SPC Guiding Case No. 28: Case of Hu Kejin for Refusing to Pay Labor Remuneration

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Keywords

Criminal / crime of refusing to pay labor remuneration / unit or individual without the qualification of an employing entity

Holding

1. A unit or individual that does not have the qualification of an employing entity (a labor contractor), which employs workers illegally and refuses to pay their remuneration, where the amount is relatively large and it still fails to pay after being ordered to do so by the relevant government department, shall be pursued for criminal liability for the crime of refusing to pay labor remuneration.

2. Even if another unit or individual advances the labor remuneration on its behalf before the criminal case is filed, this does not affect the criminal liability of the employing unit or individual (labor contractor) for the crime of refusing to pay labor remuneration.

Basic Facts

In December 2010, the defendant Hu Kejin subcontracted part of the construction work of the first-phase landscape project of Sansheng Feili Mountain in Huangshui Town, Shuangliu County, Sichuan Province, and then hired multiple migrant workers to carry out construction. During the construction period, Hu Kejin received a total of more than RMB 510,000 in project payments from the contractor, which already exceeded the actual project amount confirmed at settlement. After the project was completed on June 5, 2011, Hu Kejin, citing project losses, owed more than RMB 120,000 in wages to more than 20 migrant workers including Li Chaowen. On June 9, the Shuangliu County Human Resources and Social Security Bureau ordered Hu Kejin to pay the owed migrant worker wages, but Hu booked a flight that very night and fled by plane the next morning. On June 30, Sichuan Jintianxia Garden Engineering Co., Ltd., as the general contractor of the project, advanced more than RMB 120,000 in migrant worker wages on Hu's behalf. On July 4, the public security organ filed a case to investigate Hu Kejin for refusing to pay labor remuneration. On July 12, Hu Kejin was arrested in Cixi City, Zhejiang Province.

Judgment

On December 29, 2011, the Shuangliu County People's Court of Sichuan Province rendered Criminal Judgment (2011) Shuangliu Xing Chu Zi No. 544, finding the defendant Hu Kejin guilty of the crime of refusing to pay labor remuneration and sentencing him to one year of imprisonment and a fine of RMB 20,000. The defendant did not appeal, and the judgment became legally effective.

Reasoning

The effective judgment held: The defendant Hu Kejin refused to pay the labor remuneration of more than 20 migrant workers in the amount of more than RMB 120,000, a relatively large amount, and fled after being ordered to pay by the relevant government department; his conduct constitutes the crime of refusing to pay labor remuneration. Although Hu Kejin did not have lawful hiring qualifications, had contracted the construction project without the corresponding construction qualifications, and had illegally recruited migrant workers for construction, these circumstances do not affect the pursuit of his criminal liability for the crime of refusing to pay labor remuneration. In this case, after Hu Kejin fled, the general contractor of the project, in

accordance with the relevant provisions, settled the migrant worker wages owed by Hu Kejin; this settlement constituted an advance payment on behalf of Hu Kejin. Although this conduct reduced the social harm of the owed wages, it could not exempt Hu Kejin from the liability to pay labor remuneration. Therefore, Hu Kejin shall still be pursued for criminal liability for the crime of refusing to pay labor remuneration. Given that Hu Kejin was a first-time offender with a good attitude toward admitting guilt, the above judgment was rendered in accordance with law.

Relevant Legal Provisions

Article 276-1, paragraph 1 of the Criminal Law of the People's Republic of China.

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