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Republic of the Philippines  
Supreme Court

Manila

EN BANC

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 ANDREW  
RAMANO, ARTHUR DUNGOG,  
EDWIN SAGUN, APOLINAR DEL  
GRACIA, SENGKLY ESLABRA,  
ERIC BIGLANG-AWA,  
REYNALDO CRUZ, CARLO  
DIONISIO, ERNESTO CRUZ,  
LORENZO ALANO, CRISANTO  
PANLUBASAN, ROBERTO  
SANCHEZ, NELSON LUCAS, and  
PHILBERT ACHARON,

Petitioners,

G.R. No. 202481

- versus -

ABS-CBN BROADCASTING  
CORPORATION,

Respondent.

X-----X

ABS-CBN CORPORATION,

Petitioner,

G.R. Nos. 202495 &  
202497

- versus -

JOURNALIE PAYONAN,  
ANTONIO MANUEL, JR.,  
MANUEL MENDOZA, JOSEPH R.  
ONG, RIEL A. TEODORO, RAMON  
CATAHAN, JR., RONNIE  
LOZARES, FERDINAND  
MARQUEZ, FERDINAND  
SUMERACRUZ, DANTE T. VIDAL,  
CEZAR ZEA, RICARDO JOY

CAJOLES, JR., ALEX R. CARLOS,  
JHONSCHULTZ CONGSON,  
LESLIE REY OLPINDO,  
ARMANDO A. RAMOS, ROMMEL  
V. VILLANUEVA, ENRICO V.  
CASTULO, FRANKIE DOMINGO,  
MANUEL CONDE, ANTONIO  
IMMANUEL N. CALLE, OLIVER J.  
CHAVEZ, FRANCIS LUBUGUIN,  
JEROME B. PRADO, RICHARD T.  
SISON, RODERICK N.  
RODRIGUEZ, LAURO  
CALITISEN, ELMER M.  
EVARISTO, GILBERT M.  
OMAPAS, CHRISTOPHER  
MENDOZA, WILFREDO N.  
ZALDUA, RUSSEL M. GALIMA,  
MEDEL GOTEL, OSIAS LOPEZ,  
JOSEPH ELPHIN F. LUMBAD,  
MARLON MACATANTAN,  
JOSEPH ARMAND MAMORNO,  
ALFRED CHRISTIAN NUÑEZ,  
ALAIN PARDO, ROÑINO  
SANTIAGO, JUN TANGALIN,  
JONATHAN C. TORIBIO, JERICO  
T. ADRIANO, JULIUS T. ADRIANO,  
MARK ANTHONY AGUSTIN,  
BENJAMIN C. BENGCO, JR.,  
DANILO R. BLAZA, GINO REGGIE  
BRIONES, RICKY BULDIA,  
NICOMEDES CANALES,  
ALFREDO S. CURAY, ROJAY  
PAUL DELA ROSA,  
CHRISTOPHER DE LEON, DIXON  
DISPO, ANDREW EUGENIO,  
JEFFREY ALFRED  
EVANGELISTA, ALLAN V.  
HERRERA, MICHAEL V. SANTOS,  
and ROMMEL M. MATALANG,

Respondents.

X-----X  
ISMAEL B. DABLO, ROLANDO  
S. BARRON, ROBERTO B. DEL  
CASTILLO, ALBERT B. DEL  
ROSARIO, GEORGE B.  
MACASO, REY I. SANTIAGO,  
REYNALDO L. TUGADE, and

G.R. No. 210165

**PAUL VIRAY,**  
Petitioners,

- versus -

**ABS-CBN BROADCASTING CORPORATION and/or EUGENIO LOPEZ,**  
Respondents.

X-----X  
**RICARDO JOY CAJOLES, JR., ANTONIO IMMANUEL CALLE, RICHARD SISON and JOURNALIE PAYONAN,**  
Petitioners,

G.R. No. 219125

- versus -

**ABS-CBN BROADCASTING CORPORATION,**  
Respondent.

X-----X  
**ABS-CBN CORPORATION,**  
Petitioner,

G.R. No. 222057

- versus -

**JOSEPH R. ONG, FERNANDO LOPEZ, RAYMON REYES and GARRET CAILLES,**  
Respondents.

X-----X  
**ABS-CBN CORPORATION and EUGENIO LOPEZ III,**  
Petitioners,

G.R. No. 224879

- versus -

**RONNIE B. LOZARES,**  
Respondent.

X-----X  
**ANTONIO BERNARDO S. PEREZ, JOHN PAUL PANIZALES, FERDINAND CRUZ, CHRISTOPHER MENDOZA, DENNIS REYES, JUN BENOSA, ROLAND**

G.R. No. 225101

**KRISTOFFER DE GUZMAN,  
FREDIERICK GERLAND  
DIZON, RUSSEL GALIMA,  
ALFRED CHRISTIAN NUNEZ,  
ROMMEL VILLANUEVA,  
JHONSCHULTZ CONGSON,  
ALEX CARLOS, MICHAEL  
TOBIAS, GERONIMO  
BANIQUED, RONALDO SAN  
PEDRO, and ERIC PAYCANA,**  
Petitioners,

- versus -

**COURT OF APPEALS – SPECIAL  
NINTH DIVISION and ABS-CBN  
BROADCASTING  
CORPORATION,**

Respondents.

X-----X  
**ABS-CBN CORPORATION,**  
Petitioner,

**G.R. No. 225874**

Present:

**PERALTA,\* C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
J. REYES, JR.,  
HERNANDO,  
CARANDANG,\*  
LAZARO-JAVIER,\*  
INTING,  
ZALAMEDA,  
LOPEZ,  
DELOS SANTOS,  
GAERLAN,\* and  
BALTAZAR-PADILLA,\*\* JJ.**

- versus -

**JOSE ZABALLA III, TAUCER  
TYCHE BENZONAN and  
FISCHERBOB CASAJE,**

Respondents.

Promulgated:

September 8, 2020

X-----X

\* No part.

\*\* On leave.

**DECISION****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),<sup>1</sup> petitioners-workers seek the reversal of the Court of Appeals (CA) Decision<sup>2</sup> dated January 27, 2012 and Resolution<sup>3</sup> 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.**<sup>4</sup>

**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),<sup>5</sup> ABS-CBN Corporation (ABS-CBN) seeks the reversal of the CA Decision<sup>6</sup> dated October 28, 2011 and Resolution<sup>7</sup> 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:

<sup>1</sup> *Rollo* (G.R. No. 202481), Vol. I, pp. 8-52.

<sup>2</sup> *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.

<sup>3</sup> *Id.* at 89-91.

<sup>4</sup> *Id.* at 72.

<sup>5</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. I, pp. 1-248.

<sup>6</sup> *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.

<sup>7</sup> *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.

**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.**<sup>8</sup>

### **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),<sup>9</sup> ABS-CBN seeks the reversal of the CA Decision<sup>10</sup> dated February 24, 2015 and Resolution<sup>11</sup> 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<sup>th</sup> month pay plus attorney's fees of ten percent (10%) of the total monetary award.<sup>12</sup>

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 complainant[s] 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 complainant[s]' salary was withheld up to the time of payment thereof. Likewise, respondents are ordered to pay the accrued 13th month pay for

<sup>8</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1926.

<sup>9</sup> *Rollo* (G.R. No. 222057), pp. 21-106.

<sup>10</sup> *Id.* at 700-713. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. concurring.

<sup>11</sup> *Id.* at 772-773. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr. concurring.

<sup>12</sup> *Id.* at 712.

the same periods plus attorney's fees equivalent to 10% of all the monetary award[s] to complainant[s]. The other monetary claims and damages claimed by complainant[s] are **DENIED** for failure to substantiate the same. The case is hereby remanded to the Labor Arbiter for the proper computation of the monetary 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.**<sup>13</sup>

**G.R. No. 224879**

***ABS-CBN Corporation, et al. v. Lozares***

In *ABS-CBN Corporation, et al. v. Lozares* (G.R. No. 224879),<sup>14</sup> ABS-CBN seeks the reversal of the CA Decision<sup>15</sup> dated January 4, 2016 and Resolution<sup>16</sup> 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.**<sup>17</sup>

**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),<sup>18</sup> ABS-CBN seeks the reversal of the Decision<sup>19</sup> dated January 12, 2016 and Resolution<sup>20</sup> dated July 15, 2016 rendered by the CA in CA-G.R. SP No.

<sup>13</sup> Id.

<sup>14</sup> *Rollo* (G.R. No. 224879), pp. 11-62.

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

<sup>16</sup> Id. at 82-83.

<sup>17</sup> Id. at 79.

<sup>18</sup> *Rollo* (G.R. No. 225874), Vol. I, pp. 10-72.

<sup>19</sup> *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.

<sup>20</sup> Id. at 763-764.

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 13<sup>th</sup> month pay computed three years back from the filing of the complaint.<sup>21</sup>

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.**<sup>22</sup>

*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),<sup>23</sup> petitioners-workers pray for the reversal of the CA Decision<sup>24</sup> dated August 19, 2014 and Resolution<sup>25</sup> 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.<sup>26</sup> Thus, the CA dismissed the case without delving into the merits.<sup>27</sup>

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.**<sup>28</sup>

<sup>21</sup> Id. at 727-728.

<sup>22</sup> Id. at 728.

<sup>23</sup> *Rollo* (G.R. No. 219125), Vol. I, pp. 11-45.

<sup>24</sup> *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.

<sup>25</sup> Id. at 1376-1377.

<sup>26</sup> See id. at 1353 and 1358.

<sup>27</sup> Id. at 1358.

<sup>28</sup> Id.



**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),<sup>29</sup> petitioners-workers seek the reversal of the assailed CA Decision<sup>30</sup> dated January 28, 2016 and Resolution<sup>31</sup> dated May 26, 2016 in CA-G.R. SP No. 125868, declaring that there was no employer-employee relationship between them and ABS-CBN.<sup>32</sup> The CA likewise opined that ABS-CBN did not exercise control over the manner the workers performed their duties<sup>33</sup> because all that ABS-CBN was concerned with was the end result and its conformity with the company's standards.<sup>34</sup>

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.**<sup>35</sup>

**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),<sup>36</sup> therein petitioners-workers seek the reversal of the assailed Decision<sup>37</sup> dated April 30, 2013 and Resolution<sup>38</sup> 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.<sup>39</sup>

The dispositive portion of the CA Decision states:

<sup>29</sup> *Rollo* (G.R. No. 225101), Vol. I, pp. 11-49.

<sup>30</sup> *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.

<sup>31</sup> *Id.* at 899-900.

<sup>32</sup> See *id.* at 864-866.

<sup>33</sup> *Id.* at 867.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 868.

<sup>36</sup> *Rollo* (G.R. No. 210165), Vol. I, pp. 9-48.

<sup>37</sup> *Id.* at 55-66. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

<sup>38</sup> *Id.* at 85-87.

<sup>39</sup> See *id.* 64-65 and 86.

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

**SO ORDERED.**<sup>40</sup>

### 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,<sup>41</sup> and was given a license and authority to operate by the National Telecommunications Commission. This franchise, however, expired on May 5, 2020.<sup>42</sup>

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

REGULARIZATION CASES: <sup>43</sup>	
G.R. Nos. 202495 & 202497 ( <i>ABS-CBN Corporation v. Payonan, et al.</i> )	
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
Cezar 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

<sup>40</sup> Id. at 65.

<sup>41</sup> 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.

<sup>42</sup> *Republic v. ABS-CBN Corporation*, G.R. No. 251358, June 23, 2020 (Resolution).

<sup>43</sup> *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.

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 Nuñez	April 1999
Alain Pardo	June 2000
Ronifio 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
<b>G.R. No. 202481 (Del Rosario, et al. v. ABS-CBN Broadcasting Corporation)</b>	
Philbert Acharon	September 1999
Lorenzo Alano	September 1996
Tommy Anacta	November 1995
Rolando 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
Roberto Sanchez	April 1997
Rey I. Santiago	May 1997
Isagani Taoatao	October 1995
Reynaldo L. Tugade	July 1994
Paul Viray	July 1997

ILLEGAL DISMISSAL CASES:<sup>44</sup>

NAME	DATE HIRED	POSITION
<b>G.R. No. 222057 (ABS-CBN Corporation v. Ong, et al.)</b>		
Joseph R. Ong	September 1999	Cameraman
Garett Cailles	June 1998	Cameraman
Raymon Reyes	September 1999	Cameraman
Fernando Lopez	November 2000	Cameraman
<b>G.R. No. 225874 (ABS-CBN Corporation v. Zaballa III, et al.)</b>		
Jose Zabala III	May 2003	Lightman
Fischerbob Casaje	September 2004	Lightman / Electrician / Gaffer
Taucer Tyche Benzonan	March 2011	Cameraman
<b>G.R. No. 225101 (Perez, et al. v. ABS-CBN Broadcasting Corporation)</b>		
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

<sup>44</sup> 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.

<b>G.R. No. 224879 (ABS-CBN Corporation, et al. v. Lozares)</b>		
Ronnie Lozares	November 1996	Lightman-Electrician
<b>G.R. No. 219125 (Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation)</b>		
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
<b>G.R. No. 210165 (Dablo, et al. v. ABS-CBN Broadcasting Corporation)</b>		
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.<sup>45</sup> After completing their seminars, they were assigned to render services in the self-produced, co-produced, and live-coverage programs of ABS-CBN.<sup>46</sup> Their presence was strictly required in each program.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup>

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.<sup>50</sup>

<sup>45</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. VI, p. 3683; *rollo* (G.R. No. 225874), Vol. II, p. 716.

<sup>46</sup> *Id.*; *rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2233; *rollo* (G.R. No. 225874), Vol. II, p. 717.

<sup>47</sup> *Rollo* (G.R. No. 225874), Vol. II, p. 717.

<sup>48</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2232.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

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.<sup>51</sup> These make-shift studios were used for taping and shooting programs in remote areas.<sup>52</sup>

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.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup> Under this system, the workers were regarded as independent contractors, not regular employees.<sup>59</sup> An accreditation under the IJM System did not in any way create an employment relationship between the so-called talents and the company.<sup>60</sup> Most importantly, the IJM System eliminated the rigors of recruiting or negotiating with independent contractors.<sup>61</sup>

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

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> See id. at 2229.

<sup>55</sup> *Rollo* (G.R. No. 225874), Vol. II, p. 717.

<sup>56</sup> *Rollo* (G.R. No. 225101), Vol. I, p. 542.

<sup>57</sup> Id. at 542-543.

<sup>58</sup> *Rollo* (G.R. No. 225101), Vol. II, p. 856.

<sup>59</sup> Id.

<sup>60</sup> *Rollo* (G.R. No. 225101), Vol. I, p. 543.

<sup>61</sup> *Rollo* (G.R. No. 225101), Vol. II, p. 856.



included in the pool without their consent or over their vehement objections.<sup>62</sup> Upon the implementation of the IJM System, each of the workers was given an hourly rate.<sup>63</sup> Consequently, beginning January 2002, they were paid based on the actual hours they worked, multiplied by their specified hourly rate.<sup>64</sup> They did not receive overtime pay, premium pay, and holiday pay for the work they rendered during rest days, special holidays, and regular holidays.<sup>65</sup>

Clamoring for better rights, the workers formed the ABS-CBN IJM Workers' Union.<sup>66</sup> 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.<sup>67</sup> The workers claimed that ABS-CBN compelled them to sign a document denominated as "Accreditation in the Internal [Job] Market System."<sup>68</sup> With this document, the workers were relegated to mere talents.<sup>69</sup> 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,<sup>70</sup> entitled "Re: Undocumented Personnel," ABS-CBN reclassified the status of its regular employees to mere talents or contractual employees.<sup>71</sup> 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."<sup>72</sup> Fearful of losing their jobs, the workers signed the said contract.<sup>73</sup>

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."<sup>74</sup> 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.<sup>75</sup>

Meanwhile, the rest of the workers persistently clamored for their recognition as regular employees. Allegedly, this incurred the ire of ABS-

<sup>62</sup> See *rollo* (G. R. No. 219125), Vol. I, p. 24.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> See id. at 16.

<sup>67</sup> *Rollo* (G.R. No. 202481), Vol. I, p. 13.

<sup>68</sup> Id. at 59.

<sup>69</sup> *Rollo* (G.R. No. 202481), Vol. I, p. 13.

<sup>70</sup> April 28, 2003 in other parts of the *rollo*.

<sup>71</sup> *Rollo* (G.R. No. 219125), Vol. I, p. 25.

<sup>72</sup> Id.

<sup>73</sup> See id. at 26.

<sup>74</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1913.

<sup>75</sup> Id. at 1913-1914.

CBN.<sup>76</sup> In May 2010, ABS-CBN purportedly coerced the union members to sign a contract and waive their claims for regularization.<sup>77</sup>

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.<sup>78</sup> No notice of termination was given to the workers. They were forthwith barred from entering the company premises.<sup>79</sup>

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.<sup>80</sup>

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<sup>81</sup> 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*<sup>82</sup> (*Jalog*), should be applied in resolving the instant petitions due to the similarity of facts and circumstances between the said case and

<sup>76</sup> *Rollo* (G.R. No. 225874), Vol. II, p. 717.

<sup>77</sup> *Id.*; *rollo* (G.R. No. 225101), Vol. I, p. 530; and *rollo* (G.R. No. 219125), Vol. I, p. 16.

<sup>78</sup> *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.

<sup>79</sup> *Rollo* (G.R. No. 224879), pp. 391-392; and *rollo* (G.R. No. 219125), Vol. I, p. 17.

<sup>80</sup> See *rollo* (G.R. No. 225101), Vol. I, p. 531; and *rollo* (G.R. No. 225874), Vol. I, p. 24.

<sup>81</sup> *Rollo* (G.R. No. 202481), Vol. II, pp. 1429-1430.

<sup>82</sup> See *rollo* (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028 and *rollo* (G.R. Nos. 202495 & 202497), Vol. IV, pp. 2066-2086.



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*.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> (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.<sup>86</sup> 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.<sup>87</sup>

<sup>83</sup> *Olores v. Manila Doctors College*, 731 Phil. 45, 58 (2014).

<sup>84</sup> *Id.* at 58.

<sup>85</sup> *Id.* at 58-59.

<sup>86</sup> See CA Decision, *rollo* (G.R. No. 222057), pp. 700-713.

<sup>87</sup> See NLRC Decision, *id.* at 387-399.

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.<sup>88</sup>

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.<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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

<sup>88</sup> These were the issues raised in the cases of *ABS-CBN Corporation v. Ong, et al.* (G.R. No. 222057) and *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125).

<sup>89</sup> *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, 582 Phil. 686, 699 (2008).

<sup>90</sup> *Id.* at 697, citing *Guevara v. BPI Securities Corporation*, 530 Phil. 342, 366-367 (2006).

<sup>91</sup> *Id.* at 696, citing *Spouses Abines v. Bank of the Philippine Islands*, 517 Phil. 609, 616 (2006).

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.<sup>92</sup> 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<sup>93</sup> dated October 5, 2011.

<sup>92</sup> *Dela Rosa Liner, Inc. v. Borela*, 765 Phil. 251, 259 (2015).

<sup>93</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028.



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.<sup>94</sup> 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.”<sup>95</sup>

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*.<sup>96</sup> 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.”<sup>97</sup> However, it will not set a binding precedent “if other parties or another subject matter (even with the same parties and issues) is involved.”<sup>98</sup> 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.<sup>99</sup>

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

<sup>94</sup> *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).

<sup>95</sup> *Id.* at 282-283, citing *Chinese Young Men’s Christian Association of the Philippine Islands v. Remington Steel Corporation*, *id.* at 337.

<sup>96</sup> 716 Phil. 676 (2013).

<sup>97</sup> *Id.* at 687. Emphasis omitted.

<sup>98</sup> *Id.* Emphasis omitted.

<sup>99</sup> See *rollo* (G.R. No. 225874), Vol. I, pp. 13-14; *rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1914.

power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test."<sup>100</sup>

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*<sup>101</sup> (*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.

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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

<sup>100</sup> *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).

<sup>101</sup> 758 Phil. 467 (2015).

the same.<sup>102</sup>

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.<sup>103</sup>

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.<sup>104</sup> ABS-CBN likewise withheld taxes and granted the workers PhilHealth benefits.<sup>105</sup> 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.<sup>106</sup>

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.<sup>107</sup> 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.<sup>108</sup> Likewise, ABS-CBN controlled their schedule and work assignments (and re-assignments).<sup>109</sup> 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.<sup>110</sup>

And just like in *Begino*, the fact that the workers signed a "Talent

<sup>102</sup> Id. at 480-482.

<sup>103</sup> *Rollo* (G.R. No. 219125), Vol. I, p. 15.

<sup>104</sup> *Rollo* (G.R. No. 225874), Vol. II, p. 717; *rollo* (G.R. No. 219125), Vol. I, p. 22; *rollo* (G.R. No. 225101), Vol. I, p. 32.

<sup>105</sup> Id.

<sup>106</sup> See *rollo* (G.R. No. 219125), Vol. I, p. 22.

<sup>107</sup> Id.

<sup>108</sup> See id.

<sup>109</sup> Id.; *rollo* (G.R. No. 225101), Vol. I, p. 532.

<sup>110</sup> *Rollo* (G.R. No. 219125), Vol. I, pp. 22-23.

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.<sup>111</sup> 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.<sup>112</sup>

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.<sup>113</sup> 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.<sup>114</sup>

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.

<sup>111</sup> *Begino v. ABS-CBN Corporation*, supra note 101, at 482, citing *Dumpit-Murillo v. CA*, 551 Phil. 725, 735 (2007).

<sup>112</sup> *Universal Robina Sugar Milling Corp. v. Acibo*, 724 Phil. 489, 503-504 (2014).

<sup>113</sup> *Begino v. ABS-CBN Corporation*, supra note 101, at 479.

<sup>114</sup> See *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 169-170 (2013), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).



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.<sup>115</sup> 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<sup>116</sup> 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.<sup>117</sup> 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."<sup>118</sup>

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*<sup>119</sup> (*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

<sup>115</sup> *Rollo* (G.R. No. 225874), Vol. I, p. 14.

<sup>116</sup> Now Art. 294 of the LABOR CODE OF THE PHILIPPINES.

<sup>117</sup> See *Universal Robiná Sugar Milling Corporation v. Acibo*, supra note 112, at 500.

<sup>118</sup> *Maraguinot, Jr. v. NLRC*, 348 Phil. 580, 602-603 (1998), citing *De Leon v. NLRC*, 257 Phil. 626, 632 (1989).

<sup>119</sup> 534 Phil. 306 (2006).

classified respondents as *program employees*, and in later pleadings, *independent contractors*. Program employees, or *project employees*, are different from independent contractors because in the case of the latter, no employer-employee relationship exists.<sup>120</sup>

*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.<sup>121</sup>

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.<sup>122</sup>

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.

<sup>120</sup> Id. at 333-334.

<sup>121</sup> *Rollo* (G.R. No. 222057), p. 110.

<sup>122</sup> Id. 111.

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.<sup>123</sup>

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.<sup>124</sup> 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*,<sup>125</sup> the Court emphasized that organization charts and personnel lists, among others, serve as evidence of employee status.<sup>126</sup>

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.*<sup>127</sup> (*Sonza*).

In *Sonza*, Jose Sonza (*Sonza*) was a talent who was engaged on the basis of his expertise in his craft.<sup>128</sup> 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.<sup>129</sup>

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,”<sup>130</sup> or had any say over the contents of his script. The only instruction given by ABS-CBN was a simple warning that

<sup>123</sup> Id. at 273.

<sup>124</sup> *Rollo* (G.R. No. 202481), Vol. I, p. 20.

<sup>125</sup> 749 Phil. 388 (2014).

<sup>126</sup> Id. at 418, citing *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014), further citing *Meteoro v. Creative Creatures, Inc.*, 610 Phil. 150, 161 (2009).

<sup>127</sup> 475 Phil. 539 (2004).

<sup>128</sup> See id. at 565-566.

<sup>129</sup> Id. at 551-554.

<sup>130</sup> Id. at 557-558.

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 spiels.<sup>131</sup>

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 13<sup>th</sup> month pay benefits customarily given to regular employees.<sup>132</sup>

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.<sup>133</sup> 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.<sup>134</sup> 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 "[i]ndependent contractors often present

<sup>131</sup> See *id.* at 557.

<sup>132</sup> *Rollo* (G.R. No. 222057), p. 276.

<sup>133</sup> *Sonza v. ABS-CBN Broadcasting Corp.*, *supra* note 127, at 555, citing *Alberty-Vélez v. Corporación De Puerto Rico Para La Difusión Pública ("WIPR")*, 361 F.3d 1, March 2, 2004.

<sup>134</sup> *Rollo* (G.R. No. 225101), Vol. I, p. 529.

themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees.”<sup>135</sup> 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.”<sup>136</sup>

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. 40<sup>137</sup> (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:

x x x [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

<sup>135</sup> *Sonza v. ABS-CBN Broadcasting Corp.*, supra note 127, at 552.

<sup>136</sup> *Id.* at 556.

<sup>137</sup> EMPLOYER-EMPLOYEE RELATIONSHIP, HOURS OF WORK AND DISPUTE SETTLEMENT IN THE BROADCAST INDUSTRY, January 8, 1979.

allowed by the station to be engaged or hired by other stations or persons even if such employees do not observe normal working hours.<sup>138</sup>

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:

x x x [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. x x x<sup>139</sup>

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*,<sup>140</sup> and *Television and Production Exponents, Inc. v. Servaña*,<sup>141</sup> 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."<sup>142</sup>

Essentially, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or

<sup>138</sup> Policy Instruction No. 40, p. 1.

<sup>139</sup> Id. at 2.

<sup>140</sup> 551 Phil. 802 (2007).

<sup>141</sup> 566 Phil. 564 (2008).

<sup>142</sup> Policy Instruction No. 40.

determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.<sup>143</sup> 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.<sup>144</sup>

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.

<sup>143</sup> *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550, 558 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 343-344 (2014).

<sup>144</sup> *Id.* at 558.

***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 security<sup>145</sup> industries. However, in 1998, the Court, in *Maraguinot, Jr. v. NLRC*<sup>146</sup> (*Maraguinot*) affirmed the existence of work pools in the motion picture industry, considering that “the *raison d’etre* of both [construction and film] industries concern projects with a foreseeable suspension of work.”<sup>147</sup>

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.<sup>148</sup> (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

<sup>145</sup> *Exocet Security and Allied Services Corp., et al. v. Serrano*, 744 Phil. 403, 418 (2014).

<sup>146</sup> *Supra* note 118.

<sup>147</sup> *Id.* at 605.

<sup>148</sup> *Id.* at 604, citing *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 280 (1997).



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.<sup>149</sup>

Furthermore, in *Raycor Aircontrol Systems, Inc. v. NLRC*,<sup>150</sup> the Court explained that members of a work pool could either be project employees or regular employees.<sup>151</sup> 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.<sup>152</sup>

In the particular case of ABS-CBN, the IJM 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 a "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services."<sup>153</sup> 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.<sup>154</sup>

Both parties acknowledged the existence of the IJM 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 IJM System Worker's Union, recognizing that they were in fact part of the IJM System work pool.

However, the continuous rehiring of the members of the IJM 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.

<sup>149</sup> See *Raycor Aircontrol Systems, Inc. v. NLRC*, 330 Phil. 306, 320-322 (1996).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 321.

<sup>152</sup> *Maraguinot, Jr. v. NLRC*, supra note 118, at 606.

<sup>153</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1915.

<sup>154</sup> *Id.*

As in *Tomas Lao Construction v. NLRC*,<sup>155</sup> 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.<sup>156</sup> 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.:

x x x [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.<sup>157</sup> (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.”<sup>158</sup>

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,

<sup>155</sup> Supra note 148.

<sup>156</sup> Id. at 280-281.

<sup>157</sup> Id. at 281.

<sup>158</sup> *Maraguinot, Jr. v. NLRC*, supra note 118, at 605.

(*Del Rosario, et al. v. ABS-CBN Broadcasting Corporation*) shall be included in the rank-and-file unit of the CBA.<sup>159</sup>

In *Fulache v. ABS-CBN Broadcasting Corp.*<sup>160</sup> 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) [p]ersonnel who are on 'contract' status or who are paid for specified units of work such as writer-producers, talent artists and singers."<sup>161</sup> 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."<sup>162</sup>

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

<sup>159</sup> 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.

<sup>160</sup> 624 Phil. 562 (2010).

<sup>161</sup> *Rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2510.

<sup>162</sup> LABOR CODE OF THE PHILIPPINES, Art. 294.

their actual reinstatement.<sup>163</sup>

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 13<sup>th</sup> month pay and holiday pay, pursuant to the applicable labor and tax laws,<sup>164</sup> 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.<sup>165</sup> ABS-CBN failed to adduce evidence to prove its payment of the aforementioned benefits.

<sup>163</sup> *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).

<sup>164</sup> Presidential Decree No. 851, REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13<sup>TH</sup> MONTH PAY; Revised Guidelines on the Implementation of the 13<sup>th</sup> Month Pay Law; and R.A. No. 10963 or the “TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN) LAW,” Sec. 9.

<sup>165</sup> *Loon v. Power Master, Inc.*, 723 Phil. 515, 531-532 (2013).

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.<sup>166</sup> 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,<sup>167</sup> 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.<sup>168</sup> All amounts due shall earn a legal interest of six percent (6%) per annum.<sup>169</sup>

**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

<sup>166</sup> Id. at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

<sup>167</sup> Id.

<sup>168</sup> LABOR CODE OF THE PHILIPPINES, Art. 111.

<sup>169</sup> *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 278-279 (2013).

the Resolution dated July 15, 2016 of the Court of Appeals, in CA-G.R. SP No. 131576 are **AFFIRMED**.

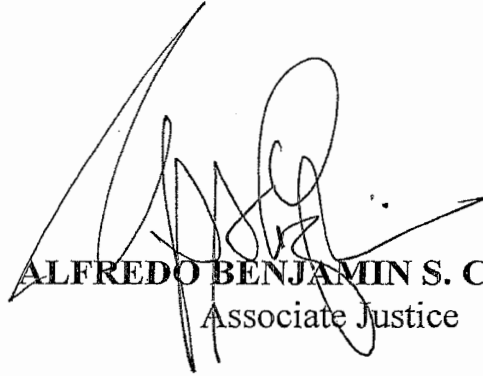
6. The petition in *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125) is **GRANTED**. The Decision dated August 19, 2014 and the Resolution dated June 18, 2015 of the Court of Appeals, in CA-G.R. SP. No. 122424, are **REVERSED and SET ASIDE**.
7. The petition in *Perez, et al.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

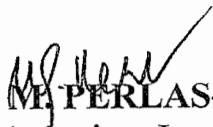
**SO ORDERED.**


  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

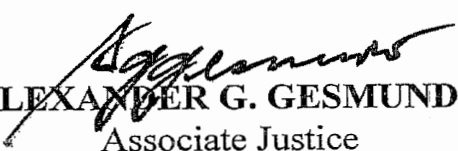
WE CONCUR:

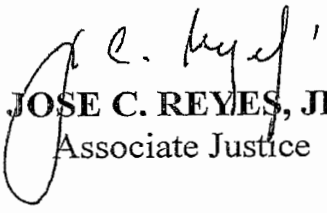
(No part)  
**DIOSDADO M. PERALTA**  
Chief Justice

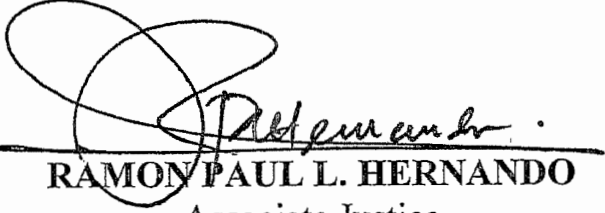
*I concur. So separate opinion*

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


  
**ALEXANDER G. GESMUNDO**  
Associate Justice


  
**JOSE C. REYES, JR.**  
Associate Justice

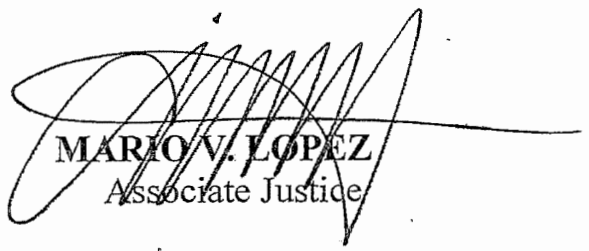
  
**RAMON PAUL L. HERNANDO**  
Associate Justice


(No part)  
**ROSMARI D. CARANDANG**  
Associate Justice

(No part)  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**MARIO V. LOPEZ**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

(No part)  
**SAMUEL H. GAERLAN**  
Associate Justice



(On leave)  
**PRISCILLA BALTAZAR-PADILLA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**DIOSDADO M. PERALTA**  
Chief Justice

