

**Summary of Arbitration Award**  
**Labor Dispute Arbitration Commission**  
**Chaoyang District**

**Date:** August 11, 2012

**In the matter of arbitration between parties:**

**Claimant:** DHR

Agent: XJ

**Respondent:** CFT Investment (The Company)

Legal representative: ZYH (Director)

Agent: LC, Beijing SC Law Firm

**Case Information**

The Claimant, DHR, filed for arbitration on October 27, 2010, claiming unpaid wages and monetary compensation from the Respondent. According to the law, a Tribunal was convened and the case was brought before one arbitrator. The arbitration was public. DHR's agent XJ and the Respondent's agent LC attended. After hearing both parties, arbitration proceedings came to an end.

**The Claimant**

The Claimant started work as vice president for the Respondent on February 22, 2011. The annual salary was 240,000 yuan, after tax. The Respondent failed to pay social security for the Claimant. In addition, the Respondent failed to pay overtime and salary, amounting to 45,517.24 yuan, from May 1, 2011 to July 8, 2011. Based on these facts, the Claimant sent a written letter of resignation via courier to the Respondent on October 26, 2011.

**Relief requested**

1. The Respondent pay 45,517.24 yuan in unpaid wages for the period May 1, 2011, to July 8, 2011, and 11,379.31 yuan in compensation for unpaid wages (25% of wages owed).
2. The Respondent reimburse expenses incurred amounting to 14,615.5 yuan for the period February 2011 to July 2011.
3. The Respondent make social security payments for the period from February 2011 to July 2011.
4. The Respondent pay to the Claimant 18,390.8 yuan in overtime for the period from February 22 to July 8, 2011.
5. The Respondent pays 10,000 yuan compensation for dismissal.

## **The Company**

1. The Claimant was absent without leave in July. The salary agreed upon by both parties and stipulated in the Claimant's employment contract is 6,000 yuan. The salary paid to the Claimant in May and June was in accordance with this standard of 6,000 yuan per month. The Company paid the Claimant her salary; it was the Claimant who did not come to collect her salary. The respondent therefore does not agree to pay 25% of the salary as compensation for unpaid wages.
2. The Company has procedures regarding reimbursement of expenses. The Claimant did not submit receipts or apply for reimbursement.
3. The Claimant's third claim does not fall under the jurisdiction of the Labour Dispute Arbitration Commission.
4. The Company refuses to pay the fourth claim. The Claimant was vice president, her job description clearly stated that working hours would be irregular and therefore she would not normally have to sign an attendance sheet.
5. The Company refuses to pay the fifth claim. The Claimant did not meet her targets for four consecutive months and should therefore automatically resign. The claimant was also absent without leave for more than three days; it was within The Company's rights to terminate her employment contract. The Claimant violated company regulations and her employment with The Company was terminated.

## **Facts and Background**

The Claimant started work for the Respondent on February 22, 2011. She was employed as "Executive Vice President". Salaries were paid in cash on the 12<sup>th</sup> day of the preceding month and employees signed to confirm receipt of salary for the month preceding. The Respondent paid wages until April 30, 2011. The Respondent did not make social security contributions on behalf of the Claimant and the Claimant maintains that she is an Urban Resident. Both agree that their employment contract has been terminated.

The Claimant and The Company signed a one year employment contract starting February 22, 2011 and ending on February 21, 2013. The contract stipulated that the salary would be as follows:

"Basic salary. Both parties agree that during the first year of employment the monthly salary after tax is 6,000 yuan, with a fixed performance based bonus of 12,000 yuan.... Other salary calculations and the method of payment shall be in accordance with company policy and Party B's 'Individual Remuneration Package'. The Individual remuneration package is contained in an annex to the employment contract. Party B must meet monthly sales targets. If Party B fails to meet sales targets for two consecutive months only 80% of the performance based bonus will be paid; if Party B fails to meet sales targets for three consecutive months only 60% of the performance based bonus will be paid; if the Party B fails to meet sales targets for four consecutive months she shall automatically resign. Final payment shall be based on Party A's financial records."

## **Positions of the Parties**

As regards the Claimant's last day of work, the Claimant asserts that her last day of work was July 8, 2011.

The Company asserts that the Claimant's last day was June 30, 2011, and that the Claimant was absent without leave from July 1, 2011. The Company failed to provide evidence of this assertion.

The Claimant contends that her annual salary after tax should be 240,000 yuan, and her monthly salary 20,000yuan. She provided the document, 'Executive Vice President Remuneration Package' as evidence. The document states, "Salary is composed of basic salary, expenses required by her position, performance based bonus, monthly bonus for exceeding targets, annual bonus for exceeding targets"; "Basic annual salary: after tax two hundred and forty thousand Chinese Yuan (240,000.00)"; the system of rewards and deductions includes a scaled payment (the total will be paid each month) "completing 60% or less of targets" 40% will be deducted from the basic salary. The Company accepted the veracity of the "Executive Vice President Remuneration Package", however, The Company maintained that the Claimant's salary was 6,000 yuan in line with provisions in her employment contract. The basic salary of 240,000 yuan was the maximum amount that the Claimant could earn in her position of executive vice president. The actual monthly salary was based on performance; if targets were not met, the according deductions must be made from her basic salary. The claimant did not make any profit during her period of employment, thus she should only be paid 60% of the basic salary stipulated in her contract for May and June.

The Company provided no evidence within the time limits provided showing actual monthly salary payments to the Claimant during her period of employment. The Company claims that in accordance with Company notices, the Claimant stopped going to collect her salary from May 2011. The Company furthermore submitted a written statement (the author was not present at the hearing) as evidence.

The Claimants disputes the authenticity of the statement and rejects the Company's claim that in May and thereafter they informed her that she could collect her salary.

As regards the reason for and timing of termination of employment, it is the Claimant's position that she brought up resignation in a conversation with The Company on July 11, 2011. The reason she gave was unpaid wages. She sent a formal letter of resignation via courier to The Company on October 26, 2011.

As regards the Claimant's position, her written letter of resignation proves and clearly states that her reason for resigning was, "Your Company has consistently failed to pay social security for the period February to July and has defaulted on payment of my salary for the period February to July... My resignation is due to the aforementioned reasons."

The Respondent admitted receipt of the letter of resignation, but refused to accept the reasons

provided by the Claimant for her resignation and refuted the Claimant's statement that she orally brought up resignation on July 11, 2011. The Respondent maintains that the employment contract was mutually terminated on July 20, 2011, because the Claimant seriously violated work discipline and used work time for personal matters. The Claimant had been absent without leave since July 1, 2011, in violation of article 24.1, 24.2, and 24.14 of her employment contract.

The Respondent gave the Claimant notice of termination of her employment contract on July 20, 2011, via telephone. The Claimant failed to complete her duties and in accordance with the provisions laid out in her employment contract was unfit to continue working for the Respondent.

As regards the Respondent's position, the Respondent submitted two written statements (the authors did not attend the hearing to give evidence) to prove that the Claimant was absent without leave from July 1, 2011. A profit report and a financing schedule were also submitted as proof that the Claimant did not reach her targets. Photocopies of photographs and photographs of text messages were also submitted as proof that the Claimant used business trips as an excuse to attend to personal matters, and in addition whilst she was planning her wedding on July 11, 2011, did not bring up resignation with the Respondent.

The Respondent also submitted management regulations, the staff handbook, an attendance sheet for training, and a completed staff appraisal form as proof that the Claimant was responsible for training new employees and fully aware of management regulations and related provisions outlined in the staff manual.

The official notice that was provided to the Claimant terminating her employment on July 20, 2011, due to her serious violations of management regulations, was also submitted to the Tribunal.

The Claimant disputed the authenticity of the written statements, the photocopies of photographs and photographs of text messages.

The Claimant accepted the authenticity of the financing schedule, but disputed the authenticity of both the profit report and the Respondent's contention that she failed to meet her targets.

The Claimant disputed the authenticity of the management regulations and the staff handbook. She accepted the authenticity of the attendance sheet for training and the completed staff appraisal form. However, she stated that she had neither seen nor received a notice terminating her employment contract, nor did she receive a phone call from the Respondent terminating her employment contract.

The Claimant failed to submit evidence within the time limit set in support of her assertion that she worked overtime on weekends.

The Claimant claims a total of 14,615.5 yuan in unpaid expenses. Some of the receipts had been returned to the Respondent for reimbursement. She submitted additional receipts amounting to 6,695.5 yuan in proof of her claim.

The Respondent disputes the veracity of the receipts and has refused to reimburse the amount claimed.

The above facts were corroborated by the statements from both parties, court records, an employment contract, the Executive Vice President's Remuneration Package, a letter of resignation, two written statements, a profit report and a financing schedule, photocopies of photographs, photographs of text messages, a notice of termination and miscellaneous receipts.

### **Award**

The arbitrator finds as follows:

Staff attendance and salaries are matters that an employer should know. Authors of the two witness statements provided by the Respondent did not appear before the Tribunal and the authenticity of these statements was disputed by the Claimant. The Tribunal therefore rejects the statements. In addition, the Tribunal rejects both the Respondent's claim that the Claimant's last known day of work was June 30, 2011, and that the Claimant failed to collect wages in May and June. The Tribunal finds in favour of the Claimant, that the Claimant's last day of work was July 8, 2011, and that the Respondent failed to pay wages to the Claimant from May 2011.

The Claimant had to sign for her salary which was paid in cash. Although the Respondent claimed that the Claimant's base salary was 6,000 yuan with the actual salary based on performance; however, the Respondent did not provide any evidence of what the Claimant was actually paid each month during the period of her employment. Moreover, the Respondent did not dispute the authenticity of the Executive Vice President's Remuneration Package provided by the Claimant.

This Tribunal therefore rejects the Respondent's claims regarding the Claimant's monthly salary and finds in favour of the Claimant's assertion that her monthly salary was 20,000 yuan. The Respondent should pay the Claimant wages amounting to 45,517.24 yuan for the period May 1, 2011, to July 8, 2011 (calculated as follows: 20,000 per month x 2 months + 20,000 per month / 21.75 days x 6 days). Furthermore, 25% of this amount should be paid in compensation for unpaid wages amounting to 11,379.31 yuan in accordance with to Article 50 of the Labour Law of the People's Republic of China and Article 3 of the Measures for Monetary Compensation for Violation or Termination of Employment Contracts.

Although the Respondent claims that he gave the Claimant notice of her dismissal for serious violations of company regulations on July 20, 2011; however, The Company has never produced evidence proving that this "notice" was sent to the Claimant or that notice of her dismissal was given to the Claimant by other means. The Tribunal therefore finds The Company's position that it terminated the Claimant's employment on July 20, 2011, to be inadmissible.

Due to The Company's recognition of the Claimant's letter of resignation, the Tribunal finds in favour of the Claimant's position that the two parties employment relationship was terminated because the Claimant wanted to resign and moreover that the date of resignation was July 11, 2011.

The reason for resignation was The Company's failure to pay salary and social security during the period of employment, the basis for this claim are Articles 38.1 (c), 46.1, and 47 of the Labour Contract Law of the People's Republic of China. The Company is therefore liable to pay the Claimant 6,301.50 yuan (calculated as follows: 3 x 4201 yuan per month x 0.5 per month), in compensation for breaking the terms of employment.

It is an Employee's responsibility to provide evidence of any overtime work in support of a claim for overtime pay. Because the Claimant did not provide this evidence, the Tribunal finds her claim of working overtime on Saturdays and Sundays inadmissible, and therefore does not support her claim for overtime pay.

According to the Article 2 of the Labour Dispute Mediation and Arbitration Law of the People's Republic of China, the Claimant's request for reimbursement of expenses falls outside the jurisdiction of this Tribunal; therefore no judgement shall be made in this regard.

The Claimant asserts that she is already an Urban Resident. However, disputes regarding social security can be resolved according to the law via administrative government channels in accordance with the Interim Regulation on the Collection and Payment of Social Insurance Contributions, Measures for the Resolution of Administrative Disputes Regarding Social Insurance Premiums, and Measures for Auditing Social Security and their relevant provisions. The Tribunal therefore has no jurisdiction in the matter of DHR's claim for unpaid social security contributions and no ruling is made.

### **Ruling**

The parties failed to reach a mediated agreement.

Based on Article 50 of the Labour Law, Article 38.1 (c), Article 46.1 and Article 47 of the Labour Contract Law, Article 3 of the Measures for Economic Compensations due to Violation or Termination of Labour Contracts, Article 2 and Article 6 of Law of the People's Republic of China on Labour Dispute Mediation and Arbitration, the arbitrator finds as follows:

The Respondent should pay to the Claimant a total of 45,517.24 yuan in unpaid wages for May 1, to July 8, and 25% of this amount in compensation amounting to 11379.31yuan. Payment should be made within five days from the date that this award comes into effect.

The Respondent should pay to the Claimant 6,301.50 yuan in compensation for terminating the employment contract.

All other claims are rejected.