SPC Guiding Case No. 179: Nie Meilan v. Beijing Lin Brothers Culture Co., Ltd. (Confirmation of Labor Relations)

Dan Young Business Consultancy — www.danyoungcpa.com

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Keywords

Civil / confirmation of labor relations / cooperative operation / written labor contract

Holding

1. Where eligible subjects of a labor relationship enter into an agreement in the name of "cooperative operation" or the like, but the content of the parties' rights and obligations agreed in the agreement and the circumstances of actual performance conform to the standards for determining a labor relationship, the people's court shall support the worker's claim that a labor relationship exists with the employer.

2. Where a written agreement signed between an employer and a worker contains labor contract clauses, such as the content of work, labor remuneration, and the term of the labor contract, that conform to Article 17 of the Labor Contract Law, the people's court shall not support the worker's claim for payment of double wages on the ground that the employer failed to enter into a written labor contract.

Basic Facts

On April 8, 2016, Nie Meilan and Beijing Lin Brothers Culture Co., Ltd. ("Lin Brothers Company") signed an "Agreement on Cooperatively Establishing a Tea Business Project," which provided: "Article 1: The parties agree that Party A will contribute funds to invest in the tea project and appoint Party B as the project manager for tea business, and Party B will be responsible for the management and operation of the company. Article 2: After the project is launched, the parties will, as appropriate, jointly establish a company, and Party B may enjoy management shares. Article 3: Distribution of benefits: Before the company is established, Party B will be compensated in the form of base salary plus performance. After the company is established, distribution will be based on the parties' shareholding ratios. Party B is responsible for management and operation, with the compensation method being: base salary + performance, rewards + share dividends. Article 4: During the operation of the parties, matters not covered shall be resolved through friendly negotiation between the parties. Article 5: This contract is executed in two original copies, with each company shareholder holding one copy."

After the agreement was signed, Nie Meilan worked on the project. Her work content was responsible for the operation and management of the "Chinese Painting and Calligraphy" art tea house, mainly responsible for reception, tea sales, and other work. Lin De Tang, the legal representative of Lin Brothers Company, paid Nie Meilan her wages for the preceding calendar month by bank transfer on the 15th of each month at the standard of a monthly base salary of RMB 10,000. Nie Meilan's leave required Lin De Tang's approval, and the actual number of days of attendance affected the amount of wages actually paid. On May 6, 2017, Lin Brothers Company notified Nie Meilan to terminate the cooperation agreement. Nie Meilan actually worked until May 8, 2017.

Nie Meilan applied for labor arbitration, arguing that the parties were in a labor relationship and requesting Lin Brothers Company to pay the difference in double wages for failing to enter into a written labor contract; Lin Brothers Company claimed that the parties were in a cooperative relationship. The Beijing Haidian District Labor and Personnel Dispute Arbitration Commission rendered Award Jing Hai Lao Ren Zhong Zi (2017) No. 9691: all of Nie Meilan's arbitration claims were dismissed. Nie Meilan refused to accept the

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arbitration award and brought a lawsuit before the Haidian District People's Court of Beijing within the statutory period.

Judgment

On April 17, 2018, the Haidian District People's Court of Beijing rendered Civil Judgment (2017) Jing 0108 Min Chu No. 45496: (1) it was confirmed that a labor relationship existed between Lin Brothers Company and Nie Meilan during the period from April 8, 2016 to May 8, 2017; (2) Lin Brothers Company shall, within seven days from the effective date of the judgment, pay Nie Meilan wages of RMB 22,758.62 for the period from March 1, 2017 to May 8, 2017; (3) Lin Brothers Company shall, within seven days from the effective date of the judgment, pay Nie Meilan the difference in double wages for failing to enter into a labor contract during the period from May 8, 2016 to April 7, 2017, totaling RMB 103,144.9; (4) Lin Brothers Company shall, within seven days from the effective date of the judgment, pay Nie Meilan compensation of RMB 27,711.51 for unlawfully terminating the labor relationship; (5) the remaining litigation claims of Nie Meilan were dismissed. Lin Brothers Company refused to accept the first-instance judgment and appealed. On September 26, 2018, the Beijing First Intermediate People's Court rendered Civil Judgment (2018) Jing 01 Min Zhong No. 5911: (1) items (1), (2), and (4) of Civil Judgment (2017) Jing 0108 Min Chu No. 45496 of the Haidian District People's Court of Beijing were affirmed; (2) items (3) and (5) of that judgment were revoked; (3) the remaining litigation claims of Nie Meilan were dismissed. Lin Brothers Company refused to accept the second-instance judgment and applied to the Beijing High People's Court for retrial. On April 30, 2019, the Beijing High People's Court rendered Civil Ruling (2019) Jing Min Shen No. 986: Lin Brothers Company's retrial application was dismissed.

Reasoning

The effective judgment of the court held: The "Agreement on Cooperatively Establishing a Tea Business Project" signed between Applicant Lin Brothers Company and Respondent Nie Meilan was entered into voluntarily and did not violate mandatory provisions of laws and regulations, and was a valid contract. The determination of the nature of the contract should be based on the legal relationship involved in the contract's content, namely the rights and obligations established by the contracting parties. Article 1 of the agreement signed by the parties expressly provided for the appointment of Nie Meilan as the tea business project manager. The word "appoint" generally indicates that the party intends to employ a worker to provide labor for it. Article 3 of the agreement provided for Nie Meilan's method of remuneration; regardless of whether the target company set by the parties had been established, Nie Meilan could obtain "base salary," "performance," and other remuneration, which was clearly inconsistent with the distribution of benefits in a cooperative operation. The typical characteristics of a cooperative operation contract are joint capital contribution and shared risk, but the contract in this case neither provided for Nie Meilan's capital contribution ratio nor for shared risk, which was inconsistent with a cooperative operation contract. From the relevant evidence in the case, Nie Meilan was subject to Lin Brothers Company's management, reporting monthly on employees' attendance, distribution of funds, expenses, sales, work plans, and applications for reserve funds, and the wages paid were closely related to the number of days of attendance. The relationship formed between the parties in the course of performing the contract conformed to the dual characteristics of personal subordination and economic subordination in a labor relationship. Therefore, the original judgment's determination that a labor relationship existed between the applicant and the respondent was not improper. The cooperation agreement signed by the parties could also be regarded as a written labor contract; although it lacked some essential clauses, this did not affect the agreed clauses and their validity, and it could still serve the function of fixing the labor relationship and the rights and obligations of the parties. The second-instance court's amendment of the judgment in accordance with the law was correct. Lin Brothers Company issued to Nie Meilan a "Notice of Termination of Cooperation Agreement" on May 6, 2017, informing Nie Meilan of the termination of the parties' cooperation, which constituted an expression of intent to terminate the labor relationship between the parties. According to Article 6 of the Several Provisions

of the Supreme People's Court on Evidence in Civil Proceedings, in labor dispute cases, where a labor dispute arises from an employer's decision of dismissal, removal, expulsion, termination of labor contract, or the like, the employer bears the burden of proof. Lin Brothers Company failed to provide relevant evidence of the reason for terminating the labor relationship, and should bear the adverse consequences. The judgment rendered by the second-instance court based on the specific circumstances of the case and the relevant evidence was not improper.

Relevant Legal Provisions

Articles 10, 17, and 82 of the Labor Contract Law of the People's Republic of China.

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