

MANILA YACHT CLUB, INC., PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND RAMON LAGAO, RESPONDENTS.

G.R. No. L-19258. May 31, 1963

Ponente: REGALA, J.

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REGALA, J.:

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

It appears that in WC Case No. 467, the Manila Yacht Club, Inc. was ordered by Regional Office No. 3 of the Department of Labor to pay the workmen's compensation claim of its employee, Ramon Lagao, who was found to have contracted tuberculosis as a result of the nature of his employment as marine engineer and mechanic. The motion for reconsideration of the decision having been denied, the case was forwarded to the Workmen's Compensation Commission for review.

While the case was thus pending review before the Commission, petitioner filed a "Motion to Dismiss Claim and/or for Rehearing," praying that the case be dismissed on the ground that, being a non-profit and non-stock corporation and not being engaged in any trade, occupation or profession for the purpose of profit or gain, the Workmen's Compensation Act (Act No. 3428, as amended) did not apply to it and therefore Regional Office No. 3 as well as the Commission acquired no jurisdiction over the claim. This motion was denied in an order issued on March 20, 1961 by the Hon. Jose Sanchez. A motion for reconsideration of the order was likewise denied on April 21, 1961.

On September 26, 1961, the Hon. Sanchez rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the decision sought to be reviewed is hereby affirmed, and the respondent, Manila Yacht Club, Inc., ordered:

"1. To pay to the claimant the sum of four thousand and NO/100 (P4,000.00) pesos in lump sum as compensation;

"2. To reimburse to the claimant the sum of ONE-THOUSAND EIGHT and NO/100(P1,008.00) pesos for medical expenses;

"3. To provide claimant with such medical, surgical and hospital services and supplies as the nature of his illness may require until said ailment is arrested or cured, pursuant to Section 13 of the Act;

"4. To pay the amount of three hundred (P300.00) pesos as Attorney's fees; and

"5. To pay to the Workmen's Compensation Fund the sum of forty six (P46.00) pesos (including P5.00 for the review) as fees pursuant to Section 55 of the Act."

The Manila Yacht Club, Inc. filed a motion for reconsideration but the same was denied by the Workmen's Compensation Commission en banc by a 2 to 1 vote, hence, this petition, petitioner contending that Regional Office No. 3 and the Workmen's Compensation Commission had no jurisdiction over this case, considering that it

is a non-profit organization.

On the other hand, respondents, while admitting the proposition that the Workmen's Compensation Act does not apply to non-profit private enterprises (Sec. 1), like the petitioner, nevertheless contend that this defense should have been raised at the earliest opportunity and not for the first time on appeal.

In support of its position, petitioner cites Sections 46, 2 and 39 (d) of the Workmen's Compensation Act, which read as follows:

"SEC. 46. Jurisdiction. - The Workmen's Compensation Commissioner shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, * * *."

"SEC. 2. Grounds for compensation. - 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. * * *."

"SEC. 39. Definition of various words. - In this Act, unless the context indicates otherwise, the definition of various words used therein shall be as follows:

* * * * *

"(d) 'Industrial employment' in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain except domestic service." (Italics ours)

Nowhere in Sections 46 and 2, above-quoted, does it appear that the claims cognizable by the Workmen's Compensation Commission are those filed by an employee against his employer where there is an "industrial employment" as the term is defined in Section 39 (d). All that the law requires is that there must be an employer-employee relationship between the parties, which relationship, as held in *Asia Steel Corp. vs. Workmen's Compensation Commission, et al.*, G. R. No. L-7636, June 27, 1955, is the "jurisdictional foundation without which an indemnity is unauthorized." Indeed, all that the law states is that all claims for injuries or illnesses suffered under the circumstances mentioned in Section 2 are within the jurisdiction of the Workmen's Compensation Commission if there is a relationship of employer and employee between the parties. That the employer, in the case of a private one, is not engaged in business for the purpose of gain is a matter of defense which he must raise at the earliest opportunity, in the same way that it was held that the non-application of the law because the employer's gross income is less than P10,000 is only an affirmative defense which, if not invoked on time, is deemed waived. (*Viana vs. Al-Lagadan, et al.*, 99 Phil., 408; 54 Off. Gaz., 644; *Rolan vs. Perez*, 63 Phil., 80). This conclusion is clear from the following provisions of the law:

"SEC. 1. Employees included. - This Act shall be applicable to all industrial employees hereinafter specified."

"SEC. 42. Law applicable to small industries. - All claims for compensation by reason of an accident in an enterprise, industry," or business carried on or in a "trade, occupation or profession exercised by an employer for the purpose of gain, whose capital amounts to less than ten thousand pesos and is not hazardous or deleterious to employees, shall be governed by the provisions of Act Numbered Eighteen hundred and seventy-four and its amendments. * * *." (Italics ours)

In short, then, while the existence of an employment relationship is a jurisdictional question, the non-applicability of the law to the employer because his establishment is not an industrial employment for the purpose of gain or that even if it is for the purpose of gain his capital is less than P10,000 is a matter of defense which, if not raised on time, is waived. .

The evidence shows that the petitioner did not set up any defense of non-coverage during the several trials held before the Chief Hearing Officer. Such being the case, the Chief Hearing Officer was deprived of any opportunity to make a finding of fact on the matter.

We have ruled in the case of Rolan vs. Perez, supra, that the contention of an employer who claims that his yearly gross income is below the required amount fixed by law and therefore not covered by the Workmen's Compensation Act, is a defense favorable to the defendant and the burden is on him to establish it.

Reasoning by analogy, therefore, the contention of the petitioner that its business or enterprise is not for gain or profit, is a defense favorable to it, and the burden is upon it to prove it. We hold therefore that the failure of the petitioner to raise the non-applicability of the law to it in Regional Office No. 3 is fatal.

WHEREFORE, the petition for certiorari is dismissed, with costs against the petitioner.

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

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