

Homologation of employer-employee settlements by the Labor Courts

19.07.2022 3 min read

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The Employment Reform (Law 13.467/2017) added articles 855-B to 855-E to the Consolidation of Labor Laws (CLT – Consolidação das Leis do Trabalho), which together set out the procedure for homologation by the Labor Courts of settlements reached out of court between employees and employers. All that is needed is for the parties, each represented by different legal counsel, to file a petition asking the court to certify the agreement they have reached.

The intention behind the introduction of the provisions was to promote the principle of conciliation that is inherent to the Labor Courts, by giving employers and employees scope to negotiate a private settlement to disputes, and benefit from the legal certainty that court homologation provides.

Over the last five years, however, the Labor Courts have created specific rules for the homologation procedure that go beyond the requirements established by the legislator.

For example, the 2nd Region Labor Court, which serves the city of São Paulo, Santos and other cities, has stipulated various guidelines for court homologation of out-of-court settlements, including court costs shared between the parties, a penalty clause for breach of the settlement, specification of the amounts negotiated and limits on the scope of releases given in the settlement.

For its part, the Rio de Janeiro Labor Court, in addition to requiring a penalty clause for breach and specification of the amounts negotiated in the settlement, also expects the parties to file proof that contributions to the Severance Guarantee Fund (FGTS – Fundo de Garantia por Tempo de Serviço) have been made, including the 40% fine owed if the employee has been dismissed without cause, if the FGTS amounts are not dealt with in the settlement.

Thus, through their decisions, regional labor courts have been imposing various prerequisites for homologation of out-of-court settlements. In other cases, the courts have homologated settlements only in part, excluding general releases of claims related to the period of employment. Without the release, however, employees are free to pursue through the Labor Courts claims that are not expressly settled in agreement made with their employer.

In this uncertain scenario, the Superior Labor Court (TST – Tribunal Superior do Trabalho) has seen a constant flow of appeals dealing with homologation of out-of-court settlements. The TST has been homologating settlements that meet the requirements under article 855-B CLT, as long as the parties' consent and good faith is clear. The TST's decisions reiterate that it is not up to the Labor Courts to alter, unilaterally, the terms negotiated between the parties, if they

are represented by legal counsel, as required by law. The courts must simply certify – or not – the entire agreement submitted by the parties.

The TST's position is encouraging, since it offers legal certainty to companies that opt to make out-of-court settlements. At the same time, the TST itself has stressed that homologation is not a rubber stamp, and that agreements which do not contain reciprocal concessions, which contain defects of consent, or which contain provisions contrary to the law or public order will not be homologated. To ensure that their settlements are valid and enforceable, therefore, employers should take care to comply with these guidelines, along with the formal requirements set out in article 855-B CLT.

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