

MANUEL SOTELO, PLAINTIFF AND APPELLEE, VS. BEHN, MEYER & CO., H. MU., DEFENDANT AND APPELLANT.*G. R. No. 35489. December 29, 1932*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Iloilo by Manuel Sotelo for the purpose of recovering from the defendant, Behn, Meyer & Co., H. Mij., the sum of P20,000 for breach of contract and to compel the defendant to render an accounting of certain commissions claimed by the plaintiff under the contract Exhibit A. Upon hearing the cause the trial judge gave judgment in favor of the plaintiff to recover the sum of P16,500, with costs. From this judgment the defendant appealed.

Behn, Meyer & Co., H. Mij., the defendant in this case, is a mercantile corporation organized under the laws of the Dutch East Indies; and, at the time of the institution of this action, and for many years prior thereto, was engaged in business in the Philippine Islands with its head office in the City of Manila. In the early part of the year 1928 said company desired to open an office in the City of Iloilo, and to this end it employed the plaintiff herein, Manuel Sofelo, as salesman. It was stipulated that this employment should extend over a period of five years, beginning April 1, 1928, and terminating March 31, 1933, with a salary of 1*500 per month. Although, under the terms of the contract, the plaintiff was employed as a salesman, he, generally acted as manager of the Iloilo office.

Prior to his employment by the defendant under the contract referred to, the plaintiff had been engaged as selling agent in Iloilo for several business houses in Manila; and his character as an energetic salesman throughout the region where the defendant expected to find clients was well known. Antonio Porta, manager of the firm of Porta, Pueo y Cia., of Manila, says that the plaintiff is honest, diligent, and intelligent in business, almost without a rival ("tal vez como ningtifi otro").

The opening of the defendant's Iloilo agency coincided very nearly with the end of flush times in the Visayan country, and before long the defendant company apparently realized that it had made a mistake and ought to get out of that region as soon as practicable. But an impediment to speedy withdrawal was found in the five-year contract which it had made with Manuel Sotelo. In order, therefore, to test the matter with him, the manager of the defendant company, on October 5, 1929, wrote Sotelo a letter accepting his resignation from the position which he had been employed to fill. Much surprised at the reception of this letter Sotelo replied that he had not tendered his resignation and intimated that he intended to abide by his contract. This maneuver having failed, the defendant's Manila manager finally, on June 30, 1930, discharged the plaintiff from its service.

On July 14, 1930, thereafter, the complaint in this case was filed by Sotelo to recover damages for breach of the contract and for an accounting. The defendant answered with a general denial, special defense, and counterclaim. The only specification in the special defense with which we need here concern ourselves is that the plaintiff had been guilty of disobedience to orders and had failed to carry out the instructions given by the defendant. But there

is no specification in the answer of the particular instructions or orders supposedly violated.

The discharge of the plaintiff by the defendant on June 30, 1930, was, *prima facie*, a clear breach of contract, and it was incumbent on the defendant to prove that such discharge of the plaintiff was justified. In this we are of the opinion, as was the trial court, that the defendant has failed to justify its action. The point most relied upon by the defendant is the failure of the plaintiff to supply beforehand, to the central office, the itineraries of the proposed trips of the plaintiff into neighboring provinces. In this connection it appears that the plaintiff was a salesman, who, upon receiving Information, or forming his own impressions, that business might be found at the particular points, was accustomed to go after it without much red tape; and although the business of the Iloilo agency did not prosper, nevertheless its failure to make money was not the fault of the plaintiff. The elaborate instructions (Exhibit 3) given by the defendant's manager were apparently sent to the plaintiff after defendant's manager had decided to get rid of him, and we believe that those instructions and regulations were not promulgated in good faith, but rather to lay a basis for the discharge of the plaintiff. At any rate the plaintiff testified that the regulations referred to were impracticable, and we conclude that the discharge of the plaintiff was not really due to his failure to conform to them. We are of the opinion that the trial court committed no error in holding that the discharge of the plaintiff constitutes a breach of contract on the part of the defendant and that the plaintiff is entitled to recover damages therefor.

With respect to the amount of the damages allowed by the trial court, we are of the opinion that the judgment is excessive. In this connection it will be noted that the trial judge awarded to the plaintiff full salary for the entire period elapsing between the date of the discharge and the date fixed for the termination of the contract. Yet the proof shows that, after the plaintiff was discharged, he again set himself up in business as a business agent upon his own account and that he was soon reemployed by at least two of the five Manila firms that had used him as their agent prior to the time when the plaintiff went with Behn, Meyer & Co. In *Garcia Palomar vs. Hotel de France Co.* (42 Phil., 660), this court held that an employee who is improperly discharged is under an obligation to use reasonable diligence to obtain other suitable employment and that in assessing the damages for the period which is still to run after the breach, the court may properly take into account the probability that the discharged employee will be able to earn money in other employment. As was said in that case, "The law of service is a law of life. The general rule is that sooner or later men who are capable of service find employment, and enforced idleness is the exception. It should not be presumed in advance that the exceptional will occur. To assume that the plaintiff must remain idle through the entire term of contract merely because he had not found employment up to the time of trial would put a premium on idleness and incompetency." (42 Phil., 677.) Considerations of this kind have greater weight in a case like that now before us, from the proven fact that after his discharge he returned to business upon his own account and prior to the date of the trial in this case had been reinstated in his relations with some of his old customers. Upon consideration of the different factors bearing upon this feature of the case, we are of the opinion that the ends of justice will be sufficiently met by allowing to the plaintiff about 60 per centum of the amount which he would have earned under his contract with the defendant if he had been permitted to serve as its salesman for the entire term.

The judgment will accordingly be modified by reducing the amount of recovery to the sum of P10,000, and as thus modified, the judgment is affirmed, with costs against the defendant. So ordered.

Villa-Real, Hull, and Imperial, JJ., concur.

Vickers, J., voted in conformity with this decision but was absent at the time the opinion was promulgated and his signature therefore does not appear signed to the decision.—STREET, J.

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