

A.J. EVELAND, PLAINTIFF AND APPELLEE, VS. THE EASTERN MINING COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 4976. November 27, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff commenced an action against the defendant for the purpose of recovering the sum of \$2,705, United States currency, with interest. The action was based upon two grounds:

First. For services rendered by the plaintiff for the defendant as engineer and general agent of the defendant, at a salary of \$250, United States currency, per month, from on or about the 15th of October, 1906, until the 15th of April, 1907. The plaintiff alleged that there was still due and unpaid upon said contract of employment the sum of \$125, United States currency.

Second. And for a second cause of action the plaintiff alleged that he had been employed by the defendant on the 1st day of May, 1907, to visit the United States in the interests of the said defendant, and that the defendant promised to pay to him as salary the sum of \$250, United States currency, per month, and the necessary expenses of his voyage, including his food; that in accordance with such employment, on the 1st day of May, 1907, the plaintiff left the Philippine Islands and went to the United States under said contract of employment, and returned to the Philippine Islands on or about the 15th of October, 1907, and that his employment under this agreement with the defendant was terminated on the 25th of October, 1907; that there was still due under said contract for salary and necessary expenses incurred, the sum of \$2,580 United States currency.

To this complaint the defendant demurred, which demurrer was overruled. Later the defendant answered and presented a general denial of each and all of the facts alleged by the plaintiff.

Later the cause was duly tried, and after hearing the evidence the lower court found that there was due to the plaintiff from the defendant the sum of P5,310, for which sum he rendered a judgment against the defendant and in favor of the plaintiff, with interest at 6 per cent per annum from the 21st of February, 1908, with costs.

From this decision the defendant appealed and in this court made the following assignments of errors:

"First. That the findings of fact in the judgment rendered by the Court of First Instance are not supported by the preponderance of the evidence in the case.

"Second. That the findings of fact in the judgment rendered by the said Court of First Instance are clearly and manifestly contrary to the weight of the evidence in the said case.

"Third. That the judgment rendered in this case is contrary to the preponderance of the evidence adduced in the same.

"Fourth. That the conclusions of the said court at the trial, regarding the admission of evidence in this case and the dismissal of the evidence offered at the said trial, were contrary to law.

"Fifth. That the judgment of the said court, as rendered, is contrary to law."

The first three assignments of error above noted relate only to the question of the sufficiency of the evidence adduced during the trial to support the judgment of the lower court.

With reference to the first cause of action in which the plaintiff attempts to recover of the defendant the sum of \$125 (P250) the defendant admits its responsibility for this amount. (Brief of appellant, p. 2.)

With reference to the second cause of action the plaintiff claims that the defendant owes him the sum of \$1,500, United States currency, as salary due him for services rendered from the 1st day of May, 1907, up to and including the 31st day of October, 1907, at the rate of \$250 per month; and in addition thereto the sum of \$1,880, United States currency, for money expended for traveling expenses and living expenses in going to and from the United States, which expenses were incurred in accordance with the terms of the contract between the said plaintiff and defendant. The plaintiff admits that he received as payment on his claim the sum of \$800, United States currency, leaving due him, according to his claim, the sum of \$2,580, United States currency. In support of this claim the plaintiff introduced a letter written by him to the defendant, dated April (August), 1906, which letter was marked "Exhibit B" and is as follows:

"My services as mining engineer to your company are at your disposal for \$250 gold a month, and all expenses, including proper quarters, food, etc., traveling expenses where necessary, technical and personal services and assistance, etc., such as usually obtain."

On the 29th day of April, 1907, the board of directors of the defendant passed the following resolution:

"Whereas Mr. A.J. Eveland has signified his willingness to resume his position as general manager of said company: Therefore, be it

"Resolved, That A.J. Eveland be, and hereby is, employed by The Eastern Mining Company as mining engineer and general manager of said company, according to the terms mentioned in the letter of the said A.J. Eveland, dated April (August) 24, 1906, and on file with the secretary of said company; said services to begin on the 1st day of May, 1907.

"Be it further resolved, That the said A.J. Eveland be given, and he hereby is given, full and general powers of attorney to represent The Eastern Mining Company in any and all matters in the United States."

The resolution of the board above referred to contained other matters which, however, have no bearing upon the question of the employment of the plaintiff, with reference to his salary and expenses.

There seems to have been some question whether the letter (Exhibit B) bore the date of August, 1906, or April, 1906. It was admitted, however, by the defendant that the letter should bear the date of April, 1906, and therefore that date is used. The date is a matter of no importance, however, because it was written before the date of the said resolution (Exhibit A) and no question is made as to its contents.

It appears that the plaintiff, under the contract thus entered into by Exhibits A and B, entered upon the employment and sailed for the United States on or about the 1st day of May, 1907, and returned to Manila on or about the 15th day of October of the same year. Upon the return of the plaintiff from the United States he rendered an account of his salary and expenses to the board of directors and asked that the same be paid. So far as the record shows there was no objection made by the defendant at the time of the rendition of said account, except as to the amount of the expenses incurred by the plaintiff. The account of the plaintiff was referred to an auditing committee of the board of directors of the defendant company, which committee on the 25th of October, 1907, made the following report:

"The undersigned committee begs to present the following report of their investigation of the report submitted by A. J. Eveland of his expenditures from Manila to New York and return while traveling for the Eastern Mining Company, that, with the exception of a few dollars spent as tips to servants, etc., the said expenditures have been validly made, but considering that Mr. Eveland was drawing a salary of \$250 United States currency per month from the company, and his living expenses, and further considering that this company was and is in a struggling condition financially, it is respectfully recommended that the expense bill rendered by the said Mr. Eveland amounting to over \$15 United States currency per day is excessive, and that the directors request him to exercise that spirit of fairness which we believe his, by reducing his account to a more reasonable basis, considering the condition of this company.

"Respectfully,

"T. M. DEVILBLISS.

"THOS. D. AITKEN.

"G. W. PARSONS."

From the above report of the committee appointed to audit the account of the plaintiff it will be seen that the said committee found "that, with the exception of a few dollars spent as tips to servants, etc., the said expenditures have been validly made."

The plaintiff presented to the board Exhibit C, which was an itemized statement of his expenditures during his trip to the United States, and during the trial swore that this statement was true and correct and that the expenditures indicated in said itemized statement were made as stated in said account. The plaintiff was discharged as an employee of the defendant on the 25th of October, 1907. The period of his services, therefore, as claimed under his second cause of action, was from the 1st of May, 1907, to the 25th of October, 1907.

An effort was made on the part of the defendant during the trial of the cause to show that there was an understanding between the plaintiff and defendant that he was not to be paid until the company was in a position to do so comfortably. The lower court found as a fact and the president of the said company testified during the trial that it owed no debts, that it had no incumbrances, and that it owned property which he considered worth more than a half a million dollars. It would seem, therefore, that if the contention of the defendant in this particular should be admitted that even then it should not affect the right of the plaintiff to a judgment, considering the financial condition of the company as stated by the president.

Under the foregoing statements of facts, as sustained by the record, and with special reference to the second cause of action, it would seem that the following facts are admitted beyond question:

First. That the plaintiff was employed by the defendant as its mining engineer and general manager.

Second. That such employment commenced on May 1, 1907, and terminated October 25, 1907, covering a period of five months and twenty-five days.

Third. That the plaintiff was directed by the defendant to proceed jto the United States on business for the company, and that the plaintiff, in obedience to said direction, did go to the United States and returned October 15, 1907.

Fourth. That the defendant was to be paid the sum of \$250, United States currency, per month, as said mining engineer and general manager, and his necessary expenses, including proper quarters, food, traveling expenses, technical and personal services and assistance, etc. (See Exhibits A, B, C, and D.)

Exhibits A and B above quoted constituted an absolute offer and an absolute acceptance and therefore together constitute a contract, in accordance with the terms of the said exhibits. There was an attempt during the trial of the

cause to vary the terms of this contract, and while the court admitted much evidence which tended to vary the terms of the said contract, yet the court in its decision, in accordance with section 285 of the Code of Procedure in Civil Actions, held that such evidence should not be allowed to have the effect of varying the terms of the said contract.

The defendant attempted to show that the services rendered by the plaintiff while he was in the United States were rather against than in favor of the interests of the defendant. The evidence is not clear upon this question. Even though it should be admitted, it would operate rather to show that the defendant had made a mistake in entering into the contract with this particular plaintiff than to invalidate the contract which it had made.

The defendant further contends that it received no benefit whatever from the services of the plaintiff while he was on his trip to the United States in the interest of the said company. That fact may be admitted, for the payment of the salary and expenses of the plaintiff mentioned in said contract were not dependable upon the result of his efforts in behalf of said company. The evidence admitted for the purpose of showing that the payment of the salary and expenses of the plaintiff depended upon whether or not the efforts of the plaintiff in the United States were successful was inadmissible under the contract. It would be extremely dangerous to permit testimony of this character to vary the terms of written contracts. There is nothing in the record which shows that at the time the offer and acceptance were made that the parties to the said offer and acceptance had the remotest idea that the payment of the salary and expenses mentioned in said contract depended upon the successful result of the efforts of the plaintiff while on his trip to the United States.

The attorney for the appellant has presented a very interesting and able brief in this court, but after a careful examination of all of the facts presented by him we are compelled to, and do hereby, find that the evidence adduced during the trial of the cause was sufficient to justify the findings of fact made by the lower court.

We deem it unnecessary to discuss the fourth and fifth assignments of error made by the appellant, for the reason that the questions involved in them have been discussed in relation to the other assignments of error.

We find no reason for changing or modifying the judgment of the lower court and the same is hereby affirmed with costs.

After the expiration of twenty days let judgment be entered in favor of the plaintiff and against the defendant for the sum of P5,310, with interest at 6 per cent from the 21st of February, 1908. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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