

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND ANTONIO RUBISO, RESPONDENTS.

G.R. No. L-22439. May 29, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Workmen's Compensation Commission, promulgated on November 19, 1963 and its resolution en banc of January 9, 1964 in W. C. Case No. R08-772, affirming that of the Hearing Officer, Department of Labor, Regional Office No. 6 in Cebu City, awarding to Antonio Rubiso compensation in the sum of P3,369.60 and other benefits, on a finding that his illness of pulmonary tuberculosis was either contracted during his employment or aggravated, by the nature and conditions of his employment.

It appears that on March 29, 1961 Rubiso filed with the Department of Labor, Regional Office No. 6 stationed in Cebu City a claim for compensation under the Workmen's Compensation Act claiming that he had contracted tuberculosis during his employment. Petitioner's answer, on the other hand, alleged firstly, that the claimant did not contract and could not have contracted TB out of and in the course of his employment with petitioner, and secondly, that the claim was barred by laches and prescription, having been filed more than five years from the date when the alleged ailment was contracted. After a hearing on the merits, the Hearing Officer rendered the decision mentioned above which was subsequently affirmed first, by Commissioner Sanchez and subsequently by the Workmen's Compensation Commission. The Commission en banc having denied petitioner's motion for reconsideration, the latter took the present appeal by certiorari.

The facts of the case as found by Associate Commissioner Jose Sanchez and later affirmed by the Commission en banc, are as follows:

"The records of the case disclose that claimant began working with the respondent company on December 19, 1953 as a laborer and cement mixer operator-helper; that after a year, he was made an air compressor operator in the Mines Department of respondent in the mountains, the position he held up to December 7, 1956 when he was separated from the service because of his illness of pulmonary tuberculosis. Claimant's illness of PTB, when discovered upon x-ray examinations by the company physicians Dr. Antonio Victoria on August 24, 1956 and Dr. Rafael Dira on September 3, 1956, was diagnosed as far advanced, bilateral, because of the findings of 'Fibrotic and calcified rings of former cavity formations, and extensive infiltration on both lung fields.' As a laborer during the first days of his employment, claimant's work was to lift cement and gravel and pour them on the box of the cement mixer machine; and when he was made a cement mixer operator helper, he tended the operation of the cement mixer machine which was electrical-ly run. As air compressor operator, he operated one of the machines that supplied the air to the men working inside the tunnel. Claimant's salary at the time he left the service was P4.50 a day, working six days a week. During the entire period of his employment, he was assigned to night work every 15 days.

"The records further show that as a result of the X-ray examination performed on the claimant by Dr. Isidro Peña on February 7, 1961, and by Dr. Cecilio Dolorfino of the Cebu Chest Center on January 28, and October 26, 1961, it was found that his sickness of PTB had regressed to the minimal stage."

In support of its appeal petitioner now contends that the Commission erred in not holding that Rubiso's claim was barred by laches and prescription and in holding that claimant's illness was compensable, there being no substantial evidence showing causal connection between the alleged contraction or aggravation of Rubiso's illness and the nature of his work as an employee and laborer of petitioner.

The record discloses that the defenses of laches and prescription are being raised for the first time in this appeal. They were not invoked in the proceedings before the Hearing Officer nor later on before Associate Commissioner Sanchez and the Workmen's Compensation Commission. As said defenses do not affect the jurisdiction of the latter, they can not now be entertained and must be deemed to have been waived (*Regalado vs. Visayan Shipping Company Inc.*, G. R. No. L-42855, May 21, 1939; *Victorias Milling Company, Inc. vs. Compensation Commissioner et al.* G. R. No. L-10533, May 31, 1957; *Manila Yacht Club Inc. vs. Workmen's Compensation Commission et al.* G. R. No. L-19258, May 31, 1963).

Anent the alleged non-compensability of Rubiso's illness, the record likewise discloses that petitioner had knowledge of claimant's illness but failed to submit to the Commission the report required by Section 37 of the Workmen's Compensation Act, as amended. This failure amounts to a waiver of the defense that the laborer's claim is not compensable (*Martha Lumber Mill Inc. vs. Romana V. Lagradante et al.* G. R. No. L-7599, June 27, 1956; *Manila Railroad Company vs. Workmen's Compensation Commission et al.*, G. R. No. L-19377, January 30, 1964). While under the law, the employer's right to controvert any claim for compensation arises immediately upon the occurrence of the event upon which the claim is predicated, such employer, to be entitled to controvert the claim, must submit a report of the accident or event upon which the claim is based within fourteen (14) days from the date of disability or within ten (10) days after he has acquired knowledge thereof; otherwise he shall be deemed to have waived the right to controvert the claim and, as stated in *National Development Company vs. Workmen's Compensation Commission et al.*, G. R. No. L-19863, April 29, 1964, "the law bars all defenses available to the employer, making no exception. Hence even the defense based on the employee's failure to file the claim in due time is now barred".

The question of whether claimant's illness (PTB) was compensable or, in this case, was contracted or aggravated during Rubiso's employment, is a question of fact resolved in the affirmative by the Commission when it held that claimant's illness must "have been contracted during the period of his employment" although it remained undetected until the last few months of his employment when he was twice X-rayed at his instance. The Commission likewise found that, even accepting the employer's contention that Rubiso must have had the beginnings of the disease even before his employment, still there was evidence "showing that he had the symptoms of the disease during the first year of his employment" and that, therefore, his case was one "of aggravation", the latter being clearly attributable to the nature of his work as petitioner's laborer which required him "to lift cement bags and gravel and pour them into the cement mixer; and even when he was designated as helper operator of the cement mixer machine; he had been constantly exposed to inhalation of cement dust, not to mention the elements as his work was in the open; and as air compressor operator assigned in the mountains he had been exposed to the cold winds especially when on night duty as he had been assigned to night work every fifteen days during the entire period of his employment".

The facts disclosed by the record, show, in our opinion, that the present appeal is frivolous.

WHEREFORE, the appealed decision and resolution are affirmed, with treble costs against petitioner.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Castro, J., on leave.

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