

ITOGON-SUYOC MINES, INC., PETITIONER VS. FRUTO DULAY AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.*G.R. No. L-18974. September 30, 1963*

Ponente: REGALA, J.

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This case comes to Us for review from the Workmen's Compensation Commission.

The facts, as found by the Commission, are:

"Previous to his employment with the respondent Itogon-Suyoc Mines, Inc., Fruto Dulay applied for work in the Antamok Mining Company on October 10, 1950, but was refused admission into the service by the management because he was found afflicted with lung" ailment. On September 22, 1951, he suffered the same fate of the chest. He worked as mucker performing the following results: 'Far Advanced PTB, right lung, fibro-caseous with fraction (traction) of the heart to the right. Beginning infiltrations, left upper lung. However, seven months thereafter, or specifically on April 30, 1952, he was allowed to work by the herein respondent after passing the pre-employment physical examination conducted by Dr. Ramon Pellicer, a company physician. It should be noted that this medical check-up did not include an X-ray examination of the chest. He worked as mucker performing the following duties, to wit: (1) to muck and bore holes five feet deep by means of a stopper machine, weighing 200 pounds more or less., and blast them with dynamites; and (2) to lift timber of varied sizes, which include some round posts that could hardly be carried by two persons. His place of work was hot as the company provided no electric fan for adequate ventilation. He worked either on the nightshift, starting from 4:00 up to 12:00 p.m. or the day shift, starting from 7:00 a.m. up to 3:00 p.m. On April 28, 1954, he was automatically separated from the employment because he exceeded his vacation leave without permission from the respondent (AWOL). Fortunately, after having requested the General Superintendent for his reinstatement, lie was readmitted to the employment on May 14, 1954. On July 7, 1954, he was X-rayed by Dr. Hugo A. Rosa, the company physician who took the place of Dr. Rampn Pellicer, and was discovered suffering from:

'RL: Fibro-caseous all over

'LL: Fibroid Lesions LS-3, markedly retracted mediastinum to the right.

REMARKS: For advanced chronic P.T.B.

On July 16, 1954, he stopped working at the instance of the incumbent company physician and received medication from the respondent until September 12, 1955. From August 2. to 30, 1954, inclusive, he paid Dr. Jose Villamil P1.00 daily for the injections of streptomycin on him. He was X-rayed on November 3, 1954, but the result revealed 'no apparent radio-graphic change.' When he sought employment in the Philippine Engineers' Syndicate on December 18, 1954, he was rejected because he was found to have been afflicted with 'R.L. Fibro-caseous lesion all over with retracted mediastinum. L.L.-00.'" At the time he was told to stop working by the company physician due to his illness, he was earning P24.00."

From these facts, Commissioner Cesareo Perez concluded that Dulay's ailment was aggravated by the nature of

his work and therefore was compensable. In addition, he held that the company had waived its right to contest the compensability of the disease on the ground that the company did not submit its employer's report within the time stated in Section 45 of the Workmen's Compensation Act (Act No. 3428, as amended). Accordingly, he ordered the company—

"1. To pay the claimant, thru this Commission, the sum of TWO THOUSAND NINE HUNDRED NINETY-FIVE and 20/100 (P2,995.20) PESOS as compensation pursuant to Section 14 of the Act, as amended;

"2. To reimburse to the claimant, thru this Commission, the sum of TWENTY-NINE (P29.00) PESOS which he spent for medical treatment and to provide him with continuous medical and hospital services and supplies until his illness is cured or arrested pursuant to Section. 13 of the Act;

"3. To pay the claimant the sum of P224.64 as attorney's fee; and

"4. To pay the Commission the amount of P35.00 as costs pursuant to Section 55 of the Act, as amended." Its motion for reconsideration having been denied by the Commission en bane, the company appealed to this Court.

Section 2 of the Workmen's Compensation Act provides:

"When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. * * *.

In holding the case compensable on the ground of aggravation, the Commission stated:

"* * * Here, claimant admitted that he was suffering from pulmonary tuberculosis far advanced, on September 22, 1951 (t.s.n. p. 2, "hearing of December 11, 1959). This illness must have improved at the inception of his work on April 30, 1952 which is quite probable because, aside from the medical treatment extended to him by Dr. Jose Villamil,, Fruto Dulay was at a complete rest for more than seven (7) months as he was not yet engaged in any work activities. Moreover, the fact that he was admitted into the service, and allowed to work for more than two years after having passed the physical examination made by Dr. Ramon Pellicer sometime in April, 1952, is a strong indication that said illness was arrested and therefore inactive. However, due to the strenuous work entailed by his being a miner * * * and his nighttime duties at the underground level where the atmosphere was hot, his ailment was reactivated and has progressed to a more disabling far advanced stage which ultimately necessitated his early separation from the employment. * * * " (Italics ours.)

The company contends that there is absolutely no evidence that Dulay was under medical treatment after he was found sick of far advanced pulmonary tuberculosis on September 22, 1951 so as to warrant the conclusion that his illness had been arrested at the time of his employment on April 30, 1952 and then aggravated and reactivated by the nature of his work.

Be that as it may, the fact remains however that Dulay was given pre-employment physical examination and was obviously found fit by the company's own physician that is why he was admitted to work. As a matter of fact, he was allowed to work for more than two years and it was only when he was told to do so by the company physician that he stopped working. If he was later found sick of TB, it must be because of the nature of his work which consisted of boring holes by means of a machine that weighed 200 pounds and lifting timber of various sizes and which he did under conditions that could not but aggravate his illness.

Neither was Dulay guilty of bad faith in allegedly not disclosing the fact of his illness at the time he presented himself to physical examination as required by the company physician who found him fit to work.

The decision orders petitioner "to provide him (Fruto Dulay) with continuous medical and hospital service and supplies until his illness is cured or arrested, pursuant to Section 13 of the Act." Petitioner assails this portion of the decision on the ground that Dulay is no longer in its employ and that its liability for medical care can not extend beyond 208 weeks. There is no merit in the contention. Section 13 does not require employer-employee relationship as a condition for the employer's liability. As long as the illness was contracted during the employee's employment, the employer's obligation subsists. This obligation lasts for as long as the employee is sick. The limit of 208 weeks, like the limit of P4,000, refers to the liability of the employer for compensation (Sees. 12, 14, 16, 18, Act No. 3428, as amended) and has no reference at all to the employer's liability for medical care (Sec. 13) which lasts during the "period of disability." See *La Mallorca-Pambusco vs. Isip, et al.*, G. R. No. L-16495, Oct. 19, 1961)

Neither is there merit in petitioner's argument that Dulay cannot be said to have "contracted sickness" under Section 13 on the assumption that his lung ailment was aggravated by the nature of his work. Under Section 2 of the law, an employee may contract tuberculosis "either aggravated by or the result of the nature of such employment" and since we have shown that Dulay's TB condition was aggravated by the nature of his work, the decision correctly provides for his medical attendance.

Another reason in support of the conclusion reached herein is the fact that both the hearing officer and the Commission en banc have found that the lung ailment of the defendant was aggravated as a result of his heavy work. In line with a long array of decisions, We conclude that there is evidence to support the finding or conclusion of the Workmen's Compensation Commission.

Wherefore, the decision dated July 18, 1961 and the resolution dated September 6, 1961 of the Commission are hereby affirmed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Barrera, Paredes, Dizon and Makalintal, JJ., concur.

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