



NCP Brazil
Ministry of Finance

FINAL STATEMENT

Banco Santander S.A./ Bank Workers Union of São Paulo, Osasco and Region
Complaint NCP N° 02/2010

On September 22nd, 2009, the Brazilian National Contact Point (NCP) received a notification sent by the trade union Bank Workers Union of São Paulo, Osasco and Region (Bank Workers Union), the Federation of Workers in Credit Companies of the State of São Paulo (FETEC/SP-CUT) and the Central Workers Union (CUT) – Complainants – against Santander Bank Brasil - a multinational enterprise with its headquarters in Spain.

According to the complainants, Santander had violated the Guidelines by using legal loopholes, specifically the “*Interdito Proibitório*”¹, to prevent the presence of Bank Workers Union leaders in its units during the month of September of 2009, a period in which usually occurs bank workers’ strikes. Such action would violate Paragraph 7 of Chapter I e the *caput*, and paragraph 8 Chapter IV of the Guidelines (2000 edition):

I. Concepts and Principles

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

8. Enable authorized representatives of their employees to negotiate on collective bargaining or labor-management relations issues and allow

¹ The “*interdito proibitorio*” is a legal institution of the Brazilian Civil Procedure Code aimed at the defense of rights of property. According to labor law, this instrument may be used by companies in order to defend their businesses and assets during strike periods. In practice, however, it has been found that the “*interdito proibitorio*” has been used to move further away the strike movement from the vicinity of certain companies.



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the parties to consult on matters of mutual concern with representatives of management who are authorized to take decisions on these matters.

On February 2nd, 2010, the NCP requested information to the Complainants referent to the identification information of the Complainants and of Santander. An answer was received on the next Day. On March 1st, 2010, there was a request of information regarding juridical decision and/or initiatives taken by both parts to solve the case. On March 3rd, 2010, the complainants answered that there was no legal or political action taken in regard to the case. On May 26th, 2010, the Ministry of Labor accepted to analyze Allegation.

Thus, the NCP concluded, based on the NCP Resolution N°01/2007, that the Allegation brought together elements that had thematic relevance with the topics covered by the Guidelines; had well enough delimited focus area; and presented verifiable facts and evidences. On June 22nd, 2010, the NCP Complaint n° 02/2010 was accepted by the NCP and the fact was communicated to both parts, to the Spanish NCP and to the OECD.

On June 22nd, 2010, the NCP sent Official Message n° 124/2010/SAIN/MF-DF to the President of Santander Bank informing about the acceptance and requesting Santander's comments. On June 23rd, 2010, the Brazilian NCP received an answer from Santander claiming that there was no anti-union practice in the use of the *Interdito Proibitório*, which was a Constitutionally Admitted Right, and requesting the filing of the complaint.

After Santander's arguments were analyzed, the NCP requested additional information to the Bank Worker's Union, through the official message n° 742012/SAIN/MF. On April 20th, 2012, through official message n°045/2012, the Bank Worker's union expressed their consideration disagreeing that the *Interdito Proibitório* does not violate the right to strike, informing, through documents, about the involvement of São Paulo's Military Police Command in the plans of the action, object of the Complaint, the use of the *Interdito Proibitório*, and the use of police force to scatter the protesters which would have caused an international reaction.

After the analyses of the fore mentioned documents, the Ministry of Labor recommended mediation between the parts, in the terms of Article 13, Section IV, of the NCP's Resolution n°01/2007, seeking good business and labor practices when there are strikes. The meeting took place on October 21st, 2014, on the headquarters of the Ministry of Finance, in Brasília – DF, and had participants representing Santander Bank, FENABAN, Bank Worker's Union, National Confederation of the Financial Sector Workers – CONTRAF, Ministry of Labor and the Ministry of Finance

During the mediation there was no agreement if the *Interdito Proibitório* is an anti-union practice. Despite such disagreement and the conceptual divergence on the subject, the parties have ratified that they would maintain an open channel and constant



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negotiation and debate on this subject, as well as on other issues related to labor relations.

In the context of this Complaint, it was clear that the parties, although differ on specific issues in relation to practices adopted by Santander in strike acts, in particular with regard to the use of the *Interdito Proibitório*, recognize the tradition of openness to dialogue on both sides. In this context, the NCP recommends that the parties proceed in dialogue on the topics in question and that Santander seeks, in practices related to situations of strike, to go beyond their legal rights and obligations. Such progress should be in the interest of the development of more positive labor relations, in particular with regard to the use of the *Interdito Proibitório*, in line with the text and the spirit of the Guidelines.

Due to the exposed, the NCP decides to conclude Complaint n°02/2010.

Brasília, March 30th, 2015.