Research on the Handling Method of Difficult Labor Law Cases Based on Law

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Abstract: In response to the problems of difficult labor law cases, such as loopholes in the concept of "incomplete labor relations," a lag in the study of legal methods in labor law, the complexity of the regulatory system of labor law, and communication jurisprudence and legal methods in difficult cases, this study, based on Hart and Dworkin's theory of difficult cases, analyzes the causes of difficult cases and solutions from the perspective of jurisprudence, and conducts either comprehensive or specialized research on legal methods for resolving difficult cases. It proposes type-specific legal construction methods, defines the concept of "incomplete labor relations" by means of elemental identification standards, and provides partial protection of labor law rights.

1. Introduction

In the era of innovation and artificial intelligence, facing the practical problems of a large number of difficult cases of labor law, it is necessary to apply legal theory to legal practice to ensure that the judgment results meet the legal provisions and can be accepted by the public, improve and perfect the theory of legal methods of labor law, and study the application law of legal methods of labor law.

Ronald Dworkin considers difficult cases as cases in which there is no clear legal rule in the legal text to specify the way to be decided [1,2]. Huang Yuexin defined legal loopholes as the incompleteness existing in the original legal system that should be complete [3]. Yang Renshou, judges only need to use logical reasoning to deduce correct legal rulings from the legal knowledge system [4]. Lin Lin defines difficult cases from the perspective of legal discovery, and judges are making legal discovery and looking for the basis for judgment [5].

The current research hotspot and the main direction of progress of difficult cases at home and abroad: study the general theory of difficult cases, analyze the causes, types and solutions of difficult cases from the perspective of jurisprudence. Western schools of law or legal figures of the difficult case thought theory, such as Hart's difficult case theory, Dworkin's difficult case theory, etc. [6]. The special research of solving difficult cases by legal methods and the research of solving difficult cases by department law are mainly concentrated in two major areas: civil difficult cases and criminal difficult cases. Legal methods to solve difficult cases of labor law research is relatively few. [7]

The deficiency of the above research is that the theory of difficult cases is fragmented and not systematic enough. This paper chooses the difficult cases of labor law to study, hoping to put forward valuable reference opinions in two aspects: first, the systematic study of difficult cases to form a theoretical system of difficult cases; The second is to supplement the lack of research on difficult cases of labor law.

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2. Types of difficult Labour law cases

2.1. A difficult case of legal interpretation

German philosopher Gadamer said that hermeneutics is the art of understanding text. The task of hermeneutics is the understanding and interpretation of texts.

There are four approaches to legal interpretation: First, the approach of linguistics, which uses the interpretation rules of semantics and pragmatics to explore the meaning of law from the perspective of the meaning of the language in which the law is formulated; Secondly, the teleological approach, from the Angle of legal purpose, rule of law principle and legislator's intention, revises the deviation that may occur by simply relying on the interpretation method of text; Third, sociological approach, using sociological methods and interpretation rules, from the perspective of social context analysis to find the meaning of law; Fourth, the approach of value analysis, using the method of value measurement or interest measurement, to find the meaning of law from the external value of law. The essence of legal interpretation is a value judgment.

Due to the generality and fuzziness of legal principles, the value orientation of interpreters is more obvious in the interpretation of legal principles. Each interpreter's basic views on things, inner values and the ideal state he pursues may be the basis for his interpretation of legal principles.

From the viewpoint of dichotomy between formal rationality and substantive rationality, we can divide the interpretation methods into two categories. One is the formal interpretation method. For example, textual interpretation, system interpretation, etc., these interpretation methods are limited within the scope of legal text, and the determination of legal meaning depends on the symbolic information conveyed by legal text. The other is the substantive interpretation method. For example, historical interpretation, purpose interpretation, etc., these interpretation methods not only rely on legal texts, but also consider the purpose of the law, the intention of the legislator, public policy and the concept of fairness and justice. According to the principle that formality takes precedence over substance in legal hermeneutics, formal interpretation methods generally have precedence over substantive interpretation methods. Only when the formal interpretation cannot determine the interpretation result, or when there are multiple interpretation results, or when the formal interpretation result seriously violates justice, can the substantive interpretation be used to supplement, select and amend the interpretation result.

2.2. Difficult cases from the perspective of legal reasoning

In the adjudication of difficult cases, the legal method commonly used by judges all over the world is legal reasoning. Legal reasoning: The reasoning process in which the judge follows certain rules and proves the conclusion of the judgment with the basis and reason of the judgment. Legal reasoning requires the rationality of the inference process and the acceptability of the judgment result.

Professor Zhang Wei believes that legal reasoning includes not only the resolution of the relevant disputes according to the existing, clear and formal legal sources, but also the search and determination of the legal basis for resolving the relevant disputes and violations within a certain framework. It can be seen that legal reasoning includes both formal reasoning and substantive reasoning. A typical form of formal reasoning is deductive reasoning or syllogism, which uses logic to deduce conclusions (judicial decisions) from a major premise (legal provisions) and a minor premise (case facts). The facts of the case are compared with the general legal provisions, and a judgment conclusion is presented by logical deduction. The inferential process of placing the facts of a specific case under the constitutive elements of a legal norm in order to derive a specific legal consequence. The limitation of formal reasoning is that it is only applicable to conventional cases where the legal content is determined and the facts of the case are clear, and it is powerless to deal with situations where the legal content is vague, conflicting or loophole. At this time, it is necessary to use substantive reasoning methods such as legal purpose and value measurement to solve legal conflicts or fill legal loopholes. The characteristic of substantive reasoning is that it cannot reach a conclusion by the thought process and proof of a single chain mentioned before, and the reasoning method characterized by value judgment and practical rationality is mainly suitable for difficult

cases.

Formal reasoning can guarantee the certainty of law application, but its limitation is that it is only applicable to simple cases. Substantive reasoning solves difficult cases by appealing to value judgment and practical rationality, but it easily leads to uncertainty and arbitrariness of judgment conclusions. Therefore, in order to better solve the difficult cases in judicial practice, it is necessary to give full play to the advantages of the two to make up for their shortcomings, realize the perfect combination of formal reasoning and substantive reasoning, and take the formal rules as the basic guarantee and the substantive value balance as the guidance, in order to effectively deal with the judgment of difficult cases.

2.3. Difficult cases from the perspective of legal argument

Since the 1980s, the comprehensive study of legal argument theory involves topics, methods, principles, concepts, etc. Among them, the rational justification of judicial judgment and the acceptability of decision results have become the core issues of legal argument theory. Foreign scholars mainly study legal argument at two levels: First, in the level of legal philosophy, legal argument is regarded as a special form of general argument. It mainly includes Toulmin's logical argument theory, Perelman's rhetorical argument theory and Habermas's communicative rationality theory. The second is the theory of legal argumentation in legal theory. It mainly includes McCormick's theory of justifying legal decisions, Alexi's theory of procedural argumentation, Petzenik's theory of legal transformation and Arnio's theory of legal interpretation corroboration.

Traditionally, the reason why deductive logic is criticized mainly lies in the adequacy of the major premise of formal logic. This is actually related to the problem of external proof in legal argument. The distinction between internal justification and external justification is an important theoretical basis of legal argumentation and an important theoretical result of legal method research. It is a new and more convincing legal method based on the traditional theory of law application. Of course, this distinction has experienced a development process in foreign academic circles, and different jurists have different theoretical construction and interpretation of it.

Scholars have realized that the theory of legal argument contains two different forms of internal justification and external justification. The role of the two is also different. It is generally believed that internal justification is the process of reasoning legal judgment (conclusion) from the established legal norm (major premise) and the facts of the pending case (minor premise). It is clear that internal justification applies to simple cases in which the large and small premises are determined. The distinction between internal justification and external justification is based on the distinction between law discovery and law application. It is precisely in this sense that internal justification is a process independent of law discovery and a process of law application on the basis of having completed law discovery. However, in difficult cases, the main premises used for legal proof are either ambiguous, conflicting, or loophole, so that effective internal proof cannot be carried out. At this time, external proofs are needed to complete the task of finding and determining sufficient major premises.

2.4. Difficult cases in judicial practice in our country

China's laws and regulations, judicial interpretation of difficult cases from the trial procedure, involved subjects, case content, judgment requirements and other aspects of different from the conventional case provisions:

First, cases with significant social impact. Cases involving national interests, social public interests, or the interests of vulnerable groups, as well as group disputes, and the outcome may have a significant social impact. The judgment result of such cases involves a wide range and has a large impact on the country, society and similar groups, and has a certain exemplary role in the national order, social stability and the interests of the poor people.

Second, it mainly refers to cases involving public order and good customs, protection of heroes, doing good deeds, helping others, etc., which may trigger moral evaluation. For example, the case of workers who were fired for returning home to attend their parents' funerals.

If the legal rules themselves seriously violate fairness and justice, or the result of the application

leads to the occurrence of serious injustice, then the legal rules can be corrected and repaired by using higher legal concepts and legal principles. Of course, in this kind of correction, there is a problem of standard and degree, if the judge does not have any arbitrary revision of the standard, or only judge based on personal moral values, it will bring legal uncertainty and damage the rule of law.

3. Legal findings in difficult labor law cases

3.1. The field of legal discovery is the source of law

The so-called legal discovery is the activity of finding the law in the existing effective law. Compared with legal interpretation, legal reasoning, legal demonstration and other legal methods, legal discovery has not been concerned by scholars in our country for a long period of time. With the deepening of theoretical research on legal methods, people gradually find that even in countries with written laws, the applicable legal norms are not obvious and readily available, but need to follow certain rules and follow specific methods to find and discover.

Proving legal discovery is an independent legal method, which shows the independent value and significance of its existence by comparing with related concepts. Engisch distinguishes between legal discovery and legal proof, and believes that the two are not only not opposite, but the most crucial task of legal discovery is to prove the relationship between legal discovery and legal application through the formulation of law. There are three main viewpoints: First, law discovery and law application are two kinds of legal activities with essential difference. The application of law is only a natural process of entering laws and facts to automatically draw judgment conclusions, while the discovery of law refers to the creative judicial activities to fill legal loopholes. Secondly, law discovery and law application are two kinds of legal activities without essential difference. The two concepts have a relationship of upper and lower inclusion, that is, law discovery includes law application, and is collectively called law acquisition by Kaufman. The difference between the two is mainly manifested in the difference of the expansion degree of law, the expansion degree of law application is less than the expansion degree of law discovery. Third, law discovery and law application are two parallel legal activities. Professor Zheng Yongliu holds this view and defines legal discovery as the situation in which the law cannot be directly applied, while the law application belongs to the situation in which the law can be directly applied, and uses the law application to control the law discovery and application.

To study the field of legal discovery, we must rely on the theory of legal origin. Similarly, the study of the concept of the source of law needs to be combined with the concepts of law discovery and law application.

3.2. Division of legal sources

1) Formal and informal sources

The main sources of official sources are: constitutions, statutes, administrative regulations, administrative orders, regulations, treaties, judicial precedents, and statutes and regulations of autonomous or semi-autonomous bodies. Although the list of informal sources cannot be exhaustive, they should include the following categories: equity, common law, standards of justice, public policy, moral convictions, social tendencies, and principles of reasoning and thinking about the nature of things. This kind of division has been adopted by Chinese jurisprudence circles and has become the mainstream view.

2) Source of effectiveness and source of cognition

The classification of the source of effectiveness and the source of cognition is to understand the source of law from the perspective of the source of the basis of judgment. The source of law includes two parts: one is to identify the fact or source of the legal effect on which the judgment is based; The second is to identify the facts or sources of the content of the judgment. The former is the source of formal effectiveness, while the latter refers to the source of substantive effectiveness. The two can either be separated from each other or combined with each other.

3) Basic source, secondary source, cognitive source

Alexi and Petzenik argue that every legal system has a specific hierarchical system of legal sources. 2 They divided the source of law into three hierarchies according to the degree of compliance with the obligation of the judge to the source of law at the time of the decision: the source of necessity, the source of ought, and the source of may. In German law theory, a third category, the secondary source, is added on the basis of the dichotomy of legal sources. Secondary sources mainly refer to precedents, but also include administrative rules and privately created norms.

Basic source: universal binding force, typical such as laws, regulations, etc., comprehensive effect.

Secondary sources, limited binding effect, guiding cases, administrative rules, registered privately created norms, etc., auxiliary compliance obligations, constructive effect.

Cognitive origin, no binding effect, axiomatic reason, trading practices, general views, etc., no obligation to comply.

3.3. Rules and regulations of the employer

The right to make work rules is an integral part of the business operation granted by the employer on the basis of the law, so the work rules made by the employer under the legal authority are a kind of law.

The employing unit shall have the right to formulate rules and regulations according to law, and the worker shall have the obligation to observe them. Rules and regulations that meet certain conditions can be the basis for the court to determine the rights and obligations of employers and workers. In this way, it can be seen that whether from the legal provisions or judicial practice, the rules and regulations formulated by the employer have the quasi-legal nature of binding on the workers.

Positioning the rules and regulations of the employer as the secondary source of the labor law has strong practical significance, which can guide the judge to conduct more effective and scientific legal discovery in the trial of labor dispute cases, and give full play to the function and role of the legal source of the labor law.

Laws and regulations are codes of conduct with universal applicability and legal force formulated by the legislature according to the Legislation Law, which are the embodiment of the will power of the state and the specific exercise of the legislative power of the state.

Laws and regulations have the effect of taking precedence over the rules and regulations of the employer, that is, the rules and regulations of the employer shall not conflict with the laws and regulations, and the conflict is invalid. If the provisions of the rules and regulations of the employer on the rights and obligations of both employers and employees take precedence over the minimum standard, the rules and regulations of the unit take precedence over the minimum standard, if it is lower than the minimum standard, the semi-mandatory standard is directly applicable; The third is the arbitrary norm, which is determined by its characteristics. If the provisions on rights and obligations in the rules and regulations of the employer obtain the consent of the worker, including the consent of the individual intention of the worker at the conclusion of the contract, and the consent of the collective intention of the worker during the existence of the labor relationship, the rules and regulations of the employer have the effect of priority application.

4. Legal interpretation of difficult labor law cases

4.1. The application of legal interpretation in difficult cases

The law needs to be combined with the facts of a particular case to be applicable to an individual case. For some specific cases, difficult cases, legal norms may appear vague, ambiguous, too abstract and unclear reference and other situations, the law needs to be interpreted and concrete. There is no fixed priority relationship between various legal interpretation methods, so the choice of methods has certain arbitrariness and randomness. In order to give full play to the role of legal interpretation methods in solving difficult cases, it is necessary to explore the meta-rules of legal

interpretation methods.

The dichotomy of legal language and meaning is usually adopted: that is, the meaning is divided into explicit cases and complex cases. Heck uses the term conceptual core and conceptual periphery. According to Hart, it is the inherent nature of language that in all areas of experience, including those of rules, the guidance that a generalized language can provide is limited. There are both core areas that make the general expression clearly applicable, and marginal areas where the application is not clear.

The uncertainty of language in the conceptual core and around the concept directly determines the difficulty of the application of legal rules. The application of system interpretation in difficult cases of labor law and its position in the legal structure. To fully understand the intent of the legislator behind a norm, it is often necessary to understand the interrelationships between norms. System interpretation focuses on the position of constitutive elements or legal provisions in the legal structure and system, and draws the conclusion of interpretation from this.

Comparing adjacent concepts or legal provisions, adjacent concepts may help to explain the constituent elements to be clarified, meaning to determine the meaning of the concept to be explained from the top, bottom, left and right. Similar rules of interpretation, if the general provisions are specified by example, the interpretation cannot go beyond the scope of the example.

4.2. Application of system interpretation in difficult cases of labor law

From the perspective of the legal system, the legal order is a coordinated and unified whole composed of the effective existing laws of various departments such as constitution, civil law, criminal law, administrative law and labor law. The individual law or department law constituting the legal system shall follow the principle of unity of legal order. The so-called unity of legal order means that the specific concepts in different laws must be interpreted in the same way, so that the legal order remains unified. The logical law of identity: Any object must be identical with itself.

The premise of a unified interpretation of concepts in different laws is the existence of the so-called value parallelism, that is, the values on which different laws or legal norms are based must be consistent. Therefore, the unified interpretation of concepts is limited on the basis of the unity of the value of law. In addition to the unity, the concept of law also has relativity, that is, if it belongs to different legal departments or legal systems with different natures, the concept of law cannot be interpreted in a unified way, but should distinguish the content requirements of specific legal nature and legal relations.

The principle of good faith in civil law is embodied in the field of labor law. As far as workers are concerned, it takes the form of workers' duty of loyalty, which comes from the maintenance of the order of the employer, and also has the obligation to truthfully report relevant personal information and circumstances to the employer.

The concretization of civil law provisions in the field of labor law, some provisions in civil law, also exist in labor law. For matters stipulated by civil law and labor law at the same time, and there is no conflict between them, which belong to the concretization of civil law provisions in the field of labor law, the provisions of labor law shall be applied preferentially.

4.3. Meta-rules of legal interpretation

Through legal methodology to promote the rational judgment, the uncontrolled approach of pluralism is certainly not desirable. It is necessary to explore the method of using the method, that is, the so-called meta-method, meta-rule. The significance of legal interpretation meta-rules is mainly manifested in two aspects: First, the various interpretation methods are not arbitrary, but like basic rights, at least in the abstract level have different weights; Second, when determining the solution of the method, adhering to a certain order of application of interpretation methods can ensure that people will not ignore any important interpretation methods.

The basis of judicial judgment is divided into formal basis and substantive basis, which is clear and beneficial, and provides a more intuitive perspective of analysis. Substantive basis refers to the moral, economic, political, custom and other social factors that constitute the grounds for judgment. Formal basis refers to the legal basis of judicial decision, also known as authoritative basis or

authoritative reason. The authority of this basis is reflected in the fact that the judge is authorized or required to make a decision based on it, which can exclude or weaken other substantive grounds in the decision.

According to the formal degree of interpretation, the formal of textual interpretation is higher than that of system interpretation, and the formal of system interpretation is higher than that of purpose interpretation. On the basis of the hierarchical relationship between them, we can draw the conclusion that the textual interpretation takes precedence over the system interpretation and the system interpretation takes precedence over the purpose interpretation.

When there is a conflict between certainty and admissibility of legal decisions, which party should take precedence? The most important social function of legal norms is to stabilize the specific function of social behavior expectations. To play this stabilizing function, law must adhere to the certainty of legal decisions. The method of textual interpretation takes precedence over the method of subjective purpose interpretation, the method of subjective purpose interpretation takes precedence over the method of systematic interpretation, the method of systematic interpretation takes precedence over the method of historical interpretation, the method of historical interpretation takes precedence over the method of comparative interpretation, and the method of comparative interpretation takes precedence over the method of objective purpose interpretation.

4.4. The concretization of the general provisions of the labor law

As a rule, general clauses of labor law express a kind of order, that is, the orders and prohibitions contained in legal norms, so general clauses are not legal principles in nature, but legal rules. There is jurisprudence that, on the contrary, defines a general clause as a rule used by legislators to satisfy the facts of a case, which no longer fits the normative pattern of once established, once and for all. Some scholars describe the general clause as an element that must rely on the judge to make a value judgment in its application, and the standard on which the value judgment is based needs to be concretized or enriched

As a broad standard, the general clause actually grants decision-making power to the decision maker who applies the standard. Strict rule legislation, on the other hand, gives power to the maker of the rule rather than to the person applying the rule in a particular case.

Judicial interpretation and judicial opinions on the concretization of general provisions: In order to unify the application of labor laws, the Supreme People's Court has formulated judicial interpretations of the application of labor laws. Judicial interpretation is the supreme judicial organ's specific understanding of the law in adjudicating labor dispute cases, and it is the concretization of labor law provisions. In addition to judicial interpretations, the Supreme People's Court also issues a large number of judicial documents and approvals, as well as judicial opinions of the higher people's Court and the intermediate People's Court.

5. Labor rights conflict and its measurement

5.1. Analysis of difficult labor law cases with conflict of rights

The division of external system and internal system of law. The external system refers to the external form of law by the basic unit and norm of law, and the internal system refers to the due value or right contained in law, which constitutes the reason and basis for judges to make judgments. Legal norms are the basis for the generation of rights, and the conflict of laws can be transformed into the conflict of rights. Hart gave his answer. He argues that rights and duties exist where there are social rules (legal norms) and they specify rights and duties.

The rights and obligations of both parties, employers and workers in labor relations are relative, and the rights of one party are the obligations of the other party. Moreover, employers are in a strong position in the use and management of labor force, and it is easy to use their own rights to damage labor rights.

Dworkin's theory of rights provides a solution to difficult cases. Dworkin's critique of legal positivism argues that only explicit political decisions or explicit social practices can create rights.

As an independent legal method, the measurement of rights mainly applies to the field of conflict of rights. Through the analysis of the difficult cases of conflict of rights, we can connect the research object with the research method more pertinently, so as to achieve the target.

5.2. Labor right

Law is regarded as a kind of institutional fact, and the boundary of defining the source of law lies in institutional law. Based on Dworkin's right proposition theory, labor law right is regarded as a kind of institutional right, so as to build a bridge between right theory and legal source theory.

Dworkin proposed the right proposition that judges decide difficult cases by confirming or denying specific rights. Dworkin's solution to difficult cases through the proposition of rights is based on the distinction of rights. Dworkin first distinguishes between background rights, which refer to the right to argue in abstract form about decisions made by society, and institutional rights, which refer to the right to argue about decisions made by a particular or specific institution. 2 On this basis, he also distinguishes between institutional rights and legal rights. Legal rights are considered to be rights based on positive law rules, and legal rights are a kind of institutional rights.

Labor background rights refer to other social factors outside the law. According to the above labor law source theory, background rights correspond to the cognitive source of labor law source. In particular, the axioms, reasonings, rules of thumb, trading practices, civil conventions, professional ethics, jurisprudence, and prevailing academic views in the cognitive sources of labor law can be used as arguments to prove background rights.

Labor system rights: According to Dworkin's proposition of rights, system rights are mainly based on legal principles and the Constitution, which constitute the arguments for the establishment of system rights.

Labor legal right: as a legal right, it is mainly based on the enactment of law. In addition to legislation, the legal rights mentioned by Dworkin also include precedents, which is because the United States is determined by case law countries.

6. Closing loopholes in labor law

6.1. Labor law loophole analysis

Legal loophole is a certain fact of life (social relations) that should be adjusted by law, and there is no applicable legal norm in whole or in part. For the matters that should be regulated, the adjusted legal norms may have the following types of legal loopholes :(1) normative loopholes, that is, lack of corresponding components of legal norms, belong to incomplete laws, that is, either lack of constitutive elements or lack of legal consequences; (2) Conflict loophole, that is, the law makes multiple norms for a specific matter, but the multiple norms are contradictory; At this time, multiple norms can contain the same case facts and have opposite legal consequences, which is the conflict loophole. (3) Legal loophole, that is, the law does not regulate specific matters at all. Due to the development of platform economy, new forms of employment have changed the original employment relations, labor relations and civil relations, and a third type of quasi-subordinate employment relations, incomplete labor relations, has emerged. This kind of newly emerged employment relationship, the legislation has not made provisions, has not been adjusted and standardized, there is a legal loophole.

For this legal loophole, it cannot be filled by purpose limitation and analogical application. This paper uses the method of type thinking to identify and continue incomplete labor relations. Through the classification of labor relations, we can clearly see that between the labor relations with typical subordination and the civil relations with no subordination, there exists a class of incomplete labor relations with quasi-subordination, whose nature is between labor relations and civil relations. Neither the labor law can be fully applied nor the civil law can be directly applied, but it can only be a transitional form in the middle, and the labor law can be partially applied for protection.

The division of external system and internal system of law. The external system refers to the external form of law by the basic unit and norm of law, and the internal system refers to the due

value or right contained in law, which constitutes the reason and basis for judges to make judgments. Legal norms are the basis for the generation of rights, and the conflict of laws can be transformed into the conflict of rights. Hart believes that when there are social rules (legal norms) and rights and duties are specified, rights and duties exist.

6.2. Identification of loopholes in incomplete labor relations laws

Labor relation refers to the social relation that combines labor force and means of production formed between the employer and the laborer in the process of realizing labor. Labor relation refers to the social relation that combines labor force and means of production formed between the employer and the laborer in the process of realizing labor.

The main body of labor relations is the laborer who owns the labor force and the employing unit who owns the means of production. The establishment of production relations is inseparable from the labor force of the laborer and the means of production of the employer, which constitute the most important factors of production. At the same time, as the owners of production factors, employers and workers are the main body of labor relations.

The content of labor relations is the combination of labor force and means of production, which belong to different ownership subjects. According to Marx, labor and the means of production are two indispensable elements of the relations of production, and they are only possible factors of production when separated from each other. In order to produce, they must be combined.

In essence, labor relations are the combination of the means of production owned by the employer and the labor force owned by the laborer. In the process of organizing production, the employer obtains the right to use, manage and dominate the labor force.

Due to the emergence of the new economic mode of labor, there is a change in the subordinated relationship between workers and enterprises, and there may be the following types of legal loopholes :(1) normative loopholes, that is, lack of corresponding component legal norms, belong to incomplete laws, that is, lack of constituent elements or lack of legal consequences; (2) Conflict loophole, that is, the law makes multiple norms for a specific matter, but the multiple norms are contradictory; At this time, multiple norms can contain the same case facts and have opposite legal consequences, which is the existence of conflict loophole (3) legal loophole, that is, the law does not regulate specific matters at all.

6.3. Typified continuation of incomplete labor relations

In the field of law, type refers to the normative type: the middle point between legal ideas and life facts, the middle point between normative justice and the justice of things. Type is an overall image that combines a set of elastic features around the center of meaning.

The criterion for the identification of incomplete labor relations: from the element type to the element type, the criterion for the identification of the element type of labor relations belongs to the characteristic of conceptual thinking, which is to extract and list the characteristics of labor relations exhaustively, and define it as a closed legal constitutive requirement.

The factor recognition standard has the following characteristics: the element recognition standard is based on concept, while the factor recognition standard is based on type; The element identification standard requires all constituent elements at the same time, while the element identification standard only needs to have the main feature elements that meet the overall image.

Our country labor relations factor type identification model assumption

(1) Indicators to support labor relations: specific instructions from the employer to the working hours, working place, and working content of the worker; Be subject to the management and constraints of the employer system; The worker completes the work himself; The working hours of the workers meet certain requirements; The employing unit regards the work of the laborer as a source of business income; Labor remuneration occupies a large proportion in the source of income of laborers; Economic security of the labor force (insurance, salary during sick leave, pension, etc.).

(2) The index elements that deny labor relations: workers decide working hours independently; The worker bears the business risk; The employer only demands the result of labor without regard to the process.

(3) Indicators that neither support nor deny labor relations: the name of the contract between the parties; The provision and ownership of means of production such as tools of labor; Whether the worker is an individual business; The method of payment of labor remuneration.

7. Conclusion

Applying the general theory of difficult cases to the labor law department, this paper proposes solutions to the specific types of difficult cases in the labor law, such as ambiguity, conflict and deficiency, through legal methods such as legal discovery, legal interpretation, right measurement, loophole filling and continuous construction. This main line of thinking constitutes the logical correlation of this paper. Its essence is to rationally deal with legal uncertainties through legal methods. Thus the rationality and acceptability of law can be realized.

On the one hand, it uses the method of institutional analysis to delineate the boundary of legal sources in the scope of institutional facts. On the other hand, from the perspective of formal-substance analysis, we distinguish the basic source and the secondary source.

Legal interpretation meta-rules provide guidance for the application of labor law interpretation methods, we must explore the applicable rules of legal interpretation methods, meta-rules. Meta-rules are essentially legal principles.

The measure of rights resolves the conflict of rights in labor law, and judges decide difficult cases by confirming or denying specific rights. The application of legal methods to solve difficult cases is a legal person's exploration to pursue the stability and acceptability of law based on the belief and principle of the rule of law.

To realize the certainty of law through legal methods, legal interpretation, legal reasoning and legal argumentation exist in order to eliminate the ambiguity, conflict and loophole of law. The pursuit of difficult cases to provide good answers to promote the perfection of the law.

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