

## **SUPERIOR CONCRETE PRODUCTS, INC., PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND CARMELITO BENOZA, RESPONDENTS.**

*G.R. No. L-42020. March 31, 1978*

Ponente: MUÑOZ PALMA, J.

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### **MUÑOZ PALMA, J.:**

In this petition the Superior Concrete Products, Inc. seeks to set aside an award of the Workmen's Compensation Commission dated November 11, 1975 in RO 4-W. C.C. No. 144437 granting to Carmelito Benozza compensation benefits for his illness which incapacitated him to work for a total number of 343-4/7 weeks as of the date of the filing of the claim or the maximum amount of P6,000.00 pursuant to Section 14 of the Workmen's Compensation Act.[1]

Superior Concrete Products, Inc. submits:

1. That respondent Commission gravely erred in rendering a decision in Case No. 144437 while another case involving the same claim, Case No. 14617, was still pending, thereby resulting in a denial of due process; and
2. That the claim is barred by prescription and laches, it having been filed after the lapse of more than ten years from the time the illness allegedly occurred.

We gave due course to this Petition to inquire into the veracity of petitioner's submittal that the decision under review was rendered without due process of law and for this purpose We caused the records of respondent Commission to be elevated for examination.

The records of the Commission show that Carmelito A. Benozza filed with Regional Office 4 of the Department of Labor a notice of sickness and claim for compensation dated April 20, 1971, which was docketed as Case No. 122718 wherein he alleged that he was a laborer of Superior Concrete Products, Inc. with a daily wage of P10.00; that in the course of his employment, more particularly on February 2, 1963, he contracted tuberculosis, and on March 24, 1967 he had to stop working by reason of said sickness.[2] Notice of the filing of this claim was received by Superior Concrete Products on April 26, 1971,[3] but it was only on July 12, 1971, when it filed its report controverting the claim on the ground that the sickness did not arise in the course of the employment and that the claim had lapsed.[4] On July 12, 1971, Acting Chief Referee Atanacio Mardo issued an award in favor of the claimant in the sum of P6,000.00 on the basis of his finding that the claimant, a laborer of the Superior Concrete Products contracted "PTB, Chronic Active Minimal, Bilateral", in the course of his employment and that the employer failed to controvert the claim within the reglementary period provided by law, the notice of the claim having been received by the employer on April 26, 1971, and the supposed controversion having been filed only on or about July 12, 1971.[5]

The employer corporation filed a Motion for Reconsideration of the above-mentioned award in Case No. 122718 calling attention to the fact that it had not received any notice of the claim from the Department of Labor, and that

the claim was filed only on April 20, 1971 or after more than seven years had passed since the happening of the alleged sickness in February, 1963.[6] Acting on this Motion for Reconsideration, the award was vacated and the claim was re-docketed as RO 4WC case 14617. A hearing was held in case 14617 and for failure of claimant to appear the case was dismissed without prejudice on August 21, 1972.[7] The claimant however filed a motion to revive the case[8] which was granted by the Acting Referee Tomas Montesines in an order of May 18, 1973.[9]

On September 1, 1973, Carmelito Benozza filed once more his claim now docketed as Case No. 144437. On October 26, 1973, Acting Chief Referee Ernesto Cruz issued an award[10] granting to claimant P6,000.00 as maximum compensation for his disability from March 26, 1967 up to October 25, 1973.

A Motion for Reconsideration was filed by Superior Concrete Products, alleging that there was a denial of due process as it was deprived of its right to present evidence in this particular case No. 144437 especially since an earlier claim for the same ailment docketed as case No. 122718 which later was re-docketed as case 14617 was pending wherein the parties were still in the process of presenting their evidence.[11]

The aforementioned Motion for Reconsideration was denied by Acting Chief of Section, E.M. Cayapas, for lack of merit.[12] The case was elevated to the Commission en banc for review which however affirmed the above-mentioned award in a decision dated November 11, 1975.[13]

Hence, this petition for review.

On the issues posed by petitioner We hold:

1. There was no denial of due process to petitioner. As shown by the facts narrated above, Case No. 122718 was dismissed without prejudice by the referee and on motion of the claimant the case was revived and set for hearing. While it is true that the referee could have proceeded with Case No. 122718, no substantial prejudice was caused to petitioner however when claimant filed a new claim which was docketed as Case No. 144437 considering that, as found by the Commission and which We confirm to be the fact, copy of the notice of this second claim dated August 30, 1973, was sent to and received by Superior Concrete Products on September 3, 1973.[14] Notwithstanding receipt of said notice in case No. 144437 petitioner-employer did not file a report of controversion within the reglementary period as of September 26, 1973. Almost a month later the Acting Chief Referee issued the disputed award of P6,000.00 in Case No. 144437. During that intervening period from September 3, 1973 to October 26, 1973, no action was taken by petitioner and that justified the issuance of an outright award on the basis of the documentary evidence submitted by the claimant.

There is denial of procedural due process when a party is not accorded an opportunity to be heard in a case filed against him.[15] What the law prohibits however is not the absence of a Previous notice, but the absolute absence thereof and lack of opportunity to be heard.[16]

Hence, in "Y" Shipping Corporation v. Erispe, et al., where the employer had full opportunity to contest the claim filed against it with the Workmen's Compensation Commission but did not appear before the Regional Office notwithstanding notice, the Court held that the employer cannot complain that it was denied due process before the award was rendered.[17]

In the case now before Us, the employer was furnished a copy of the notice of claim in Case No. 144437 since September 3, 1973, but it did not file any notice of controversion or opposition to said claim up to the time an award was rendered by the Acting Referee on October 26, 1973. Not only that, the employer filed a motion for reconsideration invoking denial of due process and the same was denied by the Acting Referee. The referee's award was then elevated for review to respondent Commission en banc which considered the argument of petitioner herein that it was denied due process when case No. 144437 was decided by the referee notwithstanding

the pendency of case No. 122718, but the Commission held the argument to be without merit inasmuch as case No. 122718 was dismissed without prejudice and therefore the claim could be refiled and that in fact the employer received notice of the filing of the second claim. All these incidents show that petitioner was duly heard and his arguments duly disposed of.

In *Caltex v. Castillo, et al.*, the Court stressed that "(S)ince what due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount, an allegation based solely on the lack of opportunity to be heard without notice does not per se merit unconditional approval." Thus where the petitioner Caltex was given the opportunity to ventilate its protest against the award in a motion for reconsideration, it cannot be said that it was denied an opportunity to be heard and that the decision against it by the Workmen's Compensation Commission was issued without due process.[18]

2. An outright award in favor of the claimant is justified by the evidence existing in the record of this case.

A certification from the Quezon Institute of the Philippine Anti-Tuberculosis Society, Quezon City, dated September 14, 1973, confirms that Carmelito Benosa was sick of pulmonary tuberculosis and that he had his chest x-ray examinations in said hospital on certain specific dates with the corresponding findings, as follows:

"June 26, 1963 (PF-S64)

RIGHT HEMITHORAX: Scattered mottled infiltrations at 1st, 2nd, and 3rd interspaces.

LEFT HEMITHORAX: Fibroxudative lesions from apex, 1st, 2nd and 3rd interspaces. Area of radiolucency at 1st and 2nd interspaces.

"June 2, 1964 (MC-43927)

RIGHT HEMITHORAX: There is pleural fluid at basal region with extension to minor fissure. Fibroxudative lesions in upper lung field.

LEFT HEMITHORAX: Scattered fibro-condular changes throughout lung field with cavity at sub-clavicular area.

"July 14, 1964 (MC-43927)

RIGHT HEMITHORAX: Less marked basal effusion but parenchymal lesions are practically unchanged.

LEFT HEMITHORAX: Slight improvement of upper third infiltrations although size of sub-clavicular cavity is unchanged.

"Sept. 29, 1964 (PF-138)

RIGHT HEMITHORAX: Disseminate fibroxudative lesions at upper third.

LEFT HEMITHORAX: Cavity in upper lobe with disseminate lesions at 1st, 2nd and 3rd interspaces.

"Dec. 7, 1965 (PF-939)

RIGHT HEMITHORAX: Scattered fibrosis almost throughout with some perifocal exudate in upper lung and inner basal area.

LEFT HEMITHORAX: Partially contracted upper lobe with fairly large cavity at inner sub-clavicular area. Fibrosis at 2nd and 3rd interspaces. Confluent infiltrations at base.

"Sept. 23, 1968 (PF-531)

RIGHT HEMITHORAX: Apical and sub-clavicular infiltrations.

LEFT HEMITHORAX: Apical and sub-clavicular.

"Jan. 24, 1967 (PF-923)

RIGHT HEMITHORAX: Minimal fibrosing changes in upper third with prominent lung markings at inner base.

LEFT HEMITHORAX: Prominent and irregular lung markings at inner zone of lower half with density at inner 1st and 2nd interspaces.

"Jan. 3, 1968 (PF-970)

RIGHT HEMITHORAX: Minimal residual fibroid changes in both upper thirds.

LEFT HEMITHORAX:

"July 15, 1968 (PF-115)

RIGHT HEMITHORAX: Denso inner base with exudative lesions at 1st and 2nd inter-spaces.

LEFT HEMITHORAX: Fibroid changes at apex, 1st and 2nd interspaces.

"May 4, 1970 (PF-955)

RIGHT HEMITHORAX: Minimal apical and sub clavicular infiltrations.

LEFT HEMITHORAX: Hazy apex.

"May 24, 1971 (PF-504)

RIGHT HEMITHORAX: Stationary findings as of x-ray taken on May 4, 1970 (Minimal apical and sub-clavicular infiltrations).

LEFT HEMITHORAX: Stationary findings as of x-ray taken on May 4, 1970 (Masy apex).

"Oct. 4, 1973 (PF-730)

RIGHT HEMITHORAX: Infiltrations at 1st interspace.

LEFT HEMITHORAX: Denso apex." (pp. 2 & 3 W.C.C. Records)

In addition, claimant Carmelito Benosa was examined by respondent Commission's Compensation Rating Officer, Dr. Valente L. Peji, on October 18, 1973, and was found to be suffering still of pulmonary tuberculosis and therefore entitled to receive compensation for temporary total disability under Section 14 of the Workmen's Compensation Act.[19]

We cannot now dispute the findings of respondent Commission that Carmelito Benosa became afflicted with pulmonary tuberculosis sometime in February 1963 in the course of his employment as a laborer of petitioner corporation. Due to his need for earning a livelihood, Benosa however continued working until in March, 1967, the progress of his ailment was such that he could no longer cope with the physical demands of his work and had to leave his employment. Since then, Benosa was physically disabled from pursuing his customary occupation and was in fact still suffering from his sickness up to the latest date of his chest x-ray on October 4, 1973.

With the ailment having occurred in the course of employment and aggravated by the claimant's manual labor which exposed him to dust and heat and necessitated the lifting and moving of heavy concrete products, claimant enjoys the benefits of Section 44 of the Workmen's Compensation Act which establishes the presumption of compensability of a claim of this nature thereby justifying an outright award in his favor.[20]

3. The claim for compensation benefits filed by private respondent Benozza has not prescribed. Petitioner asserts that inasmuch as the claimant alleges that he became sick with pulmonary tuberculosis in February of 1963, the claim for compensation has long prescribed and the employee is guilty of laches since the latter filed the claim for the first time only in April of 1971.

Although the herein claimant became ill in February of 1963, however, it was only in March of 1967 when he became disabled from work, and inasmuch as it is the employee's disability to pursue his occupation by reason of illness which entitles him to compensation, Benozza's cause of action accrued only in March of 1967, consequently, the filing of his claim in April of 1971 was well-within the ten - year prescriptive period for compensation cases of this nature.[21]

If there was any delay in the filing of this claim, that may be attributed to the fact that claimant is a mere laborer, unschooled, and ignorant of his rights under the law, and that proper advice could have come to him only at a late date.

At any rate, with the failure of the employer to controvert the present claim of Benozza within fourteen days after the disability or within ten days after he had knowledge thereof (notice of the claim in case No. 144437 was received on September 3, 1973) it lost its right to raise non-jurisdictional defenses, and ultimately admitted the compensability of the claim.[22]

WHEREFORE, the petition is denied and We affirm the decision under review with modification as follows –

Petitioner is ordered:

- To pay the claimant the sum of Six Thousand (P6,000.00) Pesos as disability compensation;
- Provide the claimant with such services and supplies needed for his early recovery from his illness;
- To pay claimant's counsel, Atty. Ricardo M. Perez, the sum of Six Hundred (P600.00) Pesos as attorney's fees for his appearance before the Commission as well as before this Court;
- To pay the Workmen's Compensation Commission Sixty One (P61.00) Pesos as Administrative Fees; and
- To pay costs.

So Ordered.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

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[1] pp. 12, 40-42, W.C.C. Records

[2] p. 78, *ibid.*

[3] see p. 75, *ibid.*

[4] pp. 76-77, *ibid.*

[5] pp. 74-75, *ibid.*

[6] pp. 72-73, *ibid.*

[7] pp. 67-70, *ibid.*

[8] p. 66, *ibid.*

[9] p. 65, *ibid.*

[10] p. 10, *ibid.*

[11] pp. 13-18, *ibid.*

[12] p. 38, *ibid.*

[13] pp. 40-42, *ibid.*

[14] p. 8, *ibid.*

[15] *Macabingkil v. Yatco, et al.*, 1967, per Fernando, J., 21 SCRA 150, 157, citing *U.S. v. Ling Su Fan*, 10 Phil. 104; *Lopez v. Director of Land*, 47 Phil. 23; and others.

[16] *Batangas, Laguna Tayabas Bus Co. v. Commissioner Cadiao, et. al.*, 1968, 22 SCRA 987.

[17] per Makalintal, J., 20 SCRA 1

**[18] 21 SCRA 1071, 1079**

[19] p. 9, W.C.C. Records

[20] *Espino v. WCC, et al.*, July 29, 1977, 78 SCRA 189, per Makasiar, J.; *Bautista v. WCC, et al.*, L-42885, November 23, 1977, citing *Lopez v. WCC*, L-42582, October 21, 1977, and a host of other cases

[21] *Bautista v. WCC*, *supra* citing *Manila Railroad Co. v. Perez and WCC*, 1965, 14 SCRA 504, and *Vallo v. WCC, et al.*, 1976, 73 SCRA 623

[22] Sec. 45, *Workmen's Compensation Act National Housing Corporation v. Niones, et al.*, L-37907, September 30, 1977, citing *Justo v. WCC, et al.*, L-43681, January 31, 1977; *Angel de Castro, Jr. v. Republic of the Philippines, et al.*, L-43289, February 28, 1977.

See also *Roma v. WCC, et al.*, L-43675, October 28, 1977, citing a host of applicable cases; *Pillsbury Mindanao Flour Milling Co. et al. v. Murillo & WCC*, L-32300, January 31, 1978, per Teehankee, J.

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