

Study on the Right of the Employer to Fine

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ABSTRACT

Since the abolition of the Regulations on rewards and Punishment for enterprise Employees, the dispute about whether the employer enjoys the right to fine continues. Based on the definition of the fine right of the employer, this paper discusses the reason of the constant dispute. Through learning all kinds of materials, the current academic circle against the employer to enjoy the right to fine and support the employer to enjoy the right to fine their own argument. After analyzing the two ways of fine ordered to pay fine and deduct wage in practice, we draw the conclusion that the law should prohibit ordered to pay fine and strictly limit to deduct salary, and put forward the suggestions of regulation respectively. Among them, there are common suggestions for the two types of fines, that is, the legality review of the procedures and contents of the rules and regulations and the correction of the case handling organs in specific cases.

KEYWORDS: *fine right, rules and regulations, from the attribute, pay the fine, deduction of wages*

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I. Definition of the right to impose a fine

Scholars in the field of labor law have different definitions of the concept of employer fine right, and the author divides the definition of the concept of employer fine right in the current academic circle into three kinds. First, the fine is defined as the economic punishment similar to the administrative penalty, which has certain administrative power nature; second, the fine is defined as an economic punishment measure because the laborer violates the labor discipline or rules and regulations. The third is to define the fine as similar to the claim of liquidated damages that one party violates the contract obligation and the other party obtains thereby. Thus it can be seen that each theory has no agreement on the definition of the employer's right to fine, because the concept is closely related to its nature, so the scholars discuss whether the employer has the right to fine due to different concepts.

II. The legislative status of the right of fine in China

At the national level, the State Council issued in 1982, the enterprise worker rewards and punishment regulations (hereinafter referred to as the regulations), the third chapter of the regulations, a total of 15, including in article 11 of the enterprise can to laborer administrative punishment or economic punishment

of seven kinds of circumstances, thus, the national legislation once sure unit of choose and employ persons have a fine. However, the implementation of the Regulations was suspended on January 15, 2008 for the grounds that it was replaced by the Labor Law of the People's Republic of China (hereinafter referred to as the Labor Law) and the Labor Contract Law of the People's Republic of China (hereinafter referred to as the Labor Contract Law). However, there is no provision in the Labor Law and the Labor Contract Law on the right to fine, so there is no clear provision on the right to fine in the current national legislation.

As the current national level does not clearly stipulate whether the employer has the right to fine, which indirectly leads to the local legislation with different or even completely opposite attitudes on the issue. Which support unit of choose and employ persons has the legislation of the shaanxi enterprise wage payment regulations, the wage payment regulations in Hebei province, "Shanghai enterprise wage payment method", the Shenzhen special economic zone harmonious labor relations to promote regulations, the wage payment regulations of Jiangsu province, the Beijing wage payment regulations, prohibit unit of choose and employ persons to laborer fines

legislation has the labor security supervision regulations of Guangdong province.

Thus it can be seen that whether the employer enjoys the right to fine is not clearly stipulated at the national legislative level, and there is no unity at the local legislative level, thus leaving space for discussion in the theoretical circle.

III. The dispute over whether the employer enjoys the right to fine

As can be seen from the above, since the abolition of the Regulations, the national level has not clearly stipulated the fine right of employers in the law, and the legislative attitude of different places is not consistent. This problem also involves the economic property, one of the core contradictions between labor and management. The problems in practice are prominent, and there is no consistent criterion in the judicial practice, so scholars have discussed their own views and views from different perspectives.

1. Oppose the right of employers to fine

A. The employing unit does not have the subject qualification of the fine

This is put forward by the scholars who hold the first definition of the fine right of employers. They believe that the essence of the fine is the unilateral deprivation and restriction of the property of natural persons, so the fine is an economic punishment with the nature of administrative power, and the subject of its execution must be the subject with public power stipulated by law. And unit of choose and employ persons is not administrative organ however, because this unit of choose and employ persons has no right to impose a fine to laborer. Article 17 of the Administrative Punishment Law of the People's Republic of China stipulates: "Administrative penalty shall be implemented by the administrative organ with the power of administrative penalty within the scope of its statutory functions and powers." It can be seen that the subject of the exercise of punishment power is the administrative organs, judicial organs and other subjects with legal authorization, and it is obvious that the employer does not belong to the subject with the power of administrative punishment.

B. There is no legal basis for the employer to enjoy the right to fine

Scholars who hold this view believe that since the abolition of the Regulations, enterprises can no longer exercise the right to fine according to the laws that have been abolished, and the current Labor Law and the Labor Contract Law do not grant employers this power. Some scholars believe that after the abolition of the Regulations, there are no other legal provisions for the right to fine the employer, which shows that the country's legislative attitude to this issue has

changed, and no longer supports the employer with the right to fine.

C. The right of fine unit is inconsistent with China's current economic system

Scholars who hold this view believe that the right to fine by employers is the product of the planned economy era, and employers should not enjoy the right to fine under the background of the current socialist market economy. Under the planned economy system, college and technical secondary school graduates are assigned by the state. Once these workers enter the enterprise, they will not make serious mistakes as long as they will not be fired. People call these jobs "iron rice bowl". In this context, in order to regulate the workers, the government has unified the punishment power of enterprises, and listed the forms of punishment one by one, executed by the enterprises, and the right of fine is one of them. However, after China entered the socialist market economic system, the government and enterprises have been separated, and the law has formulated a relatively perfect dismissal system. Employers can use the dismissal system to regulate workers, so scholars believe that employers should no longer enjoy the right of fines.

D. Employers may abuse their power to fine them

Most scholars who hold this theory are from the policy perspective of consideration. They believe that workers and employers are unequal, and the existence of the power of fine will damage the legitimate interests of workers to a large extent. The employer integrates the decision maker and the executor, and has a strong position in the labor relationship. If the employer has the right to fine, it may cause the abuse of the right to fine to a certain extent, resulting in the situation of "punishment".

2. Support the employing unit to enjoy the right to impose fines

A. The right of fine is an inherent power of the employer

This view is made by scholars holding the second definition. They believe that employers enjoy the right to maintain the order of production and operation, and punishing workers is one of the means to maintain the order of production and operation. The fine is closely related to the economic interests of the workers, so the fine is one of the most effective punishment methods, and it is also a management right enjoyed by the employer. Accordingly, want unit of choose and employ persons to pass legal procedure to fine matter to list in rules and regulations only, when laborer violates the matter of these provisions, unit of choose and employ persons can undertake fine to its.

B. Unit of choose and employ persons exercises the right to fine essentially is to pursue liquidated damages

This view is proposed by scholars in support of the third definition. They believe that a labor contract is essentially a contract, and that both parties have rights and obligations to each other. Laborer should obey the command management of unit of choose and employ persons to complete the work task according to the standard thereby, when laborer does not complete the work task very well, constitute breach of contract behavior, its should pay certain liquidated damages to unit of choose and employ persons, and unit of choose and employ persons has the right to pursue liquidated damages to its, namely fine right.

IV. Whether the employing unit should enjoy the right of fine

The author through Peking University magic weapon search case found that in recent years, the use of the use of two ways, one is to order workers to pay a certain fine, the second is to deduct the wages of a certain amount of workers. The expression of these two ways in practice is the unit of choose and employ persons in the rules and regulations, and then when the laborer violates the rules and regulations, the unit of choose and employ persons starts the fine procedure. The author thinks, unit of choose and employ persons no matter how can not order laborer to pay fine, but deduct the salary of certain amount of laborer is reasonable still has room for discussion.

1. The employing unit shall not order the laborer to pay the fine

Article 13 of paragraph 1 of the Constitution of the People's Republic of China stipulates that the lawful private property of citizens shall be inviolable. Thus it can be seen that the private property right is the basic right of citizens, except for the administrative organs that enjoy the power of administrative punishment, any individual and organization shall not infringe on the private property of workers. The law does not give the employer the right of administrative punishment, so it is illegal for the employer to deprive the private property of the workers only by the rules and regulations made by itself.

2. whether the employer can deduct the wages

A. Legal level analysis

"Labor law" the 50th regulation: wage ought to pay to laborer himself by the month with monetary form, must not deduct or default laborer wage without reason. Visible from this, labor law clearly stipulated unit of choose and employ persons must not deduct the salary of laborer. But labor ministry is about printing and printing "wage pay provisional regulation" the notice the 15th regulation 4 unit of

choose and employ persons can deduct the situation of salary. In addition, the Ministry of Labor on the issuance of the "supplementary provisions of related issues" in the notice of the word deduction, "deduction" means that the employer deduct the wages due to the laborer without justifiable reasons, However, it does not include the following five cases of wage reduction: (1) there are clear provisions in national laws and regulations; (2) There are clear provisions in the labor contract signed according to law; (3) There are clear provisions in the factory rules and regulations formulated by the employer according to law and approved by the congress; (4) The total wage of the enterprise is related to the economic benefits, When the economic benefits go down, Wages must be lowered (but the wages paid to workers shall not be lower than the local minimum wage standard); (5) Corresponding wage reduction due to workers asking for personal leave. The above two normative documents were both issued by the Ministry of Labor in 1995. Although they have been used for a long time and are rarely applied in practice, their effectiveness is still currently effective. It can be seen that the unit of choose and employ persons has a certain legal basis.

B. Theoretical level analysis

The problem of any labor law should return to the in-depth analysis from the attribute theory, whether the unit of choose and employ persons enjoys the right to deduct the laborer wages of course.

China's general theory believes that there are three attributes: personality, organization and economic subordination. After the laborer and the employer conclude the labor contract, they are no longer the equal relationship in civil law, but the subordinate labor relationship. In personality, the laborer should accept the command, supervision and management of the employing unit, abide by the rules and regulations of the employing unit, and obey the work arrangement of the employing unit. Unit of choose and employ persons has the right to check the work of laborer, when the problem appears on laborer work, unit of choose and employ persons has the right to punish and sanction to its. In the organization, the laborer becomes a member of the labor collective, and works externally in the name of the employer. On economy, laborer has economic dependence to unit of choose and employ persons, unit of choose and employ persons pays labor remuneration to laborer continuously in fixed time. It can be seen from the attribute theory that the employer has the right to manage the laborer. When the laborer violates the rules and regulations or causes damage to the interests of the employing unit, the employer can give certain

punishment to the laborer. However, no matter whether the labor relationship is established or not, the original property of laborers is always the absolute right to the world, and no individual or organization except the public power cannot be deprived of the right. But because of the existence of economic attribute, the laborer did not pay the employer as the counterpart, when a series of problems in the work of the quality of labor force is not high or even damage to the interests of the employer, the author believes that the employer is the employer can reduce the wages. Accordingly, the author thinks that the unit of choose and employ persons has certain theoretical basis when punishing the laborer.

To sum up, the employer has certain legal basis and theoretical support for the deduction of workers' wages, but this does not mean that the employer can arbitrarily deduct the wages of workers, and the law must strictly regulate it.

V. Regulatory suggestion of the employer's fine right

1. The regulation of fines

According to the above analysis, no matter through what procedure, the unit of choose and employ persons have no right to order workers to pay a fine, the law should clearly prohibit this kind of behavior. The author thinks that the following points may be taken to regulate it: 1, the labor supervision department should conduct substantive review, once the employer has such behavior, it should be prohibited. 2, the labor supervision department should also be the employer's rules and regulations of the procedures and content of the review, once the rules and regulations of the occurrence such provisions, ordered the employer to modify. 3. The labor dispute arbitration committee and the people's court shall find out the facts of the cases involving ordering the laborer to pay the fine. Once the employer is found to have such behavior, the employer shall let the employer bear the adverse consequences. 4. The employer claims that the order to pay the fine is specified in the rules and regulations formulated through the democratic procedures, and the labor dispute arbitration committee and the people's court shall not support it.

2. The regulation of wage deduction

As mentioned above, the employer, for the purpose of maintaining its internal production and operation order, has a certain legal and theoretical basis for the employees who violate the rules and regulations, especially the following attribute theory gives some support to the employer for the rationality of the wage deduction. However, it is precisely because the

workers belong to the employer, which leads to the inequality between labor and management in reality, and the current conflict situation between labor and capital in China is still very serious, and the problem of strong labor and weak labor is very prominent. The author believes that the protection of workers still needs to be put in the first place, so we may follow the French example of how to ban employers from fine workers in any form.

But if you want to recognize that employers have the right to fine workers by means of deducting wages, then very strict procedures must be established to limit them. Such as: 1, the employer should clearly state in the rules and regulations under what circumstances can deduct the wages of workers, and the corresponding amount of deduction in each situation; 2, the amount of the monthly fine shall not exceed a certain limit. Referring to foreign legislation, the upper limit of fines in Estonia is 50% of the current wage, the upper limit of Japan is 10% of the current wage, the regulations issued in 1982 is 20% of my monthly salary, the upper limit of the author believes that according to the current economic development and social security situation, the upper limit of fines is 5% of my monthly wage; 3, the rules and regulations must be legal, the procedure must be democratic, the results must be published; 4, the rules and the procedure are legal. 5. The labor dispute arbitration committee and the court shall correct the illegal contents in the rules and regulations when hearing the cases.

Conclusion

Although fines can give full play to the management function of employers, but using fines to govern the enterprise is certainly not the optimal strategy. In today's social structure, the laborer is always a vulnerable group, they are to obtain production materials and establish labor relations with unit of choose and employ persons, fines involving their most sensitive economic interests, if improper is easy to cause dissatisfaction with workers, thus affect the harmonious development of labor relations, and labor disputes. Therefore, employers should not "punish the management", but should explore more appropriate management methods to ensure the order of production and operation, such as education, warning, notification and criticism. In addition, employers should establish more reward system, guide workers to make contributions to the better development of the enterprise, so as to form a harmonious and stable labor relationship.

References

- [1] Zhao Yingjie, Labor Law, Northeast Forestry University Press, 2005, p. 233.

- [2] Qin Wenxian, "On the Fines Imposed by Enterprises," China Labor, No. 4, 2005, p. 20.
- [3] Zhu Yin hao, "On the Economic Penalty Power of Enterprises," Journal of Chongqing University of Science and Technology (Social Sciences Edition), No. 4, 2011, p. 94. Shen Tongxian, Labor Law, Peking University Press, 2009, p. 122.
- [4] Wei Haozheng, "A Comprehensive Implementation Strategy for Enterprises under the Labor Contract Law," Legal Daily, No. 5, 2008, p. 6.
- [5] Zheng Aiqing, "Lessons from French Enterprise Labor Regulations for China," China Labor Security News, No. 4, 2003, p. 3.
- [6] Zhou Kaichang, "Should 'Fines' Become a Thing of the Past?" Shanghai Financial News, No. 8, 2008, p. 2.
- [7] Huang Kun, "Are the Reward and Punishment Regulations of This Enterprise Legal? (Part I)," China Labor, No. 9, 2010, p. 47.
- [8] Zhou Zhaoyu, "A Study on the Limits of Punitive Power of Employers in Labor Relations," Master's Thesis, Institute of Labor Studies, Chinese Culture University, 1999, p. 23.
- [9] Chen Rongwen, "A Review of Estonia's Labor Discipline Penalty Law," Journal of Fujian Police College, No. 6, 2009, p. 85.
- [10] Tian Si Lu and Jia Xiufen, A Study on Japanese Labor Law, China Social Sciences Press, 2013, pp. 132–142.

