SPC Guiding Case No. 240: Qin [X]dan v. Beijing [X] Auto Technology Development Service Co., Ltd. (Labor Dispute)

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Keywords

Civil; labor dispute; confirmation of labor relations; new forms of employment; designated driver; necessary operational management; absence of labor relations

Holding

Where a platform enterprise or a platform-employment cooperative enterprise carries out necessary operational management for the purpose of maintaining the normal operation of the platform and providing quality services, but does not form dominant labor management, the people's court shall not support a worker's claim that a labor relationship exists between the worker and the enterprise in accordance with law.

Basic Facts

Qin [X]dan registered on the driver-side APP of a designated-driving platform on December 31, 2020, applying to become a designated driver. The operator of the platform was Beijing [X] Auto Technology Development Service Co., Ltd. (hereinafter "Beijing [X] Auto Company"). The Information Service Agreement on the platform stipulated that: Beijing [X] Auto Company provides designated drivers with paid designated-driving information services; designated drivers accept orders through the platform of Beijing [X] Auto Company, and conclude and perform the Designated Driving Service Agreement with users of the designated-driving service, with the platform recording various information data during the designated-driving service; based on platform data, designated drivers collect designated-driving service fees from users of the designated-driving service and pay information service fees to Beijing [X] Auto Company; Beijing [X] Auto Company does not actually provide designated-driving services, does not act as agent for any party user of the platform, and only serves as an intermediary between designated drivers and users of the designated-driving service, facilitating users in concluding the Designated Driving Service Agreement; Beijing [X] Auto Company has no labor, service, or employment relationship with designated drivers, but has the right to supervise the designated-driving service activities and fee collection of designated drivers according to platform rules, and has the right to evaluate the designated-driving service activities of designated drivers based on feedback from platform users, as well as to conduct corresponding investigations and handling.

In the actual performance of the agreement, Beijing [X] Auto Company did not manage Qin [X]dan as an employee, nor did it require him to comply with the company's labor rules and regulations. After users of the designated-driving service issued demand information for designated-driving services, the platform uniformly dispatched orders to eligible drivers, and Qin [X]dan decided on his own whether to accept or compete for orders. Qin [X]dan only needed to purchase work uniforms, receive software-use training, take road tests, and undergo spot checks on his appearance; he had a high degree of autonomy in deciding his working hours and workload, and could decide on his own whether to register to use the platform and when to use the platform to engage in designated-driving services. The remuneration Qin [X]dan received from engaging in designated-driving services was designated-driving service fees, paid directly by users of the designated-driving service.

In addition, the platform rewarded or deducted gold coins for designated drivers based on their order-acceptance rates. Platform-rewarded gold coins could be used by designated drivers to purchase platform props to improve their subsequent success rate in competing for orders, and were not directly

related to their income. The platform compiled data such as the number of completed orders and the rate of accountable cancellations of designated drivers, and imposed risk-control measures such as account bans on designated-driver accounts with clearly abnormal order-acceptance conditions.

A labor dispute later arose between the two parties, and Qin [X]dan applied for labor arbitration, requesting that Beijing [X] Auto Company pay the difference of double wages for failure to conclude a written labor contract for the period from January 31, 2021 to January 31, 2022, in the amount of RMB 8,074.38. The Shijingshan District Labor and Personnel Dispute Arbitration Commission of Beijing rendered an award dismissing Qin [X]dan's arbitration claim. Qin [X]dan was dissatisfied and filed a lawsuit with the Shijingshan District People's Court of Beijing.

Judgment

On March 31, 2023, the Shijingshan District People's Court of Beijing rendered the civil judgment (2023) Jing 0107 Min Chu No. 2196: dismissing Qin [X]dan's claims. After the judgment was pronounced, Qin [X]dan was dissatisfied and appealed. On September 15, 2023, the Beijing First Intermediate People's Court rendered the civil judgment (2023) Jing 01 Min Zhong No. 6036: dismissing the appeal and affirming the original judgment.

Reasoning

The focus of the dispute in this case was whether a labor relationship existed between the platform operator Beijing [X] Auto Company and the designated driver Qin [X]dan.

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, in determining whether labor management exists, it is still necessary to focus on examining and accurately judging whether the enterprise exercises dominant labor management over the worker and whether the labor provided by the worker has the characteristic of subordination.

In this case, although Beijing [X] Auto Company carried out a certain degree of operational management over the designated driver Qin [X]dan according to the agreement, such management did not constitute dominant labor management; Qin [X]dan had the right to decide on his own whether to register to use the platform, when to use the platform, and whether to accept or compete for orders, and he did not have strong subordination to Beijing [X] Auto Company. Specifically: First, judging from the content of the relevant agreement, Beijing [X] Auto Company provided paid designated-driving information services to designated drivers; designated drivers accepted orders through the platform of Beijing [X] Auto Company and concluded transactions with users of the designated-driving service; designated drivers collected designated-driving service fees from users of the designated-driving service and paid information service fees to Beijing [X] Auto Company as agreed; Beijing [X] Auto Company did not actually provide designated-driving services, did not act as agent for any party user of the platform, and only served as an intermediary between designated drivers and users of the designated-driving service; designated drivers could freely decide whether to use the platform to receive information services. Second, judging from the actual performance of the agreement, Qin [X]dan had the right to decide his working hours and location on his own, rather than accepting orders according to the work arrangements of Beijing [X] Auto Company, and Beijing [X] Auto Company did not carry out employee management over Qin [X]dan in respect of commuting time, attendance, and the like; therefore, no subordinate relationship of management and being managed existed between the two parties. Qin [X]dan's income was withdrawn from his platform account, and the withdrawn funds came from users of the designated-driving service, which were paid directly by the users to Qin [X]dan's account on the platform, after which Qin [X]dan applied to the platform for withdrawal; the withdrawal time was decided by Qin [X]dan on his own, and was not labor remuneration paid by Beijing [X] Auto Company. Third, although Beijing [X] Auto Company required Qin [X]dan to purchase work uniforms, receive software-use training, take road

tests, and undergo spot checks on his appearance, and rewarded or deducted gold coins based on Qin [X]dan's order-acceptance rate, these were necessary operational management measures taken for maintaining the normal operation of the platform and providing quality services; Beijing [X] Auto Company's measures such as banning accounts based on data such as Qin [X]dan's number of completed orders and rate of accountable cancellations, as well as abnormal order-acceptance conditions, were also necessary operational measures taken on the basis of reasonable risk control.

In summary, the work requirements put forward by Beijing [X] Auto Company to the designated driver Qin [X]dan were necessary operational management measures taken for maintaining the normal operation of the platform and providing quality services, and did not constitute dominant labor management; therefore, a labor relationship between the two parties 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

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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