

JOSE MONTEVERDE, PLAINTIFF AND APPELLANT, VS. CASINO ESPAÑOL DE MANILA, DEFENDANT AND APPELLEE.*G. R. No. 11365. April 18, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is an appeal from a decision of the Court of First Instance of Manila dismissing the complaint filed by plaintiff against defendant.

Plaintiff was employed by defendant as a waiter-pinboy and had been working as such from October, 1951 to February 15, 1955 with a monthly salary of P127.00. On the latter date, plaintiff was dismissed on the strength of a written statement made by one Alejandro Olido, his co-worker, to the effect that he saw two teaspoons, one knife and a towel in the house of plaintiff which were obviously taken by him from the defendant. Feeling that he was a victim of injustice, he filed a claim with the Bureau of Labor praying that he be paid his back wages and a separation pay. After proper investigation, said Office rendered decision dismissing the complaint for it was found that plaintiff was dismissed for cause. However, on a rehearing at the instance of plaintiff on the ground that Olido rectified his previous statement saying that what he saw in the house of plaintiff were articles similar to those belonging to defendant, the Bureau of Labor ruled that plaintiff be paid a sum equivalent to one month salary in lieu of one month notice in advance. Complying with this ruling, defendant deposited with said Bureau the sum of P110.00. Plaintiff did not appeal from this decision. However, on December 27, 1955, or four months thereafter, he commenced the present action praying for his reinstatement with back wages.

At the hearing, the parties agreed to re-submit in this case all the pleadings, evidence and record of the proceedings had in the office of the Bureau of Labor with this reservation: that defendant shall have the right to present the testimony, of Jose Luis Carceller to explain and clarify certain points, while plaintiff the right to present a rebuttal witness. After these witnesses had testified and the parties had submitted their memoranda, the court rendered decision dismissing the complaint. Plaintiff took the case directly to this Court on the plea that he would raise only questions of law.

Appellant claims that the trial court ignored the evidence submitted with regard to the promise of reinstatement made by witness Jose Luis Carceller who was then the manager of defendant if he proves to be innocent of the charge imputed to him, and this claim is predicated upon the fact that the main witness of defendant regarding this charge has rectified his statement and cleared him of any responsibility.

There is no merit in this claim. In the first place, the trial court did not make any finding on this matter, for it merely decided the case in the light of Republic Act No. 1052. The court considered this Act applicable and having found that defendant has already complied with its terms, found no merit in the complaint. In the second place, appellant has misinterpreted the promise made by Carceller to reinstate him if he proves his innocence of the charge because in making his claim, he only quotes from a portion of Carceller's testimony and ignores the rest. In other words, what Carceller stated was not an outright reinstatement if appellant would prove his

innocence but simply a promise that he would recommend his reinstatement to the secretary of the board of directors of defendant who is the one empowered to act on the matter.

Thus, this is what Carceller testified: "I most certainly would take him back again if it is proven beyond reasonable doubt that he is innocent and I would also take step to punish the witness who misled me if that were the case." And when he was asked to explain the import of such statement, Carceller made this clarification: "What I meant was I am going to recommend it to the Secretary and Board of Directors to take him back if it was so proven." And when he was asked whether he recommended him for reinstatement, Carceller said that he did not because "I had my doubts as to his honesty." (t. s. n. pp. 3-5, August 14, 1956). Indeed, there is something to this statement when we consider the rectification of witness Olido to the effect that articles he saw in the house of appellant were only similar to those belonging to the defendant. This rectification is not satisfactory. It does not clear appellant completely from any taint of guilt.

But we agree with the trial court that, even if there were no cause for separation, defendant can still separate appellant from the service under the provisions of Republic Act No. 1052. Section 1 of this Act provides that "In case 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." In other words, as long as that notice is given, the relation may be terminated. In the present case defendant has complied with this requirement when, in lieu of that notice, it paid an amount equivalent to one month salary to appellant. This is the basis of the decision of the trial court and in this we find no error.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, J.J., concur.

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