SPC Guiding Case No. 18: ZTE (Hangzhou) Co., Ltd. v. Wang Peng (Labor Contract Dispute)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on November 8, 2013.

Keywords

Civil / labor contract / unilateral termination

Holding

An employee ranking at the bottom in the employer's grade assessment is not equivalent to "being incompetent for the work," does not satisfy the statutory conditions for unilateral termination of a labor contract, and the employer may not unilaterally terminate the labor contract on that basis.

Basic Facts

In July 2005, the defendant Wang Peng entered the plaintiff ZTE (Hangzhou) Co., Ltd. ("ZTE") to work. The labor contract stipulated that Wang Peng would perform sales work with a basic monthly salary of RMB 3,840. The company's "Measures for the Administration of Employee Performance" provided that employees' semi-annual and annual performance assessments were divided into four grades — S, A, C1, and C2 — representing excellent, good, values mismatch, and performance to be improved respectively; the proportions of the S, A, and C (C1, C2) grades were 20%, 70%, and 10% respectively; and those incompetent for the work were in principle assessed as C2. Wang Peng originally performed sales work in the company's distribution division. After January 2009, due to reasons such as the dissolution of the distribution division, he was transferred to the East China region to perform sales work. In the second half of 2008, the first half of 2009, and the second half of 2010, Wang Peng's assessment results were all C2. ZTE considered that Wang Peng was incompetent for the work and remained incompetent after transfer, and therefore terminated the labor contract after paying part of the economic compensation.

On July 27, 2011, Wang Peng initiated labor arbitration. On October 8 of the same year, the arbitration commission rendered an award: ZTE shall pay Wang Peng the remaining compensation of RMB 36,596.28 for unlawfully terminating the labor contract. ZTE, considering that it had not unlawfully terminated the labor contract, sued in court on November 1 of the same year, requesting an order that it was not required to pay the remaining compensation for terminating the labor contract.

Judgment

On December 6, 2011, the Binjiang District People's Court of Hangzhou, Zhejiang Province, rendered Civil Judgment (2011) Hang Bin Min Chu Zi No. 885: the plaintiff ZTE (Hangzhou) Co., Ltd. shall, within fifteen days of the judgment taking effect, pay the defendant Wang Peng in one lump sum the remaining compensation of RMB 36,596.28 for unlawfully terminating the labor contract. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The effective judgment held: In order to protect the lawful rights and interests of workers and to build and develop harmonious and stable labor relations, the Labor Law of the People's Republic of China and the Labor Contract Law of the People's Republic of China impose clear restrictions on the conditions under which an employer may unilaterally terminate a labor contract. The plaintiff ZTE terminated the labor contract on the ground that the defendant Wang Peng was incompetent for the work and remained incompetent after

transfer, and it should bear the burden of proof in this regard. According to the "Measures for the Administration of Employee Performance," "the proportion of the C (C1, C2) assessment grade is 10%." Although Wang Peng's assessment results were once C2, the C2 grade does not fully equate to "being incompetent for the work." ZTE could not prove that the worker was incompetent for the work merely on the basis of the assessment results under such a restricted grade proportion, and this did not satisfy the statutory conditions for unilaterally terminating the labor contract on that basis. Although Wang Peng was transferred from the distribution division in January 2009, he performed sales work both before and after the transfer, and there was the fundamental reason that the dissolution of the distribution division led to Wang Peng's transfer; therefore, it could not be proven that Wang Peng was transferred because he was incompetent for the work. Accordingly, ZTE's assertion that Wang Peng was incompetent for the work and remained incompetent after transfer lacked sufficient basis, and there existed the circumstance of unlawfully terminating the labor contract; ZTE should, in accordance with law, pay Wang Peng compensation at twice the statutory economic compensation standard.

Relevant Legal Provisions

Articles 39 and 40 of the Labor Contract Law of the People's Republic of China.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.