

Brazil's Highest Labor Court Issues New Rules for Processing Appeals

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Appeals to the Superior Labor Appeals Court (TST – *Tribunal Superior do Trabalho*, the highest court in employment-related matters) are highly technical because of the various requirements imposed by the legislation. Recently, however, the TST issued new rules that seek to simplify the rules for processing appeals to that court.

In the past, if permission to appeal to the TST was denied by a Regional Labor Appeals Court (the courts of second instance), parties could appeal that decision directly to the TST by interlocutory appeal. Now, with the changes introduced by TST Resolution 224, if permission is denied to appeal from a decision that is consistent with the position taken by the TST in cases where the court has issued a binding ruling (decisions under the repetitive appeals system, in proceedings to decide a question of law that is repeatedly raised in claims before the labor courts, or in assumption of jurisdiction proceedings to decide issues with significant social impact), the parties may no longer appeal the denial to the TST: their only recourse is to ask the Regional Labor Appeals Court to review its decision.

On its website, the TST publishes tables listing “Repetitive Appeals” (*Recursos de Revista Repetitivos*),¹ “Assumption of Jurisdiction Proceedings” (*Incidentes de Assunção de Competência*),² and “Repetitive Claims Proceedings” (*Incidentes de Resolução de Demands Repetitivas*).³ These tables, together with a careful reading of the decision denying leave to appeal, can help lawyers check which step is appropriate – an interlocutory appeal to the TST or a petition for review with the Regional Labor Appeals Court.

If the petition for review filed with the Regional Labor Appeals Court is successful, and permission to appeal is granted, the appeal to the TST will follow the ordinary course. If, however, the Regional Labor Appeals Court dismisses the petition for review, its decision will be final and unappealable.

Of course, many decisions by the Regional Labor Appeals Courts will not deal with matters on which the TST has issued a binding ruling. If the Regional Labor Appeals Court denies permission to appeal to the TST in such cases, the appellant will continue to have the option of filing an interlocutory appeal to the TST against the denial, in the procedure already well known to Brazil's labor and employment lawyers.

The TST's new rules also deal with cases where permission to appeal is denied in a case that raises more than one issue, one (or more) on which the TST has issued a binding ruling, so that the appellant must file a petition for review to the Regional Labor Appeals Court, and another (or others) on which an interlocutory appeal lies to the TST. In these cases, the appellant must file both a petition for review and an interlocutory appeal, and the interlocutory appeal will be decided after the petition for review.

Although the TST's new rules provide that the decision by the Regional Labor Appeals Courts in petitions for review is final and unappealable, there are still some avenues open to dissatisfied appellants, at least in some situations. For example, a party could bring a separate action

to set aside judgment, or a complaint to the TST, where the contested decision is inconsistent with a binding ruling Brazil's highest courts, the Superior Court of Justice (STJ – *Superior Tribunal de Justiça*) and the Supreme Federal Court (STF – *Supremo Tribunal Federal*) or by the TST. In such cases, article 966§5 of the Code of Civil Procedure (CCP) provides that an action to set aside judgment lies when a decision based on a binding ruling did not take into account the distinctions between the specific case before the courts and the binding precedent. In addition, article 988§4 CCP provides that a complaint can be filed with the TST where the lower labor courts have failed to follow a binding ruling issued by the TST. Last, the constitutionality of the new rules can be challenged by appeal to the STF.

The new system for processing appeals to the TST comes from the Code of Civil Procedure (articles 988§5, 1030§2, and 1021, which apply to labor proceedings, according to art. 896-B of the Consolidation of Labor Laws – CLT) and should give greater weight and effect to binding rulings issued by the TST, which in turn should promote greater legal certainty, efficiency, and equal treatment, in addition to reducing the number of appeals to the TST.

Appeals to the TST were already restricted by reason of subject matter, and with the new rules, bringing an appeal will become even more complex. The TST's new rules reinforce the need for a detailed analysis of decisions denying leave to appeal to the TST in order to identify the appropriate course of action and avoid procedural missteps. BMA's Labor and Employment team is constantly monitoring changes in employment law and procedure to ensure that our clients have the support they need at every stage of legal proceedings.

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NOTES

1. At .

2. At .

3. At .

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