

**ALBERT B. DEL ROSARIO, REYNALDO TUGADE, ROLANDO BARRON,
GEORGE MACASO, REY I. SANTIAGO, ROBERTO B. DEL CASTILLO,
PAUL VIRAY, ISMAEL DABLO, TOMMY ANACTA, ISAGANI TAOATAO,
ROLIO A...**

G.R. No. 202481. September 08, 2020

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CAGUIOA, J:

This involves eight (8) consolidated Petitions for Review on Certiorari under Rule 45 of the Revised Rules of Court. The petitions may be divided into two categories — the regularization cases and the illegal dismissal cases.

Regularization Cases

G.R. No. 202481

Del Rosario, et al. v. ABS-CBN Broadcasting Corporation

In Del Rosario, et al. v. ABS-CBN Broadcasting Corporation (G.R. No. 202481),^[1] petitioners-workers seek the reversal of the Court of Appeals (CA) Decision^[2] dated January 27, 2012 and Resolution^[3] dated June 26, 2012 in CA-G.R. SP No. 117885, which dismissed their case for regularization.

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the Decision dated October 29, 2009 and the Resolution dated October 29, 2010, issued by public respondent NLRC are REVERSED and SET ASIDE; the Labor Arbiter's Decision dated March 26, 2004 is hereby REINSTATED.

SO ORDERED.^[4]

G.R. Nos. 202495 & 202497

ABS-CBN Corporation v. Payonan, et al.

In ABS-CBN Corporation v. Payonan, et al. (G.R. Nos. 202495 & 202497),⁵ ABS-CBN Corporation (ABS-CBN) seeks the reversal of the CA Decision⁶ dated October 28, 2011 and Resolution⁷ dated June 27, 2012 in CA-G.R. SP Nos. 108552 and 108976, declaring the workers as regular employees of ABS-CBN.

The dispositive portion of the CA Decision states:

WHEREFORE, upon the foregoing, the petitions are GRANTED.

In CA-GR SP No. 108552, the Resolutions dated 23 October 2008 and 30 January 2009 of the National Labor Relations Commission, Second Division are ANNULLED AND SET ASIDE, and a new one rendered declaring petitioners as regular employees of private respondent and accordingly entitled to the benefits and privileges accorded to all other regular employees of private respondent ABS-CBN under the Collective Bargaining Agreement and/or company policy.

In CA-GR SP No. 108976, the Resolutions dated 18 December 2008 and 23 March 2009 of the National Labor Relations Commission, Third Division are ANNULLED AND SET ASIDE, and the Decision of the Labor Arbiter dated 23 June 2008 is reinstated.

SO ORDERED.[8]

Illegal Dismissal Cases

G.R. No. 222057

ABS-CBN Corporation v. Ong, et al.

In ABS-CBN Corporation v. Ong, et al (G.R. No. 222057),⁹ ABS-CBN seeks the reversal of the CA Decision¹⁰ dated February 24, 2015 and Resolution¹¹ dated December 21, 2015 in CA-G.R. SP. No. 122068 where the CA declared that respondents-workers were regular employees of ABS-CBN and were illegally dismissed. Consequently, the CA ordered their immediate reinstatement to their former positions without loss of seniority rights, coupled with the payment of their backwages computed from the time their salaries were withheld up to the time of their actual reinstatement. The CA further awarded 13 th month pay plus attorney's fees often percent (10%) of the total monetary award.¹²

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition is hereby GRANTED. ABS-CBN is ordered to immediately reinstate petitioners to their former positions without loss of seniority rights and the payment of [backwages] from the time their salaries were withheld up to the time of actual reinstatement. If reinstatement be not feasible, ABS-CBN is ordered to pay complainants] separation pay equivalent to one (1) month pay for every year of service in addition to the payment of [backwages], but, it shall be computed from the time complainants' salary was withheld up to the time of payment thereof. Likewise, respondents are ordered to pay the accrued 13th month pay for the same periods plus attorney's fees equivalent to 10% of all the monetary award[s] to complainants]. The other monetaiy claims and damages claimed by complainantfs] are DENIED for failure to substantiate the same. The case is hereby remanded to the Labor Arbiter for the proper computation of the monetaiy awards. The NLRC is hereby DIRECTED to notify this Court of the computation twenty (20) days from notice. No pronouncement as to costs.

SO ORDERED.[13]

G.R. No. 224879

ABS-CBN Corporation, et al. v. Lozares

In ABS-CBN Corporation, etal. v. Lozares (G.R. No. 224879),^[14] ABS-CBN seeks the reversal of the CA Decision^[15] dated January 4, 2016 and Resolution^[16] dated May 27, 2016 in CA-G.R. SP No. 122824, which reversed the National Labor Relations Commission (NLRC) ruling that dismissed respondents-workers' complaint for illegal dismissal.

The decretal portion of the assailed CA Decision reads:

We SET ASIDE the Decision dated 25 August 2011, and the Resolution dated 28 October 2011, issued by the National Labor Relations Commission in the consolidated cases docketed as NLRC NCR Case Numbers 07-10422-10,08-11773-10, and 08-11664-10, and rule as follows: 1) we ORDER ABS-CBN Broadcasting Corporation and Eugenio Lopez III to REINSTATE Ronnie B. Lozares to his former position with full backwages, without loss of seniority rights and other employee's benefits, and to PAY P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P20,000.00 as attorney's fees; x x x.

IT IS SO ORDERED.[17]

G.R. No. 225874

ABS-CBN Corporation v. Zaballa III, et al.

In *ABS-CBN Corporation v. Zaballa III, et al.* (G.R. No. 225874),^[18] ABS-CBN seeks the reversal of the Decision^[19] dated January 12, 2016 and Resolution^[20] dated July 15, 2016 rendered by the CA in CA-G.R. SP No. 131576, which affirmed the rulings, of the Labor Arbiter (LA) and the NLRC that the workers are in fact employees of ABS-CBN. Consequently, the CA awarded holiday pay, and 13th month pay computed three years back from the filing of the complaint.^[21]

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is hereby DENIED. The assailed Resolutions of the National Labor Relations Commission, Second Division, dated 27 March 2013 and 14 June 2013, are hereby AFFIRMED.

SO ORDERED.^[22]

G.R. No. 219125

Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation

In *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125),^[23] petitioners-workers pray for the reversal of the CA Decision^[24] dated August 19, 2014 and Resolution^[25] dated June 18, 2015 in CA-G.R. SP. No. 122424. The CA dismissed petitioners-workers complaint for illegal dismissal, finding that they committed forum shopping by filing a case for illegal dismissal notwithstanding the pendency of their complaint for regularization.^[26] Thus, the CA dismissed the case without delving into the merits.^[27]

The dispositive portion of the CA Decision reads:

WHEREFORE, all the foregoing considered, the petition is DISMISSED for utter lack of merit. The assailed decision of the National Labor Relations Commission is AFFIRMED. Moreover, petitioners and counsel are strictly admonished for their blatant disregard of the rule against forum-shopping and let this be a warning to them that a commission of the same or similar acts shall be dealt with more severely.

SO ORDERED. ^[28]

G.R. No. 225101

Perez, et al. v. ABS-CBN Broadcasting Corporation

In *Perez, et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 225101),²⁹ petitioners-workers seek the reversal of the assailed CA Decision³⁰ dated January 28, 2016 and Resolution³¹ dated May 26, 2016 in CA-G.R. SP No. 125868, declaring that there was no employer-employee relationship between them and ABS-CBN.³² The CA likewise opined that ABS-CBN did not exercise control over the manner the workers performed their duties³³ because all that ABS-CBN was concerned with was the end result and its conformity with the company's standards.^[34]

The dispositive portion of the assailed CA Decision reads:

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision dated May 29, 2012 of the National Labor Relations Commission (Special Division) is AFFIRMED, save for the dismissal of the appeal by the NLRC (Fifth Division) for non-perfection with respect to petitioners Dizon, Congson, Villanueva and Mendoza.

SO ORDERED.^[35]

G.R. No. 210165

Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.

In Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al. (G.R. No. 210165),^[36] therein petitioners-workers seek the reversal of the assailed Decision^[37] dated April 30, 2013 and Resolution^[38] dated November 20, 2013 in CA-G.R. SP No. 122635, which dismissed petitioners-workers' complaint for illegal dismissal. The CA held that petitioners-workers are not regular' employees of ABS-CBN. Accordingly, absent any employment relationship between ABS-CBN and the workers, the former may not be held guilty of illegal dismissal.^[39]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.^[40]

The Antecedents

The following facts are common to the eight petitions:

ABS-CBN, formerly known as ABS-CBN Broadcasting Corporation, is a domestic corporation that owns a wide network of television and radio stations. It was granted a franchise to operate as a broadcasting company under Republic Act (R.A.) No. 7966, 41 and was given a license and authority to operate by the National Telecommunications Commission. This franchise, however, expired on May 5, 2020.^[42]

On various dates, ABS-CBN hired the services of the following persons (collectively, "workers"):

REGULARIZATION CASES: 43

G.R. Nos. 202495 & 202497 (ABS-CBN Corporation v. Payonan, et al.)

NAME: DATE HIRED:

Journalie Payonan October 1997

Antonio E. Manuel, Jr. August 1999

Manuel A. Mendoza March 1999

Joseph R. Ong September 1999

Riel A. Teodoro 1996

Ramon P. Catahan, Jr. 1998

Ronnie Lozares 1996

Ferdinand L. Marquez 1998

Ferdinand C. Sumeracruz July 1997

Dante T. Vidal June 1997

Cesar Z. Zea 1997

Ricardo Joy C. Cajoles, Jr. December 1999

Alex R. Carlos May 1999

Johnschultz A. Congson December 1999

Leslie Rey S. Olpindo December 1999

Armando A. Ramos December 1999

Rommel V. Villanueva April 1999

Enrico V. Castulo March 1995

Frankie S. Domingo March 1995

Manuel Conde February 1997

Antonio Immanuel N. Calle January 1999

Oliver J. Chavez December 1999

Francis M. Lubugin December 1999

Jerome B. Prado June 2000

Richard T. Sison September 1996

Roderick N. Rodriguez August 1997

Elmer M. Evaristo May 1996

Christopher Mendoza September 1994

Gilbert M. Omapas July 1996

Lauro Calitisen May 1997

Wilfredo Zaldua April 1999

Russel M. Galima April 2001

Medel Gotel June 1998

Osias Lopez August 1999

Joseph Elphin Lumbad May 1999

Marlon Macatantan January 1999

Joseph Armand B. Mamorno June 1998

Alfred Christian Nunez April 1999

Alain Pardo June 2000

Ronino Santiago May 1999

Jun Tangalin August 1999

Jonathan C. Toribio August 1996

Jerico T. Adriano November 1993

Julius T. Adriano May 1993

Mark Anthony Agustin January 1998
Benjamin C. Bengco, Jr. June 2000
Danilo R. Blaza August 1997
Gino Reggie Briones October 1999
Ricky Beldia May 1999
Nicomedes Canales, Jr. August 1999
Alfredo S. Curay May 1997
Rojay Paul Dela Rosa November 2000
Christopher De Leon August 1999
Dixon Dispo June 1998
Andrew Eugenio January 1998
Jeffrey Alfred Evangelista April 1999
Allan V. Herrera January 2002
Michael V. Santos November 2001
Rommel M. Matalang November 2001
G.R. No. 202481 (Del Rosario, Corporation) et al, v. ABS-CBN Broadcasting
Philbert Acharon September 1999
Lorenzo Alano September 1996
Tommy Anacta November 1995
Iolando Barron August 1999
Eric Biglang-awa June 1999
Ernesto Cruz June 1994
Reynaldo Cruz No date indicated in the records of the case
Ismael Dablo July 1994
Roberto Del Castillo September 1995
Albert Del Rosario July 1994
Apolinar Dela Gracia March 1995
Carlo Dionisio March 1997
Arthur Dungog July 1997
Sengkly Eslabra March 1997
Nelson Lucas February 1999

George Macaso March 1995
Crisanto Panlubasan February 1996
Rolio Andrew Ramano 1992
Edwin Sagun October 1996
Robeito Sanchez April 1997
R.ey I. Santiago May 1997
Isagani Taoatao October 1995
Reynaldo L. Tugade July 1994
Paul Viray July 1997

ILLEGAL DISMISSAL CASES: 44

NAME DATE HIRED POSITION

G.R. No. 222057 (ABS-CBN Corporation v. Ong, et al.)
Joseph R. Ong September 1999 Cameraman
Garett Cailles June 1998 Cameraman
Raymon Reyes September 1999 Cameraman
Fernando Lopez November 2000 Cameraman
G.R. No. 225874 (ABS-CBN Corporation v. Zaballa III, et al.)
Jose Zabala III May 2003 Lightman
Fischerbob Casaje September 2004 Lightman / Electrician / Gaffer
Taucer Tyche Benzonan March 2011 Cameraman
G.R. No. 225101 (Perez, et al. v. ABS-CBN Broadcasting Corporation)
Antonio Bernardo Perez January 2002 Senior Video Editor
John Paul Panizales January 2001 Technical Director/VTR Man
Ferdinand Cruz January 2001 Video Engineer/VTR Man
Christopher Mendoza October 1995 Sound Engineer
Dennis Reyes November 2001 Sound Engineer
Jun Benosa November 2001 Sound Engineer
Roland Kristoffer De Guzman December 2004 VTR Man
Fredierick Gerland Dizon April 2005 Video Engineer
Russel Galima April 2000 Sound Engineer

Alfred Christian Nunez April 1998 Sound Engineer
Rommel Villanueva January 2000 Video Engineer/CCU
Jhonschultz Congson January 2000 Video Engineer/CCU
Alex Carlos January 2000 Video Engineer/CCU
Michael Tobias April 2004 Video Engineer
Geronimo Baniqued October 1997 Lighting Director
Ronaldo San Pedro September 2004 Lightman
Eric Paycana Year 2003 Moving Lightman Operator
G.R. No. 224879 (ABS-CBN Corporation, et al. v. Lozares)
Ronnie Lozares |November 1996 Lightman-Electrician
G.R. No. 219125 (Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation)
Ricardo Joy Cajoles, Jr. December 1999 Video Engineer
Antonio Immanuel Calle January 1999 VTR/Video Engineer
Richard Sison September 1996 VTR/Video Engineer
Journalie Payonan October 1997 LD/Cameraman
G.R. No. 210165 (Dablo, et al. v. ABS-CBN Broadcasting Corporation)
Ismael Dablo July 1994 Senior Cameraman
Roberto Del Castillo September 1995 Senior Cameraman
Rolando Barron August 1999 Driver/Assistant Cameraman
Albert Del Rosario July 1994 Cameraman
George Macaso March 1995 Cameraman
Rey I. Santiago May 1997 Cameraman
Reynaldo Tugade July 1994 Cameraman
Paul Viray July 1997 Cameraman

Upon their engagement, the workers were required to undergo various training seminars and workshops to equip them with the skills and knowledge necessary in their respective fields of assignment.[45] After completing their seminars, they were assigned to render services in the self-produced, co-produced, and live-coverage programs of ABS-CBN.[46] Their presence was strictly required in each program.[47]

Customarily, during the production of shows and the live coverage of events, ABS-CBN hired three different groups of employees to work in such productions. These consisted of the technical crew, production staff, and outside broadcast (OB) van drivers and production assistance (PA) van drivers.[48]

Specifically, the technical crew consisted of the cameramen, audio men, sound engineers, VTR men, light men, and the camera control unit group, who were all under the control and supervision of the technical director,

production supervisor, and producer.[49]

Meanwhile, the production staff was in charge of the production of shows or programs, and the workers were subject to the control and supervision of the Executive Producers and Assistant Producers.[50]

Finally, the OB van and PA van drivers were tasked to drive the vans, which served as the studios outside of the ABS-CBN premises.[51] These make-shift studios were used for taping and shooting programs in remote areas.[52]

All members of the technical crew, production staff, and OB and PA van drivers worked as one team, such that the outcome of the production depended on their combined efforts.[53] Overall, the workers were tasked to perform numerous functions relative to broadcasting, programming, marketing, and production of television shows and programs, actual broadcasting, reporting, showing of daily programs and shows, and live reporting of events. Similarly, the members of the production group were continuously re-hired to film new programs, upon the conclusion of the shows they were initially engaged in.[54]

In exchange for the services they rendered, the workers were paid salaries twice a month, as evidenced by pay slips bearing ABS-CBN's corporate name.[55]

Sometime in 2002, ABS-CBN adopted a system known as the Internal Job Market (IJM) System, a database which provided the user with a list of accredited technical or creative manpower and/or talents who offered their services for a fee. This database indicated the competency rating of the individuals and their corresponding professional fees.[56] The system allowed the producer to easily obtain information on the talent and his availability for projects. Should the producer desire to hire an individual from the system, the latter shall be notified of the particular project for which his/her services are sought, and will be ordered to report on the scheduled shooting date.[57]

According to ABS-CBN, the IJM scheme led to the creation of a work pool of accredited technical or creative manpower who offered their services for a fee.[58] Under this system, the workers were regarded as independent contractors, not regular employees.[59] An accreditation under the IJM System did not in any way create an employment relationship between the so-called talents and the company.[60] Most importantly, the IJM System eliminated the rigors of recruiting or negotiating with independent contractors.[61]

Due to the creation of the IJM System, the workers were asked to sign a contract that would place them all under the IJM Work Pool. They were included in the pool without their consent or over their vehement objections.[62] Upon the implementation of the IJM System, each of the workers was given an hourly rate.[63] Consequently, beginning January 2002, they were paid based on the actual hours they worked, multiplied by their specified hourly rate.[64] They did not receive overtime pay, premium pay, and holiday pay for the work they rendered during rest days, special holidays, and regular holidays.[65]

Clamoring for better rights, the workers formed the ABS-CBN IJM Workers' Union.[66] Thereafter, they started demanding recognition as regular employees. Thus, in the later part of 2002 up to the first quarter of 2003, the workers filed cases for regularization before the LA.[67] The workers claimed that ABS-CBN compelled them to sign a document denominated as "Accreditation in the Internal [Job] Market System." [68] With this document, the workers were relegated to mere talents.[69] ABS-CBN maintained that an accreditation under the IJM system did not create an employment relationship between it and the "talent".

Furthermore, in a Memorandum dated April 23, 2003,[70] entitled "Re: Undocumented Personnel," ABS-CBN reclassified the status of its regular employees to mere talents or contractual employees.[71] The Memorandum

stated that "all personnel engaged as talents shall execute relevant talent contracts not later than 15 May 2003. After such date, any talent engagement' not covered by contracts shall be deemed discontinued and no payments or disbursements shall be authorized by the Finance Manager." [72] Fearful of losing their jobs, the workers signed the said contract. [73]

Ushering in more changes in the employees' status, sometime in 2007, ABS-CBN required the workers in ABS-CBN Corporation v. Payonan, et al. to sign an employment contract, which stated that they were "freelance employees." [74] Those who refused to sign were deprived of their benefits. This prompted the workers to file a complaint for regularization and claim benefits due to regular employees. [75]

Meanwhile, the rest of the workers persistently clamored for their recognition as regular employees. Allegedly, this incurred the ire of ABS-CBN. [76] In May 2010, ABS-CBN purportedly coerced the union members to sign a contract and waive their claims for regularization. [77]

Because the workers refused to comply, ABS-CBN effected a series of mass dismissals of workers on various dates from June to September 2010. Those who refused to sign the said contract were terminated from their employment. [78] No notice of termination was given to the workers. They were forthwith barred from entering the company premises. [79]

From these series of summary dismissals sprung numerous complaints filed before the LA for illegal dismissal with claims for monetary benefits, ranging from overtime pay, holiday pay, holiday premium, rest day premium, 13th month pay, night shift differential, and payment of moral, exemplary damages and attorney's fees. [80]

Over a span of almost eight years, various rulings have been rendered by the LA, the NLRC, and the CA involving the instant petitions.

In view of the similarity of facts and issues raised in the eight petitions, on February 27, 2019, the Court issued a Resolution [81] ordering the consolidation of all eight petitions.

Issues

The common issues raised in the consolidated petitions consist of procedural and substantive grounds, which may be summarized as follows:

1. Whether or not the petitions should be dismissed on procedural grounds due to the failure of the workers to file a motion for reconsideration against the NLRC ruling in G.R. No. 222057 (ABS-CBN Corporation v. Ong, et al.)
2. Whether or not the workers are guilty of forum shopping by instituting the case for illegal dismissal, notwithstanding the pendency of the regularization case;
3. Whether or not the ruling of the Court in *Jalog, et al. v. NLRC* [82] (*Jalog*), should be applied in resolving the instant petitions due to the similarity of facts and circumstances between the said case and the instant petitions;
4. Whether or not the workers are regular employees of ABS-CBN;
5. Whether or not the workers in G.R. Nos. 202495 & 202497 (*ABS-CBN Corporation v. Payonan, et al.*) and G.R. No. 202481 (*Del Rosario, et al. v. ABS-CBN Broadcasting Corporation*) are entitled to the benefits under the Collective Bargaining Agreement (CBA) with ABS-CBN; and
6. Whether or not the workers in G.R. No. 222057 (*ABS-CBN Corporation v. Ong, et al.*); G.R. No. 224879 (*ABS-CBN Corporation, et al. v. Lozares*); G.R. No. 225874 (*ABS-CBN Corporation v. Zaballa, III, et al.*); G.R. No. 219125 (*Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation*); G.R. No. 225101 (*Perez, et al. v.*

ABS-CBN Broadcasting Corporation); and G.R. No. 210165 (Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.) were illegally dismissed by ABS-CBN.

On one side, the workers clamored for their recognition as regular employees of ABS-CBN in view of their performance of work that is necessary and desirable to the latter's business over a period of many years. In addition, the workers point out that they were hired, paid, supervised controlled, disciplined, and eventually, dismissed by ABS-CBN. They likewise claim that as regular employees, they were illegally dismissed.

On the other side, ABS-CBN primarily seeks the dismissal of the petitions on procedural grounds, claiming that the failure of the workers to file a Motion for Reconsideration before the CA, and their commission of forum shopping, render the instant petitions defective; hence, dismissible. Similarly, ABS-CBN claims that the ruling of the Court in *Jalog* should be applied to the workers herein due to the similarity of facts in the said case and the instant petitions.

As for its substantive arguments, ABS-CBN adamantly maintains that the workers were not regular employees, but were actually talents. They were hired due to their distinct skill and artistry. In fact, the workers were not subject to its control and supervision, and were merely given guidelines in the performance of their work. Accordingly, in the absence of an employment relationship between ABS-CBN and the workers, the former cannot be held guilty of illegal dismissal.

Ruling of the Court

Procedural Issues

The failure to file a motion for reconsideration shall not be deemed fatal to the cause of the workers

As a general rule, the filing of a motion for reconsideration is an indispensable condition for filing a special civil action for certiorari.^[83] The motion for reconsideration is essential to grant the court or tribunal the opportunity to correct its error, if any, before resort to the courts of justice may be had.⁸⁴ However, this rule is not iron-clad, and is subject to well-known exceptions, such as:

- [1.] Where the order is a patent nullity, as where the court a quo has no jurisdiction;
- [2.] Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- [3.] Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- [4.] Where, under the circumstances, a motion for reconsideration would be useless;
- [5.] Where petitioner was deprived of due process and there is extreme urgency for relief;
- [6.] Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- [7.] Where the proceedings in the lower court are a nullity for lack of due process;
- [8.] Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
- [9.] Where the issue raised is one purely of law or where public interest is involved.^[85] (Emphasis in the original)

The second exception applies here. The issues raised before the NLRC, which pertain to the existence of an employment relationship between ABS-CBN and the workers and the fact of illegal dismissal, were the very same questions raised in the special civil action for certiorari before the CA.[86] Certainly, it would be futile to strictly require the filing of a motion for reconsideration when the very issues raised before the CA were exactly similar to those passed upon and resolved by the NLRC.[87]

Moreover, in labor cases, rules of procedure shall not be applied in a rigid and technical sense, as they are merely tools designed to facilitate the attainment of justice. Thus, when their strict application would result in the frustration rather than the promotion of substantial justice, technicalities must be avoided.

Here, considering that the very livelihood of the workers is hanging by a thread, the ends of justice will be better served by ruling on the merits of the case, rather than summarily dismissing the petition on account of a procedural flaw.

The workers are not guilty of forum shopping

ABS-CBN seeks the dismissal of the petitions, claiming that the workers are guilty of forum shopping for filing their complaint for illegal dismissal during the pendency of their regularization case.[88]

The Court is not persuaded.

Forum shopping exists when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively. The remedies stem from the same transactions, are founded on identical facts and circumstances, and raise substantially similar issues, which are either pending in, or have been resolved adversely by another court.[89] Through forum shopping, unscrupulous litigants trifle with court processes by taking advantage of a variety of competent tribunals, repeatedly trying their luck in several different fora until they obtain a favorable result.[90] Because of this, forum shopping is condemned, as it unnecessarily burdens the courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary, and permits a mockery of the judicial processes.[91] Absent safeguards against forum shopping, two competent tribunals may render contradictory decisions, thereby disrupting the efficient administration of justice.

Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.

The test to determine whether the causes of action are identical is to 'ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action.[92] This is absent here. The facts or the pieces of evidence that would determine whether the workers were illegally dismissed are not the same as those that would support their clamor for regularization.

Besides, it must be remembered that the circumstances obtaining at the time the workers filed the regularization cases were different from when they subsequently filed the illegal dismissal cases. Before their illegal dismissal, the workers were simply clamoring for their recognition as regular employees, and their right to receive benefits concomitant with regular employment. However, during the pendency of the regularization cases, the workers were summarily terminated from their employment. This supervening event gave rise to a cause of action for illegal dismissal, distinct from that in the regularization case. This time, the workers were not only praying for

regularization, but also for reinstatement by questioning the legality of their dismissal. The issue turned into whether or not ABS-CBN had just or authorized cause to terminate their employment. Clearly, it was ABS-CBN's action of dismissing the workers that gave rise to the illegal dismissal cases. And it is absurd for it to now ask the Court to fault the workers for questioning ABS-CBN's actions, which were done while the regularization cases were pending. The Court cannot allow this.

Simply stated, in a regularization case, the question is whether the employees are entitled to the benefits enjoyed by regular employees even as they are treated as talents by ABS-CBN. On the other hand, in the illegal dismissal case, the workers likewise need to prove the existence of employer-employee relationship, but ABS-CBN must likewise prove the validity of the termination of the employment. Clearly, the evidence that will be submitted in the regularization case will be different from that in the illegal dismissal case.

Having thus settled the procedural matters raised by ABS-CBN, the Court shall now proceed to discuss the merits of the case.

Substantive Issues

Jalog is not binding on the workers

ABS-CBN argues that the ruling in Jalog applies. In Jalog, the CA Former Seventh Division ruled that the cameramen and the other workers of its Engineering Department are talents and not its regular employees. This ruling was affirmed by the Court through a Minute Resolution^[93] dated October 5, 2011.

This contention does not hold water.

Essentially, the phrase *stare decisis et non quieta movere* literally means "stand by the decisions and disturb not what is settled." This legal concept ordains that for the sake of certainty, a conclusion reached in one case should be applied to those that follow, if the facts are substantially the same, even though the parties may be different.^[94] Simply stated, like cases ought to be decided alike.

Accordingly, "where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue."^[95]

However, the CA's decision in Jalog was affirmed by the Court through a minute resolution. The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*.^[96] There, the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties."^[97] However, it will not set a binding precedent "if other parties or another subject matter (even with the same parties and issues) is involved."^[98] Thus, the ruling in Jalog, which involves different litigants, may not be applied to the parties in the instant petition.

The workers are employees of ABS-CBN

ABS-CBN further argues that the workers are talents and not its employees. They claim that this is evident from the nature of work they performed and the contracts they signed. ABS-CBN also staunchly maintains that its main business is broadcasting, and not the production of programs. It explains that as a broadcasting company, it avails itself of various options in airing its content and generating revenues. Among these schemes are "block-timing," availment of foreign canned shows and licensed programs, as well as line production, co-production, self-production, and live coverages.^[99]

The Court is not persuaded.

In ascertaining the existence of an employer-employee relationship, the Court has invariably adhered to the four-fold test, which pertains to: (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test."^[100]

This is not the first time the four-fold test is being applied to ABS-CBN workers. The Court has ruled in *Begino v. ABS-CBN Corporation*^[101] (*Begino*), that cameramen/editors and reporters are employees of ABS-CBN following the four-fold test.

Begino involved cameramen/editors and reporters engaged under Talent Contracts, which were regularly renewed over the years. The Court therein ruled that petitioners therein were regular employees, as follows:

The Court finds that, notwithstanding the nomenclature of their Talent Contracts and/or Project Assignment Forms and the terms and condition[s] embodied therein, petitioners are regular employees of ABS-CBN. Time and again, it has been ruled that the test to determine whether employment is regular or not is the reasonable connection between the activity performed by the employee in relation to the business or trade of the employer. As cameramen/editors and reporters, petitioners were undoubtedly performing functions necessary and essential to ABS-CBN's business of broadcasting television and radio content. It matters little that petitioners' services were engaged for specified periods for TV Patrol Bicol and that they were paid according to the budget allocated therefor. Aside from the fact that said program is a regular weekday fare of the ABS-CBN's Regional Network Group in Naga City, the record shows that, from their initial engagement in the aforesaid capacities, petitioners were continuously re-hired by respondents over the years. To the mind of the Court, respondents' repeated hiring of petitioners for its long-running news program positively indicates that the latter were ABS-CBN's regular employees.

x x x x

As cameramen/editors and reporters, it also appears that petitioners were subject to the control and supervision of respondents which, first and foremost, provided them with the equipments (sic) essential for the discharge of their functions. Prepared at the instance of respondents, petitioners' Talent Contracts tellingly provided that ABS-CBN retained "all creative, administrative, financial and legal control" of the program to which they were assigned. Aside from having the right to require petitioners "to attend and participate in all promotional or merchandising campaigns, activities or events for the Program," ABS-CBN required the former to perform their functions "at such locations and Performance/Exhibition Schedules" it provided or, subject to prior notice, as it chose[,] determine, modify or change. Even if they were unable to comply with said schedule, petitioners were required to give advance notice, subject to respondents' approval. However obliquely worded, the Court finds the foregoing terms and conditions demonstrative of the control respondents exercised not only over the results of petitioners' work but also the means employed to achieve the same.^[102]

The Court's ruling in *Begino* is applicable here. The workers here are employees of ABS-CBN.

The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), Pag-ibig Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.^[103]

In the same vein, the workers received their salaries from ABS-CBN twice a month, as proven through the pay slips bearing the latter's corporate name. Their rate of wages was determined solely by ABS-CBN.^[104] ABS-CBN likewise withheld taxes and granted the workers PhilHealth benefits.^[105] These clearly show that the workers were salaried personnel of ABS-CBN, not independent contractors.

Likewise, ABS-CBN wielded the power to discipline, and correspondingly dismiss, any errant employee. The workers were continuously under the watch of ABS-CBN and were required to strictly follow company rules and regulations in and out of the company premises.[106]

Finally, consistent with the most important test in determining the existence of an employer-employee relationship, ABS-CBN wielded the power to control the means and methods in the performance of the employees' work. The workers were subject to the constant watch and scrutiny of ABS-CBN, through its production supervisors who strictly monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company.[107] In fact, the workers were required to comply with ABS-CBN's company policies which entailed the prior approval and evaluation of their performance. They were further mandated to attend seminars and workshops to ensure their optimal performance at work.[108] Likewise, ABS-CBN controlled their schedule and work assignments (and re-assignments).[109] Furthermore, the workers did not have their own equipment to perform their work. ABS-CBN provided them with the needed tools and implements to accomplish their jobs.[110]

And just like in *Begino*, the fact that the workers signed a "Talent Contract and/or Project Assignment Form" does not ipso facto make them talents. It is settled that a talent contract does not necessarily prevent an employee from acquiring a regular employment status.[111] The nature of the employment does not depend on the will or word of the employer or on the procedure for hiring and the manner of designating the employee, but on the activities performed by the employee in relation to the employer's business.[112]

Besides, it must be remembered that labor contracts are subject to the police power of the State and are placed on a higher plane than ordinary contracts.[113] This means that the Court shall not hesitate to strike down any contract that is designed to circumvent an employee's tenurial security. Accordingly, ABS-CBN's Talent Contract, which deprives the workers of regular employment, cannot stand.

The workers are regular employees

Having established that the workers are employees of ABS-CBN, the Court proceeds to determine the kind of employees they are.

The Labor Code classifies four (4) kinds of employees, as follows: (i) regular employees, or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees, or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (iii) seasonal employees, or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees, or those who are not regular, project, or seasonal employees. Jurisprudence added a fifth kind — fixed-term employees, or those hired only for a definite period of time.[114]

As a background, block-timing is a scheme where an external producer, who is known as the block-timer, purchases a fixed number of airtime on certain dates from ABS-CBN. During this time, the block-timer's own shows are aired, and the advertising revenues earned shall belong to the block-timer.

Similarly, in airing foreign canned shows and licensed programs, ABS-CBN merely obtains broadcasting rights from the previous owners of the said programs. Basically, what ABS-CBN does in these cases is to simply avail of distributorship or airing rights in order to play the contents of a program that has been previously produced.

Hence, in this respect, there can be no employer-employee relationship between the production staff of the "block-timers," and owners of the foreign shows and licensed programs, on the one hand, and ABS-CBN, on the

other.[115] This is based on the obvious reason that ABS-CBN had no hand in the production of the said shows. However, this same ratiocination does not apply to the workers hired in the self-produced, line-produced, co-produced shows, and live coverages of ABS-CBN.

Notably, an essential characteristic of regular employment as defined in Article 280[116] of the Labor Code is the performance by the employee of activities considered necessary and desirable to the overall business or trade of the employer.[117] The necessity of the functions performed by the workers and their connection with the main business of an employer shall be ascertained "by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety."[118]

Again, this is not the first time the Court has determined that certain workers of ABS-CBN are regular employees given the tasks that they were engaged in. In *ABS-CBN Broadcasting Corporation v. Nazareno* [119] (*Nazareno*), the workers involved were production assistants who were repeatedly hired but treated as talents. The Court therein ruled that the production assistants were regular employees as follows:

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.

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. 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. 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.

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, ox: project employees, are different from independent contractors because in the case of the latter, no employer-employee relationship exists.[120]

Nazareno applies here. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:

x x x To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.[121]

In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows:

3. To engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcriptions or other devices by which sight and sound may be

reproduced.

4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic production services and other creative production services; and to engage in any manner, shape or form in post production mixing, dubbing, overdubbing, audio-video processing, sequence alteration and modification of every nature of all kinds of audio and video productions.

5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.[122]

Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description — or simply, the production of shows — are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.

The workers — who were cameramen, light men, gaffers, lighting directors, audio men, sound engineers, system engineers, VTR men, video engineers, technical directors, and drivers — all played an indispensable role in the production and re-production of shows, as well as post-production services. The workers even played a role in ABS-CBN's business of obtaining commercial revenues. To obtain profits through advertisements, ABS-CBN would also produce and air shows that will attract the majority of the viewing public. The necessary jobs required in the production of such shows were performed by the workers herein.[123]

In fact, a perusal of ABS-CBN's Organizational Structure would show that the workers' positions were included in the plantilla, under the Network Engineering Group and Production Engineering Services, and News and Current Affairs Department of ABS-CBN.[124] This serves as clear proof of the importance of the functions performed by the workers to the over-all business of ABS-CBN. In *Fuji Television Network, Inc. v. Espiritu*,^[125] the Court emphasized that organization charts and personnel lists, among others, serve as evidence of employee status.[126]

Parenthetically, the main distinction between a talent and a regular employee in the broadcast industry was explained in the landmark case of *Sonza v. ABS-CBN Broadcasting Corp.*^[127] (*Sonza*).

In *Sonza*, Jose Sonza (*Sonza*) was a talent who was engaged on the basis of his expertise in his craft.^[128] His possession of unique skills and celebrity status gave him the distinct privilege to bargain with ABS-CBN's officials on the terms of his agreement with the latter. These negotiations resulted to a hefty talent fee. Also, the payment of his salaries did not depend on the amount of work he performed or the number of times he reported for duty, but was based solely on the terms of the agreement. More than this, ABS-CBN was duty-bound to continue paying him his talent fees during the lifetime of the agreement, regardless of any business losses it may suffer, and even if it ceased airing his programs.^[129]

More importantly, ABS-CBN was bereft of any power to terminate or discipline Sonza, even if the means and methods of the performance of his work did not meet its approval. Similarly, ABS-CBN did not control his work schedule, or regulate the manner in which he "delivered his lines, appeared on television, and sounded on radio,^[130] or had any say over the contents of his script. The only instruction given by ABS-CBN was a simple warning that Sonza should refrain from criticizing ABS-CBN and its interests. In short, Sonza enjoyed an untrammelled artistic creativity on the contents and delivery of his lines and plays.^[131]

In stark contrast, the workers here were hired through ABS-CBN's Human Resources Department. Their engagement did not involve a negotiation with ABS-CBN's high-level officials. They did not possess any peculiar skills or talents or a well-nigh celebrity status that would have given them the power to negotiate the terms of their employment. In fact, their only choice over their engagement was limited to either accepting or rejecting the

standard terms of employment prepared by ABS-CBN. In the same manner, they received a basic salary and were granted benefits such as SSS, Medicare, and 13th month pay benefits customarily given to regular employees.[132]

Equally telling, the workers did not enjoy the same level of impunity granted to Sonza. It bears stressing that an independent contractor is endowed with a certain level of skill and talent that is not available on-the-job.[133] Obviously, the workers do not hold this level of distinction.

ABS-CBN further points out that a particular sense of creativity or artistic flair is needed depending on the type of show that the worker is employed. For instance, the artistry and skill demanded for a television drama or telenovela is very different from that required in a variety show or a current events program. According to ABS-CBN, this proves that the workers were hired due to their unique skill in matching the artistic demands of each distinct program.

Strangely, however, a perusal of the list of television shows where each worker was hired reveals that they worked on a diverse range of programs, ranging from formal news programs, lively variety shows, and dramatic telenovelas. The ease with which they shuttled from one program to another, regardless of the huge disparity in the genre of the programs, clearly shows that their duties were more routinary and mundane, and not artistic or creative as ABS-CBN strives to portray.

In addition, it is bizarre that the workers, whom ABS-CBN maintains are "talents," were likewise assigned to perform work as property custodians and maintenance personnel.[134] Surely, individuals as "talented" and "skilled" as ABS-CBN claims them to be will not be ordered to perform such banal tasks.

Suffice it to say, talents or "[independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees."135 Because of this, the employer does not exercise control over the manner and method in which the talent performs his/her work. Simply — the greater the control exercised by the employer, the greater the likelihood that the worker is an employee. "The converse holds true as well — the less control the hirer exercises, the more likely the worker is considered, an independent contractor."136]

Based on all the foregoing, it is absurd to conclude that the employees are similarly situated with Sonza. By no stretch of the imagination may these workers be regarded as independent contractors.

The workers are not program/project
employees of ABS-CBN

ABS-CBN argues that, should the Court affirm the existence of an employment relationship between the said company and the workers, the latter should simply be regarded as project employees.

Such argument fails to persuade.

The business of creating and producing television shows is heavily dependent on viewer preference and advancements in modern technology. Given the numerous television programs aired in a network, it is not surprising to find one that would last for many years, and one that is terminated in a short span of months. Indeed, it is economical for the broadcasting networks to maintain shows which earn, and to end those which do not. More so, it is nearly impossible to predict beforehand the success and 'the lifespan of each program.

In fact, this volatility is recognized in Department of Labor and Employment's Policy Instruction No. 40137 (Policy Instruction No. 40), which affirms that "changes of programs, ratings or formats" affect a broadcasting industry's business or trade. Due to this reality, the Policy Instruction recognizes the existence of two kinds of

employees in the broadcast industry.

The first of which are the regular station employees characterized as:

xxx [T]hose whose services are engaged to discharge functions which are usually necessary and desirable to the operation of the station and whose usefulness is not affected by changes of programs, ratings or formats and who observe normal working hours. This shall include employees whose talents, skills or services are engaged as such by the station without particular reference to any specific program or undertaking, and are not allowed by the station to be engaged or hired by other stations or persons even if such employees do not observe normal working hours.[138]

Based on the definition given, station employees are regular employees as defined under Article 280 of the Labor Code.

The other classification of broadcast employees pertains to the program employees, who are:

xxx [T]hose 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, xxx[139]

The above definition shows that program employees are project employees under Article 280 of the Labor Code, since their employment is fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement. Consequently, program employees 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.

Policy Instruction No. 40 is useful in understanding the classes of employment in the broadcast industry, insofar as it pertains to the regular station employees and the program employees. In *Consolidated Broadcasting System, Inc. v. Oberio*, [140] and *Television and Production Exponents, Inc. v. Servaña*, [141] the Court used the provisions of Policy Instruction No. 40 to determine the workers' employment status and thus, declared that the employer's failure to provide a project employment contract, as mandated by said Policy Instruction, easily proves that the so-called talents or project workers are, in reality, regular employees.

As applied here, the workers are not project/program employees under Policy Instruction No. 40, which mandates that the engagement of program employees shall be under a written contract specifying the nature of their work, rates of pay, and the programs in which they will render services. "The contract shall be duly registered by the station with the Broadcast Media Council within three days from its consummation." [142]

Essentially, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase. [143] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project. [144]

Here, ABS-CBN failed to adduce any evidence to establish that the requirements for project employment were complied with. There is nothing in the records that would prove that the employees were notified beforehand of the duration and scope of their projects. Neither was there confirmation of compliance with the contract-registration requirement, or evidence of the submission of a notice of termination or completion of project. It is basic that project or contractual employees shall be apprised of their project 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. Surely, ABS-CBN was in the best position to present these documents. Its failure to present them is therefore taken against it.

The Court is mindful that, in order to strike a balance between the rights of labor and capital and, more importantly, to contend with the volatility of the broadcasting industry, various employment agreements may be forged between the broadcasting company and the workers. These may range from regular employment, if the employees are continuously hired from one program to another, with their tenure unaffected by any changes in programs, ratings, or formats, to project employment, wherein the employees are assigned to work for a specific project or program, or a particular season within the program, with their tenure coterminous with the said program. This second classification likewise includes employees who are tasked to work on the seasonal specials released by the broadcast network. In the extreme end, workers who possess a distinct level of skill and artistry may be engaged as independent contractors. However, what remains crucial is the network's compliance with the provisions of the Labor Code and its implementing rules and regulations.

In this regard, cameramen may, in special instances, be regarded as talents if they possess a distinct level of artistry and creativity and work under , minimal guidelines set by the director or producer. In this instance, the director works simply to coordinate the end result, with the cameramen executing the shots and angles on their own accord and discretion. In this respect, a distinction must be drawn between the cameramen who are talents, versus the cameramen in the instant case, who are regular employees of ABS-CBN.

The IJM System of ABS-CBN is a work pool of regular employees

The final defense raised by ABS-CBN is that the workers belonged to a work pool of independent contractors, who were hired from time to time to work in its television programs. To show proof thereof, ABS-CBN points out that the workers were not exclusively bound to render services for ABS-CBN, but were actually free to offer their services to other employers anytime they wanted to. ABS-CBN is only partly correct.

The Court finds that a work pool indeed existed, but its members, consistent with the rulings in Begino and Nazareno, were regular employees, and not independent contractors.

Traditionally, work pools have been recognized in the construction, shipping, and security¹⁴⁵ industries. However, in 1998, the Court, in *Maraguinot, Jr. v. NLR*¹⁴⁶ (Maraguinot) affirmed the existence of work pools in the motion picture industry, considering that "the raison d'être of both [construction and film] industries concern projects with a foreseeable suspension of work."¹⁴⁷

The broadcast industry is a business that is allied with the film industry. Similar to the business of producing and creating films, the production of programs in the broadcast industry likewise involves periods with a foreseeable suspension of work. In fact, the description of a work pool perfectly suits the distinct nature of the broadcast industry:

A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is concerned. [It is said that this arrangement] is beneficial to both the employer and employee for it prevents the unjust situation of "coddling labor at the expense of capital" and at the same time enables the workers to attain the status of regular employees. [In *Lao*, the Court held that] the continuous rehiring of the same set of employees within the framework of the Lao Group of Companies is strongly indicative that private respondents were an integral part

of a work pool from which petitioners drew its workers for its various projects.¹⁴⁸ (Citations omitted)

The creation of a work pool is a valid exercise of management prerogative. It is a privilege inherent in the employer's right to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose. However, in order to ensure that the work pool arrangement is not used as a scheme to circumvent the employees' security of tenure, the employer must prove that (i) a work pool in fact exists, and (ii) the members therein are free to leave anytime and offer their services to other employers. These requirements are critical in defining the precise nature of the workers' employment.^[149]

Furthermore, in *Raycor Aircontrol Systems, Inc. v. NLRC*,^[150] the Court explained that members of a work pool could either be project employees or regular employees.^[151] Specifically, members of a work pool acquire regular employment status if: (i) they were continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer.^[152]

In the particular case of ABS-CBN, the DM System clearly functions as a work pool of employees involved in the production of programs. A closer scrutiny of the DM System shows that it is a pool from which ABS-CBN draws its manpower for the creation and production of its television programs. It serves as a "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services."^[153] The database includes information, such as the competency rating of the employee and his/her corresponding professional fees. Should the company wish to hire a person for a particular project, it will notify the latter to report on a set filming date.^[154]

Both parties acknowledged the existence of the DM System work pool and the workers' inclusion therein. On the part of ABS-CBN, it gave the workers an ABS-CBN identification card, placed them under the supervision of its officers and managers, allowed them to use its facilities and equipment, and continuously employed them in the production of television programs. On the part of the workers, they formed the ABS-CBN DM System Worker's Union, recognizing that they were in fact part of the DM System work pool.

However, the continuous rehiring of the members of the DM System work pool from one program to another bestowed upon them regular employment status. As such, they cannot be separated from the service without cause as they are considered regular, at least with respect to the production of the television programs. This holds true notwithstanding the fact that they were allowed to offer their services to other employers.

As in *Tomas Lao Construction v. NLRC*,^[155] the Court affirmed that the members of a work pool shall still be regarded as regular employees, even if they are allowed to seek employment elsewhere during lulls in the business.^[156] The Court stressed that, during the cessation of work, the employees shall simply be treated as being on leave of absence without pay until their next project. Correlatively, the employer shall not be obliged to pay the employees during the suspension of operations, viz.:

xxx [T]he cessation of construction activities at the end of every project is a foreseeable suspension of work. Of course, no compensation can be demanded from the employer because the stoppage of operations at the end of a project and before the start of a new one is regular and expected by both parties to the labor relations. Similar to the case of regular seasonal employees, the employment relation is not severed by merely being suspended. The employees are, strictly speaking, not separated from services but merely on leave of absence without pay until they are reemployed. Thus we cannot affirm the argument that non-payment of salary or non-inclusion in the payroll and the opportunity to seek other employment denote project employment.^[157] (Citations omitted)

By analogy, and as applied to the members of the IJM System work pool, even if they are allowed to offer their

services to other employers during the lulls in the production business, they shall still be regarded as regular employees who are simply "on leave" during such periods of suspension in production. On the part of ABS-CBN, it shall not be obliged to pay the employees during such temporary breaks.

It bears stressing that similar to the caveat laid down in *Maraguinot*, the Court wishes to allay any fears that the instant ruling unduly burdens an employer, or that it unreasonably coddles labor at the expense of capital. This decision is simply a "judicial recognition of the employment status of a project or work pool employee in accordance with what is *fait accompli*, i.e., the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employer's usual business or trade."^[158]

Consequently, as regular work pool employees of ABS-CBN, the workers are entitled to the following benefits:

The workers in the regularization
cases are entitled to all the benefits
under the CBA

As regular employees of ABS-CBN, the workers in G.R. Nos. 202495 & 202497 (*ABS-CBN Corporation v. Payonan, et al*), and G.R. No. 202481, (*Del Rosario, et al. v. ABS-CBN Broadcasting Corporation*) shall be included in the rank-and-file unit of the CBA.^[159]

In *Fulache v. ABS-CBN Broadcasting Corp.*^[160] and *Nazareno*, the Court categorically declared that the workers, who were production assistants, cameramen, assistant editor/teleprompter operators, video editors, and VTR operators, being regular employees of ABS-CBN, are part of the bargaining unit of ABS-CBN's rank-and-file employees. As such, they are entitled to the CBA benefits as a matter of law and contract.

Here, the CBA states in no uncertain terms that the "appropriate bargaining unit shall [consist of] the regular rank and file employees of [ABS-CBN], but shall not include: (a) personnel classified as Supervisor and Confidential employees; (b) personnel who are on 'casual' or 'probationary' status x x x; and (c) [personnel who are on 'contract' status or who are paid for specified units of work such as writer-producers, talent artists and singers]."¹⁶¹ Clearly, the workers are indeed members of the bargaining unit, as they are regular rank-and-file employees and do not belong to any of the excluded categories.

The workers in the illegal dismissal
cases are entitled to reinstatement
and backwages and other benefits

The necessary consequence of a declaration that the workers are regular employees is the correlative rule that the employer shall not dismiss them except for a just or authorized cause provided in the Labor Code. This is the essence of the tenurial security guaranteed by the law: "An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full back wages, inclusive of allowances, and to his other benefits or their monetary Equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."^[162]

The facts show that ABS-CBN failed to prove the existence of just or authorized causes for terminating the services of the workers, save for its claim that they are talents. Without any notice or warning, the workers were simply barred from entering the company premises.

Hence, the dismissed workers are entitled to the twin reliefs of reinstatement without loss of seniority rights, and payment of backwages computed from the time their compensation was withheld up to the date of their actual reinstatement. ^[163]

However, consistent with the finding that the workers are regular work pool employees, then, following Maraguinot, the workers are deemed reinstated to the work pool and are entitled to backwages, subject to deductions as stated below, and other benefits.

In the computation of backwages, the Court shall apply the principles of "suspension of work" and "no pay" between the end of one program and the start of a new one. Thus, similar to Maraguinot, the period during which the workers' respective production units were not shooting any television programs should be deducted from the computation of their backwages.

In connection therewith, ABS-CBN is directed to provide the LA the necessary data to determine the periods of the programs for which each worker would have been employed were it not for his/her dismissal. In turn, the LA is directed to deduct the periods between the end of one program and the start of the new one from the computation of the backwages.

In case of ABS-CBN's failure to provide the data above, the workers shall be entitled to backwages from the time of their illegal dismissal until their reinstatement following the finality of this Decision, without any deductions.

In addition to their backwages, the workers are likewise entitled to their monetary benefits consisting of their 13th month pay and holiday pay, pursuant to the applicable labor and tax laws,[164] computed in the same manner provided above, by deducting the amounts corresponding to the periods that they were not engaged in the production of programs. Notably, in determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought. Essentially, in claims for payment of monetary benefits such as holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This, likewise, stems from the fact that all pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that the differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker, but are in the custody and control of the employer.[165] ABS-CBN failed to adduce evidence to prove its payment of the aforementioned benefits.

However, as to the workers' claims for overtime pay, premium pay for holidays and rest days, and night shift differential pay, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.[166] Considering that the workers failed to prove that they actually rendered service in excess of the regular eight working hours a day, and that they in fact worked on holidays and rest days,[167] the Court is constrained to deny their claim for these benefits.

As for the workers' prayer for moral and exemplary damages, the Court denies these reliefs for lack of factual and legal basis. Nonetheless, the workers are entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award, since the instant case includes a claim for unlawfully withheld wages, and the workers were forced to litigate to protect their rights.[168] All amounts due shall earn a legal interest of six percent (6%) per annum.[169]

WHEREFORE, in light of the foregoing, the Court renders the following disposition:

1. The petition in Del Rosario, et al. v. ABS-CBN Broadcasting Corporation (G.R. No. 202481) is GRANTED. The Decision dated January 27, 2012 and the Resolution dated June 26, 2012 of the Court of Appeals in CA-G.R. SP No. 117885 are REVERSED and SET ASIDE.
2. The petition in ABS-CBN Corporation v. Payonan, et al. (G.R. Nos. 202495 & 202497) is DENIED. The Decision dated October 28, 2011 and the Resolution dated June 27, 2012 of the Court of Appeals in CA-G.R.

SP Nos. 108552 and 108976 are AFFIRMED.

3. The petition in ABS-CBN Corporation v. Ong, et al. (G.R. No. 222057) is DENIED. Accordingly, the Decision dated February 24, 2015 and the Resolution dated December 21, 2015 of the Court of Appeals in CA-G.R. SP. No. 122068 are AFFIRMED.

4. The petition in ABS-CBN Corporation, et al. v. Lozares (G.R. No. 224879) is DENIED. The Decision dated January 4, 2016 and the Resolution dated May 27, 2016 of the Court of Appeals in CA-G.R. SP No. 122824 are AFFIRMED with MODIFICATION by DELETING the award of moral damages and exemplary damages.

5. The petition in ABS-CBN Corporation v. Zaballa III, et al. (G.R. No. 225874) is DENIED. The Decision dated January 12, 2016 and the Resolution dated July 15, 2016 of the Court of Appeals, in CA-G.R. SP No. 131576 are AFFIRMED.

6. The petition in Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation (G.R. No. 219125) is GRANTED. The Decision dated August 19, 2014 and the Resolution dated June 18, 2015 of the Court of Appeals, in CA-G.R. SP. No. 122424, are REVERSED and SET ASIDE.

7. The petition in Perez, et al. v. ABS-CBN Broadcasting Corporation (G.R. No. 225101) is GRANTED. The Decision dated January 28, 2016 and the Resolution dated May 26, 2016 of the Court of Appeals in CA-G.R. SP No. 125868, are REVERSED and SET ASIDE.

8. The petition in Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al. (G.R. No. 210165) is GRANTED. The Decision dated April 30, 2013 and the Resolution dated November 20, 2013 of the Court of Appeals in CA-G.R. SP No. 122635 are REVERSED and SET ASIDE.

The employees who were illegally dismissed shall be deemed reinstated to the work pool. They are likewise entitled to backwages and other benefits from the time of their illegal dismissal up to actual reinstatement, deducting therefrom the periods corresponding to when ABS-CBN Corporation was not undertaking the production of programs.

Let this case be remanded to the Labor Arbiter for the proper computation of the monetary benefits due to each of the workers in accordance with the guidelines in this Decision. All amounts awarded shall earn a legal interest of six percent (6%) per annum from the date of finality of this Decision until full payment.

ABS-CBN Corporation is hereby ordered to provide the necessary data to assist the Labor Arbiter in computing the amount of backwages due to the employees.

SO ORDERED.

Peralta, C.J., no part.

Perlas-Bernabe, Gesmundo, J. Reyes, Jr., Hernando, Inting, Zalameda, Lopez, and Delos Santos, JJ., concur.

Leonen, J., I concur. see separate opinion.

Carandang, J., no part.

Lazaro-Javier, J., no part.

Gaerlan, J., no part.

Baltazar-Padilla, J., on leave.

[1] Rollo (G.R. No. 202481), Vol. I, pp. 8-52.

[2] Id. at 54-73. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Vicente S.E. Veloso and

Amy C. Lazaro-Javier (now a Member of this Court) concurring.

[3] Id. at 89-91.

[4] Id. at 72.

[5] Rollo (G.R. Nos. 202495 & 202497), Vol. 1, pp. 1-248.

[6] Rollo (G.R. Nos. 202495 & 202497), Vol. III, pp. 1907-1927. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guarifia III and Apolinario D. Bruselas, Jr. concurring.

[7] Rollo (G.R. Nos. 202495 & 202497), Vol. IV, pp. 2060-2065. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser. concurring.

[8] Rollo (G.R. Nos. 202495 & 202497), Vol. III, p. 1926.

[9] Rollo (G.R. No. 222057), pp. 21-106.

[10] Id. at 700-713. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. concurring.

[11] Id. at 772-773. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr. concurring.

[12] Id. at 712.

[13] Id.

[14] Rollo (G.R. No. 224879), pp. 11-62.

[15] Id. at 72-80. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

[16] Id. at 82-83.

[17] Id. at 79.

[18] Rollo (G.R. No. 225874), Vol. I, pp. 10-72.

[19] Rollo (G.R. No. 225874), Vol. II, pp. 715-729. Penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla concurring.

[20] Id. at 763-764.

[21] Id. at 727-728.

[22] Id. at 728.

[23] Rollo (G.R. No. 219125), Vol. I, pp. 11-45.

[24] Rollo (G.R. No. 219125), Vol. II, pp. 1347-1359. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Marlene Gonzales-Sison concurring.

[25] Id. at 1376-1377.

[26] See id. at 1353 and 1358.

[27] Id. at 1358.

[28] Id.

[29] Rollo (G.R. No. 225101), Vol. I, pp. 11-49.

[30] Rollo (G.R. No. 225101), Vol. II, pp. 854-869. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Edwin D. Sorongon concurring.

[31] Id. at 899-900.

[32] See id. at 864-866.

[33] Id. at 867.

[34] Id.

[35] Id. at 868.

[36] Rollo (G.R. No. 210165), Vol. I, pp. 9-48.

[37] Id. at 55-66. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

[38] Id. at 85-87.

[39] See id. 64-65 and 86.

[40] Id. at 65.

[41] AN ACT GRANTING THE ABS-CBN BROADCASTING CORPORATION FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN TELEVISION AND RADIO BROADCASTING STATIONS IN THE PHILIPPINES, AND FOR OTHER PURPOSES, March 30, 1995.

[42] Republic v. ABS-CBN Corporation, G.R. No. 251358, June 23, 2020 (Resolution).

[43] Rollo (G.R. No. 202481), Vol. II, pp. 890-892; rollo (G.R. Nos. 202495 & 202497), pp. 3251, 3311-3315; and rollo (G.R. No. 210165), Vol. I, pp. 12-13.

[44] Rollo (G.R. No. 210165), Vol. I, pp. 12-13; rollo (G.R. No. 219125), Vol. I, pp. 13-14; rollo (G.R. No. 222057), pp. 389, 701; rollo (G.R. No. 224879), p. 73; rollo (G.R. No. 225101), Vol. III, pp. 1451-1452; rollo (G.R. No. 225874), Vol. II, p. 716; and rollo (G.R. Nos. 202495 & 202497), Vol. VI, p. 3682.

[45] Rollo (G.R. Nos. 202495 & 202497), Vol. VI, p. 3683; rollo (G.R. No. 225874), Vol. II, p. 716.

[46] Id.; rollo (G.R. Nos. 202495 & 202497), Vol. IV, p. 2233; rollo (G.R. No. 225874), Vol. II, p. 717.

[47] Rollo (G.R. No. 225874), Vol. II, p. 717..

[48] Rollo (G.R. Nos. 202495 & 202497), Vol. IV, p. 2232.

[49] Id.

[50] Id.

[51] Id.

[52] Id.

[53] Id.

[54] See id. at 2229.

[55] Rollo (G.R. No. 225874), Vol. II, p. 717.

[56] Rollo (G.R. No. 225101), Vol. I, p. 542.

[57] Id. at 542-543.

[58] Rollo (G.R. No. 225101), Vol. II, p. 856.

[59] Id.

[60] Rollo (G.R. No. 225101), Vol. I, p. 543.

[61] Rollo (G.R. No. 225101), Vol. II, p. 856.

[62] See rollo (G. R. No. 219125), Vol. I, p. 24.

[63] Id.

[64] Id.

[65] Id.

[66] See id, at 16.

[67] Rollo (G R.No. 202481), Vol. I, p 13.

[68] Id. at 59.

[69] Rollo (G. R.No. 202481), Vol. I, p. 13.

[70] April 28, 2003 in other parts of the rollo.

[71]Rollo(G. R.No. 219125), Vol. I, p. 25.

[72] Id.

[73] See id. at 26.

[74] Rollo(G. R.N.OS 202495 & 202497), Vol. III, p. 1913

[75]Id. at 1913-1914

[76] Rollo (G.R. No. 225874), Vol. II, p. 717.

[77] Id.; rollo (G.R. No. 225101), Vol. I, p. 530; and rollo (G.R. No. 219125), Vol. I, p. 16.

[78] Rollo (G.R. No. 225101), Vol. I, p. 531; rollo (G.R. No. 219125), Vol. I, pp. 16-17; rollo (G.R. No. 222057), p. 702; rollo (G.R. No. 224879), p. 391; and rollo (G.R. No. 225874), Vol. II, p. 717.

[79] Rollo (G.R. No. 224879), pp. 391-392; and rollo (G.R. No. 219125), Vol. I, p. 17.

[80] See rollo (G.R. No. 225101), Vol. I, p. 531; and rollo (G.R. No. 225874), Vol. I, p. 24.

[81] Rollo (G.R. No. 202481), Vol. II, pp. 1429-1430.

[82] See rollo (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028 and rollo (G.R. Nos. 202495 & 202497),

Vol. IV, pp. 2066-2086.

[83] Olores v. Manila Doctors College, 73 1 Phil. 45, 58 (2014).

[84] *Id.* at 58.

[85] *Id.* at 58-59.

[86] See CA Decision, rollo (G.R. No. 222057), pp. 700-713.

[87] See NLRC Decision, *id.* at 387-399.

[92] Dela Rosa Liner, Inc. v. Borela, 765 Phil. 251, 259 (2015).

[93] Rollo (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028.

[94] Lazatin v. Hon. Desierto, 606 Phil. 271, 282 (2009), citing Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation, 573 Phil. 320, 337 (2008).

[95] *Id.* at 282-283, citing Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation, *id.* at 337.

[96] 716 Phil. 676(2013).

[97] *Id.* at 687. Emphasis omitted.

[98] *Id.* Emphasis omitted.

[99] See rollo (G.R. No. 225874), Vol. I, pp. 13-14; rollo (G.R. Nos. 202495 & 202497), Vol. III, p. 1914.

[100] South East International Rattan, Inc. v. Coming, 729 Phil. 298, 306 (2014), citing Atok Big Wedge Co., Inc. v. Gison, 670 Phil. 615, 626-627 (2011), further citing Philippine Global Communication, Inc. v. De Vera, 498 Phil. 301, 308-309 (2005).

[101] 758 Phil. 467(2015).

[102] *Id.* at 480-482.

[103] Rollo (G.R. No. 219125), Vol. I, p. 15.

[104] Rollo (G.R. No. 225874), Vol. II, p. 717; /-o//o(G.R. No. 219125), Vol. I, p. 22; rollo (G.R. No. 225101), Vol. I, p. 32.

[105] *Id.*

[106] See rollo (G.R. No. 219125), Vol. I, p. 22.

[107] *Id.*

[108] See *id.*

[109] *Id.*; rollo (G.R. No. 225101), Vol. I, p. 532.

[110] Rollo (G.R. No. 219125), Vol. I, pp. 22-23.

[111] Begino v. ABS-CBN Corporation, *supra* note 101, at 482, citing Ditmpit-Mnrillo v. CA, 551 Phil. 725 735 (2007).

- [112] Universal Robina Sugar Killing Corp. v. Acibo, 724 Phil. 489, 503-504 (2014).
- [113] Begino v. ABS-CBN Corporation, supra note 101, at 479.
- [114] See GMA Network, Inc. v. Pabriga, 722 Phil. 161, 169-170 (2013), citing Brent School, Inc. v. Zamora, 260 Phil. 747(1990).
- [115] Rollo (G.R. No. 225874), Vol. I, p. 14.
- [116] Now Art. 294 of the LABOR CODE OF THE PHILIPPINES.
- [117] See Universal Robina Sugar Milling Corporation v. Acibo, supra note 112, at 500.
- [118] Maraguinot, Jr. v. NLRC, 348 Phil. 580, 602-603 (1998), citing De Leon v. NLRC, 257 Phil. 626, 632 (1989).
- [119] 534 Phil. 306 (2006).
- [120] Id. at 333-334.
- [121] Rollo (G.R. No. 222057), p. 110.
- [122] Id. 111.
- [131] See id. at 557.
- [132] Rollo (G.R. No. 222057), p. 276.
- [133] Sonza v. ABS-CBN Broadcasting Corp., supra note 127, at 555, citing Albery-Velez v. Corporation De Puerto Rico Para La Difusion Piiblica ("WIPR"), 361 F.3d 1, March 2, 2004. 134
- [134] Rollo (G.R. No. 225101), Vol. I, p. 529.
- [135] Sonza v. ABS-CBN Broadcasting Corp., supra note 127, at 552.
- [136] Id. at 556.
- [137] EMPLOYER-EMPLOYEE RELATIONSHIP, HOURS OF WORK AND DISPUTE SETTLEMENT IN THE BROADCAST INDUSTRY, January 8, 1979.
- [138] Policy Instruction No. 40, p. 1.
- [139] Id. at 2.
- [140] 551 Phil. 802(2007).
- [141] 566 Phil. 564 (2008).
- [142] Policy Instruction No. 40.
- [143] Dacles v. Millenium Erectors Corporation, 763 Phil. 550, 558 (2015), citing Omni Hauling Services, Inc. v. Bon, 742 Phil. 335, 343-344 (2014).
- [144] Id. at 558.
- [145] Exocet Security and Allied Services Corp., et al. v. Serrano, 744 Phil. 403, 418 (2014).

- [146] Supra note 118.
- [147] Id. at 605.
- [148] Id. at 604, citing *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 280 (1997).
- [149] See *Raycor Aircontrol Systems, Inc. v. NLRC*, 330 Phil. 306, 320-322 (1996).
- [150] Id.
- [151] Id. at 321.
- [152] *Maraguinot, Jr. v. NLRC*, supra note 118, at 606.
- [153] Rollo (G.R. Nos. 202495 & 202497), Vol. III, p. 1915.
- [154] Id.
- [155] Supra note 148.
- [156] Id. at 280-281.
- [157] Id. at 281.
- [158] *Maraguinot, Jr. v. NLRC*, supra note 118, at 605.
- [159] In the petitions for regularization (G.R. Nos. 202481 and 202495 & 202497), the workers likewise beseech the Court for their inclusion in the CBA with ABS-CBN.
- [160] 624 Phil. 562(2010).
- [161] Rollo (G.R. Nos. 202495 & 202497), Vol. IV, p. 2510. 162
- [162] LABOR CODE OF THE PHILIPPINES, Art. 294.
- [163] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 524 (2015), citing *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 604-605 (2013).
- [164] Presidential Decree No. 851, REQUIRING ALL EMPLOYERS to PAY THEIR EMPLOYEES A 13TH MONTH PAY; Revised Guidelines on the Implementation of the 13th Month Pay Law; and R.A. No. 10963 or the "TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN) LAW," Sec. 9.
- [165] *Loon v. Power Master, Inc.*, 723 Phil. 515, 531 -532 (2013).
- [166] Id. at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).
- [167] Id.
- [168] LABOR CODE OF THE PHILIPPINES, Art. III.
- [169] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 278-279 (2013).
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CONCURRING OPINION

LEONEN, J.:

Before this Court are eight Petitions for Review on Certiorari under

Rule 45 of the Rules of Court, consolidated as they all involve common questions of law.

These cases began as complaints for regularization filed before the Labor Arbiter by 135 ABS-CBN Corporation (ABS-CBN) workers, reduced to 95 during the proceedings. The cases ultimately led to two consolidated cases separately resolved by different divisions of the Court of Appeals, in which one set of complainants were declared regular employees, and another set declared independent contractors.

In G.R. No. 202481,¹ 242 workers assailed the January 27, 2012 Decision³ and June 26, 2012 Resolution⁴ of the Court of Appeals in CA-G.R. SP No. 117885, which dismissed their case for regularization. Meanwhile, in G.R. Nos. 202495-97, ABS-CBN questioned the October 28, 2011 Decision⁵ and June 27, 2012 Resolution⁶ of the Court of Appeals in CA-G.R. SP Nos. 108552 and 108976, where 72 ABS-CBN workers were found to be regular employees.

During the pendency of these regularization cases, 20 of the 99 workers filed complaints for illegal dismissal, among others, before the Labor Arbiter.

The first of these cases was filed by Ismael Dablo, Rolando Barron, Roberto Del Castillo, Albert Del Rosario, George Macaso, Rey Santiago, Reynaldo Tugade, and Paul Viray, who would eventually be among the petitioners in G.R. No. 202481. Their complaint for illegal dismissal, reinstatement, payment of backwages, moral and exemplary damages, payment of 13th month pay, service incentive leave, and attorney's fees was ultimately dismissed by the Court of Appeals in its April 30, 2013 Decision⁷ and November 20, 2013 Resolution⁸ in CA-G.R. SP No. 122635. Relying on the result of CA-G.R. SP No. 117885, the Court of Appeals found that it had no jurisdiction to rule on the workers' employment status, and therefore, the status of their dismissal.⁹ Now before this Court, these workers assailed the rulings in a Petition for Review docketed as G.R. No. 210165.

Likewise dismissed by the Court of Appeals, on the ground of forum shopping, was the illegal dismissal case filed by Ricardo Joy Cajoles, Jr., Antonio Immanuel Calle, Richard Sison, and Journalie Payonan, who were parties to G.R. Nos. 202495-97. They now question the August 19, 2014 Decision¹⁰ and June 18, 2015 Resolution¹¹ in CA-G.R. SP No. 122424 through a Petition for Review, docketed as G.R. No. 219125.

Joseph R. Ong from G.R. Nos. 202495-97 had also filed a complaint for illegal dismissal, money claims, and damages with three other camera operators. This was granted by the Court of Appeals in its February 24, 2015 Decision¹² and December 21, 2015 Resolution¹³ in CA-G.R. SP No. 122068. Thus, ABS-CBN now questions the rulings before this Court in G.R. No. 222057.

Likewise, Ronnie Lozares, Jun Tangalin, and Lauro Calitisen, also from G.R. Nos. 202495-97, filed a complaint for illegal dismissal, nonpayment of benefits, and moral and exemplary damages against ABS-CBN, which was consolidated with two other complaints. In its January 4, 2016 Decision¹⁴ and May 27, 2016 Resolution¹⁵ in CA-G.R. SP No. 122824, the Court of Appeals found that, among the three, only Ronnie Lozares proved that he was a regular employee who had been illegally dismissed. ABS-CBN now assails this ruling in G.R. No. 224879.

Christopher Mendoza, Russel Galima, Alfred Christian Nunez, Rommel Villanueva, Jhonschultz Congson, and Alex Carlos from G.R. Nos. 202495-97, along with 11 other workers, also filed cases for illegal dismissal against ABS-CBN. The Court of Appeals in CA-G.R. SP No. 125868 had dismissed their complaint in its January 28,

2016 Decision¹⁶ and May 26, 2016 Resolution.¹⁷ They now question the rulings in G.R. No. 225101.

In G.R. No. 225874, ABS-CBN assails the January 12, 2016 Decision¹⁸ and July 15, 2016 Resolution¹⁹ of the Court of Appeals in CA-G.R. SP No. 131576. There, three ABS-CBN workers not parties to either regularization case had been found to be regular employees.

In sum, 95 workers sought to be regularized by ABS-CBN, with 20 later seeking redress when their employments were terminated by the company, while an additional 19 workers filed their own complaints for illegal dismissal.

These workers occupied different positions, though all involved in television production. They are, variously: camera operators, light technicians, camera control unit operators, OB van drivers, PA van drivers, audio technicians, sound engineers, drivers, system operators, electricians, gaffers, technical directors, VTR operators, video engineers, camera control unit staff, lighting directors, and moving light operators.^[20]

Against their complaints, ABS-CBN raised common defenses:

1. It is principally engaged in broadcasting, not production. Thus, the services rendered by the workers are not usually necessary or desirable in its usual business or trade.^[21]
2. The workers are "talents" or independent contractors hired based on unique skills or expertise for particular productions.^[22]
3. The workers, as independent contractors, are accredited by ABS-CBN for inclusion in a company database called the "Internal Job Market System." ABS-CBN's program producers use this system for their technical or creative staffing. The workers in the Internal Job Market System are not exclusively bound to render services for ABS-CBN.^[23]
4. When a worker is chosen using the Internal Job Market System, they are briefed on the general requirements of the project. However, they proceed independently when operating their equipment, without training or supervision when they perform their tasks.^[24]

I.

This Court's power of review over labor cases in a Rule 45 petition is limited to the correctness of the Court of Appeals' findings on the existence, or lack, of grave abuse of discretion committed by the National Labor Relations Commission.^[25] In *Montoya v. Transmed Manila Corporation*:^[26]

1. We review in this Rule 45 petition the decision of the CA on a Rule 65 petition filed by Montoya with that court. In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?^[27] (Emphasis in the original, citations omitted)

There is grave abuse of discretion when a court or tribunal "capriciously acts or whimsically exercises judgment to be 'equivalent to lack of jurisdiction.'"^[28]

In G.R. No. 210165, the Court of Appeals held that *Fulache v. ABS-CBN Broadcasting Corporation*[29] was inapplicable, because a decision had already been rendered by a different division of the Court of Appeals in the regularization case to which the workers were parties:

Petitioners' reliance on *Fulache v. ABS-CBN Broadcasting, Corp.* anent the issue of employer-employee relationship is misplaced. Involved in said case were drivers, drivers/cameramen and cameramen/editors, who were also dismissed by private respondent ABS-CBN almost under the same circumstances herein.

.....

The *Fulache* ruling cannot be applied herein. This is due to the fact that the then Special Fourteenth Division of this Court already handed down a Decision dated January 27, 2012 in CA-G.R. SP No. 117885 which declared that the parties in the regularization case, including herein petitioners, failed to prove that they are regular employees, thus reversing and setting aside the Decision dated October 29, 2010 rendered by the NLRC.

Evidently, this Court has no jurisdiction to rule on the question of whether petitioners are regular employees, the same having been passed upon by the Special Fourteenth Division.[30] (Citations omitted)

Meanwhile, in G.R. No. 219125, the Court of Appeals dismissed the illegal dismissal case filed by workers who were part of the regularization case in G.R. Nos. 202495-97. In so ruling, it reasoned that the workers committed forum shopping:

Without a doubt, when petitioners lodged this case before the Labor Arbiter, there was already a pending case, which, as a matter of fact, has already been decided by the labor tribunals, involving significantly the same issues and same parties. Indeed, [in] the filing of the second case for illegal dismissal, petitioners had blatantly defied the rule on forum shopping. Petitioners, having obtained an unfavorable ruling in the Payonan case in the proceedings below, deliberately sought another forum in the hope of obtaining a favorable judgment, as it did, since the Court of Appeals reversed the labor tribunals' decisions in the Payonan case on October 28, 2011. In fact, as may be gleaned from the pleadings of the petitioners, they obviously took advantage of the ruling in the Payonan case by invoking that the same be likewise made applicable to them. By so doing, they themselves acknowledge the fact that they have interest in the Payonan case by virtue of their being petitioners also therein.

There is no escaping that the simultaneous remedies availed of by the petitioners are a manifest case of forum shopping. Clearly, in the two cases earlier mentioned and the one under our consideration, petitioners seek to obtain one and the same relief, that is, to declare their dismissal illegal and for the private respondent to declare them as regular employees, before the same tribunal.[31]

It is evident in these rulings that the Court of Appeals gravely abused its discretion.

As noted by the ponencia, there is no forum shopping when workers in a regularization case later file cases for illegal dismissal:

Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action. This is absent here. The facts or the pieces of evidence that would determine whether the workers were illegally dismissed are not the same as those that would support their clamor for regularization.

Besides, it must be remembered that the circumstances obtaining at the time the workers filed the regularization cases were different from when they subsequently filed the illegal dismissal cases. Before their illegal dismissal, the workers were simply clamoring for their recognition as regular employees, and their right to receive benefits concomitant with regular employment. However, during the pendency of the regularization cases, the workers were summarily terminated from their employment. This supervening event gave rise to a cause of action for illegal dismissal, distinct from that in the regularization case[s]. This time, the workers were not only praying for regularization, but also for reinstatement by questioning the legality of their dismissal. The issue turned into whether or not ABS-CBN had just or authorized cause to terminate their employment. Clearly, it was ABS-CBN's action of dismissing the workers that gave rise to the illegal dismissal cases. And it is absurd for it to now ask the Court to fault the workers for questioning ABS-CBN's actions, which were done while the regularization cases were pending. The Court cannot allow this.[32]

Moreover, the circumstances surrounding the illegal dismissal cases of some of the workers in G.R. Nos. 202495-97 are not new to this Court. In *Fulache*, this Court held that ABS-CBN acted in bad faith when it treated its workers as independent contractors who may be dismissed without cause despite the existence of regularization actions. For failing to recognize this, the Court of Appeals and the labor tribunals were deemed to have committed grave abuse of discretion:

Lastly, it forgot that there was a standing labor arbiter's decision that, while not yet final because of its own pending appeal, cannot simply be disregarded. By implementing the dismissal action at the time the labor arbiter's ruling was under review, the company unilaterally negated the effects of the labor arbiter's ruling while at the same time appealing the same ruling to the [National Labor Relations Commission]. This unilateral move is a direct affront to the [National Labor Relations Commission]'s authority and an abuse of the appeal process.

All these go to show that ABS-CBN acted with patent bad faith. A close parallel we can draw to characterize this bad faith is the prohibition against forum-shopping under the Rules of Court. In forum-shopping, the Rules characterize as bad faith the act of filing similar and repetitive actions for the same cause with the intent of somehow finding a favorable ruling in one of the actions filed. ABS-CBN's actions in the two cases, as described above, are of the same character, since its obvious intent was to defeat and render useless, in a roundabout way and other than through the appeal it had taken, the labor arbiter's decision in the regularization case. Forum-shopping is penalized by the dismissal of the actions involved. The penalty against ABS-CBN for its bad faith in the present case should be no less.

The errors and omissions do not belong to ABS-CBN alone. The labor arbiter himself who handled both cases did not see the totality of the company's actions for what they were. He appeared to have blindly allowed what he granted the petitioners with his left hand, to be taken away with his right hand, unmindful that the company already exhibited a badge of bad faith in seeking to terminate the services of the petitioners whose regular status had just been recognized. He should have recognized the bad faith from the timing alone of ABS-CBN's conscious and purposeful moves to secure the ultimate aim of avoiding the regularization of its so-called "talents."

The [National Labor Relations Commission], for its part, initially recognized the presence of bad faith where it originally rules that:

While notice has been made to the employees whose positions were declared redundant, the element of good faith in abolishing the positions of the complainants appear to be wanting. In fact, it remains undisputed that herein complainants were terminated when they refused to sign an employment contract with Able Services which would make them appear as employees of the agency and not of ABS-CBN. Such act by * clearly demonstrated bad faith on the part of the respondent in carrying out the company's redundancy program. ...

On motion for reconsideration by both parties, the [National Labor Relations Commission] reiterated its

"pronouncement that complainants were illegally terminated as extensively discussed in our Joint Decision dated December 15, 2004." Yet in an inexplicable turnaround, it reconsidered its joint decision and reinstated not only the labor arbiter's decision of January 17, 2002 in the regularization case, but also his illegal dismissal decision of April 21, 2003. Thus, the [National Labor Relations Commission] joined the labor arbiter in his error that we cannot but characterize as grave abuse of discretion.

The Court cannot leave unchecked the labor tribunals' patent grave abuse of discretion that resulted, without doubt, in a grave injustice to the petitioners who were claiming regular employment status and were unceremoniously deprived of their employment soon after their regular status was recognized. Unfortunately, the CA failed to detect the labor tribunals' gross errors in the disposition of the dismissal issue. Thus, the CA itself joined the same errors the labor tribunals committed.[33] (Citations omitted)

The Court of Appeals in G.R. No. 225101 also gravely abused its discretion in taking cognizance of *Jalog v. National Labor Relations Commission*, G.R. No. 198065:

To reiterate, the most important factor in determining the existence of an employer-employee [relationship] is the power of control. As held in *Jalog*, ABS-CBN did not control the manner by which petitioners performed their work. How they operate the pieces of television equipment handed to them was left to their creativity, imagination and artistic inclination. What ABS-CBN was looking out for was only the result of their work and its conformity with company standards. Neither is there merit in petitioners' contention that the pieces of equipment that they used do not belong to them but to ABS-CBN. Ownership of the television equipment is immaterial. What petitioners brought to their jobs were not pieces of equipment but their unique individual talents and skills in operating the equipment. At the hands of a person without talent, the equipment would be useless and would not achieve desired results. Also, it may be true that ABS-CBN provided further training for petitioners; however, it is not disputed that such training was optional and was merely intended to hone their skills which they already had even before they offered their services.[34]

As observed in the ponencia, the Court of Appeals Decision in *Jalog* was affirmed by this Court through an October 5, 2011 minute resolution.[35] Jurisprudence has held that while a minute resolution denying a petition for review on certiorari is a judgment on the merits,[36] it cannot bind non-parties thereto:

The CA's reliance on the *Philippine Pizza, Inc.* 's minute resolution is, however, misplaced. Case law instructs that although the Court's dismissal of a case via a minute resolution constitutes a disposition on the merits, the same could not be treated as a binding precedent to cases involving other persons who are not parties to the case, or another subject matter that may or may not have the same parties and issues. In other words, a minute resolution does not necessarily bind non-parties to the action even if it amounts to a final action on a case.

In this case, records do not bear proof that respondents were also parties to the *Philippine Pizza, Inc.* 's case or that they participated or were involved therein. Moreover, there was no showing that the subject matters of the two (2) cases were in some way similar or related to one another, since the minute resolution in the case of *Philippine Pizza, Inc.* did not contain a complete statement of the facts, as well as a discussion of the applicable laws and jurisprudence that became the basis for the Court's minute resolution therein. In this light, the principle of *stare decisis* cannot be invoked to obtain a dismissal of the instant petition.[37]

The Court of Appeals failed to explain why it took cognizance of *Jalog* despite that case not involving any of the petitioners-workers party to G.R. No. 225101, or even showing that they in any way participated in the proceedings therein.

II

This is not the first time that this Court has had to pass upon the employment status of persons working for ABS-CBN.

Sonza v. ABS-CBN Broadcasting Corporation[38] decided on June 10, 2004, was a case of first impression:

The present controversy is one of first impression. Although Philippine Labor laws and jurisprudence define clearly the elements of an employer-employee relationship, this is the first time that the Court will resolve the nature of the relationship between a television and radio station and one of its "talents". There is no case law stating that a radio and television program host is an employee of the broadcast station.[39]

In Sonza, this Court found that a television and radio broadcaster who had executed an exclusive talent agreement with ABS-CBN was an independent contractor. ABS-CBN and petitioner Jose Sonza did not have an employer-employee relationship, as none of the elements that made such a relationship existed in his case.

On June 22, 2005, this Court issued an unsigned resolution in ABS-CBN Broadcasting Corporation v. Marquez, G.R. No. 167638. Marquez was cited by this Court in two cases, Dumpit-Murillo v. Court of Appeals[40] and Consolidated Broadcasting System, Inc. v. Oberio[41] both promulgated on June 8, 2007.

Dumpit-Murillo referenced Marquez's ruling that ABS-CBN "talents" who were production crew members for a certain tele-series, and later rehired or reassigned to subsequent productions, were regular employees.[42] Meanwhile, Consolidated Broadcasting System, which concerned drama talents of a radio station, referred to Marquez's discussion on Department of Labor and Employment Policy Instruction No. 40. The decision reads:

In ABS-CBN v. Marquez, 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. .

..

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 repents 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.[43] (Emphasis in the original, citation omitted)

On September 26, 2006, this Court decided ABS-CBN v. Nazareno,[44] which involved a complaint for

recognition of regular status filed by four production assistants with ABS-CBN. There, this Court found that the production assistants were regular employees because they had performed tasks necessary or desirable in ABS-CBN's usual business or trade for an average of five years.[45] Sonza was found inapplicable in that case, where there was an employer-employee relationship between ABS-CBN and the production assistants.[46]

Fulache, decided on January 21, 2010, involved a group of drivers/camera operators, drivers, camera operators/editors, a production assistant/teleprompter operator-editing, and a VTR operator/editor, who filed complaints for regularization, unfair labor practice, and inoney claims. In it, they alleged that ABS-CBN excluded them from a collective bargaining agreement covering rank-and-file employees.[47] After the Labor Arbiter had found that the workers were regular employees, and pending ABS-CBN's appeal with the National Labor Relations Commission, ABS-CBN dismissed the drivers for allegedly failing to sign employment contracts with a third-party service contractor.[48]

This Court ruled in the workers' favor. First, it found that they were rank-and-file employees entitled to collective bargaining agreement benefits, and second, it held that the drivers were illegally dismissed because ABS-CBN's termination of their employment was tainted with bad faith.[49]

On April 20, 2015, this Court in *Begino v. ABS-CBN Corporation*[50] found that two camera operators/editors and two reporters were regular employees of ABS-CBN, despite their continuous employment under "talent contracts." [51] There, this Court likewise declined to apply *Sonza* to determine the employer-employee relationship of the parties:

In finding that petitioners were regular employees, the [National Labor Relations Commission] further ruled that the exclusivity clause and prohibitions in their Talent Contracts and/or Project Assignment Forms were likewise indicative of respondents' control over them. Brushing aside said finding, however, the CA applied the ruling in *Sonza v. ABS-CBN Broadcasting Corp.* where similar restrictions were considered not necessarily determinative of the existence of an employer-employee relationship. Recognizing that independent contractors can validly provide his exclusive services to the hiring party, said case enunciated that guidelines for the achievement of mutually desired results are not tantamount to control. As correctly pointed out by petitioners, however, parallels cannot be expediently drawn between this case and that of *Sonza* case which involved a well-known television and radio personality who was legitimately considered a talent and amply compensated as such. While possessed of skills for which they were modestly recompensed by respondents, petitioners lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry.

Later echoed in *Dumpil-Murillo v. Court of Appeals*, this Court has rejected the application of the ruling in the *Sonza* case to employees similarly situated as petitioners in *ABS-CBN Broadcasting Corporation v. Nazareno*. The following distinctions were significantly observed between employees like petitioners and television or radio personalities like *Sonza*, to wit:

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. The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship. . . .

Rather than the project and/or independent contractors respondents claim them to be, it is evident from the foregoing disquisition that petitioners are regular employees of ABS-CBN. This conclusion is borne out by the ineluctable showing that petitioners perform functions necessary and essential to the business of ABS-CBN which repeatedly employed them for a long-running news program of its Regional Network Group in Naga City. In the course of said employment, petitioners were provided the equipments they needed, were required to comply with the Company's policies which entailed prior approval and evaluation of their performance.[52](Citations omitted)

III

When it is undisputed by the parties that some form of work is performed by a person for another, this Court's first task is to determine whether an employer-employee relationship exists between the parties. Next, we must determine the employment status.[53]

This Court has developed the "four-fold test"[54] to determine whether an employer-employee relationship exists.[55] These four factors are: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct[.]"[56]

Of these four factors, the most important is the employer's power of control over their employee, which means "the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end." [57] Yet, not every form of control is considered sufficient to pass this test:

Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control. Thus, this Court has explained:

It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. ...

The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results. Thus, in this case, we are to examine the factors enumerated by petitioner to see if these are merely guidelines or if they indeed fulfill the requirements of the control test.[58]

The power of control need not be actually exercised by the employer. It is enough that the employer "has a right to wield the power." [59]

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But when the complexity of the relationship makes the application of the control test untenable, the economic

realities of the employment relations may also be considered. In *Francisco v. National Labor Relations Commission*:^[60]

However, in certain cases the control test is not sufficient to give a complete picture of the relationship between the parties, owing to the complexity of such a relationship where several positions have been held by the worker. There are instances when, aside from the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.

The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.

This two-tiered test would provide us with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.

...

In *Sevilla v. Court of Appeals*, we observed the need to consider the existing economic conditions prevailing between the parties, in addition to the standard of right-of-control like the inclusion of the employee in the payrolls, to give a clearer picture in determining the existence of an employer-employee relationship based on an analysis of the totality of economic circumstances of the worker.

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.

The proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business. In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency. By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the economic dependence of the worker on his employer.^[61] (Citations omitted)

An employee stands in contrast with an "independent contractor," a type of service relation recognized in jurisprudence. An independent contractor is different from the job contracting recognized in Article 106 of the Labor Code.^[62] Here, the relationship is bilateral because the independent contractors perform the work for the principals themselves, and not through other workers.^[63]

These independent contractors work on their own account, are responsible for themselves, and are generally not interfered with by the person who hire them.^[64] Notably, Article 1713 of the Civil Code, on contracts for a piece of work, states:

ARTICLE 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his

labor or skill, or also furnish the material.

In *Investment Planning Corporation of the Philippines v. Social Security System*,^[65] this Court found that commission agents selling investment plans were not employees, but independent contractors of a securities firm as they were paid by result and not based on the labor performed. "The securities firm did not control the means and methods employed by the agents in the course of their work:

We have examined the contract form between petitioner and its registered representatives and found nothing therein which would indicate that the latter are under the control of the former in respect of the means and methods they employ in the performance of their work. The fact that for certain specified causes the relationship may be terminated (e.g., failure to meet the annual quota of sales, inability to make any sales production during a six-month period, conduct detrimental to petitioner, etc.) does not mean that such control exists, for the causes of termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees.^[66]

Similarly, in *Sara v. Agarrado*,^[67] a person who sold rice for another, on a commission basis, was deemed an independent contractor paid for the results of the labor performed. The same conclusion was reached in *Encyclopaedia Britannica (Philippines) Inc. v. National Labor Relations Commission*,^[68] concerning a sales division manager who was found to have free rein over the means and methods by which he marketed the products sold. A basketball referee exercising "independent judgment" while officiating games was found to be an independent contractor in *Bernarte v. Philippine Basketball Association*.^[69]

The employer's right of control over the performance of work determines whether a person is an employee or an independent contractor.^[70] In *Tan v. Lagrama*:^[71]

Of the four elements of the employer-employee relationship, the "control test" is the most important. Compared to an employee, an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under its own responsibility according to its own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. Hence, while an independent contractor enjoys independence and freedom from the control and supervision of his principal, an employee is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.^[72]

When the employer's ostensible power of control over the conduct of work is missing, and the worker's pay depends on the results achieved, the worker must be considered an independent contractor.^[73] Notably, a worker who may otherwise be classified as a project employee cannot be an independent contractor, because no employer-employee relationship exists with independent contractors.^[74]

The factor of the person's "unique skills, expertise or talent" in their selection or engagement that would make them an independent contractor was first recognized in *Sonza*:

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA's services to co-host its television and radio programs because 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.[75]

Engagement based on a person's unique skills, expertise, or talent was one of the factors that made this Court consider a newspaper columnist in Orozco as an independent contractor.[76] However, in Nazareno, four production assistants were found to not have been selected by ABS-CBN based on any "peculiar or unique skills, talent or celebrity status"[77] as they were merely hired through the personnel department.

Notably, the broadcaster in Sonza was engaged by ABS-CBN through an agreement executed between ABS-CBN through its corporate officers and petitioner Jose Sonza's management corporation, of which Sonza was the president and general manager. This fact was used by this Court when it contrasted Sonza with the circumstances surrounding the employment of another broadcaster in Dumpit-Murillo:

In the case at bar, it does not appear that the employer and employee dealt with each other on equal terms. Understandably, the petitioner could not object to the terms of her employment contract because she did not want to lose the job that she loved and the workplace that she had grown accustomed to, which is exactly what happened when she finally manifested her intention to negotiate. Being one of the numerous newscasters/broadcasters of ABC and desiring to keep her job as a broadcasting practitioner, petitioner was left with no choice but to affix her signature of conformity on each renewal of her contract as already prepared by private respondents; otherwise, private respondents would have simply refused to renew her contract. Patently, the petitioner occupied a position of weakness vis-a-vis the employer. Moreover, private respondents' practice of repeatedly extending petitioner's 3-month contract for four years is a circumvention of the acquisition of regular status. Hence, there was no valid fixed-term employment between petitioner and private respondents.[78]

As this Court observed in *Fuji Television Network, Inc. v. Espiritu*: [79]

Sonza was engaged by ABS-CBN in view of his "unique skills, talent and celebrity status not possessed by ordinary employees." His work was for radio and television programs. On the other hand, Dumpit-Murillo was hired by ABC as a newscaster and co-anchor.

Sonza's talent fee amounted to P317,000.00 per month, which this court found to be a substantial amount that indicated he was an independent contractor rather than a regular employee. Meanwhile, Dumpit-Murillo's monthly salary was P28,000.00, a very low amount compared to what Sonza received.

Sonza was unable to prove that ABS-CBN could terminate his services apart from breach of contract. There was no indication that he could be terminated based on just or authorized causes under the Labor Code. In addition, ABS-CBN continued to pay his talent fee under their agreement, even though his programs were no longer broadcasted. Dumpit-Murillo was found to have been illegally dismissed by her employer when they did not renew her contract on her fourth year with ABC.

In Sonza, this court ruled that ABS-CBN did not control how Sonza delivered his lines, how he appeared on television, or how he sounded on radio. All that Sonza needed was his talent. Further, "ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work ... did not meet ABS-CBN's approval." In Dumpit-Murillo, the duties and responsibilities enumerated in her contract was a clear indication that ABC had control over her work.[80] (Citations omitted)

Finally, in *Begino*, this Court warned that expedient parallels drawn with Sonza should not be made when the

workers involved are not similarly situated. Mere possession of skills and abilities cannot be the basis of a finding that workers are independent contractors.[81]

Based on these, it is patently obvious that any application of *Sonza* must be made with care for the circumstances that begot it. As *Dumpit-Murillo*, *Fuji Television Network*, and *Begino* demonstrate, it is the totality of the examination of all four factors, from selection and engagement until the power of control wielded by the alleged employer, that determines whether *Sonza* should apply.[82]

IV

Article 295 of the Labor Code distinguishes four classifications of employment: (1) regular; (2) project; (3) seasonal; and (4) casual:

ARTICLE 295. [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 service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

A fifth classification recognized in jurisprudence is the fixed-term employee. In *Brent School v. Zamora*[83]

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 [now Article 295] of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[84]

The test to determine whether a worker is a regular employee is the existence of a reasonable connection between the activity that the employee performs and the employer's usual business and trade. In *De Leon v. National Labor Relations Commission*.[85]

This provision reinforces the Constitutional mandate to protect the interest of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient. Thus, contrary agreements notwithstanding, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer. Not considered regular are the so-called "project employment" 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 employment which by its nature is only desirable for a limited period of time. However, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity he performed and while such activity actually exists.

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade 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 the 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 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. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[86] (Emphasis supplied, citation omitted)

Thus, the Labor Code provides the two types of regular employment: first, by the nature of work; and second, by the years of service.[87] This is to emphasize the protection of labor from agreements that may keep workers from attaining security of tenure.[88]

It must be emphasized that Article 295 of the Labor Code cannot be used to determine the existence of an employer-employee relationship. It merely determines the kinds of employees so that an employee may determine their rights accordingly.[89]

The ponencia bases its determination of the usual business or trade of ABS-CBN on an examination of the company's Articles of Incorporation:

Nazareno applies here. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:

... To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all 'other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.

In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows, to wit:

3. to engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name, and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcription or other devices by which sight and sound may be reproduced.

4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic reproduction services and other creative production services; and to engage in any manner, shape, or form in post-production mixing, dubbing, overdubbing, audio- video processing sequence alteration and modification of every nature of all kinds of audio and video production

5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.

Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description - or simply, the production of shows - are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.[90]

Nonetheless, beyond ABS-CBN's Articles of Incorporation, what should also be taken into account is its own admissions concerning its business of broadcasting, as well as the findings of the various divisions of the Court of Appeals.

In G.R. No. 202481:

[ABS-CBN] is principally engaged in the business of broadcasting television and radio contents in the Philippines that are recognized and patronized both locally and internationally. In 1986, [ABS-CBN] started to employ a combination of schemes (like block timing, line production, co-production, self-production, foreign canned shows, live coverages, license programs, etc.) in terms of air content for the further generation of revenues. Volatility in viewer preferences pushed [ABS-CBN] to sidestep and resort to production instead of just broadcasting content particularly when internal resources are not available to it. [ABS-CBN] needed to improvise and provide its clientele different program materials that are attractive to advertisers in order to effectively generate more revenues. Although [ABS-CBN] produces some of the content that it broadcasts, the production of the same is not its principal business. Broadcasting remains its primary concern.[91]

In G.R. Nos. 202495-97:

In response, private respondent ABS-CBN averred that it is engaged in the business of broadcasting television and radio content, and generates revenues through the following schemes, to wit:

Option 1: Block Time - by this scheme, a producer or the block-timer purchases a fixed number of hours wherein it can air any show they desire and the advertising revenues thereof will pertain solely to the block timer.

Option 2: Line Production - by this mode, a producer conceptualizes, implements and creates a particular program, which is in turn bought by a broadcasting company at a fixed price. The advertising revenues earned from the airing of such program is for the account of the broadcasting company.

Option 3: Co-production - by this scheme, the broadcasting company and the producer share the entire cost of the production of a program. Consequently, the advertising revenues [are] similarly shared by the broadcasting company and the producer.

Option 4: The broadcasting company can shoulder the entire cost of producing a particular program, and naturally the advertising revenues or losses incurred shall be for the sole account of the broadcasting company.

Option 5: The broadcasting company purchases foreign canned shows, and the advertising revenues earned from airing the same shall be for the sole account of the broadcasting company.

[ABS-CBN] employed a mix of all schemes although a good number of foreign canned shows were being aired especially at prime time in line with viewer preferences and industry practice. Later, viewer preferences improved such that quality local programs were appreciated over foreign canned shows. However, the prohibitive cost of producing a high quality local program that would appeal to the viewers has deterred producers from making such huge investments. Thus, [ABS-CBN] was constrained to venture into more co-productions and company-produced programs.[92]

In G.R. No. 219125:

[ABS-CBN] contended that since 1986 it already resorted to various schemes to generate revenues such as Block-time, Line Production, Co-production, Self-production, Foreign Canned Shows, Live Coverage,

Licensed Programs or combinations thereof depending on the preferences of the viewers, it went into production instead of just plain broadcasting.[93]

ABS-CBN argues that its principal concern is broadcasting, and thus, any worker not involved in broadcasting is not its regular employee. Article 295 of the Labor Code, however, only requires that the employer's business or trade be "usual." The employer's business or trade must be examined in its entirety:

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual trade or business trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.[94] (Citation omitted)

Based on ABS-CBN's own descriptions of its business, production of broadcast content is part of its usual trade or business. While not completely indispensable, because of sources of broadcast content available elsewhere, the production of its own content is desirable for ABS-CBN, especially because advertising revenues earned from broadcast of self-produced content is paid out solely to it. As such, persons who perform production work for ABS-CBN may be considered to be providing services necessary or desirable to ABS-CBN.[95]

In this regard, the ponencia's discussion concerning project or program employees and work pools substantially sets forth the correct legal principles. Clearly, ABS-CBN's Internal Job Market System is a form of work pool of workers who are undisputedly its employees:

In the particular case of ABS-CBN, the [Internal Job Market] System clearly functions as a work pool of employees involved in the production of programs. A closer scrutiny of the IJM System shows that it is a pool from which ABS-CBN draws its manpower for the creation and production of its television programs. It serves as "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services." The database includes information, such as the competency rating of the employee and his/her corresponding professional fees. Should the company wish to hire a person for a particular project, it will notify the latter to report on a set filming date.[96](Citations omitted)

Nonetheless, it is inaccurate to state that the distinction must be made here between regular employees and independent contractors within the work pool.[97] Instead, the analysis must revolve around whether the employees who are part of the work pool are either regular or project employees.

In *Maraguinot, Jr. v. National Labor Relations Commission*[98]

It may not be ignored, however, that private respondents expressly admitted that petitioners were part of a work pool; and, while petitioners were initially hired possibly as project employees, they had attained the status of regular employees in view of VIVA's conduct.

A project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

- 1) There is a continuous rehiring of project employees even after cessation of a project; and
- 2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer.

However, the length of time during which the employee was continuously re-hired is not controlling, but

merely serves as a badge of regular employment.[99]

In Footnote 23 of *Dumpit-Miirillo*:[100]

See *ABS-CBN Broadcasting Corporation v. Marquez*, G.R. No. 167638, June 22, 2005, pp. 5-6 (Unsigned Resolution), where this Court held what ABS-CBN called "talents" as regular employees. The Court declared: "It may be so that respondents were assigned to a particular tele-series. However, petitioner can and did immediately reassign them to a new production upon completion of a previous one. Hence, they were continuously employed, the tele-series being a regular feature in petitioner's network programs. Petitioner's continuous engagement of respondents from one production after another, for more than five years, made the latter part of petitioner's workpool who cannot be separated from the service without cause as they are considered regular. A project employee or a member of a workpool may acquire the status of a regular employee when the following concur: there is continuous rehiring of project employees even after the cessation of the project and the tasks performed by the alleged "project employee" are vital, necessary, and indispensable to the usual business or trade of his employer. It cannot be denied that the services of respondents as members of a crew in the production of a tele-series are undoubtedly connected with the business of the petitioner. This Court has held that the primary standard in determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of his employer. Here, the activity performed by respondents is, without doubt, vital to petitioner's trade or business.[101]

V

The resolution of the questions of law in these cases does not equate to a similar resolution of the questions of fact raised by these petitions.

To reiterate, a Rule 45 petition in a labor case is limited to determining whether the Court of Appeals committed grave abuse of discretion. We do not resolve questions of fact. This Court is not equipped to scrutinize the voluminous records of these cases to determine whether the evidence presented by each worker-claimant substantially proves their claim for regularity of employment, and subsequently, the illegality of their dismissal, based on the guidelines laid down here.

The ponencia has made certain factual findings on the basis of some, but not all, of the consolidated cases.

For example, the ponencia determined that the workers had been selected and engaged by ABS-CBN:

The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), and Pag-ibig Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.[102]

The only citation to the record was G.R. No. 219125, in which the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals all found that there was no employer-employee relationship between the workers and ABS-CBN.[103]

G.R. No. 219125 was likewise the only reference to the record when the ponencia concluded that ABS-CBN had the power to discipline the workers, that ABS-CBN monitored their work to meet with company standards through production supervisors, and that ABS-CBN provided them with the equipment and tools to perform their jobs.[104] Alongside G.R. No. 219125, G.R. No. 225101 was used to show that ABS-CBN controlled the workers' schedules and work assignments.[105] Records from G.R. Nos. 225874, 219125, and 225101 were used to determine that the workers received wages from ABS-CBN and that ABS-CBN withheld their taxes and paid their PhilHealth benefits.[106] However, the Court of Appeals in G.R. No. 225101 found that the workers-petitioners were not regular employees of ABS-CBN, while in G.R. No. 225874, only one of the three

workers who filed the illegal dismissal case was able to prove that there was an employer-employee relationship between ABS-CBN and him:

In this case, petitioners Jun and Lauro did not adduce any evidence to prove that an employer-employee relationship existed between respondent ABS-CBN and themselves. Petitioners Jun's and Lauro's bare assertions, and reference to related pending cases, were not substantial evidence of the existence of an employer-employee relationship. Hence, petitioners June's and Lauro's action for illegal dismissal must fail.

As for petitioner Ronnie, the evidence adduced proved that there existed an employer-employee relationship between respondent ABS-CBN and petitioner Ronnie.[107]

In fact, the differences in the pieces of evidence presented by the workers in the various proceedings below was pointed out by the Court of Appeals in G.R. No. 202481:

Here, private respondents submitted evidence allegedly showing employer-employee relationship, however, a scrutiny of the sum-total of evidence shows otherwise, as follows:

Re: Identification Cards (IDs)

It is worthy to note that, of the 34 complainants, only 4 of them have presented their IDs; a closer scrutiny of said IDs will show that they do not necessarily show that they are regular employees of the petitioner considering the fact that there is no showing of any employment designation of the person named in the IDs. In fine, said IDs are not considered proofs of an employer-employee relationship as the same do not show that fact. In a business establishment, an identification card is usually provided as a security measure in order to identify the holder thereof if found within the premises of the employer. A scrutiny of the four (4) IDs shows the following:

This card is a property of ABS-CBN and may be cancelled/confiscated without prior notice. Use of this card allows bearer access to company premises and constitutes acceptance of the rules and regulations of the company and the policies covering the issuance of this card and all future amendments thereto.

If indeed private respondents are considered regular employees of the petitioner, they should have been issued employment cards bearing the designation of the employee or the specific assignment. In this case, said cards were issued purely as IDs for security purposes, and none has been indicated therein that will show that private respondents are employees of petitioner.

Re: Certifications

Certifications were issued to: (1) Cristanto M[.] Panlubasan on January 31, 2003, showed that he was initially engaged by petitioner as program employee in February 1996; (2) Lorenzo Alano, who was initially engaged as Technical Field Assistant in September 1986; and (3) Edwin Sagun, who was initially engaged as Senior Cameraman in October 1996. These certifications per se do not show that they are regular employees considering that there was no clear showing that they have been previously engaged by petitioner in its broadcasting business.

Re: Certificates of Attendance

The Certificates of Attendance were issued for having completed the requirements of the Basic Cameraworks given to: Cris Panlubasan, Jonathan Romblon, Romualdo Racelis, Oscar Domingo, George Macaso, Ismael Dablo, Rolando Barron, and Nestor Conato; another set of Certificates of Attendance were issued for having completed the requirements of Photojournalism; they were given to: Ismael Dablo, Ciisanto Panlubasan and Rolando Barron; a cursory reading thereof will show that they are not determinative of an employer-employee relationship considering that these only show that the said private respondents had participated in these workshops.

Re: The Pay-Slips

The pay-slips of: George Macaso that were issued for the talent fee period 1/01/2003-1/15/2003, 12/01-15/2002, 12/16/2003-12/31/2002, 1-15-2002, January 16-31, 2002; Edwin Sagun that were issued for the talent fee period Dec. 16-31, 1999, January 1-5, 1999; Nestor Conato that were issued for the talent fee period - Christmas bonus, for the period 1/1/2003 to 1/15/2003; Roberto del Castillo that were issued for the period 7-1-15, 2002, 1995 Christmas Bonus; Crisanto Panlubasan that were issued for the talent period 7-1 to 15, 2002, Feb 16-31 2002; Ismael Pablo that were issued for the period Aug 1-15, 2001 1/01/2002-11/15/2002, 12/01/2002-12/15/2002; Arthur Dungog that were issued for the period 12/01/2002-12/15/2002 and 12/16/2002-12/31/2002; Sanchez Roberto that were issued for the period 01/01/2003-01/15/2003; Apolinar dela Garcia that were issued for the period 12/01/12/15/2002 and cash [gift]; Tugade, Reynaldo that were issued for the period 11/01/2002-11/15/2002, 12/01/2002-12/15/2002 and 10/01/2002-10/15/2002, and of Rolando Barron that were issued for the period 10/01/2002-10/15-2002, 07/01/2002-07/15/2002, will show that no clear indications are found that they are regular employees of petitioner in its broadcasting business.

It must be noted that these pay-slips, which indicate the phrase "for the period", were issued after the filing of the regularization case against petitioner. This will only show that private respondents were merely accredited by petitioner in its Internal Job Market System. Prior to the mentioned date, they were considered "Talents" receiving talent fees as shown in the payslips abovementioned.[108] (Citations omitted)

Further, of those who have been found to be ABS-CBN employees, it is still a matter of evidence to determine the classification of their employment. It is not enough to merely state that ABS-CBN has produced no proof of project employment for all workers.[109] The ponencia should have examined whether there has been a continuous rehiring of each worker even after their first project has ceased, in accordance with Maraguinot, Jr.[110] and Dumpit-Murillo[111]

A finding of illegal dismissal is also factual.[112] The employee must first establish the fact of dismissal with substantial evidence. Only then would the burden of proof shift to the employer to show that the dismissal was for just or authorized cause, and with due process observed.[113] It is insufficient to do as what the ponencia has done, and merely declare that no valid cause was made for the termination of the workers' services and that the workers were simply barred from entering company premises, without reference to the records of the six illegal dismissal cases under consideration.[114]

Therefore, the disposition of these cases should be tailored to their specific circumstances. We must account for the findings of the various divisions of the Court of Appeals and the labor tribunals when these bodies, more adequately equipped to review evidence presented before them, have already made the necessary factual determinations. Conversely, when the Court of Appeals and the labor tribunals merely dismissed the cases on the grounds of lack of jurisdiction or cause of action, the cases must be remanded to them for further proceedings.

In G.R. No. 202481, the Court of Appeals and the Labor Arbiter both erred in finding that petitioners were independent contractors or "talents." Thus, what should be reinstated is the October 29, 2009 Decision of the National Labor Relations Commission, the dispositive portion of which stated:

WHEREFORE, the appeal is hereby GRANTED and the appealed Decision is hereby REVERSED and SET ASIDE. A new decision is hereby rendered confirming the regular employment status of the herein complainants and ORDERING ABS-CBN Broadcasting Corporation to provide the complainants all their monetary and nonmonetary benefits under the Collective Bargaining Agreement of December 11, 1999 to December 10, 2002 and other CBAs subsequently entered into.

SO ORDERED.[115]

Similarly, as the Court of Appeals in G.R. Nos. 202495-97 had already made sufficient factual findings on

respondents' employment status, its Decision and Resolution should be affirmed.

As for G.R. Nos. 210165, 219125, and 225101, a review of the proceedings therein shows that the illegal dismissal cases were dismissed without either the Court of Appeals or the labor tribunals passing upon the facts surrounding the terminations of employments. Thus, these cases should be remanded to the Court of Appeals to make the necessary factual determinations. The exception is Fredierick Gerland Dizon in G.R. No. 225101, whose employment status with ABS-CBN should first be determined, as the Court of Appeals and the labor tribunals did not determine that at the outset. Neither is he a party to either regularization case before this Court.

Among these cases, G.R. No. 224879 is unique because, of its three dismissed workers, only one—Ronnie Lozares—was found by the Court of Appeals to have sufficiently proved his claims of an employer-employee relationship and illegal dismissal. However, as correctly held by the ponencia, the Court of Appeals incorrectly awarded him moral and exemplary damages and attorney's fees, as he has not sufficiently proven that he was entitled to them.[116] The other two workers in this case—Jun Tangalin and Lauro Calitisen—had their claims rejected by the Court of Appeals because of the alleged non-existence of an employer-employee relationship. But since they are both declared regular employees due to G.R. Nos. 202495-97, and because the Court of Appeals had made a finding that ABS-CBN had no valid cause for their dismissal,[117] they should be entitled to either reinstatement or separation pay, as well as payment of their money claims.

Finally, all illegally dismissed workers from these cases should be entitled to an award of attorney's fees. Among the instances when a dismissed worker is entitled to attorney's fees is when "the defendant's act or omission has compelled the plaintiff to litigate with third persons or the plaintiff incurred expenses to protect his interest[.]"[118]

Here, it was ABS-CBN's repeated acts of refusing to recognize its regular employees that forced the workers to litigate for their rights. Some of them even sought redress for a second time when they were terminated from employment while their regularization cases were pending. Moreover, as this Court has already noted in *Fulache*, ABS-CBN exhibited bad faith in attempting to defeat the outcome of the pending regularization cases by dismissing its employees in the interim.

ACCORDINGLY, I vote as follows:

1. The Petition in GR. No. 202481 is GRANTED. The Court of Appeals' January 27, 2012 Decision and June 26, 2012 Resolution in CA-G.R. SP No. 117885 are REVERSED and SET ASIDE.

The National Labor Relations Commission's October 29, 2009 Decision confirming petitioners' regular employment status and ordering respondent ABS-CBN to provide all monetary and non-monetary benefits under their Collective Bargaining Agreement is REINSTATED.

2. The Petition in G.R. Nos. 202495-97 is DENIED. The Court of Appeals' October 28, 2011 Decision and June 27, 2012 Resolution in CA-G.R. SP No. 108552 declaring respondents Journalie Payonan, et al. as regular employees of petitioner ABS-CBN entitled to the benefits and privileges accorded to all its other regular employees under their Collective Bargaining Agreement are AFFIRMED. The Court of Appeals' October 28, 2011 Decision and June 27, 2012 Resolution in C.A.-G.R. SP No. 108976, which affirmed the Labor Arbiter Decision recognizing respondents Allan V. Herrera, Michael V. Santos, and Rommel M. Matalang as regular employees of petitioner ABS-CBN, are likewise AFFIRMED.

3. The Petition in GR. No. 210165 is GRANTED. The Court of Appeals' April 30, 2013 Decision and November 20, 2013 Resolution are REVERSED and SET ASIDE. Considering that petitioners are regular employees in view of GR. No. 202481, the case is REMANDED to the Court of Appeals to determine whether petitioners were illegally dismissed, with due and deliberate dispatch.

4. The Petition in GR. No. 219125 is GRANTED. The Court of Appeals' August 19, 2014 Decision and June 18, 2015 Resolution in CA-GR. SP No. 122424 are REVERSED and SET ASIDE. Considering that petitioners are regular employees in view of GR. Nos. 202495-97, the case is REMANDED to the Court of Appeals to determine whether petitioners were illegally dismissed, with due and deliberate dispatch.

5. The Petition in GR. No. 222057 is DENIED. The Court of Appeals' February 24, 2015 Decision and December 21, 2015 Resolution in CA-G.R. SP No. 122068 are AFFIRMED.

6. The Petition in GR. No. 224879 is DENIED. The Court of Appeals' January 4, 2016 Decision and May 27, 2016 Resolution in CA-GR. SP No. 122824 are AFFIRMED WITH MODIFICATION with respect to respondent Ronnie Lozares. The award of moral damages, exemplary damages, and attorney's fees is DELETED.

Considering that Jun Tangalin and Lauro Calitisen are regular employees in view of GR. Nos. 202495-97, and petitioner ABS-CBN has offered no just or authorized cause for their dismissal, they are DECLARED illegally dismissed. They are entitled to reinstatement to their former positions without loss of seniority rights and the payment of backwages from the time their salaries were withheld up to the time of actual reinstatement. If reinstatement cannot be done, petitioner ABS-CBN is ordered to pay each respondent:

a. full backwages and other benefits, both based on each respondent's last monthly salary, computed from the date their employment was illegally terminated until the finality of this Decision; and

b. separation pay based on each respondent's last monthly salary, computed from the date the respondent commenced employment until the finality of this Decision at the rate of one month's salary for every year of service, with a fraction of a year of at least six months being counted as one whole year.

The case is REMANDED to the Labor Arbiter to make a detailed computation of the amounts due to the illegally dismissed employees, which must be paid without delay, and for the immediate execution of this Decision.

7. The Petition in G.R. No. 225101 is GRANTED. The Court of Appeals' January 28, 2016 Decision and May 26, 2016 Resolution in C.A.-G.R. SP No. 125868 are REVERSED and SET ASIDE. The December 29, 2011 Decision of the National Labor Relations Commission (Fifth Division) in NLRC NCR CASE No. 00-06-08496-10 (LAC No. 04-000965-11) is REINSTATED WITH MODIFICATION.

Considering that petitioners Alex Carlos, Alfred Christian Nunez, Russel Galima, Jhonschultz Congson, Rommel Villanueva, and Christopher Mendoza are regular employees in view of G.R. Nos. 202495-97, the case is REMANDED to the Court of Appeals to determine whether they were illegally dismissed, with due and deliberate dispatch.

As for petitioner Fredierick Gerland Dizon, the case is REMANDED to the Court of Appeals to determine whether he was a regular employee of respondent ABS-CBN and if he had been illegally dismissed, with due and deliberate dispatch.

8. The Petition in G.R. No. 225874 is DENIED. The Court of Appeals' January 12, 2016 Decision and July 15, 2016 Resolution in C.A.-GR. SP No. 131576 are AFFIRMED.

In all instances, the total judgment award per dismissed employee shall be subject to interest at the rate of 6% per annum from the finality of this Decision until their full satisfaction.[119] ABS-CBN is ordered to pay attorney's fees at 10% of each total judgment award and costs of suits in all cases.

(Sgd.) MARVIC M.V.F. LEONEN
Associate Justice

[1] Rollo (G.R. No. 202481), p. 54.

[2] I note that as stated in footnote no. 3 of the CA Decision in CA-G.R. SP No. 117885 [rollo (G.R. No. 202481), pp. 55—56], 34 complainants, including one Tommy Anacta, originally filed the complaint before the Labor Arbiter. However, in the proceedings before the Court of Appeals, only 23 petitioners were impleaded in the title of the case, without Tommy Anacta. Before this Court, he was again impleaded as among the petitioners.

[3] Rollo (G.R. No. 202481), pp. 54-72. The January 27, 2012 Decision in CA-G.R. SP No. 117885 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Amy C. Lazaro-Javier (now a member of this Court) of the Special Fourteenth Division, Court of Appeals, Manila.

[4] Id. at 89-91. The June 26, 2012 Resolution in CA-G.R. SP No. 117885 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Amy C. Lazaro-Javier (now a member of this Court) of the Former Special Fourteenth Division, Court of Appeals, Manila.

[5] Rollo (G.R. Nos. 202495-97), pp. 1907-1927. The October 28, 2011 Decision in CA-G.R. No. 108552 and 108976 was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guarina III and Associate Justice Apolinario D. Bruselas, Jr. of the Seventh Division, Court of Appeals, Manila.

[6] Id. at 2060-2065. The June 27, 2012 Resolution in CA-G.R. SP No. 108552 was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Danton Q. Bueser and Apolinario D. Bruselas, Jr. of the Special Former Seventh Division, Court of Appeals, Manila.

[7] Id. at 55-66. The April 30, 2013 Decision in CA-G.R. SP No. 122635 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Associate Justice Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[8] Id. at 85-87. The November 20, 2013 Resolution in CA-G.R. SP No. 122635 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[9] Rollo (G.R. No. 210165), pp. 64-65.

[10] Rollo (G.R. No. 219125), pp. 1347-1359. The August 19, 2014 Decision in CA-G.R. SP No. 122424 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Marlene Gonzales-Sison and Rosmari D. Carandang (now a member of this Court), of the Fourth Division, Court of Appeals, Manila.

[11] Id. at 1376-1377. The June 18, 2015 Resolution in CA-G.R. SP No. 122424 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Marlene Gonzales-Sison and Rosmari D. Carandang (now a member of this Court), of the Former Fourth Division, Court of Appeals, Manila.

[12] Rollo (G.R. No. 222057), pp. 700-713. The February 24, 2015 Decision in CA-G.R. SP No. 122068 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. of the Special Ninth Division, Court of Appeals, Manila.

[13] Id. at 772-773. The December 21, 2015 Resolution in CA-G.R. SP No. 122068 was penned by Associate Justice Elihu A. Ybanez and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Associate Justice Apolinario D. Bruselas, Jr. of the Special Former Ninth Division, Court of Appeals, Manila.

[14] Rollo (G.R. No. 224879), pp. 72-80. The January 4, 2016 Decision in CA-G.R. SP No. 122824 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[15] Id. at 82-83. The May 27, 2016 Resolution in CA-G.R. SP No. 122824 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[16] Rollo (G.R. No. 225101), pp. 854-869. The January 28, 2016 Decision in CA-G.R. SP No. 125868 was penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Edwin D. Sorongon of the Special Ninth Division, Court of Appeals, Manila.

[17] Id. at 899-900. The May 26, 2016 Resolution in CA-G.R. SP No. 125868 was penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Associate Justice Edwin D. Sorongon of the Former Special Ninth Division, Court of Appeals, Manila.

[18] Rollo (G.R. No. 225874), pp. 715-729. The January 12, 2016 Decision in CA-G.R. SP No. 131576 was penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla of the Thirteenth Division, Court of Appeals, Manila.

[19] Id. at 763-764. The July 15, 2016 Resolution in CA-G.R. SP No. 131576 was penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla of the Thirteenth Division, Court of Appeals, Manila.

[20] Ponencia, pp. 12-13.

[21] Rollo (G.R. No. 202481), p. 63; rollo (G.R. Nos. 202495-97), p. 1912; rollo (G.R. No. 225101), p. 856; rollo (G.R. No. 225874), p. 718.

[22] Rollo (G.R. No. 202481), p. 64; rollo (G.R. Nos. 202495-97), p. 1912; rollo (G.R. No. 219125), p. 1349; rollo (G.R. No. 222057), p. 702; rollo (G.R. No. 225101), p. 856; rollo (G.R. No. 225874), p. 718.

[23] Rollo (G.R. No. 202481), p. 71; rollo (G.R. Nos. 202495-97), p. 1915; rollo (G.R. No. 219125), p. 1349; rollo (G.R. No. 225101), p. 856; rollo (G.R. No. 225874), pp. 718-719.

[24] Rollo (G.R. Nos. 202495-97), p. 1915, Rollo (G.R. No. 219125), p. 1349; rollo (G.R. No. 225101), p. 856; rollo (G.R. No. 225874), pp. 718-719.

[25] See *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1 (2012) [Per J. Brion, Second Division]; *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division]; *E. Ganzon, Inc. v. Ando, Jr.*, 806 Phil. 58 (2017) [Per J. Peralta, Second Division]; *Almagro v. Philippine Airlines, Inc.*, G.R. No. 204803, September 12, 2018, [Per J. Jardeleza, First Division],

[26] 613 Phil. 696 (2009) [Per J. Brion, Second Division].

[27] Id. at 706-707.

[28] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 120 (2017) [Per J. Leonen, Second Division] citing *Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 421 Phil. 864, 870 (2001) [Per J. Sandoval-Gutierrez, Third Division].

[29] 624 Phil. 562 (2010) [Per J. Brion, Second Division],

[30] Rollo (G.R. No. 210165), pp. 63-65.

[31] Rollo (G.R. No. 219125), pp. 1356-1357.

- [32] Ponencia, pp. 19-20.
- [33] *Fulache v. ABS-CBN Broadcasting Corp.*, 624 Phil. 562, 583-585 (2010) [Per J. Brion, Second Division].
- [34] *Rollo* (G.R. No. 225101), p. 867.
- [35] Ponencia, pp. 20-21.
- [36] See *Magdangal v. City of Olongapo*, 259 Phil. 107 (1989) [Per J. Cortes, En Banc].
- [37] *Philippine Pizza, Inc. v. Porras*, G.R. No. 230030, August 29, 2018, [Per J. Perlas-Bernabe, Second Division].
- [38] 475 Phil. 539 (2004) [Per J. Carpio, First Division].
- [39] *Id.* at 550.
- [40] 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division].
- [41] 551 Phil. 802 (2007) [Per J. Ynares-Santiago, Third Division].
- [42] 551 Phil. 725, 735 (2007) [Per J. Acting C.J. Quisumbing, Second Division].
- [43] *Consolidated Broadcasting System, Inc. v. Oberio*, 551 Phil. 802, 814-815 (2007) [Per J. Ynares-Santiago, Third Division].
- [44] 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].
- [45] *Id.* at 333.
- [46] *Id.* at 334-336.
- [47] *Fulache v. ABS-CBN Broadcasting Corporation*, 624 Phil. 562, 568-569 (2010) [Per J. Brion, Second Division],
- [48] *Id.* at 570-571.
- [49] *Id.* at 586-587.
- [50] 758 Phil. 467 (2015) [Per J. Perez, First Division].
- [51] *Id.* at 480.
- [52] *Id.* at 482-484.
- [53] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 417¹⁸ (2014) [Per J. Leonen, Second Division].
- [54] *Sara v. Agarrado*, 248 Phil. 847, 851 (1988) [Per C.J. Fernan, Third Division],
- [55] *Zanotte Shoes v. National Labor Relations Commission*, 311 Phil. 272, 216-211 (1995) [Per J. Vitug, Third Division].
- [56] *Viaña v. Al-Lagadan*, 99 Phil. 408, 41 M12 (1956) [Per J. Concepcion, En Banc].
- [57] *Cosmopolitan Funeral Homes, Inc. v. Maalat*, 265 Phil. 111,115 (1990) [Per J. Gutierrez, Jr., Third Division].
- [58] *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 49-50 (2008) [Per J. Nachura, Third Division] citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 259 Phil. 65 (1989) [Per J.

Narvasa, First Division]; Consult a v. Court of Appeals, 493 Phil. 842 (2005) [Per J. Carpio, First Division]; and Manila Electric Company v. Benamira, 501 Phil. 621 (2005) [Per J. Austria-Martinez, Second Division].

[59] See Lu v. Enopia, 806 Phil. 725, 740 (2017) [Per J. Peralta, Second Division].

[60] 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].

[61] Id. at 407-409.

[62] LABOR CODE, art. 106, which states:

ARTICLE 106. Contractor or Subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[63] Fuji Television Network, Inc. v. Espiritu, 749 Phil. 388, 425-426 (2014) [Per J. Leonen, Second Division],

[64] Maligaya Ship Watchmen Agency v. Associated Watchmen and Security Union, 103 Phil. 920, 923- 925 (1958) [Per J. Labrador, En Banc].

[65] 129 Phil. 143 (1967) [Per J. Makalintal, En Banc].

[66] Id. at 151.

[67] 248 Phil. 847 (1988) [Per C.J. Fenian, Third Division].

[68] 332 Phil. 1 (1996) [Per J. Torres, Jr., Second Division].

[69] 673 Phil. 384 (2011) [Per J. Carpio, Second Division].

[70] Cosmopolitan Funeral Homes, Inc. v. Maalat, 265 Phil. Ill, 116 (1990) [Per J. Gutierrez, Jr., Third Division].

[71] 436 Phil. 190 (2002) [Per J. Mendoza, Second Division].

[72] Id. at 201.

[73] Comulla v. Court of Appeals, 493 Phil. 842, 850-851 (2005) [Per J. Carpio, First Division].

- [74] See *ABS-CBN v. Nazareno*, 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].
- [75] *Sonza v. ABS-CBN Broadcasting Corporation*, 475 Phil. 539, 551-552 (2004) [Per J. Carpio, First Division].
- [76] *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 56 (2008) [Per J. Nachura, Third Division],
- [77] 534 Phil. 306, 335 (2006) [Per J. Callejo, Sr, First Division].
- [78] 551 Phil. 725, 740 (2007) [Per Acting C.J. Quisumbing, Second Division].
- [79] 49 Phil. 388 (2014) [Per J. Leonen, Second Division].
- [80] *Id.* at 432-433.
- [81] *Begino v. ABS-CBN Corporation*, 758 Phil. 467, 483 (2015) [Per J. Perez, First Division].
- [82] See *Paragele v. GMA Network, Inc.*, G.R. No. 235315, [Per J. Leonen, Third Division].
- [83] 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].
- [84] *Id.* at 763.
- [85] 257 Phil. 626 (1989) [Per C.J. Fenian, Third Division].
- [86] *Id.* at 632-633.
- [87] *E. Ganzon, Inc. v. National Labor Relations Commission*, 378 Phil. 1048, 1055 (1999) [Per J. Bellosillo, Second Division].
- [88] *De Leon v. National Labor Relations Commission*, 257 Phil. 626 (1989) [Per C.J. Fernan, Third Division].
- [89] *Singer Sewing Machine Company v. Drilon*, 271 Phil. 282 (1991) [Per J. Gutierrez, Jr., Third Division],
- [90] *Ponencia*, pp. 26-27.
- [91] *Rollo* (G.R. No. 202481), pp. 58-59.
- [92] *Rollo* (G.R. Nos. 202495-97), pp. 1914-1915.
- [93] *Rollo* (G.R. No. 219125), p. 1349.
- [94] *Magsalin v. National Organization of Working Men*, 451 Phil. 254 (2003) [Per J. Vitug, First Division].
- [95] *Ponencia*, p. 27.
- [96] *Id.* at 33.
- [97] *Id.*
- [98] 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].
- [99] *Id.* at 600-601.
- [100] 551 Phil. 725 (2007) [Per Acting C.J. Quisumbing, Second Division].
- [101] *Id.* at 735-736, footnote 23.

[102] Ponencia, p. 24.

[103] Id., footnote 105.

[104] Id., footnotes 106, 107, and 110.

[105] Id., footnote 109.

[106] Id., footnotes 104-105.

[107] Rollo (G.R. No. 224879), p. 77.

[108] Rollo (G.R. No. 202481), pp. 68-71.

[109] Ponencia, p. 32.

[110] 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].

[111] 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division],

[112] See *Aniola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

[113] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

[114] Ponencia, p. 37.

[115] Rollo (G.R. No. 202481), pp. 519-520.

[116] Ponencia, pp. 37-38.

[117] Rollo (G.R. No. 224879), p. 78. As held by the Court of Appeals in its January 4, 2016 Decision:

"The Records show that respondents did not adduce any evidence to show that the dismissal of petitioners, particularly of petitioner Ronnie, was for valid cause. Respondents' failure to justify petitioner Ronnie's dismissal meant that the dismissal was illegal."

[118] *Alva v. High Capacity Security Force*, 820 Phil. 677, 688 (2017) [Per J. Reyes, Jr., Second Division].

[119] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

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