

FIRST DIVISION

[G.R. NO. 164156, September 26, 2006]

**ABS-CBN BROADCASTING CORPORATION, PETITIONER, VS.
MARLYN NAZARENO, MERLOU GERZON, JENNIFER DEIPARINE,
AND JOSEPHINE LERASAN, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76582 and the Resolution denying the motion for reconsideration thereof. The CA affirmed the Decision^[2] and Resolution^[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000762-2001 (RAB Case No. VII-10-1661-2001) which likewise affirmed, with modification, the decision of the Labor Arbiter declaring the respondents Marlyn Nazareno, Merlou Gerzon, Jennifer Deiparine and Josephine Lerasan as regular employees.

The Antecedents

Petitioner ABS-CBN Broadcasting Corporation (ABS-CBN) is engaged in the broadcasting business and owns a network of television and radio stations, whose operations revolve around the broadcast, transmission, and relay of telecommunication signals. It sells and deals in or otherwise utilizes the airtime it generates from its radio and television operations. It has a franchise as a broadcasting company, and was likewise issued a license and authority to operate by the National Telecommunications Commission.

Petitioner employed respondents Nazareno, Gerzon, Deiparine, and Lerasan as production assistants (PAs) on different dates. They were assigned at the news and public affairs, for various radio programs in the Cebu Broadcasting Station, with a monthly compensation of P4,000. They were issued ABS-CBN employees' identification cards and were required to work for a minimum of eight hours a day, including Sundays and holidays. They were made to perform the following tasks and duties:

- a) Prepare, arrange airing of commercial broadcasting based on the daily operations log and digicart of respondent ABS-CBN;
- b) Coordinate, arrange personalities for air interviews;
- c) Coordinate, prepare schedule of reporters for scheduled news reporting and lead-in or incoming reports;
- d) Facilitate, prepare and arrange airtime schedule for public service announcement and complaints;

e) Assist, anchor program interview, etc; and

f) Record, log clerical reports, man based control radio.^[4]

Their respective working hours were as follows:

Name Time No. of Hours

1. Marlene Nazareno 4:30 A.M.-8:00 A.M. 7 ½
8:00 A.M.-12:00 noon
2. Jennifer Deiparine 4:30 A.M.-12:00M.N. (*sic*) 7 ½
3. Joy Sanchez 1:00 P.M.-10:00 P.M.(Sunday) 9 hrs.
9:00 A.M.-6:00 P.M. (WF) 9 hrs.
4. Merlou Gerzon 9:00 A.M.-6:00 P.M. 9 hrs.^[5]

The PAs were under the control and supervision of Assistant Station Manager Dante J. Luzon, and News Manager Leo Lastimosa.

On December 19, 1996, petitioner and the ABS-CBN Rank-and-File Employees executed a Collective Bargaining Agreement (CBA) to be effective during the period from December 11, 1996 to December 11, 1999. However, since petitioner refused to recognize PAs as part of the bargaining unit, respondents were not included to the CBA.^[6]

On July 20, 2000, petitioner, through Dante Luzon, issued a Memorandum informing the PAs that effective August 1, 2000, they would be assigned to non-drama programs, and that the DYAB studio operations would be handled by the studio technician. Thus, their revised schedule and other assignments would be as follows:

Monday - Saturday

4:30 A.M. - 8:00 A.M. - Marlene Nazareno.

Miss Nazareno will then be assigned at the Research Dept.

From 8:00 A.M. to 12:00

4:30 P.M. - 12:00 MN - Jennifer Deiparine

Sunday

5:00 A.M. - 1:00 P.M. - Jennifer Deiparine

1:00 P.M. - 10:00 P.M. - Joy Sanchez

Respondent Gerzon was assigned as the full-time PA of the TV News Department reporting directly to Leo Lastimosa.

On October 12, 2000, respondents filed a Complaint for Recognition of Regular Employment Status, Underpayment of Overtime Pay, Holiday Pay, Premium Pay, Service Incentive Pay, Sick Leave Pay, and 13th Month Pay with Damages against the petitioner before the NLRC. The Labor Arbiter directed the parties to submit their

respective position papers. Upon respondents' failure to file their position papers within the reglementary period, Labor Arbiter Jose G. Gutierrez issued an Order dated

April 30, 2001, dismissing the complaint without prejudice for lack of interest to pursue the case. Respondents received a copy of the Order on May 16, 2001.^[7] Instead of re-filing their complaint with the NLRC within 10 days from May 16, 2001, they filed, on June 11, 2001, an Earnest Motion to Refile Complaint with Motion to Admit Position Paper and Motion to Submit Case For Resolution.^[8] The Labor Arbiter granted this motion in an Order dated June 18, 2001, and forthwith admitted the position paper of the complainants. Respondents made the following allegations:

1. Complainants were engaged by respondent ABS-CBN as regular and full-time employees for a continuous period of more than five (5) years with a monthly salary rate of Four Thousand (P4,000.00) pesos beginning 1995 up until the filing of this complaint on November 20, 2000.

Machine copies of complainants' ABS-CBN Employee's Identification Card and salary vouchers are hereto attached as follows, thus:

I. Jennifer Deiparine:

Exhibit "A" - ABS-CBN Employee's Identification Card

Exhibit "B", - ABS-CBN Salary Voucher from Nov.

Exhibit "B-1" & 1999 to July 2000 at P4,000.00

Exhibit "B-2"

Date employed: September 15, 1995

Length of service: 5 years & nine (9) months

II. Merlou Gerzon - ABS-CBN Employee's Identification Card

Exhibit "C"

Exhibit "D"

Exhibit "D-1" &

Exhibit "D-2" - ABS-CBN Salary Voucher from March

1999 to January 2001 at P4,000.00

Date employed: September 1, 1995

Length of service: 5 years & 10 months

III. Marlene Nazareno

Exhibit "E" - ABS-CBN Employee's Identification Card

Exhibit "E" - ABS-CBN Salary Voucher from Nov.

Exhibit "E-1" & 1999 to December 2000

Exhibit :E-2"

Date employed: April 17, 1996

Length of service: 5 years and one (1) month

IV. Joy Sanchez Lerasan

Exhibit "F" - ABS-CBN Employee's Identification Card

Exhibit "F-1" - ABS-CBN Salary Voucher from Aug.

Exhibit "F-2" & 2000 to Jan. 2001

Exhibit "F-3"

Exhibit "F-4" - Certification dated July 6, 2000

Acknowledging regular status of
Complainant Joy Sanchez Lerasan
Signed by ABS-CBN Administrative
Officer May Kima Hife

Date employed: April 15, 1998

Length of service: 3 yrs. and one (1) month^[9]

Respondents insisted that they belonged to a "work pool" from which petitioner chose persons to be given specific assignments at its discretion, and were thus under its direct supervision and control regardless of nomenclature. They prayed that judgment be rendered in their favor, thus:

WHEREFORE, premises considered, this Honorable Arbiter is most respectfully prayed, to issue an order compelling defendants to pay complainants the following:

1. One Hundred Thousand Pesos (P100,000.00) each and by way of moral damages;
2. Minimum wage differential;
3. Thirteenth month pay differential;
4. Unpaid service incentive leave benefits;
5. Sick leave;
6. Holiday pay;
7. Premium pay;
8. Overtime pay;
9. Night shift differential.

Complainants further pray of this Arbiter to declare them regular and permanent employees of respondent ABS-CBN as a condition precedent for their admission into the existing union and collective bargaining unit of respondent company where they may as such acquire or otherwise perform their obligations thereto or enjoy the benefits due therefrom.

Complainants pray for such other reliefs as are just and equitable under the premises.^[10]

For its part, petitioner alleged in its position paper that the respondents were PAs who basically assist in the conduct of a particular program ran by an anchor or talent. Among their duties include monitoring and receiving incoming calls from listeners and field reporters and calls of news sources; generally, they perform leg work for the anchors during a program or a particular production. They are considered in the industry as "program employees" in that, as distinguished from regular or station employees, they are basically engaged by the station for a particular or specific program broadcasted by the radio station. Petitioner asserted that as PAs, the complainants were issued talent information sheets which are updated from time to time, and are thus made the basis to determine the programs to which they shall later be called on to assist. The program assignments of complainants were as follows:

- a. Complainant Nazareno assists in the programs:
 - 1) Nagbagang Balita (early morning edition)
 - 2) Infor Hayupan
 - 3) Arangkada (morning edition)
 - 4) Nagbagang Balita (mid-day edition)

- b. Complainant Deiparine assists in the programs:
 - 1) Unzanith
 - 2) Serbisyo de Arevalo
 - 3) Arangkada (evening edition)
 - 4) Balitang K (local version)
 - 5) Abante Subu
 - 6) Pangutana Lang

- c. Complainant Gerzon assists in the program:
 - 1) On Mondays and Tuesdays:
 - (a) Unzanith
 - (b) Serbisyo de Arevalo
 - (c) Arangkada (evening edition)
 - (d) Balitang K (local version)
 - (e) Abante Sugbu
 - (f) Pangutana Lang

 - 2) On Thursdays
Nagbagang Balita
 - 3) On Saturdays
 - (a) Nagbagang Balita
 - (b) Info Hayupan
 - (c) Arangkada (morning edition)
 - (d) Nagbagang Balita (mid-day edition)
 - 4) On Sundays:
 - (a) Siesta Serenata
 - (b) Sunday Chismisan
 - (c) Timbangan sa Hustisya
 - (d) Sayri ang Lungsod
 - (e) Haranahan^[11]

Petitioner maintained that PAs, reporters, anchors and talents occasionally "sideline" for other programs they produce, such as drama

talents in other productions. As program employees, a PA's engagement is coterminous with the completion of the program, and may be extended/renewed provided that the program is on-going; a PA may also be assigned to new programs upon the cancellation of one program and the commencement of another. As such program employees, their compensation is computed on a program basis, a fixed amount for performance services irrespective of the time consumed. At any rate, petitioner claimed, as the payroll will show, respondents were paid all salaries and benefits due them under the law.^[12]

Petitioner also alleged that the Labor Arbiter had no jurisdiction to involve the CBA and interpret the same, especially since respondents were not covered by the bargaining unit.