a result thereof, respondent resigned the following day, from his employment in the agency.

On February 11, 1959, respondent filed in Regional office No. 3 of the Department of Labor a claim for separation pay[[1]] against petitioner Damaso P. Perez. On February 24, 1959, respondent, likewise, filed a complaint for estafa in the City Fiscal's office against petitioner, for the same act of alleged non-payment of his salaries (I.S. 4482).

On August 4, 1959, or while this criminal complaint was pending investigation, petitioner instituted in the Court of First Instance of Manila Civil Case No. 41080 (the present action), for consignment and declaratory relief, alleging that notwithstanding his offers for payment of the sum of P600.00 demanded by respondent as unpaid salaries, the latter refused to accept the same. Thus, petitioner deposited said amount in court. In his answer to this petition, respondent denied the allegation that there was tender of payment made by petitioner, and in turn made a counterclaim for moral damages and attorney's fees. Thereafter, the City Fiscal dropped the criminal complaint against petitioner by reason of the alleged satisfaction of the unpaid salaries subject of the complaint, and due to defendant's desistance to prosecute.

In the consignment-case, the lower court, after hearing, rendered judgment finding petitioner liable for unpaid salaries of respondent for the period of from December 1, 1958 to January 15, 1959. Petitioner was also ordered to pay him separation pay corresponding to respondents one month salary, or P400.00, moral damages in the sum of P2,000.00 and P500.00 as attorney's fees. On appeal by petitioner, the Court of Appeals modified the lower court's decision only by reducing the moral damages from P2,000.00 to P1,000.00 and eliminating the provision for attorney's fees. Hence, the filing of the instant petition for review.

There is no disagreement as to the fact that respondent worked for petitioner's agency for five and one-half

months from August 1, 1958 to January 15, 1959) that he was informed of the change of the nature of his employment, from monthly salary to commission basis, on January 15, 1959 said arrangement to take effect on the same day; that this new appointment forced him to resign from his employment. In assailing the award of separation pay to respondent, petitioner contends that the former was not entitled thereto, respondent having rendered service for less than six months. The contention is without merit.

Under Republic Act 1052[2] before its amendment by Republic Act 1787, an employment for an indefinite period can not be terminated by the employer without serving upon the employee, one month advance notice thereof or paying him separation pay corresponding to his salary for one month. Note that while the law imposes the obligation, to give one month advance notice, on both the employer and employee, should the employee violate the same, the latter is not subject at all to any liability. Also, the law makes no distinction between justified and unjustified separation or dismissal. Neither is the employee's length of service taken as a factor in the matter of award of separation pay. [3] With the introduction of the amendment, however, the law on termination pay became more specific. In the first place, termination of employment was classified into two: those for just cause and those without, the law itself providing what constitute just cause for severance of employment. The employee who violates the injunction against termination of employment without advance notice to his employer, may now be held liable for damages. Upon the other hand, in determining the period of notice or the corresponding compensation to which a dismissed employee shall be entitled, the length of his service to the employer is taken into consideration. It is clear, therefore, that while under Republic Act 1952, every dismissed employee is entitled to one month advance notice or the equivalent separation pay, under Republic Act 1787, an employee who was dismissed without just cause shall be entitled to at least one month advance notice or severance pay, or shall be credited with half-month for every year of service, whichever is longer. In other words, if an employee had rendered services for 3 years—since he shall be credited half-month for every year of service—he will be entitled to advance notice of one and one-half months or the equivalent salary for said period. If he is credited with two years service, he is entitled to one month notice. If he has served for at least one year and six months, he also deserves one month notice, because the fraction of six months shall be considered one year. Suppose the employee has worked for one year and five months? Although the employee shall be credited with only half month for the one year service, and the fraction of five months is not considered one year, nevertheless, he is to be given one month notice, because under the law an employee is entitled to at least one month notice, the length of service being the basis of computation only if the result thereof will be more than one month. Differently stated, the minimum period of notice to which an employee is entitled, irrespective of the length of his service to the employer, is one month. It is needless to emphasize that this provision applies only if the termination of employment has been made without just cause. In the present case, it has not been proved that respondent's separation from the service was for any of the causes mentioned in the law as justifying termination of his employment.

Petitioner, likewise, assails the award of moral damages to respondent in the sum of P1,000.00. In this connection, the only basis mentioned by the Court of Appeals for the award of moral damages was that "from the time his (respondent's) services were terminated by the plaintiff on January 15, 1959, up to the time that he was able to land a job with the Stanvac Company, he had suffered much, being the father of a family with five children; he was downtrodden and had no other recourse than to pawn the small pieces of jewelry belonging to his wife." We do not believe this is sufficient ground to award moral damages. In no part of the decision under review is a finding that the non-payment of respondent's salary in due time was malicious, fraudulent or in bad faith. And we have held in various cases that in breach of contracts, moral damages may be awarded only where the breach was wanton or deliberately injurious, or the one responsible acted fraudulently or with malice or bad faith. [[4]]

As petitioner acknowledges his liability for respondents unpaid salaries for one and one-half months, the sum of P600.00 deposited in court may accordingly be disposed of for this purpose.

WHEREFORE, as thus modified, by eliminating the award, of moral damages, the decision of the Court of Appeals is hereby affirmed, with costs against petitioner.

SO ORDERED.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Paredes, JJ., concur.

[1] This claim was later amended to include demand for unpaid salary for one and a half months.

[2] "An act to provide for the manner of terminating employment without a definite period in a commercial, industrial, or agricultural establishment or enterprise.

"SEC. 1. In cases of employment, without a definite period, in a commercial, industrial or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.

"The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment.

"SEC 3. This Act shall take effect upon its approval." (Republic Act 1052).

[3] "SEC. 1. In cases of employment, without definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in case of an employee by serving notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.

"The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.

"The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice. (Republic Act 1787).

[4] Nacesito, et. al., vs. Pares, et. al., 104 Phil. 75; Tamayo vs. Aquino, 105 Phil.949; Francisco vs. GSIS, et. al., and cases cited therein, 1959; Francisco vs. GSIS, et. al., G.R. No. L-18287, Nov. 30, 1963.

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