

# Study on the Improvement of the Protection of Procedural Rights and Interests of Workers in Labour Dispute Arbitration

Jingyi Cao<sup>1</sup>, Jia Zhao<sup>1</sup>, Buqi Zhe<sup>1</sup> & Libing Zhu<sup>1</sup>

<sup>1</sup> Tianjin Normal University, Tianjin, China

Correspondence: Jingyi Cao, Tianjin Normal University, Tianjin, China.

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## Abstract

Arbitration of labour disputes, as an important way to protect the rights and interests of workers, aims to achieve better resolution of labour disputes and maintenance of labour relations through the front-loading of arbitration of labour disputes. With the continuous development of the society, labour dispute disputes are increasing, and the procedural rights and interests of workers in labour dispute arbitration are also more and more prominent. Based on this problem, China needs to carry out a series of reforms to the labour dispute arbitration system, to fill the gaps in the existing legal regulations, and to propose a series of targeted measures for the difficulties encountered by workers in labour dispute arbitration.

**Keywords:** labour disputes, arbitration and conciliation, labour arbitration

## 1. Introduction

The arbitration system for labour disputes is an important legal system in countries and regions around the world. China has also developed a unique “one arbitration, two trials” model for resolving labour disputes, with “one arbitration” referring to the fact that, in the event of a labour dispute, it should first be decided by the Labour and Personnel Dispute Arbitration Commission. This system is designed to reduce the pressure of litigation, improve the efficiency of dispute resolution and stabilise labour relations.

However, with the rapid development of China’s socialist market economy and the gradual transformation of the social structure, the conflict between the interests of the intensification of the content of labour disputes more and more complex, China’s existing legal regulations can not be a good solution to the predicament of the workers in the arbitration of labour disputes, the rights and interests of workers are not well protected. Based on this, this paper draws on advanced experience at home and abroad, and puts forward corresponding improvement measures to better play the role of labour dispute arbitration.

## 2. Current Status of Research on the Labour Dispute Arbitration System in China

At present, scholars have expressed their insights on the difficulties of proof, unclear scope of cases, time-consuming and unclear statute of limitations for arbitration in labour dispute arbitration for workers.

With regard to the unclear starting point of the statute of limitations for arbitration, some scholars have suggested that, due to the complexity and diversity of labour dispute cases, the phrase “the date when the parties knew or should have known that their rights had been infringed upon” should be further refined, and in particular, specific classifications should be made for the different types of labour disputes. (ZHANG Dongmei, 2009) In particular, a specific classification should be made for different types of labour disputes.

On the interface between labour arbitration and litigation. Some scholars are of the view that the automatic invalidation of labour arbitration results after prosecution will vitiate the arbitration process. In view of this, they believe that the court should establish a corresponding review mechanism to conduct a comprehensive review of

the arbitration content of labour dispute cases and an in-depth analysis of the arbitration evidence procedure in labour dispute cases. However, based on the principles of limited review and legitimacy review, we should only review the arbitration content related to the litigation claim, excluding the outcome of the arbitration award, in order to prevent the arbitration procedure from being hollowed out.

The purpose of “pre-arbitration” in China is to effectively filter cases so that a number of cases can be properly handled in arbitration, thereby reducing the number of labour cases flowing into the courts and easing the work pressure on judges. However, in terms of the number of labour dispute cases currently being handled by the courts, it has failed to achieve the desired goal. Moreover, its narrow “import”, lengthy procedures, high costs and restrictions on the right to appeal, on the contrary, the labour dispute arbitration has lost its flexibility. In this regard, some scholars have proposed the programme of “arbitration and adjudication of choice, separation of adjudication and adjudication, and respective finality”, i.e., the separation of litigation and arbitration as in the case of ordinary arbitration, such as commercial arbitration, so that the parties concerned can only choose one of the two ways to defend their rights. This will help to save judicial resources on the one hand, and respect the parties’ right to procedural choice. On the one hand, it can enhance the authority of the arbitration committee to handle the award and the responsibility of handling the case, improve the quality of handling the case, and clarify the final effect of the arbitration result from the legal level. (Chen Jinhong, 2002) The final effect of the arbitration results has been clarified at the legal level.

3. Various Procedural Problems Faced by Workers in Labour Dispute Arbitration

3.1 Difficult and Time-Consuming for Workers to Defend Their Rights

Since 2015, China’s courts have adopted a case registration system, but in labour arbitration, the case review system is still used, and some cases are dismissed because they do not meet the review requirements, thus depriving some parties of the right to labour arbitration and making it difficult to defend their rights in labour cases. Since labour arbitration is a front-loaded procedure in China, the dismissal of arbitration has led to many cases flowing directly into the courts without arbitration, reducing one of the parties’ paths to relief and increasing the workload of the courts. At the same time, workers in labour disputes with their units to negotiate, consultation failed to mediate, mediation and then arbitration, arbitration did not meet the satisfaction of both parties to litigation, litigation results are not satisfied with the appeal, the process of defending their rights is difficult and long. The time and financial costs involved are high. This makes many labourers give up the road of defending their rights under the condition of weighing their interests. The project team found that in reality, some workers are still reluctant to apply for labour arbitration in labour disputes (see Figure 1), and most of them prefer to accept part of the loss and settle with the company due to the time-consuming and costly labour arbitration (see Figure 2).

If a dispute occurs, will you apply for labor arbitration?		
	Subtotal	Proportion
	224	70.44%
	94	29.56%
Fill in the number of people	318	

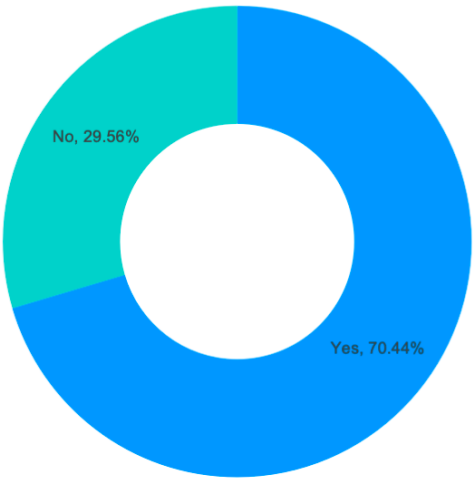


Figure 1.

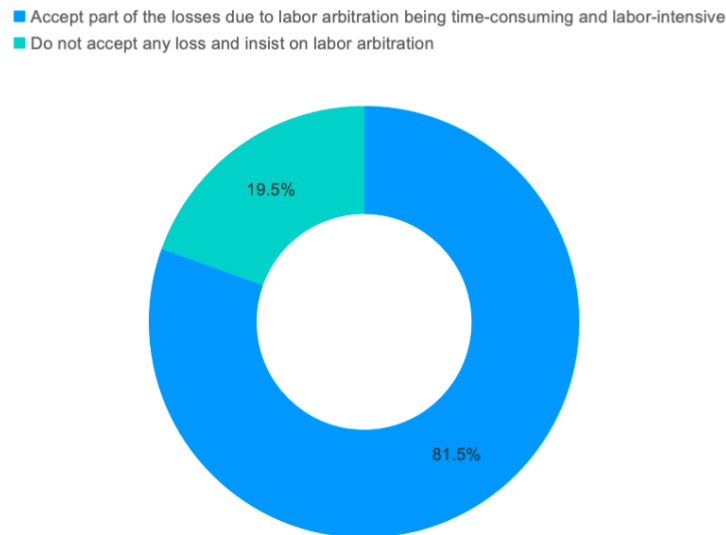


Figure 2.

### 3.2 Soundness of the Arbitration Organisation's Set-up

Currently, labour and personnel dispute arbitration committees in China are subordinate to other departments, and their internal personnel must have representatives from the executive branch. Arbitration committees may be influenced by the executive branch when dealing with labour disputes involving vulnerable labour groups such as migrant workers. The tripartite representation mechanism of labour dispute arbitration committees is often deflated in practice, with the vast majority of cases being completed only by administrative staff in the arbitration committee office, despite the presence of hired part-time arbitrators. The strong administrative overtones of labour arbitration institutions may affect the impartiality of arbitration results (Ding Huanxiang, 2010).

### 3.3 Articulation of Arbitration Proceedings

Firstly, there is a difference in the standard of adjudication between the two, and the outcome of the trial may be different or even overrule the previous arbitration result, thus leading to a lack of validity and authority of the arbitration.

Secondly, the two have different standards of jurisdiction and admissibility. Blurred boundaries in the scope of admissibility can affect the quality of cases and are not conducive to the timely and effective protection of the legitimate rights and interests of workers. With regard to the jurisdictional interface between labour dispute arbitration and labour litigation hearings, there are still irrationalities in the place of jurisdiction and the mode of jurisdiction.

Thirdly, there is duplication in the exchange and use of evidence. The evidence submitted by the parties in labour arbitration needs to be re-submitted and re-examined in the litigation stage, and the evidence in the arbitration and litigation stages cannot be shared, which greatly reduces the efficiency of the case. Although 2022 issued the "labour dispute arbitration in the litigation convergence of the relevant issues of opinions (a)" on arbitration and litigation evidence can not share the problem of corresponding provisions, that is, the labour arbitration stage of the two sides are recognized by the people's court after the explanation of the evidence is no longer cross-examined; in the stage of labour arbitration, the parties did not put forward the evidence in the stage of litigation, the need to explain its explanation. However, no detailed provisions have been made in respect of admissibility and burden of proof, which need to be continued and improved.

### 3.4 The Issue of the Scope of Arbitration of Labour Disputes

The rapid development of the digital economy has had a great impact on the operation of the labour market and on workers' choice of employment patterns and career paths. More and more forms of employment have begun to emerge, and various labour disputes have arisen one after another. In China, there are relevant laws regulating the scope of labour dispute arbitration, but the overall scope of cases is relatively small, which makes the legislation lag behind the practice, resulting in many workers' applications for arbitration being rejected, and they are unable to safeguard their own rights and interests.

### 3.5 Statute of Limitations for Labour Arbitration

In recent years, through a large number of cases, we can clearly perceive that the statute of limitations for arbitration is often insufficient in dealing with labour dispute cases, especially for workers who lack knowledge of the law and do not know how to defend their rights, and often find it difficult to defend their rights due to a variety of reasons that result in the expiration of the statute of limitations for labour arbitration. Although article 27 of the Labour Dispute Mediation and Arbitration Law extends the statute of limitations for arbitration to one year, it is still relatively short compared to the three-year statute of limitations in civil litigation.

3.6 Existing Problems in the Labour Arbitration Supervision System

First, the internal supervision mechanism is not operating perfectly. Although corresponding documents have been issued in accordance with the Rules for Handling Arbitration of Labour and Personnel Disputes and the Law on Mediation and Arbitration of Labour Disputes, the internal supervision of labour arbitration in the above-mentioned laws and regulations focuses more on procedural supervision, such as avoidance of arbitration, procedural errors, and handling of arbitration personnel’s violations of laws and regulations, and so on. However, there are no detailed provisions on how to resolve substantive errors in arbitral awards that have already entered into force, which makes it impossible for erroneous labour dispute arbitral awards to be corrected or revoked by the arbitration institution itself.

Secondly, the coverage of external supervision mechanisms is not comprehensive enough. Although the law stipulates that after the arbitration decision is made, the parties can seek legal remedies by filing a lawsuit with the people’s court and applying for non-enforcement, etc., the external supervision of the arbitration hearing process has been in a state of absence. (Agriculture and Industry Subsector Group, 2022) Go to court, the court will not review the entity content, and once missed the statute of limitations and annulment of the judgement period, the parties will lose the legal remedies, the arbitration judgement found that the facts are wrong and many other issues directly affecting the parties will not be able to get corrected in a timely manner.

3.7 Lack of Provisions Relating to the Preservation of Property, etc.

“The preservation procedure is a system of provisional relief aimed at guaranteeing the fulfilment of the creditor’s rights as affirmed in a civil judgement or at preventing irreparable damage to the rights provided for in the law.” (Jiang Wei & Xiao Jianguo, 2013) At present, the system of property preservation is widely used in civil litigation, which can make the execution of court judgements more effective. However, there is no property preservation in labour arbitration and other related provisions, only for work-related injuries, diseases in urgent need of medical treatment or due to salary arrears and living difficulties of the parties to implement part of the award first execution system. According to research, in reality, there are many cases of employers defaulting on wages (see Figure 3), and if a large amount of compensation is involved, the employer may transfer property in order to avoid paying compensation, and even if the arbitration rules that the employer needs to be compensated, the employer may cite bankruptcy as a reason for making the ruling difficult to enforce, so that the lawful rights and interests of the worker are not effectively safeguarded at this time.

Are there any wage arrears?	Subtotal	Proportion
	158	49.69%
	160	50.31%
Fill in the number of people	318	

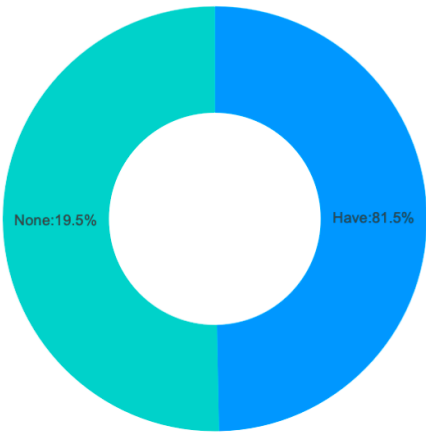


Figure 3.

#### **4. Countermeasures for the Protection of Workers' Procedural Rights and Interests in Labour Arbitration**

##### *4.1 Adoption of a Series of Measures to Promote the Effective Defence of Workers' Rights and Reduce the Time Spent on Them*

First, it is proposed that a case registration system be adopted for the examination of labour arbitration cases. Only the formal elements of the application will be examined, no other substantive examination will be carried out, and the case will be accepted if it meets the formal elements, and will be accepted and concluded within a certain period of time in accordance with the law. (Supreme People's Court Case Registration System Reform Research Group, 2015) (c) Adoption of the case registration system. The adoption of the case registration system will make it less difficult for workers to defend their rights, and will make it possible to resolve all kinds of labour disputes effectively and safeguard the legitimate rights and interests of workers.

At the same time, "green channels" have been opened and "holiday arbitration tribunals" have been set up to promote the "quick adjustment, quick establishment, quick adjudication and quick conclusion" of cases. The "green channel" can effectively safeguard the labour rights and interests of disadvantaged groups and smooth the connection between adjudication and trial, thereby shortening the time limit for arbitration and reducing the cost of appeals for disadvantaged groups. However, nationwide, only the "green channel" has been opened for migrant workers seeking help with unpaid wages, and it should be opened for other workers. In reality, there are often employees who have labour disputes but are unable to take time off from work to attend arbitration; for such disadvantaged groups with special circumstances, "holiday arbitration tribunals" should be implemented to stagger arbitration, using breaks to provide conditions for the parties to attend hearings and to provide convenience for special disadvantaged groups.

##### *4.2 Promoting the Reform of the Establishment of Labour Arbitration Institutions*

Establishment of independent arbitration committees. The establishment of labour arbitration committees needs to be staffed independently, without the approval of local labour departments, to reduce the involvement of public authorities and change the status quo whereby arbitration cases are dominated by administrative departments. The professional knowledge and relevant skills of the members of the arbitration committee should be improved to better guarantee the impartiality of labour arbitration.

##### *4.3 Promoting Effective Convergence of Arbitration and Litigation*

First, when handling labour dispute cases, labour arbitration committees and courts should follow the principle of uniform application of the law and ensure the accuracy and consistency of its application. For disputed cases involving the application of the law, labour arbitration committees and courts should strengthen communication and collaboration and jointly study solutions to avoid conflicts and contradictions in the application of the law.

Second, labour arbitration commissions and courts should clarify their respective jurisdictions to avoid conflicts of jurisdiction. The labour arbitration commissions should strictly check the admissibility of cases in accordance with the prescribed admissibility criteria to ensure that the admitted labour dispute cases meet the statutory conditions. Courts should also conduct strict examinations when accepting litigation cases involving labour arbitration.

Thirdly, a sound mechanism for linking labour arbitration and litigation enforcement should be established to ensure that labour arbitration awards and court judgements are effectively enforced. Labour arbitration committees and courts should strengthen communication and coordination, and work together to resolve problems encountered in the course of enforcement. For example, a "joint mediation platform for adjudication and adjudication" should be established. For more complex cases, courts and arbitration departments can set up cooperation groups to deal with them jointly. By both parties have a full understanding of the specific circumstances of the case, according to their own knowledge of the case processing advice, to find the most favourable solution to the parties.

##### *4.4 Expanding the Scope of Labour Disputes*

China's Rules for Arbitration of Labour and Personnel Disputes provide for the scope of disputes that can be subject to labour and personnel arbitration and set out underpinning provisions. However, due to the continuous diversification of employment patterns in China, different types of labour dispute cases have emerged. Issues involving the confirmation of labour relations in new forms of employment such as takeaway workers and online car drivers are difficult to resolve through labour dispute arbitration. In addition, issues related to the treatment of workers' injury insurance or commercial insurance for workers in new forms of employment are also difficult to be resolved under the current scope of cases. In order to respond to actual needs and protect the rights and interests of workers in new forms of employment, it is necessary to keep pace with the development of the times and expand the scope of cases accepted.

##### *4.5 Improvement of the System Relating to the Statute of Limitations for Arbitration*

First, a judicial interpretation of the “date of occurrence of the labour dispute” that is consistent with the legislator’s actual legislative intent and establishes the starting point for the time limit for the arbitration of labour disputes should be the point at which the employer and the worker clearly express their differing views in the event of disputes between them over the provisions relating to wages, insurance, benefits, training, labour protection, the implementation of the labour contract and so forth.

Secondly, all the rules on suspension, interruption, extension and the maximum limitation system in the statute of limitations in litigation shall be incorporated into the labour dispute arbitration limitation system, so that the labour dispute arbitration limitation system will become a logically rigorous and systematically perfect arbitration limitation system. (Zhang Zuochuan, 2006) Secondly, it will incorporate all the rules on suspension, interruption, extension and maximum period of limitation in litigation into the labour dispute arbitration limitation system, making the labour dispute arbitration limitation system a logical and complete system.

Thirdly, a system for informing workers of the statute of limitations on arbitration has been established. In the event of a labour dispute, workers are obliged to be informed of the statute of limitations for labour arbitration, regardless of the agency or department to which they appeal.

#### *4.6 Improvement of Labour Arbitration Supervision Mechanisms*

To improve the supervision system of labour arbitration, it is necessary to promote the different main bodies to play their advantages, form a synergy of supervision, and correct in a timely manner the various problems that may exist in labour arbitration in order to enable labour arbitration to play its real role. (Agriculture and Industry Subsector Group, 2022) To this end, suggestions are made in two areas:

First, the local legislatures improve the case handling rules according to their authority, and on the basis of the existing Labour and Personnel Dispute Arbitration Case Handling Rules, they can add corresponding provisions to give the arbitration institutions the right to internally correct and revoke erroneous awards, and formulate the arbitration case handling rules in line with the actual situation of the localities. In this way to make up for the above law in the effective decision of self-correction and external correction of the missing part of the error.

Second, industry supervision should be improved as soon as possible to form a diversified labour arbitration supervision system. Social supervision, trade union supervision and public opinion supervision can be strengthened by drawing on the principle of openness, regularly publicising cases to the community, publicising the methods of handling, the process of handling and the results of handling to the community, and accepting the supervision of the public and public opinion. A diversified monitoring system will also promote the development of a diversified mediation mechanism; the two are mutually reinforcing and will further improve the social governance system and social governance capacity.

#### *4.7 Addition of Provisions on Property Preservation in the Labour Dispute Arbitration System*

Since workers are in a relatively disadvantaged position compared to employers, given the special nature of the relationship between the two parties, a property preservation system should be added to labour arbitration, so that workers can apply for property preservation against the enterprise after a labour dispute has arisen. This will help to prevent the employer from maliciously transferring company property, thus circumventing the effective implementation of the award, effectively safeguarding the legitimate rights and interests of workers, and reducing the occurrence of the phenomenon of legal white slips. As the applicant is required to bear the guarantee responsibility in property preservation, but in labour dispute arbitration, the workers themselves are in a disadvantaged position, and their legitimate rights and interests have been violated by the employer, and very often the economic situation is difficult to maintain, and it is difficult to come up with the corresponding property to bear the guarantee responsibility. If the workers are required to bear the guarantee responsibility, many of them may not be able to apply for property preservation, and their legitimate rights and interests are still not effectively protected. In view of the special nature of workers’ status, it is recommended that, where there is sufficient evidence, workers should be moderately relieved or exempted from the security responsibility for applying for property preservation. Of course, when implementing the property preservation system, it is also necessary to consider some specific operational issues, such as how to determine the scope of property preservation and how to balance the rights and interests of workers and employers. At the same time, it is also necessary to improve the relevant laws and regulations and institutional provisions to ensure that the property preservation system can be effectively implemented in practice.

### **5. Conclusion**

Labour relations in China are becoming increasingly complex and diversified, and there are many problems in resolving labour disputes in practice, so there is an urgent need for reforms in certain areas in order to adapt to the current situation of labour disputes in China. It is hoped that the legislative, administrative and judicial organs of our country, taking into account the current economic and social environment, will introduce and implement more feasible, effective and practical legal regulatory measures to better ensure that workers are on

an equal legal footing with their employers in labour arbitration, and to promote the fair, efficient and convenient settlement of labour arbitration cases, so that the vast number of workers can feel the protection of the law in all aspects of their work. The Labour Arbitration Committee has been working on this issue for some time.

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