# ARE CHINESE COURTS PRO-LABOR OR PRO-EMPLOYER?

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ABSTRACT

As a socialist nation with laws promoted as "pro-labor," the official representation is that China's legal system (in particular its courts) gives special protection to employees. China's labor statutes (in particular, the Labor Contract Law) favor employees. The debate on whether Chinese courts are "pro-labor" or "pro-employer" has been going on for many years. The established perception is that Chinese courts are "pro-labor." By examining 2,054 sampled dismissal cases for serious breaches of employers' internal regulations, this article shows that Chinese courts are in no way "pro-labor." The employers have won by a substantial margin. Courts in most cases only conducted a simple factual review to see if the employer's internal regulations have been violated by the employee. Courts in most cases did not conduct a substantive assessment of whether the dismissal was fair or unfair ("fairness review"). The data reveals that the fairness review is pivotal in the determination of litigation outcome. Had the court conducted a fairness review in every case, the employees would have prevailed. The failure of the court to conduct a fairness review is solid proof

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that courts favor employers. This ground-breaking finding contradicts the established perception that courts are "pro-labor" and past empirical literature that suggests employees are winning in labor disputes lawsuits. This study shows that despite the "pro-labor" perception, the Chinese courts are, in fact, "pro-employer." This revelation has profound implication for the study of judicial protection of labor rights in socialist authoritarian regimes.

*Key words:* Chinese courts, pro-labor or pro-employer, labor law, unfair dismissal, socialist authoritarian legal system

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## I. INTRODUCTION

As a socialist nation, the official representation is that China's labor statutes are pro-labor.[1] The Labor Contract Law of the People's Republic of China ("LCL"), a predominant labor statute in China,[2] was first promulgated in 2008, and subsequently amended

[1] Before the implementation of the Labor Contract Law ("LCL"), Baoshu Sun (孙宝树), Vice Minister of the Ministry of Labor and Social Security, in responding to questions from the media, said the LCL focuses on the protection of the legitimate rights and interests of vulnerable workers, so as to achieve the balance of strength and interests of both sides. *Laodong He Shehui Baozhang Bu Fubuzhang Sun Baoshu Jiu Laodong Hetong Fa Da Jizhe Wen* (*劳动和社会保障部副部长孙宝树就《劳动合同法》答记者问*) [*Sun Baoshu, Vice Minister of the Ministry of Labor and Social Security, answered reporters' questions on the "Labor Contract Law"*], PKULAW (June 29, 2007), https://www.pkulaw.com/lawexplanation/8cd1bc039c6bc20518cc102c3fca2769bdfb.html [https://perma.cc/D9CJ-F658] [hereinafter *Sun Baoshu*]; *see also* Xi Xiaoming (奚晓明), *Zhongguo Tese Shehuizhuyi Falü Tixi Xingcheng Yihou de Minshi Shenpan Gongzuo* (*中国特色社会主义法律体系形成以后的民事审判工作*) [*Civil Trial Work after the Formation of the Socialist System of Laws with Chinese Characteristics*], 69 ZHONGGUO SHENPAN (中国审判) [CHINA TRIAL] 8, 10 (2011) (noting that the LCL has been promulgated under the socialist legal system); Zhang Huiqin (章惠琴) & Guo Wenlong (郭文龙), *Cong Qingxie Baohu Yuanze Shenshi Laodong Hetong Fa Zhi Xiugai* (*从倾斜保护原则审视《劳动合同法》之修改*) [*Reviewing the Amendment of the Labor Contract Law from the Principle of Tilted Protection*], XUESHUJIE (学术界) [ACADEMICS], no. 1, 2017, at 42, 43-44 (noting that the LCL is designed to protect the rights and interests of the workers). *But see* Patricia Chen & Mary Gallagher, *Mobilization Without Movement: How the Chinese State "Fixed" Labor Insurgency*, 71 ILR REV. 1029, 1029 (2018) (explaining why a "broad-based labor movement" failed to take shape in China despite having "pro-labor legislation" and "movement-oriented labor NGOs").

[2] Apart from the Labor Contract Law, there are two other key labor related national legislations in China. Laodong Fa (劳动法) [Labor Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, amended Dec. 29, 2018, effective Dec. 29, 2018) 2019 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 155 (China); Laodong Zhengyi Tiaojie Zhongcai Fa (劳动争议调解仲裁法) [Labor Dispute Mediation and Arbitration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2007, effective May 1, 2008), http://www.gov.cn/zhengce/2007-12/29/content_2602214.htm [https://perma.cc/V79B-NS66] (China). The Labor Law provides a high-level regulatory framework for employment relations, while the Labor Dispute Mediation and Arbitration Law sets out the dispute resolution mechanism for labor disputes. It is the Labor Contract Law, however, that provides for the detailed regulation of employment contracts and labor-employer relations. This Article focuses on the enforcement of the Labor Contract Law.

in 2012.[3] While some have questioned its actual effectiveness,[4] LCL has generally been hailed by many as a milestone in labor rights protection,[5] including for migrant workers.[6] LCL made it clear that special protection is given to labor rights.[7] Major changes have been introduced by LCL. For instance, LCL established the requirement that an employer must enter into a written labor contract with the employee upon commencement of any full-time employment,[8]

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[3] Laodong Hetong Fa (劳动合同法) [Labor Contract Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 29, 2007, amended Dec. 28, 2012, effective July 1, 2013), 2013 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 45 (China).

[4] *See* Shuming Zhao & Jie Zhang, *Impact of Employment Contracts Law on Employment Relations in China,* 45 INDIAN J. INDUS. RELS. 566, 567-79 (2010) (discussing the adverse impacts of the LCL); *see also* Zhiming Cheng, Russell Smyth & Fei Guo, *The Impact of China's New Labour Contract Law on Socioeconomic Outcomes for Migrant and Urban Workers*, 68 HUM. RELS. 329, 348 (2015) (noting critiques of the LCL); Muriel Périsse, *Labour Law in China: How Does It Contributes to the Economic Security of the Workforce? A Commonsian Reading,* 51 J. ECON. ISSUES 1, 15-23 (2017) (discussing unintended effects of the LCL); Randall Akee, Liqiu Zhao & Zhong Zao, *Unintended Consequences of China's New Labour Contract Law on Unemployment and Welfare Loss of Workers*, 53 CHINA ECON. REV. 87, 103-04 (2019) (finding that the LCL may have caused companies to dismiss workers).

[5] *See* Sean Cooney, *China's Labour Law, Compliance and Flaws in Implementing Institutions,* 49 J. INDUS. RELS. 673, 683-84 (2007) (noting that the LCL addressed previously noted legal deficiencies in the existing labor law); *see also* Haiyan Wang, Richard P. Applebaum, Francesca Degiuli & Nelson Lichtenstein, *China's New Labour Contract Law: Is China Moving Towards Increased Power for Workers?*, 30 THIRD WORLD Q. 485, 489-94 (2009) (discussing the positive impact of the LCL).

[6] *See generally* Xiaoying Li & Richard B. Freeman, *How Does China's New Labour Contract Law Affect Floating Workers?*, 53 BRIT. J. INDUS. RELS. 711 (2015) (discussing evidence that the LCL improved working conditions for migrant workers).

[7] *See, e.g.*, Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 1 ("This Law is formulated for the purposes of improving the labor contractual system, clarifying the rights and obligations of both parties of labor contracts, protecting the legitimate rights and interests of employees, and establishing and developing a harmonious and stable employment relationship."); *see also id.* art. 14 (stating that among other things, "[i]f the employer fails to sign a written labor contract with an employee after the lapse of one full year from the date when the employee begins to work, it shall be deemed that the employer and the employee have concluded a labor contract without a fixed term.").

> If remunerations, work conditions, and other criteria are not expressly stipulated in a labor contract and a dispute is triggered, the employer and the employee may re-negotiate the contract. If no agreement is reached through negotiations, the provisions of the collective contract shall be followed. If there is no collective contract or if there is no such stipulation about the remuneration, the principle of equal pay for equal work shall be observed. If there is no collective contract or if there is no such stipulation about the work conditions and other criteria in the collective contract, the relevant provisions of the state shall be followed.

*Id.* art. 18.

[8] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 10.

which was not a requirement prior to the LCL. The LCL also provided the content requirement for every labor contract (e.g., the contract must provide for working hours and holidays). [9] Remuneration provided in a labor contract must not be lower than the minimum wage. [10] Targeting widespread practices of late payment or non-payment of wages, the LCL expressly required that wages must be paid in full on time.[11]

The LCL is widely regarded as a pro-labor statute.[12] It is also the legislative intention of the LCL to give special protection to labor

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[9] *Id*. art. 17.

[10] *Id*. art. 85.

[11] *Id*. art. 30.

[12] Existing literature suggests that the LCL offers "tilted protection" to employees. The LCL recognizes that the employees are in a weaker position in the employment relations and the need to particularly favor the employees. *See* Zhang & Guo, *supra* note 1, at 43-44; Wang Bei (王蓓), Cheng Long (程龙) & Lü Guofan (吕国凡), *Laodong Zhengyi Susong de Shizheng Kaocha Yu Duice Yanjiu – Yi Gongping Yu Xiaolü de Guanxi Wei Shijiao* (*劳动争议诉讼的实证考察与对策研究 – 以公平与效率的关系为视角*) [*An Empirical Examination of Labor Dispute Litigation and Countermeasures – The Relationship Between Fairness and Efficiency as a Perspective*], SICHUAN DAXUE XUEBAO ZHEXUE SHEHUIKEXUE BAN (四川大学学报(哲学社会科学版)) [J. SICHUAN U. (SOC. SCI. ED.)], no. 5, 2012, at 118, 118; Kinglun Ngok, *The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition*, 73 INT'L. LAB. & WORKING-CLASS HIST. 45, 59-61 (2008); Haina Lu, *New Developments in China's Labor Dispute Resolution System: Better Protection for Workers' Rights?*, 29 COMPAR. LAB. L. & POL'Y J. 247, 257, 271 (2008); Thomas F. Remington & Xiao Wen Cui, *The Impact of the 2008 Labor Contract Law on Labor Disputes in China*, 15 J.E. ASIAN STUD. 271, 271-74 (2015); Dong Yan, *Juridification in Chinese Labour Law: A Cautionary Tale of Remuneration Disputes*, 41 EMP. RELS. 1273, 1273 (2019); Bin Wu & Yongnian Zheng, *A Long March to Improve Labour Standards in China: Chinese Debates on the New Labour Contract Law*, BRIEFING SERIES, issue 39, Apr. 2008, at 1, 4; Zhao Yixuan (赵艺璇), *Laodong Fa Shang de Laodong Yiwu Jujue Jifuquan* (*劳动法上的劳动义务拒绝给付权*) [*The Right to Refuse to Perform Labor Obligations Under Labor Law*], 24 GUOJIA JIANCHAGUAN XUEYUAN XUEBAO (国家检察官学院学报) [J. NAT'L PROSECUTORS COLL.], 133, 136 (2016); Dong Wenjun (董文军), *Laodong Hetong Jingji Buchang de Zhidu Shanbian Yu Gongneng Jiexi* (*劳动合同经济补偿的制度嬗变与功能解析*) [*Analysis of the Institutional Transmutation and Function of Financial Compensation in Labor Contracts*], DANGDAI FAXUE (当代法学) [CONTEMP. L.], no. 6, 2011, at 99, 102; Yuan Zhonghua (袁中华), *Laodong Hetong Jiechu Zhengyi Zhi Zhengming Zeren Fenpei – Jiyu Fajiaoyixue de Fenxi* (*劳动合同解除争议之证明责任分配 – 基于法教义学的分析*) [*Allocation of Burden of Proof in Disputes over Dissolution of Employment Contracts – An Analysis Based on Legal Doctrine*], FASHANG YANJIU (法商研究) [STUD. L. & BUS.], no. 1, 2019, at 130, 139 (discussing LCL's preferential protection of laborers when it comes to termination); Zhou Xianri (周贤日) & Peng Yaozong (彭耀宗), *Laodong Guanxi de Fal Ganyu Jizhi Yanjiu – Cong Guojia Shehui He Siren Zeren Pingheng de Weidu* (*劳动关系的法律干预机制研究 – 从国家、社会和私人责任平衡的维度*) [*Research on the Legal Intervention Mechanism of Labor Relations – From the Dimension of the Balance of State, Social and Private Responsibilities*], FAZHI SHEHUI (法

rights.[13] Workers were consulted extensively during the legislative process of the LCL.[14] In a way, the legislature was aware of the power imbalance between employers and employees, and used the LCL to level the playing field for employees.[15] Commentators have pointed out that the LCL provides "tilted protection" (倾斜保护) for employees.[16] In other words, the LCL recognizes that employees are in a weaker position in employment relations, and there is a need to particularly favor the employees as a result of this power imbalance.[17] For instance, the LCL provides that "[if] an employer

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治社会) [FED. SOC'Y.], no. 4, 2017, at 6, 7 (discussing the LCL's preferential protection of laborers); Wu Wanqun (吴万群), *Dui Laodong Fa Qingxiedu de Jidian Kaoliang* (*对劳动法"倾斜度"的几点考量*) [*How Tilted is the Labor Law?: A Few Points to Consider*], FUYANG SHIFAN XUEYUAN XUEBAO SHEHUIKEXUE BAN (阜阳师范学院学报(社会科学版)) [J. FUYANG NORMAL U. (SOC'L SCI. ED.)], no. 4, 2010, at 97, 98.

[13] *Sun Baoshu*, *supra* note 1.

[14] *See* Malcolm Warner & Ying Zhu, *Labour and Management in the People's Republic of China: Seeking the 'Harmonious Society,'* 16 ASIA PAC. BUS. REV. 285, 294 (2010) (discussing how the Standing Committee solicited feedback on a draft of the Labor Contract Law and individual workers and union leaders participated in arguments over the first official draft of the law). For further discussion of how the government consulted workers in drafting the LCL, see also Wang, Applebaum, Degiuli & Lichtenstein, *supra* note 5, at 490; *Quanguo Renda Changweihui Jieshao Laodong Hetongfa Caoan Zhengqiu Yijian Qingkuang* (*全国人大常委会介绍劳动合同法草案征求意见情况*) [*The Standing Committee of the National People's Congress Introduces the Draft of the Labor Contract Law and Solicits Opinions*], ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [CENT. PEOPLE'S GOV'T CHINA] (Apr. 21, 2006), http://www.gov.cn/xwfb/2006-04/21/content_260252.htm [https://perma.cc/7QK7-D7WD] [hereinafter *Standing Committee Introduces the Draft*].

[15] *Standing Committee Introduces the Draft*, *supra* note 14. An authoritative commentary on the LCL indicated that the LCL focuses on the protection of the legitimate rights and interests of workers (as the weaker party), so as to achieve the balance of strength and interests between the two sides, with a view to promoting a harmonious and stable employment relationship. Zhonghua Renmin Gongheguo Laodong Hetong Fa Qicao Xiaozu (中华人民共和国劳动合同法起草小组) [Drafting Group of the Labor Contract Law of the People's Republic of China], Zhonghua Renmin Gongheguo Laodong Hetong Fa Lijie Yu Shiyong (《中华人民共和国劳动合同法》理解与适用) [Interpretation and Application of The Labor Contract Law of the People's Republic of China] 2 (2013). Furthermore, the Supreme People's Court was well aware of the power imbalance between employers and employees, and that there was nothing wrong for the law to be tilted towards the employees given that they are the weaker party. *See* Xi, *supra* note 1.

[16] Li Gen, *The Legal Analysis of the Dilemma of Labor Relationship Development in the Process of Social Transformation in China: From the Perspective of "Labor Blackmail,"* 5 CHINA LEGAL SCI. 3, 12-13 (2017); *see also* Zhang & Guo, *supra* note 1, at 44-45 (discussing this phenomenon).

[17] To supplement the quantitative study, the Author collected data from thirty-four informants who are all judges. All thirty-four informants responded to

fails to conclude a written labor contract with an employee after the lapse of more than one month but less than one year as of the day when it started using him, it shall pay to the worker his monthly wages at double amount."[18] Another example is "[if] the employer fails to sign a written labor contract with an employee after the lapse of one full year from the date when the employee begins to work, it shall be deemed that the employer and the employee have concluded a labor contract without a fixed term."[19] One further example is that if the employer terminates the labor contract in violation of the LCL, it must pay double compensation to the employee.[20] These provisions clearly favor the employee and has the effect of reversing the power disparity between labor and employers. There is a socio-political reason for the laws to favor labor. Policymakers are well aware of the potential disruption to social stability workers can cause if they are treated unfairly in labor disputes.[21] With the economy developing rapidly, workers are more aware of their rights. It is in the political interest of the state to take special care of workers' interests and manage their grievances in a

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a questionnaire on issues relating to labor disputes in general and Serious Breach Dismissal Cases specifically. Eighty percent of the informants who responded to the questionnaire created for this study believe that the LCL is pro-labor. Informants who were interviewed in this study predominantly believe that the LCL is pro-labor. *See, e.g.*, Interview with No. 15 Informant ID: 2020.07.09.1 (Sept. 8, 2020); Interview with No. 32 Informant ID: 2020.07.20.9 (Sept. 12, 2020); Interview with No. 34 Informant ID: 2020.08.11 (Sept. 10, 2020); Interview with No. 3 Informant ID: 2020.06.17.3 (Sept. 12, 2020); Interview with No. 9 Informant ID: 2020.06.17.9 (Sept. 11, 2020); Interview with No. 17 Informant ID: 2020.07.09.3 (Sept. 10, 2020); Interview with No. 16 Informant ID: 2020.07.09.2 (Sept. 12, 2020); Interview with No. 6 Informant ID: 2020.06.17.6 (Sept. 30, 2020). All interviews are on file with the Author.

18 Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 82.

19 *Id.* art. 14.

20 *Id.* art. 87.

21 For instance, a Sichuan intermediate court, in a court publication, highlighted the negative effects on courts caused by workers' petitioning (*xinfang*) as a result of the workers losing lawsuits. *See Laodong Hetong Fa He Tiaojie Zhongcai Fa Shishi Hou Laodong Zhengyi Anjian Shenli Zhong Ruogan Redian Nandian Wenti Tanxi* (*《劳动合同法》和《调解仲裁法》实施后劳动争议案件审理中若干热点难点问题探析*) [*On the Topical and Difficult Issues in the Trial of Labor Disputes After the Implementation of the Labor Contract Law and Mediation and Arbitration Law*], CHENGDU FAYUAN WANG (成都法院网) [CHINACOURT] (Jan. 7, 2010, 22:45), http://cdfy.chinacourt.gov.cn/article/detail/2009/01/id/565185.shtml [https://perma.cc/W2UL-XXQD].

more controlled manner.[22] This outlines the background of the legislation of the LCL.[23]

While the text of the LCL clearly provides special protection to labor, assessing the effectiveness of enforcement of the LCL is more nuanced exercise. For instance, employee satisfaction with the enforcement of the LCL varied with different factors, such as age, educational level, geography, the capacity of the employer, and existence of an employment contract.[24] A study found that the LCL had varying effects across "different types of firms depending on their ownership structure, product mix, market orientation, size and geographical location."[25] The labor protection regime is also influenced by the divergent local rules and practices in different provinces in China.[26] Cultural factors also play a role in the enforcement of labor laws.[27] As for specific measures, some features of the LCL are more effective than others in practice. A feature that has proven to be effective is the use of collective agreements.[28] Under the LCL, for instance, where an employer fails to conclude a written employment contract and the remuneration is unclear, the remuneration of the employee should follow the provisions of the collective agreement.[29] A commentator noted that "Chinese

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[22] *See* Mary E. Gallagher, *China's Workers Movement and the End of the Rapid-Growth Era*, 143 DAEDALUS 81, 83-84 (2014) (noting that Chinese workers are increasingly aware of their rights and the dilemma of the Chinese government to "improve governance and quality of life without losing control").

[23] *See* Wang, Applebaum, Degiuli & Lichtenstein, *supra* note 5, at 498 (commenting that "[by] providing favorable legal provisions for the most oppressed workers, the new law actually encourages them to channel the fight for their legal rights to their own employers—rather than merely rail against an 'unfair society'").

[24] Mary Gallagher, John Giles, Albert Park & Meiyan Wang, *China's 2008 Labor Contract Law: Implementation and Implications for China's Workers*, 68 HUM. RELS. 197, 205 (2015).

[25] Tu Lan, John Pickles & Shengjun Zhu, *State Regulation, Economic Reform and Worker Rights: The Contingent Effects of China's Labour Contract Law*, 45 J. CONTEMP. ASIA 266, 266 (2015).

[26] *See* Cheng Jinhua (程金华) & Ke Zhenxing (柯振兴), *Zhongguo Falü Quanli de Lianbangzhi Shijian: Yi Laodong Hetong Fa Lingyu Weili* (*中国法律权力的联邦制实践—以劳动合同法领域为例*) [*The Practice of Federalism of Legal Power in China—An Example in the Field of Labor Contract Law*], FAXUEJIA (法学家) [THE JURIST], no. 1, 2008, at 1, 1 (noting how local legislation and judicial practices are in conflict with central legislation and judicial practices).

[27] Wei Shen & Rohan Price, *Confucianism, the Rise of Worker Activism and Labour Law in China,* 12 CHINA: INT'L J. 115, 118 (2014).

[28] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], arts. 51-56.

[29] *Id.* art. 11.

collective agreements have so far had a 'substitution effect' that might create additional leverage to protect workers' rights and interests, even in the absence of individual agreements or clauses."[30] However, the number of lawsuits involving collective agreements remains low as compared to the total number of collective agreements and other labor disputes.[31] While collective agreements have a positive effect in entrenching labor rights, the effectiveness of collective consultation has been called into question.[32] Under the LCL, the labor unions should establish collective consultation/negotiation mechanism with employers with the objective to protect the rights and interests of employees.[33] It has been said that collective consultation is used by the Chinese government to "[contain] the recent rise in labour unrest, while pragmatically postponing collective bargaining for the sake of stability and growth."[34] The LCL has been generally effective in protecting the rights of migrant workers. An empirical study showed that the LCL "increased the percentage of migrant workers with written contracts, which in turn raised social insurance coverage, reduced the likelihood of wage arrears and raised the likelihood that workers has a union at their workplace."[35] Another study has found that the LCL is more effective in enhancing the welfare of urban workers than migrant workers in areas of "receipt of social benefits, subjective well-being and wages."[36] A study calls for the LCL to improve on its clarity, showing an increase of "factually complicated" remuneration disputes (e.g. overtime claims) triggered by ambiguities in the LCL.[37] The promotion of the use of mediation as the preferred medium for labor dispute

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[30] Dong Yan, *Unveiling the Legal Effect of Collective Agreements in China*, 42 EMP. RELS. 366, 377 (2020).

[31] *Id*. at 366.

[32] *See* Feng Chen & Xin Xu, "*Active Judiciary": Judicial Dismantling of Workers' Collective Action in China*, 67 CHINA J. 87, 105-06 (2012) (finding that Chinese courts are able to side with the employee in individual labor disputes as the dispute are non-politically sensitive, but are hostile towards labor collective actions given the political sensitivity of such actions).

[33] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 6.

[34] Qingjun Wu & Zhaoyang Sun, *Collective Consultation Under Quota Management: China's Government-Led Model of Labour Relations Regulation*, 153 INT'L LAB. REV. 609, 609 (2014).

[35] Li & Freeman, *supra* note 6, at 711.

[36] Zhiming Cheng, Russell Smyth & Fei Guo, *supra* note 4, at 329.

[37] Yan, *supra* note 12.

resolution by the state and local governments (as a policy tool)[38] has created concern that labor rights guaranteed under the statutes are not fully enforced in practice.[39]

The enforcement of the LCL varies across regions. Despite established national rules on labor dispute resolution,[40] and an established labor dispute arbitration system (which is the first instance forum for labor disputes),[41] the divergence in local practices in labor dispute resolution is alarmingly significant,[42] partly due to the fact that there are gaps and deficiencies in the national statutes that govern labor disputes[43] and partly due to a deliberate attempt to decentralize labor relations.[44] It is possible for local authorities to enact rules and regulations with their own provided certain requirements.[45] While formally local rules and regulations must be consistent with the national law, inconsistencies are not always identified and rectified. Some argue that this creates a kind of quasi-federalism in the enforcement of law given the wide variety of local

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[38] For the effect of the policy of preferring mediation on the management of civil justice in China, see generally PETER C.H. CHAN, MEDIATION IN CONTEMPORARY CHINESE CIVIL JUSTICE: A PROCEDURALIST DIACHRONIC PERSPECTIVE (2017).

[39] *See* Wenjia Zhuang & Feng Chen, *"Mediate First": The Revival of Mediation in Labour Dispute Resolution in China*, 222 CHINA Q. 380, 382 (2015) (noting how mediation leads to outcomes favorable to the authorities).

[40] Laodong Zhengyi Tiaojie Zhongcai Fa (劳动争议调解仲裁法) [Labor Dispute Mediation and Arbitration Law]; *see* Yun Zhao, *China's New Labor Dispute Resolution Law: A Catalyst for the Establishment of Harmonious Labor Relationship?*, 30 COMPAR. LAB. L. & POL'Y J. 409, 416-26 (2009) (examining the new Labor Dispute Resolution Law, its framework and features).

[41] For criticism of the arbitration system, see Kyung-Jin Hwang & Kan Wang, *Labour Dispute Arbitration in China: Perspectives of the Arbitrators*, 37 EMP. RELS. 582, 585-87 (2015).

[42] *See* Wang Tianyu (王天玉), *Laodong Fa Guizhi Linghuohua de Falü Jishu* (*劳动法规制灵活化的法律技术*) [*Legal Techniques for Flexibility of Labor Law Regulations*], FAXUE (法学) [LEGAL SCI.], no. 10, 2017, at 76, 89 (suggesting amending the LCL to allow local legislatures and administrative authorities to enact specific rules customized for local practices).

[43] The national law only requires the employer to notify the labor union before dismissal. Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 43. There is no requirement to consult with the labor union. Also, there is no requirement to give employees an opportunity to be heard before dismissal.

[44] *See* Eli Friedman & Sarosh Kuruvilla, *Experimentation and Decentralization in China's Labor Relations*, 68 HUM. RELS. 181, 182 (2015) (arguing that China is taking an "experimental, gradualist, and decentralized approach to reform of the system of labor relations").

[45] Lifa Fa (立法法) [Legislation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, amended Mar. 15, 2015, effective Mar. 15, 2015), art. 73, 2015 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 163 (China).

rules and regulations.[46] For instance, Beijing, Shanghai and Guangdong each have its own set of local rules to regulate employment relations.[47] The complexity and divergences in different local labor rules are further complicated by the inherent bias that some claim that Chinese courts hold against migrant workers.[48] But local legislation sometimes enhances the protection of labor rights. Suzhou is a prime example. The Suzhou City Intermediate Court and Suzhou City Labor Disputes Arbitration Committee devised a set of regulations governing dismissal for serious breach of employer's internal regulations ("Suzhou Regulations"). Under the Suzhou Regulations, if the employer failed to give the employee an opportunity to be heard before dismissing the employee for breach of the employer's internal regulations, the dismissal must be considered unfair (and therefore, unlawful).[49] The Suzhou Regulations also imposes a requirement on the employer to consult (not just notify) the labor union when an employee is dismissed.[50]

While the LCL and other labor statutes[51] are clearly drafted with the intention to afford special protection to the employees, the judicial interpretation of these instruments may not necessarily result in pro-labor outcomes. In other words, while statutory law

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[46] *See* Cheng & Ke, *supra* note 26.

[47] For example, for Beijing, see Guanyu Shenli Laodong Zhengyi Anjian Falü Shiyong Wenti De Jieda (北京高院关于审理劳动争议案件法律适用问题的解答) [Answers of Beijing Higher People's Court on the Application of Law in Hearing Labor Dispute Cases] (promulgated by the Beijing Higher People's Ct. & Beijing Lab. Arb. Comm., Apr. 24, 2017, effective Apr. 24, 2017), (Westlaw China 万律 (Westlaw China)).

[48] *See* Jize Jiang & Kai Kuang, *Hukou Status and Sentencing in the Wake of Internal Migration: The Penalty Effect of Being Rural-to-Urban Migrants in China*, 40 L. & POL'Y. 196, 196 (2018) (finding "discrimination against rural-to-urban migrants" in the quantitative examination of criminal cases in China).

[49] Suzhoushi Zhongji Renmin Fayuan Suzhoushi Laodong Zhengyi Zhongcai Weiyuanhui Laodong Zhengyi Yantaohui Jiyao (苏州市中级人民法院、苏州市劳动争议仲裁委员会劳动争议研讨会纪要) [Summary of Seminar on Labor Dispute of Suzhou Intermediate People's Court and Suzhou Labor Dispute Arbitration Committee], GONGSHANG PEICHANG FALÜ WANG (工伤赔偿法律网) [WORK INJURY LEGAL COMPENSATION NETWORK] (Sept. 8, 2014, 08:09 AM), http://www.ft22.com/jiangsusheng/2014-9/5822.html [https://perma.cc/P8VU-QY6A].

[50] Art. 43 of the LCL only requires the employer to notify the labor union before the dismissal and does not require consultation with the labor union. Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 43.

[51] For the features that give specific protection to employees under the Labor Dispute Mediation and Arbitration Law, see Zhao, *supra* note 40, at 423-26.

may strongly favor the weaker group, courts may not interpret the law in such a way that would result in the protection of the weaker group. The divergences in enforcement of the LCL as discussed above is an indication that the black-letter law and judicial enforcement of the law can be very different. Also, despite the socialist rhetoric underlying the statutory and policy infrastructure governing labor-employer relations, actual judicial practice may not be as "socialist" as it is officially represented.[52] This study seeks to go beyond the black-letter law and empirically assess how courts shape the employee protection regime in China. This is particularly important from a socio-economic perspective as courts in China are tasked with the policy mission of maintaining social stability.[53] While the LCL and other labor instruments are pro-labor (or at least represented as pro-labor), are Chinese courts *in fact* pro-labor in adjudicating labor disputes? This article seeks to answer this question by reviewing 2,054 sampled cases relating to what are known as "serious breach dismissals." Under the LCL, the employer is entitled to terminate the employment contract if the employee had "seriously breached" the internal regulations of the employer ("Serious Breach Dismissal Cases").[54] Contrary to the established perception that courts are pro-labor and existing studies

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[52] ELAINE SIO-IENG HUI, HEGEMONIC TRANSFORMATION: THE STATE, LAWS, AND LABOUR RELATIONS IN POST-SOCIALIST CHINA 97 (2018):

> By giving the labor market, the labor contract system, and capital-labor relations a form of equality, fairness, andlegality, the labor law system hides its own tendencies and those of the party-state towards the capitalists, masking the economic differences between the conflicting classes and fragmenting the Chinese workers into individualized legal subjects.

*See also* Elaine Sio-ieng Hui, *The Labour Law System, Capitalist Hegemony and Class Politics in China*, 226 CHINA Q. 431, 436 (2016) (discussing how "the Chinese labour law system has helped to reproduce capitalist hegemony").

[53] The LCL is only effective if the courts are robust in enforcing its provisions and interpreting it in such a way that defends labor rights. Any meaningful discussion must therefore go beyond the black-letter law and explain how the involvement of the judiciary and other institutions/players shape the employee protection regime. *See* Laszlo Goerke & Michael Neugart, *Lobbying and Dismissal Dispute Resolution Systems,* 41 INT'L REV. L. & ECON. 50, 50 (2015). For the approach of courts dealing with labor protests in China, see Yang Su & Xin He, *Street as Courtroom: State Accommodation of Labor Protest in South China*, 44 L. & SOC'Y REV. 157, 157 (2010) (finding that courts and relevant government agencies "engage protestors on the street, which often grants a favorable resolution").

[54] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 39(2). The dismissal will be without compensation and without notice, which is permitted under the LCL.

that employees are winning in litigation,[55] this study finds that *employers* have come out ahead by a substantial margin in labor disputes lawsuits (Serious Breach Dismissal Cases).[56] This study shows that despite the "pro-labor" established perception, the Chinese courts are, in fact, "pro-employer."

Section II begins with outlining the debate on whether Chinese courts are pro-labor or pro-employer. The rationale behind the pro-labor and pro-employer propositions are explored. The established perception that Chinese courts are pro-labor is explained. The chapter also introduces the relevance of Galanter's party capability theory in Chinese labor dispute lawsuits. Section III explains the legal background of Serious Breach Dismissal Cases in China. The relative underdevelopment of Chinese law on unfair dismissal is examined from a comparative perspective. Section IV outlines the methodology used in this study and introduces the dataset. It also provides an overview of the independent and dependent variables of this study. Section V sets out the findings and analysis of this study. The key finding is that *employers* have won by a substantial margin.[57] Another important finding is that courts in most cases failed to conduct a substantive review on the fairness of the dismissal ("fairness review").[58] Section VI is the discussion section, which examines how the data supports the conclusion that Chinese courts are pro-employer. It also provides practical reasons why courts did not conduct a fairness review and explains the relationship between legal representation and case outcome. The Article concludes by exploring the implications of this study, highlighting the significance of this study's contribution.

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55 *See infra* Section II.B.

56 *See infra* Table 4.

57 *See infra* Table 4.

58 *See infra* Table 28a.

## II. DEBATING WHETHER CHINESE COURTS ARE PRO-LABOR OR PRO-EMPLOYER, THE ESTABLISHED PRO-LABOR PERCEPTION, AND THE RELEVANCE OF THE PARTY CAPABILITY THEORY

### *a. Are Chinese Courts Pro-Labor or Pro-Employer: Two Propositions*

Two propositions can be advanced in relation to Chinese courts' inclination in adjudicating labor disputes. The first is that Chinese courts are pro-labor and follow the "tilted protection" principle enshrined in labor statutes. The second is that, despite the pro-labor stance of China's statutory law, courts remain pro-employer in practice.

The rationale that supports the pro-labor proposition has a number of levels. First, Chinese courts are subservient to the legislature in China's constitutional order.[59] Judges in China work under a very strict system of judicial accountability for error[60] and are evaluated against a stringent set of quantitative parameters.[61] In interpreting legislation, Chinese courts cannot "reinvent" the law. Unlike the discretion given to their common law counterparts in interpreting legislation, Chinese courts are bound to give effect to the letter of the law in a statute and its legislative intentions. It is, therefore, logical to expect that the pro-labor inclination of the LCL and other labor statutes would influence (or even dictate) judicial outcomes. Second, Chinese courts are swayed by ideology more so

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[59] *See, e.g.*, *supra* note 38, at 159 (stating that "the legislature has *de jure* control over the judiciary").

[60] *See* Peter C.H. Chan & Huina Xiao, *A Typology of Judicial Liability for Error in Chinese Courts*, 51 H.K.L.J. 309, 310 (2021); *see also* Carl Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On*, 39 N.M.L. REV. 63, 67-69 (2009) (discussing Chinese courts' adoption of responsibility systems); Wang Lungang (王伦刚) & Liu Sida (刘思达), *Cong Shiti Wenze Dao Chengxu Zhi Zhi: Zhongguo Fayuan Cuo'An Zhuijiuzhi Yunxing De Shizheng Kaocha* (*从实体问责到程序之治——中国法院错案追究制运行的实证考察*) [*From Physical Accountability to Procedural Governance: An Empirical Examination of the Operation of China's Court Error Accountability System*], FAUXEJIA (法学家) [JURIST], no. 2, 2016, at 27, 28-30 (exploring the development of the accountability system).

[61] *See* Kwai Hang Ng & Peter C.H. Chan, "*What Gets Measured Gets Done": Metric Fixation and China's Experiment in Quantified Judging*, ASIAN J.L. & SOC'Y 1, 1-3 (2021) (introducing the Case Quality Assessment System (CQAS), a metric used for judging judges in China); *see also* Jonathan J. Kinkel & William J. Hurst, *The Judicial Cadre Evaluation System in China: From Quantification to Intra-State Legibility*, 224 CHINA Q. 933, 933-37 (2015) (explaining CQAS).

than their common law or Western counterparts. With the socialist ideologically driven labor policies of the state, courts cannot turn a blind eye to these ideological attributes in adjudication. When the state propagates the importance of giving special protection to workers,[62] the courts must give effect to the policy objectives of the state. Third, the judiciary's institutional concern is that if labor is not given special protection, losing employee litigants (especially in collective disputes)[63] will resort to citizens' petition (*xinfang*)[64] and other means to voice their discontent,[65] thereby creating social instability. Given the socio-political embeddedness of Chinese courts[66] and the stability maintenance role courts play in China,[67] it is logical to expect the judiciary to favor employees out of stability maintenance concerns. Finally, Chinese courts may side with the employee litigants (the weaker party) as a strategic maneuver to establish the courts' own legitimacy.[68] It is not unusual for courts in developing countries to side with the "have-nots" in an attempt to

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[62] *See Zhonggong Zhongyang Guanyu Goujian Hexie Laodong Guanxi De Yijian* (*中共中央国务院关于构建和谐劳动关系的意见*) [*Opinions of the CPC Central Committee and State Council on Building Harmonious Labor Relations*], PKULAW (Mar. 21, 2015), https://www.pkulaw.com/chl/339cc0fe5583e0bbbdfb.html [https://perma.cc/4RZ2-BEE6].

[63] For a typology of labor disputes in China, see generally Feng Chen & Mengxiao Tang, *Labor Conflicts in China: Typologies and Their Implications*, 53 ASIAN SURV. 559 (2013) (classifying labor disputes into three categories: disputes over "legal rights"; disputes over "interests"; and disputes over "pre-reform entitlements").

[64] For an explanation of the role of *xinfang* in China's judicial politics, see KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA 126-128 (2017); *see also* Yuqing Feng & Xin He, *From Law to Politics: Petitioners' Framing of Disputes in Chinese Courts*, 80 CHINA J. 130, 131-33 (2018) (explaining *xinfang*).

[65] For an updated review on the (informal) approach of worker strikes in China, see generally Wei Chen, *Informal Strike Organization in South China: The Worker Representative Mechanism, Sustained Leadership, and Strike Outcomes*, 20 CHINA REV. 109 (2020).

[66] *See* Ng & He, *supra* note 64, at 191 (summarizing political and social embeddedness of Chinese courts).

[67] *See, e.g.*, Carl F. Minzner, *China's Turn Against Law*, 59 AM. J. COMPAR. L. 935, 935-39 (2011) (discussing how Chinese authorities are using the Chinese judiciary to uphold social stability); Yuhua Wang & Carl F. Minzner, *The Rise of the Chinese Security State*, 222 CHINA Q. 339, 339-40 (2015) (suggesting that Chinese authorities reworked their political-legal apparatus for "stability maintenance").

[68] *See* Peter C.H. Chan, *Do the "Haves" Come Out Ahead in Chinese Grassroots Courts? Rural Land Disputes Between Married-Out Women and Village Collectives*, 71 Hastings L.J. 1, 77 (2019) ("[T]he courts may have also sided with the MOW litigants as a strategic consideration to establish the courts' own legitimacy through protecting the weak.").

enhance "their own legitimacy and stability within the political system."[69]

The rationale that supports the pro-employer proposition has a number of levels. First, while government policies have a socialist undertone, China's labor system is also a product of the market economy. Courts cannot blindly follow socialist rhetoric and must consider business efficacy in their decisions. Employing a pro-labor stance will jeopardize the pragmatic objective to promote commercial efficiency. In fact, informants in this study have consistently expressed the importance of honoring "corporate autonomy" in adjudication to avoid upsetting the employers' commercial decisions, including dismissal decisions.[70] Second, the dominating role of capital in a market-driven economy (and the impact it has on the labor regime) cannot be ignored.[71] Courts are subject to the socio-political realities of the locality. If local governments go a long way to protect the rights of government-connected enterprises, it would not be illogical to expect courts to be pro-employer.[72] Businesses can cause trouble as well. The result may not be in the form of petitions or protest, but in the form of political retaliation. This concern is particularly real for small local district courts which depended greatly on the local government for political and financial resources. Finally, while one study found that Chinese grassroots courts sided with the "have-nots" in rural land disputes,[73] another found that the "haves" prevailed in Shanghai courts.[74] The truth is, Chinese courts do not always side with the weaker party, even though there could be reasons (institutional or otherwise) to do so in certain types of cases.

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[69] Stacia L. Haynie, *Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court*, 56 J. POL. 752, 753 (1994).

[70] *See* Informant ID: 2020.07.09.1, *supra* note 17; Informant ID: 2020.07.20.9, *supra* note 17; Informant ID: 2020.06.17.6, *supra* note 17.

[71] *See* Hui, *The Labour Law System, Capitalist Hegemony and Class Politics in China, supra* note 52**Error! Bookmark not defined.**.

[72] One informant said that Nanjing courts are relatively lenient towards employees, while Shenzhen courts are vigorously pro-employer. Informant ID: 2020.07.09.3, *supra* note 17.

[73] *See* Chan, *supra* note 68, at 77.

[74] *See e.g.*, Xin He & Yang Su, *Do the "Haves" Come Out Ahead in Shanghai Courts?*, 10 J. EMPIRICAL LEGAL STUD. 120, 131-33 (2013) (finding that stronger parties win more often and by a large margin).

*b. The Established Perception: Chinese Courts are Pro-Labor*

The established perception is that Chinese courts are pro-labor. It is not difficult to find official policies of local courts on the judiciary's pro-labor stance.[75] Existing literature supports the claim that Chinese courts are pro-labor. In particular, past empirical studies have generally found that employees prevailed in labor dispute litigations.[76] Studies have also found that employees

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[75] *See, e.g.*, *Daxing Fayuan Shenzhi Xianjie Peihe Qieshi Weihu Laodongzhe Hefa Quanyi* (*大兴法院审执衔接配合切实维护劳动者合法权益*) [*Daxing court trial and enforcement cooperation to effectively protect the legitimate rights and interests of workers*], ZHONGGUO FAXUEYUAN WANG (中国法院网) [CHINACOURT] (Apr. 27, 2018), https://www.chinacourt.org/article/detail/2018/04/id/3282709.shtml [https://perma.cc/7KL6-Y2QW]; *Yangzhongshi Sifaju Sanjucuo Chengqi Nongmingong Gongzi Baohusan* (*扬中市司法局"三举措"撑起农民工工资"保护伞"*) [*Yangzhong City Judicial Bureau's "Three Initiatives" to Support the "Protective Umbrella" of Migrant Workers' Wages*], FARUN JIANGSU (法润江苏) [JSCHINA] (June 8, 2020), http://frjs.jschina.com.cn/31022/31034/202006/t20200608_6679067.shtml [https://perma.cc/U76E-FJ7C].

[76] *See* Fu Hualing & D.W. Choy, *From Mediation to Adjudication: Settling Labor Disputes in China*, 3 CHINA RTS. F. 17, 21 (2004) (reporting that employees prevailed in court litigation between 1995 and 2001, and in certain courts (such as Ningbo and Zhongshan), employees' success rate was as high as over ninety percent); Chen & Xu, *supra* note 32 (finding that Chinese courts are able to side with the employee in individual labor disputes as the dispute are non-politically sensitive, but are hostile towards labor collective actions given the political sensitivity of such actions); Wang Li (王莉) & Yang Xue (杨雪), *Xietiao Laodong Guanxi Goujian Hexie Shehui – Yi Shanghai Shi Laodong Zhengyi Shizheng Yanjiu Wei Li* (*协调劳动关系 构建和谐社会–以上海市劳动争议实证研究为例*) [*Coordinating Labor Relations and Building a Harmonious Society – Taking Empirical Research on Labor Disputes in Shanghai as an Example*], Keji Qingbao Kaifa Yu Jingji (科技情报开发与经济) [SCI-TECH. INFO. DEV. ECON.], no. 16, 2006, at 97, 97 (finding that employees came out ahead in labor dispute lawsuits in Shanghai); Wang, Cheng & Lü, *supra* note 12, at 120 (finding that with legal representation, the employees come out ahead in labor dispute lawsuits); Li Xin (李馨), *Youli Yuanze Zai Laodong Zhengyi Anjian Zhong De Shiyong* (*"有利原则"在劳动争议案件中的适用*) [*The Application of "Favorable Principle" in Labor Dispute Cases*], RENMIN SIFA (人民司法) [PEOPLE'S JUST.] no. 14, 2015, at 45, 46 (explaining that courts adopt an approach that gives employees an advantage in labor dispute litigation); Yan, *supra* note 12, at 1282 (finding that employees' winning rate was as high as seventy percent and that legal representation increases the chances of success for employees); Qin Guorong (秦国荣), *Yongren Danwei Yiwu: Zeren Fanwei Yu Lifa Luoji* (*用人单位义务:责任范围与立法逻辑*) [*Employer's Obligations: Scope of Responsibility and Legislative Logic*], FAZHI YANJIU (法治研究) [RSCH. RULE L.], no. 3, 2018, at 109, 110 (stating that courts and labor dispute arbitration tribunals are sympathetic towards employees and would not hesitate to bend procedural rules in favor of employees during hearings); Tong Ji (佟季), *Laodong Zhengyi Anjian Qingkuang Fenxi* (*劳动争议案件情况分析*) [*Analysis of the Situation of Labor Dispute Cases*], RENMIN SIFA (人民司法) [PEOPLE'S JUST.], no. 5, 2008,

prevailed in labor dispute arbitration proceedings.[77] These findings echo court reports that confirm employees were prevailing in labor dispute arbitration and court cases.[78] Informants in this study

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at 69, 70 (finding that employees have consistently prevailed over employers in court litigation in a number of local courts); Wang Zhiwei (王智嵬), Zhao Jilun (赵继伦) & Yu Guilan (于桂兰), *Woguo Laodong Zhengyi Anjian Shuliang Zengzhang Zhuangkuang Yu Yuanyin: Jiyu 1991-2016 Nian Xiangguan Shuju De Shizheng Fenxi* (*我国劳动争议案件数量增长状况与原因– 基于 1991-2016 年相关数据的实证分析*) [*The Growth Status and Reasons of the Number of Labor Dispute Cases in China – An Empirical Analysis Based on Relevant Data from 1991-2016*], SHANDONG DAXUE XUEBAO ZHEXUE SHEHUIKEXUE BAN (山东大学学报(哲学社会科学版)) [J. SHANDONG U. (SOC. SCI. ED)], no. 5, 2020, at 64, 68 (finding that during the two decades between 1996 and 2016, employees have consistently prevailed in court litigation in sixteen provinces in China).

[77] *See* Fu & Choy, *supra* note 76, at 19 (showing that employees came out ahead in labor arbitration proceedings between 1996 and 2002 and that employees from the private sector have a higher winning rate than their counterparts in state-owned enterprises or public institutions); *see* Yu Qin (余琴) & Zhuang Wenjia (庄文嘉), *Gaige Kaifang 40 Nian De Laodong Lifa Difang Tiaojie Yu Zhengyi Chuzhi: Jiyu Laodong Zhengyi Shengsulü De Shizheng Fenxi* (*改革开放 40 年来的劳动立法、地方调解与争议处置 – 基于劳动争议胜诉率的实证分析*) [*Labor Legislation, Local Mediation and Dispute Disposition in the Past 40 Years of Reform and Open Policy: An Empirical Analysis Based on the Winning Rate of Labor Disputes*], ZHONGSHAN DAXUE XUEBAO SHEHUIKEXUE BAN (中山大学学报(社会科学版)) [J. SUN YAT-SEN U. (SOC. SCI. ED.)], no. 3, 2018, at 171, 171 (finding that while employees' success rates in arbitration has decreased in recent years, employees still came out ahead by substantial margins); Ji Yueting (嵇月婷), Chai Jing (柴静), Li Yanjun (李彦君) & Tang Kuang (唐鑛), *Laodong Zhengyi Zhongcai Zhong lushi Daili Qingkuang Dui Zhongcai Jieguo De Yingxiang* (*劳动争议仲裁中律师代理情况对仲裁结果的影响*) [*The Impact of Attorney Representation in Labor Dispute Arbitration on Arbitration Outcomes*], ZHONGGUO RENLI ZIYUAN KAIFA (中国人力资源开发) [CHINA HUM. RES. DEV.], no. 12, 2017, at 156, 165 (finding that legal representation increases the chances of success of employees in labor dispute arbitration).

[78] *See, e.g.*, Chen Jinlu (陈金路), *Liaocheng Laodong Zhengyi Baogao: Siqi Yi Fasheng Zhengyi Anjian, Laodongzhe Shengsulu Gao* (*聊城劳动争议报告：私企易发生争议案件,劳动者胜诉率高*) [*Liaocheng Labor Dispute Report: Private Enterprises Are Prone to Disputes, and Workers Have a High Rate of Winning Lawsuits*], DAZHONGWANG (大众网) [DZWWW] (Jan. 10, 2017), http://www.dzwww.com/shandong/sdnews/201701/t20170110_15408270 [https://perma.cc/T8EA-4BTF]. The success rate of employees at Chongqing Fifth Intermediate Court was as high as ninety-five percent. *Laodongzhe Shengsulu Chao Jiucheng* (*劳动者胜诉率超九成*) [*Laborers Win over 90 Percent of Cases*], SOUHU XINWEN (搜狐新闻) [SOHU NEWS] (MAY 2, 2011), http://news.sohu.com/20110502/n280471299.shtml [https://perma.cc/ZMJ2-M7L6]. In Jiaqing City (Zhejiang Province), employees won 86.3% of all labor dispute arbitrations in the first half of 2014. *Jinnian Shangbannian Quanshi Laodong Renshi Zhongcai Jigou Shouli Laodong Zhengyi Anjian 1007 Jian* (*今年上半年全市劳动人事仲裁机构受理劳动争议案件 1007 件*) [*The City's Labor Arbitration Institutions Received 1007 Labor Dispute Cases in the First Half of This Year*], ZHEJIANG ZAIXIAN (浙江在线) [ZHEJIANG ONLINE]) (Aug. 13, 2014),

confirm that litigation fees of employee litigants[79] (which are already very low)[80] are frequently waived by courts.[81] This practice substantially improved employee litigants' access to court. Most informants who were interviewed have the overall impression that Chinese courts are pro-labor.[82] Some informants have said that Chinese courts are more or less neutral with no particular inclination towards labor or employer (or the courts seek to strike a balance between the two parties).[83] Not a single informant views Chinese courts as pro-employer. An informant noted that courts are clearly pro-labor as the employer has a greater evidential burden to discharge than employees in labor lawsuits.[84] Some informants in this study[85] recognized the evidential difficulty employees face (as they have less resources) and confirmed that judges are aware of this

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http://jx.zjol.com.cn/system/2014/08/13/020196900_01.shtml [https://perma.cc/3V99-ADLX]. According to official statistics on labor dispute arbitration in Shanghai (around 2004), employees' claims were supported eighty-six percent of the time. *Shanghai: Laodong Jiufen Laodongzhe Shengsulu Gaoyu Yongren Danwei* (*上海：劳动纠纷劳动者胜诉率高于用人单位*) [*Shanghai: Labor Disputes Have a Higher Winning Rate for Workers than for Employers*], ZHONGQING ZAIXIAN (中青在线) [CHINA YOUTH ONLINE] (Oct. 30, 2004), http://zqb.cyol.com/content/2004-10/30/content_977452.htm [https://perma.cc/EFR5-GM2H]. The Hangzhou Intermediate Court, in hearing labor disputes appeals, have ruled in favor of employees over ninety percent of the time during the period between January 2010 and September 2013. *Hangzhou Laodong Zhengyi Anjian Laofang Shengsulu Chao 9 cheng Suqiu Yuelaiyue Duoyanghua* (*杭州劳动争议案件劳方胜诉率超 9 成 诉求越来越多样化*) [*Labor Side Wins More Than 90% of Hangzhou Labor Dispute Cases, Claims Becoming More Diverse*], ZHEJIANG ZAIXIAN (浙江在线) [ZHEJIANG ONLINE] (Dec. 11, 2013), https://zjnews.zjol.com.cn/system/2013/12/11/019753827.shtml [https://perma.cc/TL8G-EBES].

[79] Susong Feiyong Jiaona Banfa (诉讼费用交纳办法) [Measures on the Payment of Litigation Costs] (promulgated by the St. Council, Dec. 19, 2006, effective Apr. 1, 2007), art. 13, http://www.gov.cn/zwgk/2006-12/29/content_483407.htm [https://perma.cc/ZQ6W-5TZT].

[80] The filing fee for labor dispute lawsuits is just RMB 10. Enforcement fees range from RMB 50 to 500. Property preservation fee is RMB 30.

[81] Informant ID: 2020.07.09.2, *supra* note 17; Informant ID: 2020.08.11, *supra* note 17.

[82] Informant ID: 2020.07.09.1, *supra* note 17; Informant ID: 2020.06.17.3, *supra* note 17; Informant ID: 2020.07.09.3, *supra* note 17; Informant ID: 2020.07.09.2, *supra* note 17; Informant ID: 2020.06.17.6, *supra* note 17. Sixty percent of the informants who responded to the questionnaire were of the view that the LCL must be interpreted by the courts in a manner that favors the employees in order to fully reflect the pro-labor nature of the LCL.

[83] Informant ID: 2020.07.09.2, *supra* note 17; Informant ID: 2020.08.11, *supra* note 17.

[84] Informant ID: 2020.06.17.3, *supra* note 17.

[85] Informant ID: 2020.06.17.3, *supra* note 17; Informant ID: 2020.06.17.9, *supra* note 17.

power imbalance when adjudicating labor disputes.[86] It has been argued that Chinese courts generally adopt an adjudicatory approach that favors employees. There are two aspects to this approach. First, when a contractual term in a labor contract is unclear, the court should interpret it in a way that favors the employee. Second, when the labor statute is unclear, the court should interpret the law in a way that favors the employee.[87] An internal report supplied by an informant [88] concerning serious breach dismissals lawsuits (between 2017 and 2019) in a suburban district court in Beijing indicated employees have won by a substantial margin.[89]

While existing research overwhelmingly found employees winning in labor disputes, one study found employers have generally prevailed over employees in Shanghai courts ("He and Su Study"). [90] The margin of victory for the employer is more significant when the employee is a "farmer" (i.e., a migrant worker) and less significant when the employee is a "white collar" worker.[91] The He and Su Study, however, should be read within the context of its data. First, it is geographically limited to Shanghai and is unlikely to be representative on a national level.[92] It is not illogical to expect Shanghai courts to lean towards business (the employer)

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[86] For instance, employees may not have the means to retain a lawyer to assist with fact-finding. The power imbalance also suggests that employees are in a weaker position in gathering evidence (e.g., employment related documentation and records are maintained and controlled by the employer).

[87] *See* Xu Jianyu (许建宇), *Youli Yuanze De Tichu Jiqi Zai Laodong Hetong Fa Zhongde Shiyong (*"*有利原则*"*的提出及其在劳动合同法中的适用*) *[The Introduction of the "Favorable Principle" and its Application in the Employment Contract Law]*, FAXUE (法学) [LEGAL SCI.], no. 5, 2006, at 90, 91. For a case example demonstrating this approach, see Gao Yiming Su Beijing Bide Chuangzhan Tongxun Jishu Youxian Gongsi Laodong Hetong Jiufen An (高轶明诉北京比德创展通讯技术有限公司劳动合同纠纷案) [Gao Yiming v. Beijing Bide Chuangzhan Communication Co., Ltd. Labor Contract Dispute], 2008 People's Just. Case 24 (Beijing Chaoyang District People's Ct. 2008) (China).

[88] Informant ID: 2020.06.17.3, *supra* note 17.

[89] The report noted that the employees won seventy-six percent of the time among cases adjudicated between 2017 and 2019 (there were in total 123 cases). The main reason for courts finding for the employee was that the employer was unable to prove that there was a serious breach of the internal regulations.

[90] He & Su, *supra* note 74.

[91] He & Su, *supra* note 74, at 131-32.

[92] This Article surveys national data of every court in China. One limitation, however, is that this Article focuses on Serious Breach Dismissal Cases only, while the He and Su Study surveyed labor disputes generally. See He & Su, *supra* note 74, at 127 (explaining that the sample used in the research was selected randomly from twelve issue areas).

given Shanghai is the leading business hub in China. This does not necessarily mean that courts in other parts of China favor employers (particularly rural courts or courts in less developed regions). Second, there are only 284 labor dispute cases in the He and Su Study, which is a rather small sample to be representative.[93] Third, the employer does not always prevail. When the employer sues the blue-collar worker, the worker prevails.[94]

*c. How Does Galanter's Party Capability Theory Fit into This Debate?*

Since Marc Galanter devised the theory on party capability,[95] extensive scholarship has emerged to test the theory in different jurisdictions and under various circumstances.[96] In the simplest terms, the theory suggest that the party with more extensive experience, greater resources and superior status (the "haves") prevails over the party with limited experience, less resources and inferior status (the "have-nots") in litigation.[97] The party capability theory was tested in China in a number of studies with varying

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[93] He & Su, *supra* note 74, at 135.

[94] He & Su, *supra* note 74, at 132.

[95] *See generally* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95 (1974) (analyzing different kinds of parties and the effect these differences might have).

[96] *See generally* Yoav Dotan, *Do the "Haves" Still Come out Ahead? Resource Inequalities in Ideological Courts: The Case of the Israeli High Court of Justice*, 33 L. & SOC'Y. REV. 1059 (1999) (finding out the litigation outcomes before the Israeli High Court of Justice); Kathryn Hendley, Randi Ryterman & Peter Murrell, *Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises*, 33 L. & SOC'Y. REV. 833 (1999) (examining "whether Galanter's repeat player concept helps in deciphering the law-related behavior of Russian enterprises"); Reginald S. Sheehan & Kirk A. Randazzo, *Explaining Litigant Success in the High Court of Australia*, 47 AUSTL. J. POL. SCI. 239 (2012) (exploring party capability theory in the High Court of Australia); Haynie, *supra* note 69 (extending the comparative analysis to Philippines); Peter McCormick, *Party Capacity Theory and Appellate Success in the Supreme Court of Canada, 1949-1992*, 26 CAN. J. POL. SCI. 523 (1993) (analyzing the decisions of the Supreme Court of Canada regarding to party capability theory).

[97] *See* Galanter, *supra* note 95, at 97–104:

> [T]hose with other advantages [haves] tend to occupy this position of advantage and to have their other advantages reinforced and augmented. This position of advantage is one of the ways in which a legal system formally neutral as between "haves" and "have-nots" may perpetuate and augment the advantages of the form.

outcomes.[98] The present study provides a ground to further test the party capability theory in China in the context of labor dispute resolution. In serious breach dismissal lawsuits, the employees (very likely to be "one-shotters") are clearly the "have-nots", while the employers (very likely to be "repeat players") are the "haves."[99] In an earlier study by the author, one vital element that allowed the "have-nots" to prevail by a substantial margin was that Chinese grassroots courts "favored" the "have-nots" over the "haves." It was this "judicial favor" for have-nots that "neutralized the party-capability advantages enjoyed by the 'haves'" and allowed the have-nots to come out ahead.[100] Will the same judicial favor for the "have-nots" appear in Serious Breach Dismissal Cases? If Chinese courts do not favor employees (the "have-nots"), it is unlikely that the employees would prevail. In other words, if courts are *not* pro-labor (or even worse, if courts are pro-employer), the employees ("have-nots") are very likely to lose.

## III. SERIOUS BREACH DISMISSAL CASES: AN OVERVIEW

Dismissal of the employee under the LCL requires cause.[101] China is, on paper, categorically against at-will employment.[102] However, unlike common law jurisdictions where jurisprudence on

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[98] *See, e.g.*, He & Su, *supra* note 74 (discovering that the "haves" came out ahead by substantial margin); Xifen Lin & Wei Shen, *Do the "Haves" Come Out Ahead in China's Prisons? – An Empirical Study of China's Commutation Procedures*, 48 INT'L. J.L. CRIME & JUST. 1, 1 (2017) (finding that "haves" prisoners have "higher chances of commutation"); Chan, *supra* note 68, at 1 (revealing that the "have-nots" prevailed in rural land dispute lawsuits).

[99] *See* Galanter, s*upra* note 95, at 97–104 (categorizing parties in a legal system as one-shotters (OS) and repeat players (RP) and noting that in America, most RPs are larger and powerful than OSs, creating an overlap between RPs and "haves" and between OSs and "have-nots.").

[100] Chan, s*upra* note 68, at 68-69.

[101] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 39-40.

[102] Some argue that jurisdictions that are against at-will employment may only be so on paper, as in practice courts sometimes do not enforce the law that forbids employers dismissing employees without cause. *See* Samuel Estreicher & Jeffrey M. Hirsch, *Comparative Wrongful Dismissal Law: Reassessing American Exceptionalism,* 92 N.C.L. REV. 343, 350 (2014) (claiming that actual practices in countries surveyed for the study "frequently results in less protection" and that challenges to dismissal may be difficult).

unfair dismissal is well established,[103] neither the LCL nor any other Chinese labor statutes provided guidance on what constitutes unfair dismissal. This study focuses on Article 39(2) of the LCL, as it is one of the most controversial provisions in the current Chinese labor legislative regime.[104] Under Article 39(2) of the LCL, the employer is entitled to terminate the employment contract if the employee had "seriously breached" the internal regulations of the employer, in which case, the employee is dismissed without compensation and without notice. But if the employer unfairly or wrongfully dismisses an employee, the employer must provide compensation.[105] The test for unfair dismissal, however, is not provided in Article 39(2), nor any other provisions in the LCL. Therefore, the court must determine on its own what constitutes fair and unfair dismissal under Article 39(2) of the LCL. Two judicial interpretations of the Supreme People's Court ("SPC") conferred the court power to review the employer's decision to dismiss. First, if the employer unilaterally dismisses an employee but failed to notify the relevant labor union,[106] the court must award compensation to the employee (this provides some procedural safeguard for the employee) ("SPC 2013 Interpretation").[107] Second, if the employer is "really wrong" (or clearly in error) (确有错误) in dismissing the employee, the court can revoke the dismissal (this confers substantive review powers on the court to assess whether or not the dismissal was wrongful or

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103 *See generally* JOHN BOWERS & CAROL DAVIS, TERMINATION OF EMPLOYMENT (2010) (introducing the relative law with an array of helpful checklists); Murray Wilcox QC, *Unfair Dismissal Cases*, 18 ECON. & LAB. RELS. REV. 79 (2008) (explaining two key points about the design of the unfair dismissal legislation).

104 *See* Cheng & Ke, *supra* note 26, at 10 (noting that at the local level, judicial interpretations of Article 39 vary).

105 Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 87.

106 Labor unions in China are organized under the All China Federation of Trade Unions.

107 Zuigao Renmin Fayuan Guanyu Shenli Laodong Zhengyi Anjian Shiyong Falü Ruogan Wenti De Jieshi Si (最高人民法院关于审理劳动争议案件适用法律若干问题的解释（四）) [Interpretation (IV) of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Labor Dispute Cases] (promulgated by the Judicial Comm. Sup. People's Ct., Dec. 31, 2012, effective Feb. 1, 2013), art. 12, Sup. People's Ct. Gaz., Jan. 18, 2013, http://gongbao.court.gov.cn/Details/811bdac65d1992d26d60339c558077.html [https://perma.cc/H6TP-79RC] (China) (repealed Jan. 1, 2021). Under the LCL, prior to the dismissal, the employer must notify the relevant labor union of its decision to dismiss and the reasons for the dismissal. Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 43.

unfair) ("SPC 2008 Interpretation").[108] SPC 2008 Interpretation confers not only the power to review the fairness of the dismissal, but also an obligation to conduct a fairness review. The provision, on the face, seems only *permissive* in that the court *can* revoke the dismissal if there is a clear error. But by implication, the court must have done a fairness review before it is in a position to revoke the dismissal. This "fairness review" is not an option, it is an obligation.

Serious Breach Dismissal Cases are critically important in the study of China's labor rights because the ground of serious breach of employer's internal regulations under Article 39(2) of the LCL is most prone to manipulation by the employer in summarily and unfairly dismissing employees without compensation.[109] Article 39(2) of the LCL does not define what constitutes "serious breach" (nor does any other statutory provision or SPC interpretation). Common sense dictates that "serious breach" is usually connected to some form of employee "misconduct" such as absenteeism, lateness, disobedience, use of violence, or abusive language in the workplace. However, the complete lack of objective standards as to what constitutes "serious breach" creates a lacuna in which employers are at liberty to regard even trivial breaches as serious breaches, thereby subjecting employees to very unreasonable standards.[110] To date, no guidance has been given by the SPC on how lower courts should interpret Article 39(2) of the LCL in a way that will not subject employees to unfair dismissal. For instance, when would the internal regulations of the employer be so unreasonable that dismissal based on such regulation would definitely amount to unfair dismissal? Would a technical breach of

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[108] Zuigao Renmin Fayuan Guanyu Shenli Laodong Zhengyi Anjian Shiyong Falü Ruogan Wenti De Jieshi Yi (最高人民法院关于审理劳动争议案件适用法律若干问题的解释) [Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labor Dispute Cases] (promulgated by the Judicial Comm. Sup. People's Ct., Apr. 16, 2001, effective Apr. 30, 2001), art. 20, Sup. People's Ct. Gaz., Dec. 16, 2008, https://www.pkulaw.com/chl/210739e42639bd53bdfb.html [https://perma.cc/3EDR-3KTT] (China) (repealed Jan. 1, 2021).

[109] The employee has to compensate the employer (for breach of the employment contract) if the employee is dismissed under Article 39(2) of the LCL. Laodong Hetong Fa Shishi Tiaoli (劳动合同法实施条例) [Implementation Regulations for the Labor Contract Law] (promulgated by the St. Council, Sept. 18, 2008, effective Sep. 18, 2008), art. 26, ST. COUNCIL GAZ., Sept. 18, 2008, http://www.gov.cn/gongbao/content/2008/content_1107604.htm [https://perma.cc/AH2A-5QXZ] (China).

[110] Li Jianfei (黎建飞), *Laodong Hetong Jiechu De Nan Yu Yi* (*劳动合同解除的难与易*) [*The Difficulty and Ease of Dissolving Employment Contracts*], FAXUEJIA (法学家) [THE JURIST], no. 2, 2008, at 18, 20-21.

an internal regulation be purposefully interpreted by the employer as "serious breach" resulting in the unfair dismissal of the employee? This glaring gap in the law in China is contrasted with the well-established jurisprudence on dismissal on the basis of the employee's misconduct in common law jurisdictions. In England, the employer can only legally dismiss an employee for misconduct when: (a) the employer believed that the employee was guilty of misconduct; (b) the employer had in mind reasonable grounds upon which to sustain that belief; and (c) at the stage at which that belief was formed on those grounds, it has carried out as much investigation into the matter as was reasonable in the circumstances (the *Burchell* test).[111] Unless it is "gross misconduct," a summary dismissal is considered "unfair" if the employer failed to give proper warning or notice to the employee.[112] Under English law, a dismissal based on misconduct would be considered unfair if proper procedures are not followed. Proper procedures would normally involve a reasonable investigation of the alleged misconduct in question and a fair hearing for the employee to argue his or her case.[113]

The underdevelopment of unfair dismissal jurisprudence in China is glaringly obvious in that no detailed substantive or procedural safeguards are provided under Chinese law to ensure that a dismissal is fair (and hence not wrongful). Article 39(2) of the LCL simply gives too much discretion to the employer, leaving the employee's job security at the total mercy of the employer (and giving the employer an opportunity to abuse its powers under Article 39(2)). If the employee is unfairly dismissed under Article 39(2), does the court take a proactive role in remedying the situation by either restoring employment or providing compensation to the employee? Or would the court simply confirm whatever the employer does so long as there is not a breach of the employer's internal rules (i.e. deferring completely to the employer)? Would the court assess whether the employer's internal regulations are

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111 British Home Stores Ltd. v. Burchell [1978 ] ICR 303 (Eng.).

112 BSC Sports & Soc. Club v. Morgan [1987] IRLR 391 (Eng.); MPI Ltd. v. Woodland [2007] All ER (D) 100 (Eng.). In these cases, the courts were trying to distinguish between unfair dismissal and wrongful dismissal. Even though a summary dismissal may be fair, it can be wrongful.

113 Polkey v. A.E. Dayton Servs. Ltd. [1988] ICR 142 (Eng.); *see also* IDS, EMPLOYMENT LAW HANDBOOK: UNFAIR DISMISSAL 104-08 (2010) (listing the procedural steps necessary to show that an employer acted reasonably in a conduct dismissal).

reasonable,[114] and decide whether the alleged breach is indeed a "serious breach"? The above questions cannot be properly answered unless one conducts a comprehensive quantitative analysis of Serious Breach Dismissal Cases for the whole of Mainland China. To date, no such empirical study has been conducted.[115] This study seeks to fill this gap.

## IV. DATA, METHODOLOGY, AND VARIABLES

### *a. Data and Methodology*

This study coded a representative sample of "documents of adjudication decisions" (DADs)[116] of Serious Breach Dismissal Cases during the period between 2010-2018.[117] Using the China Judgments Online search system, a search was conducted on July 16, 2019 using search terms of "Serious Breach of the Employing Unit's Internal Regulations and System" (严重违反用人单位的规章制度) and "Article 39" (第三十九条) in a whole document search and with the search limited to court documents of first-instance civil judgments at basic-level courts in relation to labor disputes (劳动争议). The search generated 6,539 DADs, which covers the time period

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[114] Article 4 of the LCL provides some standards for the employer's internal regulations, for example, internal regulations must be made known to the employee (although the regulations do not form part of the employment contract). *See* Yan Tian (阎天), *Laodong Guizhang Xingzhi Sanfenshuo: Yi Bili Yuanze Wei Jianyan Biaozhun* (*劳动规章性质三分说：以比例原则为检验标准*) [*The Three-dimensional Nature of Labor Regulations: The principle of Proportionality as the Test*], JIAODA FAXUE (交大法学) [S.J.T.U.L. REV.], no. 4, 2017, at 34, 36 n.8 (noting that Article 4 of the LCL requires the employers to disclose rules). In any event, the lower courts are not given any clear procedural guidance on the enforcement of Article 4 of the LCL. *See* Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art 4. Also, Article 4 is seldom relied upon by the court in deciding Serious Breach Dismissal Cases. The reality is that, in practice, there is virtually no enforcement mechanism to ensure the employer's internal regulations are reasonable and non-oppressive to the employee.

[115] A limited quantitative study was conducted for Beijing, Shanghai, and Guangdong. Cheng & Ke, *supra* note 26.

[116] In Chinese, DACs are called *caipan wenshu* (裁判文书). DADs in China are equivalent to court opinions in the United States.

[117] This study uses the China Judgments Online search engine, which holds one of the most comprehensive repositories of DADs online. ZHONGGUO CAIPAN WENSHU WANG (中国裁判文书网) [CHINA JUDGMENTS ONLINE], http://wenshu.court.gov.cn [https://perma.cc/V2R9-YTL9].

between 2010 and 2018. No DADs prior to 2010 were generated under the search.[118] After data cleaning, the dataset contained 6,187 DADs.[119] To ensure the sample presents the same temporal and regional structure of the population, the 6,187 cases were assigned into different groups along with the year of the decision and the province to where the court belongs. The identified DADs were then systematically sampled.[120] A sample of 2,064 cases was selected, which is approximately one-third of the population. Ten DADs were dropped, as some were duplicates and some contained incomplete information. The final number for the DADs analysis was 2,054.[121]

After examining the DADs, a codebook was created with a list of variables. Then, the information from the DADs was hand-coded into a computer. Four independent coders were trained for content analysis.[122] The average inter-coder reliability, measured by Cohen's Kappa, was 0.876789.

To supplement the quantitative study, the author collected data from thirty-four informants who are all judges.[123] Semi-structured interviews were conducted with nine of the informants, all of whom are experienced in adjudicating labor disputes. All thirty-four informants[124] responded to a questionnaire on issues relating to labor disputes in general and Serious Breach Dismissal Cases specifically.[125]

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[118] This is because most courts do not make their pre-2010 DADs available online.

[119] In other words, the population is 6,187 DADs.

[120] This study uses a systematic sampling method to obtain samples. First, we numbered each case according to the year of the decision and the alphabetical order of the province. For example, the first case of Anhui Province in 2010 was numbered 00001, and the first case of Anhui Province in 2011 was numbered 10001. Second, we obtained samples based on one third of the population. In other words, we chose the first of every three cases. For example, the selected first and second case in 2010 (in Anhui Province) was No.00001 and No.00004 respectively. 2064 samples were obtained for coding.

[121] This study analyses 2054 DADs of Serious Breach Dismissal Cases. This represents roughly one-third of the population.

[122] In order to carry out high-reliability coding, this study trained the coders and adjusted the codebooks based on the feedback from the coders. The training of the coders lasted the entire month of November 2019. The formal coding started on December 6, 2019, and was completed on January 31, 2020.

[123] For details of the informants, see *infra* Appendix.

[124] Out of the thirty-four questionnaire respondents, twenty-nine had experience in handling labor disputes.

[125] Questionnaire responses are on file with the author.

*b. How Does One Determine Winning and Losing?*

There are three possible case outcomes in this study: "the employee wins," "both sides win partially,"[126] and "the employer wins."[127]

For cases with monetary claims only, "the employee wins" if the employee is awarded the full amount claimed. "Both sides win partially" if the employee recovered only a portion of the amount claimed. "The employer wins" when no amount is awarded.

For cases with non-monetary claims only, there are two situations: (a) request to continue the labor contract; or (b) request to confirm that a labor relationship exists between employer and employee during a certain period of time. For the first situation, "the employee wins" if the court decides to continue the labor contract; otherwise, "the employer wins." For the second situation, "the employee wins" if the court decides to confirm the labor relationship; otherwise, "the employer wins." For cases with non-monetary claims only, there is no partial win for both sides.

There are some cases where the employee requests to either continue the labor contract or seek monetary compensation. In these cases, the employee is actually seeking to continue the labor contract as the preferred remedy. As such, if the court rules in favor of continuing the labor contract, the employee wins; if the court only gives monetary compensation (regardless of the amount awarded), it is a partial win for both sides. The employer wins if the court neither continued the labor contract nor awarded monetary compensation. It is important to note that requesting to continue the labor contract and seeking compensation are mutually exclusive claims, so it is not possible for both claims to be allowed by the court simultaneously.

For hybrid claims (with both monetary and non-monetary elements), the employee wins when the employee is awarded the full amount claimed and the labor relationship is confirmed by the court. Any of the following situations would be regarded as a partial win for both sides: (1) employee recovered the full amount of the monetary claim, but the labor relationship is not confirmed; (2) employee only recovered a portion of the amount claimed and the labor relationship is confirmed; (3) employee only recovered a

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126 This case outcome classification mirrors the classification in He & Su, *supra* note 74.

127 A "win" for the employer means a "loss" for the employee.

portion of the amount claimed and the labor relationship is not confirmed; or (4) employee is not awarded any monetary compensation, but the court confirmed the labor relationship. For hybrid claims, the employer wins if no monetary amount is awarded and the court did not confirm the labor relationship.

*c. Introduction to the Variables*

This study coded a number of independent variables about the employee that are likely to directly or indirectly affect the outcome of the case.[128] For instance, the gender of the employee was coded to assess whether gender played a role in the outcome of the case.[129] The average earned income of the employee was coded to test whether financial resources of the employee affected the chance of winning. The study also coded a number of independent variables about the employer.[130] The capacity of the employer can be critical in determining outcome. As shown in He and Su's Study, government agencies and government-related firms commanded an overwhelming advantage against all other entities.[131] The location of the parties vis-à-vis the location of the court was also recorded to assess whether there is pattern of local protectionism.

Besides the basic information of the two parties, the contents of the internal regulations that employees allegedly violated, and how the employees allegedly violated them were also recorded (in other words, the reasons for dismissal are recorded).[132] Whether the court

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[128] Variables about the employee include, for instance, the employee's gender, average earned income and location of household registration (whether the same location as the court or at a different location). It also included whether the employee was represented and the type of legal representation.

[129] An empirical study showed that gender has an impact on the outcomes of divorce cases in Chinese courts. XIN HE, DIVORCE IN CHINA: INSTITUTIONAL CONSTRAINTS AND GENDERED OUTCOMES (2021).

[130] Variables about the employer include, for instance, the employer's capacity (e.g., whether it was a state-owned enterprise or a private firm), location, and legal representation.

[131] He & Su, *supra* note 74, at 132.

[132] Variables on the principal reason for dismissal include, absence without justification (旷工), extra-long sick leave (超长病假), extra-long special leave (超长事假), refusing adjustment of position (调岗不到岗), refusal to adjust salary (拒绝调薪), refusal to enter into a new employment contract (拒绝签订新的劳动合同), unprofessional behavior (违规专业行为), violation of security regulations (such as smoking, quarrelling, fighting in the workplace or threatening a co-worker) (违规

conducted a "fairness review" was recorded (i.e., whether the court conducted a substantive review of the fairness of the dismissal).[133] Variables relating to procedural fairness were coded.[134] The study also coded whether there are any local regulations that provide special safeguards for the employee litigants. Some independent variables were set on the claim itself.[135] The outcome of the case was coded.[136] A key variable of party capability—legal representation—has also been coded.[137] Temporal and regional variations are recorded to assess the variations in local judicial policies (and local economic development) on labor disputes and changes in the litigation of labor disputes through time.

## V. FINDINGS AND ANALYSIS: EMPLOYERS CAME OUT AHEAD

### *a. Overview*

#### *i. Temporal Variations*

As part of an overview of the data, the temporal variations in case outcome are presented in Table 1. 2016 had the highest rate of frequency, and 2010 had the lowest rate of frequency. Using the

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安全行为，如抽烟、争吵、打架、恐吓同事等), violation of diligent duty (such as sleeping during working hours) (怠工，如值班睡觉等), and refusal to accept arrangement for occupational injury (拒绝针对工伤的安排).

133 The substantive review of fairness of the dismissal focuses on the reasonableness of the dismissal, i.e., whether the employers' internal regulations that employees violated were reasonable, as well as whether the employees' behavior had *seriously* breached those regulations (as opposed to only technically breaching the regulations).

134 The procedural fairness of the dismissal focuses on whether the procedure of dismissal was fair or unfair, i.e., whether the employer has informed the labor union before the dismissal; whether employer has given the employee a chance to be heard before the dismissal; and whether the employer provided a procedure for dismissal complaints.

135 Variables about the claim include the main claim of the employee (monetary, non-monetary, or hybrid), whether the employee claimed double financial compensation, and the value of the monetary claim.

136 Variables on the outcome of the case include the monetary amount awarded to the employee, and whether the court found any illegality in the dismissal or in the employer's internal regulations. Whether the court awarded double financial compensation was also recorded.

137 Galanter, *supra* note 95, at 114 ("Parties who have lawyers do better.").

employer's winning rates[138] as the reference point, the employees performed the poorest in 2013 but improved from 2014 to 2017. The improvement coincided with the explosion of cases in the same period (2014-2017).

*Table 1: Case Outcome by Year of Court Decision (N=2054)*

| **Year of Decisions**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **2018** | 14.36% | 17.29% | 18.64% | 64.07% |
| **2017** | 19.57% | 20.40% | 19.40% | 60.20% |
| **2016** | 21.71% | 11.66% | 19.28% | 69.06% |
| **2015** | 18.31% | 14.63% | 21.54% | 63.83% |
| **2014** | 13.97% | 16.38% | 13.24% | 70.38% |
| **2013** | 7.25% | 8.05% | 12.08% | 79.87% |
| **2012** | 2.04% | 2.38% | 23.81% | 73.81% |
| **2011** | 1.66% | 14.71% | 8.82% | 76.47% |
| **2010** | 1.12% | 8.70% | 17.39% | 73.91% |
| **Total** | 100% | 14.95% | 18.16% | 66.89% |

[1] Chi-square=43.880, DF=16, P<0.001.

### *ii. Regional Variations*

Studying the regional variations of case outcomes in Table 2 could unveil striking patterns. Courts in different regions may adopt divergent adjudication policies. Economic divergences (here focusing on GDP per capita)[139] may also affect the outcome of these cases. For instance, some regions may be more pro-employer than others due to economic development needs. During the period between 2010 and 2018, Guangdong had the highest rate of frequency of cases, while Qinghai has the lowest rate of frequency. Interestingly, the wealthiest province (Guangdong) and second

[138] The employer's win rate is the employee's loss rate.

[139] This study adopted the official GDP per capita data of provinces up to 2016. *See* National Data, NAT'L BUREAU STAT., http://data.stats.gov.cn/easyquery.htm?cn=E0103 [https://perma.cc/95LX-PDJC].

wealthiest province (Jiangsu) (in terms of GDP per capita) also have the highest and second highest rate of frequency respectively. Employees lost the most in Shanghai, China's leading business center. The predominance of business in the city may have influenced courts, making Shanghai courts the most anti-labor in all of China. Employees lost the least in Qinghai, but the rate of frequency is also the lowest there.

*Table 2: Case Outcome Across Provinces (N=2054)*

| **Province**[1] GDP/Capita (Unit RMB) | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Guangdong** (97277.77) | 13.00% | 16.48% | 12.73% | 70.79% |
| **Jiangsu** (92595.40) | 10.66% | 13.70% | 22.37% | 63.93% |
| **Shandong** (76469.67) | 4.72% | 20.62% | 19.59% | 59.79% |
| **Zhejiang** (56197.15) | 5.26% | 17.59% | 15.74% | 66.67% |
| **Henan** (48055.86) | 3.55% | 12.33% | 19.18% | 68.49% |
| **Sichuan** (40678.13) | 6.38% | 6.11% | 18.32% | 75.57% |
| **Hubei** (39366.55) | 3.21% | 27.27% | 18.18% | 54.55% |
| **Hunan** (36425.78) | 3.80% | 12.82% | 16.67% | 70.51% |
| **Hebei** (36010.27) | 2.87% | 13.56% | 23.73% | 62.71% |
| **Fujian** (35804.04) | 2.68% | 7.27% | 21.82% | 70.91% |
| **Shanghai** (32679.87) | 8.03% | 8.48% | 5.45% | 86.06% |

| | | | | |
|---|---|---|---|---|
| **Beijing** (30319.98) | 3.55% | 19.18% | 26.03% | 54.79% |
| **Anhui** (30006.82) | 3.55% | 15.07% | 23.29% | 61.64% |
| **Liaoning** (25315.35) | 5.89% | 10.74% | 16.53% | 72.73% |
| **Shaanxi** (24438.32) | 1.56% | 18.75% | 28.12% | 53.12% |
| **Jiangxi** (21984.78) | 1.07% | 13.64% | 36.36% | 50% |
| **Chongqing** (20363.19) | 4.04% | 12.05% | 21.69% | 66.27% |
| **Guangxi** (20352.51) | 2.68% | 20% | 21.82% | 58.18% |
| **Tianjin** (18809.64) | 2.78% | 19.30% | 17.54% | 63.16% |
| **Yunnan** (17881.12) | 0.93% | 10.53% | 21.05% | 68.42% |
| **Inner Mongolia** (17289.22) | 0.63% | 53.85% | 15.38% | 30.77% |
| **Shanxi** (16818.11) | 0.63% | 23.08% | 0% | 76.92% |
| **Heilongjiang** (16361.62) | 1.56% | 25.00% | 9.38% | 65.62% |
| **Jilin** (15074.62) | 2.73% | 16.07% | 16.07% | 67.86% |
| **Guizhou** (14806.45) | 0.97% | 25.00% | 50% | 25.00% |
| **Xinjiang** (12199.08) | 0.88% | 16.67% | 11.11% | 72.22% |
| **Gansu** (8246.07) | 0.58% | 25.00% | 25.00% | 50% |
| **Hainan** (4832.05) | 1.27% | 7.69% | 23.08% | 69.23% |

| | | | | |
|---|---|---|---|---|
| **Ningxia** (3705.18) | 0.39% | 12.50% | 25.00% | 62.50% |
| **Qinghai** (2865.23) | 0.15% | 33.33% | 66.67% | 0% |

[1] Chi-square=132.917, DF=58, P<0.001.

*iii. Economic Factors: Employees' Success Rates Across Five GDP Per Capita Clusters*

To measure the variation across provinces of similar economic strength in terms of GDP per capita,[140] the provinces are assigned into five different "GDP Per Capita Clusters."[141] From the data in Table 3, the "middle income" cluster (GDP Per Capita Cluster (RMB 40000–60000)) seems to be least favorable to employees (i.e., employees are losing the most). Interestingly, employees performed comparatively well in the "poorest" cluster (GDP Per Capita Cluster (RMB 0-20000)). This could be an indication that courts in least developed regions in China are less pro-employer than most courts in more affluent regions. The cluster with the highest rate of frequency is GDP Per Capita Cluster (RMB 20000-40000).

The employee litigant's success rates varied significantly across the different GDP Per Capita Clusters (Chi-square=132.917, P<0.001).

[140] For an explanation about the data source, see *supra* note 139.

[141] The five clusters are: (a) below RMB 20000; (b) not less than RMB20000, but less than RMB40000 per capita; (c) not less than RMB40000, but less than RMB60000 per capita; (d) not less than RMB60000, but less than RMB80000 per capita; and (e) not less than RMB80000, but less than RMB100000 per capita.

*Table 3: Case Outcome by GDP Per Capita Clusters (N=2054)*

| **GDP Per Capita**[1] (Unit: RMB 1000) | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **[80,100)** | 23.66% | 15.23% | 17.08% | 67.70% |
| **[60,80)** | 4.72% | 20.62% | 19.59% | 59.79% |
| **[40,60)** | 15.19% | 11.54% | 17.63% | 70.83% |
| **[20,40)** | 42.94% | 13.83% | 18.48% | 67.69% |
| **[0, 20)** | 13.49% | 19.86% | 19.13% | 61.01% |

[1] Chi-square=132.917, DF=58, P<0.001.

*b. The Employers Came Out Ahead*

*i. Employers are Winning by a Substantial Margin*

The data in Table 4 shows (n=2054) that the employers have come out ahead by a substantial margin. The employers' winning rate is 66.89% while the employee's winning rate is only 14.95%. This is a whooping difference of 51.94% in terms of winning rate comparison. The partial wining rate for both sides is 18.16%. These findings contradict the established perception that Chinese courts are pro-labor.

*Table 4: General Information on Case Outcome (N=2054) and Employees' Recovery Rate in Monetary Claims (N=1848)*

| Outcome | Frequency | % | Cumulative Rate of Percent | Employees' Recovery Rate in Monetary Claims | Frequency | % |
|---|---|---|---|---|---|---|
| **Employee Wins** | 307 | 14.95 | 14.95% | >100% | 6 | 0.32 |
| **Both Sides Win Partially** | 373 | 18.16 | 33.11% | 100% | 214 | 11.58 |
| **Employer Wins** | 1374 | 66.89 | 100% | (75%, 100%) | 122 | 6.60 |
| **Total** | 2054 | 100 | | (50%, 75%] | 96 | 5.19 |
| | | | | (25%, 50%] | 80 | 4.33 |
| | | | | (0%, 25%] | 64 | 3.46 |
| | | | | 0% | 1266 | 68.51 |
| | | | | Total | 1848 | 100 |

*ii. Monetary Claims: Recovery Rate, Average Claim, and Average Award*

The recovery rates for employees on monetary claims in Table 4 tell the same story (n=1848): an overwhelming victory for employers.[142] The employee recovered nothing 68.51% of the time.[143] The employee achieved full recovery only 11.58% of the time.[144] Statistics in Table 5 show for the data (n=1848) that the mean and median values of the average monetary claim are RMB65461.84 and RMB35297.19, respectively, with standard deviation at RMB219013.66. The data shows that the mean and median values of the average monetary award are RMB12096.85 and RMB0.00, respectively, with standard deviation at RMB35563.93. The data shows that the mean and median values of the recovery rates of

142 *See supra* Table 4.

143 *See supra* Table 4.

144 In rare cases (0.32%), the court awarded more than 100% of the monetary claim (the highest recovery rate was 133% of the monetary claim). *Supra* Table 4.

monetary claims are 0.23 and 0.00, respectively, with standard deviation at 0.38.

*Table 5: Statistics on Monetary Claims and Monetary Awards of Employees (N=1848)*

| | **Mean** | **Median** | **SD** |
|---|---|---|---|
| **Average Monetary Claim** | 65461.84 | 35297.19 | 219013.66 |
| **Average Monetary Award** | 12096.85 | 0.00 | 35563.93 |
| **Recover Rate** | 0.23 | 0.00 | 0.38 |

*c. Capacity of the Employee*

*i. Employee as Plaintiff or Defendant*

Labor disputes reach the courts only after labor dispute arbitration.[145] If the employee wins in the arbitration, the employer will take the matter to court as the "plaintiff" (effectively appealing the arbitration decision), in which case the employee will be the "defendant." If the employer wins in the arbitration, the employee will become the "plaintiff" in the court litigation.[146] From the data (n=2054) in Table 6, employees lost more as plaintiffs (76.78%) and less as defendants (38.56%). This indicates something important: if the employee had already won in the arbitration, the court is more reluctant to find against the employee. By contrast, if the employee had lost in the arbitration, the court is very likely to uphold the arbitration decision and find against the employee. This shows that the outcome of the labor dispute arbitration has a direct bearing on the decision of the court.

The data shows that employees' success rate varied significantly by whether they were plaintiffs or defendants (Chi-square=387.656, DF=4, P<0.001).

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[145] Laodong Zhengyi Tiaojie Zhongcai Fa (劳动争议调解仲裁法) [Labor Dispute Mediation and Arbitration Law], art. 5; *see also* Zhao, *supra* note 40, at 416 ("[A] dispute can only come before the people's court if one party does not accept the arbitral award.").

[146] In rare cases, the employee could be a plaintiff in one case and a defendant in another.

*Table 6: Case Outcome by Employee Being Plaintiff/Defendant in Litigation (N=2054)*

| **Employee's Identity**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Plaintiff** | 73.37% | 6.90% | 16.32% | 76.78% |
| **Defendant** | 23.61% | 40.62% | 20.82% | 38.56% |
| **Plaintiff and Defendant** | 3.02% | 9.68% | 41.94% | 48.39% |

[1] Chi-square=387.656, DF=4, P<0.001.

*ii. Location of the Employee*

The data (n=1196) in Table 7 shows that the employee loses more[147] if the location of their household registration is different from the location of the court hearing the case. This may indicate that the local courts are less protective of employees who are "outsiders" or migrant workers in labor disputes.

The data shows that employees' success rate varied significantly by the location of the employees (Chi-square=13.060, DF=2, P<0.01).

*Table 7: Case Outcome by the Employee's Location (N=1196)*

| **Employee's Location**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **The Same as the Location of the Court** | 81.61% | 16.09% | 19.67% | 64.24% |
| **Different from the Location of the Court** | 18.39% | 14.55% | 10% | 75.45% |

[147] The employers' success rate is higher when the employees' location of their household registration is different from the location of the court.

[1] Chi-square=13.060, DF=2, P<0.01.

### *iii. Gender of the Employee*

While the data (n=1452) in Table 8 shows that male employees lose more than female employees, the case outcome did not vary significantly by gender (Chi-square=5.920, DF=4, P=0.205).[148]

*Table 8: Case Outcome by the Gender of Employee (N=1452)*

| **Gender of Employee**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Female** | 34.20% | 16.63% | 22.25% | 61.12% |
| **Male** | 86.87% | 15.40% | 17.61% | 66.99% |
| **Female and Male** | 0.33% | 0% | 25.00% | 75.00% |

[1] Chi-square=5.920, DF=4, P=0.205.

### *iv. Single and Multiple Employee Litigants*

From the data (n=2054) in Table 9, single employee litigants lose more (67.06%) than multiple employee litigants (47.06%). Employees' success rate varied significantly by the number of employee litigants (single or multiple) (Chi-square=22.811, DF=12, P<0.05), but note the very low rate of frequency for multiple employee litigants (0.83%).

*Table 9: Case Outcome by Single or Multiple Employee Litigant(s) (N=2054)*

| **Single or Multiple**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|

[148] For multiple employee litigants, the gender of the first employee litigant is taken for this analysis.

| | | | | |
|---|---|---|---|---|
| **Single** | 99.17% | 14.78% | 18.16% | 67.06% |
| **Multiple** | 0.83% | 35.29% | 17.65% | 47.06% |

[1] Chi-square=22.811, DF=12, P<0.05.

*v. Employees' Average Earned Income*

From the data (n=1433) in Table 10, no particular pattern is identified in the variation of outcome by the average earned income of the employees. From the data, most employee litigants are within the bracket of lowest-income wage earners (with 76.20% in the RMB 0-5000 bracket). This data informs us that labor dispute resolution in Chinese courts, at least as far as serious breach dismissals are concerned, involve significant power asymmetry between the parties. Having said that, the lowest-income bracket of employee litigants is not losing the most (58.88%) when compared to employees from other income brackets (one income bracket of litigants have lost 100% of the time (the RMB 35000-40000 bracket)).

The case outcome varied significantly by the average earned income of the employees (Chi-square=2121.950, DF=1966, P<0.01).

*Table 10: Case Outcome by Employees' Average Earned Income (N=1433)*

| **Average Earned Income (RMB)**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **(50000,** | 0.28% | 50% | 0% | 50% |
| **(45000, 50000]** | 0.14% | 0% | 50% | 50% |
| **(40000, 45000]** | 0.28% | 25.00% | 50% | 25.00% |
| **(35000, 40000]** | 0.21% | 0% | 0% | 100% |
| **(30000, 35000]** | 0.42% | 33.33% | 33.33% | 33.33% |
| **(25000, 30000]** | 0.56% | 50% | 0% | 50% |
| **(20000, 25000]** | 0.42% | 16.67% | 33.33% | 50% |
| **(15000, 20000]** | 1.12% | 12.50% | 12.50% | 75.00% |
| **(10000, 15000]** | 3.21% | 15.22% | 23.91% | 60.87% |
| **(5000, 10000]** | 17.17% | 16.67% | 20.73% | 62.60% |
| **(0, 5000]** | 76.20% | 16.85% | 24.27% | 58.88% |

[1] Chi-square=2121.950, DF=1966, P<0.01.

*d. Capacity of the Employer*

*i. Employer's Location*

The employer wins more when it is in the same location as the court than when it is in a different location from the court, but the margin is too slight to assess whether that there was local

protectionism in the adjudication.[149] The employer's location vis-à-vis the location of the court that hears the case was insignificant in the variation of the outcome of the case (Chi-square=0.701, DF=2, P=0.704).[150]

*Table 11: Case Outcome by the Employer's Location (N=2023)*

| **Employer's Location**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Same as the Location of the Court** | 98.52% | 15.05% | 18.11% | 66.83% |
| **Different from the Location of the Court** | 1.48% | 16.67% | 23.33% | 60% |

[1] Chi-square=0.701, DF=2, P=0.704.

*ii. Employer's Capacity*

The data (n=2054) in Table 12 seems to suggest that courts are most favorable toward government employees, and least favorable to employees of foreign firms, as employees have lost the least when pitted against state organs and institutions (58.54%) and have lost the most when they are litigating against foreign firms (79.08%) and their local subsidiaries (79.21%). Employees of state-owned enterprises (SOEs) fare better (they lose 69.09% of the time) than employees of listed firms (private)[151] (they lose 72.92% of the time), but do worse than employees from non-listed private firms (they lose 63.14% of the time). The employer's capacity was significant in the variation of the outcome of the case (Chi-square=48.796, DF= 16, P<0.001).

[149] *See infra* Table 11.

[150] *See infra* Table 11.

[151] "Listed firms (private)" here means that they are listed corporations that are non-SOEs. It does not carry the meaning of private company under the dichotomy of private/public companies.

*Table 12: Case Outcome by the Employer's Capacity (N=2054)*

| Employer's Capacity[1] | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **State Organs and Institutions** | 3.99% | 20.73% | 20.73% | 58.54% |
| **State-Owned Enterprises (SOEs)** | 5.36% | 14.55% | 16.36% | 69.09% |
| **Non-Listed Private Firm** | 60.76% | 16.51% | 20.35% | 63.14% |
| **Listed Firm (Private)** | 2.34% | 14.58% | 12.50% | 72.92% |
| **Foreign Firm** | 15.82% | 10.46% | 10.46% | 79.08% |
| **Non-listed Subsidiary of Listed Firm** | 2.39% | 12.24% | 16.33% | 71.43% |
| **Local Subsidiary of Foreign Firm** | 4.92% | 7.92% | 12.87% | 79.21% |
| **Others** | 4.43% | 14.29% | 25.27% | 60.44% |

[1] Chi-square=48.796, DF= 16, P<0.001.

*e. Legal Representation*

*i. Type of Legal Representation of the Employee*

The employer's type of legal representation was significant in the variation of the outcome of the case in Table 13 (Chi-square=24.558, DF = 14, P<0.05). From the data (n=2054), the "losing

rate" of the employee without legal representation[152] (64.68%) is slightly lower than the employees' "general losing rate"[153] (66.89%). An unrepresented employee loses less (loses 64.68% of the time) than an employee represented by a professional attorney from a law firm (loses 68.69% of the time), a professional attorney from the government (loses 100% of the time), staff from legal organizations[154] (losing rate of 100%) and "others" (losing rate of 69.68%). An unrepresented employee loses more than an employee represented by a relative or friend (losing rate of 60.42%), basic-level legal service (losing rate of 63.58%) and multiple legal counsel (losing rate of 41.38%).

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[152] The "losing rate" of the employee when the employee had no legal representation means the "winning rate of the employer" when the employee had no legal representation.

[153] The "general losing rate" of the employee means the general winning rate of the employer in this study.

[154] "Staff from legal organizations" is *jiedao falu gongzuoweiyuanhui gongzuorenyuan* (街道法律工作委员会工作人员) in Chinese.

*Table 13: Case Outcome by the Type of Legal Representation of the Employee (N=2054)*

| Employee's Legal Rep. [1] | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **No Legal Representative** | 23.71% | 18.28% | 17.04% | 64.68% |
| **Relative or Friend** | 2.34% | 20.83% | 18.75% | 60.42% |
| **Staff from Legal Organization** | 0.15% | 0% | 0% | 100% |
| **Professional Attorney from Law Firm** | 56.28% | 13.15% | 18.17% | 68.69% |
| **Professional Attorney from Government** | 0.15% | 0% | 0% | 100% |
| **Basic-level Legal Service** | 8.42% | 18.50% | 17.92% | 63.58% |
| **Multiple Legal Counsel** | 1.41% | 20.69% | 37.93% | 41.38% |
| **Others** | 7.55% | 11.61% | 18.71% | 69.68% |

[1]Chi-square=24.558, DF = 14, P<0.05.

*ii. Type of Legal Representation of the Employer*

The data (n=2054) in Table 14 shows an unrepresented employer wins less than an employer with any type of representation. However, the employer's type of legal representation was insignificant in the variation of the outcome of the case (Chi-square=14.993, DF=12, P=0.242).

*Table 14: Case Outcome by the Type of Legal Representation of the Employer (N=2054)*

| **Employer's Legal Rep.** [1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **No Legal Representative** | 1.17% | 16.67% | 37.50% | 45.83% |
| **Staff from Firm** | 21.23% | 15.37% | 17.89% | 66.74% |
| **Staff from Legal Organization** | 0.15% | 0% | 0% | 100% |
| **Professional Attorney from Law Firm** | 48.00% | 16.33% | 18.26% | 65.42% |
| **Basic-level Legal Service Workers** | 1.31% | 7.41% | 22.22% | 70.37% |
| **Multiple Legal Counsel** | 19.23% | 13.42% | 16.71% | 69.87% |
| **Others** | 8.91% | 10.93% | 18.58% | 70.49% |

[1] Chi-square=14.993, DF=12, P=0.242.

*iii. Legal Representation of Each Party*

From the data (n=2054) in Table 15, almost all employers were represented (with a rate of frequency of 98.83%), as compared to the lower rate of representation for employees (only 76.29%). When the employee was unrepresented, the employee actually loses less. When the employer was represented, the employer wins more. Whether the employee was represented was insignificant in the variation of the outcome of the case (Chi-square=5.638, DF = 2, P = 0.060). Whether the employer was represented was significant in the variation of the outcome of the case (Chi-square=6.660, DF = 2, $P < 0.05$).

*Table 15: Case Outcome by Legal Representation of Each Party (N=2054)*

| Legal Representation | | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|---|
| **Employee**[1] | Yes | 76.29% | 13.91% | 18.51% | 67.58% |
| | No | 23.71% | 18.28% | 17.04% | 64.68% |
| **Employer**[2] | Yes | 98.83% | 14.93% | 17.93% | 67.14% |
| | No | 1.17% | 16.67% | 37.50% | 45.83% |

[1] Chi-square=5.638, DF = 2, P = 0.060.

[2] Chi-square=6.660, DF = 2, P < 0.05.

*iv. Legal Representation of Employee (LRE) vs. Legal Representation of Employer (LRR)*

From the data (n=2054) in Table 16, when the employee is represented, the employee loses more when the employer is also represented (employee loses 67.84% of the time), as compared to when the employer is unrepresented (employee loses 33.33% of the time). This was significant in the variation of the outcome of the case (Chi-square=6.672, DF = 2, P < 0.05).

When the employee is unrepresented, the employee also loses more when the employer is represented (employee loses 64.84% of the time), as compared to when the employer is unrepresented (employee loses 58.33% of the time). However, this was insignificant in the variation of the outcome of the case (Chi-square=2.658, DF = 2, P = 0.256).

*Table 16: Case Outcome by Legal Representation of Employee (LRE) vs. Legal Representation of Employer (LRR) (N=2054)*

| | **LRE = No**[1] | | | **LRE = Yes**[2] | | |
|---|---|---|---|---|---|---|
| **Outcome** | **LRR = Yes** | **LRR= No** | **Total** | **LRR = Yes** | **LRR = No** | **Total** |
| **Employee Wins** | 18.53% | 8.33% | 18.28% | 13.83% | 25.00% | 13.91% |
| **Both Sides Win Partially** | 16.63% | 33.33% | 17.04% | 18.33% | 41.67% | 18.51% |
| **Employer Wins** | 64.84% | 58.33% | 64.68% | 67.84% | 33.33% | 67.58% |
| **Total** | 100% | 100% | 100% | 100% | 100% | 100% |
| **N** | 475 | 12 | 487 | 1555 | 12 | 1567 |

[1] Chi-square=2.658, DF = 2, P = 0.256.

[2] Chi-square=6.672, DF = 2, P < 0.05.

*f. Details of the Dismissal and the Employee's Claim*

*i. Principal Reason for Dismissal*

From the data (n=2054) in Table 17, the employee loses the most when the principal reason for dismissal was strike (employee loses 91.67% of the time). The employee loses the least (employee loses 0.00% of the time) when the principal reason for dismissal was refusal to enter into a new labor contract. The principal reason for dismissal was significant in the variation of the outcome of the case (Chi-square=79.184, DF = 24, P<0.001). From the data, it appears that courts are inherently hostile toward organized labor and strikes. This is strong evidence contradicting the established view that Chinese courts are pro-labor.

*Table 17: Case Outcome by the Principal Reason for Dismissal (N=2054)*

| Principal Reason for Dismissal[1] | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **Absence Without Justification** | 40.51% | 12.02% | 15.26% | 72.72% |
| **Extra-Long Sick Leave** | 0.34% | 0% | 28.57% | 71.43% |
| **Extra-Long Special Leave** | 0.15% | 33.33% | 33.33% | 33.33% |
| **Refusing Adjustment of Position** | 3.12% | 17.19% | 26.56% | 56.25% |
| **Refusing to Enter into a New Labor Contract** | 0.24% | 20% | 80% | 0% |
| **Irregular Professional Behavior** | 14.17% | 18.21% | 18.90% | 62.89% |
| **Behavior That Violates Security** | 12.51% | 14.79% | 21.79% | 63.42% |
| **Violation of Diligent Duty** | 9.01% | 15.14% | 14.59% | 70.27% |
| **Receiving Kickback** | 1.56% | 18.75% | 9.38% | 71.88% |
| **Commission of Crime** | 1.95% | 7.50% | 15.00% | 77.50% |
| **Strike** | 1.17% | 4.17% | 4.17% | 91.67% |
| **Disobeying Work Arrangements** | 4.19% | 19.77% | 12.79% | 67.44% |

| | | | | |
|---|---|---|---|---|
| **Others** | 11.10% | 21.05% | 27.63% | 51.32% |

[1] Chi-square=79.184, DF = 24, P<0.001.

*ii. Employee's Principal Claim*

From the data (n=2054) in Table 18, the vast majority of employees sought financial compensation (frequency rate of 88.61%). Only a very small fraction sought to terminate the labor contract (frequency rate of 0.05%). The employee has varying success with different principal claims. For instance, the employee loses more when he seeks to continue the labor contract (employee loses 65.36% of the time) when compared to the employee seeking to confirm the employment relationship (employee loses 57.41% of the time). The principal claim was significant in the variation of the outcome of the case (Chi-square=68.544, DF = 6, P < 0.01).

*Table 18: Case Outcome by Employee's Principal Claim (N=2054)*

| **Principal Claim**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Compensation** | 88.61% | 13.35% | 19.29% | 67.36% |
| **Continuation of the labor Contract** | 8.71% | 31.28% | 3.35% | 65.36% |
| **Confirmation of the Employment Relationship** | 2.63% | 12.96% | 29.63% | 57.41% |
| **Termination of the Labor Contract** | 0.05% | 100% | 0% | 0% |

[1] Chi-square=68.544, DF = 6, P < 0.01.

*iii. Double Financial Compensation?*

Under the law, employees who are wrongfully dismissed are automatically entitled to double financial compensation. [155] However, in practice, the courts will not consider awarding double financial compensation unless specifically pleaded. From the data (n=2054) in Table 19, only 30.92% of employees claimed double financial compensation. And when they do, their success rate is higher than when they do not claim double financial compensation. One possible explanation is that employees will only claim double financial compensation when their case is strong. As their case is already strong, the chances of winning are also greater. Whether the employee claimed double financial compensation was significant in the variation of the outcome of the case (Chi-square=43.928, DF = 2, P < 0.001).

*Table 19: Case Outcome by Whether Employee Claimed Double Financial Compensation (N=2054)*

| **Double Financial[1] Compensation** | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes** | 30.92% | 18.74% | 24.57% | 56.69% |
| **No** | 69.08% | 13.25% | 15.29% | 71.46% |

[1] Chi-square=43.928, DF = 2, P < 0.001.

*iv. Type of Employee's Non-Monetary Claim*

From the data (n=2054) in Table 20, 49.51% of all cases are pure monetary claims. For all other cases, there is a non-monetary element in the claims. Among these cases, the employee loses the least when he sought to confirm the employment relationship (employee loses 49.37% of the time); the employee loses the most when the claim was for the employer to bear the legal costs (employee loses 79.81% of the time).

155 Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 87.

The type of the employee's non-monetary claim was significant in the variation of the outcome of the case (Chi-square=136.600, DF = 14, P < 0.001).

*Table 20: Case Outcome by the Type of Employee's Non-Monetary Claim (N=2054)*

| Type of Non-Monetary Claim[1] | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **Continuation of the Labor Contract** | 9.25% | 33.68% | 3.16% | 63.16% |
| **Termination of the Labor Contract** | 5.36% | 12.73% | 20% | 67.27% |
| **Confirmation of the Employment Relationship** | 3.85% | 12.66% | 37.97% | 49.37% |
| **Social Insurance** | 7.50% | 14.29% | 29.87% | 55.84% |
| **Employer to Bear Legal Costs** | 15.68% | 7.45% | 12.73% | 79.81% |
| **Confirmation of Illegal Termination of Labor Contract by Employer** | 4.77% | 10.20% | 19.39% | 70.41% |
| **Other Non-Monetary Relief** | 4.09% | 14.29% | 27.38% | 58.33% |
| **No Non-Monetary Element (i.e.,** | 49.51% | 14.85% | 18.29% | 66.86% |

| **Pure Monetary Claim)** | |
|---|---|

[1] Chi-square=136.600, DF = 14, P < 0.001.

*v. Whether Employer Notified Labor Union Before the Dismissal*

Under the SPC 2013 Interpretation, if the employer dismisses an employee but failed to notify the relevant labor union,[156] the court must award compensation to the employee.[157] The intention of this interpretation was to provide some procedural safeguard to employees in the dismissal process. However, the reality is quite different. From the data (n=2054) in Table 21, most employers did not notify the relevant labor union before dismissing the employee (frequency rate of 68.89%). According to the SPC 2013 Interpretation, if the employer fails to notify the labor union before dismissal, the court should automatically rule in favor of the employee.[158] However, the court has ruled against the employee 59.72% of the time. This is a direct contradiction of the SPC 2013 Interpretation. When the employer did notify the labor union, the employee loses more.[159] Interestingly, the employee loses more when the labor union objected to the dismissal (employee loses 100% of the time) than when the labor union supported the dismissal (employee loses 82.73% of the time). This anomaly is hard to explain.

Whether the employer notified the labor union before the dismissal was significant in the variation of the outcome of the case (Chi-square=106.704, DF = 4, P < 0.001).

[156] Labor unions in China are organized under the All China Federation of Trade Unions.

[157] *Supra* note 107.

[158] *See supra* note 107

[159] *See infra* Table 21.

*Table 21: Case Outcome by Whether the Employer Notified the Labor Union Before the Dismissal (N=2054)*

| **Notified Labor Union ("LU")?**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **No** | 68.89% | 17.88% | 22.40% | 59.72% |
| **Yes, and Dismissal Supported by the LU** | 31.01% | 8.48% | 8.79% | 82.73% |
| **Yes, but the LU Objected to Dismissal** | 0.10% | 0% | 0% | 100% |

[1] Chi-square=106.704, DF = 4, P < 0.001.

*vi. Whether the Employee Was Given an Opportunity to be Heard Before Dismissal*

In some local regulations (e.g., in Suzhou), if the employer failed to give the employee an opportunity to be heard before dismissing the employee for breach of the employer's internal regulations, the dismissal must be considered unfair (and therefore, unlawful).[160] This provides sound procedural safeguard in the dismissal process. This, however, is not the position of the national law. Giving employees an opportunity to be heard is not a statutory requirement under the LCL. From the data (n=2054) in Table 22, employees were denied the opportunity to be heard before dismissal in the vast majority of cases (frequency rate of 97.52%). Only 2.48% of the time were employees given the opportunity to heard before dismissal. This shows that on the national level, the protection of procedural rights of employees is extremely weak in China. Dismissal in China remains a summary process. Where the employee was given an opportunity to be heard, the employee loses more in court (employee loses 82.35% of the time) as compared to the employee who was not given a chance to be heard (employee loses 66.50% of the time). One speculation is that the courts could be of the view

[160] *See supra* note 49 and accompanying text.

that if the employer had heard the employee's side of the story, the dismissal was somehow more "just." However, whether the employee was given an opportunity to be heard was insignificant in the variation of the outcome of the case (Chi-square=5.645, DF = 2, P = 0.059).

*Table 22:14 Case Outcome by Whether the Employee Was Given an Opportunity to be Heard Before Dismissal (N=2054)*

| **Employee Given an Opportunity to be Heard?**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes** | 2.48% | 7.84% | 9.80% | 82.35% |
| **No** | 97.52% | 15.13% | 18.37% | 66.50% |

[1] Chi-square=5.645, DF = 2, P = 0.059.

*vii. Whether a Warning Notice was Given to the Employee Before Dismissal*

Serving a warning notice on the employee before initiating dismissal is part of due process. While not required by law, the data in Table 23 shows (n=2054) that some employers do serve warning notices on employees (frequency rate of 20.20%). Yet the majority of employers do not serve warning notices on employees (frequency rate of 79.80%). The employee loses more when served with a warning notice prior to dismissal (employee loses 78.80% of the time) when compared with the employee who received no warning notice (employee loses 63.88% of the time). Whether a warning notice was given to the employee before the dismissal was significant in the variation of the outcome of the case (Chi-square=35.210, DF = 2, P < 0.001).

*Table 23: Case Outcome by Whether a Warning Notice was Provided to the Employee Before Dismissal (N=2054)*

| **Warning Notice**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes** | 20.20% | 11.33% | 9.88% | 78.80% |
| **No** | 79.80% | 15.86% | 20.26% | 63.88% |

[1] Chi-square=35.210, DF = 2, P < 0.001.

*g. Previous Dispute Resolution*

*i. Previous Labor Dispute Arbitration Outcome*

Labor dispute arbitration is the first instance forum for labor dispute resolution in China. It would be interesting to see whether its outcome has any bearing on the ensuing lawsuit in dismissal cases. From the data (n=2054) in Table 24, the court has a tendency to confirm the arbitration decision. When the arbitration outcome is completely in favor of the employee, the employee loses the least in the litigation (employee loses 35.14% of the time); when the arbitration outcome is completely in favor of the employer, the employee loses the most in the litigation (employee loses 86.59% of the time); when the arbitration outcome is partially in favor of the employee, the employee losing rate is in between the two (employee loses 43.19% of the time). This shows that labor dispute arbitration is a very important stage in the protection of the employee's rights that clearly has an impact on the outcome of the ensuing lawsuit. Previous labor dispute arbitration outcome was significant in the variation of the outcome of the case (Chi-square=683.419, DF = 6, P < 0.001). 12.12% of the cases were rejected by labor dispute arbitral tribunal on different grounds. These cases eventually reached the court. The employees lose 59.44% of the time in this type of case.

*Table 24: Case Outcome by Previous Labor Dispute Arbitration Outcome (N=2054)*

| Arbitration Outcome | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **Completely in Favor of the Employee** | 12.61% | 56.76% | 8.11% | 35.14% |
| **Partially in Favor of the Employee** | 16.80% | 17.39% | 39.42% | 43.19% |
| **Completely in Favor of the Employer** | 48.64% | 4.00% | 9.41% | 86.59% |
| **Case Rejected by Labor Arbitration Tribunal** | 12.12% | 10.84% | 29.72% | 59.44% |

[1] Chi-square=683.419, DF = 6, P < 0.001.

*ii. Previous Mediation Attempt?*

If the parties attempted mediation prior to the lawsuit, would that have a bearing on the litigation outcome? In China, parties are asked to disclose previous mediation attempts to the court. From the data (n=2054) in Table 25, the great majority of parties did not attempt mediation prior to litigation (frequency rate of 94.89%). When parties did not attempt mediation, the employee lost 67.11% of the time. Only around 5% of the time did parties attempt mediation. When parties attempted mediation, but failed to reach a settlement, the employee lost 63.00% of the time. When parties attempted mediation, successfully reached a settlement, but later revoked the settlement and commenced litigation, the employee lost 60.00% of the time. A previous mediation attempt was insignificant in the variation of the outcome of the case (Chi-square=2.835, DF = 4, P = 0.586).

*Table 25: Case Outcome by Previous Mediation Attempt (N=2054)*

| **Previous Mediation Attempt**[1] | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes, Attempted Mediation but Without a Settlement** | 4.87% | 17.00% | 20% | 63.00% |
| **Yes, Attempted Mediation and with a Settlement** | 0.24% | 0% | 40% | 60% |
| **No** | 94.89% | 14.88% | 18.01% | 67.11% |

[1] Chi-square=2.835, DF = 4, P = 0.586.

*h. Substantive Review of the Legality and Fairness of the Dismissal?*

*i. Court Ruling of Legality of the Dismissal*

From the data (n=2054) in Table 26, the court found the dismissal was legal 69.96% of the time and illegal 28.53% of the time. Cases of illegal dismissal usually concern the employer failing to notify the labor union prior to dismissing the employee, which is in breach of the law.[161] When the court found that the dismissal was legal, the employee lost 93.53% of the time. When the court found the dismissal to be illegal, the employee lost 2.90% of the time. This shows that the court's finding of legality of the dismissal is crucial to the outcome of the case: when the court finds the dismissal to be

[161] *See supra* note 107 and accompanying text. Under the LCL, prior to the dismissal, the employer must notify the relevant labor union of its decision to dismiss the employee and the reasons for the dismissal. Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 43.

legal, the employee almost never wins; when the court finds the dismissal to be illegal, the employee almost never loses. However, as will be shown below, the court reached this decision most of the time by simply applying the plain meaning of Article 39(2) of the LCL without deeper inquiry into the reasonableness of the internal rules or the fairness of the dismissal. In other words, when determining the question of legality, the court most of the time simply stopped at the factual question of whether the internal regulations of the employer were breached by the employee without further qualitative inquiry into fairness.

The court ruling of legality of the dismissal was significant in the variation of the outcome of the case (Chi-square=1592.832, DF = 4, P < 0.001).

*Table 26: Case Outcome by Court Ruling of Legality of the Dismissal (N=2054)*

| **Dismissal Legal?** | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes** | 69.96% | 1.18% | 5.29% | 93.53% |
| **No** | 28.53% | 49.15% | 47.95% | 2.90% |
| **No Information or Insufficient Information to Decide** | 1.51% | 6.45% | 51.61% | 41.94% |

[1] Chi-square=1592.832, DF = 4, P < 0.001.

### *ii. Court Ruling of Legality of the Relevant Internal Regulations of the Employer Company*

Internal regulations could be ruled as "illegal" for a number of reasons. The most common ground is that the internal regulations were adopted without proper endorsement by the decision-making body of the employer company (either the board or general meeting). The other reason is the failure to publicly notify (*gongshi*) the employee about the contents of the internal regulations (the public notification requirement). While the court ruled the dismissal

illegal 28.53% of the time,[162] the court only found the relevant internal regulations of the employer were illegal 2.73% of the time, as shown in Table 27. This shows that most cases of illegal dismissals were unrelated to the legality of internal regulations. However, the court ruling of legality of internal regulations was significant in the variation of the outcome of the case (Chi-square=105.773, DF = 2, P < 0.001).

*Table 27: Case Outcome by Court Ruling of Legality of the Relevant Internal Regulations of the Employer Company (N=2054)*

| **Internal Regulations Illegal?** | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes** | 2.73% | 48.21% | 48.21% | 3.57% |
| **No** | 97.27% | 14.01% | 17.32% | 68.67% |

[1] Chi-square=105.773, DF = 2, P < 0.001.

### *iii. Whether the Court Conducted a "Fairness Review" (a Substantive Review of the Dismissal to Determine Its Fairness)*

The data in Table 28a shows (n=2054) that courts in most cases (68.26% of the time) did not conduct a fairness review (substantive review of the dismissal to determine its fairness). This implies that the courts in these cases simply looked at the facts to determine if the employees seriously breached the employer company's internal regulations. The courts in these cases did not consider whether the dismissals were fair or unfair. This is immensely troubling as employees are completely unprotected from unfair dismissal in these cases. For instance, the internal regulations could be so unreasonable that breaching the regulations should not justify dismissal. Justice cannot be served if breaching the internal regulations was the only factor the court considered in reaching its decision. This is particularly unsatisfactory as courts are required to conduct a fairness review under the law. Under the SPC 2008 Interpretation,[163] if the employer is "really wrong" in dismissing the

[162] *See supra* Table 26.

[163] *See supra* note 108 and accompanying text.

employee, the court can revoke the dismissal. This confers substantive review powers, as well as an obligation on the court to assess whether the dismissal was unfair. The court's failure to conduct a fairness review is, therefore, a contravention of the law.

From Table 28a, when no fairness review is conducted, the employer wins 89.59% of the time. When the court does conduct a fairness review, the employer prevails only 18.10% of the time. This stark contrast shows the critical impact of the fairness review on case outcomes. Whether the court conducted a substantive review of the dismissal to determine its fairness was significant in the variation of the outcome of the case (Chi-square=1044.008, DF=2, P<0.000).

As seen in Table 28b, when the court does conduct a fairness review (frequency rate of 31.74%), the court almost always finds for the employee when the dismissal was unfair[164] and almost always finds for the employer when the dismissal was fair.[165] The only exception is when the court found that both the internal regulations were unreasonable and the breach was not serious (the employee's losing rate is as high as 20%). But given the very low rate of frequency (0.24%), this seems to be an outlier rather than the norm. When the breach was not serious, the losing rate of the employee was as low as 0.81%. This shows that the employee almost always prevails if the breach is technical, as long as the court conducts a fairness review.

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[164] When the court found the internal regulations were unreasonable (after conducting a fairness review), the losing rate of the employee was 2.78%; when the breach was not serious, the losing rate of the employee was as low as 0.81%; and when the court found the dismissal was unfair or illegal on other grounds, the losing rate of the employee was 1.59%. *Infra* Table 28b.

[165] The losing rate of the employee was as high as 98.20% when the court found that the dismissal was fair after conducting a fairness review. *Infra* Table 28b.

*Table 28a: Case Outcome by Whether the Court Conducted a Fairness Review (a Substantive Review of the Dismissal to Determine Its Fairness) (N=2054)*

| Fairness Review? | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **Yes** | 31.74% | 40.80% | 41.10% | 18.10% |
| **No** | 68.26% | 2.92% | 7.49% | 89.59% |

[1] Chi-square=1044.008, DF=2, P<0.000.

*Table 28b: Case Outcome by Whether the Court Conducted a Fairness Review: Breakdown of Court Ruling When a Fairness Review was Conducted (N=2054)*

| | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|
| **Yes. The Internal Regulations Were Unreasonable** | 1.75% | 66.67% | 30.56% | 2.78% |
| **Yes. The Breach Was Not Serious** | 5.99% | 54.47% | 44.72% | 0.81% |
| **Yes. Both the Internal Regulations Were Unreasonable and the Breach Was Not Serious** | 0.24% | 80% | 0% | 20% |
| **Yes. Other Grounds for Finding the** | 18.35% | 45.36% | 53.05% | 1.59% |

| | | | | |
|---|---|---|---|---|
| **Dismissal Unfair or Illegal** | | | | |
| **Yes. The Dismissal Was Fair** | 5.40% | 0% | 1.80% | 98.20% |
| **No. Did Not Conduct a Substantive Review** | 68.26% | 2.92% | 7.49% | 89.59% |

[1] Chi-square=1469.876, DF = 10, P < 0.001.

*i. Procedural Variables*

*i. Trial in Absentia*

From the data (n=2054) in Table 29, when the employer is absent at trial, the employee loses the least (28.57%), which is understandable. It is, however, paradoxical that the employee loses more when both parties are present (67.18%) than when the employee was absent (61.54%). When both parties were absent, the employee loses 100% of the time. Trial in absentia was significant in the variation of the outcome of the case (Chi-square=17.346, DF = 6, P < 0.01)

*Table 29: Case Outcome by Trial in Absentia (N=2054)*

| **Trial in Absentia** | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| **Yes. The Employee Was Absent** | 0.63% | 38.46% | 0% | 61.54% |
| **Yes. The Employer Was Absent** | 0.68% | 35.71% | 35.71% | 28.57% |

| | | | | |
|---|---|---|---|---|
| **Both Parties Were Present** | 98.64% | 14.66% | 18.16% | 67.18% |
| **Both Parties Were Absent** | 0.05% | 0% | 0% | 100% |

[1] Chi-square=17.346, DF = 6, P < 0.01.

### *ii. Legal Basis of Court's Decision: Substantive/Procedural/Both*

Based on the data (n=2054) in Table 30, it appears that whenever the court rules on a purely procedural basis, the employee has a greater chance of winning (employee wins 28.26%). The employee's wining rate is around the same when the court rules on a purely substantive basis as when the court rules on both procedural and substantive bases. It is difficult to make sense of this finding. One possible reason is that since the rate of frequency of the court ruling on a purely procedural basis is very low (2.24%), these cases are likely to involve more serious procedural breaches on the part of the employer, thus explaining the higher winning rate of the employee. The legal basis of the court's ruling was significant in the variation of the outcome of the case (Chi-square=16.660, DF = 4, P < 0.01).

*Table 30: Case Outcome by the Legal Basis of Court's Ruling (N=2054)*

| **Legal Basis of Court's Ruling** | **Frequency** | **Employee Wins** | **Both Sides Win Partially** | **Employer Wins** |
|---|---|---|---|---|
| Substantive Basis | 42.26% | 14.29% | 18.20% | 67.51% |
| Procedural Basis | 2.24% | 28.26% | 32.61% | 39.13% |
| Both | 55.50% | 14.91% | 17.54% | 67.54% |

[1] Chi-square=16.660, DF = 4, P < 0.01.

*j. Law and Regulations of the State*

*i. Relevant Labor Statutory Provisions Applied by the Court*

Based on the data (n=2054) in Table 31, when courts apply pro-labor local rules,[166] the employee wins more than when the rules are not applied. This shows that local legislation that seeks to protect labor rights are helpful to employees in advancing their cases in litigation. When the court applies Article 47 (relating to the calculation of compensation), Article 48 (relating to the consequence of unlawful termination) or Article 87 (relating to double financial compensation for unlawful termination) of the LCL, [167] the employees' winning rate is higher than when these provisions were not applied. The application of relevant labor statutory provisions was significant in the variation of the outcome of the case.[168]

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[166] Pro-labor local rules applied by courts include, for example, Chongqingshi Shiye Baoxian Tiaoli (重庆市失业保险条例) [Regulations on Unemployment Insurance of Chongqing] arts. 18, 24, 25 (promulgated by the Standing Comm. People's Cong. Chongqing Municipality, Nov. 29, 2011, effective Jan. 1, 2012), https://www.pkulaw.com/lar/a62e26236f904f5417251a6213fcb728bdfb.html [https://perma.cc/C8JD-GTUT] (China); Guanyu Qiye Xiaji Gaowen Jintie Biaozhun de Tongzhi (关于企业夏季高温津贴标准的通知) [Notice of Enterprise Summer Heat Allowance Rates] (promulgated by the Jiangsu Provincial Dep't Hum. Res. & Soc. Sec., Provincial Nat'l Tax'n Bureau & Provincial Loc. Tax'n Bureau, Jun. 27, 2011, effective Jun. 27, 2011), https://www.pkulaw.com/lar/88d45c6c8d5c7993c0353195456808febdfb.html [https://perma.cc/UG87-UXMZ] (China); Fujiansheng Shishi Gongshang Baoxian Tiaoli Banfa (福建省实施《工伤保险条例》办法) [Measures for the Implementation of the Regulations on Work Injury Insurance in Fujian Province], art. 27 (promulgated by People's Gov. Fujian Province, Sep. 4, 2011, effective Sep. 4, 2011), https://www.pkulaw.com/lar/4b5bd067e3c00d327a6eccebf067f2b7bdfb.html [https://perma.cc/M3UG-ANC8] (China).

[167] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 47-48, 87.

[168] *See infra* Table 31.

*Table 31: Case Outcome by Relevant Labor Statutory Provision Applied by the Court (N=2054)*

| Relevant Labor Statutory Provision Applied? | | Frequency | Employee Wins | Both Sides Win Partially | Employer Wins |
|---|---|---|---|---|---|
| **Art. 39 of the Labor Contract Law**[1] | Yes | 85.00% | 11.34% | 13.86% | 74.80% |
| | No | 15.00% | 35.39% | 42.53% | 22.08% |
| **Art. 47 of the Labor Contract Law**[2] | Yes | 22.54% | 37.37% | 56.37% | 6.26% |
| | No | 77.46% | 8.42% | 7.04% | 84.54% |
| **Art. 48 of the Labor Contract Law**[3] | Yes | 15.00% | 39.61% | 43.51% | 16.88% |
| | No | 85.00% | 10.60% | 13.69% | 75.72% |
| **Art. 87 of the Labor Contract Law**[4] | Yes | 24.25% | 34.34% | 46.99% | 18.67% |
| | No | 75.75% | 8.74% | 8.93% | 82.33% |
| **Pro-Labor Local Rules**[5] | Yes | 9.40% | 19.17% | 25.91% | 54.92% |
| | No | 90.60% | 14.51% | 17.36% | 68.14% |

[1] Chi-square=328.627, DF = 2, P < 0.001
[2] Chi-square=1001.090, DF = 2, P < 0.001
[3] Chi-square=411.125, DF = 2, P < 0.001
[4] Chi-square=694.721, DF = 2, P < 0.001
[5] Chi-square=14.147, DF = 2, P <0.001

*k. Linear Regression*

*i. A Methodological Note*

The multivariate linear regression of this study only selected a portion of the variables as independent variables and dependent variables.[169] This is because multivariate regression requires both independent and dependent variables to be continuous variables. As such, categorical variables (such as the location of the parties, the employee's claim type, type of legal representation of the parties, the employer's capacity, and the principal reason for dismissal) are not selected for the regression.

*ii. Relationships Between Relevant Independent Variables and Monetary Award*

According to the linear regression results in Table 32 (under Model 1), a number of independent variables (i.e., the average earned income of the employee, the amount of the monetary claim, the amount of monetary award in the previous labor dispute arbitration and whether double financial compensation is claimed) are significantly positively related to the monetary award in the litigation. Regional differences (in terms of per capita GDP in each province) also has a positive impact on the monetary award.

Under Model 2 also in Table 32, "fairness review" is added to the linear regression. The regression shows that the court conducting a fairness review is significantly positively related to the monetary award.

Under the law, employees who are wrongfully dismissed are automatically entitled to double financial compensation.[170] However, in practice, the courts will not consider awarding double financial compensation unless specifically pleaded.[171] The linear regression (under both models) shows that claiming double financial compensation is significantly positively related to the monetary award. One possible explanation for this significantly

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169 *See infra* Tables 32-33.

170 Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 87.

171 *See supra* Section V.F.3; *supra* Table 19.

positive relationship is that employees will only claim double financial compensation when their cases are strong.

The linear regression (under both models), which shows that monetary award in the previous labor dispute arbitration is positively and significantly related to the monetary award in the litigation, suggests that previous arbitration outcome is indicative of litigation outcome.

While no particular pattern is identified in the variation of outcome by the average earned income of the employees in the bivariate analysis above,[172] the average earned income of the employee and the monetary award is significantly positively related under Model 1 of the linear regression. The significance expanded under Model 2. A possible explanation for this is that an employee with higher income is more resourceful and in a more advantageous position to litigate the case than an employee with lower income.

The amount of the monetary claim is significantly positively related to the monetary award under both models of the linear regression. It appears that a greater monetary claim is likely to result in a larger monetary award.

Courts in different regions may adopt divergent adjudication policies. Economic divergences (here focusing on GDP per capita)[173] may affect the outcome of these cases. For instance, some regions may be more pro-employer than others due to economic development needs.[174] Under Model 1, the linear regression shows regional differences (in terms of per capita GDP in each province) has a positive impact on the monetary award. However, Model 2 shows no significance between the two.

Whether the employer notified the labor union is significantly negatively related to the monetary award under Model 1. In other words, if the employer failed to notify the labor union before dismissing the employee, the employee will receive more compensation. The significance decreased under Model 2.

Interestingly, the linear regression (under both models) shows that legal representation of both the employer and the employee are insignificantly related to the monetary award.

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172 *See supra* Section V.C.5; *supra* Table 10.

173 For an explanation about the data source, see *supra* note 139.

174 *See supra* Section V.A.2; *supra* Table 2. However, as Table 2 shows, some regions with higher GDP are not necessarily more pro-employer than some regions with lower GDP.

*Table 32: Relationships Between Relevant Independent Variables and Monetary Award in Litigation (N=2054)*

| | **Model 1** | **Model 2** |
|---|---|---|
| **Regional Variations (Per Capita GDP in Each Province)** | .056* | .039 |
| **Year of the Decision** | .043 | .042 |
| **Number of Employees as Plaintiff/Defendant** | .010 | .003 |
| **Length of Absence (of the Employee) Without Justification** | -.021 | .008 |
| **Average Earned Income of the Employee** | .077** | .081*** |
| **Employee's Legal Representation** | .012 | .022 |
| **Employer's Legal Representation** | -.012 | -.008 |
| **Amount of the Monetary Claim** | .162*** | .192*** |
| **Employer Notified Labor Union** | -.109*** | -.056* |
| **Previous Labor Dispute Arbitration (Whether or Not)** | .032 | .035 |
| **Warning Notice Given by the Employer** | -.033 | -.003 |
| **Previous Labor Dispute Arbitration (Money Awarded)** | .451*** | .383*** |
| **Double Financial Compensation** | .126*** | .094*** |
| **Employee Claimed Litigation Costs** | -.030 | .002 |
| **Court Conducted Fairness Review (Whether or Not)** | | .341*** |
| **R2** | .363 | .467 |

*p <.05, **p<.01, ***p<.001

### *iii. Relationships Between Relevant Independent Variables and the Employee's Success Rate*

For the purpose of the linear regression, the employee's "success rate" is calculated as follows: (1) for purely monetary claims, the success rate is the monetary award divided by the monetary claim; (2) for purely non-monetary claims, the success rate is 100% when the claim is allowed and 0% if the claim is disallowed;[175] (3) for hybrid claims (with both monetary and non-monetary elements), the success rate is the success rate of the monetary claim*0.5 + the success rate of the non-monetary claim*0.5.

Under Model 1 of the linear regression in Table 33, the length of absence (of the employee) without justification, the amount of the monetary claim, whether employee claimed litigation costs, and whether the employer has notified the labor union before the dismissal are significantly negatively related to the employee's success rate in litigation. Warning notice has a negative correlation with the employee's success rate.[176] In other words, if the employer gave warning notice, there is a lesser chance of the employee winning in litigation.

The monetary award in the previous labor dispute arbitration is significantly positively related to the employee's success rate in litigation. In other words, the greater the amount of monetary award in the previous arbitration, the easier it is for employees to win in the litigation. This shows that the outcome of labor dispute arbitration is a yardstick for litigation success. Whether the employee claimed double financial compensation is also significantly positively related to the employee's success rate in litigation. This can be explained as the employees will only claim double financial compensation when their cases are strong.

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[175] For pure non-monetary claims, there are two situations: (a) request to continue the labor contract; or (b) request to confirm that a labor relationship exists between employer and employee during a certain period of time. For the first situation, the employee's wining rate is 100% if the court decides to continue the labor contract; otherwise, the wining rate is 0%. For the second situation, the employee's winning rate is 100% if the court decides to confirm the labor relationship; otherwise, the winning rate is 0%.

[176] Warning notice refers to the employer giving written warning to the employee for violation of the internal regulations of the company before the dismissal.

It is worth noting that there is a positive correlation between the year and the employee's success rate, which means that as time goes by, it is easier for employees to win in litigation.

In Table 33, under Model 2, "fairness review" is added to the linear regression. The regression shows that the court conducting a fairness review is significantly positively related to the employee's success rate.

The length of absence (of the employee) without justification and warning notice (which were significant under Model 1) become insignificant under Model 2. The positive and negative correlations and significance of other variables (under Model 1) have not changed in Model 2, although the significance of whether the employer notified the labor union has been weakened under Model 2.

*Table 33: Relationships Between Relevant Independent Variables and the Employee's Success Rate in Litigation (N=2054)*

| | **Model 1** | **Model 2** |
|---|---|---|
| **Regional Variations (Per Capita GDP in Each Province)** | -.009 | -.024 |
| **Year of the Decision** | .106*** | .104*** |
| **Number of Employees as Plaintiff/Defendant** | .019 | .005 |
| **Length of Absence (of the Employee) Without Justification** | -.076* | -.019 |
| **Average Earned Income of the Employee** | -.004 | .004 |
| **Employee's Legal Representation** | -.046 | -.027 |
| **Employer's Legal Representation** | -.037 | -.030 |
| **Amount of the Monetary Claim** | -.163*** | -.104*** |
| **Employer Notified Labor Union** | -.165*** | -.062** |
| **Previous Labor Dispute Arbitration (Whether or Not)** | -.002 | .008 |
| **Previous Labor Dispute Arbitration (Monetary Award)** | .271*** | .138*** |
| **Double Financial Compensation** | .135*** | .073*** |
| **Employee Claimed Litigation Costs** | -.134*** | -.071*** |
| **Warning Notice Given by the Employer** | -.081** | -.023 |
| **Court Conducted Fairness Review (Whether or Not)** | | .668*** |
| **R2** | .179 | .578 |

*p <.05, **p<.01, ***p<.001

## VI. DISCUSSION

### *a. The Employers Came Out Ahead by a Substantial Margin – Confirming Chinese Courts Are Pro-Employer*

From the data (n=2054), the employers came out ahead by a significant margin.[177] The employers won 66.89% of the time.[178] The success rate of employees is very low, only 14.95%. This means that employers are winning by a *substantial margin* of 51.94%. The recovery rates for employees in monetary claims tell the same story (n=1848): an overwhelming victory for employers. The employee recovered nothing 68.51% of the time.[179] The employee achieved full recovery only 11.58% of the time.[180]

This study contradicts existing empirical studies that found employees came out ahead.[181] It also contradicts the established perception that Chinese courts are pro-labor. Informants have confirmed that LCL is a pro-labor piece of legislation.[182] One informant said, the LCL is definitely pro-labor, as "the employee is the weaker party."[183] Most informants were of the view that courts must interpret the LCL and other labor statutes in a way that favors employees.[184] A pertinent question arises: if the labor statutes are clearly pro-labor, how can employers win by such a substantial margin? Employers' overwhelming success in this study suggests that Chinese courts are *not* pro-labor, but pro-employer.

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177 *See supra* Section V.B.1; *supra* Table 4.

178 From the employees' points of view, their losing rate is 66.89% of the time. *Supra* Table 4.

179 *Supra* Table 4.

180 In rare cases (0.32%), the court awarded more than 100% of the monetary claim (the highest recovery rate was 133% of the monetary claim). *Supra* Table 4.

181 For empirical studies finding that employees came out ahead, see sources cited *supra* note 76 and accompanying text. For an example of studies finding the opposite, see He & Su, *supra* note 74.

182 Informant ID: 2020.07.09.1, *supra* note 17; Informant ID: 2020.07.20.9, *supra* note 17; Informant ID: 2020.08.11, *supra* note 17; Informant ID: 2020.06.17.9, *supra* note 17; Informant ID: 2020.07.09.2, *supra* note 17; Informant ID: 2020.06.17.6, *supra* note 17.

183 Informant ID: 2020.07.20.9, *supra* note 17.

184 The questionnaire responses are on file with the author.

*b. Critical Evidence Confirming That Courts Are Pro-Employer: Courts Did Not Conduct Fairness Review in Most Cases*

The data clearly show that courts *do not* favor employees (but favor employers), as courts in most cases (68.26% of the time) did not conduct a "fairness review" (a substantive review of the dismissal to determine its fairness).[185] This implies that courts in these cases simply looked at the facts to determine if the employees seriously breached the employer company's internal regulations. The courts in these cases did not consider whether the dismissals were fair or unfair. No pro-labor court would leave out a fairness review. In fact, a "neutral" court would still conduct a fairness review, as it is an obligation of the court under Article 20 of the SPC 2008 Interpretation.[186] Only a pro-employer court would neglect such a legal obligation. Evidence from the interviews confirm that judges generally ignore such a legal obligation citing different reasons.[187] Informants confirm that some judges do not see the fairness review as a "mandatory requirement."[188] Even judges who believe there is an inherent "moral duty" to conduct the review[189] argue that the LCL is unclear as to whether there is an expressed obligation to conduct a fairness review. One informant pointed out that many judges see Article 39(2) of the LCL as a "contentious provision" that gives "extensive discretion to the judge", including the discretion not to conduct a fairness review.[190]

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185 *See supra* Table 28a.

186 Under the SPC 2008 Interpretation, if the employer is "really wrong" in dismissing the employee, the court can revoke the dismissal. This confers the power, as well as the responsibility, on the court to assess whether or not the dismissal was unfair. The court's failure to conduct a fairness review is, therefore, a contravention of the law. *See supra* note 108 and accompanying text.

187 As stated above, if the employer is "really wrong" (or clearly in error) (确有错误) in dismissing the employee, the court can revoke the dismissal. Article 20 of the SPC 2008 Interpretation confers not only the power to review fairness of a dismissal, but also an obligation to conduct a review. *Supra* note 108. The provision, on its face, is permissive in that the court can revoke the dismissal if there is a clear error. But, by implication, the court must have done a fairness review before it is in a position to revoke the dismissal. The fairness review is not an option, it is an obligation.

188 *See, e.g.*, Informant ID: 2020.07.20.9, *supra* note 17; Informant ID: 2020.06.17.9, s*upra* note 17; Informant ID: 2020.07.09.1, s*upra* note 17.

189 *See, e.g.*, Informant ID: 2020.07.09.3, s*upra* note 17; Informant ID: 2020.06.17.2, s*upra* note 17; Informant ID: 2020.06.17.9, s*upra* note 17.

190 Informant ID: 2020.07.20.9, s*upra* note 17.

Even barring the legal requirement, any decision without a fairness review is bound to be irrational (and unjust) as the employer gets a free ride whenever it proves any breach of its internal regulations by the employee, however technical. Only a pro-employer court would deliberately ignore reviewing the fairness of the dismissal and accept such irrationality in its decision. In fact, conducting a fairness review is the logical step in adjudicating Serious Breach Dismissal Cases. When a fairness review is conducted (frequency rate of 31.73%), the court almost always find for the employee when the dismissal was unfair[191] and almost always find for the employer when the dismissal was fair.[192] Failing to conduct a fairness review leaves employees completely unprotected from unfair dismissal. For instance, the internal regulations could be so unreasonable that breaching the regulations should not justify dismissal. Justice cannot be served if breaching the internal regulations was the only factor that the court considered in reaching its decision.

Some informants have confirmed that courts are unwilling to conduct a fairness review because they are minded to "preserve corporate autonomy" and "avoid interfering with the internal management of the company."[193] One informant said "corporate autonomy" is important, and "courts try not to substitute their views for the views of the employers."[194] In other words, so long as the internal regulations are legally constituted, [195] courts are unwilling to challenge them on the basis of "reasonableness" or "fairness" as courts believe the employer is acting within the sphere

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[191] When the court found the internal regulations were unreasonable (after conducting a fairness review), the losing rate of the employee was 2.78%; when the breach was not serious, the losing rate of the employee was as low as 0.81%; and when the court found the dismissal was unfair or illegal on other grounds, the losing rate of the employee was 1.59%. *Supra* Table 28b.

[192] The losing rate of the employee was as high as 98.20% when the court found that the dismissal was fair after conducting a fairness review. *Supra* Table 28b.

[193] Informant ID: 2020.07.09.1, s*upra* note 17; Informant ID: 2020.07.20.9, s*upra* note 17; Informant ID: 2020.06.17.6, s*upra* note 17.

[194] Informant ID: 2020.07.09.1, *supra* note 17.

[195] Courts are, however, concerned about the "legality" of the internal regulations. Internal regulations could be ruled as "illegal" for a number of reasons. The most common ground is that the internal regulations were adopted without proper endorsement by the decision-making body of the employer's company (either the board or the general meeting). The other reason is the failure to publicly notify (*gongshi*) the employee about the contents of the internal regulations (otherwise known as the public notification requirement).

of its corporate autonomy to dismiss employees based on its own regulations.[196] The court's overarching concern for "corporate autonomy" is another clear indication that courts in China are pro-employer. "Corporate autonomy" has become a convenient excuse for courts to evade the critical question of whether the dismissal was unfair. If courts are pro-labor, they should not be concerned at all about the nebulous notion of "corporate autonomy" (or "internal management autonomy") and should step in to protect labor rights.

The unwillingness of most Chinese courts to conduct a fairness review points to one conclusion: Chinese courts are pro-employer. The fairness review is pivotal in the determination of outcome. The linear regression shows that conducting a fairness review has significant positive relations with monetary award and the employee's success rates.[197] The stark difference in the employer's success rate with or without fairness review supports this conclusion. When no fairness review is conducted, the employer wins 89.59% of the time. When the court does conduct a fairness review, the employer prevails only 18.10% of the time.[198] When the court conducts a fairness review, the odds are reversed and the employee actually comes out ahead.[199] By leaving out the fairness review, Chinese courts are deliberately taking the employer's side.

There are two other pieces of evidence that confirm the pro-employer stance of courts. First, according to the SPC 2013 Interpretation, if the employer fails to notify the labor union before dismissal, the court should automatically rule in favor of the employee. However, according to the data, the court has ruled against the employee 59.72% of the time in such a situation.[200] This is a direct contradiction of the SPC 2013 Interpretation and reveals the court's favor toward employers. Second, employees who are wrongfully dismissed are automatically entitled to double financial compensation under the law.[201] However, in practice, the courts will not consider awarding double financial compensation unless specifically pleaded, which is a violation of the law and reveals

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196 Informant ID: 2020.07.09.1, s*upra* note 17; Informant ID: 2020.07.20.9, s*upra* note 17; Informant ID: 2020.06.17.6, s*upra* note 17.

197 *See supra* Tables 32-33.

198 *Supra* Table 28a.

199 *See supra* Table 28a. When a fairness review is conducted, the employee wins 40.80% of the time. When a fairness review is not conducted, the employee only wins 2.92% of the time. *Supra* Table 28a.

200 *Supra* Table 21.

201 Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 87.

judicial bias that favors employers. From the data, 69.08% of employees did not specifically plead double financial compensation.[202] This practice (which is against the law) is another clear indication that Chinese courts are pro-employer, as even a "neutral court" would award double financial compensation without the need for it to be specifically pleaded.

*c. Practical Reasons the Court Did Not Conduct a Fairness Review*

Informants have identified practical reasons why courts, in many cases, did not review the fairness of the dismissal.[203] One informant, explaining why he exercised his discretion to not conduct a fairness review, said that internal regulations are "very well thought out documents" and are drafted based on detailed and good precedents.[204] It is not entirely possible for judges to find problems in them, even if a fairness review is conducted. To some judges, conducting fairness review is a daunting task, and a time-consuming one. Informants said the overloaded dockets of courts was the other reason for judges' reluctance to conduct the review.[205] One informant said that judges are simply "too busy" to conduct the review.[206] Another informant mentioned that judges are concerned that if they conducted fairness reviews and rigorously enforced labor rights, it would open a floodgate of cases, which would not be in the institutional interests of the courts. This informant said courts from less developed regions tend to hold this view.[207]

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202 *Supra* Table 19.

203 When asked why courts in most cases did not conduct a fairness review, some respondents to the questionnaire said that the courts did not have sufficient time to conduct the review due to heavy caseloads, while others attributed it to the judicial belief that the formulation of the internal regulations and the decisions to dismiss are the internal business decisions of the employer.

204 Informant ID: 2020.07.09.01, *supra* note 17.

205 Informant ID: 2020.07.09.01, *supra* note 17; Informant ID: 2020.07.09.02, *supra* note 17.

206 Informant ID: 2020.07.09.01, *supra* note 17.

207 Informant ID: 2020.06.17.6, *supra* note 17.

*d. Contribution to the Party Capability Theory*

At first glance, the finding in this study seems to confirm Galanter's party capability theory, as employers (the "haves") came out ahead. But when one looks closer, the employer really won because courts favored employers, not because of party capability advantages. As mentioned above, the courts sided with the employers by refusing to conduct a fairness review in most cases. When the court actually conducts a fairness review, the outcome is reversed and the employee actually comes out ahead.[208] The party capability theory presupposes courts are generally impartial and places a high premium on procedural fairness.[209] While this may be true for US courts, it may not be applicable to judiciaries of other countries, especially in developing states where courts tend to be partial and dependent. Haynie argues that while the party capability theory applies in industrialized nations, its applicability in developing states is questionable (using the Philippines as an example).[210] In He and Su's Study, despite finding the haves came out ahead in Shanghai courts, the author admitted that "there is a need to go beyond the party capability theory" and cited a number of factors that determined outcome aside of party resource imbalance.[211] These factors included, among other things, the political and social "penetrability" of Chinese courts (i.e. the fact that Chinese courts are subject to outside political influence and stability maintenance concerns).[212] Local governments, with potentially vested interests in the haves, are likely to influence courts to side with the haves. The margin of victory for the haves in Shanghai courts is most extreme when it is a government agency and government-related firm litigating (whether against repeat players

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[208] *See supra* Table 28a (showing that when a fairness review is conducted, the employee wins 40.8% of the time and that when a fairness review is not conducted, the employee only wins 2.92% of the time).

[209] *See* Galanter, *supra* note 95, at 96 (outlining general assumptions including that court-like agencies purport to adjudicate conflicts impartially).

[210] Haynie, *supra* note 69, at 60.

[211] He & Su, *supra* note 74, at 139 ("[T]he party capability thesis remains intact, if not sufficient, to explain away the winning gap between the haves and the have-nots.").

[212] *See supra* note 74, at 139-42 (discussing the concept of "penetrable courts").

or one-shotters).[213] This shows the significance of political embeddedness in determining outcome.

In the current study, legal representation, a critical element of party capability, is insignificant in the determination of outcome.[214] If one takes away the judicial favor for employers (i.e., the court faithfully conducts a fairness review in every case), the employees (have-nots) would have prevailed. This finding casts doubt as to whether party capability theory can adequately explain the litigation dynamics in China. This finding echoes an earlier study by the author on litigation between married-out women ("MOW") (have-nots) and village collectives (haves) in Chinese grassroots courts, in which it was found that the have-nots came out ahead by a substantial margin.[215] In that study, the data "shows the courts favored the 'have-nots' over the 'haves'" and that the "judicial favor for MOW . . . propelled the MOW (the 'have-nots') to victory."[216] That study and the current study show the instrumental importance of judicial preference in the determination of outcome in China. If the court favors a particular party, it is much more likely that that party will prevail. Judicial preference for a party appears to take precedence over resource advantages/disadvantages.

*e. Lawyer Capability*

Legal representation is a crucial variable of party capability.[217] This study shows mixed findings when it comes to lawyer capability. In the bivariate analysis, the employee loses more when the employee is represented.[218] In the same analysis, the employer wins more when the employer is represented. The outcome varied insignificantly by legal representation of the employee (Chi-square=5.638, DF = 2, P = 0.060)[219] and significantly by legal representation of the employer (Chi-square=6.660, DF = 2, P <

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213 S*upra* note 74, at 139 ("[A]fter controlling for legal representation, the difference in winning rates across the classes of the parties remained significant and large.").

214 *Supra* Section V.K.2; *supra* Tables 32-33.

215 S*upra* note 68, at 160.

216 S*upra* note 68, 68-69.

217 *See* Galanter, *supra* note 95, at 114-19 (discussing the beneficial implications of legal representation for a party's outcome).

218 *See supra* Table 14.

219 *See supra* Table 15.

0.05).[220] The linear regression, however, shows no significant relationship between legal representation of either party with the monetary award in litigation.[221] The linear regression also shows no significant relationship between legal representation of either party with the employee's success rate in litigation.[222]

*f. Other Observations*

An interesting observation can be drawn from the data (n=2054) relating to the employer's capacity.[223] It seems that courts are most favorable towards government employees, and least favorable to employees of foreign firms, as employees have lost the least when pitting against state organs and institutions (58.54%), and have lost the most when they are litigating against foreign firms (79.08%) and their local subsidiaries (79.21%).[224] This may reflect an underlying judicial policy of a sliding scale of labor rights protection. If one imagines two extremities on the scale of the labor market, one being state-controlled labor market and the other being free-market labor market, government employees belong to the former and foreign firm employees belong to the latter. It would be logical to expect courts to afford greater protection to employees in the state-controlled labor market (China being a socialist state) and less protection to employees in the free-market labor market.

The most common principal reason for dismissal was absence without justification (frequency rate of 40.51%).[225] The losing rate of the employee when the principal reason for dismissal was absence without justification was 72.72%, which is higher than the overall losing rate of 66.89%.[226] An informant said dismissal based on absence without justification is frequently used by employers as a convenient excuse to dismiss employees.[227] Sometimes employers will set unreasonable rules on absence. For instance, a two-day absence is regarded as a serious breach of internal regulations. But

220 *See supra* Table 15.
221 *See supra* Table 32.
222 *See supra* Table 33.
223 *See supra* Table 12.
224 *Supra* Table 12.
225 *See supra* Table 17.
226 *See supra* Tables 4, 17.
227 Informant ID: 2020.07.20.9, *supra* note 17.

there could be many reasons for an employee's unannounced absence. For example, the employee may be sick and can only produce evidence of sickness after the period of absence. The employer may say that the evidence was not furnished at the beginning of the period of absence. Absence regulations are prone to be manipulated to disfavor the employee. The relatively high losing rate suggests that courts are likely to have simply rubber-stamped the decision of the employer as long as the employee was dismissed according to the employer's absence regulations, no matter how unreasonable they were.

The court takes a very technical approach in the determination of legality of the dismissal. The court will usually rule the dismissal to be "illegal" if there is some procedural irregularity in the adoption of the internal regulations, for example, if the internal regulations were adopted without proper endorsement by the decision-making body of the employer company (either the board or general meeting), or if the employer failed to publicly notify (*gongshi*) the employee about the contents of the internal regulations (or the public notification requirement). Yet this approach to legality is overly technical and simplistic. The court should be in a position to test the "reasonableness" and "fairness" of the dismissal. If the internal regulations are unreasonable, the dismissal should still be ruled "illegal" even though technical boxes are ticked.

Serving a warning notice on the employee before proceeding with the dismissal is part of due process (although not strictly required by the law). But having received a warning notice should not negatively affect the employee's case. The data tells a different story.[228] The employee loses more when served with a warning notice prior to dismissal (losing rate of 78.80%) when compared with the employee who received no warning notice (losing rate of 63.88%). One way to interpret this data is courts are stricter on employers if they fail to serve a warning notice. But it can equally be interpreted that courts presume that somehow an employee who received a warning notice needs less protection from the court. The same can be said about whether the employee was given an opportunity to be heard. Where the employee was given an opportunity to be heard, the employee loses more in court (losing rate of 82.35%) as compared to the employee who was not given a chance to be heard (losing rate of 66.50%).[229] One speculation is that

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[228] *See supra* Table 23.

[229] *See supra* Table 22.

the courts view that if the employer had heard the employee's side of the story, the dismissal was somehow more "just." But this kind of assumption is irrational. The fact that the employee was granted an opportunity to be heard by the employer does not imply the employee's case is weaker.

When courts apply pro-labor local rules, the employee wins more.[230] This phenomenon makes good sense when one looks at the pro-labor regulations in Suzhou. Under the Suzhou Regulations, if the employer fails to give the employee an opportunity to be heard before dismissal, the dismissal must be considered unfair (and therefore, unlawful).[231] The Suzhou Regulations also imposes a requirement on the employer to consult (not just to notify) the labor union if an employee is dismissed under Article 39(2) of the LCL.[232] These procedural safeguards are absent under national law. Going forward, central policymakers are recommended to consider local pro-labor regulations (like the Suzhou Regulations) in revising national labor statutes.

*g. Limitations of This Study*

This study has a number of limitations. First, it focuses only on Serious Breach Dismissal Cases and does not examine other labor dispute lawsuits. While Serious Breach Dismissal Cases are an important type of labor dispute lawsuit, it cannot be representative of all labor dispute lawsuits. The conclusion that Chinese courts are pro-employer must be qualified as such.[233] Second, this study does not capture cases that were withdrawn or settled. It is possible that more meritorious cases brought by employees were settled (or withdrawn as a result of settlement or other reasons) at an early stage of litigation. If these cases were to enter the hearing stage, the success rate of employees may increase. There is no practical way to capture the judicial attitude towards settled and withdrawn cases empirically short of interviewing all judges who handled those cases. This limitation would be present in any study of this nature. Third, this study does not look into the attitude of the tribunals in

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230 *See supra* Table 31.

231 WORK INJURY LEGAL COMPENSATION NETWORK, *supra* note 49.

232 WORK INJURY LEGAL COMPENSATION NETWORK, *supra* note 49.

233 This is contrasted with the He and Su Study in which labor disputes are examined generally. *See supra* note 92.

labor dispute arbitration. Labor dispute arbitration is the first instance dispute resolution forum for labor disputes in China. While this study finds Chinese courts to be pro-employer, labor dispute arbitration tribunals may not necessarily be pro-employer.[234] Fourth, this study only covers DADs from 2010 to 2018. It does not cover the position pre-2010. Informants have indicated that courts tend to be more in favor of employees in the early days right after the passage of the LCL (in 2008).[235] This attitude may have changed throughout the years. Fifth, this study only surveyed first instance court decisions. The success rate of employees may change when some of these decisions go on appeal. Finally, the study sampled DADs that are available online. It is expected that courts will not disclose all DADs, as some of them may be politically sensitive. The sample, therefore, cannot be completely representative using only publicly available sources.[236] However, given that Serious Breach Dismissal Cases are unlikely to involve highly sensitive matters, it is expected that the proportion of undisclosed DADs is very small.

## VII. CONCLUSION AND IMPLICATIONS

This study contradicts the established perception that Chinese courts are pro-labor and past empirical literature that suggests employees are winning in labor disputes lawsuits.[237] Empirical evidence in this study shows the employers came out ahead by a significant margin.[238] This suggests Chinese courts are, in fact, pro-employer. The data clearly shows courts do not favor the employees, as courts in most cases (68.26% of the time) did not conduct a substantive review of the dismissal to determine its fairness (i.e. a "fairness review"),[239] which is required under the SPC

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234 As discussed above, the literature suggests that labor dispute arbitration tribunals are generally pro-labor. *See* cases cited *supra* note 77.

235 Informant ID: 2020.07.09.3, *supra* note 17.

236 *See* He & Su, *supra* note 74, at 128 (recognizing case analysis cannot always be representative of cases from a given court because not all cases are public).

237 If courts are truly pro-labor, employees should have overwhelming success in litigation. The data shows the opposite scenario. *See supra* Table 2.

238 *See supra* Table 4.

239 *See supra* Table 28a.

2008 Interpretation.[240] A pro-labor court (or even a "neutral" court) would most certainly conduct a fairness review. Only a pro-employer court would leave out a fairness review and rubber stamp the employer's decision. Apart from this main finding, a number of implications can be drawn from this study. First, while the LCL is pro-labor,[241] the judicial interpretation of the LCL did not secure a pro-labor outcome. As illustrated in this study, courts had frustrated their function to protect employees from unfair dismissal when they failed to conduct a fairness review in most cases. This demonstrates that while statutory law may favor the weaker group/party, courts may not interpret the law in such a way that result in the protection of the weaker group/party. Second, despite the socialist rhetoric underlying the statutory and policy infrastructure that governs labor-employer relations, actual judicial practice suggests that courts are in no way "socialist." If anything, courts are very "business minded" and would not hesitate in siding with employers. Third, it appears that the LCL (at least Article 39(2) of the LCL)[242] needs urgent revision. Currently, the language in LCL is unclear on whether a fairness review is required. Many judges use this as an excuse to skip the fairness review, while turning a blind eye to their obligation under SPC 2008 Interpretation.[243] This is highly detrimental to the protection of employees' rights. To avoid misconception, Article 39(2) of the LCL should be amended to expressly set out the requirement to conduct a fairness review. Fourth, the case outcome varied significantly by regional variation (by province) (Chi-square=132.917, DF=58, P<0.001).[244] From the data, one possibility for the variation is that courts in different localities applied divergent local rules and regulations (some rules being more favorable to labor than others).[245] This finding provides a basis for future studies to investigate the causal link between local pro-labor rules and employee litigants' success rates across

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[240] Under the SPC 2008 Interpretation, if the employer is "really wrong" in dismissing the employee, the court can revoke the dismissal. This confers substantive review powers (as well as an obligation) on the court to assess whether or not the dismissal was unfair. The court's failure to conduct a substantive review is, therefore, a contravention of the law. *See supra* note 108.

[241] *See supra* note 12 and accompanying text.

[242] Laodong Hetong Fa (劳动合同法) [Labor Contract Law], art. 39(2).

[243] *See supra* note 108.

[244] *See supra* Table 2.

[245] *See supra* Table 31.

geographic regions.[246] It also forms the basis for future research on which regional courts are relatively pro-labor and which are relatively pro-employer.[247] Fifth, this study shows that it is possible, through examining court opinions, to decipher judicial attitudes in the adjudication of cases. In this study, through empirically analyzing the DADs of Serious Breach Dismissal Cases, it is revealed that courts in China are pro-employer. Finally, this study casted doubt as to whether party capability theory can adequately explain the litigation dynamics in China. The linear regressions show legal representation, a critical element of party capability, is insignificant in the determination of outcome.[248] If one takes away the judicial favor for employers (i.e., the court faithfully conducts a fairness review in every case), the employees (have-nots) would have come out ahead. This finding echoes an earlier study on litigation between married-out women ("MOW") (have-nots) and village collectives (haves) in Chinese grassroots courts, in which it was found that the have-nots came out ahead by a substantial margin.[249] In that study, the data "shows the courts favored the 'have-nots' over the 'haves.' It is believed that the judicial favor for MOW . . . propelled the MOW (the 'have-nots') to victory."[250] These two studies show the instrumental importance of judicial preference for a party in the determination of outcome. Judicial preference for a party appears to take precedence over party capability (or resource advantages/disadvantages) in shaping outcome.

Hopefully, future research on Chinese labor law and China's judicial system can build on and benefit from this study.

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246 *See supra* Table 31 (showing that when courts apply pro-labor local rules, the employee wins more, which shows that local legislation that seeks to protect labor rights are helpful to employees in advancing their cases in litigation).

247 Informant ID: 2020.07.09.3, *supra* note 17 (featuring statements by one informant that Nanjing courts are generally lenient towards employees, while Shenzhen courts are vigorously pro-employer).

248 *See supra* Tables 32-33.

249 *See supra* note 68, at 1.

250 *Supra* note 68, at 68-69.

## APPENDIX

*Details of Informants*

| Informant ID | Gender | Age | Ethnicity | Education (Year) | CPC Member? | Court Level | Court Location | Current Position | Year of Joining the Judiciary | Focus of Judicial Work | Annual Income in 2019 (RMB) | Handled Labor Disputes Before? | Date of Interview |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2020.06.17.1 | Female | 53 | Manchurian | Bachelor (2008) | Yes | Basic | Beijing | Judge | 1988 | Civil Cases | 250,000 | Yes | |
| 2020.06.17.2 | Female | 28 | Han | Master (2016) | Yes | Basic | Beijing | Judicial Assistant | 2016 | Civil Cases | 120,000 | Yes | 2020.09.08 |
| 2020.06.17.3 | Female | 28 | Han | Master (2018) | Yes | Basic | Beijing | Judicial Assistant | 2018 | Civil Cases | 200,000 | Yes | 2020.09.12 |
| 2020.06.17.4 | Female | 28 | Han | Master (2019 | Yes | Basic | Zhejiang | Judicial Assistant | 2013 | Civil Cases | Not provided | No | |
| 2020.06.17.5 | Female | 33 | Han | Master (2014) | No | Basic | Inner Mongolia | Judge | 2010 | Civil Cases | 90,000 | Yes | |
| 2020.06.17.6 | Male | 34 | Han | Master (2014) | Yes | Basic | Hebei | Judicial Assistant | 2016 | Civil Cases | 90,000 | Yes | 2020.09.30 |
| 2020.06.17.7 | Female | 32 | Mongol | Master (2007) | Yes | Basic | Beijing | Deputy Presiding Judge (or Deputy Division Head) | 2010 | Administrative cases | Not provided | No | |
| 2020.06.17.8 | Male | 38 | Han | Master (2008) | Yes | Basic | Beijing | Judge | 2008 | Civil Cases | 250,000 | Yes | |
| 2020.06.17.9 | Female | 31 | Han | Master (2016) | Yes | Basic | Beijing | Judicial Assistant | 2016 | Civil Cases | 150,000 | Yes | 2020.09.11 |
| 2020.07.02.1 | Female | 27 | Han | Junior College (2015) | No | Basic | Sichuan | Not provided | 2017 | Civil Cases | 36,000 | No | |
| 2020.07.02.2 | Female | 44 | Han | Master (2010) | Yes | Basic | Sichuan | Judge | 1999 | Civil Cases | 150,000 | Yes | |
| 2020.07.02.3 | Male | 47 | Han | Master (2006) | No | Intermedia | Jiangxi | Judge | Not provided | Civil Cases | Not provided | Yes | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | te | | | | | | | |
| 2020.07.06 | Female | 38 | Han | Bachelor (2001) | No | Basic | Sichuan | Judge | 2010 | Civil Cases | 65,000 | Yes | |
| 2020.07.07 | Male | 35 | Han | Bachelor (2007) | Yes | Basic | Chongqing | Judge | 2011 | Civil Cases | 150,000 | No | |
| 2020.07.09.1 | Female | 42 | Han | Master (2005) | Yes | Intermediate | Nanjing | Judge | 2008 | Civil Cases | 300,000 | Yes | 2020.09.08 |
| 2020.07.09.2 | Female | 52 | Han | Bachelor (1992) | Yes | Basic | Nanjing | Judge | 1987 | Civil Cases | Not provided | Yes | 2020.09.12 |
| 2020.07.09.3 | Female | 24 | Han | Bachelor (2018) | Yes | Basic | Nanjing | Judicial Assistant | 2018 | Civil Cases | Not provided | Yes | 2020.09.10 |
| 2020.07.09.4 | Female | 55 | Han | Bachelor (2006) | Yes | Basic | Nanjing | Presiding Judge (or Division Head) | 1986 | Civil Cases | Not provided | Yes | |
| 2020.07.09.5 | Male | 45 | Han | Master (2010) | Yes | Intermediate | Nanjing | Judge | 2006 | Civil Cases | 300,000 | Yes | |
| 2020.07.14.1 | Female | 39 | Han | Master (2005) | Yes | Intermediate | Guangdong | Judge | 2005 | Civil Cases | 400,000 | Yes | |
| 2020.07.14.2 | Male | 44 | Han | Master (1998) | Yes | Intermediate | Guangdong | Judge | 2002 | Civil Cases | 600,000 | Yes | |
| 2020.07.14.3 | Male | 50 | Han | Master | Yes | Intermediate | Guangdong | Judge | 1994 | Civil Cases | Not provided | Yes | |
| 2020.07.14.4 | Male | 44 | Han | Master (2002) | Yes | Basic | Guangdong | Judge | 2002 | Civil Cases | Not provided | Yes | |
| 2020.07.20.1 | Male | 39 | Han | Bachelor | Yes | Basic | Chongqing | Presiding Judge (or Division Head) | 2005 | Civil Cases | 180,000 | Yes | |
| 2020.07.20.2 | Female | 50 | Han | Junior College (2000) | Yes | Basic | Chongqing | Judge | Not provided | Civil Cases | Not provided | Yes | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2020.07.20.3 | Female | 29 | Han | Bachelor (2015) | No | Basic | Chongqing | Judicial Assistant | 2019 | Civil Cases | Not provided | Yes | |
| 2020.07.20.4 | Female | | Han | Bachelor | Yes | Basic | Chongqing | Judicial Assistant | Not provided | Civil Cases | Not provided | No | |
| 2020.07.20.5 | Male | 55 | Han | Bachelor | Yes | Basic | Chongqing | Judge | Not provided | Civil Cases | Not provided | Yes | |
| 2020.07.20.6 | Female | 35 | Han | Bachelor | Yes | Basic | Chongqing | Judge | Not provided | Civil Cases | Not provided | Yes | |
| 2020.07.20.7 | Male | 37 | Han | Bachelor | Yes | Basic | Chongqing | Judicial Assistant | 2010 | Civil Cases | 100,000 | Yes | |
| 2020.07.20.8 | Female | 29 | Han | Master (2015) | Yes | Basic | Chongqing | Judicial Assistant | 2015 | Civil Cases | 50,000 | Yes | |
| 2020.07.20.9 | Male | 34 | Han | Bachelor (2008) | Yes | Basic | Chongqing | Judge | 2008 | Civil Cases | 260,000 | Yes | 2020.09.12 |
| 2020.07.20.10 | Male | 37 | Han | Bachelor (2006) | Yes | Basic | Chongqing | Judge | 2006 | Civil Cases | Not provided | Yes | |
| 2020.08.11 | Female | 52 | Han | Bachelor (2007) | Yes | Intermediate | Nanjing | Member of the Adjudication Committee | 2004 | Civil Cases | 300,000 | Yes | 2020.09.10 |