

The difficulty of the implementation of teleworking in the Public Brazilian Enterprise.

Vera Regina Alexander Boscatte
GESTEC / BSP

(Group for Research and Management, Work and Technology
Business School of São Paulo)
Avenida Paulista, 2000 12 ° Andar - Bela Vista
01310-200 - São Paulo - Brazil
admveraboscatte@terra.com.br

ABSTRACT

The Brazilian reality, as regards public administration, makes impossible an easy acceptance of Telework, because of an excessive requirement of accountability to their managers. The Brazilian public manager has a thought of total control about the acts of his subordinates as an attempt to avoid audits that can call him relapsor or that may cause him being accused of administrative misconduct. Thus, the severe completion of the work scheduled time, with excessive control of punctuality, because of strict rules and even the use of advanced technology such as the so called electronic dots, brings to the manager a sense of comfort concerning the control of the sum spent with payroll wages. Awareness is needed, as well as an appropriate change in laws and regulations, so that Telework can be implemented in Brazilian public administration.

1. INTRODUCTION

Brazilian public servants are subjected to two schemes of work: the Single System (Law 8112 of 12. 11. 1990) and CLT (Consolidation of Labor Laws).

2. SINGLE REGIME AND THE LAW N° 8112 AND INDICATORS IN 11/12/1990

The Law n° 8112 of December 11, 1990, disposes about the legal regimen of civil public services of the Union and about the autharchies and federal public foundations in Brazil. Concerning the Brazilian civil public functionary, we see that the definition of his public function is the set of tasks and responsibilities established in the organizational structure that are appointed to him. The positions are established by law, with proper denomination and salaries are paid by public funds. These positions are subjected to valuation.

During the period of functional valuation are judged indicators such as the ability and capacity, attendance, discipline, initiative, productivity and accountability. Thus, the Brazilian public manager, in order to measure these indicators, thinks he must have the public servant by his side and under his command. The manager thinks the servant must be seen in order to be valued and he can not see if the telecommuter is constant or not. Likewise he can not evaluate whether telecommuter servant has initiative, is disciplined, productive and responsible. So he does not want to sin by omission, at the risk of being replaced by his representative who would be previously indicated.

3. PUBLIC ENTERPRISES RULED BY CLT (Consolidation of Labor Laws)

Some public companies are governed by the Brazilian Labor Laws and have the same treatment of private companies. But with respect to legal punishments, the servants receive the same criterion. Thus, fear in relation to administrative misconduct is the same to the servants: those governed by the Single System / Law n° 8112/90, as those governed by the Consolidation of Labor Laws. Thus, there is difficulty in accepting Teleworking. But we are aware that there are public teleworkers in both work schemes without the correct nomenclature and also that it is a system of rewarding work.

4. PUBLIC SERVANT AT THE VISION OF THE COURT OF AUDIT OF BRAZIL

The Court of Audit of Brazil(TCU) considers the Public Manager responsible for the office duties he holds and he will also answer for the financial damages caused to the Union. Thus, the manager is afraid that might cause damage to the public coffers as a result of the actions of the functionaries upon whom he has total control. Therefore, the

Home Office becomes a risk for him because he will not have under his vision the public goods in the possession of the functionary and which are needed to perform his functions.

In the case of possible damage to the public coffers, there are administrative disciplinary proceedings (PAD), which could result in dismissal (dismissal) of the function and the money regarding the damage should be restituted to the Union. It should be also extended to the successors of the servant the obligation to repair the damage and it would run up against the limit of the value of the inheritance received. Thus, the administrative misconduct brings disastrous results.

Administrative Misconduct in accordance with the understanding of Mr. Pazzaglini Son[1] is more than a mere action inconsistent with the law; it is denotative of a subversive conduct with administrative purposes, or by the harmful use (illegal and immoral) of public power, whether by omission, misappropriation of functional performance, whether by willful or negligent use of legal regulations.

It is result both of dishonesty and loyalty, about the incompetence of the public officer in performance of his professional activities. The Federal Law No. 8422/92 deals with acts of misconduct, committed by any public official in Brazil. In Brazilian legislation, administrative misconduct is serious, briefly, regarding the violation of the principles of morality, impersonality and economy, as well as illicit enrichment, as due to the law.

5. LEGAL RESPONSIBILITIES OF THE PUBLIC SERVANT, UNDER THE LAW 8112/90

Article 121 of Law 8112/90 says that the servant has civil, criminal and administrative responsibility for the unlawful exercise of his duties. The Article 122 says that the liability arises from an act or omission commissive, willfully or grossly negligence, resulting in losses to the exchequer or to third parties.

Thus, the servant is concerned, too, about working at another place than that he previously worked, and about the possibility of becoming liable for acts not committed by him with respecting public goods or about the unlawful exercise of his own activities.

6. DUTIES OF THE BRAZILIAN PUBLIC SERVANT, BEFORE THE LAW 8112/90

The duties of public servants, by the law quoted above, block the real possibility of Telework in the vision of public managers:

- a) to perform with zeal and dedication the duties of the office
- b) to be loyal to the institutions he serves
- c) to observe the laws and regulations
- d) to carry out superior orders, except where clearly illegal;
- e) Answer promptly
 - i. to the general public, providing the required information, except that protected by secrecy;
 - ii. the dispatch of certificates requested by the defense in law or the clarification of situations of personal interest;
 - iii. requests for defense of the Exchequer;
- f) to bring to the attention of higher authority the deficiencies he knows by virtue of his office.
- g) to provide the economy of material and the maintenance of public assets.
- h) to maintain as confidential matter the matters of the department.
- i) to maintain a consistent conduct in accordance with the administrative morality.
- j) to be diligent and punctual at the service.
- k) to treat the people with courtesy
- l) to represent against illegality, omission or abuse of power.

By the virtue of their duties, both the public manager as the simple servant fear the failure of what was imposed to them. A relevant factor is the secrecy on matters of public policy. The manager fears the leak of information on his responsibility and, with respect to telework, he loses the total control over the actions of his subordinate.

7. PROHIBITIONS IMPOSED TO THE BRAZILIAN PUBLIC SERVANT

With respect to the bans imposed to the public servant, which are listed below, some difficult Telework, from the point of view of the essence of the subjected matters.

- a) to be absent from duty during the work scheduled time without prior authorization of the immediate manager.
- b) to remove, without the prior consent of the competent authority, any document or object of the department.

- c) To oppose unjustified resistance to the progress of the development of a document and to the accomplishment of the process of the service.
- d) to promote appreciation or dislike expressions within the enclosure of the department.
- e) Committing a person outside the division except for cases provided by law, the performance of tasks that are under his responsibility or under his subordinate.
- f) to coerce or entice subordinates in order to affiliate them in a professional association or in trade union or political party.
- g) to maintain under his immediate managership in office or in position of trust, spouse, partner or relative until 2nd civil grade.
- h) To act as agent or intermediary, with public offices, except in the case of welfare benefits or assistance to relatives up to 2nd grade and spouse or partner.
- i) to receive bribes, commission, gift or advantage of any kind related with his duties.
- j) To accept commission, employment or pension status abroad.
- k) Practicing usury under any of its forms.
- l) To act in a negligent way.
- m) to use personnel or material resources of the department, in particular services or activities.
- n) Committing to another servant tasks related to the post he occupies, except in emergencies and transient.
- o) To practice any activities that are incompatible with the exercise of office or position and at the work scheduled time.
- p) To refuse to update his registration information when requested.

The bans bring caution to the public manager and to the servant. The liability of the documents that possibly should be taken home, in the case of Home Office, really causes distress. The secrecy regarding the issues is a big worry. It is pointed the possibility of delay in the accomplishment of the duty, because as the servant is working in his own residence, he will not have the commitment to finish his job with speed.

The control of the receiving of bribes, commission, gifts or advantage of any kind brings the concern that the servant is out of the sight of his superior, which probably could facilitate such an event.

The possibility of someone else - someone from his own family - to help in carrying out the work while the servant in his own home, gives additional force to the bans. The control of the work scheduled time is a highly negative factor for the acceptance of Telework by the Brazilian public manager. The manner of controlling the telecommuter whether he is acting negligently, is also a worrying factor for the manager.

Another major concern for the Brazilian public administration, is that the servant has exclusivity with the Union, not being allowed to have his own businesses, alongside the position he occupies in the government. Thus, this situation will have no control by the state, with the telecommuter.

The control of absences, early departures, delays and, consequently, the discount fee, loses its function with respect to the teleworkers, since the manager has no way of controlling, or perhaps it does not apply, since the teleworker is in another workplace (that may be his own residence), which causes the manager to oppose the deployment of Telework.

The overtime service in public administration, is allowed only in exceptional and temporary situations, respecting the limit of two hours per day. This fact makes the manager to question the control of overtime, on Teleworking, which in turn causes the server chooses to perform overtime under the supervision of his manager (for not being questioned and also to ensure the receipt of his payment).

8. THE DISCIPLINARY PENALTIES IMPOSED IN LAW 8112/90

The disciplinary penalties frighten both the manager and the servant, causing insecurity on both sides. The manager fears being punished for not having the control of the situation, in the case of the implementation of telework. In turn the servant fears that he can take one fault he did not commit and to have either no eyewitness who could reported his innocence.

Penalties will be stronger, in ascending order.

- a) Warning
- b) Suspension
- c) The abrogation of retirement or availability (work transferred to another department than that which was his previous)
- d) removal from office on commission
- e) Dismissal of commissioned function

In the application of penalties, shall be considered the nature and the seriousness of the infraction, the damage that has been done to public service, the aggravating or mitigating circumstances and the background of the functions.

9. SERIOUS FAULTS THAT LEAD TO DISMISSAL OF PUBLIC SERVICE

The dismissal occurs when:

- a) There is crime against public administration
- b) There is abandonment of post
- c) Lack of habitual assiduity
- d) Administrative misconduct
- e) Incontinence public and scandalous conduct inside the department
- f) Severe insubordination during the service
- g) Physical offense during the service to a servant or to a private, except in legitimate self-defense or others self-defense
- h) Irregular application of public money
- i) Disclosure of secret which was appropriated due to his post
- j) Injury to the public coffers
- k) To squander national assets
- l) Corruption
- m) Accumulation of illegal positions, jobs or public functions
- n) To use the public post in order to achieve personal gain or that of others, in the detriment of the dignity of public service.

10. PROFESSIONAL CAPABILITY OF THE BRAZILIAN PUBLIC SERVANT

The Brazilian civil servant is enabled to have licenses to get professional capability. He thinks that, by telecommuting, and out of sight of his managers, he will be forgotten, losing the opportunity to improve in his career, through training courses. Also, within his department, are made courses, workshops of multiplication, workshop, and this fact also reinforces his fear about being forgotten.

11. THE ETHICAL FACTOR OF THE SERVANT IN DETRIMENT THE ACCEPTANCE OF TELEWORKING

One factor that conflicts with respect to the teleworkers, is the possibility that they not keep absolute secrecy about the documentation of the department, as well as about the knowledge they have of its services. The managers think that the Telework allows a lack of commitment from the servant, in relation to public administration. One of the most relevant indicators to break this insecurity, would be the total interpersonal reliability, achieved through correct principles of character and safety. Only through a solid knowledge about the personality of their subordinates, managers might choose, with minimal margin of error and without major risks, who would be the possible teleworkers.

12. THE REALITY OF TELEWORK ALREADY USED IN PUBLIC AREA

Public enterprises apply Telework and do not detect it, to the fullest. They surround themselves with laws, in order to be protected. But with respect to telework, the public enterprises are required to use it.

We take as example the Ministry of Agriculture of Brazil and its companies: CONAB – (The Brazilian Company of Storage), EMBRAPA – (Brazilian Agricultural Research) and INMET – (National Institute of Meteorology). Even the Ministry of Agriculture has federal agriculture inspectors - FFAs, which have their functions in the survey of farm products in stores, slaughterhouses, dairies, in central supply, free markets, ports and airports, and in these farthest spaces they supervise the export and import of food. They act, too, in the harvest season of apples in Argentina.

It has also inspection agents who need not necessarily specific degree courses, such as inspectors, who have been trained in veterinary medicine, agronomy and animal husbandry. The agents stay directly within the abattoir and inside the enterprises which produce various products, especially those resulting from milk, cheese, curd and yoghurt. With this, we see that the servants work in many others several places than the Ministry itself, including in other private companies, ie private, non-governmental organizations, making the proper supervision.

For such services, the Union provides the daily values which are settled for payment of the trip and the stay in the place of implementation of telework. Electronic devices such as notebooks, are provided.

Regarding the Brazilian Company Storage, teleworkers travel throughout the states, often using GIS, with appropriate equipment to assess the crop, still in plantings. They also control in warehouses / silos, which are stored the harvested grains.

The Institute of Meteorology also uses servants outside the offices, who having special equipment, estimate the quality of time, benefiting Brazilian agriculture, as to the planting. ANVISA / Sanitary Inspection that is an agency of the Ministry of Health has its inspectors working in flexible places. Thus, we see that the Brazilian civil servants are already using Telework, although not classified as teleworkers.

For them, there is flexibility in the law, with respect to the rigidity of time. They do not receive overtime.

On the contrary they work for results, ie, they need to present the results of what was proposed, without the need for marking rigid work schedule time.

In all Brazilian public departments, there are functions that require the flexibility of the workplace, ie Telework has become a necessity to reach the objectives. It just needs to be accepted and inserted in the laws of public administration, as an indicator of success.

13. SOLUTION FOR THE CONTROL OF PRODUCTIVITY OF THE INSPECTORS

There are several Brazilian agencies of the government that have inspectors on their staff. For instance, we have the Federal Public Revenue, an agency of the Ministry of Finance, which oversees the contributors, whether individuals or corporations. One of the systems to measure results of their work is through the achievement of goals set in advance, to be achieved within a stipulated period. The adequate production demonstrates, clearly, the productivity of their servants. With this, the Telework finds, in the public administration, awareness of its possibility.

14. TELEWORKERS IN COURT IN MINAS GERAIS

TRJ (Regional Court of Justice) in the state of Minas Gerais, uses the Telework, without naming it.

The legal assistants work in Home Office, taking the cases to be expedited to their homes, returning to the Court on a day in the week to introduce them and to pick up more cases. They do not receive overtime, but have a gratified function, or receive a plus percentage, as motivation. A research with some lawyers who work in this regime, resulted in a better quality of life, with a reduction of stress highly rewarding, as they do not have to face daily traffic, and can eat homemade food, having appropriate time to solve personal problems, having a most satisfactory family life, and a highly important item raised, which was the time available for legal advice and even distance learning courses, for the area.

Only one negative factor was introduced: no equipment for the job is offered to the telecommuter home office, he has to use his own computers and bears the costs of using the Internet. This fact is a consequence of non-awareness of what the Telework is in reality, and the basic necessities for its deployment. It is necessary the training both for the manager and for the servant. The survey of basic needs must be accomplished.

15. LAWYERS TELEWORKING IN BRASÍLIA

Court of Audit (TCU) is applying a Telework Pilot Project as an experience, extended by one year. Taking as the unique productivity, the result has been highly satisfactory. If there is continuity of this type of work, the servant statutory (public servant subjected to the law 8112/90) will have, coming from the department that examines the public accounts, the major motivation to use the remote working, as it is called at TCU (Court of Audit). That method is used only by lawyers of the Department Board.

It is worth noting that the scheme of work is statutory.

16. TELE AUDITORS

The Internal Revenue Service - SRF in Brasilia, with its servers in a statutory regime, is using a telework pilot project, with its auditors, with a highly satisfactory result, which could become a workable model, with wide acceptance.

17. TELEWORKERS IN BANCO DO BRASIL S.A.

Bank of Brazil has a project of Telework to be approved and to be included in its area of technology, which will

give great credibility to this type of work. Having a system of work contained in the Law 8112/90, ie in a statutory regime, the implementation of telework in that bank, will bring greater security to managers and servants because of the reliability of character that Bank of Brazil has near Brazilian in general.

18. TELEWORKING DEPLOY TO SERPRO / BRASILIA

There is no knowledge of another public agency, in accordance with CLT (Consolidation of Labor Laws), which has implemented the Telework, in essence, in Brazil. The Federal Data Processing - SERPRO, a department of Ministry of Finance, has successfully deployed this type of work, after two unsuccessful attempts at others locations outside the Federal Capital. The main cause related to the implementation positive result was a proper study of every step, by technicians who knew the ways. It had been assessed the profile of the appropriate servants to the new way of working, as well it had also the awareness of managers, on all the material needs to the system and all the necessary security on productivity, responsibility and ethics. There have been evaluated the positions and profile of each servant, who best fit with respect to the description of the job.

Finally, it was concluded that the implementation of Telework brought a reasonable financial economy, due to the cost of transportation, and the result of work have been highly satisfactory, because if the servant is satisfied he will have a satisfactory production. There was primarily a preliminary evaluation of the institution.

19. CONCLUSION

Brazilian government must be aware that one of the indicators of success and that would solve many problems of its situation, is the proper implementation of Telework. From the moment this reality is faced and a special training is made, the positive factors begin to emerge. The economy spent on driving, especially in large cities and especially on Brasilia (Federal Capital), where the cost of tickets is exorbitant; the satisfaction of the servants, resulting in quality of life well differentiated; increased productivity; absences reduction consequent of licenses, which charge is very expensive to the government; more responsibility on the work done, are key factors for an effective result of good governance.

In order the fears about the Telework fall to the ground, we must have updated the Law 8112/90. It that has being through several processes of updating, needs to be revised in some points, aiming to bring more tranquility to the servants, with converging points of satisfaction to public service. It must be demonstrated clearly that the Law will not have its punitive effect from a satisfactory outcome measurable through a truly effectiveness. And only one servant with a good quality of life, with excellent interpersonal relationship with his family, with total solution to his stress, with the recognition of the need for leisure time, will bring up points for the Telework.

To the servers in the regime of Consolidation of Labor Laws (CLT) is already being bestowed a special law regarding Telework, which is yet being approved in the House of Deputies, in Brasilia. Law 8112/90, regarding the statutory servers, needs to be updated by inserting the Telework as an economic indicator solution for the Brazilian public administration. Note that the number of servants in the regime of Consolidation of Labor Laws (CLT) is really lower than the statutory one.

For there being an acceptance of this type of work, it is necessary a change in cultural aspects, and to stop thinking that only the work which a person is present, can bring effective results, with appropriate and desired productivity. The organizational structure should have a revaluation, meaning that productivity can be measured even at a distance.

20. BIBLIOGRAPHY:

[1] Pazzaglini Filho, *Administrative Improbability*, Atlas, 1999

Source: Brazilian Society of Telework and Teleatividades

Law 8.112/90