

ELIAS AGUSTIN, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND PANQUI SUGAR MILLS, INC., RESPONDENTS.

G.R. No. L-19957. September 29, 1964

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

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

Review by certiorari of the judgment of the Workmen's Compensation Commission in R.W.C. Case No. 350-ROI, dismissing the workman's claim for compensation for disability due to tuberculosis.

The Commission found the facts to be as follows:

"* * * ; That Elias Agustin was employed as Water Pump Tender from 1929 to 1956 when he was laid off; that his work consisted of pumping hot water to supply the boilers (calderas) up to the water level as indicated on the gauge glass; that he adjusts the supply of hot water by opening the valve connection of one caldera after another until the five calderas are filled with the use(d) of a wrench weighing about one-half kilo; that his place of work exposed him to the heat emitting from the furnace and calderas; that he also performs other work in the fire-room department and also helped in disposing of the bagasse dust, which has offensive smell; that on or about October 25, 1956, before the milling season, claimant's chest was X-rayed at the Maria Clara Chest Center, Dr. Quirino's Clinic and at the F.E.U. Hospital, all of whose findings showed that Elias Agustin was suffering from pulmonary tuberculosis, minimal; that upon these results, the claimant was laid off; that his daily wage was P4.80, working seven days a week; and at the time he stopped working, Agustin was given P300.00 by the company allegedly for treatment.

To strengthen his claims, claimant testified that aside from being exposed to the heat, he perspired profusely and that he felt back pains and headache, and in 1946, he vomitted blood and threw waste containing blood. He also declared that sometime in 1954, his chest was X-rayed and was advised by Dr. Serafin de los Santos, company physician, that he was sick of T. B., but he was allowed to continue working. No evidence was however presented to show the chest findings in 1954."

In rejecting the claim, the Commission's pivotal conclusion was that claimant failed to show that his sickness was due to the nature of his work, saying—

"* * * . It must again be re-stated that pulmonary tuberculosis is not, per se, compensable, even with the type of work claimant was employed to do. He must show beyond conjecture that his sickness can be attributable to, or reasonably traced from, his work.

"And in practice, the claimant does not merely come to the Commission exhibiting a broken arm or other injury and then force the respondent to prove that there was no contraction between the injury and the employment. The claimant must prove his case beyond speculation and conjecture." (Larchituky vs. Gotham Fodl-ing Box Co., 230 N. Y. 8, 12; 128; 899).

The view taken by the Commission does not accord with the presumption established by section 43 of the

Philippine Workmen's Compensation Act, that in all compensation proceedings it shall be presumed, "in the absence of substantial evidence to the contrary, that the claim comes within the provisions of this Act". This means, (as already ruled in *Naira vs. Workmen's Compensation Commission*, G. R. No. L-18066, October 30, 1962) that—

"Mere absence of evidence that the mishap was traceable to the employment does not suffice to reject the claim; there must be credible showing that it was not so traceable,"[1]

so that the laborer at present is relieved from the burden of proving causation once the injury is shown to have arisen in the course of the employment.

The Commission does not refer to any evidence showing that the disease of the claimant could not have been due to the conditions in which he had been working for so many years. It merely speculates that it could not have so originated, because after 23 years the tuberculosis was found to be minimal. We find this speculation insufficient to rebut the statutory presumption, since it does not exclude the probability that the conditions of work reduced the resistance of the laborer's body to the point that he was unable to withstand the infection. Also, the Commission's reasoning is faulty, in that the number of years that elapsed before the disease became manifest merely tends to prove that the deterioration caused by working conditions was slow, but not that the working conditions did not cause such deterioration in the health of the laborer.

The disease having arisen in the course of the employment, it is presumed by law that it arose out of it; and the fact that the conditions of work are only a contributory cause that permitted the disease to take hold in the organism of the laborer does not make the injury less compensable (*Larson, Workmen's Comp. Law*, Vol. 1, p. 50).

The reasoning in *Blue Bar Coconut Co., et al. vs. Boo*, 95 Phil., 867; 53 Off. Gaz., p. 3471, 3474, is here applicable:

"* * * If he was not infected before he was taken in by the company, the fact that he was stricken with the sickness, as shown by haemoptysis, is a strong indication that it was the result of the nature of his work and employment. The claimant has made out his case and the burden of proof shifted to the company. The latter must show that the lessening of the claimant's resistance was due to causes other than the nature of his work or employment, such as dissipation, excesses or lack of sleep and the like."

The claimant-appellant's right to compensation becomes all the more impregnable when we take into account that the employer's right to controvert the claim has been forfeited due to its failure to file with the Commission the notice of controversion prescribed by the second paragraph of section 45 of the Compensation Act. The Commission recognizes in its decision the employer's failure to file the notice, but declares the forfeiture waived because the claimant raised no objection to the appearance and participation of the employer's counsel in the proceedings before the hearing officer. This view we hold to be erroneous. The forfeiture of the right to controvert is imposed by the statute as a sanction for the employer's failure to file the notice required by section 45, and is, therefore, a measure of public policy designed to compel observance of the act's requirements. The protection of the claimant-laborer is here incidental. Hence, the forfeiture can only be removed in the manner specifically prescribed by the law itself.

"Failure on the part of the employer or the insurance carrier to comply with (his requirement shall constitute a renunciation 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."

It follows from the foregoing that the claimant's failure to object to the appearance of counsel can not purge the

employer of the consequences of its refusal to file the notice required by section 45 of the Compensation Act. The Commission's ruling violates the policy of the act, in that it would encourage employers to disregard section 45 and gamble on the ignorance of the laborer to permit controversion at the hearing, without prior notice. As between a laborer, usually poor and unlettered, and the employer, who has resources to secure able legal advice, the law has reason to demand from the latter stricter compliance. Social justice in these cases is not equality but proportion.

Neither can we agree to the view that the participation of counsel for the employer warrants an inference that the right to controvert was "impliedly" reinstated by the hearing officer. In the first place, by the very words of the statute, only the Commissioner (now the Commission), and not the hearing officer, can reinstate a forfeited right to controversion. In the second place, an excuse for the non-application of a statutory policy is not to be implied, but must clearly appear in the records.

IN VIEW OF THE FOREGOING, the decision under review is reversed and set aside, and the case is ordered remanded to the Workmen's Compensation Commission for computation of the compensation due to the appellant-laborer Costs against respondent Panique Sugar Mills, Inc.

Bengzon, C.J., Bautista Angelo, Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Also *Iloilo Dock & Engineering Co. vs. Workmens' Comp. Commission*, G. R.. No. L-16206, June 29, 1962; *Batangas Transp. Co. vs. Vda. de Rivera*, G.R. No. L-7658, May 8, 1956.

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