

NORTHWEST ORIENT AIRLINES, INC., PETITIONER, VS. LOUISE MATEU AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-25274. July 29, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

To sustain the plea of petitioner Northwest Orient Airlines, Inc. in this petition for the review of a decision of respondent Workmen's Compensation Commission would be to reverse without any justification the controlling doctrine on the adverse consequences of non-controversion on the part of the employer, one so continuously and uninterruptedly adhered to, and for good and sufficient reason. We are not disposed to take that stand. We sustain the award of the Workmen's Compensation Commission in favor of respondent Louise Mateu.

In the decision of respondent Workmen's Compensation Commission of August 5, 1965, now sought to be reviewed, the facts were narrated thus: "Claimant Louise Mateu had filed on January 27, 1965 with the Regional Office No. IV, through the Bureau of Workmen's Compensation, her Notice of Inquiry or Sickness and Claim for Compensation dated January 22, 1965, Physician's Report of Sickness or Accident dated October 26, 1964, signed by Dr. Clarence Ekvall, Manila Sanitarium and Hospital, and a certificate of the same physician dated November 13, 1964 stating among other things, that she is an employee of the Northwest Orient Airlines, Inc., as time worker, with the regular occupation as Passenger Sales Agent, earning a daily wage of P26.31 with 5 working days a week. Sometime in 1948, while stationed in Tokyo, Japan, she allegedly met a car accident in the company car while going from the airport to their staff house, and since then her right shoulder and arm have been bothering her, causing her temporary total disability for labor. On June 29, 1957, claimant again sustained an injury when the aircraft she was riding on suddenly lost altitude between Okinawa and Tokyo. Last September 8, 1964, she was again disabled for work until November 1, 1964, caused by pain in her right shoulder, the same shoulder which had been injured several years back, which has been diagnosed as: 'Biceps tendonitis, right; Fibrositis, right shoulder girdle musculature.'"[1]

A regional officer of the Workmen's Compensation Commission furnished petitioner Northwest Orient Airlines, Inc. her notice of injury or sickness and claim for compensation. There was a reservation on the part of the American Foreign Insurance Associations on behalf of petitioner of its right to controversion pending investigation of the circumstance of the accident. It was shown, however, that not only was such reservation made out of time but nothing else was done on the matter. Under the circumstances, it was the view of respondent Workmen's Compensation Commission that as there was an admission that the injury was work-connected and there was a failure to controvert, the award made by the referee, which moreover was supported by substantial evidence, should not be set aside. Hence this petition for review.

The first assigned error can easily be disposed of. It would dispute a finding of fact of the respondent Workmen's Compensation Commission as to the controversion having been made. Such an effort cannot be attended with

success. Only recently, in the case of *Victorias Milling Co., Inc. v. Workmen's Compensation Commission*,^[2] we had occasion to reiterate that findings of facts based on substantial evidence of record are not for us to disregard. They are binding and conclusive.

The next two errors assigned would raise a due process question in view of the alleged failure to accord petitioner its day in court. The above-cited *Victorias Milling Co.* decision reiterates that in the absence of controversy, the due process argument is not likely to prevail. It quoted *Filipino Pipe & Foundry Corp. v. Workmen's Compensation Commission*,^[3] where this Court, speaking through the present Chief Justice, stated: "It is not denied that petitioner's answer to Hiwatig's claim had not been filed within ten (10) days from notice of Hiwatig's claim. Pursuant to section 45 of Act No. 3428, petitioner is deemed, therefore, to have renounced its right to controvert said claim. In other words, the same was deemed admitted by petitioner, which, accordingly, had no more right to demand a day in court." Petitioner *Northwest Orient Airlines, Inc.* cannot, therefore, take any comfort in the above assigned errors.

Nor is the fourth assigned error objecting to the late filing of the claim any more persuasive. Again to quote from the *Victorias Milling Co.* decision: "Failure to controvert amounts to a waiver or renunciation or forfeiture or loss of right of the defense that the claim for compensation was not filed within the statutory period. What is undeniable is that 'the failure to controvert is fatal to its defense of the claim having been filed out of time.'"

An excerpt from *Central Azucarera de Don Pedro v. Workmen's Compensation Commission*^[4] is likewise relevant. Thus: "With regard to the claim that the delay in filing the claim for compensation should be considered fatal to its success, appellant corporation seems to have taken no notice of the fact that the original ruling to that effect has suffered a gradual evolution, and that the trend of the more recent decisions of this. Court has been to consider the delay a non-jurisdictional defect, unless it is shown that the employer has been prejudiced thereby * * *. This trend conforms to the need of protecting the workman whose inferiority vis-a-vis the employer has always been marked by disadvantage (Civil Code of the Philippines, Article 24)."

WHEREFORE, the decision of respondent *Workmen's Compensation Commission* of August 5, 1965, affirming the award of its chief referee of April 26, 1965 in favor of respondent *Louise Mateu*, is hereby affirmed. With costs against petitioner *Northwest Orient Airlines, Inc.*

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Petition, Annex H, pp. 1-2.

[2] L-25665, May 22, 1969.

[3] L-20381, December 24, 1963.

[4] 24 SCRA 484 (1968).

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