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A Case Study of Labour Dispute Settlement

In May 2000, a factory recruited new employees to work on a main production line, and concluded 5-year labour contracts with them. In June 2000, in order to adapt to market changes, the factory decided to replace the production line with a new one. Those employees would have to be assessed in accordance with requirements of the new production line before taking up new posts. As a result of the assessment, 36 employees were proved not up to the post. Therefore, the factory decided to revoke the labour contracts with them. In response to the decision, 6 persons out of the 36 requested for changing posts, and the rest 30 requested for carrying through the labour contracts. The factory insisted on its decision. The 36 employees applied to the district Labour Dispute Arbitration Committee for arbitration. The committee decided:

- 1) The decision made by the factory was announced wrong.

Renewal of production line and the consequent necessity of re-assessment of employees is “great change of basis for the conclusion of the contract”, and should be dealt with in accordance with legal stipulations. According to article 26 of *Labour Law*, when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labour contract can no longer be carried out, and no agreement on modification of the labour contract can be reached through consultation by the parties involved, the employing unit may revoke the labour contract but a written notification shall be given to the labourer 30 days in advance. The factory acted against the stipulation, because it revoked labour contracts without prior consultation with the employees.

- 2) The factory should satisfy the request made by the 6 employees for changing posts.

According to *Labour Law*, in the case when labour contract can no longer be carried out due to the above-mentioned reason, parties should consult to modify labour contract. So the factory should change posts for the 6 employees.

- 3) The factory had right to revoke labour contracts with the rest employees.

The *Labour Law* stipulates that in the above-mentioned circumstance, the employing unit may revoke the labour contract, if the parties can not reach agreement on modification of the labour contract. In this case, employees should be notified in writing 30 days in advance and given financial compensations.

4) Arbitration procedure

Since the dispute concerned more than 3 persons, which had common claim, it was classified as collective labour dispute. In this case, the employees involved may appoint representative(s) to participate in the arbitration process. For the appeal of the 6 employees for changing posts, the arbitration committee formed a simple arbitration tribunal, composed of 3 arbitrators. A special arbitration tribunal with an odd number (above 3) of arbitrators was created to deal with the dispute, raised by the 30 employees for carrying through labour contracts. Special arbitration procedure was applied by the special tribunal.

List of Current Laws, Regulations and Interpretations

1. Chapter X. Labour Disputes, *Labour Law of the People's Republic of China*, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the P.R.C on July 5, 1994, and promulgated by the Order of the President of the P.R.C No.28 on July 5,1994, effective as of January 1, 1995.
2. *Regulations on Settlement of Labour Disputes in Enterprises*, promulgated by the State Council on July 6, 1993
3. *Interpretations on Some Questions in Applying of Regulations on Settlement of Labour Disputes in Enterpris*, issued by the Ministry of Labour on September 23, 1993.
4. *Rule on Organisational Structure and Working Procedure of Enterprise Labour Dispute Mediation Committee*, issued by the Ministry of Labour on November 5, 1993.
5. *Rule on Organisational Structure of Labour Dispute Arbitration Committee*, issued by the Ministry of Labour on November 5, 1993.
6. *Rule on Working Procedure of Labour Dispute Arbitration Committee*, issued by the Ministry of Labour on October 18, 1993.
7. *Interpretations on Some Questions on Application of Laws and Regulations in Handling Labour Disputes*, adopted by the Judicial Commission of the Supreme People's Court at its 1165th meeting on March 22, 2201 (Legal Interpretation 2001 No. 14)