

Kluwer Mediation Blog

Mediation Could Well be a Solution to a More Modern, Agile, and Efficient Framework for Resolving Labour Disputes

Andrea Maia (Mediar360 – Dispute Resolution) · Wednesday, July 25th, 2012

Lack of flexibility is probably one of the most difficult obstacles to resolve any dispute. The absence of flexibility, limits the ability to reach agreements and ultimately makes the courts the only place where the dispute can find any kind of resolution.

It is weird, therefore, that countries like Brazil have, in their legal systems, at this day and age, mechanisms that limit the parties' capacity to negotiate and settle disputes. Incredibly, this limitation exists in the labour law.

Brazilian Constitution and the labour laws (CLT- Consolidação das Leis Trabalhistas) prescribes a series of norms that challenge the worldwide trend to resolve labour disputes through direct parties' negotiation or even through mediation.

Labour laws are rigid, confusing, unclear and complex. They attempt to cover every detail of the labour relationships, but ultimately are lost in contradictions and doubts. They generate legal uncertainty, increase labour costs and make the parties incapable of solving their disputes without court intervention.

In fact, the article 9 of the CLT does not allow the employee to negotiate any of its rights, making compromising an illegal solution. In Brazil, individual disputes that otherwise could be easily resolved through mediation; direct negotiation; or arbitration, require court intervention.

The result of this (to say the least) outdated and illogical legal system is a clogged court system. The Brazilian labour court received, in 2011, in excess of 569.000 new cases (TST – <http://www.tst.gov.br/>). At any given moment, the Brazilian labour courts are home to approximately 2 million disputes. Roughly speaking, this means that, on average, 1% of the Brazilian population, at any given time, is seeking remedy in the labour courts every.

Clearly, resolving all these disputes in an acceptable, cost efficient and satisfactory manner is an impossible task imposed to the Brazilian courts by an outdated, illogical and complex legal system.

It also imposes huge costs to the Brazilian economy. According to “O Globo”, one of Brazil's largest newspapers, the 36 largest companies in operation in Brazil reserved, in their balance sheets, approximately US\$ 12.5 billion for payments related to pending labour disputes.

It is estimated that each tax payer pays about US\$ 25.00 per year to maintain the labour courts.

Worst of all, it is estimated that, for every US\$ 1.00 paid to an employee as a result of a labour law suit, US\$ 1.3 is spent in the process of resolving the dispute in the court system.

Most of these disputes that clog Brazil's court system could be easily resolved through direct negotiation or mediation. However, the adoption of these ADR options would depend upon changes in the laws which would have to give back to employers and employees the ability and powers to negotiate and make decisions regarding their own disputes.

Mediation could well be a solution to lower the cost of doing business in Brazil. Doing so, however, demands a swiping regulatory reform aiming at establishing a more modern, agile, and efficient framework for resolving labour disputes. Something the country desperately needs in these times of economic uncertainty.


To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Wednesday, July 25th, 2012 at 10:38 am and is filed under [ADR](#), [Business](#), [Court Procedure and Litigation](#), [Efficiency](#), [Growth of the Field \(Challenges, New Sectors, etc.\)](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.