

THE FUNDAMENTAL RIGHTS TO DISCONNECT TELEWORKING AND ITS EFFECTS ON GLOBAL SOCIETY

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ABSTRACT

The right to rest is rich conquest of the working class that goes back to the Industrial Revolution and their struggles. Because of its importance, integrates the minimum set of fundamental social rights. Your in-depth study led to the creation of the theory of disconnection, it considers that a worker has the right to "disconnect" from his work, tasks, and employer in these intervals of rest. With telecommuting and, notoriously, with the methods of making teleworking at home and online, the right to rest is a doubt. Would be affected the social rights by new patterns of production? It would be a charge of pulling back?

Keywords: Telework. Fundamental Rights. Disconnection

1. INTRODUCTION

This paper is about the right of disconnect from working, glimpsed from the perspective of the fundamental rights to rest, as well as other the fundamental rights that workers have, such as access to culture, leisure, education, family life, etc.

That's because, as will be seen thought in the paper, is the rights of the worker, by which on can

That's because, as will be seen throughout the paper, the rights of the worker, by which one can make his life worthwhile, can be effected only through the real enjoyment of their right to rest, in various forms consubstanciatiated in law.

Still, it takes into account the situation of workers who are effectively in a legal limbo: they often aware of theirs rights but no way to actualize them.

It should be borne in mind that new technologies are used effectively to increase the profit of enterprises, but must also serve a social function will work. Problem is identified when the technologies let employees constantly connected to work.

Thus, if the rest are neglected in the face of constant performance of teleworkers, critical thinking is necessary not to see him exclusively as a means of facilitating the work, pointing out that the hypothesis suggested by this article, your privacy is absorbed by the working environment (virtual)..

The survey does not exhaust the discussion on the topic, just want to encourage reflection on the impact of this new form of labor rights guaranteed to the worker since industrialization and especially with the end of World War II. Nor is it to make apology for not working, by contrast, emphasizes the importance that the work has in life worthy of human beings, but can not fail to serve the man, for his continuing social ladder, as recommended in Article 7 (caput) of the Law Magna Brasileira.

2. THE TELEWORK

2.1 Historify

It is difficult to pinpoint the exact moment of birth of teleworking, the more when we glimpse its various species: homeworking, telecommuting or teleworking, as classified by Jack Nilles, even in the second half of the nineteenth century.

Certainly the community began to pay attention to the phenomenon, especially from the aforementioned century, behold, thence came to the technologies greatly influence human life and capital markets.

But you can no leave the fact that the phenomenon of teleworking, or work shifted from direct and continuous supervision of the "boss", was with the creation and use of the telegraph, after the radio, telephone, and so on, with increasing calls and implements new information technologies and communication.

It can be said that teleworking is gaining emphasis with the growth of technology and the influence it exerts in various aspects of human life.

With the emergence of new technologies, in addition, new forms of work are consolidated, requiring constant improvement of judicial labor, which is not necessarily true, because few law enforcement officers know this institute "in depth, notably the point that, with certainty and justice postulate, defend, and decide on claims that teleworking is the scenario." As regards Finacto [1]. The "in academic life (and the doctrine Academicist), again saving references. In the judicial decisions, awkward silence".

In Brazil is not different, there are few studies on the topic and fewer still in judicial decisions. With regard to legislative action, we can say that if not considered void, nothing reflects the social reality.

2.2 Definition and classification:

The focus of this study is not conceptualize precisely what is telecommuting, or even determine a rating for various types of existing telework, but do so if necessary in order with brief comments.

There are numerous lines of inquiry by which to define and classify telework. For this investigation, it was preferred to the classification cited by Nilles in 1873, who thinks telecommuting as one performed at a distance by the worker, moved from fixed workplace, ie the company without the direct supervision of a superior, as also indicates Antonio Padilla [2].

Actually one of the most used forms of teleworking is that done via internet, ie where the employee performs tasks, primarily through a computer connected to the worldwide network of computers.

That is, the implementation of telework appears today as a good alternative to minimize costs enterprise, especially with the shift worker to another space than the company and, consequently, with the disclaimer on it and their actions, using is skilled labor, giving preference (the entrepreneur) to self-employed.

This is because through this modo of work is possible from business transactions to customer service, without having to move the employee from his residence or do you attend a fixed seat to do its job.

In this context, telework can be classified as the criterion communicative, that is, by means of communication with the employer, such as offline or online.

The teleworking off line, also called disconnected, is accomplished without any direct linkage with the telematics company's central computer, data is sent via electronic mail or conventional employer. As criticism, some scholars say is not telecommuting, for no definite communication with the telematics company, essential characteristic of teleworking.

The teleworking on line, also called connected, uses computer technology and telecommunications to receive orders and perform the work and the result of its completion. Such communication between teleworker and employer may be unidirectional, where the connection between computers is very simple and can not be the direct intervention of the company, and bidirectional, where the connection enables interaction of the company computers and the telecommuter, the employer its power direction, including those related to working hours and rest times of the worker [3].

3. THE PARASUBORDINAÇÃO IN TELEWORKING

The new technologies bring with them a new form of subordination, where the employee is attached indirectly to the employer, is called "parassubordinação" or "telesubordinação," which occurs at a distance, in a less pronounced than the subordination in traditional employment contracts [4].

Vera winter continues in the sense that this is not comparable with the domestic labor of early industrialization, behold:

[...] The result of modern equipment that allow control of the distance and the employee's permanent connection to the company, enabling the determination of working hours, rest periods and breaks under the law consolidated [5].

It is said when power to direct subordination of the employer is intense and constant, and is less intense when we are faced with so controversial parassubordinação.

4. THE RIGHTS TO DISCONNECTION IN THE TELEWORKING

The worker is employed him, or standalone or parassubordinado, has among its fundamental rights, the right to rest. The 1988 Federal Constitution and the Consolidation of Labor Laws in Brazil, and standards of the International Labor Organization ratified by Brazil, among other laws, provide various kinds of rest, so that workers can regain their strength, keeping their health and therefore the safety of other workers and the company.

There is legal provision of weekly rest, rest intrajornada, rests between a few minutes journey to certain workers in Brazil (such as every 90 to 10 minutes of work for doctors, prescribed by law 3.999/61), etc., and others country's.

That is, legally there is a quantitative prediction of maximum work, daily, weekly and even hours in some cases, that does not confuse legally nor socially, having a rest every kind of purpose, as well as asserted by Professor Mauricio Godinho Delgado^[6].

The right to disconnect is a right not to work effectively during periods of rest of the worker, is the "right not to work"^[7], objectified as effective fundamental human right. You can see the proof of this assertion of fundamentalism of the right to rest in the 1988 Federal Constitution in its Articles 1, III; 6 caput, 7 caput, and subparagraphs XIII, XIV, XV, XVI, XVII, XXVIII, and the conventions 155 and 161 of the ILO, the Universal Declaration of Human Rights in its Article XXIII to XXVII, among others.

Power would make a long list of rules and laws that elevate the character of fundamental rights such as leisure, culture, etc.. To close the logic of the system, ensuring leisure, culture and leisure, working time limited offers precisely so that man can have access to these rights, justifying the status of the worker's fundamental right to disconnect from their work.

This perspective of the fundamental right of the right to disconnect, comes to minimum guarantees that are provided to works: the right to rest, leisure, culture, security, etc., based upon only when the human being does not work effectively, ie if "of" all that part of his professional life to devote himself to the others rights you have.

It is not intended with this work make any apology for leisure, unlike the man at work is effectively the means to have a decent life, as the current charter advocates in Brazil, as well as the letters of all democratic countries in the post- World War II.

The dignity life was elevated to a fundamental right, by working the main way to implement this law so that work is a fundamental and social under which rests the Democratic State (and Social) of Law.

But think of how access to culture and leisure, family life, with friends, or pleasure seeking individual if the employee needs to be at all times connected to your computer, mobile phone, pager, or other means that causes the same not to lose their source of income and survival? Salomão Rosenda, in a recent article asserts that:

The right to rest, leisure, untying complete the work requirements are necessary for maintaining the healthy life of the employee. Teleworking emerges as a likely threat to these rights, as from a computer the employee can be connected to the company wherever you are.^[8]

Thus the right to disconnect is just a modern face of existing rights to holidays, rest and working hours limited, ie, there is talk here of the preservation of minimum rights already protected against the employee, in its broadest sense, generic and not only the subordinate employee, as known in the ratings surpassed Hired Under Employment Laws.

4.1. Ways of linking in teleworking :

The ways of linking the worker to service contractor, teleworking, are diverse, but one factor in common: technology. As correctly noted Denise Finato employee and employer:

not occupy the same space (and sometimes even have mutually temporal differences - time zone), but can be synchronously interconnected via technology (internet, webcams, etc.). The use of this (technology), incidentally, is the note ringing of teleworking: without it there is telecommuting at any of its modalities^[9].

It should be borne in mind that telecommuting, for being kind of work that can be performed anywhere, makes the linkage of worker to employer is not necessarily recognized by national Hired Under Employment Laws, ie one in which the worker is with all their rights guaranteed by virtue of having a formal contract.

Teleworking, precisely because it is not legal positivism in Brazil, creates room for the work to be done informally, without having secured rights to the balanced working environment, control of day, etc.

Thus, it is said that teleworking may occur autonomously, subject, creating a bond of employment, if any, or through the famous creations of legal persons by the workers themselves, created at the behest of the employer to evade not only the rights of workers but evade paying taxes.

4.2. Contract work: work day ordinary and extraordinary, vacation, paid weekly rest, the workplace, non-competition clause.

The employer has greater control over the teleworker on line than off line for, behold, they can make use of *software*^[10], using passwords to *log on*^[11] and *log off*^[12], and may supervise teleworkers, including counting the day's ordinary and extraordinary work, monitor the goals and, with respect to the subject matter of this paper, or not allow the telecommuter to connect to the company that schedules should be employed to rest.

In the case of teleworkers *off line*, tying end up in the background and, as Sergio Pinto Martins, "can be verified much more autonomy than subordination. Are diluted work orders"^[13]. In this mode, the teleworker would not have a working set, it is difficult to establish the start time and finish work, and usually their workday can be controlled from the establishment of goals, which may be daily, weekly, monthly or even yearly.

Overtime, conducted in the ordinary way, according to studies, affect the health of employees and even the labor market^[14]. That's because employees become more susceptible to contracting diseases from their work and greatly reduce their capacity, the supply of labor available.

It is easy to see that many workers have their workshop, office, in your own home. In such cases, even when only lead of the work to be performed or perfected at home, at leisure, interpersonal relations worker's mistake with his life.

Many companies convey the possibility of increased income or access to higher positions in the company through the use of free time of the employee, where it manages your time and may exceed the business goals and increase your earning working "when you are most appropriate". Thus, the company draws its burden of responsibility for complying with the employee of their rest periods, since such gains often occur just extras in holiday periods, weekend work after the trading period, etc.

However, the worst aspect of such a violation is called *parassurdinados* those employees who theoretically released from work orders from superiors, but they have goals, often in contracts where responsibility for results, without minimal rights are respected.

This line is that the right to disconnect, as advocated by Otavio Amaral Calvet^[15], should be extended not only to that worker named traditionally employed, but to all workers who somehow work under some form of subordination, even though distance or under a subordination mitigated, as in many teleworkers.

4.3. Professional life versus private life:

If the work performed within the boundaries of the firm, eventually leading some professionals to perform work or prepare at home, telecommuting telecommuter's home run in the difficulty becomes even greater when it comes to separating the job with a personal and intimate.

Here, it is the discussion about the employees who become compulsive for the work, also called workaholics, they channel most of his time working at the expense of leisure and even personal relationships.

As already noted, one the main forms of benchmarking in teleworking are called targets. In the rush to not only meet them but surpass them, workers forget the main objective of carrying out their work: a dignified live, where they can enjoy the rights to leisure, cultural enhancement, available to other scales of rights not only basic subsistence. Otavio Amaral Calvet brilliantly asserts that:

the conduct of those involved in labor relations should be directed to not get injured and the maximum possible, provide for the enforcement of this right both in space outside of the productive activity, and in the implementation of the employment relationship itself.^[16]

It is not only the worker who is subordinate within the organization under the supervision of the employer, but that he is doing his work outside the workplace should be encouraged, not only available, their right to switch off from work effectively and give attention to aspects of his private live.

4.4. Functions of direction, management, supervision, leadership or positions of trust in teleworking

In these activities, now permeated by information technology and communication in telework or mixed system (face and remote), one sees the greatest difficulties in ensuring the constitutional right to rest (and disconnection). However, the Consolidation of Labor Laws provides for no differentiation between types of work, notably with respect to their minimum guarantees. So:

Article 3 – It is considered that any individual employee pay services of any nature is not the employer, under and through the dependence of salary.

Sole paragraph – There will be awards for the kind of employment band condition of the employee, nor between the intellectual work, and technical manual.

Inobstante this, Article 62 in its subsection II opens a dangerous side. Of any sort to any worker shall be granted the right to a weekly rest:

Article 62 - are not covered by the arrangements provided in this chapter: II - managers as well exercentes considered for managerial positions, which have been equipped for the purpose of this Article, the directors and heads of department or branch.

Article 67 - will be provided to every employee a weekly rest of 24 (twenty four) consecutive hours which, except for reasons of overriding public convenience or necessity of the service, should coincide with Sunday in whole or in part.

According to Jorge Luiz Souto Maior ^[17]:

The problem is that this type of employee [...] has been suffering across the world, journeys to work excessive. They are often connected to work 24 hours a day, 7 days a week, through the use of modern means of communication: cell phone, pager, laptop, fax, etc ...

And afterwards, the author, after a review of Law No. 605 of 1949, which regulated the art. 67 finds that the CLT ^[18]:

Now, if entitled to paid weekly rest, it is because the order itself recognizes that the work of senior employees should have limits. Moreover, using the same line of reasoning, it will come inevitably to the conclusion that art. 62, II, CLT, is unconstitutional, insofar as the item XIII, art. 7, given to all workers, without distinction, the right to limitation of working hours.

[...]

The employer hires when a senior employee, director or exercente of position of trust, and especially heads of department or branch, can not use the forces of the worker before 24 hours a day, and technological advances have allowed this to happen.

It is precisely this last not that is the fine line that is ordinarily overcome when it comes to workers who hold, in illusion, greater autonomy in the allocation of its work force.

5. CONCLUSION

Distance work, while establishing a sense of greater freedom, greater flexibility in the supply of labor, presents favorable situation for the employer or contractor operating the hand piece by means of informational and communicational technology.

To note the strong presence of technology in various communication media profession, part to the realization that the teleworker to see if the legal guarantees that jettisoned ballast must respect the right to disconnect from the perspective of the fundamental right of all workers regardless of the form of subordination to which they are subjected.

In the case of teleworking, disconnect the equipment telematics labor is the face of the right to disconnect the virtual mode of working. Even working off line, as specified above, or in pursuit of goals or gain increases, the worker must have effective hours of rest, without being connected to professional matters by any means, so you can use your free time in favor of the minimum rights that lead to the relentless pursuit of work: more free time with quality.

It is only in your spare time that man embodies their right to culture, family life, seeking religious, philosophical, etc.,. It is only when it is effectively disconnected the worker can take advantage of what has accumulated with its gain in the workplace.

This is how the job can make human life worthy: giving you the effective ways of finding the human satisfactions and not just the man for exploring the wealth of a few, hindering him the free time that can noticeably through the closer interpersonal relationships and deepening their cultural roots, make him more human.

6. REFERENCES

[3] ANDRADE, Pollyanna Vasconcelos Correia Lima de. **Telework in the Brazilian legal system.** Journal of the Regional Labor Court of the 13th Region: João Pessoa, v. 15, n.1, 2007.

[15]. [16] CALVET, Otávio Amaral. **Right to Leisure in labor relations.** Ed LTR. Rio de Janeiro: 2006.

[6] DELGADO, Maurício Godinho. **Course in Labour Law.** 7th edition. Ed LTR. São Paulo: 2008.

[1]. [9] FINCATO, Denise Pires. **Accidents at work and telework: new challenges to the dignity of the worker. in Fundamental Rights and Justice:** in Review of the Post-Graduate, Masters and Doctorate in Law from PUCRS, 2008.

[10]. [11] [12] HOUAISS, Antônio. Dictionary of Portuguese Language. Antonio Houaiss Institute of Lexicography. Rio de Janeiro: 2001.

[13] MARTINS, Sérgio Pinto. **Teleworking.** IOB repertoire of Jurisprudence: Labor and Social Security. São Paulo, v. 2, n. 18, Sept. 2001

[8] ROSENDÁ, Salomão. **Right to disconnect - A Reality in Telework.** LTR Magazine, Volume 71, nº 07, July 2007.

[7]. [14]. [17]. [18] SOUTO MAIOR, Jorge Luiz. **The right to disconnect from work. Journal of the Regional Labor Court of the 15th Region.** Campinas, n. 23, July / Dec. 2003 .

[4]. [5] WINTER, Vera Regina Loureiro. **Telecommuting: an alternative job.** São Paulo: LTR, 2005.

[2] PADILLA, Antonio. **Teleworking Direction and Organization.** Ra-MA ed. Madri 1998.

APPENDIX

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