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The environment of work and health of the worker: challenges to the realization of human dignity

*O meio ambiente do trabalho e a saúde do trabalhador: desafios à efetivação da
 dignidade humana*

*El medio ambiente del trabajo y la salud del trabajador: desafíos a la efectividad de la
 dignidad humana*

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ABSTRACT

This essay aims to reflect on psychosomatic diseases in the work environment. Psychosomatic illnesses, among them depression, are the great evils that affect our society today. Depression is characterized by the loss or diminution of interest and pleasure in life, generating anguish and prostration, a symptom of permanent melancholy. This disease can be developed for a number of reasons, but in today's society it has been perceived and noticed more frequently and often associated with work. Psychiatric illnesses are ignored by many companies, who do not recognize their gravity and see them only as a transient emotional situation or as a lack of personal disposition for work, using the well-known practice of blaming the victim his or herself. This essay aims at analyzing the possibility of characterizing depression as a work disease, trying to delimit the extent to which illness and work affect one another, in a relation of cause and effect, highlighting the main aspects related to the existing knowledge on depression, especially in the work environment. Thus, the method employed is the deductive dialectic, based on the analysis of data that inform the seriousness of the problem, its treatment in the legal, doctrinal, and jurisprudential contexts, in light of the social reality brought forth by the new generation known as technological and informational, in which human values from the past have become less important, especially in relation to the reality of capital. This liquidity of social understanding, especially by the employer, launches a great challenge for the protection of the sick person and for the realization of their fundamental guarantees in the working environment.

KEYWORDS: Depression. Work environment. Psychological disorder. Legal protection to the worker. Work Sickness.

RESUMO

Este ensaio objetiva refletir sobre as doenças psicossomáticas no ambiente de trabalho. As doenças psicossomáticas, dentre elas a depressão, são os grandes males que acometem a nossa sociedade atualmente. A depressão se caracteriza pela perda ou diminuição de interesse e prazer pela vida, gerando angústia e prostração, sintoma da melancolia permanente. Essa doença pode ser desenvolvida por diversas razões, mas na sociedade atual ela vem sendo percebida e notada com maior frequência e não raro ligadas ao trabalho. As doenças psiquiátricas são ignoradas por muitas empresas, que não reconhecem a gravidade e as enxergam apenas como uma situação emocional passageira ou como falta de disposição pessoal para o trabalho, utilizando-se da conhecida prática de atribuir culpa à própria vítima. O presente ensaio objetiva a análise da possibilidade de se caracterizar a depressão como doença do trabalho, procurando delimitar até que ponto a enfermidade e o trabalho repercutem um sobre o outro, numa relação de causa e efeito, ressaltando os principais aspectos referentes aos conhecimentos relativos à depressão, em especial no ambiente de trabalho. Assim, o método empregado é o dialético dedutivo, a partir da análise documental de dados que informam a gravidade do problema, o seu tratamento no âmbito legislativo, doutrinário e jurisprudencial, diante da realidade social instalada pela nova geração conhecida como tecnológica e informacional, na qual valores humanos pretéritos passam a ter menor relevo, em especial frente à realidade do capital. Essa liquidez de entendimento social, em especial pelo empregador, lança grande desafio para a proteção do adoecido e a efetivação das suas garantias fundamentais no meio ambiente de trabalho.

PALAVRAS-CHAVE: Depressão. Meio ambiente de trabalho. Transtorno psicológico. Proteção legal ao trabalhador. Doença do Trabalho.

RESUMEN

Este ensayo tiene como objetivo reflexionar sobre las enfermedades psicosomáticas en el ambiente de trabajo. Las enfermedades psicosomáticas, entre ellas la depresión, son los grandes males que acometen nuestra sociedad actualmente. La depresión se caracteriza por la pérdida o disminución de interés y placer por la vida, generando angustia y postración, síntoma de la melancolía permanente. Esta enfermedad puede ser desarrollada por diversas razones, pero en la sociedad actual ella viene siendo percibida y notada con mayor frecuencia y no raras veces vinculadas al trabajo. Las enfermedades psiquiátricas son ignoradas por muchas empresas, que no reconocen la gravedad y las ven sólo como una situación emocional pasajera o como falta de disposición personal para el trabajo, utilizando la conocida práctica de atribuir culpa a la propia víctima. El presente ensayo objetiva el análisis de la posibilidad de caracterizar la depresión como enfermedad del trabajo, buscando delimitar hasta qué punto la enfermedad y el trabajo repercuten uno sobre el otro, en una relación de causa y efecto, resaltando los principales aspectos referentes a los conocimientos relativos a la depresión, especialmente en el ambiente de trabajo. Así, el método empleado es el dialéctico deductivo, a partir del análisis documental de datos que informan la gravedad del problema, su tratamiento en el ámbito legislativo, doctrinal y jurisprudencial, ante la realidad social instalada por la nueva generación conocida como tecnológica e informacional, en la cual los valores humanos pretéritos pasan a tener menor relieve, en especial frente a la realidad del capital. Esta liquidez de entendimiento social, en especial por el empleador, plantea un gran desafío para la protección del enfermo y la efectividad de sus garantías fundamentales en el medio ambiente de trabajo.

PALABRAS-CLAVE: Depresión. Medio ambiente de trabajo. Trastorno psicológico. Protección legal al trabajador. Enfermedad del Trabajo.

EVOLUTION AND SOCIAL DISEASE

Society evolves and with it its complexities. We live in a time when the evolutions seem to be in true Olympic rhythm, cultural barriers are broken every moment, and society seems to want to break its own record of celerity, causing real social stress. Not infrequently these social tensions require attention since they bring different social reflexes. Just as the law created stages to mark its evolution - first, second and third generation rights (or dimension) -, the social and economic evolution also followed the same steps, causing reflections in the evolution of the work. Social evolution with its modernity and postmodernity and the work with its industrial revolutions - the first, second and third revolutions. As in the case of the law, in which the fourth-generation law is already spoken about, for the protection of biodiversity, in the economic and social area the fourth industrial revolution is already talked about, which, through the technological and informational revolution, breaks paradigms with respect to past social culture, creating new realities.



This new situation, driven by economic and social development itself, seems to create other realities in which other areas of knowledge are still assimilating to better understand these social challenges.

The health area is a clear example of this. To the extent that medicine advances, new diseases also begin to exist, and these diseases are slow to be classified by the International Code of Diseases (ICD), and after this recognition by the health area, they go through another moment, an administrative limbo in which health science recognizes the disease, but the state takes time to classify it in the list of diseases, especially in the list of occupational diseases, to protect the worker affected by it.

A clear example of this is repetitive strain injury (RSI). Prior to its recognition, the worker affected by such an illness was often classified by a non-work-related professional, as indolent, among other negative adjectives attributed to them. Nowadays, the effects of this injury and the severity of this fact are already recognized for human health, classifying it as a repetitive strain injury resulting from a variety of activities, such as leisure, sports, and work. In the case of the repetitive strain injury resulting from work, it was classified as *Work-related Musculoskeletal Disorders* – WRMD – or *rsi-wrmd*.

According to the European Agency for Occupational Safety and Health – FACTS¹ - several countries (Member States) developed public policies to tackle the problem of repetitive strain injuries (RSI) in the 1960s and 1970s of the 20th century," which convince us that the situation has given rise to a considerable amount of time for the public authorities to mature and recognize this problem in several countries linked to the European Union. In spite of the seriousness of the problem, in Brazil, it was only in 1987 that this disease was recognized by social security, although its

¹ FACTS – AGÊNCIA EUROPEIA PARA A SEGURANÇA E SAÚDE NO TRABALHO. **Lesões por esforços repetitivos nos Estados-Membros da UE**: Síntese de um relatório da Agência. Bélgica: 2000. Available at: <<http://www.ergonomianotrabalho.com.br/ler-europa.pdf>>. Access on Aug 19th, 2018.



genesis may have been rooted in the beginning of the first industrial revolution.²

Like this disease, many others could be mentioned, however, in this essay, we will focus on emotional or psychosomatic diseases. Like the repetitive strain injury that received several negative adjectives, which were usually attributed to its holder, doubly victimizing the sufferer, psychosomatic diseases seem to be on the same path.

The same has been occurring with patients with psychosomatic diseases, in their various modalities, many of them related to work. The case is so serious that it has also gained international notoriety, being known as burnout syndrome, or illness due to excessive and chronic stress, caused by overload or overwork.³ As the doctor Nicole Geovana explains, the name "burnout" literally means "burn to the end." It is, therefore, a physical and mental exhaustion resulting from an exhausting and overloaded working life.⁴ It is in this same source that we assert that this pathology can evolve into mental or physical disorders, or both at the same time. Depression is a typical example of this type of illness, and the workplace seems to be fertile and conducive to its creation and propagation.

Health areas classify the term "disease" as a disorder in the functioning of some organ, the psyche, or the whole set, and may present symptoms. Thus, the inclusion of the psyche, that is, what is related to mental illnesses, and not just physical ones, is emphasized within the classification.

Depression is a disease that has intensified over the years, especially in Western cultures. This is due to the fact that it is in a context of excessive appreciation of individuality, that is, the merit for the achievements is entirely of the individual, as well as guilt for failures, preventing any sharing of feelings with other

² BRASIL. MINISTÉRIO DA SAÚDE. SECRETARIA DE POLÍTICAS DE SAÚDE. **Protocolo de investigação, diagnóstico, tratamento e prevenção de Lesão por Esforços Repetitivos e Distúrbios Osteomusculares Relacionados ao Trabalho**, Brasília, jul. 2000. Available at: <http://bvsm.s.saude.gov.br/bvs/publicacoes/protocolo_ler.pdf>. Access on Aug 19th, 2018.

³ GEOVANA, Nicole. O que é síndrome de burnout e quais são os sintomas? In **Médico Responde**, s.d. Available at: <<https://medicoresponde.com.br/o-que-e-sindrome-de-burnout-e-quais-sao-os-sintomas/>>. Access on Aug 19th, 2018.

⁴ GEOVANA, Nicole. O que é síndrome de burnout e quais são os sintomas? In **Médico Responde**, s.d. Available at: <<https://medicoresponde.com.br/o-que-e-sindrome-de-burnout-e-quais-sao-os-sintomas/>>. Access on Aug 19th, 2018.



people or with one's own family, since all suffer from the same social illness.

The feeling of isolation caused by depression is also a risk factor for other types of illness, i.e., a mental illness is shown to affect the individual's physical health.

Just as work is an individual action of collective reflection, the emotional illness, although often silent, affects the working individual as well, but its reflection is supported by the whole society, which will bear, in addition to the collective reflex due to social illness - collective psychopathy - with the costs it causes and other repercussions.

THE BALANCE OF THE WORK ENVIRONMENT

The work environment is the place where the worker spends most of his life and builds his personal and interpersonal relationships and experiences. Thus, the imbalance of this place will directly affect the worker's quality of life.

The capitalist mode of production promotes the misuse of the labor force because it values the worker only by the extensions of his arms, only by his physical strengths, and not as an individual who has his fundamental rights consecrated by the constitution, as a human being. Man is the center of social relations, and for this reason work has to be for man and not man for work, and this assertion does not derive from a semantic appeal and cannot be taken as a catch phrase. To relegate this fact is the first step to the other social inversions of values. And when social values are reversed, notably those motivated by capital, man animalizes himself in both senses, in the condition of exploited and in the condition of exploiter.

It is not uncommon for employees to go through treatments that hurt their dignity. These situations can lead to serious losses, many of them definitive, to their physical and mental health, in addition to affecting their family and social life, their personal and professional self-esteem, with a direct reflection on their existential right. If the fight is for a dignified work, a dignified rest and restorative leisure should also be inserted in this context. It is a fundamental human right.

Dignified work must involve a dignified rest, a dignified treatment, a respect for the worker as a human being; in short, he cannot only be a living being in relation to the other living beings in the same place, a confinement, imprisoned by capital, as



if it were an unappealable sentence by the simple crime of the need to work.

The understanding of Ercílio Denny is no other when he outlines:

To be human in the full or authentic sense of the word, it is not enough to exist in fact. It is necessary to have a unitary set of convictions and values that define human existence in principle: its scope and its meaning. Moreover, such principles must be clear. Not only should they not be exposed to continuous discussions but should also indicate to man his position in the observable world. Because man thinks to himself through mediation with the observable world.⁵

In this sense, Amauri Mascaro Nascimento⁶ proposes a broader notion of the work environment, encompassing the organizational aspects of the environment, in order to analyze all the factors that can affect the mental health of the worker, such as working hours, overtime, breaks, among other elements that may impact the work-environment balance.

Therefore, the objective of defining the work environment as balanced surpasses the perception of an adequate physical environment within the norms of hygiene and safety of the worker, it is necessary to also emphasize the concern with his physical and mental health. For this reason, the salubrity of the environment must consider the physical aspect, but also the non-physical aspect, which we here call emotional, to value the worker in the environment in which he spends most of his life. For this reason, it is not enough to provide personal protective equipment (PPE), it is necessary to build and provide an emotional protection equipment (EPE), which we are now advocating, and which will be seen elsewhere.

DEPRESSION AS A WORK DISEASE

Excessive individualism in Western societies takes center stage in the workplace, which is full of competitiveness.

When depressed, people view themselves from the negative view of

⁵ DENNY, Ercílio A. **Experiência & Liberdade**. Capivari-São Paulo. Opinião E. 2003. p. 320.

⁶ NASCIMENTO, Amauri Mascaro. **Curso de direito do trabalho: história e teoria geral do direito do trabalho: relações individuais e coletivas do trabalho**. São Paulo: Saraiva, 29. ed., 2017, p. 491.



everything around them, as incapable of selling their work or producing insufficiently with it.

This essay proposes to analyze the procedural and normative progress of the regulatory bodies on the characterization of depression as a work disease so that an adequate response can be made to the judicial demands submitted to the Labor Courts. In addition, to be able to correlate the technical knowledge within the legal sphere to determine the responsibility of the employer and possible solutions to the conflicts in the work environment.

Besides the importance of the subject for the Law, it is also important to the work environment and the national economy. The contradiction in this respect is that people tend to become depressed by the excessive collection on their productivity, among other facts that evidently also contribute to this situation. It occurs, however, that when the person is depressed, their productivity tends to drop. This drop is so noticeable that it can overcome the loss of productivity due to absenteeism, besides contributing against the quality of the work.

ABSENTEEISM, PRESENTEEISM AND DISCONNECTION.

When approaching the theme of absenteeism, the need arises to talk about its concept and others that relate to it: presenteeism and disconnection. These phenomena occur in the work environment.

Absenteeism or truancy, in Latin, *absens* is an act or effect of abstaining, failing to do something which one was obligated to do, it also means being out, away, absent. In the labor field absenteeism is the absence of the worker in the workplace. It can have several causes and can exist in several forms: absenteeism supported by law - legal absence from work -, compulsory absenteeism - disciplinary impediments-, absenteeism due to illness - also protected by law - and voluntary absenteeism, or unjustified absence - being absent at work as a result of a voluntary unilateral act of the employee's initiative, not covered by law for allowance purposes.

Sasaki⁷ reveals that not all diseases lead to absenteeism, since, in cases such

⁷ SASAKI, Simone Fabiane da Silva. Trabalho bancário e fatores associados ao presenteísmo e ao absenteísmo. 2013. **Dissertação de Mestrado** - Faculdade de Saúde Pública da Universidade de São Paulo, São Paulo, 2013.



as depression, many employees may continue to work. In this case, it is presenteeism. Presenteeism is the opposite of absenteeism, it is the physical presence of the employee in the workplace, even though he is not physically or psychologically healthy. In this way, they are unable to fully comply with their labor obligations. This disease, still under construction of a diagnostic hypothesis, can be caused by factors related to the work, such as the high pressure due to the control over their functions, the relationship with the colleagues, and the stipulation of exaggerated deadlines, and by personal factors, such as financial status and family life⁸.

The cost of the employee's physical absence is easy to calculate, since the employer uses their salary pattern and the period of their absence from work, and using the formula concerning the consequent interruption or suspension of the employment contract - depending on the form of removal -, calculates the amount to be accounted for, being aware that in both cases there are administrative costs. In the case of presenteeism, however, it is difficult to estimate the costs of the damage caused to the work organization, as the drop in employee productivity can overcome the loss of productivity due to absenteeism, in addition to contributing to increase the possibilities of accidents in the workplace. In addition to the productivity factor, it is necessary to consider the final quality of the product, which can also be compromised. In this sense, the damage goes beyond the financial, reaching the social as well for this reason, because in both cases society will also bear such cost, because at some point it will face the luck of supporting another sick worker, who should be treated by the single health system.

EPE AS AN INSTRUMENT OF CAUTION, PREVENTION AND PROTECTION OF THE EMPLOYEE'S PHYSICAL AND EMOTIONAL HEALTH.

⁸ HANSEN, Claus D.; ANDERSEN, Johan H. Going ill to work--what personal circumstances, attitudes and work-related factors are associated with sickness presenteeism?. **Social science & medicine** (1982), 67(6), 956–964, 2008. Available at: <<https://doi.org/10.1016/j.socscimed.2008.05.022>>. Access on Aug 19th, 2018.



Inspired by the personal protective equipment (PPE), given the incidence of psychosomatic diseases originating in the work environment, we defend the need to create the emotional protection equipment (EPE) for the employee, not foreseen in the NRs of ordinance 3124/78, evidently. Using a metaphorical language, we understand that in the era of the fourth industrial revolution, nowadays, the provision of physical equipment to protect the health of the employee is no longer in keeping with the reality of the healthy environment, given the need to also worry about the full protection of the employee in the work environment. This new "instrument" should also be provided to the employee, as if it were a PPE.

Just as the PPE was created for the prevention of physical occurrences, we defend the need to create an EPE to prevent emotional occurrences. Just as we defend the employer's objective liability for the work-related accident, we understand that sickness due to work must follow the same fate.

The reader must now be wondering how we have resolved this. This is the high point of this reflection. The solution to this serious and delicate problem is not intended here, but rather to raise the need for its awareness in view of the high incidence of psychosomatic illnesses in the most diverse work environments and in its most diverse forms. For this reason, the solution must not be a single response, formatted with catch phrases, but must be constructed in a procedural way, being the first step to raise awareness of its need, for later creation of this *tool* for environmental harmonization. Each environment must create a proper *instrument* of dialogue appropriate to that place, in the search for its balance. This is the reason for the creation of an individual protection equipment, but as stated somewhere, of collective reflection, internal and external to the company.

This is a way of guaranteeing worker dignity so that the work environment remains healthy and can contribute to the employee's physical and mental health.

To create this instrument, the concept of protection must also encompass concepts of precaution and prevention, both physical and emotional. This is an important issue because the principles are based on every legal system. In this context, the protective principle must involve the protection of the worker's physical and mental health, in its healing aspect, but especially in the preventive one.



EMOTIONAL PROTECTION EQUIPMENT - EPE

Given the employer's responsibility for the physical and mental health of its employees and the seriousness of the issue, we advocate that the EPE should also bring together the concepts of prevention and precaution previously presented.

Medicine acts in two scopes: preventive and curative, both of which must be considered by the EPE. In this way, these two strands are supported to establish solutions to be applied by the employer in the work environment.

In the preventive scope, the employer must adopt measures to eliminate stress in the workplace. Employers must have capable professionals to foster the search for a healthy environment, diagnosing the various situations that may bring unbalance to the work environment, tending to influence the worker's life, with the possibility of him becoming ill. The worker, in this sense, must be treated as a human being, cannot be treated as a vile instrument of work, which can be discarded at any time to their own devices, as if they were an inanimate piece.

As pointed out above, it is not enough for Ercílio Denny to exist in fact, the human being must justify his existence for himself and for others who live with him in society, and where he creates his relationships. He must have the guarantee of self-esteem and the realization of his existence, and for this he needs to get rid of the bonds, to free himself, in order to guarantee the realization of his Fundamental Rights. It is not another and understanding of Thomas Fleiner brings us his contribution:

Finding myself on a beautiful, sunny Italian beach, I freely decided to work on this book, instead of dreaming, bathing, drinking coffee, or even watching television. What does this have to do with human dignity? A lot! Unlike all other living things, man determines, at least in part, the cause of his own actions. [...] When this freedom is invaded by others, man has his dignity violated. Human dignity presupposes respect for the scope of freedom that people need to form their opinions and, in accordance with them, determine their actions. In addition, it is necessary to give man the possibility of developing himself according to his life plans. Any coercive measure that essentially undermines their freedom of decision constitutes an attack on human dignity.⁹

⁹ FLEINER, Thomas. **O que são direitos humanos**. Translated by Andressa Cunha Cury. São Paulo: Max Limonad, 2003, p. 11.



For FLEINER human dignity is based on freedom, for violation of this right violates its dignity, and this is important so that man can develop his own project of life, or in the words of the Preacher, life must be lived in abundance, man should live abundantly, or in a more lenient reading, live in dignity. "I came that they may have and enjoy life and have it in abundance"¹⁰. This is perhaps one of the earliest definitions of human dignity, the concept of which is simply outlined, but it sums up the idea of eminent modern scholars, who still labor to close their conceptual diagnosis. The worker must live abundantly even in his workplace, and it is the duty of the employer to eliminate the noises, physical polluting agents, but also the tensions that cause the same evils.

CASE LAW ASPECT

Case law, in the absence of legal parameterization, has been fulfilling its role in identifying the immaterial damage resulting from psychosomatic diseases, based on the causality nexus, given its multiple causalities. Therefore, it is necessary to characterize the inertia of the employer as to the correct treatment of his work environment.

Claims for damages based on the damages resulting from the work in unhealthy and unbalanced labor-environmental conditions, although it has registered a low frequency of trials, represents the third thematic category more frequently, according to the case law research carried out.

As an example, we point out the judgment rendered in the records of the ordinary appeal nº 0062200-64.2007.5.06.0015, held before the Regional Labor Court of the 7th Region (TRT&), in a decision rendered by Sérgio Torres Teixeira, on December 06, 2013, whose case registers the origin of the indemnification claim for existential damage resulting from the contraction of disease by the worker, due to unbalanced labor-environmental conditions:

¹⁰ HOLY BIBLE. The Gospel of Saint John, chapter 10, verse 10. s.d.



MORAL AND MATERIAL DAMAGE. PROOF. RECOGNITION. CLAIMANT. DISEASE. INVOLVEMENT. CAUSAL NEXUS. LABOR ACTIVITY. FINDINGS. EXISTENTIAL DAMAGE. OCCURRENCE. INDEMNIFICATIONS. SENTENCE. MAINTENANCE. There are many documents in the procedural notebook that demonstrate the illness that affected the worker, for reasons directly related to her work environment, and, undoubtedly, because of the business conduct, which, through hierarchical superiors, exercised intense psychological pressure, in an excessive way on the hyposufficient part. Even genuine existential damage, evidenced in the "frustration of the worker in not realizing a project of life and in the loss of social and family relations, due to the deprivation of his right to rest." This scenario also culminated in the issuance of the Notice of Work Accident - CAT, addressed to Social Security, giving rise to the perception of the corresponding social security benefit to the insured, and, subsequently, the disability retirement. It was more than proven to the attitude of the banking entity, to collaborate, effectively, to the serious health problems that assail the claimant. Indemnities for moral damages and material that prove relevant and in amounts consistent with reasonableness and proportionality. Sentence that holds. Ordinary appeal dismissed.¹¹

There is no other understanding expressed in the decision by rapporteur Ricardo de Carvalho, of the 3rd group of the Regional Labor Court of the 4th Region (TRT4), in Ordinary Appeal nº 0000221-16.2014.5.04.0661, in which he recognizes the emotional insalubrity of the work environment to which the worker was subjected, in order to trigger symptoms of depression and severely affect his social life:

EXISTENTIAL DAMAGE. INDEMNITY. In the event that the conviction results from the conditions of employment to which the applicant was subjected, leading her to develop depression, being away from work for three years, as well as unfair salary discounts, to the point of receiving nothing at the end of the month.¹²

The Higher Labor Court (TST) adopts the theory of subjective responsibility of the employer, however, it does not fail to recognize, like the Regional Labor Courts, the responsibility of the employer when it contributes to the occurrence of the factual situation of the worker's illness, as can be seen from the decision we have made as an example, in a decision issued by the TST at the process nº RR: 376008520075040030:

¹¹ BRASIL. TRT 7th Region. **RO 0062200-64.2007.5.06.0015**. Rapporteur: Sergio Torres Teixeira. 2ª Group. Trial: 12/04/2013. Publication: 06/12/2013.

¹² BRASIL. TRT 4th Region. **RO 0000221-16.2014.5.04.0661**. Rapporteur: Ricardo Carvalho Fraga. 3rd Group. Trial: 9/15/2015.



“INDEMNIFICATION FOR MORAL DAMAGES ARISING FROM WORKPLACE DISEASE EQUATED WITH ACCIDENT OF WORK - DEPRESSION. MORAL HARASSMENT. EXISTENCE OF GUILT. SUBJECTIVE LIABILITY OF THE DEFENDANT. This is a claim for compensation for moral damages, based on an illness equated with an accident at work, a depressive episode in the face of humiliating treatment of the author and other employees in the workplace during the period in which she was subordinated to the supervisor (...). According to the reasoning of the judgment under appeal, the court stated that "the expert evidence proves the existence of a causal link between the inappropriate treatment in the work environment and the illness developed during the contract, and the moral damages resulting from the illness are similar to an accident at work." The Court of First Instance, a complete instance for the analysis of facts and evidence, based on an expert opinion that diagnosed a moderate depressive condition and the oral evidence obtained, stated that "the occupational disease has the excessively humiliating, stressful, health-damaging work environment as a concause." In addition, it concluded that "the causal link and the fault of the defendant remain configured, the latter through the attitude of the contracted supervisor." In fact, considering the factual context of evidence contained in the case file, about the disease acquired by the claimant, the moral damage arising from it and the causal link between the damage and the humiliating treatment of the claimant, there is no way to exclude the right to compensation. In addition, it is pointed out that, in order to arrive at a different conclusion from the Regional, it would be necessary to reverse the evidentiary set, not allowed in this extraordinary appeal, in the face of the obstacle foreseen in Precedent no. 126 of the TST.¹³

Also worthy of mention is the decision in AI 806-58.2011.5.15.0082:

INDEMNIFICATION FOR MORAL DAMAGE. VACATION DEPRIVATION FOR A LONG PERIOD. EXISTENTIAL DAMAGE. ENJOYMENT AND PAYMENT. O e. TRT to assert that, despite the acknowledgment of the right to double vacation payment, the author is entitled to compensation for moral damages, resulting from the long deprivation of the right to vacation (2005 to 2010), enjoyment and payment, because the elements that led to the respective indemnification remain characterized: the moral conduct, the conduct of the employer and the causal link between the employer's attitude and the harm suffered by the author and considered: "... on the one hand, to prevent recurrence of the employer in situations such as the one found in this action and, on the other hand, to compensate the worker for the suffering caused, without, however, giving rise to illicit enrichment." Unscathed art.

¹³ BRASIL. TRIBUNAL SUPERIOR DO TRABALHO. RR: 376008520075040030. Rapporteur: José Roberto Freire Pimenta, Trial: 04/15/2015, 2nd Group, Publication: 4/24/2015.



5, X, of the Federal Constitution. Restraints coming from TST Groups, which are not available under art. 896, line “a” of the CLT. Worsening of known and devoid instrument¹⁴.

As seen in the above decisions, the Labor Courts seem to be sensitive to such situations, but they work with the cases presented to them, and do not, evidently, account for the social reality that affects workers in the National productive scenario. In this way, they do not operate in a preventive manner, and do not contribute to such a task, since they are often criticized for being too insensitive in arbitrating the values to be compensated in cases of immaterial damages. Without bringing the discussion into question, it does not affect this reflection, and without wishing to enter into the discussion of the unconstitutionality of the tabulation established by Article 223-G of the CLT - which we understand will be endorsed by the STF, like other mistaken referendums that have already occurred -, the Labor Courts seem to mean that the aforementioned tabulation seems reasonable. We do not agree, but this is a subject for further reflection.

CONCLUSION

Labor Law is an area of legal science that dialogues with other areas of science, notably with the area of health and engineering, to prevent the health and safety of workers. This dialogue becomes fruitful when it aims at the realization of workers' rights, in order to guarantee their human dignity. As the courts do not act preventively, labor inspection has been facing a serious scrapping project for decades, and now we are talking about the extinction of the Ministry of Labor. Faced with such serious situations that arise in the political field, tending to cause a real social retrogression, the climate is one of apprehension and astonishment, for society is striding strenuously towards a diametrically opposed situation, towards the economic and social evolution driven by technological and informational advancement. As a result of this social advance, situations arise and need to be

¹⁴ BRASIL. TRIBUNAL SUPERIOR DO TRABALHO. AI 806-58.2011.5.15.0082. 3rd Group. Rapporteur: Alexandre Agra Belmonte. Trial: 03/25/2015.



protected. As we know the political scenario is not sensitive to such situations. For this reason, the discussion of the integral protection of the worker, if not for public policies, gives rise to an awareness of the need to take care of individual or collective social health; and thus, the employer will take better care of the physical and mental health of its employees, because it is not only absenteeism that causes damage to the company, but also presenteeism, in the same proportion or in a more significant proportion.

REFERENCES

ABREU, Fernanda Moreira. **Depressão como doença do trabalho e suas repercussões jurídicas**. São Paulo: LTr, 2005.

ALMEIDA, Victor Hugo de. Consumo e trabalho: impactos no meio ambiente do trabalho e na saúde do trabalhador. 2013. 241 f. **Tese (Doutorado em Direito)** – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2013.

BRASIL. Ministério da Previdência Social. **Diretrizes de conduta médico-pericial em transtornos mentais**. Brasília, 2007.

BRASIL. Ministério da Saúde. Doenças relacionadas ao trabalho - manual de procedimento para os serviços de saúde. In: **Rev. Trib. Reg. Trab. 3ª Reg.**, Belo Horizonte, v.46, n.76, p.27-44, jul./dez.2007. Brasília, 2001.

BRASIL. MINISTÉRIO DA SAÚDE. SECRETARIA DE POLÍTICAS DE SAÚDE. **Protocolo de investigação, diagnóstico, tratamento e prevenção de Lesão por Esforços Repetitivos e Distúrbios Osteomusculares Relacionados ao Trabalho**, Brasília, jul. 2000. Available at: <http://bvsmms.saude.gov.br/bvs/publicacoes/protocolo_ler.pdf>. Access on Aug 19th, 2018.

BRASIL. TRIBUNAL SUPERIOR DO TRABALHO. **AI 806-58.2011.5.15.0082**. 3rd Group. Rapporteur: Alexandre Agra Belmonte. Trial: 03/25/2015.

BRASIL. TRIBUNAL SUPERIOR DO TRABALHO. **RR: 376008520075040030**. Rapporteur: José Roberto Freire Pimenta, Trial: 04/15/2015, 2nd Group, Publication: 4/24/2015.

BRASIL. TRT 4th Region. **RO 0000221-16.2014.5.04.0661**. Rapporteur: Ricardo Carvalho Fraga. 3rd Group. Trial: 9/15/2015.

BRASIL. TRT 7ª Região. **RO 0062200-64.2007.5.06.0015**. Rapporteur: Sergio Torres Teixeira. 2ª Group. Trial: 12/04/2013. Publication: 06/12/2013.



COSTA, Aline Moreira da; GONÇALVES, Leandro Krebs. Meio ambiente do trabalho e proteção jurídica do trabalhador: (re)significando paradigmas sob a perspectiva constitucional. In: FELICIANO, Guilherme Guimarães; URIAS, João. (Org.). **Direito ambiental do trabalho**: apontamentos para uma teoria geral. São Paulo: LTr, 2013. v. 1.

DELGADO, Mauricio Godinho. **Curso de direito do trabalho**. 16. ed. São Paulo: LTr, 2017.

DENNY, Ercílio A. **Ética & Sociedade**. Capivari - São Paulo: Opinião E. 2001.

DIAS, José de Aguiar. **Da responsabilidade civil**. Rio de Janeiro: Lumen Juris, 2012.

FACTS – AGÊNCIA EUROPEIA PARA A SEGURANÇA E SAÚDE NO TRABALHO. **Lesões por esforços repetitivos nos Estados-Membros da UE**: Síntese de um relatório da Agência. Bélgica: 2000. Available at: <<http://www.ergonomianotrabalho.com.br/ler-europa.pdf>>. Access on Aug 19th, 2018.

FLEINER, Thomas. **O que são direitos humanos**. Translated by Andressa Cunha Cury. São Paulo: Max Limonad, 2003.

GEOVANA, Nicole. O que é síndrome de burnout e quais são os sintomas? In **Médico Responde**, s.d. Available at: <<https://medicoresponde.com.br/o-que-e-sindrome-de-burnout-e-quais-sao-os-sintomas/>>. Access on Aug 19th, 2018.

GORZ, André. **O imaterial**: conhecimento, valor e capital. São Paulo: Annablume, 2005.

HANSEN, Claus D.; ANDERSEN, Johan H. Going ill to work--what personal circumstances, attitudes and work-related factors are associated with sickness presenteeism?. **Social science & medicine** (1982), 67(6), 956–964, 2008. Available at: <<https://doi.org/10.1016/j.socscimed.2008.05.022>>. Access on Aug 19th, 2018.

HIRIGOYEN, Marie-France. **Assédio moral**: a violência perversa no cotidiano. 7. ed. Rio de Janeiro: Bertrand Brasil, 2005.

HOLY BIBLE. **The Gospel of Saint John**, chapter 10, verse 10. s.d.

JACQUES, M. G. **O nexo causal em saúde/doença mental no trabalho**: uma demanda para a psicologia. Universidade Federal do Rio Grande do Sul. Porto Alegre, Brasil, 2006.

LIMA, M. E. A. **Escritos de Louis Le Guillant** - da Ergoterapia à Psicopatologia do Trabalho. Petrópolis, Rio de Janeiro: Ed. Vozes, 2006.



MORETTI, Silvinha. **Qualidade de vida no trabalho x Auto-realização humana.** [Blumenau], 2008. Available at: <<http://www.ergonomia.ufpr.br/PB%20qvt%20realiz%20humana.pdf>>. Accessed on: Sept. 24th, 2018.

NASCIMENTO, Amauri Mascaro. **Curso de direito do trabalho: história e teoria geral do direito do trabalho: relações individuais e coletivas do trabalho.** São Paulo: Saraiva, 29. ed., 2017, p. 491.

SABONGI, Camila Martinelli. O dano existencial aplicado ao âmbito juslaboral. 2015. 72 f. **Trabalho de Conclusão de Curso (Graduação em Direito)** – Faculdade de Ciências Humanas e Sociais, Universidade Estadual Paulista “Júlio de Mesquita Filho”, Franca, 2015.

SABONGI, Camila Martinelli. O dano existencial na jurisprudência trabalhista brasileira e a necessidade de harmonização de políticas públicas labor-ambientais para o seu enfrentamento. 2018. 103 f. **Dissertação de Mestrado – Faculdade de Ciências Humanas e Sociais, Universidade Estadual Paulista “Júlio de Mesquita Filho”, Franca, 2018.**

SASAKI, Simone Fabiane da Silva. Trabalho bancário e fatores associados ao presenteísmo e ao absenteísmo. 2013. **Dissertação de Mestrado - Faculdade de Saúde Pública da Universidade de São Paulo, São Paulo, 2013.**

SELIGMAN, Martin E. P. **Indefensión: en la depresión, el desarrollo y la muerte.** Translation. Luis Aguado Aguilar. Madrid: Debate, 2000.

TEIXEIRA, Sueli. **A depressão no meio ambiente do trabalho e sua caracterização como doença do trabalho.** Rev. Trib. Reg. Trab. 3ª Reg., Belo Horizonte, v.46, n.76, p.27-44, jul./dez.2007.

VALADARES, C. **Trabalhador mais protegido.** UnBnotícias, Ano 10, n. 78, 2007. Available at: <<http://www.secom.unb/unbnoticias.un0507-p7.htm>>. Access on May 25th, 2018.

WEBER, Max. **Economia e sociedade: fundamentos da sociologia compreensiva.** Brasília: Universidade de Brasília, 1999.

