

ILOILO CHINESE COMMERCIAL SCHOOL PETITION, VS. LEONORA FABRIGAR AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. 16600, December 27, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

As a result of the death of Santiago Fabrigar, on June 28, 1956, his heirs in the person of Leonora Fabrigar (common-law wife) and their children, filed a claim for compensation with the Workmen's Compensation Commission, Case No. 1085, W.C.C., entitled "Leonora Fabrigar, et al., Claimants, vs. Iloilo Chinese Commercial School, Respondents". In this claim, it was alleged that the cause of death was "pulmonary tuberculosis contracted during and as a result of his employment as janitor". The Hearing Officer of the WCC denied the claim and dismissed the case, finding that the claimant failed to prove the casual effect of employment and death; nothing was shown that the disease was contracted in line of duty; that whatever evidence claimant presented about the cause of death was only a mere suggestion that progressively developed from tuberculosis with heart trouble to a sudden fatal turn, ending up for the cause of "beriberi adult" at the time of death, as per certification of Sanitary Inspector Dr. P. E. Labitoria, of Dao, Capiz (Exhibits C & 4).

The heirs of Santiago Fabrigar appealed the decision with the Workmen's Compensation Commission which, on November 12, 1959, rendered judgment reversing the decision of its Hearing Officer, making the following findings of facts:

That Santiago Fabrigar had been employed from 1947 to March 12, 1956, as a janitor-messenger of the respondent Iloilo Chinese Commercial School, his work consisting of sweeping and scrubbing the floors, cleaning the class-rooms and the school premises, and other janitorial chores; that on March 11, 1956, preparatory to graduation day, he carried desks and chairs from the class-rooms to the auditorium, set the curtains and worked harder and faster than usual; that although he felt shortness of breath and did not feel very well that day, he continued working at the request of the overseer of respondent; that on the following day he reported for work, but on March 13, he spat blood and stopped working; that from April 29, 1956 to May 15, 1956, he was under treatment by Dr. Quirico Villareal "for far advanced pulmonary tuberculosis and for heart disease"; and that previous to said treatment, he was attended by Dr. Jaranilla for pulmonary tuberculosis. The Commission concluded that the short period of intervention between his last day of work (March 13, 1956) when he spat blood and his death on June 28, 1956, due to pulmonary tuberculosis, indicated that he had been suffering from such disease even during the time he was employed by the respondent and considering the strenuous work he performed, his employment as janitor aggravated his pre-existing illness; that although there is a discrepancy between the cause of death "beriberi adult", as appearing in the Death Certificate and the testimony of Dr. Villareal, the latter deserves more credence, because their Information (cause of death) was given by (the Sanitary inspector who did not, in any way, examine the deceased before or after his death. The Commission, therefore, ordered the respondent Chinese Commercial School, Inc., in said case—

"1. To pay to the claimant, for and in behalf of her minor children by the deceased, namely Carlito, Gloria, Rosita and Ernesto, all surnamed Fabrigar, the amount of Two thousand four hundred ninety six and 00/100 Pesos (P2,496.00) as death benefits; and

2. To pay to the Commission the amount of P25.00 as fees pursuant to Section 55 of Act 3428, as amended."

The above decision is now before Us for Review on a Writ of Certiorari, after the motion for reconsideration had been denied, petitioner alleging that the Commission, erred:

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In disregarding completely the evidentiary value of the death certificate of the attending physician which was presented as evidence by both claimants and respondent (Exhibits C & 4) to prove the cause of death;

- In finding that the cause of death of said Santiago Fabrigar was tuberculosis and was contracted during and as a result of the nature of his employment;

- In holding that the herein petitioner was the employer of the deceased Santiago Fabrigar; and

- In not holding that the herein petitioner is exempt from the scope of the Workmen's Compensation Law.

Petitioner contends that the preponderance of evidence on the matters involved in this case, militates in its favor. Considering the doctrine that the Commission, like the Court of Industrial Relations, is bound not by the rule of preponderance of evidence as in ordinary civil cases, but by the rule of substantial evidence (*Ang Tibay vs. CIR*, 69 Phil. 635; *Phil. Newspaper Guild vs. Evening News*, 86 Phil., 303; 47 Off. Gaz. No. 12, p. 6188; secs. 43 & 46 R. Act No. 772 W.C. Act), petitioner's pretension is without merit. Substantial evidence supports the decision of the Commission. While seemingly there exists an inconsistency in the cause of death, as appearing in the death certificate by Dr. Labitoria and in Dr. Villareal's diagnosis, it is a fact found by the Commission, that the Sanitary Inspector did not examine the deceased before and after his death. "Undoubtedly", says the Commission, "the information that he died of beriberi adult, as appearing in the death certificate was given because it appears that the deceased had also edema of the extremities (swollen legs)". The evidence of record sustains the following findings of the Commission, as Fabrigar's cause of death, to wit—

"The short period of time intervening between his last day of work (March 13, 1956) when he spat blood and his death on June 28, 1956 due to pulmonary tuberculosis indicates that he had been suffering from the disease even during the time that he was employed by the respondent. Considering the strenuous work that he performed while in the service of the respondent and the unusually long hours of work he rendered (6:00 p.m. to 1:30 p.m. and from 2:00 p.m. to 6:00 p.m. or 7:00 p.m.) beyond the normal, and legal working hours, we find that his employment aggravated his pre-existing illness and brought about his death. Moreover, our conclusion finds support in the fact that immediately preceding his last day of work with the respondent, he had an unusually hard day lifting desks and other furnitures and assisting in the preparations for the graduation exercises of the school. Considering also his complaints during that day (March 11), among which was shortness of breath', we may also say that his work affected an already existing heart ailment."

We find no plausible reason for altering or disturbing the above factual findings of the Commission, in the present appeal by certiorari.

It is claimed that actually the deceased was not an employee of the petitioner, but by the Iloilo Chinese Chamber of Commerce which was the one that furnished the janitor service in the premises of its buildings, including the part thereof occupied by the petitioner; that the Chamber of Commerce paid the salaries of janitors, including the deceased; that the petitioner could not afford to pay rentals of its premises and janitor due to limited finances which depended largely on funds raised among its Board of Directors, the Chinese Chamber of Commerce and

Chinese nationals who helped the school. In other words, it is pretended that the deceased was not an employee of the school but of the Chinese Chamber of Commerce which should be the one responsible for the compensation of the deceased. On one hand, according to the Commission, there is substantial proof to the effect that Fabrigar was employed by and rendered service for the petitioner and was an employee within the purview of the Workmen's Compensation Law. On the other hand, the most important test of employer-employee relation is the power to control the employee's conduct. The records disclose that the person in charge (encargado) of the respondent school supervised the deceased in his work and had control over the manner he performed the same.

It is finally contended that petitioner is an institution devoted solely for learning and is not an industry within the meaning of the Workmen's Compensation Law. Consequently, it is argued, it is exempt from the scope of the same law. Considering that this factual question has been properly put in issue before the Commission, it may not now be entertained in this appeal for the first time (*Atlantic Gulf etc. vs. CIR, et al. supra*, p. 650 citing *International Oil Factory Union vs. Hon. Martinez, et al.*, 110 Phil., 595;). The decision of the Commission does not show that the matter was taken up. We are at a loss to state whether the issue was raised in the motion for reconsideration filed with the Commission, because the said motion is not found in the record before us. And the resolution to the motion for reconsideration does not touch this question.

In view hereof, the appeal interposed by the petitioner is dismissed, and the decision appealed from is affirmed, with costs against the herein petitioner.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, and De Leon, JJ., concur.

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