SPC Guiding Case No. 180: Sun Xianfeng v. Huai’an West District Human Resources Development Co., Ltd. (Labor Contract Dispute)

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

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Keywords

Civil / labor contract / termination of labor contract / determination of lawfulness

Holding

When determining the lawfulness of an employer's unilateral termination of a labor contract, the people's court shall base its determination on the content of the termination notice issued by the employer to the worker. Where, in the course of the trial, the employer, going beyond the basis and grounds stated in the termination notice, additionally alleges that the worker committed other serious violations of the employer's rules and regulations during the performance of the labor contract and, on that basis, claims that the conditions for terminating the labor contract were met, the people's court shall not support the claim.

Basic Facts

On July 1, 2016, Sun Xianfeng (Party B) and Huai'an West District Human Resources Development Co., Ltd. ("West District Company") (Party A) signed a labor contract, which provided: the term of the labor contract was from July 1, 2016 to June 30, 2019; Party B's work location was Lianyungang, where he would perform mail collection and delivery and driver duties; if Party B seriously violated Party A's labor discipline and rules and regulations, Party A could immediately terminate the contract without bearing any economic compensation; if Party A terminated or rescinded the labor contract in breach of contract, it should pay Party B economic compensation or damages in accordance with the law and the contract; and the various rules and regulations formulated and publicized by Party A in accordance with the law, such as the Employee Handbook, the Regulations on Reward and Punishment Management, and the Regulations on Employee Attendance Management, were attachments to the contract and had the same effect as the contract. Thereafter, Sun Xianfeng, as arranged by West District Company, was responsible for the SF Express mail collection and delivery work in the Duigougang Town area of Guannan County, Jiangsu Province. West District Company settled wages into Sun Xianfeng's bank account every month from August 25, 2016. As of September 25, 2017, Sun Xianfeng's average monthly wage for the preceding 12 months was RMB 6,329.82. On September 12, October 3, and October 16, 2017, Sun Xianfeng successively committed disciplinary violations such as not wearing work clothes during working hours, clocking in on behalf of others, and leaving messages on the company's public platform insulting a company supervisor. Afterwards, West District Company, pursuant to the Regulations on Reward and Punishment Management, had the head of the employing department, the head of the recommending department, the head of the labor union, and the head of the human resources department jointly sign to confirm, and imposed penalties of deducting 2 points, 10 points, and 10 points respectively for Sun Xianfeng's above disciplinary violations; however, the specific time of the point-deduction penalties was difficult to determine.

On October 17, 2017, Sun Xianfeng was suspended from work by the employing department of his unit on the grounds that he had failed to promptly hand over the business funds from his period of duty. The next day, Sun Xianfeng clocked in for attendance at his unit, which showed that the clock-in information could not be entered. On October 25, West District Company issued a departure certificate, stating that Sun Xianfeng had formally resigned from West District Company on October 21, 2017, that the procedures had been

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completed, and that as of that date he had no labor relationship with the company. On October 30, West District Company issued a Notice of Termination of Labor Contract, stating that Sun Xianfeng had, without performing leave procedures and without the approval of any leader, been absent from work without justifiable reason for more than three days from October 20, 2017, and that, pursuant to the relevant national laws and regulations and the unit's rules and regulations, the unit had decided, after study, to terminate the labor relationship with Sun Xianfeng from October 20, 2017, and that he was required to complete the relevant procedures before November 15, 2017, with any consequences for failure to do so in time to be borne by himself. Afterwards, Sun Xianfeng applied to the Guannan County Labor and Personnel Dispute Arbitration Commission of Jiangsu Province for arbitration. After the arbitration award, Sun Xianfeng refused to accept it and brought a lawsuit, requesting West District Company to pay damages of RMB 68,500 for unlawful termination of the labor contract.

During the trial, West District Company alleged that, during his employment, Sun Xianfeng had committed disciplinary violations such as failing to wear work clothes as required, clocking in on behalf of others, insulting a supervisor, and failing to promptly hand over business funds in accordance with the company's rules and regulations, thereby seriously violating the employer's rules and regulations; and that from October 20, 2017, Sun Xianfeng had been absent from work for several days without justifiable reason without performing leave procedures and without approval, and that terminating the labor relationship with Sun Xianfeng from October 20, 2017 in accordance with the law was in compliance with legal provisions.

Judgment

On November 15, 2018, the Guannan County People's Court of Jiangsu Province rendered Civil Judgment (2018) Su 0724 Min Chu No. 2732: (1) Defendant West District Company shall, within ten days from the effective date of the judgment, pay Plaintiff Sun Xianfeng economic compensation of RMB 18,989.46; (2) the remaining litigation claims of Plaintiff Sun Xianfeng were dismissed. West District Company refused to accept the judgment and appealed. On April 22, 2019, the Lianyungang Intermediate People's Court of Jiangsu Province rendered Civil Judgment (2019) Su 07 Min Zhong No. 658: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held: An employer's unilateral termination of a labor contract is premised on the worker's commission of acts violating laws and discipline or violating the labor contract, and the evaluation of its lawfulness should also be based on the facts, evidence, and relevant legal provisions existing at the time the decision to terminate the labor contract was made. The notice of termination of labor contract served by the employer on the worker is the employer's expression of intent to terminate the labor contract, and is legally binding on the employer. The notice of termination of labor contract expressly states the basis and grounds for terminating the labor contract. When trying a dispute over termination of a labor contract, the people's court should conduct its review based on the facts, evidence, and law existing at the time the decision was made, and should not go beyond the content and scope stated in the notice of termination of labor contract. Otherwise, it would deviate from the content of the review of the lawfulness of the termination of labor contract at issue between the labor and capital sides, resulting in inconsistency between the court's judgment and the parties' litigation claims and the focus of the dispute; at the same time, it would also contravene the basic principle of good faith that civil subjects should uphold in engaging in civil activities, causing an imbalance in the protection of the rights and interests of labor and capital.

In this case, the labor contract signed between Sun Xianfeng and West District Company was the true expression of both parties' intent and was lawful and valid. The Regulations on Reward and Punishment Management, an attachment to the labor contract, served as the employer's management rules and regulations, did not violate the mandatory provisions of laws and administrative regulations, was lawful and valid, and was binding on both parties. According to the Regulations on Reward and Punishment Management, if an employee was absent from work without justifiable reason for three consecutive days or

more, the company had the right to impose the fifth category of penalty liability, namely termination of the contract and never rehiring. The notice of termination of labor contract served by West District Company on Sun Xianfeng expressly stated that the ground for terminating the labor contract was Sun Xianfeng's absence from work without justifiable reason for more than three days. What Sun Xianfeng requested the court to review was also the lawfulness of West District Company's termination of the labor contract on the ground of his absence from work without justifiable reason for more than three days. Therefore, the court's review of the lawfulness of West District Company's termination of the labor contract should also be limited to the content stated in the notice of termination of labor contract, and should not go beyond the scope of the dispute. Although West District Company additionally alleged during the hearing that Sun Xianfeng had, during his employment, committed other disciplinary violations such as failing to promptly hand over business funds, not wearing work clothes, clocking in on behalf of others, and leaving messages on the company's public platform insulting a company supervisor, which also seriously violated the employer's rules and regulations and for which the company was still entitled to terminate the labor contract, according to the evidence in the case and West District Company's own statements, West District Company, when it was already aware of Sun Xianfeng's above conduct, did not propose to terminate the labor contract, but instead proactively proposed to reassign Sun Xianfeng to other work, and when it issued the notice of termination of labor contract to Sun Xianfeng, it also did not use the above conduct as a ground for terminating the labor contract. The court did not support the above claims raised by West District Company during the litigation.

West District Company terminated the labor contract on the ground that Sun Xianfeng had been absent from work without justifiable reason for more than three days, and should bear the burden of proving the fact that Sun Xianfeng had been absent from work without justifiable reason for more than three days. However, West District Company only provided an employee attendance sheet produced by the unit itself as evidence. The attendance sheet had not been signed and confirmed by Sun Xianfeng, and Sun Xianfeng did not accept it, arguing that it was the unit's leader who arranged the suspension and providing as evidence a video of the failed clock-in. Because Sun Xianfeng was arranged to suspend work during his employment, West District Company did not provide evidence to prove facts such as whether, after that, it notified Sun Xianfeng to report to the company, how it notified him, and the time of notification. Therefore, the fact that Sun Xianfeng had been absent from work without justifiable reason for more than three days was unclear, and West District Company should bear the adverse consequence of its inability to prove this. Its termination of the labor contract on the ground that Sun Xianfeng's absence from work violated the company's rules and regulations lacked a factual basis and constituted unlawful termination of the labor contract.

Relevant Legal Provisions

Article 39 of the Labor Contract Law of the People's Republic of China.

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