

## Strike modalities: abusive and illegal

Depending on its objectives, the strike can be: Revolutionary: One that responds to purposes of political subversion, rather than to demands of an economic or social nature. Political: That which is carried out for political reasons or for any other purpose unrelated to the professional interest of the affected workers. General: That which simultaneously affects all the work activities of a place. Solidarity or support: The purpose of which is to show solidarity with other workers on strike, provided that the workers who support the strike have a direct or indirect interest in the conflict. Novatoria: That which aims to alter what is agreed in a current collective agreement. Depending on the way of exercising the right to strike, we can mention: With occupation of the workplace: Which is held without leaving the workplace. With arms down or crossed: The demand or protest that is practiced in the usual workplace while remaining inactive. Wild: That which occurs suddenly or by surprise without complying with the legal requirements, especially the notice period. Indefinite: That which is called without an end date. There are some atypical modalities that do not involve the interruption of activity, but rather that work continues:

Japanese style: What workers do by increasing the performance of their work to create a surplus of production for the company. Of zeal or regulation: Consisting of meticulously applying the regulatory provisions and carrying out the work very slowly so that performance decreases and services are delayed. At a slow pace: the activity is not paralyzed, but rather work is done more slowly. Partial strike: these represent only a partial interruption, such as overtime strikes or additional or flexible hours, agreed upon in a collective agreement. Articulated strike: which, as the doctrine points out, has the objective of causing the greatest damage to the employer, with the minimum effort. In turn, within this category, it is worth differentiating between rotating or intermittent strikes. Rotating strike: in which certain groups of workers, by sections or categories, alternate in stopping their activity. Intermittent strike: its execution is divided into several moments, distributed within the day or in longer time cycles and the interruption periods must be set in advance Strategic strike: the call of workers belonging to a neuralgic sector of the production process, who, for their position, can trigger, disproportionately, the paralysis of that process. It is legitimate to prohibit some forms of work stoppage, as long as the essential content of the right to strike is respected.

### Abusive modalities

In this way, Royal Decree Law 17/1977, of March 4, on labor relations, (RDLRT), first of all, considers some of these modalities to be abusive in its art. 7. The exercise of the right to strike must be carried out, precisely, through the cessation of the provision of services by the affected workers and without occupation by them of the workplace or any of its dependencies. However, the peaceful occupation of jobs is allowed, provided that the right to work of workers who do not support the strike is not hindered and, provided that the employer has not issued a legitimate order to leave the workplace<sup>2</sup>. Therefore, a strike with forceful occupation of the workplace is abusive, while a sit-down or crossed strike would be permitted. Its number 2 provides that rotating strikes, those carried out

by workers who provide services in strategic sectors with the purpose of interrupting the production process, strikes of zeal or regulations and, in general, any form of collective alteration in the work regime other than to strike, will be considered illegal or abusive acts. In general, those strikes in public services that disproportionately harm other constitutionally protected goods are also considered abusive, by imposing damages on users that are not considered proportional to justify the purposes sought.

Now, this must be understood as art. 7.2 establishes a “iuris tantum” presumption that the strike is illicit because it is abusive. However, it admits contrary evidence that justifies the proportionality between the means used and the end to be achieved. Intermittent strikes are not expressly mentioned, even though they could be considered included in the generic closing clause of the article, which speaks of any form of collective alteration in the work regime other than a strike. However, both doctrine and jurisprudence consider that, since it is not expressly prohibited, its legality is admitted, consequently reversing the burden of proof and it must be the employer who proves its abusive nature. The so-called strategic strikes are considered abusive when the objective element is demonstrated, that is, the call of workers belonging to a neuralgic sector of the production process and the subjective, artificial reduction of the scope of the conflict by limiting the call only to those who, due to their position, can disproportionately trigger the paralysis of that process.

Illegal modalities on the contrary, art. 11, expressly declares the illegality of other modalities:

a) When it is initiated or sustained for political reasons or for any other purpose unrelated to the professional interest of the affected workers. The strike carried out in response to social or economic policy decisions made by the Government is not considered as such, and the so-called general strikes are legitimized within this category.

b) When it is solidarity or support, unless it directly affects the professional interest of those who promote or support it. The expression "directly" in letter b) of article 11 declared unconstitutional by the TC (Plenary) Sentence of April 8, 1981. In effect, the solidarity strike is one that is inserted into another already undertaken by other workers, then it will always be, by nature, without immediate or direct repercussions for the workers who initiate it out of solidarity. Thus, the requirement contained in the RDLRL that it directly affects professional interest was as much as making said strikes impossible. Hence, the High Court has declared this requirement unconstitutional. Since a general prohibition of this type of strikes is abusive and they are legitimized as long as the initial strike they support is legal and there is another interest on the part of the calling group.

c) When its purpose is to alter, within its period of validity, what was agreed in an agreement or what was established by an award. What has been called a rookie strike. It is legitimate, therefore, to impose legal limits, in this case, a legal duty of peace, through collective bargaining, during the validity of the collective agreement. In such a way that a strike can only be called after the loss of validity of an agreement or in the immediately preceding period, a new agreement is negotiated, provided that an alternative impartial and rapid arbitration procedure is articulated under which individual or collective complaints about the interpretation or application of collective agreements can be

examined, to compensate for this restriction on the fundamental right. The operation of the “rebus sic stantibus” clause is admitted, despite the fact that the strike actually seeks to alter the current collective agreement, when there is a substantial alteration of the circumstances that existed at the time of the negotiation of the collective agreement that is intended to be modified. On the contrary, a strike is allowed and is legal when the purpose of the strike is not strictly to alter the current agreement, its interpretation (strike motivated by legal conflicts) or to demand matters not addressed in collective bargaining, or extend the effects of the agreement to other cases and situations that arise after the Collective Agreement comes into force. Likewise, the Constitutional Court has admitted the recourse to strike due to the employer's failure to comply with the agreement.

d) When it occurs in contravention of the provisions of this Royal Decree-Law, or what is expressly agreed in the collective agreement for the resolution of conflicts. For example, for not respecting the communication or the notice period of the strike, called wildcat strikes, or the constitution of the Strike Committee, for not respecting or carrying out maintenance and security services, illegal occupation of work centres, violent actions by strikers preventing the right to work of non-striking workers, attacks on people or damage to the company's material assets or the mandatory submission to prior mediation, as we have seen. In these cases, in accordance with art. 12 of the RDLRT, the company will be entitled to carry out the closure of the company. There is no room for unilateral declaration of the illegality of the strike by the company or the government authority, if this is the responsibility of the judicial bodies; On the contrary, it would act as a coercive measure on the workers' decision to support the strike.