



Labour Department (Headquarters)

勞工處（總部）

Your reference 來函編號：

Our reference 本處檔案編號：LD LRD/12-1/1-12/2(C)

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13 October 2011

Clerk to Manpower Panel
Legislative Council
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Attn: Mr Raymond Lam)

Dear Mr Lam,

**Panel on Manpower
Information requested by Members at the meeting of 12 July 2011**

At the meeting of 12 July 2011, Members of the Panel on Manpower have requested the Administration to provide further information on the cases involving disputes on false self-employment as presented in the LC Paper No. CB(2)2313/10-11(01). Our response is as follows.

Breakdown of the more common categories of cases in the transportation industry

A Member asked for a further breakdown within the transportation industry in which disputes on false self-employment were more commonly found. We would like to inform Members that out of the 397 cases involving disputes on false self-employment received by the Labour Relations Division (LRD) of the Labour Department from October 2009 to May 2011, there were 111 claimants in 88 cases who worked in the transportation industry. Among these 111 claimants, 93 were drivers and the other 18 were engaged in other duties such as delivery, packing and warehouse work. Among the 93 drivers, 52 were truck drivers, among whom 38 were cross-border drivers, while the rest of the other 41 claimants were drivers of other types of vehicles like passenger buses.

Nature of disputes involved

Of the 397 cases mentioned above, apart from isolated cases where disputes arose when the employer intended to unilaterally change the status of an employee to that of a self-employed person, the most common disputes in these cases revolve around whether the claimant was an employee or a self-employed person, which had a direct bearing on his entitlements to the employment benefits being claimed. On the one hand, the defendants in these disputes often claimed that the claimants had been engaged in the capacity of a self-employed person pursuant to a verbal agreement or written self-employment contract¹. The claimants, on the other hand, often argued that they were not aware of the existence of such verbal agreements or had not signed any self-employment contracts, while others complained that they were left with no choice but to sign the self-employment contracts in order to keep their jobs, even if they considered themselves being bona fide employees. The vast majority of disputes arose after the employment / contractual relationship between the two concerned parties had ceased and the claimants wished to claim back the employment benefits to which they were entitled by their being purportedly employed. Among the cases received, the more common items pursued by the claimants were wages in lieu of notice, holiday pay and annual leave pay.

Time taken for conclusion of cases

The time required for conclusion of a case involving disputes on false self-employment varied according to the circumstances of individual cases. In some cases, the employers would settle in private with their employees right after they had received the notice of claims of their employees issued by LRD together with leaflets setting out some common criteria in distinguishing an employee from a contractor or a self-employed person and the relevant provisions in the Employment Ordinance on the statutory entitlements of an employee. For conciliation cases through LRD, they were usually handled in three to four weeks' time after the claimant lodged claims and, depending on the inclination of the parties concerned, such cases would usually be settled not long after the conciliation meetings. For disputes that could not be settled despite conciliation, they would be referred to the Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB) for adjudication upon claimants' request. In such cases, the length of time needed to conclude a case varied on a case-by-case basis.

¹ Among the 397 cases of alleged false self-employment, the claimants in 186 cases had signed self-employment contracts.

Outcome of cases

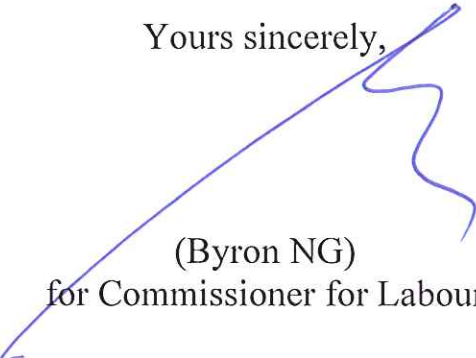
Some Members enquired, among the 148 cases handled by LT or MECAB in which the respondents were either ordered to pay to or reached settlement with the claimants, the amounts awarded by LT or MECAB to the claimants in adjudication cases. Some Members also asked about the amounts received by claimants in respect of the 128 cases settled after intervention or conciliation of LRD. We would like to inform Members that of the aforesaid 148 cases handled by LT or MECAB, adjudication awards were made in favour of the claimants in 24 cases whereas consent awards were issued by LT or MECAB in the other 124 cases. Of the 24 cases with adjudication awards, the amount awarded to the claimants ranged from \$700 to \$436,800. In ten cases, the amount awarded exceeded \$45,000 while in five cases the amount awarded exceeded \$100,000. The more common items covered in these awards included wages, wages in lieu of notice, annual leave pay and statutory holiday pay.

As for the other 128 cases which were settled after intervention or conciliation by LRD, the parties involved in some cases were often reluctant to disclose the details of the terms of settlement as the amounts were often mutually agreed in private. Therefore, no relevant statistics have been kept in this regard.

Offences and penalties

A Member enquired about the nature of offences and the fines imposed with regard to the 21 successful prosecution cases. An analysis of these cases by the nature of offences shows that six cases involved failure to pay wages, eight cases involved various holiday offences such as failure to grant statutory holiday, annual leave pay or statutory holiday pay, and six cases involved failure to take out valid insurance policies for employees. The other offences included the dismissal of a pregnant employee and failure to pay relevant compensation, and failure to pay severance payment. The fines imposed in respect of these 21 cases ranged from \$1,000 to \$60,000.

Yours sincerely,



(Byron NG)
for Commissioner for Labour