Contracampo
BRAZILIAN JOURNAL OF COMMUNICATION | PPGCOM-UFF

The grey zone of work and employment, workers on digital platforms and on-demand dock workers: labour rights beyond the employment relationship

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Volume 39
issue 2 / 2020

Contracampo e-ISSN 2238-2577
Niterói (RJ), 39 (2)
ago/2020-nov/2020

Contracampo – Brazilian Journal of Communication is a quarterly publication of the Graduate Programme in Communication Studies (PPGCOM) at Fluminense Federal University (UFF). It aims to contribute to critical reflection within the field of Media Studies, being a space for dissemination of research and scientific thought.

PPGCOM Programa de Pós Graduação COMUNICAÇÃO MESTRADO E DOUTORADO UFF

TO REFERENCE THIS ARTICLE, PLEASE USE THE FOLLOWING CITATION:

Lacerda, R; Neves, B (2020). The grey zone of work and employment, workers on digital platforms and on-demand dock workers: labour rights beyond the employment relationship. Contracampo – Brazilian Journal of Communication, Niterói, v. 39, n. 2, p. XXX-YYY, aug./nov. 2020.

Submission on: 11/11/2029, Reviewer A: 02/08/2020; Reviewer B: 02/03/2020; Accepted on 04/27/2020

DOI – http://dx.doi.org/10.22409/contracampo.v39i2.38553

Abstract

The article analyzes, based on the notion of the grey zone of work and employment, the nature of the relationship between workers and digital platforms, establishing a parallel between Uber drivers and the on-demand dock workers, to demonstrate the possibility of applying the protection of labour law without the need to discuss the existence of employment relationship between the platforms and the on-demand workers mediated by it, given the similarity of characteristics between the two emerging figures, especially their vulnerabilities and their shared nature of work on demand.

Keywords

Platform workers; On-demand workers; On-demand dock workers; Grey zone of work and employment; Labour law.

Introduction

This article aims to investigate the new forms of organization of work, from the model of work on demand through the platform of the company Uber and the likes, comparing it with the organization of on-demand port work on a separate basis, from the prism of the theory of the grey zone of work and employment, understanding as alive the process of disorganization and reorganization of labour relations. The comparison between the two atypical forms of work may be able to show the possibility of guaranteeing legal protection to workers under the new mode of labour management beyond the debate about the existence or not of the employment relationship with companies intermediating workers through platforms.[1] In order to verify the possibility of guaranteeing legal protection to workers, it is intended, taking as a basis for discussion the notion of the grey zone of work and employment, to address the origins of Labour Law and the process of choosing its main object, subordinated work. The parallel development of another form of work will be presented, that of on-demand dock workers, who for having demonstrated strength from their social movements of claim obtained the same legal protection as those who work under the employment regime, culminating with the constitutional isonomy conquered in Brazil in 1988, demonstrating the expansionist tendency of labour law. For the comparison between on-demand dock workers and workers intermediated by platforms, Uber's drivers will be taken as the paradigm, since it is the most well known company that moves the largest number of workers in relation to other digital platforms.[2]

Thus, it is intended to investigate the existence of similarities between the two forms of work organization cited and verify whether there is the possibility of labour protection without entering into the debate on the existence of the employment relationship between workers and companies that provide services with the use of technological tools such as smartphone applications.

The grey area of work and employment

The process of constant change in the forms in which work presents itself can be learned from the notion of the "grey zone of work and employment" (Azaïs, 2017; Kesselman & Azaïs, 2011). This process is characterized by the vitality, ambiguity and attrition of institutional actors and frameworks, as well as traditional public policies that guaranteed equal redistribution (Kesselman & Azaïs, 2011). In this movement there is the emergence of new professions or the displacement of existing professions to statutes with fewer rights, coinciding with the emergence of increasingly fluid boundaries between forms of employment and work, which ends up undermining the binary ratio between legal and illegal, formal and informal, autonomous and subordinate (Azaïs, 2017).

The term grey zone has two meanings: an area of interactions wholly or partially located under the control or power of regulation of non-institutional actors or the margins of maneuver existing within the legal regulation itself (Bureau & Dieuaide, 2018, p. 268).

The so-called decoherence of binary employment patterns typical of the Fordist norm (employee/autonomous, formal/informal, insiders/outsiders etc.) results from the proliferation of areas of lawlessness and confusion of laws - the State as an actor creating the grey zone (Silva, 2017) –, as well as strategies to circumvent and escape existing laws (Bureau & Dieuaide, 2018; Azaïs, 2019).

The notion of grey area is an important tool not only to observe analytically the current labour

1 In fact, the debate about the existence or not of the employment relationship between workers and companies that use a platform to carry out a certain economic activity is heated. In this work, however, the analysis is not legal, but basically interdisciplinary, not dealing with the legal qualification of these workers based on current law.

2 According to the company's website, of the more than three million workers it has recruited in the world, more than 600,000 work in Brazil. Cf. Uber, 2020. Retrieved April 17, 2020 from: https://www.uber.com/pt-BR/newsroom/fatos-e-dados-sobre-uber/.

relations, but also to show the need to go beyond the constructions, interpretations and nomenclatures based on the Fordist norm, which already shows signs of not being aware of the current world of work, providing the analytical framework of the process of institutional change (Bureau & Dieuaide, 2018; Azaïs, 2017). The grey zone approach allows not only to retain the notion of employment relationship, but also to adopt plural employment "relationships" to account for the variety of situations, dynamics and socio-professional contexts and, at the same time, to create a space to replace a normative and explicit system of wage employment codified at national level by a wide spectrum of complex regulations and statutes, both formal and informal, which are reasonably different in each place (Bureau & Dieuaide, 2018, p. 267). The notion of the grey zone observes the universe of work in movement, still centered on the planet subordinated work, but that in its orbit workers are launched in emerging figures, who sometimes return to the planet and sometimes become its satellites. It is more the observation of a film than that of a photograph.

From the perspective of the grey zone notion, we will analyze the figures of the individual port worker and the Uber driver. However, before the analysis of the emerging figures of platform and on-demand dock work, let us check the formation of labour law around the binary construction employment/independent work.

The formation of labour law around binary construction employment/independent work

The understanding that the accumulation of wealth would depend on the exploitation of other people's work is nothing new in humanity. The way of appropriating the work of others manifests itself in a specific way in each epoch. Thus, what changes in each epoch is only the way labour is organized by the seizer of its fruits, with curtailment of freedom (e.g., servants and slaves) or freedom controlled by the contract (e.g., economically dependent workers and employees).

However, in creating this contractual and commodified figure of the labour relationship (Supiot, 2002), there was a need to control the exploitation, either because it had overwhelming results on the beings who worked, or because of the demand of the exploited, the threat of the system being overthrown or the search for legitimation of the mode of production (Collin et al., 1980; Ramos Filho, 2012; Carelli, 2013). It was felt necessary to regulate competition in order to guarantee minimum standards for the survival and reproduction of those who lived off the work of others.

In this way, maintaining the model of labour as a commodity to be negotiated in the market, the creation – also legal - of subordinated labour was added to the technique of so-called free labour, through which there was recognition of the subjection of the worker to productive activity and, consequently, the need to regulate the restriction of freedom of exploitation and the sale of fictitious goods, drawing limits to the power of the labour donor (Carelli, 2013). Thus, the system recognizes the limitation of the freedom of the worker who sells his labour force, which only exists fictitiously (Polanyi, 2000). In return, the worker will have the guarantee that the exploitation of his work will observe certain limits recognized to competing workers, as well as will be guaranteed minimum standards of remuneration, the employer taking the risks of the economic activity, both in relation to the burdens and in the case of bonuses. Therefore, Labour Law may be seen as an instrument to restrict or soften subjection by limiting the power and regulating competition between companies and between workers. On the other hand, it can also be understood as an instrument to allow the regulated and limited reification of the human being who works.

The main object of Labour Law, as it was constituted, is the work exploited by another man or by a legal fiction that replaces him (legal entity) in a subordinated regime (Supiot, 2002).

Subordination corresponds to the technical need to organize production, as a requirement of the capitalist organization's own form of production at the end of the 19th and 20th centuries, based on

the technologies existing at the time. The figure of subordinated labour, thus, was created to organize production, but in a way to mitigate the fact that, although labour is economically treated as a commodity, legally this could not happen, since this commodity is, after all, a human being. Thus, arises the ambiguous figure of the subordinate free man: a man subject to rigid rules and standards of conduct, with punishments and restricted freedom, but whose submission is legally controlled and limited (Supiot, 2002).

The counterpoint of subordinate work is self-employment or independent work, in which the organization of the work activity - and its fruits - are freely available to the worker. And an area of non-employment law is created. The binary system of employment then emerges.

Thus, what we call a Fordist framework of work - the portrait of an era - was built.

The binary system employee/independent worker

Labour law was then born with subordinate work as its target, opposing employees to independent or self-employed workers in a binary system of all or nothing: once work was framed as subordinate, protective legislation would be applied; if the characteristics of dependent work were not checked, labour law would not be applied. Thus, the coexistence of subordinated work with other forms of work relations, such as autonomous, eventual or voluntary work, is insistent in this idea, while the definition of employee carries enormous importance and normative burden (Davidov et al., 2015).

Some countries use the concept of subordination, others the definition of control and others integration as criteria defining the employment relationship framework (Davidov et al., 2015, p. 120).

While it is true that the basic structure of the framework in the category of employee is similar in several legal systems, it is also possible to state, in the context of the grey area of work and employment, that in all countries there are and always have been attempts by companies to avoid such a framework in order to move away from the application of labour legislation and cheapen the cost of labour, because work without rights is consequently less expensive than work with rights. If the framework as an employee is a requirement for labour protection, it is very likely that an attempt will be made to escape by hiring through other types of labour relations.

Some countries have tried to address the challenge of framing the movement represented by the grey zone of work and employment on the basis of laws that provided for categories of intermediate workers between employees and self-employed, called dependent contractors (Sweden and Canada), as quasi employees (Germany) and parasubordinates (Italy) who, although not framed as employees, deserved, in those legal systems, the guarantee of some rights intended for these workers. Spain and England can also be cited as examples of guarantees of labour rights and protection of non-subordinated workers (Davidov et al., 2015, p. 118-122).

The risk in relation to the aforementioned legislative strategy is that it may be appropriate to remove a good part of the rights of workers who could be classified as employees, legitimizing the escape from the characterization of the employment relationship.

It is not today that companies try to avoid the costs derived from the rights associated with the application of labour legislation by using the strategy of trying to frame the worker as an independent contractor, this being a global problem. The extent of the problem will depend, as a rule, on the reaction of the social actors involved in the grey zone.

Veena Dubal (2017), on the other hand, demonstrates how binary classification has taken on greater importance in the neoliberal political and cultural movement, due to the increased use of apparently independent contractual forms, with the objective of exclusion from labour protection, and that the legislative reaction was the expansion of the employee category, as we recently witnessed in the case of the Californian law AB5 (Dubal, 2020).

This is the proposal of Guy Davidov (2017): the need to extend the approach of the recipient of

labour rights beyond the existing concepts, in view of the purposes of legal protection. Thus, the most important question to be asked, within the current legal framework, is whether certain workers should receive legal protection, instead of wondering whether they would be framed in the strict terms of the existing tests for employee qualification, based on an organizational structure of the last century. This approach, which takes into account the protection objectives of labour law, is expressly recommended by the International Labour Organization in Recommendation No. 198 of 2006.

In this regard, the perspective of the grey zone is proposed for the extension of the scope of labour law, to account for movements that place workers outside the rigid Fordist binary classification.

The on-demand dock worker - labour law outside the binary system

On-demand dock work is a phenomenon that, in itself, can prove three statements: 1) the shortcomings of the binary employment/independent worker classification; 2) the independence of labour law from the Fordist employment relationship; 3) the importance, therefore, from the perspective of the grey zone of work and employment.

However, in order to deal with the development of the on-demand dock worker and reflect on the application of labour law to forms that escape the binary Fordist classification, it is necessary to make a brief introduction on the dynamics of work in the port and the way workers are organized.

The port operator is the one who rents the public port or owns a certain space in the private port and, therefore, is responsible for mooring the ships in that space and provides the services of loading and unloading the goods, checking the cargo, carrying out maintenance, repairing the ship, among other services.[3]

Therefore, the demand of a port operator, including labour, is fluctuating, depending on the arrival or departure of ships with goods. Often it can go a few days without receiving a ship and thus without performing any operation. For this reason, the port has organized itself around on-demand labour, not employed directly, but hired on demand. Until 1993, the on-demand workers, who had to be registered or enrolled with the union representing the professional category, were called by the latter for the work demanded by the port operator. From 1993 on, the registered or enrolled workers started to be called by the labour management body (Órgão Gestor de Mão de Obra – OGMO), entity constituted by the port operators to manage the demand for work on demand.

The dock worker in Brazil is, by legal definition[4], anyone who works in private or state-owned organized ports and performs the function of stevedoring, foreman, block, watchman, cargo checker and cargo repair.

By current legislation,[5] the dock worker may be hired, alternatively, with an employment relationship, providing services directly to the port operator or as a freelance worker, when he will be intermediated for punctual services by the labour management body - OGMO.

A dock worker can be defined as one who provides services, without employment ties, to a number of workers, who are the port operators, through a managing body of labour in the port sector.

Only registered or listed on-demand dock workers[6] in the labour management body will be

3 Art. 2, XIII, Law nº 12.815/2013.

4 Art. 40, caput and paragraph 1, Law nº 12.815/2013.

5 Art. 40, Law nº 12.815/2013.

6 Registered dock workers have a preference in port calls over those enrolled. There are two lists (registration and enrollment), the second list accessed in the absence of registered workers who made themselves available for the performance of the tasks demanded.

required to perform tasks.[7] They are, therefore, holders of exclusivity in the provision of on-demand labour in the port and OGMO is responsible for determining the cap number of registered or enrolled workers.

The on-demand dock worker works for several port operators, and therefore the provision of services is sporadic for each of them.

Therefore, dock workers are interested in providing their services that day, they go to the port, assign their presence and wait to know whether or not they will be called in a queue, organized by OGMO, from their registration number, to ensure that they receive the same job opportunities. The consequence of not being present at the port when they are offered a job opportunity is to lose it and return to the end of the queue, remaining even longer without work, and therefore without remuneration. They may refuse, in this way, the job opportunities offered, but, obviously, they may be pressed by the economic need to accept them (Paixão & Fleury, 2018).

The labour management body holds the power to apply some penalties in case of disciplinary transgression, such as: verbal or written reprimand, suspension of registration for a period of 10 to 30 days and cancellation of registration.[8]

The remuneration for each operation is also not defined by the dock worker, but by the port operators, as a rule, based on collective bargaining instruments.[9]

The OGMO is responsible for maintaining and controlling the register of on-demand dock workers, which gives it the power to establish whether or not the income obtained by a worker could be his main source of livelihood. If the OGMO opens a very large amount of registers, the trend is that the income of on-demand workers will decrease as they can climb less often. Thus, work would become just a gig and would lose out on the main income of these workers. This phenomenon can also be interpreted as a manifestation of the vulnerability of dock workers.

Therefore, on-demand dock workers are in a state of dependence on OGMO and port operators, as they have to provide their services in the way determined by the service taker, they have to present themselves to guarantee their remuneration and may suffer penalties if they do not present the frequency desired by the takers.

In this way, the worker in question, despite not performing his work in the classic manner of an employed worker, since he works at the same time for several takers and with a certain freedom to refuse tasks or jobs that he does not want, has similar vulnerabilities, since he depends on work for survival and must follow the guidelines of the port operator.

In addition, the fact that the on-demand dock worker is threatened with losing his registration if he is not a frequent worker, as well as suffering other penalties from OGMO, also denote his vulnerability, which gives him the need to receive from the legal system the same legal protection that the employee receives.

As evidenced, the on-demand dock worker is not classified as an employee. The social struggle of the category was not for their classification as employees. To this day, the legislative changes that sought to increase the number of employees involved in the Brazilian port's operations have received resistance from the on-demand workers.[10]

In any case, the unions of on-demand dock workers, from their social struggles and their vindication movements, have managed to obtain the recognition of isonomy of rights in relation to the employed workers, which occurred since the Constitution of the Republic of 1988.[11]

7 Art. 40, Paragraphs 2º and 3º, Law nº 12.815/2013.

8 Art. 33, I, Law nº 12.815/2013.

9 Art. 43, Law nº 12.815/2013.

10 Retrieved from July 16, 2017 from: http://bcgp.adv.br/Palestra_Encontro_Nacional_Operadores_Portuarios.pdf.

11 Art. 7, XXXIV, Brazilian Federal Constitution.

Thus, it is possible to affirm that the isonomy conferred to the on-demand dock worker was justified by the vulnerability present in the relationship between the worker and the operators, which manifests itself in multiple forms, such as: the aforementioned workers, although they are not continuously subordinated to the various port operators taking on service, nor to OGMO, suffer a double subjection or dependence during the period in which they are providing service; the on-demand worker may suffer various penalties, among others.

The on-demand dock workers are in a situation of relative autonomy in relation to the amount of hours they can employ in the activity, including the power to deny job offers, but this autonomy is limited by the powers that OGMO holds.

Therefore, it is possible to conclude that the isonomy given to the on-demand dock worker was justified by the vulnerability present in the relationship between the worker and the operators, which is manifested in the three statements we made in this item are proven: the binary classification does not give an account of the on-demand work, the labour law is independent of the form "employment" to be applied and the grey zone is a useful instrument to understand the configurations of the work.

The new forms of work organization - the Uber case

The way of organizing work follows the technique of each era, without forgetting that technology is a social construction. Therefore, we can say that the organization of work demands a certain type of technique, ignores others, uses another. Subordination, as we have seen, is born from a certain and specific way of organizing production. From the modification of the way of producing (or rendering services), there is variation in the way subordination manifests itself in each period. Today there are more advanced techniques to achieve the same goals. By the existing technology, the subordination of military style is at certain times and activities dispensable.

Uber has been showing itself as an example of the new forms of organization of work, in which it is able, through technology, to organize large numbers of workers at a distance to carry out their economic activity (Gomes, 2018; Consiglio, 2018). As we have seen, the business strategy of avoiding costs related to the application of labour legislation is part of the grey zone process, based on the attempt to escape the worker's classification as an employee, a phenomenon that has been repeated over time in almost all countries. The novelty of Uber is the use of digital technologies to do this with the pretension of moving away from the traditional form of subordination (Collier et al., 2018).

The status or framing of Uber drivers has been the subject of extensive debate (Stefano and Aloisi, 2018; Kenner, 2019; Scholz, 2017). The way workers are organized in the transportation service offered by the company, which in its speech only claims to connect drivers to their passengers by providing an application, has presented itself as a challenge to legal and labour relations scholars (Prassl, 2018; Todolí, 2017; Trillo Párraga, 2017).

The debate is therefore applicable to all other companies that, like Uber, offer the service of workers to users through the use of online networks or platforms. Several names have already been suggested for this phenomenon, such as collaborative economy, crowdsourcing/crowdworking, gig economy, platform capitalism or work on demand (Prassl, 2018; Bogg, 2019; Woodcock & Graham, 2020).

The response to the phenomenon as to whether or not labour legislation is applied, or the granting of certain guarantees to workers who provide services in the economy on demand, may determine how companies will maintain their organization or structure, or reflect on the need for reformulation. In Brazil, there are hundreds of lawsuits seeking recognition of employment. Most of them, including the one that has already been judged by the Superior Labour Court, have been dismissing the requests, understanding that they are self-employed workers, denying them any rights. If the tendency persists, the country will be in the opposite direction of the movement in the United States, where legislation is beginning to appear

that recognizes the condition of employee of workers (Dubal, 2020), or of European countries like France (Collet, 2019), Switzerland (Leroy, 2019) e Spain (Sevillana, 2019), in which the courts of these nations have found that there is an employment relationship between transport platforms and their workers, or even from Germany (HF, 2018) and Nordic countries, which have always understood to employ the drivers subordinate to the platforms.

The technology allows the employer to maintain an intense control, even if this is not practiced in a direct and presential way. According to elements collected and mentioned in Labour Lawsuit nº 0011359-34.2016.5.03.0112, Uber's driver is obliged to follow strict rules and behavior standards determined by the company, and the passenger's evaluation, at the end of the race, is also an intense form of control, because the driver knows that he will be evaluated. The price of the service is determined by the company. Workers are not guaranteed a salary if they do not accept the calls. There is punishment by Uber, as temporary suspension, in case the workers do not answer the calls in the following manner. Uber may also break the contract unilaterally with the driver without any motivation, which suggests the existence of control or powers similar to those of an employer. The indication of the two vulnerabilities: subordination and dependence may indicate the need to apply labour legislation or to guarantee these workers isonomy of rights.

Digital platforms are proliferating in part thanks to advances in technology, being presented in various formats and with a wide variety of service contract arrangements, and the vulnerability of the worker may be more attenuated or more accentuated, depending on the form of contract established.

Other forms of hiring will come to challenge the current legal system, as part of the process of the gray area of work and employment, by having to provide some protection to those workers who, due to their condition, are unable to protect and guarantee themselves a minimum standard of civilization. These are challenges that are already presenting themselves in the dynamics of our current society and deserve further reflection and debate.

On-demand Dock worker and On-demand Platform Workers - similarities and differences

The on-demand dock worker can constitute an interesting analysis key for the study of phenomena about the new forms of work that are made possible, mainly, by digital technologies, such as applications that allow the hiring of Uber and similar rides, motorcycle taxi drivers, delivery guys, skate shippers, lawyers, doctors, among others.

Clearly, the workers intermediated by platform are part of a process called "grey areas of employment", through which there is a business reorganization, within a public space, with the use of workers outside the Fordist norm and in a more precarious situation.

The legal experts who claim that there is no employment relationship between the driver and the company that performs the economic activity of transportation by application, understand that this application only links customers to service providers, taking for themselves a percentage of the amount that the driver comes to receive with the race. They state that they do not impose minimum working hours on workers, who may remain inactive for long periods. They also argue that the worker can provide their services through other applications, without any penalty.[12] The Fordist paradigm is strongly present in these analyses.

On the other hand, the lawyers who defend the existence of an employment relationship between Uber and the driver maintain that the company is an intermediary of labour, that the worker has subordination, in a widened and teleological characterization, and thus meets all the requirements of the

12 For all, Pellegrini (2018). The author is Uber's legal director in Brazil.

employment relationship.[13]

From the example of the on-demand dock worker, a typical worker on demand, we can verify the similarity of both categories of workers, who move away from the condition of truly independent or self-employed workers.

In the case of on-demand dock workers, the composition of the "teams" (minimum groups of workers necessary to carry out each operation or task), the remuneration of the workers (guaranteed minimum wage), the working day and other working conditions must be the object of collective bargaining between the entity representing the dock workers and that of the port operators.[14]

Thus, unlike typically self-employed workers, there is no individual fixing of the price of their work, but the remuneration policy of dock workers is dealt with in the instruments of collective bargaining, with the worker knowing at the time of the call how much he will be paid for the work in that operation. Thus, the independent worker, although not offering his price, does not submit to random remuneration policies imposed by the intermediator of his work, as is the case with application drivers, who are subject to the unilateral imposition (and modification) of tariffs by Uber and must submit to it, not having instruments of collective negotiation to define their remuneration and other rights.

In respect of dock workers, the training depends exclusively on the Ministry of the Navy and the Labour Management Body.[15] Before Law 8.630/93, the union could also qualify dock workers. Therefore, the workers depend on the body constituted by the port operators in order to qualify and therefore obtain their diplomas and carry out their respective activities.

According to the evidence cited in the Labour Lawsuit No. 0011359-34.2016.5.03.0112, Uber's drivers are also trained by the company, personally or through videos, to provide services, being the platform who authorizes or not their provision of services, establishing a minimum score that the driver needs to obtain from the evaluation of passengers to continue being able to work for Uber.

On-demand dock workers, as said, may be punished by OGMO for lack of attendance, losing their registration and, therefore, the possibility of working. This also occurs in the case of Uber drivers, who may be suspended if they remain inactive for too long in the system or have their contracts terminated if they do not obtain the minimum score stipulated unilaterally by the company.

Uber's main defense argument used to support the non-existence of an employment relationship with the driver is also found in the on-demand dock worker: the non-existence of rigid schedules to perform the work and the theoretical possibility of denying the tasks offered (Hawkins, 2019). At this point the two types of work are very much alike: they are workers on demand.

Uber's strategy, like that of other on-demand employment companies, seems to be to give the worker a certain degree of freedom, which in practice is governed by pricing and low tariffs, which make it necessary to provide large amounts of time to obtain the necessary remuneration (Carelli, 2017).

In addition, it may be thought that the alleged freedom, which both on-demand dock workers and platform workers would have to choose to work whenever they wanted, would be comparable to the freedom that the employee has not to go to work: both will be equally penalized by not receiving the remuneration for the period not worked, as well as they may be excluded for not attending.

Another aspect to be compared between the two working environments is that Uber does not limit the number of workers, or does it according to their interests, while entry into port work depends on obtaining the registration that is provided by OGMO and it controls the number of registered workers.

The registration of an on-demand dock worker presupposes previous professional qualification,

13 For all, Chaves Júnior, Mendes & Oliveira (2017).

14 Art. 32, paragraph and Art. 43, Law nº 12.815/2013.

15 Art. 32, II and Art. 33, II, b and c, Law nº 12.815/2013.

through training carried out in an entity indicated by OGMO.[16] After obtaining the registration and previous selection, the dock worker enters the on-demand list, reaching the preference in the work schedule to work as an on-demand worker. The limitation of the number of workers resulted from a historical process of social struggles by dock workers to ensure decent pay and satisfactory working conditions from a limited competitive framework of workers.

The control, in Uber's case, is done by the scores given by the customers. The recipient of the score is not the customer, but serves only for the company to control, in its interest, the convenience of the driver to continue driving through the platform.

The on-demand dock worker is controlled during the period of service provision by OGMO and by the port operator, being required to strictly follow the operators' rules. In the case of the on-demand dock worker, the control is personal and direct, unlike the case of Uber, where the control takes place in a less face-to-face manner in relation to Uber, occurring through the score from customers, pricing and remote control of rides.

The control, in Uber's case, is done by the scores given by the customers. The recipient of the score is not the customer, but serves only for the company to control, in its interest, the convenience of the driver to continue driving through the platform.

The on-demand dock worker is controlled during the period of work by the OGMO and the port operator, and must strictly follow the operators' rules. In the case of the sporadic worker, the control is personal and direct, unlike the case of Uber, where the control takes place from a less presential form in relation to Uber, occurring through the score from customers, pricing and remote control of rides.

In addition, the on-demand dock workers are called to provide services to several port operators, as can occur in relation to Uber's drivers, who can also meet the demand of other transport companies, and there is no exclusivity in both cases.

Thus, the similarity of situations is verified: both are workers on demand, economically dependent on the supplier of the work, controlled in their work during its execution, submitted to disciplinary power and holders of certain negative power over the work offered. The on-demand dock worker, however, has guarantees against the power exercised by the labour management body and the power of collective bargaining, legally foreseen.

Final considerations

We have seen that in both phenomena (on-demand dock worker and platform work) it is possible to identify the ambiguity of the freedom granted, instilled in the minds of workers the idea of freedom of work, life without an employer, but in reality the freedom is immediately denied by those who command and control job offers.

Both categories have typical employee vulnerabilities, which is demonstrated by the possibility of suffering penalties or dependence on Uber or port operators respectively.

Based on a reading of both phenomena, this study aimed to examine the possibility of providing legal protection to workers on demand whose labour are intermediated by platforms. The intention was to analyze the category of on-demand worker, necessary for the dynamics of the port, as a paradigm to reflect on the possibility of granting legal protection by labour law to categories that may go beyond the framework of the classic employee of the Fordist norm, bringing reflections on the boundaries of labour law.

From the investigation of the emergence of other forms of labour organization, with Uber as a model, and from the comparison with the category of on-demand workers, it is possible to conclude

16 As provided in paragraphs 1 and 2 of Law no. 12,815/2013.

that there are important similarities in the labour process of the two emerging figures, which may lead to similar regulation of work on demand, considering platform workers as on-demand dock workers, recipients, therefore, of labour protection.

The freedom proclaimed by Uber and other intermediaries of work by platform could only be possible with the guarantee of rights that would limit their power. The very existence of an employment relationship or not is perhaps less relevant than the consideration of the need to guarantee rights by expanding the boundaries of labour law, by the perception of the notion of the grey zone at a time when the world is going through a process of reformulating the organization of forms of work that challenge the classical employment framework of the Fordist norm. If labour law can provide a route for the inclusion of these workers in citizenship, as has happened with the dock workers, it is, on the other hand, the greatest threat from the expansion of the grey zone perpetrated by the entry of work platforms. Decisions in this field are always political and therefore never neutral. In other words, they do not escape being tested on their legitimacy by social actors. The dispute between workers and companies and their correlation of forces among themselves and with the other stakeholders in the public space of the grey zone will be essential in the institutional configuration of work on platforms.

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