

The process of conciliation and labor award in Mexico

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Abstract

In Mexico, the employment relationship is between an employer and a worker, this relationship is complicated when there are problems between both, hence the need to reach an agreement through conciliation, which if it is not resolved, will have to reach a procedure called award that will end the trial. In this regard, the objective of this work is to analyze the conciliation and labor award process in Mexico in its correct application according to Mexican legislation, as well as to know the results of labor appearances. The research method involved a qualitative study by knowing the labor appearances of the Conciliation and Arbitration Board of Mexico City, as well as the opinion of the employees and employers who appear in a labor dispute.

Key Words

Procedure, conciliation, award.

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1. Introduction

This paper has as its basis and substantial element in knowing the legal rights that a person has from the very moment he is hired as a worker, as well as knowing the rights and scope that an employer has, knowing that these two elements provide a guideline for an employment relationship. This relationship has the paid salary and the working time developed as its core. According to the International Labor Organization (ILO), work should be fairly remunerated, with a secure workplace and provide social protection for the worker (Peralta, 2010). When that is fulfilled, there shouldn't be any problem and, therefore, there would be no need for this paper. However, when a problem between an employer and a worker emerges because both consider that it is the other person who is in breach of his obligation, this leads to a labor dispute; considering that we are facing an unequal struggle, since the worker has no other argument than his labor force and this is when they have the need to face a procedure at the labor courts, in a procedure that leads to a conciliation and following all its procedural phases until reaching an award that would be equivalent to a judgment.

In order to issue a judgment, the worker must have a guide, which is the purpose of this paper, so that he knows the procedure, how the conciliation takes place, followed by a trial until reaching an award, all of this starting from a demand, until reaching the end of the trial.

A trial that must be followed by the worker who should know the places where he can get technical advice on his labor rights and also where his procedure can be carried out for free. However, this study gives the worker the opportunity to carry out his own procedure because it is hereby shown that the labor law is written in plain terms and the procedure can be conducted in a straightforward way by following its procedural phases. The demand must be clear in the pleadings, in other words, in the benefits demanded by the worker and the law does not require any technical formality for the worker to be able to file a demand. In addition, it is important to state that in this type of trials the burden of proof is on the employer, which means that the employer has the duty to prove everything in a labor trial, such as how much the worker earned, if he was paid annual bonus and all the legal benefits, so that the labor conciliation and arbitration board can determine the result of the trial.

To achieve this result, the labor law leads the worker as it explains and provides definitions of the fundamental concepts and procedural steps that he must know about.

The employment relationship is a benchmark for the rights and obligations between worker and employer, which is a basis for the worker's action for the claim of his labor benefits (Zavala Gamboa, 2014).

In Mexico the employment relationship is between an employer who requires an employee, who is a worker in need of a salary obtained by working time; all of this becomes complicated when problems exist between them, hence the need to reach an agreement through conciliation, and

if this is not resolved, a procedure will have to be followed in order for a resolution called an award, which will end the trial.

A trial will always resolve a labor dispute. However, the labor dispute, which is a conflict of interest between the worker and the employer, can be solved privately, which means, before starting a trial or approaching an authority. Even so, reaching the authority responsible for solving the conflict, the parties are invited to conciliate in order to reach an agreement, but if that doesn't happen, a procedure that will solve the problem through an award will be carried out.

When an award is issued, it is due to the fact that the worker has already turned to several sources to solve his problem, without success; to prevent the worker from being unfamiliar with legal advice, the objective of this study is to serve as a guide and legal support so that the worker has the foundations and knowledge of the labor law, as well as the instance to which he should turn to for a solution to his labor dispute.

It should be recalled that the aim of this study is to present the labor rights in the procedure from the conciliation where the parties are invited to settle interests until reaching an award, which is the judgment that ends the labor procedure. The objective involves, not only knowing the results of the labor hearings Conciliation and Arbitration Board of Mexico City, but also the employees' and employers' opinions, through a survey, that resulted from their labor procedures in the local conciliation and arbitration boards of Mexico City.

The remainder of this paper is organized as follows. Section 2 discusses labor disputes. Section 3 shows the labor procedure. Section 4 deals with conciliation. The award will be discussed in section 5. Section 6 shows the methodology used. Section 7 describes the results. Section 8, the discussion. And finally, in section 9, conclusions and future research will be given.

2. Labor disputes

Labor disputes and problems arise from the imbalance between the employer, who owns all the productive machinery, and the worker, who has only his labor force. Disputes are precisely that clash or disagreement that occurs at the moment between the employer and the worker. If it is not solved in the act, there will be a labor problem, which are the actions triggered as a consequence of the conflict or dispute (De la Cueva, 2001).

3. Labor procedure

The labor procedure occurs through the labor conciliation and arbitration board, where the employer is sued by its worker, when economic benefits that have not been paid or compensated are claimed. This process starts with the labor demand. According to Ramírez Juárez (2012), the labor procedure is the most commonly used in labor dispute resolution.

3.1. Labor demand

The labor demand is the written document in which the worker, through the facts that constitute it, claims from the employer what is legally owed through benefits to him (De Buen Lozano & Morgado Valenzuela, 1997). Once the demand is admitted, the summons is served.

3.2. Notice to the defendant and defense

Once the demand is admitted by the labor board, the defendant is served with a summons, which means that he is notified that a demand has been filed against him, and is provided copies of the demand, as well as of the agreements issued by the labor authority, so that he is accurately informed and will be able to respond or bring a counterclaim. It should be added that the Federal Labor Law (LFT, 2021) in Art. 743, mentions the rules for the first notification to the employer regarding the demand.

3.3. Audience

The parties will be summoned to an audience where they will be invited to conciliate, which means reaching a favorable agreement for both parties. If so, the facts that are not disputed will be established and fixed by both parties and will become *res judicata*, which means that the judgment has been declared final. If this is not the case and the conciliation has not been successful, the defendant must respond to the demand, asserting his defenses and exceptions (Barajas Montes De Oca, 1990).

3.4. Offer of proof

At this procedural stage, the parties must offer evidence to prove the facts that they stated both in the claim and in the defense. It is well known that whoever proves his facts through evidence will win the trial, therefore the evidence is offered by the parties, admitted by the authority, prepared and presented. In this regard, the Federal Labor Law (LFT, 2021), addresses evidence during a labor trial in Art. 776 to 834. According to Ramírez Juárez (2012), evidence is important to determine who is right in a labor dispute.

3.5. Pleadings

Once the proof stage is completed, a date and time will be set for a hearing for the pleadings to take place; as the name implies, the parties will argue according to their rights and interests. The pleadings are the final stage that closes the trial where the formality of the trial has been fulfilled (Climen Beltrán, 1989).

3.6. Award

Once the pleadings have concluded, the file will be ready for study and resolution as if it were a judgment, but in the study, it is called an award. The award will state whether or not the benefits demanded by the worker are appropriate or not, so that once the employee is notified, they are paid in the terms ordered, without taking away the worker's right to go to a higher instance. Article 837 Section III of the Federal Labor Law (LFT, 2021), mentions that the award is one of the labor resolutions. That is to say, it is the final resolution and brings the labor dispute to an end.

4. Conciliation

Conciliation is the invitation extended by the board for the parties to reach an agreement through a conciliator (Ross Gámez, 1991). However, it is suggested that this legal figure is replaced by

a mediator who, in addition to conciliating the parties' interests, has the power to propose solutions according to the labor problem and based on the law (Cavazos Flores, 2005), such authority being executed through enforcement proceedings.

5. Award

The labor award is the final resolution issued by the labor board (Trueba Urbina, 1980), which acquits or condemns the employer; in case of being condemned, it will indicate precisely the amount, the time and place of the payment. It empowers the winning party to enforce the judgement through the use of public force, if necessary, or through seizure.

6. Applied methodology

The study type is basic research and in terms of approach it is qualitative, since the variables studied were nominal.

The universe of study was the parties involved in the labor conciliation and award and the labor conciliation and award process was the unit of analysis, as well as the evaluation of the results obtained from the labor hearings according to the statistics of the Conciliation and Arbitration Board of Mexico City, and to know the opinion of the employees and employers involved in a labor conflict at the aforementioned dispute resolution body.

The study was divided into two phases: the first was desk work and the second was fieldwork.

1.- Desk work: At this stage, the theoretical element of the research, the doctrinal concepts, the legal concepts, the background of the problem studied and the results expected were elaborated, using the content analysis research technique.

2.- Fieldwork: The survey technique was implemented; surveys were applied to both employers and workers who have followed the process of labor conciliation and arbitration. The interviews with employers and workers were conducted while they were leaving their labor proceedings at the local conciliation and arbitration boards in Mexico City.

A set of 150 interviews were conducted, of which 84 respondents represented the employee side and 66 represented the employer side. From the information gathered, it was found that the respondents, on both sides, were experiencing the different procedural stages such as conciliation, procedure and labor award.

The survey questions were related to the type of contract held, the reasons for the labor demand and the judgments issued.

The sample was conducted and a labor law firm was consulted.

For the purposes of this study, the following variables have been defined:

Conciliation: Result of an agreement which ended the labor procedure.

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Procedure: Labor trials that did not result in an agreement, but have not yet reached the award stage.

Award: Final resolution of the board regarding the benefits of the demand, in favor or against the parties.

It is important to emphasize that, in this second stage, an analysis of the data issued by the Local Conciliation and Arbitration Boards of Mexico City was performed.

7. Results

From the analysis covered by the study regarding labor trials in terms of conciliation and awards issued, the proceedings that occurred in the Local Conciliation and Arbitration Board of Mexico City from January to September 2019 and from interviews conducted with employers and workers leaving their labor procedures at the local conciliation and arbitration boards of Mexico City are attached.

7.1. Local Conciliation and Arbitration Board of Mexico City

The Local Conciliation and Arbitration Boards of Mexico City issue their statistical data through a consolidated list of the files in process, as well as the demands received and the completed trials, up to the accumulated period from January to September 2019:

Table 1. Local Conciliation and Arbitration Boards of Mexico City

MONTH	PREVIOUS MONTH	FILES IN PROCESS	DEMANDS RECEIVED	COMPLETED TRIALS
January	94,430	95,726	2,810	1,514
February	95,726	96,877	2,359	1,749
March	96,877	98,170	3,222	1,977
April	98,170	98,760	2,793	2,203
May	98,760	97,722	2,332	2,830
June	97,722	98,678	2,816	1,860
July	98,678	98,789	1,254	1,143
August	98,789	100,022	3,084	1,851
September	100,022	100,562	2,977	2,437

Source: Compilation based on data from the labor board of Mexico City, 2019.

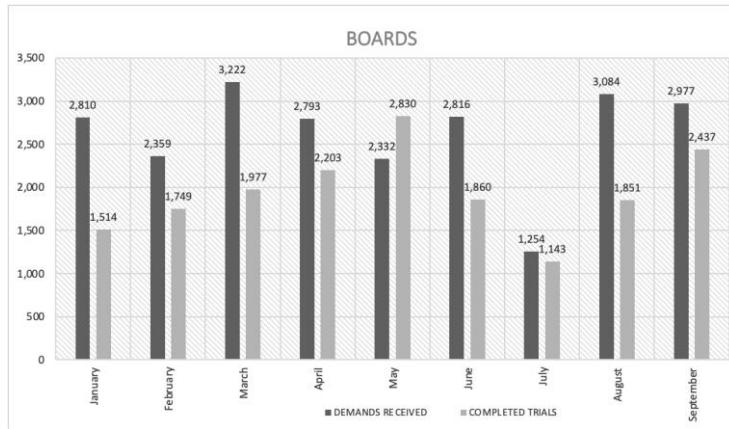


Figure 1. Demands received and closed trials for September 2019.

Source: Compilation based on data from the labor board of Mexico City, 2019.

Figure 1 shows that from January to September 2019, 23,647 demands were received and 17,564 trials were concluded; March was the month with the highest number of labor demands, representing 14 percent of the total number. However, May was the month with the highest number of completed trials with 16 percent of the total number, according to data obtained from the local boards of Mexico City.

Therefore, according to the previously mentioned data in Table 1, along with Figure 1, it can be inferred that in the term from January to September 2019, on average, 2,627 demands were received and 1,952 trials were concluded.

The resolutions issued after the trials' completion are disclosed, as well as the causes that ended the procedure, as follows:

Table 2. Resolutions and closed files

RESOLUTIONS	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER
Issued awards	1,032	1,057	933	991	976	1,121	581	1,085	1,089
convictions	353	248	275	330	310	301	155	320	298
acquittals	255	263	238	185	225	246	144	248	273
mixed	424	546	420	476	441	574	282	517	518
Closed files	1,514	1,749	1,977	2,203	2,830	1,860	1,143	1,851	2,437
By conciliation	931	873	1,088	955	1,053	1,188	758	1,048	1,043
By incompetence	26	55	32	22	34	37	13	37	23
By withdrawal	351	351	423	351	335	415	211	366	373
By accumulation	10	2	3	3	4	3	2	15	1
By expiration/statute of limitations	4	20	15	5	5	5	9	98	77
By completed award	114	102	192	98	82	145	109	118	147
Filed due to inactivity	78	346	224	769	1,317	67	41	169	773

Source: Compilation based on data from the labor board of Mexico City, 2019.

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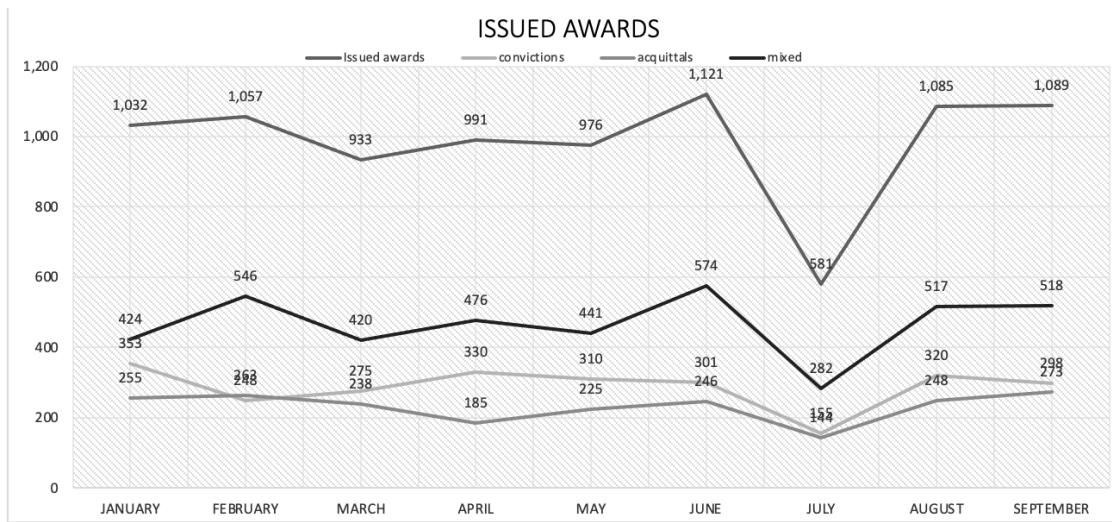


Figure 2. Awards issued in resolutions from January to September 2019.

Source: Compilation based on data from the labor board of Mexico City, 2019.

In the resolutions from January to September 2019, 8,865 labor awards were issued, of which, as shown in Figure 2, 1,121 were issued in June, which is the highest number of awards issued, 3 percent represented by convictions, 3 percent by acquittals and 6 percent by mixed awards.

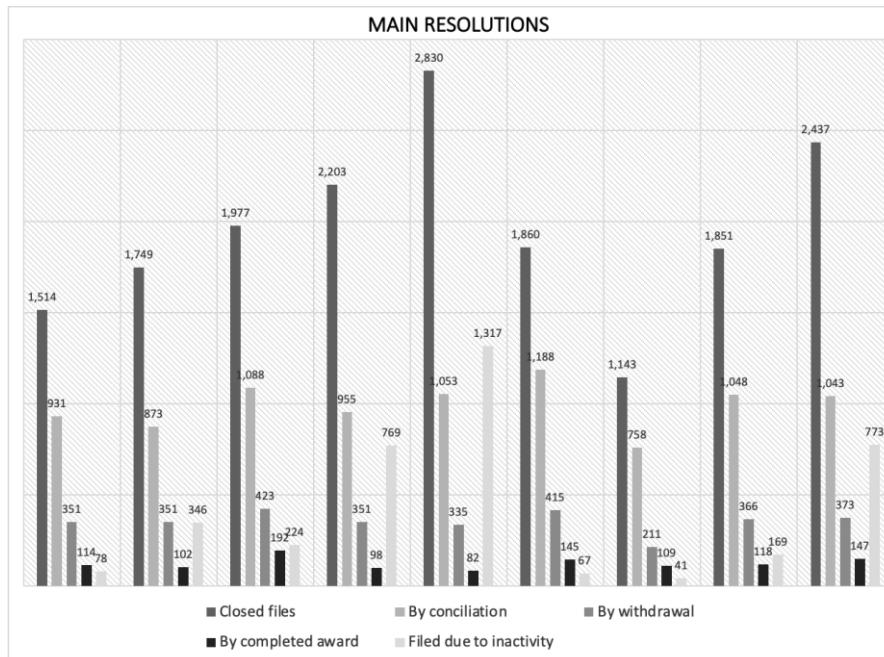


Figure 3. Closed files from January to September 2019.

Source: Compilation based on data from the labor board of Mexico City, 2019.

In Figure 3, the results obtained by the boards of Mexico City regarding closed files for the period January-September 2019 are shown, in which May stands out, given there were 2,830 closed files from a total number of 17,564 registered, which represent 16.11% of the total number; 5.99% of the cited percentage was closed by conciliation, 0.19% by incompetence, 1.91% by withdrawal, 0.02% by accumulation, 0.03% by expiration or statute of limitations and 7.5% filed due to inactivity.

The Figures 2, 3 and table 2 above, together lead to the following conclusion of the statistics for the period from January to September 2019: 985 awards were issued, of which 288 of them were sentenced, 231 cases were acquitted and 466 mixed awards were issued, 993 cases ended in conciliation, 353 due to withdrawal, 123 by completed award and 420 were filed for inactivity on average over the period mentioned above.

Some files conclude because the employer offers a new job to the suing worker and the latter accepts it, this is legally known as reinstatement. In this order, the law establishes that when the worker is reinstated, the situation he previously had must be improved; in other words, his salary must be increased, as well as his benefits:

Table 3. Reinstatements performed

	January	February	March	April	May	June	July	August	September
Reinstatements	325	295	322	323	353	383	220	335	360
Total	325	620	942	1,265	1,618	2,001	2,221	2,556	2,916

Source: Compilation based on data from the labor board of Mexico City, 2019.

From the foregoing reasoning, the Labor Conciliation and Arbitration Board of Mexico City showed that in the period from January to September 2019 there was an average of 324 reinstatements out of a total number of 2,916 employees who returned to work (Table 3), on the other hand, when the employee does not return to work, he is commonly liquidated, that is, he is granted a payment of all his rights in benefits that he had for the time he was employed. The following is a reference of the employees who were terminated.

Table 4. Terminated employees

	January	February	March	April	May	June	July	August	September
Terminated employees	1,045	1,048	1,402	1,036	1,139	1,398	905	1,182	1,249
TOTAL	1,045	2,093	3,495	4,531	5,670	7,068	7,973	9,155	10,404

Source: Compilation based on data from the labor board of Mexico City, 2019.

Table 4 shows the statistics of the employees who were terminated, of which 1,156 employees were terminated on average from January to September 2019 out of a total number of 10,404,

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while Table 5 shows the characteristics of the population served according to the records of the Conciliation and Arbitration Board of Mexico City:

Table 5. Characteristics of the population served

Gender	January	February	March	April	May	June	July	August	September
Men	1,683	1,484	1,973	1,646	1,574	1,792	805	1,922	2,048
Women	1,279	1,067	1,457	1,390	1,032	1,415	583	1,439	1,395

Source: Compilation based on data from the labor board of Mexico City, 2019.

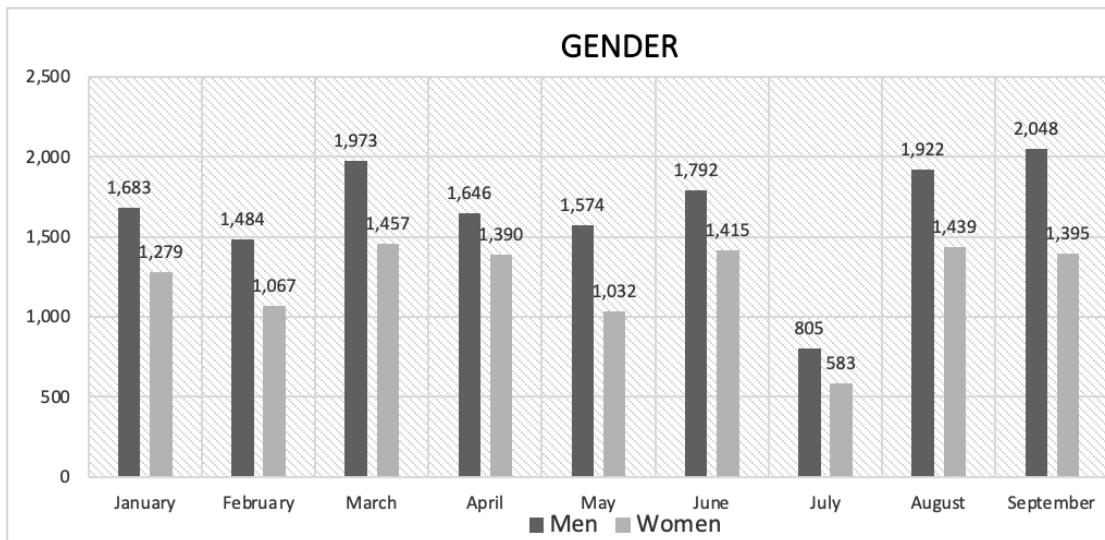


Figure 4. Statistics of the population served by gender in 2019.

Source: Compilation based on data from the labor board of Mexico City, 2019.

In the labor conciliation and award boards of Mexico City, from January to September 2019, 25,984 people were attended, 57% of whom were men and the remaining 43% women, as shown in Figure 4.

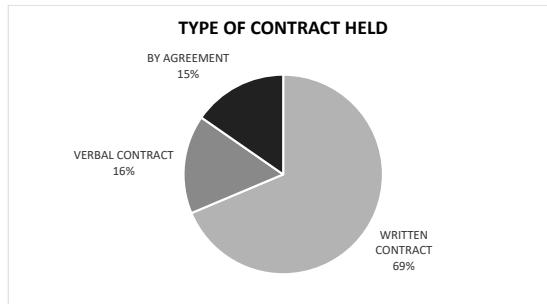
7.2. Interviews with employers and employees leaving their labor procedures at the local conciliation and arbitration boards of Mexico City.

In this study, a sample of 150 individuals was interviewed outside the conciliation and arbitration boards of Mexico City, of which 84 respondents represented the workers' side and 66 represented the employers' side.

The following statistics were obtained from the conducted surveys regarding the labor conciliation and labor award process:

TYPE OF CONTRACT HELD

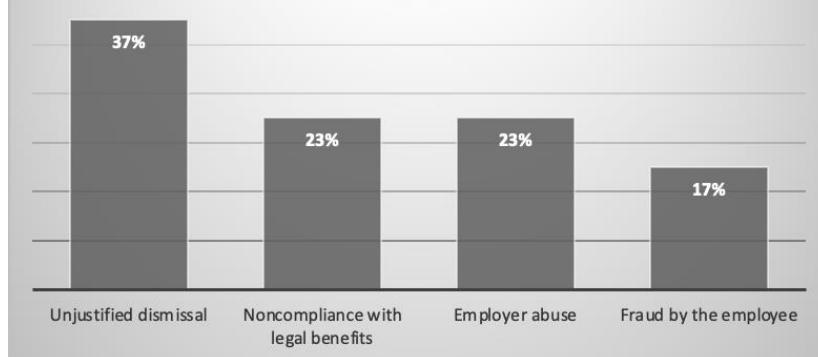
Written	103
Verbal	24

By agreement**23****Figure 5. Types of contracts held according to the interview conducted, 2019.****Source: Compilation based on field data, 2019.**

In Figure 5, according to the results shown, the contract held by most of the respondents was the written contract, represented by 69%; 16% held a verbal contract and 15% held a contract by agreement. It is important to note that in order to file a labor demand, it does not matter whether the contract is verbal or written; the important thing is the existence of an employment relationship and that this leads to a dispute that justifies the filing of a demand, and according to the survey, the main reasons for filing a labor demand are listed below:

REASON FOR THE DEMAND

Unjustified dismissal	55
Noncompliance with legal benefits	35
Employer abuse	35
Fraud by the employee	25

REASON FOR THE DEMAND**Figure 6. Main reasons for a labor demand according to the interview conducted, 2019.**

Source: Compilation based on field data, 2019.

The main reasons for labor demand according to the survey showed that 37% of those surveyed were sued for unjustified dismissal, 23% for noncompliance with legal benefits, 23% for employer abuse, and 17% for fraud by the employee, according to the results obtained in the sampling (Figure 6).

The sample showed that some of the participants were able to end their labor dispute through conciliation, others through an award, and some others were still in the procedure.

JUDGEMENTS ISSUED

Conciliation	78
Award	26
In process	46

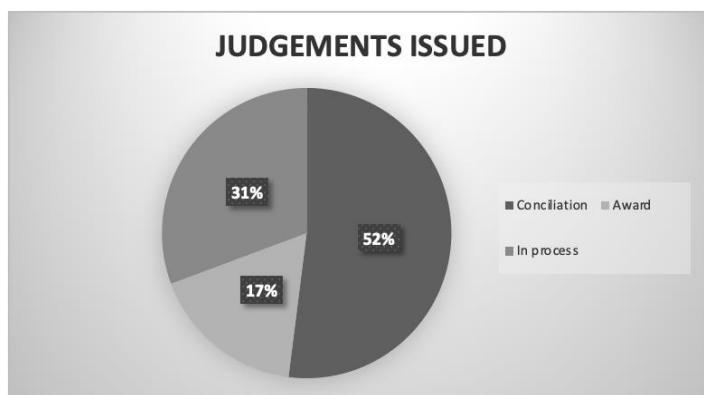


Figure 7. Judgments issued in 2019.

Source: Compilation based on field data, 2019.

As shown in Figure 7, conciliation is the leading form of labor dispute resolution, representing 52% of the sample of workers and employers, while the labor award represents only 17%. It is worth mentioning that this sample revealed that 31% of those surveyed were still in the process of resolving their labor dispute.

8. Discussion

According to the results derived from the various authors and scientific articles analyzed in this study, with the statistics provided by the Conciliation and Arbitration Boards of Mexico City and the survey conducted at the entrance of the Local Conciliation and Arbitration Boards of Mexico City, provide as a result comparative observations and concordance to perform the following discussion, that leads to a definitive stage of this analysis.

The analysis reveals that the areas to be discussed are not exactly the same, since each institution reflects its own areas, therefore, the discussion is adjusted to the characteristics, as a comparison of the gender of the men and women involved in labor trials, the type of contract held, the main forms of resolution and the forms of conciliation.

The labor trials in their comparative study, in most cases, have an interrelation due to the agreement in their statistics, so it is observed that in the proceedings from January to September 2019 in the Local Boards of Mexico City intervened 64% of men compared to 36% of women, while the statistics of the interviews conducted at the entrance of the Local Conciliation and Arbitration Boards of Mexico City showed that 67% of men and 33% of women intervened.

From what is stated in the comparison between the Local Boards of Mexico City and the interviews conducted at the entrance of the Local Conciliation and Arbitration Boards of Mexico City regarding the gender of the workers who intervened in the labor trials, the figures issued by each institution are relatively similar, which leads to the fact that more men intervened in the labor trials than women, since it significantly exceeds 50% in these data taken as a reference. Therefore, it is assumed that it could be a gender issue that few women are involved in labor trials.

Regarding the type of contract held by the employers and workers, the results of the interviews conducted at the entrance of the Local Conciliation and Arbitration Boards of Mexico City, the employers who conciliated said that the contract they held with their workers was a written contract, represented by 30%: 1% held a verbal contract and 2% by agreement; the workers who also conciliated revealed that 9% held a written contract, 7% held a verbal contract and 3% by agreement. Of the employers surveyed who reached the award, 10% revealed that they had a written work contract and 1% had a verbal contract. 5% of the employees who reached the award had a written contract and 1% had a contract by agreement and, finally, the workers who are still in the procedure mentioned that 15% had a written contract, 7% had a verbal contract and 9% had a contract by agreement.

As it can be observed, according to the opinion of the parties, both workers and employers agree that the main contracting method is the written contract, it is worth mentioning that it is the only one allowed by the Mexican legislation, however, it is important to highlight that even in the XXI century, the employment relationship is verbal and by agreement, therefore, formal employment tends to have a lot of disagreements from those who practice it in Mexico.

Continuing with the data of the conciliation boards, in their statistics from January to September 2019, 26,429 resolutions were made; from such total, 35% were made by conciliation, 12% by withdrawal, 34% by award, by completed award 4% and filed due to inactivity, 14%. In the survey of 150 people in 2019 in the Conciliation and Arbitration Boards of Mexico City, 52% ended the labor conflict through conciliation and 17% through an award, according to the results obtained from those surveyed.

Analyzing the data provided by the Conciliation and Arbitration Board of Mexico City and the interviews conducted with employers and workers, it is clear that although the sampling carried out by each institution is very different, followed by the percentages provided, each of the results agree that the main form of resolution for labor disputes is conciliation, followed by the award. However, the withdrawal is very frequent and therefore is one of the main forms of resolution in this type of labor disputes.

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In the labor field, it is important to emphasize that in addition to the statistics, they also go according to what the authors refer to, such as the specific cases of the author Saad de Bianciotti, Carla (2005), who refers to the conciliation procedure as a system activated through a claim generally presented by the worker. However, this article complements the one also written by Cavazos Flores, Baltasar (2005), and completes it exactly because the author suggests not only a conciliator but a mediator who has the power to propose a conciliation of interests.

Regarding the form of conciliation, according to the survey conducted at the Conciliation and Arbitration Boards of Mexico City, the workers who were able to resolve the labor dispute through conciliation said that 13% of them reached conciliation through a trial and the other 6% responded that they reached conciliation through the intervention of a third party. On the other hand, 5% of the workers who reached the award revealed that the conciliation took place within the trial and 1% with the intervention of a third party. Lastly, among the workers who are still in some stage of the process, the method of conciliation was 50% without trial, meaning conciliation out of trial, 19% in trial and 11% with the intervention of a third party.

From the previous paragraph and comparing the opinions of the survey conducted, it can be seen that the answers are very similar, so it can be deduced that more conciliations take place in trial, and although conciliation can also take place by other methods such as the intervention of a third party or without the need for a trial, the most frequent is conciliation by trial, according to the resulting figures.

The results show in their individualized study and as a whole that they are consistent with the current reality in terms of individuals who file demands, what they request and the results they obtain. In addition, it is inferred that scholars endorse these actions with doctrinal concepts, which are discussed on a daily basis in labor-related problems.

9. Conclusions and future research

The male gender has had the leading role in labor disputes in 2019.

The main cause of labor demand in 2019 is unjustified dismissal.

The written contract is the only contractual form allowed by Mexican law.

Informality through verbal contracts is usual in employment relationships.

Conciliation is the main form of resolution in labor disputes, both in and out of trial.

In the Conciliation and Arbitration Boards in Mexico City in 2019, the most frequent agreements were mixed awards.

From the period from January to September 2019 there were 2,916 reinstatements of workers in the Conciliation and Arbitration Boards in Mexico City.

From January to September 2019 there were 10,404 terminations of workers in the Conciliation and Arbitration Boards of Mexico City.

Future research

This study can be taken to further research approaches since it provides the opportunity to analyze and propose other types of parameters and guidelines. The study refers to initial issues from the concepts of worker, employer, reaching an employment relationship, where all of this leads to a problem that ends up in a labor board to be resolved through an award, currently handled on an individual basis. However, other topics may be proposed at different levels, such as the following:

The conciliation procedure and labor award in collective labor disputes in Mexico.

The conciliation procedure and labor award in collective labor disputes handled through a labor union in Mexico.

The interest of third parties such as government institutions when an issued award has an impact on its outcome.

The psychosocial impact on the worker when losing his job and experiencing a lack of financial capacity.

Moral damage caused by unjustified dismissal as a result of the uncertainty of ignoring the outcome of a labor trial.

Unjustified dismissal and grievance against women as a matter of gender.

Unjustified dismissal and grievance against homosexuals as a matter of sexual orientation.

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