

MANILA RAILROAD COMPANY, PETITIONER, VS. LADISLAO MANALANG, ET AL., RESPONDENT.

G.R. No. 20845. November 29, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

From October 27, 1926 to March 1, 1954 Ladislao Manalang was employed by the Manila Railroad Company, in various positions, the last one being locomotive fireman, for three years.

As locomotive fireman he was assigned to a night train on the Manila-Naga route. Among his duties were to wipe or clean the locomotive, to take the spade or shovel, "maniqueta" and oil containers and to oil the locomotive, and, when the locomotive was running, to feed the engine with coal or wood.

Sometime in March of 1950, at 8:00 P.M., he vomited blood at the railroad company's shed in Tayuman, Manila. For two weeks he rested and received medical treatment from Dr. Fausto Galauran, the company physician. From X-ray examination a "spot" in his left lung was discovered. Subsequently, he resumed working in the company.

Sometime in November of 1953 he again vomited blood and had to file his leave. The chief physician of the company, Dr. Salgado, treated him, and helped him file his retirement papers with the Government Service Insurance System. On March 1, 1954 Ladislao Manalang retired from the company under the disability retirement provided for by Republic Act 660.

On November 10, 1958 he filed a claim for compensation, under the Workmen's Compensation Act, with the Regional Office in Manila of the Department of Labor. After the Manila Railroad Company filed its answer, raising various defenses including prescription, the Regional Office aforementioned heard the case. The hearing officer, on June 22, 1962, awarded P4,000.00 compensation benefits.

A petition for review was filed by the company with the Workmen's Compensation Commission. An Associate Commissioner rendered a decision on December 3, 1962, affirming the hearing officer and further ordering the company to pay P300.00 to claimant's counsel as attorney's fees.

A motion for reconsideration was sought from the Commission en banc but on January 22, 1963 the same was denied. The present suit was filed herein by the company on February 19, 1963, by way of petition for review of the decision and resolution of the Workmen's Compensation Commission.

Petitioner would first contend that the Regional Office of the Department of Labor had no power to hear the claim for compensation. The point is already settled that regional offices of the Department of Labor are vested with jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act.[1]

Next, petitioner would argue that the present claim is barred by Section 24 of the statute, since it was filed later than two months after the date of sickness. Anent this point we agree with respondent Commission that the failure of the company to file a controversion of a claim that may be filed, within the time fixed by Section 45 of the

statute, is a bar to questioning the late filing of the claim. Said provision states in pertinent part:

"In case the employer decides to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with this 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."

Petitioner maintains that the filing of the claim within the aforesaid period of two months is a condition precedent, of jurisdictional import, and, hence, cannot be waived. Such a view is no longer prevailing.

According to Horovitz:

"The defense of notice and claim may be waived. Both claim and notice, while originally considered conditions precedent to an award, have yielded to a more reasonable interpretation, and are now considered defenses by employers or insurers or state funds and subject to the same infirmities as other defenses. If not seasonably raised by the payer of compensation they are deemed waived, or, what amounts to the same thing, the court will consider that the excuses or substitutes for late claim and notice have been complied with, and hence the employer's or insurer's or state fund's defense of claim and notice fails completely." (HOROVITZ ON WORKMEN'S COMPENSATION, pp. 254-255.)

So, also, Larson states that: "The majority rule is that strict compliance with notice and claim requirements may be waived by the employer or insurer". (2 Larson, LAW OF WORKMEN'S COMPENSATION, p. 284)

Conformably to the recent trend of jurisprudence, this Court has in fact ruled that timeliness of notice or claim under Section 24 of the Act is not jurisdictional (*Century Insurance Co. vs. Fuentes*, L-16039, August 31, 1961). Failure of the employer, as in this case, to file a timely controversion under Section 45 of the law, bars all defenses available to the employer, including the defense based on the employee's failure to file the claim in due time (*National Development Corporation vs. Workmen's Compensation Commission*, L-19863, April 29, 1964).

As to the merits of the claim it is insisted by petitioner that claimant's illness did not arise out of, nor was it aggravated by, his employment. Suffice it to note that the finding of respondent Commission, supported by substantial evidence, is as follows:

"In this particular case, it has been sufficiently shown that the nature of claimant's work necessarily exposed him to extreme heat emanating from the locomotive engine, especially when the engine was fed by him with coal or wood. It has also been sufficiently proven that the fire box where the claimant was stationed during the trip exposed him to sudden change of temperature. Apart from these environmental conditions is the fact that claimant had to sleep or rest on concrete benches of the MRR stations because of the difficulty in carrying the tools, luggages, and utensils to the dormitory—a practice among employees tolerated by the management when the train is delayed, which is often.

"With these conditions obtaining in, or playing an integral part of, claimant's employment with the respondent, there can not be any reason to doubt that claimant's resistance must have been gradually lowered to such a degree as to enable the tubercle bacilli that found lodgment in his lung to develop culminating in hemoptysis in March, 1950 while he was in the course of his employment. Claimant's sickness of pulmonary tuberculosis must therefore be the result of the nature of his employment. * * * " (WCC Decision, pp. 4-5)

Following the rulings in a long array of cases, since the above findings of fact are supported by substantial evidence, they are binding upon this Court and no longer subject to review.[2]

Petitioner, finally, questions the award of attorney's fees, which was premised on Article 2208(8) of the New Civil Code. It is petitioner's view that respondent Commission should have applied only Section 31 of the Workmen's Compensation Law, which does not provide for recovery of attorney's fees from the company. Such a contention has

already been rejected by us, for the reason that precisely because Section 31 of the Act does not govern attorney's fees recoverable from the adverse party, Article 2208(8) of the New Civil Code applies, to supplement the deficiency in the Workmen's Compensation Act, in accordance with Article 18 of the New Civil Code (*National Development Corporation vs. WCC*, supra).

Wherefore, the decision and resolution appealed from are affirmed, with costs against petitioner. So ordered.

Bengzon, C. J., Bautista Angelo, Concepción, Reyes, J. B. L., Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

[1] *Miller vs. Mardo*, L-15138, July 31, 1961; *San Miguel Brewery vs. Sobremesana*, L-18730, September 16, 1961; *Mallorca vs. Ramos*, L-15476, September 19, 1961.

[2] *Basaysay vs. WCC*, L-16438, November 29, 1961; *Rebodos vs. WCC*, L-18737, November 29, 1962; *Itogon-Suyoc Mines, Inc. vs. Dulay*, L-18974, September 30, 1963.

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