

**PRISCO IBASAN, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES
(BUREAU OF PUBLIC SCHOOLS) AND WORKMEN'S
COMPENSATION COMMISSION AND/OR THE SECRETARY OF LABOR,
DEPARTMENT OF LABOR, R...**

G.R. No. L-48528. April 25, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the decision (p. 29, rec.) dated December 18, 1975 of respondent Workmen's Compensation in R04-WC Case No. 138234, reversing the award (pp. 17-20, rec.) of the Acting Referee, Regional Office No. 4, Manila, on petitioner's claim for compensation under P.D. 626, as amended.

The main facts are not disputed.

Petitioner Prisco A. Ibasan was, prior to his retirement, a classroom teacher with assignment at the Division of Tarlac since June 6, 1927 (p. 16, WCC rec.). He devoted 42 long years, the most productive years of his life, to the government service (p. 45, WCC rec.). He testified that as early as 1964 while still in the service, he had been complaining of nervousness, back pains, dizziness and chest pains (pp. 31 & 45, WCC rec.), for which he has been under treatment of the municipal health officer of his town (pp. 19, 27-28, WCC rec.). His medical records reveal that he is afflicted with cardiovascular accident thrombosis, resulting in the weakness of his upper right extremity, weakness of the facial muscles and slurred speech (p. 9, WCC rec.). His illness was traced to an artery in the cerebral vessels causing thrombosis, which the doctors certified as having resulted from or had been aggravated by the nature of his employment (pp. 9-10, WCC rec.). Because of his ailment, he was forced to retire optionally on August 31, 1969 at the age of 63 (p. 29, WCC rec.).

On February 8, 1973, petitioner filed a Notice of Injury or Sickness and Claim for Compensation (p. 10, WCC rec.) against his employer, the respondent Bureau of Public Schools, seeking to recover disability compensation benefits on account of his illness and disability. The same was controverted by the respondent Commission through the Assistant Solicitor General on March 28, 1973 (p. 15, WCC rec.).

After hearing, the acting referee found the claim meritorious, and rendered his decision dated March 25, 1975 (pp. 17-20, rec.), ordering the Bureau of Public Schools:

"1. to pay the claimant, PRISCO IBASAN, thru this office the sum of FOUR THOUSAND FIFTY-SIX (P4,056.00) PESOS, as disability compensation benefits;

"2. to pay Atty. Felizardo Moreno, the sum of P202.80 as attorney's fees; and

"3. to pay this office the sum of P41.00 as administrative and decision fees pursuant to Sec. 55 of the Act."

After the rendition of the said decision, there are now two conflicting versions of the procedural developments that allegedly transpired in this case.

Atty. Felizardo P. Moreno, counsel of record for the claimant-petitioner since the filing of this claim with the Workmen's Compensation Commission, alleged that he never received any copy of a motion for reconsideration/appeal from respondent office (p. 179, WCC rec.). Believing that the decision of the acting referee must have already become final (p. 7, rec.), he prepared a letter dated December 8, 1975, requesting that the case be endorsed to the respondent Bureau of Public Schools for payment (p. 21, rec.). Said letter was hand-carried by him to the Office of the Solicitor General on December 9, 1975 and stamped "received" on said date. After receiving no reply, he again wrote the Office of the Solicitor General a follow-up letter dated September 14, 1976, reiterating his request that the claim be endorsed for payment (p. 22, rec.). This second letter was answered by Assistant Solicitor General Nathaniel P. de Pano, Jr. on September 17, 1976 (p. 23, rec.), informing him that the decision of the acting referee has been reversed and dismissed by respondent Commission in its decision dated December 18, 1975.

This came as a surprise to petitioner's counsel, who thought all along that the referee's decision had long become final and executory. He therefore filed with the Compensation Appeals and Review Board of the Department of Labor on December 21, 1976, a manifestation (p. 24, rec.), requesting copies of the alleged decision of the WCC and of the motion for reconsideration and/or petition for relief from judgment, if any. However, it was only on July 5, 1978 that said counsel received a copy of said decision (pp. 9 & 28, rec.), after writing directly the Secretary of Labor (p. 26, rec.), when his manifestation and two other follow-ups (p. 25, rec.) yielded negative results.

Petitioner, through his counsel of record, Atty. Felizardo Moreno, now comes to this Court seeking a reversal of the decision of the respondent Commission and a revival of the acting referee's award, on the following grounds:

- That the said Commission committed a reversible error when it entertained a motion for reconsideration filed by the Office of the Solicitor General for respondent Bureau of Public Schools, despite the fact that petitioner's counsel was not furnished a copy of its motion for reconsideration; and
- That the said Commission likewise committed a reversible error when it took cognizance of the motion for reconsideration filed by the Solicitor General and reversed the decision of the acting referee, despite the fact that said decision had long become final and executory and beyond the jurisdiction of the said Commission to disturb.

On the other hand, the Office of the Solicitor General, as counsel for respondents, argues that the respondent Commission acted within the scope of its jurisdiction and its sound discretion when it entertained the timely motion for reconsideration, such that the decision of the acting referee did not become final (p. 54, rec.). This contention is based on the following procedural developments that allegedly took place according to the respondents:

A Notice of Decision signed by E.M. Cayapas, Acting Chief Referee, was received by the Office of the Solicitor General on March 31, 1975 together with a copy of the acting referee's decision of March 25, 1975 (p. 51, rec.). On the said Notice of Decision, the counsel for claimant was noted as follows:

"Atty. Felizardo Moreno Counsel for Claimant May Building, España Manila."

On April 8, 1975, respondent Bureau timely filed a motion for reconsideration, furnishing a copy thereof to claimant's counsel at the above-stated address, believing that that was his true and correct address. On June 26, 1975, Atty. Juan G. Milo entered his appearance as counsel for claimant-petitioner. He filed a notice of appearance (p. 51, WCC rec.) together with an affidavit (p. 50, WCC rec.) allegedly signed by petitioner appointing him as counsel on the ground that his attorney of record, Atty. Felizardo Moreno of May Building, Rizal Avenue, Manila, could not be contacted.

The claimant, now through Atty. Juan G. Milo, filed an opposition to the motion for reconsideration dated June 27, 1975 (pp. 52-55, WCC rec.).

Respondent's motion for reconsideration and claimant's opposition thereto were elevated to the Workmen's Compensation Commission, which decided the case against claimant on December 18, 1975 (pp. 66-67, WCC rec.).

The present petition for review on certiorari dated August 1, 1978 is now being assailed for having been filed more than two years after receipt by petitioner's counsel (referring to Atty. Juan G. Milo) of the decision appealed from, and therefore out of time.

Against these conflicting backgrounds, there appear only 3 procedural issues that need to be resolved:

- Whether or not the respondent Commission committed a reversible error when it entertained the motion for reconsideration filed by the Office of the Solicitor General;
- Whether or not the decision of the acting referee had already become final and executory, and beyond the power of the respondent Commission to disturb; and
- Whether or not this petition has been filed on time.

I

The records show that the Office of the Solicitor General received the Notice of Decision with a copy of the decision of the acting referee dated March 25, 1975 on March 31, 1975 (p. 43, WCC rec.), and timely filed a motion for reconsideration on April 7, 1975 (p. 49, WCC rec.). The said motion for reconsideration contains a notification addressed to the Hear-ing Officer concerned, asking that the same be submitted "for the consideration and resolution of this Honorable Body immediately upon receipt thereof," and indicates that Atty. Felizardo Moreno, counsel for claimant, was furnished a copy thereof at "May Building, España, Manila" (p. 46, WCC rec.), although there is no proof of service or any registry return receipt subsequently attached to the records to show actual service.

A perusal of the evidence indicates that the error in placing "May Building, España, Manila" as the address of petitioner's counsel is attributable to the Workmen's Compensation Commission, for such address first appeared in the Notice of Decision signed by E.M. Cayapas, Acting Chief Referee and Chief of Section, WCC Regional Office No. 4 (p. 43, WCC rec.). Heretofore, the address of said counsel in all the records of the case is invariably recorded as 2040 Cayetano Arellano St., Sta. Mesa Manila" (Claim for Compensation, p. 10, WCC rec.; 1st page of t.s.n., indicating counsel's appearance; p. 38, WCC rec., and all other pleadings he has signed and filed in connection with this case). It can there-fore be said that the respondent Commission committed an error which is tantamount to lack of notice, an integral part of procedural due process, when it sent the notice to petitioner's counsel at the wrong address.

It was obvious that the said counsel never received a copy of the motion for reconsideration, as shown by the absence of returns in the records. This must have worried the claimant-petitioner to the point that he himself wrote personally a letter dated April 28, 1975 (p. 45, WCC rec.), answering in layman's terms the said motion for reconsideration. The filing of such letter-reply by petitioner himself should have caused the WCC people to examine the records and find out why the notice was not received by counsel, which would have eventually led them to his correct address. Had they exercised such diligence, it would have been very easy to locate the real address of petitioner's counsel from the records.

Ordinarily, the hearing officer or referee concerned should have acted immediately on the motion for

reconsideration as enjoined by Section 4, Rule 19 of the Rules of the Workmen's Compensation Commission, quoted as follows:

"Sec. 4. Duties of Hearing Officer or Referee. Upon receipt of a petition for review or motion for reconsideration, the hearing officer or referee having control of the case shall immediately act upon the same. Should he decide to re-open the case and order a new trial, his decision is deemed vacated so that after the re-hearing or reception of additional evidence, he shall render a new decision or order. The now amended or modified decision or order shall become final unless a petition for review or motion for reconsideration is filed with the hearing officer or referee within fifteen (15) days from receipt of a copy thereof by the aggrieved party.

"In case the hearing officer or referee does not render a new decision or amend or modify the decision or order sought to be reviewed, he shall immediately issue an order denying the petition for review or motion for reconsideration and shall elevate within ten (10) days from denial the entire case to the Commission for review."

But instead of acting thereon in accordance with the above rule, the acting referee waited for more than five (5) months before transmitting the records of the case to the Workmen's Compensation Commission on September 10, 1975 (p. 64, WCC rec.). Was it because the acting referee was reluctant to give due course to the motion for reconsideration, knowing as he does that there was no proof of notice on claimant's counsel as required by the rules?

The second paragraph of Section 8, Rule 15 of the Rules of the Workmen's Compensation Commission provides:

"A party filing a motion shall serve all parties concerned a copy each thereof in the manner and in accordance with the requirements provided for in the Rules of Court."

And the pertinent provisions of the Rules of Court, which are supplementary to these rules, read thus --

"Sec. 4, Rule 15: Notice. - Notice of a motion shall be served by the applicant to all parties concerned, at least three days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

"Sec. 6, Rule 15: Proof of service to be filed with Motion. - No motion shall be acted upon by Court without proof of service of the notice thereof, except when the Court is satisfied that the rights of the adverse party or parties are not affected.

xx xx xx

"Sec. 2, Rule 37: Contents of the motion for new trial and notice thereof. - The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. x x x"

In the light of the foregoing, the acting referee should have refused to act on the motion for reconsideration following the doctrine laid down in *Estipona vs. Navarro* (L-41825, Jan. 30, 1976, 69 SCRA 286, 289), as follows:

"Service of a copy of the motion on the opposing lawyers and indicating the time and place of hearing are mandatory requirements. They are vital elements of procedural due process."

Likewise, in *Cledera vs. Sarmiento* (39 SCRA 553, 575), WE held:

"To emphasize once more, the directives in Section 2 of Rule 37 and Sections 4, 5, and 6 of Rule 15 of the

Revised Rules of Court are as mandatory as they are clear and simple; and non-compliance therewith is fatal to the cause of the movant, because the mere filing of the motion for reconsideration, without the requisite notice of hearing, does not toll the running of the period for appeal. Unless the movant sets the time and place of hearing in the notice and serves the adverse party with the same, the court would have no way to determine whether the party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which to file his reply or opposition. The rules commanding the movant to serve on the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing 'shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion' (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. To deviate from the peremptory principle thus uniformly reaffirmed in the latest cases aforecited in, and to exempt from the rigor of the operation of said principle, the case at bar would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon -- all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be ignored. We had to draw a line somewhere and We did when We promulgated on January 1, 1964 the Revised Rules of Court, wherein We delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding" (Please see also *Sebastian vs. Cabal*, 32 SCRA 453; *Manila Surety & Fidelity Co., Inc. vs. Bath Construction Co.*, 14 SCRA 435).

Accordingly, the respondent's motion for reconsideration should not have been given due course for failure to comply with the Rules.

II

Had the said motion for reconsideration been treated in accordance with established doctrines as above-stated, the second issue would not have arisen, for the acting referee's decision should have become final and executory.

Granting for the sake of argument, that the notice was properly made and the motion for reconsideration could be given due course, who is now entitled to the notices of subsequent proceedings?

The records show that Atty. Juan G. Milo entered his appearance as counsel for claimant on June 30, 1975. His notice of appearance dated June 24, 1975 (p. 51, WCC rec.) was intended to effect a substitution of Atty. Felizardo Moreno as may be gleaned from an affidavit purportedly signed by claimant and attached to the Notice of Appearance, which states in part that "said Atty. Juan G. Milo is taking over this case upon my request and instance and dictated by compelling reasons alluded to above (since Atty. Felizardo Moreno could no longer be found), and with all my authority and conformity for said Atty. Juan G. Milo to proceed and handle this case until terminated" (p. 50, WCC rec.).

On the same date (June 30, 1975), Atty. Milo filed for claimant an opposition (pp. 52-55, WCC rec.) to the motion for reconsideration. This opposition, together with respondent's motion for reconsideration dated April 7, 1975 and the entire records of the case, was transmitted to the Workmen's Compensation Commission on September 10, 1975 (p. 65, WCC rec.).

Did the acceptance by the respondent Commission of the opposition to the motion for reconsideration filed by Atty. Milo for claimant operate to effect a substitution of the latter as new counsel of record for claimant-petitioner, vice Atty. Felizardo Moreno, the erstwhile counsel of record?

In a long line of cases, We have always ruled that unless the procedure prescribed in Section 26 of Rule 138 is complied with, the attorney of record is regarded as the counsel who should be served with copies of judgments, orders and pleadings and who should be held responsible for the conduct of the case (*Fojas vs. Navarro*, 32 SCRA

476, 485 [1970]).

"In order that there may be substitution of attorneys in a given case, there must be (1) a written application for substitution; (2) the written consent of the client; (3) the written consent of the attorney substituted; and (4) in case such written consent cannot be secured, there must be filed with the application proof of service of notice of such motion upon the attorney to be substituted, in the manner prescribed by the rules. Unless the foregoing formalities are complied with, substitution will not be permitted, and the attorney who properly appeared last in the case, before such application for substitution, will be regarded as the attorney of record and will be held responsible for the proper conduct of the case" (Adarne vs. Aldaba, A.C. No. 801, June 27, 1978; Cortez, et al. vs. CA, et al., L-32547, May 9, 1978; Ramos vs. Potenciano, 118 Phil. 1435; and U.S. vs. Borromeo, 20 Phil. 189).

In the case at bar, such procedure was not followed. The respondent Commission merely accepted the notice of appearance as well as the pleading filed by Atty. Juan Milo without the consent of, or at least the proof of notice on, the original counsel of record, to his proposed substitution. Such notice could have easily been effected with the exercise of a little more diligence, since the true and correct address of Atty. Moreno has been part of the record since the filing of this claim. Failure to notify him rendered void and nugatory further proceedings before the respondent Commission. The decision of the acting referee therefore should have become final and executory and beyond the power of the respondent Commission to review and reverse.

III

On the question of timeliness of this petition, it is apparent from the records that the same was filed within the reglementary period.

The alleged notice on Atty. Juan G. Milo of the decision of the respondent Commission was ineffective, since there was no effective substitution of petitioner's counsel.

On the other hand, petitioner's counsel of record, Atty. Felizardo Moreno, upon being informed of the dismissal of his client's claim by respondent Commission, filed on December 29, 1976 before the Compensation Appeals and Review Staff, Department of Labor, a manifestation (p. 24, rec.) requesting a copy of the decision of the Workmen's Compensation Commission. Failing to receive a reply thereto, he reiterated the same in subsequent manifestations dated February 25, 1977 and July 8, 1977 (p. 25, rec.), which again did not merit any action from the said office. It was only after writing directly on June 6, 1978 the Secretary of Labor (pp. 26-27, rec.) that he received a copy of the decision on July 5, 1978 (p. 28, rec.).

On July 10, 1978, petitioner filed a notice of appeal (p. 36, rec.) with the Department of Labor, and on July 14, 1978 he filed before this Court a motion for a 30-day extension of time to file a petition for certiorari (p. 2, rec.), which was granted on July 24, 1978 (p. 4-B, rec.). The petition having been fully filed on August 2, 1978 (p. 5, rec.), there is no question that the same was filed on time.

WHEREFORE, THE DECISION DATED DECEMBER 18, 1975 OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND THE ACTING REFEREE'S AWARD IN HIS DECISION OF MARCH 25, 1975 IS HEREBY REINSTATED WITH THE MODIFICATION THAT THE ATTORNEY'S FEES PAYABLE TO ATTY. MORENO BE INCREASED TO 10% OF PETITIONER'S DISABILITY BENEFITS.

SO ORDERED.

Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), J., took no part.

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