

PANAY ELECTRIC CO., INC. PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FLORENTINO SARABIA AND LUZON SURETY CO., INC., RESPONDENTS.

G.R. No. 59647. December 27, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We resolved to give partial due course, in respect of the award of damages, in this appeal by Certiorari from the Decision of respondent Court of Appeals,[1] in CA-G.R. No. 65524-R, entitled "Panay Electric Co., Inc. vs. Florentino Sarabia and Luzon Surety Co., Inc."

Private respondent, Florentino Sarabia, was employed in 1952 by petitioner company as a bill collector. To guarantee fulfillment of his obligations as such, he posted in favor of petitioner two surety bonds in the total amount of P4,000.00, with his co-respondent, Luzon Surety Co., Inc., as surety.

Contending that, an auditing report presented by the accounting firm of Sycip, Gorres and Velayo in January, 1965, showed that Florentino Sarabia had incurred a shortage in his collections for a period of 7 1/2 years in the sum of P12,155.68, petitioner filed against him and the surety company a suit for reimbursement on June 22, 1966. Prior thereto, or, in February, 1965, private respondent had not been allowed by petitioner to continue working.

In his Answer filed on October 31, 1966, Sarabia denied the shortage, attributing it to erroneous accounting, and prayed for attorney's fees in the sum of P800.00 and actual damages in the sum of P500.00. And, in an Amended Answer dated October 6, 1972, which was admitted by the lower Court, Sarabia alleged in an additional counterclaim that he was dismissed without cause and prayed for reinstatement with back salaries and damages. Respondent surety company disclaimed any liability because of Sarabia's refusal to admit the shortage.

The Trial Court found the shortage to be only in the amount of P41.85; that the case was the product of "either a wilful frame-up or a mistake in accounting"; and ordered Sarabia's reinstatement with back wages from January, 1965; the payment to him of moral damages of P20,000.00, exemplary damages of P10,000.00, attorney's fees of P5,000.00, and expenses of litigation of P1,000.00, and costs. The complaint as against the surety company was dismissed.

Respondent Court of Appeals affirmed the amount of the shortage and the reinstatement ordered, but modified the judgment by limiting backwages to the monthly salary of P180.00 for a period of three years, or the total sum of P6,480.00, as actual damages, P10,000.00 as moral damages, P5,000.00 as exemplary damages, P2,000.00 for attorney's fees and expenses of litigation, and costs, all such amounts to bear legal interest from the date when the judgment in this case shall become final, until fully paid. Reinstatement was conditioned upon Sarabia's physical fitness, who was said to be "at present old and sick," and upon presentation of a duly verified certification by a Government physician.

That Sarabia did not actually incur any shortages except for the amount of P41.85 is a factual finding that is binding upon this Court in the absence of established exceptions. Considering the error in the shortage, we agree that petitioner need not have terminated his services. He is thus entitled to reinstatement and backwages[2] in the total sum of P6,480.00.

The fact that reinstatement and additional damages were prayed for only in an Amended Answer filed approximately six years after the original Answer does not bar it on grounds of prescription and laches. The original Answer had already alleged termination of services on account of shortage of collections, which shortage Sarabia disputed and was, in effect, an allegation that termination was without cause. The reinstatement prayed for merely supplemented and amplified the fact of termination. An amendment which merely supplements and amplifies the facts originally alleged relates back to the date of the commencement of the action and is not barred by the statute of limitations the period of which expires after service of the original complaint but before service of amendment.[3]

The award of moral damages is uncalled for. In filing the present case, petitioner had not acted with malice, fraud, or in bad faith. It relied solely on the letter of the accounting firm of Sycip, Gorres & Velayo. However, such reliance was misplaced, for, as found by the Court of Appeals, that letter was "only a brief letter mentioning some summarized findings which are unverified and undetailed. It even stressed the fact that there are unascertained differences 'due to unavailable records and/or customer's credit balances due to overpayment'."

Neither are exemplary damages proper. Petitioner had not acted in a "wanton, fraudulent, reckless, oppressive, or malevolent manner".[4] Based on the accounting findings, incomplete though they may have been, petitioner cannot be blamed for trying to protect itself.

The grant of attorney's fees and expenses of liti-gation of P2,000.00 is, we find, just and equitable.

ACCORDINGLY, the judgment under review is hereby modified by the elimination of the award of moral damages and exemplary damages; but affirmed as to: a) the order to re-instate Florentino Sarabia, subject to his physical fitness; b) the award of actual damages of P6,480.00, the same to bear interest at the legal rate from the time that this judgment becomes final and until fully paid; and c) the grant of counsel fees and litis expenses of P2,000.00.

Florentino Sarabia shall reimburse petitioner the amount of P41.85, with interest at the legal rate from the time this judgment becomes final and until fully paid.

Costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] Per Nestor D. Alampay, J., ponente, concurred in by Isidro C. Borromeo and Vicente V. Mendoza, JJs.

[2] Samuel Pepito vs. Secretary of Labor, et al., 96 SCRA 454 (1980).

[3] Barbosa, et al., vs. Mallari, et al., 99 Phil. 799 (1956), citing Moran, Rules of Court, Vol. I, p. 384 (1952) ed.

[4] Art. 2232, Civil Code.

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