Article on *iProfesional.com*

A NATIONAL LABOR COURT SUSTAINED THE CALCULATION FORMULA USING CENTRAL BANK INTEREST RATE FOR ONGOING LAWSUITS

Rules keep having to be refined and reformulated as new cases arise. Key points of this Court decision

By Julián A. de Diego

A relevant ruling by Panel II of **the National Labor Court of Appeals sustained the calculation formula using the interest rate published by the Argentine Central Bank (BCRA), in accordance with Section 55 of the Labor Modernization Act, which is lower than the INDEC CPI cap.**

Indeed, in re *Ferrero, Daniel Dardo v Mil Colección Srl et al on Employment Termination* (March 15, 2026), the Court assessed whether to apply the INDEC CPI plus a 3% annual interest rate, or **the coefficient calculated by the Argentine Central Bank based on the average lending rate for time deposits, floored at 66% of the CPI and capped at 100% of such index.**

It is worth mentioning that the index provided by BCRA is lower because it takes a more realistic outlook based on the surrounding circumstances and the economy. For example, during the pandemic, indicators lagged behind inflation—as has been the case for many years leading up to the present.

The judges of Panel II dissented. In her dissent, Judge Andrea García Vior argued that the Central Bank's table should be declared unconstitutional on the court's

own initiative.

In her opinion, Judge Andrea García Vior maintained that "two claimants in identical or similar positions could end up with different legal outcomes solely based on whether they filed their claim before or after March 6, 2026, even if their claims accrued on the same date".

She further added that "this guidance, which addresses a—so to speak—procedural matter—unrelated in its timing even to the legislation in effect when the claim originated—fails to provide a reasonable basis for the exception. Framed this way, it acts as a covert punishment for those who sought relief from labor courts before the structural amendment of the labor and employment law system (and even the procedural rules and jurisdictional framework to be applied, at least by labor courts) After extensive consideration of the issue, I fail to see any objective justification for this disparaging difference in treatment".

The other two judges on Panel II disagreed with Judge García Vior.

They found that **there are no grounds to declare the law unconstitutional, based on the criteria set by Supreme Court precedents.**

In Judge García Vior's view, "this distinction is not linked to the nature of the claims nor does it serve any overriding public interest." Consequently, she favored declaring the regulation unconstitutional and ordering the application of the inflation-adjustment method established under the general scope of Section 276 of the Employment Contract Act (LCT).

However, Judge Alejandro Sudera disagreed with his colleague, finding that "...the circumstances do not meet the requirements which, under the doctrine of the Supreme Court, could lead to a *sua sponte* declaration of unconstitutionality". He further explained that "the rule is intended to apply to claims which may have been more or less hit by inflation over time".

"After years of suggesting—*de lege ferenda*—that the legislature should move away from the ban on indexation and establish a concrete standard for preserving the purchasing power of labor claims in line with constitutional provisions (regardless of how much I may personally agree with it), I have no choice but to apply it", he concluded. Accordingly, he ruled that the award amount must be subject to the adjustment mechanism set forth in Act No. 27802.

Regarding this point, a key takeaway from Judge Sudera's vote is that "...One of the many elements that must be considered if one wishes to **promote the creation of genuine, formal, and stable private-sector employment is predictability (which is, of course, far more necessary and useful than reducing the cost of layoffs, weakening protections against arbitrary termination, or the legalization of off-the-books employment)**." He added that "…Beyond the powers naturally granted to judges regarding the setting of interest rates, I have—persistently—argued *de lege ferenda* that **legislating on this point was highly advisable. The legal certainty gained from doing so would far outweigh the downside of adding just one more exception to the countless ones already**

existing for the ban on indexation".

In turn, Appellate Judge Leonardo Ambesi joined Judge Sudera's opinion. After analyzing several comparative calculations—including a dollar-based assessment—he found that the application of the relevant provision did not, in this instance, constitute a manifest violation of the Constitution under the Supreme Court's guiding principles of prudence, justice, and equity".

He further added that "as noted by my colleague in the lead opinion, **this is a transitional framework intended to resolve disputes originating in an economic and legal climate distinct from the one later envisioned under Laws 27742 and 27802".** "Now, the provisions of Section 55 of Act No. 27802 contains a general calculation framework limited by two components that serve as 'boundaries'". "Consequently, it is impossible to assert in the abstract, much less as a general rule, the validity or invalidity of a mechanism that—in practice and according to its text—leaves the final determination of the interest and costs at issue to the Courts' discretion."

He further states that "...In other words, these factors require an examination of the specific case to determine whether there are sufficient grounds to show that the formula designed by Congress—acting within its own powers and following the standards set by the Supreme Court—actually violates the constitutional guarantees invoked at the outset (see Argentine Supreme Court of Justice decision of December 16, 2021 in re *Sosa, Fernando Pablo v Mondelez Argentina SA on Employment Termination*, citing the Attorney General's opinion as adopted by the Court).

"As has been rightly pointed out, **judges do not seek to formulate a code; their role is to decide cases. Typically, in grounding a decision, they establish a rule in the hope of providing guidance for future cases and of subsuming the present case under that rule. However, the future remains opaque, in part because a case-oriented approach compels the judge to focus exclusively on the matter at hand."**

"Rules keep having to be refined and reformulated as new cases arise"(R. Posner, *How Judges Think*. Translated into Spanish by V. Roca Pérez, Marcial Pons, Madrid, 2011, p. 236).

Notably, fees are now calculated in UMAs; this unit ignores the underlying value of the claim and instead focuses on the professional services rendered by the lawyers and witness experts.

The debate in this ruling—beyond its high quality, intensity, and detail—demonstrates that our judges are approaching Labor Modernization Act No. 27802 with a constructive spirit. They recognize that legal certainty and judicial support must accompany this fundamental shift in mindset, acknowledging that employment in the current era of exponential technology poses a challenge for the Judiciary and its interpretation of these changes, all with the goal of achieving a better future within our democracy.