

ABS-CBN BROADCASTING CORPORATION, PETITIONER, VS. MARLYN NAZARENO, MERLOU GERZON, JENNIFER DEIPARINE, AND JOSEPHINE LERASAN, RESPONDENTS.*G.R. NO. 164156. September 26, 2006*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76582 and the Resolution denying the motion for reconsideration thereof. The CA affirmed the Decision[2] and Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000762-2001 (RAB Case No. VII-10-1661-2001) which likewise affirmed, with modification, the decision of the Labor Arbiter declaring the respondents Marlyn Nazareno, Merlou Gerzon, Jennifer Deiparine and Josephine Lerasan as regular employees.

The Antecedents

Petitioner ABS-CBN Broadcasting Corporation (ABS-CBN) is engaged in the broadcasting business and owns a network of television and radio stations, whose operations revolve around the broadcast, transmission, and relay of telecommunication signals. It sells and deals in or otherwise utilizes the airtime it generates from its radio and television operations. It has a franchise as a broadcasting company, and was likewise issued a license and authority to operate by the National Telecommunications Commission.

Petitioner employed respondents Nazareno, Gerzon, Deiparine, and Lerasan as production assistants (PAs) on different dates. They were assigned at the news and public affairs, for various radio programs in the Cebu Broadcasting Station, with a monthly compensation of P4,000. They were issued ABS-CBN employees' identification cards and were required to work for a minimum of eight hours a day, including Sundays and holidays. They were made to perform the following tasks and duties:

- a) Prepare, arrange airing of commercial broadcasting based on the daily operations log and digicart of respondent ABS-CBN;
- b) Coordinate, arrange personalities for air interviews;
- c) Coordinate, prepare schedule of reporters for scheduled news reporting and lead-in or incoming reports;
- d) Facilitate, prepare and arrange airtime schedule for public service announcement and complaints;
- e) Assist, anchor program interview, etc; and
- f) Record, log clerical reports, man based control radio.[4]

Their respective working hours were as follows:

Name	Time	No. of Hours
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1. Marlene Nazareno 4:30 A.M.-8:00 A.M. 7 ½
8:00 A.M.-12:00 noon
2. Jennifer Deiparine 4:30 A.M.-12:00M.N. (sic) 7 ½
3. Joy Sanchez 1:00 P.M.-10:00 P.M.(Sunday) 9 hrs.
9:00 A.M.-6:00 P.M. (WF) 9 hrs.
4. Merlou Gerzon 9:00 A.M.-6:00 P.M. 9 hrs.[5]

The PAs were under the control and supervision of Assistant Station Manager Dante J. Luzon, and News Manager Leo Lastimosa.

On December 19, 1996, petitioner and the ABS-CBN Rank-and-File Employees executed a Collective Bargaining Agreement (CBA) to be effective during the period from December 11, 1996 to December 11, 1999. However, since petitioner refused to recognize PAs as part of the bargaining unit, respondents were not included to the CBA.[6]

On July 20, 2000, petitioner, through Dante Luzon, issued a Memorandum informing the PAs that effective August 1, 2000, they would be assigned to non-drama programs, and that the DYAB studio operations would be handled by the studio technician. Thus, their revised schedule and other assignments would be as follows:

Monday - Saturday

4:30 A.M. - 8:00 A.M. - Marlene Nazareno.

Miss Nazareno will then be assigned at the Research Dept.

From 8:00 A.M. to 12:00

4:30 P.M. - 12:00 MN - Jennifer Deiparine

Sunday

5:00 A.M. - 1:00 P.M. - Jennifer Deiparine

1:00 P.M. - 10:00 P.M. - Joy Sanchez

Respondent Gerzon was assigned as the full-time PA of the TV News Department reporting directly to Leo Lastimosa.

On October 12, 2000, respondents filed a Complaint for Recognition of Regular Employment Status, Underpayment of Overtime Pay, Holiday Pay, Premium Pay, Service Incentive Pay, Sick Leave Pay, and 13th Month Pay with Damages against the petitioner before the NLRC. The Labor Arbiter directed the parties to submit their respective position papers. Upon respondents' failure to file their position papers within the reglementary period, Labor Arbiter Jose G. Gutierrez issued an Order dated

April 30, 2001, dismissing the complaint without prejudice for lack of interest to pursue the case. Respondents received a copy of the Order on May 16, 2001.[7] Instead of re-filing their complaint with the NLRC within 10 days from May 16, 2001, they filed, on June 11, 2001, an Earnest Motion to Refile Complaint with Motion to Admit Position Paper and Motion to Submit Case For Resolution.[8] The Labor Arbiter granted this motion in an Order dated June 18, 2001, and forthwith admitted the position paper of the complainants. Respondents made the following allegations:

1. Complainants were engaged by respondent ABS-CBN as regular and full-time employees for a continuous period of more than five (5) years with a monthly salary rate of Four Thousand (P4,000.00) pesos beginning

1995 up until the filing of this complaint on November 20, 2000.

Machine copies of complainants' ABS-CBN Employee's Identification Card and salary vouchers are hereto attached as follows, thus:

I. Jennifer Deiparine:

Exhibit "A" - ABS-CBN Employee's Identification Card

Exhibit "B", - ABS-CBN Salary Voucher from Nov.

Exhibit "B-1" & 1999 to July 2000 at P4,000.00

Exhibit "B-2"

Date employed: September 15, 1995

Length of service: 5 years & nine (9) months

II. Merlou Gerzon - ABS-CBN Employee's Identification Card

Exhibit "C"

Exhibit "D"

Exhibit "D-1" &

Exhibit "D-2" - ABS-CBN Salary Voucher from March

1999 to January 2001 at P4,000.00

Date employed: September 1, 1995

Length of service: 5 years & 10 months

III. Marlene Nazareno

Exhibit "E" - ABS-CBN Employee's Identification Card

Exhibit "E" - ABS-CBN Salary Voucher from Nov.

Exhibit "E-1" & 1999 to December 2000

Exhibit :E-2"

Date employed: April 17, 1996

Length of service: 5 years and one (1) month

IV. Joy Sanchez Lerasan

Exhibit "F" - ABS-CBN Employee's Identification Card

Exhibit "F-1" - ABS-CBN Salary Voucher from Aug.

Exhibit "F-2" & 2000 to Jan. 2001

Exhibit "F-3"

Exhibit "F-4" - Certification dated July 6, 2000

Acknowledging regular status of

Complainant Joy Sanchez Lerasan

Signed by ABS-CBN Administrative

Officer May Kima Hife

Date employed: April 15, 1998

Length of service: 3 yrs. and one (1) month[9]

Respondents insisted that they belonged to a "work pool" from which petitioner chose persons to be given specific assignments at its discretion, and were thus under its direct supervision and control regardless of nomenclature. They prayed that judgment be rendered in their favor, thus:

WHEREFORE, premises considered, this Honorable Arbiter is most respectfully prayed, to issue an order compelling defendants to pay complainants the following:

- One Hundred Thousand Pesos (P100,000.00) each and by way of moral damages;
- Minimum wage differential;
- Thirteenth month pay differential;
- Unpaid service incentive leave benefits;
- Sick leave;
- Holiday pay;
- Premium pay;
- Overtime pay;
- Night shift differential.

Complainants further pray of this Arbiter to declare them regular and permanent employees of respondent ABS-CBN as a condition precedent for their admission into the existing union and collective bargaining unit of respondent company where they may as such acquire or otherwise perform their obligations thereto or enjoy the benefits due therefrom.

Complainants pray for such other reliefs as are just and equitable under the premises.[10]

For its part, petitioner alleged in its position paper that the respondents were PAs who basically assist in the conduct of a particular program ran by an anchor or talent. Among their duties include monitoring and receiving incoming calls from listeners and field reporters and calls of news sources; generally, they perform leg work for the anchors during a program or a particular production. They are considered in the industry as "program employees" in that, as distinguished from regular or station employees, they are basically engaged by the station for a particular or specific program broadcasted by the radio station. Petitioner asserted that as PAs, the complainants were issued talent information sheets which are updated from time to time, and are thus made the basis to determine the programs to which they shall later be called on to assist. The program assignments of complainants were as follows:

a. Complainant Nazareno assists in the programs:

- 1) Nagbagang Balita (early morning edition)
- 2) Infor Hayupan
- 3) Arangkada (morning edition)
- 4) Nagbagang Balita (mid-day edition)

b. Complainant Deiparine assists in the programs:

- 1) Unzanith
- 2) Serbisyo de Arevalo
- 3) Arangkada (evening edition)
- 4) Balitang K (local version)
- 5) Abante Subu
- 6) Pangutana Lang

c. Complainant Gerzon assists in the program:

- 1) On Mondays and Tuesdays:
 - (a) Unzanith
 - (b) Serbisyo de Arevalo

- (c) Arangkada (evening edition)
- (d) Balitang K (local version)
- (e) Abante Sugbu
- (f) Pangutana Lang
- 2) On Thursdays
- Nagbagang Balita
- 3) On Saturdays
- (a) Nagbagang Balita
- (b) Info Hayupan
- (c) Arangkada (morning edition)
- (d) Nagbagang Balita (mid-day edition)
- 4) On Sundays:
- (a) Siesta Serenata
- (b) Sunday Chismisan
- (c) Timbangan sa Hustisya
- (d) Sayri ang Lungsod
- (e) Haranahan[11]

Petitioner maintained that PAs, reporters, anchors and talents occasionally "sideline" for other programs they produce, such as drama

talents in other productions. As program employees, a PA's engagement is coterminous with the completion of the program, and may be extended/renewed provided that the program is on-going; a PA may also be assigned to new programs upon the cancellation of one program and the commencement of another. As such program employees, their compensation is computed on a program basis, a fixed amount for performance services irrespective of the time consumed. At any rate, petitioner claimed, as the payroll will show, respondents were paid all salaries and benefits due them under the law.[12]

Petitioner also alleged that the Labor Arbiter had no jurisdiction to involve the CBA and interpret the same, especially since respondents were not covered by the bargaining unit.

On July 30, 2001, the Labor Arbiter rendered judgment in favor of the respondents, and declared that they were regular employees of petitioner; as such, they were awarded monetary benefits. The fallo of the decision reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the complainants regular employees of the respondent ABS-CBN Broadcasting Corporation and directing the same respondent to pay complainants as follows:

- I - Merlou A. Gerzon P12,025.00
- II - Marlyn Nazareno 12,025.00
- III - Jennifer Deiparine 12,025.00
- IV - Josephine Sanchez Lerazan 12,025.00

P48,100.00

plus ten (10%) percent Attorney's Fees or a TOTAL aggregate amount of PESOS: FIFTY TWO THOUSAND NINE HUNDRED TEN (P52,910.00).

Respondent Veneranda C. Sy is absolved from any liability.

SO ORDERED.[13]

However, the Labor Arbiter did not award money benefits as provided in the CBA on his belief that he had no jurisdiction to interpret and apply the agreement, as the same was within the jurisdiction of the Voluntary Arbitrator as provided in Article 261 of the Labor Code.

Respondents' counsel received a copy of the decision on August 29, 2001. Respondent Nazareno received her copy on August 27, 2001, while the other respondents received theirs on September 8, 2001. Respondents signed and filed their Appeal Memorandum on September 18, 2001.

For its part, petitioner filed a motion for reconsideration, which the Labor Arbiter denied and considered as an appeal, conformably with Section 5, Rule V, of the NLRC Rules of Procedure. Petitioner forthwith appealed the decision to the NLRC, while respondents filed a partial appeal.

In its appeal, petitioner alleged the following:

- That the Labor Arbiter erred in reviving or re-opening this case which had long been dismissed without prejudice for more than thirty (30) calendar days;
- That the Labor Arbiter erred in depriving the respondent of its Constitutional right to due process of law;
- That the Labor Arbiter erred in denying respondent's Motion for Reconsideration on an interlocutory order on the ground that the same is a prohibited pleading;
- That the Labor Arbiter erred when he ruled that the complainants are regular employees of the respondent;
- That the Labor Arbiter erred when he ruled that the complainants are entitled to 13th month pay, service incentive leave pay and salary differential; and
- That the Labor Arbiter erred when he ruled that complainants are entitled to attorney's fees.[14]

On November 14, 2002, the NLRC rendered judgment modifying the decision of the Labor Arbiter. The fallo of the decision reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Jose G. Gutierrez dated 30 July 2001 is SET ASIDE and VACATED and a new one is entered ORDERING respondent ABS-CBN Broadcasting Corporation, as follows:

1. To pay complainants of their wage differentials and other benefits arising from the CBA as of 30 September 2002 in the aggregate amount of Two Million Five Hundred, Sixty-One Thousand Nine Hundred Forty-Eight Pesos and 22/100 (P2,561,948.22), broken down as follows:

- a. Deiparine, Jennifer - P 716,113.49
- b. Gerzon, Merlou - 716,113.49
- c. Nazareno, Marlyn - 716,113.49
- d. Lerazan, Josephine Sanchez - 413,607.75

Total - P 2,561,948.22

2. To deliver to the complainants Two Hundred Thirty-Three (233) sacks of rice as of 30 September 2002 representing their rice subsidy in the CBA, broken down as follows:

- a. Deiparine, Jennifer - 60 Sacks
- b. Gerzon, Merlou - 60 Sacks

c. Nazareno, Marlyn - 60 Sacks
d. Lerazan, Josephine Sanchez - 53 Sacks

Total 233 Sacks; and

3. To grant to the complainants all the benefits of the CBA after 30 September 2002.

SO ORDERED.[15]

The NLRC declared that the Labor Arbiter acted conformably with the Labor Code when it granted respondents' motion to refile the complaint and admit their position paper. Although respondents were not parties to the CBA between petitioner and the ABS-CBN Rank-and-File Employees Union, the NLRC nevertheless granted and computed respondents' monetary benefits based on the 1999 CBA, which was effective until September 2002. The NLRC also ruled that the Labor Arbiter had jurisdiction over the complaint of respondents because they acted in their individual capacities and not as members of the union. Their claim for monetary benefits was within the context of Article 217(6) of the Labor Code. The validity of respondents' claim does not depend upon the interpretation of the CBA.

The NLRC ruled that respondents were entitled to the benefits under the CBA because they were regular employees who contributed to the profits of petitioner through their labor. The NLRC cited the ruling of this Court in *New Pacific Timber & Supply Company v. National Labor Relations Commission*.^[16]

Petitioner filed a motion for reconsideration, which the NLRC denied.

Petitioner thus filed a petition for certiorari under Rule 65 of the Rules of Court before the CA, raising both procedural and substantive issues, as follows: (a) whether the NLRC acted without jurisdiction in admitting the appeal of respondents; (b) whether the NLRC committed palpable error in scrutinizing the reopening and revival of the complaint of respondents with the Labor Arbiter upon due notice despite the lapse of 10 days from their receipt of the July 30, 2001 Order of the Labor Arbiter; (c) whether respondents were regular employees; (d) whether the NLRC acted without jurisdiction in entertaining and resolving the claim of the respondents under the CBA instead of referring the same to the Voluntary Arbitrators as provided in the CBA; and (e) whether the NLRC acted with grave abuse of discretion when it awarded monetary benefits to respondents under the CBA although they are not members of the appropriate bargaining unit.

On February 10, 2004, the CA rendered judgment dismissing the petition. It held that the perfection of an appeal shall be upon the expiration of the last day to appeal by all parties, should there be several parties to a case. Since respondents received their copies of the decision on September 8, 2001 (except respondent Nazareno who received her copy of the decision on August 27, 2001), they had until September 18, 2001 within which to file their Appeal Memorandum. Moreover, the CA declared that respondents' failure to submit their position paper on time is not a ground to strike out the paper from the records, much less dismiss a complaint.

Anent the substantive issues, the appellate court stated that respondents are not mere project employees, but regular employees who perform tasks necessary and desirable in the usual trade and business of petitioner and not just its project employees. Moreover, the CA added, the award of benefits accorded to rank-and-file employees under the 1996-1999 CBA is a necessary consequence of the NLRC ruling that respondents, as PAs, are regular employees.

Finding no merit in petitioner's motion for reconsideration, the CA denied the same in a Resolution^[17] dated June 16, 2004.

Petitioner thus filed the instant petition for review on certiorari and raises the following assignments of error:

- THE HONORABLE COURT OF APPEALS ACTED WITHOUT JURISDICTION AND GRAVELY ERRED IN UPHOLDING THE NATIONAL LABOR RELATIONS COMMISSION NOTWITHSTANDING THE PATENT NULLITY OF THE LATTER'S DECISION AND RESOLUTION.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC FINDING RESPONDENTS REGULAR EMPLOYEES.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC AWARDING CBA BENEFITS TO RESPONDENTS.[18]

Considering that the assignments of error are interrelated, the Court shall resolve them simultaneously.

Petitioner asserts that the appellate court committed palpable and serious error of law when it affirmed the rulings of the NLRC, and entertained respondents' appeal from the decision of the Labor Arbiter despite the admitted lapse of the reglementary period within which to perfect

the same. Petitioner likewise maintains that the 10-day period to appeal must be reckoned from receipt of a party's counsel, not from the time the party learns of the decision, that is, notice to counsel is notice to party and not the other way around. Finally, petitioner argues that the reopening of a complaint which the Labor Arbiter has dismissed without prejudice is a clear violation of Section 1, Rule V of the NLRC Rules; such order of dismissal had already attained finality and can no longer be set aside.

Respondents, on the other hand, allege that their late appeal is a non-issue because it was petitioner's own timely appeal that empowered the NLRC to reopen the case. They assert that although the appeal was filed 10 days late, it may still be given due course in the interest of substantial justice as an exception to the general rule that the negligence of a counsel binds the client. On the issue of the late filing of their position paper, they maintain that this is not a ground to strike it out from the records or dismiss the complaint.

We find no merit in the petition.

We agree with petitioner's contention that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional; failure to do so renders the assailed decision final and executory and deprives the appellate court or body of the legal authority to alter the final judgment, much less entertain the appeal. However, this Court has time and again ruled that in exceptional cases, a belated appeal may be given due course if greater injustice may occur if an appeal is not given due course than if the reglementary period to appeal were strictly followed.[19] The Court resorted to this extraordinary measure even at the expense of sacrificing order and efficiency if only to serve the greater principles of substantial justice and equity.[20]

In the case at bar, the NLRC did not commit a grave abuse of its discretion in giving Article 223[21] of the Labor Code a liberal application to prevent the miscarriage of justice. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[22] We have held in a catena of cases that technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the workingman.[23]

Admittedly, respondents failed to perfect their appeal from the decision of the Labor Arbiter within the reglementary period therefor. However, petitioner perfected its appeal within the period, and since petitioner had filed a timely appeal, the NLRC acquired jurisdiction over the case to give due course to its appeal and render the decision of November 14, 2002. Case law is that the party who failed to appeal from the decision of the Labor Arbiter to the NLRC can still participate in a separate appeal timely filed by the adverse party as the situation is considered to be of greater benefit to both parties.[24]

We find no merit in petitioner's contention that the Labor Arbiter abused his discretion when he admitted respondents' position paper which had been belatedly filed. It bears stressing that the Labor Arbiter is mandated by law to use every reasonable means to ascertain the facts in each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process.[25] Indeed, as stressed by the appellate court, respondents' failure to submit a position paper on time is not a ground for striking out the paper from the records, much less for dismissing a complaint.[26] Likewise, there is simply no truth to petitioner's assertion that it was denied due process when the Labor Arbiter admitted respondents' position paper without requiring it to file a comment before admitting said position paper. The essence of due process in administrative proceedings is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. Obviously, there is nothing in the records that would suggest that petitioner had absolute lack of opportunity to be heard.[27] Petitioner had the right to file a motion for reconsideration of the Labor Arbiter's admission of respondents' position paper, and even file a Reply thereto. In fact, petitioner filed its position paper on April 2, 2001. It must be stressed that Article 280 of the Labor Code was encoded in our statute books to hinder the circumvention by unscrupulous employers of the employees' right to security of tenure by indiscriminately and absolutely ruling out all written and oral agreements inharmonious with the concept of regular employment defined therein.[28]

We quote with approval the following pronouncement of the NLRC:

The complainants, on the other hand, contend that respondents assailed the Labor Arbiter's order dated 18 June 2001 as violative of the NLRC Rules of Procedure and as such is violative of their right to procedural due process. That while suggesting that an Order be instead issued by the Labor Arbiter for complainants to refile this case, respondents impliedly submit that there is not any substantial damage or prejudice upon the refiling, even so, respondents' suggestion acknowledges complainants right to prosecute this case, albeit with the burden of repeating the same procedure, thus, entailing additional time, efforts, litigation cost and precious time for the Arbiter to repeat the same process twice. Respondent's suggestion, betrays its notion of prolonging, rather than promoting the early resolution of the case.

Although the Labor Arbiter in his Order dated 18 June 2001 which revived and re-opened the dismissed case without prejudice beyond the ten (10) day reglementary period had inadvertently failed to follow Section 16, Rule V, Rules Procedure of the NLRC which states:

"A party may file a motion to revive or re-open a case dismissed without prejudice within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, his only remedy shall be to re-file the case in the arbitration branch of origin."

the same is not a serious flaw that had prejudiced the respondents' right to due process. The case can still be refiled because it has not yet prescribed. Anyway, Article 221 of the Labor Code provides:

"In any proceedings before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."

The admission by the Labor Arbiter of the complainants' Position Paper and Supplemental Manifestation which were belatedly filed just only shows that he acted within his discretion as he is enjoined by law to use every reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. Indeed, the failure to submit a position paper on time is not a ground for striking out the paper from the records, much less for dismissing a complaint in the case of the complainant. (*University of Immaculate Conception vs. UIC Teaching and Non-Teaching*

Personnel Employees, G.R. No. 144702, July 31, 2001).

"In admitting the respondents' position paper albeit late, the Labor Arbiter acted within her discretion. In fact, she is enjoined by law to use every reasonable means to ascertain the facts in each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process". (Panlilio vs. NLRC, 281 SCRA 53).

The respondents were given by the Labor Arbiter the opportunity to submit position paper. In fact, the respondents had filed their position paper on 2 April 2001. What is material in the compliance of due process is the fact that the parties are given the opportunities to submit position papers.

"Due process requirements are satisfied where the parties are given the opportunities to submit position papers". (Laurence vs. NLRC, 205 SCRA 737).

Thus, the respondent was not deprived of its Constitutional right to due process of law.[29]

We reject, as barren of factual basis, petitioner's contention that respondents are considered as its talents, hence, not regular employees of the broadcasting company. Petitioner's claim that the functions performed by the respondents are not at all necessary, desirable, or even vital to its trade or business is belied by the evidence on record.

Case law is that this Court has always accorded respect and finality to the findings of fact of the CA, particularly if they coincide with those of the Labor Arbiter and the National Labor Relations Commission, when supported by substantial evidence.[30] The question of whether respondents are regular or project employees or independent contractors is essentially factual in nature; nonetheless, the Court is constrained to resolve it due to its tremendous effects to the legions of production assistants working in the Philippine broadcasting industry.

We agree with respondents' contention that where a person has rendered at least one year of service, regardless of the nature of the activity performed, or where the work is continuous or intermittent, the employment is considered regular as long as the activity exists, the reason being that a customary appointment is not indispensable before one may be formally declared as having attained regular status. Article 280 of the Labor Code provides:

ART. 280. REGULAR AND CASUAL EMPLOYMENT.-The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

In *Universal Robina Corporation v. Catapang*,^[31] the Court reiterated the test in determining whether one is a regular employee:

The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such

activity exists.[32]

As elaborated by this Court in *Magsalin v. National Organization of Working Men*: [33]

Even while the language of law might have been more definitive, the clarity of its spirit and intent, i.e., to ensure a "regular" worker's security of tenure, however, can hardly be doubted. In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade. But, although the work to be performed is only for a specific project or seasonal, where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the repeated and continuing need for its performance as being sufficient to indicate the necessity or desirability of that activity to the business or trade of the employer. The employment of such person is also then deemed to be regular with respect to such activity and while such activity exists.[34]

Not considered regular employees are "project employees," the completion or termination of which is more or less determinable at the time of employment, such as those employed in connection with a particular construction project, and "seasonal employees" whose employment by its nature is only desirable for a limited period of time. Even then, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity performed and while such activity actually exists.

It is of no moment that petitioner hired respondents as "talents." The fact that respondents received pre-agreed "talent fees" instead of salaries, that they did not observe the required office hours, and that they were permitted to join other productions during their free time are not conclusive of the nature of their employment. Respondents cannot be considered "talents" because they are not actors or actresses or radio specialists or mere clerks or utility employees. They are regular employees who perform several different duties under the control and direction of ABS-CBN executives and supervisors.

Thus, there are two kinds of regular employees under the law: (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed.[35]

The law overrides such conditions which are prejudicial to the interest of the worker whose weak bargaining situation necessitates the succor of the State. What determines whether a certain employment is regular or otherwise is not the will or word of the employer, to which the worker oftentimes acquiesces, much less the procedure of hiring the employee or the manner of paying the salary or the actual time spent at work. It is the character of the activities performed in relation to the particular trade or business taking into account all the circumstances, and in some cases the length of time of its performance and its continued existence.[36] It is obvious that one year after they were employed by petitioner, respondents became regular employees by operation of law.[37]

Additionally, respondents cannot be considered as project or program employees because no evidence was presented to show that the duration and scope of the project were determined or specified at the time of their engagement. Under existing jurisprudence, project could refer to two distinguishable types of activities. First, a project may refer to a particular job or undertaking that is within the regular or usual business of the employer, but

which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. Second, the term project may also refer to a particular job or undertaking that is not within the regular business of the employer. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.[38]

The principal test is whether or not the project employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.[39]

In this case, it is undisputed that respondents had continuously performed the same activities for an average of five years. Their assigned tasks are necessary or desirable in the usual business or trade of the petitioner. The persisting need for their services is sufficient evidence of the necessity and indispensability of such services to petitioner's business or trade.[40] While length of time may not be a sole controlling test for project employment, it can be a strong factor to determine whether the employee was hired for a specific undertaking or in fact tasked to perform functions which are vital, necessary and indispensable to the usual trade or business of the employer.[41] We note further that petitioner did not report the termination of respondents' employment in the particular "project" to the Department of Labor and Employment Regional Office having jurisdiction over the workplace within 30 days following the date of their separation from work, using the prescribed form on employees' termination/ dismissals/suspensions.[42]

As gleaned from the records of this case, petitioner itself is not certain how to categorize respondents. In its earlier pleadings, petitioner classified respondents as program employees, and in later pleadings, independent contractors. Program employees, or project employees, are different from independent contractors because in the case of the latter, no employer-employee relationship exists.

Petitioner's reliance on the ruling of this Court in *Sonza v. ABS-CBN Broadcasting Corporation*[43] is misplaced. In that case, the Court explained why Jose Sonza, a well-known television and radio personality, was an independent contractor and not a regular employee:

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA'S services to co-host its television and radio programs because of SONZA'S peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, because of his unique skills, talent and celebrity status not possessed by ordinary employees, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.

B. Payment of Wages

ABS-CBN directly paid SONZA his monthly talent fees with no part of his fees going to MJMDC. SONZA asserts that this mode of fee payment shows that he was an employee of ABS- CBN. SONZA also points out that ABS-CBN granted him benefits and privileges "which he would not have enjoyed if he were truly the

subject of a valid job contract."

All the talent fees and benefits paid to SONZA were the result of negotiations that led to the Agreement. If SONZA were ABS-CBN's employee, there would be no need for the parties to stipulate on benefits such as "SSS, Medicare, x x x and 13th month pay which the law automatically incorporates into every employer-employee contract. Whatever benefits SONZA enjoyed arose from contract and not because of an employer-employee relationship.

SONZA's talent fees, amounting to P317,000 monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay SONZA such huge talent fees precisely because of SONZA'S unique skills, talent and celebrity status not possessed by ordinary employees. Obviously, SONZA acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.

The payment of talent fees directly to SONZA and not to MJMDC does not negate the status of SONZA as an independent contractor. The parties expressly agreed on such mode of payment. Under the Agreement, MJMDC is the AGENT of SONZA, to whom MJMDC would have to turn over any talent fee accruing under the Agreement.[44]

In the case at bar, however, the employer-employee relationship between petitioner and respondents has been proven.

First. In the selection and engagement of respondents, no peculiar or unique skill, talent or celebrity status was required from them because they were merely hired through petitioner's personnel department just like any ordinary employee.

Second. The so-called "talent fees" of respondents correspond to wages given as a result of an employer-employee relationship. Respondents did not have the power to bargain for huge talent fees, a circumstance negating independent contractual relationship.

Third. Petitioner could always discharge respondents should it find their work unsatisfactory, and respondents are highly dependent on the petitioner for continued work.

Fourth. The degree of control and supervision exercised by petitioner over respondents through its supervisors negates the allegation that respondents are independent contractors.

The presumption is that when the work done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service, such work is a regular employment of such employee and not an independent contractor.[45] The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship.[46]

It follows then that respondents are entitled to the benefits provided for in the existing CBA between petitioner and its rank-and-file employees. As regular employees, respondents are entitled to the benefits granted to all other regular employees of petitioner under the CBA.[47] We quote with approval the ruling of the appellate court, that the reason why production assistants were excluded from the CBA is precisely because they were erroneously classified and treated as project employees by petitioner:

x x x The award in favor of private respondents of the benefits accorded to rank-and-file employees of ABS-CBN under the 1996-1999 CBA is a necessary consequence of public respondent's ruling that private respondents as production assistants of petitioner are regular employees. The monetary award is not considered as claims involving the interpretation or implementation of the collective bargaining agreement. The reason

why production assistants were excluded from the said agreement is precisely because they were classified and treated as project employees by petitioner.

As earlier stated, it is not the will or word of the employer which determines the nature of employment of an employee but the nature of the activities performed by such employee in relation to the particular business or trade of the employer. Considering that We have clearly found that private respondents are regular employees of petitioner, their exclusion from the said CBA on the misplaced belief of the parties to the said agreement that they are project employees, is therefore not proper. Finding said private respondents as regular employees and not as mere project employees, they must be accorded the benefits due under the said Collective Bargaining Agreement.

A collective bargaining agreement is a contract entered into by the union representing the employees and the employer. However, even the non-member employees are entitled to the benefits of the contract. To accord its benefits only to members of the union without any valid reason would constitute undue discrimination against non-members. A collective bargaining agreement is binding on all employees of the company. Therefore, whatever benefits are given to the other employees of ABS-CBN must likewise be accorded to private respondents who were regular employees of petitioner.[48]

Besides, only talent-artists were excluded from the CBA and not production assistants who are regular employees of the respondents. Moreover, under Article 1702 of the New Civil Code: "In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living of the laborer."

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 76582 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.
Panganiban, C. J. (Chairperson), In the result.

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Rodrigo V. Cosico and Rosalinda Asuncion-Vicente, concurring, rollo, pp. 9-34.

[2] Id. at 170-219.

[3] Id. at 220-227.

[4] Rollo, p. 180.

[5] Id. at 183.

[6] Id. at 213.

[7] Id. at 174.

[8] Id. at 248-250.

[9] CA rollo, pp. 128-129.

[10] Id. at 138-139.

[11] See CA rollo, pp. 7-8.

[12] Rollo, pp. 229-233.

[13] Id. at 257-258.

[14] Rollo, p. 172.

[15] Rollo, p. 218.

[16] 385 Phil. 93 (2000).

[17] Rollo, p. 36.

[18] Id. at 58-59.

[19] Mabuhay Development Industries v. National Labor Relations Commission, 351 Phil. 227, 234-235 (1998), citing City Fair Corporation v. National Labor Relations Commission, 313 Phil. 464, 465 (1995).

[20] Sublay v. National Labor Relations Commission, 381 Phil. 198, 204 (2000).

[21] Art. 223. APPEAL

Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

[22] Buenaobra v. Lim King Guan, G.R. No. 150147, January 20, 2004, 420 SCRA 359, 364 (2004).

[23] Huntington Steel Products, Inc. v. National Labor Relations Commission, G.R. No. 158311, November 14, 2004, 442 SCRA 551, 560.

[24] See Sandol v. Pilipinas Kao, Inc., et al., G.R. No. 87530, June 13, 1990, 186 SCRA 491.

[25] Panlilio v. National Labor Relations Commission, 346 Phil. 30, 35-36 (1997).

[26] U.I.C. v. U.I.C. Teaching & Non-Teaching Personnel and Employees Union, 414 Phil. 522, 533 (2001).

[27] Mayon Hotel & Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 629-630.

[28] Philips Semiconductors (Phils.), Inc. v. Fadriquela, *Infra* note 35, at 418.

[29] CA rollo, pp. 51-52.

[30] Lopez v. National Steel Corporation, G.R. No. 149674, February 16, 2004, 423 SCRA 109, 113.

[31] G.R. No. 164736, October 14, 2005, 473 SCRA 189.

[32] Id. at 203-204, citing Abasolo v. National Labor Relations Commission, 400 Phil. 86, 103 (2000), De Leon v. National Labor Relations Commission, G.R. No. 70705, August 21, 1989, 176 SCRA 615, 621.

[33] 451 Phil. 254 (2003).

[34] Id. at 260-261.

[35] Philips Semiconductors (Phils.), Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 419.

[36] De Leon v. National Labor Relations Commission, *supra* note 32, at 624.

[37] Kimberly Independent Labor Union for Solidarity v. Drilon, et al., G.R. Nos. 77629 and 78791, May 9, 1990, 185 SCRA 190, 204.

[38] Villa v. National Labor Relations Commission, 348 Phil. 116, 143 (1998).

[39] ALU-TUCP, et al. v. National Labor Relations Commission, G.R. No. 109902, August 2, 1994, 234 SCRA

678, 685.

[40] *Samson v. National Labor Relations Commission*, 323 Phil 135, 148 (1996).

[41] *Tomas Lao Construction v. National Labor Relations Commission*, 344 Phil. 268, 279 (1997).

[42] Section 2.2 of Department Order No. 19, cited in *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 273-274 and *Samson v. National Labor Relations Commission*, supra note 40, at 147.

[43] G.R. No. 138051, June 10, 2004, 431 SCRA 538.

[44] *Id.* at 595-596.

[45] David Albert Pierce, Esq., "Management-side employment law advice for entertainment industry" with subtitle "Classification of Workers: Independent Contractor versus Employee" http://www.piercegorman.com/Classification_of_Workers.html (visited July 14, 2006).

[46] *Id.*

[47] *Cinderella Marketing Corporation v. National Labor Relations Commission*, Second Division, G.R. Nos. 112535 and 113758, June 22, 1998, 291 SCRA 91, 96.

[48] *Rollo*, pp. 121-122.

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