OPEN LETTER IN DEFENSE OF THE LABOR COURT'S JURISDICTION TO HEAR DISPUTES RESULTING FROM LABOR RELATIONS INVOLVING DIGITAL PLATFORMS

The Amendment to the Constitution No. 45, enacted on December 30, 2004, significantly modified the jurisdiction of the Labor Court, as originally established in art. 114 of the Federal Constitution, expanding its scope. It overcame the premise that it would only judge conflicts between employees and employers, thereby adding several other matters, previously decided by the other branches of the Judiciary.

The most significant change came by way of art. 114.I, which widened the jurisdiction to actions arising from labor relations in general.

The literal interpretation of the provision would inevitably conclude that any disputes arising from the labor relationship should be heard by Labor Courts, not by Common Courts.

As a matter of fact, the Labor Courts have always been responsible for determining whether a labor relationship, for example, involving commercial representatives, cooperative members, entrepreneurs or self-employed professionals, characterizes an authentic employment relationship or not, whenever it is asserted, based on art. 9 of the Brazilian Consolidation of the Labor Laws (CLT), the use of mechanisms to conceal it.

This is, as is well known, one of the most important precepts of the Brazilian labor legislation, since it allows the elements of the relationship to be analyzed in order to identify or not, in each case, the employment relationship, based on the principle of the primacy of reality and based on relevant

aspects, such as whether or not wages were paid and whether or not the worker worked a certain number of hours.

In effect, art. 9 of the CLT, which states that "the acts practiced with the objective of distorting, preventing, or defrauding the labor legislation will be null and void", as they violate the public order and inalienable rights, which cannot be excluded even by agreement between the parties, since it aims at identifying the contract as a reality and recognizing its legal consequences.

It is deeply troubling, therefore, the meaning that has been attempted to be attributed to labor relations through digital platforms. The intention is to instill the idea of workers' autonomy and that, in fact, there is no work, but mere intermediation of people by technology companies that disarticulate the bonds of cooperation and the mechanisms of collective resistance, imposing an ideology that modulates not only the social imaginary, but also the workers' own subjectivity and the legal world, despite the subordination to the algorithm and the various controls exercised over workers.

The truth is that app-based work has taken on a dimension once unimaginable, and is present in almost all activities.

In Brazil, according to a survey by the Brazilian Center for Analysis and Planning widely publicized by the media, the number of workers using apps exceeds 1,600,000 (one million, six hundred thousand), considering only drivers and couriers. But the number is estimated to be even higher, as a consequence of the other economic segments, high unemployment rates, and informality.

Regardless of the activity, there is no way to rule out the existence of an employment relationship and, therefore, the Labor Courts have jurisdiction to analyze, in each case, whether or not there is an employment relationship.

It is important to note that Brazil, by express provision in the constitution, is subject to the rule of law, and is committed to the ideal of Social Justice, which presupposes the valorization of labor, the preservation of the dignity of the worker's human being, and the prohibition of setbacks.

There is no other way to build a truly free, just, and solidary society, a fundamental objective of the Republic, for which the Labor Law is an integral part of, as a protective framework for workers, and the strengthening of the bodies and institutions, both constitutionally and infra-constitutionally in charge of putting it into practice, such as labor unions, labor lawyers, the Ministry of Labor and Employment, the Labor Prosecution Service, and the Labor Courts. That is why its jurisdiction must be firmly, faithfully, and uncompromisingly protected, as provided by art. 114.I of the Constitution.

Luciana Paula Conforti
President
National Association of Labor Judges – ANAMATRA

José Antonio Vieira
President
National Association of Labor Prosecutors - ANPT

Genebra, 13 de junho de 2023.

111ª Conferência Internacional do Trabalho da OIT

A/C Exmo. Sr. Luiz Marinho, Ministro do Trabalho e Emprego

Assinam a **CARTA ABERTA EM DEFESA DA COMPETÊNCIA DA JUSTIÇA DO TRABALHO PARA APRECIAR AS CONTROVÉRSIAS RESULTANTES DAS RELAÇÕES DE TRABALHO POR PLATAFORMAS DIGITAIS** as entidades abaixo:

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ANTONIO FERNANDES DOS SANTOS NETO, Presidente Nacional da CSB

ANTONIO DE LISBOA AMÂNCIO VALE, Secretario de Relações Internacionais da CUT

CARLOS AUGUSTO MULLER, Subsecretário de Relações Internacionais da CTB

DENILSON PESTANA DA COSTA, Diretor de Relações Internacionais da NCST

JULIO DURVAL FUENTES, Presidente de la Confederación Latinoamericana de Trabajadores Estatales (CLATE)

MATÍAS CREMONTE, Presidente de la Asociación Latinoamericana de Abogados Laboralistas