

**VICTORIAS MILLING CO., INC., PETITIONER-APPELLANT, VS.
BERTITO D. DADIVAS, AS ACTING REFEREE, DEPARTMENT OF
LABOR, REGIONAL OFFICE NO. VII, BACOLOD SUB-REGIONAL
OFFICE, BACOLOD ...**

G.R. No. L-24985. March 27, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by petitioner Victorias Milling Co., Inc., from an order of the Court of First Instance of Negros Occidental dismissing its petition for prohibition and, preliminary injunction to restrain Bertito D. Dadivas, as Acting Referee of the Bacolod Sub-Regional Office, Regional Office No. VII of the Department of Labor, from further proceeding with the hearing of Workmen's Compensation. Commission Case No. 6385, involving a claim for compensation of Rufino Pineda, as petitioner's former laborer.

The record shows that Pineda's claim was filed, with the afore-mentioned Sub-Regional Office, on October 18, 1961; that it is alleged in said claim that Pineda was petitioner's piece worker, with a daily wage of P4.00; and that he was discharged from the service in November, 1952, because of pulmonary tuberculosis contracted in the course of his employment. Petitioner moved to dismiss the claim, upon the ground that it had been filed long after the expiration of the period of two (2) months prescribed therefor in Section 24 of the Workmen's Compensation Act, or about nine years from the date of Pineda's alleged sickness. This motion having been denied by respondent Dadivas, as Acting Referee of said office, petitioner instituted the present action, for prohibition and preliminary injunction, in the Court of First Instance of Negros Occidental, to restrain Dadivas from proceeding with the hearing of said claim of Pineda for lack of jurisdiction to hear and decide the same, on account of its aforesaid late filing. Dadivas, in turn, moved to dismiss the action, alleging that appeal, not prohibition, is the proper remedy to review his order complained of and that the alleged late filing of Pineda's claim did not affect the jurisdiction to hear and decide the same. Allowed by the lower court to intervene as respondent, Pineda filed an answer in intervention, alleging therein, inter alia, that the Workmen's Compensation Commission has exclusive jurisdiction over his claim and that petitioner had failed to seasonably controvert the same. In due course, thereafter, the lower court issued an order, dated June 23, 1965, sustaining the contention of Dadivas and dismissing the case without costs. Hence, this appeal.

The main question for determination in this case is whether or not the Workmen's Compensation Commission has jurisdiction to hear and decide Pineda's claim for compensation, despite the fact that it had been filed more than two (2) months after the date of the illness on which it is based. In this connection, Section 24 of the Workmen's Compensation Act provides:

"Notice of the injury and claim for compensation. - No compensation proceeding under this Act shall prosper unless the employer has been given notice of the injury or sickness as soon as possible after the same was received or contracted, and unless a claim for compensation was made not later than two months after the date of the injury or sickness, or in case of death, not later than three months after death, regardless of whether

or not compensation was claimed by the employee himself. Such notice may be given and such claim made by any person considering himself entitled to the compensation or by any other person in his behalf. In case medical, surgical, and hospital services and supplies have been furnished voluntarily by the employer, notice of the in-jury or sickness within the time limit above mentioned shall not be necessary, and if the employer has voluntarily made the compensation payments, the claim for compensation to be made within the time limits above established shall no longer be necessary."

Inasmuch as the filing of a claim for compensation within said period of two (2) months is essential for it to "prosper", it is clear that compliance with said requirement is essential to the success of the claimant, or to the rendition of a decision favorable to him, not to the jurisdiction to entertain his claim, for there could be no possibility of passing upon the merits thereof in the absence of authority, to hear and decide the same. In a long list of cases,[1] we have adhered to the view that the late filing of a claim for compensation is not jurisdictional, but, merely, a matter of defense. Suffice for us to quote from *Manila Railroad v. Manalang*[2]:

"x x petitioner would argue that the present claim is barred by Section 24 of the statute, since it was filed later than two months after the date of sickness. Anent this point, we agree with respondent Commission that the failure of the company to file a contravention of a claim that may be filed, within the time fixed by Section 45 of the statute, is a bar to questioning the late filing of the claim. Said provision states in pertinent part:

'In case the employer decides to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident, and the reason why compensation is not being paid. Failure on the part of the employer or 'the insurance carrier to comply with this requirement shall constitute a re-nunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate his right to controvert the claim.'

"Petitioner maintains that the filing of the claim within the aforesaid period of two months is a condition precedent, of jurisdictional import, and, hence, cannot be waived. Such a view is no longer prevailing.

"According to Horovitz:

"The defense of notice and claim may be waived. Both claim and notice, while originally considered conditions precedent to an award, have yielded to a more reasonable interpretation, and are now considered defenses by employers or insurers or state funds and subject to the same infirmities as other defenses. If not seasonably raised by the payer of compensation they are deemed waived, or, what amounts to the same thing, the court will consider that the excuses or substitutes for late claim and notice have been complied with, and hence the employer's or insurer's or state fund's defense of claim and notice fails completely.¹

"So, also, Larson states that: 'The majority rule is that strict compliance with notice and claim requirements may be waived by the employer or insurer'.²

"Conformably to the recent trend of jurisprudence, this Court has in fact ruled that timeliness of notice or claim under Section 24 of the Act is not jurisdictional.³ Failure of the employer, as in this case, to file a timely contravention under Section 45 of the law, bars all defenses available to the employer, including the defense based on the employee's failure to file the claim in due time.⁴"

Indeed, it is alleged in Pineda's claim, that petitioner had been notified of his illness; that he was hospitalized for 16 days; and that he had been given medical attention by petitioner herein, through one Dr. Ricardo Jara, thereby suggesting that petitioner knew of Pineda's illness. Upon the other hand, in his answer, as intervenor in this case, Pineda affirms that petitioner's report or notice indicating its intent to controvert said claim was filed on June 24,

1960. In other words, the records of the present case indicate that petitioner had filed neither the report of in-jury nor the notice of controversion within the periods prescribed in sections 37 and 45 of Act No. 3428. Pursuant to said section 45, petitioner may be deemed, therefore, to have renounced the right to controvert the claim in question, if the aforementioned allegations are duly proven. In other words, petitioner's right to a dismissal of said claim is not indubitable, so that no error was committed, either by respondent Dadivas, in denying petitioner's motion to dismiss, or by the lower court, in dismissing the present action.

WHEREFORE, the order appealed from should be, as it is hereby affirmed, with costs against petitioner, Victorias Milling Co., Inc.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] *Alcoresa v. Johnston*, 64 Phil. 846; *Victorias Milling Co. v. Compensation Commissioner*, L-10533, May 13, 1957; *Tan Lim Te v. Workmen's Compensation Commissioner*, L-12324, Aug. 30, 1958; *Bureau of Public Works v. Workmen's Compensation Comm.*, L-8994, Nov. 28, 1958; *Central Azucarera Don Pedro v. De Leon*, L-9449, July 24, 1959; *Luzon Stevedoring Co. v. Hon. Cesario de Leon*, L-9521, Nov. 28, 1959; *Century Ins. Co. v. Fuentes*, L-16039, Aug. 31, 1961; *Fuentes v. Binarnira*, L-14965, Aug. 31, 1961; *Republic v. Workmen's Compensation Comm.*, L-17813, April 30, 1963; *Manila Railroad Co. v. Workmen's Compensation Comm.*, L-18388, June 28, 1963; *Pangasinan Trans. Co. v. Workmen's Compensation Comm.*, L-16490, Jan. 30, 1964; *Nat. Dev. Co. v. Workmen's Compensation Comm.*, L-19863, April 29, 1964; *Manila Railroad v. Workmen's Compensation Comm.*, L-18264, May 26, 1964; *Manila Railroad v. Workmen's Compensation Comm.*, L-19773, May 30, 1964; *Peter Paul Phil. Corp. v. Workmen's Compensation Comm.*, L-19612, July 30, 1964; *A. L. Ammen Trans. Co. v. Workmen's Compensation Comm.*, L-20219, Sept. 28, 1964; *Nat. Dev. Co. v. Workmen's Compensation Comm.*, L-18922, Nov 27, 1964; *Nat. Dev. Co. v. Workmen's Compensation Comm.*, L-2056) March 31, 1965; *Manila Railroad v. Manalang*, L-20845, Nov. 29, 1965.

[2] *Supra*.

1 Horovitz on Workmen's Compensation, pp. 254-255.

2 2 Larson, Law of Workmen's Compensation, p. 284.

3 Century Insurance Co. v. Fuentes, *supra*.

4 National Development Corp. v. Workmen's Compensation Commission, *supra*.

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