

Certain Issues Regarding the Application of Labor Laws to Agricultural Migrant Workers: A Case Analysis of the Chang v. Chen Lawsuit

Shisi Chen

Northwest University of Political Science and Law, Xian 710122, China

1739743996@qq.com

Abstract. In the rapid development of the market economy environment of farmers casual workers become an important participant in the labour market, but this kind of subject is often because of the lack of legal knowledge is difficult to protect their legitimate rights and interests. In this paper, the case of peasant casual labourer Chang v. Chen as an example reveals that peasant casual labourer is difficult to identify the nature of the employment of the same problem, as a basis for further leading to the application of the contract is confusing, and then in the protection of the rights and interests of the peasant casual labourer fuzzy zone. Migrant casual workers are a large class of subjects, which specific disputes are complex, in order to better put forward useful insights, the article in order to fit the four characteristics of the case to limit the scope of the subject, and then to determine the nature of the subject of the employment of such subjects in order to put forward a reasonable solution.

Keywords: Migrant Casual Labour; Nature of Employment; Contractual Application; Labour Law.

1. Introduction

The appellant is a farmer in Shaanxi Province, Chang, he and his wife work together, in the form of casual labour irregularly under the appellee Chen engaged in renovation work. The cause of the incident is Chen in order to sympathise with Chang's family in Xi'an nowhere to settle so he gave his own place garage to Chang to live but with the condition - need Chang in the period of residence to complete the garage roof tile laying. Chang in laying tiles during the accidentally fell from the roof, causing "fourth degree" disability, Chang appeal court for compensation for medical expenses, nursing fees and other related costs amounted to more than one million nine hundred thousand yuan. The appellee Chen to "good intention to give favours" to defend, so this case dispute focus on whether constitute labour relations. China in similar cases, for the purpose of protecting the party providing labour, generally will pay wages as the basis for determining the composition of the labour relationship, but also to accept the labour party to buy work injury insurance as the basis for confirmation, overall will be most of the cases were found to constitute a labour relationship. However, it is difficult to deal with the disputes of private labour relations, in which there are many controversial areas, first of all, the private sector for the consideration of labour flexibility generally will not sign a paper contract, the verbal contract does not have a fixed way to pay wages, there is no contract period and so on, resulting in the form of employment of migrant casual labourers is very difficult to define; not able to determine the form of employment will give rise to the duration of the contract, the fairness of the salary income and the treatment of workers' compensation insurance and so on, so this article will be in this case situation. Therefore, this article will introduce the problem of determining the nature of employment in this case as an entry point to analyse the application of labour law to the migrant casual workers in this case.

2. Problems of the Nature of Employment of Migrant Casual Labourers

2.1. Classification of the Nature of Employment in China

The nature of employment in China can be divided into two categories, one is labour employment and the other is service employment. Labour employment requires the employer and the worker to sign a labour contract, which clearly lists the responsibilities and obligations of both parties to ensure that both parties have equal status, rights and responsibilities. Labour employment is commonly divided into two categories: full-time employment and part-time employment. According to the Labour Law, full-time employees must sign an employment contract with the employer, while part-time employees may sign a verbal agreement. The signing of an employment contract makes the employee's salary, protection, work content, etc. visual and regular, and provides a basis for dealing with labour disputes and safeguarding the rights and interests of the workers. However, the content of oral agreements for part-time workers is vague, and oral agreements for casual migrant workers in particular are confusing.

The Labour Contract Law of 2008 has been applicable for many years, and the flexibility of labour employment has gradually been weakened through the improvement of the law; in order to adapt to economic development and enhance the flexibility of labour employment and reduce the input costs of both parties, another nature of employment has made up for the omission, namely, the employment of labour services. Labour service is the employer and the labourer to sign a labour contract for the purpose of completing a specific job, the labour contract relative to the labour contract rights and obligations focus on the two sides of the negotiation, this feature is widely accepted by the community, but its flexibility is accompanied by the problem of the application of the law is also controversial due to the emergence of contradictions.

2.2. Problems in Defining the Nature of Labour of Casual Migrant Workers

2.2.1. Characteristics of Labour Employment of Casual Migrant Workers

In this case, one of the parties accepting the labour was the legal representative of a Xi'an decoration company, which had a legal business licence and was qualified to employ workers. Secondly, in this case, according to the appellant Chang expression, the labour service between the two sides to the appellee Chen telephone "send work" based on the two sides to establish a long-term but unstable labour relations. The two sides did not sign a written labour contract, based on oral agreement. According to the provisions of the labour contract law, full-time employment is a monthly pay cycle, the daily working hours of no more than 8 hours, the monthly working hours of no more than 167 hours, between Chang and Chen does not constitute a full-time labour relationship. From both sides of the continuous but intermittent "work", with part-time labour relationship "coat", but both sides also violated the part-time labour law. Firstly, they were in breach of the rules on payroll. According to the Ministry of Labour and Social Security in 2003, "on part-time employment last year's opinion on the issue of part-time work" in the explanation of part-time work, part-time work is an hourly rate of pay, the labour week in the same employer daily working hours of not more than 5 hours per week working time does not exceed a total of 30 hours of work form of employment. But this case is obviously not in line with the payroll, Chang and Chen to a year for the cycle of settlement, settlement is not hourly for the unit of interest, but each time the work of 300 to 400 yuan for the cumulative. Second, the rights and obligations are unclear. According to article 4 of China's labour contract law, the employer shall establish and improve the labour rules and regulations in accordance with the law, to ensure that workers enjoy their labour rights and perform their labour obligations. In this case, Chang and Chen to establish a long-term unstable labour relationship, taking into account the possibility of Chang in a year for several consecutive months of doing work there are also several consecutive months of no labour, so the two in the signing of the oral agreement did not provide clear provisions for the provision of protection of the workers, which is also common in the folk verbal agreement, from the position of the labour relationship, the case against the provisions of the law of the labour contract.

2.2.2. Characteristics of Labour Use by Casual Migrant Workers

From the point of view of legal relations, the most essential difference between the use of labour and the use of labour lies in the equality of the status of the employer and the worker in the labour process. Generally speaking, the two parties are on an equal footing when the contract is concluded, and their rights and obligations are equal. In the course of labour, the employer and the worker are subordinate, and the worker needs to accept the management and control of the employer, i.e., the worker is required to provide labour under the employer's rules and regulations and under the direction of the supervisory personnel. Labour service is the opposite, in order to ensure the flexibility of labour service and expand employment opportunities, workers are not subject to the employer's control and management in the labour service relationship, and the two parties are equal civil subjects, not subordinate to each other. In this case, Chen will not regularly to Chang work, to settle, Chang work period is not under the control of Chen, the oral agreement between the two is similar to the completion of a task for the duration of the verbal contract, after the completion of the work, Chang won't be Chen's management and control, from this aspect, the two do not have the relationship between the subordinate, are equal civil subject, so the case has the nature of the labour service employment. From the settlement of labour remuneration, the labour contract more to labour settlement, but more for a one-time timely settlement, this case in the civil most of the salary calculation is chaotic, the relationship between the two sides is not temporary, with a long-term instability of the relationship, so the salary settlement can not be paid in time. From the relationship between the rights and obligations of the two sides, folk casual workers and employers more oral agreement is based on the labour contract, the employer will not pay social security for the workers, there is no provision for labour conditions and labour protection, which with the implementation of the initial intention of the labour is to increase the form of flexible employment is complementary, but for the rights and interests of farmers in the case of the protection of the rights and interests of the casual workers is unfair. The nature of the employment of casual migrant workers is both labour and service, and it is difficult to make a clear definition of this group of people under China's existing laws and regulations; the root of the problem lies in the fact that the lagging nature of the law makes it difficult to adapt to flexible forms of employment in the private sector.

3. Problems in the Application of Contracts to Casual Migrant Workers

3.1. Difficulty in Defining the Nature of Casual Migrant Labour Leads to Difficulty in Determining the Nature of the Contract

From the above analysis, it can be seen that the nature of the employment of casual migrant workers is both labour and service, and the two types of employment belong to different categories of labour contracts. First of all, the nature of labour employment is in the scope of the labour contract, according to the Labour Contract Law, after the establishment of the labour relationship, the employer shall sign a written labour contract with the workers, full-time workers must sign a written labour contract, and part-time workers can establish the labour relationship in verbal form. The labour contract must specify the rights and obligations of the contract, and the wages of the worker must comply with the requirements of the labour law, while the employer needs to provide protection for the worker. Secondly, the nature of labour employment belongs to the category of labour contract, labour contract compared to the labour contract, in terms of the rights and obligations of the content of the relatively lax, which is also taken into account the employer and the worker constitutes a one-time labour relations convenient and natural. In the labour contract, the employer does not need to provide social security to the party who provides the labour, and the content is mostly subject to mutual negotiation, which is more flexible, while the termination time of the labour contract is generally for the natural termination of a certain period of time for a certain task. While the labour contract needs to specify the duration of the labour contract, not specified contract period to terminate the labour contract needs to comply with the provisions of the labour law.

The difference between the labour contract and the labour service contract, directly related to the rights and interests of workers can be reasonable protection. However, in similar cases in the private sector, it is impossible to define the nature of the migrant casual labourer's work, resulting in the mixing of labour contracts and service contracts, with labour contracts being applied to the subject matter and service contracts being used for the content of rights and obligations, making the employer's rights outweigh its obligations most of the time, and leading to unlawful infringement of the rights and interests of the workers.

3.2. Advantages and Disadvantages of Written Contracts and Oral Contracts

Whether it is a labour contract or a labour service contract, folk farmers casual workers mostly use oral form of contract, on the one hand, taking into account the flexibility of the employer and the party providing labour, but on the other hand, oral form of contract in the identification of the relationship between the two parties, the content of the labour, the sharing of legal responsibility and so on are too ambiguous, especially for the lack of knowledge of the law of the folk, the legal relationship of the context of the confusion, the flexibility and the flexibility brought about by this disadvantages need to be further balanced. At present, China's laws provide that all labour relations of a labour-using nature require the signing of a written labour contract, with the exception of part-time workers, who may enter into an oral agreement.

3.2.1. Advantages and Disadvantages of Written Labour Contracts

Written contract can clarify the rights and obligations, is conducive to the protection of the rights and interests of both parties. "Written labour contract refers to a written agreement in which the worker and the employer agree on the rights and obligations and later fix them in writing to express the labour rights and obligations of both parties, as a proof of the existence of a labour relationship." . A written labour contract includes the name of the employer and its basic information; the name of the worker and his or her basic information; the duration of the labour contract; the content of the work; the working hours and holidays; the remuneration for the work; the social insurance; the protection of the work, labour mediation and protection against occupational hazards, as well as any other matters stipulated by laws and regulations that should be included in the labour contract. Written labour contracts clearly set out the rights and responsibilities of both parties in writing, which can be relied upon in case of disputes, and is conducive to the protection of the legitimate rights and interests of both parties.

A written labour contract can improve the efficiency of the case. When a labour dispute, if there is no written contract law enforcement agencies will certainly spend more energy in the collection of evidence, but also need to take into account the opportunity because of some human factors is very lead to the result of injustice; China's labour relations, labour forms are also a variety of labour, China's labour contract law has been promulgated for many years, but compared to the society of the flexible mode of employment is still lagging behind the lack of written labour contract on the one hand, is not conducive to the labour supervisory authorities on the one hand, not to have a good understanding of the labour contract. On the one hand, the lack of a written labour contract is not conducive to the correction of unlawful labour relations by the labour supervisory authorities; on the other hand, a written contract is the epitome of the history of workers' rights and interests, which is conducive to the enhancement of rights and interests awareness, and to the improvement of the social and legal structure of the society through the cultivation of a good habit.

The high cost of a written labour contract discourages employers from hiring. Employers and workers to sign a labour contract is generally longer term, once the labour contract is signed the employer needs to bear the workers and employers due to structural incompatibility resulting in the termination of the labour contract of the risk of liquidated damages, which to a large extent increases the cost of the employer and reduces the employer to try to motivation. China's current labour market shows a situation in which supply exceeds demand, and flexible forms of employment have the characteristics

of being temporary and short-term, so that enterprises do not need to bear the risk of liquidated damages, which greatly reduces the cost of input by enterprises and increases the number of jobs.

3.2.2. Advantages and Disadvantages of the Oral Form of Labour/Labour Contract

"An oral labour contract is a labour contract in which the employer makes an offer to the worker and the worker makes a verbal commitment to it", and "this labour contract is suitable for a labour relationship in which the rights and obligations of both parties can be settled in a short period of time". Adapt to the development trend of globalisation. With the development of the times, from the industrial economy to the globalised economy, the number of labour relations has been increasing, and the standard labour relations are no longer sufficient to cover them; the world has entered an era of economic instability and job insecurity, and the increase in the number of flexible jobs has been described as an inevitable trend in economic development. This type of work is short-term and flexible, which is in demand by employers but not enough to create positions for them, and written contracts require clear rights and responsibilities between the two parties and are generally longer, so this type of work is more suitable for oral agreements.

First, the oral agreement is conducive to ease the pressure of the employer. Oral agreement is generally suitable for shorter-term labour, can use the employer unit so that the weak labour and personnel management in the relief, reduce the recruitment, daily management and the risk of liquidated damages and other aspects of the cost, the employer unit will be more energy into the market development, increase the resilience of the enterprise. Oral agreements are favourable to flexible employment. Secondly, oral agreements offer the possibility of convenient employment in a mobile and flexible market. Workers do not need to enter into a labour relationship with only one employer, and workers can reasonably move around the market and increase their income. Thirdly, oral agreements are vague and not conducive to proof. The original purpose of the head agreement is to adapt to the flexible labour relations in the market, but as the two parties only make verbal expressions on its content, the two parties are relatively ambiguous about the content of their rights and obligations, and in the event of labour/labour disputes, it is difficult to produce factual evidence to protect their respective legitimate rights and interests. Fourthly, oral agreements are difficult to monitor, which increases the emergence of unlawful labour practices in society. Unlike written agreements, which are recorded in writing and clearly set out the rights and obligations of both parties, oral agreements in the private sector are often concluded out of trust between the two parties; however, due to the lack of knowledge of the law in the private sector, illegal practices occur repeatedly, and most oral agreements fail to protect the legal rights and interests of one of the parties, and because of the difficulty of proving the facts, the progress of the labour inspectorate in regulating labour relations in the private sector has been slow.

3.3. Oral Agreements are Not Suitable for Casual Migrant Workers

We have analysed the nature of the labour of the migrant casual workers in the previous case, the migrant casual workers have the characteristics of both labour and labour service, and the different scope of the contract applicable to the two will give rise to the problem of unfair treatment.

3.3.1. Remuneration

Secondly, Chen irregularly "sends work" to Chang, the unit of pay for times, under the condition that Chang did not sign with any labour agency, long-term many times should be regarded as part-time labour, and should be paid by the hour, in the case of the pay by times inevitably produce excessive working hours, the average hourly wage is lower than the local minimum wage level.

3.3.2. Labour Protection Issues

The labour disputes of migrant workers are often about the recognition of work-related injuries. The principle of China's law on the recognition of work-related injuries is that when both parties are in a labour (labour) relationship, work-related injuries are recognized as work-related injuries when they are sustained in the workplace during working hours and in the workplace. Therefore, the duration of

the labour (labour) contract is the key to this issue. However, in this case, the nature of the labour of migrant casual workers is not clearly defined, resulting in the nature of the labour contract can not be determined, if it is identified as part-time workers, the nature of the contract is a labour contract, then in the absence of an agreement on the duration of the contract, the duration of the contract for the labour contract for the two sides of either party to inform the other from the date of the date of counting, during which the employer is required to assume the obligation to provide basic necessary protection for the workers; the identified as a labour service In the case of labour, the duration of the labour contract is generally for the completion of a task, and the termination condition is the completion of the task, during which the employer does not need to pay social security for the workers, and other labour protection is negotiated by both parties, so that the employer's obligation of labour protection is relatively easy.

But folk farmers and employers are often on the obligations of the workers in accordance with the contract law requirements, the employer's obligations but the use of specific labour contract requirements, the difference between the rights and obligations of the two sides of the big, but also because of often farmers and casual workers of the legal awareness of the weak, in the verbal agreement can not make their legitimate rights and interests are protected. Therefore, in this case, where the nature of the labour of the migrant casual worker cannot be determined, the migrant casual worker needs more help in defining the nature of the labour through the nature of the contract, thus protecting the legitimate rights and interests of the migrant labourer to be protected by the law.

4. Solutions to the Legal Problems of Farmers' Casual Labourers

4.1. Definition of the Nature of Employment of Casual Migrant Workers

The cases selected in this paper represent the common problems of disputes between a part of the society's migrant casual workers and their employers, and these disputes have some common characteristics, firstly, the workers have not signed labour contracts with any labour intermediaries; secondly, the employer and the workers have the qualifications in accordance with the laws and regulations; thirdly, the employer and the workers have a long-term and irregular cooperation (several times in one year), not a one-time temporary contract; fourthly, the contract is made in oral form between the two parties. Thirdly, the employer and the worker have a long-term and irregular cooperation (several times within a year), which is not one-time and temporary; and fourthly, the contract is concluded orally between the two parties. Based on the above characteristics, this section makes some suggestions for defining the nature of employment of this type of migrant casual labour.

According to Article 1 of the Ministry of Labour and Social Security's Circular on Matters Relating to the Establishment of Labour Relationships, a labour relationship is established when the employer has recruited a worker without entering into a written labour contract, but the following circumstances are also present. (i) the employer and the worker meet the qualifications set forth in laws and regulations; (ii) the labour rules and regulations formulated by the employer in accordance with the law are applicable to the worker, and the worker is subject to the employer's labour management and engages in remunerated labour arranged by the employer; and (iii) the labour provided by the worker is an integral part of the business of the employer. This type of dispute is consistent with the first and third points, in that both parties have subject matter eligibility, and the labour provided by the casual farmer is indeed part of the employer's business, but the second point is inconsistent, in that in the private sector such casual farmers and the employer are more like equals, with the casual farmer accepting the tasks assigned to him or her without being subject to the employer's management. However, on another level, as long as the employer "sends work", the casual migrant worker will take the work, in effect establishing a long-term connection that the employer will respond to if necessary, and furthermore, for the original purpose of protecting workers, it seems to me that the relationship between this type of casual migrant worker and the employer is consistent with a labour relationship and is of the nature of a part-time labourer.

4.2. Nature and Form of Contract for Casual Migrant Workers

In the discussion in Section 1, I argued that the nature of the employment of casual migrant workers should be recognised as labour employment, and therefore the contract between casual migrant workers and the employer is a labour contract. Part-time workers can enter into an oral contract, but the use of an oral labour contract is not recommended for this group of casual migrant workers in the case.

Both parties should sign a written labour contract, but the content of the contract can be appropriately relaxed. The basic information of the employer and the worker, the duration of the labour contract, the content of the work, remuneration, social insurance, etc. must be in accordance with the law, and the other contents of the labour contract need to be appropriately relaxed after appropriate negotiations under the laws and regulations. However, this is not permanent, and when the legal concepts of these groups have grown to a certain point, the requirements for labour contracts will be gradually tightened.

4.3. Solutions to Other Problems

4.3.1. Problem of Excessive Working Hours for Casual Migrant Workers

On the basis of the above, this kind of peasant casual labour is identified as part-time labour, Article 18 of the Labour Contract Law records that "Part-time employment refers to the form of employment in which hourly remuneration is the main basis, and the average daily working time of workers under the same employer does not exceed five hours, and the cumulative weekly working time does not exceed 30 hours." However, the payroll method for casual migrant labourers in the cases is often paid on a per-period basis, with the level of each wage depending on the content of the labour on that particular occasion. This type of payroll has been adopted by the majority of the population and has formed a certain habit, which can never be Changed overnight. The fact that wages are paid on a per-period basis and that the amount of each payment is based on the specific labour service may lead to the problem of excessive working hours.

First, because of this kind of cases, although the employer and the migrant workers establish a long-term labour relationship, but the specific labour dispatch is not regular, may produce the cumulative weekly working hours more than the legal provisions of the 30 hours of the situation, in this case, the labour income can be dealt with in accordance with the full-time employment. Workers pay the equivalent of full-time workers, should enjoy the same remuneration as full-time workers, at the same time, even if the problem of excessive working hours should be subject to the working hours of full-time workers, the average daily working hours shall not exceed eight hours, once more than eight hours, the employer needs to pay overtime costs to the workers. Secondly, another aspect of excessive working hours may involve moral hazard on the part of workers. In order to obtain more pay, workers may deliberately increase their working hours, and in such cases, there is not enough to establish a complete set of rules and regulations and supervision system between the migrant workers and the employer, so it is possible to reasonably assess the market price of this kind of specific labour and set a set of wage standards, which need to ensure that they are in line with the laws and regulations on the hourly wage, and can be fluctuating up and down the standard wage corresponding to the specific labour. The standard wage for the specific labour service can be adjusted upwards or downwards.

4.3.2. Social Security for Casual Migrant Workers

In this case, the relationship between the casual migrant workers and the employer is of a labour nature, but the relationship established between the two parties is long-term and stable, but the actual period of labour is irregular. On the one hand, the employer is required to provide social insurance coverage for the worker in accordance with the employment contract to protect the worker's rights and interests, but on the other hand, the payment of social insurance coverage for this type of migrant casual labourer adds to the financial burden of the employer. Therefore, under the current circumstances, insurance policies need to be adjusted appropriately for this group.

Part-time workers vary greatly in their ability to participate in insurance contributions, and in this case, the migrant casual workers' ability to contribute is weak, and the labour relationship with the employer is strictly different from the Labour Contract Law, so in order to protect the interests of the employer at the same time, it should be adapted to a more flexible preferential policy.

In terms of contribution standards, there is flexibility to increase the number of products and set up gears. Due to the rapid economic development accompanied by the diversification of labour relations, the current law on the formal large-scale employers with strict legal norms, but for the out of addition to the legal quality of different areas of difference, part of the group's labour rights and interests can not be reasonably protected. Therefore, in order to address this situation, it is possible to set up "one rate for one group" to make social insurance flexible for different groups, promoting the transformation of insurance from a single product to multiple products and grades, and implementing differentiated preferences.

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