Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CHRISDEN CABRERA DITIANGKIN, HENDRIX MASAMAYOR MOLINES, HARVEY MOSQUITO JUANIO, JOSELITO CASTRO VERDE, and BRIAN ANTHONY CUBACUB NABONG, Petitioners, -versus- **LAZADA E-SERVICES PHILIPPINES, INC., ALLAN ANCHETA, RICHARD DELANTAR, and JADE ANDRADE,** Respondents.	**G.R. No. 246892** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M.*, LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** SEP 21 2022

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DECISION

LEONEN, *J.*:

When the status of the employment is in dispute, the employer bears the burden to prove that the person whose service it pays for is an independent contractor rather than a regular employee with or without fixed terms.[1]

This resolves a Petition for Review[2] assailing the January 14, 2019[3]

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* On official business.

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

2 *Rollo*, pp. 11–40.

and March 15, 2019[4] Resolutions of the Court of Appeals in CA-G.R. SP No. 158529, which affirmed the ruling of the National Labor Relations Commission. The National Labor Relations Commission ruled that there is no employer-employee relationship between the parties.

In February 2016, Chrisden Cabrera Ditiangkin, Hendrix Masamayor Molines,[5] Harvey Mosquito Juanio, Joselito Castro Verde, and Brian Anthony Cubacub Nabong (collectively, riders) were hired as riders by Lazada E-Services Philippines, Inc. (Lazada). They were primarily tasked to pick up items from sellers and deliver them to Lazada's warehouse. Each of them signed an Independent Contractor Agreement (Contract) which states that they will be paid ₱1,200.00 per day as service fee.[6] The contract also states that they are engaged for a period of one year.[7] The riders used their privately-owned motorcycles in their trips.[8]

Sometime in January 2017, the riders were told by a dispatcher that they have been removed from their usual routes and will no longer be given any schedules. Despite this, they still reported to work for three days and waited all day for new assignments to no avail.[9] Thereafter, they learned that their routes were already given to other employees.[10]

The riders then filed a complaint before the National Labor Relations Commission against Lazada, its employees, and its officers for illegal dismissal, non-payment of salary, overtime pay, holiday pay, service incentive leave pay, thirteenth month pay, separation pay, and illegal deduction, with claims for moral and exemplary damages and attorney's fees.[11]

The riders claimed that they are regular employees of Lazada given that the means and methods by which they carry out their work is subject to the discretion and control of Lazada.[12]

On the other hand, Lazada maintained that the riders are not regular employees but independent contractors.[13] It argued that it is not a common carrier but a business which facilitates the sale of goods between its sellers

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3 Id. at 42–49. The Resolution was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Maria Filomena D. Singh (now a Member of this Court) and Geraldine C. Fiel-Macaraig of the Special Ninth Division of the Court of Appeals, Manila.

4 Id. at 51–53. The Resolution was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Maria Filomena D. Singh (now a Member of this Court) and Geraldine C. Fiel-Macaraig of the Former Special Ninth Division of the Court of Appeals, Manila.

5 Sometimes referred to as "Heindrix."

6 *Rollo*, p. 14.

7 Id. at 207.

8 Id. at 14.

9 Id. at 14.

10 Id. at 16.

11 Id. at 14.

12 Id. at 15.

13 Id. at 15.

and buyers.[14] When a buyer purchases an item through Lazada, it merely coordinates the delivery of the product through an independent transportation service. Thus, delivery is merely an ancillary activity and not its main line of business.[15]

Further, Lazada explained that after the surge of deliveries during Christmas season, the demand decreased to its normal rate by January. Because of this, it had to reorganize the schedule to ensure that all riders will have a trip.[16] Lazada argued that the riders misunderstood the temporary team assignments as termination.[17]

The Labor Arbiter dismissed the complaint and ruled that the riders are not regular employees of Lazada.[18]

> **WHEREFORE**, the complaint is dismissed for lack of jurisdiction, there being no employer-employee relationship between the parties.
>
> **SO ORDERED**.[19] (Emphasis in the original)

The Labor Arbiter zeroed in on the Contract signed by the riders which states that "no employer-employee relationship exists between [Lazada] and the [riders]."[20] It held that since the terms of the Contract are explicit and clear, its literal meaning should control.[21]

Further, the Labor Arbiter considered that the riders had control over the means and methods of their work. Particularly, the riders provided their own vehicles or were free to choose the means of transport to be used. They also decided on their delivery routes and working hours.[22]

The Labor Arbiter noted that Lazada only requires that the goods are delivered promptly and in good condition. While Lazada gives out rules and regulations on the delivery of goods, this does not amount to the level of control that interfered with the riders' means and methods of accomplishing their work. Thus, the Labor Arbiter concluded that there is no employer-employee relationship between Lazada and the riders.[23]

On appeal, the National Labor Relations Commission affirmed the

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14 Id. at 121.
15 Id. at 121–122.
16 Id. at 151.
17 Id. at 151–152.
18 Id. at 119–126. The November 3, 2017 Decision was penned by Labor Arbiter Laudimer I. Samar.
19 Id. at 126.
20 Id. at 123–124.
21 Id. at 124.
22 Id. at 125.
23 Id.

Labor Arbiter's ruling.[24]

The National Labor Relations Commission reiterated that the Contract signed by the riders is explicit that there is no employer-employee relationship between the parties; thus, its stipulations should control.[25] Further, in applying the four-fold test, the National Labor Relations Commission found that Lazada had no control over the means and methods employed by the riders in performing their services.[26]

The riders moved for reconsideration, but this was denied by the National Labor Relations Commission.[27]

The riders then elevated the case to the Court of Appeals through a Rule 65 petition which was dismissed outright.[28]

The Court of Appeals held that the correct remedy is a Rule 43 petition; not a Rule 65 certiorari petition. It explained that a Rule 65 petition can only correct errors of jurisdiction, including commission of grave abuse of discretion amounting to lack or excess of jurisdiction. However, the riders failed to support their allegation that the National Labor Relations Commission committed grave abuse of discretion in dismissing their case. On the contrary, the Court of Appeals noted that the National Labor Relations Commission evaluated the evidence before it arrived at its own findings. Thus, the Court of Appeals did not grant the petition absent any *prima facie* showing of grave abuse of discretion on the part of the National Labor Relations Commission.[29]

Their motion for reconsideration having been denied,[30] petitioners filed a Petition for Review under Rule 45 before this Court.

Petitioners argue that Rule 65 is the proper procedural vehicle to appeal the case and not Rule 43 as concluded by the Court of Appeals.[31] They point out that there is grave abuse of discretion on the part of the National Labor Relations Commission in finding that they are independent

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24 Id. at 98–107. The April 30, 2018 Decision was penned by Presiding Commissioner Gregorio O. Bilog, III, and concurred in by Commissioners Erlinda T. Agus and Dominador B. Medroso, Jr. of the National Labor Relations Commission, Second Division, Quezon City.

25 Id. at 103–104.

26 Id. at 105–106.

27 Id. at 111–112. The September 10, 2018 Resolution was penned by Presiding Commissioner Julia Cecily Coching-Sosito, and concurred in by Commissioners Erlinda T. Agus and Dominador B. Medroso, Jr. of the National Labor Relations Commission, Second Division, Quezon City.

28 Id. at 45.

29 Id. at 46–49.

30 Id. at 51–53. The Resolution dated March 15, 2019 was penned by Associate Justice Apolinario D. Bruselas, Jr., and Associate Justice Maria Filomena D. Singh and Associate Justice Geraldine C. Fiel-Macaraig of the Court of Appeals, Former Special Ninth Division, Manila.

31 Id. at 20.

contractors.[32]

Petitioners aver that they are regular employees, regardless of the title and stipulations of their Contract. They underscore that their Contracts should be treated differently from ordinary contracts given the constitutional policy to afford full protection to labor.[33]

Citing Article 295 of the Labor Code, petitioners claim that they are regular employees considering that their service is necessary and desirable in the usual business of respondent Lazada. They stress that Lazada's business is mainly marketing, provision of platform for sellers, and delivery of goods and services to customers. Further, they have attained regular employment because they have been doing the same work for years.[34]

Applying the four-fold test, petitioners assert that all elements of an employer-employee relationship are present: (1) respondents specifically selected and engaged their services as they are former employees of RGSERVE, Inc., the contractor previously hired by respondents;[35] (2) petitioners were paid by respondents and were required to pay cash bonds and other deductions; (3) respondents have the power to dismiss petitioners; and (4) respondents have control over the performance of their work.[36]

Petitioners argue that the method of their service is controlled by respondents. They claim they are expected to report to work every day within definite work hours. They are also required to follow company rules and regulations.[37] They point to their Contracts which explicitly provide that "[t]he method by which Contractor is to perform such services shall be as instructed by, and within the discretion and control of the Company."[38] This, they did by keeping track of the arrival, departure, and unloading time through a route sheet. Respondents also impose on them a penalty of ₱500.00 for any lost parcel, on top of the lost parcel's value. The mode of paying their salaries are also in respondents' discretion. Petitioners add that in incident reports they are required to submit, the word "EMPLOYEE" is on it.[39] To support these claims, they submit their time cards, advertisements, trip tickets, company-issued scanners, cellphones, and sim cards.[40]

Further, petitioners aver that they were required to render 12 hours of work a day for six days a week, effectively preventing them from gaining

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32 Id. at 21.
33 Id.
34 Id. at 21–23.
35 Id. at 22.
36 Id. at 22–23.
37 Id. at 23.
38 Id. at 25.
39 Id.
40 Id. at 26.

other employment. This made them solely reliant on respondents for income, showing economic dependence which supports their regular employment.[41]

Petitioners also claim that they do not have the substantial capital or investment to become independent contractors. They allege that they do not have the capacity to perform their duties without the tools provided by respondents, such as cellphones, product scanners, and uniforms.[42]

Being regular employees, petitioners argue that they are entitled to the monetary claims and damages due to their illegal dismissal.[43] Particularly, they submit that respondents should pay them full backwages and separation pay in lieu of reinstatement. They also demand salary for when they reported to work for three days back in January 2017.[44]

Petitioners add that they were not given their thirteenth month pay, service incentive leave pay, and holiday pay despite working during holidays.[45] They further assert that cash bonds were illegally collected from them, given that DOLE Labor Advisory No. 11 only allows the posting of cash bonds for security agencies. They claim that these cash bonds and other deductions have not been returned to them. Petitioners also argue that the value added and withholding tax deductions on their salaries have no legal basis.[46]

Lastly, petitioners argue that they are entitled to moral and exemplary damages as their dismissal was attended by bad faith, was oppressive to labor, and was done in a manner contrary to morals, good customs, or public policy.[47] They claim that respondents should likewise be liable for attorney's fees considering that their wages were not paid.[48]

In their Comment, respondents claim that petitioners' services are neither necessary nor desirable to their business. Lazada's main business is providing an online platform where sellers and buyers can transact. It does not function as a common carrier responsible for the delivery of products to the customers. Thus, it can still operate as an online marketplace and simply leave the delivery of the goods to the buyers and sellers.[49]

Further, respondents submit that petitioners failed to satisfy the four-

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41 Id. at 24.
42 Id. at 26–27
43 Id. at 30.
44 Id. at 28.
45 Id. at 29
46 Id. at 30–31.
47 Id. at 31–32.
48 Id. at 33.
49 Id. at 589–590.

fold test, especially the control test.[50]

First, petitioners' claim that they were selected and engaged by RGSERVE, Inc., which was engaged earlier by Lazada, is immaterial as there was no proof that RGSERVE, Inc. and Lazada are affiliates, branches, or alter-egos of each other. Petitioners' employment with RGSERVE, Inc. is beside the point as petitioners entered into Contracts with respondents.[51]

Second, petitioners are paid Contract Service Fees. Cash bonds and deposits are also deducted from petitioners in accordance with the Contract. The cash bond is supposedly a measure of equity as respondents could have imposed a lump sum posting of the security deposit instead of agreeing with installment payments. Moreover, they claim that petitioners represented having sufficient capital to be engaged as independent contractors when they signed the Contract. Further, respondents aver that the Contract is governed by the Civil Code and not by the Labor Code.[52] Thus, these stipulations should stand given that the parties freely agreed upon them.[53]

Third, respondents claim to have no power of dismissal over petitioners given that their agreement can only be terminated in keeping with their Contract. Thus, respondents argue that the proper remedy is to go through arbitration or to file a civil suit. Moreover, petitioners were not dismissed by respondents and they acted based on an unnamed dispatcher's claim that they will no longer be given trips.[54]

Lastly, respondents claim they have no control over petitioners' conduct as the terms and conditions of their Contract are only necessary to safeguard the rights and interests of both parties and do not amount to the degree of control in an employer-employee relationship. Particularly, petitioners were asked to comply with respondent Lazada's guidelines merely to ensure that the deliveries are carried out smoothly.[55]

Further, respondents assert that petitioners failed to satisfy the economic dependence test. They point out that petitioners have the discretion on how to perform their task. Petitioners can choose their mode of transportation, the specific routes to take, when to have breaks, and when to begin their deliveries. Respondents assert that the Contract does not state the specific period for the deliveries, contradicting petitioners' claim that they were ordered to work 12 hours a day for six days a week.[56] Given this arrangement, petitioners are free to offer their services to other parties.[57]

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50 Id. at 591.
51 Id. at 592.
52 Id. at 593.
53 Id. *citing* CIVIL CODE, art. 1306.
54 Id. at 594.
55 Id.
56 Id. at 601.
57 Id. at 602.

Respondents stress that the route sheet is not an indication of control but merely necessary to guide petitioners in the pick up and delivery of parcels. The nature of their service necessitates respondent Lazada to provide the information for the pickup and delivery of the parcels. Further, the penalty for lost parcels is only to ensure that parcels are delivered and not an indicator of control. Respondents add that the provision of cellphones and sim cards is only an additional measure for coordinating deliveries.[58] As for the manual time cards, respondents submit that this is only for monitoring the period of service rendered by petitioners for purposes of billing. Moreover, respondents argue that the advertisements do not prove anything except that respondent Lazada uses delivery services in its business.[59]

Accordingly, respondents maintain that petitioners cannot claim backwages, separation pay, and other benefits considering that they are not regular employees. Moreover, their Contract with petitioners clearly provides that they will be paid fees for each full day of service rendered. Thus, petitioners should not expect to be paid while on standby.[60]

Further, respondents aver that petitioners are not entitled to the refund of their cash bonds and other deductions. While deductions from employees' wages are generally not allowed, petitioners voluntarily agreed to this arrangement as provided in their Contract.[61] Respondents further argue that petitioners are not entitled to moral and exemplary damages, and attorney's fees because they were never terminated in the first place.[62] Given that they are not respondents' regular employees, there can be no bad faith or fraud that can be ascribed to respondents' acts.[63]

In their Reply, petitioners stress that their service as riders is necessary and desirable in respondent Lazada's business because part of its business is to deliver the goods and services to its customers.[64]

Petitioners reiterate that using the four-fold test, they are considered employees of respondent Lazada.[65] They highlight that respondents have control over their performance of work as provided in the Contract, specifically the part stating that the method of their service "shall be as instructed by, and within the discretion and control of [respondent Lazada.]"[66]

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58 Id.
59 Id. at 603.
60 Id. at 606–607.
61 Id.
62 Id. at 610–611.
63 Id. at 611.
64 Id. at 1075.
65 Id.
66 Id. at 1077.

Moreover, petitioners submit that the degree of control exercised by respondents amounts to an employer-employee relationship. The guidelines are not mere instructions but are intended for accountability.[67] Given that they are regular employees of respondents, there is illegal dismissal when they were terminated without notice.[68]

The following issues are raised for this Court's resolution:

First, whether or not the Court of Appeals erred in dismissing the petition for certiorari outright;

Second, whether or not petitioners are regular employees of respondent Lazada; subsumed under this issue are the following: (1) whether or not petitioners are independent contractors; (2) whether or not petitioners satisfied the four-fold test; (3) whether or not there is economic dependence in petitioners' employment with respondents; and

Finally, whether or not petitioners are entitled to monetary awards.

I

In *St. Martin Funeral Home v. NLRC*,[69] this Court ruled that the decision of the National Labor Relations Commission may be reviewed by the Court of Appeals through a Rule 65 certiorari petition when there is grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion is defined in this wise:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.
>
> Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[70] (Citations omitted)

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67 Id. at 1077–1078.

68 Id. at 1080.

69 356 Phil. 811 (1998) [Per J. Regalado, En Banc].

70 *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591–592 (2007) [Per J. Austria-Martinez, Third Division].

Decisions of the National Labor Relations Commission may be imputed with grave abuse of discretion when they 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 [National Labor Relations Commission] contradict those of the [Labor Arbiter]; and when necessary to arrive at a just decision of the case."[71]

Meanwhile, from the Court of Appeals, a party may elevate the case before this Court through a petition for review under Rule 45, where only questions of law may be raised. In labor cases, a Rule 45 petition is limited to resolving if the Court of Appeals correctly determined whether there is grave abuse of discretion and other jurisdictional errors in the ruling of the National Labor Relations Commission.[72]

In *Fuji Television Network, Inc. v. Espiritu*,[73] we explained the parameters of reviewing a Rule 45 labor petition before this Court, which assails a resolution on a Rule 65 petition before the Court of Appeals.

> When a decision of the Court of Appeals 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 decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:
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> > 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. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.
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> *Career Philippines v. Serna*, citing *Montoya v. Transmed*, is instructive on the parameters of judicial review under Rule 45:
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> > As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
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> > 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.

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71 *Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66401> [Per J. Leonen, Third Division].

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

73 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

> 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 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[.][74] (Citations omitted)

Thus, this Court generally will not reevaluate the sufficiency of evidence before the labor tribunals.[75] However, this rule admits certain exceptions:

> (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
> (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures;
> (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
> (4) when there is a grave abuse of discretion in the appreciation of facts;
> (5) when the Appellate Court, in making its findings, went beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;
> (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
> (7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
> (8) when the findings of fact are themselves conflicting;
> (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
> (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[76] (Citation omitted)

In this case, the Court of Appeals dismissed the certiorari petition outright, ruling that petitioners should have filed a Rule 43 petition instead. This is untenable. As held in *Fuji Television Network, Inc.*, the decision of the National Labor Relations Commission may be elevated before the Court of Appeals through a Rule 65 petition.

Petitioners mainly contend that there is grave abuse of discretion because the conclusions of the Labor Arbiter and the National Labor Relations Commission are based on gross misapprehension of facts and are

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74 Id. at 415–416.

75 *Navotas Industrial Corp. v. Guanzon*, G.R. No. 230931, November 15, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68038> [Per J. Leonen, Third Division].

76 *Visayan Electric Company v. Alfeche*, 821 Phil. 971, 982 (2017) [Per J. Leonen, Third Division].

contradicted by evidence on record. A careful review of the Petition shows these errors committed by the labor tribunals.

Taking all these in consideration, this Court can resolve questions of fact and reassess the tribunals' findings.

II

Consistent with the constitutional recognition that labor is a primary social economic force,[77] full protection to labor is a social policy enshrined in Article XIII, Section 3 of the Constitution.

> ARTICLE XIII
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> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
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> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
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> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The provision guarantees the right of workers to security of tenure, among others. One's employment is a property right which cannot be revoked without due process.[78] In *Rivera v. Genesis Transport Service, Inc.*:[79]

> It is the policy of the state to assure the right of workers to "security of tenure." The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when

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77 CONST., Art. II, sec. 18.

78 *Rivera v. Genesis Transport Service, Inc.*, 765 Phil. 545 (2015) [Per J. Leonen, Second Division].

79 765 Phil. 545 (2015) [Per J. Leonen, Second Division].

> authorized by" the code. Dismissal is not justified for being arbitrary where the workers were denied due process and a clear denial of due process, or constitutional right must be safeguarded against at all times[.][80]

Our laws strengthen this policy. In labor contracts, the nature of employment of a worker is prescribed by law, regardless of what the contract and the parties present it to be.[81] Employment contracts are not ordinary contracts because they are imbued with public interest.[82] Article 1700 of the Civil Code affirms this policy:

> ARTICLE 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

The applicable provisions of the law are deemed incorporated into the contract and the parties cannot exempt themselves from the coverage of labor laws simply by entering into contracts.[83] Thus, regardless of the nomenclature and stipulations of the contract, the employment contract must be read consistent with the social policy of providing protection to labor.[84]

Article 295 of the Labor Code provides four classifications of employment, namely: regular, project, seasonal, and casual. It reads:

> ARTICLE 295. *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.

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80 Id. at 553–554 *citing Rance v. National Labor Relations Commission*, 246 Phil. 287, 292–293 (1988) [Per J. Paras, Second Division].

81 LABOR CODE, art. 295.

82 *Innodata Knowledge Services, Inc. v. Inting*, 822 Phil. 314 (2017) [Per J. Peralta, Second Division].

83 Id.

84 *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-EDC*, 662 Phil. 225 (2011) [Per J. Nachura, Second Division].

Employees who perform activities which are necessary or desirable in the usual business of the employer may be regular, project, or seasonal employees.[85] Of the three, project and seasonal employees are generally engaged to perform tasks which only lasts for a specific period and duration.[86] Meanwhile, casual employees are those who perform work which are not usually necessary or desirable for the employer's business.[87]

Activities which are considered usually necessary or desirable in the employer's business generally depends on the industry.[88] There must be a reasonable connection between the work performed by the employee and the usual trade or business of the employer.[89]

Brent School, Inc. v. Zamora[90] recognized another category of employment which is fixed-term. A fixed-term employment is an arrangement wherein an employee is hired for a specific period. In fixed-term employment, the work performed may also be necessary or desirable to the usual business of the employer.

Fixed-term employments are recognized by law for projects with pre-determined completion or generally in a work where a fixed term is essential and natural appurtenance.[91] As explained in *Brent School, Inc v. Zamora,*[92]

> Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. Similarly, despite the provisions of Article 280, Policy Instructions No. 8 of the Minister of Labor implicitly recognize that certain company officials may be elected for what would amount to fixed periods, at the expiration of which they would have to stand down, in providing that these officials, ". . . may lose their jobs as president, executive vice-president or vice-president, etc. because the stockholders or the board of directors for one reason or another did not reelect them."[93] (Citation omitted)

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85 *GMA Network, Inc. v. Pabriga*, 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].

86 *Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66401> [Per J. Leonen, Third Division].

87 *GMA Network, Inc. v. Pabriga*, 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].

88 *Ilustrisimo v. St. Joseph Fish Brokerage, Inc.*, G.R. No. 235761, October 6, 2021 [Per J. Leonen, Third Division].

89 *Price v. Innodata Phils. Inc.*, 588 Phil. 568 (2008) [Per J. Chico-Nazario, Third Division].

90 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

91 *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

92 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

93 Id. at 761.

For a fixed-term employment to be valid, either of these circumstances must be proven:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[94] (Citation omitted)

These criteria presume that an employee, "on account of special skills or market forces, is in a position to make demands upon the prospective employer[.]"[95] The parity of standing between the employer and employee indicates that the employee needs less protection than that of the ordinary worker.[96] In determining whether the fixed-term employment is valid, the burden of proof lies with the employer to show that it deals with the employee in more or less equal terms. The recognition of fixed-term employment in *Brent* remains an exception rather than the general rule.[97]

To determine the existence of an employer-employee relationship, this Court employs a two-tiered test: the four-fold test and the economic dependence test.[98]

Under the four-fold test, to establish an employer-employee relationship, four factors must be proven: (a) the employer's selection and engagement of the employee; (b) the payment of wages; (c) the power to dismiss; and (d) the power to control the employee's conduct. The power of control is the most significant factor in the four-fold test.[99]

The right to control extends not only over the work done but over the means and methods by which the employee must accomplish the work.[100] The power of control does not have to be actually exercised by the employer. It is sufficient that the employer "has a right to wield the power."[101]

However, this Court has clarified that not all rules imposed upon the

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94 *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 178 (2013) [Per J. Leonardo-De Castro, First Division].
95 Id.
96 Id.
97 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division].
98 *Francisco v. National Labor Relations Commission*, 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].
99 *Coca Cola Bottlers Phils., Inc. v. National Labor Relations Commission*, 366 Phil. 581 (1999) [Per J. Bellosillo, Second Division].
100 *Orozco v. Court of Appeals*, 584 Phil. 35 (2008) [Per J. Nachura, Third Division].
101 J. Leonen, Concurring Opinion in *Del Rosario v. ABS-CBN Broadcasting Corp.*, G.R. Nos. 202481, 202495, 202497, 210165, 219125, 222057, 224879, 225101 & 225874, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66570> [Per J. Caguioa, En Banc].

worker is an indication of control. When rules are intended to serve as general guidelines to accomplish the work, it is not an indicator of control.[102] In *Orozco v. Court of Appeals*,[103]

> 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 the 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 untrammelled 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[.][104] (Citation omitted)

When the control test is insufficient, the economic realities of the employment are considered to get a comprehensive assessment of the true classification of the worker.[105] In *Francisco v. National Labor Relations Commission*,[106] this Court explained the import of this test:

> 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

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102 *Orozco v. Court of Appeals*, 584 Phil. 35 (2008) [Per J. Nachura, Third Division].
103 584 Phil. 35 (2008) [Per J. Nachura, Third Division].
104 Id. at 49.
105 *Francisco v. National Labor Relations Commission*, 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].
106 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].

> dependence of the worker on his employer.[107] (Emphasis supplied, citations omitted)

Respondents here mainly contend that there is no employer-employee relationship because petitioners are independent contractors.

An independent contractor is defined as:

> [O]ne who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under one's own responsibility according to one's 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.[108] (Citation omitted)

Our laws and jurisprudence recognize two types of contractors: legitimate job contractors and independent contractors who possess unique skills and talent.[109]

Article 106 of the Labor Code governs legitimate job contractors and subcontractors:

> 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

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107 Id. at 408–409.
108 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 424 (2014) [Per J. Leonen, Second Division].
109 Id.

> 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.[110]

To be considered a legitimate contractor, the contractor must have a substantial capital or investment. It must also have a distinct and independent business uncontrolled by the principal and compliant with all the rights and benefits for the employees.[111] Section 8 of DOLE Department Order No. 174-2017 lays down the conditions for permissible contracting or subcontracting:

> SECTION 8. *Permissible Contracting or Subcontracting Arrangements.* — Notwithstanding Sections 5 and 6 hereof, contracting or subcontracting shall only be allowed if all the following circumstances concur:
>
> a) The contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;
>
> b) The contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner and method, investment in the form of tools, equipment, machinery and supervision;
>
> c) In performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the result thereto; and
>
> d) The Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws.

Permissible contracting or subcontracting is governed by a trilateral relationship wherein the principal engages the contractor's services. In turn, the contractor hires workers to accomplish the work for the principal.[112]

The second type of independent contractor consists of individuals who possess unique skills and talents which set them apart from ordinary employees and whose means and methods of work are free from the control of the employer.[113] Examples can include a columnist who was hired because of her talent, skill, experience, and feminist standpoint,[114] a basketball referee who has special skills and independent judgment,[115] and a *masiador* or *sentenciador* who had expertise in cockfight gambling.[116] In these instances, there is no trilateral relationship but a bilateral relationship

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110 LABOR CODE, Art. 106.
111 *Mago v. Sun Power Manufacturing Limited*, 824 Phil. 464 (2018) [Per J. Reyes, Jr., Second Division].
112 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division].
113 Id.
114 *Orozco v. Court of Appeals*, 584 Phil. 35-57 (2008) [Per J. Nachura, Third Division].
115 *Bernarte v. Philippine Basketball Association*, 673 Phil. 384 (2011) [Per J. Carpio, Second Division].
116 *Semblante v. Court of Appeals*, 671 Phil. 213 (2011) [Per J. Velasco, Jr., Third Division].

because the independent contractors are directly engaged by the principal.[117]

With this type of contracting, there is no employer-employee relationship between an independent contractor and the principal, and their contracts are governed by the Civil Code. When the status of the employment is in dispute, the employer bears the burden to prove that the workers are independent contractors rather than regular employees.[118]

In this case, respondents contend that petitioners are independent contractors and that there is no employer-employee relationship between them. They submit that petitioners represented having substantial capital when they signed the Contract and should be bound by its stipulations.

However, respondents failed to discharge their burden of proving that petitioners are independent contractors. Petitioners do not fall under any of the categories of independent contractors.

First, petitioners are not hired by a contractor or subcontractor. Petitioners merely refer to RGSERVE, Inc. as their former employer, but it is clear in the parties' submissions that petitioners were directly hired by respondents. Each petitioner signed an individual Contract with respondent Lazada who paid them directly.[119] Thus, there is no trilateral relationship wherein a contractor or subcontractor is required to possess substantial capital or investment.

Second, petitioners cannot be considered independent contractors in a bilateral relationship. The work performed by petitioners do not require a special skill or talent. Picking up and delivering goods from warehouse to buyers do not call for a specific expertise. It is also not shown that petitioners were hired due to their unique ability or competency.

Contrary to respondents' assertions, petitioners satisfy both the four-fold and economic dependence tests.

Here, the four factors are present. First, petitioners are directly employed by respondent Lazada as evidenced by the Contracts they signed. Petitioner's former employer, RGSERVE, Inc., is not a party to the Contract with respondent Lazada. Second, as indicated in the Contract, petitioners receive their salaries from respondent Lazada. Petitioners are paid by respondent Lazada the amount of ₱1,200.00 for each day of service. Third, respondent Lazada has the power to dismiss petitioners. In their contract, respondents can immediately terminate the agreement if there is a breach of

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[117] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division].
[118] Id.
[119] *Rollo*, p. 203.

material provisions of the Contract.[120] Lastly, respondent Lazada has control over the means and methods of the performance of petitioners' work.

This is explicit in their agreement which states:

> 2. Duties. Contractor, as an Independent Contractor, agrees to provide and to make itself available to provide, services ("Services") as a logistics and delivery services provider to the Company during such reasonable hours and at such times as the Company may from time to time request. *The method by which Contractor is to perform such Services shall be as instructed by, and within the discretion and control of the Company.* In performing Services under this agreement, Contractor agrees that it shall use diligent efforts and professional skills and judgment.[121] (Emphasis supplied)

This is also reflected in the way petitioners' work is carried out. Respondent Lazada requires the accomplishment of a route sheet which keeps track of the arrival, departure, and unloading time of the items. Petitioners shoulder a penalty of ₱500.00 if an item is lost on top of its actual value. Petitioners were also required to submit trip tickets and incident reports to respondent.[122]

Even if we consider these instructions as mere guidelines, the circumstances of the whole economic activity between petitioners and respondents confirm the existence of an employer-employee relationship.

The services performed by petitioners are integral to respondents' business. Respondents insist that the delivery of items is only incidental to their business as they are mainly an online platform where sellers and buyers transact. However, the delivery of items is clearly integrated in the services offered by respondents. That respondents could have left the delivery of the goods to the sellers and buyers is of no moment because this is evidently not the business model they are implementing.

In carrying out their business, they are not merely a platform where parties can transact; they also offer the delivery of the items from the sellers to the buyers. The delivery eases the transaction between the sellers and buyers and is an integral part of respondent Lazada's business. Further, respondent Lazada admitted that it has different route managers to supervise the delivery of the products from the sellers to the buyers.[123] Thus, it has taken steps to facilitate not only the transaction of the seller and buyer in the online platform but also the delivery of the items.

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120 Id.
121 Id.
122 Id. at 25.
123 Id. at 584.

Further, petitioners have invested in equipment to be engaged by respondents. Particularly, petitioners are required by respondents to use their own motor vehicles and other equipment and supplies in the delivery of the items. Moreover, petitioners had no control over their own profit or loss because they were paid a set daily wage. Petitioners also had no control over their own time and they cannot offer their service to other companies as respondents can demand their presence from time to time.[124]

More importantly, petitioners are dependent on respondents for their continued employment in this line of business. As the facts reveal, petitioners have been previously engaged by a third-party contractor to provide services for respondents. This time, petitioners were directly hired by respondents. This demonstrates that petitioners have been economically dependent on respondents for their livelihood.

Petitioners cannot be deemed regular employees with a fixed-term employment. The fixed-term employment enunciated in *Brent* presupposes an employee who is more or less on equal footing with an employer. It applies only in exceptional cases where the employee has bargaining power on account of a special skill or the market force.[125] This is not demonstrated or argued by the respondents. Respondents even failed to allege as to how the terms and conditions of their Contracts were agreed upon.[126]

The validity of a fixed-term employment and the level of protection accorded to labor is determined based on the "nature of the work, qualifications of the employee, and other relevant circumstances."[127] Here, petitioners cannot bargain the terms of their employment. To reiterate, it is not shown that petitioners were hired by respondents due to their special talent or skills. Their work as riders does not require strict and distinctive qualifications that distinguish them from other riders. More importantly, it is not shown that the fixed-term of one year in petitioners' case is an essential and natural appurtenance to their work as riders. The delivery of items is a usual and continuous activity in respondent Lazada's business.

Respondents maintain that the Contract they signed with petitioners explicitly states that there is no employer-employee relationship between them. However, protection of the law afforded to labor precedes over the nomenclature and stipulations of the Contract. The Contract petitioners signed is not as ordinary as respondents purport it to be. Thus, it is patently erroneous for the labor tribunals to reject an employer-employee relationship simply because the Contract stipulates that this relationship does not exist.

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[124] Id. at 203.

[125] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].

[126] *See Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66401> [Per J. Leonen, Third Division].

[127] *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Oct/2019/1> [Per J. Leonen, Third Division].

Finding that petitioners are regular employees of respondents, petitioners should be reinstated to their positions with full backwages computed from the time of dismissal up to the time of actual reinstatement. This includes their salary for holiday pay and the cash bonds they advanced. If reinstatement is no longer feasible, they should be given separation pay in addition to full backwages. Petitioners are likewise entitled to the payment of attorney's fees considering that they were forced to litigate.[128]

Nevertheless, there is no showing that respondents acted with malice, fraud, or bad faith. In *Rivera v. Genesis Transport Service, Inc.*,[129] we explained when moral and exemplary damages may be awarded:

> "Moral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a manner contrary to morals, good customs or public policy." Also, to provide an "example or correction for the public good," exemplary damages may be awarded.[130] (Citations omitted)

Here, petitioners failed to demonstrate that respondents acted with intent to do a wrongful act out of malice or that they purposely oppressed petitioners when they failed to provide them schedules.[131] As explained by respondents, they failed to provide schedules due to the shortage of orders. Thus, there is no basis for the award of moral or exemplary damages.

WHEREFORE, the Petition for Review is **GRANTED.** The January 14, 2019 and March 15, 2019 Resolutions of the Court of Appeals in CA-G.R. SP No. 158529 are **REVERSED.**

Respondents Lazada E-Services Philippines, Inc., Allan Ancheta, Richard Delantar, and Jade Andrade are **ORDERED** to reinstate Chrisden Cabrera Ditiangkin, Hendrix Masamayor Molines, Harvey Mosquito Juanio, Joselito Castro Verde, and Brian Anthony Cubacub Nabong to their former positions, and to pay their full backwages, overtime pay, thirteenth month pay, cash bond deposit, and other benefits and privileges from the time they were dismissed on January 16, 2017, up to their actual reinstatement.

This case is **REMANDED** to the Labor Arbiter for the computation of the total monetary benefits awarded and due to Chrisden Cabrera Ditiangkin, Hendrix Masamayor Molines, Harvey Mosquito Juanio, Joselito Castro Verde, and Brian Anthony Cubacub Nabong. All monetary awards shall be subject to the interest rate of 6% per annum from the date of finality of this

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[128] *Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66401> [Per J. Leonen, Third Division].

[129] 765 Phil. 544 (2015) [Per J. Leonen, Second Division].

[130] Id. at 560.

[131] *Montinola v. Philippine Airlines*, 742 Phil. 487 (2014) [Per J. Leonen, Second Division].

Decision until full payment.[132]

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

On official business
MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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

CERTIFICATION

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

MARVIC M.V.F. LEONEN
Acting Chief Justice
(Per Special Order No. 2914)