Language as evidence in workplace harassment

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1 Introduction[1]

1   Workplace harassment refers to a systematic succession of acts of hostile and unethical communication that one or more perpetrators direct against a target (or targets) over a significant period (Leymann, 1990). According to Duffy and Sperry (2007), workplace harassment is 'designed to secure the removal from the organisation of the one who is targeted' (p. 398). Alternatively, perpetrators of workplace harassment may aim to cause harm to the moral integrity of a target through humiliation, degradation, discrediting, and social ostracism (Gamian-Wilk & Madeja-Bien, 2018). Workplace harassment is a 'communicative phenomenon that is talked into being' (Lutgen-Sandvik & Tracy, 2012, p. 16). Moreover, it is related to acts of verbal discrimination (Stollznow, 2017), such as insults, verbal abuse, threats, defamation, and explosive outbursts whose intensity, frequency, and duration are used as measures to quantify the degree of its severity.

2   From the above it follows that workplace harassment is an ideal object of study for forensic linguistics—a discipline that analyses language as evidence or in evidence. Paradoxically, as discussed in section 2 below, the abundant amount of literature on workplace harassment comes primarily from the social sciences. Moreover, scientifically dedicated linguistic research into workplace harassment has yet to be done. In this paper, we claim that linguistic theory and methodology can play a supporting role in the task of documenting evidence in cases of workplace harassment. The pragmatic turn in linguistics has, in effect, opened the door to the analysis of offensive language (Culpeper, 2011), and forensic linguistic research into language crimes, such as, for instance, defamation (Tiersma, 1987; Shuy, 2010; and Guillén-Nieto, 2020), solicitation, conspiracy, perjury, threat, and bribery (Tiersma & Solan, 2012). One significant problem in the task of arguing cases of workplace harassment before

administrators or a court of law is their discontinuous structure—i.e., the crime is committed by one or more perpetrators through a succession of acts of hostile and unethical communication that are not adjacent in time and space, and can be prolonged over time. We aim to show that the application of genre theory (Bakhtin, 1986; Biber & Conrad, 2009) to the analysis of cases of workplace harassment can help demonstrate that rather than a succession of discontinuous elements, workplace harassment is, in fact, a unified text that obeys a strategic plan in pursuit of a final malicious purpose.[2] We hypothesise that there is a relationship of dependence between the micro-acts of aggression perpetrators direct against a target and their super-goal—e.g., to remove the target from the organisation, to condemn the target to social ostracism, or to nullify the target's dignity (Namie & Namie, 2009). Furthermore, we ask the following questions: Can we categorise workplace harassment as a genre of communication? If so, what are its generic features? Can the identification of the generic features of workplace harassment assist in the task of making the crime visible in the eyes of administrators or the courts of justice?

3   The paper is structured as follows: First, we offer a state-of-the-art review on harassment at the same time we draw attention to the lack of scientifically dedicated linguistic studies in the field. Second, we explain the problem workplace harassment poses to lawyers when they try to sustain their cases with strong evidence before administrators or in a court of law. Third, we propose genre theory as a linguistic tool for the analysis of the form and content of harassment. Fourth, we discuss in detail the challenges harassment poses to genre theory and suggest solutions to make the new data that harassment provides compatible with the theory. Lastly, we demonstrate how genre theory can help achieve an improved understanding of the form and content of a suspicious episode of workplace mobbing.

2. State of the art

4   In the sections that follow we provide a state-of-the-art review of the most relevant stages in the study of harassment. We begin with pioneering research in the 1960s and move through the intervening decades to the present.

2.1 The 1960s and 1970s: The conceptualisation of harassment as a social phenomenon

5   Before the 1960s, the social phenomenon of harassment was nameless, a reflection of the fact that the concept did not exist in the public or legal mind. The 1960s and 1970s gave us the term *mobbing. Mobbing* was initially used by Lorenz (1965), an Austrian ethologist, to describe animal survival instinct behaviour where some predators gang up on stronger predators to scare them away. The action of birds is the most commonly used example of mobbing in the animal world, though it exists in a wide range of animal species. Animal mobbing is highly confrontational and an overt social process aimed at the removal of a threat. For example, when birds mob a perceived predator, one or two birds start by chasing after it. Soon afterwards more and more birds are attracted to the mobbing calls and participate in the mobbing of the predator. The endgame is the scaring off of the predator from their territory or its annihilation. Lorenz (1965) explained that mobbing in the animal world serves two functions: (a) to

scare away the more robust animal, and (b) to serve as intra-species education about where predators are and what to do to repulse them (Duffy & Sperry, 2012). Apart from mobbing in the animal world, Lorenz (1965) also described examples of mobbing in schoolchildren and soldiers. The term *mobbing* was rapidly adopted by Heinemann (1972), a Swedish school physician, to describe aggression in schoolchildren and group violence among adults. The latter phenomenon was named *bullying* by Olweus (1973), who feared that *mobbing*, with its specific grammatical reference to a group, was not an appropriate term for the action of an individual perpetrator. A few years later, Brodsky (1976) introduced the concept of the *harassed worker* in his comprehensive book on workplace harassment in the United States. With the research strands coming from different disciplines and different countries, especially Austria, Sweden, and the United States, researchers placed workplace mobbing, workplace bullying, and workplace harassment on the table as compelling areas for ongoing research and conceptualisation.

2.2 The 1980s and 1990s: Leymann's foundational work on workplace mobbing

6   Heinz Leymann, a German professor and practising psychologist, pioneered research into the phenomenon of *workplace mobbing* in the 1980s and 1990s, and laid the foundation for the current study of mobbing as workplace abuse. He used the term *mobbing* to refer to a group of individuals uniting to persecute a target in the workplace. Leymann's initial research in the area drew on detailed case studies of nurses who had committed or had tried to commit suicide because of events in the workplace (Leymann, 1990, 1996; Leymann & Gustafsson, 1996). Owing to Leymann's research, we know the five phases of a mobbing episode:

7   1) The initial conflict phase: A situation, event, or difference of opinion becomes the catalyst for mobbing.

8   2) The recruiting phase: Other workers, who can be either conscious or unconscious collaborators, are recruited into the mobbing. Then perpetrators direct abusive behaviour against the target for purposes of demeaning him or her.

9   3) The critical phase: Administrators enter into the mobbing episode when the target asks for help.

10 4) The revictimisation phase: Administrators align themselves with perpetrators, considering the target difficult, unstable, under extreme stress, or mentally ill.

11 5) The expulsion phase: The target is socially excluded, either proactively by an executive or through constructive dismissal, because leaving the organisation is the only choice available to preserve health.

12 Furthermore, Leymann (1996) provided the first methodical study of the social problem of mobbing through the analysis of several hundred critical-incident interviews with victims of mobbing in Sweden between 1981 and 1984. From this work came a description of the effects experienced by mobbing targets that served as a basis for LIPT-45 (Leymann Inventory of Psychological Terror). This questionnaire has been a source of inspiration for most quantitative investigation in the field and for the design of later questionnaires, such as LIPT-60 (González de Rivera Revuelta & Rodríguez-Abuín, 2005). As its name suggests, LIPT-45 lists 45 mobbing actions in the workplace. A

person could be considered a victim of mobbing when he or she experiences at least one mobbing action over the course of one year. Current definitions of mobbing ask for more than one frequent mobbing action and allow for shorter periods of half a year (González de Rivera Revuelta & Rodríguez-Abuín, 2005). The effects of the actions on the target victim fall into five significant categories:

13   1) Effects on self-expression and communication—e.g., perpetrators continuously interrupt, criticise, or yell at the target.

14   2) Effects on social contacts—e.g., perpetrators do not allow colleagues and coworkers to talk with the target.

15   3) Effects on personal reputation—e.g., perpetrators spread unfounded rumours about the target.

16   4) Effects on working conditions—e.g., perpetrators give the target meaningless jobs or tasks that affect self-esteem.

17   5) Effects on physical health—e.g., perpetrators threaten the target with physical violence, damage to the workplace, or outright sexual harassment.

18   Leymann (1990, p. 125) also attracted attention to the way organisations typically manage targets' resilience by reframing them as difficult or unstable, and frequently imposing punitive psychiatric evaluations on them. Since Leymann (1990) published his groundbreaking article on mobbing in the United States, many researchers have extensively documented the phenomenon in the fields of evolutionary and social psychology, sociology, and organisational communication research. Among researchers in the United States who have built on Leymann's foundational work on mobbing is Westhues (1998, 2004, 2006), who led the way to research on mobbing in academe in his many publications devoted to the topic. Similarly, Leymann's work also inspired research in other parts of the world. For instance, in France, Hirigoyen (1998) raised scientific and social awareness on the phenomenon of workplace mobbing, which she named *harcèlement moral au travail* ('workplace moral harassment'). In Germany, Zapf, Knorz, and Kulla's work (1996) initially followed Leymann's in the use of the term *mobbing*, but later switched to *workplace bullying*. Researchers in the United Kingdom (Adams, 1992) and Ireland (O'Moore, Seigne, McGuire, & Smith, 1998), among others, adopted the term *workplace bullying*. By the end of the 1990s, workplace mobbing began to be addressed by North American scholars as *workplace violence*, *workplace aggression*, *psychological abuse* (Baron & Neuman, 1998), and *emotional abuse* (Keashley, 1997) for the purposes of differentiating nonphysical forms of workplace abuse from physical violence.

2.3 The 2000s: The expansion of research on workplace mobbing

19   The 2000s have seen the growth of research on mobbing in academe. Some relevant examples are the work by López-Cabarcos and Vázquez Rodríguez (2006) on mobbing in Spanish public universities, and the work by McKay, Huberman, Fratzl and Thomas (2008) on workplace bullying at a Canadian university. Additionally, some exciting contributions have emanated from the field of law such as Coleman's (2006) contrastive analysis of European and American anti-harassment regulations and prevention measures. Lastly, we should point to the works in the field of critical discourse analysis: Mumby and Clair (1997), Lutgen-Sandvik and Tracy (2012), and Dick (2013) have

contributed to an improved understanding of how workplace harassment is embedded in a discourse of power in organisations.

20   Upon reviewing the extensive literature on harassment, one major weakness stands out. Although harassment is well documented in social sciences, there is a lack of micro language studies of workplace harassment, despite its being a crime perpetrated primarily through the use of malicious language.

3. Workplace harassment as a legal problem

21   Article 31 of the Charter of Fundamental Rights of the European Union provides the source of community-wide action against workplace harassment:

> Every worker has the right to working conditions which respect his health, safety and dignity. (Charter of Fundamental Rights of the European Union, Chapter IV Solidarity, Article 31 Fair and just working conditions. *Official Journal of the European Communities*, 2000/C 364/16).

22   The European Union has already taken a stand against workplace harassment through resolutions such as the European Parliament Resolution on Workplace Harassment (2001/2339) (INI). This resolution referred to the findings of a survey made by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) in 2000:

23   Whereas, according to a survey of 21,500 workers carried out by the European Foundation for the Improvement of Living and Working Conditions (Dublin Foundation), 8% of the workforce in the EU, which is equivalent to 12 million people, state that over the last 12 months they have been subject to bullying at work, and whereas this figure can be assumed to constitute substantial under-reporting. (10. Harassment at the workplace, A5-0283/2001. European resolution in harassment at the workplace [2001/2339 (INI)]. *Official Journal of the European Communities*, C77E /138. 28 March 2002).

24   Not only did the resolution above draw attention to the significance of harassment in the workplace as a social scourge in modern democratic societies, but it also urged the European Commission to discover effective ways to combat the problem. The European Commission, in its statement of 2 July 2002,[3] *On the social responsibility of companies*, also recommended the adoption, transfer, and implementation of the so-called codes of conduct on workers' rights, human rights, and environmental protection. According to the European Risk Observatory Report, *Workplace violence and harassment: A European picture* (Milczarek & European Agency for Safety and Health at Work, EU-OSHA, 2010), all community states must deal with the regulation of workplace harassment as a top priority. Consequently, the law in each member state should provide, among other things, an exact definition of workplace harassment, norms for its prevention, and legal procedures for resolving workplace conflicts that affect interpersonal relations in the workplace, as well as regulate the burden of proof in this context. For instance, in Spain, a civil law jurisdiction, harassment relates to different criminal offences under the reformed text of the Spanish Penal Code (LO 1/2015, 30 March). Specifically, harassment is considered a crime against liberty—i.e., Title VI, Crimes against liberty; Chapter III, Coercion, Art. 172er. Stalking; and a crime against moral integrity—i.e., Title VII. Tortures and other crimes against moral integrity, Art. 173. Harassment, and Art. 184. Sexual harassment. On the other hand, harassment can also be considered an

actionable offence in common law jurisdictions. In the United States, for example, harassment is governed by state laws that vary by state. It is commonly defined as a course of conduct that annoys, threatens, intimidates, alarms, or puts a person in fear for their safety.[4] Moreover, it is considered a class B misdemeanour.

25   Even though workplace harassment can be an actionable offence in both civil law and common law jurisdictions, we know from experience that it is complicated to document evidence in cases of workplace harassment before administrators or in court. The reasons for this problem are varied: Workplace harassment has some idiosyncratic characteristics, such as its indirectness (Stein, in this volume). Typically, the professional discourse of the workplace masks harassment. In other words, perpetrators often disguise harassment under the false appearance of restructuring policies, corporate strategies, managerial methods, professional genres of communication, or even norms. As a result, targets do not recognise the discourse of workplace harassment until it is too late to prevent damage to their moral integrity (Keashly, 2001).When the diagnosis of workplace harassment finally comes, victims are often reluctant to report it to the hierarchy at work or to sue perpetrators because of shame, fear of not being believed, fear of retaliation, or lack of trust in the organisation or court verdict (Lutgen-Sandvik & Tracy, 2012; Scarduzio & Geist-Martin, 2010). When victims finally dare to report it, arguing harassment before administrators or in a court of justice is not an easy task (Guillén-Nieto, 2021) because unlike other crimes, harassment leaves no apparent trace in the victim (Dick, 2013). However, the effects of harassment can be so devastating that they may even lead to the victim's suicide (cf. Leyman, 1990, 1996; Leymann & Gustafsson, 1996).

26   The case of the telecommunications giant France Telecom is a recent example of the distressing effects workplace harassment can have on targets. In 2019, media outlets were reporting on moral harassment leading to employee suicides in the company (*CBS News*, 2019; *France-Soir*, 2019; Kostov, 2019; Taix & Montesse, 2019; Vandoorne & Ziady, 2019). France Telecom, as a legal entity, and three of its managers were tried and criminally convicted for moral harassment by the Tribunal Correctionnel de Paris on 20 December 2019 (*Résumé du délibéré sur France Télécom*, 2019).[5] At the heart of the trial was the 2007–2010 period in which France Telecom had to undergo radical restructuring because of privatisation and increased competition on the world market. The purpose was to slash the company's staff by supporting twenty-two thousand forced departures in three years (*Résumé du délibéré sur France Télécom*, 2019). Top-level executives put pressure on the employees to leave. However, the situation got out of hand when the corporate strategy resulted in a string of employee suicides. Since the deaths encouraged demands for action against moral harassment, some of the victims sued three executives of France Telecom. The critical question for the court to deliberate was whether the defendants had implemented a company policy aimed at destabilising employees and creating an anxiety-provoking professional climate (*Résumé du délibéré sur France Télécom*, 2019). At the trial, the plaintiffs had to demonstrate that there was moral harassment on the grounds of three conditions:

27   1) Harassment was the result of a structured corporate policy.

28   2) The acts performed by the defendants were conducive to degradation.

29   3) The executives abused their power. (*Résumé du délibéré sur France Télécom*, 2019)

30   The Tribunal Correctionnel de Paris finally established that three top-level executives of France Telecom had used prohibited means to force the employees to leave, such as

forced functional or geographical transfers, reductions in salary, repeated emails urging employees to leave, and worsening working conditions, among other actions. The judgment on France Telecom has established a legal precedent because it is the first ruling of its kind against a renowned French company, clearing the path for future cases of workplace harassment. It also breaks new ground because the ruling expands the definition of workplace harassment to include corporate policies and management methods aimed at creating an anxiety-provoking professional climate that pushes employees into depression and suicide.

4. The challenges workplace harassment poses as a linguistic object of study

31   Pragmatic theories have tended to address language as cooperative action, geared towards reciprocally informative polite understanding. Because of this idealised understanding of people's use of language, harmful types of discourse against social, moral, and legal norms such as harassment, defamation, and hate speech, have been considered marginal objects of linguistic study. Typically, offensive language has been portrayed as unusual, anomalous, or deviant when it is, in effect, more common in everyday language than one might think.

4.1 The conceptualisation of harassment as a genre of communication

32   Harassment can be considered an umbrella term for a wide range of behaviours of an offensive nature that have the purpose of nullifying or impairing a person's right to dignity. Any type of harassing behaviour exhibits a recognised form of communication —that is, it consists of a succession of acts of hostile and unethical communication that one or more perpetrators direct against a target (or targets) for malicious purposes over a significant period (Leymann, 1990). Drawing on Bhatia's (2004, 2012) concept of super-genre, we propose categorising harassment as a super-genre because of its highly stable communicative functions. As a super-genre, harassment encompasses a constellation of closely related sub-genres of negative communication that can take place individually or in combination with each other. We here propose five functional criteria for the classification of the different sub-genres of harassment:

33   1) The locus in which the offence takes place. According to this criterion, harassment can take place in private life (among family and friends) or public life (in a workplace, social network, or blog, among other possibilities).

34   2) The number of perpetrators who participate in the act of harassment. According to this criterion, harassment can be of two types: mobbing (carried out by a group of perpetrators) or bullying (done by only one perpetrator).

35   3)The power relationship that exists between perpetrators and the target. According to this criterion, harassment can be vertical (from superior to subordinate or from subordinate to superior), horizontal (between peers), or mixed (involving a combination of both vertical and horizontal types of harassment).

36   4) The identity of the target. According to this criterion, harassment can be discriminatory (the target belongs to a protected class—based on gender, age, race,

disability, or religion, among others) or nondiscriminatory (the target does not belong to a protected class).

38   5) The mode of expression of the act of harassment. According to this criterion, harassment can be verbal, physical, psychological, or sexual—e.g., quid pro quo, sexting, and stalking—or cyber-harassment—e.g., cyberbullying and flaming.

38   Now that harassment has been categorised as a super-genre encompassing a constellation of closely related sub-genres of communication, we move on to consider the significant challenges the discourse of harassment poses to genre theory in the next subsections. Specifically, harassment challenges the three conceptual pillars sustaining the theory: (1) genre as social action, (2) the shared goals of the participants in the speech event, and (3) text cohesion.

4.1.1 Genre as social action

39   Carolyn Miller (1984) defines *communication genre* as 'a social construct and social action providing the writer with a socially recognisable way to make his or her intentions known' (pp. 157–158). In other words, a communication genre is a socially agreed upon and recognised form of communication that a group of people has developed over time to communicate more appropriately and efficiently with one another. If we consider harassment a genre of communication, we can argue that it challenges Miller's canonical definition because it is a malicious instrument that enacts and expresses power abuse, social inequality and dominance. That is to say, perpetrators use it to satisfy their own interests to the detriment of the victim's rights and interests. In an attempt to make harassment compatible with Miller's definition, we suggest considering harassment a super-genre of negative communication that provides perpetrators with a socially recognisable way to achieve their communicative purposes—e.g., to nullify or impair a person's right to dignity. It is important to note that it is frequently only after the fact that the social action becomes known to the victim.

4.1.2 The shared goals of the participants in the speech event

40   Genres enable people in the same working field or the same social context to have shared goals in communication. Swales (1990) describes a genre as follows:

41   A genre comprises a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognised by the expert members of the parent discourse community and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains the choice of content and style. (p. 58)

42   From the above quote, we infer that genres have distinctive sets of linguistic forms or markers that differentiate them from other genres and even differentiate sub-types of genres. However, harassment challenges this conceptual pillar supporting the theory of genre in that the communicative purposes of the participants in the speech event are either divergent or conflicting rather than shared. More specifically, perpetrators of workplace harassment seem to have shared knowledge about the way language must be structured to achieve their communicative purposes. However, typically victims need time to understand the perpetrators' harmful intention and by the time they finally do,

it is already too late to prevent the harassment from having devastating effects on their lives (cf. Dick, 2013).

4.1.3 Text cohesion

43 In any traditional notion of a text, one presupposes temporal and spatial integrity or at least proximity. As mentioned earlier, workplace harassment consists of a succession of acts of hostile and unethical communication that one or a few perpetrators maliciously direct against a target over a significant period. The discontinuity of the acts that features the discourse of harassment poses a challenge to the traditional concept of text cohesion—i.e., the grammatical and lexical linking within a text that holds it together and gives it meaning. In *Cohesion in English*, Halliday and Hasan (1976) identified several cohesive devices that build coherence in texts: repetition, referencing, substitution, and ellipsis. The pragmatic turn in linguistics has opened the door to new conceptual space for treating speech events of greater complexity, including those that are nonadjacent in spatial and temporal terms, such as computer-mediated communication (Giltrow & Stein, 2009; Giltrow, 2013). As a result, we now understand that cohesive devices can also work at a discourse level with speech acts rather than words:

44 1) Repetition: The same speech act can be repeated.

45 2) Referencing: Speech acts can anticipate or refer to other speech acts.

46 3) Substitution: Speech acts can be substituted for other speech acts.

47 4) Ellipsis: Speech acts can be unspoken when they are able to be inferred from contextual cues.

48 One can recognise texts of the same genre because of the similar superstructure and macrostructure they exhibit. On the one hand, the superstructure refers to the schematic structure of a text—i.e., the expected, orderly, and continuous sequence of acts enabling the participants in the speech event to recognise the genre and the social instrument of communication, and make predictions about the meaning conveyed through it. Workplace harassment poses a significant challenge to linguistic analysis because of the discontinuous sequence of acts of hostile communication that perpetrators direct against a target over a significant period. Typically, the sequence of malicious acts destabilise the target and create an anxiety-provoking climate of which perpetrators take advantage.

49 On the other hand, the macrostructure refers to the global meaning of a text conveyed by its topics and themes. In this line of thought, De Beaugrande and Dressler (1996) refer to the meaning of discourse as 'continuity of senses'. Liao and Sun (2017) provide another view of meaning when they explain it as a hierarchical system of interrelated goals: super-goals, macro-goals, and micro-goals. We find that Liao and Sun's view helps us understand that the unity of meaning of an episode of harassment can be assessed only by whether its superstructure, which typically consists of a discontinuous sequence of speech acts, is related to the super-goal pursued by perpetrators. The achievement of the super-goal involves the successful performance of two acts:

50 1) A directive ('to harass somebody')—a complex illocutionary act driven by want, wish, or desire for the target to do some future action; and

51 2) A perlocutionary act—the effect of the directive ('to harass') on the target

52   The super-goal provides harassment with a global meaning or macrostructure. Underneath the umbrella of the super-goal, the perpetrators may pursue other sub-goals such as, for instance, ˈto humiliate the targetʹ, ˈto degrade the targetʹ, ˈto defame the targetʹ, ˈto demonise the targetʹ, among others. Only in retrospect can the victim become distinctly aware of the fact that the individual acts of hostile communication make sense when one interprets them as forming part of a unitary speech event.

5. A genre-based approach to workplace harassment

53   In this section, we propose a genre-based approach to analysing suspicious cases of workplace harassment. The approach consists of three steps:

54   1) Analysing the speech event

55   The speech event refers to the basic unit of interactive verbal behaviour that is socio-culturally driven by unspoken conventions or inner rules (Gumperz, 1990). The speech event is bound to a speech situation or social context of interaction, which includes the following typified categories, among others:

56   a) the participants and their social relations, whether of power or solidarity;

57   b) the physical setting of communication;

58   c) the purpose of communication;

59   d) the topics of conversation; and

60   e) the mode of communication, i.e., the channel, the register, and the tone.

61   The speech event activates a mental frame based on our previous experiences that sets out *structured expectations* (Tannen, 1993). We use these structured expectations as guidance for actions and interpretations in similar situations. In other words, a frame provides us with a baseline for the analysis and interpretation of the speech event. Deviations from the baseline, apart from breaking our sociocultural expectations, may also be considered trace evidence in forensic linguistic casework (Guillén-Nieto & Stein, forthcoming)—e.g., deviations may hint at workplace harassment embedded in organisational communication.

62   2) Determining the type of harassment

63   For purposes of classification, we will use the five criteria proposed in section 4.1.

64   3) Analysing text cohesion

65   The purpose of this step is to determine whether the discontinuous acts of hostile communication are independent from each other or, on the contrary, make up a unified text structure (superstructure) unveiling a strategic plan of action (macrostructure).

6. A genre-based approach to a suspicious case of workplace mobbing

66   The legal doctrine makes an essential distinction between workplace harassment and work conflict. Whereas in cases of workplace harassment, perpetrators intend to achieve a malicious purpose by causing the person moral damage, in cases of work

conflict, there may be a clash of opposing interests between two parties—e.g. between the executive and the worker or between coworkers. Despite the seemingly clear-cut difference between the two concepts, in practice, workplace harassment cases may be easily confused with work conflicts for three main reasons. First, workplace harassment is often mistaken for workplace conflicts relating to the arbitrary and abusive use of power. Second, an episode of workplace harassment may be triggered by a workplace conflict. Third, professional discourse often masks workplace harassment. Therefore, we argue that the discontinuous nature of workplace harassment makes it difficult for the victims to give a convincing account of the facts to administrators or a court of law (Keashly, 2001). In an endeavour to understand the traumatic experience they have gone through, victims often need to call for psychological help. When some subjects experience emotional trauma, their histories become inarticulate stories. Part of the psychological therapeutic process consists of having victims reconstruct the narratives of their traumatic experiences. Through these reconstructed narratives, psychotherapists can help victims come to grips with reality and overcome the adverse effects caused by abusive behaviour in the workplace (Dick, 2013; Lutgen-Sandvik, 2008). Apart from psychotherapists, lawyers also ask their clients to write an account of the facts to understand the case, which is sometimes the only piece of evidence available. Example 1 reproduces an excerpt[6] from a victim's written account. It is important to note that when the victim finally decided to sue the perpetrators—in this case the restaurant manager and his brother, she had already been fired and under psychological therapy for depression for months.

When the new manager took over, and his brother came, things began to change in the restaurant. Both of them were cooks. They asked me repeatedly to take care of cutting up the chickens, but I didn't do it because that was not my job. I was the cashier. I also had to serve meals to the customers when I was not at the cash register. I complained about it, and the boss said I had to serve meals but did not say anything about cutting up the chickens. One day the boss asked me to change my usual working schedule. I said no. When he realised I was not going to change it, he didn't insist on it anymore. I had a chair to sit down while I was working at the cash register When I came back from my holiday, there was no longer any chair. Under the pretext of having done some small reforms in the restaurant while I had been away, they had removed it. They said I shouldn't be sitting down when I was at the cash register dealing with customers. I didn't say anything. My workmates were all immigrants from Ecuador and Peru, so they would do whatever they were asked to do to keep their jobs. After a time, I realised they might have spread rumours against me among them, because all of a sudden nobody was willing to speak to me anymore. I felt totally isolated. Nobody counted with me or helped me. For example, when I ran out of change, they simply didn't take any notice. I realised the cooks had talked negatively about me to my fellow workers and made them believe I was a bad person. One of my workmates said once to me, 'We know who you are'. They told me that I had no right to say anything. If I asked them about something relating to the job, they would just make an obscene gesture and yell at me, 'Get lost!' (…)

Example 1. Excerpt from a victim's written account

67 The victim's written account gives the linguist access to the suspicious episode of workplace mobbing.[7] The excerpt contains language clues pointing to two phases of a workplace mobbing episode. Such clues can be analysed by linguists more accurately than by lawyers, for the simple reason that linguists, unlike lawyers, have expertise in

linguistics and the tools to analyse language (Ainsworth & Juola, 2019). Therefore, forensic linguists can help lawyers in interpreting the victim's written account, and offer them expert linguistic insights and recommendations. It is up to the lawyers to take it from there and use the linguistic findings in their legal reasoning. In the sections that follow, we demonstrate how a genre-based approach can help achieve an improved understanding of the form and content of a suspicious episode of workplace mobbing.

68   1) Analysing the speech event

69   Through the victim's written account, the linguist can access information about the speech situation framing the speech event. As depicted in Example 1, the speech situation relates to communication in the workplace (a restaurant) and the speech event to daily interactions between managers and employees. The participants in the speech event are the restaurant's manager, his brother, and the employees (the victim and her coworkers). Upon reading the text, our ˈstructured expectationsˈ (Tannen, 1993) about the speech event are broken. The victim presents the participants in two antagonistic blocks: 'They' (the restaurant manager and his brother) and 'I' (the victim). The restaurant manager and his brother seem to be abusing their institutionalised protected power over the victim. Specifically, they use offensive language and even yell at her ('If I asked them about something relating to the job, they would just make an obscene gesture and yell at me, "Get lost!"'); defame the target by spreading rumours against her (Guillén-Nieto, 2020) ('I realised they might have spread rumours against me among them, because all of a sudden nobody was willing to speak to me anymore'); or ask her to do things that are unrelated to her job as a cashier ('They asked me repeatedly to take care of cutting up the chickens, but I didn't do it because that was not my job. I was the cashier. I also had to serve meals to the customers when I was not at the cash register'). As the excerpt shows, the communicative purposes of the restaurant manager and his brother are unclear, their register is inappropriate for the standards of professional communication, and their tone is surprisingly hostile. Furthermore, we can observe that the victim shows capacity for resilience by refusing to do anything that does not comply with the social norms governing the speech event—e.g., to do tasks that are unrelated to her job as a cashier or have her work schedule changed for no good reason. Let us take, for instance, the following quote in which the victim's resilience is highlighted in bold type:

70   They asked me repeatedly to take care of cutting up the chickens, **but I didn't do it because that was not my job. I was the cashier**. I also had to serve meals to the customers when I was not at the cash register. **I complained about it**, and the boss said I had to serve meals but did not say anything about cutting up the chickens. One day the boss asked me to change my usual working schedule. **I said no.** When he realised **I was not going to change it**, he didn't insist on it anymore.

71   2) Determining the type of harassment

72   The case under study seems to involve ˈworkplace mobbingˈ (Leymann, 1990) exerted by the manager and his brother, and the target's coworkers, though these seem to be unconscious collaborators in the mobbing episode. Since the target is a woman, the case may also be considered ˈdiscriminatory harassmentˈ in some jurisdictions such as Spanish civil law in which women are considered members of a protected class (Organic Act 1/2004 of 28 December on Protection Measures against Gender Violence).[8] Besides,

the asymmetrical power relationship between the perpetrators (the manager and his brother) and the target (employee) may also be indicative of ˙vertical harassment'— that is, from superiors to a subordinate. However, since the perpetrators recruited other employees into the mobbing episode as unconscious collaborators, this may be a case of ˙mixed harassment'.

73 We can reasonably argue that due to the business restructuring the new management had in mind, a workplace conflict arose. The target refers to the emergence of work problems in these words: 'When the new manager took over, and his brother came, things began to change in the restaurant.' As earlier mentioned, an initial work conflict was categorised by Leymann (1990, 1996) as the first phase of a workplace mobbing episode. As in the case of France Telecom earlier discussed, here the perpetrators' super-goal was the removal of the target from the organisation. Extra-linguistic information about the case supports this assertion: The target was first forced into depression and finally fired.

74 To achieve their super-goal, the perpetrators must perform an act. According to Searle's (1975) classification of illocutionary acts, the act is a directive (˙We want you to leave the organisation'). Then the desired perlocutionary effect on the target is for her to leave the organisation. However, the perpetrators know that if they perform the directive directly and explicitly, the target would never leave the organisation for the simple reason that this would mean going against her rights and interests as a worker. Therefore, the perpetrators seek an alternative strategy to achieve the desired perlocutionary effect on the target: The directive must be performed indirectly and implicitly. Specifically, perpetrators must do acts that destabilise the target and create an anxiety-provoking professional climate that pushes her into depression and ultimately out of the organisation. In the case under discussion, the perpetrators recruited the target's coworkers as unconscious collaborators, as we can infer from the victim's statement: 'I realised the cooks had talked negatively about me to my workmates and made them believe I was a bad person. One of my workmates said once to me, "We know who you are"'. ˙Recruiting is, in effect, the second phase of a workplace mobbing episode identified by Leymann (1990, 1996). The reason why coworkers are recruited as unconscious collaborators is to subject the target to pressure. Furthermore, one can observe a succession of hostile acts of communication, nonadjacent in space and time, of very different nature, e.g., verbal, para-verbal, and nonverbal, directed against the target by the manager and his brother and coworkers over an extended period.

75 3) Analysing text cohesion

76 It is the task of the linguist to describe and explain the way the individual acts of hostile communication that perpetrators direct against the target over a significant period together form a unified text. To this end, genre theory can be employed as a working tool to bring the natural chaos of an episode of workplace mobbing into order. On taking a closer look at the excerpt of the victim's written account, one can infer that the individual acts to which she refers are not isolated acts, but instead make up a sequence of micro-acts of aggression (micro-directives) directed by various individuals (the restaurant manager and his brother, and coworkers) against the target. When the linguist places the different micro-acts together, they configure a macro-act of aggression—i.e., to harass the target (a macro-directive). The sequence of small-scale verbal and nonverbal attacks on the target (micro-directives) and the resulting macro-

act build the superstructure, or schematic structure, of the workplace mobbing text. As explained earlier, the unity of meaning of an episode of workplace harassment can be assessed only by whether the discontinuous individual acts of hostile communication that the perpetrators direct against the target are related to the super-goal—the overarching goal—that they pursue. This overarching goal provides a global meaning or macrostructure to the mobbing text. Figure 1 depicts the complex embedded structure of the workplace mobbing text.
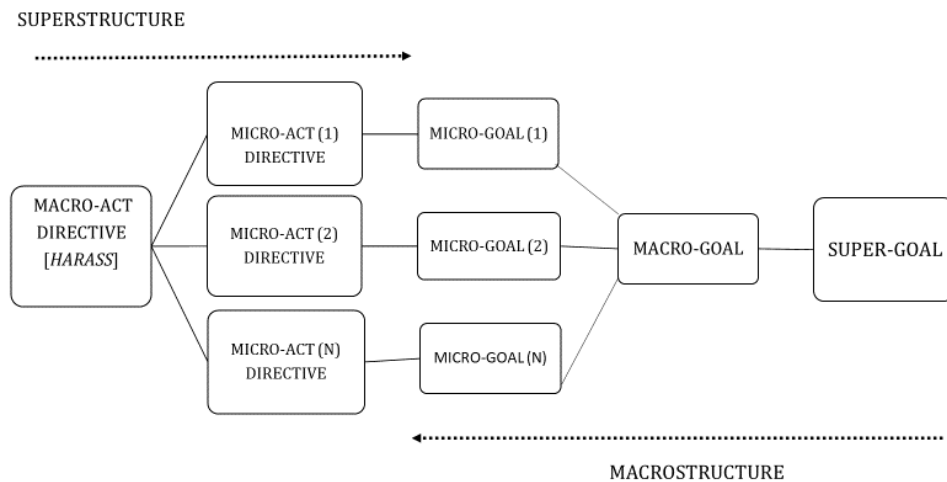

Fig. 1. The embedded structure of the workplace mobbing text.

77   In the case under analysis, harassment (macro-directive) is realised through different types of micro-acts of aggression (micro-directives) that indirectly support the super-goal:

78   1) Micro-directives aimed at humiliating the target. For example:

79   They told me that I had no right to say anything. [*Micro-directive*] If I asked them about something relating to the job, they would just make an obscene gesture and yell at me, 'Get lost!' [*Micro-directive*]

80   2) Micro-directives aimed at discriminating against the target, leading her to social ostracism (Gamian-Wilk & Madeja-Bien, 2018). For example:

81   All of a sudden nobody was willing to speak to me anymore. [*Micro-directive*] I felt totally isolated. Nobody counted with me or helped me. [*Micro-directive*] For example, when I ran out of change, they simply didn't take any notice. [*Micro-directive*]

82   3) Micro-directives aimed at defaming the target (Keashly, 2001). For example:

83   After a time, I realised they might have spread rumours against me among them. [*Micro-directive*] I realised the cooks had talked negatively about me to my fellow workers and made them believe I was a bad person. [*Micro-directive*] One of my workmates said once to me, 'We know who you are'. [*Micro-directive*]

84   4) Micro-directives aimed at degrading the target by assigning her tasks below her professional qualification. For example:

85   They asked me repeatedly to take care of cutting up the chickens. [*Micro-directive*] I also had to serve meals to the customers when I was not at the cash register. [*Micro-directive*]

86   5) Micro-directives aimed at putting pressure on the target. For example:

87   One day the boss asked me to change my usual working schedule. [*Micro-directive*] I said no. I had a chair to sit down while I was working at the cash register. When I came back from my holiday, there was no longer any chair. [*Micro-directive*]

88   Furthermore, the micro-acts of aggression form a unitary structure at a discourse level because they are linked through the following cohesive devices:

89   1) Repetition. The perpetrators repeat the same micro-act of aggression. For instance, 'They asked me repeatedly to take care of cutting up the chickens', 'When he realised I was not going to change it, he didn't insist on it anymore', and 'After a time, I realised they may have spread rumours against me among them'.

90   2) Referencing. Some micro-acts of aggression anticipate or refer back to other micro-acts of aggression. For example, the micro-act of aggression 'One of my workmates said once to me, "We know who you are"' refers back to another micro-act of aggression: 'I realised the cooks had talked negatively about me to my fellow workers and made them believe I was a bad person'.

91   3) Substitution. The perpetrators substitute one micro-act of aggression for another micro-act of aggression. For example, the micro-act degrading the target ('I also had to serve meals to the customers when I was not at the cash register') can be substituted for a micro-act defaming the target ('After a time, I realised they may have spread rumours against me among them') or by a micro-act discriminating against the target ('They told me that I had no right to say anything'). The substitution of one micro-act of aggression for another is possible because they have a unified meaning. In other words, they play a supporting role to the macro-act of harassing the target, as they destabilise the victim and create an anxiety-provoking professional climate that pushes the target into depression.

92   4) Ellipsis. A micro-act of aggression can be omitted from speech when it is superfluous because it can be inferred from contextual clues. For instance, when the victim's coworkers are not willing to speak to her, the act of discrimination is implicitly conveyed:

93   After a time, I realised they might have spread rumours against me among them [*Micro-directive*], because all of a sudden nobody was willing to speak to me anymore. [*Micro-directive*] I felt totally isolated. Nobody counted with me or helped me. [*Micro-directive*] For example, when I ran out of change, they simply didn't take any notice. [*Micro-directive*]

94   From the above linguistic analysis, two essential ideas emerge. First, as a communication genre, workplace mobbing is likely to break our sociocultural expectations about the social norms and internal rules governing the speech event in which it is embedded. More significantly, any deviation from the baseline may also be understood as trace evidence for forensic linguistic casework because it may indicate workplace harassment. Second, although workplace mobbing refers to a succession of discontinuous acts of hostile communication, this language crime should be better understood as a hierarchically structured macro-act of aggression both on the level of form (superstructure) and meaning (macro-structure).

7. Conclusions

95   We hope this paper has cleared the path for the linguistic analysis of workplace harassment from the pragmatic perspective of genre theory. Workplace harassment has some typified generic features providing perpetrators with a socially recognisable way to achieve their malicious communicative intentions. However, the harassment becomes known to the victim only after being perpetrated and experiencing moral damage. We demonstrated the hypothesis that there is a relationship of dependence between perpetrators' super goal and the micro-acts of aggression they direct against a target. Therefore, workplace mobbing should be understood as a macro-directive (to harass) divided into a battery of micro-directives rather than as a succession of individual acts of hostile and unethical communication. The macro-directive (in our case, 'We want you to leave the organisation') and the micro-directives supporting the macro-directive are all indirectly performed because perpetrators are aware that workplace harassment is socially stigmatised.

96   We hope to have demonstrated how genre theory can help achieve an improved understanding of the unified form and content of suspicious episodes of workplace harassment. Finding from this piece of research can provide psychologists and lawyers useful insights into how harassing behaviour can be identified and supported with stronger evidence before the administrators or a court of justice. Furthermore, raising awareness of and increasing knowledge about how language is structured to communicate malicious intent may provide clues to perpetrators' intentions that enable triers of fact to distinguish between a work conflict and an episode of workplace harassment.

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NOTES

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2. This paper is a further development of the joint paper 'Mobbing, a genre?' that the author and Dieter A. Stein (Heinrich-Heine University of Dusseldorf) presented at the 16th International Pragmatics Conference, held at Hong-Kong Polytechnic University, on 9–14 June 2019. See also Stein (in this volume), Mobbing as a genre and cause for legal action? Linguistic prolegomena for a legal issue.

3. Commission of the European Communities. Brussels, 2 July 2002. COM (2002) 345 final. Communication from the commission concerning corporate social responsibility: a business contribution to sustainable development. 5.1 Codes of conduct (pp. 13–14).

4. U.S. Department of State. Discriminatory Harassment Policy. (Retrieved on 22 January 2020).

5. The author had access to the case of France Telecom through the summary of judgment, which is available on the internet. *Résumé du délibéré sur France Télécom*. Tribunal de Paris-le 20 décembre 2019, par Jean-Louis Osvath, Inspecteur du travail, pp. 1–3.

6. The excerpt is taken from a victim's written account given to the forensic psychologist hired by the lawyers in the case. The case was judged in Spain, a civil law jurisdiction. However, unfortunately, the claimant lost the case. Later, the author was given the material and allowed to use it for research purposes. Due to confidentiality reasons, personal references are omitted. Example 1 shows a literal English translation of the original manuscript in Catalan.

7. . It is important to highlight that the suspicious episode of workplace mobbing is the object of study rather than the victim's written account. This genre is different to that of workplace mobbing and, thereby, deserves a separate study.

8. Organic Act 1/2004 of 28 December on Protection Measures against Gender Violence.

RÉSUMÉS

Partant de l'hypothèse que le harcèlement au travail peut être considéré comme un genre de communication négative servant des fins malveillantes (Guillén Nieto & Stein 2019 ; Stein dans le présent volume), cet article vise trois objectifs. En premier lieu, nous examinons les difficultés liées à la preuve du harcèlement au travail devant l'administration ou les tribunaux. En second lieu, nous analysons les défis que le harcèlement au travail pose à l'analyse linguistique, en nous référant particulièrement à la théorie du genre, et nous suggérons des biais pour rendre cette théorie compatible avec le nouvel apport linguistique que le langage du harcèlement représente. Enfin, nous illustrons les connaissances que le linguiste expert peut offrir du point de vue de la théorie du genre dans les cas de harcèlement au travail. Afin de ne pas bâtir des châteaux en Espagne, notre analyse s'appuie sur une étude d'un cas en particulier portant sur un type concret de harcèlement au travail que Leymann (1990, 119-126 ; 1996, 165-184) a nommé « mobbing au travail ».

Drawing on the hypothesis that workplace harassment may be considered a genre of negative communication serving malicious purposes (Guillén Nieto & Stein 2019; Stein in this volume), the purposes of this paper are threefold. In the first place, we consider the difficulties involved in proving workplace harassment before administration or in court. In the second place, we analyse the challenges workplace harassment poses to linguistic analysis, with special reference to genre theory, and suggest ways of making the theory compatible with the new linguistic input the language of harassment provides. Finally, we illustrate the knowledge the expert linguist can offer from the perspective of genre theory in cases involving workplace harassment. In order not to build a castle in the sky, our analysis is grounded in an exemplary case study relating to a specific type of harassment in the workplace that Leymann (1990 : 119-126; 1996 : 165-184) named « workplace mobbing ».

INDEX

Mots-clés : théorie du genre ; le langage comme preuve ; harcèlement au travail ; mobbing au travail
Keywords : genre theory ; language as evidence ; workplace harassment ; workplace mobbing

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