



THE DIGNITY OF THE EMPLOYEE AS A FACTOR FOR MEASURING MORAL DAMAGE IN THE SCOPE OF THE LABOR COURTS



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Kallyne Barbosa da Silva¹ and Anne Harlle Lima da Silva Moraes²

ABSTRACT

The labor reform promoted relevant changes in the way moral damage in labor relations is measured. Thus, this research aimed to investigate the impacts of the limitation of compensation for moral damage in the Labor Court imposed by the reform. The general objective was to understand why the measurement of moral damage in the workplace violates the dignity of the employee. To this end, the following specific objectives were established: to describe the importance of protecting the dignity of the employee; analyze the labor legislation in force and its application in cases of moral damage involving the dignity of the worker; and discuss the relevance of broad reparation for moral damage. The research adopted the deductive method, with a qualitative approach, being developed through bibliographic review and jurisprudential analysis. Initially, the concept of human dignity and its evolution in the context of labor relations was addressed, evidencing its centrality in the configuration of moral damage. Next, the practical application of the rules of the Labor Court in cases of offense to dignity was analyzed, especially after the reform, which introduced limits to compensation based on tariff criteria. Finally, the implications of civil liability for non-patrimonial damages and the need to ensure broad and proportional compensation were discussed. It is concluded that the legal pricing of moral damage reduces the value of human dignity, compromises the recognition of the worker's subjectivity and generates distortions by linking the amount of compensation to the salary, promoting inequalities and violating constitutional principles.

Keywords: Moral damage. Dignity of the employee. Labor reform. Reparation.

¹Student of the Bachelor of Laws course at
Institute of Higher Education of Southern Maranhão - IESMA/UNISULMA
E-mail: kallynebarbosa532@gmail.com

²Advisor Professor.

Dr. in Law from the Autonomous Faculty of Law of São Paulo (FADISP/ALFA, 2022). Master's degree in Regional Development from Faculdade Alves Faria (ALFA/GO, 2016). Professor of the Bachelor's Degree in Law at the Institute of Higher Education of Southern Maranhão - IESMA/UNISULMA.
Email: anne.moraes@unisulma.edu.br

INTRODUCTION

The present work discusses the dignity of the employee as a factor for measuring moral damage in the scope of the labor courts. Although it is the worker's inherent right to maintain his dignity, in practice, many citizens still face situations that threaten their dignity, resulting in moral damages that require adequate reparation and a fair trial.

The topic is relevant in view of the constant discussions about the limits imposed by the labor reform on compensation for moral damages suffered by workers. The lack of consistency in judicial decisions on moral damage can lead to inadequate reparations, both due to excess and insufficiency, undermining confidence in the judicial system and in the application of labor standards.

This study was chosen in three essential areas. In the legal aspect, the need to reflect on the compatibility between the legal parameters of compensation for moral damage and the constitutional principles that govern labor relations is highlighted, as it is understood that it is not feasible to measure moral damage in the labor field, where the moral damage suffered must be measured broadly, without being tabulated by law and thus negatively impacting the dignity of the employee. In the personal aspect, the interest in the fragility of the worker in the face of arbitrariness in the work environment, especially when there is no reparation proportional to the suffering experienced. From a social point of view, it is essential to discuss measures that guarantee fair and effective reparation, as a way to reaffirm the value of human work and combat abusive practices.

The key concepts that structure this research are: dignity of the human person, as a fundamental constitutional principle; moral damage, as an injury to the worker's rights of an immaterial nature; and the measurement of moral damage, focusing on the limitations brought about by the labor reform. So, based on these elements, the problem lies in the question: why is the dignity of the employee violated with the measurement of moral damage, in the labor field? The general objective is to understand why the measurement of moral damage, in the labor environment, violates the dignity of the employee. To this end, the following specific objectives were outlined: to describe the importance of protecting the dignity of the employee; analyze the current law of the Labor Court in cases of moral damage involving the dignity of the employee; discuss the importance of ample reparation of moral damage.

The structure of the article is organized into four chapters: the first discusses the historical evolution of the worker's dignity; the second deals with moral damage and labor liability, bringing subjective and objective liability; the third addresses moral damage in the labor sphere and how the labor reform addresses the compensation of moral damage; and

the fourth addresses specific situations that give rise to moral damage, based on doctrine and jurisprudence.

Finally, the methodology used in this study is qualitative, with an exploratory and descriptive character using the deductive method, aiming to find solutions to the conflicts presented within the scope of the specific theme. The data were obtained through bibliographic research, based on doctrinal works, legislation and jurisprudence that deal with the dignity of the worker and moral damage in labor law.

METHODOLOGY

TYPE OF RESEARCH

The present study is a qualitative and exploratory approach, due to the purpose of analyzing the impact of the measurement of moral damage in the labor field in view of the dignity of the employee. According to Minayo (2002, p.21), "qualitative research answers very particular questions. It is concerned, in the social sciences, with a level of reality that cannot be quantified." In other words, it works with the universe of meanings, motives, aspirations, beliefs, values and attitudes, which corresponds to a deeper space of relationships, processes and phenomena that cannot be reduced to the operationalization of variables. The research will be exploratory, because it seeks information about the topic under analysis, so that it can be studied in a more concise and delimited way with regard to the causes by which the measurement of moral damage in the labor courts hurts the dignity of the employee.

In addition, this research will be descriptive, as it will point out characteristics about the dignity of the employee, as well as moral damage and its form of measurement in the labor context.

TECHNIQUES AND INSTRUMENTS

The study will rely on bibliographic research, since it seeks to identify existing theories and concepts on the subject. For Gil (2010, p. 29) "bibliographic research is based on material already published. Traditionally, this type of research includes printed material, such as books, magazines, newspapers, theses, dissertations and annals of events". With this, notoriously the use of bibliography will be of great value to explain the concepts and understandings related to the proposed theme, through public materials.

METHODS OF APPROACH

The method used was deductive, aiming to find solutions to the conflicts presented within the scope of the specific theme. As observed by Prof. Mauricio B. Almeida (2017), the deductive method is a rationalist method, which presupposes reason as the only way to achieve true knowledge. It uses a descending chain of reasoning, starting from general to particular analysis, until reaching the conclusion. This method employs the syllogism, in which two premises are combined to infer a third that logically follows from them (Almeida, 2017).

In this research, laws and historical data were used to support the research, using them as a source of study on the subject in question. As for the collection of the aforementioned data, it will occur through a bibliographic survey, that is, doctrine and law, on the concepts of human dignity aimed at the employee, as well as on the measurement of moral damage in the labor context, so that, later, the information obtained is evaluated and presented in the results of the research.

RESULTS

The analysis of article 223-G of the Consolidation of Labor Laws, introduced by Law 13,467/2017, revealed that the pricing of moral damage based on the worker's salary creates an objective limitation that contradicts the constitutional principles of human dignity, proportionality and full reparation. The rule, by establishing fixed parameters for the setting of off-balance sheet indemnities, links the amount of the damage to the economic condition of the injured party, and not to the actual severity of the injury suffered.

The research identified that the setting of indemnity limits according to the employee's remuneration has been the subject of criticism in the labor doctrine and the subject of discussions in the jurisprudential sphere, especially in the Superior Labor Court. There are recent decisions that point to the unconstitutionality of pricing in cases of serious offenses, defending the prevalence of constitutional principles over infra-constitutional legislation

These decisions reinforce the central hypothesis of the research, in the sense that the pricing of labor moral damage compromises the protection of the employee's dignity and needs to be interpreted in the light of the Federal Constitution of 1988.

DISCUSSION

In view of these results obtained, it is observed that the pricing of moral damage, as provided for in article 223-G, reduces compensation to a merely economic criterion, without considering the effective extent of the damage caused to the worker's dignity. This finding is

the criticism already pointed out by authors such as Mauricio Godinho Delgado, who denounces the dehumanization of labor relations after the reform.

Moral damage is linked to the integrity of the person and cannot be measured based only on the victim's salary, as this distorts the principle of equality and aggravates the worker's condition of vulnerability. Thus, the data analyzed show that the rigid application of the legal norm can result in concrete injustices, especially in cases of low-paid workers. In addition, the jurisprudence of the Superior Labor Court, although still divided, already shows signs of resistance to pricing in the most serious cases, interpreting article 223-G in a systematic manner and in accordance with the Federal Constitution. This demonstrates the tension between the literalness of the labor reform and the fundamental principles of Labor Law.

HUMAN DIGNITY IN THE WORKPLACE

The right to dignity of the human person is fundamental to living with nobility. According to Ramos (2014, apud Silva, 2020, p. 24). "Human rights consist of a set of rights considered indispensable for a human life based on freedom, equality and dignity. Human rights are the essential and indispensable rights to a dignified life."

According to the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must act towards one another in a spirit of fraternity" (Article 1).

In this same perspective, Silva (1989, p. 660), "the principle of the dignity of the human person in labor relations is one of the foundations of the Republic and of the democratic rule of law, as established in Article 1 of the Federal Constitution, and is complemented by Article 170, which ensures free initiative and the valorization of human work, with the purpose of guaranteeing everyone a dignified existence, according to the dictates of social justice."

The understanding of the evolution of the labor field is socially and legally important for the evolution of labor law and for the present research of this study, there is a relationship between the old and the current context where the work and the dignity of the employee were not valued. Thus, gradually the working class conquered its rights.

In antiquity, work was seen as a punishment, where the human being did it without any expectation of return, just condemned to torture for something considered wrong by the gods of the time.

The gods had condemned Sisyphus to roll a rock incessantly to the top of a mountain, from which the stone fell again by its own weight. They had thought, with

their reasons, that there is no punishment more terrible than useless and hopeless work (Camus, 1942, p. 161).

Thus, labor served as a punishment for the rebels. The gods were convinced that working without ceasing, generating fatigue, would rebuke bad behavior. Which shows us the main purpose of work, far from any contemporary valuation, punishment. Thus, as Barros (2016, p. 46) mentions, "the worker was not, therefore, a subject of rights". From this perspective, it is clear that the dignity of the employee, historically, has always been violated. According to (Sussekund, 2010). Labor Law emerged as a consequence of the workers' resistance of the nineteenth century, when workers opposed the exploitation promoted by the entrepreneurs of the time. On the international scene, several revolutionary movements proclaimed ideals of freedom and equality, with the French Revolution being a milestone in this process. Popular dissatisfaction resulted from the extreme concentration of wealth and the absence of fair social policies. With the revolution, the feudal structure lost strength, and new constitutional declarations were created, including labor rights and restrictions on certain freedoms, such as unionization and strike. Mention is made of the Loi Chapelier law (1791), which consolidated freedom of work in France, although it was later repealed, allowing the regulation of the right to demonstrate and strike (Vargas, 2011).

The Industrial Revolution represented a fundamental milestone in modifying production methods, gradually replacing artisanal work with the use of machines. This technological advancement has led to the loss of many jobs, forcing the migration of workers to urban centers in search of new opportunities. However, rapid urbanization overcrowded the cities, which were not prepared to accommodate this large population, resulting in precarious living conditions and strenuous working hours of up to 16 hours a day, without fair remuneration.

With this intensified exploitation, workers began to organize collectively, demanding improvements in working conditions and the recognition of their dignity at work. The Industrial Revolution consolidated the proletariat as the basis of the capitalist system, establishing the employment relationship as the main link between worker and employer (Delgado, 2017). During the nineteenth century, with the expansion of the industrial system, this relationship became dominant, fostering the emergence of Labor Law as an instrument of protection for workers.

Given this scenario, it is undeniable that this revolution deeply impacted the dignity of workers, who faced precarious conditions and inadequate remuneration, without any form of compensation. It was from this reality that Labor Law emerged, the result of the struggles

and demands of the working class throughout history. Currently, in Brazil, the Consolidation of Labor Laws (CLT) is the main means of regulating labor relations, ensuring legal protection, safety, and decent conditions for workers, in addition to ensuring compliance with fundamental rights in the workplace.

MORAL DAMAGE AND LABOR LIABILITY

The dignity of the human person is being expressly provided for in the Federal Constitution of 1988. Article 5, item V, ensures the right of reply proportional to the grievance, in addition to compensation for material, moral or image damage. Item X, on the other hand, establishes the inviolability of intimacy, private life, honor and image, guaranteeing compensation in case of violation (Brasil, 1988).

With the advent of the Constitution, new perspectives emerged on the work environment and the employer's liability for damages caused to workers. This made it possible to repair not only material damages, but also moral and aesthetic damages, resulting from work accidents or occupational diseases (Delgado, 2019, p.69).

Correia (2019, p. 1476) defines damage as any damage caused to the person, whether material, moral or aesthetic. In the labor sphere, moral damage stands out for its amplitude, covering various forms of violation of the employee's rights. In the same sense, Cavalieri Filho (2012, p. 77) conceptualizes moral damage as the subtraction or reduction of a legal asset, whether patrimonial or inherent to the victim's personality, such as honor, image and freedom. Thus, any action that causes the deprivation or reduction of an essential right may constitute moral damage.

In addition, Carlos Bittar (1992, p. 41) explains that moral damage affects the subjectivity of the individual and his social perception, affecting both his intimacy and personal consideration as well as his reputation and image in society. This demonstrates that the violation of the worker's dignity is not restricted to the professional environment, but can have repercussions on their social and psychological life.

The Brazilian legal system provides for compensation for moral damages both in the constitutional and infra-constitutional spheres, with provisions in the Consolidation of Labor Laws (CLT) and in the Civil Code. Article 186 of the Civil Code establishes that any person who, by action or omission, causes damage to another, even if exclusively moral, commits an unlawful act (Brasil, 2002). On the other hand, the CLT, in article 223-B, classifies moral damage as a type of non-patrimonial damage, which occurs when a conduct, active or omissive, violates the moral rights of another person, ensuring the victim the right to due reparation (Brasil, 1943).

Civil liability is a fundamental institute in both the national and international legal systems. Its conception is constantly evolving, since it needs to adapt to social transformations and meet the new demands of the collectivity. When thinking about civil liability, it is immediately associated with the practice of an unlawful act, whether action or omission, that causes damage to third parties, making due reparation necessary. In this sense, Diniz (2005, p. 13) clarifies: "Civil liability is limited to repairing the damage caused to others, undoing, as much as possible, its effects, and restoring the injured party to the previous state".

The foundations of civil liability date back to Roman Law, in which the idea of private revenge prevailed, later evolving to the notion of damage caused to the victim. This evolution reflected the need to ensure justice and balance in social and legal relations. In the labor context, the employer is primarily responsible for compensating the employee when he or she suffers moral damage resulting from unlawful conduct in the workplace. In addition, this obligation may extend to others involved in the employment relationship and in the fulfillment of their labor obligations.

As Delgado (2019, p. 743) teaches, the following may also be held liable: "the taker of outsourced services, the entity that is part of an economic group, the partner of a corporate entity in cases of disregard of its personality, the member of a consortium of employers, etc."

Thus, the employer (or those who have a legal relationship with an employment relationship) has the duty to repair the damage caused to the worker. In the scope of labor law, this compensation is not only based on legality, but also on the need to ensure justice and protection for the employee.

When analyzing civil liability in the workplace, it is verified that its application occurs both from a subjective and objective perspective, depending on the circumstances of the specific case. One of the most relevant aspects within this context is moral damage, which has become an essential mechanism for the protection of the dignity of the worker.

With regard to subjective liability, Quintanella and Donizetti (2017) state that its characterization requires the agent to act with intent or fault, causing damage to third parties. Thus, the essential elements of this type of liability are: intent or fault, damage and causal link.

In the context of labor relations, this is the general rule, that is, the employer's liability depends on proof of fault or willful misconduct. However, proof of moral damage is not easily obtained through documentation, as aspects such as pain, suffering and anguish do

not have tangible materiality. However, it is possible to demonstrate the conduct – active or omissive – that resulted in the damage, thus allowing its reparation.

The exception to this rule occurs in relation to the activity performed by the worker. When it comes to accidents or occupational diseases, the employer's liability is objective, since the risk is presumed and, by itself, characterizes an off-balance sheet damage to the employee.

Regarding strict liability, Sebastião Geraldo Oliveira (2011, p. 251) explains that: "the occurrence of the damage is enough to generate the right to civil reparation, for the benefit of the victim". With the evolution of the legal system and the centrality of the dignity of the human person in the Constitution, the understanding that the company is objectively liable in cases of work accidents has been consolidated. This responsibility arises from the presumption that certain activities involve inherent risks, more evident than in other functions, and cannot be considered normal in the work environment. However, Delgado (2019) points out that strict liability in work accidents is not absolute, being a presumption *juris tantum*, that is, it admits evidence to the contrary.

In addition, the employer's liability arises when there is non-compliance with occupational health and safety standards, as well as negligence in the duty to care for the employee's well-being. According to Oliveira (2011, apud Delgado, 2019), several situations can constitute strict liability within the employment contract, such as nuclear damage (art. 21, item XXIII, paragraph "c", of the FC/88) and damage to the environment, including the work environment (art. 225, § 3, and art. 200, VIII, of the FC/88).

The civil code also tends to reinforce strict liability in cases of work accidents, as established:

Article 927. Anyone who, by an unlawful act (art. 186 and 187), causes damage to another, is obliged to repair it.

Sole Paragraph. **There will be an obligation to repair the damage, regardless of fault, in the cases specified by law, or when the activity normally carried out by the author of the damage implies, by its nature, a risk to the rights of others.**

Thus, objective liability, which dispenses with proof of guilt, applies when the activity performed by the worker, by its very nature, involves significant risks. The employer, in this context, has the duty to adopt preventive measures to mitigate any damages.

Thus, it is concluded that, in strict liability, intent or fault is not required, the configuration of the unlawful act, the damage and the causal link is sufficient. In line with the Civil Code of 2002, which acts as a subsidiary source of Labor Law in cases of omission, the general rule is the adoption of subjective liability.

In view of this analysis of moral damage in the labor sphere, we see the evolution of the legal system in the protection of the dignity of the worker, the Constitution of 1988 consolidated this right, reinforcing the need for reparation in the face of violations that compromise the moral integrity of the employee. However, the effectiveness of this protection still faces challenges, especially in proving moral damage and setting compensation amounts.

Moral damage in the labor sphere

Moral damage in the labor sphere represents an important protection for the dignity of the worker, ensuring the reparation of injuries that go beyond material damage, affecting their honor, image and psychological well-being. The 1988 constitution brought a new approach to moral damage and the criteria for its compensation. With its enactment, the personality rights of workers gained greater recognition, since the Magna Carta places the dignity of the human person at the center of constitutional values, guaranteeing the protection of fundamental rights.

According to Delgado (2019), moral damage can be classified as individual or collective. Individual damage affects a specific person in their immaterial sphere, affecting their personality rights. Collective damage, on the other hand, although it also involves the violation of personality, is distinguished by impacting a group of individuals in a common way, although each one may suffer particular damages, without excluding the possibility of individual reparation.

According to Correia (2019, p. 1476), "damage corresponds to any damage caused to a person, which may be of a material, moral or aesthetic nature". In this context, it is observed that the damages suffered by the employee are extensive, but, for the purposes of this study, moral damage stands out.

According to Sérgio Cavalieri Filho (2012, p.77), moral damage consists of the "subtraction or reduction of a legal asset, regardless of its nature, whether patrimonial or part of the victim's personality, such as honor, image and freedom". Thus, any act that deprives or reduces an essential right of a person constitutes moral damage, being an unlawful conduct. Furthermore, Carlos Bittar's statement (1992, p. 41) is plausible, when he explains:

Damages are qualified as moral damages due to the sphere of subjectivity, or the evaluative plane of the person in society, in which the violating fact has repercussions, and there are as such those that affect the most intimate aspects of the human personality (that of intimacy and personal consideration), or of the very valuation of the person in the environment in which he lives and acts (that of reputation or social consideration).

With the labor reform instituted by Law 13,467/2017, there were significant changes in the definition and quantification of moral damage, especially in relation to the affected spheres. According to article 223-C of the CLT, assets such as honor, image, intimacy, freedom of action, self-esteem, sexuality, health, leisure and physical integrity are legally protected (BRASIL, 1943). After the recognition of the moral damage by the magistrate, the determination of the compensation must follow the parameters established by article 223-G, paragraph 1, of the CLT, which provides limits for financial compensation according to the seriousness of the offense:

Article 223-G (...)

Paragraph 1 - If the request is granted, the court shall set the compensation to be paid to each of the injured parties in one of the following parameters, with accumulation being prohibited:

I - Offense of a light nature, up to three times the last contractual salary of the offended party;

II - Offense of a medium nature, up to five times the last contractual salary of the offended party;

III - offense of a serious nature, up to twenty times the last contractual salary of the offended party;

IV - Offense of a very serious nature, up to fifty times the last contractual salary of the offended party. (BRAZIL, 1943).

In addition to classifying the severity of the damage, the labor reform established criteria for defining the amount of compensation, linking it to the employee's contractual salary. This standardization aims to provide greater predictability to judicial decisions, although it also limits the discretion of the judge in setting the compensation.

Thus, although the reform sought to establish objective criteria for the reparation of moral damage, the imposition of maximum limits on compensation may compromise the effective protection of the worker. This is because the setting of the value should take into account the extent of the damage in a broader way, allowing the magistrate greater freedom to evaluate each case in a specific and fair way.

LIMITATION OF MORAL DAMAGE IN THE JURISPRUDENCE OF THE SUPERIOR LABOR COURT

The work environment and the coexistence between the parties that make up the employment contract undoubtedly present challenges, especially due to the different ways of thinking. Therefore, it is essential that the rules established by both the legal system and moral principles are followed. It is necessary that the relationship between employee and employer be guided by honesty, in order to avoid material and moral damages. However,

this conduct is not always observed and, when not complied with, generates the violation of the rights of the other.

Labor law has as its central objective to offer protection to the worker, since he represents the most vulnerable link in this relationship. When there is an offense to the moral dignity of the employee, it is up to the Law to act fairly, seeking due compensation for the damage suffered.

Among situations that may give rise to compensation for moral damage to the worker, Paroski (1999, p.103-135) lists several situations that highlight compensation for moral damage in the labor sphere, such as:

- a) sexual harassment and abuse in the workplace, or outside it, when the abuse occurs due to work;
- b) moral harassment when perverse manipulation and psychological terrorism are configured, thus understood as the degradation of working conditions, either through excessive rigor, entrusting the employee with useless tasks, isolation, among others;
- c) discriminatory dismissal of carriers of the HIV virus;
- d) abusive transfers, as a means of coercion to the transferred worker;
- e) personal searches, in an abusive manner, such as forcing the employee to undress, totally or partially, often in the presence of other workers of the same sex or of the opposite sex;
- f) work accident, when the employer does not comply, either by intent or fault, with the occupational safety and medicine standards;
- g) injury, slander or defamation, whatever the situation;
- h) dismissal based on false just cause.

These specific situations configure the psychic, emotional and even physical integrity of the worker, directly hurting his dignity. With regard to the repair of damage, it consists of restoring the affected property to its previous state. In the case of material damage, the solution may be reparation, replacement or indemnification, since it is something measurable and determined, with exceptions, such as assets with great affective value.

However, when the damage falls on the honor, image or other personality rights, it is not possible to fully restore them, and only the mitigation and relief of the suffering caused is viable, so we see how these conducts directly affect the dignity of the worker, in the emotional pain, in the feeling of humiliation and even in the destructuring in the personal and professional life of the worker.

The practice of abusive, discriminatory acts not only hurts the worker individually, but the legal system in the face of such conduct. It should be noted that the constitutional principles that guide the determination of moral damage in labor relations perform essential functions in the Law, acting in the elaboration, interpretation and integration of norms. In the normative elaboration phase, the principles serve as a guide to the legislator in the

formulation of the rules, in the interpretative phase the principles guide the judge in the application of the Law to the concrete case.

The Federal Constitution of 1988, with its humanistic, democratic and social character, incorporates several constitutional principles aimed at the protection of labor, but we will emphasize the principle of full reparation of moral damage, which guarantees ample compensation when there is a violation of the values inherent to the human person. This principle is supported by article 5, item V, of CF 88, which provides that "the right of reply is ensured, proportional to the aggravation, in addition to compensation for material, moral or image damage". Thus, in the face of any violation of personality rights, it imposes the duty of reparation that must be proportional to the damage suffered.

The employer must ensure a healthy, safe and respectful environment, promoting the prevention of harm, especially those that affect the dignity and moral integrity of workers. According to Diniz (2005, p. 35), "Civil liability is the application of measures that oblige a person to repair moral or property damage caused to a third party due to an act performed by him/herself, by a person for whom he/she is responsible, for something that belongs to him/her or a simple legal imposition".

The judiciary has been reaffirming the protection of workers and the employer's duty to repair damages suffered, aggressions of a physical or moral nature are also situations that violate the moral sphere of the individual, generating the right to due reparation. Such offenses can occur both in the work environment and outside it, as long as they have repercussions on the employment relationship. In this sense, the following judgment is observed:

I - INTERLOCUTORY APPEAL. APPEAL ON A POINT OF LAW. CLAIMANT. SUMMARY. LAW NO. 13,467/2017. TRANSCENDENCE. COMPENSATION FOR MORAL DAMAGES. GENDER DISCRIMINATION. ARBITRATED AMOUNT. The legal transcendence for a more detailed examination of the controversy due to the peculiarities of the concrete case must be recognized. In a preliminary examination, the relevance of the controversy over the amount of compensation for moral damages is verified, which involves a judgment of proportionality in relation to the facts recorded in the judgment under appeal, which in principle justifies the TST's pronouncement in the specific case. It is advisable to grant the interlocutory appeal, to determine the processing of the appeal for review for a better examination of the alleged violation of article 5, X, of the Federal Constitution. Interlocutory appeal granted. II - APPEAL ON A POINT OF LAW. CLAIMANT. SUMMARY. LAW NO. 13,467/2017. COMPENSATION FOR MORAL DAMAGES. GENDER DISCRIMINATION. ARBITRATED AMOUNT. 1 - The TRT partially granted the plaintiff's ordinary appeal to order the respondent to pay compensation for moral damages, in the amount of R\$3,000,000.00 (based on article 223-G, § 1, of the CLT), resulting from gender discrimination suffered in the workplace. 2 - As for the facts prior to the enactment of Law 13,467/2017, the principles of proportionality and full compensation for damages are taken into account when setting the amount of compensation for moral damages (articles 5, V, of the Federal Constitution and 944 of the Civil Code). The main rule of compensation for moral damages (article 5, X, of the FC) is the dignity of the human person, indicated by the original constituent

legislator as one of the foundations of the Democratic Rule of Law (article 1, III, of the FC). For these reasons, according to the STF, the old special laws that set compensation amounts for moral damages in specific cases did not find legitimacy in the Federal Constitution, as was the case of the Press Law (Law 5,250/1967), the Brazilian Telecommunications Code (Law 4,117/1962) and the Brazilian Aeronautical Code (Law 7,565/1986). In RE 447.584/RJ, Justice Cezar Peluso, the STF concluded that article 52 of the Press Law (Law 5250/1967) was not accepted, noting that "Any limitation, prior and abstract, to the amount of compensation for moral damages, subject to a judgment of equity, is incompatible with the scope of unrestricted indemnity guaranteed by the current Constitution of the Republic". In ADPF 130, Justice Carlo Britto, the STF decided not to fully accept the Press Law (Law 5250/1967), again ruling out the hypothesis of fixing the amount of compensation for moral damages, among others, for the following reason: "(...) The relationship of proportionality between the moral or material damage suffered by someone and the compensation that he or she is entitled to receive (the greater the damage, the greater the compensation) operates within the scope of the potentiality of the offense and the concrete situation of the offended party (...)". 3 - As for facts subsequent to the enactment of Law 13,467/2017, the principle of proportionality also applies to the determination of the amount of compensation for moral damages (articles 5, V, of the Federal Constitution and 944 of the Civil Code). Due to the provisions of Law 13,467/2017 on the matter, direct actions of unconstitutionality were filed by ANAMATRA (ADI 6,050), CNTI (ADI 6,082) and CFOAB (ADI 6,069), which were waived from ADI 5,870 (extinguished without resolution of the merits due to loss of object before the end of the term of MP 808/2017). In ADIs 6,050, 6,082 and 6,069, the STF's conclusion was summarized in the following summary: "Direct actions of unconstitutionality". 2. Labor Reform. Articles 223-A and 223-G, paragraphs 1 and 2, of the CLT, as amended by Law 13,467/2017. Parameters for the determination of the quantum of compensation for non-patrimonial damages. 3. Actions known and partially upheld to confer an interpretation in accordance with the Constitution, in order to establish that: 3.1. The wording given to articles 223-A and 223-B, of the CLT, does not exclude the right to compensation for indirect moral damage or rebound damage in the context of labor relations, to be assessed under the terms of civil legislation; 3.2. The criteria for quantifying compensation for non-pecuniary damage provided for in article 223-G, caput and paragraph 1, of the CLT must be observed by the judge as guiding criteria for the grounds of the judicial decision. It is constitutional, however, the judicial arbitration of damages in amounts higher than the maximum limits provided for in items I to IV of paragraph 1 of art. 223-G, when considering the circumstances of the specific case and the principles of reasonableness, proportionality and equality". 4 - Thus, as for the facts that occurred during the term of Law 13,467/2017, the parameters of article 223-G of the CLT may be used in setting the amount of compensation for moral damages. The provision, however, in the part in which it presents a tabulation of values, does not bind the judge in setting the compensation for moral damages, according to "the circumstances of the specific case and the principles of reasonableness, proportionality and equality" (under the terms decided by the STF). 5 - In the present case, the conviction of the respondent to pay compensation for moral damages resulted from gender discrimination observed in the course of the employment contract, as described by the TRT "from her change to the position of butcher, on 5/26/2018 (fl. 58), suffered from sexist attitudes from other co-workers, including the person in charge of the sector, who did not consider her fit to perform the function just because she was a woman, in evident gender discrimination". In addition to the seriousness of the facts narrated, it is important to consider the guilt of the respondent who, according to the decision of the Regional Court, was aware of the facts and was negligent in the search for a solution. 6 - On this subject, it should be noted that the International Labor Organization, in the Declaration of Philadelphia, provided that "all human beings of any race, creed or sex, have the right to ensure material well-being and spiritual development within freedom and dignity, economic tranquility and with the same possibilities". The importance of seeking gender equality was highlighted by the UN, which brings the matter as Sustainable Development Goal - 5 of the UN 2030 Agenda. 7 - In addition, among the core obligations of the ILO is Convention No. 111 (ratified by Brazil), which combats discrimination in matters of employment and occupation, conceptualizing in its article 1 discrimination as "Any distinction, exclusion or preference based on race, color,

sex, religion, political opinion, national descent or social origin, which has the effect of destroying or altering equality of opportunity or treatment in matters of employment or profession". 8 - Gender-based violence and harassment is also combated by the ILO in Convention No. 190 (pending ratification by Brazil), which conceptualizes it as follows: "the term "gender-based violence and harassment" means violence and harassment directed at people by virtue of their sex or gender, or disproportionately affects people of a particular sex or gender, and includes sexual harassment." 9 - In the Brazilian legal system, discrimination on the basis of gender violates the principle of equality and article 5, I, of the Federal Constitution: "men and women are equal in rights and obligations, under the terms of this Constitution", as well as article 1 of Law No. 9,029/95: "The adoption of any discriminatory and limiting practice for the purpose of access to the employment relationship is prohibited, or its maintenance, due to sex, origin, race, color, marital status, family situation, disability, professional rehabilitation, age, among others, except, in this case, the hypotheses of protection of the child and adolescent [...]". 10 - The CNJ's Protocol for Judgment with a Gender Perspective - created with the primary objective of overcoming the obstacles that make it impossible to achieve the equivalence of dignity between women and men, in all scenarios - highlights how the work environment can be hostile to women, often in a veiled way. 11 - The situation under analysis is more serious. Gender violence occurred transparently in the workplace, without any shame and without reprimand by the respondent. 11 - It is therefore noted that the amount arbitrated at R\$3,000.00 as compensation for moral damages did not observe the principle of proportionality, considering the facts narrated, the nature and extent of the damage and the degree of fault of the respondent. 13 - Appeal on a point of law is granted.

(TST - RR: 0000444-14 .2021.5.09.0651, Rapporteur: Katia Magalhães Arruda, Judgment Date: 10/25/2023, 6th Panel, Publication Date: 10/27/2023).

In this sense, it is worth emphasizing the responsibility of the employer, who has the obligation to take care of the protection of the intimacy and privacy of its workers, through the adoption of effective measures that guarantee a work environment based on harmony and respect, free of abusive practices, in recognition of the dignity of all who carry out their activities there. Thus, it is observed that, although the aforementioned judgment recognizes the existence of gender discrimination in the workplace and the defendant's omission to curb such conduct, the amount set as compensation for moral damages was R\$ 3,000.00 with the limitation of article 223-G, paragraph 1, of the CLT, which is disproportionate due to the seriousness of the facts narrated. This amount, even if revised later, exposes a condition between the discourse of valuing human dignity and the concrete practice of measuring the damage suffered.

As mentioned above, sexual harassment is also subject to sanctions in the labor sphere, especially when it occurs in the workplace or as a result of work activity. Such conduct can be characterized as: "a form of insistent and malicious approach, manifest or veiled, with sexual intentions and connotations, practiced by one individual in relation to another" (Delgado, 2019, p. 767).

The following case law is observed:

Summary: | - INTERLOCUTORY APPEAL IN AN APPEAL FOR REVIEW GOVERNED BY LAW 13,467/2017.

RECOGNIZED SOCIAL TRANSCENDENCE. SUMMARY RITE. COMPENSATION FOR MORAL DAMAGES.

PROVEN MORAL HARASSMENT. QUANTUM INDEMNITY. BONUS. If a possible violation of article 5, V, of the Federal Constitution is demonstrated, it is necessary to grant the interlocutory appeal to determine the processing of the appeal on a point of law. Interlocutory appeal granted. II - APPEAL FOR REVIEW GOVERNED BY LAW 13,467/2017. RECOGNIZED SOCIAL TRANSCENDENCE. SUMMARY RITE. COMPENSATION FOR MORAL DAMAGES. PROVEN MORAL HARASSMENT. QUANTUM INDEMNITY. BONUS. In the hypothesis, the Regional Court stated that "the proven harassment was of a serious nature", maintaining the sentence that condemned the defendant for moral damages, in view of the moral harassment practiced by the defendant's manager, who adopted totally inappropriate and inconvenient conduct in the work environment. Regarding the quantum of compensation for moral damages, the jurisprudence of this Court has been moving towards reviewing the amount set in the ordinary courts only to repress stratospheric or excessively modest values. In casu, it can be inferred from the parameters on which the judgment of the Regional Court was based, as well as from the circumstances of the case, that the amount of compensation (R\$ 2,000.00) is disproportionate to the extent of the damage suffered by the claimant. In fact, in cases involving moral harassment, in which there was inappropriate conduct practiced by the worker's hierarchical superior, this Superior Court arbitrated the quantum of compensation in considerably higher amounts, which demonstrates the modesty of the value of the conviction in the records. In the present case, considering the parameters of article 223-G, caput, of the CLT (introduced by Law 13,467/2017 and applicable to the case), especially the seriousness of the facts, the nature of the offense and the intensity of the plaintiff's suffering, the personal consequences of the employer's conduct (which would have led to the plaintiff's resignation), the degree of intent on the part of the defendant's manager and the defendant's high economic size (capital stock in the amount of R\$ 376,751,741.00), I consider that the offense committed by the respondent is of a very serious nature, under the terms of article 223-G, § 1, IV, of the CLT, and the amount of compensation for moral damages should be increased to R\$ 20,000.00 (twenty thousand reais). Appeal for review known and granted. (TST - RR: 10062-58.2019.5.03.0153, Rapporteur. Delaíde Miranda Arantes, Judgment Date: 08/26/2020, 6th Panel, Publication Date: 09/09/2020).

Thus, it is concluded that the abusive practice of authority by the hierarchical superior, with the objective of obtaining sexual advantage in the workplace, constitutes sexual harassment and must be fought and duly compensated, without restrictions on access to justice. It is up to the judge who directly analyzed those involved, the facts and the records of the case, to establish the amount of compensation. Labor law, due to its protective essence, has the function of ensuring adequate compensation for these damages, recognizing that the dignity of the employee cannot be relativized in the face of the economic interests of the company. Even if full reparation for moral damage is not capable of fully restoring the suffering caused, it must seek fair and proportional compensation, thus reaffirming the value of human dignity.

The analysis of this decision reveals a worrying dissonance between the seriousness of the facts narrated and the amount initially arbitrated as compensation for moral damages of R\$2,000,000.00. Although the Superior Labor Court later increased this amount to R\$20,000.00, the original amount shows the persistence and limitation of decisions that

underestimate the extent of the suffering imposed on the victim, which weakens the pedagogical and reparative character of the sanction. Thus, it is urgent that jurisprudence advances in order to guarantee effective reparations, which reaffirm the commitment of the legal system to combat all forms of violence and inequality in the workplace.

CONCLUSION

Due to the limitations imposed by the labor reform on the measurement of moral damage, which directly affect the dignity of the employee, the present study aimed to analyze the impacts of these limitations from the perspective of the worker. In view of this, the general objective of the research was to understand why the fixing of moral damage in the context of labor relations represents an affront to the dignity of the employee. This purpose was achieved, since it was demonstrated that moral damage is essentially linked to the dignity of the worker, and that once the reparatory indemnity is reached, it cannot be limited based on the contractual salary, as these are inestimable values to the essence of human dignity.

During the analysis, it was found that several points of the labor reform collide with the principle of the dignity of the worker, demonstrating that the limitation imposed is an affront to the constitutional principles that guarantee ample, full and proportional compensation for the damage suffered. The employer's liability for harmful acts of an off-balance sheet nature must be analyzed based on the seriousness of the act, the extent of the damage and the vulnerability of the offended party, and not exclusively by objective and tabulated criteria, as they can lead to inequality.

As a contribution, the study reaffirms the need to interpret moral damage from a humanized, constitutional and proportional perspective. It is also recommended that future research deepen the analysis of the judicial criteria for setting off-balance sheet indemnities and the social impacts of the pricing imposed by the reform, in order to contribute to the improvement of labor legislation.

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"Slow down, you crazy child. you're so ambitious for a juvenile." – Billy Joel, Vienna. As in the aforementioned song, everything has its necessary time for growth, and it takes patience to reap the fruits of our efforts because we are not late for what is already ours.

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