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Prevention and Resolution of Labor Disputes

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ABSTRACT

The study covers preventive dispute resolution methods in industrial relations as well as empirical testing of hypotheses regarding labor disputes in Russia. The hypothesis regarding the impact of the number of laid-off employees at the initiative of the employee on the number of labor lawsuits to reinstate employment filed is not supported. The hypothesis regarding the impact of the number of laid-off employees due to staff reduction on the number of Russian labor lawsuits to reinstate employment filed is supported. The largest number of disputes settled via mediation in Russia is labor wage disputes. The number of Russian labor disputes settled via mediation is still a small proportion of the total number of terminated labor disputes.

KEYWORDS

Alternative Dispute Resolution, Conciliation, Electronic Labor Inspector, Employment Reinstatement, MeFigure diation, Mediation Abuse, Risk-Oriented Approach to Inspection, Self-Check of Employer

1. INTRODUCTION

Fundamental principles for the management of industrial contradictions are contained in the international labor standards – the Collective Bargaining Convention, the Collective Bargaining Recommendation (ILO, 1981a; ILO, 1981b). The International Labour Organization (ILO) identifies the basic principles of resolving labor disputes: a) preventing the emergence of labor disputes; b) in the case of the inevitability of a labor dispute – orientation to its internal resolution; c) in case of need – the involvement of a third party (Heron & Vandenabeele,1999; ILO, 2013). Preventing labor disputes involves a pre-emptive dialogue between employers and employees so that their differing interests can be effectively aligned. Preventive measures can reduce or eliminate the risk of industrial conflicts.

The objective of the study is a qualitative assessment of preventive methods of resolving contradictions in the field of industrial relations, empirical testing of hypotheses concerning layoffs of employees, as well as quantitative assessment of labor disputes. This particular study extends previous research of labor dispute resolution by focusing on preventive dispute resolution in Russia and hypotheses testing regarding labor litigation to reinstate employment. First hypothesis of the study is that the number of employees who resigned on their own initiative affects the number of labor lawsuits filed. Second hypothesis of the study is that the number of employees who resigned due to staff reduction affects the number of labor lawsuits filed.

The rest of the paper is organized as follows. Section 2 presents theoretical framework of labor dispute resolution with a focus on preventive mechanisms, Section 3 discusses the Russian Labor Inspectorate's preventive activities, mediation in Russian courts, and Russian labor litigation to reinstate employment. Final section concludes the paper.

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2.THEORETICAL FRAMEWORK OF LABOR DISPUTE RESOLUTION WITH A FOCUS ON PREVENTIVE MECHANISMS

Preventive resolution of industrial contradictions occurs through the prevention of a dispute, and in case of its occurrence, resolution through conciliation, mediation and voluntary arbitration. The mediator on preventive resolution clarifies controversial issues, provides an exchange of views, formulates proposals, approaches, actions, alternatives, develops proposals and recommendations (Collective bargaining, 2015).

Preventive resolution of industrial contradictions is an aggregate of economic, managerial, legislative, social, psychological and technological mechanisms aimed at identifying, preventing and resolving industrial relation conflicts (Bocharova, 2007).

2.1. Bilateral Mechanisms for Preventing and Resolving Labor Disputes

2.1.1 Collective Bargaining

2.1.1.1 Bargaining Power of the Parties to a Labor Dispute

Gazal-Ayal & Perry (2014) show that alternative dispute resolution methods are more readily used by a stronger party to gain additional benefits.

2.1.1.2 Bargaining Model of Union Contract Negotiations in the US

Cramton & Tracy (1992, 1994) examine a bargaining model of union contract negotiations. It predicts the level of dispute activity and the form of disputes. They estimate three logit models for the US negotiations (1970–1989) and find support for the predictions.

2.1.2. Unions and Conflict Resolution

2.1.2.1 The Presence and Absence of a Trade Union Body and the Use of Alternative Dispute Resolution Methods

Avgar et al. (2013) report on the relationship between alternative dispute resolution (ADR) practices and unionization in the largest US corporations (Fortune 1000). The study is based on the results of a corporate survey conducted in 1997 and 2011. According to the survey, in 2011 in corporations the use (at least once in the last three years) of such ADR technique as arbitrage decreased compared to the 1997 survey data by 39% (from 62% to 38%). Survey respondents justify the decrease in the use of arbitration by its increasing similarity to litigation. As a result - high costs and laboriousness of arbitration. Researchers note the different coverage of ADR in corporations with unions and those without a union body. The ratio of ADR-covered workers to non-ADR workers in trade union corporations is 60% to 40%, in non-union corporations it is 42% to 58%, i.e., the ratio is almost mirror image.

2.1.2.2 Bargaining Model of Union Contract Negotiations in the US

Cramton & Tracy (1992, 1994) examine a bargaining model of the US union contract negotiations (1970–1989).

2.1.3 Preventive Human Resources Management Concepts and Techniques

To prevent violations, employers can use practice-oriented concepts and techniques for human resources management. Galli (2018, 2019) examines the relationship of human resource management with the Theory of constraints (TOC). Anjum, Ming & Puig (2019) empirically test the relationship of the practice of strategic human resource management with the service behavior among employees. Strategic human resource management practices have positive impact on service behavior. Galli (2020) surveys the motivation of employees of large corporations in the environments of their continuous improvement. Basharat (2020) studies mentoring in human resource management. Sisodia & Agrawal

(2019) survey employability skills for medical services. Meduri & Srinivasa (2020) empirically test a relationship between the competencies of the emergency relief workers, job performance, and job satisfaction.

2.2 Trilateral Mechanisms for Preventing and Resolving Labor Disputes

2.2.1 Preventive Activities of a Labor Inspectorate

The functions of labor inspectorates include explaining labor laws, preventing conflicts, or mediating their resolution.

The Labor Inspectorate in Russia provides empoyees and employers with free public services aimed at preventing the occurrence of labor disputes (Sapfirova, 2016). The main ones are counseling and information. Koryuchina (2016) argues the impracticality of "spraying" the functions of the Federal Labor Inspectorate, given the limited resources of the agency.

2.2.2 Alternative Dispute Resolution System Challenges in the Early Stages of its Development

Edwards (1986) warns against hasty decisions during a period of over-popularity of the ADR system. He insists on the need to ensure an appropriate level of quality for the emerging ADR industry. The researcher offers one of the options for solving this problem - the attraction and training of the so-called neutrals, who should be well versed in this area.

2.2.3 Comparison of Different Labor Dispute Resolution Methods

Posthuma et al. (2016) compare different methods of resolving labor disputes based on data from US federal courts. Researchers examined data from about 98,000 lawsuits in US federal courts. Data included lawsuits from all federal district courts from 1996-2003. The lawsuits addressed the application of Civil Rights Law, the Employee Retirement Income Security Act of 1974 (ERISA), or the National Labor Relations Act of 1935 (NLRA). The researchers note that employers won in arbitration much less often than in judge trials. In contrast, employers were more likely to win in civil rights suits than in other types of cases.

2.2.4 Mediation in Industrial Conflicts

2.2.4.1 Trade-offs of Concessions

In international practice, compulsory and voluntary mediation is distinguished. Compulsory mediation involves participation in negotiations, in the mediation procedure itself. With voluntary mediation, the parties only consider the proposals of the mediator.

Lootsma (1989) examines the possibilities of conflict resolution (demonstrating in industrial conflict) using a pairwise comparison method. The same method was proposed by Saaty (1988) to resolve the racial conflict in South Africa at the end of the last century. Lootsma (1989) suggests the participation of one representative from each side. Each of these representatives will evaluate and compare one concession from each side. For the case where even within one side there is no consensus on a controversial issue, Lootsma (1989) suggests the participation of several representatives from each side. In this case, the use of logarithmic regression is proposed.

2.2.4.2 Grand Mediation of Labor Disputes in China

Since 2006, in China, mediation has received another impetus in development in the form of so-called grand mediation (Zhuang & Chen, 2015). Zhuang & Chen (2015) point to some contradiction between the central government's focus on the rule of law and extrajudicial procedures. This is due to a change in the central government's strategy: since 2006, mediation has once again become the main method of resolving labor disputes. The change in strategy, in turn, was largely due to the increase in the number of labor and social conflicts.

Zhuang & Chen (2015) caution that increasing the use of mediation in the resolution of labor disputes in China may serve the bureaucratic interests of local authorities.

2.2.4.3 Mediation of Labor Disputes in the European Union Member States

Elgoibar, Medina, Garcia, Pender, & Euwema (2019) use qualitative analysis to consider the features of alternative resolution of collective labor disputes in EU member states.

Researchers note the lack of professionalism of mediators in some member states, insist on the need not to limit the time of the mediation process, and also note the difficulties caused by the mandatory nature of mediation, which occurs in some member states.

Rojot, Le Flanchec, & Landrieux-Kartochian (2005) note that mediation is rarely used in France to resolve labor disputes. Using the case study of the French telecommunications company SFR Cegetel group, the researchers note that the parties to the disputes resort to mediation, as a rule, forcibly: to save time, in the event of a very acute conflict, as well as in cases where the monetary value of the subject of the dispute is low.

2.2.4.4 Mediation in the Commonwealth of Independent States

Birken & O'Sullivan (2019) study the specifics of mediation in Central Asian countries (particularly in the Commonwealth of Independent States, CIS).

The authors note that in some CIS countries the laws on mediation have been introduced. However, they stress that the mere existence of a law is not a prerequisite for the development of mediation in a particular jurisdiction.

When characterizing professionals for mediation, the authors insist that mediators should not be seen as competitors to lawyers.

Clarke (1999, 2005) argues, that, given the characteristics of the Russian labor market, it is advisable to use the "investigation" approach, rather than "adversarial" in resolving labor disputes. It consists in active involvement of administrative bodies of justice and other intermediaries in the investigation and hearing of cases; and in recruiting industrial relations professionals.

Galiakbarova & Saimova (2016) note that out-of-court resolution of labor disputes is rarely used in Kazakhstan. This is justified, on the one hand, by the lack of qualified professionals, on the other hand – by the functioning of special committees (conciliation committees).

2.2.5 Labor Arbitration

2.2.5.1 Labor Arbitration in China

Cooney (2007) argues the need to improve the dispute resolution system in China, in particular, by providing greater autonomy to the labor disputes arbitration committees (LDACs). The author draws attention to a significant annual increase in the number of labor claims (about 60% annually). About 30% of labor claims are remuneration claims. Of these, about 80% of claims are satisfied in favor of workers.

2.2.5.2 Labor Arbitration in Slovak Republic

In the study of labor arbitration in Slovak Republic Olšovská & Švec (2017) draw attention to the vulnerability of the position of workers when considering claims in labor arbitration as a potentially weaker party.

2.2.6 Dispute Resolution Professionals and Limitations of ADR Methods

2.2.6.1 The Impact of the Supply of Labor Lawyers on the Filing of Labor Lawsuits

Fraisse et al. (2015) regress job flows on indicators of judicial outcomes, using an instrument, based on local shocks in the supply of lawyers. They use data of the French labor disputes (1996–2003). They found that when the numbers of lawyers increase, workers litigate more often.

2.2.6.2 Mediators are not competitors to lawyers

Some researchers (Birken & O'Sullivan, 2019) note that mediators should not be considered as competitors to lawyers. At the same time, they should have good expertise in their field (Birken & O'Sullivan, 2019; Edwards, 1986).

2.2.6.3 Limitations of ADR Methods

Gazal-Ayal & Perry (2014) found empirical evidence for one of the limitations of alternative dispute resolution methods. Based on data from the Israeli Labor Court in Haifa (2008, about 600 cases), the researchers conclude that the use of ADR methods is used by the stronger party of the labor dispute (in terms of bargaining power) to reduce its obligations to the weaker party.

3. RESULTS AND DISCUSSION

3.1 Russian Labor Inspectorate's Preventive Activities

3.1.1 Risk-Oriented Approach in Planning the Activities of the Labor Inspectorate

Following the Concept of the Federal Government (Government of the Russian Federation, 2015), in the activities of the Federal Labor Inspectorate, there is a transition to a risk-oriented approach in planning inspections of compliance with labor legislation (Smirnova, 2018; Kurevina, 2017). Moreover, the priority in planning inspections is supposed to be given to activities with harmful, hazardous production. That is, it is the production risk that is considered. Sapfirova (2016) proposed not to limit priorities to these types of industries, and even to establish some proportions (quotas) in the number of inspections for sectors with high and low industrial risk. However, it is under the risk-oriented approach that it seems advisable to expand the coverage of risks and not be limited only to production risk (harmful and hazardous production). A significant proportion of labor disputes are not related to hazardous and harmful industries. It is advisable to consider not only the production risk but the risks of labor disputes. These risks are higher in small organizations, where the level of the shadow economy is higher and, accordingly, the level of non-compliance with labor laws. There are some concerns about potential industrial conflicts in some small businesses not reflected in official data.

3.1.2. Self-Check of Employers

Since 2017, employers can check their compliance with labor laws with the help of the online self-check service "Electronic Inspector[1]."

The service is implemented in the form of so-called "check sheets" in the form of a list of criteria by which the employer will be able to independently assess their compliance with labor laws.

200 thematic test sheets on various labor law issues, which are integrated into different sections of labor law, are available for self-testing. These sections are Hiring, Change in the terms of the employment contract, Dismissal, Protecting an employee's personal data, Working hours, Rest time, Pay, Guarantees and compensation, The responsibility of the employee and the employer, Employee certification, Additional vocational education for workers, Health and safety, The specifics of regulating the work of certain categories of workers, Other issues.

If the employer does not find any violations in the answers to the questions in the checklists, as an incentive he receives a declaration of compliance with the requirements of labor law. The Federal Labor Inspectorate plans to exempt such employers from routine inspections (Tarasov, 2017).

When violations are detected in the checklists, the sanction is not applied to the employer. In this case, the employer needs to follow the recommendations to eliminate violations and then pass the self-check again.

3.2. Mediation in Russian Courts

When considering disputes, the court of general jurisdiction takes measures to reconcile the parties, assists them in resolving the dispute (Civil Procedure Code, 2002).

The mediation procedure is a method of settling disputes with the assistance of a mediator on the basis of voluntary consent of the parties in order to reach a mutually acceptable solution.

The mediation procedure is carried out with the mutual will of the parties on the basis of the principles of voluntariness, confidentiality, cooperation and equality of the parties, impartiality and independence of the mediator. This procedure can be applied to disputes arising from industrial relations.

The actions of mediators in 2014–2015 were not contested in the courts of general jurisdiction. There are no cases of going to court with claims to mediators. Cases of judicial challenge to mediation agreements are rare (Supreme Court, 2016).

Consider data on the number of labor disputes settled by mediation (Figure 1). The first data on mediation of labor disputes in court appeared in 2014. The largest number of disputes settled via mediation in 2014–2019 is labor wage disputes. This is followed by disputes about reinstatement. A relatively small number of settled disputes constituted disputes over damages caused during the performance of job duties.

However, the number of disputes settled via mediation is still a small proportion of the total number of terminated labor disputes (Table 1). Data is presented as a percentage of the number of terminated court cases. In the first years of application of the legislation on mediation, the number of disputes settled via mediation was insignificant. The proportion of settled disputes in the total number of terminated court cases ranged from 0.1 to 0.5%. In this regard, it can be assumed that workers are not yet sufficiently aware of the mediation procedure and other alternative dispute resolution methods.

Figure 1. Labor disputes settled via mediation

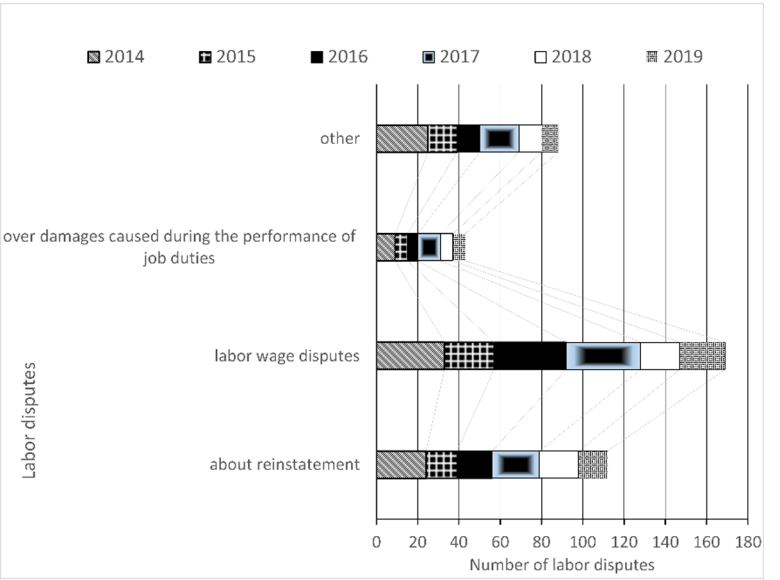


Table 1. Labor disputes settled via mediation (as a percentage of the number of terminated court cases)

Labor disputes	2014	2015	2016	2017	2018	2019
about reinstatement	0.8	0.5	0.6	1.0	1.0	0.8
labor wage disputes	0.1	0.1	0.2	0.4	0.2	0.3
over damages caused during the performance of job duties	0.8	0.6	0.5	1.0	0.6	0.7
other disputes	0.3	0.2	0.2	0.4	0.2	0.2
Total	0.2	0.1	0.2	0.5	0.4	0.4

3.3. Russian Labor Litigation to Reinstate Employment

3.3.1. Local Legislation to Reinstate Employment

The preventive function in the field of labor relations manifests itself in the rules of the Labor Code (on the protection of employees, on state supervision, on trade unions, on job certification), special federal laws, as well as collective agreements (Arapchore, 2012; Sudakova, 2002).

According to the Russian Labor Code (Labor code, 2001), in the event that a dismissal or transfer to another job is recognized as illegal, the employee must be reinstated in his previous job.

The court may decide to change the wording of the grounds for dismissal to "dismissal at will." If the wording of the basis or reason for the dismissal is found not to be in conformity with the law, the court must change it and indicate in the decision the basis and reason for the dismissal. If the incorrect wording of the grounds or reasons for dismissal prevented the employee from applying for another job, the court decides on the payment to the employee of average earnings for the entire time of the forced absenteeism.

The court makes a decision on the payment to the employee of average earnings for the entire time of a forced absenteeism or difference in earnings for the entire period of performance of the lower paid work. In cases of dismissal or unlawful transfer to another job, the court may decide to recover moral damages in favor of the employee.

3.3.2. Labor Suits to Reinstate Employment

Consider the change in the number of labor suits filed in the courts to reinstate employment in the years 2007–2018. Consider also the number of laid-off workers in 2007–2018.

The main reason for the dismissal of employees is the dismissal at the initiative of the employee. In general, during the period under review, there was a decrease in the total number of employees laid off on this basis. However, in 2010–2013 there was a slight increase in this indicator. The number of layoffs due to staff reductions is significantly lower. In 2009 there was a significant increase in this indicator. In subsequent years, the value of this indicator decreased (Figure 2, left vertical axis). The right vertical axis (see Figure 2) shows the number of labor claims filed with the courts. The highest value of the claims filed was observed in 2009, the lowest – in 2018.

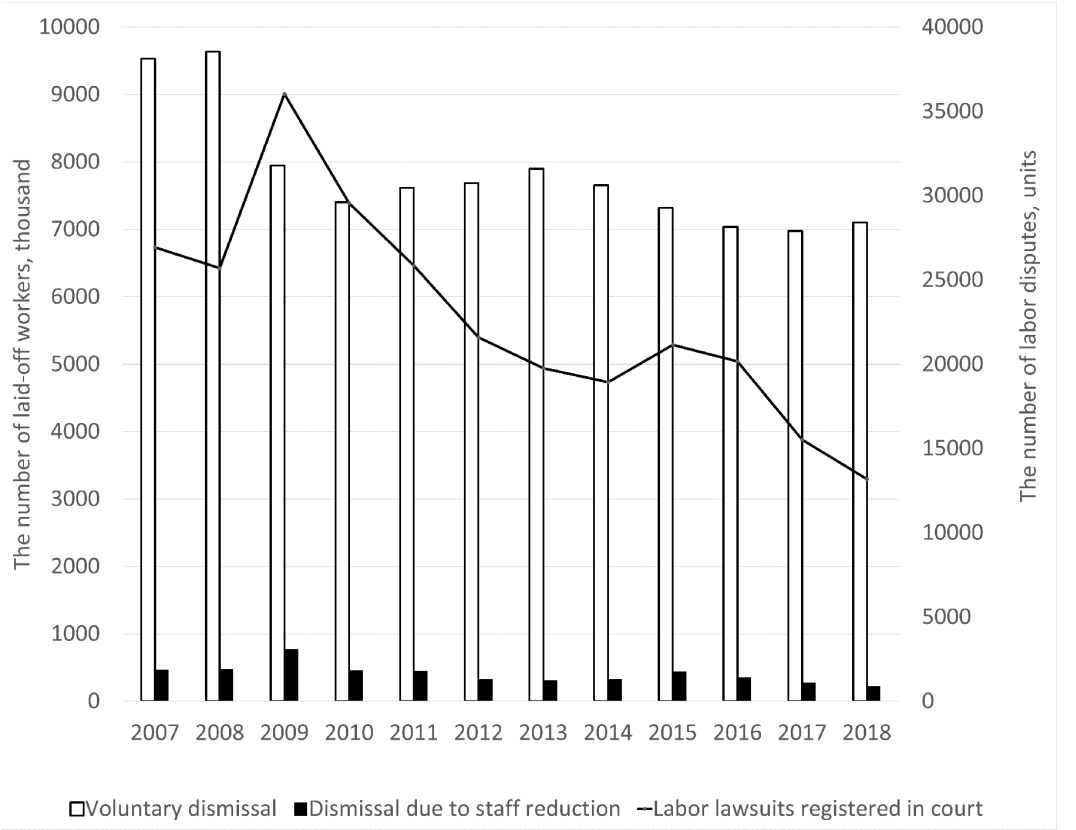
3.3.3. Hypotheses Testing

Consider two hypotheses (H1, H2) regarding the dependence of the number of labor lawsuits filed (dependent variable) on the number of laid-off employees for two different reasons: (1) voluntary dismissal and (2) due to staff reduction (two independent variables). This relationship estimated based on linear regression.

The number of labor lawsuits filed described by linear regression:

$$y = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \epsilon$$

Figure 2. Labor disputes to reinstate employment, laid-off employees, the Russian Federation Source: Calculated from the data of Rostrud (FSLE, 2019).



where y represents lawsuits, x_1 represents voluntary dismissal, and x_2 represents dismissal due to staff reduction.

The fitted regression model is

$$Lawsuits = 707.03 + 0.74 \times voluntary\,dismissal$$
$$+40.02 \times dismissal\,due\,to\,staff\,reduction$$

Although the whole model is significant (F value =37.4, p–value=0.0001), variable "voluntary dismissal" is not significant (F value=0.77, p–value=0.4018).

Therefore, the hypothesis H1 regarding the impact of the number of laid-off employees at the initiative of the employee (voluntary dismissal) on the number of labor lawsuits to reinstate employment filed is not supported.

Further, the number of independent variables in the linear regression model has been reduced to one variable (dismissal due to staff reduction):

$$Lawsuits = 5776.54 + 41.75 \times dismissal\,due\,to\,staff\,reduction$$

Table 2. Values I

Source	F Value	p-value
Model	37.4	0.0001
voluntary dismissal	0.77	0.4018
dismissal due to staff reduction	58.5	0.0001

Table 3. Values II

Source	F Value	p-value
Model	75.73	0.0001
dismissal due to staff reduction	75.73	0.0001

Both the model as a whole and the independent variable in this model are significant (F value = 75.73, p–value = 0.0001).

The hypothesis H2 regarding the impact of the number of laid-off employees due to staff reduction (dismissal due to staff reduction) on the number of labor lawsuits to reinstate employment filed is supported.

4. CONCLUSION

4.1 Testing Hypothese

The hypotheses regarding the dependence of the number of claims filed (dependent variable) on the number of laid-off workers and employees for two different reasons are tested: voluntary dismissal and due to staff reduction (two independent variables).

The hypothesis H1 regarding the impact of the number of laid-off employees at the initiative of the employee (voluntary dismissal) on the number of labor lawsuits to reinstate employment filed is not supported. The hypothesis H2 regarding the impact of the number of laid-off employees due to staff reduction (dismissal due to staff reduction) on the number of labor lawsuits to reinstate employment filed is supported.

The data support the conclusion that in Russia the largest number of labor disputes settled via mediation in 2014–2019 is labor wage disputes. This is followed by disputes about reinstatement. A relatively small number of settled disputes constituted disputes over damages caused during the performance of job duties.

Table 4. Regression statistics

Statistics	Values	Statistics	Values
Std. Dev.	2255.93	R–Squared	0.8834
Mean	22865.17	Adj. R–Squared	0.8717
C.V. %	9.87	Pred. R–Squared	0.7648
PRESS	103000000	Adeq. Precision	24.795

However, the number of disputes settled via mediation in Russia is still a small proportion of the total number of terminated labor disputes. The proportion of settled disputes in the total number of terminated court cases varies from 0.1 to 0.5%.

4.2 Recommendations to Improve Industrial Relations

Preventive resolution of contradictions in the field of industrial relations allows to reduce or even eliminate the possibility of conflicts. It is advisable to give priority to out-of-court methods for resolving labor disputes, to direct efforts to prevent the emergence of labor conflicts. Implementation of this strategy should be carried out at macro- and microlevels. The role of the state in its implementation is to encourage employers and employees to strengthen social partnership, to develop the negotiation process; in the activation of social policy; in financing its implementation on the principle of priority.

Extrajudicial settlement of labor disputes is facilitated by the activation of the work of the tripartite commissions on regulating industrial relations, as well as the activities of sectoral trade unions. For the resolution of labor disputes at enterprises, there are mediation and arbitration commissions. However, in the modern Russian practice, neither employers nor workers consider the labor dispute resolution committee and the trade union committee as an effective mechanism for resolving labor disputes.

Thus, the strategy of out-of-court settlement of labor disputes is a fair and effective method for resolving contradictions in the field of industrial relations, leading to a reduction in the burden on civil courts in conditions of limited budget financing.

Due to the limited budgetary sources of the financing labor inspection, as well as the need to improve performance, it is advisable to expand possible inspection methods aimed mainly at preventing violations of the law and law enforcement practices in the field of industrial relations, changing priorities in labor inspection activities. It is necessary to focus on the implementation of preventive measures, to adjust the priority activities of labor inspections in the direction of conflict prevention in the field of industrial relations, to provide more technical assistance, counseling, to ensure improved enforcement of legislation, contracts and agreements in the industrial relations sphere.

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ENDNOTE

[1] The service is available in a Cyrillic domain at *onlaininspektsiya.rf* [onlineinspection.rf] (Punycode encoded url is xn---80akibcicpdbetz7e2g.xn-p1ai).

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