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FIRST DIVISION

[G.R. No. L-43555. February 28, 1979]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner,* *vs.* **WORKMEN'S COMPENSATION COMMISSION and EDMUNDO BACULI,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION COMMISSION; REASSIGNMENT OF CASES; EFFECT.** — While the Supreme Court maintains that in order to insure judicial stability, the independence of the proceedings or judgment of a court of competent jurisdiction shall not be interfered with by other courts of concurrent jurisdiction, this rule need not necessarily be determinative of the propriety of the proceedings in a compensation case. The Workmen's Compensation Commission is but an administrative agency vested with quasi-judicial function whose duly designated referees perform their duties under the direction and supervision of the regional administrator or chief referee who may reassign the hearing of a claim to another referee. Hence, where a compensation case has been acted upon by a referee assigned to hear the case, and on motion for reconsideration the Chief Referee reassigned the case to another referee who reversed the decision of the first referee, the intervention of the second referee did not in reality constitute an undue interference, but on the contrary, it was a constructive step to satisfy the demands of due process.

2. **ID.; ID.; ID.; FORMAL ORDER NOT NECESSARY.** — A formal order of reassignment is not mandatory it being sufficient that the Acting Chief Referee made known the reassignment of the case to another referee. Thus, the handwritten note of the Acting Chief Referee appearing on the left hand corner of a motion to lift the order of dismissal, reassigning the case to another referee is sufficient and valid to vest the latter officer the proper authority to hear and determine the claim for there

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is nothing in the Workmen's Compensation Act requiring such authorization to be issued in a formal order, the authority of the superior officer not having been questioned and the act was done in the regular performance of his duty. Under Section 48 of the Act, the hearing, investigation and determination of any question or controversy in workmen's compensation cases shall be conducted without regard to technicalities, legal forms and technical rules on evidence and strict procedural rules should not be resorted to in order to defeat or suppress the substantial rights of the litigants.

3. **ID.; ID.; PRESUMPTION OF COMPENSABILITY; APPICATION.** — Once an illness, subject of a compensation claim is shown to have supervened in the course of employment, there arises in favor of the claimant the rebuttable presumption that the said illness either arose out of or at least was aggravated by the nature of claimant's employment; and that consequently, the burden to show by substantial evidence the contrary lies with the employer. The ultimate result of this principle is that the presumption rebuttable at its inception becomes conclusive upon the failure of the employer to destroy the same. Rheumatic arthritis although not characteristically occupational, is considered a disabling and compensable ailment.

4. **ID.; ID.; PHYSICAL DISABILITY; EFFECT OF FILING CERTIFICATE OF CANDIDACY.** — Mere filing of a certificate of candidacy is not the substantive kind of evidence acceptable to overthrow the state of physical disability. It only provided ground for the employer to surmise that a person entering the political arena, would have to engage in the usual hectic campaigning for votes, an activity certainly not fitted for a disabled man. The weakness of the conjecture lies on the singular emphasis on physical disability without regard to the equally important and concurring factor of loss or diminution of earning capacity. Aside from the filing of the certificate of candidacy, there is no other proof to ascertain that respondent thereafter actually engaged in political activities. In truth, respondent was not even elected.

5. **ID.; ID.; ID.; LAW DOES NOT REQUIRE TOTAL DISABILITY AS BASIS OF COMPENSABILITY.** — It is not impossible nor improbable for an afflicted man to engage in activities to keep

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with the normal and basic functions of life, including, perhaps, a modest or limited effort to earn a living. To deny him these would be a denial of life itself. The law does not require total state of incapacity alone as basis of compensability. It suffices that a person fit in some respect as the claimant herein but suffers a degree of disability resulting in the loss or diminution of an individual's earning capacity he would still be within the benevolent coverage of he Workmen's Compensation Act. Disability as a basis for compensation, is the combination of partial or total physical incapacity and of inability to work, or inability to work with the same case and competency as before the injury, or the loss, total or partial, of earning power from the injury.

6. **ID.; ID.; CLAIM FOR COMPENSATION; EFFECT OF FAILURE TO CONTROVERT.** — By mandate of Section 45 of the Workmen's Compensation Act requiring the employer to controvert either on or before the fourteenth day of disability or within ten days after he has acquired knowledge of the alleged accident, petitioner's failure to controvert the claim on time in effect constitutes a waiver of all non-jurisdictional defenses.

APPEARANCES OF COUNSEL

Manuel M. Lazaro, Felipe S. Aldana & Antonio Brillantes for petitioner.

Ernesto H. Cruz & Emilia E. Andres for respondent WCC.

Juan Baligad for private respondent.

D E C I S I O N

GUERRERO, *J.*:

This is a petition for review on *certiorari* of the decision of the Workmen's Compensation Commission affirming with modification the referee's award for disability under the Workmen's Compensation Act, as amended.

Respondent claimant Edmundo Baculi was employed by petitioner Metropolitan Waterworks and Sewerage System on September 17, 1953 with a starting position of Leave Clerk.

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Thereafter, claimant was successively promoted as Clerk Computer, Legal Researcher, Trial Attorney I, Trial Attorney II, Trial Attorney III and concurrently Private Secretary to the General Manager, and finally as Special Assistant. His last salary was ₱12,044.00 *per annum*. As Trial Attorney, he appeared as counsel for the petitioner in many cases litigated in court, and in many occasions, he had to wade across the streets during floods. As clearly as 1953, he had been afflicted with "Rheumatic Arthritis" or "Gouty Arthritis" characterized by the swelling of the joints resulting in pains to his lower extremeties which had caused temporary incapacity from work during intermittent attacks. Claimant was treated by Dr. Felix Monroy, Chief of the Medical Services of Metropolitan Waterworks and Sewerage System, upon whose suggestion petitioner was hospitalized several times. His medical expenses were paid for by petitioner. The findings of Dr. Monroy were reflected in his Physician's Report and medical certificate.

Since 1953, Baculi's ailment had not improved until he began to limp, as a consequence of which he retired from the service on September 21, 1971, availing himself of the benefits provided for under R.A. 6234 reorganizing the National Waterworks and Sewerage Authority. The Physician's Report stated however that Baculi's retirement was due to illness. Following the day of his retirement, or on September 22, 1971, Baculi filed his certificate of candidacy for the position of councilor of Quezon City.

On December 21, 1971, respondent filed a Notice of Injury or Sickness and Claim for Compensation for disability due to Gouty Arthritis contracted during employment (Records, p. 299). The claim was controverted thru petitioner's Employer's Report of Accident or Sickness dated April 7, 1972 (Records, p. 296). On October 5, 1973, respondent filed a motion for *ex-parte* hearing of the claim on the ground of employer's failure to file notice of controversion on time. Petitioner opposed the motion but Acting Referee Tomas G. Montesines issued an order on November 26, 1973 denying the motion for *ex-parte* hearing and proceeded to schedule the hearing of the claim (Records, p. 270).

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On April 3, 1974, Acting Referee Montesines issued a decision dismissing the claim on the ground that the illness of claimant although proven to have supervened during the time of his employment, had not been shown to have incapacitated him from work as evidenced by his filing of his candidacy for councilor right after his retirement; and moreover, that at the time the claim was filed, there was no more employer-employee relationship.

It appears, however, that copy of the decision of Acting Referee Montesines was never served on claimant. The latter learned of the dismissal only through verbal inquiry. Hence, on May 15, 1975, claimant filed a motion to lift the order of dismissal believing that said order was merely interlocutory. The case was re-assigned to Acting Referee Estratronico Añano who gave due course to the aforesaid motion. The motion was heard at which petitioner-employer was represented by Atty. Antonio M. Brillantes of the Office of the Government Corporate Counsel, who likewise manifested that he has not received a copy of the decision. During the hearing, claimant maintained that the decision of April 3, 1974 is not in order as there was no formal reception of evidence adduced by the parties. On August 15, 1975, Acting Referee Añano issued an order setting aside the decision dismissing the claim and set anew the hearing of the case in order that the basic issues in connection with the claim can be properly ventilated (Annex "H", Records, p. 60).

The claim was heard anew, during which petitioner's counsel lengthily cross-examined all the witnesses for the claimant. On September 16, 1975, while claimant was offering his evidence, petitioner filed a Motion for Reconsideration contesting the authority of Acting Referee Añano in issuing the order of August 15, 1975, arguing to the effect that the decision of a referee can be set aside only by a superior officer, if not by the deciding referee himself, hence, it is only Acting Referee Montesines who can hear the motion to lift the order of dismissal (Annex "I", Records, p. 64). On October 24, 1975, Acting Referee Añano denied the motion for reconsideration after stressing that authority was vested in him when the case was re-assigned to him for further proceedings (Annex "L", Records, p. 100).

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After considering the evidence, Acting Referee Añano promulgated his decision on November 9, 1975 awarding to claimant disability compensation, stating as reasons that there was ample evidence to sustain the compensability of claimant's illness which petitioner-employer failed to overcome by substantial evidence. It was also ruled that claimant's filing of his certificate of candidacy had nothing to do with his cessation from work and that petitioner failed to controvert the claim in due time in spite of its knowledge of claimant's ailment for which claimant had taken leave of absence. The claimant was therefore awarded the following benefits:

"Under Section 14 of the Act, claimant shall be entitled to disability compensation benefits equivalent to 60% of his average weekly wage which was ₱240.95 (₱1,044.13 x 12 divided by 52 weeks). Sixty (60%) percent of ₱240.95 is ₱144.57 and for 208 weeks of temporary disability from September 22, 1971 to September 30, 1975 claimant shall be entitled to the sum of ₱31,070.56 but this amount is reduced to ₱6,000.00, the maximum fixed by the Act;

Under Section 13 of the Act, he shall be entitled to such medical, hospital services, supplies and appliances as the nature of his illness and extent of his disability shall so require.

Atty. Juan Baligad claimant's counsel, shall be entitled to attorney's fees of ₱300.00 pursuant to Section 31 of the Act.

WHEREFORE, premises considered, judgment is rendered in favor of the claimant and ordering the Metropolitan Waterworks and Sewerage System;

1. To pay claimant, Atty. Edmundo A. Baculi, the sum of SIX THOUSAND (₱6,000.00) PESOS, as disability compensation benefits under Section 14 of the Act;

2. To provide claimant with such medical, surgical, hospital services, supplies and appliances as the nature of his illness and extent of his disability shall so requires;

3. To pay Atty. Juan Baligad the sum of ₱300.00 as attorney's fees; and

4. To pay this Office the sum of ₱61.00 as decision fees pursuant to Section 55 of the Act."

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Petitioner sought a reconsideration of the above decision. Not disposed to change his decision, Referee Añano elevated the records of the case to the Commission for review. On March 30, 1976, the Commission rendered its decision confirming the compensability of the claim, thus:

"On the first instance, respondent advanced the theory that claimant did not suffer any disabling ailment during his employment with respondent and more so, at the time of his retirement on September 21, 1971. In this connection, it is pointed out that claimant had been performing his work continuously, thus earning one promotion to the other. Furthermore, it was argued that claimant could not have possibly contracted his ailment within two months after his employment, meaning, he was already suffering from the said ailment when he entered the service of respondent.

"We find no merit in respondent's contentions, hence, we can not subscribe to its theory. Definitely, this is a case of aggravation. The coverage of the Workmen's Compensation Act, is not limited to illnesses directly caused or contracted by employment, but also extends to cases where the ailment is aggravated by or the result of such employment. The fact that claimant was already suffering from a pre-existing ailment at the time of employment would not relieve respondent from the liability to pay compensation mandated by law where it is shown that the said ailment was aggravated by such employment, such as in this case. It is noteworthy in this regard that when claimant entered the employ of respondent, he was not laboring under any disability otherwise, he would have been accepted for employment in the first pace. He might have been sick already, yes, but the same was not yet pronounced. It may be stated also in passing that when an employer hires an employee, he takes him with all the infirmities that the said employee is suffering and that these infirmities should not be aggravated in the course of employment, otherwise, liability to pay compensation under the law, attaches.

"The other point raised by respondent, however, is well-taken. It appearing that claimant did not suffer from any temporary total disability, he is not entitled to compensation under Section 14 of the Act. His is (not) precluded, however, from receiving the benefits for permanent partial disability equivalent to a 30% non-scheduled disability rating as evaluated by the Assistant Chief Compensation Rating Medical Officer. In this respect, therefore, the decision appealed from, should be modified.

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"Accordingly, claimant is entitled to compensation equivalent to fifty (50%) per cent of his average weekly wage of ₱239.31 (₱12,444.00 ÷ 52) which is ₱119.65 and for 84.4 weeks (30% of 208 weeks) equals ₱9,835.36 which should be reduced to ₱6,000.00, the maximum compensation authorized by law. Considering that this is an appealed case, the award for attorney's fees and administrative cost should also be increased to conform with law.

"WHEREFORE, subject to the modification hereinabove indicated, the decision under review should be, as it is hereby, AFFIRMED. Respondent Metropolitan Waterworks and Sewerage System ordered:

1. To pay the claimant, thru this Commission, the amount of SIX THOUSAND (₱6,000.00) PESOS as compensation;

2. To pay claimant's counsel, Mr. Juan Baligad, the amount of SIX HUNDRED (₱600.00) PESOS as attorney's fee pursuant to Section 31 of the Act; and

3. To pay the Workmen's Compensation Fund the amount of SIXTY SIX (₱66.00) PESOS as administrative cost including the ₱5.00 fee for this review pursuant to Section 55 of the Act."

Petitioner now seeks a review of the foregoing judgment on the basis of the following errors, to wit:

I. Respondent Commission erred in not considering that Acting Referee Estratonico S. Añano acted without or in excess of his jurisdiction when he rendered his decision dated November 9, 1975.

II. Respondent Commission erred in holding that claimant Edmundo Baculi is suffering from disabling illness.

Regarding the first assigned error, it is petitioner's principal contention that Acting Referee Estratonico Añano had no authority to take over the case which was originally assigned to Acting Referee Tomas Montesines since the former referee has not been granted formal authority by his superior officer to act on the matter. Petitioner submits that in so entertaining respondent's Motion to Lift the Order of Dismissal, Acting Referee Añano acted in excess or without authority since the said motion should have been under cognizance of Acting Referee Montesines who was in control of the case. It adds further that the hearing

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of the motion and the eventual setting aside of the decision dismissing the claim is improper as petitioner had not been furnished with a copy of the motion. The general premise of the arguments is that all referees in the regional office are co-equal and coordinate, each having concurrent jurisdiction to hear and determine compensation cases without interference from the other.[1]

We hold petitioner's contention untenable. While this Court maintains that in order to insure judicial stability, the independence of the proceedings or judgment of a court of competent jurisdiction shall not be inferred with by other courts of concurrent jurisdiction,[2] this rule need not necessarily be determinative of the propriety of the proceedings in this case in view of the peculiar circumstances obtaining whereby the intervention of Acting Referee, Añano did not in reality constitute and undue interference, but on the contrary, it was a constructive step to satisfy the demands of due process. After all, the Workmen's Compensation Commission is but an administrative agency vested with quasi-judicial function whose duly designated referees perform their duties under the direction and supervision of the regional administrator or chief referee who may reassign the hearing of a claim to another referee.

The records show that while there was no formal order re-assignment, the re-assignment to Referee Añano was noted in the handwritten note of Acting Chief Referee Leonor Cayapas appearing at the left hand corner of respondent's Motion to Lift the Order of Dismissal.[3] Such notation of the Acting Chief Referee reassigning the case to another referee is sufficient and valid to vest the latter officer the proper authority to hear and determine the claim for there is nothing in the Workmen's Compensation Act requiring such authorization to be issued in a formal order, the authority of the superior officer not having been questioned and the act was done in the regular performance of his duty. Under Section 48 of the Act, the hearing, investigation

[1] Petitioner's Memorandum, p. 267.

[2] See *Mas v. Dumara-og*, 12 SCRA 34.

[3] Annex "A", p. 250.

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and determination of any question or controversy in workmen's compensation cases shall all be conducted without regard to technicalities, legal forms and technical rules on evidence and strict procedural rules should not be resorted to in order to defeat or suppress the substantial rights of the litigants.[4] Petitioner's first assigned error is therefore without merit.

The records bear that claimant was actually hospitalized several times. The testimony of Dra. Anita Gonong Alonzo, Chief of Medical Services, MWSS, is to the effect that claimant was hospitalized from January 21 to 27, 1969 (Original records, p. 113). Certificates issued by the St. Luke's Hospital show that claimant was confined on January 21, 1969 under the service of Dr. Homobono Calleja and was discharged on January 27, 1969; was also confined in the same hospital on May 14, 1966 under the service of Dr. Emilia Cabigas and discharged on May 17, 1966; and again confined on said hospital on June 21, 1969 under the case of Dr. Emmanuel Gatchalian and discharged on June 24, 1969 (Original records, pp. 215-217). Further, in a certificate dated September 15, 1975, claimant is shown to have been confined at the Santo Tomas University Hospital from December 17 to 18, 1970 and that he paid hospitalization expenses in the amount ₱207.10. The medical record of claimant also shows that he had been an out-patient of the MWSS clinic since 1953 when he was diagnosed to be suffering from Rheumatoid Arthritis. Thereafter, he consulted the clinic several times, particularly on February 20, 1959, September 16, 1959, February 28, 1961, November 1, 1961, April 12, 1961, June 13, 1961, August 26, 1963, January 27, 1964, and February, 1971 (*supra*, pp. 114, 225-256). Dra. Alonzo also testified that she personally treated the claimant for the said ailment which was characterized by the occurrence of pains in the lower extremeties aggravated by walking.[5] The consistent ruling of this Court is that "once an illness, subject of a compensation claim is shown to have supervened in the course of employment, there arises in favor of the claimant the rebuttable presumption that the

[4] *Earnshaw Dock & Honolulu Iron Works v. Sortijas*, 66 SCRA 566, 572 (1975).

[5] Annex "M", pp. 106-107.

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said illness either arose out of or at least was aggravated by the nature of claimant's employment; and that consequently, the burden to show by substantial evidence the contrary lies with the employer. The ultimate result of this principle is that the presumption rebuttable at its inception becomes conclusive upon the failure of the employer to destroy the same.[6] In a number of cases, this Court had considered that rheumatic arthritis although not characteristically occupational, is a disabling and compensable ailment.[7]

We are not convinced that the mere filing of a certificate of candidacy is the substantive kind of evidence acceptable to overthrow the state of physical disability. It only provided ground for petitioner to surmise that like any person entering the political arena, respondent would have to engage in the usual hectic campaigning for votes, an activity certainly not fitted for a disabled man. The weakness of the conjecture, We may add, lies on the singular emphasis on physical disability without regard to the equally important and concurring factor of loss or diminution of earning capacity. Aside from the filing of the certificate of candidacy, there is no other proof to ascertain that respondent thereafter actually engaged in political activities. In truth, respondent was not even elected.

It is not impossible nor improbable for an afflicted man, as herein respondent, to engage in activities to keep with the normal and basic functions of life, including, perhaps, a modest or limited effort to earn a living. To deny him these would be a denial of

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[6] *Paraiso v. Herminia Castelo-Sotto; et al.*, L-42896, September 30, 1978. See Also: *Santos v. WCC*, 75 SCRA 365; *Caling v. WCC*, 77 SCRA 309; *Evangelista v. WCC*, 77 SCRA 497; *Romero v. WCC*, 77 SCRA 482; *Vda. de Flores v. WCC*, 78 SCRA 17; *Espino v. WCC*, 78 SCRA 189; *Dimaano v. WCC*, 78 SCRA 506; *De la Cruz v. WCC*, 79 SCRA 96; *Bautista v. WCC*, 80 SCRA 313; *Moraza v. WCC*, 81 SCRA 306, etc.

[7] *Dimaano v. WCC*, fn 10, *supra*; *Pros v. WCC*, 73 SCRA 92; *Caparas v. WCC*, 73 SCRA 221; *Vda. de Pailagao v. WCC*, L-43650, June 30, 1978; *Abordo v. WCC*, L-43073, July 31, 1978; *Lopez v. WCC*, L-43036, September 30, 1978; *Bachiller, Sr. vs. Republic of the Philippines*, L-43420, October 30, 1978.

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life itself. The law does not require total state of incapacity alone as basis of compensability. It suffices that a person fit in some respect as the claimant herein but suffers a degree of disability resulting in the loss or diminution of an individual's earning capacity he would still be within the benevolent coverage of the Workmen's Compensation Act. The citation quoted in the case of *Gonzales v. Workmen's Compensation Commission*,[8] penned by Justice Makasiar is authoritative, illustrating the proper balance between the factors of physical disability and loss or diminution of earning capacity as elements of a compensable disability, thus:

"Disability, as a basis for compensation, is the combination of partial or total physical incapacity and of inability to work, or inability to work with the same case and competency as before the injury, or the loss, total or partial of earning power from the injury (*Corpus Juris*, Section 353, p. 813).

"Disability is used either in the medical or physical sense, as evidenced by obvious loss of members or by medical testimony that the claimant simply cannot make the necessary muscular movements and exertions; it is also used to mean *de facto* inability to earn wages, as evidenced by proof that claimant has not in fact earned anything.

"These medical and wage-loss aspects of disability may be more clearly illustrated as follows: A claimant may by in a medical sense, utterly shattered and ruined, but may be sheer determination and ingenuity contrive to make a living for himself; conversely, a claimant may be able to work, in both his and doctor's opinion, but awareness of his injury may lead employers to refuge his employment.

"The problem of the administrators of the Act is the proper balancing of these medical and wage-loss factors. An absolute insistence on medical disability in the abstract would produce a denial of compensation in the latter case, although the wage-loss is as real and as directly traceable to the injury as in any other instances. At the other extreme, an insistence on wage-loss as the test would deprive the claimant in the former illustration of an award, thus not only penalizing his laudable efforts to make the best of his misfortune but also fostering the absurdity of pronouncing a man non-disabled

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[8] 81 SCRA 703 (1978); See also: *Romero v. WCC*, 77 SCRA 482.

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in spite of the unanimous contrary evidence of medical experts and of common observation. (Larson, p. 3 Vol. III)." (The Workmen's Compensation Act by Inton and Morabe, p. 709).

Finally, the records do not sustain the contention that the claim was seasonably controverted. The notice of claim dated December 3, 1971 was filed with the Regional Office on December 12, 1971. The only reliable record of controversion is the Employer's Report of Accident or Sickness dated April 7, 1972 which was filed only on April 14, 1972.[9] Petitioner claims to have filed a similar employer's report earlier on February 24, 1972, but the records do not show that this report was actually filed and received by the Commission on said date. Hence, by mandate of Section 45 of the Act requiring the employer to controvert either on or before the fourteenth day of disability or within ten days after he has acquired knowledge of the alleged accident, petitioner's failure to controvert the claim on time in effect constitutes a waiver of all non-jurisdictional defenses.[10]

WHEREFORE, the judgment of the respondent Commission is hereby affirmed, ordering petitioner Metropolitan Waterworks and Sewerage System to pay:

(1) Claimant, Edmundo Baculi, the reduced amount of SIX THOUSAND PESOS (₱6,000.00) as maximum compensation for a non-scheduled permanent partial disability under Section 17 of the Act;

(2) Respondent's counsel, Atty. Juan Baligad, the amount of SIX HUNDRED PESOS (₱600.00) as attorney's fee pursuant to Section 31 of the Act; and

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[9] Original Records, p. 296.

[10] *Despe v. WCC*, 75 SCRA 350; *Bihag v. WCC*, 75 SCRA 357; *Bael v. WCC*, 75 SCRA 181; *Justo v. WCC*, 75 SCRA 220; *Delgado Brothers, Inc. v. WCC*, 75 SCRA 343; *Vda. de Galang v. WCC*, 76 SCRA 153; *Buenaventura v. WCC*, 76 SCRA 485; *Romero v. WCC*, 77 SCRA 482; *Evangelista v. WCC*, 76 SCRA 497; *Vda. de Flores v. WCC*, 78 SCRA 17; *Vda. de Yohanon v. Balena and WCC*, 78 SCRA 348; *Cuyno, Jr. v. WCC*, 78 SCRA 100; *National Housing Corporation v. WCC*, 79 SCRA 281; *Galindez v. WCC*, 79 SCRA 331; *Ilingan v. WCC*, 79 SCRA 345; *Lopez v. WCC*, 79 SCRA 551; *Roma v. WCC*, 80 SCRA 170; *Mulingtapang v. WCC*, 80 SCRA 610.

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(3) To the Workmen's Compensation Fund, the administrative fee pursuant to Section 55 of the Act.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. L-43748. February 28, 1979]

HARTFORD FIRE INSURANCE CO., *plaintiff-appellee*, *vs.* **E. RAZON, INC.**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW; DEFINED;.** — Where the action is submitted upon agreed stipulations of fact and the issue is the correctness of the conclusion drawn therefrom, the question is one of law.

2. **ID.; EVIDENCE; BURDEN OF PROOF; ARRASTRE OPERATOR NOT LIABLE FOR DAMAGE TO GOODS OCCURRING AFTER GOODS HAD LEFT ITS CUSTODY.** — Where the Bad Order Certificate requested by the arrastre operator and prepared before the release of goods to the consignee's broker, signed by the defendant's inspector and the consignee's representative, showed that the drums of brake fluid in question were "in apparent good order, contents complete except each dented at rims," while the marine survey made at the consignee's warehouse showed "that the contents had leaked as shown by stain marks on various parts of the containers," the burden is upon the plaintiff to prove that the cracks on the three drums and the consequent leakage of their contents could be traced to dents on the rims of the drums. In the absence of proof to the contrary, that the spillage or leakage occurred after the shipment in question left the custody of the defendant. The