

CASE NOTE: CHINA

CASE CITATION:

Zhang Hua v Shanghai Danwei Information Consultation Co. Ltd¹

NAME AND LEVEL OF COURT:

Shanghai People's Court of Jing'an District

DATE OF DECISION: **11 May 2009**

Authentication; e-mail; civil proceedings

Brief facts

On 1 March 2006, Mr Zhang Hua was employed by the Shanghai Danwei Information Consultation Co. Ltd as the manager of the Beijing branch. Part of the contractual agreement was that he would be paid RMB10,000 yuan per month before tax, together with a 400 yuan subsidy for being mobile. Mr Zhang was to be paid 13 month's pay each year. In addition, Mr Zhang was entitled to gain a bonus from the Beijing project. Mr Zhang was required to work in Beijing for the company for three years until the end of March 2009. He was not permitted to engage in any activity that would injure the benefit of the company, nor could he conduct similar activities or provide a part-time consultation for any other company during the term of the agreement. If he failed to honour the terms of the agreement, he was required to pay RMB100,000 yuan compensation for breach of contract before leaving, and would not be entitled to the bonus for the year the contract was terminated.

On 24 October 2007, Mr Zhang left the company for personal reasons. Because there were different views regarding the bonus for 2007 between him and the company, Mr Zhang applied for labour arbitration on 30 June 2008. The arbitration court did not uphold his application.

As a result, Mr Zhang initiated legal action in September 2008 and complained that the company failed to pay his salary to him on time, as a result of which he had to leave the job on 24 October 2007. He held that he was entitled to receive the bonus for 2007, because he had not engaged in any activities that would injure the benefit of the company, nor did he undertake any consultation of a similar kind for other companies.

Therefore he required the employer pay him a bonus of RMB 49,754.12 yuan, together with compensation of 25 per cent.

However, the company argued that Mr Zhang Hua carried out a number of activities that injured the company, which is why he was not entitled to the bonus. The company submitted a number of e-mails sent by Mr Zhang Hua on 9 July 2007, which indicated that Mr Zhang introduced some projects of the company to his friends, including Beijing ZeroData Market consultation Co. Ltd and Dalian World Union. The company also offered a witness, who gave evidence to show that Mr Zhang had engaged in the activities that injured the company, and performed similar kinds of information consultancy work.

The evidential value of the e-mails submitted by the company

In this case, an important issue was the evidential value of the e-mails submitted by the company. To prove the authenticity of the e-mails, the court asked the Information Internet Security Supervision Department of Shanghai Metropolitan Police to verify the authenticity of the e-mails submitted by the company. After a technical analysis of five e-mails collected from the computer in the company, on 5 March 2009, the Information Internet Security Supervision Department confirmed that e-mails sent to other companies on 9 July 2007 between 11:35 and 15:45 were sent by Mr Zhang's e-mail account with the company.

However, Mr Zhang Hua argued that although he used the e-mail address, he did not send the e-mails in question, and the style of writing of the content of the e-mails was different from his, and claimed that other people must have sent them. However, he did not submit any other evidence to support his theory.

¹ *The names of the parties may not be accurate, because all the reports and news items regarding the case use 'default' names, possibly because of privacy concerns.*

The court's view

The court did not accept Mr Zhang's argument, because he failed to provide any evidence to support his theory. On the contrary, both the e-mails and the testimony of the witness for the company indicated that Mr Zhang introduced the company's projects to others. The evidence of the e-mails and the testimony of the witness acted to corroborate the theory of the case put forward by the company. The court did not uphold the complaints by Mr Zhang.

Commentary

This case illustrates that the members of the court adopted the e-mails as evidence, and confirmed the authenticity of the e-mails. Therefore, the verification of e-mails by the Metropolitan Police has legal effect, and the court adopted the evidence of authenticity. It appears that this is the first time the Shanghai court requested the Metropolitan Police to verify the authenticity of e-mails.

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