

Kluwer Mediation Blog

Solving Complex Problems Thinking out of the Box

Andrea Maia (Mediar360 – Dispute Resolution) · Friday, October 25th, 2013

As mentioned in a previous post, this month I will briefly talk about two high profile cases from the corporate sector which helped to improve mediation awareness in Brazil and, due to its widespread coverage, provided the general public clear examples of how it is possible to fix complex legal problems by not letting our pre-conceived perceptions and emotions interfere in our decision making process, keeping open all different problem solving possibilities.

The first case is a Dispute System Design (DSD) project created to provide an efficient and just system to compensate the victims of an airplane crash which occurred in Brazil in 2007 (TAM flight 3054), when 199 people lost their lives.

In a tragedy of this nature, it is not difficult to imagine the difficulties in dealing with those directly affected by the accident. Fueled by an almost unstoppable media coverage, the natural grief and emotions of the parts involved, as well as all the non-legal aspects of the case, created an atmosphere where litigation apparently seemed to be the only way forward.

After intense efforts, it took 9 months to convince the stakeholders involved in the conflict to try a new approach in an accident of such proportion and publicity. Mr. Diego Faleck, the system designer, in an unprecedented compensation strategy for the beneficiaries of the victims, developed a framework which not only addressed the interests of the families of those who lost their lives, but also kept the costs involved and the time to settle at minimum levels.

In an effort to facilitate the process, a claim resolution facility, staffed by specifically hired and trained professionals, was opened in order to not only assist the beneficiaries in filing their claims, but also to fulfill several other important tasks such as:

- Early neutral evaluation of all cases;
- Offer of mediation;
- Advisory arbitration committee, in which the public authorities would issue nonbinding opinions to help the parties resolve their disputes;
- Neutral representatives present at every meeting the family members had with the companies;
- Government participation, which gave legitimacy to the proceedings.

In conclusion, one year later, 200 people (the beneficiaries of around 55 victims), had already been compensated and, in less than 2 years, 92% of the conflicts were solved, with most of the family members reporting that the system's transparency and impartiality helped them get through their ordeals with more tranquility. On the other side of the table, the legal counsels of the airline and

the insurance companies have also mentioned that they spent less on legal fees and more on compensating families. No doubt a well developed Mediation process helped to bring a less painful ending to all involved in this terrible tragedy.

The second case comes from a complete different industry segment and it relates to the settlement of one of the biggest shareholders' disputes in Brazil's corporate history: Casino's (France) acquisition of Pao de Açucar, (a leading supermarket chain in Brazil).

In 2005, Abilio Diniz, the former owner of the supermarket chain struck a deal to sell the group, known as Grupo Pão de Açucar (GPA), to Jean Charles Naouri's Casino, through a step-up transaction that would only be completed in 2012. After more than five years of working together, the two had a falling out in 2011, when Diniz proposed a merger of GPA with the local operations of Casino's French rival, Carrefour SA. Casino fiercely opposed the deal, which eventually fell apart, starting a bitter battle between GPA and Casino.

Amidst such a complex situation, in a last effort before the arbitration proceeding started, Willian Ury was hired to help lawyers and parties involved to put an end to more than two years of a ruthless shareholding dispute for the control of the Brazilian supermarket chain.

Among others, Willian Ury's line of work focused on:

- Helping parties to determine their true interests and priorities;
- Discussing realistic resolution options, and;
- Encouraging parties to question their stance.

In a surprisingly line events, almost unimaginable a few months earlier, the parties reached a simple two pages agreement, outlined in just seven items, where parties agreed to settle any and all disputes, complaints or claims related to their partnership in Brazil, as well as bringing to an end all the arbitration cases brought by both sides throughout the dispute.

In conclusion, through two completely different examples, it has been clearly demonstrated that the use of Mediation tools, where new perspectives are brought into the table by professionals who do not have any other interest rather than to solve the conflict in a faster, creative, inexpensive and a mutually satisfying way, can be applied regardless of the industry, economic size or seemingly untreatable problems.

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