



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

ABS-CBN CORPORATION,  
Petitioner,

G.R. No. 203876

Present:

GESMUNDO, C.J.,  
Chairperson,  
CAGUIOA,  
INTING,  
GAERLAN, and  
DIMAAMPAO, JJ.

- versus -

CLARA L. MAGNO,  
Respondent.

Promulgated:  
MAR 29 2022

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DECISION

GAERLAN, J.:

This is a petition<sup>1</sup> for review on *certiorari* assailing the Decision<sup>2</sup> dated June 29, 2012 and the Resolution<sup>3</sup> dated October 5, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 123028. The assailed CA rulings reversed the Resolutions dated August 24, 2011<sup>4</sup> and October 28, 2011<sup>5</sup> of the National Labor Relations Commission (NLRC) in LAC No. 05-001360-11, which affirmed the Decision<sup>6</sup> dated April 13, 2011 of the Labor Arbiter (LA) in NLRC NCR Case No. 09-12938-10.

<sup>1</sup> Rollo, pp. 14-97.

<sup>2</sup> Id. at 850-878. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) with Associate Justices Andres B. Reyes (a retired Member of this Court) and Sesinando E. Villon concurring.

<sup>3</sup> Id. at 992.

<sup>4</sup> Id. at 373-396. Penned by Presiding Commissioner Raul T. Aquino with Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese concurring.

<sup>5</sup> Id. at 414-415.

<sup>6</sup> Id. at 276-300. Penned by Labor Arbiter Eduardo G. Magno.

### The Antecedent Facts

ABS-CBN Corporation (ABS-CBN) is a company engaged in the business of broadcasting television and radio programs in the Philippines. Respondent Clara L. Magno (Magno) was employed by ABS-CBN since 1992 and served as a Production Assistant and eventually a Video Tape Recorder (VTR) Playback Operator for its various programs.<sup>7</sup>

ABS-CBN alleged that due to the nature of its industry, it was constrained to produce its own television content to ensure that its prime airtime slots would always have good programs capable of attracting advertisers. It thus hired professionals and technical personnel, called "talents," to accomplish this.<sup>8</sup>

In 2002, to ease the rigors of scouting and negotiating with talents, ABS-CBN created the Internal Job Market (IJM) system. This was essentially a database of accredited technical/creative manpower who offered their services for a fee. These talents were made to undergo specialized trainings and subsequently comply with an accreditation process. ABS-CBN would then assign each talent a competency rating and corresponding professional rate of service.<sup>9</sup> In January 2002, despite the general refusal of similarly situated talents, Magno was placed under the IJM system as a VTR Playback Operator without her consent.<sup>10</sup>

According to Magno, one of the programs she was assigned to work on was Wowowee hosted by Willie Revillame (Revillame). She worked on this program for several years and formed friendship with the members of its production staff. However, Revillame eventually left ABS-CBN and moved to another television network bringing with him some of his production staff. ABS-CBN then launched Pilipinas Win na Win! (PWNW) on July 31, 2010 to replace Wowowee.<sup>11</sup> Magno was assigned to provide the same services for PWNW.<sup>12</sup>

One night when Revillame hosted a dinner for his production staff, some of Magno's friends invited her to join. The management of ABS-CBN learned about this and was allegedly angered. Magno then claimed that her superiors forced her to resign for being unworthy and disloyal to the network.<sup>13</sup> She

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<sup>7</sup> Id. at 374.

<sup>8</sup> Id. at 187-191.

<sup>9</sup> Id. at 192-193.

<sup>10</sup> Id. at 237-238.

<sup>11</sup> Id. at 299.

<sup>12</sup> Id. at 274-275.

<sup>13</sup> Id. at 281.

therefore felt compelled to file her Resignation Letter<sup>14</sup> dated August 16, 2010; which stated:

TO: PHOEBE LUZ ANIEVAS  
EXECUTIVE PRODUCER  
PWNW  
ABS-CBN

FROM: CLARA MAGNO  
VTR PLAYBACK OPERATOR

CC: H.R. DEPARTMENT

RE: RESIGNATION LETTER

As required by my contract of employment, I hereby give you notice of my intention to leave my position as VTR Playback Operator of the show.

I would like to thank you for having me as part of your team and work for almost 19 years.

Respectfully yours,  
(signed)  
CLARA L. MAGNO<sup>15</sup>

Magno alleged that she was constructively dismissed afterwards when ABS-CBN stopped giving her any work assignments and cancelled her active program assignments.<sup>16</sup>

Out of dire necessity, she claimed she was forced to take on work in another television network.<sup>17</sup> She notably joined the production staff of Revillame's new show "Willing Willie" as its VTR Playback Operator together with other employees who used to work for Wowowee.<sup>18</sup>

Magno thereafter filed a Complaint dated September 13, 2010 against ABS-CBN for illegal dismissal, regularization, nonpayment of overtime pay, holiday pay, holiday premium, rest-day premium, 13<sup>th</sup> month pay, separation pay, and night shift differential pay, as well as moral and exemplary damages, and attorney's fees.

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<sup>14</sup> Id. at 115.

<sup>15</sup> Id.

<sup>16</sup> Id. at 281.

<sup>17</sup> Id. at 242-243.

<sup>18</sup> Id. at 118.

In the interim, Magno and other employees of the Willing Willie show filed a Complaint-in-Intervention<sup>19</sup> on October 27, 2010 in a civil case between ABS-CBN and Revillame docketed as Civil Case No. Q-10-67770 before the Regional Trial Court of Quezon City, Branch 84. In this Complaint-in-Intervention, Magno and her fellow intervenors recounted the circumstances behind their resignation from ABS-CBN and transfer to Revillame.

The parties underwent the mandatory mediation proceedings but no settlement was reached. The parties were thus ordered to file their respective position papers.

Magno filed a Position Paper,<sup>20</sup> Reply,<sup>21</sup> and Rejoinder.<sup>22</sup> She mainly argued that she should be deemed a regular employee of ABS-CBN because she has worked there for over eighteen years and the nature of her work was necessary and desirable to its business. Her employment also passed the “four-fold test” in determining the existence of an employer-employee relationship. ABS-CBN directly hired her, paid her salary twice a month, monitored and controlled her through its supervisors, and clearly had the power to discipline and dismiss her.<sup>23</sup>

She additionally cited the case of *ABS-CBN Broadcasting Corporation v. Nazareno*,<sup>24</sup> and the Decision dated August 13, 2010 of the Office of the Secretary of the Department of Labor and Employment in DOLE Case No. NCR-OD-M-0911-006 where it was recognized that an employer-employee relationship existed between ABS-CBN and members of the IJM Workers Union.<sup>25</sup>

She thus claimed to be constructively dismissed by ABS-CBN when she was forced to resign on account of her attendance at a dinner with her friends which was hosted by Revillame. She was also denied access to the work premises despite her other work assignments.<sup>26</sup> This did not constitute a just or authorized cause for her dismissal under the Labor Code. Moreover, ABS-CBN failed to comply with the requirements for procedural due process in her dismissal.<sup>27</sup>

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<sup>19</sup> Id. at 124-138.

<sup>20</sup> Id. at 139-158.

<sup>21</sup> Id. at 237-247.

<sup>22</sup> Id. at 271-275.

<sup>23</sup> Id. at 144-145.

<sup>24</sup> 534 Phil. 306 (2006).

<sup>25</sup> *Rollo*, pp. 146-152.

<sup>26</sup> Id. at 242.

<sup>27</sup> Id. at 154-156.

With regard to her resignation letter, she alleged that it is evident from the language used that she only intended to resign from her job at the PWNW program and not from ABS-CBN as a whole.<sup>28</sup>

In response, ABS-CBN filed its Position Paper,<sup>29</sup> Reply,<sup>30</sup> and Rejoinder.<sup>31</sup> It argued that Magno's Complaint should be dismissed outright for lack of jurisdiction and lack of cause of action since it had no employment relationship with her. Magno was an independent contractor hired through the IJM system and it did not exercise control over the means and methods of her work. In fact, she was hired precisely as an independent contractor who did not need to be controlled because of her experience, skills, and expertise.<sup>32</sup> Her work was also not necessary and desirable to its usual trade and business which was to broadcast television programs.<sup>33</sup>

Considering that Magno was not an employee of ABS-CBN, she could not have been illegally dismissed. All her monetary claims must also be denied as these apply only to cases of illegal dismissal.<sup>34</sup>

Lastly, it vehemently denied that Magno was forced by her superiors to resign from her job. Her resignation letter proved her intention to sever any contractual relationship she had with ABS-CBN and debunked her claim of illegal dismissal.<sup>35</sup> It highlighted that she is already working for another television station but still filed this Complaint in the hopes of extorting money from ABS-CBN.<sup>36</sup>

### The LA Ruling

The LA rendered its Decision<sup>37</sup> dismissing Magno's Complaint against ABS-CBN:

**IN VIEW OF THE FOREGOING**, judgment is hereby rendered **DISMISSING** the Complaint for lack of cause of action and/or lack of merit.

**SO ORDERED.**<sup>38</sup>

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<sup>28</sup> Id. at 242-243.  
<sup>29</sup> Id. at 181-216.  
<sup>30</sup> Id. at 248-263.  
<sup>31</sup> Id. at 264-270.  
<sup>32</sup> Id. at 196-204.  
<sup>33</sup> Id. at 251.  
<sup>34</sup> Id. at 208-209.  
<sup>35</sup> Id. at 259.  
<sup>36</sup> Id. at 209-210.  
<sup>37</sup> Id. at 276-300.  
<sup>38</sup> Id. at 300.

The LA ruled that Magno was not a regular employee of ABS-CBN since she failed to prove that the latter exercised the determinative element of control over the means and methods of her work. Considering there was no employment relationship, her claim for constructive dismissal and payment of separation pay, backwages, and monetary benefits must fail.

Dissatisfied, Magno appealed<sup>39</sup> to the NLRC insisting she was constructively dismissed as a regular employee of ABS-CBN under the IJM system.

ABS-CBN filed an Opposition<sup>40</sup> to the appeal asserting that the LA did not err in concluding that there was no employment relationship with Magno since she was an independent contractor. It further argued that Magno failed to prove her claim that she was forced to resign.

### **The NLRC Ruling**

The NLRC issued its Resolution<sup>41</sup> denying Magno's appeal and affirming the LA Decision:

**WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the appeal for utter lack of merit and **AFFIRMING** the April 13, 2011 Decision of Labor Arbiter Eduardo G. Magno.

**SO ORDERED.**<sup>42</sup>

The NLRC concurred that Magno failed to sufficiently prove that she was a regular employee of ABS-CBN. It observed that her service engagement with ABS-CBN was not exclusive and she was not prohibited from taking on jobs with other television networks and production companies.<sup>43</sup> Her claim of constructive dismissal must therefore fail due to the absence of an employment relationship.

Magno filed a Motion for Reconsideration<sup>44</sup> of the Resolution, to which ABS-CBN filed an Opposition.<sup>45</sup>

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<sup>39</sup> Id. at 301-331.

<sup>40</sup> Id. at 332-372.

<sup>41</sup> Id. at 373-396.

<sup>42</sup> Id. at 395-396.

<sup>43</sup> Id. at 390-391.

<sup>44</sup> Id. at 398-401.

<sup>45</sup> Id. at 402-411.

The NLRC issued a Resolution<sup>46</sup> denying the motion for reconsideration for lack of merit.

Undeterred, Magno filed a petition for *certiorari*<sup>47</sup> with the CA, to which ABS-CBN filed a Comment.<sup>48</sup> Magno alleged that the NLRC committed grave abuse of discretion when it declared that she was not an employee of ABS-CBN and that she voluntarily resigned from her job.

### The CA Ruling

The CA rendered its Decision<sup>49</sup> granting Magno's petition and reversing and setting aside the rulings of the NLRC and the LA:

**ACCORDINGLY**, the petition is **GRANTED**. The NLRC Resolutions dated August 24, 2011 and October 28, 2011 are **REVERSED** and **SET ASIDE** and a new judgment rendered:

- a) **EXEMPTING** private respondent Eugenio Lopez III from personal liability arising from this case;
- b) **ORDERING** private respondent ABS-CBN to reinstate, without loss of seniority rights, petitioner Clara L. Magno to the various positions she used to hold and to pay her the appropriate backwages to be determined and computed by the NLRC;
- c) **AWARDING** petitioner P20,000.00 as moral damages and P10,000.00 as exemplary damages; and
- d) **GRANTING** petitioner 10% of her total money award as attorney's fees.

**SO ORDERED.**<sup>50</sup>

The CA concluded that Magno was a regular employee of ABS-CBN because she had rendered necessary and desirable services for it for over 18 years.<sup>51</sup> It also gave weight to the documentary evidence presented to prove additional badges of her regular employment.

It further held that the language in the resignation letter was clear that Magno intended to resign as the VTR Playback Operator only for the PWNW

<sup>46</sup> Id. at 414-415.

<sup>47</sup> Id. at 416-451.

<sup>48</sup> Id. at 452-509.

<sup>49</sup> Id. at 850-878.

<sup>50</sup> Id. at 876-877.

<sup>51</sup> Id. at 866-867.

program and not entirely as an employee of ABS-CBN.<sup>52</sup> The letter was only addressed to the Executive Producer of PWNW and expressed her intention to “leave my position as VTR Playback Operator *of the show*.”<sup>53</sup> Hence, ABS-CBN constructively dismissed her when it prohibited her from performing work in other shows.<sup>54</sup> It ruled that she should be reinstated without loss of seniority rights and paid backwages.

ABS-CBN filed a Motion for Partial Reconsideration<sup>55</sup> to which Magno filed a Comment/Opposition.<sup>56</sup>

The CA denied ABS-CBN’s motion for partial reconsideration in its assailed Resolution<sup>57</sup> dated October 5, 2012 for lack of merit.

Hence, the instant petition.

### **The Issues**

1. Whether or not there was an employer-employee relationship between ABS-CBN and Magno.
2. Whether or not Magno was constructively dismissed.<sup>58</sup>

### **The Ruling of this Court**

ABS-CBN in its petition<sup>59</sup> maintained that Magno was not a regular employee based on the four-fold test but an independent contractor. It reiterated that Magno failed to prove that she was constructively dismissed and, on the contrary, resigned voluntarily.

Magno filed a Comment/Opposition<sup>60</sup> alleging that she resigned only from the PWNW program and not as an employee of ABS-CBN. She was thus constructively dismissed when she was prohibited from working in her other program assignments.

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<sup>52</sup> Id. at 872.

<sup>53</sup> Id. at 115.

<sup>54</sup> Id. at 873.

<sup>55</sup> Id. at 879-931.

<sup>56</sup> Id. at 982-990.

<sup>57</sup> Id. at 992.

<sup>58</sup> Id. at 38-40.

<sup>59</sup> Id. at 14-97.

<sup>60</sup> Id. at 995-1029.



ABS-CBN filed a Reply<sup>61</sup> insisting that Magno was not entitled to her claims since these are predicated on a finding of illegal dismissal.

After a judicious review, this Court finds the petition partially meritorious.

On a preliminary note, the issues for resolution in this case involve questions of fact which require a re-examination of the evidence. This is outside the scope of a petition for review filed under Rule 45 of the Rules of Court. Nevertheless, this case falls under a recognized exception to this rule considering the factual findings of the labor tribunals differ from the CA.<sup>62</sup>

***Magno is a regular employee of ABS-CBN.***

This Court has established the four-fold test in determining the existence of an employer-employee relationship. The elements of the four-fold test include: (1) the selection and engagement of employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct.<sup>63</sup> It is recognized that "[t]here is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status."<sup>64</sup>

It bears stressing that this Court sitting *en banc* in *Del Rosario v. ABS-CBN Broadcasting Corporation*<sup>65</sup> (*Del Rosario*) already established that there is an employer-employee relationship between ABS-CBN and its talents under the IJM system. This was based on the application of the four-fold test as follows:

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>61</sup> Id. at 1032-1069.

<sup>62</sup> *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil. 418, 433 (2015).

<sup>63</sup> *Expedition Construction Corporation v. Africa*, 822 Phil. 1044, 1055 (2017).

<sup>64</sup> *Marsman & Company, Inc. v. Sta. Rita*, 830 Phil. 470, 492-493 (2018).

<sup>65</sup> G.R. Nos. 202481, 202495, 202497, 210165, 219125, 222057, 224879, 225101, and 225874, September 8, 2020.

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. ABS-CBN likewise withheld taxes and granted the workers PhilHealth benefits. 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.

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. 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. Likewise, ABS-CBN controlled their schedule and work assignments (and re-assignments). 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.

And just like in *Begino*, the fact that the workers signed a "Talent Contract and/or Project Assignment Form" does not *ipso facto* make them talents. It is settled that a talent contract does not necessarily prevent an employee from acquiring a regular employment status. 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.

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. 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.<sup>66</sup> (Citations omitted)

It was further clarified that these IJM talents hired by ABS-CBN were *regular* employees of ABS-CBN pursuant to Article 280 of the Labor Code. This is mainly because they performed functions necessary and desirable to ABS-CBN's overall business and trade. The Court in *Del Rosario* elucidated:

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. This is based on the obvious reason that ABS-CBN had no hand

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Id.

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 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. 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."

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 (Nazareno)*, the workers involved were production assistants who were repeatedly hired but treated as talents. The Court therein ruled that the production assistants were regular employees as follows:

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

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

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

*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.

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.

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

The workers — who were cameramen, light men, gaffers, lighting directors, audio men, sound engineers, system engineers, VTR men, video engineers, technical directors, and drivers — all played an indispensable role in the production and re-production of shows, as well as post-production services. The workers even played a role in ABS-CBN's business of obtaining commercial revenues. To obtain profits through advertisements, ABS-CBN would also produce and air shows that will attract the majority of the viewing public. The necessary jobs required in the production of such shows were performed by the workers herein.<sup>67</sup>

The continuous rehiring of the talents by ABS-CBN for its various programs accorded them regular employment status for the production of television programs.

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<sup>67</sup> Id.

Guided by the foregoing, Magno is deemed a regular employee of ABS-CBN. She was similarly situated with the petitioners in *Del Rosario* who were placed under the IJM system and continuously rehired for various programs. As a VTR Playback Operator, she rendered services necessary and desirable to the overall business and trade of ABS-CBN.

The CA aptly observed that Magno proved badges of the employer-employee relationship with ABS-CBN. She was directly hired by ABS-CBN and provided a company Identification Card.<sup>68</sup> ABS-CBN paid for her salaries as evidenced by her employee pay slips.<sup>69</sup> It registered her as its employee in government agencies and facilitated compliance with her labor requirements. This is supported by documents such as the Certification<sup>70</sup> dated April 27, 2006 on the payment of her PhilHealth contributions, PhilHealth Claim Form,<sup>71</sup> Memorandum for Withholding Tax Adjustment,<sup>72</sup> Certificate of Creditable Tax Withheld at Source,<sup>73</sup> Certificate of Update of Exemption and of Employer's and Employee's Information<sup>74</sup> for the Bureau of Internal Revenue, and her Certificates of Compensation Payment/Tax Withheld.<sup>75</sup> It also issued her a Certification of Employment<sup>76</sup> dated March 9, 2004 as a requirement for her application for a housing loan.

ABS-CBN likewise exercised control over the means and methods of Magno's work. It controlled her work assignments and transfers, and monitored her closely in the accomplishment of her work through its production supervisors and producers.

Consequently, based on the totality of evidence and consistent with prevailing jurisprudence, Magno was a regular employee of ABS-CBN.

***Magno failed to prove that she was constructively dismissed.***

Having established that Magno was a regular employee of ABS-CBN, it will now be determined if she was constructively dismissed.

It is well-settled that an employee's claim of constructive dismissal should be established with clear and convincing evidence. Bare and self-serving

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<sup>68</sup> *Rollo*, p. 159.

<sup>69</sup> *Id.* at 160-169.

<sup>70</sup> *Id.* at 171.

<sup>71</sup> *Id.* at 172.

<sup>72</sup> *Id.* at 173.

<sup>73</sup> *Id.* at 174.

<sup>74</sup> *Id.* at 175.

<sup>75</sup> *Id.* at 176-180.

<sup>76</sup> *Id.* at 170.

allegations of constructive dismissal are insufficient to discharge this burden of proof.<sup>77</sup>

It was therefore held in *Rodriguez v. Sintron Systems, Inc.*<sup>78</sup> (*Rodriguez*) that the employee could not be considered constructively dismissed for her failure to prove its factual basis with substantial evidence.

Moreover, if the employer asserts that the employee resigned from work, it has the burden to prove that the resignation was voluntary. This is considering “[it] is constructive dismissal when resignation ‘was made under compulsion or under circumstances approximating compulsion, such as when an employee’s act of handing in his [or her] resignation was a reaction to circumstances leaving him [or her] no alternative but to resign.’”<sup>79</sup>

In this case, a review of the evidence on record warrants a reversal of the CA’s ruling that Magno was constructively dismissed.

Magno claimed she was constructively dismissed because her superiors forced her to resign and she was denied access to the work premises despite her active work assignments.<sup>80</sup> The CA affirmed this and held that ABS-CBN illegally dismissed her when it acted in bad faith and “totally excluded [her] from its workforce without due process.”<sup>81</sup>

However, upon closer scrutiny, it is clear that the factual basis of Magno’s claim of constructive dismissal was utterly unsubstantiated. She did not name any of her superiors who allegedly forced her to resign or provide any details on how this incident transpired. She likewise did not present any evidence that she attempted to work on her other active assignments but was denied access to the work premises. In the absence of such evidence, her claim of constructive dismissal was bare, self-serving, and unworthy of credence.

The LA thus held that Magno “failed to substantiate her alleged constructive dismissal. Her purported forced resignation does not merit any consideration for want of evidence.”<sup>82</sup>

The need for substantial evidence to prove the acts amounting to constructive dismissal is more critical in view of the fact that Magno filed a resignation letter. Although she claimed that she was forced to file this

<sup>77</sup> *Cosue v. Ferritz Integrated Development Corporation*, 814 Phil. 77, 86 (2017).

<sup>78</sup> G.R. No. 240254, July 24, 2019.

<sup>79</sup> *Pascua v. Bankwise, Inc.*, 824 Phil. 846, 858-859 (2018).

<sup>80</sup> *Rollo*, p. 242.

<sup>81</sup> *Id.* at 875.

<sup>82</sup> *Id.* at 296.

resignation letter, the contrary interpretation is equally plausible. It is noted that the tenor of her resignation letter was amiable and cordial. She even expressed gratitude to the Executive Producer for “having me as part of your team and work for almost 19 years.”<sup>83</sup> Based on human experience, these belie her claim of a coerced resignation.

In light of this statement, it is also unclear whether she intended to resign from the PWNW program only or from being an employee of ABS-CBN altogether. The PWNW program was launched in July 31, 2010 and she filed her resignation letter only sixteen days later on August 16, 2010. If she intended to resign only from the PWNW program, it is questionable why she would express gratitude for her work “for almost 19 years.”<sup>84</sup>

Magno and her colleagues explained in their Complaint-in-Intervention<sup>85</sup> why they left ABS-CBN and moved to work for Revillame. They alleged that they were impelled to resign because of the unjustified and unilateral cancellation of *Wowowee* and the odious manner Revillame was treated. It can be deduced from their statements that they resigned voluntarily from ABS-CBN to follow Revillame. The relevant portions of the Complaint-in-Intervention state:

7. On 31 July 2010, a new noontime show was launched known as *Pilipinas Win na Win*. The new show replaced the cancelled *Wowowee*.

8. The unjustified and unilateral cancellation by Defendant of *Wowowee* and the odious manner they treated Plaintiff [Revillame] in renegeing on their promise to restore Plaintiff to *Wowowee* impelled some if not all of the Intervenorers to resign from Defendant [ABS-CBN].

9. Fueled by their belief in the talent and cause of Plaintiff to entertain the Filipino masses and disgusted by the manner by which Defendant treated Plaintiff, Intervenorers who opted to resign from Defendant, followed Plaintiff and in the process, relinquished their job security and economic stability with Defendant with nothing but hope that Plaintiff would continue entertaining the Filipino masses.<sup>86</sup>

Based on all the foregoing, Magno’s claim of constructive dismissal was not established with clear and substantial evidence. The CA committed reversible error in upholding this ruling without sufficient factual basis.

Necessarily, the CA’s grant of backwages and other monetary claims in favor of Magno must also be reversed. These monetary claims can be awarded

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<sup>83</sup> Id. at 115.

<sup>84</sup> Id.

<sup>85</sup> Id. at 124-138.

<sup>86</sup> Id. at 126.

only to employees who have been illegally dismissed pursuant to Article 279 of the Labor Code.

***Magno was not illegally dismissed but did not abandon her job at ABS-CBN.***

Although Magno was not constructively dismissed, she cannot be considered to have abandoned or forfeited her employment with ABS-CBN. Abandonment of employment is “the deliberate and unjustified refusal of an employee to resume his employment.”<sup>87</sup> This requires (1) the employee’s failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. It is recognized that abandonment is incompatible with the filing of a case for constructive dismissal.<sup>88</sup>

As a result, it was explained in *Rodriguez* that the remedy of “reinstatement” cannot be granted similar to illegal dismissal cases. This is simply because there can be no reinstatement to a position one is still holding. The Court will therefore merely declare that “the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed.”<sup>89</sup>

ABS-CBN should thus accept Magno to her former position, or substantially equivalent position in all her assigned programs, if these still exist. In the event that these programs no longer exist, she should be reinstated as part of the IJM work pool of ABS-CBN’s regular employees. The exercise of either option shall be without payment of backwages.

If Magno is not amenable to returning to work in her previously assigned programs, if these still exist, or to be reinstated as part of the IJM work pool, she is deemed to have voluntarily resigned. In such case, considering her failure to work was not caused by abandonment or termination, it has been recognized that each party shall bear their own economic loss.<sup>90</sup>

**WHEREFORE**, the petition for review on *certiorari* is **GRANTED**. The Decision dated June 29, 2012 and the Resolution dated October 5, 2012 of the Court of Appeals in CA-G.R. SP No. 123028 are **REVERSED** and **SET ASIDE**. Respondent ABS-CBN Corporation is **ORDERED** to reinstate respondent Clara L. Magno to her former position without payment of backwages or other monetary claims.

<sup>87</sup> *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 400 (2013).


<sup>88</sup> *Borja v. Miñoza*, 812 Phil. 133, 147 (2017).

<sup>89</sup> *Rodriguez v. Sintron Systems, Inc.*, supra note 78.

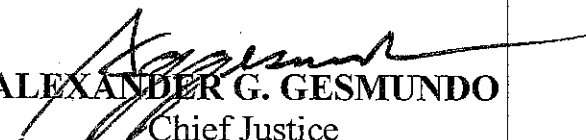
<sup>90</sup> *Borja v. Minoza*, supra note 88, citing *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013).

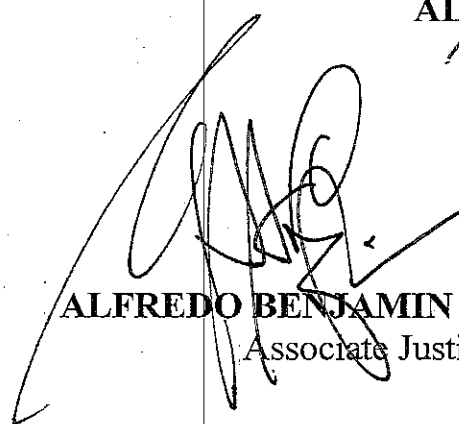



**SO ORDERED.**


  
**SAMUEL H. GAERLAN**  
 Associate Justice

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
 Chief Justice  
 Chairperson

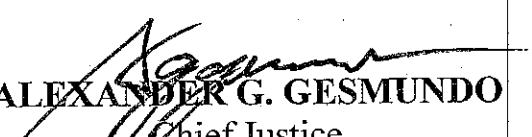
  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

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

  
**JAPAR B. DIMAAMPAO**  
 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's Division.

  
**ALEXANDER G. GESMUNDO**  
 Chief Justice

