SPC Guiding Case No. 237: Langxi [X] Service Outsourcing Co., Ltd. v. Xu [X]shen (Confirmation of Labor Relations Dispute)

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

Keywords

Civil; confirmation of labor relations; new forms of employment; contracting and cooperation agreements; actual performance; labor management

Holding

Where a platform enterprise or a platform-employment cooperative enterprise concludes contracting or cooperation agreements with a worker, and the worker claims that a labor relationship exists with the enterprise, the people's court shall make a corresponding determination in accordance with law based on the employment facts, comprehensively considering factors such as the degree of the worker's autonomy in deciding working hours and workload, the degree to which the labor process is subject to management and control, whether the worker is required to comply with relevant work rules, algorithm rules, labor discipline and reward and punishment measures, the continuity of the worker's work, and whether the worker can decide or change the transaction price. Where employment facts exist and dominant labor management is constituted, a labor relationship shall be found in accordance with law.

Basic Facts

Langxi [X] Service Outsourcing Co., Ltd. (hereinafter "Langxi [X] Service Company") and Shanghai [X] Network Technology Co., Ltd. (hereinafter "Shanghai [X] Network Company"), the operator of a certain vegetable-purchasing platform, concluded a Service Contracting Contract on April 1, 2019. The contract stipulated that: Langxi [X] Service Company would complete work such as commodity sorting and distribution for Shanghai [X] Network Company; the two parties would verify Langxi [X] Service Company's contracting fees for the previous month on a regular basis each month, after which Shanghai [X] Network Company would pay; Langxi [X] Service Company would manage the personnel providing the relevant services on its own and independently bear the corresponding remuneration, commercial insurance premiums, welfare benefits, as well as employer liability or other liabilities prescribed by laws and regulations.

In July 2019, Langxi [X] Service Company arranged for Xu [X]shen to engage in distribution work at the Jiuting Station of the vegetable-purchasing platform. Langxi [X] Service Company concluded a Freelancer Cooperation Agreement and a New-Form Freelancer Task Contracting Agreement with Xu [X]shen. Both agreements stipulated that Xu [X]shen established a cooperative relationship with Langxi [X] Service Company, and that the Labor Contract Law did not apply to their cooperative relationship. Among them, the New-Form Freelancer Task Contracting Agreement stipulated that: Langxi [X] Service Company would pay service fees to Xu [X]shen according to the service standards and fee standards of project service personnel confirmed by the cooperative company; there would be no base salary and no guaranteed service fee, implementing a system of more work, more pay and no work, no pay. However, Langxi [X] Service Company did not pay fees according to the service fee calculation method agreed in the above agreements, and the remuneration actually paid to Xu [X]shen included items such as basic remuneration, per-order remuneration, and rewards. On August 12, 2019, Langxi [X] Service Company transferred RMB 9,042.74 (same currency hereinafter) to Xu [X]shen. On August 13, 2019, Xu [X]shen was making a wooden rack at the station following instructions, and was accidentally injured in his right foot while cutting a wooden board; he was hospitalized for treatment and never continued working at the station thereafter. On September 3,

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2019, Langxi [X] Service Company paid Xu [X]shen 15,000 yuan in the name of "service fees." During his work at the station, Xu [X]shen's attendance time was relatively fixed, he accepted station management, clocked in for work according to the schedule, completed distribution tasks according to system-dispatched orders, and did miscellaneous work at the station when there were no distribution tasks.

Due to a dispute with Langxi [X] Service Company over work-related injury determination, Xu [X]shen applied for labor arbitration. The Songjiang District Labor and Personnel Dispute Arbitration Commission of Shanghai rendered an award: a labor relationship existed between Xu [X]shen and Langxi [X] Service Company from July 5, 2019 to August 13, 2019. Langxi [X] Service Company was dissatisfied and filed a lawsuit with the Songjiang District People's Court of Shanghai.

Judgment

On July 5, 2021, the Songjiang District People's Court of Shanghai rendered the civil judgment (2021) Hu 0117 Min Chu No. 600: confirming that a labor relationship existed between Xu [X]shen and Langxi [X] Service Outsourcing Co., Ltd. from July 5, 2019 to August 13, 2019. After the judgment was pronounced, Langxi [X] Service Outsourcing Co., Ltd. was dissatisfied and appealed. On March 7, 2022, the Shanghai First Intermediate People's Court rendered the civil judgment (2021) Hu 01 Min Zhong No. 11591: dismissing the appeal and affirming the original judgment.

Reasoning

The focus of the dispute in this case was whether, given that Langxi [X] Service Company and Xu [X]shen had concluded contracting and cooperation agreements, a labor relationship could be found between the two parties and how it should be found.

Whether a labor relationship exists has a significant impact on the rights and interests of the worker. Where a labor relationship exists, the worker enjoys a series of rights in accordance with law, such as obtaining labor remuneration, enjoying social insurance and welfare, and obtaining economic compensation and compensation payments, and also bears obligations such as accepting the employer's management. According to the Labor Law of the People's Republic of China and the Labor Contract Law of the People's Republic of China: "An employer establishes a labor relationship with a worker from the date of employment" and "a labor contract shall be concluded to establish a labor relationship." However, in practice, there are situations where an enterprise signs contracting, cooperation and other contracts with workers to avoid establishing a labor relationship with them. In this regard, the people's court shall, based on the employment facts, comprehensively consider factors such as personality subordination, economic subordination, and organizational subordination, accurately determine whether a labor relationship exists between the enterprise and the worker, and handle labor rights protection cases in accordance with law. Article 1 of the Notice of the Ministry of Labor and Social Security on Matters Concerning the Establishment of Labor Relations (Lao She Bu Fa [2005] No. 12) provides: "Where an employer recruits a worker without concluding a written labor contract, but the following circumstances simultaneously exist, a labor relationship is established: (1) the employer and the worker meet the subject qualifications prescribed by laws and regulations; (2) the various labor rules and regulations formulated by the employer in accordance with law apply to the worker, the worker is subject to the employer's labor management and engages in remunerated labor arranged by the employer; (3) the labor provided by the worker is a component of the employer's business." It can thus be seen that the essential characteristic of a labor relationship is dominant labor management. Under new forms of employment, the production and operation modes of platform enterprises have undergone relatively significant changes, and the specific forms of labor management have accordingly acquired many new characteristics, but the determination of a labor relationship should still comprehensively consider the existence and strength of personality subordination, economic subordination, and organizational subordination. Specifically, a corresponding determination should be made in accordance with law by comprehensively considering factors such as the degree of the worker's autonomy in deciding working hours and workload, the degree to which the labor process is subject to management and control,

whether the worker is required to comply with relevant work rules, algorithm rules, labor discipline and reward and punishment measures, the continuity of the worker's work, and whether the worker can decide or change the transaction price.

In this case, although what Langxi [X] Service Company and Xu [X]shen concluded were contracting and cooperation agreements, based on the relevant legal provisions and in combination with the facts ascertained by the court, a labor relationship between Xu [X]shen and Langxi [X] Service Company should be found. Specifically: First, Xu [X]shen engaged in distribution work at the station, accepted station management, clocked in for work according to the station schedule, and completed distribution tasks on time according to dispatched orders; he could not autonomously choose the distribution time and distribution tasks, and even when there were no distribution tasks, he had to remain at the station to do miscellaneous work. Second, the composition of Xu [X]shen's remuneration included items such as basic remuneration, per-order remuneration, and rewards, indicating that Langxi [X] Service Company conducted corresponding assessment and management of Xu [X]shen's work and paid remuneration accordingly. Third, Langxi [X] Service Company contracted commodity sorting, distribution and other business from Shanghai [X] Network Company, and the distribution work engaged in by Xu [X]shen was an important component of the business contracted by Langxi [X] Service Company. In summary, employment facts existed between Xu [X]shen and Langxi [X] Service Company, constituting dominant labor management and satisfying the essential characteristics of a labor relationship, so a labor relationship should be found.

Relevant Legal Provisions

Article 16 of the Labor Law of the People's Republic of China

Articles 7 and 10 of the Labor Contract Law of the People's Republic of China

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