

## THIRD DIVISION

[ G.R. No. 230576, October 05, 2020 ]

**ABS-CBN CORPORATION, PETITIONER, VS. JAIME C. CONCEPCION, RESPONDENT.**

### DECISION

**ZALAMEDA, J.:**

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

#### The Case

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

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

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

**SO ORDERED.**"<sup>[7]</sup>

#### Antecedents

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

To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and

to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.<sup>[10]</sup>

Among its secondary purposes are:

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

x x x

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

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

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

ABS-CBN claims that it is not its principal business nor its legal obligation to produce television programs. It can operate its business without producing any of its own television programs. Just like any other broadcasting companies, it has several options in terms of where and how to obtain content to broadcast or air, and the means of generating revenues. These options include the following schemes: (1) block-time;<sup>[12]</sup> (2) line production;<sup>[13]</sup> (3) Co-production;<sup>[14]</sup> (4) Self-production;<sup>[15]</sup> (5) Foreign canned shows;<sup>[16]</sup> (6) Live Coverages;<sup>[17]</sup> (7) Licensed Programs;<sup>[18]</sup> and (8) a combination of the foregoing schemes.<sup>[19]</sup>

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

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

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

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

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

SO ORDERED."<sup>[23]</sup>

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

"WHEREFORE, the decision of the labor arbiter a quo is hereby VACATED and SET ASIDE. A new one is entered finding that complainant is a regular employee of respondents, and that his dismissal was without just cause nor due process, therefore illegal. Respondents are therefore directed to reinstate complainant to the position of OB Van Driver/Gen Set Operator immediately, and to pay him backwages from the time of his illegal dismissal until the reinstatement and attorney's fees of ten (10%) percent of total award.

SO ORDERED."<sup>[25]</sup>

ABS-CBN filed a Motion for Reconsideration<sup>[26]</sup> and sought the inhibition of Commissioner Lacap on the ground that she had previously ruled against ABS-CBN and prayed that the case be re-assigned to another Division of the NLRC.<sup>[27]</sup>

Consequently, Chairman Gerardo C. Nograles issued Administrative Order No. 03-19, series of 2012, creating a Special Division<sup>[28]</sup> to resolve the Motion for Reconsideration filed by ABS-CBN.

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

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

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

### **Ruling of the Court**

This Court finds the Petition devoid of merit.

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

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

It is a settled rule that a special civil action for *certiorari* under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court. However, there are well-defined exceptions established by jurisprudence, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.<sup>[32]</sup>

In this case, exceptions (b) and (d) are present. The issues raised before the NLRC,

which pertain to the existence of an employer-employee relationship between ABS-CBN and herein respondent and the issue of illegal dismissal were the very same questions raised before the CA. Moreover, respondent's failure to file a motion for reconsideration is adequately explained in the Prefatory Statement<sup>[33]</sup> of his Petition for *Certiorari*. This is not to say, however, that respondent's suspicions are correct. Only that under the circumstances, respondent could not be faulted for opting not to file a motion for reconsideration anymore.

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

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

ABS-CBN points the CA disregarded its own ruling in the case of *Jalog, et al. v. ABS-CBN Broadcasting Corporation*,<sup>[36]</sup> wherein the appellate court declared that complainants therein, i.e., cameramen, crane operators, VTR men and drivers, are independent contractors. The Decision<sup>[37]</sup> was eventually affirmed by this Court. It calls this Court to "set straight"<sup>[38]</sup> the departure made by the CA in accordance with the doctrine of stare decisis.

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

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

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

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that