

MANILA RAILROAD COMPANY, PETITIONER, VS. MARIANO RIVERA AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-23021. May 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for review of the decision dated April 6, 1964 of the Workmen's Compensation Commission as well as of its resolution en banc dated May 25, 1964 denying petitioner's motion for reconsideration.

Respondent Mariano Rivera was employed with petitioner Manila Railroad Company as a Laborer in its maintenance section, Engineering Department, since December 1923 up to January 1942. In 1953, after a pre-employment physical examination, he was re-employed by petitioner as a trackman for about three (3) months, after which he was promoted to maintenance capataz in a temporary capacity at a monthly salary of P140.00.

On January 13, 1961 a chest X-ray examination of respondent Rivera showed the following results:

"x x x moderate fibro-caseous infiltrators in the right upper lung field with marked pleural thickening and traction of the right superior mediastinum superiorly and to the right. There are likewise fibroacinar infiltrates in the LUL from the apex (own to the 1st, 2nd and 3rd anterior, i.e., Left hilus likewise tracted superiorly x x x" (Exh. C).

In a memorandum dated June 8, 1961, petitioner, thru its division engineer, informed respondent Rivera that he was afflicted with pulmonary tuberculosis which disqualified him for employment and that he should stop working immediately until he could again qualify physically. Rivera stopped working on June 16, 1961. However, his service was officially terminated on the following July 31.

On October 10, 1961 respondent Rivera filed the required notice of injury or sickness and claim for compensation. On November 10, 1961 petitioner filed with the Department of Labor the employer's report of accident or illness.

The claim was heard and on August 22, 1962, Hearing Officer Pedro P. Pelaez rendered a decision, the dispositive portion of which reads:

"WHEREFORE, respondent Manila Railroad Company is hereby ordered to pay claimant, Mariano Rivera, thru this Office the amount of ONE THOUSAND TWO HUNDRED TWO PESOS and 18/100 as compensation already due him, and a weekly compensation of P19.39 starting, from August 28, 1962 until the remaining period of the 208 weeks shall have been completed and in no case shall exceed the maximum compensation of P4,000.00, unless sooner his illness shall have been cured; and to reimburse the amount of P110.00 duly incurred for medical expenses, and to provide further medical, surgical, hospital services and supplies as the nature of his illness may require. Respondent is also ordered to pay this Office the amount of P13.00 as fees, plus an additional sum of P1.00 per P100.00 of subsequent compensation payment pursuant to

Section 35 of the Act."

In due time, petitioner sought a review of the above-quoted decision of the Hearing Officer and on April 6, 1964, the Commission, thru Chairman N. Baens del Rosario, rendered a decision the dispositive part of which reads:

"WHEREFORE, the decision under review is hereby affirmed and the respondent is hereby ordered:

1. To pay the claimant, thru this Commission, the amount of TWO THOUSAND EIGHT HUNDRED FIFTY-EIGHT and 64/100 PESOS (P2,858.64) in lump sum and the weekly compensation of P19.39 from April 17, 1964 until the remaining period of 208 weeks shall have been completed but in no case shall the total compensation amount exceed P4,000.00, unless sooner his illness shall have been pronounced cured by competent medical authority;
2. To reimburse the claimant the amount of ONE' HUNDRED TEN NO/100 PESOS (P110.00) for medical expenses incurred;
3. To furnish the claimant with medical, surgical and hospital services and supplies as the nature of his illness may require;
4. To pay this Commission the amount of P39.00 as fees (including the review fee and postponement fee assessed against the respondent as per order dated May 29, 1962 of Hearing Officer Pedro P. Pelaez) pursuant to Sec. 55 of the Act 3428, as amended; and
5. To pay the attorney's fees in the amount of P214.40, which is equivalent to 7.5% of the amount due the claimant."

Petitioner moved, to reconsider, but the motion was denied by the Commission en banc in a resolution dated May 25, 1964. Petitioner filed the instant petition for review and avers: (1) that in workmen's compensation cases an injury or disease, to be compensable, must be one which produces disability; (2) that the claim for compensation was filed out of time and hence barred by the statute of limitations; and (3) that the award is based on findings contrary to, and not supported by, the evidence on record.

The first question is predicated on the contention that respondent claimant, being a temporary employee of the petitioner company, was dismissed from his employment for failure to qualify for permanent appointment and not by reason disability.

The contention is without merit. It is not disputed that on June 8, 1961 respondent Rivera was informed by petitioner that he was afflicted with pulmonary tuberculosis and ordered to stop working. Rivera actually stopped working on June 16, 1961, although the official termination of his service was on July 31, 1961. Petitioner's memorandum of June 8, 1961 shows quite clearly that such termination was due to his disability on account of sickness and not to the expiration of his temporary appointment. In fact, as found by respondent Commission, Rivera's appointment as maintenance capataz became permanent on August 16, 1960, as evidenced by his appointment papers (Exh. D).

Petitioner claims that respondent's notice of injury and claim for compensation was filed beyond the two-month period prescribed by Section 24 of Act 3428 and was therefore barred. It is true that respondent's affliction was already known in January 1961 and that the notice of injury or sickness and claim for compensation was filed only on October 10, 1961. However, the rule is that the failure on the part of an employee to comply with the requirement of Section 24 of Act 3428 concerning the giving of notice and the filing of the claim within the prescribed period is non-jurisdictional in nature and does not constitute a bar to the proceeding if it is shown that the employer, his agent or representative, has knowledge of the injury, sickness or death, or that the employer did not suffer by such delay or failure (*Manila Railroad Co. vs. Workmen's Compensation Commission, et al.*,

L-21902, August 10, 1967; *Rio y Compania vs. Workmen's Compensation Commission, et al.*, L-21467, August 30, 1967; *National Development Co. vs. Workmen's Compensation Commission, et al.*, L-21963, August 30, 1967). In the case at bar, petitioner had knowledge of respondent's illness since January 1961, when the company physician confirmed from the chest X-ray examination that the respondent had pulmonary tuberculosis despite which petitioner failed to controvert the right to compensation either on or before the fourteenth day of disability or within ten days after knowledge of the illness. Such failure has been held to be a waiver of the right to controvert the claim.[1]

Petitioner argues that the findings of respondent Commission as to the nature respondent's work does not find support in the evidence and that the X-ray examination of the claimant revealed that he was suffering from pulmonary tuberculosis in the minimal and not in the moderately advanced stage. This point raises a question of fact, and have consistently ruled that findings of fact by the Commission binding upon this Court as long as there is substantial evidence to support the same. The pertinent findings of the Commission are as follows:

"x x x He performed the work of a trackman, which is to repair damaged rails, lift 'traviezas', adjust and replace ties, cut grass along the, railroad tracks, and repair washouts. While as a 'capataz' he had four men under him he also helped them in their work of maintenance of the tracks, especially during emergencies, when the work had to be done through the night. x x x

x x x x x

"The foregoing finding which is interpreted to be the moderately advanced stage of pulmonary tuberculosis is confirmed by the statement of respondent's physician to the effect that the claimant must have been afflicted with pulmonary tuberculosis in its minimal stage three or four years prior to January, 1961, (t.s.n. p. 26, March 18, 1962). And this could have been possible in view of the fact that pulmonary tuberculosis in its minimal stage is practically symptomless and could not have been detected by ordinary physical examination. Considering that the work of the claimant involved strain and exposure to the inclemencies of the weather, even when he was a 'capataz', and more so, when he, was a trackman - the conclusion is inevitable that his employment with the respondent aggravated his ailment. The respondent's physician himself admitted that 'even with good food, further work has aggravated tuberculosis especially if there is no treatments' (t.s.n. p. 26, March 18, 1962)."

In any event, since the illness occurred during employment, there is a rebuttable presumption that the same arose out of or was at least aggravated by, such employment. The claimant is relieved from the burden of proving causation once the illness or injury is shown to have arisen in the course of the employment. The burden to overthrow the presumption is laid by the statute on the employer. In the case at bar, no substantial evidence exists to overcome said presumption (*Magalona vs. Workmen's Compensation Commission, et al.*, L-21849, December 11, 1967; *National Development Co. vs. Ayson*, L-23450, May 24, 1967).

We come now to the award for medical expenses in the amount of P110.00 incurred by the claimant. It is admitted that the aforesaid expenses are not supported by receipts; and there is no showing that the attending physician was presented at the hearing to substantiate the claim. The same should therefore be disallowed.

WHEREFORE, the decision appealed from is hereby affirmed, with the modification mentioned above. Costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro and Angeles, JJ., concur.

[1] *Manila. Railroad Co. vs. Workmen's Compensation Commission, et al.*, L-21902, supra; *Rio y Compania vs. Workmen's Compensation Commission, et al.*, supra; *National Development Co. vs. Workmen's Compensation*

Commission, et al., supra; Manila Railroad Co. vs. Workmen's Compensation Commission, et al., L-21504, Sept. 15, 1967; Talisay-Silay Milling Co., Workmen's Compensation Commission. et al.

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