



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**ABS-CBN CORPORATION,**  
Petitioner,

**G.R. No. 230576**

Present:

-versus-

LEONEN, *J.*, Chairperson,  
GESMUNDO,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, *JJ.*

Promulgated:

**JAIME C. CONCEPCION,**

Respondent.

October 5, 2020

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**DECISION**

**ZALAMEDA, J.:**

An independent contractor enjoys independence and freedom from control and supervision of his principal. In order to be considered an independent contractor and not an employee of a television network, it must be shown that an OB van driver was hired because of his unique skills and talents, and the television network did not exercise control over the means and methods of his work.<sup>1</sup>

<sup>1</sup> See *Paragale v. GMA Network, Inc.*, G.R. No. 235315, 13 July 2020.

### The Case

Before this Court is a Petition for Review<sup>2</sup> which seeks to reverse and set aside the Decision<sup>3</sup> dated 20 October 2016 and Resolution<sup>4</sup> dated 13 March 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 125867, which annulled and set aside the Decision<sup>5</sup> dated 29 May 2012 of the Special Division of the National Labor Relations Commission (NLRC) and reinstated the Decision<sup>6</sup> dated 29 December 2011 of the Fifth Division of the NLRC. The dispositive portion of the CA Decision reads:

**“WHEREFORE**, foregoing considered, the petition is **GRANTED**. The assailed Decision dated May 29, 2012 of the National Labor Relations Commission-Special Division in LAC No. 05-001370-11 granting the motion for reconsideration of the private respondent and reversing and setting aside the earlier decision dated December 29, 2011 rendered by the National Labor Relations Commission-Fifth Division is **VACATED** and **SET ASIDE**.

Accordingly, the Decision dated December 29, 2011 of the NLRC-Fifth Division is **REINSTATED** and **AFFIRMED** en toto.

**SO ORDERED.**<sup>7</sup>

### Antecedents

ABS-CBN Corporation<sup>8</sup> (ABS-CBN) is a domestic corporation principally engaged in the business of broadcasting television and radio content in the Philippines. Under its Amended Articles of Incorporation,<sup>9</sup> its principal purpose is:

To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave,

<sup>2</sup> *Rollo*, Vol. I, pp. 15-76.

<sup>3</sup> *Rollo*, Vol. II, pp. 693-705; penned by Justice Leoncia Real-Dimagiba and concurred in by Justices Ramon R. Garcia and Josep Y. Lopez of the Fifteenth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 761-763.

<sup>5</sup> *Rollo*, Vol. I, pp. 453-461.

<sup>6</sup> *Id.* at 418-427.

<sup>7</sup> *Rollo*, Vol. II, p. 704.

<sup>8</sup> Formerly known as ABS-CBN Broadcasting Corporation.

<sup>9</sup> *Rollo*, Vol. I, pp. 90-97.

satellite or whatever means including the use of any new technologies in television and radio systems.<sup>10</sup>

Among its secondary purposes are:

1. To broadcast, disseminate, distribute, transmit, retransmit, receive, or collect by satellite, microwave, electronic, electrical or other means, news, sports, entertainment, educational and informative matter, advertisements or any other matter which may be transmitted by television, radio or electronic signals, and to provide for the use of other equipment or facilities for such purpose.

X X X

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

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

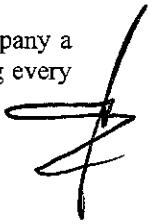
5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.<sup>11</sup>

ABS-CBN claims that it is not its principal business nor its legal obligation to produce television programs. It can operate its business without producing any of its own television programs. Just like any other broadcasting companies, it has several options in terms of where and how to obtain content to broadcast or air, and the means of generating revenues. These options include the following schemes: (1) block-time;<sup>12</sup> (2) line

<sup>10</sup> Id. at 93.

<sup>11</sup> Id. at 93-94.

<sup>12</sup> Id. at 19. In this scheme, an external producer – the “block-timer” – purchases from the Company a fixed number of airtime on a specific day or days, i.e., from 8:00 to 9:00 o’clock in the evening every



production;<sup>13</sup> (3) Co-production;<sup>14</sup> (4) Self-production;<sup>15</sup> (5) Foreign canned shows;<sup>16</sup> (6) Live Coverages;<sup>17</sup> (7) Licensed Programs;<sup>18</sup> and (8) a combination of the foregoing schemes.<sup>19</sup>

Respondent maintains that he was hired by ABS-CBN as OB (Outside Broadcast) van driver in June 1999 under the Engineering Department and was given the task to oversee the generator used during tapings/shooting of programs aired by ABS-CBN. He was assigned to different TV Programs at

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Saturday, for six (6) months. During this time, the external producer's program is aired and the advertising revenues thereof will pertain solely to him as the "block-timer". The external producer seeks or awaits advertisers for its program. The advertisers then directly deal with the "block-timer" for their advertisement placements ["ad placements"] as the latter effectively "owns" the blocked time slot. The following are examples of the programs on block-time: *Kabuhayang Swak na Swak*, produced by Bayan Productions, Inc.; and *The Healing Eucharist* which is produced by Healing Eucharist, Inc. In effect, Bayan Productions, Inc. and Healing Eucharist, Inc. purchased from the Company the particular time slot when the shows they produced are aired. All advertisers who want their advertisement shown during the time slot purchased by Bayan Productions, Inc. or Healing Eucharist, Inc. will contract directly with the latter for the time their advertisements are aired. All personnel involved in the production of said shows, such as cameramen and lightmen are engaged and paid by Bayan Productions, Inc. or Healing Eucharist, Inc., both of which are separate and distinct entities from the Company. Examples of previous programs on block time were *Trip and Trip* and *Urban Zone* which were produced by Bayan Productions, Inc.

- <sup>13</sup> Id. Under this set-up, an external producer conceptualizes, implements and creates a particular program, which is in turn bought by a broadcasting company at a specific price. In this arrangement, the Line Producer is responsible for all aspects of production: from engaging the services of all production personnel such as the director, cameramen, audiomen, lightmen, production assistants, drivers, etc. to the procurement of equipment needed such as cameras, lights, microphones, vehicles, etc. The Line Producer is likewise solely obligated to pay for all the fees and expenses associated with the production of the program. The broadcasting company, in turn, is responsible for paying the Line Producer the agreed contract fee. The advertising revenues generated from the airing of such program are for the sole account of the broadcasting company. Examples of line-produced programs are *Goin' Bulilit*, which is produced by Edgar Mortiz and *Agimat: Mga Alamat ni Ramon Revilla*, which was produced by Classified Media. In the past, the long-running show *Palibhasa Lalake* was line-produced by Regal Films.
- <sup>14</sup> Id. at 19-20. The broadcasting company and the external producer join forces and resources to produce a show, with the former normally contributing the airtime, among other things. In any case, they share the entire cost of the production of a program and any advertising revenue is similarly shared by the broadcasting company and the external producer. An example would be *Divalicious*, a co-production of the Company and ALV Productions, Inc. for the telecast of the concert of Pops Fernandez; *Lea Salonga: My Life on Stage*, a co-production of the Company with Global Content Center Corporation; and *Kahit Isang Saglit*, a co-production of the Company with Double Vision SDN BHD, a Malaysian company.
- <sup>15</sup> Id. at 20. The broadcasting company handles all aspects of production of a particular program to be aired on a particular time slot. Naturally, the profits generated or losses incurred from the same are for the broadcasting company's sole account. Examples would be the drama series *May Bukas Pa*, which starred Zaijan Jaranilla; *Tayong Dalawa*, which starred Gerald Anderson, Kin Chiu and Jake Cuenca; and the defunct variety show *Wowowee*. This type of production is resorted to in order that all valuable time slots have shows to be aired. To ensure that no prime time slot is left without any show to air, the Company sets aside a particular budget for a show on that slot unless it can obtain a worthy show or program through blocktime, line production or co-production. The budget is for the entire production cost. However, such a show is merely temporary as the Company will sell the airtime to an interested independent producer who might subsequently bid for the same time slot.

For business reasons, the Company ventures into production especially for prime time slots that are so called because these are the hours that attract the maximum percentage of viewership. As such, the prime time slots command the highest broadcasting rate per minute that no external producer could probably afford or would risk investing in.

the time of his employment,<sup>20</sup> and acted as property custodian over all equipment, especially the generator used in their tapings/shootings. According to respondent, he was supervised by ABS-CBN personnel with respect to his work schedules, the programs he was assigned to, and the time he was supposed to report for work. He was made to comply with company rules, and for infractions committed, he was subjected to penalties and sanctions. In one instance in 2003 he was issued a Memo from ABS-CBN TV Engineering Division for the alleged overheating of a generator set.<sup>21</sup>

<sup>16</sup> Id. at 20-21. This could be the simplest option involving foreign shows – “taped” or digitally recorded - for which the Company acquired limited license to re-broadcast. These shows are ready for airing, leaving nothing much to be done except dubbing, if such be the intention. The profits generated or losses incurred are likewise for the broadcasting company’s sole account. Of course, this is still determined by the number of advertisers for the show. An example would be the hit Korean soap opera, *He is Beautiful*, which was aired on 16 August 2010 to replace the Company’s self-produced *Precious Hearts Romance*, a Filipino drama series. Other examples are the animated series *Hana Yori Dango*, *Huntik: Secrets of the Seekers*, *Dora the Explorer*, *Spongebob Squarepants*, *Avatar*; the Korean soap opera, *Honey Watch Out* and Taiwan telenovela, *Meteor Garden*. Other networks’ shows like *Charlie’s Angels*, *Three’s Company*, *Golden Girls*, and other situation comedies, police, detective – or adventure- type shows like *McGyver*, *Starsky and Hutch*, *Miami Vice*, or *Six Million Dollar Man* also fall under this category.

<sup>17</sup> Id. at 21. Closely related to canned shows would be live coverages in the sense that the broadcasting company does not handle any aspect of production, the only obvious difference being that canned shows are pre-recorded. Live coverage are not regular contents for airing since the same pertain to occasional big international or major events abroad that the target market prefers watching live. Examples would be the Miss Universe Pageant or major boxing bouts and other sports events.

<sup>18</sup> Id. Another type of content would be shows that the broadcasting or production company may obtain under license or authority from the “owner” thereof. The content may be already existing like the movies of Fernando Poe Jr. for which the Company was given the license by FPJ Productions, Inc. to broadcast. They were shown every Saturday afternoon some years back.

<sup>19</sup> Id. A combination of the foregoing schemes is also possible depending on the intention, preference, requirement or purpose of the parties to the contract namely, the broadcasting company and the content-provider. For example, the live concerts of Gary Valenciano are usually produced by his own outfit, Genesis Production. For purposes of a subsequent broadcast on television, the Company may purchase the rights over the concert or it may enter into a contract with Genesis under which it will handle recording the concert, and air the same on an agreed date.

<sup>20</sup> *Rollo*, Vol. II, pp. 768-769. Including *Ariba-Ariba*, *Bituin*, *Maalala Mo Kaya*, *Sa Dulo ng Walang Hanggan*, *Tabing Ilog*, *Wansapanatym*, TFPO-EG Technical FA, *Berks*, *Kailangan Kita*, *Kay Tagal Kang Hinintay*, *Tayong Dalawa*, UAAP Volleyball 2008, SOCO 2006, I Love Betty La Fea, Christmas Special 2008, *Wowowee*, *Pare Koy*, *Basta’t Kasama Kita*, *It Might Be You*, *Star in a Million*, *Malay Mo Madedvelop*, *Kokey Returns*, *Showtime*, *Momay*, *Rated K*, *Nagsimula sa Puso*, *Agimat: Mga Alamat ni Ramon Revilla*, *Tanging Yaman*, *Habang May Buhay*, *Magkano ang Iyong Dangal*, *Boy & Kris*, *Lobo*, *TV Patrol World*, *Volta*, *Kung Fu Kid*, *Super Inggo*, *Walang Kapital*, *Flordeluna*, *Mga Anghel na Walang Langit*, *Nginig*, *Vietnam Rose*, *Sa Piling Mo*, *Komiks*, *Goin’ Bulilit*, *ASAP Mania*, *Krystala*, *Sana’y Walang Wakas*, *Home Along Da Airport*, *The Buzz*, *MagandangTanghali Bayan*, *Sa Puso Ko*, *Iingatan Ka*.

<sup>21</sup> *Rollo*, Vol. I, p. 246. It reads:

“This is to formally inform you about the explanation regarding the incident about the generator 3 which overheat[ed]. The 1<sup>st</sup> explanation I asked from you was verbal[.]. This time I will repeat (sic) that im (sic) still waiting for your explanation within 24 hrs upon receipt of this memorandum. Failure to do so will merit the next disciplinary action.

I was also inform[ed] that you are requesting your emergency leave from the HRANI driver, which I think [is] not acceptable. Please explain why you do this kind of action.

For your [i]nformation and strict compliance.

(Sgd)

Respondent asserts that eventually, he was placed in the Internal Job Market work pool devised by ABS-CBN and joined the workers' union. As a result of the union's constant demands for regularization, ABS-CBN started coercing complainant and other union members to sign contracts indicating they were waiving their rights to regularization and giving them deadlines within which to do so. Thus, respondent filed an initial complaint for regularization on 06 August 2010. A month later, or on 01 September 2010, respondent was dismissed from service after he refused to sign the employment contract prepared by ABS-CBN. This prompted respondent to amend his labor complaint to include illegal dismissal. At the time of his dismissal on 01 September 2010, he was receiving a salary of Php558.16/day or Php69.77 per hour.

The Labor Arbiter (LA) dismissed respondent's complaint upon finding that there is no employer-employee relationship between ABS-CBN and respondent. The dispositive portion of the Decision<sup>22</sup> dated 31 March 2011 reads:

“WHEREFORE, premises considered, the complaint for regularization, illegal dismissal and damages is dismissed for lack of jurisdiction, there being no employer-employee relationship between complainant and respondent company ABS-CBN Broadcasting Corporation.

SO ORDERED.”<sup>23</sup>

Respondent appealed to the NLRC. The Fifth Division, through Commissioner Mercedes R. Posada-Lacap, reversed the Labor Arbiter's Decision, and held that respondent is a regular employee of ABS-CBN. In its Decision<sup>24</sup> dated 29 December 2011, the Fifth Division disposed:

“WHEREFORE, the decision of the labor arbiter a quo is hereby VACATED and SET ASIDE. A new one is entered finding that complainant is a regular employee of respondents, and that his dismissal was without just cause nor due process, therefore illegal. Respondents are

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WILSON I. BANZALES  
OB Van Supervisor


Noted:

(Sgd)  
Mr. Carlos S. Tolentino  
TFM Manager<sup>27</sup>

<sup>22</sup> Id. at 326-351.

<sup>23</sup> Id. at 351.

<sup>24</sup> Id. at 418-427.



therefore directed to reinstate complainant to the position of OB Van Driver/Gen Set Operator immediately, and to pay him backwages from the time of his illegal dismissal until the reinstatement and attorney's fees of ten (10%) percent of total award.

SO ORDERED.<sup>25</sup>

ABS-CBN filed a Motion for Reconsideration<sup>26</sup> and sought the inhibition of Commissioner Lacap on the ground that she had previously ruled against ABS-CBN and prayed that the case be re-assigned to another Division of the NLRC.<sup>27</sup> Consequently, Chairman Gerardo C. Nograles issued Administrative Order No. 03-19, series of 2012, creating a Special Division<sup>28</sup> to resolve the Motion for Reconsideration filed by ABS-CBN.

In its *Per Curiam* Decision dated 29 May 2012,<sup>29</sup> the Special Division reversed the earlier Decision of Commissioner Lacap and reinstated the Decision of the Labor Arbiter. Without filing a motion for reconsideration, respondent filed a Petition for *Certiorari*<sup>30</sup> under Rule 65 of the Rules of Court before the CA.

On 20 October 2016, the CA annulled and set aside the *Per Curiam* Decision of the NLRC Special Division and reinstated the Decision of Commissioner Lacap. ABS-CBN filed a Motion for Reconsideration<sup>31</sup> but the same was denied by the CA.

ABS-CBN thus filed the instant Petition for Review, on the ground that respondent failed to file a Motion for Reconsideration before it filed the Petition for *Certiorari* before the Court of Appeals and that the appellate court erred in holding that respondent is a regular employee of ABS-CBN.

### **Ruling of the Court**

This Court finds the Petition devoid of merit.

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<sup>25</sup> Id. at 427.

<sup>26</sup> Id. at 428-448.

<sup>27</sup> Id. at 449-452.

<sup>28</sup> Composed of Presiding Commissioner Raul T. Aquino, Commissioners Julie C. Rendoque and Gregorio O. Bilog III.

<sup>29</sup> *Rollo*, Vol. I, pp. 453-461.

<sup>30</sup> Id. at 462-499.

<sup>31</sup> *Rollo*, Vol. II, pp. 706-759.



*The failure of respondent to file a motion for reconsideration is not fatal*

ABS-CBN avers that the CA should have dismissed the case for failure of respondent to file a motion for reconsideration before the Special Division of the NLRC. We are not persuaded.

It is a settled rule that a special civil action for *certiorari* under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court. However, there are well-defined exceptions established by jurisprudence, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) 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; (c) 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; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) 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; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.<sup>32</sup>


In this case, exceptions (b) and (d) are present. The issues raised before the NLRC, which pertain to the existence of an employer-employee relationship between ABS-CBN and herein respondent and the issue of illegal dismissal were the very same questions raised before the CA. Moreover, respondent's failure to file a motion for reconsideration is adequately explained in the Prefatory Statement<sup>33</sup> of his Petition for

<sup>32</sup> *Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964-977 (2017); G.R. No. 218901, 15 February 2017.

<sup>33</sup> *Rollo*, Vol. I, pp. 462-464. It reads:

“The case is for regularization, illegal dismissal and damages filed by the petitioner. The case filed by the petitioner was dismissed by Labor Arbiter Aliman D. Mangandog. Petitioner timely filed his appeal to the Commission –Fifth Division. The Commission-Fifth Division rendered a Decision dated December 29, 2011 vacating and setting aside the Decision of the Labor Arbiter. After receipt of the Decision dated December 29, 2011, private respondent filed a motion for reconsideration and sought the inhibition of the Honorable Commission – Fifth Division. The entire members of the Commission – Fifth Division inhibited without resolving the Motion for Reconsideration filed by herein private respondent.

Instead of re-raffling the case to the other Division of the NLRC, the Chairman of the NLRC issued Administrative Order No. 03-19, Series of 2012 creating a Special Division to resolve the motion





*Certiorari*. This is not to say, however, that respondent's suspicions are correct. Only that under the circumstances, respondent could not be faulted for opting not to file a motion for reconsideration anymore.

In any event, it must be emphasized that the rules of procedure, especially in labor cases, ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice.<sup>34</sup> Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not only be *secundum rationem* but also *secundum caritatem*.<sup>35</sup>

*Neither the Court of Appeals nor the respondent is bound by the Jalog case*

ABS-CBN points the CA disregarded its own ruling in the case of *Jalog, et al. v. ABS-CBN Broadcasting Corporation*,<sup>36</sup> wherein the appellate court declared that complainants therein, i.e., cameramen, crane operators, VTR men and drivers, are independent contractors. The Decision<sup>37</sup> was

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for reconsideration of the private respondent. In a Per Curiam Decision, the Decision of the Honorable Commission- Fifth Division was VACATED and SET ASIDE.

A similar case for regularization and illegal dismissal entitled Antonio Bernardo Perez, et al. versus ABS-CBN Broadcasting Corp./ Eugenio Lopez III docketed as LAC No. 04000965-11 was also decided by the Honorable Commission – Fifth Division on December 29, 2012 wherein the complainants (talent employees of ABS-CBN) were declared to be regular employees and to have been illegally dismissed by the respondent (ABS-CBN). Herein private respondent filed a motion for reconsideration and sought the inhibition of the Honorable Commission – Fifth Division. The entire Fifth Division inhibited from further resolving the motion for reconsideration.

Again, instead of re-raffling the case to another Division of the NLRC, the NLRC Chairman issued an Administrative Order No. 03-20, Series of 2012 creating a Special Division to resolve herein private respondents' motion for reconsideration. In resolving the motion for reconsideration filed by herein private respondents, in a Per Curiam Decision, the Special Division REVERSED and SET ASIDE the Decision of the Honorable Commission – Fifth Division.

There are several cases of similar nature involving talent employees of herein private respondents that were decided by the NLRC (Commissions) in favor of herein private respondents. Private respondents did not move for the inhibition of those Divisions of the NLRC. However, when the Fifth Division decided against the herein private respondents, they immediately sought the inhibition of the Fifth Division. In a very special accommodation, an Administrative Order was issued mainly to create a Special Division and decided the motion for reconsideration in a Per Curiam Decision.

By reason of the highly questionable procedure in the way the special division was created and the motion for reconsideration was resolved, and under the circumstances, filing a motion for reconsideration would be useless, the Petitioner elevated the case directly to this Honorable Court via Petition for Certiorari.”

<sup>34</sup> *Peak Ventures Corporation v. Heirs of Nestor B. Villareal*, 747 Phil. 320-337 (2014); G.R. No. 184618, 19 November 2014.

<sup>35</sup> *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518-533 (2005); G.R. No. 140189, 28 February 2005.

<sup>36</sup> Docketed as CA-GR SP No. I10334.

<sup>37</sup> Penned by Associate Justice Normandie B. Pizzaro and concurred in by Associate Justices Amelita G. Tolentino and Ruben C. Ayson, Court of Appeals, Manila.

eventually affirmed by this Court. It calls this Court to “set straight”<sup>38</sup> the departure made by the CA in accordance with the doctrine of *stare decisis*.

While this Court affirmed the CA Decision in *Jalog*, it was not a signed decision or resolution, but a Minute Resolution promulgated on 05 October 2011. In the said Minute Resolution, this Court dismissed the petition filed by various workers who were members of the Internal Job Market, for lack of verification and for failure of the petition to show reversible error in the assailed judgment.

In the case of *Read-Rite Philippines, Inc. v. Francisco*,<sup>39</sup> then Associate Justice (later Chief Justice) Teresita Leonardo-De Castro discussed:

As to the final ruling in *Zamora*, the same is a minute resolution of the Court dated November 12, 2007 in G.R. No. 179022 that affirmed the judgment of the Court of Appeals. In *Alonso v. Cebu Country Club, Inc.*, we declared that a minute resolution may amount to a final action on a case, but the same cannot bind non-parties to the action. Further, in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, we expounded on the consequence of issuing a minute resolution in this wise:

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, **if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** x xx (Emphasis supplied)

Even assuming that *Jalog* has a binding effect, this Court is not precluded from revisiting doctrines and precedents. *Abaria v. National Labor Relations Commission*<sup>40</sup> expounds on *stare decisis* in this wise:

<sup>38</sup> *Rollo*, Vol. I, p. 63.

<sup>39</sup> 816 Phil. 851-871 (2017); G.R. No. 195457, 16 August 2017.

<sup>40</sup> 678 Phil. 64-101 (2011); G.R. No. 154113, 07 December 2011.



Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by 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.

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.

*Respondent Concepcion is a regular employee of ABS-CBN, not an independent contractor*

ABS-CBN insists that respondent is a talent who works as OB van driver and not a regular employee but an independent contractor. This Court however, is not convinced.

Preliminarily, it is settled that the employer has the burden to prove that a person whose services it pays for is an independent contractor rather than a regular employee.<sup>41</sup> Jurisprudential law has recognized another kind of independent contractor – those individuals with unique skills and talents that set them apart from ordinary employees.<sup>42</sup> In the recent case of

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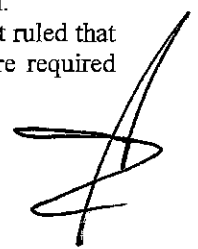
<sup>41</sup> *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388-450 (2014); G.R. No. 204944-45, 03 December 2014.

<sup>42</sup> In *Fuji Television Network*, Associate Justice Leonen cited the following cases:

In *Orozco v. Court of Appeals*, Wilhelmina Orozco was a columnist for the Philippine Daily Inquirer. This court ruled that she was an independent contractor because of her "talent, skill, experience, and her unique viewpoint as a feminist advocate." In addition, the Philippine Daily Inquirer did not have the power of control over Orozco, and she worked at her own pleasure.

*Semblante v. Court of Appeals* involved a *masiador* and a *sentenciador*. This court ruled that "petitioners performed their functions as masiador and sentenciador free from the direction and control of respondents" and that the masiador and sentenciador "relied mainly on their 'expertise that is characteristic of the cockfight gambling.'" Hence, no employer-employee relationship existed.

*Bernarte v. Philippine Basketball Association* involved a basketball referee. This court ruled that "a referee is an independent contractor, whose special skills and independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party."



*Paragele v. GMA Network, Inc.*,<sup>43</sup> this Court's Division emphasized that in order to be considered independent contractors and not employees of GMA Network, it must be shown that those cameramen were hired because of their unique skills and talents, and that GMA Network did not exercise control over the means and methods of their work.

Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship. These are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called control test.<sup>44</sup>

The records show that respondent was directly hired by ABS-CBN. He was receiving salaries twice a month with payslips bearing the ABS-CBN's corporate name.<sup>45</sup> His Certificates of Compensation Payment/Tax Withheld, indicate that his salary is being deducted for SSS, Pag-Ibig, Philhealth, among others, which certificates indicate that his employer is ABS-CBN.<sup>46</sup>

At the time of respondent's dismissal on 01 September 2010, he was receiving a salary of Php558.16/day or Php69.77 per hour. Although wages are not a conclusive factor, it may indicate whether one is an independent contractor.<sup>47</sup>

An independent contractor enjoys independence and freedom from the control and supervision of his principal. This is opposed to an employee who is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.<sup>48</sup>

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In these cases, the workers were found to be independent contractors because of their unique skills and talents and the lack of control over the means and methods in the performance of their work."

<sup>43</sup> G.R. No. 235315, 13 July 2020.

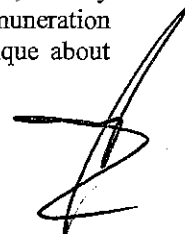
<sup>44</sup> *Expedition Construction Corporation v. Africa*, G.R. No. 228671, 14 December 2017.

<sup>45</sup> *Rollo*, Vol. I, pp. 236-245.

<sup>46</sup> *Id.* at 247-254.

<sup>47</sup> In *Paragele v. GMA Network, Inc.*, G.R. No. 235315, 13 July 2020, Associate Justice Leonen discussed: "They were paid a meager salary ranging from P750.00 to P1500.00 per taping. Though wages are not a 'conclusive factor in determining whether one is an employee or an independent contractor,' it may indicate whether one is an independent contractor.' In this case, the sheer modesty of the remuneration rendered to petitioners undermines the assertion that there was something particularly unique about their status, talents, or skills."

<sup>48</sup> *Id.*



Here, ABS-CBN has production and field supervisors to monitor respondent in his works and to see to it that he follows the required standards set by ABS-CBN. The network has the power to discipline respondent, and in fact, he was once subjected to a disciplinary action. Respondent, just like any normal employee, was required to attend seminars and workshops to ensure their optimal performance at work.

Undaunted, ABS-CBN insists that respondent is a talent, thus, an independent contractor. This argument, however, deserves scant consideration. Respondent cannot be considered a talent of ABS-CBN as he is neither an actor nor a star.<sup>49</sup> Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees which respondent does not have.<sup>50</sup> Notwithstanding, ABS-CBN tries to project respondent as not an ordinary office driver, but an OB van driver.<sup>51</sup>

Petitioner's asseveration rests on flimsy ground. Driving an OB van which is equipped with specialized equipment does not make the driver a standout. Parenthetically, ABS-CBN took pains in discussing what other workers do, such as audioman or sound engineer, cameraman, gaffer, and lightman but failed to discuss the nature of the job of an OB Van Driver, except that it includes the handling of the OB Van.

ABS-CBN has not disputed that at the time respondent was hired by the Human Resource Department, his driving skills were limited and that he had no knowledge in operating a generator set. It was the network which provided him the necessary trainings and seminars to develop his skills.<sup>52</sup> Moreover, the tools and instrumentalities needed by respondent for his work is provided to him<sup>53</sup> – the OB Van and the generator set. ABS-CBN could

<sup>49</sup> See *ABS-CBN Broadcasting Corporation v. Nazareno*, 534 Phil. 306-338 (2006); G.R. No. 164156, 26 September 2006.

<sup>50</sup> *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004. In *Samonte v. La Salle Greenhills, Inc.*, 780 Phil. 778-794 (2016); G.R. No. 199683, 10 February 2016, the Court discussed:

“x x x On more than one occasion, we recognized certain workers to be independent contractors: individuals with unique skills and talents that set them apart from ordinary employees. We found them to be independent contractors because of these unique skills and talents and the lack of control over the means and methods in the performance of their work. In some instances, doctors and other medical professional may fall into this independent contractor category, legitimately providing medical professional services. x x x”

<sup>51</sup> *Rollo*, Vol. I, p. 24. “An OB Van Driver is likewise totally different from that of an ordinary office driver. An OB Van Driver’s tasks usually involve handling the OB Van that is designed with accessory specialized equipment for outside broadcasting. Outside Broadcasting is the coverage of television programs, typically to cover news and live events, from a mobile television studio. In an external environment, the OB Van provides the video and audio facilities of a TVV production studio.”

<sup>52</sup> *Rollo*, Vol. II, p. 785.

<sup>53</sup> *Supra* at note 49.

also assign him to any show or programs where the production group would need his services.

It does not escape our attention that respondent has no power to bargain and negotiate for his fee. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative of an independent contractual relationship.<sup>54</sup> That ABS-CBN classified him as a talent is of no moment and does not make him an independent contractor. It is not the will or word of the employer which determines the nature of employment of an employee but the nature of the activities performed by such employee in relation to the particular business or trade of the employer.<sup>55</sup> Hence, not being an independent contractor, respondent is necessarily an employee of ABS-CBN.

Article 294 (formerly Article 280) of the Labor Code reads:

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

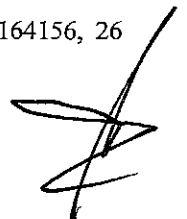
An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed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

The law provides for two (2) types of regular employees, namely: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether

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<sup>54</sup> *ABS-CBN Broadcasting Corporation v. Nazareno*, 534 Phil. 306-338 (2006); G.R. No. 164156, 26 September 2006.

<sup>55</sup> *Id.*



continuous or broken, with respect to the activity in which they are employed (second category).<sup>56</sup>

ABS-CBN insists that it is not legally obliged to produce programs as its main business is broadcasting. It has emphasized the available options to it in airing shows and generating revenues – block-time, line production, co-production, self-production, foreign canned shows, live coverages, licensed programs, and a combination of the foregoing schemes. Simply stated, it tries to distance itself from self-production, co-production, line production and live coverages, because it is in these schemes that ABS-CBN would need the services of its talents, including herein respondent. However, the nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.<sup>57</sup>

A reading of Amended Articles of Incorporation of ABS-CBN, particularly paragraphs 1, 3, 4 and 5 of its Secondary Purposes, shows that the network is likewise engaged in the business of production of shows. If it opts not to produce programs, it may rightfully do so, but it does not remove its employees from being regular employees.

There is no doubt that as OB van driver and generator set operator, respondent performed job which is necessary or desirable in the usual business or trade of employer. It is equally true that he had been performing his job since 1999 until his services was terminated in 2010. Thus, being a member of the Internal Job Market System, respondent is deemed regular work pool employee under the second category.<sup>58</sup>

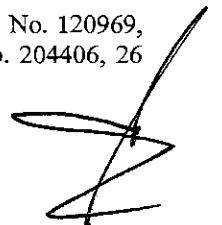
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<sup>56</sup> *University of Santo Tomas v. Samahang Manggagawa ng UST*, 809 Phil. 212-225 (2017); G.R. No. 184262, 24 April 2017.

<sup>57</sup> *Magsalin v. National Organization of Working Men*, 451 Phil. 254-264 (2003); G.R. No. 148492, 09 May 2003. An almost similar argument was debunked by the Court in this wise:

“The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely “postproduction activities,” one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety<sup>4</sup> and not on a confined scope.”

<sup>58</sup> See *Maraguinot v. National Labor Relations Commission*, 348 Phil. 580-607 (1998); G.R. No. 120969, 22 January 1998. See also *Malicdem v. Maruias Industrial Corporation*, G.R. No. 204406, 26 February 2014.



*Respondent was illegally dismissed*

Security of tenure is a constitutionally guaranteed right. Employees may not be terminated from their regular employment except for just or authorized causes under the Labor Code.<sup>59</sup> In this case, respondent was illegally dismissed, since his dismissal does not fall under the just<sup>60</sup> or authorized causes.<sup>61</sup>

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 backwages, 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>62</sup>

In computing for the backwages, this Court deems it wise to apply the case of *Maraguinot*,<sup>63</sup> where this Court aptly discussed:

In closing then, as petitioners had already gained the status of regular employees, their dismissal was unwarranted, for the cause invoked by private respondents for petitioners' dismissal, viz.: completion of project, was not, as to them, a valid cause for dismissal under Article 282

<sup>59</sup> *SME Bank, Inc. v. De Guzman*, 719 Phil. 103-137 (2013); G.R. No. 184517, 08 October 2013.

<sup>60</sup> LABOR CODE, Art. 297. *Termination by Employer*. - An employer may terminate an employment for any of the following causes:

- a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b) Gross and habitual neglect by the employee of his duties;
- c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e) Other causes analogous to the foregoing. (As renumbered by Republic Act No. 10151)

<sup>61</sup> LABOR CODE, Art. 298. *Closure of Establishment and Reduction of Personnel*. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at months shall be considered one (1) whole year. (As renumbered by Republic Act No. 10151)

<sup>62</sup> *Philippine National Oil Company- Energy Development Corporation v. Buenviaje*, G.R. No. 183200-01, 29 June 2016.

<sup>63</sup> *Supra* at note 57.



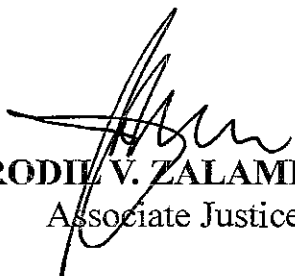
of the Labor Code. As such, petitioners are now entitled to back wages and reinstatement, without loss of seniority rights and other benefits that may have accrued. Nevertheless, following the principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted.

In addition to backwages, respondent is entitled to 13<sup>th</sup> month pay, and holiday pay, computed by deducting the amounts corresponding to the periods that respondent's production group was not engaged in the shooting of programs. Likewise, respondent is entitled to attorney's fees equivalent to ten percent of the total monetary award.<sup>64</sup> All amounts due shall earn legal interest pursuant to *Nacar v. Gallery Frames*.<sup>65</sup>

There is, however, a need to remand the case to the Labor Arbiter for the computation of the monetary awards. In this regard, ABS-CBN is directed to provide the necessary data to enable the Labor Arbiter to compute such awards, in the light of this Decision.

**WHEREFORE**, the Petition is **DENIED**. The assailed Decision dated 20 October 2016 and Resolution dated 13 March 2017 of the Court of Appeals in CA-G.R. SP No. 125867 are **AFFIRMED**. The case is **REMANDED** to the Labor Arbiter, through the National Labor Relations Commission, for the computation of backwages and other monetary benefits. Petitioner ABS-CBN Corporation is **DIRECTED** to furnish the Labor Arbiter the necessary and relevant data to fast track the computation.

**SO ORDERED.**

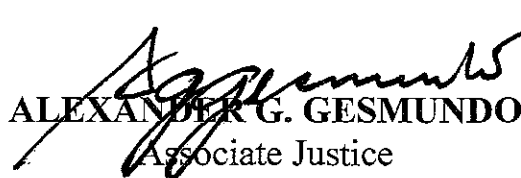
  
**RODIL V. ZALAMEDA**  
Associate Justice

<sup>64</sup> *Alva v. High Capacity Security Force, Inc.*, G.R. No. 203328, 08 November 2017.


<sup>65</sup> 716 Phil. 267-283 (2013); G.R. No. 189871, 13 August 2013.

**WE CONCUR:**

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


  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARIE D. CARANDANG**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

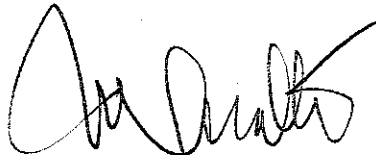
**ATTESTATION**

I attest 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.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to the Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**DIOSDADO M. PERALTA**  
Chief Justice