Article

Dispatch Work in China: A Study from Case Records, Part II

Modern China
2017, Vol. 43(4) 355–396

DOI: 10.1177/0097700417708555
journals.sagepub.com/home/mcx
SAGE

Philip C. C. Huang[1,2]

Abstract

On the basis of case records from Xinjiang and Shanghai between 2013 and 2016, this article examines how dispatch work law has changed in practice and in theory during that period. It demonstrates that in using dispatch agencies as legal "protective shields" to dispose of obligations to workers, the state-owned enterprises (SOEs) have behaved much as what the case records from 2012 used in my earlier study (Part I) showed. What has changed is that public institutions and large private enterprises have followed the example of the SOEs to reduce old personnel as well as to hire new personnel through dispatch work. The new cases also show that, within that overall trend, the courts have tried to tighten their regulation of dispatch agencies, especially with respect to obligations for social insurance and compensation for unilateral dismissal of workers. At the same time, dispatch agencies (along with enterprises) have adopted some countermeasures to deal with the new pressures, especially by signing only short-term contracts and rotating a worker among different agencies. Even so, as far as the "black hole" in legal theory and practice is concerned—of an artificially constructed separation of the worker's person from his or her work—managerial abuses, especially with respect to overtime and vacation work and unilateral termination of workers by enterprises, have continued apace with little restraint from the courts. The situation cries out for stronger reform.

[1]Law School, Renmin University of China, Beijing, China
[2]History Department, University of California, Los Angeles, CA, USA

Corresponding Author:
Philip C. C. Huang, 332 Grenola Street, Pacific Palisades, CA 90272, USA.
Email: huang@history.ucla.edu

Keywords
user of the person vs. user of the work, the black hole in legal theory and practice, obligations for social insurance of the dispatch agencies, compensation for unilateral termination of contract, countermeasures adopted by dispatch agencies

The Problem, the Approach, and the Sources

This article is the sequel to my "Dispatch Work in China: A Study from Case Records, Part I" (Huang, 2017b). That earlier article draws on all the "dispatch work" 劳务派遣 cases nationwide in 2012 (in the Supreme Court's website of legal judgments and rulings) that involved "labor disputes" 劳动争议 at the basic-level courts in order to delineate the broad outlines of dispatch work that have emerged since the promulgation of the Labor Contract Law in 2007. This article looks further at what has happened in such legal practice from 2013 to 2016, after the promulgation of the amended labor contract law in 2012 (implemented 2013), the "Temporary Regulations on Dispatch Work" issued by the Ministry of Human Resources and Social Security in 2013 (implemented 2014), and the Supreme Court's "Explanations Concerning Certain Problems in Applying Laws to Labor Disputes," especially "Explanation IV" (issued in 2012 and implemented in 2013).

To explain again the research method adopted here: the labor dispatch laws (contained in the 2007 Labor Contract Law) are complex, murky, and self-contradictory, and cannot be analyzed merely on the basis of the text, but rather need to be studied first through their actual use, and then on that basis map out the practical implications and patterns of change of the laws, as well as their internal contradictions in practice and in theory, thereby to clarify their real implications. At the same time, this article examines some problems not considered in the earlier one, most especially questions involving minority peoples and cases where appellate court judgments overturn or modify basic-level court judgments. This article also follows up on the earlier study's theme about the "black hole" in the legal theory and practice of dispatch work: namely, after the law artificially constructed a severing of the contract-signing entity from the actual managing entity, it has become extremely difficult to constrain abusive management practices, because the contracting entity is merely a brokering entity and not the actual managing company, and therefore cannot practically bear legal responsibility for management practices, this while the actual managing entity, now behind the legal "protective shield" of the dispatch agency, also needs not bear responsibility for their own management practices.

The empirical evidence for Part I comes from the Supreme Court's website for "documents of judgments and rulings" 裁判文书 by searching under dispatch work > labor disputes > basic-level courts > 2012 (the year when the number of dispatch cases first began to rise rapidly). The search yielded 59 cases nationwide, of which two were duplicates, to result in 57 cases actually discussed in the article. Thereafter, the number of cases rose rapidly each year. For this article, the empirical evidence comes from searches made in late December 2016 for cases from 2013 to 2016 for the Xinjiang Uyghur Autonomous Region and Shanghai Municipality, including mid-level courts 中级法院. The reason for selecting the two areas is that they represent the two ends of China: one more tightly administratively controlled and with a larger proportion of state-owned enterprises (SOEs) and the other more highly marketized and with greater development of private enterprises. At the same time, Xinjiang has more cases involving minority peoples and hence raises issues not just of labor relations ("class") but also of minorities (citizenship rights and "identity politics").

Under the parameters defined above, Xinjiang has a total of 168 cases, of which 33 involve minorities (mostly Uyghurs) as plaintiffs or defendants, with two duplicates, to make for 31 cases discussed in this article. As for Shanghai, there are 433 cases by the same parameters, of which 344 are basic-level court cases and 89 mid-level court cases. Because the quantities involved are too large for in-depth substantive analysis, this article has used sampling to take one of every 15 in the former group, for a total of 22 cases, and one of 10 in the latter group, or 8 cases. The result is 30 cases, of which two are duplicates, to make for 28 cases discussed in the article. Comparisons are made between the two regions on the basis of these groups of cases. The cases are listed in Appendices A and B in the order of discussion.

Here it should be explained again that research on dispatch work is still very much in its beginning stages, and we need to combine qualitative with quantitative analysis. If one does just one or the other (such as analysis of a single case or merely the text of the law), one can easily miss the essentials or even be completely mistaken about the realities. For that reason, this article adopts the approach of using mainly qualitative analysis of cases (hence the deliberate limiting of cases to a manageable number), but employs also a measure of quantitative information, though that of necessity can only yield very rough indicators because of the limited sampling.

The cases studied here can be grouped into four categories. The first involves disputes between SOEs and public institutions vs. their workers. What this group shows about the actual operations of the law is substantially the same as shown in the previous article. The SOEs are using the dispatch work shield of the law to change themselves from "employer/user of the

person” 用人单位 into “employer/user of the work” 用工单位 and not of the person, thereby terminating their legal “labor relationship” 劳动关系 with their workers and shifting it to the dispatch agency As the newly constructed “user of the work,” they have only a “dispatch work relationship” 劳务关系 with the worker, a relationship that by law applies mainly to “temporary, supplementary, or substitute” workers and comes with very limited obligations to the workers.

In the previous article, all my cases concern SOEs and none public institutions. But the 2013-2016 cases contain a significant proportion of public institutions 事业单位 that are imitating the actions of the SOEs in undertaking “systemic reform” 改制 to “dump their burdens” 甩包袱. Also, some of the SOEs and public institutions are shown to be continuing to treat their workers abusively, telling once more about the “black hole” that is under few legal constraints. In this respect, there has been little change along with the rapid proliferation of dispatch work.

The second category of cases is disputes between private enterprises and their workers. What this group tells us is that private enterprises (including joint Chinese- and foreign-capital enterprises 合资企业) are imitating the behavior of the SOEs in joining the big trend of “flexibilization” in labor use. Their method is mainly to use the dispatch agencies as a protective legal shield to rid themselves of the old legal obligations to workers, thereby reducing their labor costs.

The third category is disputes between the new dispatch agencies, now called “users of the person” (though not the actual managing entity) and their contracted workers. In the 2012 cases examined for the first article, we saw how the courts based themselves on contract law principles to focus mainly on whether the dispatch agencies violated specific terms of agreement or contracting laws. For those, the courts tended to be rather strict, as for example with nonpayment or delayed payment of wages, unilateral termination of contracts, failure to fulfill required obligations with respect to work injuries, failure to sign a written contract with the worker, and such. But we also saw that multiple obstacles stood in the path of workers against assertions of their claims: the courts basically refused to consider disputes involving social insurance, rigidly applied the one-year time limit rule for filing arbitration petitions, and rigidly insisted on formalistic evidence, refusing to accept oral agreements, agreements reached through informal intermediaries, and informal IOUs, all commonly used by villagers and frequently used in the construction industry. The courts also refused to apply the legal principle of “equal work, equal pay” by questioning its fundamental principle: shouldn’t “equal” apply not only to the category of the work but also the quality and contribution of an individual worker’s performance? The most difficult thing

for the workers was to assert rights that fall into the managerial practices' "black hole" of the law, such as overtime pay, annual vacation pay, termination by the "user of the work," and so on. The cases for 2013-2016 show once more that in that area, it is virtually impossible for workers to assert their claims.

Nevertheless, there have been some new developments in this category of cases. In the dispatch agency vs. worker cases from Xinjiang, the largest group (13 cases) involve an enterprise that was shutting down its quarry and tried simply to turn its problems over to a dispatch agency, without first "legally" placing the workers under a dispatch work relationship. The court's judgment relied mainly on the Supreme Court's "Explanations IV" ("Applying Laws to Labor Disputes"), Article 5, to the effect that a company taking over another that has shut down must assume the burden to compensate for unilateral termination of contract if the original company has not done so (Supreme Court, 2012: Article 5). That concrete instruction was particularly apposite in this case and became decisive in the court's judgment. In another case, a company tried to dismiss a worker without first legally terminating its labor relationship with him (by placing him under a dispatch work relationship with a dispatch agency). The court similarly adjudged that the obligation of the original company for financial compensation for unilateral dismissal of a worker should be borne by the successor dispatch agency.

In addition, we saw in the 2012 cases that the courts refused to consider disputes over social insurance (acting in line with the government's policy on the matter during the "grasp the big and let go of the small" privatization of small- and medium-sized SOEs at the turn of the century). But in the 2013-2016 cases, the courts have begun to accept the Supreme Court's 2010 Explanations III (Article 1), calling on them to take on those disputes. This was especially evident in the last category of cases, that of second-level court judgments. Even then, however, the courts have limited themselves to the question of the principle of whether an entity should provide social insurance, but refused to engage in disputes over different levels of benefits, as for example with regard to workers who were being transferred through "systemic reform" from regular status to dispatch work status.

Overall, the intent of government policy and of the laws and regulations is clearly to make dispatch agencies, now legally the (new) "employer of the person," bear more of the burden of obligations to employees and workers. This is an effort to mitigate the consequences of the strategic decision to let state enterprises, public institutions, and large private enterprises "dump their burdens" and take advantage of "flexible use of labor" by making small

dispatch agencies that are not so critical to the economy as a whole take on more of the burden.

However, even so, as merely a brokerage entity and not the actual managing entity, dispatch agencies realistically cannot reach, in theory or in practice, the level of worker protection provided by the old labor laws. We will see how, among the numerous cases involving overtime pay, not a single case was won by the worker and, in those involving annual vacation pay, only one was. Moreover, the actual employer-manager, now as the "user of the work," enjoys much greater power to unilaterally dismiss a worker without any obligation for severance compensation. In addition, we will see how some dispatch agencies (along with the enterprises involved) have developed useful countermeasures to minimize their risk of potential obligations to workers, such as using multiple agencies and signing just short-term contracts from year to year, thereby limiting compensation for unilateral termination to just one month's pay (by law, one month's pay for each year worked, up to a total of 12 years).

The last group of cases is second-judgment 二审 cases, a total of 14, of which 8 are from Shanghai and 6 from Xinjiang (one of which does not involve a substantive issue, only a procedural one over jurisdiction). The key difference between the two sets is that the former without exception upheld the first judgment (in two of them, the so-called changed judgment 改判 had only to do with the arithmetic of calculating compensation, not a substantive revision), while in the 5 Xinjiang cases, 4 involved substantive revisions of the first judgments, including efforts to mediate among the contending parties (enterprise, dispatch agency, and worker), to take into account the plight of the worker, and to see beyond the simple one-year formalistic time limit rule. They represent one possible method that can be used on a larger scale to mitigate some of the consequences of the present dispatch work laws.

Such a sharp divergence between the two sets of cases might cause us to wonder if, in minority areas, the courts, especially mid-level second-judgment courts, in addition to attending to the state's strategic concern to let enterprises shed their burdens and use labor flexibly, also pay attention to maintaining harmonious relations with minority peoples, to mitigate conflicts between workers and enterprises/dispatch agencies that have resulted from the new dispatch work laws and regulations. From the empirical evidence in the cases studied, it seems that those efforts might be a part of the state's larger strategic concern to "maintain stability" 维稳. But we cannot oversimplify, because we also see examples of second judgments that rigidly uphold formalistic decisions of the first judgments. Perhaps the conclusion most in accord with realities is that although using dispatch law to lighten the burdens

of large state-owned and private enterprises is the broad overall trend, we also see evidence of efforts in the reverse direction, making for a complex and crisscrossing picture. Nevertheless, it seems indisputable that the main consequence of labor dispatch law has been to lighten the burdens on large state and private enterprises and public institutions and that most dispatch workers work with little or no legal protections and social welfare benefits.

State-Owned Enterprises, Public Institutions, and Their Workers

Among the seven Xinjiang cases of disputes between SOEs and public institutions vs. their workers, four involve SOEs and three involve public institutions. Compared with the earlier 2012 cases, the basic implication of the 2013-2016 Xinjiang cases is similar, demonstrating how SOEs led the way in using dispatch work to "dump their burdens." Shanghai in this period, however, is different: there are no cases involving SOEs, even though they no doubt led the way in using dispatch work here as elsewhere. What followed were cases involving public institutions (six cases). We discuss the Xinjiang and Shanghai cases separately below.

Xinjiang: Large-Scale State-Owned Enterprises

The State Grid Corporation of China. First are three cases involving the large SOE State Grid Corporation of China's 国家电网公司 subsidiary the Gongliu county electricity supply company 巩留县供电公司 (formal English names of the companies are capitalized; informal renderings are given in lower case) and three workers. Kasimu·Maisimu 卡斯木·买斯木[1] worked at the company from year 2000 as a meter reader. In 2007, the company had him sign a "termination of labor relationship contract agreement" and a new contract with the dispatch agency Yiliyi 伊犁伊劳派遣公司, thereby placing him under a dispatch work relationship rather than a labor relationship with the company. In April 2011, the company stopped paying his wages. Kasimu did not bring claims until 2016, first to the local arbitration board and then to the local court, asking the company to make up for retirement and health insurance payments from 2000 to 2014 and severance compensation of 10 months' pay (one month's wage for each of the 10 years he had worked). The court adjudged that his labor relationship with Gongliu had ended in 2007 when he "voluntarily" signed the termination of contract agreement. Thereafter, the company was merely the "user of the work" 用工关系 and Kasimu merely under a dispatch work relationship with the company. What's more, the time

limit of one year for arbitration had long since passed. Therefore, the court rejected his claims (Case A-1).

The other two cases were much the same. Nulaili·Yaermaimaiti 努来力·亚尔买买提 started working for the company in 1997 and remained there for 13 years. In 2007, he was similarly made to sign a termination of labor relationship contract. In October 2010, the company ceased paying his wages. Nulaili did not apply for arbitration until February 18, 2016, seeking back retirement and health insurance payments for the nine years from 1997 to 2005. The company argued that Nulaili had signed the termination agreement voluntarily and that the time limit for arbitration and filing suit had long since passed. The court held that the company had acted lawfully and rejected Nulaili's claims (Case A-2).

Reziwanguli·Abudujili 热孜万古丽·阿布都吉力 (female) similarly worked for the company for 12 years. In January 2013, the company stopped paying her wages. She asked for back payments for 3 years of retirement and health insurance and severance pay for 12 years of work. Gongliu again argued that the plaintiff had voluntarily signed a termination of labor relationship agreement in 2007 and that thereafter she had merely a dispatch work relationship with the company. Moreover, the time limit for a lawsuit had long passed. On that basis, the court rejected the plaintiff's claims (Case A-3).

Consistent with the detailed demonstration in my previous article, these three cases show how SOEs used the dispatch shield to "legally" dispose of their obligations to their long-term workers. Thus were these three workers, after working more than a decade for the company, all dismissed without any of the compensation provided for in law.

The China West Construction Group. Another case involves the giant construction materials SOE China West Construction Group Company (Zhongjian) 中建西部建设股份有限公司 (now on the Fortune Global 500 list) and an operator of cement mixing trucks 特种搅拌车工人. The plaintiff Rousidanmujiang·Maimaiti 肉斯旦木江·买买提 had signed a two-year contract with the company in 2008 and then a two-year contract with the labor dispatch agency Xixingbang 西兴邦, which dispatched him to work at Zhongjian until 2012. On July 1, 2011, however, Zhongjian elected to sign a contract itself with the plaintiff. On March 28, 2014, the plaintiff submitted to the company a "resignation report" (in truth to ask the company to adjust his work schedule so he could take care of his mother). On the 31st, the company issued to the plaintiff a "proof of termination of contract." The plaintiff sought severance compensation of 30,000 yuan (6 months' pay at an average of 5,000 yuan/month, for 6 years worked), back social insurance payments from 2008 to 2014, overtime pay and rest days and

annual vacation pay, and a subsistence stipend during his period of "awaiting employment" (May 2014 to April 2015).

The court held that once the plaintiff signed a labor dispatch contract, his former labor relationship with the company ceased and became a dispatch work relationship. At the same time, the time limit for arbitration had elapsed. Moreover, the plaintiff had submitted a "resignation report" on March 28, 2014, pleading that his mother required his care. That meant he had resigned of his own volition. On that basis, the court rejected his request for severance compensation. As for rest days and vacation pay, the court held that the plaintiff in fact had a vacation of 120 days every winter and that Zhongjian was going forward with a report seeking permission to implement a "system of unified counting of work time." The court held that, under that unified counting system, the plaintiff did not work more than the legally set limit of 2,000 hours per year and therefore rejected his claims for both overtime and vacation pay. As for his request for social insurance payments, the court pointed out that it would not support such for the period of April 2014 to April 2015, since the plaintiff had resigned of his own volition. The plaintiff thus obtained partial support for his claim for social insurance payments from Zhongjian, and only that. On this point of social insurance, there has indeed been change since the time of our previous study—the courts had begun to consider seriously claims regarding social insurance in accordance with the Supreme Court's Explanations III (Supreme Court, 2010: Article 1). Otherwise, things remained much the same as before (Case A-4).

Here, we see for the first time an SOE adopting the method of switching back and forth between a direct labor relationship with itself and an indirect dispatch work relationship through an intermediating dispatch agency to minimize its potential obligations and liabilities. This is a point we will pick up again below.

Xinjiang: Public Institutions

Different from the 2012 cases, the cases examined for this article contain a relatively large number of cases of labor disputes between public institutions and their workers: three in Xinjiang (and six in Shanghai).

Tayier·Yitanmu 塔依尔·伊坦木 (b. 1962) has worked since 1989 for the Tulufan city's Bureau of Cultural Relics 吐鲁番市文物管理局 and since 1990 at the site of its Asitana ancient graves 阿斯塔那古墓群. In 2010, the Bureau had him sign a contract with the Huimin 惠民 dispatch agency. According to the plaintiff, at the time he was not aware of the implications of the change from a regular labor relationship to a dispatch work relationship. Subsequently, he was further asked to sign a contract with another agency, the

Chengxin 诚信劳务派遣公司. On June 1, 2015, Tayier petitioned for arbitration and then sued, seeking back payments for his retirement benefits. But the arbitration board and then the court held that his labor relationship had been dissolved in 2010 and that he had not petitioned for arbitration and had not brought suit until 2015, long after the time limit of one year had passed (Case A-5). Tayier then applied for permission for a re-trial 再审, which was denied. Here we can see that this 50-something worker simply could not accept the fact that although he had worked at the same place for the same entity doing the same work for 20 some years, his relationship with the company had somehow been changed from a regular labor relationship to a dispatch work relationship, so he appealed repeatedly.

In another case, the plaintiff Gulayimu·Selimu 古拉伊木·色力木 (no birthdate given) worked as the cleaning person for a semi-governmental neighborhood office on Youhao Nanlu street in the Shayibake district 沙依巴克区人民政府友好南路街道办事处 in Urumqi. In 2007, that office underwent "systemic reform" into a public benefits entity 公益单位 and had Gulayimu sign with the Huamin agency 华民派遣公司 a five-year dispatch work contract with an ending date of May 31, 2012. In January 2012, however, Gulayimu was diagnosed with pulmonary tuberculosis and had to live in a hospital. From July 2012 on, the Neighborhood Office stopped paying him. Gulayimu sued for termination of contract compensation and also for the company to make up his social insurance payments. The court found that his labor relationship with that office had ceased in 2007, and his contract with the dispatch agency at the end of May 2012. On that basis, the court rejected his claims (Case A-6). Thus, this worker, who had held the same job for 17 years, was unfortunate enough to have contracted tuberculosis and then even more unfortunately dismissed without compensation.

Another case was quite different and stands out from the highly formalistic and legalistic judgments of the two cases just discussed. It involved the family housing compound of the Xinjiang Federation of Literary and Art Circles 新疆文学艺术界联合会的家属院 and its long-time gate guard Yueliwasi·Wupuer 约力瓦斯·吾甫尔. The court established that, during the years 2000 to 2007, the plaintiff had been paid by each family's contribution of 10 yuan a month, which the court adjudged to be an "employer-employee relationship" 雇佣关系 and not a "labor relationship" 劳动关系. But, in 2008, the Federation 文联 began to collect management fees 物业费 from the resident families, thereby assuming formal responsibility for management of the compound, and therefore, in the judgment of the court, turned the relationship into a labor relationship. Then on March 1, 2013, the Federation arranged for the plaintiff to sign a contract with the Zhonglian 众联 agency, thereby placing him under a dispatch work relationship. On July 1, 2014, the Federation terminated the plaintiff.

Yueliwasi brought suit, seeking compensation for unilateral termination, back payments for social insurance, and double wages for the period he was worked without a contract. (The Labor Contract Law provides: "if the employer has not, within the time frame of one month to a year after the laborer has begun work, signed a written contract with the laborer, it should pay the laborer double wages for every month worked without a contract" [Labor Contract Law, 2007: Article 82].) The first-level court found that since the plaintiff had signed a dispatch work contract, there could be no question of double pay for an uncontracted period. The court acknowledged that a labor relationship had existed between the plaintiff and the Federation and ruled that the latter should make up the social insurance payments during that period (it had only paid for April and May 2009). In addition, the Federation should pay a severance compensation amounting to five and a half months of pay (for five and a half years of work), totaling 11,000 yuan. As for the dispatch agency Zhonglian, it should cover the social insurance payments of 2013 and 2014 (when the plaintiff was under contract with Zhonglian) (as summarized in Case A-30).

The judgment of this case was different from the two other cases above in that it came with a definite substantive dimension (to consider the plight of this old worker and seek a measure of compromise), not simply a formalistic and legalistic judgment. Even so, both plaintiff and defendant were dissatisfied, and both appealed to the second-level court. We will see how the second judgment became even more explicitly substantive in the section below on second judgments (Case A-30).

Shanghai's Public Institutions: The Shuangyong Activities Center

In the Shanghai cases, none involves SOEs, but six involve one public institution, showing how it "dumped its burdens." Among those, two are first-level judgment cases (Cases B-1, 2), and four are second-level judgment cases (Cases B-21, 22, 23, 24). The six plaintiffs all faced the same situation: an employing entity that was undergoing "systemic reform" 改制 and was engaged in "lightening its load" by reducing the number of employees. The unit was the Shuangyong Activities Center 双拥活动中心, which occupied the Huayong building 华拥大厦 in the city. That building had belonged to the Liberation Army and had served as a veterans' services center. In 1999, it was turned over to the Shanghai Bureau of Civic Affairs, renamed the Shuangyong building, and became the site of the Shuangyong Activities Center. Later, the Shuangyong Center decided to stop engaging in hotel- and restaurant-like activities and reconstitute itself into a strictly public service entity. On November 26, 2014, it received formal approval-in-principle from above for it to "determine and separate out different parts of the activities center and

divide up the employees into different streams 分流." On December 15, 2014, Shuangyong stopped providing accommodations and meals for the public and set up a plan for separating out regular personnel from non-permanent 编制外 personnel. In reaction, one plaintiff charged that the Activities Center was merely "waving the banner of systemic reform while engaging in illegal dismissal of personnel" (Case B-1). The tensions led to a host of lawsuits from employees against Shuangyong. The sampled cases used for this article (one in 15 first-level cases and one in 10 second-level cases) are but a small portion of the total.

Shuangyong's problem was that it had not first "legally" placed the workers concerned under a dispatch work relationship, perhaps because these were savvy long-term employees who could not be easily manipulated. Shuangyong in any case was resorting to a different method to minimize its obligations for unilaterally terminating the workers. Nevertheless, to the extent that some workers were offered the option of being placed after termination as non-permanent dispatch workers in other units, these cases are very much concerned with the differences between a dispatch work relationship and the workers' former labor relationship with the entity. What the workers faced was the prospect of being turned from regular laborers under labor relationships into dispatch workers.

A representative case is plaintiff Liu Jing 刘静 (b. 1970), who had been recruited into a public institution under the Liberation Army in 1996 and then assigned in 1999 to Shuangyong as an electrician. On July 1, 2011, she signed a no-fixed-term long-term labor (relationship) contract 无固定期限劳动合同 with Shuangyong. But on December 15, 2014, she was notified by Shuangyong that she "need not come to work anymore." Shuangyong, it turns out, had classified her as a "type-one" worker, someone "who has worked for 15 years and is less than five years from retirement" and who by law may not be dismissed. To get around the problem, Shuangyong was ostensibly offering her two choices: after terminating the existing labor relationship, she would be reassigned by the Bureau of Civic Affairs to another unit (as a dispatch worker) or she may "leave her post to rest" 退岗修养. To those options, the plaintiff responded that she would, under her post-termination dispatch-worker status, lose what amounts to 300 yuan per month in social insurance benefits because she would be placed in a lower-level category for benefits. She sued for 60,000 yuan in compensation from Shuangyong to make up that difference (Case B-1).

The court adjudged that since Shuangyong had paid for social insurance for her, it had met the law's requirement of social insurance for workers in principle; beyond that, it was not within the court's purview to consider different levels of benefits, that is, the difference between her Shuangyong

benefits and her prospective new benefits as a dispatch worker. Therefore, her request was denied.

In another case, plaintiff Ye Yun 叶韵 worked as a switchboard operator for Shuangyong and established a labor relationship with the company in 2001. She too signed a no-fixed-term long-term labor contract with Shuangyong on July 1, 2011. She too was notified on December 15, 2014, that there was "no need for her to come to work anymore." But she was classified in this "systemic reform" into a type-three employee, falling into the category for "termination of the labor contract." Like Liu Jing in the case above, Ye asked for compensation to make up the difference in her social insurance benefits. As in the above case, the court held that her request fell outside its purview. Ye also sought severance compensation for unilateral termination of her contract, but the court ruled that according to the Labor Contract Law, "if the objective conditions of an entity has changed greatly from the time the labor contract was signed, such that it is no longer possible to meet the terms of the contract, the entity may dissolve the contract with 30-day advance written notice." Shuangyong no longer engaged in commercial activities, which constituted "a major change in objective conditions," and therefore did not violate the law, as the plaintiff alleged. Therefore, the court rejected her claims (Case B-2).

In the sample of second-judgment cases, four stem from the same "systemic reform" of Shuangyong. The appellant He Jun 何俊, like plaintiff Liu Jing in the first case above, was an electrician and, like plaintiff Ye Yun in the second case, was categorized as a type-three worker (to be terminated) and sought severance compensation for his years worked. But the court ruled in the same way: that "objective conditions" had "changed greatly" and Shuangyong could legally dissolve the labor contract with him without having to pay compensation (Case B-21). In the second of these appeal cases, appellant Mei Huazhong 梅华忠 was likewise categorized as a type-three worker and sought severance compensation as well as compensation for the lower level of benefits he would be assigned. The appeals court likewise upheld the first-level court's judgment (Case B-22). The same was true of the third appellant, Zhou Guanying 周关英 (Case B-23), and also of the fourth appellant, Wan Qianghua 万强华 (Case B-24).

From the above cases, we can see that the upper levels had made the administrative decision to turn Shuangyong into a strictly public services entity, and for that reason needed to dispose of the workers of Shuangyong's earlier commercial operation. Therefore, a plan for "separating workers into different streams" was mapped out, the true intent being to reduce the workforce. To dismiss its workers and thus "lighten its burden" of obligations, Shuangyong used as a legalistic ploy the provision in the Labor Contract Law

about "major changes" in the "objective conditions" that make an entity unable to meets its contractual obligations." The truth, however, was not that business conditions had changed greatly, but rather that an administrative decision had been made for "systemic reform" of Shuangyong.

From the workers' point of view, after working for years and years in a stable job with relatively good benefit provisions, they were suddenly faced with losing their status as regular laborers under a labor relationship with their employer. And they were all faced with the prospect that their next jobs, with or without Shuangyong's promise of the intercession of the Shanghai Bureau of Civil Affairs, were going to be jobs as dispatch workers and not regular laborers. That meant the loss of a big portion of their benefits when compared with the social insurance they had enjoyed while at Shuangyong. They therefore tried to use labor protection laws to assert their rights.

But what they were up against was the basic reality that administrative policy decisions were paramount. And the basic decision was to allow state enterprises and public institutions to "lighten their burdens." It was from the conflicts between that strategic policy choice and the workers' interests that the multiple lawsuits and appeals came. The Shuangyong cases, even though they did not resort to the ploy of a dispatch agency shield, were part and parcel of that larger policy decision. Although Shuangyong itself had not arranged to put the workers first under a dispatch agency as dispatch workers, that was in fact going to be the consequence of its actions.

Private Enterprises vs. Their Workers

Of the cases used for my previous article—all 57 cases of dispatch work > labor disputes > first-level courts nationwide—not one involved a private enterprise (though one did involve a subcontracting firm that the court treated the same as a private enterprise), but in the cases used for this article, there is one such case from Xinjiang and nine from Shanghai. As can be seen, private enterprises have been widely resorting to the same dispatch work shield for flexible labor use as the SOEs.

Xinjiang: A Private Enterprise

Although the Xinjiang cases contain only one that involved a private enterprise, it tells a larger story because of the method the enterprise adopted to deal with its worker. Plaintiff Aishajiang·Maimaiti 艾沙江·买买提 worked as a cotton picker for the Jinfang Textile Company 新疆金纺纺织公司 from August 21, 2007, until September 24, 2014. But in that period, the company had him sign contracts successively with four different dispatch agencies,

until the last contract terminated in 2012. Aishajiang applied for arbitration and then filed suit in court in 2015 for unilateral severance compensation, unpaid social insurance, and double wages for the time he was without a contract. The court simply ruled that the time limit for arbitration had long passed and rejected his claims (Case A-7).

The plaintiff probably thought initially that the treatment he received was common, and it did not occur to him until much later to try to assert his rights. Even so, we can see that the textile company likely deliberately used the gimmick of changing dispatch agencies frequently in order to limit its possible legal liabilities for unilateral termination of contract, social insurance payments, and double pay for the period a worker worked without a contract. Since every new contract set a new beginning date of employment with a new agency, it would be very difficult for a worker to claim compensation for any lengthy period of successive years of work with an enterprise or to make a timely claim that would apply to the entire period of work. We will see below how this is a ploy that has been used by other companies and dispatch agencies to cope with potential workers' claims.

Shanghai: Private Enterprises

As the area where the market economy and private enterprises are the most highly developed in the nation, Shanghai can be expected to have more disputes between private enterprises and their workers. They show us how private enterprises have followed the lead of the SOEs to use dispatch agencies as protective shields; they also tell again how difficult it is for workers to assert claims for overtime and vacation pay; and, finally, they tell about the specific countermeasures dispatch agencies (along with enterprises) have adopted to cope with increased pressures from the state and the courts.

A Joint Chinese-Foreign Capital Company. First, we have two cases involving the joint Chinese-foreign capital company Zhongji Reefer Containers 中集冷藏箱公司. Lu Weihua 陆卫华 worked as a floor operator in the factory from 1998 on, but the company never gave him a contract. By 2008, Lu had worked ten years for the company, and by law the company should have given him a contract for "an unlimited period," but it dragged things out before signing a contract with him on December 1, 2013. Lu petitioned and then sued for double pay for the period he was worked without a contract. Moreover, he stated that he had had to work 12 hours a day and frequently over weekends and holidays. He thus also sought overtime and unpaid holiday pay.

The court held that he did not petition for double pay for his period of work without a contract until after the one-year time limit had passed and that

his request for holiday pay before 2014 was likewise past the time limit. As for his request for overtime pay, the court noted that the work tables 考勤表 of the company only show whether a worker reported for work on any given day but do not contain information about overtime work. Hence, there is not sufficient evidence for determining overtime work. Thus did the court reject all his claims (Case B-3).

Zhou Weiguo 周为国 similarly began working at the company in 1998 on the factory floor, but his status was as a dispatch worker from the start, sent by the Shixian agency 世贤 to work at Zhongji, initially under a five-year contract. On January 17, 2013, Zhou, while en route home from work, was injured in a traffic accident "in which the responsibility rested entirely with the other side." The injury was determined by the Baoshan district's Bureau of Human Resources and Social Security to be a "work injury," and Zhou convalesced for one year. He brought suit, arguing that his relationship with the company was a labor relationship and that he was worked 12 hours a day and frequently on rest days and holidays. He argued that he should receive overtime and unpaid holiday pay, plus double pay for the period he was worked without a contract (Case B-4).

The court determined that his relationship with Zhongji in the 1998-2013 period was one of dispatch work and not a labor relationship. Therefore, the court rejected his claims for double pay for being worked without a contract, as would be required for someone under a labor relationship. With regard to overtime pay, the court repeated at excruciating lengths the evidence and arguments of both sides, but could not come to a clear picture of what really happened and ended up by concluding that "there is insufficient evidence." What's more, the plaintiff's complaint had passed the time limit of one year. Therefore, the court rejected those claims as well.

This last case shows that Zhongji had already adopted the method of developing a dispatch work shield just like the SOEs had used. The two cases together show (just as did those in my earlier article) that, without the cooperation of the company, it is extremely difficult for workers to prove unpaid overtime and holiday work. Given the law's theoretical construction of a separating out of the "user of the person" and the "user of the work," workers have virtually no possibility of obtaining a court judgment to compel the "user of the work" to bear legal responsibility for its own management practices.

The Anjie Automobile Transport Company. Next we have three cases of the Anjie automobile transport company's 安捷轿车运输公司 disputes with three workers. Yang Xinghai 杨星海 began working for the company in 2008. In 2011, the company had him sign a dispatch work contract with its "staff and workers dispatch agency" 职工劳务公司, thereby converting Yang to dispatch worker

status. Yang said in his complaint that the company never allowed rest days on legal holidays nor any annual vacation. He sought overtime pay for the period from March 25, 2008, to April 7, 2015, a total of 63,000 yuan, and annual vacation pay of 28,636 yuan, plus compensation of 38,340 yuan for unilateral dissolution of contract. The court held that Yang's relationship with the company was one of dispatch work, not a labor relationship. Moreover, the company uses a piece-work system of payment by mileage without a fixed schedule. Therefore, the court rejected his claims (Case B-5).

Plaintiff Yao Liang 姚亮 entered the company under similar terms and also signed in 2011 a dispatch work contract with its dispatch agency. Represented by the same lawyer (Wang Yang 汪洋), Yao also asked for overtime and vacation pay and severance compensation. The court made the same judgment, holding that Yao's relationship with the company was one of dispatch work and not a regular labor relationship and that the company remunerated workers on a mileage basis (Case B-6). Finally, plaintiff Bi Yujie 毕玉杰, also represented by the same lawyer, made the same claims and met the same result (Case B-7).

From the above cases, we can see that the Anjie company was well prepared, having set up a dispatch agency as its shield and also a remuneration system by mileage, which precludes application of laws with regard to work hours and holidays. The workers really had no chance of asserting their claims for overtime and vacation pay and severance compensation according to conventional labor law provisions. We have seen how of the numerous cases seeking overtime pay, not one succeeded. As for vacation pay, we will see below, there is just one lone example of a successful claim.

Two Other Private Enterprises vs. Their Workers. In the cases of two other private enterprises vs. their workers, what happened was much the same: namely, the enterprises used dispatch agencies and their contracts as protective shields to rid themselves of their legal obligations toward workers. They also used a piece-work system to preclude claims for overtime and vacation pay.

Plaintiff Zhang Wenming 张文明 was sent by the dispatch agency Lianhui 联慧 to work at the Anji automobile transport company 安吉汽车运输公司 (registration capital: 35 million yuan) to work as a driver from February 17, 2009, until December 31, 2013. Thereafter, from January 1, 2014 on, he worked under a labor contract with Anji. On April 21, 2015, he submitted his resignation request to the company, for the reason that it did not allow vacation and overtime pay. He also sought severance compensation for unilateral termination. The court found that Anji operated by a system of payment by mileage without a fixed work schedule (as in a regular labor relationship). Moreover, the plaintiff had exceeded the time limit for filing a complaint. Therefore, the court rejected all his claims (Case B-8).

In the final case involving private enterprises, plaintiff Ge Feng 戈锋 was sent by the Fuchen Jiangong agency 辅臣建功人力资源公司 to work at the Shanghai Yishiduo e-commerce company 益实多电子商务公司. On August 7, 2015, the company and the agency notified the plaintiff and other workers that it intended to alter their labor contracts, lowering the wages and changing the time period of the contract. On August 13, the plaintiff and more than 100 workers together sent Yishiduo a public "notice for discussion" 协商通告, calling for discussions and assurance that their normal work would not be interrupted during those discussions. But on August 21, the company notified the workers that their contracts were being terminated because of their unexcused absence from work 旷工. The company later claimed at court that the workers had "gathered to cause trouble and were absent from work for many days in a row" 聚众闹事, 连续旷工多日. Therefore, the company was sending them back to the Fuchen agency. On August 21, Fuchen terminated its contracts with the workers. On September 18, Ge Feng and others petitioned for arbitration, failed, and brought suit. The court, after investigating, pointed out that the workers' contracts with Fuchen contained the following sentence in Article 2, section 2, item 5: "if a worker should be absent from work (without proper excuse), it will constitute a serious violation of the company's rules and system. The company may immediately terminate the labor contract, without having to pay compensation for termination of contract." On that basis, the court rejected the plaintiff's requests (Case B-9).

Clearly, the Yishiduo company, long before its decision to lower the wages of the workers, had prepared for the eventuality of possible resistance. Even before hiring the workers, it had developed with the Fuchen dispatch agency a contract that contained language for terminating workers without the obligation to pay severance compensation in the event they should stop work. The reality is that, given the state's policy and laws intended to support enterprise use of the dispatch work shield to "use labor flexibly," and the collusion between the enterprise and the dispatch agency (and given also "socialist" China's paradoxical history of lack of effective labor unions), there was really little space in which workers could resist management actions.[2]

Dispatch Agencies

What we have seen above are the major implications of dispatch work law in actual legal practice. But we need also to see that state policies and laws are gradually strengthening their regulation of dispatch agencies, requiring them to shoulder more obligations to workers. This is especially evident in the Xinjiang cases. At the same time, both the Xinjiang and Shanghai cases tell about some of the measures that dispatch agencies are adopting to deal with

those pressures. Below we discuss first the legal obligations that dispatch agencies are required to bear and then the countermeasures that some of them have adopted in response.

Xinjiang: Obligations of Dispatch Agencies

A Dispatch Agency Taking over the Workers of a Dissolved Company Has to Bear the Original Company's Obligations for Severance Compensation. First is the largest group of cases from Xinjiang: a total of 13 disputes between the Shawan Tianshan cement company 沙湾天山水泥有限责任公司, its dispatch agency Donggui 东硅, and more than 50 quarry workers (involving one Kazakh and the rest Uyghurs) (Cases A-8 to A-20). The Tianshan company (registration capital 90 million yuan, with 700 workers) was the original employer. At the end of 2014, however, it notified the workers, through the Donggui dispatch agency, that the company was going to close the quarry and that Donggui would handle the dissolution of contracts with the workers. Nominally, Donggui was prepared to arrange reassignment of the workers to another quarry, but since the other quarry was quite some distance away from the workers' homes, it was not a genuine option. The court explicitly noted that fact in its judgment. Before that, Tianshan had not notified the workers of what was to come. It has also continued to pay wages itself (rather than through Donggui).

In the process of dissolving the contracts with the workers, the Donggui agency at one point tried to use with plaintiff Tuerhan·Hushaying 吐尔汉·胡沙英 (a Kazakh, who had worked at the company from 2008 until 2013) the excuse that he had been absent from work (without proper excuse) to dismiss him. The court adjudged in that case that Donggui had "failed to provide proof that the plaintiff seriously violated the rules and regulations of the company," and ordered it to pay severance compensation of 14,092 yuan, plus another 50% of that sum for "additional compensation" 额外经济补偿 as punishment for trying to dismiss the worker illegally (Case A-10).

In the judgments of these cases, the key was the Supreme Court's Explanation IV (implemented 2013) that provided, in rather convoluted legalese: "if a laborer for reasons not of his own making is assigned from one unit to another to work, and the original employing unit of the person 原用人单位 had not paid financial compensation [for unilateral termination], if the laborer seeks compensation in accordance with article 38 for termination of contract with the new employer, or if the new employer seeks to terminate the contract, in counting the qualifying number of years worked for calculating the amount of compensation, if the laborer asks that the time period with the original employer should be included with the time worked for the new

employer, the people's courts should approve the claim" (Supreme Court, 2012: Article 5). The Supreme Court's instructions on this matter were specific and relevant enough to become the main basis for the court's judgments in this group of cases (e.g., Case A-13).

The fact that the Tianshan company had handled things clumsily and illegally was of course an important factor. The court held that when the Donggui agency signed new contracts with the workers, the Tianshan company "did not explain to the workers the change in their status," "did not dissolve the original labor relationship, and continued to pay the workers itself, so that the plaintiff(s) had no way of knowing which one was the entity with which they had a labor relationship. Its behavior went counter to the rules of the Labor Contract Law with respect to dispatch work. . . ." On that basis, the court ordered that Donggui, in addition to the usual compensation for termination of contract, also pay (as punishment) an additional compensation equal to one half of the total (see, as examples, Cases A-10 and A-20).

Among the Xinjiang cases between Donggui and workers over Donggui's taking over of the Tianshan company's obligations are two cases involving Han workers. Those were adjudged exactly the same way as the cases involving the Uyghur workers (and one Kazakh). That is to be expected: even if the courts do in principle give special consideration to minorities, they would still surely not reach different judgments in the same dispute. It is much more likely for them to give special consideration in the mid-level courts' second judgments. (See Cases Han-1 and Han-2 in Appendix A; see also the discussion below of second-judgment cases.)

A Dispatch Firm Has to Bear Responsibility for Compensation for Unilateral Termination of Its Contract with a Worker. In another similar case, the plaintiff Xieraili·Kuerban 西尔艾力·库尔班 began working for the Xinjiang Xinneng Tianning Electrical Insulation Material Company 新疆新能天宁电工绝缘材料公司 (registration capital: 5 million yuan) in 2007. The company began paying for social insurance for him in October 2008 and signed a labor contract with him. In 2009, the company had him sign a "proof of dissolution of the labor relationship contract" and then gave him just a two-year contract to the end of 2011. In 2012, the company had him sign a dispatch work contract with the Caitehao 才特好 dispatch agency, good until the end of 2013. Then, again a contract for two years until the end of 2015. At the end of that period, Caitehao terminated his contract. Xieraili brought suit, seeking termination compensation of 19,728 yuan, double pay of 18,374 yuan for the period he was worked without a contract, overtime pay of 15,717 yuan, and vacation pay of 28,455 yuan. The court adjudged that the plaintiff's labor relationship with Tianning had ended in 2011. After that, Tianning bore no obligations to

him. But he had a labor relationship with the dispatch agency Caitehao, which must pay him compensation for termination of contract, including the period he was contracted with Tianning, or a total of seven months' pay (for seven years worked), amounting to 19,700 yuan. In addition, the agency must pay him unpaid vacation pay for 2013-2014 in the amount of 1,397 yuan. As for the plaintiff's claim for overtime pay, the court ruled that there was insufficient evidence (Case A-21).

The Dispatch Agency Has Responsibility for Social Insurance. Moreover, as we have already seen, the dispatch firm also needs to bear responsibility for the worker's social insurance, as shown in the case involving plaintiff Yueliwasi and the Xinjiang Federation of Literary and Art Circles' family housing compound discussed above—a point that is especially clear in the second-judgment cases discussed below. This is very different from the 2012 cases, where the courts basically refused to consider social insurance disputes, whether involving enterprises, public institutions, or dispatch agencies. In the 2013-2016 period, as we have seen, in the case involving the giant SOE Zhongjian (A-4), the Xinjiang Literary Federation (Wenlian, Case A-30), and the six Shanghai cases involving the public institution Shuangyong Activities Center (Cases B-1, 2; B-21, 22, 23, 24), the courts explicitly held that those entities should bear responsibility for the social insurance of workers, though the courts still refused to consider disputes over different levels of social insurance benefits, insisting that those lie outside the scope of their purview. They would limit their purview to the issue of whether social insurance should be provided, but not consider disputes over different levels and varieties. In the case involving the Xinjiang Literary Federation, the court also ruled that the dispatch agency Zhonglian be held responsible for social insurance during the period the worker was contracted with it (A-30).

Xinjiang: Countermeasures Adopted by the Dispatch Agencies

In the above cases, we have seen how, since 2013, the intent of the government's policies and laws has been to make dispatch agencies bear more obligations to the workers. Nevertheless, we need also be aware that dispatch agencies (usually in conjunction with the enterprises they serve) have developed certain measures to cope with those governmental and legal pressures.

Successive Short-term Contracts with Multiple Dispatch Agencies. Between 2011 and 2015, plaintiff Aihemaiti·Yimier 艾合买提·伊米尔 was made to sign contracts successively with a series of different dispatch agencies—from Xinhuiyuan 鑫汇源 to Caitehao 才特好 to Xinyuan 新源—to be dispatched to work at the Tiankang animal husbandry company 天康畜牧公司 as a

feeder. Tiankang did not sign a contract with him directly until January 16, 2015, but then on December 1 of the same year notified him verbally that he "need not come to work anymore." The plaintiff applied for arbitration and then sued, asking for compensation for termination of contract to cover his 4.5 years of work and also for making up his social insurance payments. The court adjudged that Tiankang was only responsible for the last half year, or half a month's salary, because Aihemaiti's earlier contracts were all with different companies under different contracts, and the one-year time limit had passed. As for Aihemaiti's request for social insurance payments for the earlier years, that too had passed the one-year time limit (Case A-22).

Here, we can see that Tiankang and the three dispatch agencies deliberately engaged in short-term, successive one-year contracts, precisely for the purpose of minimizing the potential obligations that they might have to bear. Using short-term contracts and changing from one agency to another is clearly an effective method for minimizing such possible obligations.

Including Preventive Clauses in the Contract. Another method is to include preventive clauses in the contract to guard against possible worker claims. Plaintiff Maihemuti·Maimaiti 麦合木提·麦麦提 signed a three-year contract with the Xinminsheng 新民生 dispatch agency on December 1, 2009, to be sent to work at the Urumqi Railway Bureau 乌鲁木齐铁路局 as a locomotive fitter. That was followed by a five-year contract in 2012. Then, the Xinminsheng agency (at the behest of the Railway Bureau) planned to move the plaintiff to passenger services, a job with lower pay. The plaintiff objected, applied for arbitration, and then brought suit, seeking compensation for termination, social insurance fees, and subsistence for the dispute period. But the Xinminsheng agency was well prepared for such eventualities, since it had included the following provision in its contract with the plaintiff:

> The agency may change the post of the worker as needed. The worker should obey. . . . Otherwise, the agency shall have the right to treat the matter as an act of deliberately leaving his post, and therefore terminate the labor relationship with the worker. . . . In the interim, the agency will not be responsible for wages or social insurance payments.

The court cited that contract passage and rejected the plaintiff claims (Case A-23).[3]

Shanghai: Countermeasures

The Shanghai dispatch agencies also had their methods for dealing with such increased pressures from the courts. At the same time, the cases also show,

once again, how difficult it is for workers to obtain overtime pay. The cases further bring into focus the fact that the actual employing company, as the "user of the work" unit 用工单位, has almost unchecked power to dismiss workers, without bearing any legal obligation for compensation for unilateral termination. A dispatch agency acting in cahoots with the "user of the work" unit can also avoid obligations by having the user of the work unit, and not itself, dismiss the worker.

Dismissing Workers through the User of the Work Unit. The first ploy is closely linked to the "black hole" in the theory and practice of dispatch work law. With the artificially contrived separating of the "user of the person" from the "user of the work," the actual managing enterprise, though in theory just the "user of the work," in reality still remains the managing entity and still has the power to dismiss a worker, only now without bearing legal obligations. At the same time, the dispatch agency also need not bear responsibility if it is the user of the work entity and not the dispatch agency that dismisses the worker. That, indeed, is a direct carryover from the original intent of dispatch law: to allow enterprises to "dump their burdens" by using the dispatch shield.

Plaintiff Liu Jianqiang 刘建强 was dispatched by the Gongyun 工蕴 agency to work as an electrician for the property management company Shangqin 上勤物业管理公司. On December 22, 2014, the Shangqin company notified Liu that he was being dismissed and did not pay him his wages in full. Liu applied for arbitration and then sued, seeking compensation for termination of contract, his unpaid wages, and also four days of overtime work during a recent typhoon. The Gongyun agency, for its part, argued that Liu had seriously violated work rules and mishandled things (without concrete details), and the agency was therefore "suggesting that he resign." For that reason, the agency should not be liable for severance compensation. The court held that although the plaintiff maintained that he had a labor relationship with the Shangqin company, he was in fact employed by the Gongyun agency. Therefore, Shangqin was not liable. As for the Gongyun agency, since it was Shangqin that had dismissed the plaintiff, it too was not liable for severance compensation. With regard to Liu's request for overtime pay, the court held that there was no proof of actual overtime work (Case B-12).

Another case is similar in substance. Wang Minggang 王明岗 was sent by the Sutong 苏通 dispatch agency to work at the Delphi automobile air conditioning systems company 上海德尔福汽车空调系统公司 on its factory floor, beginning March 30, 2009. The plaintiff said that he had been moved by the "squad leader" 班长 to a post in front of the furnace, which was heavy work for which he had not been properly trained and therefore could not really carry out, whereupon the squad leader ordered him to go home. On

June 5, 2015, the Sutong agency notified Wang that the company had "sent him back" to the agency and terminated its contract with him. Wang sought arbitration, failed, and brought suit, seeking severance compensation. The court ruled that the Delphi company had acted within its rights in dismissing him and that the dispatch agency Sutong had not violated any rules in terminating its contract with him, and therefore rejected his claim (Case B-13).

The above two cases illustrate once more the problem of the "black hole" in current legal theory and practice. As the actual manager of the plaintiff, the Shangqin property maintenance company had the power to dismiss the plaintiff (ostensibly for serious violation of company rules) and "send him back" to the dispatch agency. As for the dispatch agency Gongyun, it was not the party dismissing the worker and hence also did not need to bear the obligation for severance compensation. In the second case, the Delphi company, as the "user of the work" and the actual managing entity, had the power to reassign the worker, and when the worker resisted, could similarly "send him back" to the agency. What the case shows is that the actual managing entity (in this case, personified by the factory floor "squad leader") enjoys virtually unrestrained power to dismiss a worker. As merely the "user of the work" and not "the user of the person," the Delphi company was not subject to the legal constraint of having to pay severance compensation for the unilateral termination of a worker's contract. By extension, as the user of the person, the dispatch agency also is not responsible, since it is the user of the work and not the dispatch agency that dismissed the worker.[4]

Being On Duty Outside Regular Schedules Is Not Real Work. We have seen how of the numerous cases involving claims for overtime pay, in not one instance did the worker prevail, including the dispute between the Zhongji Reefer Company and its two workers (Cases B-3, 4), the Shanghai Anjie automobile transport company and its three workers (Cases B-5, 6, 7), the Gongyun dispatch agency and its worker (B-12), and so on. The next case provides further clarification of this issue. In addition to the ploy of using a piece-work system rather than regular work schedules, a dispatch agency and/or the user of the work can claim that being "on duty" is not the same as real work.

The plaintiff Ge Dengdong 葛登东, a worker who had been disemployed from his original work unit 下岗, was sent by the Baojia 宝嘉 dispatch agency to the arbitration court of Shanghai's Zhabei district 上海市闸北区劳动争议仲裁院 on June 28, 2013, to work as its building security guard and cleaning and maintenance person 保洁保安员 for a period of one year, to be renewed year by year. On May 14, 2015, Ge was notified that he was being discontinued. He sued. He maintained that he had to stand guard in the main hall from 8:00 a.m. to 8:00 p.m., after which he then had to collect the hot water bottles

from the offices, make sure that the windows were properly shut, turn on the alarm system, and so on. He could not go to bed until 12:00 a.m. and had to work every day without any days of rest or holidays. The Baojia agency (along with the arbitration court) countered that he actually "worked from 8:00 a.m. to 5:30 p.m., with a two-hour lunch break" and that "in the evenings he did not have to work, only be on duty 值班 between 8:00 p.m. and 7:00 a.m. The guard room has a bed, television, and air conditioning, and he could sleep during those on-duty hours." The court held that the plaintiff did not "provide proof of overtime work," that his "nighttime work is different from daytime work," and is properly considered being merely "on duty." On that basis, the court rejected his claims for severance compensation and overtime pay (Case B-15).

Here once again we see how difficult it is for workers to assert claims for overtime pay, most especially from non-managing, broker-like dispatch agencies, despite the Labor Contract Law's construction of them as the new "users of the person."

Differences between Shanghai and Xinjiang in Second-Judgment Cases

In the second-judgment cases, there is an unexpectedly sharp difference between the Shanghai and Xinjiang cases: in the eight Shanghai cases, the second judgments basically all upheld the first judgment. Six simply "affirmed the original judgment" 维持原判. (Four are the disputes between the Shuangyong Activities Center and its workers discussed above—Cases B-21, 22, 23, 24; the other two are B-25, 26.) The remaining two cases ruled that "the original judgment is correct but that there are mistakes in its computations, which should be corrected" 原审正确，但计算有误，应予纠正 (Cases B-27, 28), basically affirming the original judgment and making only some minor adjustments in the computations.

By contrast, of the five Xinjiang second-judgment cases (the sixth is a non-substantive case over jurisdiction[5]), three overturned or substantially changed the original judgment, and one evinced strong "substantivist" tendencies in both the first judgment and the second judgment, rather different from most of the other cases studied in which the judgments were almost all highly formalistic.

Substantive Consideration for an Older Worker

Wuban·Ehan 吾班·俄汗, an employee of the giant SOE national electric power company, worked for more than 20 years for its local Tacheng

Tiechanggou company 国电塔城铁厂沟发电公司. In 2008, as part of "systemic reform," that company was turned over in toto to the newly constituted subsidiary Guodian Xinjiang electric power company 国电新疆电力公司. The new company signed two short-term contracts with the plaintiff. The original judgment was highly formalistic: the worker's relationship with the original company had indeed been a labor relationship, but he has only a dispatch work relationship with the new company as just a temporary worker. On that basis, the court rejected the worker's claims for double pay during the period he was worked without a contract and for subsistence pay during the period he was awaiting new employment. The second judgment, however, referred explicitly to the fact that Wuban had worked for the company "for more than 20 years" and, while rejecting his claim for double pay for being worked without a contract, adjudged that the company should pay him an "awaiting employment wage" 待岗工资 of 37,600 yuan and also make up for his social insurance payments. This decision may be seen as a kind of substantivist judgment: while upholding a part of the original formalistic judgment, it also found a way to compensate this older worker appropriately (Case A-26).

Working Out Compromises among Three Parties and the Issue of "Joint Responsibility"

The second case is a complex one involving multiple lawsuits and appeals. Maimaiti·Ailiaishan 买买提·艾力艾山, after working for the giant SOE China Petroleum 中石油 for ten years, was placed under a dispatch work contract in 2006. In 2014, Maimaiti got into a fight with a fellow worker and was dismissed ("sent back") by the company to the dispatch agency Liyuan 力源, whereupon Liyuan terminated his contract. Maimaiti applied to the local arbitration board for compensation of 67,478 yuan for unilateral termination, plus overtime and vacation pay of 19,796 yuan. The arbitration board upheld his claims, ruling 裁决 that Liyuan *and* China Petroleum should pay the termination compensation of 67,478 yuan for failure to follow proper dismissal procedures, and China Petroleum the overtime and vacation wages of 19,796 yuan. First, the Liyuan agency appealed to overturn the arbitration ruling. The mid-level court worked out a mediated compromise sum of 45,000 yuan for the severance compensation. China Petroleum also appealed, pointing out that it had signed a detailed "outsource" 外包 agreement with Liyuan that included provisions about overtime and vacation pay and that the company had already paid Liyuan those sums. Whereupon, Liyuan paid Maimaiti the overtime and vacation pay he sought. Then Maimaiti also

appealed, seeking the difference in severance pay between 45,000 yuan and the sum of 67,478 yuan upheld originally by the arbitration board. The second-judgment court determined that the mediation settlement had been worked out in consultation with Liyuan and Maimaiti and had already been paid. It thus upheld that settlement and rejected Maimaiti's claim. We can see that in this case, both the first and second judgments showed strong "substantivist" tendencies favoring mediation, rather different from the great majority of our other cases, which are strongly formalist in their reliance on the letter of the law (Case A-28).

This case is also the only one among the cases studied for this article in which the court ordered both the dispatch agency and the actual employer to bear "joint responsibility" for severance compensation for improper dismissal. Here we need to point out that "joint responsibility" 连带责任 is a legal concept that is often misunderstood. The 2007 Labor Contract Law provides:

> Where a labor-dispatching unit violates the provisions of this Law, the administrative department of labor . . . shall order it to rectify the violation. If the circumstances are serious, a fine shall be imposed on it, with not less than 1,000 yuan but not more than 5,000 yuan for each person, and its business license shall be revoked by the administrative department for industry and commerce. If harm is caused to the dispatched worker, the labor-dispatching unit and the labor-receiving unit shall bear joint liability for compensation. (Labor Contract Law, 2007: Article 92)

The last sentence may on the face of it be mistakenly construed as a general principle that when a dispatch agency and a company have seriously harmed a worker's interests, as for example in changing the worker's labor relationship to a dispatch work relationship, then they are required by law to bear joint responsibility. In fact, however, this sentence is clearly intended to apply only to "illegal" behavior and has not been applied by the courts to cases in which the company and the dispatch agency are deemed to have "legally" changed the worker's status from a labor relationship to a dispatch relationship, which is what actually happened in the great majority of the cases we have studied. Even though many of the cases examined for this study named not just the dispatch agency as defendant but also the actual managing company as either the second defendant or the "third party," this particular case is the only one in which there was an explicit ruling that the company bear joint responsibility for the harm to the worker, because it had not followed proper legal procedures in dismissing him.[6]

The 2012 amended Labor Contract Law raised the dollar amount of penalties and changed the last sentence to "If the user of the work unit should cause damage to the dispatch worker, the dispatch agency and the user of the work

entity shall bear joint liability for compensation." The law's intent clearly is still for such joint liability to apply only to "illegal" actions.

Seeing Beyond the One-Year Time Limit and Substantive Consideration for Vacation Pay

In the third second-judgment case (we have already discussed above the outlines of its first judgment – Case A-21), the plaintiff Xieraili·Kuerban 西尔艾力·库尔班 worked from 2007 for the Xinjiang Xinneng Tianning Electrical Insulation Material Company. In 2009, the company issued to him a "proof of dissolution of the labor relationship contract." In February 2010, the company concluded an agreement with the Caitehao agency for it to dispatch workers to the company. On January 1, 2012, Caitehao formally dispatched the plaintiff to Tianning to work. Xieraili applied for arbitration and then sued, asking the court to affirm that he was under a labor relationship with Tianning and that the contract with Caitehao was invalid. He wanted Tianning to make up his social insurance payments from 2007 to 2014, and sought termination compensation of 19,700 yuan for 7.5 years worked, and unpaid vacation pay (A-29).

The court held that he did not have a labor relationship but rather a dispatch work relationship with Tianning, because he had signed a contract with Caitehao. On that basis, the court rejected his claims for social insurance payments and vacation pay. To the evident surprise of Xieraili and his lawyer, however, the court concluded that he had a labor relationship with the Caitehao agency and that Caitehao should pay him the severance compensation of 19,700 yuan and make up for his social insurance payments and his vacation pay (1,397 yuan). But then, both the plaintiff and Caitehao refused to accept the judgment and appealed to the mid-level court.

Here we can see, first of all, Xieraili and his lawyer clearly assumed that to assert his claims, he needed to invalidate the contract with Caitehao and establish that he had a labor relationship with Tianning. But in fact, the intent of the government and the dispatch work law is to allow enterprises to "use labor flexibly" and "dump their burdens." The first-level court's judgment, therefore, is entirely consistent with the government's intention and policy. But what the plaintiff and his lawyer had not anticipated was that it was also the intention of the government and of the law to make dispatch agencies shoulder more of the burdens of the original enterprises.

First, on the matter of severance compensation, the court did not follow simply the formalistic one-year time limit requirement but rather relied on what the second judgment pointed to as Article 38 of the Labor Contract

Law: "the new employer of the person, when terminating a contract, in counting the number of years of work for compensation, if the worker requests that the period should include the time worked for the original enterprise, the people's court should approve the request" (actually drawn from Article 5 of the Supreme Court's Explanations IV [Supreme Court, 2012]). It was on that basis that the court set the required compensation sum at 7.5 years of work, 19,700 yuan.

In addition, on the question of social insurance, we have seen that the situation has changed since 2012: the Supreme Court's Explanations III, Article 1 (Supreme Court, 2010), has taken hold by this time, such that the courts no longer take the position as they had earlier that disputes over social insurance fall outside their purview. They are now dealing with those seriously, although, as noted above, they are adjudging only the issue of principle as to whether social insurance should be provided, but have declined to rule on disputes involving different levels of benefits.

Finally, with regard to the plaintiff's request for overtime pay, the court ruled that there was insufficient evidence, but with respect to his request for vacation pay, the court took a position different from what had been done in the 2012 cases (to reject such claims along with overtime claims).The Supreme Court's Explanations III had already directed that, in consideration of the difficulties workers face in providing proof, "if the worker can provide proof that the 'user of the person' unit has proof of overtime, and the unit refuses to provide such proof, then it will have to bear the negative consequences" (Supreme Court, 2010: Article 9). That provision had a definite effect on this case. The original court had on that basis asked the Tianning Company to furnish its "work tables." Here the second-level court adjudged that even though those work tables could not prove overtime, they do show that the employer had not allowed any vacation days. On that basis, the second-judgment court ordered the dispatch agency Caitehao to pay 200% of the unpaid, required ten days per year vacation pay, a total of 2,592 yuan, concluding that the original judgment "mishandled" 原判处理错误 this issue by only granting the plaintiff 1,397 yuan.

Here we can see that in actual legal practice there has already appeared some effort to fill in part of the "black hole" in the legal theory of dispatch work. The Supreme Court's Explanation III instructed the original enterprise (the "user of the person" now made into merely the "user of the work") to cooperate with the court and provide work tables to help settle disputes over overtime and vacation pay. Even so, as we have also seen, work tables are of only limited use. In this case, it could prove only the number of days the worker worked, but could not demonstrate overtime work on particular workdays. The basic problem here is still the artificially constructed separating out

of "user of the person" from "user of the work," turning the mere contract-making dispatch agency into an ostensible "user of the person," when the original enterprise still remains the actual managing entity. The courts, even if genuinely concerned about protecting workers' rights, still have a difficult time making the dispatch agency bear responsibility for actual managerial behavior.

The last second-judgment case involves a public institution, namely the Literary Federation's 文联 family housing compound vs. its gate guard from year 2000 to 2014, Yueliwasi. What the second judgment did was to explicitly reject the new argument brought by the Federation: that Yueliwasi's complaint had been brought after the one-year time limit had expired, because the plaintiff's contract with itself had been terminated on March 1, 2013, but he did not file his complaint until September 1, 2014. On that basis, this mid-level court could easily have ruled formalistically to reject the plaintiff's claims, like so many of the other court judgments did. But the court did not do so, electing instead to uphold the original judgment and ordering the Federation to make up the social insurance payments (it had only paid for the two months of April and May 2009) and to pay termination compensation (of 11,000 yuan). As for the dispatch agency, though it did not need to pay the severance compensation, it was to make up the social insurance payments of 2013 and 2014 (Case A-30). Thus did the court allow this dismissed long-term worker some measure of compensation.

Overview of Changes since 2013

Overall, the cases since 2013 show some definite changes in legal practice from our nationwide cases of 2012. Different from the earlier courts' refusal to consider social insurance disputes, the courts have now incorporated the Supreme Court's Explanation III's (Article 1) direction that they deal with such disputes. Also, different from the highly formalistic judgments of the 2012 cases on vacation pay, the courts have begun to incorporate the instruction in that same Explanation III (Article 9) that they seek to examine the work tables of the enterprises concerned to settle disputes about vacation pay. The courts have also adopted the direction in Explanation IV that when an enterprise closes down and turns itself over to a dispatch agency, the latter's obligation for compensation for unilateral termination should include the period of time the worker worked for the original enterprise.

At the same time, the Xinjiang cases show a more substantivist tendency than the Shanghai ones, especially in second judgments. They include the use of civil mediation, avoidance of overly rigid application of the time-limit

rule, and more consideration for the plight of the worker. They represent one possible direction for correcting the excesses of the present tide of letting enterprises "dump their burdens."

However, in light of the fact that the Shanghai cases of the same period, including its second judgments, still demonstrate highly formalistic tendencies, we might also conclude that differences between the cases of the two areas stem from Shanghai's greater development of private enterprises and of a market economy. The differences might also be due to the fact that in addition to the state's strategic policy to help enterprises "dump their burdens," in the Xinjiang Uyghur Autonomous Region, there is also the need, especially in second-judgment cases, to consider the longstanding policy goal of maintaining harmonious relations with minority peoples.

Nevertheless, we need to see that even among the Xinjiang cases, there is still the example of a second judgment simply affirming a formalistic first judgment. As discussed above, in the case of Rousidanmujiang vs. the giant SOE Zhongjian's Xinjiang subsidiary, the worker had already established a labor relationship with the company in 2008 to 2010. The company then had him sign two successive two-year contracts with the Xixingbang dispatch agency. On March 28, 2014, the plaintiff had submitted a so-called "resignation report" to the company, hoping it would adjust his work schedule so that he could take care of his mother, whereupon the company dismissed him, on March 31. The court held that he had in fact resigned of his own volition, and hence there could be no question of compensation for unilateral termination of contract by the company. As for his claims for overtime and vacation pay, the court held that Zhongjian had since 2009 adopted "a system of unified counting of work time" for eight work categories, including the cement mixing truck operators, that the plaintiff had in effect 120 days of holiday a year during the (snowbound) winter months, and that his total work time did not exceed the legally set limit of 2,000 hours a year, thereby rejecting all his claims (A-4). Rousidanmujiang appealed to the mid-level court, but it simply affirmed the first judgment (A-31).

In light of such a case, as well as the other cases from Shanghai, economically the most developed area of China, there can be no denying that flexible labor use and reducing the burdens of the enterprises remain the main intent and practical consequences of dispatch work law. Even though the courts have adopted a number of countermeasures, some to genuine effect, we must not lose sight of this larger picture.

From the perspective of what we have termed the "black hole," there is no doubt that the government's main purpose is to help enterprises lighten their burdens, to enhance their vigor and competitiveness in order to

stimulate/maintain economic development. Its resort is mainly the artificial construction of the dispatch agencies as the new "user of the person," this while turning the actual managing entity into merely the "user of the work" that needs bear little or no obligation to the worker. Yet at the same time, in order to mitigate the resulting "contradictions" (between enterprise and workers and between Han and minority peoples), the government also tries to turn the newly constructed "user of the person" (i.e., dispatch agencies) (which are not deemed to be as strategically important to overall economic development) into more substantial entities with more obligations toward workers. The amended labor contract law of 2012 has accordingly raised the required registration capital for dispatch agencies from the meager 500,000 yuan to 2 million yuan (Labor Contract Law, Amended, 2012: Article 57). Even so, however, the basic fact remains that the dispatch agencies are no more than intermediary brokerage entities. In the final analysis, they can never truly bear all the obligations of the real managing entity.

The history of labor shows us that there can be no avoiding conflicts between workers and management, because their interests are fundamentally opposed. Other things being equal, the higher the labor cost, the lower the enterprise's profits; the reverse is also true. Even though enterprises clearly should consider the fact that well-treated and better-motivated workers can bring higher labor productivity and hence also higher profits than the differential costs in wages, the fact remains that few enterprises ever do. The reality is that the powers of management and workers are usually grossly unequal, which is a major reason behind management abuses. It is also the reason that labor legislation has focused on the rights of workers to organize unions and engage in collective bargaining. The problem of gross inequalities between the two sides is not one that can be resolved by theoretical constructs alone. The theory of labor contract law, however, relies on the fiction of equal relations between the two in a free market economy and then employs neoliberal economic doctrine to maintain that such a mechanism would lead to the optimal allocation of resources, including labor.

Such a theory, we must acknowledge, must not be used as a substitute for our old labor theory predicated on unequal relations between management and labor. It can at most be used as a supplement, restricted to "temporary, supplementary, or substitute work." From this point of the view, the reassertion by the Ministry of Human Resources and Social Security's "Temporary Regulations" of 2013 of the fundamental principle that enterprises "may only use dispatch workers for temporary, supplementary or substitute posts" (Article 3) and its call to limit such use to no more than 10% of an enterprise's total workforce (Article 4) are sensible declarations of intent indeed (Ministry

of Human Resources and Social Security, 2013). However, given the tidal force of informal labor use in China, one can only wonder: can the Ministry's prescriptions really be effectively implemented?

Final Observations

Looking back on the past 40 years of the Reform period, what is unmistakable is the tidal wave of "deformalization" and "informalization" (namely, little or no protection by labor legislation and little or no social insurance) of China's urban workforce. First was the large-scale entrance into urban employment of "peasant workers," the great majority of whom are informal (only 17% or so in the latest data from 2014 had the crucial health and retirement insurance), their numbers reaching a total of 277 million by 2015. Then there was the dismployment 下岗 of forty to fifty million workers of small- and medium-scale SOEs in the late 1990s and early 2000s. Finally, there is the rapid spread of dispatch work/employment since the promulgation of the Labor Contract Law, totaling 37 million enterprise workers already by 2011 (All-China Federation of Trade Unions, 2012), reaching perhaps 60 million or more today.

If we count the 17% of the peasant workers with health and retirement insurance as formal workers, that means there are 230 million informal peasant workers. If we estimate that one-third of the 45 million disemployed workers are still working, that would make for another 15 million informal workers. When we add to those two categories of informal workers the estimated 60 million dispatch workers, that would make a total of 305 million informal workers, or more than three-quarters of all the 393 million urban employed today (2015) (see Huang, 2017a or Huang Zongzhi, 2017; see also Huang, 2013, 2011, 2009; and Huang Zongzhi, 2013). By way of comparison, dispatch workers in all of the developed countries total just 47 million, or just 10% of the total employed, according to the International Labour Organization's latest data on "global employment" (International Labour Organization, 2013: figures on "vulnerable employment" in tables on pp. 155 and 156). In other words, informal employment in China today totals more than six times that in all of the world's developed countries added together. At this present rate, it is possible that in the near future only officials of the party-state, and perhaps also formal employees of public institutions, will still be fully protected by labor laws. In that event, the global category of "labor law" will become, for China, a term simply brimming with irony.

Finally, from the perspective of China's justice system as a whole, the history of China's labor laws tells us also about a host of persistent "Chinese characteristics": including the close entwining of administration and law,

informal and formal justice, and revolutionary socialist ideals with capitalist practices. Seen in a positive light, those combinations offer the possibility of complementarity and the potential for creative innovation (Huang Zongzhi, 2016a, 2016b). But seen from a negative perspective, the combinations evince multiple contradictions and ambiguities, and are still awaiting new conceptual and practical breakthroughs to go beyond the simplistic either/or binaries of the West vs. China and of Chinese tradition vs. the Revolution vs. transplantation from the West, and make the Chinese justice system truly an innovative one with positive "Chinese characteristics." (See my preliminary explorations of what such a justice system might look like in Huang Zongzhi, n.d. [a], n.d. [b].)

Within the justice system as a whole, the present-day labor laws are perhaps the most contentious and most internally contradictory branch of all Chinese law. There are paradoxes and contradictions that stem from historical developments: labor laws in China come not from long-term contentions and compromises between labor and capital, as in the West, but rather from the triumph of the Communist Party and its assumption of state power, making labor protection a matter of state policy. And, after the Communist Party's takeover of state power, it became perfectly natural to include revolutionary cadres (as "the vanguard of the proletariat") among laborers protected by labor law. As for labor unions, they paradoxically became entities organized from above by the party-state. In the great alliance among the party-state, state enterprises, and private enterprises forged in the course of China's Reform period, unions have become almost entirely an organ of the enterprises' management. In the gigantic tide of informal peasant workers, the disemployment of small- and medium-sized SOEs, and the "flexible labor use" of dispatch work, the rights and powers of workers have been steadily whittled away, until labor law has been virtually completely hollowed out. What is needed today is for the party-state to take stronger actions to restore a more sustainable balance among the interests and rights of the party-state, enterprises, and workers. The first step would be to develop a comprehensive vision for a long-lasting plan that would transcend the great tensions in Chinese society today.

Appendix A

The Xinjiang Uyghur Autonomous Region: Labor Dispute Cases over Dispatch Work Involving Minority Peoples, 2013-2016

The cases come from the Supreme Court's website China Judgements Online 中国裁判文书网, http://wenshu.court.gov.cn/ (searched at the end

of December, 2016), entering "dispatch work" > "labor disputes" > Xinjiang Uyghur Autonomous Region, from the years 2013 to 2016, which yielded a total of 168 cases, of which 27 are basic-level court cases involving minority peoples and 6 mid-level court cases involving minority peoples (including one application for appeal after a second-judgment), a total of 33 cases. Of those, two were duplicates, making for a total of 31 cases actually discussed. The cases are listed by categories in the order they are discussed, with second-judgment cases coming last. Dates listed are the dates of judgment.

A-1: 卡斯木·买斯木与国网新疆电力公司巩留县供电公司劳动争议纠纷一审民事判决书。2016.4.22
A-2: 努来力·亚尔买买提与国网新疆电力公司巩留县供电公司劳动争议纠纷一审民事判决书。2016.04.22
A-3: 热孜万古丽与国网新疆电力公司巩留县供电公司劳动争议纠纷一审民事判决书。2016.4.22
A-4: 肉斯旦木江·买买提与中建西部建设股份有限公司劳动争议纠纷一审民事判决书。2015.12.30（亦见下列二审裁定）
A-5: 塔依尔·依坦木与吐鲁番市文物管理局劳动争议纠纷申请再审民事裁定书。2016.5.5
A-6: 古拉依木·色力木与被告乌鲁木齐华民劳务派遣有限公司、乌鲁木齐市沙依巴克区人民政府友好南路街道办事处劳动争议一案民事判决书。2014.1.15
A-7: 艾沙江·买买提与新疆金纺纺织股份有限公司, 新疆金源人力资源服务有限公司, 乌鲁木齐佳众源人才劳务派遣有限公司, 乌鲁木齐市民之源劳务派遣有限公司, 新疆冬磊劳务有限公司劳动争议一审民事判决书。2016.7.1
A-8: 达吾列提哈孜·巴牙合买提与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.28
A-9: 哈布里·斯兰与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-10: 吐尔汉·胡沙英与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-11: 杰恩斯·玛坎诉被告沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-12: 努尔木哈买提·夏依马尔旦与沙湾天山水泥有限责任公司、被告新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29

A-13: 达列里·哈米提与沙湾天山水泥有限责任公司、被告新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.2.15
A-14: 巴合提亚尔·夏都拉与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.2.5
A-15: 布拉英·吾马尔江与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.2.5
A-16: 克米西·毛力达拜与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-17: 哈力米哈孜·斯兰与沙湾天山水泥有限责任公司、被告新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.2.5
A-18: 赛里克·拜山拜与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.28
A-19: 海拉提·合孜尔与沙湾天山水泥有限责任公司、被告新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-20: 马合沙提·托列吾汉与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
A-21: 西尔艾力·库尔班诉新疆新能天宁电工绝缘材料有限公司、新疆才特好人才服务有限公司劳动争议民事一审判决书。2015.2.13（亦见以下的二审裁定）
A-22: 艾合买提·依米尔与阿克苏鑫汇源人才服务有限公司、新疆才特好人才服务有限公司阿克苏分公司等经济补偿金纠纷一审民事判决书。2016.8.29
A-23: 原告麦合木提·麦麦提与被告新疆新民生劳务派遣有限公司、乌鲁木齐铁路局乌鲁木齐机务段劳动争议一案一审民事判决书。2015.12.20
A-24: 阿不来力木·牙合甫与新疆守信劳务派遣有限责任公司、乌鲁木齐铁路局、乌鲁木齐铁路局哈密机务段劳动合同纠纷一审民事裁定书。2015.1.28（亦见下列二审裁定）
A-25: 艾海提·图尔迪与巴州天信人力资源服务有限公司劳动合同纠纷一审民事判决书。2014.4.23
A-26: 吾班·俄汗与国电塔城铁厂沟发电有限公司确认劳动关系纠纷民事二审判决书。2015.1.6
A-27: 阿不来力木·牙合甫与新疆新民生劳务派遣有限公司、乌鲁木齐铁路局等劳务派遣合同纠纷、劳动争议二审民事裁定书。2015.10.23（亦见上列一审）
A-28: 买买提·艾力艾山与中国石油天然气股份有限公司新疆和田销售分公司、和田力源劳务派遣有限责任公司劳动争议纠纷二审民事判决书。2015.5.28
A-29: 西尔艾力·库尔班与新疆才特好人才服务有限公司与新疆新能天宁电工绝缘材料有限公司劳动争议二审民事判决书。2015.6.29（亦见以上的一审案件）

A-30: 约力瓦斯·吾甫尔与新疆维吾尔自治区文学艺术界联合会、新疆众联劳务派遣有限公司劳动争议二审民事判决书。2015.6.2
A-31: 肉斯旦木江·买买提与中建西部建设股份有限公司劳动争议二审民事裁定书。2016.3.7（亦见上列一审）
Han (汉)-1: 周洪斌与沙湾天山水泥有限责任公司、新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.1.29
Han (汉)-2: 魏振环与沙湾天山水泥有限责任公司、被告新疆东硅人才劳务有限责任公司劳动争议纠纷一审民事判决书。2016.2.6

Appendix B

Sampled Labor Dispute Cases Involving Dispatch Work in Shanghai Municipality, 2013-2016

The cases come from the Supreme Court's website China Judgements Online (searched at the end of December 1916), entering "dispatch work" > "labor disputes" > Shanghai Municipality, from the years 2013 to 2016, which yielded a total of 433 cases, of which 344 are of basic-level courts and 89 mid-level courts. From the former, 1 of every 15 cases was sampled, yielding 22 cases, and from the latter, 1 of 10, yielding 8 cases. Of the total of 30 sampled cases, 2 were duplicates, to make for 28 cases actually discussed. The cases are arranged in the order of discussion, with second-judgment cases coming last, although those are discussed also in the "public institutions" section of the article. Dates given are the dates of judgment.

B-1: 刘静与上海市双拥活动中心劳动合同纠纷一审民事判决书。2015.9.18
B-2: 叶韵与上海双拥活动中心劳动合同纠纷一审民事判决书。2015.9.18
B-3: 陆卫华与上海中集冷藏箱有限公司、上海众汇劳动力资源咨询服务有限公司等确认劳动关系纠纷一审民事判决书。2015.6.24
B-4: 周为国与上海中集冷藏箱有限公司、上海世贤人力资源有限公司确认劳动关系纠纷一审民事判决书。2015.6.24
B-5: 杨星海与上海嘉顿储运有限公司、上海安捷轿车运输有限公司等劳动合同纠纷一审民事判决书。2015.8.24
B-6: 姚亮与上海安捷轿车运输有限公司、上海市嘉定区职工劳务开发有限公司劳动合同纠纷一审民事判决书。2015.8.24
B-7: 毕玉杰与上海嘉顿储运有限公司、上海安捷轿车运输有限公司等劳动合同纠纷一审民事判决书。2015.8.24
B-8: 张文明与上海安吉汽车运输有限公司、上海联慧人力资源发展有限公司追索劳动报酬纠纷一事判决书。2015.10.19

B-9: 戈锋与上海益实多电子商务有限公司、上海辅臣建功人力资源发展有限公司劳务派遣合同纠纷一审民事判决书。2016.2.25
B-10: 王善争与昌硕科技（上海）有限公司劳动合同纠纷一审民事判决书。2015.2.27
B-11: 于海龙与中国四达国际经济技术合作有限公司上海分公司、屹立锦纶科技（苏州）有限公司合同纠纷一审民事判决书。2014.7.18
B-12: 刘建强与上海工蕴人力资源有限公司、上海上勤物业管理有限公司劳动合同纠纷一审民事判决书。2015.12.16
B-13: 王明岗与上海苏通人才服务有限公司、上海德尔福汽车空调系统有限公司劳务派遣合同纠纷一审民事判决书。2015.11.18
B-14: 季群与上海敏辉劳务派遣有限公司、上海弘安汽车配件厂劳动合同纠纷一审民事判决书。2015.1.9
B-15: 葛登东与上海宝嘉物业管理有限公司劳动合同纠纷一审民事判决书。2015.12.10
B-16: 上海东浩人力资源有限公司与宝力融资租赁有限公司、任春劳动合同纠纷一审民事判决书。2014.8.14（重复）
B-17: 上海信美实业有限公司诉被告陆某劳动合同纠纷一审判决书。2013.10.22
B-18: 创和捷商贸（北京）有限公司与中智上海经济技术合作公司、尹冬冬劳务审派遣合同纠纷一审民事裁定书。2014.8.11
B-19: 赵源与行睿网络电视技术有限公司上海分公司、中智上海经济技术合作公司劳务派遣合同纠纷一审民事裁定书。2016.6.3
B-20: 力丰机床（上海）有限公司与中智上海经济技术合作公司、鲍琪华劳务派遣合同纠纷一审民事裁定书。2014.2.12
B-21: 何俊诉上海市双拥活动中心劳动合同纠纷一案二审民事判决书。2015.12.1
B-22: 梅华忠诉上海双拥活动中心劳动合同纠纷一案二审民事判决书。2015.12.1
B-23: 周关英诉上海市双拥活动中心劳动合同纠纷一案二审民事判决书。2015.12.1
B-24: 万强华诉上海市双拥活动中心劳动合同纠纷一案二审民事判决书。2015.12.1
B-25: 前锦网络信息技术（上海）有限公司诉吴颖韬劳动合同纠纷一案二审民事判决书。2014.6.12
B-26: 上海神明电机有限公司与周小武工伤待遇等事宜仲裁一审民事裁定书。2015.1.22
B-27: 郝延红诉陈浩合伙协议纠纷一案二审民事判决书。2014.8.20
B-28: 何海英诉上海锦山针织厂劳动合同纠纷一案二审民事判决书。2014.12.3

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Chinese Uyghur names are rendered here by transliterating their Chinese names.
2. Of course, despite the dispatch work shield, enterprises could not simply refuse to pay or delay paying wages, something which the state, in the face of widespread abuses, came to regulate quite strictly through policies, laws, and regulations. Plaintiff Wang Shanzheng 王善争 was sent by the Zhenghang 整航 agency to the Changshuo science and technology company 昌硕科技公司 to work. Because the company failed to pay his wages in full, Wang petitioned for arbitration, seeking full payment and also compensation for termination of contract. The local arbitration board upheld his claim for unpaid wages, but rejected that for severance compensation. Wang therefore filed suit. The court upheld the arbitration ruling for unpaid wages and rejected his claim for severance compensation (because Wang was a dispatch worker and also the one who had initiated the termination of the contract) (Case B-10).
   The last case in this category is an unusual one. Yu Hailong 于海龙, a high-level technical person, was sent by the Sida "international economic and technical" agency 四达国际经济技术上海分公司 to the Yili nylon science and technology company in Suzhou 屹立锦纶科技公司(苏州) to work as associate manager of sales. His contract contained a requirement for 90-day notice of termination (with pay) as well as a "non-disclosure and non-competition agreement" obligating him to maintain secrecy and not work for a competitor for one year after termination of his contract. Yili notified him in 2014 of its intent to terminate his contract. Yu sued for three months' termination wages. The court upheld his claim, citing the Supreme Court's Explanation IV (Article 6) addressing specifically non-disclosure and non-competition agreements, and ordered payment of 30% of a year's wages (Case B-11).
3. There are two other cases between dispatch agencies and workers. One is Abulailimu·Yahefu 阿不来力木·牙合甫 suing the Shouxin 守信 agency and the Urumqi Railway Bureau 乌鲁木齐铁路局 over the issue of which court has jurisdiction. The substantive implication is not clear (Case A-24; see also the second-judgment case, Case A-27, of the Xinminsheng 新民生 dispatch agency and Urumqi Railway appealing for a second judgment of Abulailimu's lawsuit). In the final dispatch agency vs. worker case, plaintiff Aihaiti·Tuerdi 艾海提·图尔迪 had been sent by the Bazhou Tianxin 巴州天信 agency in 2008 to work at the Luntai county 轮台县 post office. He was terminated in October 2010. The

plaintiff sought severance compensation, but the post office issued a statement to the effect that the plaintiff "was not able to deliver mail accurately, had a poor attitude, was the target of multiple customers' complaints, and frequently lost newspapers and journals, items of mail, and, despite repeated criticisms and education . . . did not change for the better." The court therefore rejected the plaintiff's claims (Case A-25).

4. Another case is a very unusual one. Plaintiff Ji Qun 季群 (female) signed a contract with the Minhui 敏辉 dispatch agency on February 18, 2013, and was sent to work at the Hong'an auto parts factory 宏安汽车配件厂 as a general worker. However, though the plaintiff's copy of the contract shows an end date of February 17, 2014, the Minhui copy shows December 17, 2014. The plaintiff said that she was dismissed by the factory on July 31, 2014, but Minhui insisted that she actually resigned herself on that date. The plaintiff sought double pay for the uncontracted period of March 17 to July 31, 2014, amounting to 21,827 yuan, plus termination of contract compensation of 16,500 yuan. The court held that it would recognize the plaintiff's copy of the contract as the legitimate one and ordered Minhui to pay her the balance of the double pay for the period March 17 to July 17. However, the court also concluded that since the plaintiff was not able to provide proof that Minhui had dismissed her on July 31, it denied the claim for severance compensation. The facts in this case are rather murky, not sufficient to support any generalization (Case B-14).
5. The Xinmingsheng dispatch agency (along with the Urumqi Railway, Hami Section 乌鲁木齐铁路局哈密机务段) appealed to the Urumqi Railway mid-level court 乌鲁木齐铁路运输中级法院 to void the earlier judgment by the Urumqi Railway's Hami section court in the lawsuit brought by plaintiff Abulailimu·Yahefu 阿不来力木·牙合甫 against the Xinminsheng agency and the Urumqi Railway. The appellants argued that the court with proper jurisdiction should be the court of the new city district of Urumqi, where the agency and the Railway Company Bureau are located. But the appeals court ruled that the Hami section court also has jurisdiction and rejected the appellants' request (Case A-27; see also Case A-24). It is not clear what the substantive issues behind this dispute might be.
6. In the cases used for my previous article, there was just one in which the "joint responsibility" principle was applied: a case involving injury at work of the plaintiff Zhang Zhengcai 张正才. The court ruled that the dispatch agency was to bear the obligation for compensation, but also that the "user of the work" entity was to bear "joint liability"—clearly a more stringent treatment of the "user of the work" entity than in other kinds of disputes because the case involved work injury (Huang, 2017b: Case 20).

References

All-China Federation of Trade Unions, Project on the Issue of Dispatch Work 全总劳务派遣问题课题组 (2012) "当前我国劳务派遣用工调查" (Investigation of China's present dispatch labor use). 中国劳动 5: 23–25.

HUANG, PHILIP C. C. (2009) “China’s neglected informal economy: reality and theory.” Modern China 35, 4 (July): 405–38.

HUANG, PHILIP C. C. (2011) “The theoretical and practical implications of China’s development experience: informal economic practices.” Modern China 37, 1 (Jan.): 3-43.

HUANG, PHILIP C. C. (2013) “Misleading Chinese legal and statistical categories: labor, individual entities, and private enterprises.” Modern China 39, 4 (July): 347–79.

HUANG, PHILIP C. C. (2017a) “China’s informal economy, reconsidered: an introduction in light of social-economic and legal history.” Rural China 14, 1: 1-17.

HUANG, PHILIP C. C. (2017b) “Dispatch work in China: a study from case records, Part I.” Modern China 43, 3 (May): 247-87.

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (2013) “重新认识中国劳动人民——劳动法规的历史演变与当前的非正规经济” (Reconceptualizing China’s laboring people: historical change in China’s labor laws and the present-day informal economy). 开放时代 5: 56–73.

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (2016a) “中国古今的民、刑事正义体系——全球视野下的中华法系” (The past and present of China’s civil and criminal justice system—the Sinitic legal tradition in global perspective). 法学家 1: 1-27.

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (2016b) “中国正义体系中的‘政’与‘法’” (Administration and law in China’s justice system). 开放时代 6: 141-59.

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (2017) “中国的非正规经济再思考: 一个来自社会经济史和法律史视角的导论” (China’s informal economy reconsidered: an introduction in light of social-economic and legal history). 开放时代 2: 153-63.

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (n.d.[a]) “中国正义体系三大传统与当前的民法典编纂”（The three traditions of the Chinese justice system and the current drafting of a civil code).

HUANG ZONGZHI 黄宗智 [Philip C. C. Huang] (n.d.[b]) “中国的正义体系往哪里去” (Whither the Chinese justice system?).

International Labour Organization (2013) “Global employment trends.” http://www.ilo.org/wcmsp5/groups/public/—dgreports/—dcomm/–publ/documents/publication/wcms_202326.pdf.

Labor Contract Law of the People’s Republic of China 中华人民共和国劳动合同法 (2007) Implemented in 2008. http://www.gov.cn/flfg/2007-06/29/content_669394.htm.

Labor Contract Law of the People’s Republic of China, Amended 中华人民共和国劳动合同法(修正) (2012) Implemented on Mar. 1, 2013. http://www.chinaclear.cn/zdjs/editor_file/20150408110820354.pdf.

Ministry of Human Resources and Social Security 人力资源社会保障部 (2013) 劳务派遣暂行规定 (Temporary regulations on dispatch work). Implemented Mar. 1, 2014. http://www.mohrss.gov.cn/gkml/xxgk/201401/t20140126_123297.htm.

Supreme Court 最高法院 (2010) 关于审理劳动争议案件适用法律若干问题的解释（三）(Explanations concerning certain problems in applying laws to labor

disputes, III). http://www.360doc.com/content/16/0903/16/2472588_588138497.shtml.

Supreme Court 最高法院 (2012) 关于审理劳动争议案件适用法律若干问题的解释（四）(Explanations concerning certain problems in applying laws to labor disputes, IV). http://www.court.gov.cn/zixun-xiangqing-5064.html.

Author Biography

Philip C. C. Huang has been working mainly at the intersection points of the historical and the contemporary, and of society, economy, and law.