

VICTORIAS MILLING CO., INC., PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND VICENTE DEL ROSARIO, RESPONDENTS.

G.R. No. L-25640. March 21, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

It was in 1923 when Vicente del Rosario started to work with the Victorias Milling Co. in Victorias, Negros Occidental. He was a laborer, then a sweeper in the company's machine shop department, then a scaler and later a centrifugal operator in its boiling house department. In 1930 he was made a river pump operator.

Installed in the river pump house in Central Manapla, Negros Occidental, are two diesel motor pumps, each supplied with big pipes. These pumps suck water from the river which is then coursed by pressure thru the pipes to the sugar mill site and buildings of the company. The pipes are provided with screeners.

Vicente oiled, lubricated, cleaned and tended these pumps. He worked in different shifts, sometimes from 7 a.m. to 3 p.m., at other times from 3 to 11 p.m., and often on the graveyard shift, that is, from 11 p.m. to 7 a.m. the facing day. His job required him to dive or go under water one to four brazas deep three times a week -- five times a night in case of flood -- to clean the pipes and screeners that got clogged with dirt.

He was hospitalized in September 1953 at the St. Joseph's Hospital in Manapla, a hospital owned and maintained by the company, for minimal pulmonary tuberculosis, and from August 26 to September 9, 1954, again for the same disease. He then resumed work, but had to stop two weeks afterwards because of a "backache." The company separated him from the service on August 25, 1955, on account of "pulmonary tuberculosis," and he was paid a gratuity of P2,717.34. When separated from his employment, he was earning P4.24 a day.

On January 19, 1960 he filed a claim for compensation (RO-7-WC-786) with the Regional Office in Bacolod City against the company. On March 7 the latter filed an "Employer's Report of Accident or Sickness" and other papers.

The hearing officer, on February 28, 1964, rendered a decision finding that the "claimant's sickness could either have been aggravated by or was the result of the nature of his employment", adjudging the claimant entitled to compensation under section 14 of the Workmen's Compensation Act, as amended, and ordering the company

"To pay to claimant through this Office the sum of THREE THOUSAND SEVEN HUNDRED FOUR PESOS AND 48/100 (P3,704.48); and

"To pay to this Office the total sum of THIRTY EIGHT PESOS (P38.00) pursuant to section 55 of the Workmen's Compensation Act, as amended."

On October 27, 1965 the Workmen's Compensation Commission, on review, affirmed the decision of the hearing officer in toto, and further adjudged the company to pay "the additional sum of P5.00 as cost of this

review". The company's motion for reconsideration was denied by the WCC en banc on December 14, 1965.

Hence the present recourse.

1. The company contends that the WCC erred in entertaining the claim for compensation which was filed almost four and a half years (January 19, 1960) after the claimant's separation from the service (August 25, 1955), in violation of section 24 of the Workmen's Compensation Act, as amended, which sets the maximum period of two months for the filing of the claim. This contention is not a new one; as many times as it has been urged we have rejected it. We emphatically ruled in *Rio y Compania vs. Workmen's Compensation Commission, et al.*,^[1] reiterating the doctrine previously expounded in many cases, "that failure to comply with the requirements of section 24 of the Workmen's Compensation Act --that is, the giving of notice and the filing of a claim within the time prescribed in said section -- is non-jurisdictional."

2. The WCC likewise did not err in holding that the company's failure to file its employer's report and notice of controversion within ten days after knowledge of the accident, as required by paragraph 2 of section 45 of the Workmen's Compensation Act, as amended, amounted to statutory renunciation of its right to assert non-jurisdictional defenses.^[2] The company filed its employer's report and notice of controversion only after it was asked to do so by the Bacolod Regional Office.

Anent the argument that an employer is required to submit an "Employer's Report of Accident or Sickness" only in case of "injuries" * * * in the course of their employment, as provided in sections 37 and 44 of the Act, and in case of "accident" under section 45 of the Act, and the herein claimant's "sickness" did not arise out of or as a result of "injuries" or "accident", suffice it to point out that paragraph 2 of section 45 speaks of "accidents" and "disability", and the disability of an employee or laborer may be due to sickness, that is, to causes other than "injuries" or "accidents". Indeed, section 39 (c) of the Act defines "injury" or "personal injuries" to include "sickness".

3. That the claimant was afflicted with tuberculosis as early as September 1953, is conclusively proved by (1) the "Radio Physical Therapy Record" dated September 10, 1953 of the St. Joseph's Hospital in Manapla; (2) the "Treatment Record" of the claimant, also of the same hospital; and (3) the "Physician's Report of Sickness and Accident", submitted by the company to the Bacolod Regional Office on March 7, 1960.

The company disagrees with the Commission's conclusion that the claimant's sickness "was contracted * * * during the period of his employment", contending that this is not supported by the evidence on record, and arguing that tuberculosis is not an "occupational disease."

We have read the decision of the WCC, and we find no reason to disturb its findings. We quote with approval the following excerpts from the decision:

"It is safe to conclude that said illness was contracted by the claimant during the period of his employment, since he underwent the physical and medical examinations conducted yearly by the company on its employees and was found fit for work; it was only in September, 1953 when upon x-ray examination he was found afflicted with said PTB disease. * * *

"The nature and the conditions under which the claimant worked must have had adverse effects on his health. He had to go into the cold water especially when on night duty, three times a week; and when there is flood, as many as five times during the night to clean the screeners. The working conditions were far from favorable to his health since his place of work (pump house) continuously exposed to the heat emanating from the water pumps he was tending, and to the heat caused by the galvanized roofing of the pumphouse when working in the day shift, not to mention the fact that, prior to being a pump tender, he had been in constant exposure to the heat emanating from the furnace or oven of the Boiling House department of respondent while working

therein as a scaler and sub-sequently, as a centrifugal operator. Moreover, claimant was frequently assigned to night work. Night work has a debilitating effect on one's physical constitution. As aforestated, the nature and the conditions under which claimant worked had, evidently, adverse effects on his health gradually lowered his body resistance against the infection of tuberculosis germs deemed pre-sent in him in a dormant form."

We have consistently refused to reverse or modify the findings of fact made by the WCC[3] on the ground, here urged by company, that there is testimonial evidence on record contrary to the said findings. The WCC findings in the present case are supported by substantial evidence on record and are therefore binding upon us.[4]

Furthermore, while tuberculosis "is an infectious disease, attributable solely to the tubercular bacilli * * *, it is recognized that any factor which lowers the resistance of an individual or brings injury to the lung structure will render him susceptible to tubercular infection, and so it is true occupational diseases frequently terminate in tuberculosis".[5] The obvious conclusion we can draw from the environmental circumstances in the case at bar is that the claimant's sickness was contracted during the course of his employment. The nature and conditions of his work had a debilitating effect on his physical constitution. Whether he did not have tuberculosis or had an arrested case of it at the time of his employment, his work either served to reactivate the disease or constituted its original cause. In either case, he is entitled to compensation.[6]

ACCORDINGLY, the judgment a quo is affirmed in toto, at petitioner's cost.

Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

Reyes, Acting C.J., did not take part.

Concepcion, C.J., on leave.

[1] G.R. No. L-21467, August 30, 1967, 1967C PHILD 466, 471

[2] G.R. No. L-22096, Talisay-Silay Milling Co. Inc. vs. WCC, et al., September 29, 1967, 1967C PHILD 857, 861; note 1, supra, 471-472.

[3] Talisay-Silay Milling Co., Inc. vs. WCC et al., supra; Laguna-Tayabas Bus Co. vs. Consunto, G.R. No. L-12726, May 20, 1960; Davao Gulf Lumber Corp. vs. Del Rosario, G.R. No. L-15978, Dec. 29, 1960.

[4] Talisay-Silay Milling Co., Inc. vs. WCC, et al. supra; Basay-say, vs. WCC, et al., G.R. No. L-16438, Nov. 29, 1961; Rebodos vs. WCC, et al., G.R. No. L-18737, Nov. 29, 1962; Itogon-Suyoc Mines, Inc. vs. Dulay, G.R. No. L-18974, Sept. 30, 1963.

[5] Schneider, Workmen's Compensation, Permanent Ed., p. 633, and the authorities therein cited.

[6] Blue Bar Coconut Co. vs. Boo, 95, Phil. 867,873.

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