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Multilevel Regulatory System Guarantees Reduced Working Hours for the Care of a Person with a Disability[1]

Por Christiana D'Arc Damasceno Oliveira Andrade Sandim, Judge at the Regional Labour Court n. 14 (TRT 14). Law Doctor[2].

Introduction

The Labor Court applied the multilevel regulatory system and conventionality control to set aside a clause of Caixa Econômica Federal's collective bargaining agrément.

In cases involving children and dependents with disabilities, procedural time carries a particular weight: there are developmental windows that, once lost for lack of adequate therapeutic support, do not return. It was this finding — combined with a dense framework of international human rights law — that led the

[1] July 3, 2026 — *News Brazilian Academy of Labor Law*. Translator's note: This is a certified-style, terminology-controlled legal translation from the Brazilian Portuguese original. Footnotes marked with superscript numerals explain Brazilian legal institutes, courts, and procedural devices that have no exact common-law equivalent; where an equivalent exists, the closest functional term has been used in the body text and the source term retained in parentheses or in the footnote.

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Labor Court to expand, from 25% to up to 50%, the right to reduced working hours for employees of Caixa Econômica Federal[3] who have children or dependents with disabilities.

Under this understanding, the 1st Panel (1ª Turma) of the Regional Labor Court of the 14th Region (TRT14)[4] raised, from 25% to 50%, the ceiling on reduced working hours set out in the collective bargaining agreement for Caixa employees caring for a child or dependent with a disability — a percentage that is not automatically granted to everyone, but applied according to case-by-case proof of the dependent's need for accompaniment during business hours. By unanimous vote, the panel partially granted the ordinary appeal (recurso ordinário)[5] filed by the Association of Caixa Econômica Federal Managers of the State of Rondônia (AGECEF/RO) and denied Caixa's cross-appeal (recurso adesivo), without any reduction in salary and without requiring make-up hours.

The rapporteur (relatora)[6] of judgment is Judge Christiana D'Arc Damasceno Oliveira Andrade Sandim, sitting judge (juíza titular) of the 3rd Labor Court of Porto Velho/RO and, during this term, convened (juíza convocada)[7] to serve on the 1st Panel of TRT14. PhD and Holder of Titular Academician of Chair No. 34 of the Brazilian Academy of Labor Law (ABDT), the judge — who built her career in the Amazon region, particularly in the State of Acre — is the author and co-author of works on fundamental rights in the world of work. It was she who framed the reasoning of the opinion around the multilevel regulatory system of human-rights protection[8] — a category drawn from constitutional and international-law scholarship, here applied to the care of persons with disabilities in the employment context.

I. The case

AGECEF/RO filed a collective action (ação civil coletiva)[9] seeking a reduction of up to 50% working hours for its members with a child or dependent with a disability. The first-instance judgment dismissed the claim: in the trial court's view, the 2024/2026 Collective Bargaining Agreement — which already provided for up to a 25% reduction, plus remote, hybrid, or in-person work arrangements — was sufficient in light of Theme

[3]Caixa Econômica Federal is a federal public bank (empresa pública federal) wholly owned by the Brazilian Union. Because it is part of the State's own administrative apparatus, its employment relationships are directly bound by Brazil's international human-rights obligations, a point the ruling addresses expressly.

[4]TRT14 (Tribunal Regional do Trabalho da 14ª Região) is the intermediate-level labor appellate court with jurisdiction over the states of Rondônia and Acre, within Brazil's specialized labor court system (Justiça do Trabalho).

[5]In Brazilian labor procedure, the recurso ordinário is the primary appeal from a first-instance labor court (Vara do Trabalho) to the corresponding Regional Labor Court (TRT); the recurso adesivo (cross-appeal) is a subordinate appeal filed by the opposing party, valid only if the main appeal is also pursued.

[6]Relatora / rapporteur: the judge on a multi-member panel assigned to study the case and draft the leading opinion, which the other panel members then vote to accompany, in whole or in part.

[7]Juíza convocada / 'convened judge': a first-instance judge temporarily elevated (seconded) to sit on an appellate panel — typically to cover a vacancy or workload backlog — as distinguished from a permanently appointed appellate judge (desembargador/desembargadora).

[8]Sistema normativo multinível / 'multilevel regulatory system': a doctrinal construct describing the layered coexistence, within a single legal order, of domestic constitutional norms, supralegal treaty norms, and ordinary legislation, ranked according to a hierarchy of validity — loosely comparable to, though textually distinct from, 'multilevel constitutionalism' as discussed in European Union legal scholarship.

[9]Ação civil coletiva: a collective action brought by a labor union or professional association on behalf of its members' shared interests, distinct from an individual labor claim and from the broader ação civil pública, which protects diffuse or collective rights of an unascertained membership.

1,046 of the Federal Supreme Court's General Repercussion docket[10], and Law No. 14,457/2022 had filled any remaining regulatory gap on the matter.

The Panel reversed the judgment. It held that a collective-bargaining clause fixing a flat percentage reduction cannot operate as an absolute ceiling to the detriment of the individualized reasonable accommodation owed to each child or dependent with a disability, which must be assessed according to the circumstances of the specific case.

II. The multilevel regulatory system

For the rapporteur, Judge Christiana D'Arc, the dispute falls within the multilevel regulatory system of human-rights protection — a model already recognized in constitutional and international-law scholarship, under which domestic and international norms coexist according to hierarchical criteria.

> *"International human-rights treaties incorporated into the Brazilian legal order function as parameters of validity for infra-constitutional norms — including collective-bargaining norms — and not as merely optional interpretive sources."*
>
> *— literal excerpt from the judgment*

That status as a parameter of validity, however, varies in intensity depending on the procedure by which each treaty was incorporated — a distinction the opinion develops from the dual hierarchy established by the Federal Supreme Court since its ruling in Extraordinary Appeal (RE) 466,343 (2008)[11].

The judgment distinguishes two tiers. Human-rights treaties approved under the ordinary procedure — such as International Labour Organization (ILO) Convention No. 111 and the American Convention on Human Rights, among other instruments examined in the ruling — hold supralegal status, prevailing over ordinary legislation and over collective bargaining agreements, though ranking below the Constitution.

Treaties approved under the qualified procedure of art. 5, §3 of the Constitution — a three-fifths quorum, in two rounds of voting, in each house of Congress — are equivalent to a constitutional amendment and become part of the constitutional bloc (bloco de constitucionalidade)[12]. In this group sits the Convention on the Rights of Persons with Disabilities (CRPD), promulgated by Decree No. 6,949/2009: to date, the only human-rights treaty incorporated by Brazil with the force of a constitutional amendment. Christiana D'Arc explains, in the judgment, that this differentiated hierarchy carries a direct practical consequence: no infra-

[10]'Tema de Repercussão Geral' (General Repercussion Theme): under Brazil's binding general-repercussion system, the Federal Supreme Court (STF) selects leading cases raising a constitutional question of broad relevance; the resulting 'Theme' ruling binds all lower courts. Theme 1,046 established the general prevalence of terms freely negotiated in collective bargaining over statutory labor provisions, subject to certain limits.

[11]RE 466.343: landmark 2008 STF decision holding that international human-rights treaties not approved under the qualified procedure of art. 5, §3 of the Constitution nonetheless hold 'supralegal' status — ranking below the Constitution but above ordinary domestic legislation, and rendering conflicting ordinary law inapplicable.

[12]Bloco de constitucionalidade / 'constitutional bloc': a doctrine of French origin (bloc de constitutionnalité), widely adopted in Latin American constitutionalism, under which norms formally external to the constitutional text — here, a treaty incorporated with constitutional-amendment force — are treated as materially part of the constitution itself for purposes of hierarchy and judicial review.

constitutional norm — not even a collectively bargained one — may set a level of protection lower than that required by the CRPD.

III. Conventionality control

The rapporteur's reasoning also distinguishes conventionality control from constitutionality control. Christiana D'Arc wrote that it is the duty — not merely the discretion — of every domestic court to also exercise conventionality control (controle de convencionalidade)[13], verifying the compatibility of domestic norms with the human-rights treaties binding the State, a duty recognized by the Inter-American Court of Human Rights (IACtHR) since Almonacid Arellano v. Chile (2006).

When the treaty carries constitutional rank, as does the CRPD, setting aside an incompatible clause is, in practice, equivalent to setting aside a norm incompatible with the Constitution itself — a form of review that, in the judge's view, any court may exercise sua sponte, with effects confined to the specific case (inter partes).

Article 2 of the CRPD defines reasonable accommodation as the necessary modifications required in each specific case, and characterizes its denial as discrimination on the basis of disability — what contemporary scholarship terms ableism (capacitismo)[14], a concept also codified in the Protocol for Adjudication with an Anti-Discriminatory, Intersectional, and Inclusive Perspective, part of the broader Protocols for Adjudication in the Labor Courts issued by the National School for the Training and Improvement of Labor Judges (ENAMAT)[15] in 2024.

For Christiana D'Arc, a clause that fixes a uniform percentage, regardless of the severity of the disability or the therapeutic protocol indicated, does not satisfy this requirement of individualization.

One of the central points of the judgkent is that the dependent with a disability took no part in the collective bargaining that limited his or her right to care. The rapporteur noted that the clause reaches, “obliquely, yet directly in its effects, the rights of one who never had a voice in that negotiation” — since the union and the company negotiate the working conditions of adults, not the protection owed to the child or dependent.

Caixa's being bound by the CRPD's obligations, according to the judge, rests on two cumulative grounds: as a federal public enterprise, it is directly part of the State apparatus; and, even were it a private employer,

[13]Controle de convencionalidade / 'conventionality control': a doctrine developed by the Inter-American Court of Human Rights requiring domestic judges and authorities to review the compatibility of domestic law with binding international human-rights treaties (and with the Inter-American Court's own case law), setting aside incompatible domestic provisions. In states such as Brazil, where certain treaties hold constitutional rank, it operates in parallel with ordinary constitutionality review (controle de constitucionalidade).
[14]Capacitismo — the Portuguese-language term paralleling 'ableism' in English: structural discrimination or prejudice against persons with disabilities, grounded in the presumption that non-disabled bodily and cognitive function is the normative standard.
[15]ENAMAT (Escola Nacional de Formação e Aperfeiçoamento de Magistrados do Trabalho): the national training school for Brazilian labor judges, operating under the Superior Labor Court (TST), responsible for issuing adjudication protocols intended to standardize rights-sensitive judicial practice across the labor court system.

the horizontal effect of fundamental rights (eficácia horizontal dos direitos fundamentais)[16] — which also radiates into relationships between private parties — would impose the same obligation.

IV. Expanded scope

Another point of innovation in the judgmen lies in not confining the right to the biological parent-child relationship. TST[17] Repetitive Interlocutory Appeal Theme (IRR) 138, a binding precedent that already secured reduced working hours for public employees with a child with Autism Spectrum Disorder (ASD), expressly mentions only "child" — which, on a literal reading, would exclude anyone caring for a sibling, grandchild, or other dependent without a filiation bond.

The rapporteur filled that gap by analogy to art. 98, §3 of Law No. 8,112/1990[18] — the very same provision that already underlies, by analogous application, the right to reduced working hours itself — whose wording is broader, covering "spouse, child, or dependent." Since that broader provision is the source from which Theme IRR 138 derives, the rapporteur reasoned that interpreting it consistently with the binding precedent is not an extension contrary to the thesis itself, but simply the application, to Theme IRR 138, of the same scope the source provision already contained. In practice, the effect is that the ruling now also reaches whoever holds legal responsibility for the care of a dependent with a disability without a filiation bond — for example, grandparents who have grandchildren as dependents, or legally responsible siblings.

V. Theme 1,046 does not displace the crpd

The rapporteur directly examined STF Theme 1,046, which enshrines the prevalence of negotiated terms over statutory provisions and was the trial court's principal ground for dismissal. She acknowledged its validity but concluded it does not assist Caixa in this case, for two cumulative reasons: the duty of individualized reasonable accommodation derives from a norm of constitutional rank, which no collective bargaining may contradict; and Theme 1,046 itself governs conflicts between a collective norm and a worker's rights as a party to the employment contract — not the right to adequate care, which belongs primarily to the child or the dependent with a disability.

The judgment made clear that setting the clause aside on an incidental basis, limited to the association's members who are parties to the action, does not compromise the validity of the collective bargaining agreement as a whole, nor does it hollow out union autonomy — it simply recognizes that such autonomy

[16]Eficácia horizontal dos direitos fundamentais / 'horizontal effect (or application) of fundamental rights': a doctrine prominent in German (Drittwirkung) and subsequently Latin American constitutional theory, under which constitutional fundamental rights bind not only the State (vertical effect) but also private parties in relation to one another.

[17]TST (Tribunal Superior do Trabalho): Brazil's Superior Labor Court, the highest court within the specialized labor judiciary. Its 'Repetitive Interlocutory Appeal' (Incidente de Resolução de Recursos Repetitivos, IRR) theses bind all lower labor courts nationwide, functioning similarly to the STF's general-repercussion precedents but confined to the interpretation of federal labor law.

[18]Law No. 8,112/1990 is Brazil's Statute of Federal Civil Servants (Estatuto dos Servidores Públicos Civis da União), governing the employment regime of federal public-sector employees. Although Caixa's own staff are governed by the private-sector labor regime (CLT), Brazilian courts have applied this statute's dependent-care provisions by analogy to fill gaps in CLT-based collective instruments.

operates within limits already fixed by a hierarchically superior norm. With the reversal, Caixa was also ordered to pay the prevailing party's attorney's fees and court costs.

VI. A substantive, not merely rhetorical, use of international law

A distinctive feature of the judgment, according to the experts consulted, lies in how the multilevel regulatory system bore simultaneously on three fronts — the person with a disability, the reduced working hours of the legally responsible caregiver, and the rights of the child — with a double layer of conventionality and constitutionality control operating on the same collective-bargaining clause.

Notable, in this regard, is the depth with which international-body materials were used, and not merely for rhetorical effect. The judgment drew on the ILO Committee of Experts' 2023 General Survey — Achieving Gender Equality at Work (ILC.111/III(B), 111th Session of the International Labour Conference) — reading it together with ILO Conventions No. 111 and No. 156[19], treating the set as an articulated interpretive system rather than an isolated citation.

The same rigor appears in the examination of the Inter-American corpus iuris: the judgmennt relied on Advisory Opinion OC-17/2002 of the Inter-American Court of Human Rights (IACtHR), on the juridical condition of the child as an autonomous rights-holder, as well as on the Court's contentious case law — Furlan and Family v. Argentina (Series C No. 246, August 31, 2012), addressing disability and harm to one's life project (proyecto de vida)[20], and, as to conventionality control specifically, Almonacid Arellano v. Chile (Series C No. 154, September 26, 2006, §124) and Trabajadores Cesados del Congreso v. Peru (Series C No. 158, November 24, 2006, §128) — a line the IACtHR later deepened in Cabrera García and Montiel Flores v. Mexico (2010), extending the duty of review to every State organ, and in Gelman v. Uruguay (2011).

It should be noted that, on June 12, 2025, the IACtHR adopted Advisory Opinion OC-31/25, concerning the content and scope of the right to care and its interrelation with other rights — an instrument likely to be added, in future analogous rulings, to the framework already built from OC-17/2002.

VII. A comparative-law reading

One aspect that has drawn interest beyond labor law circles is precisely this unified architecture. In common-law jurisdictions, similar facts tend to generate separate claims, grounded independently in disability anti-discrimination legislation, in parental-leave or flexible-working statutes, and, on occasion, in constitutional or human-rights arguments kept apart from one another.

[19]ILO Convention No. 111 (Discrimination (Employment and Occupation), 1958) and Convention No. 156 (Workers with Family Responsibilities, 1981), both ratified by Brazil, address employment discrimination and the accommodation of workers' family-care duties, respectively.

[20]Proyecto de vida / 'life project': a reparations concept developed in IACtHR jurisprudence, referring to the realistic prospects for personal fulfillment a victim held prior to a human-rights violation — distinct from, and broader than, material or moral damages, and recognized as a compensable head of harm in itself.

The judgment took a different path: it wove these strands — disability rights, labor law, and children's rights — into a single thread, centered on the constitutionally ranked duty of reasonable accommodation.

At the close of the judgment, Judge D'Arc observed that deprivation of adequate therapeutic and family support during a child's earliest years "does not amount to a mere disadvantage that can be compensated for later — it constitutes permanent, progressive harm to the child's life project, silently consummated with each week of omission." The passage illustrates, in particular, the urgency of the biological window associated with ASD in early childhood — but the thesis set out is not confined to children: as noted above, it reaches any dependent with a disability under the legal care responsibility of a caregiver, regardless of age or biological bond.

> *"Caring for a dependent with a disability is not a private family burden, nor a matter left to a company's managerial discretion — it is a question of structural equality, with direct repercussions for the design of working hours, the scope of anti-discrimination law, and the legal recognition of dependency and care as a category of rights."*[21]
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The precedent has drawn interest extending well beyond labor law, reaching scholarship on disability rights, social reproduction, and human-rights adjudication.

Case reference: Ordinary Appeal (RO) 0000762-12.2025.5.14.0006

[21] Christiana D'Arc, Judge Rapporteur.