Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

WALTER L. BORROMEO and JIMMY N. PARCIA, Petitioners, - versus - **LAZADA E-SERVICES PHILIPPINES, INC., ALEX DORONOLLO, ALLAN ANCHETA, RICHARD DELANTAR, and SAM REYES,** Respondents.	**G.R. No. 265610** **Present:** LEONEN, *SAJ., Chairperson*, LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** APR 03 2024

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DECISION

LOPEZ, J., *J.*:

This resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA), which found that the National Labor Relations Commission (NLRC) did not act with grave abuse of discretion when it affirmed the ruling of the Labor Arbiter dismissing the complaint filed by Walter L. Borromeo (Borromeo) and Jimmy Parcia (Parcia) against Lazada E-Services Philippines, Inc. (Lazada), Alex Doronollo[4] (Doronollo), Allan Ancheta (Ancheta), Richard Delantar (Delantar), and Sam Reyes (Reyes) (collectively, Lazada et al.) for lack of jurisdiction on the ground that there is no employer-employee relationship between the parties.

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1 *Rollo*, pp. 3–399.

2 *Id.* at 64–84. The May 23, 2022 Decision in CA-G.R. SP No. 158478 was penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Nina Antonio-Valenzuela and Emily L. San Gaspar-Gito of the Thirteenth Division, Court of Appeals, Manila.

3 *Id.* at 87–93. The September 27, 2022 Resolution in CA-G.R. SP No. 158478 was penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Emily L. San Gaspar-Gito of the Former Thirteenth Division, Court of Appeals, Manila.

4 Also "Doronillo" in some parts of the records.

Borromeo started to render service as a pick-up rider for Lazada on February 5, 2015 until March 31, 2016 under RGServe Manpower Services (RGServe). On the other hand, Parcia commenced his services as Lazada's pick-up rider from March 31, 2012 until March 31, 2016 under Dynamic Personnel Assistance Manpower (Dynamic).[5]

On April 1, 2016[6] and July 16, 2017,[7] Borromeo and Parcia, respectively, signed an Independent Contractor Agreement (Agreement) with Lazada where they agreed to provide logistics and delivery services for the company using their own motor vehicles. Their respective contracts provided that they would be paid a service fee in the amount of PHP 1,200.00 for a full day's work. Borromeo's contract was good for one year, unless earlier terminated pursuant to Clause 6 of the Agreement or renewed in writing, while the engagement of Parcia was for a duration of six months, unless earlier terminated pursuant to Clause 7 or renewed in writing at the sole discretion of Lazada.[8]

As riders, Borromeo and Parcia were tasked to pick-up products sold through the Lazada platform from its merchants and deliver them to Lazada's warehouse. According to them, Reyes, the route dispatcher team leader, would provide them a route sheet which contained their assigned merchants from whom they will pick-up the products for transfer to the warehouse. Borromeo and Parcia had to report to the monitoring supervisor and route monitoring staff of Lazada the moment they arrive at the location of their assigned merchants to be able to scan the products. They also had to inform them, through text messages or phone calls, the number of products they picked-up from the said merchants. Aside from the route sheet, Borromeo and Parcia were also directed to retrieve defective items from the return department for return to the merchants, which was no longer part of their job as riders but which they could not refuse for fear that they would not be given new routes for pick-up.[9]

On August 18 and 19, 2017, Borromeo and Parcia were informed that they would be terminated on August 23, 2017 because Lazada was reducing personnel at its pick-up department, and that it would be retaining only five pick-up riders. This prompted Borromeo and Parcia to file before the NLRC a complaint for illegal dismissal, nonpayment of overtime pay, holiday pay, holiday premium pay, rest day premium pay, service incentive leave pay, and 13th month pay, illegal deductions on their respective surety bonds,

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5 *Rollo*, p. 12.
6 *Id.* at 208–214.
7 *Id.* at 215–221.
8 *Id.* at 208, 212, 214–215, 218.
9 *Id.* at 12–13.

regularization, as well as for payment of moral and exemplary damages and attorney's fees.[10]

Borromeo and Parcia claimed that they were regular employees of Lazada not only because their work were directly related and usually desirable to the business of Lazada which was the selling of products online, but also due to the fact that RGServe and Dynamic were labor-only contractors. They assert that their dismissal was illegal as it was made without legal basis since they did not commit any misconduct against Lazada. Procedural due process was likewise not observed before their services were terminated.[11]

Lazada moved for the dismissal of the complaint and countered that Borromeo and Parcia were independent contractors and not its employees for the following reasons: (a) they make use of their own vehicles in providing the contracted services; (b) they were duly registered and licensed to perform delivery and transportation services with the pertinent business permits, Bureau of Internal Revenue (BIR) and Department of Trade and Industry (DTI) registrations; and (c) their individual contracts explicitly provided that there will be no employer-employee relationship between the parties.[12]

Lazada further claimed that its contract with Borromeo expired on March 30, 2017 and the same was not renewed because Borromeo did not agree to do last mile delivery services. On the other hand, its contract with Parcia was still in effect when he was informed that there was going to be a change from first mile pick up to last mile delivery. Since Parcia no longer went back to work after asking for time to consider the proposed change in his service route, Lazada decided to terminate the contract. It served a Notice of Pre-Termination[13] dated September 5, 2017, but Parcia refused to accept it. Lazada argued that Borromeo and Parcia were not illegally dismissed because they were never its employees. Thus, the case did not fall within the jurisdiction of the Labor Arbiter, and Borromeo and Parcia were not entitled to their monetary claims which were reserved only for regular employees. There was also no basis to implead Doronollo, Ancheta, Delantar, and Reyes.[14]

In a Decision,[15] the Labor Arbiter dismissed Borromeo and Parcia's complaint for lack of jurisdiction after finding that there was no employer-employee relationship between the parties. The Labor Arbiter held that the

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10 *Id.* at 14–15, 121.
11 *Id.* at 14, 126–127, 274.
12 *Id.* at 275, 316.
13 *Id.* at 229.
14 *Id.* at 275.
15 *Id.* at 272–280. The April 30, 2018 Decision in NLRC Case No. NCR-10-15563-17 was penned by Labor Arbiter Alberto B. Dolosa of the National Labor Relations Commission, Regional Arbitration Branch, National Capital Region.

Agreement between the parties, the BIR Authority for Borromeo and Parcia to print official receipts, BIR Certificate of Registration, and DTI Certificate of Business Name Registration in their names sufficiently proved that Borromeo and Parcia were not employees of Lazada, but that they were separately engaged as independent contractors to undertake delivery and transportation business using motor vehicles registered in their names at the rate of PHP 1,200.00 for a full day of actual service, inclusive of fuel costs, telephone contacts with customers and other expenses, payable every 15th and 30th day of the month. The fact that Borromeo and Parcia issued BIR official receipts for the service fees they received and that Lazada did not deduct the mandatory Social Security System (SSS), PhilHealth, and Pag-Ibig contributions from their fees all the more showed that they were not its employees. The parties' desire not to be bound by the employer-employee relationship was expressly stipulated in the Agreements they signed.[16]

The Labor Arbiter continued that the control test in determining the existence of employer-employee relationship between the parties was not also satisfied in that it was not sufficiently shown that Lazada controlled the means and methods by which they individually fulfilled their obligations as Lazada's only concern was that they get the deliveries done. Lazada's act of providing them with route sheets did not negate the existence of independent contractor agreement since the route sheets only apprised them where to pick-up the parcels for delivery to Lazada's warehouse, and eventually for dispatch to the buyers, and it was not a means to dictate upon them the method to be employed to attain the desired result. Thus, instead of being illegally dismissed, the Labor Arbiter found that the Agreement between Lazada and Parcia was pre-terminated on September 5, 2017 under Clause 7 thereof, while Lazada's contract with Borromeo ended on March 30, 2017. The Labor Arbiter concluded that since no employer-employee relationship existed between the parties, their contracts were governed by the Civil Code and the Labor Arbiter had no jurisdiction over the complaint.[17]

The Labor Arbiter also noted that Borromeo and Parcia did not implead as indispensable parties RGServe and Dynamic, the manpower agencies that initially hired them as delivery riders for Lazada. As such, their unsubstantiated allegation that RGServe and Dynamic were mere labor-only contractors which made them regular employees of Lazada could not be passed upon.[18] The Labor Arbiter disposed of the case in this wise:

> WHEREFORE, premises considered, respondents' Motion to Dismiss is hereby GRANTED.
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> Let this case be as it is hereby DISMISSED for lack of jurisdiction,

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16 *Id.* at 277–278.
17 *Id.* at 278–279.
18 *Id.* at 277.

there being no employer-employee relationship existing between the complainants and respondents.

SO ORDERED.[19]

On appeal, the NLRC rendered a Decision[20] affirming the judgment of the Labor Arbiter that there was no employer-employee relationship between the riders and Lazada, substantially echoing the reasons set forth by the Labor Arbiter to support his findings. Like the Labor Arbiter, the NLRC held that their relationship was governed by the Civil Code provisions on contracts. Absent any showing that the terms thereof were contrary to law, morals, good customs, public order or public policy, the parties' freedom to stipulate and agree on the terms and conditions of the contract shall prevail and govern their relationship. As with the Labor Arbiter, the NLRC held further that Borromeo and Parcia's claim that they should be regarded as regular employees of Lazada on account of their engagement by RGServe and Dynamic, whom they claim were labor-only contractors, could not be passed upon for failure to implead the alleged labor only contractors.[21] The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED.

SO ORDERED.[22]

Borromeo and Parcia moved for reconsideration, but the NLRC denied it in its Resolution[23] for lack of merit.

Undaunted, Borromeo and Parcia elevated the matter to the CA via a Rule 65 petition. They alleged that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in ruling that they were independent contractors and that no employer-employee relationship existed between them and Lazada, and that they were not illegally dismissed from employment; hence, not entitled to reinstatement with full backwages, damages, and attorney's fees.[24]

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19 *Id.* at 280.

20 *Id.* at 316–327. The July 23, 2018 Decision in NLRC LAC No. 07-002366-18 (NLRC Case No. NCR-10-15563-17) was penned by Commissioner Cecilio Alejandro C. Villanueva and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr. of the Third Division, National Labor Relations Commission, Quezon City.

21 *Id.* at 325–326.

22 *Id.* at 326.

23 *Id.* at 335–336.

24 *Id.* at 72.

In its Decision,[25] the CA found the said Petition without merit. It agreed with the NLRC that Borromeo and Parcia were independent contractors for the following reasons: (a) Borromeo and Parcia's respective registrations with the DTI and BIR showed that they were carrying on independent businesses; (b) Borromeo and Parcia's respective Agreements with Lazada showed that they were hired as independent contractors; (c) the Agreements they respectively signed with Lazada provided that they had to use their own vehicle in carrying out logistics and delivery services for Lazada; (d) the parties agreed in the said Agreements that there would be no employer-employee relationship between them; (e) the term and duration of Borromeo and Parcia's engagement with Lazada were expressly indicated in their respective Agreements along with the grounds for the termination of their engagement by either party; (f) the Agreements clearly indicated that Lazada would pay Borromeo and Parcia PHP 1,200.00 for each full day of service where a 2% withholding tax was imposed instead of the compulsory deductions on wages; (g) Lazada did not exercise control over Borromeo and Parcia's work as their respective Agreements required them to use diligent efforts, professional skills, and sound judgment in rendering their services; and (h) Borromeo and Parcia were allowed to assign their rights and obligations under the Agreements with the approval of Lazada in writing. Considering that there was no employer-employee relationship between the riders and Lazada, the nonrenewal or termination of their Agreements did not constitute illegal dismissal as would entitle them to the reliefs they prayed for.[26] The CA disposed of the case in this wise:

> The Petition for *Certiorari* dated 22 November 2018 is DENIED for lack of merit.
>
> IT IS SO ORDERED.[27]

Borromeo and Parcia filed a Motion for Reconsideration, which was denied by the CA in its Resolution.[28]

Hence, the present Petition.

At the outset, Borromeo and Parcia admit that their Petition was not filed on time. However, they placed the blame on their former counsel whom they claim made them believe that they only have 15 days from receipt of the CA Resolution to file a petition before this Court, and that they could not ask for an extension of time to file a petition, as in fact, their former counsel did

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25 *Id.* at 64–84.
26 *Id.* at 76–77, 79–80, 83.
27 *Id.* at 84.
28 *Id.* at 87–93.

not really do. They were also deceived that they will be imprisoned if they pursue the filing of a petition after the lapse of the 15-day reglementary period. Due to their former counsel's misrepresentation, they were not able to protect their rights and avail of the proper legal remedies within the allowable period under the Rules of Court. They contend that the gross negligence of their counsel should not prejudice them. Thus, Borromeo and Parcia plead with this Court that their Petition be duly considered on its merits in the interest of substantial justice inasmuch as they have meritorious grounds to warrant the review sought.[29]

Borromeo and Parcia argue that the CA erred in holding that they are independent contractors and not employees of Lazada considering that this Court, in *Ditiangkin v. Lazada*,[30] a case with the same factual milieu with the case at bench, invalidated the independent contractor agreement entered into by Lazada and its riders and ruled that they are considered as employees of Lazada.[31]

Aside from the pronouncement in *Ditiangkin*, Borromeo and Parcia insisted that the four-fold test in determining the existence of an employer-employee relationship was duly satisfied in that it was shown that: (a) they were selected and hired because they were former employees of RGServe and Dynamic, the contractors previously engaged by Lazada; (b) they were paid service fees which were actually compensation for the work they perform for Lazada; (c) Lazada has the right to terminate their employment in case of breach of the terms of their contracts; and (d) Lazada exercises direct control and supervision over the performance of their work.[32]

Borromeo and Parcia claim that the power of control exercised by Lazada over the way they carried out their work is apparent as they were required to submit an accomplished route sheet where they must indicate the arrival, departure, and unloading time of the items they pick-up from the merchants. Their supervisors gave them instructions on how to perform their work as well as the routes they must follow, and monitored their performance. In addition, they were also solely liable for the total cost and value of the packages in the event they are lost or damaged regardless of the reason for the same, which Lazada could deduct from any amount due them for the services they have rendered. Aside from picking up items based on the route sheets they were provided, they were also required to retrieve items from the return department and return them to the merchants even if such task is no longer part of their job.[33]

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29 *Id.* at 4–8.
30 G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division].
31 *Rollo*, pp. 25–30.
32 *Id.* at 31–33.
33 *Id.* at 34–37.

More, Borromeo and Parcia contend that the fact that they were issued Lazada identification cards, and that they are economically dependent upon Lazada for their continued employment demonstrate that they are its employees. They likewise insist that there is no legitimate job contracting arrangement in this case since they were not hired by any contractor but were employed directly by Lazada. Their registrations with the DTI and the BIR should not also be regarded as proof that they are independent contractors given that the dates indicating their application for these agencies show that they coincide with the dates they signed their respective Agreements with Lazada. This shows that such registrations were imposed by Lazada as a condition for their continued employment.[34]

The riders also stress that they have acquired regular status of employment since they have rendered more than one year of service to Lazada at the time of their dismissal on August 23, 2017. Aside from the length of their service, the delivery service they perform for Lazada, which is irrefutably necessary and desirable to the usual trade and business of Lazada, further prove their regular status of employment. As regular employees, their unilateral dismissal from work effective August 23, 2017 without just or authorized cause and without affording them notice and hearing prior to their termination, render the same illegal.[35]

In view of the illegality of their termination from employment, Borromeo and Parcia aver that they are entitled to backwages computed from the time of their dismissal until their actual reinstatement. Since there is no showing that they were paid overtime pay, 13th month pay, holiday pay, holiday premium pay, and rest day pay, the same must likewise be awarded to them. They are also entitled to moral damages as Lazada's acts are oppressive to labor and contrary to law and morals. Exemplary damages are also due them in order to temper down the deleterious acts of Lazada. Attorney's fees must also be awarded to them because their wages were withheld without valid and legal basis as a result of their illegal dismissal. Doronolla, Ancheta, Delantar, and Reyes must be held solidarily liable with Lazada not only because they assented to the patently illegal acts of Lazada, but also because they actively participated in dismissing Borromeo and Parcia. Thus, they should not be allowed to use the separate corporate personality of Lazada to escape personal liability.[36]

In their Comment,[37] Lazada et al. countered that the Court should dismiss the Petition outright for being filed 10 months late. Borromeo and

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34 *Id.* at 38–41.
35 *Id.* at 41–42, 44–47.
36 *Id.* at 50–53.
37 *Id.* at 473–496.

Parcia should not be allowed to simply allege gross negligence on the part of their former counsel without any evidence to substantiate their claim and invoke substantial justice, without more, in order for this Court to condone their procedural lapses.[38]

Even if this Court were to brush aside the technical rules of procedure, Lazada et al. posit that the CA did not err when it ruled that Borromeo and Parcia were independent contractors and, therefore, not employees of Lazada. They argue that the pronouncement in *Ditiangkin* could not be applied here because the factual circumstances of the two cases differ, to wit: (a) the petitioners in *Ditiangkin* were actually removed from their usual routes, which is not the case here. Borromeo no longer worked for Lazada because his contract already ended on March 30, 2017. As for Parcia, his contract was preterminated when he never returned to work upon being informed of the change in his delivery route; (b) the petitioners in *Ditiangkin* alleged from the start that they did not have substantial capital or investment to be independent contractors, while Borromeo and Parcia never made such claim and even agreed in their respective contracts that they shall provide necessary equipment and manpower in order to comply with their contractual obligations; (c) unlike the petitioners in *Ditiangkin*, Borromeo and Parcia warrant that they are duly registered and licensed to perform delivery and transportation services. Their separate BIR and DTI registrations unequivocally show that the services they performed for Lazada are part of their own separate businesses; and (d) unlike *Ditiangkin*, Lazada et al. was able to discharge its burden of proving that Borromeo and Parcia are independent contractors.[39]

Further, Lazada et al. stress that regardless of the ruling in *Ditiangkin*, the pieces of evidence proffered by the parties support the findings of the Labor Arbiter, the NLRC, and the CA that Borromeo and Parcia are not its employees for the following reasons: (a) the parties mutually agreed in their respective Agreements that they will not be bound by any employer-employee relationship; (b) the relationship between the parties is purely contractual in that Lazada pays them service fees for each day's delivery, not wages, where a 2% percent withholding tax is imposed; and (c) Lazada never controlled the means and method by which Borromeo and Parcia accomplish their work.[40]

Lazada et al. add that there is no merit in the riders' contention that the identification cards issued to them by Lazada prove that they are its employees given its indication that they are engaged as independent contractors. Also, the fact that Borromeo and Parcia received payments for their services from

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38 *Id.* at 474, 476–477, 493.
39 *Id.* at 478–480.
40 *Id.* at 481, 483–488.

Lazada did not mean that they were economically dependent on the company considering that it did not give them any employment benefits.[41]

Since Borromeo and Parcia are not employees of Lazada, they were not entitled to reinstatement and backwages as these reliefs are available only to illegally dismissed employees. Lazada et al. also insisted that Borromeo and Parcia's money claims lack basis. Their claims for moral and exemplary damages as well as attorney's fees must likewise be dismissed due to absence of competent evidence that Lazada acted in a malevolent and oppressive manner. Given that Borromeo and Parcia are not its employees, it is impossible for Lazada to dismiss them oppressively or otherwise. Finally, Lazada averred that Doronollo, Ancheta, Delantar, and Reyes should not be held personally liable to Borromeo and Parcia since they are just mere employees of Lazada. In the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities, if there be any.[42]

The issues for this Court's resolution are: (a) whether the Petition should be dismissed outright for being filed beyond the reglementary period and (b) whether the CA erred in ruling that the NLRC did not gravely abuse its discretion when it held Walter L. Borromeo and Jimmy N. Parcia as independent contractors.

This Court's Ruling

A party desiring to appeal an adverse judgment, final order, or resolution rendered by the CA, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts or other courts, when allowed by law, in cases other than criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment,[43] may file a petition for review on *certiorari* before this Court.[44] However, before this Court takes cognizance of such petition, the basic procedural standards set forth under Rule 45 must first be satisfied.[45] These are as follows:

> (1) that the petition does not only exclusively raise questions of law, but also that it distinctly sets forth those legal issues;
> (2) that it be filed within 15 days of notice of the adverse ruling that impels it;
> (3) that docket and other lawful fees are paid;
> (4) that proper service is made;

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41 *Id.* at 488.
42 *Id.* at 489–493.
43 RULES OF COURT, rule 45, sec. 9.
44 RULES OF COURT, rule 45, sec. 1.
45 *Kumar v. People*, 874 Phil. 214, 221 (2020) [Per J. Leonen, Third Division].

(5) that all matters that Section 4 specifies are indicated, stated, or otherwise contained in it;
(6) that it is manifestly meritorious;
(7) that it is not prosecuted manifestly for delay; and
(8) that the questions raised in it are of such substance as to warrant consideration.[46] (Citations omitted)

Inasmuch as petitioners were not able to file their petition within the 15-day reglementary period, one of the requisites mentioned above, this Court is at liberty to deny outright or deny due course to the Rule 45 Petition they filed.[47] The dismissal of a belatedly-filed petition also finds support under Section 5(a), Rule 56 of the Rules of Court. The Section reads:

Section 5. Grounds for dismissal of appeal. – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

(a) Failure to take the appeal within the reglementary period[.]

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[48] Thus:

An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules needs to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants[.][49] (Citations omitted)

This Court is keenly aware that procedural rules are not to be brushed off or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is also true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, heedful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard.[50] Rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. As such, its strict and rigid application that would result in technicalities that tend to frustrate rather than promote

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46 *Id.* at 221–222.
47 *Id.* at 222.
48 *Boardwalk Business Ventures, Inc. v. Villareal*, 708 Phil. 443, 445 (2013) [Per J. Del Castillo, Second Division].
49 *Fenequito v. Vergara, Jr.*, 691 Phil. 335, 342 (2012) [Per J. Peralta, Third Division].
50 *Pimentel v. Adiao*, 842 Phil. 394, 403 (2018) [Per J. Caguioa, Second Division].

justice must be avoided.[51] Technical rules of procedure may also be relaxed to relieve a litigant of an injustice not commensurate with the degree of their thoughtlessness in not complying with the prescribed procedure, as in this case.[52]

As will be shown below, the CA gravely erred when it ruled that the NLRC did not gravely abuse its discretion in holding that petitioners are independent contractors, hence, not employees of Lazada.

An independent contractor is defined as:

> one 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.[53] (Citation omitted)

Article 106 of the Labor Code recognizes independent contractors,[54] which provides:

> ART. 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.
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> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in

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51 *Malixi v. Baltazar*, 821 Phil. 423, 442 (2017) [Per J. Leonen, Third Division].

52 *Department of Agrarian Reform Multi-Purpose Cooperative v. Diaz*, 832 Phil. 95, 108 (2018) [Per J. Leonen, Third Division].

53 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 424 (2014) [Per J. Leonen, Second Division].

54 *Id.*

> the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In *Ditiangkin*, this Court ruled that:

> [T]o 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. Section 8 of DOLE Department Order No. 174-2017 lays down the conditions for permissible contracting or subcontracting:
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> > 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 occur:
> >
> > 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 results 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.[55]

It must be underscored that there are three parties in a legitimate contracting relationship, namely: the principal, the contractor, and the contractor's employees.[56] In this trilateral relationship, the principal engages the contractor's services. In turn, the contractor hires workers to accomplish

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55 *Ditiangkin v. Lazada*, G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division] at 18. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

56 *Ortiz v. Forever Richsons Trading Corporation*, G.R. No. 238289, January 20, 2021 [Per J. M. Lopez, Second Division].

the work for the principal.[57] The principal controls the contractor and its employees with respect to the ultimate results or output of the contract, while the contractor controls its employees with respect not only to the results to be attained, but also with respect to the means and manner of achieving the desired outcome.[58]

Another kind of independent contractor has been recognized by jurisprudence—individuals with unique skills and talents that set them apart from ordinary employees. There is no trilateral relationship in this case, considering that the independent contractor directly performs the work for the principal. As such, the relationship is bilateral.[59]

Without a doubt, petitioners do not fall under any of these categories of independent contractors. They do not fall under the first category of independent contractor as there exists no trilateral relationship in this case. From the parties' submissions, it is clear that they were not hired by any contractor to do work for Lazada. Petitioners directly signed a contract with Lazada after their contract with RGServe and Dynamic expired. It is also Lazada who personally paid them for their services.[60] Petitioners cannot also be considered as independent contractors in a bilateral relationship inasmuch as the delivery service they performed for Lazada does not require unique skills and talents as would set them apart from ordinary employees.[61]

Having settled that petitioners are not independent contractors, the next question to be answered is whether they are Lazada's regular employees.

This Court answers in the affirmative.

In order to determine whether an employment relationship exists between the parties, this Court has applied the four-fold test:

> In determining the existence of an employer-employee relationship, this Court has generally relied on the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. Among the four, the most determinative factor in ascertaining the existence of employer-employee relationship is the "right of control test." It is

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57 *Ditiangkin v. Lazada*, G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division] at 18. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

58 *Ortiz v. Forever Richsons Trading Corporation*, G.R. No. 238289, January 20, 2021 [Per J. M. Lopez, Second Division].

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

60 *Ditiangkin v. Lazada*, G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division] at 19. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

61 *Id.* at 18.

> deemed to be such an important factor that the other requisites may even be disregarded. This holds true where the issues to be resolved is whether a person who performs work for another is the latter's employee or is an independent contractor, as in this case. For where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the means by which such end is reached, employer-employee relationship is deemed to exist.[62] (Citations omitted)

This Court, in *San Miguel Foods, Inc. v. Rivera*,[63] defined control in this wise:

> It is worthy to note this Court's pronouncement in *Royale Homes Marketing Corporation v. Alcantara*, citing *Insular Life Assurance Co., Ltd v. National Labor Relations Commission,* viz[.]:
>
> > Not every form of control is indicative of employer-employee relationship. A person who performs work for another and is subjected to its rules, regulations, and code of ethics does not necessarily become an employee. *As long as the level of control does not interfere with the means and methods of accomplishing the assigned tasks, the rules imposed by the hiring party on the hired party do not amount to the labor law concept of control that is indicative of employer-employee relationship.* In *Insular Life Assurance Co., Ltd v. National Labor Relations Commission* (citation omitted) it was pronounced that:
> >
> > > 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 and 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[.][64] (Emphasis supplied, citations omitted)

On certain occasions where the control test is not sufficient to give a complete picture of the relationship between the parties, the economic realities of the employment relations may also be considered in order to provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer, or some other capacity.[65]

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62 *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744, 757–758 (2014) [Per J. Del Castillo, Second Division].

63 824 Phil. 961 (2018) [Per J. Velasco, Jr., Third Division].

64 *Id.* at 980–981.

65 *Francisco v. National Labor Relations Commission*, 532 Phil. 399, 407 (2006) [Per J. Ynares-Santiago, First Division].

In *Francisco v. National Labor Relations Commission*,[66] this Court had the occasion to discuss the economic reality test in this wise:

> In *Sevilla v. Court of Appeals*, we observed the need to consider the existing economic conditions prevailing between the parties, in addition to the standard of right-of-control like the inclusion of the employee in the payrolls, to give a clearer picture in determining the existence of an employer-employee relationship based on an analysis of the totality of economic circumstances of the worker.
>
> Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.
>
> The proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business. In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency. By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the economic dependence of the worker on his employer.[67] (Citations omitted)

The facts in *Ditiangkin* are practically identical to this case. In *Ditiangkin*, the petitioners alleged that they were hired by Lazada in February 2016 as pick-up riders. They were also made to sign an Independent Contractor Agreement, which provides that they will be paid PHP 1,200.00 service fee per day. They also used their privately-owned motorcycles in their trips.[68]

Applying the four-fold test, this Court, in *Ditiangkin*, ruled:

> Here, the four factors are present. First, petitioners are directly employed by respondent Lazada as evidenced by the Contracts they signed. Petitioners['] 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 [PHP] 1,200.00 for each day of

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66 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].

67 *Id.* at 407.

68 *Ditiangkin v. Lazada*, G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division] at 2. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

> 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 material provisions of the Contract. Lastly, respondent Lazada has control over the means and methods of the performance of petitioners' work.[69] (Citation omitted)

In the same vein, the four factors determinative of employer-employee relationship are likewise present here. First, Lazada directly employed petitioners, albeit via an Independent Contractor Agreement; second, Lazada pays them PHP 1,200.00 per day of service rendered; third, Lazada holds the power to dismiss petitioners, as in fact it did; and fourth, Lazada controls the means and methods of the performance of petitioners' work.

This element of control is shown by the fact that petitioners are required to log in the route sheets their arrival time, loading time, and departure time to allow Lazada to monitor their movement as well as how they conduct their services. Aside from these, petitioners are also required to report their arrival at every store where they are tasked to pick up items to the Lazada monitoring supervisor and route monitoring staff in real time so that they can scan the items.[70] Remarkably, the means of logging the data of the items picked up is also dictated by Lazada as it is the company that provided the petitioners the gadgets and equipment for scanning the items, namely, mobile phone scanner, power bank, and postpaid, as evidenced by the Accountability Forms submitted.[71]

Further, petitioners' Agreement identically states under Annex I thereof that "the Services provided will be evaluated on a monthly and quarterly basis. In the event that the Contractor cannot meet the standards set in relation to the Services, the Client shall have the right to terminate this agreement immediately by providing written notice."[72] All these circumstances show that Lazada exercises control over petitioners' means and methods of rendering their service.

Aside from the four-fold test, petitioners were also able to satisfy the Economic Reality Test. Having substantially the same factual milieu, this Court reiterates our pronouncement in *Ditiangkin* on this matter:

> 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

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69 *Id.* at 19–20.
70 *Rollo*, p. 124.
71 *Id.* at 169.
72 *Id.* at 147, 155.

> 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. 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.
>
> Further, petitioner 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.
>
> 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.[73] (Citations omitted)

As regular employees[74] of Lazada, petitioners having been engaged to perform tasks usually necessary, desirable or integral to the usual trade and business of Lazada as discussed above. petitioners have a right to security of tenure.

Security of tenure dictates that the dismissal of regular employees by the employer requires the observance of the two-fold due process, namely: (1) substantive due process; and (2) procedural due process.[75]

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73 *Ditiangkin v. Lazada*, G.R. No. 246892, September 21, 2022 [Per SAJ, Leonen, Second Division] at 20–21. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website

74 LAB. CODE, art. 295 provides:

Article 295. [280] Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work of 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.

75 *Agustin v. Alphaland Corporation*, 883 Phil. 177, 188 (2020) [Per J. Carandang, Third Division].

Substantive due process requires that the dismissal must be for just causes provided under Article 297 of the Labor Code or the company rules and regulations promulgated by the employer; or authorized causes under Articles 298 and 299 of the Labor Code.[76]

Procedural due process, on the other hand, consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the employee's termination may be effected. The first notice must apprise the employee of the particular acts or omissions for which the employee's dismissal is sought. The second notice informs the employee of the employer's decision to dismiss him/her.[77]

Lazada failed to prove that the dismissal of petitioners was for any of the just or authorized causes under the law inasmuch the dismissal of Borromeo was premised on the nonrenewal of his contract, while Parcia's contract was preterminated on Lazada's erroneous supposition that they are independent contractors. There is also no showing that the twin requirements of notice and hearing had been complied with. Since petitioners were denied of their right to substantive and procedural due process, it is clear that they were illegally terminated from their employment.

As a consequence of petitioners' illegal dismissal, they are entitled under Article 294 of the Labor Code of the following reliefs: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent.[78] In the event that reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to the payment of backwages.[79] Petitioners are also entitled to attorney's fees, considering that they were forced to litigate and, thus, incurred expenses to protect their rights and interest.[80]

However, this Court withholds the grant of moral and exemplary damages in favor of petitioners. Moral damages are recoverable when the termination of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy. On the other hand, exemplary damages are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.[81] In our view, the dismissal of petitioners was not done

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76 *Id.*

77 *Foodbev International v. Ferrer*, 863 Phil. 82, 108 (2019) [Per J. J. Reyes, Jr., Second Division].

78 *Agustin v. Alphaland Corporation*, 883 Phil. 177, 189 (2020) [Per J. Carandang, Third Division].

79 *Genuino Agro-Industrial Dev't. Corporation v. Romano*, 863 Phil. 360, 379 (2019) [Per J. J. Reyes, Jr., Second Division].

80 *Paralege v. GMA Network, Inc.*, 877 Phil. 140, 183–184 (2020) [Per J. Leonen, Third Division].

81 *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, 854 Phil. 100,

with ill will. Aside from the fact that petitioners' dismissal was done illegally given that it did not comply with the due process requirements, the records fail to yield any evidence showing that their dismissal was done in bad faith or oppressively, or that petitioners were subjected to unnecessary embarrassment or humiliation so as to entitle them to moral and exemplary damages.[82]

In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment of employees when the same is done with malice or in bad faith.[83] Given that no bad faith attended the dismissal of petitioners, it follows that Doronollo, Ancheta, Delantar, and Reyes cannot be held solidarily liable with Lazada.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED.** The May 23, 2022 Decision and the September 27, 2022 Resolution of the Court of Appeals in CA-G.R. SP No. 158478 are **REVERSED.** Respondent Lazada E-Services Philippines, Inc. is **ORDERED** to **REINSTATE** Walter L. Borromeo and Jimmy N. Parcia to their former positions, and to pay their full backwages, holiday pay, holiday premium pay, rest day premium pay, service incentive leave pay, thirteenth month pay, surety bond deposit, and other benefits and privileges from the time of their illegal dismissal up to the time of their actual reinstatement.

This case is **ORDERED REMANDED** to the Labor Arbiter for the computation of the total monetary benefits awarded and due to Walter L. Borromeo and Jimmy N. Parcia. All monetary awards shall be subject to the interest rate of 6% per annum from the date of finality of this Decision until full payment.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

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118 (2019) [Per J. Leonen, Third Division].

82 *Lopez v. Javier*, 322 Phil. 70, 83 (1996) [Per J. Romero, Second Division].

83 *Polymer Rubber Corp. v. Salamuding*, 715 Phil. 141, 152–154 (2013) [Per J. Reyes, First Division].

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. 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, Second Division

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.

ALEXANDER G. GESMUNDO
Chief Justice