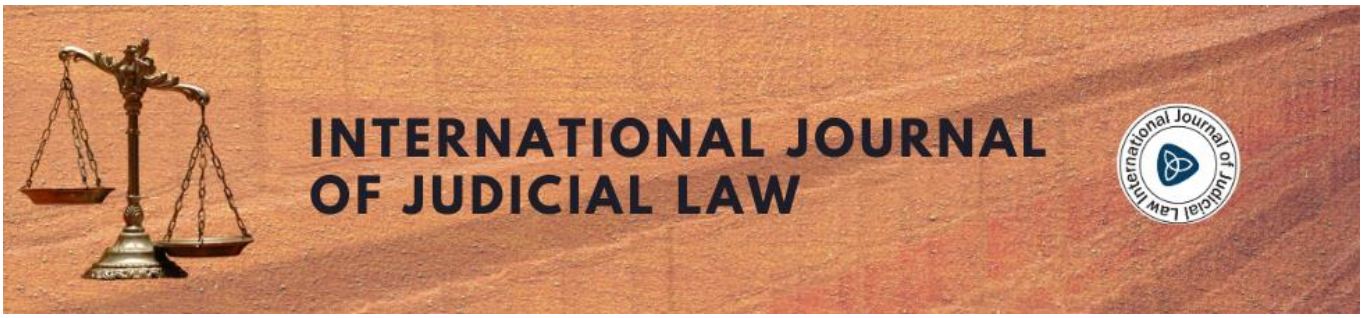




Empirical Analysis of Judicial Cases on Employment Termination Due to Work Incompetence

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Article Info

ISSN (online): 2583-6536

Volume: 03

Issue: 06

November-December 2024

Received: 02-09-2024

Accepted: 19-10-2024

Page No: 48-56

Abstract

The *Labor Law of the People's Republic of China* sets many restrictions on employers' unilateral termination of labor contracts. Termination due to work incompetence is the most common scenario in enterprises' "difficulty in contract termination". In labor disputes arising from termination due to work incompetence, employers have a relatively high rate of losing cases, mainly because the legal characterization of "work incompetence" is unclear, identification standards are ambiguous, and termination procedures are complex. Analysis of judicial big data and individual cases shows that the main reason for employers losing cases is their inability to provide sufficient evidence to prove "incompetence" and the ineffectiveness and unreasonableness of training and job transfers. When terminating employment due to work incompetence in enterprise management, employers should pay attention to the objectivity of evidence, legality of procedures, effectiveness of training, and reasonableness of job transfers to avoid the risk of illegal termination.

DOI: <https://doi.org/10.54660/IJL.2024.3.6.48-56>

Keywords: Work Incompetence, Performance Assessment, Training, Illegal Termination

1. Introduction

In August 2024, the Beijing Third Intermediate People's Court released a typical case. In this case, the plaintiff Ms. Shen was a graphic designer employed by the defendant, a Beijing technology company. After two years of employment, the company needed to reduce staff and approached Ms. Shen to negotiate severance compensation, but they failed to reach an agreement. Subsequently, the workload of Ms. Shen's three-person team gradually increased from about 40 designs per person per day to over 70 within a month, which was impossible to complete. After Ms. Shen and her colleagues protested, the company issued a "Notice of Labor Contract Termination" to Ms. Shen, citing insubordination to company management and work incompetence. After reviewing the case, the Beijing Third Intermediate Court ruled that the Beijing technology company had illegally terminated the labor contract and ordered the company to pay Ms. Shen compensation of 63,000 yuan for illegal termination. This is a typical case of termination due to work incompetence, where the employer lost the case. In a context where employers are stronger than employees, a company will not collapse because of an employee's resignation, but an employee may lose their livelihood due to termination. Therefore, labor law, which aims to protect and safeguard workers' rights, tolerates and acquiesces to employees' arbitrary resignation but sets many restrictions on companies' termination of labor contracts. Companies cannot easily terminate labor contracts unilaterally, and termination due to "work incompetence" is the most common form of companies' "difficulty in contract termination". In practice, there are many labor disputes arising from employees' work incompetence, and employers have a relatively high rate of losing such cases, with most companies losing due to inability to provide sufficient evidence to prove the legality of their contract termination. So why is it so difficult to terminate employment due to work incompetence? How does the judiciary determine "work incompetence"? And how should enterprises manage legal risks in termination due to work incompetence?

2 Reasons for the Difficulty in Termination Due to Work Incompetence

2.1 Unclear Legal Character

"Work incompetence" as one of the reasons for employers' unilateral termination of labor contracts is stipulated in Article 40(2) of the *Labor Law of the People's Republic of China*. Neither judicial interpretations nor guiding cases have clearly defined the standards for work incompetence. The legal definition of "work incompetence" can be traced back to Article 26(2) of the *Explanations on Several Articles of the Labor Law of the People's Republic of China* issued by the former Ministry of Labor in 1994: "Work incompetence" refers to inability to complete tasks stipulated in the labor contract or the workload of personnel in the same type of work or position. "Unable to meet requirements" implies that workers should obey the employer's work arrangements, while the employer must put forward relevant requirements; "stipulated in the labor contract" implies that standards for judging work incompetence need to be agreed upon by both parties in the agreement, meaning that whether one can competently perform work allows room for mutual negotiation; "workload of personnel in the same type of work or position" implies that when both parties have not agreed on work standards, certain standards can be used as reference for verification (Luo, 2018) ^[6]. This definition actually explains the issue of "work incompetence" from at least three aspects: the management rights of the unit, room for negotiation between both parties, and judgment standards when no agreement is reached. Although this definition is currently valid, it is extremely difficult to implement in practice because changes in future labor contract performance are hard to foresee, the operability of stipulating work standards through labor contracts is weak, and for knowledge-intensive types of work and positions, the measurement of workload is very challenging to apply.

2.2 Standards for Incompetence Oscillate Between Subjective and Objective Criteria

There are academic disputes over the standards for "incompetence", which can be summarized into objective theory, subjective-objective theory, and compromise theory. Most scholars support the objective theory, such as scholar Dong Baohua who believes that subjective aspects should be excluded and only objective aspects should be considered for determination (Dong, 2011) ^[4]. The objective theory refers to workers being unable to perform their duties solely due to objective lack of professional ability, meaning workers' knowledge level, skill level, or work adaptability is insufficient. From the workers' perspective, there are situations where work incompetence is caused by physical function deterioration or lack of work ability; from the employers' perspective, changes in work volume and nature due to factors such as market environment changes and industrial technology innovation pose new requirements for

workers' abilities, making workers unable to perform their current work. This is something workers can neither predict nor foresee. In this case, workers are not at fault, and employers need to make certain efforts to help workers become competent and bear corresponding obligations. The subjective-objective theory considers and judges from both subjective and objective aspects of workers, considering not only workers' objective work ability, professional knowledge reserve and skills, but also whether workers' subjective attitude is correct and whether they can actively complete their duties. It cannot ignore situations where workers objectively can and are able to work but subjectively do not want to or are unwilling to work due to laziness and negativity (Wang, 2017) ^[8]. Based on the subjective-objective theory, the compromise theory further develops, advocating objective theory as the principle and subjective theory as the exception.

Because laws and regulations have neither explicitly listed specific circumstances of "work incompetence" nor clearly stipulated specific standards for determination, the vagueness of the concept and lack of interpretation have led to different views in academia and many disputes in judicial application. Through sorting court judgments, it is found that in current judicial practice, courts tend to examine work competence based on workers' work results when making judgments, and in most cases do not consider workers' degree of subjective fault, but rather refer to quantified or certain standard work indicators, making decisions based on the amount of work completed by workers per unit time and whether they can complete work objectives. Usually, there is less dispute over objective reasons during case trials, with the focus of dispute usually being whether employers can fully prove that workers have situations of incompetence. However, there are more disputes over subjective reasons, with the focus being whether subjective reasons can be used as one of the elements for determining "work incompetence", such as workers being negative and slack, "dragging their feet". Some scholars believe that if the determination of workers' "work incompetence" excludes consideration of subjective factors, it will restrict employers' right to terminate, and in the long run, this will not be conducive to the expansion of enterprise production and operation, and more seriously, will occupy too many social resources, leading to inefficiency.

2.3 Complex Procedures for Termination Due to Work Incompetence

According to Article 40 of the *Labor Law of the People's Republic of China*, if a worker cannot perform their job duties and remains incompetent after training or adjustment of their work position, the employer may terminate the labor contract by giving the worker 30 days' written notice or paying an additional one month's salary. Termination due to work incompetence involves five steps:

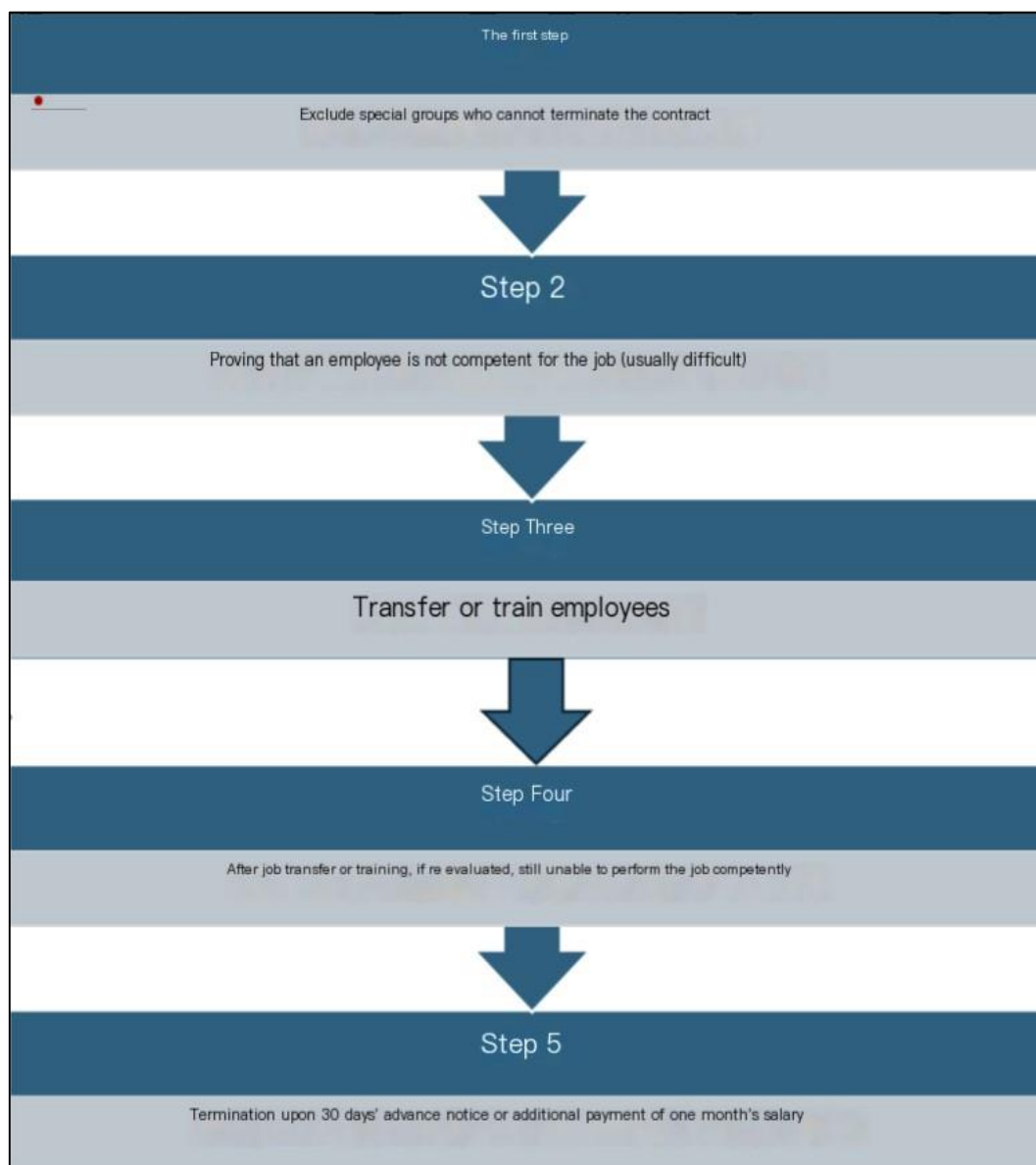


Fig 1: Process for Termination Due to Work Incompetence

In terms of termination procedures, employers first need to exclude special groups that cannot be terminated (as stipulated in Article 42 of the *Labor Law of the People's Republic of China*), and the second step is to determine that the employee is incompetent at work.

Even with sufficient evidence proving an employee's incompetence, termination on these grounds still requires following transfer or training procedures. Only after transfer or training and subsequent assessment still shows incompetence can advance notice of termination be given (or one month's payment in lieu of notice). Otherwise, the termination procedure is illegal. Take the case of "Huaibei Taifuhua Property Management Co., Ltd. v. Wang Haitao Labor Dispute" [(2018) Wan 0603 Min Chu No. 579] as an example. Plaintiff Taifuhua claimed that defendant Wang Haitao had long been absent from his actual work position, taking advantage of his position to only clock in without working, and failed to meet performance standards. The company requested him to transfer positions twice, but he either did not cooperate or refused, ultimately leading to the dispute. The focus of this case was whether Wang Haitao had long been not actually working and whether he was incompetent at work. After review, the first-instance court

held that: An employer's unilateral termination of a labor contract must comply with legally prescribed circumstances and procedures, and have conclusive and sufficient basis; otherwise, it constitutes illegal termination and should pay corresponding compensation to the worker according to law. The legality of labor contract termination should be borne by the employer as the burden of proof. Taifuhua Company claimed its reason for terminating the labor contract was Wang Haitao's work incompetence, and issued "Employee Transfer Notices" to Wang Haitao on June 8 and June 10, 2017, but failed to prove they had actually been delivered to Wang Haitao, which Wang Haitao also denied. Taifuhua Company also claimed that due to Wang Haitao's serious violation of rules and regulations and long-term inaction, it caused serious losses and damage to the company's reputation, but failed to provide sufficient evidence to prove this, which Wang Haitao also denied. Furthermore, according to Article 43 of the *Labor Law of the People's Republic of China*, "When an employer unilaterally terminates a labor contract, it shall notify the labor union in advance of the reasons. If the employer violates laws, administrative regulations or the labor contract, the labor union has the right to request the employer to make corrections. The employer

shall study the labor union's opinions and notify the labor union in writing of the handling results". Taifuhua Company failed to provide evidence proving that the termination of the labor contract complied with this statutory procedure. Therefore, Taifuhua Company's termination of the labor contract with Wang Haitao lacked factual and legal basis and violated legal procedures, constituting illegal termination of the labor contract, and should pay compensation to Wang Haitao according to law. Taifuhua Company's claim not to pay compensation to Wang Haitao was unsupported and the court did not support it.

3 Analysis of Judicial Big Data on Work Incompetence Termination Cases

3.1 Total Number of Cases

Using the LawWit legal big data platform's search function, searching for keywords "work incompetence" and "contract termination" in the judgment document database yielded 7,037 judgments, including 3,176 cases from basic courts, 3,255 cases from intermediate people's courts, 61 cases from high people's courts, 1 case from the Supreme People's Court, and 4 cases from specialized courts (case summary data as of June 30, 2024).

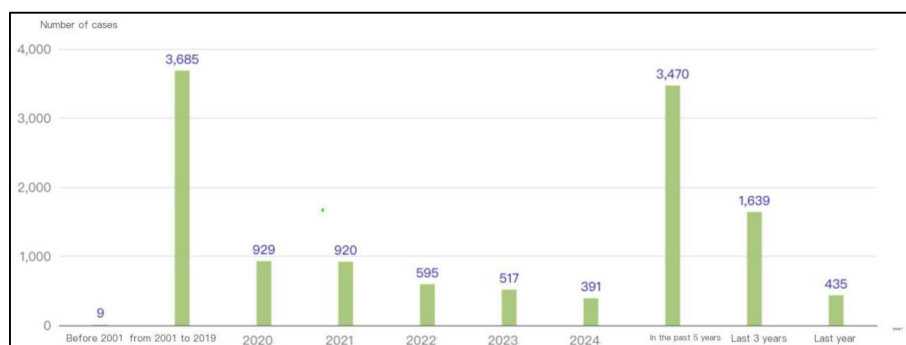


Fig 2: Number of Work Incompetence Termination Dispute Cases

Between 2001 and 2019, there were 3,684 cases, while in the past five years there were 3,470 cases. From 2020 to 2024, disputes over termination due to work incompetence have been gradually decreasing, indicating that enterprises are becoming more cautious about termination due to work incompetence.

3.2. Geographic Distribution

Looking at the geographical distribution of case numbers, there is a positive correlation between case numbers and regional economic development levels. Combined with the

national GDP situations of various provinces and cities in mainland China and the per capita GDP situations of various regions released by the National Bureau of Statistics in recent years, the eight regions that consistently rank high in provincial and municipal GDP - Guangdong, Jiangsu, Zhejiang, Hunan, Shandong, and Sichuan provinces, as well as Beijing and Shanghai which consistently rank high in per capita GDP - account for a high proportion of cases, with Guangdong Province, an economic powerhouse, having the highest number of cases.

region		Number of cases	Proportion
Guangdong		726	10.35%
Beijing		720	10.26%
Shanghai		528	7.53%
Shandong		503	7.17%
Jiangsu		430	6.13%
Liaoning		406	5.79%
Henan		350	4.99%
Sichuan		345	4.92%
Hunan		296	4.22%
Zhejiang		238	3.39%

Fig 3: Regional Distribution of Work Incompetence Termination Dispute Cases

3.3. Case Amount Involved

Case amounts are concentrated below 100,000 yuan, with a considerable number of cases between 0-10,000 yuan, indicating that some workers' rights protection awareness is strengthening. Through sorting judgment documents, it was found that there is a large gap between the amount claimed by workers and what employers are willing to pay. Most appellants in second instances are employers, with few being workers. This is because employers are unwilling to pay the

compensation and damages required in first-instance court judgments, and persist in appealing even when knowing the hope for overturning the judgment is quite small. Meanwhile, since the relationship between employers and workers has basically broken down during case trials, in some cases with smaller amounts involved, employers still use appeals to delay time to force workers to give up claims, which may be why there are more second-instance cases in work incompetence labor disputes.

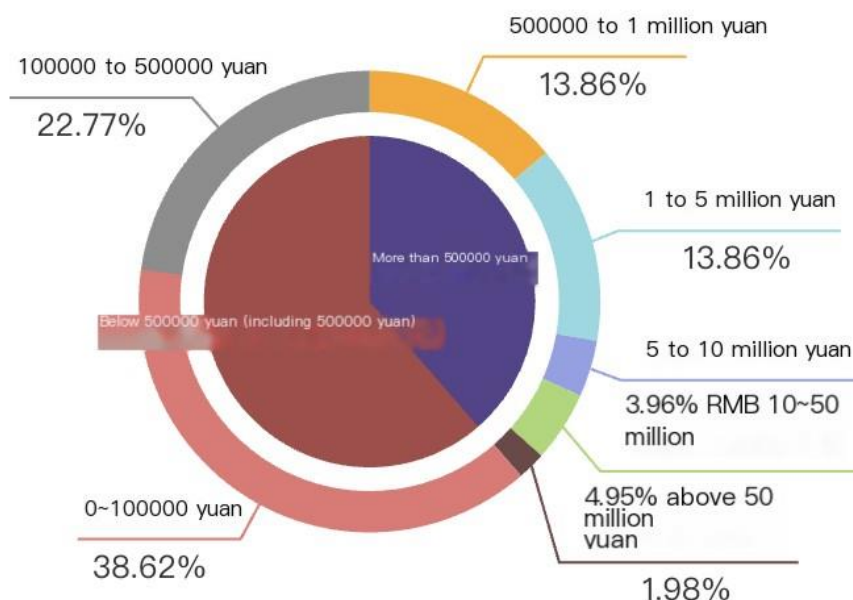


Fig 4: Compensation Amounts

3.4. Workers' Claims and Court Support Status

Cases from Guangdong Province were selected as samples for analysis. From the chart, courts determined illegal termination by employers at a rate close to 84%, with employers winning in 10 cases, accounting for about 15.7%. First and second-instance courts had similar rates of determining illegal termination by employers. It can be seen that in such cases, although there are no clear enforceable

identification standards, courts will conduct relatively strict examination of evidence pointing to "incompetence" based on the principle of tilted protection. At this time, employers bear a heavier burden of proof, with higher requirements for reviewing the content and proving power of their evidence, and units often appeal dissatisfied with judgments. This shows that judicial determination and review need more comprehensive and specific laws and regulations for support.

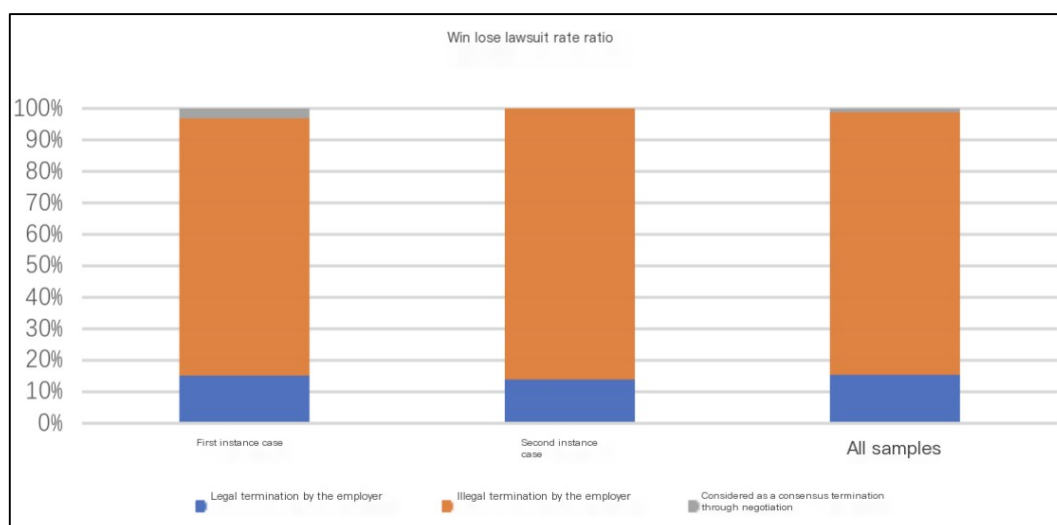


Fig 6: Court Support for Claims

3.5. Analysis of Reasons for Employers Losing Cases

Selecting 30 typical cases in Guangdong Province between 2022 and 2024 for analysis, it can be seen that the main

reason for employers losing cases is insufficient evidence to prove "incompetence", including insufficient evidence of workers being determined incompetent twice, which is also

the most commonly applied reason for courts determining illegal termination. The second reason is that employers failed to provide a performance assessment system that complies with the *Labor Law of the People's Republic of China*. When courts try such cases, they mainly examine what system employers use to assess workers and whether the assessment system is legal and reasonable, so as to determine whether workers are "competent". The third reason is that employers did not conduct job transfers or training. As mentioned earlier, the law sets preliminary procedures for employers' termination actions, namely, before terminating "incompetent" workers, units should conduct job transfers or training for these workers, evaluate the effects through

reasonable and effective training assessment mechanisms, and only terminate contracts if they still cannot perform their jobs. Finally, job transfers were unreasonable. Job adjustment for workers is an important management means in human resources and also a manifestation of employers' autonomous operation and management rights (Wang, 2022) ^[9]. According to sorted judgment documents, employers' exercise of unilateral transfer rights is conditional and limited, and must not exceed the scope prescribed by law. Exceeding necessary limits will bear adverse consequences. To some extent, this is the judiciary seeking balance between protecting workers' employment rights and employers' freedom of business management.

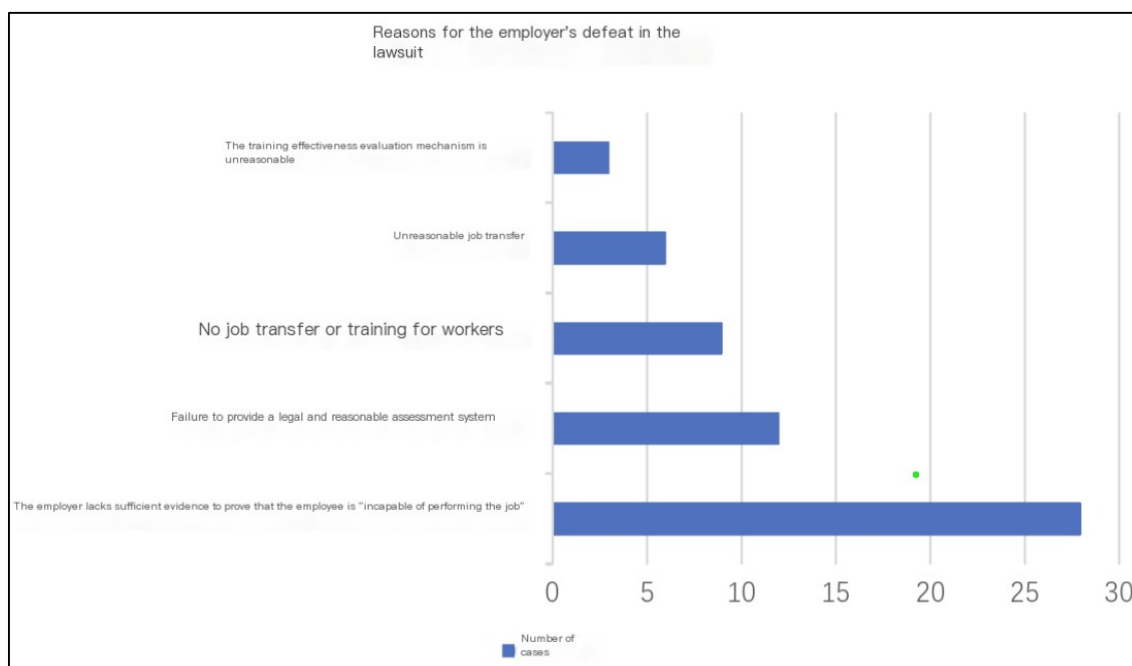


Fig 7: Reasons for Employers Losing Cases

4. Analysis of Individual Cases in Judicial Recognition of Work Incompetence Termination

4.1. Recognition of Assessment Basis Legality

Performance assessment system is a Western enterprise management system that has gradually become mature and systematic through long-term improvement and localization, and has continuously developed into a highly efficient management means favored by most enterprises. From an enterprise perspective, this system that achieves short-term indicators both stimulates workers' work enthusiasm, creates a positive competitive environment, achieves efficient enterprise management, and in the long run will bring huge economic benefits to enterprises (Deng, 2021) ^[3]. However, whether the performance assessment system can become one of the bases for determining work incompetence is still questionable, among which the most controversial is the last-place elimination system. "Last-place elimination" is a special management system in performance assessment methods, where employers set performance goals that workers need to achieve within a preset time period in advance, assess workers' work results through systematic evaluation standards, rank according to assessment results, and finally eliminate workers with poorer assessment results. One reason why enterprises recognize "last-place elimination" is to use its results as a basis for determining workers' incompetence. In practice, most enterprises dismiss

workers who rank "at the bottom", believing that based on the last-place elimination system's assessment results, these workers have already been confirmed as incompetent, essentially confusing the distinction between the two, as they are not simply corresponding equivalent relationships (Chen, 2023) ^[2]. Article 29 of the *Minutes of the Eighth National Court Civil and Commercial Trial Work Conference* issued by the Supreme People's Court clearly states: "If an employer unilaterally terminates labor contracts during the labor contract period through forms such as 'last-place elimination' or 'competitive position', workers may request the employer to continue performing labor contracts or pay compensation on the grounds of illegal termination of labor contracts". According to this, employers terminating labor contracts based on workers' ranking in last place will constitute illegal termination.

In cases involving last-place elimination, employers often present assessment results as direct evidence of incompetence, and courts will first examine the legality of their assessment basis. For example, in the "Lingbi Fuwei Tiancheng Real Estate Consulting Co., Ltd. v. Shi Siyong Labor Dispute Case" [(2020) Wan 13 Min Zhong No. 208], Lingbi Fuwei Real Estate Company's employee assessment system stipulated that those who fail to meet work requirements in quarterly performance evaluations would be dismissed. Shi Siyong's sales performance in April and May

2019 did not meet standards and was at the bottom of sales personnel, and after company training, sales still remained at the bottom, failing to meet position requirements. Fuwei Real Estate Company terminated the labor contract relationship with Shi Siyong according to company rules and regulations. The focus of dispute in this case was whether being at the bottom in performance and not meeting standards according to the last-place elimination system constituted work incompetence, and whether termination of the labor contract on this basis was legal. The second-instance court held that the unit cannot directly dismiss workers whose sales performance ranks at the bottom of sales personnel. Although Fuwei Real Estate Company's rules and regulations stipulated a last-place elimination system, the company's direct termination of their labor contract based on this system regulation as termination basis was not in accordance with law, and its unilateral termination constituted illegal termination.

4.2. Recognition of Training Effectiveness and Targeting

"Training" is a procedural requirement for unit termination behavior and also an important element for courts to determine whether their termination behavior is legal. The training at this time should be targeted training organized and arranged by employers to improve workers' professional skill levels, which is different from pre-employment training, and the two need to be distinguished (Liu, 2021). In judicial practice, there are often cases where employers provide materials proving they have conducted relevant training for workers, but courts do not recognize their claims. The reason for non-recognition is that the evidence provided by employers cannot reflect the targeting and effectiveness of training.

In the case of "Beijing Xiaomi Mobile Software Co., Ltd. (hereinafter referred to as Xiaomi Company) v. He Dan Labor Dispute" [(2021) Jing 0108 Min Chu No. 33528], plaintiff Xiaomi Company sued requesting no need to continue performing the labor contract with defendant He Dan. The reason was that He Dan failed two consecutive performance assessment tests, so the company formulated a "Performance Improvement Plan", which stipulated: if performance improvement period assessment fails to meet standards, it would be considered as still incompetent after improvement, enabling contract termination. He Dan signed and confirmed on September 2, 2020. On September 30, 2020, He Dan's assessment did not meet standards, and Xiaomi Company issued a written "Notice of Labor Contract Termination" to He Dan on November 3, 2020, informing of contract termination on November 6, 2020, claiming legal termination. After contract termination, He Dan's position had been replaced, so the labor contract was no longer possible to continue performing. He Dan acknowledged there were two performance assessments but claimed that Xiaomi Company only showed her the final score without informing her of specific assessment standards and processes, so she was not incompetent. Xiaomi Company mailed her termination agreement, but she had not actually received the documents mailed by Xiaomi Company, so she believed the labor contract had not been terminated, the labor relationship was in continuation status, and Xiaomi Company should continue performing the labor contract with her. After trial, the court analyzed as follows: According to legal provisions, even if He Dan was incompetent, Xiaomi Company should also provide He Dan with training or position transfer, and

only after training or transfer, if He Dan was still incompetent, could Xiaomi Company terminate the labor contract. Currently, the "Performance Improvement Plan" signed between Xiaomi Company and He Dan obviously belonged to work plans and goals set by the company, rather than training. Although the "Performance Improvement Plan Feedback" submitted by Xiaomi Company showed He Dan's score was below the minimum requirement of the performance improvement plan, the above document did not contain He Dan's signature confirmation information, and Xiaomi Company also failed to provide corresponding objective basis for assessment scores, so the court did not accept the authenticity and proof purpose of the "Performance Improvement Plan Feedback", and consequently did not accept Xiaomi Company's claim that He Dan failed the performance assessment test and was still incompetent after training. In conclusion, the court determined that Xiaomi Company's proposal to terminate the labor contract on the grounds that He Dan was incompetent and still incompetent after training lacked basis, constituting illegal termination of labor contract, and consequently determined that Xiaomi Company should continue performing the labor contract with He Dan.

In the case of "Bengbu Guohou Asset Management Co., Ltd. v. Xu Baoyin Labor Dispute" [(2020) Wan 03 Min Zhong No. 3949], because Xu Baoyin had long been incompetent, Guohou Company had provided unified human resource control system training to Xu Baoyin and delivered assessment results to Xu Baoyin, then terminated the labor contract, and provided relevant evidence such as Guohou lecture hall training notice and WeChat group chat records of training notification to prove legal termination of labor contract. However, after trial, the court held that the training notice was titled "Subsidiary Unified Human Resource Control Operation Training", but could not prove it was unified human resource control system training, whether the training targeted the worker's work ability weaknesses and whether it could improve the worker's work ability still needed to be proven, and there was no supporting evidence such as training sign-in records, therefore it could not prove Xu Baoyin participated in the training. The focus of dispute in this case was whether Xu Baoyin participated in the training and whether the training was targeted.

From relevant cases, it can be seen that when workers are first determined to be incompetent, employers arranging and organizing corresponding training should precisely target workers' ability shortcomings and effectively improve workers' professional abilities and work efficiency to make them competent. Some companies, although providing evidence proving they have trained employees, cannot prove it was training to improve their work skills, so the training lacks basic targeting, and if courts recognize such training nature, it would be unfair to workers. Some employers, to evade the law, conduct training before dismissal that actually covertly forces workers to resign voluntarily (Sun, 2021) [7]. For example, training for workers is relatively casual, such as talks by unit personnel or department supervisors, oral education or criticism meetings, or distributing paper materials requiring memorization, or copying employee handbooks, or adopting boot camp-style training to make workers retreat knowing the difficulty. These trainings fundamentally lack targeting, let alone effectiveness. The result is that trained workers have not significantly improved their professional abilities in substance and still cannot

competently perform designated positions, still facing the risk of being dismissed by employers. Therefore, courts conduct substantive review of training's targeting and effectiveness during case trials.

4.3. Recognition of Job Transfer Reasonableness

"Job transfer" is another procedural restriction on employers' termination actions. In judicial practice, the judgment standards for job transfer nature are not consistent, with most courts believing employers can take unilateral transfer actions without consulting workers, while some courts believe consultation and confirmation with workers are needed for transfers (Aytijan & Yang, 2024) ^[1].

In the labor dispute case of Yong versus a certain Xinjiang Company (hereinafter referred to as "certain Xinjiang Company") and the third party, a certain shareholding company [(2024) Xin 01 Min Zhong No. 5408], Yong worked in the Party Building Work Department of a certain Xinjiang Company, a wholly-owned subsidiary of a certain shareholding company, accepting management from certain Xinjiang Company with salary paid by certain Xinjiang Company. On December 10, 2020, certain Xinjiang Company formulated the "Management Measures for Personnel Deployment Center of Certain Xinjiang Company (Trial)", which stipulated: After three consecutive C ratings or two D ratings in monthly assessments within one year (referring to regulations in Xinjiang Company's individual performance management measures), upon review by the unit's party organization, such employees enter the personnel deployment center as improvement-needed employees and leave their original positions. The personnel deployment center will arrange training courses and assessments for waiting employees. After completing training courses, if test scores are qualified, they will be arranged to return to original positions; otherwise, they will be adjusted to other positions. If they refuse to comply for personal reasons when arranged to another position again, the company will terminate their labor contract according to relevant legal provisions. Yong entered the personnel deployment center for study due to two D ratings in performance assessment within one year. After failing the test, on October 15, 2021, Yong entered the second waiting period. Certain Xinjiang Company again distributed study materials, namely party building work systems, to Yong, who did not take the test a second time. Certain Xinjiang Company adjusted Yong's position to comprehensive management post in the comprehensive office of Yining Factory located in Kagelerke Village, Hudiaoyu Township, Yining County, requiring reporting by 11:00 on May 27. Yong did not report to Yining Factory. On June 20, 2022, certain Xinjiang Company issued a "Notice of Labor Contract Termination". Yong applied for arbitration to the Labor Arbitration Commission, which ruled certain Xinjiang Company had illegally terminated the labor contract. Certain Xinjiang Company, dissatisfied, filed a lawsuit. The first-instance court held that the focus of dispute in this case was: whether certain Xinjiang Company constituted illegal termination of labor contract, and regarding whether it constituted illegal termination, only examined the reasonableness of certain Xinjiang Company's job transfer behavior towards Yong. Upon investigation, certain Xinjiang Company's training content during Yong's waiting period was all original position learning content, and did not arrange any new position skill training for Yong for "comprehensive management post in comprehensive office"

according to the "Management Measures for Personnel Deployment Center of Certain Xinjiang Company (Trial)", so certain Xinjiang Company did not arrange any training for Yong regarding "comprehensive management post in comprehensive office" before directly notifying her to report to work, which did not comply with company relevant system regulations. Meanwhile, Yong's residence was in Urumqi City, and Yong had worked for many years in certain Xinjiang Company's office premises located in Urumqi City. Even if Yong had failed the test during the waiting period, certain Xinjiang Company still had the burden of proof regarding whether it was reasonable to adjust Yong's work position from Urumqi City to Yining County. The first-instance court held that for employer job transfers, when both parties cannot reach agreement, comprehensive consideration should be given to whether the employer's transfer objectively makes unfavorable changes to workers' conditions and whether it increases workers' family life and social costs due to transfer. Comprehensively considering the above ascertained facts, the first-instance court held that certain Xinjiang Company's transfer of Yong from Urumqi City to Yining County increased workers' family life and social costs, constituting a major change to the labor contract. According to Article 5 of the labor contract signed by Yong: Party A may legally change Party B's work position according to work needs and principles of reasonableness and good faith. According to the above contract provisions, certain Xinjiang Company's transfer hindered Yong's performance of duties, violating the principle of reasonableness and good faith stipulated in both parties' labor contract. Currently certain Xinjiang Company violated contract provisions by making unreasonable job transfers to Yong, and terminated the labor contract after Yong refused the transfer, constituting illegal termination of labor contract, and should pay Yong compensation for illegal termination of labor contract. Certain Xinjiang Company appealed, dissatisfied, and the second-instance court upheld the original judgment.

In this case, the court did not focus on whether Yong was competent at work, but emphasized reviewing the substantial targeting of training and reasonableness of job transfer, clearly pointing out that under the premise that both parties could not reach agreement, job transfer should follow the principle of reasonableness, comprehensively considering whether the transfer objectively increased workers' family life and social costs; if so, it constituted unreasonable job transfer, and termination of contract due to workers' refusal to accept unreasonable job transfer constituted illegal termination. When transferring workers' positions, not only must work requirements of the transferred position be considered, but also workers' own situations, including their mastered work skills and knowledge levels (Yan, 2022) ^[10]. In practice, some employers seemingly fulfill job transfer obligations but actually conduct formal transfers or malicious transfers, aiming to force workers to resign voluntarily, circumventing legal restrictions in disguise. Therefore, courts usually consider post-adjustment position and treatment issues when making determinations, and the purpose and method reasonableness and legitimacy of transfers are also within some judicial organs' consideration scope.

5. Conclusion

Although theoretically the "subjective-objective theory" and "compromise theory" of work incompetence include

subjective factors in recognition standards, according to systematic interpretation of the *Labor Law of the People's Republic of China* and related case analysis fully demonstrates that in judicial practice, courts clearly exclude subjective factors from recognition standards, that is, not examining subjective attitudes of negative slacking and fault factors. Insufficient evidence, weak proof, and inability to prove workers are indeed in an incompetent state are the main reasons for employers losing cases. Employers should pay attention to evidence objectivity when proving employee incompetence. "Last-place elimination" as an efficient performance management means has two sides; its drawback is that although last-place elimination seems procedurally reasonable, it damages workers' vital interests and becomes a tool for abuse of termination rights. Courts can also focus on reviewing the reasonableness of this system when trying cases. When employers set their standard lines, they need to follow objective and fair principles, based on general workers' work efficiency and ability in the market combined with their unit's actual situation, avoiding too high standard lines.

Training and job transfer are two preliminary measures stipulated by law, but the law has not specifically and clearly stipulated training standards. Legislative gaps have led to situations in practice where employers have organized training for workers in form, but courts do not recognize it. The party bearing the burden of proof needs to preserve good evidence of workers' participation in training, such as training sign-in sheets, on-site training videos, etc., to provide true and valid evidence during case trials. The purpose of job transfer when incompetent is to protect workers' employment rights. The job transfer stipulated in the *Labor Law of the People's Republic of China* here is because workers' current work ability is insufficient to handle position responsibilities and requirements; transfer is to match more suitable work for them, not to covertly force them to resign voluntarily. Therefore, judicial organs focus on reviewing whether employers reasonably grasp the adjustment limits of position levels and treatment, and salary and benefits before and after transfer cannot differ too much and should match company compensation systems. If work location changes, comparison can be made between distances from workplace to employee's regular residence before and after transfer to judge whether it increases labor costs for employees. If labor costs increase, compensation can be considered from aspects such as providing transportation allowances and accommodation to avoid being determined by courts as transfer lacking reasonableness and bearing adverse consequences.

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