

Civil Complaint

Chaoyang People's Court, Beijing

Plaintiff: CFT Investment

Defendant: DHR

Cause of action: Labour Dispute

Claims

1. The plaintiff refuses to pay the defendant 45,517.24 yuan in wages for the period May 1, 2011 to July 8, 2011 and 11,379.31 yuan in compensation for unpaid wages (25% of outstanding amount of unpaid wages).

2. The plaintiff refuses to pay the defendant 6,301.60 yuan as compensation for the termination of the defendant's employment contract.

3. All fees shall be for the defendant.

Facts and Reasons

Arbitral award JCLA No. 00060 (2012)¹ claimed as fact matters which are unclear and lacked sufficient evidence.

1. According to the employment contract and the Remuneration Package, the defendant's salary was 6,000 yuan per month. Bonuses are calculated over a number of consecutive months and reflect achievement and a percentage of this achievement. Proportionate rewards and disciplinary sanctions are clearly laid out. The defendant should resign if targets are not met for four consecutive months.

The arbitration award was made based on facts which are not clear. The calculation was based on a sum of 240,000 yuan, which the defendant would earn only after achieving 100% of her targets. The award was in contravention of the facts and disregarded the main provisions laid out in the defendant's employment contract.

2. The defendant shall resign if targets are not met for four consecutive months. The reality is that not only did the defendant fail to meet any of her targets, but also that she did not submit a letter of resignation. Moreover, she spent time planning her wedding and holidaying whilst travelling on business and during working hours. When she returned from her travels she did not return to the office. She did not ask for time off or complete resignation procedures and was consistently absent without leave. Her behaviour was in violation of company regulations, the staff manual and her employment contract.

The defendant sent a letter of resignation via courier on October 26, 2011. The letter was dated July 11, 2011, nearly four months before the letter was sent.

¹ The Labor Dispute Arbitration Commission of Chaoyang District.

There are two main problems with the evidence submitted by the defendant:

The defendant had been absent without leave from July 2011, she did not submit a written resignation until October, and did not complete any transfer of her duties.

Although the letter of resignation was dated in July, that the defendant sent her letter of resignation on October 26, 2011, further demonstrates that the defendant did not work from July.

As the defendant knows full well, this sort of behaviour would be unacceptable at any company. Moreover, the defendant's employment contract, company regulations, and the staff manual all contain provisions. The defendant broke these regulations. The plaintiff's dismissal of the defendant on July 20, 2011, was legitimate and reasonable. The plaintiff should not, therefore, be liable for compensation for terminating the defendant's contract of employment.

The arbitration award disregarded the aforementioned facts and made a judgement on matters which are unclear.

The defendant did not withhold wages. Wages are paid monthly. The defendant is well aware of the date on which wages are paid. The defendant did not go to the office and collect her wages. The plaintiff bears no responsibility for the defendant's erroneous actions. The defendant's actions are in violation of all previous agreements and were seriously unjust. The plaintiff should not therefore be liable to pay 25% of wages owed in compensation. The arbitration award was not made in accordance with the facts.

In conclusion, the arbitration award claimed as fact matters which are unclear and lacked sufficient evidence. The defendant's behaviour caused serious repercussions and losses to the plaintiff. The plaintiff thereby requests that the court amend the judgement in accordance with the law.