

## **NATIONAL POWER CORPORATION, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION, ET AL., RESPONDENTS.**

*G.R. No. L-19843. January 30, 1965*

Ponente: BAUTISTA ANGELO, J.

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### **BAUTISTA ANGELO, J.:**

Enrique Gulmatjco was employed as assistant stockman by the National Power Corporation at a salary of P140.00 a month. As such his duties were to check all materials and supplies that are bought by his employer, open boxes, issue spare parts and other supplies, arrange the equipment in the warehouse, act as stockkeeper, and attend to other errands within the plant compound to expedite the dispatch of requisition vouchers by the plant supervisor. Often times Gulmatico renders overtime service on emergency cases when the plant needs repairs to keep the work going. He often missed his lunch on time and in the afternoons he had to stay until all workers had left so that he could close the warehouse.

On November 4, 1956, a Sunday, the shift supervisor requested him to work overtime. On that day he manually pumped gasoline to different vehicles. When he went home for lunch he felt stomach pain but reported for work in the afternoon. When he arrived home at seven o'clock in the evening of that day he experienced severe stomach pain accompanied by "non-projectile vomiting of food previously taken." Dr. Echeverri, the plant physician, temporarily treated him, but he had to be later transferred to the Avellanosa Hospital for operation. This, however, was not performed because of a sudden drop of his blood pressure making him lose consciousness. He never regained consciousness but died shortly thereafter. The physician certified that his death was due to "ruptured chronic perforating gastric ulcer on lesser curvature of the stomach, acute generalized peritonitis, toxemia."

As a consequence, the widow Dominica Luna, in her behalf and in that of her children, filed with the Uigan City's branch office of the Department of Labor a claim for compensation pursuant to law. This was given Ylue course, and after the reception of the evidence, hearing officer Luis B. Buendia rendered decision awarding to claimant P4,000.00 as compensation and P200.00 as burial expenses. The employer appealed to the Workmen's Compensation Commission and, on November 6, 1961, Chairman Nieves Baens del Rosario, affirmed the award with additional payment of the reglementary review fees under Section 55 of the Act. The case is now before us on a petition for review.

At the outset, it should be stated that while as a rule ulcer is not an occupational disease as it is not inherent in the nature of the work of the deceased, the same was however seriously aggravated by the irregularity in which it was performed when he often missed his meals and on emergency occasions he had to work overtime thereby causing pain or spasm in his stomach. There is no evidence that he had that disease when he entered petitioner's service in 1951, but he began feeling its symptoms since 1955, and from that time on it aggravated until he died in 1956 notwithstanding the medical treatment extended to him by his employer's physician. And according to the certification of petitioner's physician, "on the day previous to the onset of the present illness the patient worked

overtime at the request of the shift supervisor. His work at that time consisted of manual pumping of gasoline to different vehicles used in the plant and recording them. At that time there was a power shut-down and manual pumping had to be used." He inhaled gasoline gas the whole day which offended his respiratory system and induced nausea. This sickness which was contracted in the course of employment and was aggravated because of the irregular and intemperate nature of the work which the deceased had to perform because of the needs of the service imposed upon him is compensable within the purview of the law as found by the respondent Commission.

But the employer now disputes this claim not because the sickness that caused the deceased's death is compensable but because respondent Commission did not acquire jurisdiction to act thereon considering that the claim was not filed within the period prescribed by law. Thus, it is claimed that under Section 21 of the Workmen's Compensation Act, as amended, a claim for compensation in case of death shall be filed not later than three months thereafter, except only if the employer has voluntarily made compensation payments where the claim may be filed even after the required time limit. And here no such compensation payment has been made. Indeed, the record shows that the deceased died on November 5, 1956, but the claim was only filed on December 2, 1958, or after more than two years from the death of the deceased. This claim, therefore, according to petitioner, has already prescribed and as such cannot serve as basis for compensation.

But respondent Commission met this argument correctly when it said: "Respondent (now petitioner) is estopped to allege that the claim was filed out of time, inasmuch as it knew from the beginning that Enrique Gulmatico died. Besides having been notified by the widow, respondent, thru its representatives, Dr. Echeverri, company physician, and Mr. Horacio Pascual, plant supervisor, attended the interment of Enrique. The respondent filed its 'Employer's Report' only on December 11, 1958 after claimant had filed her notice and claim for compensation." And in a subsequent resolution it also said: "The requirement of filing its Employer's Report is obligatory on the part of respondent; non-compliance therewith may be deemed as a waiver of the defense that the claim for compensation was not filed within the statutory period."

We have no quarrel with these pronouncements which are in line with our interpretation of the law on this matter (Martha Lumber Mill, Inc. vs. Lagradante, et al., 95 Phil. 434, June 27, 1956; Tan Lim Te vs. Workmen's Compensation Commissioner, et al., 104 Phil. 522). In the former case, we said: "it appears that the petitioner did not submit the required employer's report of accident or sickness, which would have served as petitioner's answer in the compensation proceedings; and such failure may be deemed as a waiver of the defense that the claim for compensation was not filed within the statutory period."

WHEREFORE, the decision appealed from is affirmed. No costs.

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

Reyes, J.B.L., J., concurs in the result.

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