SPC Guiding Case No. 238: Sheng [X]huan v. Jiangsu [X] Network Technology Co., Ltd. (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; individual industrial and commercial household; contracting and cooperation agreements; actual performance; labor management

Holding

1. Where a platform enterprise or a platform-employment cooperative enterprise requires a worker to register as an individual industrial and commercial household before concluding contracting or cooperation agreements, and the worker claims that the labor relationship should be determined based on the actual performance, the people's court shall, on the basis of ascertaining the facts, make an accurate determination according to the relevant laws. Where employment facts exist and dominant labor management is constituted, a labor relationship shall be found in accordance with law.

2. Where subcontracting exists in the main business, the people's court shall, based on the employment facts and the degree of labor management, and in combination with factors such as the entity that actually manages the employment and the source of labor remuneration, find in accordance with law that the worker has established a labor relationship with the enterprise most closely related to the worker.

Basic Facts

Jiangsu [X] Network Technology Co., Ltd. (hereinafter "Jiangsu [X] Network Company") contracted the food-delivery distribution service of a certain food-delivery platform in the Xushuguan area of Huqiu District, Suzhou City, Jiangsu Province. On April 25, 2019, Sheng [X]huan registered through a specific APP to become a dedicated rider in the Xushuguan area of that food-delivery platform. The specific operating mode of dedicated riders was as follows: in terms of registration, dedicated riders could only download and register on the APP with station authorization; in terms of order dispatch, the platform dispatched orders to dedicated riders based on location, and riders could not refuse, and those who could not accept orders due to special circumstances needed to apply for order reassignment; in terms of rider management, dedicated riders were managed by their exclusive stations, where the station manager decided order reassignment and rider scheduling, and riders needed to log on to accept orders according to the schedule; in terms of salary composition and settlement, the salary of dedicated riders included order commissions, rider subsidies, and other subsidies. During the registration process, Sheng [X]huan underwent facial recognition and said "I want to become an individual industrial and commercial household" as prompted. From then on, Sheng [X]huan accepted orders through the aforementioned APP and used his own vehicle for distribution after accepting orders. Jiangsu [X] Network Company had clear work-time and attendance requirements for Sheng [X]huan, and corresponding rewards would be deducted for leave.

On May 30, 2019, Jiangsu [X] Network Company and Jiangsu [X] Enterprise Management Co., Ltd. (hereinafter "Jiangsu [X] Management Company") signed a service agreement, agreeing to entrust Jiangsu [X] Management Company with providing market promotion services; Jiangsu [X] Management Company could further subcontract after undertaking project orders; if the work-taker suffered personal injury or caused property damage to any third party during the performance of tasks, Jiangsu [X] Network Company should bear the consequences on its own and could not require Jiangsu [X] Management Company to bear tort liability or other compensation liability; each month the two parties would verify the list of work-takers, commission fees, and service fees of the previous month, and Jiangsu [X] Network Company would deposit

the corresponding funds into its account set up on a third-party platform, from which the third-party platform would transfer the corresponding fees to the work-takers' accounts. On June 10 of the same year, Sheng [X]huan entrusted Jiangsu [X] Management Company to register an "individual industrial and commercial household" for him, and in the name of the "individual industrial and commercial household" signed a Project Subcontracting Agreement with Jiangsu [X] Management Company, agreeing that: the two parties were an independent civil contracting relationship, not a labor relationship; the individual industrial and commercial household independently contracted the distribution service business and bore all risks and liabilities that might arise during the contracting process; Jiangsu [X] Management Company would settle service fees to the individual industrial and commercial household on a monthly basis. On June 13 of the same year, Sheng [X]huan registered as an "individual industrial and commercial household" with a business scope of marketing planning, market promotion services, and exhibition display services. From June to August 2019, Sheng [X]huan received salaries of RMB 5,035.5, 6,270.5, and 5,807.7 respectively (same currency hereinafter). The salary bill page in the aforementioned APP showed that the salary rules were formulated by Jiangsu [X] Network Company, and the salary composition included base salary, commissions, subsidies and rewards, among which the base salary was 0 yuan.

At around 10 p.m. on August 24, 2019, Sheng [X]huan was injured in a traffic accident during food-delivery distribution. Due to a dispute with Jiangsu [X] Network Company over work-related injury determination, Sheng [X]huan applied for arbitration, requesting confirmation that a labor relationship existed between him and Jiangsu [X] Network Company from April 26, 2019 to August 24, 2019. The Huqiu District Labor Dispute Arbitration Commission of Suzhou City, Jiangsu Province rendered an award dismissing Sheng [X]huan's arbitration claim. Sheng [X]huan was dissatisfied and filed a lawsuit with the Huqiu District People's Court of Suzhou City, Jiangsu Province. During the litigation, the Huqiu District People's Court of Suzhou City, Jiangsu Province added Jiangsu [X] Management Company as a third party to participate in the litigation ex officio.

Judgment

On August 2, 2021, the Huqiu District People's Court of Suzhou City, Jiangsu Province rendered the civil judgment (2020) Su 0505 Min Chu No. 5582: a labor relationship existed between Sheng [X]huan and Jiangsu [X] Network Technology Co., Ltd. from April 25, 2019 to August 24, 2019. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The focus of the dispute in this case was whether a labor relationship existed between the food-delivery rider Sheng [X]huan and Jiangsu [X] Network Company.

A labor relationship is a relationship established between an individual worker and an employer based on employment. However, in practice, there are situations where an enterprise requires a worker to register as an "individual industrial and commercial household" before concluding contracting, cooperation and other contracts, in order to avoid establishing a labor relationship with the worker. After a dispute arises, where the worker claims that a labor relationship exists with the enterprise, the people's court cannot make a determination merely based on the contracting or cooperation agreement signed by the two parties, but should accurately determine whether a labor relationship exists between the enterprise and the worker based on the employment facts, comprehensively considering factors such as personality subordination, economic subordination, and organizational subordination. The fact that a worker is required to register as an "individual industrial and commercial household" does not prevent the worker from establishing a labor relationship with the employer. Where employment facts exist and dominant labor management is constituted, a labor relationship shall be found in accordance with law.

In this case, Jiangsu [X] Network Company required the food-delivery rider Sheng [X]huan to register as an "individual industrial and commercial household" before concluding contracting and cooperation agreements

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with him, with the intent of avoiding the legal liability that an employer should bear. The two parties actually had strong personality subordination, economic subordination, and organizational subordination, constituting dominant labor management. Specifically: First, to become a dedicated rider, Sheng [X]huan could only complete APP registration with station authorization; thereafter, Sheng [X]huan accepted orders through the APP and received remuneration based on his work performance, could not refuse orders dispatched by the platform, and needed to apply to Jiangsu [X] Network Company for order reassignment when he could not accept orders due to special circumstances; moreover, Jiangsu [X] Network Company formulated attendance rules and managed Sheng [X]huan's daily work. Second, it could be seen from the salary rule description in the APP salary bill and the platform service agreement that the source of Sheng [X]huan's salary and the entity formulating the salary rules were Jiangsu [X] Network Company, the amount paid was determined by Jiangsu [X] Network Company, and the two parties actually settled the salary. Third, Sheng [X]huan registered as a dedicated rider, belonged to the station in the Xushuguan area of the food-delivery platform contracted by Jiangsu [X] Network Company, and his food-delivery distribution service was part of the company's main business. In summary, Jiangsu [X] Network Company required and guided Sheng [X]huan to register as an "individual industrial and commercial household" to avoid employer liability in the form of establishing a so-called cooperative relationship between equal subjects, but employment facts actually existed and dominant labor management was exercised over Sheng [X]huan, which satisfied the essential characteristics of a labor relationship; therefore, a labor relationship between the two parties should be found.

With respect to the question of whether Sheng [X]huan had a labor relationship with Jiangsu [X] Network Company or with Jiangsu [X] Management Company, upon investigation, although Jiangsu [X] Network Company subcontracted the distribution business to Jiangsu [X] Management Company through a platform service agreement, in fact Sheng [X]huan still accepted orders and carried out distribution through the previously registered APP, and Jiangsu [X] Network Company also dispatched orders and settled wages through that APP. Sheng [X]huan was directly assigned work, directly managed, and had his wages settled by Jiangsu [X] Network Company, and the closeness of his connection with Jiangsu [X] Network Company clearly exceeded that with Jiangsu [X] Management Company. Therefore, Jiangsu [X] Network Company's defense that no labor relationship existed between it and Sheng [X]huan merely on the ground that it had an internal subcontracting relationship with Jiangsu [X] Management Company was not supported in accordance with law.

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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