Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ABS-CBN BROADCASTING CORPORATION, Petitioner,	**G.R. No. 219508** [Formerly UDK No. 15345]
	Present:
- versus -	GESMUNDO, *C.J., Chairperson,* CAGUIOA, LAZARO-JAVIER, LOPEZ, M. and LOPEZ, J., *JJ.*
KESSLER TAJANLANGIT, VLADIMIR MARTIN, HERBIE MEDINA and JUAN PAULO NIEVA, Respondents.	**Promulgated:** SEP 14 2021

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D E C I S I O N

LOPEZ, J., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[1] of the Court of Appeals (*CA*), dated September 18, 2014, and its Resolution[2] dated June 18, 2015 in CA-G.R. SP No. 122795. The CA granted the Petition for *Certiorari*[3] under Rule 65 filed by the herein respondents Kessler Tajanlangit, Vladimir Martin, Herbie Medina and Juan Paulo Nieva and, consequently, set aside the Resolutions[4] dated August 24, 2011 and October 28, 2011, of the National Labor Relations Commission (*NLRC*), which affirmed the Decision[5] dated March 30, 2011 rendered by the Labor Arbiter. In the aforesaid Decision, the Labor Arbiter dismissed the consolidated complaints for illegal dismissal, unfair labor practice and monetary claims

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1 Penned by Associate Justice Edwin D. Sorongon, with Associate Justice Rosmari D. Carandang (now a member of this Court) and Marlene Gonzales-Sison concurring; *rollo,* pp. 803-820A.

2 *Id.* at 932-939.

3 *Id.* at 525-593.

4 Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese concurring; *id.* at 469-485, 522-524, respectively.

5 Penned by Labor Arbiter Arden S. Anni; *id.* at 359-369.

filed by herein respondents against petitioner ABS-CBN Broadcasting Corporation for lack of merit.

Facts and Antecedent Proceedings

In light of its business beginnings, having been engaged primarily in broadcasting radio and television content, petitioner lacked creative and technical manpower to produce its own programs, but at the same time, could not engage the same on a regular basis because of the unpredictability in viewer preference.[6] It could not provide regular work knowing the uncertainty of a program's lifetime on air.[7]

Thus, according to petitioner, it engaged independent contractors such as, but not limited to, directors, actors, scriptwriters, production and technical staff for a particular program it would produce.[8] Like most if not all networks that may occasionally produce its own programs, petitioner contracts out the various services involved in program production to persons who possess the necessary talents, skills, training and expertise.[9] These persons are aptly called "talents."[10] As may be needed and depending on their talents, skills, training, expertise and availability, "talents" offer their services, or are contracted to render services either as artists, performers, production or technical staff members.[11]

In 2002, petitioner adopted and implemented the Internal Job Market System (*IJM*), a database which provides the user with a list of accredited technical or creative manpower and/or talents who offer their services for a fee.[12] Found in the database, among other things, are the competency rating of the technical manpower and their corresponding professional rates. The IJM System thus eliminated or minimized the rigors of the recruitment and of the negotiation process between independent contractors/talents and internal producers.[13]

Since talents who want to offer their services to petitioner have to undergo accreditation under the IJM System by achieving a desired competency rating, talents may opt to undergo additional training sponsored by petitioner.[14] However, these trainings are purely voluntary while

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6 CA Decision dated September 18, 2014; *rollo*, p. 807, and the Petition dated August 3, 2015; *rollo*, pp. 13-14.
7 *Id.*
8 *Rollo*, pp. 14, 807.
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.* at 14-15, 807.
13 *Id.*
14 *Id.* at 15, 808.

accreditation under the IJM System does not bind the talent exclusively to ABS-CBN.[15]

With the introduction of the IJM System, the producer is able to view information on the talent or technical/creative manpower and his availability for projects.[16] The talent or technical/creative manpower is then notified of the particular project/s for which his/her services are sought.[17] If he/she accepts the offer, he/she communicates his/her agreement thereto and reports on the production date.[18]

Further, petitioners assert that respondents as talents are not bound to exclusively or perpetually render services to petitioner. They, therefore, have unlimited opportunity to earn, considering that they may offer their services to other networks or production companies, and are even free to disengage from the IJM with or without notice or reason.[19]

The instant petition also explains that talents or independent contractors, like respondents, were not subject to the same control which petitioner exercises over its employees.[20] They were not subject to disciplinary action but were simply expected to follow basic standards of good conduct because of their association with petitioner and access to its facilities, equipment, premises, employees and officers.[21] Supervision over their work was only as to the results and not the method they adopted to perform the same.[22]

On various dates in June 2010, petitioner offered employment contracts to the respondents for new positions as remote cameramen.[23] However, instead of communicating with petitioner, respondents filed a case against it before the NLRC.[24]

For the respondents Tajanlangit, Martin, Medina and Nieva, they aver that they have been regular employees of petitioner, having been hired as cameramen on various dates from July 2003 to April 2005.[25]

At the time of hiring, no written contract or agreement indicative of a contractual relationship was entered into between petitioner and respondents. Instead, respondents were compelled to sign a document entitled "Accreditation in the Internal Job Market System x x x" so that they

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15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.* at 28-32, 809.
24 *Id.*
25 *Id.* at 805.

can be included in the IJM workpool together with other similarly situated employees.[26]

From the time of their engagement, each of the respondents have been issued an ABS-CBN Identification Card and have regularly received wages directly from ABS-CBN computed on a per-hour basis under different rates ranging from ₱80.00 to ₱90.00 per hour, fixed and determined solely by petitioner according to the category of the shows/programs where they were assigned. Based on their Annual Income Tax Return (*ITR*), respondents received from ABS-CBN average gross monthly salaries as follows:[27]

Respondent	Average Gross Monthly Salary
Kessler P. Tajanlangit	Php17,725.05
Vladimir M. Martin	Php30,574.34
Juan Paulo G. Nieva	Php17,585.06
Herbie S. Medina	Php25,533.94

According to the respondents, the monthly wages were deposited in the ATM payroll account provided by ABS-CBN on a bi-monthly basis,[28] after petitioner deducted withholding tax, SSS, Pag-IBIG and PhilHealth premiums.[29]

As cameramen, respondents allege that they were assigned to different shows or programs of petitioner at its sole and exclusive discretion.[30] Work schedule was in fact issued by the management of petitioner, indicating therein the show or program respondents would be assigned to and their work schedule.[31] Moreover, respondents were always under the direct supervision of the petitioner's production supervisors, managers and directors of the shows or programs and were not allowed to delegate their work to other competent cameramen of their own choice in case of unavailability.[32] Thus, respondents were also subject to the usual issuances of memorandum as well as imposition of disciplinary actions such as suspension and dismissal.[33]

Believing that they have been continuously employed by petitioner for more than five years but were deprived of benefits accorded to regular employees, respondents filed a complaint for regularization with money

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26 Comment/Opposition to the Petition dated May 2, 2016; *id.* at 992.
27 CA Decision dated September 18, 2014; *id.* at 805.
28 Comment/Opposition to the Petition dated May 2, 2016; *id.* at 993.
29 *Id.* at 997.
30 CA Decision dated September 18, 2014; *id.* at 805.
31 Comment/Opposition to the Petition dated May 2, 2016; *id.* at 998.
32 *Rollo*, p. 999.
33 *Id.* at 997.

claims against petitioner before the NLRC[34] docketed as LAC No. 05-001414-11.[35]

After filing the said complaint, respondents were summoned by the Human Resource Department (*HR*) and were presented with a sample contract or agreement.[36] Respondents were told that they had to sign the contract if they want to be continuously employed by petitioner, otherwise no further work assignments would be given to them.[37] On the other hand, signing the contract would entail the withdrawal of the case they filed versus petitioner as an additional condition.[38] With their refusal to sign such contracts, respondents were barred by petitioner from entering company premises and their names were removed in both the work schedules and the list of employees placed on day-off.[39]

Thereafter, respondents amended their initial complaint and demanded damages and attorney's fees from petitioner.[40]

There being no settlement agreement reached by the parties during the mandatory mediation-conciliation conferences before the Labor Arbiter, the parties were directed to file their respective position papers.[41]

In support of their position as to the existence of employer-employee relationship, respondents presented as evidence photocopies of their ID cards, photocopies of their ITRs, machine copies of payslips issued to them by petitioner, various memoranda issued to co-employees of petitioner who are similarly situated with them, machine copies of documents from the SSS, Philhealth and Pag-IBIG pertaining to respondents' employment with petitioner, and copies of work schedules issued and posted at the premises of the company.[42]

Meanwhile, petitioner submitted a photocopy of its Articles of Incorporation, photocopy of its legislative franchise, copies of respondents' payslips, photocopy of unsigned employment contracts given to respondents.[43]

On March 30, 2011, Labor Arbiter Arden S. Anni rendered his Decision[44] dismissing the respondents' Joint Complaint on the ground of

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34 CA Decision dated September 18, 2014; *id.* at 806.
35 *Rollo*, p. 469.
36 *Id.*
37 *Id.* at 806.
38 *Id.*
39 *Id.*
40 *Id.* at 806-807.
41 *Id.* at 809.
42 *Id.* at 809-810.
43 *Id.* at 810.
44 *Id.* at 359-369.

lack of employer-employee relationship between petitioner and respondents, holding that the former worked free from the control and supervision of petitioner and thereby concluding that they were independent contractors.

Petitioner appealed the Labor Arbiter's Decision before the NLRC, which was raffled to the Second Division and docketed as NLRC NCR Case No. 07-10236-10. After due proceedings, the NLRC rendered a Resolution[45] dated August 24, 2011, denying the appeal and affirming the assailed Decision. Similar to the Labor Arbiter, the NLRC held that no employer-employee relationship existed between the parties, since the element of control was not found present under the circumstances. Accordingly, respondents were considered independent contractors engaged to do independent work. Respondent then filed the Motion for Reconsideration[46] dated September 30, 2011, which the NLRC likewise denied in the Resolution[47] dated October 28, 2011.

Thereafter, herein respondents filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the Court of Appeals to question the Resolutions of the NLRC. The CA granted the aforesaid petition in its Decision[48] dated September 18, 2014, after finding that the elements in determining the existence of an employer-employee relationship have been fully established by respondents. The dispositive portion of the said Decision reads as follows:

> **WHEREFORE**, the petition for *certiorari* is **GRANTED.** The Decision dated August 24, 2011 and Resolution denying the Motion for Reconsideration dated October 28, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001414-11 [NLRC NCR No. 00-07-09356-10] are hereby **REVERSED** and **SET ASIDE.** Accordingly, a new judgment is entered as follows:
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> > 1. Confirming that petitioners Kessler Tajanlangit, Vladimir Martin, Herbie Medina and Juan Paolo Nieva are **regular employees** of ABS-CBN BROADCASTING CORPORATION, and declaring them entitled to all the rights, benefits and privileges, from the time they became regular employees in accordance with existing company practice and the Labor Code;
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> > 2. Declaring illegal the dismissal of petitioners Kessler Tajanlangit, Vladimir Martin, Herbie Medina and Juan Paulo Nieva and ordering respondent ABS-CBN (formerly ABS-CBN Broadcasting Corporation) to immediately reinstate them to their former positions without loss of seniority rights with payment of full backwages and all other statutory monetary benefits to which they are

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45 *Id.* at 369-485.
46 *Id.* at 486-507.
47 *Id.* at 522-524.
48 *Id.* at 803-820A.

entitled from the time they were dismissed up to the date of their actual reinstatement;

3. Ordering the respondent ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) to pay attorney's fees in the amount equivalent to 10% of the total monetary award.

Further, let this case be remanded to the National Labor Relations Commission without delay for the proper determination of compensation of monetary awards of the petitioners.

SO ORDERED. [49]

In its Decision, the CA found *Sonza v. ABS-CBN Broadcasting Corp.*[50] to be inapplicable to the facts of the instant case and instead, applied *ABS-CBN v. Nazareno*[51] in evaluating the relationship of the parties according to the four-fold test.[52] In so doing, it ruled that no peculiar or unique skill, talent or celebrity status was required from respondents who were initially hired as Junior Cameramen because they were merely hired just like any ordinary employee, based on the records of the case.[53] It found that as to the payment of wages, respondents' payslips and ITRs show that herein petitioner had been directly withholding taxes and other statutory deductions before the wages are distributed to respondents. It was also found noteworthy that respondents did not have the power to bargain for huge talent fees.[54] Moreover, the CA concluded that respondents were highly dependent on petitioner for continued work and that the company's bare allegation that respondents could have rejected any of their assignments is not supported by the evidence on record.[55] In fact, petitioner could bar respondents from entering its premises and prevent them from working as what had happened in the instant case.[56] There is also proof that petitioner had exercised the power to discipline the employees that are similarly situated with them through the issuance of written memos.[57] Finally, the CA was convinced that the power of control and supervision was exercised by petitioner through the employment of production supervisors, executive producers and program directors over respondents.[58] Petitioner also provided all the necessary tools, materials and equipment used by respondents, who cannot decide for themselves when and where they would work as their work assignments and schedules were dictated upon them by petitioner.[59]

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49 *Id.* at 820-820-A.
50 475 Phil. 539 (2004).
51 534 Phil. 306 (2006).
52 *Rollo*, pp. 814-816.
53 *Id.* at 816.
54 *Id.*
55 *Id.* at 816-817.
56 *Id.* at 817.
57 *Id.*
58 *Id.*
59 *Id.*

In this regard, the CA ordered the reinstatement of respondents, the payment of their backwages, other statutory monetary benefits and attorney's fees, and at the same time, declared illegal their dismissal from petitioner.[60]

Thereafter, petitioner filed its Motion for Reconsideration[61] dated October 14, 2014 to question the CA Decision, attaching thereto affidavits of witnesses who were also engaged by petitioner.[62]

In its Resolution[63] dated June 18, 2015, the CA denied the Motion for Reconsideration filed by petitioner as follows:

> **WHEREFORE**, private respondent ABS-CBN Corporation's Motion for Reconsideration is hereby **DENIED** for utter lack of merit.
>
> **SO ORDERED.**[64]

The CA took note of differences between the circumstances in *Sonza* and in the instant case, where respondents were not governed by any written contract with petitioner, and where the ITRs presented by respondents show that their income was classified as purely compensation and was not subjected to VAT.[65] According to the CA, more appropriate and applicable are the rulings of this Court in the cases of *ABS-CBN v. Marquez*[66] and *ABS-CBN v. Nazareno.*[67] Furthermore, the CA found that not only is the belated submission of affidavits unexplained by petitioner, the affidavits also failed to prove the cause for the termination of respondents.[68]

Aggrieved, petitioner brought before this Court the instant Petition for Review on *Certiorari* under Rule 45. On May 11, 2016, respondents filed their Comment/Opposition to the Petition,[69] while on July 19, 2018, petitioner filed its Reply (To Respondents' Comment on the Petition for Review on *Certiorari*).[70]

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60 *Id.* at 820-820-A.
61 *Id.* at 821-930.
62 *Id.* at 880-881.
63 *Id.* at 932-939.
64 *Id.* at 939.
65 *Id.* at 936.
66 G.R. No. 167638 (Minute Resolution), June 22, 2005.
67 *Rollo*, pp. 936-937.
68 *Id.* at 938-939.
69 *Id.* at 989-1014.
70 *Id.* at 1033-1059.

Issue

The issue brought forth by the present petition is simply whether or not the Court of Appeals committed an error in law in reversing the ruling of the NLRC that an employer-employee relationship exists between the petitioner and respondents.

Ruling

At the outset, the present petition stems from a special civil action for *certiorari* under Rule 65 of the Rules of Court, which was granted by the CA, after finding that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction, in ruling that herein parties are not governed by an employer-employee relationship. Accordingly, the CA Decision and Resolution are now questioned before this Court through a Petition for Review on *Certiorari* under Rule 45, to review whether the CA correctly determined the presence of grave abuse of discretion and other jurisdictional errors on the part of the NLRC.

As such, when a decision of the CA under a Rule 65 petition is brought to this Court by way of a petition for review under Rule 45, only questions of law may be entertained. This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.[71]

It has likewise long been established that in labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[72]

Under these parameters, this Court finds the present petition unmeritorious.

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71 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 416 (2014), citing *Meralco Industrial Engineering Services Corp. v. NLRC, et al.*, 572 Phil. 94, 117 (2008).

72 *E. Ganzon, Inc., et al. v. Ando*, 806 Phil. 58, 65 (2017).

Respondents proved by substantial evidence that they are employees of petitioner

At the crux of the controversy is the determination of whether or not respondents are employees of petitioner.

Petitioner contends that the CA should have found herein respondents to be independent contractors since they were engaged as talents to render service for specific programs by their respective producers, considering that respondents have already acquired talents and skills in performing the tasks of a cameraman. Thus, the terms of engagement of respondents are co-terminous with the programs for which they were engaged.[73]

This Court is not persuaded.

To recall, the CA considered the evidence presented by respondents before the NLRC in the form of ID cards, ITRs, payslips, memoranda issued to discipline similarly situated employees, work schedules issued by petitioner, and documents from SSS, Philhealth and Pag-IBIG to prove the existence of an employer-employee relationship with petitioner.[74] In light of the overwhelming evidence of the respondents, the CA found the NLRC to have committed grave abuse of discretion in ruling that no employer-employee relationship exists, totally disregarding substantial evidence presented to indubitably show that respondents are truly employees of the company.[75]

On the other hand, petitioner failed to present proof of any contract between respondents and the company from the time they were engaged in 2003 to 2005, up to the filing of the complaint against them in 2010, other than the unsigned draft of employment contracts presented to respondents in 2011[76] which respondents refused to sign due to the already impending labor dispute.[77] Aside from these unsigned drafts, petitioner presented only its Article of Incorporation, legislative franchise, payslips,[78] and belatedly, affidavits executed by other workers,[79] which the CA deemed gravely insufficient to establish the status of respondents as independent contractors nor rebut the evidence submitted by respondents to prove their employment.[80]

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73 Petition dated August 3, 2015, *rollo*, p. 17.
74 *Rollo*, p. 810.
75 *Id.* at 815, 933-934.
76 *Id.* at 810, 936.
77 *Id.* at 806, 809.
78 *Id.* at 810.
79 *Id.* at 938-939.
80 *Id.* at 934.

Based on the foregoing, this Court cannot fault the CA, which in the hopes of preventing a substantial wrong and doing substantial justice, found grave abuse of discretion when the findings and conclusions reached by the NLRC are not supported by substantial evidence and are in total disregard of evidence material to and even decisive of the controversy.[81] Thus, to arrive at a just decision of the case, the CA correctly granted the respondents' Petition for *Certiorari*.

All elements of the four-fold test for determining employer-employee relationship were sufficiently established

In both the assailed Decision and Resolution, the CA properly applied the four-fold test which pertains to: (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test,"[82] to ultimately ascertain that the employer-employee relationship existed between the parties. This Court agrees with the legal conclusion of the CA on the basis of its factual findings:

> Applying the four-fold test to the instant case, the records pristinely show that:
>
> 1. In the selection and engagement of petitioners, **no peculiar or unique skill, talent or celebrity status was required from petitioners** who were initially hired as Junior Cameramen because they were **merely hired through respondent ABS-CBN's TOD-Human Resources Department just like any ordinary employee.**
>
> 2. As to the payment of wages, "petitioners' **pay slips and income tax returns show that they have been receiving wages directly from ABS-CBN** computed on an hourly basis as a result of an employer-employee relationship. The pay slips undeniably show that ABS-CBN has been **directly withholding taxes and other statutory deductions before the wages are received by petitioners.** It is also worthy to note that **petitioners did not have the power to bargain huge talent fees, a circumstance negating independent contractual relationship.**
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> 3. As to the power of dismissal, petitioners are **highly dependent on ABS-CBN for continued work** and ABS-CBN's bare allegation that petitioners can reject any of their assignments is not supported by an evidence on record. **ABS-CBN could bar petitioners from entering premises and prevent them from working as what had happened in this**

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81 See *E. Ganzon, Inc., et al. v. Ando, supra* note 72.
82 *David v. Macasio*, 738 Phil. 293, 307 (2014).

> **case.** They also adduced proof that ABS-CBN has exercised the power to **discipline employees that are similarly situated with them through the issuance of written memos.**
>
> 4. Finally, the power of control and supervision exercised by ABS-CBN over petitioners is shown through **the employment of production supervisors, executive producers and program directors over petitioners' work,** and this negates the allegation that petitioners are independent contractors. Petitioners do not have any substantial capital or investment in tools or equipment or work premises. **It is ABS-CBN that provides all the necessary tools, materials, and equipment being used by petitioners** while they are working within the studio premises. **Petitioners also cannot decide for themselves when and where they would work as their work assignments and schedules are dictated upon them by ABS-CBN.**
>
> Prescinding from the foregoing, there is no denying that an employer-employee relationship exists between ABS-CBN and the petitioners.[83]

Very instructive is the pronouncement of this Court in the recent case of *Del Rosario, et al. v. ABS-CBN*,[84] where similar arguments of petitioner in the instant case to aver that cameramen are considered talents and not employees, were already squarely addressed by this Court in this wise:

> x x x The Court has ruled in *Begino v. ABS-CBN Corporation* (*Begino*), that **cameramen/editors and reporters are employees of ABS-CBN following the four-fold test.**
>
> x x x x
>
> The Court's ruling in *Begino* is applicable here. The workers here are employees of ABS-CBN.
>
> **The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), Pag-ibig Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.**
>
> In the same vein, **the workers received their salaries from ABS-CBN twice a month, as proven through the pay slips bearing the latter's corporate name. Their rate of wages was determined solely by ABS-CBN. ABS-CBN likewise withheld taxes and granted the workers PhilHealth benefits. These clearly show that the workers were salaried personnel of ABS-CBN, not independent contractors.**

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83 *Rollo*, pp. 816-817. (Emphases supplied; citations omitted)

84 G.R. Nos. 202481, 202495 & 202497, 210165, 219125, 222057, 224879, 225101, and 225874, September 8, 2020. (Emphases supplied; citations omitted)

> Likewise, ABS-CBN wielded the power to discipline, and correspondingly dismiss, any errant employee. **The workers were continuously under the watch of ABS-CBN and were required to strictly follow company rules and regulations in and out of the company premises.**
>
> Finally, consistent with the most important test in determining the existence of an employer-employee relationship, ABS-CBN wielded the power to control the means and methods in the performance of the employees' work. **The workers were subject to the constant watch and scrutiny of ABS-CBN, through its production supervisors who strictly monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company.** In fact, the workers were required to comply with ABS-CBN's company policies which entailed the prior approval and evaluation of their performance. They were further mandated to attend seminars and workshops to ensure their optimal performance at work. Likewise, **ABS-CBN controlled their schedule and work assignments (and re-assignments). Furthermore, the workers did not have their own equipment to perform their work. ABS-CBN provided them with the needed tools and implements to accomplish their jobs.**

The factual circumstances of the workers involved in *Del Rosario* are akin to those of herein respondents, namely:

(a) The workers were hired by petitioner through its personnel department;
(b) The workers were presented certificates of compensation or payslips, ITRs, SSS and Pag-IBIG documents which indicate that they are employed by petitioner;
(c) The workers received their salaries from petitioner twice a month, as proven through the payslips bearing the latter's corporate name;
(d) The rate of wages was determined solely by petitioner;
(e) Petitioner likewise withheld taxes and granted the workers SSS and PhilHealth benefits;
(f) Petitioner wielded the power to discipline, and correspondingly dismiss, any errant employee;
(g) The workers were continuously under the watch of petitioner and were required to strictly follow company rules and regulations in and out of the company premises;
(h) The workers were subject to the constant watch and scrutiny of petitioner, through its production supervisors who strictly monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company;

(i) Petitioner controlled their schedule, work assignments and re-assignments; and
(j) The workers did not have their own equipment to perform their work as it was petitioner which provided them with the needed tools and implements to accomplish their jobs.

In fact, in the present petition, even petitioner cited the case of *Del Rosario* (specifically the ruling of the CA therein before it was overturned by this Court), as it acknowledged that "[t]he Del Rosario Case similarly involves cameramen engaged by the Company."[85]

With the applicability of *Del Rosario* to the instant petition, no error can be ascribed in the CA's finding of grave abuse of discretion on the part of the NLRC for erroneously ruling that respondents as cameramen are independent contractors and not employees of petitioner despite the satisfaction of the four-fold test.

Sonza v. ABS-CBN is not applicable to the instant case.

Notably, petitioner further insists that the CA erred in disregarding the case of *Sonza*, which allegedly more appropriately addressed the relationship between respondents and petitioner.[86] Petitioner posits that respondents, like Jose "Jay" Sonza, have been specifically engaged because of their acquired talent, knowledge, skill and expertise in their respective fields and, thus, are to be regarded as "talents" hired in the nature of an independent contractor.[87]

There is no need to belabor the foregoing argument, since the same has also been adequately addressed in *Del Rosario* where this Court ruled as follows:

> Parenthetically, the main distinction between a talent and a regular employee in the broadcast industry was explained in the landmark case of *Sonza v. ABS-CBN Broadcasting Corp.* (*Sonza*).
>
> In *Sonza*, Jose Sonza (Sonza) was a talent who was engaged on the basis of his expertise in his craft. His possession of unique skills and celebrity status gave him the distinct privilege to bargain with ABS-CBN's officials on the terms of his agreement with the latter. These negotiations resulted to a hefty talent fee. Also, the payment of his salaries did not depend on the amount of work he performed or the number of times he reported for duty, but was based solely on the terms of the agreement. More than this, ABS-CBN was duty-bound to continue paying him his talent fees during the lifetime of the agreement, regardless of any business losses it may suffer, and even if it ceased airing his programs.

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85 *Rollo*, p. 88.
86 *Id.* at 37.
87 *Id.* at 37-39.

> More importantly, ABS-CBN was bereft of any power to terminate or discipline Sonza, even if the means and methods of the performance of his work did not meet its approval. Similarly, ABS-CBN did not control his work schedule, or regulate the manner in which he "delivered his lines, appeared on television, and sounded on radio," or had any say over the contents of his script. The only instruction given by ABS-CBN was a simple warning that Sonza should refrain from criticizing ABS-CBN and its interests. In short, Sonza enjoyed an untrammeled artistic creativity on the contents and delivery of his lines and spiels.
>
> In stark contrast, **the workers here were hired through ABS-CBN's Human Resources Department. Their engagement did not involve a negotiation with ABS-CBN's high-level officials. They did not possess any peculiar skills or talents or a well-nigh celebrity status** that would have given them the power to negotiate the terms of their employment. In fact, **their only choice over their engagement was limited to either accepting or rejecting the standard terms of employment prepared by ABS-CBN.** In the same manner, they received a basic salary and were **granted benefits such as SSS**, Medicare, and 13th month pay benefits customarily given to regular employees.
>
> Equally telling, **the workers did not enjoy the same level of impunity granted to Sonza**. It bears stressing that an independent contractor is endowed with a certain level of skill and talent that is not available on-the-job. Obviously, the workers do not hold this level of distinction.[88]

Thus, on this point, this Court agrees with the CA that *Sonza* is not on all fours applicable, owing to the different factual milieu of the cases.

Petitioner explains that in the engagement of respondents, of prime consideration are their skills, knowledge or expertise *vis-à-vis* the requirements and/or nature of the show or program and the directors' preference for talents whom they have previously worked with and who exhibited better skills over the others.[89]

Faced with the same line of argument in *Del Rosario,* the Court ruled to wit:

> ABS-CBN further points out that a particular sense of creativity or artistic flair is needed depending on the type of show that the worker is employed. For instance, the artistry and skill demanded for a television drama or *telenovela* is very different from that required in a variety show or a current events program. According to ABS-CBN, this proves that the workers were hired due to their unique skill in matching the artistic demands of each distinct program.

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88 *Del Rosario, et al. v. ABS-CBN, supra* note 84. (Emphases supplied)
89 *Rollo*, p. 74.

> Strangely, however, a perusal of the list of television shows where each worker was hired reveals that **they worked on a diverse range of programs, ranging from formal news programs, lively variety shows, and dramatic *telenovelas*. The ease with which they shuttled from one program to another, regardless of the huge disparity in the genre of the programs, clearly shows that their duties were more routinary and mundane, and not artistic or creative as ABS-CBN strives to portray.**[90]

Again, following *Del Rosario*, this Court finds no merit in the argument of petitioner. In the case at bar, the payslips show that in the year 2009 alone, all of the respondents have been assigned to various programs of huge disparity in genre, such as sports events, *telenovelas*, news programs, talk shows and game shows, among others. That they were able to serve as cameramen for a number of wide-ranging programs in a short span of time, undeniably proves that respondents' engagements in petitioner have been devoted to routinary and mundane work, rather than specific work that required unique, creative and artistic talents, skills, training and expertise, contrary to its argument.

Engagement through the IJM System did not make respondents independent contractor

Petitioner's contention that respondents were engaged as independent contractors for having undergone the IJM System of accreditation is also of no moment.[91]

In *Del Rosario*, this Court had occasion to clarify that engagement under the IJM System does not necessarily make one an independent contractor. In fact, members of a work pool could either be project employees or regular employees if: (i) they were continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer:

> The final defense raised by ABS-CBN is that the workers belonged to a work pool of independent contractors, who were hired from time to time to work in its television programs. To show proof thereof, ABS-CBN points out that the workers were not exclusively bound to render services for ABS-CBN, but were actually free to offer their services to other employers anytime they wanted to. ABS-CBN is only partly correct.
>
> The Court finds that a work pool indeed existed, but its members, consistent with the rulings in *Begino* and *Nazareno*, were regular employees, and not independent contractors.

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90 *Del Rosario, et al. v. ABS-CBN, supra* note 84. (Emphases supplied)

91 *Rollo*, p. 58.

Traditionally, work pools have been recognized in the construction, shipping, and security industries. However, in 1998, the Court, in *Maraguinot, Jr. v. NLRC* (*Maraguinot*) affirmed the existence of work pools in the motion picture industry, considering that "the *raison d'etre* of both [construction and film] industries concern projects with a foreseeable suspension of work."

The broadcast industry is a business that is allied with the film industry. Similar to the business of producing and creating films, **the production of programs in the broadcast industry likewise involves periods with a foreseeable suspension of work.** In fact, the description of a work pool perfectly suits the distinct nature of the broadcast industry:

> A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is concerned. [It is said that this arrangement] is beneficial to both the employer and employee for it prevents the unjust situation of "coddling labor at the expense of capital" and at the same time enables the workers to attain the status of regular employees. [In Lao, the Comi held that] the continuous rehiring of the same set of employees within the framework of the Lao Group of Companies is strongly indicative that private respondents were an integral part of a work pool from which petitioners drew its workers for its various projects. (Citations omitted)

The creation of a work pool is a valid exercise of management prerogative. It is a privilege inherent in the employer's right to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose. However, in order to ensure that **the work pool arrangement is not used as a scheme to circumvent the employees' security of tenure, the employer must prove that (i) a work pool in fact exists, and (ii) the members therein are free to leave anytime and offer their services to other employers**. These requirements are critical in defining the precise nature of the workers' employment.

Furthermore, in *Raycor Aircontrol Systems, Inc. v. NLRC*, the Court explained that **members of a work pool could either be project employees or regular employees. Specifically, members of a work pool acquire regular employment status if: (i) they were continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer.**

In the particular case of ABS-CBN, **the IJM 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 a "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.

Both parties acknowledged the existence of the IJM System work pool and the workers' inclusion therein. On the part of ABS-CBN, it gave the workers an ABS-CBN identification card, placed them under the supervision of its officers and managers, allowed them to use its facilities and equipment, and continuously employed them in the production of television programs. On the part of the workers, they formed the ABS-CBN IJM System Worker's Union, recognizing that they were in fact part of the IJM System work pool.

However, **the continuous rehiring of the members of the IJM System work pool from one program to another bestowed upon them regular employment status**. As such, they cannot be separated from the service without cause as they are considered regular, at least with respect to the production of the television programs. This holds true **notwithstanding the fact that they were allowed to offer their services to other employers**.

As in *Tomas Lao Construction v. NLRC*, the Court affirmed that **the members of a work pool shall still be regarded as regular employees, even if they are allowed to seek employment elsewhere during lulls in the business**. The Court stressed that, during the cessation of work, the employees shall simply be treated as being on leave of absence without pay until their next project. Correlatively, the employer shall not be obliged to pay the employees during the suspension of operations, *viz.*:

> x x x [T]he cessation construction activities at the end of every project is a foreseeable suspension of work. Of course, no compensation can be demanded from the employer because the stoppage of operations at the end of a project and before the start of a new one is regular and expected by both parties to the labor relations. Similar to the case of regular seasonal employees, the employment relation is not severed by merely being suspended. The employees are, strictly speaking, not separated from services but merely on leave of absence without pay until they are reemployed. Thus, we cannot affirm the argument that non-payment of salary or non-inclusion in the payroll and the opportunity to seek other employment denote project employment. (Citations omitted)

By analogy, and as applied to the members of the IJM System work pool, even if they are allowed to offer their services to other employers during the lulls in the production business, they shall still be regarded as regular employees who are simply "on leave" during such periods of suspension in production. On the part of ABS-CBN, it shall not be obliged to pay the employees during such temporary breaks.

> It bears stressing that similar to the caveat laid down in *Maraguinot*, the Court wishes to allay any fears that the instant ruling unduly burdens an employer, or that it unreasonably coddles labor at the expense of capital. This decision is simply a "judicial recognition of the employment status of a project or work pool employee in accordance with what is *fait accompli*, *i.e.*, the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employer's usual business or trade."[92]

Equally deserving of scant consideration is petitioner's assertion that the CA erred in finding that cameramen effectively hold staple positions in television programs since its principal business is broadcasting and not the production of shows.[93] This Court, once again, brings attention to the ruling in *Del Rosario* to settle the issue once and for all:

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

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92 *Del Rosario, et al. v. ABS-CBN, supra* note 84. (Emphases supplied; citations omitted)
93 *Rollo*, pp. 52-53.

> modification of every nature of all kinds of audio and video productions.
>
> 5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.
>
> Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description – or simply, the production of shows are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.
>
> **The workers – who were cameramen**, light men, gaffers, lighting director, audio men, sound engineers, system engineer, VTR men, video engineers, technical directors, and drivers – **all played an indispensable role in the production and reproduction of shows, as well as post-production services. The workers even played a role in ABS-CBN's business of obtaining commercial revenues. To obtain profits through advertisements, ABS-CBN would also produce and air shows that will attract the majority of the viewing public. The necessary jobs required in the production of such shows were performed by the workers herein.**[94]

There is no cogent reason for this Court to deviate from its sound ruling in *Del Rosario* which made it crystal clear that cameramen are indispensable in the production and reproduction of shows as part of petitioner's business.

Accordingly, the CA did not err in concluding that respondents as cameramen repeatedly hired for more than five years, were doing activities necessary and desirable to the overall business or trade of petitioner, which is characteristic of a regular employee under Article 280 of the Labor Code.[95] Indeed, the law deems repeated and continuing need for respondents' performance of work as sufficient evidence of the necessity if not indispensability of that activity to the business.[96]

The ruling in Jalog, et al. v. NLRC is not binding on respondents

As in *Del Rosario,* petitioner turns to the ruling of the CA in *Jalog, et. al v. NLRC,*[97] which has been affirmed by this Court through minute

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94 *Del Rosario, et al. v. ABS-CBN, supra* note 84. (Emphases supplied)
95 *Rollo*, p. 817.
96 *Id.* at 818; see *University of Santo Tomas v. Samahan ng Manggagawa ng UST*, 809 Phil. 212, 222 (2017).
97 CA-G.R. SP No. 110334, December 21, 2010, *rollo*, pp. 951-973.

resolutions[98] in its attempt to impute error in the CA for disregarding its ruling therein.[99] However, this Court believes that the case of *Del Rosario* should already put an end to this particular controversy:

> ABS-CBN argues that the ruling in *Jalog* applies. In *Jalog*, the CA Former Seventh Division ruled that the cameramen and the other workers of its Engineering Department are talents and not its regular employees. This ruling was affirmed by the Court through a Minute Resolution dated October 5, 2011.
>
> This contention does not hold water.
>
> Essentially, the phrase *stare decisis et non quieta movere* literally means "stand by the decisions and disturb not what is settled." This legal concept ordains that for the sake of certainty, a conclusion reached in one case should be applied to those that follow, if the facts are substantially the same, even though the parties may be different. Simply stated, like cases ought to be decided alike. Accordingly, "where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue." However, the CA's decision in *Jalog* was affirmed by the Court through a minute resolution. The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*. There, the Court explained that **a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties."**
>
> However, **it will not set a binding precedent "if other parties or another subject matter (even with the same parties and issues) is involved." Thus, the ruling in *Jalog*, which involves different litigants, may not be applied to the parties in the instant petition.**[100]

From the foregoing, this Court is not convinced that *Jalog, et al. v. NLRC*[101] should be made applicable pursuant to this Court's Minute Resolutions therein. The *Jalog* case, which involved different litigants, does not set a binding precedent to the instant case. Hence, the CA committed no error to warrant the reversal of its ruling that respondents are regular employees of petitioner and are entitled to reinstatement and the payment of backwages, other statutory monetary benefits and attorney's fees, by virtue of their illegal dismissal from the latter.

WHEREFORE, the instant petition is **DENIED** for utter lack of merit. The Decision dated September 18, 2014 and the Resolution dated June 18, 2015 of the Court of Appeals in CA-G.R. SP No. 122795, are **AFFIRMED**.

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98 G.R. Nos. 202495 and 202497, October 5, 2011 and January 25, 2012, *id.* at 974-976.
99 *Rollo*, p. 88.
100 *Supra* note 84. (Emphases supplied; citations omitted)
101 *Supra* note 97.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice