



Effective Labor Claim Negotiation: A Brazilian Case Study

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Abstract

This case study presents a negotiation between a law firm and a former Italian haute cuisine pizzeria manager over a labor claim worth \$100,000. After three previous lawyers failed to resolve the case, the law firm achieved a significant procedural turnaround by challenging the former manager's free justice and requesting a conciliation hearing. The outcome of whether the parties reached a mutual agreement is revealed in this study. This case underscores the importance of understanding the underlying interests of both parties in working towards a mutually beneficial resolution. The article concludes with a discussion of key implications derived from the case.

Keywords:

Type III negotiation; Retail Business negotiation; Labor Claim.

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1. INTRODUCTION

This work discloses a single case study, whose unit of analysis is a labor claim on a Brazilian retail business involving a company in the bar and restaurant industry, specifically an Italian haute cuisine pizzeria, in a lawsuit (labor claim), involving the company's former manager. The case occurred in São José dos Campos, São Paulo state, southeastern Brazil. The real names and identities were preserved for ethical purposes and compliance reasons. Both parties participated in a Type III negotiation (Dias, 2020) where multiple stakeholders



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discussed a single issue: compensation for the labor claim. Ultimately, the parties negotiated an extrajudicial agreement.

Negotiation is "a process of communication by which two or more parties seek to advance their interests or those of the persons they represent through an agreement on the desired future action." (Salacuse, 2003, p. 11).

The study has attracted scholarly attention during the last number of decades (Dias, 2023; Dias, 2023a; Dias, 2023b; Dias et al., 2023; Fisher, Ury & Patton, 1981; Kissinger, 1969; Lax & Sebenius, 1986; Navarro & Dias, 2024; Pruitt, 1981; Raiffa, Richardson & Metcalfe, 2002; Rubin & Brown, 1975; Santos & Dias, 2024). Negotiation has also been studied regarding different perspectives, such as negotiation process and fundamentals parties (Acuff, 1993; Salacuse, 2003, 2006; Shell, 2006), as social integration features (Cohen, 2007; Druckman, 1997; Moore and Woodrow, 2010; Neale & Northcraft, 1991; Patton, 2012; Thompson, 2001); (i) M&A negotiations (Vidaletti, Ferreira, & Dias, 2025); real estate negotiations (Soliva & Dias, 2025); (iv) Family business negotiations (Moura & Dias, 2025); decision-making process (Bazerman & Moore, 1994); IT contract negotiations (Valle, Trindade & Dias, 2025; Delgado & Dias, 2025); civil works negotiations (Dias, Toledo, Silva, Santos et al., 2022; Dias, Pires et al., 2022; Dias, Almeida, Silva, Russo, et al., 2022; Scheuer & Dias, 2025; Smejoff, Zornitta & Dias, 2025; streaming video negotiations (Gasparini, Vieira & Dias, 2025); negotiation as social interaction (Dias, 2016; Schatzki & Coffey, 1981); retail business negotiations (Dias, 2023; Dias, Lafraia, Schmitz et al., 2024; Dias, Leitão, Batista & Medeiros, 2022; Dias, Pereira, Teles & Lafraia, 2023; Dias, Pereira, Vieira, et al., 2023; Dias, Toledo, Silva, et al., 2022; Santos & Dias, 2024; Valente & Dias, 2023). In this case, the parties engaged in a Type III negotiation (Dias, 2020). We employed to a large extent the Four Type Negotiation Matrix (Dias, 2020) to represent the negotiation category, as illustrated in Figure 1:



Figure 1 The Four-Type Negotiation Matrix
Source: Dias, 2020. Reprinted under permission.

2. METHODOLOGY

This paper adopted Saunders, Lewis, and Thornhill's (2009) qualitative research, including an inductive approach and cross-sectional analysis with an interpretative worldview. We followed Yin (2004), studying one extrajudicial labor negotiation between three parties on a labor claim in Brazil as the unit of study, enhanced with the direct observation of one of the authors.

3. BACKGROUND

The case addressed a negotiation involving a company in the bar and restaurant industry, specifically an Italian haute cuisine pizzeria, in a lawsuit (labor claim), involving the company's former manager. It is paramount to highlight that after the pandemic, the company was surprised by 9 (nine) labor complaints, among them, the one in this *negotiation case*. The initial value of the case (amount requested by the worker) was \$100,000, for a single process. Despite the attempts of the lawyers who have so far acted in the case to resolve this process, all have been frustrated.

Three other lawyers had already handled the case but were unsuccessful. Moreover, it is precisely because the fourth lawyer achieved an excellent negotiation—that it was a procedural victory due to the situation of the lawsuit and the value of the case it reached—hired to provide monthly consulting and advice to this company, drastically reducing the costs and expenses arising from labor lawsuits and other legal issues.

4. REVERSING A FIRST-DEGREE CONDEMNATION

After being duly hired to act in this case, when requesting qualification in the records, and requesting oral argument, the new lawyer was surprised by a judgment with the company's condemnation, maintaining the first degree's sentence as the lawyer had already requested oral argument before the TRT-15, which is the Regional Labor Court of the 15th Region, headquartered in Campinas, São Paulo. It is the second largest labor court in the country in terms of procedural activity, responsible for conciliating and judging labor disputes, whether on an individual or collective level. he filed a motion for clarification to declare the respective Judgment null and void, since it is the lawyer's prerogative to express himself from the tribune, even more, through documentary evidence of the prior registration of this request (oral argument). The request was accepted, declaring the respective Judgment null and void, and a date was set for the oral argument. On the appointed date and time, the lawyer managed, through a decision divided among the judges, to challenge the free justice to the Complainant (former manager), being certain that the lawyer would inevitably bear the procedural costs and fees of the loss. There was also a request for bad faith litigation against the former manager, since he signed a document attached to the records, claiming to be *hypo sufficient* (poor in the legal term of the word).

Hypo-sufficiency, or **under-sufficiency** or **weakness**, is a principle in Brazilian labor law that deems employees as the weaker party due to their economic dependence and vulnerability (CLT, 1943). This principle influences interpretations and protections in favor of

workers, as they are often more vulnerable to exploitation or unfair treatment by employers. The principle leads to legal outcomes such as interpretation in favor of the worker, inalienable rights, protection against abuse, and limitations on individual agreements. The principle has evolved, with debates surrounding employee autonomy and how individual agreements can override standard labor protections (Perosa et al., 2024). It is important to emphasize that this manager enjoyed excellent financial condition and even used all the *know-how* acquired during his years in the company to open his own pizzeria, a competitor of the defendant company.

5. THE NEGOTIATION PROCESS

The case's value was \$100,000. After the oral argument, the lawyer challenged the free justice granted to the complainant (former manager), which would effectively bring financial expenses to him due to the requests that might not be accepted in the process. Nevertheless, there was a claim of bad faith on the claimant's part, since he attached documentation stating that he was entitled to judicial gratuity, even though he was a businessman in the same economic activity field as the company he filed the lawsuit against. These facts were of paramount importance for the closing of the negotiation. A conciliation hearing was requested.

6. ZONE OF POSSIBLE AGREEMENT (ZOPA)

In a previous conversation with the lawyers of the other party, there was the statement that the Complainant (former manager) would not accept less than \$19,000. This has already provided me with an indication that they would be open to negotiating, given the Zone of Possible Agreement (ZOPA) of the case (\$100,000) and the amount previously informed by one of the other party's lawyers. (\$19,000). In a previous conversation with the client, he said the maximum amount he would allow for negotiation would be \$30,200 in installments, by withdrawing the appeal deposits and installments as far as the eye can see, not exceeding \$500 and \$600. The proposal by the former manager and his lawyers was \$18,000.

7. COUNTER OFFER

The other constituent promptly argued that the total amount asked was impossible. Now, if they asked for \$18,000 for the value of the lawsuit of \$100,000, they certainly estimated something concrete below that value. Based on their initial offer, the lawyer proposed \$11,000 by withdrawing the appeal deposits and the rest in installments. Then, they proposed \$14,285 in 16 installments of \$892. The lawyer added that the value of the installments would be unfeasible, pointing out that the company had other lawsuits whose cause values were also high. In order for the company to honor the fulfillment of the other demands (some of the other lawsuits had the same lawyers as this one), the value of the installment would have to be a maximum of \$500. The lawyer was confident they would make a great deal at this point. In addition to asking for an amount below the limit that the lawyer had available to negotiate, the other party also asked for a value well below the case's value.

8. CLOSING THE DEAL

Finally, the final agreement was agreed upon at \$14,107, with the immediate release of appeal deposits for \$3,261.17 and 21 more installments. The **BATNA** identified in the negotiation case was that there were other lawsuits against the company, some of them filed by the same lawyers in the case itself. Therefore, if they asked for a very high amount, the other actions would be unfeasible, leading them to reflect on the values to be accepted in this negotiation. In addition, if they did not accept the agreement, their client would have to bear the burden of loss and procedural costs (he lost free justice), which would be a bad deal. In the case in question, the ZOPA is initially given for between \$30,168 and \$18,000, the first being my maximum authorized by the client and the second, the amount previously informed by the other party's lawyer. However, at the beginning of the conciliation hearing, the ZOPA would be between \$10,000 and \$12,000 reais, referring to R\$18,000.

9. IMPLICATIONS AND DISCUSSION

The implications of this case study emphasize the importance of strategic negotiation in labor suits and demands of both sides can lead to mutually beneficial solutions. The parties involved reached a settlement by effectively utilizing BATNA (Best Alternative to a Negotiated Agreement) and ZOPA (Zone of Possible Agreement). This case highlights the necessity for preparation, creativity, and adaptability in negotiations. Additionally, this case shows that effective negotiation can not only resolve conflicts but also bring long-term benefits, as the law firm subsequently hired the consulting firm for ongoing monthly services. Ultimately, this research underscores the value of negotiation as a tool for fair and efficient resolution of labor conflicts. This case may be helpful to scholars, practitioners, decision-makers, managers, implying in other broad areas of research, including business and retail negotiations (Dias, 2020a; Dias, 2020b; Dias, 2020c; Dias, 2021; Dias & Lopes, 2020; Dias & Lopes, 2021; Dias & Navarro, 2020; Dias & Silva, 2021; Dias, Andrade, Sotoriva, et al., 2021; Dias, Duzert & Lopes, 2021; Dias, Lopes & Duzert, 2020; Dias, Lopes & Teles, 2020; Dias, Lopes, Cavalcanti & Golfetto, 2020; Dias, Netto, Oliveira et al., 2021; Dias, Waltz & Oliveira, 2021; Sartori et al., 2020).

10. CONCLUSION

Ultimately, this case study shows how well strategic negotiation can help resolve labor conflicts and emphasizes the significance of knowing both sides' fundamental interests and demands to get a mutually beneficial agreement. The parties could negotiate the complexity of the conflict and get a good result by using important negotiating ideas such as BATNA (Best Alternative to a Negotiated Agreement) and ZOPA (Zone of Possible Agreement). The research emphasizes the need for negotiation as a strategy for fairly and effectively resolving labor conflicts, and its results have consequences for practitioners and academics trying to enhance negotiation results in comparable environments.

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