

Judicial reinterpretation of grounds for dismissal with cause: grave misconduct and proportionality in Colombian Labor Law

Reinterpretación judicial de los motivos de despido justificado: falta grave y proporcionalidad en el Derecho laboral colombiano

Reinterpretação judicial dos motivos de despedimento justificado: falta grave e proporcionalidade no Direito do Trabalho colombiano

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Abstract

Introduction: In recent decades, universities have faced increasing challenges regarding academic performance, student retention, and the need to foster skills that facilitate more self-directed and self-regulated learning. Educational research has increasingly focused on how to cultivate cognitive, metacognitive, self-regulatory, socio-emotional, and digital skills in college students (Hattie, 2009; Panadero, 2017; Zimmerman & Schunk, 2011). **Objective:** This article explores the empirical evidence related to interventions designed to enhance learning skills in higher education. **Methodology:** Through a review of research published between 2016 and 2025, theoretical and methodological patterns are identified, the main lines of intervention are highlighted, and the observed effects are analyzed, in addition to pointing out some gaps that still exist in the literature. **Conclusions:** The text considers how this may influence the design of evidence-based programs and suggests several guidelines for future research aimed at making these interventions more effective, relevant, and sustainable in the academic setting.

Keywords: Learning; Self-regulated; Higher education; Learning skills; Educational interventions.

Resumen

Introducción: En las últimas décadas, las instituciones universitarias han encontrado crecientemente obstáculos respecto al desempeño académico, la permanencia de alumnos y la necesidad de promover competencias que faciliten un aprendizaje más autodirigido y autorregulado. La investigación en educación ha aumentado su enfoque en cómo cultivar habilidades cognitivas, metacognitivas, autorregulatorias, socioemocionales y digitales en los estudiantes universitarios (Hattie, 2009; Panadero, 2017; Zimmerman & Schunk, 2011). **Objetivo:** Este artículo explora la evidencia empírica relacionada con intervenciones creadas para potenciar las habilidades de aprendizaje en la educación superior. **Metodología:** Mediante un examen de investigaciones difundidas entre 2016 y 2025, se reconocen patrones teóricos y metodológicos, se subrayan las principales líneas de intervención y se analizan los efectos observados, además de indicar algunas brechas que siguen existiendo en el estudio. **Conclusiones:** el texto considera cómo esto puede afectar el diseño de programas fundamentados en evidencias y sugiere varias directrices para investigaciones futuras que intenten que estas intervenciones sean más efectivas, pertinentes y sostenibles en el ámbito académico.

Palabras clave: Aprendizaje; Autorregulado; Educación superior; Habilidades de aprendizaje; Intervenciones educativas.

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Resumo

Introdução: A interpretação jurisprudencial da falta grave como causa justificada para a rescisão unilateral do contrato de trabalho na Colômbia passou por mudanças significativas na jurisprudência da Câmara do Trabalho da Corte Suprema de Justiça, incorporando novas perspectivas para a análise das decisões disciplinares e para a proteção dos direitos dos trabalhadores. **Objetivo:** Analisar a mudança na interpretação jurisprudencial e jurídica da Câmara do Trabalho da Corte Suprema de Justiça da Colômbia em relação ao conceito de falta grave como causa justificada para a rescisão unilateral do contrato de trabalho. **Metodologia:** A pesquisa foi desenvolvida com abordagem qualitativa, documental e hermenêutica. Foi realizada uma análise de conteúdo de nove decisões judiciais proferidas entre 2020 e 2023, selecionadas com base em sua relevância jurídica e social e em sua relação com a mudança jurisprudencial. A decisão SL2857-2023 foi escolhida como principal caso de estudo. **Resultados:** Os achados evidenciam uma transição de uma abordagem centrada exclusivamente na verificação da existência da falta para uma interpretação que incorpora o contexto, a proporcionalidade e o impacto da conduta. Além disso, identificou-se um fortalecimento da supervisão judicial sobre as decisões disciplinares. **Conclusões:** A evolução jurisprudencial fortalece a proteção dos direitos fundamentais dos trabalhadores e promove critérios mais abrangentes e equilibrados no Direito do Trabalho colombiano.

Palavras-chave: Interpretação judicial; Demissão por justa causa; Direito do Trabalho; Princípio da proporcionalidade; Jurisprudência da Suprema Corte.



1. INTRODUCTION

Research shows that labor courts in Latin America have been playing a key role in assuring access to justice in dismissal cases and that both procedural and substantive inequalities may interfere with the effective judicial protection of the worker (Bensusán, 2022; Bogg, 2022; Bronstein, 2010; Collins, 2018; Poblete, 2018). Regional reports suggest that the post-pandemic labour market increased surveillance of dismissal and underlined the need to preserve proportionality and due process in termination cases (Adams & Deakin, 2014; Cherry & Aloisi, 2017), as empirical studies show how employer's unilateral regulation often represents asymmetric disciplinary power and increases the risk of unfair or arbitrary dismissals (Aloisi, 2016; Collins, 2022; De Stefano et al., 2024; Tejada Correa, 2016) that in the long term require the corrective action of labor judges. Thus, comparative studies point out that the principle of proportionality is being increasingly used by courts across Latin America in order to temper disciplinary powers and responsibilities for employers and workers (Alon-Shenker & Davidov, 2013; Alexy, 2014; Bendor & Sela, 2015; Davidov & Eshet, 2015; Stone & Mathews, 2008; Vergara Mesa, 2015).

Country-level case studies from the region demonstrate how judicial analysis and review has been necessary to correct disproportionate disciplinary sanctions when internal regulations were vague, prior warnings were absent or when evidence of real harm was not clear (Angulo, 2023; Ariza & Montes-Rojas, 2017; Mantouvalou, 2008; Merhof, 2015; Restrepo & Botero, 2018). At the local level, the Colombian Substantive Labor Code, hereinafter referred to as SLC, considers that the occurrence of any offense classified as serious in any legal source of labor law such as the Internal Work Regulations, hereinafter referred to as IWR, constitutes just cause for unilateral termination of the employment contract by the employer (Decreto 3743, 1951).

That legal provision has led local case law to determine that when the employment contract is terminated in this manner the labor judge must only verify that the conduct in question is classified as serious in the IWR and that such conduct has actually occurred (Bronstein, 2010; Contesse, 2017).

This interpretation was applied in Colombia until 2023 when the Labor Cassation Chamber of the Supreme Court of Justice (hereinafter CSJ-SCL) made an important jurisprudential shift indicating that the labor judge must not only verify the above-mentioned criterion, but also determine whether the disciplinary offense can really be considered as serious (Alexy, 2014; Chang & Dai, 2021). This jurisprudential change strengthens the principle of proportionality and the right of defense as core guarantees in Colombian employment law framework (Atkinson, 2019; Collins & Golding, 2024; Couso, 2010).

Therefore, clarifying the scope of the jurisprudential shift given by Sentencia SL2857-2023 issued by the Court will provide the labor and business community with tools to identify whether the unilateral termination of the employment relationship by the employer is in line with the current interpretation criteria in order to guarantee the rights of the workers (Adams & Deakin, 2014; Merhof, 2015).

In addition, employers will have the tools to adjust their work rules and regulations, not only with the intention of shielding themselves from legal risks of a labor nature (Davidov, 2012; Mundlak, 2007; Tejada Correa, 2016) but also as a two-way mechanism to safeguard workers' labor rights (Alston, 2005; Dukes, 2019).

For the academic community, this research will provide a thorough analysis of this jurisprudential



shift contributing to the debate that has arisen around it in the labor law community (Arthurs, 2012; Tejada Correa, 2021).

Therefore, the interpretative reasons provided by the Court for establishing that the seriousness of the disciplinary offenses unilaterally classified as such by the employer must be verified by the labor judge are discussed in this study under the general objective of elucidating the hermeneutic reasons (Alexy, 2014; Chang & Dai, 2021) set forth by the Cassation Chamber in Sentencia SL2857-2023.

2. METHODS

The methodological design of the research was qualitative, comparative and documentary in nature (Dukes, 2019) and consistent with the stated objective of providing a detailed understanding of the legal basis of the judicial decisions here studied as well as their jurisprudential evolution, considering the legal consequences of the decisions (Adams & Deakin, 2014; Tejada Correa, 2021).

Thus, documentary analysis focusing specifically on the legal content of the selected judgments was the main technique to gather information (Cabrelli, 2011; Collins, 2021; Mundlak, 2007). The coding and classification of the data obtained from the judicial decisions was carried out using a systematized matrix that took into account theme categories which considered the factual assumptions of each case, their judicial reasoning and the decision adopted (Arnold et al., 2012; Waldron, 2021).

In order to identify discursive patterns, hermeneutic changes, iteration of arguments and doctrinal evolution data was interpreted using the open code technique (Davies, 2009). Finally, a systematic comparison of the different decisions adopted in relation to the interpretative shift under study was assessed (Alexy, 2014; Waldron, 2021).

The sample was carefully selected and consisted of nine judgments issued by the CSJ-SCL of Colombia between 2020 and 2023 in which the central legal issue concerned the proper unilateral termination of employment contracts. The decisions were selected according to their legal relevance, argumentative complexity, doctrinal importance, and direct relationship with the jurisprudential evolution regarding dismissal with just cause based on serious misconduct established in labor regulatory instruments.

The analysis included three judgments issued in 2020—Sentencias SL232-2020 (Corte Suprema de Justicia de Colombia [CSJ], Sala de Casación Laboral [SCL], 2020a), SL720-2020 (CSJ-SCL, 2020b), and SL1427-2020 (CSJ-SCL, 2020c); three judgments issued in 2021—Sentencias SL575-2021 (CSJ-SCL, 2021a), SL2178-2021 (CSJ-SCL, 2021b), and SL363-2021 (CSJ-SCL, 2021c); two judgments issued in 2022—Sentencias SL2267-2022 (CSJ-SCL, 2022a) and SL3125-2022 (CSJ-SCL, 2022b); and finally Sentencia SL2857-2023 (CSJ-SCL, 2023), which motivated the present study and constituted the central decision for the jurisprudential analysis.

First, it was necessary to describe the current scope of just causes for unilateral termination of the employment contract by the employer (Decreto 3743, 1951; Merhof, 2015; Tejada Correa, 2016).

It was also necessary to analyze the case law issued by the Chamber between 2020 and 2022 regarding dismissal with just cause based on serious misconduct established in the Internal Work Regulations



(IWR), particularly SL232-2020 (CSJ-SCL, 2020a), SL575-2021 (CSJ-SCL, 2021a), SL2178-2021 (CSJ-SCL, 2021b), SL2267-2022 (CSJ-SCL, 2022a), and SL3125-2022 (CSJ-SCL, 2022b).

On the other hand, the hermeneutic approach adopted by the Supreme Court in relation to serious offenses established in the IWR before and after SL2857-2023 was compared (Alexy, 2014; Chang & Dai, 2021).

3. RESULTS

Just causes for unilateral termination of the employment contract by the employer

Unilateral termination of the employment contract with just cause by the employer is covered in Article 62 of the SLC (Decreto 3743, 1951), which establishes 14 grounds for the employer to terminate a contractual relationship. These grounds include deception, violence, damage to the employer's property, unethical or immoral acts, criminal acts, poor performance, damages and pension-related grounds.

In this regard, the CSJ-SCL has indicated that the unilateral termination of the employment contract with just cause by the employer is a power granted by the legislator, which does not require any special formality beyond written notification indicating the grounds for the decision (Davidov & Eshet, 2015; Mundlak, 2007).

Likewise, paragraph 6 of Article 62 establishes that just cause constitutes: "Any serious violation of the special obligations or prohibitions related to the worker in accordance with Articles 58 and 60 of the SLC, or any serious misconduct classified as such in collective agreements or conventions, arbitration awards, individual contracts, or regulations" (Paz-Fuchs, 2020).

On the other hand, Article 58 sets out the obligations of the worker (personal performance of work, diligence, preservation of property, avoidance of damage), while Article 60 includes prohibitions such as showing up drunk, carrying weapons, stealing from the employer, and missing work, among others (Davidov, 2025; Merhof, 2015; Mundlak, 2007).

Case law issued by the CSJ-SCL between 2020 and 2022 regarding just cause for termination due to serious misconduct

In SL232-2020, the Court upheld the dismissal of a bank employee for mistakenly handing over a checkbook, considering that the Internal Work Regulations (IWR) expressly classified such conduct as serious misconduct. Subsequently, in SL720-2020, the Court reaffirmed that labor judges should not reassess the seriousness of conduct previously classified as serious by labor law instruments, except in cases involving the obligations and prohibitions established under Articles 58 and 60 of the Colombian Substantive Labor Code.

Similarly, in SL575-2021, the Court upheld the dismissal of a worker who attended work under the influence of alcohol because the conduct had been previously classified as serious misconduct in the IWR.

In SL2178-2021, the Court addressed a conflict-of-interest situation and held that when the regulatory provision is unclear, the labor judge must assess the seriousness of the conduct.



However, in SL363-2021, the Court reaffirmed that the employer must prove that the worker was aware of the misconduct and that the labor judge's role was limited to verifying the occurrence of the conduct rather than reassessing its seriousness.

In SL2267-2022, the Court upheld the dismissal of a worker for sharing her access credentials, conduct previously classified as serious misconduct in the IWR.

Finally, in SL3125-2022, the Court reaffirmed that labor judges should not reassess the seriousness of conduct previously classified as serious by the employer through labor regulatory instruments.

Hermeneutic shift in Supreme Court Sentencia SL2857-2023

In Sentencia SL2857-2023, the Supreme Court of Justice modified its jurisprudential line and held that labor judges must evaluate the material seriousness of the conduct attributed to the worker.

In that sentencia, the Court analyzed a case in which a worker committed administrative errors classified as serious in the IWR that were eventually corrected. It was established that there was no clear procedure or training on the functions and that the errors did not cause any harm.

Therefore, the Court concluded that the conduct was not serious (Alexy, 2014; Arnold et al., 2012; Stone & Mathews, 2008).

4. DISCUSSION

The analysis performed here uncovers a significant doctrinal development concerning the authority of labor judges to evaluate serious offenses defined in labor regulations (Alexy, 2014; Davies, 2009; Waldron, 2021).

Traditionally, the Court held that when conduct was classified as serious within internal regulations, contracts, or collective agreements, labor judges could not reassess its seriousness. This stance stemmed from the employer's regulatory power based on subordination and the ability to organize internal company discipline (Davidov, 2025; De Stefano, 2020; Paz-Fuchs, 2020; De Stefano, 2020). Such an approach led to a form of "legal automatism" where merely proving the conduct occurred was enough to justify dismissal (Arthurs, 2012; Davidov & Eshet, 2022; Kyritsis, 2014; Langille, 2011; Restrepo & Botero, 2018).

However, this interpretation raised critical concerns, as it restricted the principles of proportionality and the worker's right to defense (Alexy, 2014; Bendor & Sela, 2015). Up until 2022, this view limited the labor judge's role to verifying facts without considering the contextual circumstances of the conduct (Arnold et al., 2012; Stone & Mathews, 2008).

The interpretative shift established by Sentencia SL2857-2023 marks a paradigm change by affirming that classifying conduct as "serious" does not eliminate the labor judge's role as protector of workers' rights (Corte Suprema de Justicia de Colombia [CSJ], Sala de Casación Laboral [SCL], Sentencia SL2857-2023, 2023; Davies, 2009; Waldron, 2021). This new jurisprudence requires that the seriousness of the offense be evaluated in light of contextual factors such as the time, manner, and place of the con-



duct, the existence of clear protocols, frequency of the behavior, worker training, the actual impact of the actions, and the principle of proportionality (Alon-Shenker & Davidov, 2013; Chang & Dai, 2021; Stone & Mathews, 2008).

This development addresses the need to balance the employer's subordinate authority with essential worker protections, particularly when serious offenses arise from internal regulations created unilaterally by the employer (Cabrelli, 2011; Davidov, 2012; 2025; Dukes, 2019). Therefore, it is crucial for the labor judge to maintain competence in assessing whether the conduct truly justifies employment termination (Langille, 2011; Mundlak, 2007).

The Court cautions that accepting the employer's sole determination as just cause would impose strict liability, incompatible with the subjective and contextual nature required in evaluating contract breaches under labor law (Arnold et al., 2012).

Ultimately, this doctrinal shift carries not only technical but also ethical and social implications, as terminating an employment contract results in income loss for the worker and their family. Accordingly, any such decision must follow a rigorous, proportionate, and protective analysis consistent with the foundational principles of labor law (Alston, 2005; Arthurs, 2012).

5. CONCLUSIONS

The unilateral termination of the employment contract with just cause attributable to the worker for serious offense or breaches of the prohibitions or special obligations contained in Articles 58 and 60 of the SLC must be carried out with the firm conviction of the seriousness of the conduct, given that the assessment of such connotation corresponds to the labor judge. The seriousness of the employee's conduct does not depend on the generation of damages or losses to the employer, since conduct can be serious without having such consequences, and in any case, the rule does not contemplate that condition.

There is a well-established line of case law that summarizes the limitations on the jurisdiction of labor judges in verifying allegedly serious conduct that led to the justified dismissal of an employee, a limitation that was also generally imposed by the employer, as it was evident that litigation in these matters revolved around regulatory labor clauses.

In addition to the above, the Court's central argument revolved around the duty of protection incumbent upon the labor judge with respect to the minimum and inalienable rights of the worker, given that dismissal is the most serious consequence of all those derived from the unilateral will of the employer, and therefore its verification cannot be ignored by the labor judge.

The Court's new position appears to impose a potentially excessive burden on employers, requiring them to detail individually the behaviors that constitute serious misconduct. This requirement conflicts with the explanation of just legal causes given by the Court itself, indicating that the legislator presented them in an open and general manner, given the impossibility of detailing all the behaviors that could lead to breaches, offenses and the like.

Sentencia SL2857-2023 is a call for employers to review the disciplinary offenses included in their



work regulations, verifying their clarity and proportionality, given that the apparent breadth of possible behaviors that could be considered serious and lead to the termination of the employment contract must, from now on, convince the labor judge of their seriousness. Therefore, future research should evaluate the practical impacts of this shift on labor relations, as well as its applications across different judicial instances.

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