SPC Guiding Case No. 239: Wang [X] v. Beijing [X] Culture Media Co., Ltd. (Labor Dispute)

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

Keywords

Civil; labor dispute; confirmation of labor relations; new forms of employment; online streamer; brokerage contract; absence of labor relations

Holding

Where a brokerage company's control over the working hours, work content, and work process of a practitioner is weak, the practitioner is not required to strictly comply with the company's labor management rules, and the practitioner has relatively strong bargaining power over matters such as the distribution of benefits, it should be found that no dominant labor management exists between the two parties and no labor relationship exists.

Basic Facts

Wang [X] was an online streamer who created and operated a self-media account on a network platform. In March 2020, Wang [X] and Beijing [X] Culture Media Co., Ltd. (hereinafter "Beijing [X] Media Company") signed an Exclusive Brokerage Contract. The contract stipulated that: Wang [X] authorized Beijing [X] Media Company to exclusively provide brokerage services and business operations related to graphic, audio and video affairs on self-media platforms; Wang [X]'s main income was obtained based on monthly transaction amounts, and Wang [X]'s guaranteed fees and commissions were determined based on monthly transaction amounts, with Beijing [X] Media Company deducting relevant necessary expenses from the income and then distributing it between the two parties in proportion, and Wang [X] having the right to raise objections to the settlement of income distribution; Wang [X] should arrive at the workplace on time according to Beijing [X] Media Company's arrangements and complete work matters as agreed; the contract was a cooperation service contract, not a labor contract, and the two parties did not establish a labor relationship by signing the contract. During the process of signing the contract, Wang [X] made modifications favorable to himself especially with respect to the income distribution part.

In the actual performance of the contract, Wang [X] participated in the operation of the self-media account as agreed by the two parties. His monthly income was not fixed, and the amount of income depended on the advertising revenue of the platform jointly operated by the two parties. After the contract was signed, Wang [X]'s self-media account was jointly operated and managed by him and Beijing [X] Media Company, and the number of fans gradually increased from nearly one million before the contract was signed to 4 million. In addition, Wang [X] participated in activities such as advertising production and release and variety performances recommended by Beijing [X] Media Company.

A dispute later arose between the two parties, and Wang [X] applied for labor arbitration, requesting confirmation that a labor relationship existed between him and Beijing [X] Media Company from March 1, 2020 to April 13, 2021, that Beijing [X] Media Company pay him a bonus of RMB 255,217.5 (same currency hereinafter) for the period from February 1, 2021 to April 13, 2021, and the difference of double wages of RMB 110,000 for failure to conclude a written labor contract from March 1, 2020 to February 28, 2021. The Chaoyang District Labor and Personnel Dispute Arbitration Commission of Beijing rendered an award dismissing Wang [X]'s arbitration claims. Wang [X] was dissatisfied and filed a lawsuit with the Chaoyang District People's Court of Beijing.

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Judgment

On November 25, 2022, the Chaoyang District People's Court of Beijing rendered the civil judgment (2022) Jing 0105 Min Chu No. 9090: dismissing Wang [X]'s claims. After the judgment was pronounced, Wang [X] was dissatisfied and appealed. On September 5, 2023, the Beijing Third Intermediate People's Court rendered the civil judgment (2023) Jing 03 Min Zhong No. 7051: dismissing the appeal and affirming the original judgment.

Reasoning

The focus of the dispute in this case was whether a labor relationship existed between Beijing [X] Media Company and the online streamer Wang [X] under its wing.

The essential characteristic of a labor relationship is dominant labor management, that is, the existence of strong personality subordination, economic subordination, and organizational subordination between the worker and the employer. Under new forms of employment, with respect to the legal relationship between a relevant enterprise and an online streamer, it is necessary to analyze each case based on its specific facts, focusing on examining the content and manner of determining the rights and obligations between the enterprise and the online streamer, accurately distinguishing the performance requirements arising from the brokerage relationship from labor management, and determining whether the platform enterprise exercises dominant labor management over the online streamer and whether a labor relationship exists between the two.

In this case, judging from the contract concluded by the two parties and its actual performance, Beijing [X] Media Company did not exercise dominant labor management over the online streamer Wang [X]. Specifically: First, according to the brokerage contract concluded between Beijing [X] Media Company and Wang [X], Wang [X] should arrive at the workplace on time according to Beijing [X] Media Company's arrangements and complete work matters as agreed. However, Wang [X] was not required to comply with Beijing [X] Media Company's relevant work rules, labor discipline, and reward and punishment measures. Therefore, although Beijing [X] Media Company could impose necessary restraints on Wang [X]'s performance activities according to the brokerage contract, this did not constitute labor management in the sense of labor law, but rather a contractual obligation that Wang [X] should perform as agreed. Second, Wang [X] had relatively strong consultation and bargaining power over matters such as the manner of income distribution. During the process of concluding the agreement with Beijing [X] Media Company, Wang [X] especially negotiated and bargained over core content such as the proportion of income distribution; the legal relationship between the two parties reflected the characteristic of equal consultation, and the agreed profit-sharing method of income distribution was clearly different from a labor relationship. Third, judging from the purpose and content of the contract, the original intent of the cooperation between the two parties was to further enhance Wang [X]'s influence and popularity in art, performance, advertising, and print image on self-media platforms through the incubation by Beijing [X] Media Company, and then to obtain corresponding advertising revenue through Wang [X]'s independent participation in commercial activities, distributed as agreed in the contract. The contract content mainly included agreements on rights and obligations such as brokerage matters, remuneration and income distribution, and liability for breach of contract, and did not have the elements of a labor contract.

In summary, the rights and obligations between Beijing [X] Media Company and the online streamer Wang [X] under its wing did not satisfy the characteristics of personality subordination, economic subordination, and organizational subordination between a worker and an employer required by labor management, and a labor relationship should not be found in accordance with law.

Relevant Legal Provisions

Article 7 of the Labor Contract Law of the People's Republic of China

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Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Fa Shi [2022] No. 11)

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