

**M.E. GREY, DECEASED, SUBSTITUTED BY RUTH GREY, PLAINTIFF
AND APPELLANT, VS. INSULAR LUMBER COMPANY, DEFENDANT
AND APPELLANT.**

G. R. No. L-535. September 28, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action in the Court of First Instance of Negros Occidental to recover from defendant certain amounts of money for services rendered to the latter itemized as follows:

(a)

For salary as lumber manufacturing expert, bonus, and expenses incurred in the discharge of his duties (first cause of action)

P64,372.85

(b)

For services rendered as General Superintendent and expenses incurred in the discharge of his duties (second cause of action)

7,783.80

(c)

For services rendered as General Manager and for expenses incurred in the discharge of his duties (third cause of action)

133,972.91

(d)

Amount deposited by plaintiff with defendant (fourth cause of action)

1,000.00

(e)

Cost of first-class steamer ticket from Fabrica, Negros Occidental to, the United States (fifth cause of action)

1,000.00

After trial, the court rendered judgment sentencing defendant to pay to plaintiff the sum of P42,916.48 as follows:

(a)

Salary for services as lumber manufacturing expert, from February 16 to March 22, 1932

P4,999.82

(b)

One month extra salary from March 23, to April 22, 1932

4,166.66

(c)

Additional compensation for services as General Superintendent

1,500.00

(d)

Additional compensation for services as General Manager

31,250.00

(e)

Additional compensation for plaintiff's trip to Pangil, Laguna

1,000.00

P42,916.48

From this decision both parties have appealed. Defendant appealed in so far as the decision orders defendant to pay plaintiff the sum of P42,916.48, with legal interest thereon from the date of the filing of the complaint until paid, and to pay similar interest on the sum of P22,800.68 from the date of the filing of the complaint until the date plaintiff collected the sum of P20,567.60 from the clerk of court. Plaintiff appealed from the decision in so far as it overruled his claim for the rest of the sums itemized in the complaint.

It should be noted that the above decision was rendered on October 7, 1941, or two months before the war broke out in the Philippines, and this notwithstanding, plaintiff and defendant perfected their appeal to the Supreme Court. On June 19, 1946, defendant filed a petition with this court praying that the record of the case be returned to the trial court in order that the missing exhibits may be reconstituted to enable defendant to prepare its brief. This petition was granted but at the hearing had at the lower court for the reconstitution of the missing exhibits, it turned out that, of the 906 exhibits introduced by defendant, only 18 were reconstituted, there by leaving 888 exhibits unreconstituted. Considering that without these missing exhibits, which were lost or destroyed during the war, it will not be possible for defendant to prepare its brief, nor for the court to render a correct decision, invoking section 30, of Act 3110, defendant, on January 5, 1951, moved this court that an order be entered declaring the decision of the trial court rendered on October 7, 1941 without force and effect, reserving to plaintiff and defendant the right to institute such action as they may deem proper in the premises. This motion was denied without prejudice to considering the matter when the case is decided on the merits.

We have carefully gone over the record of the case and examined the issues and questions raised by both parties in their respective briefs in connection with the findings made by the lower court in its decision, and we have come to the conclusion that said issues and questions may now be passed upon without need of annulling the whole proceedings, or instituting a new action, as suggested by defendant, because we have found that the findings of fact of the lower court stand in the main undisputed, the only things to be reviewed being the conclusion drawn from those facts and the rulings made on the different contentions of the parties. As a matter of fact, most of the facts and figures on which a divergence of opinion has arisen, and as to which a ruling is expected from this court, are not now controverted, as they appear well explained and discussed in the briefs of both parties. We have therefore decided to proceed with the determination of the issues raised in this appeal.

On September 14, 1928, plaintiff, a consultant engineer in lumber business, and A. E. Edgcomb, President of the defendant corporation, entered into a contract of employment the terms of which are contained in two letters marked Exhibits A and B. These letters are quoted hereunder for ready reference:

"Philadelphia
Sept. 14, 1928

Mr. M. E. GREY
Franklinville, N. J.
Dear Mr. Grey:

This is to confirm my understanding of our agreement. Mr. Welhaven wanted me to get him a man who was capable of taking full charge of the manufacturing of our lumber, and you have agreed to accept this position at a salary of P10,000 per year, which is to start as soon as you arrive at the mill. In addition to this you are to receive a bonus the same as the other Americans on our staff when the Insular pays dividends.

The INSULAR LUMBER COMPANY also agrees to pay all of your expenses from here to the mill, and to furnish you and your wife a house in which to live, but they are not to pay your wife's, expenses from here to the mill.

While I have been showing you what our trade here wants, and giving you some of my ideas as to the best way to get this, yet I want it clearly understood that when you get to our mill you will be subject to the orders of Mr. Alf Welhaven, our General Manager, and Mr. F. S. Baker, our General Superintendent. I also understand that you will give them the benefit of your experience in any other line which would be of benefit to our Company.

I am enclosing herewith an extra copy of this letter.

If the above is according to your understanding, please sign one copy and return same to me.

Very truly yours,

(Sgd.) A. E. EDGCOMB

President

The above is in accordance with my understanding.

(Sgd.) M. E. GREY."

(Plaintiff's Exhibit A)

"Philadelphia
Sept. 14, 1928

Mr. M. E. GREY
Franklinville, N. J.

Dear Mr. Grey:

Supplementing my letters of this date to you, this is to confirm my understanding of our supplemental arrangement.

In addition to the \$10,000.00 salary and bonus referred to in my letters of this date, you are to receive \$15,000.00 plus the bonus at the end of the year, provided that, in the opinion of the President of the Company, your services have benefited the Company to the extent of P100,000.00.

The basis of determining the benefit of your services to the Company will be largely

1. The reduction of the cost per M feet in the production the lumber.
2. Increased percentages of the high grades.
3. Better manufacturing, handling and care of the lumber preparatory to shipment.
4. The benefit to the Company in the changes and installation of machinery.
- 5 The general schooling of and benefit to the men in the way of educating them to produce better lumber, and at lower cost.
6. Any other additional benefits which are self evident as a result of your efforts.

Very truly yours,

(Sgd.) A. E. EDGCOMB

President

The above is in accordance with my understanding.

(Sgd.) M. E. GREY."

(Plaintiff's Exhibit B)

Pursuant to the terms of the contract of employment contained in the above quoted letters, plaintiff came to Fabrica, Negros Occidental, on October 28, 1928, and assumed his duties as lumber manufacturing expert. On August 3, 1929, in addition to his original employment, he was designated general superintendent, and on October 1, 1929, he was made general manager to take the place of Alf Welhaven, resigned, and due to some disagreement with the president of the defendant, A. E. Edgcomb, he was dismissed on March 22, 1932. On October 30, 1939, [he instituted the present action, and on October 7, 1941, the court decided the case as pointed out in the early part of this decision.

First Assignment of Error

Two of the items disputed by plaintiff-appellant in this assignment of error are (1) the amount of P273.97 representing unpaid salary corresponding to October 28 and 29, 1928 which, it is claimed, was not credited to plaintiff, and (2) the additional bonus of P10,000 based on the 20 per cent dividend declared on October 25, 1930. Plaintiff claims that he began working for defendant on October 28, 1928 and yet the books of the corporation show that he has been credited for his salary only from October 30, 1928 to February 15, 1932 on the basis of an annual salary of P50,000 as agreed upon. This is disputed by counsel for defendant who contends that, according to accountant A. G. Leukart, plaintiff was credited with the salary of P161.29 corresponding to October 29, 30 and 31, 1928 on the basis of his salary of P20,000 a year, but after considering these conflicting claims in the light of the contract of employment, we find that the claim of plaintiff is more tenable because it cannot be disputed

that he is entitled to be paid from October 28 on the basis of his salary of P50,000 a year. Plaintiff, therefore, should be credited with this additional salary of P273.97.

The contention of plaintiff regarding the additional bonus of P10,000 seems also to be well taken. In the first place, this is apparent from the contract of employment embodied in the letters Exhibits A and B. Thus, in the supplementary letter Exhibit B, the following stipulation appears: "In addition to the \$10,000 salary and bonus referred to in my letter of this date, you are to receive \$15,000 plus the bonus at the end of the year, provided that, in the opinion of the President of the Company, your services have benefited the Company to the extent of \$100,000." In the foregoing stipulation it appears clear that the company agreed to pay plaintiff a bonus at the end of every year of service subject only to the condition that his services should bring to the company a profit of not less than \$100,000. This seems to be the only condition for the granting of the bonus. Indeed, this condition is reasonable enough for, if that profit is not obtained, or even if obtained but not through his services plaintiff would have no right to the bonus stipulated, is true that in the letter Exhibit A, in referring to the payment of bonus, the following sentence also appears, "you are to receive a bonus the same as the other Americans on our staff when the company pays dividend." But, as explained by plaintiff, that sentence only meant the bonus should be computed in the manner the bonus given to other Americans is computed but not that its payment should be dependent upon the giving of to other American employees.

We find that explanation reasonable considering the peculiar nature of the contract of employment of the plaintiff with the company. For one thing, bonus is a voluntary act dependent upon the goodwill of the employer. Here it ceased to be a unilateral act. It became, contractual. Here it was clearly agreed that bonus may be given to plaintiff provided that certain condition is met and if this condition is met the obligation to pay the bonus cannot be eluded. It does not appear that a similar condition was imposed upon other American employees, and there being no such showing, it is unfair to place plaintiff under a similar predicament more so when the condition imposed refers to the special service to be rendered by the plaintiff. Considering that plaintiff has rendered this service and has given to the company the profit expected of him, it is fair and just that he be given the bonus to which he is entitled under the contract.

The contention that the executive committee of the board of directors of the defendant corporation never authorized the payment of such bonus on the special dividend of 20 per cent declared on October 25, 1930, cannot defeat this claim of the plaintiff considering that this is a special feature of the contract of employment entered into between plaintiff and defendant. There is nothing in that contract to indicate that that bonus should be subject to approval by the board of directors.

The contention that this bonus should not be paid because the dividend that was distributed was based on the proceeds of the use and occupation insurance and not on ordinary profits realized by the company, is also of no moment, for it cannot be disputed that because of that insurance the company was able to save its surplus which was ample enough to warrant the distribution of dividends to its stockholders. This is borne out by the letter of the company to its stockholders dated October 25, 1930.

Another claim of plaintiff under this assignment of error refers to certain erroneous and unjustifiable deductions or charges made by defendant from plaintiff's salary as lumber manufacturing expert. These deductions amount to P12,173.62 and are itemized on pages 32 and 33 of the brief of plaintiff-appellant.

In this connection, the following observation should be made. It appears that defendant had from the very beginning followed the practice of not paying actually to the American employees their salaries and other allowances that may be due them at the end of every month but of allowing them to draw so much money that they may need for their expenses during the month provided that the amounts drawn be not be more than the

amounts credited to them, and that at the end of every month these American employees were furnished written statements showing the status of their account with the company. And in these statements are shown not only the amount of salary that is credited to them but also the charges or deductions that are made from their account for their information and verification. It is also a practice followed by the company that every time these statements are submitted to said American employees they are required to verify them and, if agreeable, to sign them as a sign of their conformity. The evidence shows that during the period plaintiff has been in the employ of defendant, this practice has been followed and plaintiff has always signed those statements without any complaint or objection on his part. Plaintiff was separated from the service on March 22, 1932 and he only filed the present action on October 30, 1939. This shows that he kept silent for over seven years, if not more, for he has never been heard of to complain about these alleged erroneous charges until he brought the matter to court, for this reason that defendant disputes now this claim not only on the ground of estoppel but because the act) if any, to press this claim has already prescribed.

In the light of the practice followed by the company as above outlined, we are inclined to sustain this objection of defendant. The very document submitted by plaintiff j that the alleged erroneous charges were made by defendant during the years 1929, 1930, 1931 and some in the month of March, 1933. Plaintiff had six years within which to ask for reimbursement for these charges from defendant through court proceedings, but he did so only on October 30, 1939, or more than seven years after his light of action had accrued. The contention of plaintiff pat the period of limitation that should apply to his claim is 10 years because his right of action for the recovery of said charges is based on his contract of employment as well as on the cablegram dated March 21, 1932 sent by the President of the defendant company, Cannot be entertained not only because there is nothing 'in said documents which may in any way refer to reimbursement of charges but because such claim has been Raised by plaintiff for the first time in this appeal. In [the lower court- the theory he entertained was that the ;liability of defendant for reimbursement was statutory. He cannot be allowed to change that theory now in this stage of the proceedings.

On the other hand, defendant disputes the allowance Riven by the lower court to plaintiff for one month extra salary in the sum of P4,166.66 on the following grounds: (1) Plaintiff did not claim for it in his complaint; (2) Plaintiff was dismissed from the service because of a gesture of defiance and insubordination he evinced in his letter to the president of the defendant which the latter could not countenance; (3) he was separated because the company lost confidence in him; and (4) the action of plaintiff has prescribed.

There is no legal basis for this contention of defendant. In the first place, while it is true that there is no specific in the complaint concerning this extra compensation such lack of specific claim is immaterial considering the complaint contains a prayer for such other relief e court may deem just and equitable. In the second place, while under article 300 of the Code of Commerce an employee may be separated for serious disregard and lack of consideration to an employer, however, it appears that plaintiff was separated due to serious differences be tween him and the company on matters of policy which are bound to arise in the management of a business so intricate and complicated as the one in which the defendant corporation was engaged. In the third place, even granting that plaintiff was separated from the service because of lack of confidence, such is not a sufficient cause for depriving him of this extra compensation, there being no showing that he had acted in bad faith, or in a manner that would warrant his dismissal for cause. Lastly, the claim of plaintiff for such extra compensation is germane to his contract of employment which, in this case, is written, and as such the period of prescription that should be considered is ten years. The lower court, therefore, did not err in granting plaintiff an extra compensation under article 300 of the Code of Commerce.

Second and Third Assignments of Error

In the second assignment of error, plaintiff-appellant contends that in the latter part of the month of July. 1929,

F.S. Baker and M.R. Arick, General Superintendent and Woods Superintendent, respectively, of the defendant company were dismissed; that plaintiff was subsequently appointed General Superintendent; that plaintiff also took over the work of the Woods Superintendent; that at the time of their dismissal, Baker and Arick were receiving a salary of P1,500 and P1,100 per month, respective and that taking into consideration the salaries of and Arick, plaintiff should be given an additional compensation of P1,600 a month, without bonus.

The record, however, shows that plaintiff did not act render service as Woods Superintendent because this position was abolished by plaintiff himself on May 31, 1929. His order abolishing this position is contained in Exhibit 6-A. We will therefore omit any reference to this position in our discussion of this matter.

In connection with the third assignment of error, plaintiff also contends that subsequent to his appointment as General Superintendent he was also appointed General Manager to take the place of Alf Welhaven, who resigned; that the salary of Welhaven was P80,000 a year, plus bonus and reimbursement for expenses incurred by him; that Welhaven did not devote his whole time to his duties as General Manager because he was at the same time the manager of a mining company from which he was also drawing a salary; and that considering the nature and extent of the service rendered by plaintiff as General Manager, he was entitled to an additional monthly compensation of P4,000, without bonus. Plaintiff, however, admits that there is no previous agreement between him and the defendant as to the amount of compensation to be paid to him when he temporarily assumed the duties and responsibilities of the additional positions for which reason, he avers, he can only claim for such compensation as his services may warrant.

Counsel for defendant, on his part, objects to this claim on the ground of estoppel and prescription. With regard to the first ground, defendant contends that plaintiff assumed the additional positions without claiming for any extra compensation and that in the monthly statements B@t were given to him showing the status of his account he never objected to any of said statements even if the same only showed the salary that was paid him in his original capacity as a lumber manufacturing expert. It is contended that his failure to object to the non-payment to him of additional compensation operates as estoppel on his part to claim for such compensation. And in connection with the second objection, it is claimed that his right of action to collect has already prescribed for the reason that he allowed almost 10 years to elapse before taking the matter to court.

We find no merit in the argument that plaintiff is in estoppel in claiming additional compensation for the new positions for the simple reason that, contrary to the claim of defendant, plaintiff did not remain silent on this matter during the period he rendered the additional services. The evidence shows that plaintiff had always insisted on his right to receive additional compensation, not of course with the management in Manila, which was under his jurisdiction while acting as General Manager, but with his superior officers in America. It was to them that plaintiff had submitted his claim for additional compensation and for which he was promised an equitable settlement by the defendant through its President, A. E. Edgcomb. Being then the highest official of the company in the Philippines he could not be bound by his failure to object to whatever deficiency may be found in the official statements, given to him at the end of every months for after all, such matter has to be acted upon by the superior officers of the company who were then in America. His failure therefore to make such a claim in the Philippines cannot be interpreted as a estoppel on his part to claim for such additional compensation.

We can make the same consideration with regard to the defense of prescription. It appears that the defendant company through its President Edgcomb had promised to make equitable settlement of his claim for additional compensation, which promise was contained in a cablegram sent by Edgcomb to the plaintiff in the order containing his dismissal. Considering this promise in writing as basis, plus his written designations, we believe that ti right to claim this additional compensation can only prescribe in 10 years and this period has not yet elapsed.

As to the worth of these extra services of plaintiff, we can do no better than to refer to the decision of the lower court. On this matter, the lower court has made a painstaking and conscientious discussion of the nature of duties rendered by the plaintiff and the difficulties undergone during his incumbency especially because of the fire that had occurred on April 15, 1930 which burned down the mill and other buildings of the company. We have taken notice of these observations to help us determine whether plaintiff is entitled to this additional compensation and if so, the worth of his services and the compensation he should be given. These observations were made after a conscientious study of the financial condition of the company during the years 1929, 1930, 1931 and 1932 and the vicissitudes it had gone through during that period. They include an appraisal of the work done by plaintiff not only in his capacity as lumber manufacturing expert but also in the double capacity he assumed as General Superintendent and General Manager of the company, and after a thorough study of the whole situation the court reached the conclusion that plaintiff was entitled to a reasonable compensation. We fully subscribe to its findings on this matter.

Fourth Assignment of Error

In the fourth assignment of error, plaintiff-appellant tries to collect from defendant the amounts of P8,138.98, P14,532.92 and P12,658.98 by way of reimbursement for money allegedly advanced by him for the business of defendant. These amounts are itemized in the bill of particulars submitted by plaintiff to the court upon request of defendant. With few exceptions these items are covered by their corresponding vouchers. Plaintiff testified that he had disbursed this money for the benefit of the company but he has never been reimbursed therefor.

While these disbursements are not now disputed, the propriety of their collection is questioned by the defendant, contends that plaintiff can no longer recover because his right of action has already prescribed. Considering the evidence submitted by plaintiff, it appears that the alleged disbursements were incurred by plaintiff from November, 1928 to April 3, 1932, and if plaintiff was entitled to reimbursement he would have brought the action for the recovery of expenses incurred in 1928, not later than the year 1934; the action to recover the expenses incurred in 1929, not later than the year 1935. the action to recover the expenses incurred in 1930, not later than the year 1936; and the action for expenses incurred in 1932, not later than April 3, 1938. Plaintiff's complaint, however, was filed on October 30, 1939, or more than six years after the cause of action had accrued. We find this contention tenable considering that under the law an action of this nature prescribes in six years.

Defendant also objects to the collection of these accounts on another ground. According to witnesses Pope and Leukart, both of defendant corporation, plaintiff would have been paid all the items of expenses asked for by him in the present case if he had only claimed for them while he was yet the General Manager of the company. This testimony is very significant. It shows that the defendant has never refused to reimburse to plaintiff all the money he has spent for its benefit. This shows its good faith. In fact, occasions there were when plaintiff, while still the General Manager of the company, sought reimbursement for disbursements made by him by giving appropriate instructions to that effect to its accounting department and that office readily made the reimbursement. On this score, the record shows that he was reimbursed by the company expenses totalling the sum P6,483.73. Again, from March 28 to April 27, 1932 shortly after his separation, he submitted a list of expenses totalling P13,351.24 and again that amount was reimbursed to him. And these amounts were reimbursed because the company found that they were incurred in its benefit. Indeed, if plaintiff really spent for the benefit of the company the sums that he now seeks to recover why did he not claim, reimbursement therefor while he was still the General Manager of the company and waited for over seven years before bringing action for their recovery? At any rate, even if said expenses considered legitimate, plaintiff's right to collect is now jarred because of his failure to file the action within the period prescribed by the statute of limitations.

Fifth Assignment of Error

The remaining question to be determined refers to the rate of interest that should be charged against the defendant on the various sums of money awarded to plaintiff. The latter claims that it should be 9 per cent because, according to him, sometime in 1931, to minimize the loan of the defendant to a local bank as far as possible and to encourage its employees to leave their salaries with the company, the latter agreed to pay 9 per cent interest on money deposited by its employees in their savings or current accounts, which was the same rate of interest the defendant was paying the bank for its loan. But counsel for the defendant has successfully disproved this contention by showing that, if there was ever such a proffer on the part of the company, that was made by plaintiff himself who, as General Manager, issued on November 28, 1931, a circular stating that as of November 1, 1931 all money placed in the savings account by the employees which will not be withdrawn for a period of one year will earn interest at the rate of 9 per cent. But, as it should be noted, the privilege only refers to money deposited as savings account and not as current account as is the case of the plaintiff. It is true that in December, 1931, twenty-five employees of the defendant were paid a sum equivalent to 9 per cent interest on the money left by them with the company for one year, but such .Payment was made only as a Christmas gift upon instructions given by plaintiff himself. Aside from that circular defendant never pursued any policy of paying on any money deposited with it by its employees an interest of 9 per cent, as claimed.

With regard to the claim that the lower court erred in sentencing the defendant to pay interest at the rate of 6 per cent per annum on all sums awarded to plaintiff We find that the contention is well founded in so far the sum of P22,800.68 is concerned, for defendant has always been willing to pay said amount to plaintiff upon demand, but not so with regard to other items awarded to plaintiff. We are of the opinion that said sum of P22,800.68 should not pay interest because the same was paid to plaintiff immediately after demand thereof has been made, but the rest of the decision with regard to the rate of interest should be respected.

Conclusion

In resume, we wish to state that, with the exception of the sums of P273.97 and P10,000 which should be awarded to the plaintiff under his first assignment of error, and the elimination of the interest charged on the sum of P22,800.68 covered by the fifth assignment of error, the decision of the lower court should be affirmed in all other respects.

Wherefore, with the modification in the sense indicated in the preceding paragraph, the judgment appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Labrador, JJ., concur.

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