7 Phil. 268

[G.R. No. 2826. January 02, 1907]

PEDRO ALDAZ, PLAINTIFF AND APPELLEE, VS. VICENTE GAY, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This was an action brought in the Court of First Instance of the Province of Iloilo by the plaintiff to recover of the defendant damages for the breach of a certain contract made and entered into between the said parties, on or about the 7th of November, 1903. After hearing the evidence, the lower court rendered a judgment against the defendant and in favor of the plaintiff for the sum of 1,200 pesos, and the costs. From this decision the defendant appealed to this court.

By the terms of the said contract the plaintiff was to have charge of the *hacienda* of the defendant denominated "Fortuna," under the following conditions:

First. That the defendant was to furnish to the plaintiff his house and rations during the year from the making of the contract until the 30th of June, 1904.

Second. That the defendant was to pay the plaintiff a monthly salary of 100 pesos.

Third. That the defendant was to pay the plaintiff ten centimos for each *pico* of sugar produced on the said *hacienda* under the direction of the plaintiff in the year 1904-5.

Fourth. That the defendant was to furnish to the said *hacienda* all those things necessary for the proper cultivation of said *hacienda*.

Under this contract the plaintiff entered upon the performance of the same on the 11th day of November, 1903, and continued in such employment until the 20th day of September, 1904, when he was discharged by the defendant. The plaintiff claims that he was wrongfully discharged and was therefore entitled to recover the salary for the remaining portion of the

period of the contract and also a reasonable amount for his maintenance for the same period, as well as 10 centimos for each *pico* of sugar produced in the year 1904-5.

The defendant claims that the plaintiff was rightfully discharged for noncompliance with the terms of the contract, and therefore he was not entitled to recover his salary for the remaining period of the contract nor the amount allowed per *pico* of the sugar produced on said *hacienda* during the year 1904-5.

By reference to paragraph 1 of said contract, it will be noted that the plaintiff was not entitled to his maintenance after the 30th day of June, 1904; he is therefore not entitled to recover an amount covering this item for the year 1904-5.

The lower court after hearing the evidence found that the plaintiff had been wrongfully discharged by the defendant and was therefore entitled to his salary at the rate of 100 pesos per month for the period necessary to complete the cultivation and harvesting of the crop for the year 1904-5, which period the lower court estimated to be five months and in consequence thereof allowed the defendant the sum of 500 pesos damages for the wrongful discharge under said contract. This conclusion of the lower court is fully justified by the evidence adduced during the trial of said cause.

With reference to the number of *picos* of sugar resulting from the crop of the year 1904-5, there was much conflict in the testimony. The witnesses for the plaintiff estimated the amount for the said period to be from 14,000 to 20,000 *picos*. The witnesses for the defendant estimated the amount to be from 8,000 to 14,000 *picos*. The lower court found that the number of *picos* would probably be about 14,000. This finding of facts is fully justified by the evidence adduced in the court below.

The lower court found as a fact that the plaintiff while acting under the terms of said contract had performed one-half of the labor necessary in the cultivation and harvesting of said crop for the year 1904-5, and therefore awarded the plaintiff 10 centimos per *pico* upon one-half of the estimated crop for the said year 1904-5, or 10 centimos per *pico* upon 7,000 *picos* of sugar, which would amount to 700 pesos. This conclusion of fact of the lower court as to the proportion of labor performed is also justified by the evidence adduced during the trial of said cause.

The lower court in its decision found as a fact that after the discharge of the plaintiff he made no effort to obtain employment during the remaining period of said contract for the purpose of reducing the damages which he had suffered by reason of the wrongful

discharge. The defendant made no effort to prove that the plaintiff did not seek other employment of the same kind, which the plaintiff might have obtained had he desired so to do.

The doctrine is well established in American jurisprudence, and nothing has been brought to our attention to the contrary under Spanish jurisprudence, that when an employee is wrongfully discharged it is his duty to seek other employment of the same kind in the same community, for the purpose of reducing the damages resulting from such wrongful discharge. However, while this is the general rule, the burden of showing that he failed to make an effort to secure other employment of a like nature, and that other employment of a like nature was obtainable, is upon the defendant. When an employee is wrongfully discharged under a contract of employment his *prima facie* damage is the amount which he would be entitled to had he continued in such employment until the termination of the period. (Howard *vs*. Daly, 61 N. Y., 362; Allen *vs*. Whitlark, 99 Mich., 492; Farrell *vs*. School District No. 2, 98 Mich., 43.)

The case of Howard *vs*. Daly was an action to recover damages for the breach of a contract for services. Justice Dwight, writing the opinion for the court, said:

> "*Prima facie* the plaintiff is damaged to the extent of the amount stipulated to be paid. The burden of proof is on the defendant to show either that the plaintiff has found employment elsewhere, or that other similar employment has been offered and declined, or, at least, that such employment might have been found. I do not think that the plaintiff is bound to show affirmatively, as a part of her case, that such employment was sought for and could not be found. No such evidence having been offered by the defendant, the plaintiff should recover the whole amount of her stipulated compensation, as damages attributable to the defendant's breach of the contract. This, as has been seen, is the true measure of damages. (Classman *vs*. Lacoste, 28 Eng. Law and Equity, 140; Goodman *vs*. Pocock, 15 Alderson and Ellison (Eng. Common Law Reports), 576; Smith *vs*. Thompson, 8 Common Law Bench, 444; Smith on Master and Servant, 98.)"

Inasmuch as the plaintiff did not appeal, we express no opinion on his right to recover damages at the rate of 10 centimos per *pico* for the full estimated amount of sugar produced in the year 1904-5.

For the foregoing reasons the judgment of the lower court is hereby affirmed with costs. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and *Tracey, JJ.,* concur.

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