

H. C. LIEBENOW, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE VEGETABLE OIL COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 13463. November 09, 1918

Ponente: STREET, J.

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STREET, J.:

This action was instituted by the plaintiff, H. C. Liebenow, on May 11, 1917, in the Court of First Instance of the city of Manila against the defendant, the Philippine Vegetable Oil Company, a corporation engaged in the manufacture of coconut oil in the city of Manila. The purpose of the proceeding is to recover a sum of money to which the plaintiff considers himself entitled by way of a bonus in addition to the salary earned by him while in the employment of the defendant company as superintendent of its factory in the district of Nagtahan, city of Manila. At the hearing in the Court of First Instance judgment was entered against the plaintiff, absolving the defendant from the complaint, and the plaintiff has appealed.

The contract under which the plaintiff rendered the service to which reference has been made is expressed in a letter of March 17, 1914, written by the president of the Philippine Vegetable Oil Company to Liebenow as follows:

"We hereby confirm conversation had on yesterday by our Mr. Vorster and yourself to the effect that this company engages your services as superintendent of its factory at Nagtahan for the period of one year from April 1st, 1914, at a monthly compensation of P500 (five hundred pesos) and living quarters and such further amount in the way of bonus as the board of directors may see fit to grant you."

In conformity with this agreement, the plaintiff entered upon the discharge of his duties as superintendent of the factory aforesaid on April 1, 1914, and continued to render service in this capacity not only for the period of one year specified in the contract, but for an additional period of four months, or until August 1, 1916, when his services terminated. At some time during the course of this employment, the exact date of which does not appear, the monthly salary of P500 was raised to P750, but the contract was not otherwise changed. After the employment ceased the defendant company continued to deliver to the plaintiff each month a check for P750, the equivalent of the salary he had been receiving. These payments were continued until the total sum of P4,500 had been thus paid.

The plaintiff alleges in his complaint that by reason of his skill and ability the defendant's plant was made much more productive and its profits thereby enormously increased. It is not denied that the service rendered was satisfactory to the company, and the court found that during the time the plaintiff was employed as superintendent the output of the plant had increased and the cost of operation had diminished, with consequent profit to the defendant company.

It is the plaintiff's contention that the stipulation contained in the letter of March 17, 1914, to the effect that the plaintiff should receive such further amount in the way of bonus, over and above salary, as the board of directors might see fit to grant has not been satisfied. The P4,500, which he received in the form of a monthly check of P750 for six successive months after the termination of his services, seems to be considered by the plaintiff purely

in the light of a free gift, and it is insisted that this money was not paid to him in satisfaction, in whole or in part, of the stipulated bonus. We cannot concur in this suggestion. It is true that the directors did not by anticipation declare that these payments should be considered in the light of a "bonus;" and a resolution to this effect was not adopted by them until after the trial in the Court of First Instance had commenced. This circumstance we consider unimportant. The money thus paid was in addition to salary; and it came from the same source and was paid by the same authority as any bonus that might have been awarded to him. The fact that the money was not so labelled is immaterial.

The plaintiff, however, contends that he is entitled to a bonus to be fixed by the court as a reasonable participation in the increased profits of the factory under his care, taking into consideration his technical skill and the greater output resulting therefrom. He believes that the increased profits of the enterprise due directly to his efficiency amounted to at least P100,000; and he suggests, as the lowest proper minimum that he should be awarded an amount sufficient to raise his salary for the whole period to the sum of P12,000 per annum, the amount supposedly paid to his predecessor. This last suggestion is based on the circumstance that, upon a certain occasion, he talked to the company's manager about the amount of the bonus which he would expect to receive and informed the manager that he would not be satisfied with less than his predecessor had been accustomed to receive. The manager, so the plaintiff says, expressed his conformity with this idea.

The solution of the case makes it necessary to consider the legal effect of the stipulation inserted in the contract in question to the effect that the plaintiff should be entitled to such further amount in the way of bonus as the board of directors might see fit to grant.

We see no reason to doubt that a promise of this character creates a legal obligation binding upon the promisor, although in its actual results it may not infrequently prove to be illusory. Such a promise is not, in our opinion, nugatory, under article 1115 of the Civil Code, as embodying a condition dependent exclusively upon the will of the obligor. Nor can it be held invalid under article 1256 of the same Code, which declares that the validity and performance of a contract cannot be left to the will of one of the contracting parties. The uncertainty of the amount to be paid by way of bonus is also no obstacle to the validity of the contract (article 1273, Civil Code); since the contract itself specifies the manner in which the amount payable is to be determined, namely, by the exercise of the judgment and discretion of the employer.

The validity of the promise being conceded, the question which arises next is: What is necessary to satisfy it? Upon this point it must be obvious that the obligation can only be satisfied when something has been paid as a bonus by or with the approval of the board of directors. In the case before us the promise to pay a bonus is absolute and unconditional. The payment is not conditioned upon satisfactory service, nor upon the duration of the service, nor upon the profits which may accrue to the employer from the efficiency of the employee. All these elements might and naturally would operate upon the minds and discretion of the directors in fixing the amount of the bonus, but they are wholly unconnected with the legal right of the plaintiff to receive something as a bonus.

The amount of the bonus, it will be observed, is left by the contract to the discretion of the board of directors. Now, when that discretion has once been exercised and a bonus has been paid by the directors or by the officers of the company, with the approval, express or implied, of the directors, can that discretion be judicially reviewed? We are of the opinion that it cannot. The parties stipulated that the discretion to be exercised was the discretion of the directors; and there would be a very manifest infringement of the contract, if we were to substitute in place of the discretion of the directors the discretion of any other person or body whomsoever.

Practical considerations point to the same conclusion. An employer, in determining what amount to award as a bonus, naturally and properly considers many things a court could not well take into account, as for instance, the

personal peculiarities which make one man more acceptable or more serviceable in the employment than another. In the complex enterprises of modern industry, especially, would it be difficult for a court to undertake to say just what any particular employee might be entitled to. The best course, we think, in such a case as this, is to recognize that the contracting parties have placed the discretion to determine the amount of the bonus in the hands of the employer, and to hold them bound by that.

But it is suggested that where a contract of service provides for a salary in a fixed sum and an additional sum to be paid by way of bonus, the whole contract is to be taken together, and it is to be considered as having about the same effect as if the parties, recognizing the inadequacy of the amount fixed as salary, had agreed that a further bonus should be paid sufficient to raise the amount to what should be considered adequate upon the basis of a quantum meruit. A more reasonable construction—and in our opinion one which approximates more closely to the evident intention of the parties—is to hold that the fixed salary was adjusted with a view to compensate the employee so far as those elements are concerned which could properly be taken into consideration in fixing a quantum meruit and that the bonus was intended to be a mere gratuity the amount of which should be determined exclusively in the discretion of the employer.

If, as supposed, the contracting parties are really bound by the stipulation which leaves the determination of the amount of the bonus to the employer, two consequences necessarily follow. The first is that where something or other is paid by way of a bonus upon such a contract, even though only a nominal amount, the obligation is satisfied. The other is that, if nothing at all is paid, the employee can recover in a legal action only nominal damages. Such a contract contains nothing which could serve as the basis of a title to special damages and affords no measure by which the amount of such damages could be ascertained.

It therefore becomes a matter of little or no practical importance whether the sum of P4,500, which was paid to the plaintiff after he quit work for the defendant, was paid as a bonus or not; for even if it were not so paid, the plaintiff could in this action recover no more than mere nominal damages.

A question which we consider of much importance is presented in an assignment of error directed to the action of the trial court with reference to a subpoena duces tecum which the plaintiff caused to be issued a few days prior to the hearing in the Court of First Instance. Said subpoena was directed to the managing director of the Philippine Vegetable Oil Company and commanded him to produce in court upon the day set for the hearing of the cause the following documents, records, and papers relative to the company's business, to wit:

"(1) All Daily Mill reports showing daily output of oil and cake and consumption of copra of the P. V. O. Co., from April 1, 1913, to March 31, 1915, both inclusive.

"(2) All shipping reports of oil of said company for the same period.

"(3) All records showing cost of all shipments of oil made by said company, both in bulk and barrels for the same period.

"(4) All records of all demurrage charges on said shipments for the same period.

"(5) All records of receipts, expenses and profits from operation of the company's mill and all operating charges and costs of said mill for the same period.

"(6) All records and vouchers showing the salary and all other sums paid to Mr. Thompson, the company's mill superintendent, or mill manager, during the entire period of his employment as well as all sums paid to him thereafter."

When the case was called for hearing the attorney for the defendant moved the court to vacate this subpoena on the ground that the plaintiff was not entitled to require the production of the documents called for. The court

reserved the matter for later determination and in the end ruled that the evidence which the plaintiff sought to elicit was irrelevant. The witness was therefore excused from producing the papers mentioned in the subpoena duces tecum and the plaintiff duly excepted.

According to the plaintiff's theory of the case, he was entitled to a bonus the amount of which should be determined by the court with a view to the usefulness and efficiency which he had exhibited in the course of his employment; and he insists that the profits earned by the defendant during the time he was employed as superintendent of the Nagtahan factory are relevant in determining the amount to be thus awarded. For reasons already stated, this contention is untenable; and we are of the opinion that the court committed no error in refusing to compel the production of the documents and records in question. The right to the bonus was wholly independent of the profits, and the amount of the profits could not properly be taken into consideration by the court at all.

The subpoena duces tecum is, in all respects, like the ordinary subpoena ad testificandum, with the exception that it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena. It is issued in the same manner as the ordinary subpoena, and is procurable from the clerk as of course without application to the court. Section 402 of the Code of Civil Procedure says that the subpoena duces tecum may be used to compel the witness to bring any book, document, or other thing under his control, which he is bound by law to produce in evidence. The words "which he is bound by law to produce in evidence" indicate a limitation upon the exigency of the writ; and it is evident that there is this difference between the ordinary subpoena to testify and the subpoena duces tecum, namely, that while the person to whom the subpoena to testify is directed is bound absolutely and without qualification to appear in response to the subpoena, the person to whom the subpoena duces tecum is directed is bound only in so far as he is required by law to produce the documents in evidence.

It results therefore that, if the case is such as to make it doubtful whether the documents to be produced are such that the witness is bound by law to produce them, the witness is entitled to have the court pass upon this question; and where a subpoena duces tecum is improperly issued to enforce the production of documents which the witness is not bound to produce, a proper remedy is by motion to vacate or set aside the subpoena. Such was the procedure adopted in this case.

The power to require the production of books, documents, and papers by means of the subpoena duces tecum is one which is undoubtedly capable of abuse and one which, if improperly used, causes great annoyance, not to say, expense to the person against whom it is directed. If the use of the subpoena duces tecum were in practice confined to the office of compelling the production of documents and papers which are directly related to the issues in a case, occasions for complaint would be infrequent. However, in modern business it is sometimes necessary for litigants to have access to voluminous materials. Journals, ledgers, cashbooks, invoice books, and account books pertaining to the business of large enterprises may have to be examined. To enforce the production of these great piles of material unconditionally in court would in many cases operate with unreasonable hardship on the party against whom the subpoena is issued and not infrequently the step would be barren of results to the person seeking to examine them. Such procedure is not to be encouraged; and it is the duty of the court, in such a situation, to control the process so as to make it conformable to law and justice. (Subsection 7, section 11, Code of Civil Procedure.) The motion to vacate or set aside the subpoena gives the court the requisite opportunity to examine the issues raised by the pleadings in the cause and to consider not only the relevancy of the evidence which is to be elicited but also to consider whether an order for the production of the document would constitute an unlawful invasion of privacy.

In determining whether the production of the documents described in a subpoena duces tecum should be enforced

by the court, it is proper to consider, first, whether the subpoena calls for the production of specific documents, or rather for specific proof, and secondly, whether that proof is prima facie sufficiently relevant to justify enforcing its production. A general inquisitorial examination of all the books, papers, and documents of an adversary, conducted with a view to ascertain whether something of value may not show up, will not be enforced. (Street, Federal Equity Practice, vol. 2, sec. 1844.) No court, it is needless to say, would punish a witness for contempt in refusing to obey a subpoena duces tecum the issuance of which has been procured with such end in view.

We observe in conclusion that where a party has any legitimate reason for inspecting the voluminous documents of an adversary, it is usually more to the purpose to ask the court, before the hearing, for an order requiring such adversary to submit his books and records for examination under such reasonable condition as the court may specify. If necessary, an expert can then be set to work; and the result of his examination can be submitted to the court in a form at once intelligible and helpful. In the case before us if the documents called for had been produced in the court room, both the court and the attorneys alike would have been helpless to discover from the unsystematized mass the particular facts intended to be proved by them; and in the end it would have been necessary to adjourn the hearing and call in an accountant to make the needed examination. While we do not wish to be understood as attempting to lay down any hard and fast rule upon such a matter, we merely suggest that it is an abuse of legal process to use the subpoena duces tecum to produce in court material which cannot be properly utilized by the court in determining the issues of the case; and in cases of this kind the litigant should be required to resort to some other procedure in order properly to place before the court the evidence upon which the case should be decided.

The judgment is affirmed, with costs. So ordered.

Torres, Johnson, Malcolm, Avanceña, and Fisher, JJ., concur.

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