

Protection of Riders' Labor Rights and Interests under the Flexible Employment Labor Model of Takeaway Platforms

Linhong Lv*

Law school, Southwest Petroleum University, Chengdu 610500, China

Abstract

With the development of information technology and the Internet in China, it seems that the traditional model of labor relations with fixed working hours and places and fixed monthly wages can no longer meet the needs of social development. More and more Internet platform companies have chosen the flexible employment mode. On the one hand, the flexible employment mode enables enterprises to flexibly employ workers according to the number of orders of the company and reduce corporate overheads; on the other hand, the flexible employment mode enables workers to be free from the constraints of fixed labor time and place, and to work part-time in several jobs at the same time, so as to reasonably allocate their time and increase their income. However, it is the flexibility of the mode of employment and the fact that the worker is formally not bound by the enterprise that makes the determination of labor relations under this flexible mode of employment difficult. If the employment relationship is not found to be established, the takeaway platform will not be held liable for the employer's vicarious liability under the traffic accident. This is extremely unfavorable to the protection of the rights and interests of takeaway riders who are themselves in a disadvantaged socio-economic position. This article identifies the criteria and problems in determining the labor relationship of flexible employment, and thus puts forward some suggestions for improvement.

Keywords

Delivery riders, Labor relations, Rights and benefits protection.

1. Introduction

With the rapid development of the Internet and big data, ordering takeout seems to have become a habit of people's lives, especially for busy office workers, and the takeout industry has seen a boom. The takeaway industry, with its own big data algorithmic advantage, has formulated platform rules such as on-time delivery and more pay for more work, so that takeaway riders often speed in order to deliver on time, thus causing a large number of traffic accidents. Takeaway platforms nowadays basically use a flexible employment model, where there is no labor contract between the rider and the platform. This leaves riders unprotected in terms of their various rights and interests after an accident. This is unfair to riders who are in a vulnerable position. Discerning whether the flexible employment model between a takeaway platform and a rider can be recognized as a labor relationship will be directly related to the protection of the rider's various rights and interests.

2. Flexible Employment Models for Takeaway Platforms and Case Studies

2.1. Flexible Employment Models for Takeaway Platforms

Takeaway platforms have three employment models. The first one is that the rider signs a labor contract directly with the takeout platform. This way the rider is protected by the labor law without dispute. The second type is that the rider himself registers as a rider through the rider

software. The rider himself takes orders through the software, and in the contract signed between the rider and the platform, it is usually written that the rider and the takeaway platform are civil legal relations instead of applicable labor legal relations, which excludes the rider from the jurisdiction of the labor law. The third type is that the rider only has a legal relationship with the outsourcing company that the platform works with. There will be no contract between the rider and the takeaway platform and there is no formally written legal relationship. [1] In fact, fewer and fewer riders are applying the first model, which is almost non-existent. This is because it increases the overhead of the company and is not in the company's interest. More riders applying the latter two models, and they all have one thing in common, that is, the rider and the takeaway platform did not sign a formal labor contract, or even no legal relationship between the rider and the platform.

2.2. Flexible Employment Case Analysis

Case 1, Labor Contract Dispute between Qingpo Zeng, Shandong Golden Cat Trading Co. Shandong Golden Cat Trading Co., Ltd. is a package dealership of Meituan in Shandong Province, contracting Meituan's delivery service in Shandong Province. The contracting process starts with Meituan releasing takeaway delivery information on Shandong Golden Cat Trading Co.'s own software platform, then the riders take orders on their own and provide delivery services, and finally Meituan pays the laborers; the company has multiple service points in each region of each city. Qingpo Zeng is the rider of one of the service points in Chengyang District, Qingdao. He provided takeaway delivery services to customers through the takeaway delivery information released by the software platform of Shandong Golden Cat Trading Co. However, Qingpo Zeng did not sign a labor contract with Shandong Golden Cat Trading Company, and on February 25, 2020, Qingpo Zeng was involved in a traffic accident while delivering food. Later, Qingpo Zeng brought Shandong Golden Cat Trading Co., Ltd. to the court. The court of first instance ruled that there is no labor relationship between Qingpo Zeng and Shandong Golden Cat Trading Co. The court held that Qingpo Zeng did not need to go to work at a certain place on time, his working hours were free, and he did not need to accept the management and domination of the plaintiff, so the status between the two parties was relatively equal, and there was no relationship of personal dependence in the labor law. Qingpo Zeng later appealed, and the court of second instance upheld the original judgment.

Case 2, Shanghai Lazarus Information Technology Co., Ltd. and Rowdy Jun Zhang Right to Life and Health Dispute. Zhenpeng Zhang was a rider of a takeaway platform, and he did not sign a labor contract with the platform, nor did he sign a labor contract with Shanghai Lazarus Information Technology Co., Ltd, the outsourcing company that sent him the orders. On January 16, 2018, Zhenpeng Zhang had a traffic accident with Rowdy Jun Zhang, who was on foot, while driving an electric car on his way to deliver food, causing Rowdy Jun Zhang to be injured. Later, Rowdy Jun Zhang sued Zhenpeng Zhang and Shanghai Lazarus Information Technology Co. The focus of the case is whether there is a labor relationship between Zhenpeng Zhang and Shanghai Lazarus Information Technology Co., Ltd. and whether Zhenpeng Zhang caused damage in the performance of his duties. The court found that Zhenpeng Zhang was wearing uniform clothes for takeaway delivery, riding an electric car with a delivery box marked with a takeaway delivery logo and was delivering takeaway orders, and concluded that Zhenpeng Zhang was performing his duties for Lazarus at the time of the incident, and that there was a labor relationship between the two parties.

From the above two cases, it can be seen that the court's decisions in such cases are not uniform, and there are even different judgments in the same case. In general, most courts will deny the existence of labor relations between the platform and the rider according to the relationship between the two sides does not meet the criteria of subordination, the reason is that the rider does not have a fixed working time, working place, and the rider is independent and free to take

orders, and the platform will not instruct the rider what time to take orders to work. Riders themselves decide what time they want to work. But there are also a few courts can from the rider is in the performance of duties itself that there is a labor relationship between the two. As a result, it is difficult to form a uniform opinion on the evaluation of such cases in judicial practice.

3. Criteria for Determining Labor Relations in China and Existing Problems

3.1. Criteria for determining labor relations in China

China's Labor Law, promulgated in 1994, does not specify the criteria for recognizing a labor relationship and the definitions of a worker and an employer. In judicial practice, the labor relationship is usually confirmed by a written labor contract. In the absence of a written employment contract, even if a de facto employment relationship may be recognized, the worker will not be granted the appropriate labour protection. It was not until 2005 that the second and third paragraphs of the Circular on Matters Relating to the Establishment of Labor Relationships, issued by the then Ministry of Labor and Social Security, stipulated that workers are subject to the labor management of the employer, and that they perform paid work arranged by the employer, as well as that the work provided by the worker is part of the employer's business. [2] This confirms the substantive characteristic of the subordinate nature of the labor relationship. In determining whether a labour relationship exists between two parties, the first thing to look at is whether the labour relationship is subordinate, with personality subordination as the core, economic subordination as the reference and organizational subordination as the complement. Personality subordination consists of the power of the employer to assign tasks to the employee, the power of the employer to supervise the performance of tasks by the employee, and the power of the employer to discipline the employee for improper performance of tasks. Economic subordination refers to the economic dependence of the employee on the employer and the lower economic status of the employee in relation to the employer. [3] Subordination reflects the fact that in the provision of labor to the employer, the employer is in the position of managing and the worker is in the position of being managed, and that there is a relationship of personal dependence between the employer and the worker.

3.2. Problems in the determination of existing labor relations in China

3.2.1. Adoption of the dichotomy of labor relations

Our country adopts the dichotomy of labor relations, dividing various forms of labor into "independent labor and dependent labor", the former belongs to civil legal relations, which can only be adjusted by contractual rights and obligations in civil law, such as contracts of entrustment, solicitation, and intermediation, etc.; the latter belongs to labor relations, which are adjusted by the labor law. The latter belongs to labor relationship, which is adjusted by labor law. However, there is a great difference between civil contract adjustment and labor law adjustment for workers. [4] Civil contract regulation is based on the equal legal status of both parties, and the rights and obligations are consistent. Labor law, on the other hand, emphasizes the protection of workers.

3.2.2. Determination of subordination emphasizes form over substance

According to the traditional labor relationship determination standard, when judging the existence of labor relationship, the fact that the worker has fixed working hours, working place and the employer can control the worker are important reasons for determination. However, all of these elements are difficult to identify under the flexible labor model, especially since riders have the right to take orders and arrange deliveries on their own. These autonomy

factors make the takeaway rider and the platform formally do not have a stable relationship of managing and being managed. the employer's control is formally weakened a lot. This is also an important reason why many courts have determined that there is no labor relationship between the platform and the rider. [5]

As a matter of fact, when a takeout rider delivers a meal, the platform's control over the rider is even greater than that of a traditional labor relationship. When delivering food, the platform will first match the rider with a route and require the rider to follow the route. Riders do not have the freedom to choose the route. Secondly, the platform's unlimited pursuit of efficiency not only stipulates the time of delivery, but also provides a strict penalty system for overtime delivery, which makes takeaway riders have huge work pressure. If the rider does not comply with the platform's regulations, he will face financial losses or even unemployment. Takeaway platforms have absolute decision-making power in terms of delivery time, rewards and punishment rules, which makes the platforms have an absolute advantageous position compared to the riders in fact. Riders still have to accept the platform's management in essence. This is the de facto subordinate relationship of controlling and being controlled that is easily ignored in the determination of the labor relationship between the rider and the platform. [6]

4. Analysis of German Labor Law

In the determination of the labor relationship in German labor law, there exists a form of worker that is similar to an employee called "employee-like" employees. Firstly, unlike employees, "employee-like" employees are not integrated into the employer's corporate organization and are not subject to its control and direction. They also do not have a personality dependency relationship with the employer. Secondly, class employees are economically dependent on the employer, i.e. the income that "employee-like" employees receive from the contractual relationship constitutes their main source of financial support. Classes of employees, although not physically dependent, are economically dependent on the employer, just as employees are, and are also persons in need of special protection. Although "employee-like" employees are independent and not subject to the management of the company, the German legislator gives them labor protection similar to that of employees in certain respects, because of the similarity of their economic as well as social status to that of employees. On the one hand, "employee-like" employees may claim the rights and benefits provided for in his contract with the employer. On the other hand, They can also enjoy some labor rights under the labor law. For example, the German labor law provides for a four-week paid annual leave for "employee-like" employees, and they can also claim equal pay for equal work and labor safety according to the Labor Safety Protection Act and the General Equal Treatment Act. [7] In contrast, in the determination of labor relations in China, the requirement of personality subordination must exist for the determination of workers, which is too demanding for workers, and there is a problem of emphasizing form over substance. There is also a lack of a buffer zone between workers and non-workers, with only two distinctions made between workers and non-workers, and if it is determined that a labor relationship does not exist, the worker is not protected by the Labor Law and does not even receive social insurance.

German labor law gives the right to "employee-like" employees who are independent but economically subordinate to enjoy part of the protection of labor law. In China, on the other hand, the existence of personality subordination between the takeaway rider and the platform is controversial, but the existence of economic subordination between the two parties is a fact recognized by all. German labor law can give only economic subordinate workers some labor law protection and the right to have social insurance. Takeaway riders are forced to accept the hegemonic rules of the platform in order to make a living, but in the end, they are not protected by any labor law. Even if the rider is injured in a traffic accident on the way to deliver the food,

the rider will not be compensated by the platform. This is extremely unfair to the riders who have frequent traffic accidents due to the platform's harsh rules of on-time delivery.

5. The Nature of Labor Laws to Protect Workers in Vulnerable Situations

Protecting the rights and interests of workers in vulnerable situations is the fundamental purpose of the labor law. In essence, the remuneration paid by the employer to the employee for his labor is not fundamentally different from the remuneration paid by the contractor to the contractor in other ordinary civil contracts. The difference between labor relations and other ordinary civil relations lies in the fact that the worker is in a vulnerable position of being managed. Regardless of whether a labor contract is signed or not, as long as the worker is in a de facto disadvantaged position, the labor law should provide protection to the worker. We have to break through the limitations of the formal criteria for determining subordination through fixed working hours, fixed workplace, fixed monthly wages, etc., and see the essence of the disadvantaged position of the worker in the labor relationship through the substance. The subordination of workers to the employer reflects the inequality of the subjects in the labor relationship, which requires the intervention of the labor law with coercive power to correct the inequality and give certain protection to the workers, and then pursue substantive fairness. [8]In practice, there is no formal labor relationship between the takeaway rider and the platform, but in essence, the rider is under the actual control of the platform and the rider's subordinate status compared to the platform is unchanged.

6. Some Recommendations and Conclusions

First of all, we should promote the amendment and improvement of the Labor Law. We can draw reference from the provisions of the German Labor Law and set up a buffer zone between employees and non-employees, that is, "employee-like" employees. "employee-like" employees are those, such as take-away riders, who are not fully managed by their employers, but who have to fulfill their work tasks according to the employers' requirements and whose main source of livelihood is the employers' remuneration. The establishment of a buffer zone through legislation provides a certain type of labor law protection to "employee-like" employees, granting them some basic worker rights such as labor safety protection, work injury benefits and relief, rather than completely excluding them from labor law. This is of great significance to the protection of the rights and interests of a large number of takeaway riders who are employed flexibly. Secondly, it is a long process to promote the revision and improvement of the law. Before that, we can also share the work risks of riders through social insurance by formulating a policy to include riders in the social insurance system first. Finally, the court should focus on the substantive elements of the labor relationship in determining whether a labor relationship exists in this type of case, and should not be overly obsessed with its formal elements. The court should reasonably apply the subordination standard so that the judgment is both legal and reasonable. In view of the fact that the courts are not uniform in determining the labor relations of platform workers, the Supreme Court and the Supreme Prosecutor can issue some guiding cases or some judicial interpretations to unify the judgment standards. This can unify the national court's determination of such cases in the shortest time, and give riders due subsidies and relief. Protecting the rights and interests of workers who is in a vulnerable position is the original legislative intent and fundamental purpose of the labor law. Legislators and judicial staff should fully understand and apply the legislative purpose of the labor law. And It is necessary to make takeaway riders no longer in the vacuum of labor law, so that the rights and interests of workers in a disadvantaged position can be protected. This will further realize social justice, create a harmonious social atmosphere, and promote positive socialist energy.

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