Interview Takeaway

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1 Questions and answers

- If you had to conduct a survey of conciliators to understand why they are not reaching settlement agreements, what questions would you ask?

  The first question suggested by the conciliators was: "Could you have done more to reach a settlement?" Additionally, during the discussion, the idea emerged that conciliators often do not have enough time to listen to the parties involved. As a result, another question that came up was: "Were you able to identify the problems and proposals of the parties?" This question aims to determine whether the conciliators listened to the parties during the process.

- What would you say are the characteristics of a good conciliator?

  Regarding the characteristics of a good conciliator, the conciliators emphasized that soft or interpersonal skills are crucial. In contrast, no one mentioned knowledge of the system or regulations. Among the soft skills highlighted were the following: active listening, empathy, being solution-oriented, and focused listening (due to time constraints).

- What would you say are the characteristics of a poor conciliator?

  Once again, the conciliators focused their responses on interpersonal characteristics. Arrogance and imposition were mentioned as traits that hinder the conciliation process.

  Note: The same conciliator who suggested that being imposing is a negative characteristic in a conciliator also proposed, as an institutional measure to improve conciliation, increasing the conciliator's authoritative power.

- What quantitative measure would you propose to evaluate the quality of conciliators?

  The conciliators appeared reluctant to admit that their work could be reduced to a quantitative measure, and as a result, they were not very forthcoming with suggestions. However, when they felt somewhat compelled to propose something, they suggested that the percentage of agreement relative to the total amount requested could be a good indicator. This measure could help identify conciliators who reach many settlements with very small amounts, as well as those who settle fewer cases but for much larger sums. The conciliators opposed this quantitative measure, as they felt it somewhat violated their role as a neutral third party in the dispute. Given their independence, the amount the worker receives or the employer pays should be irrelevant to their function. It was also suggested that a mechanism could be implemented where users rate the conciliators' performance. However, the conciliators opposed this quantitative measure as well, arguing that the parties often believe they hold some form of bias.

  Note: The conciliators also seemed concerned about outliers, as they stated that workers and lawyers tend to inflate their figures.

- **Imagine a conciliator that has a high rate of settlements but at the cost of agreements that are not in the best interest of the parties. How would you detect this situation in real life?**

  This question was not asked due to time constraints. However, some discussion regarding this phenomenon occurred while analyzing whether the percentage of the agreed amount was a good measure. The conciliators expressed the opinion that each case is unique, making it difficult to identify this. Additionally, they believe that, since there are individuals who abuse the system, both low and high settlement amounts could result from fraudulent use of the system rather than from the conciliator's behavior.

- **Imagine a conciliator that has a low rate of settlements but agreements that are in the best interest of the parties. How would you detect this situation in real life?**

  This question was not asked due to time constraints. However, some discussion regarding this phenomenon occurred while analyzing whether the percentage of the agreed amount was a good measure. The conciliators expressed the opinion that each case is unique, making it difficult to identify this. Additionally, they believe that, since there are individuals who abuse the system, both low and high settlement amounts could result from fraudulent use of the system rather than from the conciliator's behavior.

- Under what conditions should a case be rescheduled? How would you assess if a conciliator is rescheduling more or fewer cases than they should?

  Once again, the conciliators stated that it is difficult to identify an optimal rescheduling pattern. They commented that they often use the first hearing not as a conciliation session but rather as an information-sharing opportunity, with the aim that by the end of this hearing, the worker has a reasonable proposal. The second hearing is specifically used as a conciliatory session, while the third hearing is employed solely as an extraordinary measure when the parties are close to reaching an agreement. However, all seemed to agree that the typical number of hearings is two.They were also presented with the idea that a case scheduled for three hearings without reaching a settlement does not represent an optimal use of their time; however, they did not seem to agree with this assertion.

- Under what conditions should a case be dropped with the worker's consent, even though the worker attended the scheduled hearing, in order for the worker to initiate a new conciliation procedure. How would you assess whether a conciliator is engaging in this practice more or less than they should?

  The conciliators stated that this is a valid strategy when there are genuine elements that ensure the other party will be notified. Additionally, one conciliator mentioned that carrying out these false filings takes a significant amount of time, so it is not a practice they typically choose. Furthermore, the conciliators asserted that these errors stem from mistakes made during the application registration stage.

- What do you think are the main motivations of a conciliator? (considering long-term goals in their professional career, medium-term goals over the year, and short-term goals during the hearing)

  Only short-term motivations were discussed, including the recognition from users at the conclusion of the conciliation process as a factor that motivates them to perform their work. It was even mentioned that some workers wish to give a portion of their settled amount as a token of appreciation.They also stated that there is an emotional toll associated with participating in a hearing, which can lead to conciliators entering subsequent hearings feeling demotivated.

- If you wanted to increase the number of settlements, what institutional or procedural changes would you make to achieve this?

  The conciliators focused on the application registration stage as an important factor for reaching more settlement agreements. They stated that errors in this stage, as well as in the notification stage, significantly reduce the time available for them to reach a conciliatory agreement. The conciliators agreed with the assertion that if the legal criterion were changed from calendar days to business days, more conciliation agreements would be reached. Finally, one conciliator expressed the opinion that conciliators should have more authority, as it is very difficult to change the parties' expectations when they

do not respect you as an authority figure. However, this conciliator argued that, while they would like to have more power within the hearing, they would not want that to result in imposing their will on the parties. Finally, the conciliator agreed with the assertion that, rather than granting coercive power, it might suffice to change the parties' perception of the conciliator.

- **If you wanted the settlements to be fairer (e.g., more favorable for workers), what institutional or procedural changes would you make to achieve this?**

  This question was not asked due to time constraints

- **If you wanted the parties summoned to the process to appear more frequently, what would you change to accomplish this?**

  This question was not asked due to time constraints

- **If you wanted to shorten the duration of the processes, what would you change to achieve this?**

  This question was not asked due to time constraints. However, some comments were made regarding this in relation to the question about a preparatory phase. The conciliators believed that a phase allowing workers to clarify the address and legal name of the parties, as well as potentially providing a proposal, could be useful in reducing the time required for the process.

- **If you wanted to use the time of the center's staff more efficiently (e.g., not wasting time on lost cases and focusing efforts on those that are more likely to settle), what changes would you implement?**

  This question was not asked due to time constraints. However, some discussion about this topic occurred in relation to the question about rescheduling. The conciliators did not seem to agree that cases with many hearings that do not result in a settlement are a waste of time. Additionally, many stated that the first hearing is not even a conciliatory session, making it impossible to determine if there will be an opportunity for conciliation from that initial hearing. Finally, they mentioned that the decision to reschedule rests with the parties, so although they may influence that decision, there is not much they can do about it.

- Do you think a preparatory phase before the first conciliation hearing would be useful for improving settlements and reducing the length of the conciliation process? Why?

  The conciliators indeed believed that a preparatory phase would be useful, as the first hearing is often utilized for purposes beyond just conciliation.

- What would you include in this preparatory phase?

  Since the conciliators focused on the issues at the center regarding the application registration stage, they believed that the preparatory phase should concentrate on clarifying the information of the other party, for example, the name and the address. On the other hand, Joyce, upon hearing that conciliators rarely reach settlements in the first hearing, thought that it might be useful for the parties to come to the first hearing with predetermined proposals constructed on the preparatory phase. To explore this possibility, an expert in alternative dispute resolution methods who is part of our team kindly agreed to answer the following question:

  – Yesterday, we had a meeting with some conciliators to devise an intervention at the conciliation center. We realized that often the first hearing only serves to construct a proposal, meaning that they do not even negotiate during that initial meeting. Thus, we thought about implementing some kind of institutional process where parties would need to arrive at the first hearing already with a conciliation proposal, for example, submitting a proposal along with their application. However, we were unsure if this might be counterproductive; perhaps it is better to develop a proposal collaboratively during the conciliation rather than having each party present their own proposal. We wanted to know your opinion on this matter, regarding the idea of building a consensus versus preparing it in advance.

    I believe that each party is unaware of what the other party intends. If a mechanism were implemented to exchange intentions before arriving at the conciliation, it would already resemble a

demand. In reality, the process of generating empathy that occurs in a joint meeting, rather than a logical reasoning process to formalize ideas into a proposal, is the aspect that should prevail in conciliation. This approach would create proposals that allow both parties to benefit. When you ask each party to arrive with their own proposals based on their perception of the conflict, it is very likely that the proposals will be designed to benefit themselves.

- **Do you think workers need training to better navigate the conciliation process? Do you think this would lead to more and better settlements? If yes, could you briefly describe the type of training that would be useful for workers?**

  This question was neither asked nor discussed in much detail throughout the conversation.

- **Do you think companies need training to handle the conciliation process better? Do you think this would lead to more and better settlements? If yes, could you briefly describe the type of training that would be useful for employers?**

  This question was not asked directly; however, there was some discussion at the beginning of the meeting regarding the internal dynamics of companies. In particular, the conversation focused on whether the internal lawyers of the companies were good or poor representatives during the hearings, or if it would be better for companies to hire external counsel. This discussion is revisited later in relation to the specific question on this topic. Furthermore, the conciliators seemed to agree that companies are unaware of the new model and appear to perpetuate behaviors from the old model, where companies benefited from prolonging and extending the process rather than concluding it promptly and efficiently.

- **What type of training do you most need to be able to perform your job in the best way possible?**

  This question was neither asked nor discussed in much detail throughout the conversation. Some discussion took place regarding the use of the calculator, as well as the utilization of cocus method.

- Do you think that lawyers who represent the firms are an obstacle to reaching a settlement, or are they instrumental in reaching it?

  There was no consensus among the group of conciliators regarding whether internal representatives from the company were good or poor representatives in the conciliation process. On one hand, it was argued that internal representatives may have better knowledge of the situation, a greater understanding of the staff, and better incentives. On the other hand, the conciliators opposed this view, stating that many workers take layoffs personally, so including individuals they know or who have personally humiliated them can make it much more difficult to reach a consensus. (One conciliator noted that if they use the cocus method and are familiar with each other, it could potentially lead to better outcomes.)

- Do you think "personas de confianza" who attend the hearings with workers are an obstacle to reaching a settlement, or are they instrumental in reaching it?

  The conciliators seemed to agree that "personas de confianza" can become an obstacle to achieving a conciliatory agreement. They have incentives to continue the controversy, appear to have limited knowledge of the issues, and often inflate the parties' expectations. However, the conciliators also stated that the effect of "personas de confianza" is heterogeneous, as good lawyers can be instrumental in reaching an agreement.

- What policies do you suggest to overcome obstacles that lawyers or "personas de confianza" place in the way of reaching a mutually beneficial settlement?

  One proposed solution, although Joyce mentioned that it is already being implemented, was to remove the anonymity of "personas de confianza" so that they can be held accountable for their actions both inside and outside of the conciliation hearings.