Kerradel v. Micronesian Indus. Corp., 1 ROP Intrm. 118 (Tr. Div. 1984)

SESARIO KERRADEL,
Plaintiff,

v.

MICRONESIAN INDUSTRIAL CORPORATION,
Defendant.

CIVIL ACTION NO. 119-81

Supreme Court, Trial Division
Republic of Palau

Opinion; findings of facts and conclusion of law; judgment
Decided: May 16, 1984

BEFORE: ROBERT WARREN GIBSON, Associate Justice.

This matter came on regularly for hearing before the undersigned judge on the 30th day of April, 1984, plaintiff appearing by John S. Tarkong, Esq., defendant appearing by Carlos H. Salii, Esq., and the court, having heard the testimony of the witnesses and of plaintiff, received into evidence diverse and sundry exhibits, entertained the argument of counsel, and being in all things advised, now makes and enters its Opinion, Findings of Fact, Conclusions of Law, and Judgment as follows:

OPINION

The Court is of the opinion that defendant has operated in violation of the provisions of Public Laws 6-65 and 7-7-3.

As a result plaintiff is entitled to indemnification for loss of wages which, had the respective laws been followed would have required defendant to have made certain upward adjustments in plaintiff's pay scale.

Plaintiff however has furnished the Court the bare minimum of information necessary to permit the court to apply the provisions of these two Acts. In view of the fact that Public Law No. 7-7-3 became operative on November 7, 1980, and was in force and effect only 3 months and 22 days of plaintiff's employment, (Exhibit 7) no attempt has been made to apply the provisions of the latter Act.

The court therefore has been left to its own devices ⊥119 in determining such matters as Steps and Grades to be applied to plaintiff's employment and for the reason plaintiff should not therefore be heard to complain as to the amount of the award.

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Defendant argues that the court may not speculate as to damages, but this ignores the fact that defendant has clearly breached its contract with the Palau Economic Development Board (Exhibit 6), an agency of the Republic of Palau. Plaintiff falls clearly within the class for the benefit of which the aforementioned Public Laws have been enacted.

The measure of damages in such third party beneficiary employment contract cases is "what the employee would have earned had he been compensated at the proper scale less that which he in fact received as compensation". *See, Clark, Summary of American Law* § 160, p. 229; *Williston on Contracts*, Revised Ed. (Hornbook Series), §§ 1358-1361.

Though not challenged, we point to *Williston, supra*, § 365, as laying the bases for plaintiff's right to sue.

Plaintiff and one witness, Feliciano Udui, testified. Defendant offered no witnesses nor did he himself take the stand.

As a result of an examination and evaluation of the documentary and evidence introduced by the parties and the testimony of plaintiff and his witness, the Court makes the following:

FINDINGS OF FACT

1. That under the Grant of Authority to do business in the Republic of Palau given to defendant, 33 TTC § 10, defendant non citizen corporation was required to comply with the requirements of 61 TTC § 10, *et seq.*, PL 6-65, PL 7-7-3, of the existence and effect of which the court takes judicial notice. The court further finds that defendant had actual notice of this fact and of the existence of the aforementioned statutes and Laws.

2. The court finds defendant knowingly failed to comply with the requirements of these acts with regard to salary and benefits required to be paid thereunder.

3. The court finds that plaintiff commenced work at defendant's plant site on October 22, 1976 and voluntarily resigned on January 22, 1981.

⊥120 4. That from October 22, 1976, to December 22, 1977, plaintiff was employed as Gate Pilot and compensated at the rate of $1.25 per hour.

5. That from December 23, 1977, to January 22, 1979, plaintiff was employed as Shift Supervisor and compensated at the rate of $1.65 per hour.

6. That from January 22, 1979, to January 22, 1981, plaintiff was employed as Time Keeper and compensated at the rate of $1.65 per hour.

7. That on or about July 21, 1978, pursuant to and as a result of an employees' strike[,] an agreement was entered into by and between the employees of whom plaintiff was one and defendant. A copy of that agreement is in evidence as plaintiff Exhibit No. 5.

8. That said agreement provides for overtime pay over 96 hours bi-weekly employment but makes no reference to annual or sick leave or medical insurance payments for employees.

9. The court finds that insofar as providing over-time for hours bi-weekly worked in excess of 96[,] it does not comport with the requirements of the aforementioned Public Laws in that by said law over-time is fixed as hours worked in excess of 80 hours bi-weekly.

10. The Court finds that no evidence was offered to show that plaintiff might be entitled to additional compensation by reason of the hazardous nature of plaintiff's work while performing his duties as Shift Supervisor.

11. The court finds that while plaintiff contends defendant's Exhibit A was signed in blank on May 5, 1981, it speaks the truth as to plaintiff's resignation to accept employment with the Republic of Palau Public Safety Department on or about January 22, 1981.

12. The court finds that no showing has been made that plaintiff was wrongfully discharged in favor of the employment of an alien worker in violation of 49 TTC chapter 1.

13. The court finds that with regard to additional compensation for sick and annual leave there is insufficient evidence of the standard used for the computation thereof that has been presented to or agreed ⊥121 upon by the parties and therefore refuses to speculate thereon making no award of compensation in this regard.

14. The court finds that a payment of $87.20 was made by defendant to plaintiff on April 30, 1981. The court finds that payment was made for the purpose of circumventing the requirements of 61 TTC § 10, *et seq.*, Public Law 6-65, and Public Law 7-7-3, and thus is against public policy as enunciated by the cited statutes and so can not be considered as an Accord and Satisfaction with regard to a disputed matter and should only be considered as an offset to any claims due from defendant to plaintiff.

From the foregoing facts found the court draws the following:

CONCLUSION OF LAW

1. That defendant, in accepting the benefits enumerated in Exhibit 6 contracted with the Republic of Palau, *inter alia*, to adhere to the wages and benefits scale for employees of the Republic of Palau as provided by PL 6-65 and PL 7-7-3, as from time to time amended.

2. That plaintiff is a third party beneficiary of such contract and a member of the class intended to be protected thereby.

3. That defendant should not be permitted to accept the benefits of being allowed to engage in business within the Republic of Palau without accepting the concurrent detriments related thereto.

4. That plaintiff's Exhibits No. 5, purporting to agree as it does as to the payment of wages and benefits less than those required by PL 6-65 and PL 7-7-3 contravenes public policy and is therefore unenforceable per se.

5. That plaintiff is entitled to recover from defendant on the basis of breach of third party beneficiary contract of employment.

6. That the measure of damages to be applied is that which would place plaintiff in the same position (receipt of salary,) as he would have been, had defendant properly performed his employment contract and paid wages equal to those paid to Republic of Palau employee pursuant to said PL 6-65 and 7-7-3.

⊥122 7. That the court, having taken judicial notice of the aforementioned public laws is empowered to estimate by calculation based thereon the extent of plaintiff's damages.

8. Plaintiff has failed to sustain his burden of proof as to punitive damages and therefore no award of same is made. The court therefore finds that plaintiff should have judgment against defendant in the sum of $4,939.20.

JUDGMENT

In accordance with the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff have and recover of defendant the sum of $4,939.20, plus costs of suit, each party to pay their own attorneys fees.