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SECOND DIVISION

[G.R. No. 169207. March 25, 2010]

WPP MARKETING COMMUNICATIONS, INC., JOHN STEEDMAN, MARK WEBSTER, and NOMINADA LANSANG, *petitioners, vs.* **JOCELYN M. GALERA,** *respondent.*

[G.R. No. 169239. March 25, 2010]

JOCELYN M. GALERA, *petitioner, vs.* **WPP MARKETING COMMUNICATIONS, INC., JOHN STEEDMAN, MARK WEBSTER, and NOMINADA LANSANG,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATE OFFICERS; GIVEN SUCH CHARACTER EITHER BY THE CORPORATION CODE OR BY THE CORPORATION'S BY-LAWS.— Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws. Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

2.LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; APPLIED IN CASE AT BAR.— The appellate court x x x justified that Galera was an employee and not a corporate officer by subjecting WPP and Galera's relationship to the four-fold test: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. The appellate court found: "x x x Sections 1 and 4 of the employment contract mandate where and how often

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she is to perform her work; Sections 3, 5, 6 and 7 show that wages she receives are completely controlled by x x x WPP; and Sections 10 and 11 clearly state that she is subject to the regular disciplinary procedures of x x x WPP. Another indicator that she was a regular employee and not a corporate officer is Section 14 of the contract, which clearly states that she is a permanent employee — not a Vice-President or a member of the Board of Directors. x x x Another indication that the Employment Contract was one of regular employment is Section 12, which states that the rights to any invention, discovery, improvement in procedure, trademark, or copyright created or discovered by petitioner GALERA during her employment shall automatically belong to private respondent WPP. x x x Another convincing indication that she was only a regular employee and not a corporate officer is the disciplinary procedure under Sections 10 and 11 of the Employment Contract, which states that her right of redress is through Mindshare's Chief Executive Officer for the Asia-Pacific. This implies that she was not under the disciplinary control of private respondent WPP's Board of Directors (BOD), which should have been the case if in fact she was a corporate officer because only the Board of Directors could appoint and terminate such a corporate officer."

3. ID.; ID.; LABOR ARBITERS AND THE NATIONAL LABOR RELATIONS COMMISSION; JURISDICTION.— Galera being an employee, then the Labor Arbiter and the NLRC have jurisdiction over the present case. Article 217 of the Labor Code provides: "*Jurisdiction of Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural: 1. Unfair labor practice cases; 2. Termination disputes; 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment; 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations; 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; 6. Except claims for Employees Compensation, Social Security, Medicare and

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other maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters. (c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements."

4. ID.; ID.; TERMINATION OF EMPLOYMENT; JUST OR AUTHORIZED CAUSE; NOT PRESENT IN CASE AT BAR.— Apart from Steedman's letter dated 15 December 2000 to Galera, WPP failed to prove any just or authorized cause for Galera's dismissal. x x x WPP, Steedman, Webster, and Lansang x x x failed to substantiate the allegations in Steedman's letter. Galera, on the other hand, presented documentary evidence in the form of congratulatory letters, including one from Steedman, which contents are diametrically opposed to the 15 December 2000 letter.

5. ID.; ID.; ID.; TWO-NOTICE RULE; NON-COMPLIANCE THEREWITH TAINTS THE DISMISSAL WITH ILLEGALITY.— The law x x x requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. Failure to comply with the requirements taints the dismissal with illegality. WPP's acts clearly show that Galera's dismissal did not comply with the two-notice rule.

6. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; EMPLOYMENT OF ALIENS; EMPLOYMENT PERMIT, REQUIRED FOR ENTRY.— The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment

purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor." Section 4, Rule XIV, Book 1 of the Implementing Rules and Regulations provides: "*Employment permit required for entry.* — No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit."

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for WPP Marketing & Communications, Inc., John Steedman, Mark Webster & Nominada Lansang.

Picazo Buyco Tan Fider & Santos and Cer*vantes Jurisprudencia and Partners* for Jocelyn M. Galera.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

G.R. Nos. 169207 and 169239 are petitions for review[1] assailing the Decision[2] promulgated on 14 April 2005 as well as the Resolution[3] promulgated on 1 August 2005 of the Court of Appeals

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 169207), pp. 10-43; *rollo*, (G.R. No. 169239), pp. 40-73. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring; Associate Justice Jose Catral Mendoza, concurring and dissenting; and Associate Justice Celia C. Librea-Leagogo, dissenting.

[3] *Rollo* (G.R. No. 169207), pp. 63-64; *rollo*, (G.R. No. 169239), pp. 93-94. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring; Associate Justice Jose Catral Mendoza, concurring and dissenting; and Associate Justice Celia C. Librea-Leagogo, dissenting.

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(appellate court) in CA-G.R. SP No. 78721. The appellate court granted and gave due course to the petition filed by Jocelyn M. Galera (Galera). The appellate court's decision reversed and set aside that of the National Labor Relations Commission (NLRC), and directed WPP Marketing Communications, Inc. (WPP) to pay Galera backwages, separation pay, unpaid housing benefit, unpaid personal and accident insurance benefits, cash value under the company's pension plan, 30 days paid holiday benefit, moral damages, exemplary damages, 10% of the total judgment award as attorney's fees, and costs of the suit.

The Facts

The appellate court narrated the facts as follows:

> Petitioner is Jocelyn Galera (GALERA), a [sic] American citizen who was recruited from the United States of America by private respondent John Steedman, Chairman-WPP Worldwide and Chief Executive Officer of Mindshare, Co., a corporation based in Hong Kong, China, to work in the Philippines for private respondent WPP Marketing Communications, Inc. (WPP), a corporation registered and operating under the laws of Philippines. GALERA accepted the offer and she signed an Employment Contract entitled "Confirmation of Appointment and Statement of Terms and Conditions" (Annex B to Petition for *Certiorari*). The relevant portions of the contract entered into between the parties are as follows:
>
> Particulars:
> Name: Jocelyn M. Galera
> Address: 163 Mediterranean Avenue
> Hayward, CA 94544
> Position: Managing Director
> Mindshare Philippines
> Annual Salary: Peso 3,924,000
> Start Date: 1 September 1999
> Commencement Date: 1 September 1999
> (for continuous service)
> Office: Mindshare Manila
>
> 6. Housing Allowance
> The Company will provide suitable housing in Manila at a maximum cost (including management fee and other associated costs) of Peso 576,000 per annum.

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7. Other benefits.

The Company will provide you with a fully maintained company car and a driver.

The Company will continue to provide medical, health, life and personal accident insurance plans, to an amount not exceeding Peso 300,000 per annum, in accordance with the terms of the respective plans, as provided by JWT Manila.

The Company will reimburse you and your spouse one way business class air tickets from USA to Manila and the related shipping and relocation cost not exceeding US$5,000 supported by proper documentation. If you leave the Company within one year, you will reimburse the Company in full for all costs of the initial relocation as described therein.

You will participate in the JWT Pension Plan under the terms of this plan, the Company reserves the right to transfer this benefit to a Mindshare Pension Plan in the future, if so required.

8. Holidays

You are entitled to 20 days paid holiday in addition to public holidays per calendar year to be taken at times agreed with the Company. Carry-over of unused accrued holiday entitlement into a new holiday year will not normally be allowed. No payment will be made for holidays not taken. On termination of your employment, unless you have been summarily dismissed, you will be entitled to receive payment for unused accrued holiday pay. Any holiday taken in excess of your entitlement shall be deducted from your final salary payment.

9. Leave Due to Sickness or Injury

The maximum provision for sick leave is 15 working days per calendar year.

12. Invention/Know-How

Any discovery, invention, improvement in procedure, trademark, trade name, designs, copyrights or get-ups made, discovered or created by you during the continuance of your employment hereunder relating to the business of the Company shall belong to and shall be the absolute property of the Company. If required to do so by the Company (whether during or after the termination of your employment) you shall at the expense of the company execute all instruments and do all things necessary to vest in ownership for all other rights, title and interests (including any registered rights therein) in such discovery, invention, improvement in procedure, trademark,

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trade name, design, copyright or get-up in the Company (or its Nominee) absolutely and as sole beneficial owner.

14. Notice.

The first three months of your employment will be a trial period during which either you or the Company may terminate your employment on one week's notice. If at the end of that period, the Company is satisfied with your performance, you will become a permanent employee. Thereafter you will give Company and the Company will give you three months notice of termination of employment. The above is always subject to the following: (1) the Company's right to terminate the contract of employment on no or short notice where you are in breach of contract; (2) your employment will at any event cease without notice on your retirement date when you are 60 years of age.

SIGNED JOCELYN M. GALERA 8-16-99
Date of Borth [sic] 12-25-55

Employment of GALERA with private respondent WPP became effective on **September 1, 1999** solely on the instruction of the CEO and upon signing of the contract, without any further action from the Board of Directors of private respondent WPP.

Four months had passed when private respondent WPP filed before the Bureau of Immigration an application for petitioner GALERA to receive a working visa, wherein she was designated as Vice President of WPP. Petitioner alleged that she was constrained to sign the application in order that she could remain in the Philippines and retain her employment.

Then, on **December 14, 2000**, petitioner GALERA alleged she was verbally notified by private respondent STEEDMAN that her services had been terminated from private respondent WPP. A termination letter followed the next day.[4]

On 3 January 2001, Galera filed a complaint for illegal dismissal, holiday pay, service incentive leave pay, 13th month pay, incentive plan, actual and moral damages, and attorney's fees against WPP and/or John Steedman (Steedman), Mark Webster (Webster) and Nominada Lansang (Lansang). The case was docketed as NLRC NCR Case No. 30-01-00044-01.

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[4] *Rollo* (G.R. No. 169207), pp. 12-15; *rollo* (G.R. No. 169239), pp. 42-45.

The Labor Arbiter's Ruling

In his Decision dated 31 January 2002, Labor Arbiter Edgardo M. Madriaga (Arbiter Madriaga) held WPP, Steedman, Webster, and Lansang liable for illegal dismissal and damages. Arbiter Madriaga stated that Galera was not only illegally dismissed but was also not accorded due process. Arbiter Madriaga explained, thus:

> [WPP] failed to observe the two-notice rule. [WPP] through respondent Steedman for a five (5) minute meeting on December 14, 2000 where she was verbally told that as of that day, her employment was being terminated. [WPP] did not give [Galera] an opportunity to defend herself and explain her side. [Galera] was even prohibited from reporting for work that day and was told not to report for work the next day as it would be awkward for her and respondent Steedman to be in the same premises after her termination. [WPP] only served [Galera] her written notice of termination only on 15 December 2001, one day after she was verbally apprised thereof.
>
> The law mandates that the dismissal must be properly done otherwise, the termination is gravely defective and may be declared unlawful as we hereby hold [Galera's] dismissal to be illegal and unlawful. Where there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. The law mandates that both the substantive and procedural aspects of due process should be observed. The facts clearly show that respondents were remiss on both aspects. Perforce, the dismissal is void and unlawful.
>
> x x x x x x x x x
>
> Considering the work performance and achievements of [Galera] for the year 2000, we do not find any basis for the alleged claim of incompetence by herein respondents. Had [Galera] been really incompetent, she would not have been able to generate enormous amounts [sic] of revenues and business for [WPP]. She also appears to be well liked as a leader by her subordinates, who have come forth in support of [Galera]. These facts remain undisputed by respondents.
>
> A man's job being a property right duly protected by our laws, an employer who deprives an employee [of] the right to defend himself is liable for damages consistent with Article 32 of the Civil Code.

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To allow an employer to terminate the employment of his worker based merely on allegations without proof places the [employee] in an uncertain situation. The unflinching rule in illegal dismissal cases is that the employer bears the burden of proof.

In the instant case, respondents have not been able to muster evidence to counter [Galera's] allegations. [Galera's] allegations remain and stand absent proof from respondents rebutting them. Hence, our finding of illegal dismissal against respondents who clearly have conspired in bad faith to deprive [Galera] of her right to substantive and procedural due process.[5]

The dispositive portion of Arbiter Madriaga's decision reads as follows:

WHEREFORE, premises considered, we hereby hold herein respondents liable for illegal dismissal and damages, and award to [Galera], by virtue of her expatriate status, the following:

a. Reinstatement without loss of seniority rights.

b. Backwages amounting to $120,000 per year at ₱50.00 to US $1 exchange rate, 13th month pay, transportation and housing benefits.

c. Remuneration for business acquisitions amounting to Two Million Eight Hundred Fifty Thousand Pesos (₱2,850,000.00) and Media Plowback Incentive equivalent to Three Million Pesos (₱3,000,000.00) or a total of not less than One Hundred Thousand US Dollars ($100,000.00).

d. US Tax Protection of up to 35% coverage equivalent to Thirty Eight Thousand US Dollars ($38,000).

e. Moral damages including implied defamation and punitive damages equivalent to Two Million Dollars (US$2,000,000.00).

f. Exemplary damages equivalent to One Million Dollars ($1,000,000.00).

g. Attorney's fees of 10% of the total award herein.

SO ORDERED.[6]

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[5] *Rollo* (G.R. No. 169207), pp. 337-341; *rollo* (G.R. No. 169239), pp. 299-303.

[6] *Rollo* (G.R. No. 169207), p. 344; *rollo* (G.R. No. 169239), p. 306.

The Ruling of the NLRC

The First Division of the NLRC reversed the ruling of Arbiter Madriaga. In its Decision[7] promulgated on 19 February 2003, the NLRC stressed that Galera was WPP's Vice-President, and therefore, a corporate officer at the time she was removed by the Board of Directors on 14 December 2000. The NLRC stated thus:

> It matters not that her having been elected by the Board to an added position of being a member of the Board of Directors did not take effect as her May 31, 2000 election to such added position was conditioned to be effective upon approval by SEC of the Amended By-Laws, an approval which took place only in February 21, 2001, *i.e.*, after her removal on December 14, 2000. What counts is, at the time of her removal, she continued to be WPP's Vice-President, a corporate officer, on hold over capacity.
>
> Ms. Galera's claim that she was not a corporate officer at the time of her removal because her May 31, 2000 election as Vice President for Media, under WPP's Amended By-Laws, was subject to the approval by the Securities and Exchange Commission and that the SEC approved the Amended By-Laws only in February 2001. Such claim is unavailing. Even if Ms. Galera's subsequent election as Vice President for Media on May 31, 2000 was subject to approval by the SEC, she continued to hold her previous position as Vice President under the December 31, 1999 election until such time that her successor is duly elected and qualified. It is a basic principle in corporation law, which principle is also embodied in WPP's by-laws, that a corporate officer continues to hold his position as such until his successor has been duly elected and qualified. When Ms. Galera was elected as Vice President on December 31, 1999, she was supposed to have held that position until her successor has been duly elected and qualified. The record shows that Ms. Galera was not replaced by anyone. She continued to be Vice President of WPP with the same operational title of Managing Director for Mindshare and continued to perform the same functions she was performing prior to her May 31, 2000 election.
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> In the recent case of Dily Dany Nacpil v. International Broadcasting Corp., the definition of corporate officer for purposes of intra-

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[7] *Rollo* (G.R. No. 169239), pp. 140-150. Per Curiam decision signed by Commissioners Roy V. Señeres and Victoriano R. Calaycay.

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corporate controversy was even broadened to include a Comptroller/ Assistant Manager who was appointed by the General Manager, and whose appointment was later approved by the Board of Directors. In this case, the position of comptroller was not even expressly mentioned in the By-Laws of the corporation, and yet, the Supreme Court found him to be a corporate officer. The Court ruled that —

> (since) petitioner's appointment as comptroller required the approval and formal action of IBC's Board of Directors to become valid, it is clear therefore that petitioner is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC... Had the petitioner been an ordinary employee, such board action would not have been required.

Such being the case, the imperatives of law require that we hold that the Arbiter below had no jurisdiction over Galera's case as, again, she was a corporate officer at the time of her removal.

WHEREFORE, the appeals of petitioner from the Decision of Labor Arbiter Edgardo Madriaga dated January 31, 2002 and his Order dated March 21, 2002, respectively, are granted. The January 31, 2002 decision of the Labor Arbiter is set aside for being null and void and the temporary restraining order we issued on April 24, 2002 is hereby made permanent. The complaint of Jocelyn Galera is dismissed for lack of jurisdiction.

SO ORDERED.[8]

In its Resolution[9] promulgated on 4 June 2003, the NLRC further stated:

We are fully convinced that this is indeed an intra-corporate dispute which is beyond the labor arbiter's jurisdiction. These consolidated cases clearly [involve] the relationship between a corporation and its officer and is properly within the definition of an intra-corporate relationship which, under P.D. No. 902-A, is within the jurisdiction of the SEC (now the commercial courts). Such being the case, We are constrained to rule that the Labor Arbiter below had no jurisdiction over Ms. Galera's complaint for illegal dismissal.

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[8] *Id.* at 148-150.

[9] *Rollo* (G.R. No. 169207), pp. 502-505; *rollo* (G.R. No. 169239), pp. 151-154.

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WHEREFORE, the motion for reconsideration filed by Ms. Galera is hereby denied for lack of merit. We reiterate our February 19, 2003 Decision setting aside the Labor Arbiter's Decision dated January 31, 2002 for being null and void.

SO ORDERED.[10]

Galera assailed the NLRC's decision and resolution before the appellate court and raised a lone assignment of error.

The National Labor Relations Commission acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter not on the merits but for alleged lack of jurisdiction.[11]

The Decision of the Appellate Court

The appellate court reversed and set aside the decision of the NLRC. The appellate court ruled that the NLRC's dismissal of Galera's appeal is not in accord with jurisprudence. A person could be considered a "corporate officer" only if appointed as such by a corporation's Board of Directors, or if pursuant to the power given them by either the Articles of Incorporation or the By-Laws.[12]

The appellate court explained:

A corporation, through its board of directors, could only act in the manner and within the formalities, if any, prescribed by its charter or by the general law. If the action of the Board is *ultra vires* such is *motu proprio void ab initio* and without legal effect whatsoever. The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are, in effect, written into the charter. In this sense, they beome (sic) part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.

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[10] *Rollo* (G.R. No. 169207), pp. 504-505; *rollo* (G.R. No. 169239), pp. 153-154.

[11] *Rollo* (G.R. No. 169207), p. 18.

[12] *Rollo* (G.R. No. 169207), p. 21; *rollo* (G.R. No. 169239), p. 51.

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Even if petitioner GALERA had been appointed by the Board of Directors on December 31, 1999, private respondent WPP's By-Laws provided for only one Vice-President, a position already occupied by private respondent Webster. The same defect also stains the Board of Directors' appointment of petitioner GALERA as a Director of the corporation, because at that time the By-Laws provided for only five directors. In addition, the By-laws only empowered the Board of Directors to appoint a general manager and/or assistant general manager as corporate officers in addition to a chairman, president, vice-president and treasurer. There is no mention of a corporate officer entitled "Managing Director."

Hence, when the Board of Directors enacted the Resolutions of December 31, 1999 and May 31, 2000, it exceeded its authority under the By-Laws and are, therefore, *ultra vires*. Although private respondent WPP sought to amend these defects by filing Amended By-Laws with the Securities and Exchange Commission, they did not validate the *ultra vires* resolutions because the Amended By-Laws did not take effect until February 16, 2001, when it was approved by the SEC. Since by-laws operate only prospectively, they could not validate the *ultra vires* resolutions.[13]

The dispositive portion of the appellate court's decision reads:

WHEREFORE, the petition is hereby GRANTED and GIVEN DUE COURSE. The assailed Decision of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and a new one is entered DIRECTING private respondent WPP MARKETING COMMUNICATIONS, INC. to:

1. Pay [Galera] backwages at the peso equivalent of US$120,000.00 per annum plus three months from her summary December 14, 2000 dismissal up to March 14, 2001 because three months notice is required under the contract, plus 13th month pay, bonuses and general increases to which she would have been normally entitled, had she not been dismissed and had she not been forced to stop working, including US tax protection of up to 35% coverage which she had been enjoying as an expatriate;

2. Pay x x x GALERA the peso equivalent of US$185,000.00 separation pay (1 ½ years);

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[13] *Rollo* (G.R. No. 169207), pp. 33-34; *rollo* (G.R. No. 169239), pp. 63-64.

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3. Pay x x x GALERA any unpaid housing benefit for the 18 ½ months of her employment in the service to the Company as an expatriate in Manila, Philippines at the rate of ₱576,000 per year; unpaid personal and accident insurance benefits for premiums at the rate of ₱300,000.00 per year; whatever cash value in the JWT Pension Plan; and thirty days paid holiday benefit under the contract for the 1 ½ calendar years with the Company;

4. Pay x x x GALERA the reduced amount of PhP2,000,000.00 as moral damages;

5. Pay [Galera] the reduced amount of PhP1,000,000.00 as exemplary damages;

6. Pay [Galera] an amount equivalent to 10% of the judgment award as attorney's fees;

7. Pay the cost of the suit.

SO ORDERED.[14]

Respondents filed a motion for reconsideration on 5 May 2005. Galera filed a motion for partial reconsideration and/or clarification on the same date. The appellate court found no reason to revise or reverse its previous decision and subsequently denied the motions in a Resolution promulgated on 1 August 2005.[15]

The Issues

WPP, Steedman, Webster, and Lansang raised the following grounds in G.R. No. 169207:

I. The Court of Appeals seriously erred in ruling that the NLRC has jurisdiction over [Galera's] complaint because she was not an employee. [Galera] was a corporate officer of WPP from the beginning of her term until her removal from office.

II. Assuming *arguendo* that the Court of Appeals correctly ruled that the NLRC has jurisdiction over [Galera's] complaint, it should have remanded the case to the Labor Arbiter for reception of evidence on the merits of the case.

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[14] *Rollo* (G.R. No. 169207), p. 42; *rollo* (G.R. No. 169239), p. 72.

[15] *Rollo* (G.R. No. 169207), pp. 63-64; *rollo* (G.R. No. 169239), pp. 93-94.

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III. [Galera] is an alien, hence, can never attain a regular or permanent working status in the Philippines.

IV. [Galera] is not entitled to recover backwages, other benefits and damages from WPP.[16]

On the other hand, in G.R. No. 169239, Galera raised the following grounds in support of her petition:

The CA decision should be consistent with Article 279 of the Labor Code and applicable jurisprudence, that full backwages and separation pay (when in lieu of reinstatement), should be reckoned from time of dismissal up to time of reinstatement (or payment of separation pay, in case separation instead of reinstatement is awarded).

Accordingly, petitioner Galera should be awarded full backwages and separation pay for the period from 14 December 2000 until the finality of judgment by the respondents, or, at the very least, up to the promulgation date of the CA decision.

The individual respondents Steedman, Webster and Lansang must be held solidarily liable with respondent WPP for the wanton and summary dismissal of petitioner Galera, to be consistent with law and jurisprudence as well as the specific finding of the CA of bad faith on the part of respondents.[17]

This Court ordered the consolidation of G.R. Nos. 169207 and 169239 in a resolution dated 16 January 2006.[18]

The Ruling of the Court

In its consolidated comment, the Office of the Solicitor General (OSG) recommended that (A) the Decision dated 14 April 2005 of the appellate court finding (1) Galera to be a regular employee of WPP; (2) the NLRC to have jurisdiction over the present case; and (3) WPP to have illegally dismissed Galera, be affirmed; and (B) the case remanded to the Labor Arbiter for the computation of the correct monetary award. Despite the OSG's recommendations, we see that Galera's failure to seek

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[16] *Rollo* (G.R. No. 169207), pp. 83-84.

[17] *Rollo* (G.R. No. 169239), pp. 18-19.

[18] *Rollo* (G.R. No. 169207), p. 879; *rollo* (G.R. No. 169239), p. 470.

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an employment permit prior to her employment poses a serious problem in seeking relief before this Court. Hence, we settle the various issues raised by the parties for the guidance of the bench and bar.

Whether Galera is an Employee or a Corporate Officer

Galera, on the belief that she is an employee, filed her complaint before the Labor Arbiter. On the other hand, WPP, Steedman, Webster and Lansang contend that Galera is a corporate officer; hence, any controversy regarding her dismissal is under the jurisdiction of the Regional Trial Court. We agree with Galera.

Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws.[19] Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

An examination of WPP's by-laws resulted in a finding that Galera's appointment as a corporate officer (Vice-President with the operational title of Managing Director of Mindshare) during a special meeting of WPP's Board of Directors is an appointment to a non-existent corporate office. WPP's by-laws provided for only one Vice-President. At the time of Galera's appointment on 31 December 1999, WPP already had one Vice-President in the person of Webster. Galera cannot be said to be a director of WPP also because all five directorship positions provided in the by-laws are already occupied. Finally, WPP cannot rely on its Amended By-Laws to support its argument that Galera is a corporate officer. The Amended By-Laws provided for more than one Vice-President and for two additional directors. Even though WPP's stockholders voted for the amendment on 31 May 2000, the SEC approved the amendments only on 16 February 2001. Galera was dismissed on 14 December 2000.

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[19] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA102.

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WPP, Steedman, Webster, and Lansang did not present any evidence that Galera's dismissal took effect with the action of WPP's Board of Directors.

The appellate court further justified that Galera was an employee and not a corporate officer by subjecting WPP and Galera's relationship to the four-fold test: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. The appellate court found:

> x x x Sections 1 and 4 of the employment contract mandate where and how often she is to perform her work; Sections 3, 5, 6 and 7 show that wages she receives are completely controlled by x x x WPP; and Sections 10 and 11 clearly state that she is subject to the regular disciplinary procedures of x x x WPP.
>
> Another indicator that she was a regular employee and not a corporate officer is Section 14 of the contract, which clearly states that she is a permanent employee — not a Vice-President or a member of the Board of Directors.
>
> x x x x x x x x x
>
> Another indication that the Employment Contract was one of regular employment is Section 12, which states that the rights to any invention, discovery, improvement in procedure, trademark, or copyright created or discovered by petitioner GALERA during her employment shall automatically belong to private respondent WPP. Under Republic Act 8293, also known as the Intellectual Property Code, this condition prevails if the creator of the work subject to the laws of patent or copyright is an employee of the one entitled to the patent or copyright.
>
> Another convincing indication that she was only a regular employee and not a corporate officer is the disciplinary procedure under Sections 10 and 11 of the Employment Contract, which states that her right of redress is through Mindshare's Chief Executive Officer for the Asia-Pacific. This implies that she was not under the disciplinary control of private respondent WPP's Board of Directors (BOD), which should have been the case if in fact she was a corporate officer because only the Board of Directors could appoint and terminate such a corporate officer.

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Although petitioner GALERA did sign the Alien Employment Permit from the Department of Labor and Employment and the application for a 9(g) visa with the Bureau of Immigration – both of which stated that she was private respondent's WPP' Vice President – these should not be considered against her. Assurming *arguendo* that her appointment as Vice-President was a valid act, it must be noted that these appointments occurred afater she was hired as a regular employee. After her appointments, there was no appreciable change in her duties.[20]

Whether the Labor Arbiter and the NLRC have jurisdiction over the present case

Galera being an employee, then the Labor Arbiter and the NLRC have jurisdiction over the present case. Article 217 of the Labor Code provides:

Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts;

6. Except claims for Employees Compensation, Social Security, Medicare and other maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

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[20] *Rollo* (G.R. No. 169207), pp. 34-36; *rollo* (G.R. No. 169239), pp. 64-66.

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(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

In contrast, Section 5.2 of Republic Act No. 8799, or the Securities Regulation Code, states:

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

The pertinent portions of Section 5 of Presidential Decree No. 902-A, mentioned above, states:

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

Whether WPP illegally dismissed Galera

WPP's dismissal of Galera lacked both substantive and procedural due process.

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Apart from Steedman's letter dated 15 December 2000 to Galera, WPP failed to prove any just or authorized cause for Galera's dismissal. Steedman's letter to Galera reads:

> The operations are currently in a shamble. There is lack of leadership and confidence in your abilities from within, our agency partners and some clients.
>
> Most of the staff I spoke with felt they got more guidance and direction from Minda than yourself. In your role as Managing Director, that is just not acceptable.
>
> I believe your priorities are mismanaged. The recent situation where you felt an internal strategy meeting was more important than a new business pitch is a good example.
>
> You failed to lead and advise on the two new business pitches. In both cases, those involved sort (sic) Minda's input. As I discussed with you back in July, my directive was for you to lead and review all business pitches. It is obvious [that] confusion existed internally right up until the day of the pitch.
>
> The quality output is still not to an acceptable standard, which was also part of my directive that you needed to focus on back in July.
>
> I do not believe you understand the basic skills and industry knowledge required to run a media special operation.[21]

WPP, Steedman, Webster, and Lansang, however, failed to substantiate the allegations in Steedman's letter. Galera, on the other hand, presented documentary evidence[22] in the form of congratulatory letters, including one from Steedman, which contents are diametrically opposed to the 15 December 2000 letter.

The law further requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss

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[21] *Rollo* (G.R. No. 169239), p. 267.

[22] *Id.* at 237-266.

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him. Failure to comply with the requirements taints the dismissal with illegality.[23] WPP's acts clearly show that Galera's dismissal did not comply with the two-notice rule.

Whether Galera is entitled to the monetary award

WPP, Steedman, Webster, and Lansang argue that Galera is not entitled to backwages because she is an alien. They further state that there is no guarantee that the Bureau of Immigration and the Department of Labor and Employment will continue to grant favorable rulings on the applications for a 9(g) visa and an Alien Employment Permit after the expiry of the validity of Galera's documents on 31 December 2000. WPP's argument is a circular argument, and assumes what it attempts to prove. Had WPP not dismissed Galera, there is no doubt in our minds that WPP would have taken action for the approval of documents required for Galera's continued employment.

This is Galera's dilemma: Galera worked in the Philippines without a proper work permit but now wants to claim employee's benefits under Philippine labor laws.

Employment of GALERA with private respondent WPP became effective on September 1, 1999 solely on the instruction of the CEO and upon signing of the contract, without any further action from the Board of Directors of private respondent WPP**.**

Four months had passed when private respondent WPP filed before the Bureau of Immigration an application for petitioner GALERA to receive a working visa, wherein she was designated as Vice President of WPP. Petitioner alleged that she was constrained to sign the application in order that she could remain in the Philippines and retain her employment.[24]

The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign

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[23] *Pepsi-Cola Bottling Co. v. NLRC,* G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286.

[24] *Rollo* (G.R. No. 169207), pp. 14-15; *rollo* (G.R. No. 169239), pp. 44-45.

employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor."[25] Section 4, Rule XIV, Book 1 of the Implementing Rules and Regulations provides:

> *Employment permit required for entry.* — No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.

Galera cannot come to this Court with unclean hands. To grant Galera's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits **before** their employment. We hold that the status quo must prevail in the present case and we leave the parties where they are. This ruling, however, does not bar Galera from seeking relief from other jurisdictions.

WHEREFORE, we *PARTIALLY GRANT* the petitions in G.R. Nos. 169207 and 169239. We *SET ASIDE* the Decision of the Court of Appeals promulgated on 14 April 2005 as well as the Resolution promulgated on 1 August 2005 in CA-G.R. SP No. 78721.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[25] First paragraph, Article 40, Labor Code of the Philippines.