

THE BACHRACH MOTOR CO., INC., PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSION AND DOMINGO PANALIGAN, RESPONDENTS.

G.R. No. L-8589. May 25, 1956

Ponente: PARAS, C.J.

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PARAS, C.J.:

Respondent Domingo Panaligan was an employee of the petitioner Bachrach Motor Co., Inc. On November 23, 1953, he filed with the respondent Workmen's Compensation Commission a claim against the petitioner for compensation for physical disabilities resulting from an accident which took place on July 15, 1953. The respondent Commission immediately transmitted said claim to the petitioner which, without controverting it or filing an opposition thereto! within ten days, suggested to the respondent Commission that a physician from the Philippine General Hospital, Dr. Carlos P. Yarbao, conduct the physical examination of respondent Panaligan to determine the extent of his injuries. On March 27 and April 19, 1954 the petitioner submitted to the respondent Commission its physician's report of sickness or accident and employer's report of accident or sickness. On April 27, 1954 the respondent Commission sent to the petitioner a computation of the latter's liability under the Workmen's Compensation Act, based on the findings of Dr. Yarbao; and the petitioner was accordingly required by the respondent Commission to pay P3,935.19, for the loss of eighty-five per cent of the: left eye of respondent Panaligan, the use of his right leg, and temporary disability for 272 days. The petitioner controverted said award,'contesting its liability under the Workmen's Compensation Act, as well as the period of temporary total disability and the basis of compensation. The respondent Commission called the petitioner to a conference on October 29, 1954, during which the Commission explained its reasons for the award. Whereupon the petitioner filed the present proceedings for certiorari and mandamus, to compel the respondent Commission to hold a trial for the reception of evidence which the petitioner may have against the claims of respondent Panaligan and allow the petitioner to cross-examine claimant's witnesses. It is argued that the respondent Commission made the award without any trial and thereby acted without or in excess of its jurisdiction or with grave abuse of discretion. We disagree with petitioner's contentions. Under section 37 of the Workmen's Compensation Act, the petitioner was required, if it decided, to controvert the right to compensation of respondent Panaligan, to file within 10 days after it had knowledge of the accident, a notice with the Commission that compensation was not being paid, stating the reasons why it was not paid; and that failure to do so would constitute a renunciation of its right to controvert the claim. As in this case the petitioner not only did not file any opposition to the claim for compensation within the prescribed period, but admittedly paid respondent Panaligan compensation by reason of the accident, the compensability of the claim in question has been settled.

Neither was there any necessity for a formal trial, because, at the very suggestion of the petitioner, the matter of determining the injuries sustained by respondent Panaligan, was referred to Dr. Yarbao of the Philippine General Hospital, an absolutely disinterested referee; and the award given by the respondent Commission in the favor of respondent Panaligan was in accordance with the joint report of the physicians of the respondent Commission

which was in turn based upon the findings of Dr. Yambao.

It is also argued that the award should have been computed on the basic daily wage of P4.80, without including overtime pay and night service premium. This is likewise untenable. Under section 19 of the Workmen's Compensation Act, the average weekly wages should be computed in such manner that it shall be the best computation that can be made of the weekly earnings of the laborer during the 12 weeks next preceeding his injury, and under section 39 (g) of said Act "wages" includes the commercial value of the board and lodging, subsistence, fuel and other amounts which the employee receives from the employer as part of his compensation. If the commercial value of the board and lodging, subsistence and fuel is covered in "wages," there is more reason to include overtime pay and night service premium which, at any rate, may fall under "other amounts which the employee receives from the employer as part of his compensation." Wherefore, the petition is hereby dismissed with cost against the petitioner.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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