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Jurisprudence

Title: ...CONTRADICTION OF THESIS 70/2004-SS. BETWEEN THOSE SUPPORTED BY THE SECOND COLLEGIATE COURT OF THE TWENTIETH CIRCUIT AND THE THIRD COLLEGIATE COURT IN LABOR MATTERS OF THE FIRST CIRCUIT. CONSIDERING: THIRD. In order to verify the existence of the reported contradiction, the following are made...

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Second Chamber - Supreme Court of Justice of the Nation **Bulletin:** Judicial
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TEXT:

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CONSIDERING:

THIRD. In order to verify the existence of the reported contradiction, the following transcripts are made:

The complaining body, Second Collegiate Court of the Twentieth Circuit, in file number ADL. 787/2003, resolved in session of March 10, 2004, states:

"SIXTH. In principle, the reason for disagreement that refers to the existence of a violation of the rules of labor procedure will be a reason for analysis, because if it is founded it would make the study of the remaining ones unnecessary. The legal representative of the complainants points out the following: a) That in the three-phase hearing held on May 22, 2002, in file number 47/2001, it was offered, among others, the ocular inspection that should be carried out at the defendant's domicile on the payroll lists, personnel payrolls, receipts or vouchers for salaries or wages, attendance control cards and other documentation that it usually keeps or uses for the management of its personnel, for the period from November 22, 2000 to November 22, 2001, with the purpose of proving that the names of the actors appear in said documents as workers of the defendant. Request that the responsible Board agreed to favorably in an agreement of August 19 of that year, warning the defendant based on article 828 of the Federal Labor Law, that if the required documentation is not exhibited, the facts that the plaintiff intends to prove would be presumed to be true. That the inspection took place on the following September 24, where the attorney assigned to the Board of Knowledge noted the refusal of the legal representative of the

b) That the plaintiffs Alma Rosa Jiménez Riquelme and Sandra Sol Mora, in the three-phase hearing held on October 16, 2002, in file 101/2002 - accumulated to 47/2001 - offered to prove the employment relationship, the ocular inspection in the same terms as stated in the preceding paragraph, for the period from March 6, 2001 to March 6, 2002. Request that was agreed favorably by the responsible Board in the hearing itself, warning the defendant in terms of article 828 of the labor-employer law, that if the required documentation was not exhibited, the facts that are sought to be proven would be considered certain. That the inspection was carried out on November 14 of that year, in which the attorney assigned to the labor authority noted that the legal representative of the defendant refused to exhibit the respective documentation. The Court adds that the responsible Board did not agree on the results of the inspections carried out, unless it enforced the warnings it issued to the defendant in accordance with the provisions of Article 828 of the Federal Labor Law, and considered the facts to be proven to be presumptively true, which constitutes a violation of the labor procedure laws that affected the individual guarantees of the complainants, because by not having considered the facts to be presumptively true, the award could not support its decision on the evidence of the merits, therefore, the hypothesis contained in Section III of Article 159 of the Amparo Law is updated. The previous concept of violation is unfounded for the following considerations. Indeed, the plaintiff, in order to justify the existence of the employment relationship that it says linked it to the defendant, offered, among others, an ocular inspection in the accumulated trials 47/2001 and 101/2002, to be carried out at the defendant's domicile on the payroll lists, staff payrolls, receipts or vouchers for salaries or wages, attendance control cards and other documentation that it usually keeps or uses to manage its staff, for the periods from November 22, 2000 to November 22, 2001, as well as from March 6, 2001 to March 6, 2002, respectively; For its part, the responsible Board admitted the aforementioned inspections, in its order, in the agreement of August 19, 2002 (page 586 of the labor trial) and in the hearing of October 16 of that year (page 613), warning in both cases the defendant that in case of not exhibiting the required documents, the facts that are sought to be proven in terms of article 828 of the Federal Labor Law would be presumed to be true. Now, the inspections in question were carried out on September 24 and November 14, 2002, with the following result: 'In the city of Tuxtla Gutiérrez, Chiapas, at ten o'clock on September 24, 2002, in my capacity as judicial attorney I became an associate of the plaintiff's legal representative, Mr. Habib Castro Hernández, at the address of the defendant Institute of Social Security and Services for State Workers, located at Periférico Sur Poniente number 412, Bugambilias subdivision of this city and having verified that it was the correct address as indicated by the official nomenclature and company name that I have in sight and by the statement of the person who is present at this act, Ms. Patricia Verónica Cuesta Vázquez, in her capacity as legal representative of the defendant, to whom I inform the reason for my presence by reading aloud the order dated August 19, 2002 in which it is stated that orders to carry out the discharge of the ocular inspection offered in section 7 of the diligence dated May 22, 2002. In this act, the undersigned judicial actuary requests the defendant Institute of Social Security and Services for State Workers, through Ms. Patricia Verónica Cuesta Vázquez, to show me in this act the payroll lists, staff payrolls, receipts or vouchers for salaries or wages, attendance control lists or cards and other documentation that the defendant institute usually keeps or uses for the management of its staff, for a period from November 22, 2000 to November 22, 2001. In this act, the undersigned judicial actuary certify and attest that the defendant Institute of Social Security and Services for State Workers, through its legal representative, Ms. Patricia Verónica Cuesta Vázquez, does not show me the required documentation for the ocular inspection.

There being nothing else to record, this proceeding is concluded, reporting its results to the president of this Board so that he may serve to provide in accordance with the law. I attest. T "it is said" those who participated in this proceeding and so wished to do so signed. I attest. The attorney Cristina Isela Méndez Vilaseca.'. (pages 588 and 589). 'In the city of Tuxtla Gutiérrez, Chiapas, at ten o'clock on the fourteenth day of November of the year two thousand two, in my capacity as judicial attorney I became an associate of the legal representative of the plaintiff, attorney Daniel Lazos Castro, at the address of the defendant Institute of Social Security and Services for State Workers, located at Periférico Sur Poniente number 412, Bugambilias subdivision of this

city and having made sure that the address is correct, as indicated by the company name that I have in sight and as stated by the person present at this act, Ms. Patricia Verónica Cuesta Vázquez, in her capacity as legal representative of the defendant, to whom I make known the reason for my presence by reading aloud the order dated October 16, 2002, in which it is ordered that the ocular inspection be carried out. At this act, the undersigned attorney required the defendant to show me the payroll lists, staff payrolls, receipts or vouchers for salaries or wages, attendance control lists or cards and other documentation that the defendant institute usually keeps or uses for its staff for a period from March 6, 2001 to March 6, 2002, in order to prove that the names of the plaintiffs appear in the documentation subject to the inspection as workers of the defendant ISSSTE. In this act, the undersigned judicial attorney, I certify and attest that the defendant Institute of Social Security and Services for State Workers through its legal representative, Ms. Patricia Verónica Cuesta Vázquez, does not show me the required documentation for this ocular inspection. Using the voice granted to the legal representative of the defendant, Ms. Patricia Verónica Cuesta Vázquez, she states: In relation to the inspection requested by the legal representative during the hearing of the third party called to trial and the response to the clarification and extension of the claim dated October 16, 2002, this ocular inspection is flawed from its origin since my client does not have the required documentation because the plaintiffs and my client never had any employment relationship and much less was any contract for the provision of services for a specific time entered into, therefore the documentation required in this act cannot be shown for the reasons stated above, therefore I request on behalf of my client that the ocular inspection be dismissed outright. He stated and signed in the margin for the record. Using the voice granted to the legal representative of the plaintiff, Mr. Daniel Lazos Castro, he states: That in relation to the statements made by the legal representative of the defendant, I request that they not be taken into account since at the appropriate time he did not object to said evidence, also considering that said statements are subjective and without any legal basis, for which reason I request this authority that at the time of issuing the corresponding award no probative value be granted to them. He stated and signed in the margin for the record. There being nothing else to record, this diligence is concluded, reporting its result to the president of this Board so that he may serve to provide according to law. The statements of the parties are considered to have been made for all legal purposes that may be applicable, with those who intervened in it and so wished to do so signing. I attest. The attorney, Ms. Cristina Isela Méndez Vilaseca.' (pages 768 to 770). As can be seen from the above, the legal representative of the defendant did not show the documents that were requested by the attorney assigned to the responsible Board, without any provision being noted in which the attorney's reason was taken into account in the sense of informing his superior of said circumstance, or where the warning was made to the defendant, as alleged by the legal representative of the nonconformists; however, this legality control body considers that said omission does not constitute a violation of the rules of the labor procedure that has left the complainants without defense that merits the granting of protection in terms of section III of article 159 of the Amparo Law. This is so, because the inspection evidence appears regulated in the Federal Labor Law, under articles 827 to 829, which are as follows: 'Article 827. The party that offers the inspection must specify the object of the same; the place where it must be carried out; the periods it will cover and the objects and documents that must be examined. When offering evidence, it must be done in the affirmative, establishing the facts or issues that it is intended to prove with it.'. 'Article 828. Once the Board has admitted the inspection evidence, it must set a day, time and place for its presentation; if the documents and objects are in the possession of one of the parties, the Board will warn that, if they are not produced, the facts that are being proven will be presumed to be true. If the documents and objects are in the possession of persons not involved in the controversy, the appropriate means of enforcement will be applied.'.

'Article 829. In the discharge of the inspection evidence, the following rules shall be observed: I. The attorney, in the discharge of the evidence, shall strictly adhere to what is ordered by the Board; II. The attorney shall require that the documents and objects to be inspected be placed before him; III. The parties and their representatives may attend the inspection proceeding and formulate any objections or observations they deem pertinent; and IV. A detailed record shall be drawn up of the proceeding, which shall be signed by those who participate in it and which shall be added to the file, after being noted in the proceedings.' From the aforementioned provisions, it is noted that the purpose of the inspection evidence is for the court to

The Court verifies, through the official authorized to do so, facts that do not require special technical, scientific or artistic knowledge, that is, the existence of documents, things or places and their specific characteristics, perceptible through the senses. Hence its usefulness, especially in cases where the object to be inspected cannot be brought before the court. That the party offering the inspection must specify the object of the inspection, indicating the place where it is to be carried out, the periods it will cover and the objects and documents to be examined. That once the inspection is admitted, the Board must set a day, time and place for its completion, and if the documents and objects are in the possession of any of the parties, it must warn them that, if they are not produced, the facts being proven will be presumed to be true.

Finally, in his discharge the attorney will strictly adhere to what was ordered by the Board, will require that the documents and objects to be inspected be placed before him, and the parties and their representatives may be present, they may even formulate objections or observations that they deem pertinent, in addition to drawing up detailed minutes to be signed by those who intervened, which will be added to the file, after reasoning in the proceedings. All the aforementioned assumptions were fully met in the case at hand, since as indicated in preceding paragraphs, the plaintiffs in the accumulated labor lawsuits offered the inspection, specifying the subject matter of the same, indicated the place where it was to be carried out, the periods it would cover and the documents to be examined; the responsible Board, when admitting the evidence, indicated the days, hours and place for its discharge, also warned the defendant that, if they were not exhibited, the facts that are being tried to be proven would be presumed to be true; Finally, the attorney settled the case, following the requirements established in article 829 of the invoked ordinance. In this order of considerations, no violation of the rules of labor procedure is noted that has left the complainants without defense, in accordance with the provisions of section III of article 159 of the Amparo Law, which establishes: 'In trials brought before civil, administrative or labor courts, the laws of procedure shall be considered violated and the defenses of the complainant shall be affected: ... III.

When the evidence that has been legally offered is not received, or when it is not received in accordance with the law; because the inspection proceedings were received in accordance with the guidelines established by the labor-employer law. Then, the circumstance pointed out by the complainants' representative regarding the fact that the labor authority did not pronounce itself on the result of the inspections, unless it made effective the warning decreed, does not constitute a violation of the procedure, because it adjusted its performance to what is established by article 828 of the Federal Labor Law, which imposes on it the obligation that once the evidence of inspection is admitted, it sets the day, time and place for its completion, and if the documents or objects to be inspected are in the possession of any of the parties, it warns them that, in the event of not showing them, the facts that are being tried to be proven will be presumed to be true, as it did when admitting the inspections requested by the plaintiff in the accumulated labor lawsuits, because from the reading of the aforementioned provision, it is noted that it does not contain any provision that obliges the Board to make effective the warning decreed in an agreement subsequent to the completion of the inspection, since in the event that the party If the party required to produce the documents or objects subject to inspection is not inspected, the party does not produce the documents requested to be made available to the notary, the consequence is a legal sanction consisting of the facts that are intended to be proven with this means of proof being presumed to be true, that is, in the event of non-compliance with the obligation of the party to whom the production of the documents or objects subject to inspection is required, a sanction is generated against him/her, consisting, as already stated, of the facts that are intended to be proven being presumed to be true, in accordance with the literal text of article 828 of the cited law, hence the merit device leaves no doubt as to its interpretation in this regard, without this preventing the party against whom the presumption is generated from providing the means of proof that the law on the matter recognizes and admits to disprove it, because the aforementioned sanction is not absolute, but rather there is the possibility of disproving this presumption with other evidence. The argument that by not ruling on the result of the inspection and enforcing the warning, the labor authority cannot support its decision in the award based on that evidence is also unfounded, since no provision of the labor-employer law establishes in these cases, as a legal consequence, that the inspection lacks probative value, because in terms of articles 836, 840, section IV and 841 of the Federal Labor Law, the Board is obliged to take into account the actions that exist in the file, to list the evidence produced and to issue the award based on known truth and good faith, without the need to adhere to formalities regarding the estimation of evidence. Therefore, the probative value of the inspection can only derive from the objective result of its performance, in relation to the other means of proof offered by the parties in the procedure.

labor, but not of the alleged lack of pronouncement of the responsible party on the consequence produced by the warning indicated in article 828 of the law in question, as the legal representative of the plaintiffs claims to assert; because in any case, what may occur is a formal violation if the Board fails to pronounce itself on the evidence referred to or regarding the probative value that it could have, at the time when it issued the award that resolves the controversy. The criterion supported by the Third Collegiate Court in Labor Matters of the First Circuit, in the thesis visible on page 357, Volume X, October 1992, Eighth Period of the Judicial Weekly of the Federation, which says: 'INSPECTION PROOF OF, THE OMISSION OF THE BOARD TO ISSUE THE AGREEMENT THAT MAKES

EFFECTIVE THE WARNING OF PRESUMPTIVELY CONSIDERING THE THINGS AS TRUE
FACTS THAT ARE INTENDED TO BE PROVEN WITH THE. CONSTITUTES A VIOLATION OF THE RULES OF THE PROCEDURE.' (transcribed). However, the aforementioned criterion is not shared, in light of the following considerations: As established in preceding paragraphs, article 828 of the Federal Labor Law provides: (transcribed). The wording of the article imposes, as the only obligation on the Board of knowledge, the duty to warn the party obliged to exhibit the documents and objects subject to the inspection that, in case of not exhibiting them, the facts that are intended to be proven will be considered presumptively true, but it does not indicate that it must pronounce a subsequent agreement in which it makes effective this warning and considers the facts presumptively true, therefore, it is estimated that contrary to what was held by the Third Collegiate Court in Labor Matters of the First Circuit, it is sufficient that the labor authority at the time of admitting the inspection evidence offered by one of the parties, in accordance with the provisions of article 827 of the cited ordinance, warn the party that is obliged to exhibit the documents or objects subject to the inspection, so that the evidence has been received in accordance with the provisions of device 828 of the Federal Labor Law, hence the lack of pronouncement referred to, cannot constitute a violation of the essential rules of the procedure in terms of section III of the Law. of Amparo, as indicated by said constitutional control body, because in any case, what would constitute the procedural violation would be the circumstance that the Board failed to carry out the warning established by the numeral in question, because that would result in the fact that it could not have the facts that are intended to be proven as presumptively true, if the required documents were not exhibited with the consequent prejudice to the party that offered said evidence, because with that omission, it is clear that what is established in device 159, section III, of the Amparo Law would be updated, because the evidence of merit would not have been received in accordance with article 828 of the law in question. Likewise, the Third Collegiate Court on Labor Matters of the First Circuit, maintains the isolated thesis that can be consulted on page 288, Volume X, September 1992, of the Judicial Weekly of the Federation, Eighth Period, which reads: 'INSPECTION, EVIDENCE OF. LACKS OF

PROBATIVE VALUE TO PRESUMPTIVELY CONSIDER THE FACTS THAT ARE INTENDING TO BE PROVEN BY THE SAME IF THE BOARD FAILS TO MAKE EFFECTIVE THE WARNING DECREED IN THIS SENSE.' (transcribed). A criterion that is also not shared, based on the following considerations: It has already been established that from the literal text of article 828 of the Federal Labor Law, it is noted that once the inspection is admitted, when it concerns documents that are in the possession of one of the parties, they will have the obligation to present them and the Board will warn that if they are not presented, the facts that the offeror is trying to prove with it will be considered presumptively true. It was also indicated that the Board's failure to rule on the conduct of the inspection, when the obligated party does not produce the required documents or objects, in order to enforce the warning and presume the facts that are intended to be proven, could not constitute a violation of the essential rules of the procedure, because no provision of the labor-employer law obliges it to do so.

To this extent, it is estimated that contrary to the criteria of the Third Collegiate Court on Labor Matters of the First Circuit, this omission is not sufficient for the Board to be unable to analyze the inspection evidence when issuing the corresponding award, nor would it be sufficient to prevent any probative value from being granted to said evidence, in principle because there is also no provision of the cited law that establishes in these cases, as a legal consequence, that the inspection lacks probative value, because it is insisted that in terms of articles 836, 840, section IV and 841 of the Federal Labor Law, the Board is obliged to take into account the actions that exist in the file, the evidence discharged, issuing the award based on known truth and good faith, without the need to be subject to formalities regarding the estimation of evidence, therefore, the probative value of the inspection can only derive from the objective result of its discharge, in relation to the others.

means of proof offered by the parties in the labor procedure, without in any way being conditioned on the alleged lack of a pronouncement by the Board on the consequence produced by the warning indicated in article 828 of the law in consultation, because regardless of the fact that the labor law itself imposes the obligation on the Board to express the reasons and legal grounds on which it is based when evaluating evidence, in the case of inspection, failure to exhibit the documents or objects that are the subject of the same, implies a legal sanction to the party that did not exhibit them, consisting of the enforcement of the relevant warning, that is, the conclusive value of the evidence is not conditioned on the existence of a prior pronouncement on the consequence that this produces of presumptively considering as true the facts that the offeror is trying to prove, since this constitutes precisely the sanction to which the party that fails to comply with the obligation to exhibit the documents or objects that were requested is entitled.

Furthermore, as also noted, even though as a legal consequence of the warning being made effective due to the non-compliance of the required party, it produces the juris tantum presumption of having as presumptively certain the facts that are being sought to be proven by the inspection offeror, it does not prevent that party from providing the evidence that the law on the matter recognizes and admits to refute it, since that sanction should not be understood in an absolute manner. In this order of considerations, contrary to what was held by the aforementioned Collegiate Court, the probative value of the inspection admitted in terms of article 828 of the Federal Labor Law, in cases where the document or object that is being improved is not displayed upon completion, is not determined by the fact that the Board rules by making the appropriate warning effective, but will depend on the study it makes of all the evidence provided by the parties in conflict at the time of issuing the award that puts an end to the controversy, with the sole condition that it adjusts its action to what is established in articles 836, 840, section IV and 841 of the cited law, because the presumption that is generated due to said warning is a legal consequence that the rule itself establishes, and does not depend on a previous action of the Board of knowledge, which is why this legality control body does not find any impediment to consider that the Board of knowledge pronounces itself in the award that "The Court may not issue a ruling in relation to the results of the inspection, even less so that it lacks probative value, if prior to issuing it does not issue an agreement in which it makes effective the warning referred to in article 828 of the law in question, since it is a situation to which it is not obliged, as has already been made clear. Consequently, based on article 197-A of the Amparo Law, through the president of this court, it is appropriate to report the possible contradiction of criteria to the Supreme Court of Justice of the Nation, for the consequent effects."

For its part, the Third Collegiate Court on Labor Matters of the First Circuit, in direct protection number 4773/92, resolved on June 3, 1992, in the part of interest, says:

"... The concepts of violation that the complainant asserts in relation to the improper assessment of the inspection evidence that he offered in his initial written complaint are also inoperative. In effect, the complainant states that the responsible Chamber should have granted full probative value to the inspection evidence that he offered to prove the benefits that he claimed, consisting of overtime, Sunday bonus, Saturdays and Sundays worked and holidays worked. The previous arguments are inoperative, because although it is true that the complainant offered under section II of the corresponding chapter of his written complaint, the inspection evidence, with which he intended to prove, among other things, those that he points out in the concept of violation that is being analyzed, and that said evidence was admitted by the Secretary of Hearings of the responsible Chamber through an agreement that he issued in the hearing of evidence and arguments of August 14, 1991, ordering its discharge in the resumption of the aforementioned hearing on September 12 of the same year, with the warning to the defendant in the sense that if the aforementioned inspection is not allowed to take place, the facts that the plaintiff intended to prove, in accordance with articles 827, 828 and 829 of the Federal Labor Law of supplementary application, would be considered true; which was carried out on October 11, 1991, by the clerk of the responsible Chamber, drawing up the corresponding minutes in which he stated that the person with whom he understood the diligence did not put the documents subject to inspection in front of him, so he could not carry it out; it is also true that the secretary of Hearings of the responsible Chamber in the resumption of the hearing of evidence and arguments on October 14, 1991,

nine hundred and ninety-one, issued the agreement relative to the aforementioned record of the presentation of the inspection evidence, in the following terms: '... add to its files the document of October 11 of the current year, signed by Mr. Juan Antonio López Reyes. Clerk of this Court. Consider, in terms of the account process, the inspection evidence offered by the plaintiff in section two of its initial written complaint as presented, for all corresponding legal purposes ...'.

Now, as can be seen from the transcript of the agreement issued by the Secretary of Hearings of the responsible Chamber in the resumption of the hearing of evidence and arguments on October 14, 1991, he only considered the aforementioned evidence to have been satisfied in the terms of the minutes drawn up by the clerk of the responsible Chamber, for the corresponding legal purposes; but the warning decreed in the agreement issued at the hearing on September 12, 1991 was not expressly made effective, considering as true the extremes that the plaintiff, now complainant, intended to prove with said evidence, which constitutes, without a doubt, a procedural violation, since the responsible Chamber, in compliance with its own agreement in which it decreed the corresponding warning, should have made it effective by expressly declaring true the extremes that the plaintiff intended to prove with said evidence, since by not doing so, it could not validly grant it probative value when analyzing and assessing the evidence of the parties in the challenged award; "For this reason, the agreement issued by the Secretary of the Courts of the responsible Chamber on August 14, 1991, related to the aforementioned evidence, in which he did not make effective the indicated warning, was challengeable through the appeal for review provided for in article 128 of the Federal Law of Workers in the Service of the State, and since the plaintiff did not file it, the concepts of violation that are being analyzed are inoperative, as already stated. The criteria upheld by this court that was cited when analyzing the previous concept of violation serve as support for the above considerations..."

This matter gave rise to the following theses:

"Eighth Epoch

"Instance: Third Collegiate Court on Labor Matters of the First Circuit

"Source: Judicial Weekly of the Federation

"Volume: X, October 1992

"Page: 357

"INSPECTION PROOF, THE BOARD'S OMISSION TO ISSUE THE AGREEMENT THAT MAKES EFFECTIVE THE WARNING TO CONSIDER AS PRESUMPTIVELY TRUE THE FACTS THAT ARE INTENDING TO BE PROVEN WITH THE. CONSTITUTES A VIOLATION OF THE RULES OF THE PROCEDURE. When a Board admits the inspection evidence offered by one party and requires the other party to exhibit the documents subject to inspection on the date set for its completion, warning it based on article 828 of the Federal Labor Law, that in case of not doing so, the facts that are intended to be proven with the same will be considered presumptively true, it should be noted that if the documents are not exhibited when said evidence is processed, the Board must make effective the decreed warning by issuing the corresponding agreement; since if it does not do so, such omission constitutes a violation of the rules of the procedure in accordance with article 159, section III, of the Amparo Law for not having received said evidence in the terms of the cited article 828; that is, for not having been presumed to be true the facts that were intended to be proven with it."

"Eighth Epoch

"Instance: Third Collegiate Court on Labor Matters of the First Circuit

"Source: Judicial Weekly of the Federation

"Volume: X, September 1992

"Page: 288

"INSPECTION, PROOF OF. IT DOES NOT HAVE PROBATIVE VALUE TO PRESUMPTIVELY CONSIDER THE FACTS THAT ARE INTENDED TO BE PROVEN WITH IT IF THE BOARD FAILS TO MAKE EFFECTIVE THE WARNING DECREED IN THIS SENSE. The Board cannot legally assess in the award the evidence that has been presumptively perfected due to the warning that is made through the inspection evidence in the case of not exhibiting the document or element of conviction that is trying to be improved, if once the inspection has been carried out the corresponding agreement is not issued making the relevant warning effective; since although it is true that article 842 of the Federal Labor Law establishes that the facts must be assessed in conscience without the need to be subject to rules or formalities on the assessment of evidence, it is also true that the same legal provision contemplates the obligation of the Board to express the reasons and legal grounds on which it is based. supports; hence, if the agreement was not issued by which the facts that were intended to be proven with said evidence were presumed to be true, in accordance with article 828 of the aforementioned labor regulations, the value that was granted to it to prove said facts would lack legal basis."

FOURTH. Once the above has been established, it must be determined whether the indicated contradiction of thesis exists.

In this regard, Article 197-A of the Amparo Law establishes:

"Article 197-A. When the Circuit Collegiate Courts support contradictory theses in the amparo trials under their jurisdiction, the Ministers of the Supreme Court of Justice, the Attorney General of the Republic, the aforementioned courts or the Magistrates that comprise them, or the parties that intervened in the trials in which such theses have been supported, may report the contradiction to the Supreme Court of Justice, which will decide which thesis should prevail. The Attorney General of the Republic, by himself or through the agent he designates for this purpose, may, if he deems it pertinent, express his opinion within a period of thirty days.

"The decision issued will not affect the specific legal situations arising from the trials in which the contradictory sentences were issued.

"The Supreme Court must issue the resolution within three months and order its publication and submission in accordance with the terms provided for in Article 195."

To determine when there is a contradiction of theses, this Supreme Court of Justice of the Nation has said:

"Novena Season

"Instance: Plenary

"Source: Judicial Weekly of the Federation and its Official Gazette

"Volume: XIII, April 2001

"Tesis: P./J. 26/2001

"Page: 76

"CONTRADICTION OF THESES OF COLLEGIATE CIRCUIT COURTS.
REQUIREMENTS FOR ITS EXISTENCE. In accordance with the provisions of articles 107, section XIII, first paragraph, of the Federal Constitution and 197-A of the Amparo Law, when the Circuit Collegiate Courts support contradictory theses in the amparo trials of their jurisdiction, the Plenary of the Supreme Court of Justice of the Nation or the corresponding Chamber must

decide which thesis should prevail. However, it is understood that there are contradictory theses when the following assumptions occur: a) that when resolving legal transactions, essentially equal legal issues are examined and divergent legal positions or criteria are adopted; b) that the difference of criteria is presented in the considerations, reasoning or legal interpretations of the respective sentences; and, c) that the different criteria arise from the examination of the same elements."

"Novena Season

"Instance: First Chamber

"Source: Judicial Weekly of the Federation and its Official Gazette

"Volume: XI, June 2000

"Tesis: 1a./J. 5/2000

"Page: 49

"CONTRADICTION OF THESIS. REQUIREMENTS FOR THE PROCEEDINGS OF THE COMPLAINT.
It is true that in article 107, section XIII of the Constitution and within the Amparo Law, there is no provision that establishes as a prerequisite for the admissibility of the complaint of conflict of theses, the relative to the fact that it necessarily arises from judgments of identical nature; however, it is the interpretation that both the doctrine and this Supreme Court have given to the provisions that regulate said figure, which have considered that in order for there to be material to elucidate on which criterion should prevail, there must exist, at least formally, the opposition of legal criteria in which the same question is disputed. That is, for its admissibility to occur, the reported contradiction must refer to the considerations, reasoning or legal interpretations expressed within the reasoning part of the respective sentences, which are precisely those that constitute the theses that are supported by the jurisdictional bodies. It is not enough, therefore, that there are certain or determined contradictions if these only occur in accidental or merely secondary aspects within the rulings that give rise to the complaint, but the opposition must occur in the substance of the legal problem debated; therefore, it will be the nature of the problem, situation or legal business analyzed, which will materially determine the contradiction of theses that makes necessary the decision or pronouncement of the competent body to establish the prevailing criterion as a jurisprudential thesis."

In application of the transcribed theses, it must be said that in the case under study, there is the reported contradiction of theses, given that essentially identical issues were examined, starting from the same elements, but discrepant legal criteria were adopted.

That is correct, the Second Collegiate Court of the Twentieth Circuit holds that when the inspection evidence is admitted on documents that tend to prove that the actors in a labor lawsuit are employees of an employer, they must warn the defendant that if the documentation is not exhibited, the facts that are intended to be proven will be presumed true, and if the clerk, in the minutes of the respective diligence, records the refusal to exhibit them, without there being a subsequent agreement on the part of the Board, in the sense of declaring presumptively true the facts that are intended to be proven, this does not constitute a violation of the procedure, since the latter is not required by the Federal Labor Law, in addition to the fact that when the presumption is generated, it is not absolute, by virtue of the fact that evidentiary means can be provided to refute it, in addition to the fact that the Board is obliged to take into account all the actions that exist in the file. In any case, the violation could be actualized if the Board fails to rule on that evidence or its value when issuing the award.

On the contrary, the Third Collegiate Court on Labor Matters of the First Circuit, regarding a bureaucratic labor trial, concluded that if the documents are not exhibited in the presentation of the inspection evidence, the warning decreed in the agreement that admitted it must be expressly made effective; that is, a ruling must be issued expressly declaring certain

the extremes that the actor intended to prove with said evidence, otherwise a procedural violation would be generated, since by not doing so, he would not be able to validly grant probative value to it, when analyzing and evaluating the evidence of the parties in the award.

Consequently, the point of contradiction lies in determining whether, in a labor trial, in the face of the refusal to produce the documents required in the performance of an inspection test, the Board must issue a subsequent agreement expressly stating that the warning to consider the facts that are intended to be proven as certain is effective, so that if it does not issue it, this omission constitutes a procedural violation that merits granting the protection for the purpose of reinstating the procedure and correcting the violation, or, if in that case, it is not required to issue, within the procedure, any agreement, because the legal consequences of not exhibiting documents in the inspection diligence are typical of the evidentiary assessment, which is not a procedural matter, but of the award.

The fact that the matter heard by the last Collegiate Court cited, derived from a bureaucratic labor trial, is not an obstacle to the above, since in this, article 828 of the Federal Labor Law was also interpreted, applied in a supplementary manner.

FIFTH. In order to resolve the point under debate, it should be recalled that this Second Chamber, in resolving the contradiction of theses 42/96, between those supported by the Third and Ninth Collegiate Courts on Labor Matters of the First Circuit, on April 9, 1997, by a unanimous vote of five, issued, among others, the following jurisprudence:

"Novena Season

"Instance: Second Chamber

"Source: Judicial Weekly of the Federation and its Official Gazette

"Volume: V, May 1997

"Tesis: 2a./J. 21/97

"Page: 308

"INSPECTION OF DOCUMENTS IN LABOR MATTERS. IF THE OFFEROR'S COUNTERPARTY HAS BEEN WARNED TO ALLOW THEIR ANALYSIS, THE NON-EXHIBITION ONLY PRODUCES THE PRESUMPTION THAT THE FACTS TO BE PROVEN ARE TRUE, UNLESS THERE IS PROOF TO THE CONTRARY. Both article 805 of the Federal Labor Law, which refers specifically to the documents that the employer has the obligation to keep and exhibit, and the diverse 828 of the same ordinance, which regulates in a generic way the visual inspection, whether on documents or objects, and which covers any of the parties if said things are in their possession, are in agreement, by interpretation, that in the event that the obligated and warned party does not exhibit what is required, the facts that are intended to be proven will be considered true, unless there is proof to the contrary. In accordance with this, the conclusion that the non-exhibition of the document or object, by itself, constitutes proof must be rejected. full, since according to the law it only produces a presumption that can be refuted by evidence to the contrary."

The judgment, in the consideration section, explains:

"FOURTH. This collegiate body considers that the contradiction of the theses reported between those supported by the Third Collegiate Court on Labor Matters of the First Circuit, when resolving direct amparo trial number 2693/96, and the Ninth Collegiate Court of the same matter and circuit, when ruling on direct amparos 2770/93, 6939/93, 9379/93, 2109/94 and 3679/94, does exist.

"Indeed, from the analysis of the decisions that have been transcribed, it is clear that the collegiate bodies in question, when hearing the respective matters, ruled on various

aspects related to the offering, objection, admission and discharge of the inspection evidence, differing as to the way in which the Board admits the evidence, because while the Third Collegiate Court maintains that the admission 'without prejudging the existence of the documents that are the basis of the diligence', without decreeing the warning provided for in the numeral, constitutes a procedural violation in terms of section III of article 159 of the Amparo Law, the Ninth Collegiate Court considers that the admission 'without prejudging' does not contravene the general and special rules on evidence provided for in the Federal Labor Law, because even when admission in those terms is not provided for in the provisions regulating that evidence, it is not prohibited by law either, such that said admission proceeds as long as the counterparty of the offeror expressly states to the Board its physical or legal impossibility to put the documents or objects subject to inspection before the notary public, concluding that only in cases where it is not done Such manifestation gives rise to the warning and sanction regulated by the aforementioned article 828.

"The above reveals that, since the issue of contradiction is unique, for the purposes of its study and resolution it can be broken down into the following elements: a) Scope of the effectiveness of the warning and procedural consequences established in the Federal Labor Law, if in the case of inspection evidence, the warned party does not produce the document to be inspected; b) Whether or not the effectiveness and consequences mentioned are subject to expressions not expressly prohibited by law, but also not required by it, such as admitting said inspection evidence 'without prejudging the existence of the document'; and, c) Whether or not such form of admission updates the assumption of procedural violation established by article 159, section III, of the Amparo Law.

"FIFTH. In order to resolve which criterion should prevail as a matter of jurisprudence, this Second Chamber proceeds to study the subject matter of the contradiction, based on the following:

"The Federal Labor Law contains specific rules that are intended to compensate for the disadvantageous situation of the worker; this protective spirit, which is supported by constitutional norms, is evident even in the procedural principles that govern labor trials.

"One of the innovations of the procedural reform of 1980 was the introduction of a new system of distribution of the burden of proof, or rather, the creation of a substitute principle for the traditional 'he who asserts is obliged to prove', of a civil nature and based on the formal reality (not necessarily real), that the parties are in a situation of absolute equality in the process.

"Carnelutti distinguishes the 'burden of proof' from the 'obligation to prove', defining the former as a mere possibility of acting in one's own interest to avoid harm, without any sanction for failure to act. The obligation to prove, on the other hand, implies a legal duty that is not left to the will of the obligated party, but above all to the interest of third parties, by imposition of the law and subject to a sanction (Cfr. Francesco Carnelutti. Sistema del Derecho Procesal Civil, Tomo II.

Uthea Publishing House, Buenos Aires, Argentina. 1944, pp. 617 et seq.

"Articles 784, 804 and 805 of the Federal Labor Law adopt this theory of the obligation to provide evidence, replacing the burden of proof, with the aim of ensuring that in the labor process there are elements of proof that really lead to the knowledge of the truth, as a result of the recognition of the situation of inequality between employers and workers, regardless of the fact that the principle of procedural acquisition also operates.

"The first of the aforementioned devices imposes general and specific rules, which must be distinguished:

"1. The Boards must exempt the worker from the burden of proof, if there are other means of knowing the facts.

"2. They will require the employer to show the documents that he must keep by legal provision.

in the company, under the warning that if they are not presented, the facts alleged by the worker will be presumed to be true.

"3. Specifically, it is up to the employer to demonstrate the fundamental issues of the employment relationship.

"The first point mentioned includes a manifestation of the inquisitorial principle, which is reflected in various legal provisions of the Federal Labor Law, such as, among others, articles 771 (to ensure that trials do not become inactive); 772 (requirement to the worker, if his promotion is necessary, to avoid expiration); 790, section VI (intervention of the Board in the confessional); 803, 883 and 884, section III (request for information by the Board); 886 (diligences to better provide); 940 (provision of necessary measures for the prompt execution of the awards), etc.

"The second constitutes, properly, the employer's obligation to provide evidence, consisting of exhibiting in court the documents that the laws (not only labor laws) require him to keep, establishing the consequence of considering the facts alleged by the worker as true, unless there is proof to the contrary, if they are not exhibited. It is then an obligation to prove even when the one who is making the statement is the worker, because he does not have access to the documents specific to the source of work.

"In the third point, regarding the concepts contained in the sections of article 784, another manifestation of the obligation to provide evidence is recorded.

"Regarding documentary evidence, article 804, in conjunction with article 784, lists the evidence that the employer must retain and present in court, in accordance with the law; and article 805 establishes the sanction for failure to comply with this obligation, by establishing the presumption of considering the facts expressed by the worker as true, unless there is proof to the contrary.

"The rules previously analyzed, present in all labor proceedings, are very useful to solve the interpretation problem that arises, in relation to the remaining evidence regulated by the Federal Labor Law, according to the following conclusion: the obligation to provide evidence is distinguished from the burden of proof, because it carries with it a procedural consequence in the case of noncompliance, consisting of considering the facts stated by the worker in his claim as true, unless there is proof to the contrary. On the other hand, the inspection evidence, on which the contradiction is based, appears regulated for the first time in the Federal Labor Law, due to the procedural reform of 1980, under articles 827 to 829, which are as follows:

"'Article 827. The party offering the inspection must specify the subject matter of the same; the place where it is to be carried out; the periods it will cover and the objects and documents to be examined. When offering evidence, it must be done in the affirmative, establishing the facts or issues that are intended to be proven with it.'

"'Article 828. Once the Board has admitted the evidence of inspection, it must set a day, time and place for its presentation; if the documents and objects are in the possession of one of the parties, the Board will warn that party that, if they are not produced, the facts that are being proven will be presumed to be true. If the documents and objects are in the possession of persons not involved in the controversy, the appropriate means of enforcement will be applied.'

"'Article 829. In the discharge of the inspection evidence, the following rules shall be observed:

"'I. The attorney, in the discharge of the evidence, will strictly adhere to what is ordered by the Board;

"'II. The actuary will require that the documents and objects to be inspected be made available to him;

"'III. The parties and their representatives may attend the inspection and make any objections or observations they deem relevant; and

"'IV. A detailed record will be drawn up of the proceedings, which will be signed by those involved in it and the

which will be added to the file, after consideration in the proceedings.'

"It should be noted that the inspection test, which in labor matters could also be called ocular inspection, is intended for the court to verify, through the official authorized to do so, facts that do not require special technical, scientific or artistic knowledge, that is, the existence of documents, things or places and their specific characteristics, perceptible through the senses. Hence its usefulness, especially in cases where the object to be inspected cannot be brought before the court.

"Having taken into account the above considerations, it is now possible to resolve one aspect of the subject matter of the contradiction, that is, the one referring to the scope of the warning issued by the Board in the event that the party does not produce the document on which the inspection must be carried out.

"In this regard, the criterion must be established that in the aforementioned hypothesis, the only consequence is to accept as true the fact asserted presumptively and unless there is proof to the contrary.

"Indeed, both article 805, which refers specifically to the documents that the employer has the obligation to keep and exhibit, and article 828, which refers in a generic way to the visual inspection, whether on documents or objects and which covers any of the parties if said things are in their possession, both precepts, it is reiterated, are in agreement in that in the event that the required and warned party does not exhibit them, the relative facts will be considered presumptively true.

"Therefore, the conclusion that the non-display of the document or object, by itself, constitutes full proof must be rejected, and the criterion that it is procedurally harmless must also be rejected, since in accordance with the indicated precepts, what it produces is a juris tantum presumption.

"On the other hand, in order to determine the manner in which the inspection evidence should be admitted, specifically with regard to the requirement and warning, it must be taken into consideration that articles 784, 804 and 805 of the Federal Labor Law are included in the chapter on the general rules of evidence, the first and last, in the specific provisions relating to documentary evidence. Thus, the regulatory principles of 784 govern all means of evidence provided for in the Federal Labor Law, while the last two only govern documentary evidence.

"It has already been indicated that the inspection proceeds on any object if it is related to any point in controversy, but it is relevant to resolve this contradiction, to make the following distinction regarding the object of the test:

"a) On the one hand, the documents referred to in article 804, which the employer has the obligation to keep and exhibit in court; and,

"b) On the other hand, all other documents not included in article 804 and laws to which it refers, as well as the objects (other than documents), all of which are governed by article 828, regarding the preparation of the inspection.

"In this regard, it should be noted that the obligation to provide evidence in this matter (paragraph a) is imposed by law on the employer, regardless of the capacity in which he/she participates in the process, that is, as plaintiff or defendant, since what is taken into account is his/her status as a dominant factor in the employment relationship, which from a procedural point of view translates, ordinarily, into the party that has in its possession the evidence of the employment relationship.

"Now, as can be seen from reading the second and third recitals of this resolution, the matters resolved by the Circuit Collegiate Courts whose contradictory criteria are analyzed in this resolution, dealt with the offer, by the plaintiff worker, of evidence of inspection of documents.

"For this reason, this Second Chamber will limit the analysis of this contradiction to the inspection evidence offered on documents, excluding other objects whose existence and characteristics are susceptible to being appreciated through the senses.

"Indeed, from the transcription made of the consideration part of the corresponding judgments, it is clear that, with regard to the direct amparo trial 2693/96, resolved by the Third Collegiate Court on Labor Matters of the First Circuit, the inspection offered by the actor dealt with the original biweekly pay receipts, to prove the salary of $300.00 (three hundred pesos 00/100 MN) daily that he claimed to receive during the year nineteen hundred and ninety-four.

"On the other hand, from the judgment issued by the Ninth Collegiate Court on Labor Matters of the First Circuit, in relation to direct amparo trial 6939/93, it is clear that the following documents were offered: individual employment contract, staff payroll, attendance controls, consumption notes for food, lodging, transportation, overtime, days of rest and mandatory days, vacations, Sunday and vacation bonus, Christmas bonus, 16.66% of days of rest and daily salary, profit sharing, affiliation and contributions to Infonavit with real salary, personal file of the worker, books and documents of the defendant, exclusively in the items and entries concerning the worker.

"From the above it follows that the inspection concerned both documents that are related to the employer's obligation to provide evidence, as set out in articles 784 and 804 of the Federal Labor Law, and documents that the offeror's counterparty is not required to retain and which, therefore, are governed by article 828 of the law under review.

"Now, in the case of the evidence mentioned in paragraph a), that is, those that the employer is obliged to keep and present in court, the Board, when preparing the inspection evidence offered by the worker, must require the employer to present them, noting that failure to do so will be deemed to be presumed true, unless proven otherwise; a procedure that conforms to the preceding considerations supported by articles 784, 804 and 805 of the Federal Labor Law, from which it can be inferred that, in principle, the documents exist and are in the employer's possession.

"This assumption of legal presumption of the existence of a document in the possession of one of the parties, which justifies the warning to consider the facts to be proven as certain, in case of reluctance of the person obliged to present it, was already resolved by the previous Fourth Chamber of the Supreme Court of Justice of the Nation, on the occasion of the contradiction of theses that gave rise to jurisprudence 253, published on page 165 of the Appendix to the Judicial Weekly of the Federation 1917-1995, Volume V, Labor Matter, headed: 'INSPECTION, PROOF OF. ITS ADMISSION IS PROCEEDED TO DEMONSTRATE FACTS RELATED TO DOCUMENTS THAT THE EMPLOYER HAS A LEGAL OBLIGATION TO KEEP AND EXHIBIT IN COURT. From articles 784, 804 and 805 of the Federal Labor Law, it follows that the employer has certain burdens evidence and the obligation to keep and present in court various documents related to facts and services that arise with the existence, development and termination of the employment relationship. In addition, in the event of a dispute regarding any of the alleged points, if the employer fails to comply with this obligation, a sanction is generated against him, consisting of the fact that the facts alleged by the worker in his claim will be considered presumptively true, unless there is proof to the contrary. However, such omission does not prevent him from proving the disputed facts related to such documents, with some other element or means of proof that the law on the matter recognizes and admits, because it is not established in the precepts invoked, or in any other, the exclusivity of documentary evidence for the demonstration of these facts, since the aforementioned sanction is not absolute, since it does not imply that these must be considered certain, but that there is the possibility of disproving them with another or other evidence, as the cited article 805 provides that the presumption derived from the non-presentation of the documents, admits evidence to the contrary, which means that not only with the documentary evidence can the employer prove his statement regarding the controversy that arises in relation to those that are derived from the documents that he has the obligation to keep and exhibit, but the law allows him to demonstrate what is appropriate with any other evidence that is suitable for the determined purpose, for example the inspection, which if offered must be admitted and, therefore, granted the probative value that corresponds to it. Otherwise,

"This would limit, to the detriment of the offering party, the right to prove in court the facts that it alleges in defense of its interests, by not allowing it to present one of the elements of proof that the law on the matter itself recognizes as valid. Consequently, the criterion upheld in the jurisprudence published under number 1730, on page 2778, Second Part of the Appendix to the Judicial Weekly of the Federation 1917-1988, whose heading is: 'WAGES, PROOF OF INSPECTION OFFERED BY THE EMPLOYER, INAPPROPRIATE TO DEMONSTRATE THE AMOUNT OF THE.'"

"However, in the case mentioned in section b), there is no justification for the Board to warn the counterparty of the offeror, even if the warned party is the employer, by considering the facts as certain, unless there is even an indication that the document is in its possession, because the law does not require the preservation, nor even presume, the existence of documents referring to these concepts.

"At this point, it is necessary to analyze the transcribed article 828, to note that its sound interpretation does not establish anything contrary to what has been noted up to here.

"The aforementioned paragraph establishes the following condition: '... if the documents and objects are in the possession of any of the parties, the Board will warn them that, if they are not produced, the facts that are being proven will be presumed to be true...'

"Indeed, the wording of the article imposes on the Board of Knowledge the duty to warn the party obliged to exhibit the documents and objects subject to inspection, but it must be understood, based on the reasoned, logical and systematic interpretation of the law, that this should not be done indiscriminately, but only when there are at least indications that, in fact, the 'documents are in the possession' of that party, because if this is not the case, there is not even a justification for warning the facts to be presumed to be true.

"The opposite of this interpretation, that is, to consider that in all cases governed by article 828 it is appropriate to warn that the facts asserted have been presumptively proven, due to the non-exhibition of the documentary evidence subject to inspection, would lead to unhealthy practices by the offeror, such as stating that a document that does not really exist is in the possession of its counterparty, causing it to be considered true, even presumptively, because it is not exhibited, despite this being due to a legal or material impossibility.

"However, it is not contrary to logic to limit the legal warning to cases in which a preliminary analysis of the terms in which the evidence is offered shows that the determining fact is that the objects or documents to be inspected are in the possession of one of the parties, which acquires particular relevance in cases in which the legal presumption of the existence of the document is regulated.

"From all of the above, it follows not only the usefulness, but also the necessity of distinguishing the subject matter of the inspection, in order to conclude in which cases, which are those limitedly established by law, the obligation to provide evidence is present and in which cases it is not, because the type of warning in the event that the corresponding party does not produce the document will depend on such distinction.

"Therefore, it must be concluded in this section that the practice of the Board, when preparing the inspection evidence, limiting itself to establishing in a uniform manner that it admits it 'without prejudging the existence of the documents that form the basis of the diligence', is legally incorrect, when the Federal Labor Law imposes on it the obligation to take into account the various hypotheses that may arise, in order to give each of them the treatment it deserves.

"Finally, as a corollary of the above, it should be noted that it is impossible to establish in advance or a priori, whether a flawed action by the Board, such as the practice indicated, constitutes a violation of the procedure established by article 159 of the Law.
Regulation of Articles 103 and 107 of the Constitution, which merits the granting of protection in order to reinstate the procedure; this is because constitutional protection will depend on the particular case examined and, above all, on the significance that the indicated violation has on

the meaning of the award, as established by the then Fourth Chamber of this Supreme Court, in thesis 540 (1995 compilation, Volume VI), which states:

'"VIOLATIONS COMMITTED DURING THE SEQUEL OF THE PROCEDURE, A REQUIREMENT TO GRANT PROTECTION FOR. In order to grant protection for violations committed during the sequel of the procedure, it is necessary that they transcend the result of the ruling, since otherwise it would be pointless to grant the protection of the Federal Justice to repair the violation, when such repair cannot produce the effect that the responsible party is able to change the meaning of the award.'..."

In addition to the thesis already transcribed, the following resolutions were also issued:

"INSPECTION OF DOCUMENTS IN LABOR MATTERS. THE WARNING TO THE PARTY WHO MUST SHOW THEM, MUST BE MADE TAKING INTO ACCOUNT THE TYPE OF DOCUMENTS AND THE PARTY WHO MAY HAVE THEM IN ITS POSSESSION. In order to determine the appropriateness of the warning provided for in article 828 of the Federal Labor Law, the following situations must be distinguished: a) If it is a matter of documents provided for in article 804, which the employer has the obligation to keep and exhibit in court; and b) If it is to deal with any other documents not included in article 804 and laws to which it refers. In the first case, the obligation to provide evidence is imposed by law on the employer regardless of the character in which he/she participates in the process. Therefore, when dealing with this type of documents, the labor authority, when preparing the inspection evidence, must require the employer to exhibit them, warning that if he/she does not do so, the fact will be considered as presumably true, unless proven otherwise, a procedure that conforms to the principles that govern the obligation to provide evidence, derived from articles 784, 804 and 805 of the law itself, from which it is inferred, in principle, that the documents exist and are in the possession of the employer. On the other hand, the warning is not justified in the case mentioned in section b), even when the obligated party is the employer, unless there is, at least, an indication that the obligated party has the document in its possession, because the law does not require the preservation, or even presume, of the existence of documents such as those noted. Therefore, it must be understood based on the reasoned, logical and systematic interpretation of the law, which imposes on the authority of knowledge the duty to formulate the warning in question, not indiscriminately, but conditioned on there being indications that the documents to be inspected are in the possession of the party obligated to produce them; Otherwise, there is no justification for warning that the facts to be proven must be presumed to be true, so as not to encourage unhealthy practices by the offeror, such as stating that the counterparty has a document in its possession that does not really exist, with the aim of having it be considered true, even presumptively, by not being exhibited, even though this is due to a legal or material impossibility."

"INSPECTION OF DOCUMENTS IN LABOR MATTERS. THE PRACTICE OF ORDERING THEM TO BE PREPARED 'WITHOUT PREJUDGING THEIR EXISTENCE' IS LEGALLY INCORRECT AND MERITS THE GRANTING OF PROTECTION SO THAT THE PROCEDURE CAN BE RESTORED, IF THE VIOLATION GOES BEYOND THE MEANING OF THE AWARD. When the Federal Labor Law, in its article 828 states that '... if the documents and objects are in the possession of any of the parties, the Board will warn them that, if they are not produced, the facts that are being tried to be proven will be presumed to be true', it imposes on the labor authorities the obligation to take into consideration the various hypotheses on which the evidence may be based, in order to give each of them the treatment they deserve; hence, if indiscriminately, through the indicated formalism or some other of similar content, the Board orders the preparation of the evidence of inspection, it is appropriate to grant protection so that the procedure is reinstated, provided that this violation effectively transcends the meaning of the challenged award."

Now, it should be remembered that the point to be resolved in the present contradiction lies in determining whether, in a labor trial, the failure to issue a subsequent agreement expressly stating that the warning to consider the facts to be proven as true is effective, given the refusal to exhibit the documents required in the discharge of an inspection test, generates or not a procedural violation that must reinstate the procedure, or whether no agreement is required to be issued.

In what is of interest here, the execution of the transcribed contradiction 42/96, as regards what the offeror requests to be shown in an inspection, distinguishes between documents that the employer is obliged to keep (a), and documents other than this, as well as objects (b).

In the first case (a), when an inspection of this type of documents is admitted, the employer must be required to produce them, being warned that failure to do so will be deemed to be true, unless proven otherwise.

In the second (b), with respect to other types of documents, a warning will only be issued when there is even an indication that the employer has the document in his possession.

Assumption (a) is important here, since the present contradiction is limited to the inspection evidence regarding documents that the employer is obliged to keep (time sheets, personnel payrolls, receipts or vouchers for salaries or wages, attendance control cards, or documents necessary to prove overtime, Sunday bonus, Saturdays, Sundays and holidays worked).

Thus, it is worth highlighting the scope of the warning that failure to exhibit the documents in the discharge of the inspection evidence only generates, as a consequence, the fact asserted to be considered certain in a presumptive manner and unless proven otherwise, since it is a juris tantum presumption, so that, as the aforementioned judgment states, the practice of the Board, when preparing the inspection evidence, limiting itself to establishing in a uniform manner that it admits it "without prejudging the existence of the documents that are the basis of the diligence" is incorrect, by virtue of the fact that "it is impossible to establish in advance or a priori, if a flawed action by the Board, such as the practice indicated, constitutes a violation of the procedure established by article 159 of the Regulatory Law of Articles 103 and 107 of the Constitution, which merits the granting of protection in order to reinstate the procedure; this is because the constitutional protection will depend on the particular case examined and, above all, on the significance that the indicated violation has on the meaning of the award."

It should be remembered that Article 159 of the Amparo Law provides for the following as procedural violations in labor matters:

"Article 159. In trials before civil, administrative or labor courts, the laws of procedure shall be deemed to be violated and the plaintiff's defenses shall be affected:

"I. When he is not summoned to trial or is summoned in a manner other than that provided by law;

"II. When the complainant has been misrepresented or falsely represented in the trial in question;

"III. When the evidence that has been legally offered is not received, or when it is not received in accordance with the law;

"IV. When the complainant, his representative or attorney is declared to have illegally confessed;

"V. When an incident of nullity is resolved illegally;

"VI. When the terms or extensions to which he is entitled under the law are not granted;

"VII. When, through no fault of his or her own, evidence offered by other parties is received without his or her knowledge, with the exception of evidence in public instruments;

"VIII. When some documents or parts of the car are not shown to him so that he cannot make any arguments about them;

"IX. When the resources to which he is entitled under the law are rejected, with respect to provisions that affect substantial parts of the procedure that produce defenselessness,

agreement with the other sections of this same article;

"X. When the judicial, administrative or labor court continues the procedure after a jurisdiction has been promoted, or when the Judge, Magistrate or member of a labor court, impeded or challenged, continues to hear the trial, except in cases where the law expressly authorizes him to proceed;

"XI. In other cases analogous to those of the preceding sections, at the discretion of the Supreme Court of Justice or the Circuit Collegiate Courts, as appropriate."

Section III transcribed above speaks of the procedural violation consisting of not receiving evidence in accordance with the law; however, it must be clarified that the violations committed in the trial, in order to merit the reinstatement of the procedure if the protection is granted, must affect the defenses of the complainant or transcend the result of the ruling, as expressed in article 158 of the same Law.
Regulation of Articles 103 and 107 of the United States Political Constitution
Mexicans, who says:

"Article 158. The direct amparo trial is the responsibility of the corresponding Circuit Collegiate Court, under the terms established by sections V and VI of article 107 of the constitution, and applies against final judgments or awards and resolutions that end the trial, issued by judicial, administrative or labor courts, for which no ordinary appeal is available by which they may be modified or revoked, whether the violation is committed in them or, committed during the procedure, affects the defenses of the complainant, transcending the result of the judgment, and for violations of guarantees committed in the judgments, awards or resolutions indicated.

"For the purposes of this article, direct amparo proceedings shall only be admissible against final judgments or awards and resolutions that end the trial, issued by civil, administrative or labor courts, when they are contrary to the letter of the law applicable to the case, to its legal interpretation or to the general principles of law in the absence of applicable law, when they include actions, exceptions or things that have not been the subject of the trial, or when they do not include all of them, due to omission or express denial.

"When questions arise in the trial, which are not impossible to repair, regarding the constitutionality of laws, international treaties or regulations, they may only be asserted in the direct protection that is appropriate against the final judgment, award or resolution that ends the trial."

In relation to the case analysed here, based on the content of the precedent of this Second Chamber cited, when the documents that the employer is obliged to present in the labour trial are not exhibited during an inspection, only the presumption iuris tantum will be generated as a consequence of the warning made when admitting said evidence, of having as true what was intended to be proven, unless there is proof to the contrary; that is, it will or will not have full value, depending on the other evidence in the respective file, which can only be reflected in the award.

Consequently, it is not necessarily required that the Board issue an agreement after the inspection of documents that the employer is required to keep, in which, in the absence of their presentation, the warning to consider the facts that are intended to be proven as true is made effective, because in addition to the fact that this is not required by the Federal Labor Law, the legal consequence generated "unless proven otherwise" can only be analyzed when the award is issued, in accordance with the evidentiary body existing in the trial, which in this case would only generate a violation in judicando, provided for in the final part of the first paragraph of article 158 of the Amparo Law, and not a violation of procedure, as indicated in numeral 159 of the same ordinance, much less can it be said that the omission of issuing an agreement in these terms transcends the result of the ruling or affects the defenses of the complainant.

Thus, as explained in this recital, the criterion adopted by this Court must prevail.

Second Chamber, coinciding with that of the Second Collegiate Court of the Twentieth Circuit, which in accordance with the provisions of article 195 of the Amparo Law, must govern with jurisprudential character, in the following terms:

When the Board admits evidence of inspection of documents that the employer is required to keep, it must require the employer to produce them on the date set for their presentation, warning the employer, based on article 828 of the Federal Labor Law, that if they are not presented, the facts that are intended to be proven will be presumed to be true, unless there is evidence to the contrary.
Now, since it is a presumption iuris tantum of having as certain what was intended to be proven, if such documents are not exhibited, this will have value depending on the other evidence in the respective file, which can only be reflected in the award and, consequently, it is not necessarily required that the Board issue an agreement after the inspection is carried out in which the aforementioned warning is made effective, because in addition to the fact that this is not required by the Federal Labor Law, the legal consequence that would be updated would only generate a violation in judicando, but not to the procedure, since the omission of issuing an agreement in those terms does not transcend the result of the ruling nor affect the defenses of the complainant.

For the reasons stated above, it is resolved:

FIRST.-There is a contradiction of theses indicated in the fourth consideration of this resolution.

SECOND.-The criteria of this Second Chamber, coinciding with that of the Second Collegiate Court of the Twentieth Circuit, which is mentioned in the final part of the fifth recital of this judgment, must prevail as jurisprudence.

Notify and forward the jurisprudential thesis referred to in the second resolution point of this judgment to the Plenary and the First Chamber of the Supreme Court of Justice of the Nation, and to the Collegiate Courts that did not intervene in the contradiction, as well as to the Judicial Weekly of the Federation and its Official Gazette; send a copy of this judgment to the Collegiate Courts from which the contradiction arose, and file the case when appropriate.

This was resolved by the Second Chamber of the Supreme Court of Justice of the Nation, by a unanimous vote of five of the Ministers: Margarita Beatriz Luna Ramos, Genaro David Góngora Pimentel, Sergio Salvador Aguirre Anguiano, Guillermo I. Ortiz Mayagoitia and president and rapporteur Juan Díaz Romero.

Note: The theses under the headings: "INSPECTION OF DOCUMENTS IN LABOR MATTERS. THE WARNING TO THE PARTY WHO MUST SHOW THEM MUST BE MADE TAKING INTO ACCOUNT THE KIND OF DOCUMENTS AND THE PARTY THAT MAY HAVE THEM IN ITS POSSESSION." and "INSPECTION OF DOCUMENTS IN LABOR MATTERS. THE PRACTICE OF ORDERING THEM TO BE PREPARED 'WITHOUT PREJUDGING AS TO THEIR EXISTENCE' IS LEGALLY INCORRECT AND MERITS THE GRANTING OF PROTECTION SO THAT THE PROCEDURE CAN BE RESTORED, IF THE VIOLATION GOES BEYOND THE MEANING OF THE AWARD.", cited in this judgment, appear published in the Judicial Weekly of the Federation and its Official Gazette, Ninth Period, Volume V, May 1997, pages 284 and 307, respectively.

TITLE:

...CONTRADICTION OF THESIS 70/2004-SS. BETWEEN THOSE SUPPORTED BY THE SECOND COLLEGIATE COURT OF THE TWENTIETH CIRCUIT AND THE THIRD COLLEGIATE COURT ON LABOR MATTERS OF THE FIRST CIRCUIT. CONSIDERING: THIRD. In order to verify the existence of the reported contradiction, the following are made...