Access to labor courts in Brazil: Inequalities between employees and employers

Acesso à justiça do trabalho no Brasil: Desigualdades entre trabalhadores e empregadores *(PT: 97-114)*

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ABSTRACT
The specialist literature tells us that the structure of costs for access to labor courts in Brazil is differentiated for employees and employers. And this differentiation in the cost of access generates a series of problems, including several abusive and opportunistic behaviors, by workers, and also by employers. Over time, these behaviors tend to detract from the legitimacy of this branch of the justice system, which finds itself entangled in this problem, albeit completely involuntarily. In this article, we seek to verify a series of matters relating to this debate, on the basis of new empirical evidence.

Keywords: labor courts, inequality of access, workers and employers

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1. Introduction

The labor courts have a fairly long history in Brazil. Set up in the 1930s, as part of a system to regulate industrial relations, the courts have become one of the most important branches of the country's judicial system.

Specializing in employment-related issues, they have been widely used over the years by both workers and employers, establishing themselves as a key way of resolving individual and collective disputes between these groups (Biavaschi, 2007; Cardoso, 2002; French, 2001; Gomes & Silva, 2013; Paoli, 1985).

Some of the Brazilian literature is devoted to the debate on issues related to access to the labor courts. More specifically, to the problems caused by the costs of access for workers and employees. What problems are these?

Some authors claim that, for employees, the monetary and immediate costs of taking their employer to court have always been modest, especially in view of the benefits of free justice and attorneys' fees payable only at the end of the proceedings.

On the other hand, the non-monetary and mediate costs (in terms of time) have always been high for employees, mainly because of the time taken for their rights to be considered and enforced by the labor courts (Amadeo, 1998; Amadeo & Camargo, 1994; Néri, Camargo, & Reis, 2000).

According to other authors, the reverse was true, the burden falling entirely on employers. This is because the immediate monetary expense has always been considerable, as they have not benefited from free justice and have had to pay legal fees in advance.

On the other hand, the non-monetary and mediate costs (in terms of time) have always been modest for employers, especially when they enjoyed the possibility of filing judicial appeals (Camargo, 1997; Camargo & Reis, 2003; Gonzaga, 1998; Gonzaga & Pinto, 2014).

According to the literature, this cost structure in labor proceedings has always meant that employees could take companies to court whenever they liked. This situation might even encourage abusive or opportunistic behavior, which would be involuntarily validated by the labor courts in the handling of disputes[1].

But that same cost structure could also encourage abusive and opportunistic behavior by employers, insofar as they might actually feel tempted not to comply with mandatory rules on the duration of employment contracts. After all, in the

1. If those disputes occurred after the employment contracts were terminated, and if they inflated the value of the aspects where violations may have taken place. With regard to this, see Gonzaga e Pinto (2014).

context of a lawsuit, these issues could be negotiated with 'haircuts' or at least delayed[2].

In other words, for those authors, this differentiation in the cost of access generated a series of problems, including several abusive and opportunistic behaviors, by workers, and also by employers.

Obviously, over time, those behaviors tended to detract from the legitimacy of this specialist branch of the justice system, which found itself completely entangled in this problem, albeit involuntarily (Amadeo & Camargo, 1994; Camargo & Reis, 2003).

In this article, we seek to verify a series of matters relating to all this, on the basis of new empirical evidence. In particular, we examine:

1. Whether the *time-related* costs of labor proceedings are really differentiated for employees and employers. The literature states that, for employees, those costs are high (delays in the case coming to court, and often in enforcement). Whilst for employers, those same costs are low (even more so when there are judicial appeals they can file – which mean the case takes even longer to come before the judge and to be enforced). In order to verify these assertions, this article analyses certain aspects, such as the time from filing of claim to judgment, from filing of appeal to the respective decision, from filing of claim to payment of employment claim, and from judgment to payment of employment claim.
2. Whether the *monetary* costs involved in labor proceedings are really different for employees and employers. The literature says that, for employers, these costs are low. Not only because any employment claim is paid after a considerable period of time, but also because that payment is made with a significant 'haircut', or discount. For employees, for precisely the same reasons, those costs are fairly high. In order to verify these assertions, this article analyses other issues, such as the value of claims assessed, and effectively paid, by employers to employees.

It should nonetheless be noted that, in the context of the 1990s and the first decade of this century, when the literature cited above became the subject of public debate, there was no accumulation of empirical evidence capable of supporting

2. Not only because any employment claim would be paid after a considerable period of time, but also because that payment would be made with a significant 'haircut', or discount. On this issue, see Amadeo e Camargo (1994).

all the assertions made about the differentiated costs of access to the labor courts, and also concerning the problems generated by the behavior of employees and employers in view of these costs.

The information presented in the course of this article belongs to a new context, in which empirical evidence is available, allowing us to test some of the claims made, concerning possible problems thrown up by the cost structure of legal proceedings in the labor courts[3].

2. Evidence

2.1 General information

Before starting to examine the evidence which may help to test the assertions referred to above, it will be useful to provide some background information, on how claims are processed in the labor courts. This information will provide context and help readers to understand some of the assertions (some of them actually controversial) which will then be made[4].

As regards the content of the judgments rendered in these courts, it is found that 45.5 percent of them ratify the outcome of conciliation between the parties in dispute – employees and employers[5]. Another 26.6 percent are judgments that partly uphold claims, whilst 6.4 percent dismiss claims and another 3.1 percent uphold the claims in full (table 1).

Accordingly, certain allegations concerning this justice system should be considered – allegations such as '*everything the employee seeks, the labor courts give*'. As the data indicates, outcomes wholly favorable to employees are quite rare. The most frequent outcomes involve decisions which are partly favorable, either

3. This information is drawn from the Banco Nacional de Autos Findos Trabalhistas (National Data Base of Completed Employment Proceedings, referred to below as BNAFT), which is the fruit of technical cooperation between the TST (Tribunal Superior do Trabalho, Higher Labour Court) – via CSJT (Conselho Superior da Justiça do Trabalho, Higher Council for Labour Justice) – and IPEA (Instituto de Pesquisa Econômica Aplicada, Institute for Applied Economic Research). The BNAFT is illustrated in the table at the end of this article.

4. It should be mentioned that all the evidence presented in this article refers to the actions most commonly brought before the labour courts: i) employment claims with ordinary and summary procedure; ii) filed by natural persons (generally employees); iii) filed against legal persons (generally companies). This article will accordingly not look at: i) other types of actions (collective disputes, public civil actions, writs of mandamus, etc.); ii) filed by other persons (companies, unions, public prosecutor, etc.); iii) filed against other persons (such as natural persons).

5. This probably reflects the historical constitution of the labour courts, described by several authors as a jurisdiction that attaches value to building 'consensus' between the parties involved. For authors in the legal field who describe the labour courts in this way, see Barros (2006); Delgado (2006); Nascimento (2005). For authors in the field of sociology, see Biavaschi (2007); Cardoso (2002); French (2001) e Paoli (1994).

through conciliation with employers, or else through decisions by judges on the merits[6][7].

As regards the filing of appeals against the decisions of labor courts, it should be noted that this is not a common practice. Ordinary appeals are filed in 20.1 percent of the claims analyzed, applications for amendment of judgment (*embargos de declaração*) in 10.6 percent of claims, various other forms of appeal (*agravo*) in 7.5 percent and appeals on point of law (*recurso de revista*) in 7.5 percent (table 2)[8].

This means that other allegations made against this justice system can also be addressed – such as '*labor proceedings never end, because of the different appeals*'. In reality, although the rule provides for various possibilities of appeal against the rulings of judges, it is not frequent for all these possibilities to be used.

TABLE 1. Content of judgment

	%
Ratification of agreement	45.5
Partially upheld	26.6
Other cases closed without decision on merits	17.0
Dismissed	6.4
Upheld in full	3.1
No standing to sue due to lack of interest in proceedings	1.0
Limitation or time-bar	0.4
Jurisdiction declined	0.0
Total	100.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 2. If appeals filed – yes

	%
If ordinary appeal filed	20.1
If application filed for amendment of judgment	10.6
If other appeals filed	7.5
If appeal on point of law filed	7.5

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

6. This does not disprove allegations also commonly made about the labour courts – such as *"the employee asks for everything, and always comes away with something"*.
7. We should clarify that, when in this article we refer to 'decisions on the merits', we are speaking of rulings by judges which are not mere ratifications of conciliation processes.
8. Concerning the different appeals that can be filed in labour proceedings, see Leite (2012); Pinto (2006); Teixeira Filho (2011).

No less than 73.7 percent of decisions issued by the labor courts involve credit claims (i.e. entitlements – generally on the part of employees – expressed in money) (table 3). And in 72.9 percent of cases involving credit claims, that claim has been assessed (it is expressly specified in monetary terms), immediately after the judgment is rendered (table 4). However, there are significant differences in relation to this last point, depending on whether the judgments refer to ratification of conciliation outcomes (97.2 percent present assessed credit claims) or whether they are decisions by judges on the merits (only 37.8 percent) (table 5). It would appear that conciliation processes cause claims to be processed faster, and consequently more effectively.

This can also be seen in the tables below. Of labor court decisions that involve credit claims, in 46.5 percent of cases the respondents (generally, the companies) do not comply spontaneously with the payment order (table 6). In other words, nearly half the judgments need to be followed up with enforcement proceedings, which makes the processing of claims lest fast and effective. And once again there are significant differences here, depending on whether the judgments relate to ratification of conciliation outcomes (only 28.6 percent require enforcement proceedings) or decisions by judges on the merits (no less than 72.6 percent) (table 7)[9].

TABLE 3. Did the decision give rise to an employment credit claim?

	%
No	26.3
Yes	73.7
Total	100.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 4. Has the credit claim been assessed?

	%
No	27.1
Yes	72.9
Total	100.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

9. Although the percentage is low, it is still worthy of note that, even in the case of conciliation processes, enforcement proceedings are needed in 28.6 percent of the decisions ratifying those outcomes.

TABLE 5. Has the credit claim been assessed?

	NO	YES	TOTAL
Trial (Part./fully upheld)	62.2	37.8	100.0
Ratification of agreement	2.8	97.2	100.0
Total	25.9	74.1	100.0

Note: Pearson chi-square 260,163.16. Degrees of freedom: 1. Asymptotic significance (2 sided): 0.000.
Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 6. Where a credit claim exists, was it paid without requiring enforcement?

	%
No	46.5
Yes	53.5
Total	100.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 7. Where a credit claim exists, was it paid without requiring enforcement?

	NO	YES	TOTAL
Trial (Part./fully upheld)	72.6	27.4	100.0
Ratification of agreement	28.6	71.4	100.0
Total	46.0	54.0	100.0

Note: Pearson chi-square 104,971.55. Degrees of freedom: 1. Asymptotic significance (2 sided): 0.000.
Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

2.2 The time-related costs

An assertion that can be tested using data from BNAFT is: are the time-related costs of a suit in the labor courts different for employees and employers, in that they are high for the former and low for the latter?

To this end it may be possible to analyze certain aspects, such as the time: i) from filing of claim to judgment; ii) from filing of appeal to the respective decision; iii) from filing of claim to payment of employment claim; iv) from judgment to payment of employment claim.

According to information from the data base, in all the claims analyzed, the average time from the filing of the claim (generally by employees) to the judge's decision (at first instance) is 171 days – which corresponds to something like 5.6 months (table 8).

TABLE 8. Days elapsed from filing of claim to judgment

	No.
Mean	171.0
Standard Deviation	329.5
1st Quartile	40.0
2nd Quartile	83.0
3rd Quartile	186.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

If appeals are filed against the rulings of judges (in courts of whatever level), this period of time tends to be significantly longer[10]. Merely by way of example, in the case of applications for amendment of judgment, an average of 59.3 additional days are needed to reach a decision (1.9 months). In the case of ordinary appeals, an average of 255.4 additional days are needed (8.4 months). In the case of appeals on point of law, a further 267.1 days are needed on average to obtain a decision (8.8 months). Lastly, on the case of other appeals (*agravos*), the average is an additional 365.2 days (no less than 12 months) (table 9)[11].

It should be recalled that the filing of these appeals against judges' rulings is not common, as we have already seen. We should further point out that it is even less common for all these forms of appeal to be used, one after another, in a single case[12]. This means that the lengthening of the time needed to process claims, due to the appeal procedures available to parties dissatisfied with the decision, rarely entails the sum total of all the periods of time mentioned (which is not to say they are not striking in themselves).

10. Appeals which, in most cases, are decided by labor courts higher than courts of first instance (ordinary appeal: *Tribunais Regionais do Trabalho* (TRTs, Regional Labor Courts); appeals on point of law: *Tribunal Superior do Trabalho* (TST, Higher Labor Courts); other appeals (*agravos*): panels of judges from TRTs or TST). Applications for amendment of judgment are decided by the court that rendered the decision in question.

11. None of these periods of time take into account the time taken for the parties concerned to file their appeals [application for amendment of judgment: 5 days; ordinary appeal: 8 days; appeal on point of law: 8 days; other appeals (*agravos*): 8 days].

12. It should be noted that there are other appeals that the litigant parties can file in the labor courts, in addition to those mentioned here. On this, see Leite (2012); Pinto (2006); Teixeira Filho (2011).

TABLE 9. Days elapsed from filing of appeal to the respective decision

APPLICATION FOR AMENDMENT OF JUDGMENT	NO.
Mean	59.3
Standard Deviation	72.5
1st Quartile	14.0
2nd Quartile	35.0
3rd Quartile	73.0
ORDINARY APPEAL	**NO.**
Mean	255.4
Standard Deviation	230.2
1st Quartile	112.0
2nd Quartile	188.0
3rd Quartile	322.0
APPEAL ON POINT OF LAW	**NO.**
Mean	267.1
Standard Deviation	512.5
1st Quartile	25.0
2nd Quartile	56.0
3rd Quartile	198.0
OTHER APPEALS *(AGRAVOS)*	**NO.**
Mean	365.2
Standard Deviation	460.5
1st Quartile	118.0
2nd Quartile	224.0
3rd Quartile	396.0

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

Taking all the claims studied, the average time from filing by claimant (employees) to start of payment of their credit claims by the respondent (employers) is 684.0 days – equivalent to 22.4 months (table 10)[13]. In other words, the costs of a lawsuit in the labor courts, in terms of time, do not appear to be insignificant for employees: it takes almost two years for them to start to receive at least a portion of their credit claims (insofar as they are often divided into instalments).

13. We are here analysing claims that are resolved in credit claims (as we have seen, 73.7 percent of judgments rendered by the labour courts involve credit claims). Moreover, we refer to the moment of 'start of payment of credit claims' because claims are often divided into instalments to facilitate payment by the respondents (when not divided into instalments, the 'start' date is the date of payment of the claims).

But these costs appear to even higher when employers do not comply spontaneously with judgments (when enforcement is needed)[14]. In this situation, the average time between filing of claim and start of payment rises to 1,082.1 days, corresponding to 35.5 months (table 10). In other words, the need to enforce claims appears to significantly increase the time-related costs borne by employees, in actions they file with the labor courts[15].

TABLE 10. Days elapsed from filing of claim and start of payment of employment credit claim

	TOTAL	CASES WITHOUT ENFORCEMENT	CASES WITH ENFORCEMENT
	No.	No.	No.
Mean	684.0	307.9	1,082.1
Standard Deviation	1,017.1	545.9	1,237.8
1st Quartile	70.0	51.0	167.0
2nd Quartile	231.0	113.0	689.0
3rd Quartile	880.0	294.0	1,525.0

Note: T-test for equality of means (cases with and without enforcement): 242.6. Degrees of freedom: 241,779.3. Signif. (2 sided): 0.000. Mean difference: 774.1. Standard error in difference: 3.2. Confid. interv. for difference (95.0%): 767.9 and 780.4.
Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

Obviously, those costs are slightly reduced when we consider only the average time elapsing between the judges rendering their decision and the start of payment of credit claims by respondents (employers). In all the claims analyzed, that time is 533.2 days – equivalent to 17.5 months (table 11).

However, as before, those costs appear to remain high when the decisions are not spontaneously complied with by the employers (requiring enforcement). In that case, the average time between the judges' decision and start of payment by employers rises to 918.5 days – corresponding to 30.1 months (table 11).

14. As we have seen, of labor court decisions that involve credit claims, in 46.5 percent of cases the employers do not comply spontaneously with the payment order.

15. The reasons for this are varied and complex, and are examined in Campos e Benedetto (2015).

TABLE 11. Days elapsed from judgment to start of payment of employment credit claim

	TOTAL	CASES WITHOUT ENFORCEMENT	CASES WITH ENFORCEMENT
	No.	No.	No.
Mean	533.2	171.7	918.5
Standard Deviation	928.0	437.3	1,145.3
1st Quartile	11.0	6.0	77.0
2nd Quartile	73.0	15.0	532.0
3rd Quartile	685.0	85.0	1,230.0

Note: T-test for equality of means (cases with and without enforcement): 255.7. Degrees of freedom: 223,175.1. Signif. (2 sided): 0.000. Mean difference: 746.8. Standard error in difference: 2.9. Confid. interv. for difference (95.0%): 741.1 and 752.5.
Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

In short, the assertion that the time-related costs of proceedings in the labor courts are different for employees and employers (high for the former and low for the latter) appears to be confirmed, in accordance with the evidence presented.

When we focus on the time elapsing from filing of claim to judgment, from filing of appeal to the respective decision, from filing of claim to part of employment credit claim, and also from judgment to payment of employment credit claim, it is noted that the time-related costs of proceedings do not appear small for the employees.

What is more, when the respondents (employers) do not comply spontaneously with the rulings, those costs rise much further, reaching very significant periods of time, only for the start of payment of credit claims for which the original claim was filed almost three years earlier, and where the claim has already been considered and validated by judges in their rulings.

Accordingly, there are grounds to question a number of allegations commonly made concerning the labor courts, such as '*the employee has no costs, so he can go to the labor courts whenever he likes*'.

In reality, at least from a time-related perspective, those costs appear fairly high for the employee – if not for starting the process (which to a certain extent was questioned above), at least for coming out of the process with some of the credit claims paid. In any case, other evidence, relating to this topic, will be set out below.

2.3 The monetary costs

Another assertion that can be tested with the information from BNAFT is: are the monetary costs involved in bringing proceedings in the labor courts different for employees and employers? For the latter, those costs can be low, not only because any employment claims are paid after a considerable period of time (as we have seen), but also because that payment is made with a significant 'haircut', or discount. Obviously, for employees, for precisely the same reasons, those costs are fairly high.

In order to test this, it may be possible to examine a number of issues, such as the value of claims assessed, and effectively paid, by employers to employees. Table 12 presents information for both values, for all the claims studied here. It may be seen that, between the amounts assessed (immediately after the judges render their decisions) and the amounts actually paid by the respondents (employers), there is a difference (or 'haircut') that oscillates between 12.7 percent and 35.9 percent, depending on whether the calculation is based on mean or median values (considering in both cases values monetarily adjusted to 31/01/2017, by IPCA-Geral/IBGE)[16] [17].

Significant differences may be noted, depending on whether the decisions are ratifications of conciliation outcomes or else decisions by judges on the merits. In the latter case, there is a difference that varies between 54.2 percent and 60.5 percent, in all cases to the detriment of the amounts actually paid by the employers. In the former cases, that difference ranges between 34.2 percent and 36.1 percent (table 13), so that conciliation processes appear to make for faster, and consequently more effective, processing of claims (confirming what we have already seen).

When judgments are analyzed in terms of spontaneous compliance (by employers) or the need for enforcement, different pictures emerge, depending on whether the mean or median values are used. In any case, between the amounts assessed (by the judges) and the amounts effectively paid by the respondents (employers), there is always a substantial difference (or 'haircut'), which can be no less than 44.5 percent (table 14).

16. The standard deviations of the mean values are fairly high, as may be seen in the table, meaning that the median values may provide an interesting statistic for analysis in this case. Indeed, the same perhaps applies to the values of the following tables.

17. Also, in relation to the table, in addition to the 'haircut' between the amounts assessed and the amounts actually paid, it is possible to observe the relatively small amounts at issue in disputes in the labor courts. At least in the claims considered here (which are the most common in these courts), those values never exceed 13.9 minimum salaries (mean values assessed) or 4.8 minimum salaries (median values assessed) (considering in all cases the value of the national minimum salary at 31/01/2017 – R$ 937.00).

It may also be noted that when we look only at the labor court judgments which required enforcement, in cases where attempts at attachment (seizure of property) were needed, there is a difference ranging between 33.1 percent and 46.7 percent, always to the detriment of the amounts actually paid by the employers. When there is no such need, that difference varies between 9.1 percent and 34.5 percent, once more to the detriment of the amounts actually paid by the employers (table 15).

In short, the assertion that the monetary and time-related costs involved in taking disputes to the labor courts are different for employees and employers (high for the former and low for the latter) appears to be confirmed, in accordance with the evidence concerning the 'haircut' existing between the amounts assessed and actually paid, by employers to employees.

In the claims analyzed as a whole, that 'haircut' stands at 12.7 percent when calculated on the basis of mean values, and 35.9 percent when median values are considered. In other words, employees appear to face not just time-related costs in order to come away from the labor courts with payment of their claims, considered and validated in judgments, but also strictly monetary costs – which are reflected, to a certain extent, in the 'haircuts' we refer to.

TABLE 12. Comparison of values of credit claims assessed and paid (labor and other credit claims) (in R$ of 31/01/2017)

	TOTAL VALUE OF CREDIT CLAIM ASSESSED (A)	TOTAL VALUE OF CREDIT CLAIM PAID (B)	DIFFERENCE (B-A) (IN R$)	DIFFERENCE (AS PROPORTION OF A) (IN %)
Mean	13,045.04	11,393.39	-1,651.64	-12.7
Median	4,481.06	2,874.00	-1,607.07	-35.9
Standard Deviation	84,149.51	69,895.77	-	-

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 13. Comparison of values of credit claims assessed and paid, by content of judgment (labor and other credit claims) (in R$ of 31/01/2017)

		TOTAL VALUE OF CREDIT CLAIM ASSESSED (A)	TOTAL VALUE OF CREDIT CLAIM PAID (B)	DIFFERENCE (B-A) (IN R$)	DIFFERENCE (AS PROPORTION OF A) (IN %)
Trial (Part. or fully upheld)	Mean	54,204.86	24,801.29	-29,403.56	-54.2
	Median	9,259.54	3,658.74	-5,600.79	-60.5
	Standard Deviation	261,372.37	123,623.35	-	-
Ratif. Agreement	Mean	8,218.65	5,408.93	-2,809.72	-34.2
	Median	4,323.98	2,765.07	-1,558.91	-36.1
	Standard Deviation	14,316.66	18,497.01	-	-

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 14. Comparison of values of credit claims assessed and paid, by need for enforcement (labor and other credit claims) (in R$ of 31/01/2017)

		TOTAL VALUE OF CREDIT CLAIM ASSESSED (A)	TOTAL VALUE OF CREDIT CLAIM PAID (B)	DIFFERENCE (B-A) (IN R$)	DIFFERENCE (AS PROPORTION OF A) (IN %)
No	Mean	21,288.78	18,833.59	-2,455.19	-11.5
	Median	5,740.75	3,186.64	-2,554.10	-44.5
	Standard Deviation	158,561.48	109,593.45	-	-
Yes	Mean	9,380.03	6,462.79	-2,917.24	-31.1
	Median	4,286.82	2,778.00	-1,508.83	-35.2
	Standard Deviation	24,813.67	16,899.10	-	-

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

TABLE 15. Comparison of values of credit claims assessed and paid, by need for attachment (labor and other credit claims) (in R$ of 31/01/2017)

		TOTAL VALUE OF CREDIT CLAIM ASSESSED (A)	TOTAL VALUE OF CREDIT CLAIM PAID (B)	DIFFERENCE (B-A) (IN R$)	DIFFERENCE (AS PROPORTION OF A) (IN %)
Attachment attempted	Mean	23,293.55	15,579.32	-7,714.24	-33.1
	Median	5,904.77	3,146.25	-2,758.51	-46.7
	Standard Deviation	171,679.28	105,092.60	-	-
No attachment attempted	Mean	10,326.46	9,390.21	-936.24	-9.1
	Median	4,286.82	2,807.07	-1,479.75	-34.5
	Standard Deviation	33,257.55	43,882.14	-	-

Source: Drawn up by author with data from BNAFT, TST-CSJT/Ipea.

3. Final considerations

In the 1990s and the first decade of this century, some of the Brazilian literature was devoted to the debate on issues related to access to the labor courts. More specifically, to the problems caused by the differentiated cost of access for workers and employees. For those authors, this differentiation in the cost of access generated a series of problems, including several abusive and opportunistic behaviors, by workers, and also by employers. Obviously, over time, these behaviors tend to detract from the legitimacy of this branch of the justice system, which has found itself entangled in these problems, albeit completely involuntarily.

In this article, we have sought to verify a series of matters relating to all this, on the basis of empirical evidence. Very briefly, it may be asserted that:

i) The *time-related* costs of labor proceedings are really differentiated for employees and employers, to the detriment of the former. When we look at the time between the filing of claims and the payment of credit claims (among other periods of time that may be analyzed), it can been seen that the time-related costs of pursuing claims are not low for employees (especially when employers do not comply spontaneously with judgments – i.e. when enforcement proceedings are required). And we are not speaking here of the costs for filing the claims, but for coming away with a portion of the amount owed. In terms of time, these costs appear high for employees.

ii) The *monetary* costs of labor proceedings appear to be really differentiated for employees and employers, but to the detriment of the former. The 'haircut' between the amounts assessed and those actually paid by employers to employees is fairly significant, standing at 12.7 percent when calculated on the basis of mean values, and at 35.9 percent when based on median values. In other words, the monetary costs of pursuing claims do not appear small for the employees. Once again, we are not speaking here of the costs for filing the claims, but for coming away with the part of the claim really due to them (as considered and validated in the judgment).

In short, the assertions that the workings of the labor courts encourage and/or validate (albeit involuntarily) abusive and opportunistic behaviors on the part of employment actors appears to be confirmed (or rather, cannot be discarded).

Indeed, those assertions appear to be confirmed especially with regard to the behavior of employers. From the standpoint of time-related and monetary costs,

employers appear to have something (or a lot) to gain, either from delaying payment of what they owe, or else from mitigation of those payments ('haircuts').

Employees, in turn, appear to have something (or a lot) to lose, with both phenomena (delay and mitigation). Accordingly, whilst there are some costs for employees in initiating their claims in the labor courts, those costs appear to be considerably larger for them to reach the end of the process (on receipt of the amounts owed to them).

Table 1 – The National Data Base of Completed Employment Proceedings

The information used in this article is drawn from the Banco Nacional de Autos Findos Trabalhistas (National Bank of Completed Employment Proceedings, referred to below as BNAFT), which is the fruit of technical cooperation between the TST (Tribunal Superior do Trabalho, Higher Labor Court) – via CSJT (Conselho Superior da Justiça do Trabalho, Higher Council for Labor Justice) – and IPEA (Instituto de Pesquisa Econômica Aplicada, Institute for Applied Economic Research).

We should stress that BNAFT was compiled through simple random sampling of labor claims, definitively or provisionally concluded at the end of the first half of 2012. This sample includes the case files of 9,215 claims, from 1,167 local labor courts, in 683 municipalities of all the Brazilian states. This sample is representative and significant for each of the 24 TRTs (Regional Labor Courts), with a confidence level of 90.0 percent and a margin of error of 0.9 percent (for national indicators – TRTs as a whole).

BNAFT contains information on 813 different items, dealing with all acts and all procedural stages, of the sample of labor claims definitively or provisionally closed at the end of the first half of 2012. This information was gathered through online questionnaires, used by a team of labor court clerks, trained and supervised by Ipea (and in some cases used by an internal team at Ipea)[18].

Lastly, it should be mentioned that the BNAFT microdata is available to all those interested, who may make their request for access directly to TST (CSJT) and to Ipea.

18. For further information on his microdata, see Cunha e Rêgo (2015).