CONSOLIDATED BROADCASTING SYSTEM, INC., PETITIONER, VS. DANNY OBERIO, ELNA DE PEDRO, LUISITO VILLAMOR, WILMA SUGATON, RUFO DEITA, JR., EMILY DE GUZMAN, CAROLINE LADRILLO, JOSE R...

G.R. NO. 168424. June 08, 2007

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-168424/

YNARES-SANTIAGO, J.:

Assailed in this petition for review is the July 30, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 77098, which affirmed the December 5, 2001 Decision[2] of the National Labor Relations Commission (NLRC) holding that respondents were regular employees of petitioner and that they were illegally dismissed.

Respondents alleged that they were employed as drama talents by DYWB-Bombo Radyo, a radio station owned and operated by petitioner Consolidated Broadcasting System, Inc. They reported for work daily for six days in a week and were required to record their drama production in advance. Some of them were employed by petitioner since 1974, while the latest one was hired in 1997.[3] Their drama programs were aired not only in Bacolod City but also in the sister stations of DYWB in the Visayas and Mindanao areas.[4]

Sometime in August 1998, petitioner reduced the number of its drama productions from 14 to 11, but was opposed by respondents. After the negotiations failed, the latter sought the intervention of the Department of Labor and Employment (DOLE), which on November 12, 1998, conducted through its Regional Office, an inspection of DWYB station. The results thereof revealed that petitioner is guilty of violation of labor standard laws, such as underpayment of wages, 13[th] month pay, non-payment of service incentive leave pay, and non-coverage of respondents under the Social Security System.

Petitioner contended that respondents are not its employees and refused to submit the payroll and daily time records despite the subpoena duces tecum issued by the DOLE Regional Director. Petitioner further argued that the case should be referred to the NLRC because the Regional Director has no jurisdiction over the determination of the existence of employer-employee relationship which involves evidentiary matters that are not verifiable in the normal course of inspection.

Vexed by the respondents' complaint, petitioner allegedly pressured and intimidated respondents. Respondents Oberio and Delta were suspended for minor lapses and the payment of their salaries were purportedly delayed. Eventually, on February 3, 1999, pending the outcome of the inspection case with the Regional Director, respondents were barred by petitioner from reporting for work; thus, the former claimed constructive dismissal.[5]

On April 8, 1999, the DOLE Regional Director issued an order directing petitioner to pay respondents a total of P318,986.74 representing non-payment/underpayment of the salary and benefits due them.[6] However, on July 8, 1999, the Regional Director reconsidered the April 8, 1999 order and certified the records of the case to the NLRC, Regional Arbitration Branch VI, for determination of employer-employee relationship.[7] Respondents

appealed said order to the Secretary of Labor.

On October 12, 1999, respondents filed a case for illegal dismissal, underpayment/non-payment of wages and benefits plus damages against petitioner. On April 10, 2000, the Labor Arbiter dismissed the case without prejudice while waiting for the decision of the Secretary of Labor on the same issue of the existence of an employer-employee relationship between petitioner and respondents.

On appeal to the NLRC, respondents raised the issue of employer-employee relationship and submitted the following to prove the existence of such relationship, to wit: time cards, identification cards, payroll, a show cause order of the station manager to respondent Danny Oberio and memoranda either noted or issued by said manager. Petitioner, on the other hand, did not present any documentary evidence in its behalf and merely denied the allegations of respondents. It claimed that the radio station pays for the drama recorded by piece and that it has no control over the conduct of respondents.

On December 5, 2001, the NLRC rendered a decision holding that respondents were regular employees of petitioner who were illegally dismissed by the latter. It further held that respondents complied with the requirements of the rule on forum shopping. The decretal portion thereof, provides:

> WHEREFORE, premises considered, the decision of Labor Arbiter Ray Alan T. Drilon dated 10 April 2000 is SET ASIDE and VACATED and a new one entered.
>
> Ordering respondent Consolidated Broadcasting System, Inc. (Bombo Radyo Philippines), DYWB to reinstate the complainants without loss of seniority rights wi[th] full back wages computed from February 1999 up to the time of actual reinstatement.
>
> SO ORDERED.[8]

Hence, petitioner filed the instant recourse.

The issues for resolution are as follows: (1) Did respondents violate the rule on forum shopping; (2) whether the NLRC correctly ruled on the merits of the case instead of remanding the case to the Labor Arbiter; (3) whether respondents were employees of petitioner; and (4) whether their dismissal was illegal.

Respondents' complaint in the inspection case before the DOLE Regional Director alleged that they were under the employ of petitioner at the time of the filing of said complaint. Pending the resolution thereof, they claimed to have been dismissed; hence, the filing of the present illegal dismissal case before the Labor Arbiter. The causes of action in these two complaints are different, i.e., one for violation of labor standard laws, and the other, for illegal dismissal, but the entitlement of respondents to the reliefs prayed for hinges on the same issue of the existence of an employer-employee relationship. While the decision on the said issue by one tribunal may operate as res judicata on the other, dismissal of the present illegal dismissal case on the ground of forum shopping, would work injustice to respondents because it is the law itself which provides for two separate remedies for their distinct causes of action.

Under Article 217[9] of the Labor Code, termination cases fall under the jurisdiction of Labor Arbiters. Whereas, Article 128[10] of the same Code vests the Secretary of Labor or his duly authorized representatives with the power to inspect the employer's records to determine and compel compliance with labor standard laws. The exercise of the said power by the Secretary or his duly authorized representatives is exclusive to cases where employer-employee relationship still exists. Thus, in cases where the complaint for violation of labor standard laws preceded the termination of the employee and the filing of the illegal dismissal case, it would not be in consonance with justice to charge the complainants with engaging in forum shopping when the remedy available to them at the time their causes of action arose was to file separate cases before different fora. Besides, in the

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

instant case, respondent Danny Oberio disclosed in the verification the pendency of the case regarding wage differential.[11] In addition, said case was discussed in detail in the position paper,[12] evincing the absence of any intention on the part of respondents to mislead the Labor Arbiter.

Similarly, in Benguet Management Corporation v. Court of Appeals,[13] petitioner filed separate actions to enjoin the foreclosure of real estate mortgages before the Regional Trial Courts of San Pablo City and Zambales which has jurisdiction over the place where the properties were located. In both cases, petitioner contended, among others, that the loan secured by said mortgages imposed unauthorized penalties, interest and charges. The Court did not find the mortgagors guilty of forum shopping considering that since injunction is enforceable only within the territorial limits of the trial court, the mortgagor is left without remedy as to the properties located outside the jurisdiction of the issuing court, unless an application for injunction is made with another court which has jurisdiction over the latter properties.

By parity of reasoning, it would be unfair to hold respondents in the instant case guilty of forum shopping because the recourse available to them after their termination, but pending resolution of the inspection case before the DOLE, was to file a case for illegal dismissal before the Labor Arbiter who has jurisdiction over termination disputes.

More importantly, substantial justice dictates that this case be resolved on the merits considering that the NLRC and the Court of Appeals correctly found that there existed an employer-employee relationship between petitioner and respondents and that the latter's dismissal was illegal, as will be discussed hereunder.

In the same vein, the NLRC correctly ruled on the merits instead of remanding the case to the Labor Arbiter. Respondents specifically raised the issue of the existence of employer-employee relationship but petitioner refused to submit evidence to disprove such relationship on the erroneous contention that to do so would constitute a waiver of the right to question the jurisdiction of the NLRC to resolve the case on the merits.[14] This is rather odd because it was the stand of petitioner in the inspection case before the DOLE that the case should be certified to the NLRC for the resolution of the issue of employer-employee relationship. But when the same issue was proffered before the NLRC, it refused to present evidence and instead sought the dismissal of the case invoking the pendency of the inspection case before the DOLE. Petitioner refused to meet head on the substantial aspect of this controversy and resorted to technicalities to delay its disposition. It must be stressed that labor tribunals are not bound by technical rules and the Court would sustain the expedient disposition of cases so long as the parties are not denied due process.[15] The rule is that, due process is not violated where a person is given the opportunity to be heard, but chooses not to give his or her side of the case.[16] Significantly, petitioner never claimed that it was denied due process. Indeed, no such denial exists because it had all the opportunities to present evidence before the labor tribunals below, the Court of Appeals, and even before this Court, but chose not to do so for reasons which will not warrant the sacrifice of substantial justice over technicalities.

On the third issue, respondents' employment with petitioner passed the "four-fold test" on employer-employee relations, namely: (1) the selection and engagement of the employee, or the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee.

Petitioner failed to controvert with substantial evidence the allegation of respondents that they were hired by the former on various dates from 1974 to 1997. If petitioner did not hire respondents and if it was the director alone who chose the talents, petitioner could have easily shown, being in possession of the records, a contract to such effect. However, petitioner merely relied on its contention that respondents were piece rate contractors who were paid by results.[17] Note that under Policy Instruction No. 40, petitioner is obliged to execute the necessary contract specifying the nature of the work to be performed, rates of pay, and the programs in which they will

work. Moreover, project or contractual employees are required to be apprised of the project they will undertake under a written contract. This was not complied with by the petitioner, justifying the reasonable conclusion that no such contracts exist and that respondents were in fact regular employees.

In ABS-CBN v. Marquez,[18] the Court held that the failure of the employer to produce the contract mandated by Policy Instruction No. 40 is indicative that the so called talents or project workers are in reality, regular employees. Thus –

> Policy Instruction No. 40 pertinently provides:
>
> Program employees are those whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. The engagement of program employees, including those hired by advertising or sponsoring companies, shall be under a written contract specifying, among other things, the nature of the work to be performed, rates of pay, and the programs in which they will work. The contract shall be duly registered by the station with the Broadcast Media Council within three days from its consummation. (Emphasis supplied)
>
> Ironically, however, petitioner failed to adduce an iota proof that the requirements for program employment were even complied with by it. It is basic that project or contractual employees are appraised of the project they will work under a written contract, specifying, inter alia, the nature of work to be performed and the rates of pay and the program in which they will work. Sadly, however, no such written contract was ever presented by the petitioner. Petitioner is in the best of position to present these documents. And because none was presented, we have every reason to surmise that no such written contract was ever accomplished by the parties, thereby belying petitioner's posture.
>
> Worse, there was no showing of compliance with the requirement that after every engagement or production of a particular television series, the required reports were filed with the proper government agency, as provided no less under the very Policy Instruction invoked by the petitioner, nor under the Omnibus Implementing Rules of the Labor Code for project employees. This alone bolsters respondents' contention that they were indeed petitioner's regular employees since their employment was not only for a particular program.

Moreover, the engagement of respondents for a period ranging from 2 to 25 years and the fact that their drama programs were aired not only in Bacolod City but also in the sister stations of DYWB in the Visayas and Mindanao areas, undoubtedly show that their work is necessary and indispensable to the usual business or trade of petitioner. The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business. Thus, even assuming that respondents were initially hired as project/contractual employees who were paid per drama or per project/contract, the engagement of their services for 2 to 25 years justify their classification as regular employees, their services being deemed indispensable to the business of petitioner.[19]

As to the payment of wages, it was petitioner who paid the same as shown by the payroll bearing the name of petitioner company in the heading with the respective salaries of respondents opposite their names. Anent the power of control, dismissal, and imposition of disciplinary measures, which are indicative of an employer-employee relationship,[20] the same were duly proven by the following: (1) memorandum[21] duly noted by Wilfredo Alejaga, petitioner's station manager, calling the attention of the "Drama Department" to the

late submission of scripts by writers and the tardiness and absences of directors and talents, as well as the imposable fines of P100 to P200 for future infractions; (2) the memorandum[22] of the station manager directing respondent Oberio to explain why no disciplinary action should be taken against him for punching the time card of a certain Mrs. Fe Oberio who was not physically present in their office; and (3) the station manager's memorandum[23] suspending respondent Oberio for six days for the said infraction which constituted violation of petitioner's network policy. All these, taken together, unmistakably show the existence of an employer-employee relationship. Not only did petitioner possess the power of control over their work but also the power to discipline them through the imposition of fines and suspension for violation of company rules and policies.

Finally, we find that respondents were illegally dismissed. In labor cases, the employer has the burden of proving that the dismissal was for a just cause; failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal. To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee at the mercy of his employer; and the right to security of tenure, which this Court is bound to protect, would be unduly emasculated.[24] In this case, petitioner merely contended that it was respondents who ceased to report to work, and never presented any substantial evidence to support said allegation. Petitioner therefore failed to discharge its burden, hence, respondents were correctly declared to have been illegally dismissed.

Furthermore, if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter – the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor.[25]

When a person is illegally dismissed, he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages. In the event, however, that reinstatement is no longer feasible, or if the employee decides not to be reinstated, the employer shall pay him separation pay in lieu of reinstatement. Such a rule is likewise observed in the case of a strained employer-employee relationship or when the work or position formerly held by the dismissed employee no longer exists. In sum, an illegally dismissed employee is entitled to: (1) either reinstatement if viable or separation pay if reinstatement is no longer viable, and (2) backwages. In the instant controversy, reinstatement is no longer viable considering the strained relations between petitioner and respondents. As admitted by the latter, the complaint filed before the DOLE strained their relations with petitioner who eventually dismissed them from service. Payment of separation pay instead of reinstatement would thus better promote the interest of both parties.

Respondents' separation pay should be computed based on their respective one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher, reckoned from their first day of employment up to finality of this decision. Full backwages, on the other hand, should be computed from the date of their dismissal until the finality of this decision.[26]

WHEREFORE, the petition is DENIED. The July 30, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 77098, finding respondents to be regular employees of petitioner and holding them to be illegally dismissed and directing petitioner to pay full backwages, is AFFIRMED with the MODIFICATION that petitioner is ordered to pay respondents their separation pay instead of effecting their reinstatement.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

---

[1] Rollo, pp. 29-41. Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr.

[2] Id. at 81-94. Penned by Commissioner Oscar S. Uy and concurred in by Commissioners Irenea E. Ceniza and Edgardo M. Enerlan.

[3] Id. at 82.

[4] Id. at 68-69.

[5] Id. at 70.

[6] Id. at 61-65.

[7] CA rollo, pp. 94-95.

[8] Rollo, p. 94.

[9] ART. 217. Jurisdiction of Labor Arbiters and the Commission. – (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x

2. Termination disputes.

x x x x

[10] ART. 128. Visitorial and enforcement power. – (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and any labor law, wage order or rules and regulations issued pursuant thereto.

[11] Rollo, p. 86.

[12] Id. at 69-71.

[13] G.R. No. 153571, September 18, 2003, 411 SCRA 347, 355.

[14] CA rollo, pp. 62-63.

[15] Caurdanetaan Piece Workers Union v. Laguesma, G.R. Nos. 113542 and 114911, February 24, 1998, 286 SCRA 401, 432.

[16] Id. at 430.

[17] Rollo, p. 22.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

[18] G.R. No. 167638, June 22, 2005, SC E-Library.

[19] Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 273; ABS-CBN v. Marquez, supra note 18.

[20] ABS-CBN v. Marquez, supra note 18.

[21] Rollo, p. 91.

[22] Id. at 91-92.

[23] Id. at 92.

[24] Pascua v. National Labor Relations Commission, G.R. No. 123518, March 13, 1998, 287 SCRA 554, 568.

[25] Mayon Hotel and Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 640.

[26] F. F. Marine Corporation v. National Labor Relations Commission, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 173-174.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

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.