

CIRIACO HERNANDEZ, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND MANILA ELECTRIC COMPANY, RESPONDENTS.

G. R. No. L-20202. May 31, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Petition for review of a decision of the Workmen's Compensation Commission.

Petitioner Ciriaco Hernandez was employed by respondent Manila Electric Company, hereafter called MERALCO, on May 15, 1930, as automotive mechanic. The work entailed, among other things, the dismantling, repair and installation of transmissions, differentials and steering wheels of trucks. Admittedly, he was then in good health.

On January 15, 1953—after 23 years continuous service—Hernandez was found to be suffering from pulmonary tuberculosis. From 1953 to 1959, his X-ray examinations indicated presence of "minimal, fibrotic infiltration of both apices". During said period he received treatment for said disease from MERALCO's physician at its clinic.

Aside from pulmonary tuberculosis, Hernandez contracted inguinal hernia, and underwent operation therefore, in 1954. Still later, on September 18, 1959, he had carcinoma of the prostate, and was likewise operated on for it.

Pursuant to its general circular on "Leaves and Retirement" providing that:

"When an employee shall have (a) Completed 30 years of continuous, faithful and satisfactory service to the Company, or (b) Reached his 60th birthday, said employee shall be retired from the service and be paid the full amount credited to his 'Retirement Account',"

MERALCO advised Hernandez on May 8, 1959 that he will be retired on December 31, 1959 and be paid his "Retirement Account". At his own request, however, Hernandez was retired on November 25, 1959 and was paid his retirement benefits. He was then 69 years old.

On March 10, 1960, Hernandez filed with the Department of Labor a notice of Sickness and Claim for Compensation. Subsequently, this was superseded by an Amended Claim filed on March 7, 1961. The claimant alleged, in brief, that due to illness suffered in the course of his employment he was forced to retire due to disability to work but respondent MERALCO did not pay him compensation as provided by law.

After MERALCO filed its answer controverting the claim, the Department of Labor, Regional Office No. 4, heard the case. On February 1, 1962, the hearing officer decided that claimant was entitled to disability compensation, thus:

"Wherefore the Manila Electric Company is hereby adjudged pay Mr. Ciriaco Hernandez, through this Office, the sum of FOUR THOUSAND PESOS (P4,000.00) as temporary total disability compensation pursuant to the instant Claim.

"Respondent is further ordered to pay to this Office the sum of FORTY One Pesos (P41.00) as fees pursuant to Sec. 55 of Act No. 3428, as amended.

"Counsel for claimant may not charge the latter, attorney's fees in excess of the limit provided for under Section 6 Rule 26 of the Rules of the Workmen's Compensation Commission.

"So ordered."

A petition for review of the hearing officer's decision was filed by MERALCO before the Workmen's Compensation Commission. On June 25, 1962, the Associate Commissioner designated thereon rendered a decision reversing that of the hearing officer. On a motion for reconsideration by the claimant, the Workmen's Compensation Commission, en banc, affirmed the Associate Commissioner's decision, per its resolution of August 22, 1962. Accordingly, the claimant has appealed.

The record shows that petitioner was forced to ask for retirement ahead of schedule not because of his old age, but principally because of his weakened bodily condition due to his illness. At the time of his actual retirement, on November 25, 1959, petitioner was still being treated for his pulmonary tuberculosis which was definitely pronounced arrested only on April 6, 1961. As the hearing officer found, and MERALCO does not dispute it, the Employer's Report of Sickness in fact stated that Hernandez retired due to "minimal PTB, bilateral, fibroid". There is therefore no denying the fact that petitioner's aforesaid sickness, contracted in the course of his employment, and not merely his age, was responsible for his untimely retirement—36 days ahead of schedule—from the service of MERALCO.

The reason given by the Workmen's Compensation Commission in rejecting compensation for petitioner's tuberculosis was that since it took 23 years for the disease to 'Manifest itself the same could not have been due to Petitioner's working conditions. Such a view runs counter to our ruling in *Agustin vs. WCC*, L-19957, September 29, 1964, that once the disease has been shown to have in the course of the employment, it is presumed by law, in the absence of substantial evidence to the contrary, that it arose out of it Petitioner's tuberculosis admittedly arose in the course of his employment. The fact alone that 23 years had elapsed before the disease appeared is not substantial evidence that it did not arise out of the employment:

"The Commission does not refer to any evidence showing that the disease of the claimant could not have been due to the conditions in which he had been working for so many years. It merely speculates that it could not have so originated, because after 23 years the tuberculosis was found to be minimal. We find this speculation insufficient to rebut the statutory presumption, since it does not exclude the probability that the conditions of work reduced the resistance of the laborer's body to the point that he was unable to withstand the infection. Also, the Commission's reasoning is faulty, in that the number of years, that elapsed before the disease became manifest merely tends to prove that the deterioration caused by working conditions was slow, but not that the working conditions did not cause such deterioration in the health of the laborer." (*Agustin vs. WCC*, supra)

Since petitioner is entitled to compensation payments due to his pulmonary tuberculosis, we find it unnecessary and academic to resolve whether his inguinal hernia and carcinoma of the prostate likewise entitle him to the same.

Petitioner's compensation, however, should be for his inability to work during the remaining 36 days before his scheduled compulsory retirement. Since he was retireable on December 31, 1959 and has in fact received from MERALCO his retirement benefits, it cannot be said that subsequent to said date his inability to work was due to his sickness. There is no evidentiary basis to support an award for compensation payment even after December 31, 1959. From the record it could only be concluded that petitioner's earning capacity, independent of his sickness, ended on December 31, 1959, so that compensation payments, which are premised on loss or

impairment of earning capacity due to illness or injury, cannot extend beyond that date. In this regard compensation differs from medical and hospital service and supplies. An employer's obligation to provide the latter subsists until the illness is cured or arrested, pursuant to Section 13 of the Workmen's Compensation Act, as long as the illness was contracted during the employee's employment (*Itogon-Suyoc Mines, Inc. vs. Dulay*, L-18974, September 30, 1963). The present case involves only compensation payments since MERALCO had voluntarily provided Hernandez with medical and hospital services and supplies.

As to the alleged prescription, suffice it to say that by voluntarily furnishing medical service and supplies MERALCO dispensed with the need for petitioner to file his Notice of Sickness within the time limit therefore (Section 24, Workmen's Compensation Act). With regard to the two-month period for the filing of a claim for compensation, the same should be counted from the date when the disease or illness becomes compensable, that is, from the date the employee becomes physically disabled to work (*Peter Paul Philippine Corporation vs. Workmen's Compensation Commission*, L-19612, July 30, 1964). Petitioner herein was thus disabled only on November 25, 1959. While his formal claim was filed on March 10, 1960, or beyond the two-month period, his request for retirement on November 25, 1959 predicated on sickness causing his disability from working until his scheduled retirement on December 31, 1959, substantially fulfills the requirement of a claim, for then the company cannot plead surprise in the preparation of its defense, which is the only reason for requiring an early filing of the claim on the part of the employee (*Luzon Stevedores Co., Inc. vs. WCC*, L-19742, January 31, 1964).

Petitioner's applicable average weekly wage has been shown to be P69.60 ($P11.60 \times 6$ days). Sixty per cent thereof is P41.76, so he is entitled to the maximum of P35.00 weekly compensation for the period from November 25, 1959 to December 31, 1959, exclusive of the first three days pursuant to Section 14 of the Workmen's Compensation Act.

Wherefore, the decision appealed from is reversed and respondent Manila Electric Company (MERALCO) is hereby ordered to pay petitioner the compensation payment of P35.00 per week for the period from November 25, 1959 to December 31, 1959, exclusive of the first three days. Respondent is further ordered to pay to the Workmen's Compensation Commission the expenses provided for in Sec. 55 of Act No. 3428. No costs in this instance.

It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

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