

**FRANCO J. ALTOMONTE, PLAINTIFF AND APPELLANT, VS.
PHILIPPINE-AMERICAN DRUG COMPANY, DEFENDANT AND
APPELLEE. FRANCO J. ALTOMONTE, PLAINTIFF AND APPELLEE VS.
PHILIPPINE-AMERICAN D...**

G.R. Nos. 11872 and 14922. August 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

On 21 July 1948 the plaintiff was appointed by the defendant manager of its branch in Legaspi, Albay, with a monthly salary of P600 (Exhibits 1 & 1-A) and a commission of 1% on the gross receipts (Exhibits O, (X-1, 0-2, R & R-1), without a definite period of employment. On 1 June 1951 he was transferred to Cebu in the same capacity with an increased monthly salary of P1,000 and a commission of 1% on the gross receipts (Exhibits 1-A & 0-2). On 16 March 1953, the plaintiff received from the defendant a letter dated 14 March 1953, personally delivered by Antonio J. Beltran, advising him that due to unfavorable business conditions and losses incurred by the branch, his services were being dispensed with effective the date of the letter, and informing him that he would receive his salary for the whole month of March, one month additional pay and one-half month salary in lieu of two weeks vacation leave due him in 1952 (Exhibit B). On the same date the letter was written, 14 March 1953, the defendant drew a check in favor of the plaintiff (Hongkong & Shanghai Banking Corporation No. 19722, Exhibit 4) for—

Salary (March 16-31, 1953)

P500.00

One month termination pay

1,000.00

Vacation pay for 1952 (15 days)

500.00

P2,000.00

Less withholding tax

241.50

P1,758.50

(Exhibit 4-A). On 17 March 1953 the defendant issued a certificate of clearance to the plaintiff releasing him from all responsibilities in connection with his employment (Exhibit C). On 21 March 1953 the plaintiff wrote to the defendant acknowledging receipt of its letter of 14 March, and requesting that he be allowed to continue in his employment even at a reduced compensation as business conditions warrant or that in the event that his request be denied, the company defray his expenses and of his family for transportation from Cebu to Manila (Exhibit D). On 31 March 1953 the plaintiff again wrote to the defendant acknowledging receipt of its letter of 14 March 1953 and Hongkong & Shanghai Banking Corporation check No. 19722 for P1,758.50, but excepting to the propriety and legality of his separation from the service and to the correctness of the amount paid to him, claiming that P5,000 was still due him as 1% commission on the gross receipts and informing it that he applied the proceeds of the checks to that account. He requested that the balance due him be remitted and warned that if he failed to receive it within ten days from receipt of the letter, he would bring the matter to the Court (Exhibit N). On 1 April 1953 the plaintiff cashed the check issued by the defendant in his favor (Exhibit 4). On 7 April 1953 the defendant denied the plaintiff's request for the reason that commission payments were discontinued from 1 May 1952 (Exhibit 5), calling plaintiff's attention to a copy of its letter thereto attached (Exhibits 2 & 5-A).

On 12 April 1953 the plaintiff filed a complaint against the defendant in the Court of First Instance of Cebu praying that his dismissal be declared "arbitrary, illegal, and unjust;" that the defendant be ordered to reinstate him to his position with back pay at the rate of P1,000 a month and 1% commission on the gross sales or P500 a month until reinstated; that the defendant be ordered to pay him the sum of P6,000 as 1% commission on the gross receipts from 1 May 1951 (should be 1952) to 21 March 1953, P5,000 as accrued leave pay, P1,000 as bonus and P500 as transportation expenses to return to Manila; that the defendant be ordered to pay him P50,000 as moral damages for injured business reputation and P10,000 as attorney's fees; and that he be granted other just and equitable relief (civil No. R-3136).

The defendant answered that as the plaintiff's contract of employment was without a fixed period but on a monthly salary basis it has the absolute and legal right to terminate his employment on the ground of loss of confidence, inefficiency and incompetence; that another reason for his separation was the drastic cuts on its import allocation made by the Central Bank and losses incurred by the branch headed by the plaintiff; that the plaintiff was not entitled to a commission of 1% on the gross receipts because it had been discontinued on 1 May 1952 against which discontinuance the plaintiff did not protest, to a bonus because of losses suffered by the

defendant and for that reason no bonus had been paid to any employee and to travelling expenses because the contract of employment did not provide for such expenses; and that the plaintiff had been employed by E. R. Squibb & Company in Bacolod City beginning 1 April 1953. It prayed that the complaint be dismissed.

On 21 March 1953 the plaintiff filed a reply to the defendant's answer.

After trial the Court rendered judgment—

* * * declaring plaintiff's separation from defendant's service unjustified, arbitrary and illegal but without right for plaintiff to reinstatement, but orders defendant to pay his accrued 1% commission on his gross sales in the sum of P3,283.87 with legal interests thereon from the filing of this complaint till fully paid, plus P2,000 as attorney's fees, the defendant to pay the costs.

Upon motion for reconsideration, the Court entered an order modifying its judgment by awarding to the plaintiff the additional sum of P758.60 (should be P758.06), P258.06 representing the plaintiff's salary from 16 to 23 March 1953 and P500 as 15 days vacation leave pay for 1952.

Both the plaintiff and the defendant have appealed; the former to the Supreme Court assigning the following error:

The Court erred in denying: to reinstate the plaintiff-appellant with backpay, commission bonus during the period he was illegally separated and in denying payment for damages, expenses and attorney's fees in full. (G. R. No. L-11872.)

and the latter to the Court of Appeals assigning the following errors:

The Court a quo erred in finding that plaintiff-appellee's dismissal as manager of defendant-appellant's drug business in its Cebu branch was arbitrary, unjustified and illegal.

The Court a quo erred in holding defendant-appellant liable to plaintiff-appellee for accrued commission of 1% on gross sales of the Cebu branch in the sum of P3,283.87 to which commissions the further sum of P758.60 (should be P758.06) was added in its amendatory order of September 24, 1956.

The Court a quo erred in adjudging defendant-appellant to pay attorney's fees in the sum of P2,000.00. (C.A.-G.R. No. 21473-R.)

After hearing of the defendant's appeal in the Court of Appeals, on 26 July 1958 the latter certified it to this Court pursuant to "the second part of number 5, section 17 of Republic Act Numbered 296," and on the strength of the precedent laid down in the case of Villar vs. Paraiso, 96 Phil., 659), the two appeals being indivisible and "refer to only one case and the evidence presented and to be considered in one will be used in the other." (G. R. No. L-14922.)

The plaintiff whose contract of employment with the defendant as manager of its branch in Cebu was without a fixed period, was dismissed on 14 March 1953, the date of the defendant's letter which the plaintiff actually received on 16 March 1953. The certificate of clearance dated 17 March, 1953, releasing the plaintiff from all responsibilities in connection with his employment, was received by the plaintiff on 21 March 1953. While the provisions of article 302 of the Code of Commerce providing that:

In cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance.

The factor or shop clerk shall have a right, in this case, to the salary corresponding to said month.

have been repealed by the new Civil Code which took effect on 30 August 1950,[1] yet such repeal did not

deprive the defendant of the right to dismiss the plaintiff, who was holding the primarily confidential position of branch manager, for a valid and justifiable cause such as loss of confidence in him, inefficiency and incompetence on his part and retrenchment by the company due to drastic cuts in its import allocations and losses incurred. Republic Act No. 1052, approved on 12 June 1954, has, however, revived the repealed provisions of article 302 of the Code of Commerce.

The plaintiff had been paid by the defendant P500 as his salary from 16 to 31 March 1953, P1,000 as one month separation pay and P500 as 15 days vacation leave pay for 1952, less withholding tax of P241.50, or a total of P1,758.50, which shows that the defendant had not neglected to provide for the plaintiff's sustenance while out of job for the first few months. In May 1953 the plaintiff was able to secure employment with E. R. Squibb & Co. at a monthly salary of P350.

The plaintiff's contract with the defendant was P600, later on increased to P800 on 1 June 1949 and P1,000 monthly salary on 1 January 1951 (Exhibits 1 & 1-A) and 1% commission on the gross receipts (Exhibits 0, 0-1, 0-2, R & R-1). On 9 March 1951 the defendant sent to the plaintiff a check for P1,500 (Exhibits 0-6, 0-7 & R), and later on the defendant paid to the plaintiff an additional sum of P1,000 as commission due him in 1950 (Exhibits 0-7 & R). From June 1951 to April 1952 the plaintiff received from the defendant as commission the sums of P560, P434.16, P511.67, P590.18, P829.92, P598.95, P362.70, P641.63, P559.81, P394.90 and P559.27 (Exhibits X-C to 1-M, inclusive). On 1 May 1952 the defendant discontinued paying the plaintiff his commission (Exhibit 5-A). According to the plaintiff he did not protest against the discontinuance of the commission payment because business conditions then were bad and he knew that it would be very difficult to ask Mr. F. Umbreit, the general manager, for his commission. Anyway, he expected to receive it in the future as Mr. C. M. Holmes, the former general manager, used to send it to him. Moreover, he thought of the three years from 1948 to 1951 when he did not receive his commission regularly but later on the company paid him in lump sum, hence, a period of 11 months from June 1951 to April 1952 when he did not receive his commission, was not long a time to wait for it. Furthermore, he said he was afraid of Mr. Umbreit for personal reasons. Finally, he knew that his subordinates in the branch office were not receiving any bonus and he felt that it was not fair for them if he received his commission at that time.

As agreed upon in the employment contract (Exhibit O), the plaintiff is entitled to a commission of 1% on the gross receipts from May 1952, the month he stopped receiving it, to 21 March 1953, the date he was separated from the service and should be paid the amount due him on the total gross receipts of 504,237.42 for that period (Exhibits E, E-1 to E-10), or P5,042.37. The defendant cannot lawfully relieve itself from the obligation to pay the commission agreed upon by simply sending a letter to the plaintiff advising him that the payment of the commission would be discontinued beginning 1 May 1952 (Exhibit 2). The silence of the plaintiff to such advice has been satisfactorily explained by him and does not amount and cannot constitute in law acquiescence in it, much less consent thereto.

The plaintiff is not entitled to bonus, there being no showing that it had been granted by the defendant to its employees periodically or regularly as to become part of their wages or salaries. [(1)]

The attorney's fees in the sum of P2,000 awarded to the plaintiff are reasonable.

However, it appearing that the defendant had voluntarily paid the plaintiff P500 as his salary from 16 to 31 March 1953, P1,000 as one month separation pay and P500 as 15 days vacation leave pay for 1952, less withholding tax of P241.50, or a total of P1,758.50, and the plaintiff had already cashed the check drawn in his favor by the defendant for that amount, that part of the judgment awarding to the plaintiff an additional sum of P758.60 (should be P758.06), P258.06 representing the plaintiff's salary from 16 to 23 March 1953, and P500 as 15 days

vacation leave pay for 1952, should be, as it is, stricken out.

If by law the defendant has a right to end the plaintiff's employment, as there is no fixed period thereof and there are justifiable reasons for such termination, the finding by the trial court that the plaintiff's separation from the service of the defendant was "unjustifiable, arbitrary and illegal" seems to be unwarranted and in conflict with its denial of the prayer for damages. For that reason such finding should be, as it is, stricken from the judgment appealed from.

As thus modified, the judgment appealed from is affirmed, with costs against the defendant.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[1] Lara vs. del Rosario, 94 Phil., 778; 50 Off. Gaz., 1975, 1979.

[(1)] Philippine Education Co. Inc. vs. Court of Industrial Relations, 92 Phil., 48 Off. Gaz., 5278.

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