

## Teaching Note

# Kindness or harassment: conflicts of gender and race in work relationships

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### Initial questions for debate

- What is Ricardo's view of Carla, considering his statements and the nickname he gave her? Can Ricardo's jokes be considered humor? How is the nickname export-type mulatta interpreted?
- In addition to rejecting the flirtation, what other actions could Carla have taken? Why do you think she did not complain about Ricardo?
- How do you analyze the reaction of the team?
- Putting yourself in Fernando's shoes, how would you handle the events that occurred in your absence and their impact, in order to restore harmony to the team?

### Topics to be worked on

#### ***a) Prejudice, humor and the nickname "mulata exportação" (export-type mulatta)***

Humor is often used as a license, a kind of "permit" to disseminate prejudice, being reproduced and consolidated in social and professional circles.

Ricardo's playful tone in the jokes he told and nicknames he gave to colleagues and superiors tries to cover up the discrimination and prejudice of race and gender (among other characteristics, such as sexual orientation, disability, social class), gaining support from receptive people who show acceptance in the form of laughter, while those who criticize these "jokes" are sometimes condemned as not having a sense of humor.

Hidden under the cloak of a compliment, the nickname export-type mulatta is a reference to an idealized model of a “typical” Brazilian woman, with the representation of the black and sexualized woman that insists on living in the social imaginary, feeding male fantasies. Export is a process of providing a national product to foreign markets. The use of the term export-type mulatta involves the “commodification” of the Brazilian woman, especially her “typical” biotype, the mulatta - described as a national “product” that represents Brazil abroad. The term depreciates black women.

Questions to direct and trigger the debate:

- Is the nickname export-type mulatta a compliment? Where is the line between compliment and disrespect?
- Does the nickname “mulata exportação” adversely affect all women, regardless of race / color?

### ***b) Female autonomy and self-determination***

Ricardo’s behavior surpasses admiration and flirting, and ignores the will of Carla, denying her sexual self-determination and autonomy, submitting her to a unilateral desire by force. This passage of the case reminds us of the sexist jargon “a woman’s no is a yes”.

Questions to direct and trigger the debate:

- How can the lapse of time that Carla takes to react negatively to Ricardo’s kiss be interpreted? An implied acceptance, a doubt or perplexity?

### ***c) Professional disqualification in a meritocratic society***

When Ricardo suggests the possibility that Carla’s professional development is due to the exploitation of her beauty, he discredits the acting chief, invalidating her abilities and qualifications. In Brazil, women generally have higher academic qualifications than men. However, this does not prevent other forms of discrimination, such as lower wages for the same positions for men. The frequency with which these complaints are heard in workplaces portrays the strength and persistence of prejudice and discrimination based on gender, which reduces women to their aesthetic and binds their professional development to the exploitation of their beauty, making their efforts invisible and discrediting their work.

Questions to direct and trigger the debate:

- Are beauty and competence mutually exclusive qualities?
- Are beauty and competence perceived the same way for women and men, regardless of race / color?
- Is male beauty evoked to the same extent as female beauty to justify career development rather than merit?

“After all, swinging the hips is what that kind of mulatta knows how to do well.” The stereotype of the sexy woman and the rational man is the background of this phrase. Despite Carla’s expertise and skills for the position she holds, Ricardo professionally despises her and transfers her qualifications to the performance of a seductive wiggle, which depicts the image of a sexualized woman, incapable of fulfilling obligations and responsibilities of a professional nature. For Ricardo, Carla does not deserve to be in a workplace. Besides making fun by humming a samba and swinging his hips, Ricardo evokes music and a dance step of African Brazilian origin, reducing black women, represented by Carla, to a stigmatizing fetish.

### **Moral and sexual harassment**

Considered as psychological terrorism, moral harassment is a crime committed in the workplace that compromises the health of employees, work relationships and productivity. Its practice reflects discrimination and often leads to social exclusion, to the extent that many victims resign.

As opposed to what many people think, moral harassment does not only occur in top-to-bottom hierarchical relationships, from chief to subordinate. It can occur horizontally between colleagues of the same rank or even in the ascending mode, from subordinate to chief, as alluded to by the case in question. It can also occur in the plural—that is, multiple bosses harassing the same employee or a boss harassing several workers.

Moral harassment is carried out through humiliation and embarrassment, aggressive verbal attitudes, the non-sharing of information, emotional destabilization of workers, underutilization of his / her qualifications through the assignment of tasks of lesser importance or overloading employees with tasks. Ricardo chose to exercise harassment by spreading gossip, defaming Carla, trying to hurt her image and moral integrity, and also physically assaulting her.

As presented in the case and according to the Ministry of Labor and Employment (BRAZIL, 2009), most of the victims are black women who, after refusing sexual advances, become morally harassed like Carla was.

There is no conceptual provision established for moral harassment in the workplace in the Brazilian legal system. However, the jurisprudence often refers to the concept provided by Marie- France Hirigoyen, according to which:

Any abusive conduct, in particular behavior, words, actions, gestures or writing, that infringes upon the personality, the dignity, or the physical of a person, which endangers the employment of said person or degrades the climate of the workplace. (HIRIGOYEN, 2009).

Moral harassment in its most extreme version can reach verbal, physical or sexual violence; physical violence is usually the last resource evoked by the offender when the harassment is already evident (FERREIRA, 2004).

As observed in this case, Ricardo forced Carla to satisfy his desire when he realized he would not be able to achieve his goal with her .

Moral and sexual harassment are considered forms of discrimination in the workplace, a conduct prohibited by Convention No. 111 of the International Labour Organisation (ILO) concerning Discrimination in Respect to Employment and Occupations, which has been ratified by Brazil. Described “as a form of violence against women” by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1995), sexual harassment involves embarrassing colleagues or subordinates through pick-up lines, advances or insinuations of a sexual nature, whether subtle or explicit.

Unlike moral harassment, the concept of sexual harassment was characterized and is foreseen under article 216-A of the Brazilian Penal Code (CPB), as follows:

**Art. 216-A** - Constraining someone in order to obtain sexual favoring or advantage, in which the agent takes advantage of his/her hierarchically superior position or influence, inherent to the exercise of the job, position or function.

Law No. 10,224/2001, which criminalizes such behavior, establishes the penalty of imprisonment of one to two years. Also, note that Law No. 7,716/1989, which criminalizes discriminatory practices based on race or color of people, also encompasses the professional environment. Thus, the above situation can be legally judged under the new wording provided for by the Statute of Racial Equality (Law No. 12,288/2010), since it affected the performance of functional promotion, even if temporarily.

### **How to deal with sexual and moral harassment in the workplace?**

***a) As the head of the sector, what actions can be taken by Fernando to avoid the practice of sexual and moral harassment within the team he manages?***

As a boss, Fernando is responsible for introducing ethical precepts adopted by the organization into the routine of his team; raising awareness among employees of personal and professional damage caused by the practice of harassment; being alert to identify and discourage such conduct in relationships among the people he coordinates. Fernando must also educate his subordinates on the

institutional and extra-institutional tools available to assist the victim and punish the offender. The ideal is that the fight against harassment be part of the institutional policy. The staff must know the coping strategies adopted by the organization, so that they are aware of their rights, of how the institution perceives harassment and where the victim can be heard, from the complaint to the punishment of the offenders. Knowing how to recognize attitudes that are characterized as harassment in its various forms allows workers to protect themselves from its occurrence and avoid duplicating it.

Institutions are responsible for providing a healthy and decent work environment, since it is of their interest to protect the quality and harmony of the interpersonal relationships of its professionals. It must invest in harassment prevention programs, creating reliable channels for the complaint, with ombudsmen and committees to ensure confidentiality, and endeavoring to analyze, accept (when appropriate) and provide a fair response to this ethical conflict.

***b) How should a victim of harassment, like Carla, proceed?***

The silence of the victim of harassment, whether psychological or sexual, favors the harasser. According to recommendations by the Ministry of Labour and Employment, the person who was sexually harassed should, first and foremost, be explicit in his/her refusal and seek to gather evidence, such as tickets and gifts. The main orientation for victims of moral harassment to be able to circumvent the difficulty of gathering evidence is the preparation of a journal, with pages sequentially numbered to prevent their removal or inclusion. This journal or notebook should record every day experiences as well as the feelings experienced by the employee, his/her response and reaction. In both cases of harassment, it is important to seek support from colleagues who have recognized the situation; to look for the Human Resources department; to report the event to the union (besides offering response and guidance, they also provide psychological support); to file the case with the Regional Office of Labour and Employment and file a police report at the police station (in the case of Carla, the Women's Police Station is recommended).

**Moral harassment in Brazilian law**

***Federal level***

***a) Approved laws***

- Law No. 7,716/1989: defines crimes arising from prejudice of race or color.

**Art. 1** In accordance with this law, the same penalty is applied to the crimes of discrimination or prejudice of race, color, ethnicity, religion or national origin. (Wording given by Law No. 9,459, of 05/15/97)

**Art. 3** To prevent or hinder someone's access, if duly qualified, to any office of the Direct or Indirect Administration, as well as public utilities. Sole Paragraph: The same penalty is applied to someone who hinders functional promotion due to discrimination based on race, color, ethnicity, religion or national origin. (Added by Law No. 12,288, of 2010).

- Law No. 4,326/2004: establishes the National Day of Action Against Moral Harassment (May 02).

- Law No. 11,948, of June 16, 2009: prohibits loans from Brazil's National Bank for Economic and Social Development (BNDES) to companies where the practice of moral and sexual harassment occurs.

**Art. 4** The grant or renewal of any loans or financing through BNDES to private enterprises whose leaders are condemned for moral or sexual harassment, racism, child labor, slave labor or crime against the environment is prohibited.

### State level

#### ***a) States that have laws against moral harassment:***

- Rio de Janeiro:

Law No. 3,921 from August 23, 2002: 1<sup>st</sup> state law approved in Brazil.

- São Paulo:

Law No. 12,250 from February 9, 2006: prohibits moral harassment within the direct and indirect state administration and public foundations.

Law No. 13,036 from May 29, 2008: establishes the State Day of Action Against Moral Harassment in Workplace Relationships (May 2).

#### ***b) States that have complementary legislation on moral harassment:***

- Rio Grande do Sul:

Complementary Law No. 12,561 from July 12, 2006.

- Mato Grosso do Sul:

Provision added to Complementary Law No. 04, from October 15, 1990:

**Art. 1** Item XIX is added to Art. 144 of Complementary Law No. 04, from October 15, 1990, with the following wording: "**XIX - to morally or sexually harass another public servant.**"

- Minas Gerais:

Complementary Law No. 117 from January 11, 2011: provides for the prevention and punishment of moral harassment in the state administration of Minas Gerais.

**c) States that have bills on moral harassment:**

- Bahia
- Ceará
- Espírito Santo
- Pernambuco

**Panorama of the municipalities that have laws against moral harassment**

STATE	MUNICIPALITY	LAW
Bahia	Salvador	nº 6.986/2006
Federal District	Brasília	nº2949/2002
Mato Grosso	Sorriso	nº1210/2004
Mato Grosso do Sul	São Gabriel do Oeste	nº511/2003
	Sidrolândia	nº1078/2001
Minas Gerais	Contagem	nº4201/2008
	Divinópolis	nº 5.534/2002
	Juiz de Fora	nº 10.607/2003
	Sete Lagoas	nº 7.223/2006
Paraná	Campina Grande do Sul	nº 11.409/ 2002
	Cascavel	nº 3.243/2001
	Fazenda do Rio Grande	nº 491/2007
	Foz do Iguaçu	nº 3.152/2005
	Londrina	nº 9.897/2005
	Maringá	nº 435/2002
	Pinhais	nº 573/2003
Rio de Janeiro	Resende	nº 2.382/2003
Rio Grande do Norte	Natal	nº 189/2002
Rio Grande do Sul	Bagé	nº 4.027/2003
	Capão da Canoa	nº 2.359/2007
	Gravataí	nº 1.977/2003
	Osório	nº 3.338/2001
	Santa Maria	nº 4552/2002
	Viamão	nº 3.308/2005
Roraima	Rolim de Moura	nº 1.510/2007
Santa Catarina	Balneário Camboriú	nº 2.665/2006
	Bombinhas	nº 864/2005
	Gaspar	nº 2.415/2003
São Paulo	Araraquara	nº 6555/2007
	Americana	nº 3.671/2002
	Amparo	nº 3.234/2006
	Botucatu	nº 4307/2002
	Campinas	nº 11,409/2002
	Conchas	nº 504/2001
	Guarulhos	nº 358/2002
	Ilha Bela	nº 138/2002
	Iracemápolis	nº 1.163/2000
	Martinópolis	nº 2.392/2004
	Monte Aprazível	nº 2.735/2006
	Osasco	nº 3.959/2005
	Poá	nº 3.010/2004
	Praia Grande	nº 430/2005
	Presidente Prudente	nº 6.123/2003
	Ribeirão Preto	nº9.736/2003
	Santana de Parnaíba	nº 2.658/2005
	São Caetano do Sul	nº4.252/2004
	São Paulo	nº 13.288/2002
	Suzano	nº 4.103/2007
	Ubatuba	nº 2.120/2000

### **Bibliographic References**

ALKIMIN, Maria Aparecida. **Assédio moral na relação de emprego**. Curitiba: Juruá, 2006.

ASSÉDIO MORAL NO TRABALHO. Available at: <<http://www.assedio.moral.org>>. Accessed in: 29<sup>th</sup> November 2011.

BRASIL. Ministério do Trabalho e Emprego. **Assédio moral e sexual no trabalho**. Brasília: MTE/ASCOM, 2009. Available at: <<http://portal.mte.gov.br/data/files/8A7C812D32B088C70132D9AAB506149C/AssedioMoralnoTrabalho.pdf>>. Accessed in: 3th January 2012.

HIRIGOYEN, Marie-France. **Assédio moral: a violência perverso no cotidiano**. Translated by Rejane Janowitz. Rio de Janeiro: Bertrand Brasil, 2000. p. 17.

FERREIRA, Hádassa Dolores Bonilha. **Assédio moral nas relações de trabalho**. Campinas: Russell Editores, 2004.