KLEKAMP v. BLAW-KNOX COMPANY

179 F. Supp. 328 (1959) | Cited 0 times | C.D. California | December 23, 1959

Plaintiff was employed as a piping engineer either by defendantBlaw-Knox Company (hereinafter B-K), or by its Venezuelasubsidiary Blaw-Knox de Venezuela (hereinafter B-K deV). Thecontract was negotiated in a hotel in Pittsburgh by the plaintiffand two gentlemen (Mr. DeSeife and Mr. Bayer) acting on behalf ofthe corporation or corporations. The plaintiff was employed towork on a construction job in Venezuela under a contract that B-KdeV had entered into with the Government of Venezuela.

At the end of about four months on the job in Venezuela theplaintiff was given a two-week notice of termination, hisemployment terminated and he was returned to the United States atthe expense of B-K deV. Plaintiff contends that the defendant B-Kwas a party to the contract; that under the terms of the contracthis employment was for a two-year period and that it wasimproperly terminated without just cause. This action is fordamages for breach of the contract.

The defendant B-K defends on the ground that it was not a partyto the contract. It asserts that the contractwas between the plaintiff and B-K deV. It further contends thatthere was no breach of the contract.

Plaintiff takes the position that he was employed by B-K andthat he was "on loan" to B-K deV. He testified that such anarrangement is not uncommon in construction work, that he hadbeen so employed before by a different company. The testimony ofthe defendant's witness McKeefe, who saw to the Pittsburghprocessing of Klekamp prior to his departure for Venezuela, tendsto support the plaintiff's contention. McKeefe testified that atanother period while employed by B-K he did some work inVenezuela for B-K deV, saying, "I was on loan". McKeefe sent outseveral documents, all on B-K stationery, with reference toKlekamp's employment. Defendant's version of the arrangement wasthat B-K was acting as an agent in processing employees of B-KdeV and used its own stationery because that was all that wasavailable to it at the time. B-K also, it is urged, paid the basesalaries of the B-K deV employees.

Further indication that defendant regarded itself as Klekamp'semployer is its action in deducting Federal InsuranceContributions Act withholdings under Section 3102 of the RevenueCode, 26 U.S.C.A. § 3102. Section 3102 recites that the tax"shall be collected by the employer of the taxpayer". Defendantattempts to meet this evidence by pointing to Section 3121(l),which provides that domestic corporations may make FICAdeductions for employees of their foreign subsidiaries. Thislatter section, however, provides that such an arrangement is tobe made pursuant to a specific agreement with the Secretary ofthe Treasury, and there is no evidence of such an agreement. B-Kalso prepared

and directed Klekamp to fill out a claim ofexemption from withholding taxes and a withholding tax statement.The most plausible explanation of the defendant's activities isthat it considered itself the employer of Klekamp.

After a careful analysis of all the evidence, the Court findsas a fact that the defendant B-K was a party to the contract. Itmay be held liable as a principal if it breached the contract.

During the negotiations in the Pittsburgh hotel the corporationrepresentatives delivered to Klekamp a leaflet entitled "Terms ofEmployment", which included a paragraph relating to terminationof employment reading as follows:

"The Venezuelan Labor Law provides that the employee may terminate his employment at any time by giving advance notice to the Company as follows:

"1. After one month of work, prior notice of one week.

"2. After six months of work, prior notice of fifteen days.

"3. After one year of work, prior notice of one month.

"In the event of such resignation, however, the Company does not pay the return travel expenses to the point of origin of the overseas employee or his family if on married status, except when regular foreign vacation is due. Salary and other payments stop on the effective date of the resignation.

"Under the Venezuelan Labor Law, the Company also may terminate employment at any time by giving the same advance notice as specified above, or by making payment in lieu of notice. Advance notice is not required, however, if the employee is discharged for just cause as defined in the Venezuelan Labor Law, which includes such causes as dishonesty, immoral conduct, intentional or negligent acts resulting in material damage or affecting the safety of others, unjustified absence from work, and the like. In case the Company terminates the services of an employee for reasons other than just cause as defined above, the Venezuelan Labor Law provides for payment by the Company of liberal termination indemnities to the employee. Company policy provides for effecting termination only for valid reasons after careful consideration of all pertinent facts.

"In the event the Company terminates employment for other than just cause as defined in the Venezuelan Labor Law (see above), salary during travel time and return travel expense to his point of origin by the route and carrier selected by the company for the overseas employee, and his family if on approved married status, are paid by the Company. In case of discharge for cause, however, the return travel expense must be borne by the employee, and salary and other payments stop on the date of discharge."

At the Pittsburgh meeting Bayer told Klekamp that the printed"Terms" constituted the basis of the employment. Klekamp readthrough the printed "Terms", or at least glanced at them while atthe hotel, and read them soon thereafter. It is also clear thatDeSeife and Bayer told Klekamp at that meeting that terminationby the company involved either prior notice or payment in lieu ofnotice, and that upon termination for other than just cause,additional indemnities were due under the Venezuela law. Underthese circumstances the conclusion seems inescapable that theprinted "Terms" are to be considered a part of the agreement and,hence, that the portion quoted pertaining to termination is togovern this issue.

Applying the printed "Terms" to the facts, it is clear that thedefendant in effecting plaintiff's termination committed nobreach. He was notified of his termination on January 2nd, andreceived full pay and allowances until January 17, 1956, when heleft for the United States. In addition he was given one week'spay in lieu of notice, five days' unemployment compensation, fivedays' vacation pay, all appropriate utilidades and four days' payon account of travel time. In other words, he was given what wasdue him as though he had been terminated for other than justcause under the provisions of the printed "Terms".

The same result would be reached if, rather than interpretingthe "Terms" as part of the contract, the "Terms" were considereddehors the contract and, applying the governing principles ofconflicts of law, the Venezuela contract law were applied.California Civil Code, § 1646, provides that "a contract is to beinterpreted according to the law and usage of the place where itis to be performed; or, if it does not indicate a place ofperformance, according to the law * * * of the place where it ismade." What is more to the point is that it is the intention ofthe parties as to governing law that is controlling, Boole v.Union Marine Ins. Co., 52 Cal.App. 207, 198 P. 416, and takingthe "Terms" as extrinsic to the contract, they are evidencesufficient to indicate the parties' intent that the Venezuela lawis to apply. The "Terms" constitute a statement of the Venezuelalabor law.

The findings of fact and conclusions of law set forth in thismemorandum shall be deemed to be the findings of fact andconclusions of law in the case, and no further findings orconclusions will be necessary. See Rule 52, F.R.Civ.P.,28 U.S.C.A. Counsel for the defendant is directed to prepare, serveand lodge a formal judgment in accordance with local Rule 7,West's Ann.Cal.Code.