

Working in Brazil

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Brazil

The most fascinating branch of Brazilian legal language, I believe, is the terminology of labor law. Brazilian labor law is based on the on the *Consolida??o das Leis do Trabalho (Consolidation of Labor Laws)*, a long piece of legislation enacted by Getulio Vargas through a Decree Law Decree-Law dated May 1, 1943. CLT has been variously amended and added to and also supplemented by several unconsolidated laws, decree laws, decrees, regulations and what not. However the whole is often loosely referred to as the *CLT*, or a *Consolida??o*.

The language of labor law trickled down to the factory floor through layers of unsophisticated incomprehension. There and elsewhere, it was further modified by euphemistic usage. Incomprehension and euphemistic usage have combined to create a jargon that may escape many a good translator.

For instance, take *recebeu o fundo*. That of course, means *received the fund*, or, perhaps, *redeemed the deposit in the fund*, or may be *withdrew the balance of the fund*. Or does it? No, it does not. Let me explain. Under the original CLT, workers were entitled to an *indeniza??o (termination pay)* equal to one month's salary for each year worked, unless termination was for good cause. So, *foi indenizado* means *received termination pay*, in other words, *was fired*. Because employees dismissed are also entitled to *aviso pr?vio (termination notice)*, *recebeu o aviso* is another euphemism for *was fired*. Employees are required to work for their money during the *aviso pr?vio?* but employers usually think it more convenient to give dismissed employees one month's pay and tell them to go home. This is *receber o aviso [pr?vio] indenizado (receive one month's pay in lieu of termination notice)*.

Also, CLT provided that after 10 years in the service of the same company, an employee acquired *estabilidade (stability, job tenure)*. The actual provisions regarding *estabilidade* are a bit too complex for discussion here, but they amounted to the fact that a tenured employee was entitled to *indeniza??o em dobro (double termination pay)*. As a consequence, workers were systematically fired on reaching their ninth year. This was referred as *foi indenizado por causa da estabilidade (was terminated to avoid tenure)* and was not considered embarrassing.

In some cases, the workers merely used termination pay to take a vacation and do something useful—such as put up a down payment for a new home—and were hired again by the same employer a few months later. Others simply found a new job. Others still, could find no job. To protect those, the Fundo de Garantia de Tempo de Serviço—FGTS (*Length of Service Guarantee Fund*) was created. Basically, under the FGTS employers deposit 1/12 of the worker's pay in a restricted bank account, the balance of which was released to the worker if and when such worker was fired without good cause. So, *recebeu o fundo* means *withdrew the balance of the FGTS account*, or, in short, is a euphemism for *plain was fired*.

For some time, translators explained *FGTS* as a kind of *Severance Pay Fund* administered by the Federal Government, and that seemed good enough. Later on, another law allowed workers to withdraw their FGTS balance to finance a home under a government-sponsored housing program. This is referred to as *sacar o fundo*, or *usar o fundo*—not to be confused with *receber o fundo*. This move may have been in the best interests of all concerned, but entirely spoiled *Severance Pay Fund* as a translation. Shame.

In the beginning, workers were allowed to opt between the FGTS system and the traditional severance pay system. Many of them decided not to opt for FGTS, mainly because they wanted to be fired when the time came. Those were referred to as *não optantes*, often translated as *non-optants*, which is one of those translations that mean absolutely nothing to the reader. However, the shortest possible solution I have been able to figure out is *workers who decided not to join the FGTS system*. It is very cumbersome and does not mean much unless the context explains what that FGTS thing is all about. Employers were required to book a *provisão para não-optantes* to cover the liability toward those employees. Now, all workers are members of the FGTS system and the *não-optante* is no longer.

Under the FGTS system, it made very little difference whether a company fired an employee or not: severance pay had already been deposited every month, anyway. FGTS thus increased *rotatividade de mão-de-obra* (*labor turnover*) rather than reducing it. To counteract this undesired trend, employers are now required to make an additional payment equivalent to 40% of all previous payments made into the employee's account every time they want to fire someone. This is informally referred to as *multa do FGTS* (*FGTS fine*), although the word *multa* does not appear in the law.

Of course, many employers fail to *recolher o fundo* (*make deposits in the FGTS account*). Many of them do not even register their employees as such. Registration involves making an entry in a pocket-size booklet that all workers must have. This is now officially known as *Carteira de Trabalho e Previdência Social—CTPS*, formerly as *Carteira Profissional* or, colloquially, *a carteira*. Factory workers usually carry their

carteira with them at all times, because it is believed that they will get a better deal from the police if they can show they are working persons, not vagrants. The higher the pay, the better the clothes and the lower the chance of someone carrying a *profissional* in his/her pocket/purse. The police supposedly does not bother with well-dressed persons. So, not carrying your *carteira* with you is a status symbol.

To have a *carteira assinada*, means to be registered as an employee and the certainty of certain *direitos* (*rights, entitlements*). Workers tend to think about their rights when they are very angry with their employees. *Quero meus direitos* often is jargon for *if you are not satisfied then fire me—and give me my termination pay*. To which the employer may retort *v? procurar os seus direitos*, meaning *I am firing you for good cause and if you want your termination you will have to file a grievance—and win*.

That is exactly what the worker will do. He will *reclamar na justi?a* (*file a grievance*). Labor courts (*justi?a do trabalho*) are a separate branch of the Brazilian judiciary, governed by a separate set of rules similar to those applicable to civil courts. The system is reminiscent of that of the fascist *Carta del Lavoro*, on which the CLT is based. The lower court is a *Junta de Concilia??o e Julgamento—JCJ* (*Labor Grievance Settlement and Trial Board*) consisting of two *ju?zes classistas* (*lay judges representing workers and employers, respectively*) and one *juiz togado* (*full judge*). The system has been under heavy criticism for a long time, because it is claimed *ju?zes classistas* are neither independent nor sufficiently competent to perform their duties.

Often the parties reach an agreement under JCJ guidance or accept a JCJ decision. On other occasions, one of the parties may appeal to the *Tribunal Regional do Trabalho—TRT* (*Regional Court of Appeals*), which is more like an ordinary court of law. Those who are not satisfied with a TRT decision may appeal to the *Tribunal Superior do Trabalho—TST* (*Court of Labor Appeals*) and even to the *Supremo Tribunal Federal—STF* (*Supreme Court*). Some lawyers like to refer to STF as the *pret?rio excelso*, a funny expression that often befuddles translators and need not befuddle you should you come across it.

A grievance brought to a JCJ is technically referred to as a *diss?dio*. It may be deemed *individual* or *coletivo* depending on whether it is filed by a single person or a group. A *diss?dio coletivo* often is based on a *reivindica??o por aumento de sal?rio* (*claim for a pay increase*). The claim is heard very much in the manner of any ordinary grievance and usually is brought up to the TRT or TST, where some kind of raise is granted. This, is the *aumento concedido em raz?o do diss?dio coletivo* (*the increase granted as a settlement to the grievance*). However, it is often referred to as *o diss?dio* in which case it may be translated by *the annual pay increase*.

Salário, by the way, is another problem word, because it looks so much like *salary*, but means *wages* more often than not. The *salário mínimo* actually is the *minimum wage*, as most will agree. Earning the minimum wage is considered embarrassing, so, in normal conversation, it is always referred to *o salário*, dropping the *mínimo*, which seems to be the awkward part.

Other words related to labor relations are also felt to be awkward and perhaps not politically correct. For instance:

If you get a *job (emprego)*, you are *employed (empregado)*, right? Well, legally, yes. Your employers will be your *empregador* and the two of you will be bound by a *vínculo empregatício (employment relationship)*. Those are acceptable words. But, somehow, *empregado* does not seem to be acceptable any longer.

So, if you get a job, the union will say you are a *trabalhador (worker)*. You will probably say you *trabalha na... (work at...)*. You will refer to your job as *o serviço* or *a firma*. *Emprego, empregado* will never be used. Not even by *empregadas [domésticas]*, the people we used to call *maids*. The funny side that for a long time, our *empregadas* fought for the right to be considered legal *empregadas (employees)* of whoever hired them and to be treated as such, with *carteira assinada, direitos* and all that. However, as soon as they were finally granted that well-deserved right, all of a sudden *empregada* became politically incorrect. Now they are identified as *auxiliares domésticas, a senhora que trabalha lá em casa*, or even *secretárias do lar*.

Secretária is another tricky word. Do not call anyone a secretary lightly. *Secretariado* is a *profissão regulamentada (regulated profession)*, such as accountancy, medicine or engineering. The only people who can rightly call themselves *secretários* or *secretárias* (there are very few male secretaries) are those who have a *curso superior de secretariado (B.A. in what? Secretariats?)* or were already working as *secretárias* when the law was promulgated. The thousands of people who work as secretaries but are not *secretárias* must be registered as *assistentes administrativas*. Many of those *assistentes administrativas* hold a B.A. in translation. By the way, many translators struggle for the *regulamentação* to prevent non-translators, such as secretaries, from doing translator's work. It is a funny world.

But, I must not stray, as I am often wont. Back to work, so to say. A customer will never refer to you as an *empregado da Empresa X*. You will be a *funcionário* of the company. *Funcionário* is someone who has a specific function and that seems to be a lot better than merely holding a job. People who lose their jobs are entitled to *seguro desemprego (unemployment insurance)*, resulting in another euphemism: *está recebendo o seguro (is collecting [unemployment] insurance)*, once more avoiding the dreaded word *desemprego*. By the way, a worker who *está no seguro*, or *ficou no*

seguro is some unfortunate being who suffered a work accident and is receiving *workman's compensation*, not someone who was fired.

After so much work, anyone is entitled to a vacation. In Brazil, you will be entitled to a full month's paid vacation a year. In addition, according to the Constitution, you will be entitled to a vacation bonus equivalent to one third of a month's pay. *Why* this should be in the Constitution, I will not even try to explain. But *because* it is in the constitution, it is referred to as *terço constitucional*. You translate that any old way you like. I will offer no suggestions. I have already explained what it means and you should see that as a challenge.

Terminated employees are entitled to receiving their vacation pay and bonus due to them as part of the *verba rescisória* which is still known by its old name of *indenização* or *os direitos*, and is tantamount to *termination pay*, but we already know that. They are also entitled to *férias proporcionais*, meaning pro-rata payments. Let me explain: a year's work entitles you to one month's vacation, that is *férias vencidas*. If you work a year and a month, you are entitled to a full month and 1/12 month's vacation. That is *férias vencidas e proporcionais*. The period during which you acquire the right to a vacation is the *período aquisitivo*, which I prefer not to translate as *acquisitive period* because that sound too much like a buying binge. You will probably have to do with some sleight of word involving *pro-rata*, *vested vacation rights*, *vesting period* and the like. Good luck.

Férias vencidas e proporcionais, plus *aviso prévio*, *FGTS com multa* and God knows what else, can make up quite a lot of money. In these times of rising unemployment, many people are using their termination pay to open a franchised shop, a move that is making our shopping centers a nest of amateur merchants. Those would do well by reading something on bankruptcy I wrote for a previous issue of the Translation Journal. May come in handy. One never knows.

Once more, I must add a disclaimer to my article, lest someone claim that I am dispensing advice on matters outside my field of professional competence. I am neither a lawyer nor an accountant and, the sole purpose of my article is to provide my colleagues with information I believe they will consider helpful. Much of the information is accurate, but of a very general type and should never be used as the basis for a business deal. If you intend to business in Brazil, by all means talk to a lawyer or to an accountant. Translators should stick to their translations.

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