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We reiterate the same rule in the instant petition and so hold that petitioner's claim for death benefits under the Workmen's Compensation Act, not having been controverted nor overcome by substantial evidence, must be granted.

WHEREFORE, the Decision of the Workmen's Compensation Commission sought to be reviewed is set aside and the award dated September 16, 1974 made in favor of the petitioner-claimant by the Workmen's Compensation Section, Baguio City Sub-regional Office is reinstated, and modified to include an additional order for respondent to pay petitioner's counsel the amount of Four Hundred Sixty-Eight Pesos (₱468.00) as and for attorney's fees.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43027. January 31, 1979]

CONSOLACION BAUTISTA, in representation of deceased ANDRES BAUTISTA, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and PHILIPPINE NATIONAL RAILWAYS,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION COMMISSION; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE OF DISMISSAL OF CLAIM WITHOUT HEARING.** — Where failure of claimant and/or his counsel to appear on the scheduled hearings was due

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either to lack of notice, or if there was notice, to receipt thereof several days after the scheduled hearing, affirmance by the Workmen's Compensation Commission of dismissal of the claim by the hearing Officer on ground of non-appearance, constituted grave abuse of discretion.

2. ID.; ID.; **OBLIGED TO GIVE SUBSTANCE TO SOCIAL JUSTICE CLAUSE OF THE CONSTITUTION.** — The act of a hearing officer of tilting his discretion in favor of the employer and to the prejudice of the laborer, unabated by the Workmen's Compensation Commission, is a foul blow to the social justice clause of the Constitution and its injunction for the State to afford protection to labor. Government agencies especially labor agencies have been repeatedly reminded that they are under obligation at all times o give meaning and substance to these constitutional guarantees in favor of the working man; for otherwise these constitutional safeguards would be merely a lot of "meaningless patter."

3. ID.; **WORKMEN'S COMPENSATION; CLAIM FOR COMPENSATION; SUPREME COURT CAN DECIDE CLAIM ON THE MERITS DESPITE TECHNICAL OR PROCEDURE LAPSE IN THE HEARING.** — Where a workmen's claim is elevated to the Supreme Court due to a technical or procedural lapse in the hearing below, the High Court can nevertheless decide the claim and terminate the matter there and then on the basis of the pleadings before it. The niceties and refinements of technical rules on procedure must give way to effect substantial justice to the claimant.

4. ID.; ID.; **COMPENSABLE DISEASES; INCLUDE TUBERCOLOSIS.** — Under Section 2 of the Workmen's Compensation Act, as amended, tuberculosis, directly caused by employment, or either aggravated by or the result of the nature of said employment is compensable.

5. ID.; ID.; **PRESUMPTION OF COMPENSABILITY; BURDEN OF PROOF TO SHOW THE CONTRARY IS ON THE EMPLOYER.** — The presumption of compensability is very well applicable to an undisputed claim that claimant's illness of tuberculosis supervened in the course of his employment. The burden of showing the contrary by substantial evidence lies on the employer and his failure to discharge this burden renders the presumption conclusive.

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6. **ID.; ID.; CLAIM FOR COMPENSATION; ABSENCE OF X-RAY REPORT CANNOT PREJUDICE RIGHT TO COMPENSATION.** — An x-ray report/result is not an indispensable prerequisite to compensation. Said x-ray finding need not be attached to the Physician's Report because it can be logically inferred from said report that a previous x-ray examination was made. Otherwise, the physician could not have arrived at his diagnosis.

7. **ID.; ID.; ID.; REPORT OF ACCIDENT OF SICKNESS OF EMPLOYER; EFFECT OF NON-COMPLIANCE.** — The Workmen's Compensation Act, as amended, requires the employer to submit a report of accident or sickness within 14 days from disability or 10 days from knowledge thereof. Failure to comply with this requirement results in the employer's loss or waiver of his right to controvert the claim. All defenses available to the employer are barred.

8. **ID.; ID.; DISABILITY BENEFITS; EFFECT OF DEATH OF CLAIMANT PENDING ADJUDICATION THEREOF.** — Where a claimant for disability compensation dies pending adjudication of his claim and his claim is not amended so as to include death benefits, no award for death benefits may be made.

APPEARANCES OF COUNSEL

Filemon A. Asperin for petitioner.

Jose B. Calimlim and Tomas Dulay, Jr. for respondent The Philippine National Railways.

D E C I S I O N

MAKASIAR, *J.*:

Petition for review on *certiorari* of the December 31, 1975 decision of the respondent Commission affirming the September 29, 1975 order of dismissal of its referee in BWC Case No. 7601-ROI.

Petitioner is the surviving spouse and the only heir of the late Andres Bautista, claimant in BWC Case No. 7601-ROI, who died while his disability compensation claim was pending review by the respondent Commission. In his lifetime, Andres

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Bautista was employed as switchman by respondent Philippine National Railways since 1945. On August 16, 1973, he filed his application for retirement on the ground of disability; which was likewise pending action at the time of his death.

On August 12, 1974, claimant Andres Bautista filed a notice of injury or sickness and claim for compensation dated July 29, 1974 with the Department of Labor, Region I at Dagupan City; alleging that he is sick of PTB and Rheumatism, that the date of accident was August 10, 1973, that he stopped working on August 16, 1973 and that he orally notified on *August 10, 1973* his employer of the fact of his sickness (p. 59, WCC rec.). Attached to, and made an integral part of, the claim for compensation was a physician's report dated July 28, 1974 with a diagnostic finding that claimant was suffering from PTB, far advanced; prognosis: Poor, which required hospitalization (p. 60, WCC rec.). Respondent employer, which received a copy of the decision on *August 26, 1974*, filed on *September 11, 1974* its Employer's Report of Accident or Sickness (pp. 56-58. WCC rec.).

Thereafter or on September 29, 1975, the hearing officer dismissed the compensation claim of claimant for the reasons that:

"In view of the *repeated non-appearance of the claimant and counsel during the scheduled hearings of this case despite due notice to them, and it appearing that the evidence adduced was not enough to warrant an immediate Award in favor of the claimant, let this case be dismissed* and respondent PNR is absolved from any liability" (*italics* supplied).

On October 16, 1975, counsel for claimant filed a motion for reconsideration pointing out that the hearing of the case was delayed by reason of the repeated non-appearance and motions for postponement on the part of counsels for the respondent employer and the consequent withdrawal of the original counsel; that his failure to appear at the last two (2) scheduled hearings was excusable for the reason that he received the notice of hearing two (2) days after the scheduled date of hearing and

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he informed the clerk of the hearing officer of this fact; that the counsel of respondent employer was likewise not present at the last scheduled hearing; that all notwithstanding, the evidence already presented was sufficient to entitle claimant of an Award; and prayed therefore that the September 29, 1975 order of dismissal be set aside and that further hearing be held or that a decision be rendered on the basis of the evidence already presented. In the same motion, he informed the hearing officer of the fact that claimant is already dead (p. 6, WCC rec.) without however stating the date and cause of death.

On November 7, 1975, the hearing officer denied the aforesaid motion, but ordered the elevation of the entire records of the case to the respondent Commission for review.

Thereafter or on December 31, 1975, the respondent Commission, on the basis of the evidence on record, affirmed the order of dismissal. It held:

"Records show that claimant was employed as Switchman with the Philippine National Railways who stopped working on August 16, 1973 because he filed his retirement.

"On September 1, 1973, he fell ill of Pulmonary Tuberculosis (Testimony, November 27, 1974, p. 2). which necessitated his confinement at the Doña Gregoria Memorial Hospital on September 20, 1974 to October 29, 1974.

"Since claimant has already applied for retirement on August 16, 1973 and stopped working on said date, the subsequent contraction of his PTB illness on September 1, 1973 could not be attributable to his employment, especially so that on the alleged date that he contracted his illness on September 1, 1973, no proof of any kind, like x-ray Report was ever presented. The findings of PTB far advanced one year after separation from the service could no longer have any bearing with claimant's employment" (p. 3, WCC rec.).

Hence, this petition, which We subsequently treated as a special civil action.

With the submission by the parties of their respective memoranda, the case was considered submitted for decision.

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I

1. The claim of the petitioner that her deceased husband was deprived of due process by the respondent Commission's hearing officer is meritorious.

The September 29, 1975 order of dismissal of the hearing officer which charged claimant and his counsel of "repeated non-appearance" was precipitated by their failure to appear in the scheduled hearings of *August 6, 1975, August 20, 1976 and September 9, 1975.*

In his October 16, 1975 motion for reconsideration, counsel for claimant contended that his failure to appear at the aforesaid scheduled September 9, 1975 hearing was excusable; because he received the notice of hearing by ordinary mail two (2) days after the scheduled date. Despite this explanation of counsel for claimant, the factual allegations of which were not disputed by the respondent employer which was furnished a copy of the motion, the hearing officer refused to reconsider its order of dismissal. Furthermore, the WCC record does not show that indeed counsel for claimant received notice of hearing prior to the aforesaid scheduled date of hearing.

With respect to the August 6, 1975 scheduled hearing, the claim of claimant's counsel that he was not notified thereof is not disputed; nor do the records show that he was ever furnished a notice thereof.

Relative to the August 20, 1975 scheduled hearing, the counsel for claimant was not again notified of the same; although his client, claimant Andres Bautista, was sent a notice; the same was received by his representative only on August 25, 1975, or five (5) days after the scheduled hearing, at which date Andres Bautista had already died (see p. 47, WCC rec.).

In the light of the foregoing facts, We rule that the respondent Commission gravely abused its discretion in ignoring and in not passing upon the issue of denial of due process squarely presented by claimant's counsel. The very rules of the Commission require the giving of *reasonable notice* of hearing to each party

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interested by service upon him personally or by registered mail of a copy thereof at his last known post office address or if he is represented by a counsel, through the latter (Sec. 2, Rule 15, Revised rules of the WCC, 1973), so as to ensure observance and protection of an interested party's right to a hearing (Sec. 1, Rule 15, Revised Rules of the WCC). Patent therefore is the failure of the hearing officer to observe these rules. Under the circumstances, claimant was clearly deprived of his day in court. Consequently, the dismissal of the claim premised on claimant and his counsel's "repeated non-appearance" at the aforestated hearings cannot stand.

2. In passing, We noted that hearing officer tilted his discretion in favor of the employer and to the prejudice of the laborer, the late claimant Andres Bautista, as demonstrated by his obdurate handling of claimant's excusable non-appearances at scheduled hearings, on one hand, and his mild treatment of respondent employer's repeated failure to appear at scheduled hearings and its motions for postponement, on the other. The records clearly show that while respondent had asked for and was granted at least five (5) postponements; claimant, on the other hand, only moved for postponement once and that was even on a joint motion with respondent employer (pp. 16, 20, 21, 27, 28, 31, 44, 52, 53, & 54, WCC rec). This posture of the hearing officer unabated by the respondent Commission is a foul blow to the social justice clause of the Constitution and its injunction for the State to afford protection to labor. Indeed We have repeatedly reminded agencies of the government, especially labor agencies, that they are under obligation at all times to give meaning and substance to these constitutional guarantees in favor of the working man; for otherwise these constitutional safeguards would be merely a lot of "meaningless pattern."

II

1. The foregoing notwithstanding, it is the contention of the petitioner that the evidence on record is already sufficient as a basis for the rendition of a decision on the merits; and prays that the claim be now resolved on the basis thereof. Under

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the circumstances obtaining in this case, We agree with petitioner. WE have previously ruled that on the basis of the pleadings before Us, despite a technical or procedural lapse in the hearing below, We can decide a compensation claim and terminate the matter here and now. WE reasoned out that, the law being in claimant's favor, humane reasons aimed at promoting justice and the general welfare of the workingman, justify the rendition of a decision on the merits. The niceties and refinements of technical rules on procedure must give way to effect substantial justice to the claimant (*Justo vs. WCC*, 75 SCRA 220, 222 [1978]).

2. The records of the case show that claimant Andres Bautista was employed by respondent employer since 1945 (p. 47, WCC rec.); and on August 10, 1973, or after 28 years, more or less, he was found ill of tuberculosis, by reason of which he was forced to stop working even before the compulsory age of retirement. Dr. Romulo Lopez, who submitted the supporting Physician's Report, diagnosed claimant's illness as PTB, Far Advanced; and further opined that claimant's illness of PTB was the result of the nature of his employment (p. 61, WCC rec.). Dr. Lopez testified at the hearing that when admitted to the hospital, claimant was semi-conscious, pale, with frequent cough and very weak and that his (Dr. Lopez) clinical impression during admission was PTB, and affirmed his statement in the Physician's Report that the nature of claimant's work caused his sickness (pp. 38-43, WCC rec.).

Claimant Andres Bautista testified that before his employment with the respondent employer, he was stout and healthy. The nature of his work was rigorous and the place of his work was dusty and he was constantly exposed to the elements. His duties include the loading and unloading of cargoes, operating the railroad switch, and cleaning the premises of the PNR station at Aringay, La Union. His time schedule was from 2:00 in the afternoon to 10:00 in the evening. The first time he became sick, he consulted Dr. Guillermo Ordona, the company physician; he notified his employer of this fact; he was confined at Doña Gregoria Memorial Hospital and x-rayed by Dr. Lopez and was found suffering from PTB (pp. 47-50, WCC rec.).

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The above undisputed evidence on record clearly warrants the conclusion of claimant's attending physician that his illness of tuberculosis was the result of the nature of his employment. Under Section 2 of the Workmen's Compensation Act, as amended, tuberculosis directly caused by employment, or either aggravated by or the result of the nature of said employment, is compensable. In numerous cases involving similar and/or substantially similar nature of work as well as conditions or circumstances of work as that of the claimant Andres Bautista, We ruled that tuberculosis is an occupational disease; hence compensable (*Justo vs. WCC*, 75 SCRA 220, 225 [1978]; *National Development Company vs. WCC*, 19 SCRA 861 [1967]; *Caltex (Phil.) vs. Serpo & WCC*, 16 SCRA 77[1966] *Manila Railroad Company vs. Perez & WCC*, 14 SCRA 504 [1965]; *Manila Railroad Company vs. Vda. de Chavez*, 120 Phil. 944, 12 SCRA 142 [1964]; *Batangas Transportation Company vs. Perez*, 120 Phil. 767, 11 SCRA 793 [1964]; *Pantranco vs. WCC & Gatdula*, 118 Phil. 358, 8 SCRA 352 [1963]; *Manila Railroad Company vs. Ferrer*, 109, Phil. 716 [1960]).

3. Fortifying the aforesaid conclusion of work-connection, is the well-recognized presumption of compensability, very well applicable to this case as it is undisputed that claimant's illness of tuberculosis supervened in the course of his employment — on or before August 10, 1973. Consequently, claimant's illness of tuberculosis is presumed compensable; and the employer assumed by force thereof the burden of showing the contrary by substantial evidence (*Abordo vs. WCC & PNR*, L-43073, July 31, 1978; *Cañonero vs. WCC*, 3 PHILAJUR 236, 81 SCRA 712 [1978]; *Gonzales vs. WCC*, 3 PHILAJUR 229, 81 SCRA 703 [1978]). Respondent employer failed to discharge this burden even at this late stage. Hence, the *prima facie* presumption became conclusive (*Cañonero vs. WCC, supra*).

4. The conclusion of the respondent Commission that ". . . since claimant has already applied for retirement on August 16, 1973 and stopped working on said date, the subsequent contraction of his PTB illness on September 1, 1973 could not

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be attributable to his employment x x x" because "x x x (t)he findings of PTB far advanced one year after separation from the service could not longer have any bearing with claimant's employment" is erroneous and unrealistic.

Firstly, claimant's illness was discovered on August 10, 1973 (Notice of Claim or Sickness and Claim for Compensation, p. 50, WCC rec.) although claimant erroneously testified in the hearing that he first got sick of PTB on September 1, 1973 (p. 48, WCC rec.); secondly, even on the assumption that indeed claimant's illness was discovered only on September 1, 1973 and that claimant permanently ceased working on August 16, 1973, it does not mean that claimant instantly acquired his illness of tuberculosis only on September 1, 1973 — barely 15 days from August 16, 1973; not one year as mistakenly computed by the respondent Commission; for as We rationalized in the case of *Lorenzo vs. WCC* (81 SCRA 440, 441 [1978]),

"x x x By the very nature of tuberculosis, petitioner could not have suddenly and instantaneously contracted such illness during the three-day period from October 4, 1974, when the respondent company stopped its operation, to October 7, 1974, when the examination were conducted on petitioner. Tuberculosis is not an instantaneous disease; it is an imperceptible disease caused by a germ which is breathed in and feeds on the lungs or taken with food. It is medically accepted that exposure to dust and dirt is a predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens resistance to any latent tuberculosis infection and reactivates that infection (*Justo vs. WCC*, 75 SCRA 224-225 [1976]) And on this specific point, the case of *Valencia vs. WCC* (72 SCRA 245 [1976]) is strikingly similar to the present case. In that case, claimant 'showed or established that after she stopped working on July 31, 1971, she was treated by Dr. Evangelina Gonzales from *August 3, 1971* up to *February 15, 1972* as per medical certificate issued to her dated January 17, 1972, and according to the physician's report, it was clearly shown that she was sick of "minimal pulmonary tuberculosis" x x x.' And the Court therein ruled and pointed out that:

"'x x x It is clear therefore that when Dr. Gonzales examined petitioner herein on *August 3, 1971*, just three days after she stopped

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working, she was already found suffering from tuberculosis although in its minimal stage. Obviously, petitioner's ailment could not just have appeared simply on the third day of her separation.

"'Tuberculosis is a chronic infection caused in humans by bacteria and initiated almost always by inhalation of infectious bacteria. Medical authorities are agreed that the *incubation period* of tuberculosis is from *two (2) to ten (10) weeks* from the time of infection. Tuberculosis in its minimal stage indicates a slight lesion without demonstrable cavitation confined to a small area of one or both lungs, the total extent of which does not exceed the equivalent of the volume of the lung tissue which lies above the 2nd chondrosternal junctions and the spine of the 4th or body of the 5th thoracic vertebra on one side. As stated in *Batangas Transportation Co. vs. Perez & WCC*, L-19522, August 31, 1964, tuberculosis is not an instantaneous disease, it is an imperceptible germ disease that feeds on the lungs whose presence in the body cannot be easily discerned and its incipient stage may not be readily discovered.'"

Lastly, it must be clarified that although claimant Andres Bautista on August 16, 1973 applied for retirement on the ground of disability and stopped working on that date, he apparently resumed working when his retirement application was not acted upon and thereafter again filed and/or reiterated his application for retirement. These account for his conflicting claims as to the exact date when he filed his application for retirement and stopped working for respondent employer (pp. 33-37,47, 50, 59, WCC rec.; p. 1, rec.). At any rate, those conflicting dates cannot prejudice this compensation claim as it is clear that claimant's illness supervened in the course of employment and his disability took place before the compulsory age of retirement.

4. The absence of an x-ray report cannot prejudice claimant's right to compensation. For We have already ruled that an x-ray report/result is not an indispensable prerequisite to compensation (*Romero vs. WCC*, 77 SCRA 483, 488 [1977]); and that said x-ray finding need not be attached to the Physician's Report, because it can be logically inferred from the said report that a previous x-ray examination was made. Otherwise, the

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physician could not have arrived at his diagnosis. (*Landayan vs. WCC*, 77 SCRA 305-309 [1977]).

III

The claim of petitioner that there was no effective controversion of his right to compensation is likewise meritorious. Respondent employer had knowledge of claimant's illness as early as *August 10, 1973* or even earlier as claimant consulted respondent's employer physician the first time he was sick. Notwithstanding its knowledge, respondent employer did not comply with Section 37 of the Act, as amended, (in relation to Section 45 thereof) which requires it to submit a report of accident or sickness within 14 days from disability or 10 days from knowledge thereof. Hence, the report is submitted on *September 11, 1974* was too late (see pp. 56-59, WCC rec.). By failing to comply with Section 37 in relation to Section 45 of the Act, as amended, respondent employer lost its right to controvert the claim. Consequently, the claim was uncontroverted. All defenses available to respondent employer were thus barred.

IV

The claim filed in this instant case was one for *disability compensation*; but claimant died allegedly by reason of PTB (Memorandum for Petitioner, p. 30, rec.) during the pendency of the claim in the Commission. The records do not however show that the claim was ever amended so as to include a claim for death benefits; neither the exact date of the death of claimant Andres Bautista. Consequently, We limit the award to disability benefits; and under the obtaining circumstances We feel that petitioner who is the surviving spouse of claimant should be given the maximum amount allowed by law.

WHEREFORE, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY SET ASIDE AND RESPONDENT EMPLOYER IS HEREBY ORDERED.

1. TO PAY PETITIONER, THE SUM OF SIX THOUSAND (₱6,000.00) PESOS AS DISABILITY BENEFITS;

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2. TO REIMBURSE TO PETITIONER THE MEDICAL AND HOSPITAL EXPENSES OF THE LATE CLAIMANT, DULY SUPPORTED BY RECEIPTS;

3. TO PAY COUNSEL OF PETITIONER ATTORNEY'S FEES EQUIVALENT TO 10% OF THE RECOVERABLE AMOUNT; AND

4. TO PAY ADMINISTRATIVE FEES.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43080. January 31, 1979]

DIONISIA VDA. DE LOS SANTOS, for herself and in behalf of her minor children, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and SAN MIGUEL CORPORATION,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION COMMISSION; MUST PASS THE ISSUE OF WHETHER OR NOT THE FINDING OF NON-CONTROVERSION IS FACTUALLY AND/OR LEGALLY SUPPORTED.** — In proceeding to reverse the Award of the Acting Referee, without passing upon the decisive issue of whether or not the finding of non-controversion is factually and/or legally supported, the respondent Commission gravely abused its discretion. With the Acting Referee's finding of non-controversion undisturbed, respondent Commission was without jurisdiction to look into the substantial merits of the claim, especially its compensability.