

CENTRAL AZUCARERA DON PEDRO, PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSION AND PEDRO VILLANUEVA, RESPONDENTS.

G.R. No. L-24987. July 31, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Certiorari to review an award of compensation to appellee Pedro Villanueva decreed by the Workmen's Compensation Commission in its Case No. RO5-2334.

The following facts, declared in the decision appealed from, are not substantially controverted:

"The records of the case disclose that claimant started working with the respondent company as a "palero" in 1933, after undergoing a pre-employment physical and medical examination. In 1939 he was made a "fogonero" and continued as such until 1946 when he was promoted to "cabo palero" the position he held until July 28, 1961 when he stopped working because of fever, chest and back pains body weaken-ing and coughing. Claimant alleged that he begun to have said symptoms as early as 1943 and that sometime in 1959, he spat blood while working. The periodic medical, as well as the X-ray examination which started in 1952, made on the claimant during the succeeding years of his employment showed, however, that he was in good health and free from any lung ailment. Claimant was confined at the respondent's hospital on August 10, 1961 until September 2, 1961, and on November 6, 1961 he was retired from the service, but respondent's medical treatment of claimant continued up to November 29, 1961. Upon X-ray examination of the claimant by the company phy-sician on September 25, 1961, claimant was found af-flicted with minimal pulmonary tuberculosis. Said findings was later confirmed when claimant had himself X-rayed again at the Batangas Provincial Chest Center on December 1, 1961. He had himself treated by Dr. Numeriano G. Presto of Mangaldan, Pangasinan, and al legedly spent P512.00.

Claimant's work as a "palero" during the milling season was to clean the parrilla and scrape the hardened ashes on the walls of the fogon; as fogonero, he supervised the dropping of the baggasse inside the fogon by staying on top of the fogon assigned to him; and as cabo palero, he supervised the 7 men tending the 7 furnaces, as well as the supply of water to the calderas so as to maintain the required water level. Claimant worked weekly in each of the three shifts (8:00 a.m. to 4:00 p.m. ; 4: 00 p.m. to 12:00 midnight; 12:00 midnight to 8:00 a.m.), During off-milling seasons, his work was mainly cleaning the fogon, parts of the blower, repainting, and cleaning the pipe-lines inside the tambor, working every other week."

The petitioner Central assails the award primarily on the ground that that preponderant evidence is that the ailment was not contracted as a result of the nature of claimant's work, and that the claim was presented beyond the period fixed by Section 24 of the Compensation Act.

On the first ground, it must be recalled that by statute there is established a presumption that the workman's claim is compensable (Section 44, No. 1, Act 3428), and that presumption places upon the employer the burden of proving that the employee's injury or illness was not and could not be caused or ag-gravated by the nature of his

work (Naira vs. WCC, L-18066, October 30, National Development Co., vs. Ayson and WCC, May 24, 1967, 20 S.C.R.A. 192, and cases collated in the appended annotation, at pages 196-197; ITEMCCI vs. Florzo, 17 S. C. R. A. 1104).

The only evidence submitted by the employer to rebut the statutory pre-sumption lies in the testimony of claimant that as "cabo palero" his principal duty was to supervise seven furnaces of the "calderas" department; that of Dr. Gerardo Manes, to the effect that there was enough ventilation and "fair conditions of work" in the place where claimant labored; and of Dr. Angelina Gutierrez that without tubercle bacilli in his body, claimant "will not get pulmonary tuberculosis even with the conditions of labor present" (Appellant's Brief, pages 16-21).

All this evidence fails to overcome the presumption, considering the undisputed facts found by the Commission, that claimant repeatedly had to perform night work, which, in itself, debilitates the body's resistance (V. Manila Railroad Co. vs. C. I. R., G. R. No. L-3862, August 28, 1951), facilitates the activation of dormant tuberculosis; and the nature of his work scraping and cleaning the furnaces, that compelled the laborer to breathe hot and dust laden air, with unfavorable effects on his respiratory organs. Admitting that the work itself could not introduce the bacilli into the laborer's body, still this activation from a dormant state was favored by the conditions of work, and thus gives rise to a compensable injury that entitles the workman to compensation (5 Schneider, Workmen's Compensation Law, page 501).

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 (See Century Ins. Co. vs. Fuentes, L-16039, August 31, 1961; NDC vs. WCC, L-1492C, April 20, 1964; and Manila Railroad vs. Manalang; November 29, 1965). 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 Philippines, Article 24).

"ART. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

In view of the conclusions thus reached, it becomes unnecessary to inquire whether the employer has forfeited his right to controvert the claim of the laborer, since even without such forfeiture, there is substantial legal and factual support for the Commission's award.

WHEREFORE, the decision appealed from is hereby affirmed. Costs against appellant Central Azucarera Don Pedro.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Ruiz Castro, J., did not take part.

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