

CENTRAL AZUCARERA DON PEDRO, PETITIONER, VS. ELIAS AGNO AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-20424. October 22, 1964

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Review of the award of the Workmen's Compensation Commission (in its case R03—710), the dispositive portion of which reads:

"DAHIL DITO, ang kahatulan na aming isinasalangalang ay aming ibinabaligtad o pinawawalang halaga at ang pinapanagot ay inuutusang:

(1) Bayaran ang naghahabol, sa pamamagitan ng Kawanihang ito, ng halagang APAT NA LIBONG (P4.000.00) PISO, bilang bigay palang itinatalaga ng ika-14 na pangkat ng naturingang Batas Bigay-Pala;

(2) Ipagamot ang naghahabol o dili kaya'y bigyan siya ng mga gamot n.a kakailanganin ng kanyang sakit, hanggang sa ito'y gumaling, sangayon pa rin sa pangkat ika-18 ng nabanggit na batas;

(3) Bayaran ang Kawanihang ito ng halagang APAT NA PU'T ISANG (P41.00) PISO, bilang butaw na itinatalaga ng ika-55 pangkat ng nasabi pa ring batas; at

(4) Bayaran ang paglilingkod ng manananggol ng naghahabol ng halagang hindi lalampas sa Pito at Kalahating (7.5%) bahagdan ng halagang kanyang (naghahabol) matatanggap bilang bigay-pala o ang halagangTATLONG DAANG (P3.00.00) PISO, sang-ayon sa ika-6 na pangkat ng Alituntuning ika-26 ng mga Alituntunin ng Kawanihan ng Bigay-Pala (Rules of the Workmen's Compensation Commission), at sangayon pa rin sa ika-2208 (8) Artikulo ng bagong Batas Pangmamamayan (Civil Code)."

The following facts are not disputed: Respondent-claimant Elias Agno was first employed by the petitioner, Central Azucarera Don Pedro, in 1927 as cane unloader. In 1928, he was appointed head mechanic in the centrifugating department, and held the position until 1942. He was laid off in 1943 but was re-employed for the same position in 1949. On 30 January 1959, He stopped working for the company. On 16 April 1959, the petitioner's physician, by a chest X-ray examination, found the respondent's left lung with moderately advanced tuberculosis.

Respondent Agno had been married three times, and had nine children in his second marriage.

Aside from the aforestated facts, the Commission found that the work of the respondent consisted in overhauling four centrifugal machines, checking the proper functioning thereof, and, with the aid of assistants, involved lifting of heavy parts of these machines in repairing them; repairs last for twenty minutes, but, at times, from two to three hours. He performed other similar work for eight hours daily. The place of work was very warm, although equipped with blowers.

On these facts, the Commission found that the consumptive disease of the respondent had been contracted in 1958, or earlier, but certainly within the period of his employment, and was traceable to the same. The petitioner company claims that the statement is not supported by any evidence, and therefore, the Commission abused its discretion.

The claim of the petitioner is untenable. The finding of the Commission that Agno became sick during his employment, and that his sickness was traceable to the working conditions, need not be proved directly, because the finding can be inferred from facts duly established by substantial evidence (Cf. *Blue Bar Coconut Co. vs. Lugod*, 106 Phil., 513), and we do not see that the inference is arbitrary. Moreover, the statutory presumption is that the claim is compensate unless the employer proves the contrary (*Agustin vs. WCC, et al.*, L-19957, 29 Sept. 1964, & cases cited therein), and there is no adequate evidence that when claimant ceased working he was free from tuberculosis, or that this disease could have progressed, to the degree shown, between January (when he quit work) and April, 1959, when he was found with advanced TB.

For its second ground for review, the petitioner assails the award for total disability benefits under Section 14 of the Workmen's Compensation Act, as amended, on the postulate that persons affected with tuberculosis are not totally disabled. This ground raises a factual issue on the extent of the worker's disability; and, even if reviewable, the evidence is that the claimant is much too sick to work, as is shown by the X-ray examination, the employee's complete stoppage from working for the company, and the lack, in the record, of the company's desire to take him back in its employ, even on a part-time basis.

The suggestion of the petitioner company for a fifty per cent (50%) reduction of disability compensation on the false assumption that Agno can still work would seem to be a remorseless insistence to extract the last ounce of energy from a sick man. While a man with advanced tuberculosis can do work, it is not shown that he can do so and still recover. Here, again, the burden of proof is on the employer to establish how much work can be performed by the laborer without detriment to his health, and it was not met.

The last issue is whether the Workmen's Compensation Commission may award attorney's fees in the absence of a prayer for it and any evidence thereon.

While Section 47, Act 3428, as amended, empowers the Commission to approve and fix attorney's fees, in the present case there was nothing to approve and fix because there was no prayer for such fees, nor any basis established for the award. Section 31 of the Act does not govern, as it contemplates the relation between a claimant-employee and his lawyer (*National Development Co. vs. Workmen's Compensation Commission, et al.*, L-19863, 29 April 1964), while the case before us is between a claimant-employee and a respondent-employer.

Neither section 6 of Rule 2G of the Workmen's Compensation Commission rules, nor Article 2208 of the Civil Code grants, a motu proprio authority to make an award of attorney's fees when the same have not been prayed for, nor has their amount been justified. Therefore, the Workmen's Compensation Commission acted without authority in awarding ex parte attorney's fees to the claimant in the present case.

For the foregoing reasons, the decision under review is hereby modified, by striking out the award of attorney's fees, but is affirmed in all other respects, with costs against the petitioner Central Azucarera Don Pedro.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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