



PROCESS NO. TST-ED-RR-1000123-89.2017.5.02.0038

A C O R D
(5th Class)
GMBM/CHS/jr

MOTION FOR CLARIFICATION. VICTIMS.

INEXISTENCE. Since the appellate decision challenged does not contain any of the flaws foreseen in arts. 897-A of the CLT and 1.022 of the CPC, the motion for clarification should be rejected. **Rejection of motion for clarification, with application of a fine.**

These are the case of Amendments of Statement in Review Appeal No. **TST-ED-RR-1000123-89.2017.5.02.0038**, in which the following are Appellants: **MARCIO VIEIRA JACOB** and the following are Appellants **UBER DO BRASIL TECNOLOGIA LTDA. AND OTHERS.**

This is a motion for clarification brought against the appellate decision of this Class, in which the party claims to have occurred the defects provided for in arts. 1022 of the CPC and 897-A of the CLT.

This is the report.

V O T O

1 - KNOWLEDGE

The assumptions of admissibility are fulfilled, I am **aware of** the statement of objections.

2 - MERIT

The appellant files a motion for clarification against the judgment rendered by this Panel, claiming omissions in the judgment.

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Judiciary Branch
Labor Justice
Superior Labor Court

He affirms that *"the Plaintiff's statement that 'he could go offline' does not rule out the hypothesis of legal subordination, since the mechanisms of control of working hours undertaken by the Defendant are effectively established.*



Judiciary Branch
Labor Justice
Superior Labor Court



regarding the autonomy to perform his activities were not enough, it is an undisputed fact in the records that the plaintiff adhered to the digital intermediation services provided by the defendant, using an application that offers an interface



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between previously registered drivers and service users. Among the terms and conditions related to these services is the reservation to the driver of the equivalent of 75% to 80% of the amount paid by the user, as stated by the TRT. This percentage is higher than what this Court has been admitting as sufficient to characterize the partnership relationship between those involved, since the apportionment of the value of the service in high percentage to one of the parties shows a remuneration advantage not consistent with the employment relationship. Precedents. Review appeal known and provided.

It is clear, therefore, that there are no flaws to be corrected, and it should be pointed out that the measure presented does not serve to determine whether or not the decision appealed against is correct.

Therefore, I **reject** the motion for clarification and, due to the procrastinating intention, I apply a fine of 1% (one percent) on the amount of the cause (R\$ 66,000.00), in the amount of R\$ 660 (six hundred and sixty reais), in favor of the respondent, pursuant to article 1,026, paragraph 2, of the CPC.

THIS POST

The Justices of the Fifth Panel of the Superior Labor Court unanimously **rejected the motion** for clarification, and imposed a fine of 1% (one percent) on the amount of the cause (R\$66,000.00), in the amount of R\$660 (six hundred and sixty reais), in favor of the respondent, pursuant to article 1026, paragraph 2, of the CPC.

Brasilia, November 25, 2020.

Signed by digital signature (MP 2.200-2/2001)

BRENO MEDEIROS
Reporting Minister

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