



The Dilemma and Way Out of the Protection of Labor Rights and Interests of Over-Age Workers

Boya Zhang*

Harbin University of Commerce, Harbin 150028, China

*Corresponding author's e-mail: 15174681160@163.com

Abstract. Currently, over-age workers are increasingly participating in the labor market, but due to the limitations of age, skills, legal status and other aspects, over-age workers face many challenges in the protection of their labor rights and interests. Therefore, it is of great significance to construct a perfect labor rights and interests protection system for over-age workers to promote social fairness and justice, and to promote the sustainable development of the economy. By identifying the current dilemmas of over-age workers in the protection of their labor rights and interests and proposing countermeasures and suggestions to improve the protection of the rights and interests of over-age workers, it seeks a way out for the protection of the labor rights and interests of over-age workers, so as to build up a more just, reasonable and effective system of safeguarding the labor rights and interests of over-age workers.

Keywords: over-age workers, labor rights and interests, labor relations

1 Introduction

With the rapid development of society and the aging of the population, the proportion of over-age workers in the labour market has risen, and they have made important contributions to social and economic development by virtue of their rich experience and skills. However, not equal to this are the many challenges faced by over-age workers in terms of protecting their labor rights and interests. According to the work report of the Supreme Court, there are tens of millions of over-age workers in China, and there are problems in the identification of work-related injuries and social security payments, and about 50,000 such labor disputes are brought to the court every year [1]. Protecting the labor rights and interests of over-age workers is not only related to their personal survival and development, but also to the harmonious stability and sustainable development of the society. Therefore, it is necessary to propose effective solutions to the problems of protecting the labor rights and interests of over-age workers to ensure that they are treated fairly and fully protected in the labor market, and to promote the standardized and orderly development of the labor market.

2 The Dilemma of Protecting the Labor Rights and Interests of Over-Age Workers

2.1 The Legal Framework is Ambiguous and Labor Relations are Contentious

It is considered that some over-age workers have a labor relationship with the employer. At present, most regions rely on the Supreme People's Court's reply ([2015] Min Yitai Zi No. 6) to determine whether a labor relationship exists between the two parties, which explicitly states that the termination of the labor relationship should be determined on the basis of whether or not the worker (including rural migrant workers) is entitled to pension insurance or is in receipt of a retirement pension. Therefore, over-age workers who receive pension insurance are excluded from the category of “workers” in the sense of the Labor Law, while over-age workers who do not receive a pension are still protected by the Labor Law.

It is considered that over-age workers have no labor relationship with the employer at all. Some regions, based on Article 21 of the Regulations on the Implementation of the Labor Contract Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations), believe that once a worker reaches the legal retirement age (regardless of whether he or she is entitled to basic pension insurance or not), he or she can no longer establish a labor relationship [2]. Once the relationship between workers and employers is recognized as a labor relationship, they cannot be protected by labor rights and interests, nor can they defend their rights through labor inspection and labor arbitration procedures.

2.2 Higher Risk of Injury, Low Coverage by Worker's Compensation Insurance

Workers face a high risk of occupational injury. Under the current structure of the job market, over-age workers face multiple restrictions in their choice of occupation. At present, over-age workers in China are mainly migrant workers, and they are mostly concentrated in labor-intensive industries. The nature of these jobs determines that the risks faced by over-age workers in the course of their employment are much higher than those faced by ordinary workers. Due to ageing, the physical quality and reaction ability of over-age workers gradually decline, making them more vulnerable when facing high-intensity and high-risk working environments, and the risk of being victimized at work is significantly higher than that of ordinary workers [3].

Low coverage of workers' compensation insurance. At present, over-age workers' compensation insurance is outside the framework of China's current work injury insurance system, so unless over-age workers are engaged in construction, cleaning and other industries where employers are required to provide work injury insurance, employers usually do not purchase work injury insurance for over-age workers in order to reduce employment costs, which leads to a serious deviation between the risk of work injuries and the degree of protection for over-age workers [4]. In the event of work-related accidents, it is often difficult for over-age workers to obtain timely medical treatment and financial compensation.

2.3 Restricted Avenues for Defending Rights and High Costs of Defending Rights

Narrower channels for over-age workers to protect their rights. China's legal framework for the protection of the rights and interests of workers has been perfected. However, in practice, the protection of the rights and interests of over-age workers still faces many challenges. In the system of protecting the rights and interests of workers, labor arbitration and labor inspection provide important ways for workers to protect their rights and interests as a front-loaded non-litigation resolution mechanism [5]. However, the prerequisite for the application of these two mechanisms is the existence of a clear labor relationship between the worker and the employer. Therefore, for some over-age workers who are unable to determine the labor relationship, they are often rejected by the labor inspection department and have to turn to the more complicated and time-consuming court litigation, which increases the difficulty and cost of defending their rights.

The cost of defending the rights of over-age workers is high. If over-age workers want to defend their rights and interests through legal means, they can usually only do so through litigation. However, court proceedings themselves are characterized by lengthy procedures, complexity, and long processing times, and some employers may take advantage of the proceedings to engage in malicious delays, which further prolongs the time it takes to defend one's rights. This long process and high cost of defending rights makes over-age workers often face dilemmas in reality. Once the costs of defending their rights far exceed the benefits of defending their rights, they often have to choose to give up defending their rights and interests.

3 The Way Out for Over-Age Workers to Protect Their Rights and Interests in the Workplace

3.1 Improvement of the Benchmarks for Protecting the Labor of Over-Age Workers

Identify the labor status of retirees. Currently, there is no definition of the upper age limit of workers in China's labor law system, which undoubtedly brings significant challenges to the verification of the labor status of over-age workers [6]. From a practical point of view, China has gradually bid farewell to the demographic dividend period, especially in the construction industry and other labor-intensive fields, the "labor shortage" phenomenon is becoming more and more prominent, and over-age workers have become an indispensable part of these fields. Neglecting or denying the status of these over-age workers will not only undermine their willingness to re-enter the workforce, but will also infringe upon their rights and interests.

Clarify whether a labor relationship exists between the two parties. In China's current legal system, there is still significant controversy over the definition of whether a labor relationship exists between over-age workers and the employer. From a legal perspective, the conflict between the Supreme People's Court's response and Article 21 of the Implementing Regulations creates problems for over-age workers, making it difficult for them to clearly grasp the legal labor rights and interests they enjoy. Therefore, it is

urgent for the law to clarify what kind of relationship is established between over-age workers and employers and the labor rights and interests that should be protected as a result [7].

3.2 Establishment of a Sound System to Protect Over-Age Workers from Work-Related Injuries

A sound mechanism to protect over-age workers from professional injuries. Over-age workers are at a higher risk than their counterparts of the right age, so it is of vital importance to establish a sound mechanism to protect the legitimate rights and interests of over-age workers against occupational injuries. Therefore, on the one hand, before employing over-age workers, employers should carry out detailed physical condition assessment to ensure that their current health conditions and physical ability meet the requirements of specific positions; on the other hand, employers should formulate detailed safety operation procedures and equip necessary personal protective equipment to minimize the risks during the work. On the other hand, employers should formulate detailed safety procedures and equip them with the necessary personal protective equipment to minimize risks in the work process.

Construct scientific and reasonable worker's compensation insurance system for over-age workers. Age should not be the basic condition to participate in the worker's compensation insurance protection, the labor behavior of the workers is the basis of the worker's compensation insurance to protect, here we can learn from the practice of Jiangsu Province and Guangdong Province [8]. Jiangsu Province clearly stipulates the conditions for workers' compensation insurance for over-age workers, which not only enhances the occupational safety and security of over-age workers, but also provides clear legal guidance for enterprises. Guangdong Province, on the other hand, has directly included specific persons who have not established a labour relationship in the scope of worker's compensation insurance, with their employing units (organizations) voluntarily choosing to participate in worker's compensation insurance and pay worker's compensation insurance premiums for them on a stand-alone basis.

3.3 Optimizing Ways to Protect the Rights and Interests of Over-Age Workers

Further strengthening the coordination and linkage between relevant departments. In the process of protecting the labor rights and interests of over-age workers, it is necessary to provide appropriate guidance among the responsible parties. Therefore, it is possible to build an organization to protect the rights and interests of over-age workers that is led by the human resources and social security departments with the participation of many parties. It can regulate the behavior of employers in hiring over-age workers by timely filing and registering the relevant information of over-age workers, reviewing and filing the contract signing situation between over-age workers and employers, providing normative guidance on the employing behavior of employers, and strengthening publicity and education of employers, so as to prevent and reduce the disputes arising from the rights and interests of over-age workers from the source [9].

Smooth the channels for over-age workers to protect their rights and interests. In the practice of protecting the rights and interests of over-age workers, emphasis should be placed on optimizing the channels for defending their rights. For labor and personnel dispute arbitration cases involving over-age workers, work injury recognition cases and labor capacity appraisal matters, a “green channel” should be set up to ensure that the cases are given priority and handled quickly [10]. In addition, labor unions should play a role as a representative organization to protect the interests of workers. Once over-age workers suffer from work-related injuries and are not duly compensated, trade unions should take the initiative to intervene and actively assist workers in fighting for their legitimate rights and interests, so as to ensure that their interests are effectively protected.

4 Conclusion

Within the context of population aging, the number of over-age workers in the labor market continues to climb, a trend that poses new challenges to the existing labor legal system and social welfare policies. Therefore, through an in-depth analysis of the dilemmas of protecting the labor rights and interests of over-age workers, dilemmas such as the ambiguity of the legal framework, the insufficiency of worker's compensation insurance coverage, and the restriction of the channels for defending rights and interests are summarized. On this basis, countermeasures are proposed to improve the benchmark of labor protection for over-age workers, establish a sound work injury protection system, and optimize the rights and interests protection channels. By constructing a more just, reasonable and effective system for safeguarding the labor rights and interests of over-age workers, the unfair treatment of over-age workers in the labor market will be reduced and their legitimate rights and interests will be fully protected, thus promoting the sustainable development of the labor market.

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