

5 Phil. 210

[G.R. No. 1791. November 07, 1905]

EMILIO BUENO, PLAINTIFF AND APPELLEE, VS, LA COMPANIA MINAS DE CARBON DE BATAN, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

This is an action brought by the plaintiff for salary alleged to be due him from the defendant company under a contract of hiring. The net amount sued for is \$327.25, plus \$5,000 claimed as damages.

On December 23, 1902, plaintiff was employed to work in the Batan mines. The defendant company denied the allegations of the complaint and set up the following counterclaim: For 225 Spanish pesetas remitted by draft to plaintiff's family in Spain at the latter's request; \$124 for groceries drawn by plaintiff from the company's supply store in Batan; \$49.80 for a transportation ticket furnished the plaintiff from Manila to Batan and return; \$10 in cash delivered to plaintiff prior to his departure for Batan; and \$2,000 for damages incurred by the company on account of plaintiff's misconduct and his violation of the terms of the contract.

The complaint alleges that "*the defendant company has not delivered to plaintiff more than 124 pesos' worth of groceries and 225 Spanish pesetas, representing three months' salary at the rate of 75 pesetas per month, which the company remitted by draft to plaintiff's family in Spain at the latter's request.*" Plaintiff in his testimony said that prior to his departure for the Batan mines he received 22 Spanish dollars, and also 10 Spanish dollars on account of services, for which he was requested to sign the receipt marked

“Exhibit A” appearing on page 67 of the bill of exceptions. So that the first, second, and fourth items of the counterclaim stand admitted by the plaintiff.

Plaintiff has failed to establish his claim for damages in the sum of 5,000 pesos or any other sum, and there is no proof that the contract referred to in the complaint has been violated.

The wages due the plaintiff under his contract of hiring do not appear to have been paid him by the defendant company. But such failure to pay on the part of the company was not due to a breach of contract on its part, but to the fact that plaintiff, being dissatisfied with an adjustment of salary due him in accordance with the terms of the contract shown him, as well as with other provisions thereof, discontinued his work, returned to Manila, and rescinded said contract.

This contract according to plaintiff’s contention must be considered as having been rescinded since March 13, 1903, when he called at the office of the company and expressed his desire to terminate his contract, to which, so far as the record shows, the company made no objection. This contention of the plaintiff is not controverted by counsel for defendant.

The whole case rests upon the question as to what was the nature of the contract executed by the parties. Defendant claims that the contract entered into between them is the one appearing on pages 66 and 67 of the bill of exceptions, which was introduced by plaintiff without objection on the part of the defendant. Plaintiff, however, contends that this was not the contract entered into between the parties on the 22d or 23d day of December, 1902.

As to the actual terms of the contract there is no proof other than plaintiff’s uncorroborated testimony with the exception of certain indirect evidence, which has but little weight and which will be considered later.

The contract referred to as having been introduced by defendant over plaintiff’s objection, contains the following stipulations: (a)

That the “Compania Minas de Carbon de Batan” agreed to pay to Emilio Bueno for his services as a miner the sum of 4 pesos per day, Mexican currency, from the date of his arrival at Canalaga and until the other miners reached there from Spain; (b) that upon the arrival of said miners Bueno was to receive the same compensation as the others, provided his services continued to be satisfactory; (c) that Emilio Bueno consented to work in said mines for the aforesaid compensation from the date of his arrival at Canalaga and until the other Spanish miners arrived, from which time his wages were to be the same as those paid to the others; (d) that his traveling expenses to Canalaga were to be defrayed by the company; and (e) that plaintiff was to pay for his own maintenance.

The agreement which plaintiff claims to have been made between defendant company and himself differs from the terms of the contract above set forth, in that (1) the wages were to be at the rate of 120 Spanish dollars per month; (2) that out of said sum, 15 Spanish dollars were to be remitted by draft monthly to plaintiff’s family in Spain; (3) that the company was to pay plaintiff’s transportation expenses, including those of his return to Spain at the expiration of his contract, or sooner if required by plaintiff’s illness or through any default on the part of defendant company; (4) that the company was to furnish him with quarters, medicines, and medical attendance, and (5) that the company was to sell him, at Manila prices, such articles of goods as it kept in stock at the mines.

The last contract to which reference has been made is not supported by the evidence. We thought that the other contract would throw some light upon this question in view of the fact that Geronimo Abella, the company’s secretary, testified that a copy of the same had been sent to the manager of the mines on the same boat which carried the plaintiff to Canalaga (p. 37 of the bill of exceptions), and in view of the further fact that Eduardo Hernandez de Lorenzo, manager of the company, and a witness for plaintiff, in reply to the question: “*During the time that you were at the mines, did you receive a copy of what purports to be a contract between the Compania Minas de Batan and Emilio Bueno,*” he answered, “*Yes, I received it inclosed in a letter delivered by Bueno to Mr. Pasquin during my absence*” (p. 39 of the bill of exceptions). But this same witness on

cross-examination testified that such was his impression *because he had been so informed*.

It does not appear, therefore, that the contract under which the plaintiff was to work was sent on the same boat upon which he was a passenger nor that he had from the outset, full knowledge of the terms of the contract alleged by the defendant company to have been entered into. This same witness Abella testified further that he had drawn the contract for Emilio Bueno in accordance with instructions received from Jacinto Gil. When asked what these instructions were, he said that "*plaintiff was to receive 4 pesos for work actually done (this differs from the provision contained in the document introduced in evidence) and traveling expenses to the mines; and to work under the terms and conditions agreed upon with the other miners who were expected to arrive from Spain (this is not so stated in the document.)*"

In view of these circumstances it can not be said that the terms of the contract as alleged by either party have been satisfactorily established. With respect to the contract contended for by the defendant company, upon which this action is based, there seems to be a favorable circumstance in its support namely, the fact that the defendant remitted monthly to plaintiff's family in Spain 15 pesos in Spanish currency. But as has already been said, this is not a sufficient indication that the contract contended for by plaintiff was the one actually entered into between the parties.

What, in our opinion, has been conclusively proven is (1) that there was a contract of hiring between plaintiff and defendant; (2) that according to the testimony of the witness Emeterio Arteagabeitia the other four miners received 4 pesos each per day, the same as Emilio Bueno, with the exception of the Spanish miners who received 9 Spanish pesetas per day (p. 45 of the bill of exceptions); and (3) that the said contract took effect on the 23rd of December, 1902, and was terminated March 13, 1903.

The counterclaim for damages can not be sustained. The testimony of the witness Arteagabeitia is very uncertain as to the sinking of one of the shafts at the mine, and the damages caused thereby. If the

statement of this witness upon this point is true it would appear that the accident occurred after Bueno's departure. The witness stated that his belief that Bueno was responsible for the accident was based upon a statement to that effect made to him by another miner.

Nor can the defendant recover the amount of the round trip ticket furnished to plaintiff as set up in the counterclaim. All that plaintiff can recover is wages due him at the rate of 4 pesos per day. There is no proof as to which of the parties violated the contract. The witness Arteagabeitia, in a letter dated March 1, 1903, reported to the company that Bueno was coming to Manila, and recommended that he be not sent back to Batan. The contract was therefore considered in force until its cancellation on March 13, 1903. Consequently, Emilio Bueno is entitled to wages from the 23d of December, 1902, until the 13th of March, 1903, at the rate of 4 pesos, Mexican, per day, making a total of 324 pesos, from which there should be deducted the three items of the counterclaim referred to amounting to 220 pesos, Mexican currency, leaving a balance of 103.40 pesos in plaintiff's favor.

It is therefore the judgment of this court that the defendant company pay to the plaintiff in this case the sum of 103.40 pesos, Mexican currency, or its equivalent in Philippine currency, each party to pay its own costs in both instances. After the expiration of twenty days from the date hereof let judgment be entered accordingly, and the case remanded to the Court of First Instance for execution. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.