EN BANC

G.R. No. 202481 – ALBERT B. DEL ROSARIO, REYNALDO TUGADE, ROLANDO BARRON, GEORGE MACASO, REY I. SANTIAGO, ROBERTO B. DEL CASTILLO, PAUL VIRAY, ISMAEL DABLO, TOMMY ANACTA, ISAGANI TAOTAO, 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*, **v. ABS-CBN BROADCASTING CORPORATION and COURT OF APPEALS,** *Respondents*.

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G.R. Nos. 202495–97 – ABS-CBN CORPORATION, *Petitioner*, **v. JOURNALIE PAYONAN, ANTONIO MANUEL, JR., ANTONIO A. MENDOZA, JOSEPH R. ONG, RIEL A. TEODORO, ALDWIN BANIQUED, RAMON CATAHAN, JR., RONNIE LOZARES, FERDINAND MARQUEZ, FERDINAND SUMERACRUZ, DANTE T. VIDAL, CEZAR ZEA, RICARDO JOY CAJOLES, JR., ALEX R. CARLOS, JOHNSCHULTZ 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 F. LUMBAD, MARLON MACATANTAN, JOSEPH ARMAND MAMORNO, ALFRED CHRISTIAN NUNEZ, ALAIN PRADO, RONINO SANTIAGO, JUN TANGALIN, JONATHAN C. TORIBIO, JERICO T. ADRIANO, JULIUS T. ADRIANO, MARK ANTHONY AGUSTIN, BENJAMIN C. BENGCO, DANILO R. BLAZA, GINO REGGIE BRIONES, RICKY BULDIA, NICOMEDES CANALES, ALFREDO S. CURAY, ROJAY PAUL DELA ROSA, CHRISTOPHER DE LEON, DIXON DISPO, ANDREW EUGENIO, and JEFFREY ALFRED EVANGELISTA,** *Respondents*.

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G.R. No. 210165 – ISMAEL B. DABLO, ROLANDO S. BARRON, ROBERTO B. DEL CASTILLO, ALBERT B. DEL ROSARIO, GEORGE B. MACASO, REY I. SANTIAGO, REYNALDO L. TUGADE, and PAUL VIRAY, *Petitioners*, **v. THE COURT OF APPEALS, ABS-CBN BROADCASTING CORPORATION, and/or EUGENIO LOPEZ,** *Respondents*.

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G.R. No. 219125 – RICARDO JOY CAJOLES, JR., ANTONIO IMMANUEL CALLE, RICHARD SISON, and JOURNALIE PAYONAN, *Petitioners*, **v. COURT OF APPEALS – FORMER 4TH DIVISION and ABS-CBN BROADCASTING CORPORATION,** *Respondents*.

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G.R. No. 222057 – ABS-CBN CORPORATION, *Petitioner*, **v. JOSEPH R. ONG, FERNANDO LOPEZ, RAMON REYES, and GARRET CAILLES,** *Respondents*.

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G.R. No. 224879 – ABS-CBN CORPORATION and EUGENIO LOPEZ III, *Petitioners*, **v. RONNIE B. LOZARES,** *Respondent*.

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G.R. No. 225101 – ANTONIO BERNARDO S. PEREZ, JOHN PANIZALES, FERDINAND CRUZ, CHRISTOPHER MENDOZA, DENNIS REYES, JUN BENOSA, ROLAND 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*, **v. COURT OF APPEALS – SPECIAL NINTH DIVISION and ABS-CBN BROADCASTING CORPORATION,** *Respondents*.

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G.R. No. 225874 – ABS-CBN CORPORATION, *Petitioner*, **v. JOSE ZABALLA III, TAUCER TYCHE BENZONAN and FISCHERBOB CASAJE,** *Respondents*.

Promulgated:

September 8, 2020

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CONCURRING OPINION

LEONEN, *J.*:

Before this Court are eight Petitions for Review on Certiorari under

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

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

In G.R. No. 202481,[1] 24[2] workers assail the January 27, 2012 Decision[3] and June 26, 2012 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 117885, which dismissed their case for regularization. Meanwhile, in G.R. Nos. 202495-97, ABS-CBN questions the October 28, 2011 Decision[5] and June 27, 2012 Resolution[6] of the Court of Appeals in CA-G.R. SP Nos. 108552 and 108976, where 72 ABS-CBN workers were found to be regular employees.

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

The first of these cases was filed by Ismael Dablo, Rolando Barron, Roberto Del Castillo, Albert Del Rosario, George Macaso, Rey Santiago, Reynaldo Tugade, and Paul Viray, who would eventually be among the petitioners in G.R. No. 202481. Their complaint for illegal dismissal, reinstatement, payment of backwages, moral and exemplary damages, payment of 13th month pay, service incentive leave, and attorney's fees was

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

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

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

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

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

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

ultimately dismissed by the Court of Appeals in its April 30, 2013 Decision[7] and November 20, 2013 Resolution[8] in CA-G.R. SP No. 122635. Relying on the result of CA-G.R. SP No. 117885, the Court of Appeals found that it had no jurisdiction to rule on the workers' employment status, and therefore, the status of their dismissal.[9] Now before this Court, these workers assail the rulings in a Petition for Review docketed as G.R. No. 210165.

Likewise dismissed by the Court of Appeals, on the ground of forum shopping, was the illegal dismissal case filed by Ricardo Joy Cajoles, Jr., Antonio Immanuel Calle, Richard Sison, and Journalie Payonan, who were parties to G.R. Nos. 202495-97. They now question the August 19, 2014 Decision[10] and June 18, 2015 Resolution[11] in CA-G.R. SP No. 122424 through a Petition for Review, docketed as G.R. No. 219125.

Joseph R. Ong from G.R. Nos. 202495-97 had also filed a complaint for illegal dismissal, money claims, and damages with three other camera operators. This was granted by the Court of Appeals in its February 24, 2015 Decision[12] and December 21, 2015 Resolution[13] in CA-G.R. SP No. 122068. Thus, ABS-CBN now questions the rulings before this Court in G.R. No. 222057.

Likewise, Ronnie Lozares, Jun Tangalin, and Lauro Calitisen, also from G.R. Nos. 202495-97, filed a complaint for illegal dismissal, nonpayment of benefits, and moral and exemplary damages against ABS-CBN, which was consolidated with two other complaints. In its January 4, 2016 Decision[14] and May 27, 2016 Resolution[15] in CA-G.R. SP No. 122824,

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

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

9 *Rollo* (G.R. No. 210165), pp. 64–65.

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

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

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

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

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

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

the Court of Appeals found that, among the three, only Ronnie Lozares proved that he was a regular employee who had been illegally dismissed. ABS-CBN now assails this ruling in G.R. No. 224879.

Christopher Mendoza, Russel Galima, Alfred Christian Nunez, Rommel Villanueva, Jhonschultz Congson, and Alex Carlos from G.R. Nos. 202495-97, along with 11 other workers, also filed cases for illegal dismissal against ABS-CBN. The Court of Appeals in CA-G.R. SP No. 125868 had dismissed their complaint in its January 28, 2016 Decision[16] and May 26, 2016 Resolution.[17] They now question the rulings in G.R. No. 225101.

In G.R. No. 225874, ABS-CBN assails the January 12, 2016 Decision[18] and July 15, 2016 Resolution[19] of the Court of Appeals in CA-G.R. SP No. 131576. There, three ABS-CBN workers not parties to either regularization case had been found to be regular employees.

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

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

Against their complaints, ABS-CBN raised common defenses:

1. It is principally engaged in broadcasting, not production. Thus, the services rendered by the workers are not usually necessary or

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

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

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

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

20 *Ponencia*, pp. 12–13.

desirable in its usual business or trade.[21]

2. The workers are "talents" or independent contractors hired based on unique skills or expertise for particular productions.[22]

3. The workers, as independent contractors, are accredited by ABS-CBN for inclusion in a company database called the "Internal Job Market System." ABS-CBN's program producers use this system for their technical or creative staffing. The workers in the Internal Job Market System are not exclusively bound to render services for ABS-CBN.[23]

4. When a worker is chosen using the Internal Job Market System, they are briefed on the general requirements of the project. However, they proceed independently when operating their equipment, without training or supervision when they perform their tasks.[24]

I

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

> 1. We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court. In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the**

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

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

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

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

25 *See Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1 (2012) [Per J. Brion, Second Division]; *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division]; *E. Ganzon, Inc. v. Ando, Jr.*, 806 Phil. 58 (2017) [Per J. Peralta, Second Division]; *Almagro v. Philippine Airlines, Inc.*, G.R. No. 204803, September 12, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64594> [Per J. Jardeleza, First Division].

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

> **case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[27] (Emphasis in the original, citations omitted)

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

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

> Petitioners' reliance on *Fulache v. ABS-CBN Broadcasting, Corp.* anent the issue of employer-employee relationship is misplaced. Involved in said case were drivers, drivers/cameramen and cameramen/editors, who were also dismissed by private respondent ABS-CBN almost under the same circumstances herein. . . .
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> . . . .
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> The *Fulache* ruling cannot be applied herein. This is due to the fact that the then Special Fourteenth Division of this Court already handed down a Decision dated January 27, 2012 in CA-G.R. SP No. 117885 which declared that the parties in the regularization case, including herein petitioners, failed to prove that they are regular employees, thus reversing and setting aside the Decision dated October 29, 2010 rendered by the NLRC.
>
> Evidently, this Court has no jurisdiction to rule on the question of whether petitioners are regular employees, the same having been passed upon by the Special Fourteenth Division.[30] (Citations omitted)

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

> Without a doubt, when petitioners lodged this case before the Labor Arbiter, there was already a pending case, which, as a matter of fact,

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27 Id. at 706–707.

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

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

30 *Rollo* (G.R. No. 210165), pp. 63–65.

> has already been decided by the labor tribunals, involving significantly the same issues and same parties. Indeed, [in] the filing of the second case for illegal dismissal, petitioners had blatantly defied the rule on forum shopping. Petitioners, having obtained an unfavorable ruling in the *Payonan* case in the proceedings below, deliberately sought another forum in the hope of obtaining a favorable judgment, as it did, since the Court of Appeals reversed the labor tribunals' decisions in the *Payonan* case on October 28, 2011. In fact, as may be gleaned from the pleadings of the petitioners, they obviously took advantage of the ruling in the *Payonan* case by invoking that the same be likewise made applicable to them. By so doing, they themselves acknowledge the fact that they have interest in the *Payonan* case by virtue of their being petitioners also therein.
>
> There is no escaping that the simultaneous remedies availed of by the petitioners are a manifest case of forum shopping. Clearly, in the two cases earlier mentioned and the one under our consideration, petitioners seek to obtain one and the same relief, that is, to declare their dismissal illegal and for the private respondent to declare them as regular employees, before the same tribunal.[31]

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

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

> Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.
>
> The test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action. This is absent here. The facts or the pieces of evidence that would determine whether the workers were illegally dismissed are not the same as those that would support their clamor for regularization.
>
> Besides, it must be remembered that the circumstances obtaining at the time the workers filed the regularization cases were different from when they subsequently filed the illegal dismissal cases. Before their illegal dismissal, the workers were simply clamoring for their recognition as regular employees, and their right to receive benefits concomitant with regular employment. However, during the pendency of the regularization cases, the workers were summarily terminated from their employment. This supervening event gave rise to a cause of action for illegal dismissal, distinct from that in the regularization case[s]. This time, the workers were not only praying for regularization, but also for reinstatement by questioning the legality of their dismissal. The issue turned into whether

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31 *Rollo* (G.R. No. 219125), pp. 1356–1357.

> or not ABS-CBN had just or authorized cause to terminate their employment. Clearly, it was ABS-CBN's action of dismissing the workers that gave rise to the illegal dismissal cases. And it is absurd for it to now ask the Court to fault the workers for questioning ABS-CBN's actions, which were done while the regularization cases were pending. The Court cannot allow this.[32]

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

> Lastly, it forgot that there was a standing labor arbiter's decision that, while not yet final because of its own pending appeal, cannot simply be disregarded. By implementing the dismissal action at the time the labor arbiter's ruling was under review, the company unilaterally negated the effects of the labor arbiter's ruling while at the same time appealing the same ruling to the [National Labor Relations Commission]. This unilateral move is a direct affront to the [National Labor Relations Commission]'s authority and an abuse of the appeal process.
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> All these go to show that ABS-CBN acted with patent bad faith. A close parallel we can draw to characterize this bad faith is the prohibition against forum-shopping under the Rules of Court. In forum-shopping, the Rules characterize as bad faith the act of filing similar and repetitive actions for the same cause with the intent of somehow finding a favorable ruling in one of the actions filed. ABS-CBN's actions in the two cases, as described above, are of the same character, since its obvious intent was to defeat and render useless, in a roundabout way and other than through the appeal it had taken, the labor arbiter's decision in the regularization case. Forum-shopping is penalized by the dismissal of the actions involved. The penalty against ABS-CBN for its bad faith in the present case should be no less.
>
> The errors and omissions do not belong to ABS-CBN alone. The labor arbiter himself who handled both cases did not see the totality of the company's actions for what they were. He appeared to have blindly allowed what he granted the petitioners with his left hand, to be taken away with his right hand, unmindful that the company already exhibited a badge of bad faith in seeking to terminate the services of the petitioners whose regular status had just been recognized. He should have recognized the bad faith from the timing alone of ABS-CBN's conscious and purposeful moves to secure the ultimate aim of avoiding the regularization of its so-called "talents."
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> The [National Labor Relations Commission], for its part, initially recognized the presence of bad faith where it originally rules that:
>
> While notice has been made to the employees

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32 Ponencia, pp. 19–20.

> whose positions were declared redundant, the element of good faith in abolishing the positions of the complainants appear to be wanting. In fact, it remains undisputed that herein complainants were terminated when they refused to sign an employment contract with Able Services which would make them appear as employees of the agency and not of ABS-CBN. Such act by * clearly demonstrated bad faith on the part of the respondent in carrying out the company's redundancy program. ...
>
> On motion for reconsideration by both parties, the [National Labor Relations Commission] reiterated its "pronouncement that complainants were illegally terminated as extensively discussed in our Joint Decision dated December 15, 2004." Yet in an inexplicable turnaround, it reconsidered its joint decision and reinstated not only the labor arbiter's decision of January 17, 2002 in the regularization case, but also his illegal dismissal decision of April 21, 2003. Thus, the [National Labor Relations Commission] joined the labor arbiter in his error that we cannot but characterize as grave abuse of discretion.
>
> The Court cannot leave unchecked the labor tribunals' patent grave abuse of discretion that resulted, without doubt, in a grave injustice to the petitioners who were claiming regular employment status and were unceremoniously deprived of their employment soon after their regular status was recognized. Unfortunately, the CA failed to detect the labor tribunals' gross errors in the disposition of the dismissal issue. Thus, the CA itself joined the same errors the labor tribunals committed.[33] (Citations omitted)

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

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

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33 *Fulache v. ABS-CBN Broadcasting Corp.*, 624 Phil. 562, 583–585 (2010) [Per J. Brion, Second Division].

34 *Rollo* (G.R. No. 225101), p. 867.

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

> The CA's reliance on the *Philippine Pizza, Inc.*'s minute resolution is, however, misplaced. Case law instructs that although the Court's dismissal of a case via a minute resolution constitutes a disposition on the merits, the same could not be treated as a binding precedent to cases involving other persons who are not parties to the case, or another subject matter that may or may not have the same parties and issues. In other words, a minute resolution does not necessarily bind non-parties to the action even if it amounts to a final action on a case.
>
> In this case, records do not bear proof that respondents were also parties to the *Philippine Pizza, Inc.*'s case or that they participated or were involved therein. Moreover, there was no showing that the subject matters of the two (2) cases were in some way similar or related to one another, since the minute resolution in the case of *Philippine Pizza, Inc.* did not contain a complete statement of the facts, as well as a discussion of the applicable laws and jurisprudence that became the basis for the Court's minute resolution therein. In this light, the principle of *stare decisis* cannot be invoked to obtain a dismissal of the instant petition.[37]

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

II

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

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

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

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35 Ponencia, pp. 20–21.

36 *See Magdangal v. City of Olongapo*, 259 Phil. 107 (1989) [Per J. Cortes, En Banc].

37 *Philippine Pizza, Inc. v. Porras*, G.R. No. 230030, August 29, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64546> [Per J. Perlas-Bernabe, Second Division].

38 475 Phil. 539 (2004) [Per J. Carpio, First Division].

television program host is an employee of the broadcast station.[39]

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

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

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

> In *ABS-CBN v. Marquez*, the Court held that the failure of the employer to produce the contract mandated by Policy Instruction No. 40 is indicative that the so called talents or project workers are in reality, regular employees. Thus —
>
> > Policy Instruction No. 40 pertinently provides:
> >
> > > Program employees are those whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. The **engagement of program employees**, including those hired by advertising or sponsoring companies, shall be under a written contract specifying, among other things, **the nature of the work to be performed, rates of pay, and the programs in which they will work.** The **contract shall be duly registered by the station with the Broadcast Media Council within three days from its consummation.** . . .
>
> Ironically, however, petitioner failed to adduce an iota proof that the requirements for program employment were even complied with by it.

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39 Id. at 550.

40 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division].

41 551 Phil. 802 (2007) [Per J. Ynares-Santiago, Third Division].

42 551 Phil. 725, 735 (2007) [Per J. Acting C.J. Quisumbing, Second Division].

> It is basic that project or contractual employees are appraised of the project they will work under a written contract, specifying, *inter alia*, the nature of work to be performed and the rates of pay and the program in which they will work. Sadly, however, no such written contract was ever presented by the petitioner. Petitioner is in the best of position to present these documents. And because none was presented, we have every reason to surmise that no such written contract was ever accomplished by the parties, thereby belying petitioner's posture.
>
> Worse, there was no showing of compliance with the requirement that after every engagement or production of a particular television series, the required reports were filed with the proper government agency, as provided no less under the very Policy Instruction invoked by the petitioner, nor under the Omnibus Implementing Rules of the Labor Code for project employees. This alone bolsters respondents' contention that they were indeed petitioner's regular employees since their employment was not only for a particular program.[43] (Emphasis in the original, citation omitted)

On September 26, 2006, this Court decided *ABS-CBN v. Nazareno*,[44] which involved a complaint for recognition of regular status filed by four production assistants with ABS-CBN. There, this Court found that the production assistants were regular employees because they had performed tasks necessary or desirable in ABS-CBN's usual business or trade for an average of five years.[45] *Sonza* was found inapplicable in that case, where there was an employer-employee relationship between ABS-CBN and the production assistants.[46]

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

This Court ruled in the workers' favor. First, it found that they were rank-and-file employees entitled to collective bargaining agreement benefits, and second, it held that the drivers were illegally dismissed because ABS-

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43 *Consolidated Broadcasting System, Inc. v. Oberio*, 551 Phil. 802, 814–815 (2007) [Per J. Ynares-Santiago, Third Division].

44 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].

45 Id. at 333.

46 Id. at 334–336.

47 *Fulache v. ABS-CBN Broadcasting Corporation*, 624 Phil. 562, 568–569 (2010) [Per J. Brion, Second Division].

48 Id. at 570–571.

CBN's termination of their employment was tainted with bad faith.[49]

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

> In finding that petitioners were regular employees, the [National Labor Relations Commission] further ruled that the exclusivity clause and prohibitions in their Talent Contracts and/or Project Assignment Forms were likewise indicative of respondents' control over them. Brushing aside said finding, however, the CA applied the ruling in *Sonza v. ABS-CBN Broadcasting Corp.* where similar restrictions were considered not necessarily determinative of the existence of an employer-employee relationship. Recognizing that independent contractors can validly provide his exclusive services to the hiring party, said case enunciated that guidelines for the achievement of mutually desired results are not tantamount to control. As correctly pointed out by petitioners, however, parallels cannot be expediently drawn between this case and that of *Sonza* case which involved a well-known television and radio personality who was legitimately considered a talent and amply compensated as such. While possessed of skills for which they were modestly recompensed by respondents, petitioners lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry.
>
> Later echoed in *Dumpit-Murillo v. Court of Appeals*, this Court has rejected the application of the ruling in the *Sonza* case to employees similarly situated as petitioners in *ABS-CBN Broadcasting Corporation v. Nazareno*. The following distinctions were significantly observed between employees like petitioners and television or radio personalities like *Sonza*, to wit:
>
> > First. In the selection and engagement of respondents, no peculiar or unique skill, talent or celebrity status was required from them because they were merely hired through petitioner's personnel department just like any ordinary employee.
> >
> > Second. The so-called "talent fees" of respondents correspond to wages given as a result of an employer-employee relationship. Respondents did not have the power to bargain for huge talent fees, a circumstance negating independent contractual relationship.
> >
> > Third. Petitioner could always discharge respondents should it find their work unsatisfactory, and respondents are highly dependent on the petitioner for continued work.

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49 Id. at 586–587.
50 758 Phil. 467 (2015) [Per J. Perez, First Division].
51 Id. at 480.

> Fourth. The degree of control and supervision exercised by petitioner over respondents through its supervisors negates the allegation that respondents are independent contractors.
>
> The presumption is that when the work done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service, such work is a regular employment of such employee and not an independent contractor. The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship. . . .
>
> Rather than the project and/or independent contractors respondents claim them to be, it is evident from the foregoing disquisition that petitioners are regular employees of ABS-CBN. This conclusion is borne out by the ineluctable showing that petitioners perform functions necessary and essential to the business of ABS-CBN which repeatedly employed them for a long-running news program of its Regional Network Group in Naga City. In the course of said employment, petitioners were provided the equipments they needed, were required to comply with the Company's policies which entailed prior approval and evaluation of their performance.[52] (Citations omitted)

III

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

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

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

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52 Id. at 482–484.

53 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 417–418 (2014) [Per J. Leonen, Second Division].

54 *Sara v. Agarrado*, 248 Phil. 847, 851 (1988) [Per C.J. Fernan, Third Division].

55 *Zanotte Shoes v. National Labor Relations Commission*, 311 Phil. 272, 276–277 (1995) [Per J. Vitug, Third Division].

56 *Viaña v. Al-Lagadan*, 99 Phil. 408, 411–412 (1956) [Per J. Concepcion, En Banc].

57 *Cosmopolitan Funeral Homes, Inc. v. Maalat*, 265 Phil. 111, 115 (1990) [Per J. Gutierrez, Jr., Third Division].

this test:

> Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control. Thus, this Court has explained:
>
> > It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammeled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
> >
> > Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. . . .
>
> The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results. Thus, in this case, we are to examine the factors enumerated by petitioner to see if these are merely guidelines or if they indeed fulfill the requirements of the control test.[58]

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

But when the complexity of the relationship makes the application of the control test untenable, the economic realities of the employment relations may also be considered. In *Francisco v. National Labor Relations Commission*:[60]

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58 *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 49–50 (2008) [Per J. Nachura, Third Division] citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 259 Phil. 65 (1989) [Per J. Narvasa, First Division]; *Consulta v. Court of Appeals*, 493 Phil. 842 (2005) [Per J. Carpio, First Division]; and *Manila Electric Company v. Benamira*, 501 Phil. 621 (2005) [Per J. Austria-Martinez, Second Division].

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

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

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

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

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

. . . .

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

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

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

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[61] Id. at 407–409.

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

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

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

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

> We have examined the contract form between petitioner and its registered representatives and found nothing therein which would indicate that the latter are under the control of the former in respect of the means and methods they employ in the performance of their work. The fact that for certain specified causes the relationship may be terminated (e.g.,

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62 LABOR CODE, art. 106, which states:

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

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

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

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

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

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

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

> failure to meet the annual quota of sales, inability to make any sales production during a six-month period, conduct detrimental to petitioner, etc.) does not mean that such control exists, for the causes of termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees.[66]

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

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

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

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

The factor of the person's "unique skills, expertise or talent" in their

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66 Id. at 151.
67 248 Phil. 847 (1988) [Per C.J. Fernan, Third Division].
68 332 Phil. 1 (1996) [Per J. Torres, Jr., Second Division].
69 673 Phil. 384 (2011) [Per J. Carpio, Second Division].
70 *Cosmopolitan Funeral Homes, Inc. v. Maalat*, 265 Phil. 111, 116 (1990) [Per J. Gutierrez, Jr., Third Division].
71 436 Phil. 190 (2002) [Per J. Mendoza, Second Division].
72 Id. at 201.
73 *Consulta v. Court of Appeals*, 493 Phil. 842, 850–851 (2005) [Per J. Carpio, First Division].
74 *See ABS-CBN v. Nazareno*, 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].

selection or engagement that would make them an independent contractor was first recognized in *Sonza*:

> A. Selection and Engagement of Employee
>
> ABS-CBN engaged SONZA's services to co-host its television and radio programs because Sonza's peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."
>
> Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, *because of his unique skills, talent and celebrity status not possessed by ordinary employees*, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.
>
> In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.[75]

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

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

> In the case at bar, it does not appear that the employer and employee dealt with each other on equal terms. Understandably, the petitioner could not object to the terms of her employment contract because she did not want to lose the job that she loved and the workplace

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75 *Sonza v. ABS-CBN Broadcasting Corporation*, 475 Phil. 539, 551–552 (2004) [Per J. Carpio, First Division].

76 *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 56 (2008) [Per J. Nachura, Third Division].

77 534 Phil. 306, 335 (2006) [Per J. Callejo, Sr., First Division].

that she had grown accustomed to, which is exactly what happened when she finally manifested her intention to negotiate. Being one of the numerous newscasters/broadcasters of ABC and desiring to keep her job as a broadcasting practitioner, petitioner was left with no choice but to affix her signature of conformity on each renewal of her contract as already prepared by private respondents; otherwise, private respondents would have simply refused to renew her contract. Patently, the petitioner occupied a position of weakness vis-à-vis the employer. Moreover, private respondents' practice of repeatedly extending petitioner's 3-month contract for four years is a circumvention of the acquisition of regular status. Hence, there was no valid fixed-term employment between petitioner and private respondents.[78]

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

> Sonza was engaged by ABS-CBN in view of his "unique skills, talent and celebrity status not possessed by ordinary employees." His work was for radio and television programs. On the other hand, Dumpit-Murillo was hired by ABC as a newscaster and co-anchor.
>
> Sonza's talent fee amounted to P317,000.00 per month, which this court found to be a substantial amount that indicated he was an independent contractor rather than a regular employee. Meanwhile, Dumpit-Murillo's monthly salary was P28,000.00, a very low amount compared to what Sonza received.
>
> Sonza was unable to prove that ABS-CBN could terminate his services apart from breach of contract. There was no indication that he could be terminated based on just or authorized causes under the Labor Code. In addition, ABS-CBN continued to pay his talent fee under their agreement, even though his programs were no longer broadcasted. Dumpit-Murillo was found to have been illegally dismissed by her employer when they did not renew her contract on her fourth year with ABC.
>
> In *Sonza,* this court ruled that ABS-CBN did not control how Sonza delivered his lines, how he appeared on television, or how he sounded on radio. All that Sonza needed was his talent. Further, "ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work . . . did not meet ABS-CBN's approval." In Dumpit-Murillo, the duties and responsibilities enumerated in her contract was a clear indication that ABC had control over her work.[80] (Citations omitted)

Finally, in *Begino*, this Court warned that expedient parallels drawn with *Sonza* should not be made when the workers involved are not similarly situated. Mere possession of skills and abilities cannot be the basis of a finding that workers are independent contractors.[81]

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78 551 Phil. 725, 740 (2007) [Per Acting C.J. Quisumbing, Second Division].

79 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

80 Id. at 432–433.

81 *Begino v. ABS-CBN Corporation*, 758 Phil. 467, 483 (2015) [Per J. Perez, First Division].

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

IV

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

> ARTICLE 295. [280] Regular and Casual Employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided,* That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

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

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 [now Article 295] of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent

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82 *See Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://sc.judiciary.gov.ph/14782/> [Per J. Leonen, Third Division].

83 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

> any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[84]

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

> This provision reinforces the Constitutional mandate to protect the interest of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient. Thus, contrary agreements notwithstanding, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer. Not considered regular are the so-called "project employment" the completion or termination of which is more or less determinable at the time of employment, such as those employed in connection with a particular construction project, and seasonal employment which by its nature is only desirable for a limited period of time. However, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity he performed and while such activity actually exists.
>
> *The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.* The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[86] (Emphasis supplied, citation omitted)

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

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84 Id. at 763.

85 257 Phil. 626 (1989) [Per C.J. Fernan, Third Division].

86 Id. at 632–633.

87 *E. Ganzon, Inc. v. National Labor Relations Commission*, 378 Phil. 1048, 1055 (1999) [Per J. Bellosillo, Second Division].

from attaining security of tenure.[88]

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

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

> *Nazareno* applies here. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:
>
> > . . . To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.
>
> In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows, to wit:
>
> > 3. to engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name, and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcription or other devices by which sight and sound may be reproduced.
> >
> > 4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic reproduction services and other creative production services; and to engage in any manner, shape, or form in post-production mixing, dubbing, overdubbing, audio-video processing sequence alteration and modification of every nature of all kinds of audio and video production
> >
> > 5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and

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88 *De Leon v. National Labor Relations Commission,* 257 Phil. 626 (1989) [Per C.J. Fernan, Third Division].

89 *Singer Sewing Machine Company v. Drilon,* 271 Phil. 282 (1991) [Per J. Gutierrez, Jr., Third Division].

> generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.
>
> Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description - or simply, the production of shows - are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.[90]

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

In G.R. No. 202481:

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

In G.R. Nos. 202495-97:

> In response, private respondent ABS-CBN averred that it is engaged in the business of broadcasting television and radio content, and generates revenues through the following schemes, to wit:
>
> Option 1: Block Time – by this scheme, a producer or the block-timer purchases a fixed number of hours wherein it can air any show they desire and the advertising revenues thereof will pertain solely to the block timer.
>
> Option 2: Line Production – by this mode, a producer conceptualizes, implements and creates a particular program, which is in turn bought by a broadcasting company at a fixed price. The advertising revenues earned from the airing of such program is for the account of the broadcasting company.

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90 Ponencia, pp. 26–27.

91 *Rollo* (G.R. No. 202481), pp. 58–59.

> Option 3: Co-production – by this scheme, the broadcasting company and the producer share the entire cost of the production of a program. Consequently, the advertising revenues [are] similarly shared by the broadcasting company and the producer.
>
> Option 4: The broadcasting company can shoulder the entire cost of producing a particular program, and naturally the advertising revenues or losses incurred shall be for the sole account of the broadcasting company.
>
> Option 5: The broadcasting company purchases foreign canned shows, and the advertising revenues earned from airing the same shall be for the sole account of the broadcasting company.
>
> [ABS-CBN] employed a mix of all schemes although a good number of foreign canned shows were being aired especially at prime time in line with viewer preferences and industry practice. Later, viewer preferences improved such that quality local programs were appreciated over foreign canned shows. However, the prohibitive cost of producing a high quality local program that would appeal to the viewers has deterred producers from making such huge investments. Thus, [ABS-CBN] was constrained to venture into more co-productions and company-produced programs.[92]

In G.R. No. 219125:

> [ABS-CBN] contended that since 1986 it already resorted to various schemes to generate revenues such as Block-time, Line Production, Co-production, Self-production, Foreign Canned Shows, Live Coverage, Licensed Programs or combinations thereof depending on the preferences of the viewers, it went into production instead of just plain broadcasting.[93]

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

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

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92 *Rollo* (G.R. Nos. 202495–97), pp. 1914–1915.
93 *Rollo* (G.R. No. 219125), p. 1349.

on a confined scope.[94] (Citation omitted)

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

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

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

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

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

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

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94 *Magsalin v. National Organization of Working Men*, 451 Phil. 254 (2003) [Per J. Vitug, First Division].

95 Ponencia, p. 27.

96 Id. at 33.

97 Id.

98 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].

> 1) There is a continuous rehiring of project employees even after cessation of a project; and
>
> 2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer.
>
> However, the length of time during which the employee was continuously re-hired is not controlling, but merely serves as a badge of regular employment.[99]

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

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

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

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

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99 Id. at 600–601.

100 551 Phil. 725 (2007) [Per Acting C.J. Quisumbing, Second Division].

101 Id. at 735–736, footnote 23.

based on the guidelines laid down here.

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

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

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

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

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

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

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102 Ponencia, p. 24.
103 Id., footnote 105.
104 Id., footnotes 106, 107, and 110.
105 Id., footnote 109.
106 Id., footnotes 104–105.

existed an employer-employee relationship between respondent ABS-CBN and petitioner Ronnie.[107]

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

> Here, private respondents submitted evidence allegedly showing employer-employee relationship, however, a scrutiny of the sum-total of evidence shows otherwise, as follows:
>
> **Re: Identification Cards (IDs)**
>
> It is worthy to note that, of the 34 complainants, only 4 of them have presented their IDs; a closer scrutiny of said IDs will show that they do not necessarily show that they are regular employees of the petitioner considering the fact that there is no showing of any employment designation of the person named in the IDs. In fine, said IDs are not considered proofs of an employer-employee relationship as the same do not show that fact. In a business establishment, an identification card is usually provided as a security measure in order to identify the holder thereof if found within the premises of the employer. A scrutiny of the four (4) IDs shows the following:
>
> > This card is a property of ABS-CBN and may be cancelled/confiscated without prior notice. Use of this card allows bearer access to company premises and constitutes acceptance of the rules and regulations of the company and the policies covering the issuance of this card and all future amendments thereto.
>
> If indeed private respondents are considered regular employees of the petitioner, they should have been issued employment cards bearing the designation of the employee or the specific assignment. In this case, said cards were issued purely as IDs for security purposes, and none has been indicated therein that will show that private respondents are employees of petitioner.
>
> **Re: Certifications**
>
> Certifications were issued to: (1) Cristanto M[.] Panlubasan on January 31, 2003, showed that he was initially engaged by petitioner as program employee in February 1996; (2) Lorenzo Alano, who was initially engaged as Technical Field Assistant in September 1986; and (3) Edwin Sagun, who was initially engaged as Senior Cameraman in October 1996. These certifications *per se* do not show that they are regular employees considering that there was no clear showing that they have been previously engaged by petitioner in its broadcasting business.
>
> **Re: Certificates of Attendance**
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> The Certificates of Attendance were issued for having completed the requirements of the Basic Cameraworks given to: Cris Panlubasan,

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

> Jonathan Romblon, Romualdo Racelis, Oscar Domingo, George Macaso, Ismael Dablo, Rolando Barron, and Nestor Conato; another set of Certificates of Attendance were issued for having completed the requirements of Photojournalism; they were given to: Ismael Dablo, Crisanto Panlubasan and Rolando Barron; a cursory reading thereof will show that they are not determinative of an employer-employee relationship considering that these only show that the said private respondents had participated in these workshops.
>
> **Re: The Pay-Slips**
>
> The pay-slips of: George Macaso that were issued for the talent fee period 1/01/2003-1/15/2003, 12/01-15/2002, 12/16/2003-12/31/2002, 1-15-2002, January 16-31, 2002; Edwin Sagun that were issued for the talent fee period Dec. 16-31, 1999, January 1-5, 1999; Nestor Conato that were issued for the talent fee period – Christmas bonus, for the period 1/1/2003 to 1/15/2003; Roberto del Castillo that were issued for the period 7-1-15, 2002, 1995 Christmas Bonus; Crisanto Panlubasan that were issued for the talent period 7-1 to 15, 2002, Feb 16-31 2002; Ismael Pablo that were issued for the period Aug 1-15, 2001 1/01/2002-11/15/2002, 12/01/2002-12/15/2002; Arthur Dungog that were issued for the period 12/01/2002-12/15/2002 and 12/16/2002-12/31/2002; Sanchez Roberto that were issued for the period 01/01/2003-01/15/2003; Apolinar dela Garcia that were issued for the period 12/01/12/15/2002 and cash [gift]; Tugade, Reynaldo that were issued for the period 11/01/2002-11/15/2002, 12/01/2002-12/15/2002 and 10/01/2002-10/15/2002, and of Rolando Barron that were issued for the period 10/01/2002-1015-2002, 07/01/2002-07/15/2002, will show that no clear indications are found that they are regular employees of petitioner in its broadcasting business.
>
> It must be noted that these pay-slips, which indicate the phrase "for the period", were issued after the filing of the regularization case against petitioner. This will only show that private respondents were merely accredited by petitioner in its Internal Job Market System. Prior to the mentioned date, they were considered "Talents" receiving talent fees as shown in the payslips abovementioned.[108] (Citations omitted)

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

A finding of illegal dismissal is also factual.[112] The employee must first establish the fact of dismissal with substantial evidence. Only then would the burden of proof shift to the employer to show that the dismissal

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108 *Rollo* (G.R. No. 202481), pp. 68–71.
109 Ponencia, p. 32.
110 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].
111 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division].
112 *See Arriola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

was for just or authorized cause, and with due process observed.[113] It is insufficient to do as what the *ponencia* has done, and merely declare that no valid cause was made for the termination of the workers' services and that the workers were simply barred from entering company premises, without reference to the records of the six illegal dismissal cases under consideration.[114]

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

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

> WHEREFORE, the appeal is hereby GRANTED and the appealed Decision is hereby REVERSED and SET ASIDE. A new decision is hereby rendered confirming the regular employment status of the herein complainants and ORDERING ABS-CBN Broadcasting Corporation to provide the complainants all their monetary and nonmonetary benefits under the Collective Bargaining Agreement of December 11, 1999 to December 10, 2002 and other CBAs subsequently entered into.
>
> SO ORDERED.[115]

Similarly, as the Court of Appeals in G.R. Nos. 202495-97 had already made sufficient factual findings on respondents' employment status, its Decision and Resolution should be affirmed.

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

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

114 Ponencia, p. 37.

115 *Rollo* (G.R. No. 202481), pp. 519–520.

case before this Court.

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

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

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

ACCORDINGLY, I vote as follows:

1. The Petition in G.R. No. 202481 is **GRANTED**. The Court of Appeals' January 27, 2012 Decision and June 26, 2012 Resolution in CA-G.R. SP No. 117885 are **REVERSED** and **SET ASIDE**. The National Labor Relations Commission's October 29, 2009 Decision confirming petitioners' regular employment status and ordering respondent ABS-CBN to provide all monetary and non-monetary benefits under their Collective Bargaining Agreement is **REINSTATED**.

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116 Ponencia, pp. 37–38.

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

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

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

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

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

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

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

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

   Considering that Jun Tangalin and Lauro Calitisen are regular employees in view of G.R. Nos. 202495-97, and petitioner ABS-CBN has offered no just or authorized cause for their dismissal, they are **DECLARED** illegally dismissed. They are entitled to

reinstatement to their former positions without loss of seniority rights and the payment of backwages from the time their salaries were withheld up to the time of actual reinstatement. If reinstatement cannot be done, petitioner ABS-CBN is ordered to pay each respondent:

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

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

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

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

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

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

8. The Petition in G.R. No. 225874 is **DENIED**. The Court of Appeals' January 12, 2016 Decision and July 15, 2016 Resolution

in C.A.-G.R. SP No. 131576 are **AFFIRMED**.

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

MARVIC M.V.F. LEONEN
Associate Justice

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