

**SEVEN-UP BOTTLING COMPANY OF THE PHILIPPINES, PETITIONER,
VS. FIDELA LARRIBA VDA. DE TERO, ETC., ET AL., RESPONDENTS.***G.R. No. L-31995. February 12, 1973*

Ponente: CONCEPCION, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d1c7f304eb74/>**CONCEPCION, C.J.:**

Appeal by certiorari from a decision of the Workmen's Compensation Commission.

Private respondent Fidela Larriba Vda. de Tero is the widow of Agapito Tero, who was cashier, warehouseman and acting officer-in-charge of the warehouse and office of herein petitioner, Seven-Up Bottling Company of the Philippines, in Cagayan de Oro City.

It appears that in the evening of May 2, 1965, Tero was at the Inday Harborside Bar, near the pier of Macabalan, Cagayan de Oro, together with Numeriano Uba and Ernesto Amora, both Seven-Up employees. After a while, one Severino Streegan, an employee of the Coca-Cola Bottling Company, came, and, noticing that Maria Duterte, a waitress in the bar, was drinking a bottle of 7-Up, approached her and inquired why she did not take Coca-Cola instead. Agapito intervened, and asked Streegan, "Why do you prevent her if she wishes to drink 7-Up?" An altercation ensued, and as Tero and Streegan were about to come to blows, a policeman came and separated them. While the policeman was holding Tero by the shoulders, Streegan fired at him several times, thereby killing Tero instantaneously and wounding the policeman critically.

Soon after, or on June 25, 1965, Agapito's surviving spouse, Fidela Larriba Vda. de Tero, on her behalf and that of her three minor children, namely, Romeo, Almaflor and Agapito, Jr., filed with Regional Office No. 11 of the Department of Labor, at Cagayan de Oro City, the corresponding notice of injury or sickness and claim for death compensation.

In due course, a hearing officer, Acting Referee Serapion B. Bueno, rendered a decision ordering the petitioner to pay Mrs. Tero one-third of P4,457. 44, and the remaining two-thirds of said amount to her aforementioned minor children, in addition to the sum of P200 as burial expenses and P222.87 as attorney's fees, as well as P46 as WCC fees, pursuant to Section 55 of the Workmen's Compensation Act. On petitioner's motion for reconsideration, the then WCC chair-man, Hon. Nieves Baens del Rosario, rendered a decision, dated July 12, 1967, affirming that of the hearing officer, except as to the amount of the award, which was reduced to P4,000 for the widow and her three children, in addition to P200 as burial expenses, P420 as attorney's fees and P48 as WCC fees. This decision was affirmed by the Commission en banc, which, however, increased the award to the widow and her minor children to P6,000, plus P200 as burial expenses, P620 as attorney's fees, P68 as decision fee, and P5 as costs for the review, pursuant to Section 55 of the Workmen's Compensation Act.

Hence, this appeal by certiorari taken by the petitioner, upon the ground that the WCC had erred (1) in holding that the death of Agapito Tero was service-connected and that the incident resulting in his death arose out of and in the course of employment; and (2) in not holding that its right to controvert private respondents' claim had been impliedly reinstated.

In connection with the first question, it should be noted that the deceased was petitioner's highest ranking employee in Cagayan de Oro. As above stated, he was cashier, warehouseman and officer-in-charge of petitioner's business in Cagayan de Oro. As such, his duties included, but were not limited to, checking the stock in the warehouse and the number of bottles, full or empty, loaded in the company trucks, as the same were received or sent out for sale or to be returned to petitioner's branch office in Cebu City; to receive sales collections and deposit the same in the bank; to pay employees' salaries; and to prepare load and record sheets to ascertain accountability. His duties were such that oftentimes he had to work on Sundays and legal holidays. Thus, on May 2, 1965, which was Sunday, at 7:00 a.m., a truck-load of 7-Up products was brought out of petitioner's premises for the sale of said goods in the town of Initao. Before reaching its destination, the truck, however, developed engine trouble, for which reason it was brought back to petitioner's warehouse for repairs. Agapito Tero was working on his reports when the truck arrived. After checking its cargo, he bought the spare parts needed for its repair. He, likewise, paid Numeriano Uba and Ernesto Amora, the truck driver, their respective salaries.

There is, also, evidence to the effect that that evening, he went to the Inday Harborside Bar to look for Teodulo Beja, a private contractor, whose trucks were in charge of hauling 7-Up products. Located near said bar was Beja's house, where he was not on that occasion, he having gone then to another house he had acquired shortly before. It appears that on Mondays, Wednesdays, Saturdays and Sundays, Beja used to haul from the pier 7-Up products brought by vessels from the 7-Up branch in Cebu City.

In the light of the foregoing, and considering that the incident that resulted in the death of Agapito Tero took place in defense of petitioner's products against a competing product, the hearing officer, the WCC chairman and the Commission held, in effect, that his death was service-connected and that it arose out of and in the course of his employment.

At any rate, it appears that private respondents' claim must be considered uncontroverted, for failure of petitioner herein to file the employer's report of accident or sickness until July 27, 1965, or two months and 24 days after the occurrence, despite the fact that it had knowledge thereof on the very day it took place. In the language of this Court,[1] "(t)he absence of controversion is fatal to any de-fense" - except that of lack of jurisdiction - "that petitioner could interpose." The fact that petitioner was allowed to introduce evidence did not and could not imply a reinstatement of its right of controversion. As We held in *Magalona v. WCC*[2]:

"x x x It is NASSCO's position that granting that there was no controversion, the acceptance by the hearing officer of NASSCO's evidence was tantamount to reinstatement of its right to controvert, citing Section 4 of Rule 14 of the Rules of the Workmen's Compensation Commission. However, to reinstate one's right to controvert, the section requires a petition under oath by the employer, specifying the reason for its failure to controvert. In the case at bar, there was no such petition. Mere acceptance by the hearing officer of the evidence presented did not mean the reinstatement of the right to controvert. The law itself provides that only the Commissioner may reinstate the right to controvert (See Sec. 45, par. 2, Workmen's Compensation Act; *Agustin v. WCC*, L-19957, Sept. 29, 1964). By failing to present a written controversion of the claim, the employer, NASSCO, renounced its right to challenge the claim. And this means that all non-jurisdictional defenses, such as non-compensability of the illness, prescription, etc., are barred."

In the case at bar, petitioner herein had, by operation of law, renounced its right to controvert the claim of private respondents herein on account of its failure to file the requisite notice of controversion within the period prescribed in Section 45 of Act No. 3428. Petitioner did not even move to reinstate its right to controvert.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against petitioner herein.

IT IS SO ORDERED.

Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] National Development Company v. Galamgam, G.R. No. L-29634, April 29, 1971.

[2] G.R. No. L-21849, December 11, 1967, citing National Development Co. v. WCC, G.R. No. L-20504, March 31, 1965, and Industrial Textile Manufacturing Co. of the Phil. v. Florzo & WCC, G.R. No. L-21969, August 31, 1966. Underscoring ours.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.