

Exploring the Labor Nature of China's B&B Volunteers at the Legal Level

Yuhan Song

Nanjing Agricultural University, Nanjing 210018, China.

Abstract: The volunteer-for-lodging travel model, which is dominated by B&B volunteers, has become popular among young people in recent years. This travel model can save on travel room and board costs and provide participants with the opportunity to travel at low cost or even for free. However, unlike traditional volunteer work, this "quasi-labor relationship" often leads to labor disputes. By summarizing the labor characteristics of B&B volunteers, we can define their unique labor nature, so that we can quickly clarify the rights and responsibilities of both parties when disputes arise between B&Bs and volunteers, and provide a basis for dispute resolution, and accordingly discover more effective ways to protect the rights and interests of B&B volunteers.

Keywords: B&B Volunteer; Volunteer Travel; Nature of Labor

Introduction

Volunteer travel first originated in some German youth hostels, which provided young people with some agricultural and pastoral work to engage them in labor practice, in order to achieve the purpose of combining travel and education to cultivate talents. At the beginning of the 21st century, a number of volunteer travel cooperation models consisting of schools, enterprises and social organizations were established in the West, and this type of travel gradually became more widely known, and volunteer travel has since become a lifestyle trend for young people. The popularity of volunteer travel in China is closely related to the rise of the B&B industry, and B&Bs and youth hostels are the largest providers of volunteer travel opportunities today, so this paper focuses on this type of volunteer travel model as well. The B&B industry has entered a period of rapid development since 2015^[1], they are gathered in some popular tourist locations, especially in rural or remote tourist sites with fierce competition, and labor is scarce, often facing the problem of expensive and difficult employment, and the behavior of young students with meager income and strong willingness to travel in the form of volunteer work for accommodation and food in these B&Bs has both relieved the labor pressure of B&Bs and met the As a result, many B&B operators and young students are seeking opportunities to join the ranks of volunteer travel providers and participants.

The B&B volunteer travel model achieves a two-way mutual benefit between the employer and the worker, and its initial intention is good. However, at present, the authorities lack supervision of the operators of B&Bs that use volunteers, and are unable to better protect the rights and interests of volunteers working as laborers. Problems such as volunteers becoming part-time workers, poor food and accommodation conditions, and threats to personal safety frequently arise. The problems behind the various violations of the rights of volunteers are the gaps in the relevant rules and regulations, and these problems are due in part to the legal ambiguity of the labor nature of B&B volunteers. The relevant laws and regulations lack a definition of the labor status of volunteers, and the academic circles and local documents in different regions are divided on this issue. Therefore, there is no legal basis for volunteers to defend their rights when their rights are violated, and it is difficult for the courts and arbitration departments to deal with such issues with justifications. This article starts from the labor characteristics of B&B volunteers, identifies them with similar concepts, and then grasps their labor nature, and explores ways to protect the rights and interests of B&B volunteers on this basis.

1. The current situation and problems of volunteer travel activities in China's B&B

After the peak of the epidemic, China's tourism industry bottomed out and the re-energized B&B and youth travel industry began to recruit a large number of volunteers, and most of them were concentrated in the more popular tourist areas, such as

Xinjiang, Yunnan, Hainan, Zhejiang and Fujian coast. The vast majority of these volunteers are young students, who generally plan 1-3 months of their winter and summer vacation to participate in this activity, and then contact the B&B directly on the internet through a third-party platform for volunteer travel or on social media to determine the location. The B&B will generally make a verbal commitment to the hours of work, the content of the work, and the availability of food and lodging, thus ensuring that the labor is relatively easy and free. The volunteer party will make a presentation of their basic situation, and the B&B party will judge whether to formally recruit them based on their labor capacity and physical condition.

Currently, many B&Bs are looking for channels to recruit volunteers, with young students as the main component of volunteers with high quality, positive work mentality and no need for pay, favored by more and more B&B operators, and some scholars surveyed that the current domestic B&Bs recruiting volunteers are not yet saturated^[2], and it is expected that more B&Bs will use volunteers in the future to alleviate labor pressure and save labor costs in the future. The use of volunteer workers is expected to reduce labor pressure and save labor costs in the future. With the rapid growth of the volunteer travel model, problems have arisen. First, as a recruiter of B&Bs, there are still problems such as low entry barriers, lack of relevant laws and regulations, and confusion over regulatory responsibilities^[3], so there are many "black-hearted B&Bs" on the market, which are difficult to provide good labor protection for volunteers, according to relevant media investigations, many of the recruitment of volunteers. According to media investigations, many B&Bs recruiting volunteers have poor food and accommodation conditions, and even deliberately coax volunteers to engage in high-intensity work, making them serve as free labor.^[4] Secondly, those who come to volunteer are generally uninitiated students, some of whom are minors, and are more likely to make mistakes in their work, which may unintentionally cause damage to the interests of B&B operators or B&B customers and cause disputes. In general, the B&B operator and the B&B volunteer are in a temporary relationship motivated by their own interests, and the cooperation between the two is entirely profit-oriented, without the public welfare motivation of the traditional volunteer in carrying out volunteer activities. The majority of such atypical labor disputes cannot be properly resolved within a short period of time after seeking help from the relevant authorities. The reason for this dilemma is, to a certain extent, because most volunteers and B&Bs are willing to cooperate by verbal agreement, and very few of them can sign relevant agreements in advance to define the rights and responsibilities of both parties. "The object of adjustment of the law is the social relations regulated by the law, and the law is the stabilizer of society."^[5] Whether B&B volunteers are employed workers or volunteers who provide services for free is not yet legally certain, and the ambiguous relationship between them and B&B is neither applicable to labor law nor volunteer regulations, which makes it difficult for the relevant authorities to make a reasoned decision on whether the two sides are right or wrong.

Wei Xiang, a scholar at the Chinese Academy of Social Sciences, believes that "volunteer travel needs to be addressed in order to define this form of employment and bring it into the realm of regulated employment."^[6] From the legal point of view, the labor nature of B&B volunteers urgently needs a clear and precise definition in the relevant laws and regulations to enable the relevant departments to have a law to follow when solving related problems and properly handle disputes between the two sides.

2. The labor characteristics of B&B and the definition of its labor nature

In order to define the labor nature of B&B volunteers, it is necessary to clarify the status of volunteers in the personal relationship between them and B&B, and to investigate the labor characteristics of the act of volunteer travel.

2.1 Labor characteristics of volunteer travel

2.1.1 Equivalence of reimbursement

In the personal relationship formed between the volunteer and the B&B, the parties aim to obtain certain financial benefits. The volunteer party, as the owner of the labor force, enjoys the right to free room and board at the cost of ceding the labor force to the B&B party and assuming the corresponding labor obligations. As the possessor of the means of production, the B&B owner enjoys the right to use the volunteer labor for production services and makes profits from it, and assumes the obligation to provide room and board for the volunteers.^[7] This relationship is equitable and rewarding for both the volunteer and the B&B operator.

2.1.2 Temporary

Since the majority of the B&B volunteer group are school students, they generally participate in volunteer travel activities for 1-3 months, which is the peak travel season such as during the winter and summer holidays. The hours of volunteer work at the B&B are too short to be accepted by the B&B, and too long to delay school or work. In addition, volunteers come from all over the country and participate in volunteer activities with the main purpose of saving money on travel food and accommodation, and do not stay for a long time, showing a temporary nature.

2.1.3 Labor Specificity

At present, the labor legal relationship stipulated in China's law is mainly labor relationship and labor service relationship, although there are many differences between the two, but according to the provisions of Article 50 of the Labor Law of the People's Republic of China, generally have the characteristics of the employer to pay labor compensation in the form of money to the workers, and the B&B volunteers do not meet this characteristic. In addition, the establishment of labor relations and labor relations require the signing of relevant contracts, while at present there are few contracts or agreements signed between volunteers and B&Bs, reflecting an arbitrary and informal nature compared with the former. Therefore, the personal relationship between volunteers and B&Bs does not belong to any kind of labor legal relationship stipulated in the current law, which is reflected in the fact that there is no affiliation between volunteers and B&Bs in this personal relationship, and B&Bs do not bear insurance obligations, but this does not mean that the personal relationship formed between volunteers and B&Bs is unrelated to labor relations and labor relations, and they all have common features such as equal pay and equality of subjects. We can understand the personal relationship between B&B and volunteers as a "quasi-labor relationship". In summary, this personal relationship is special in comparison with other labor legal relationships.

2.2 Definition of the nature of labor

Among scholars and legal practitioners in related fields, some think that B&B volunteers are "helpers" in a sense or "odd jobs" in the emerging concept of "odd job economy", while others think that it Others believe that it should rightly be classified as a volunteer.

For example, in the case of Zhong Zhenglun v. Meixian Lingguang Temple, the plaintiff Zhong Zhenglun volunteered at a local temple as a volunteer in exchange for room and board and a monthly "allowance" of 300 yuan, and requested the temple to pay compensation for the termination of the labor relationship after the volunteer act. During the trial of the case, the Meixian Court and the Meizhou Intermediate Court had different opinions on whether or not Zhong Zhenglun could have a labor relationship with the temple as a volunteer. The second trial of the Meizhou court emphasized the nature of the volunteer status of Camarines Chung and held that the two did not constitute a labor relationship, but a "special labor relationship", thus reversing the result of the first trial and dismissing Camarines Chung's lawsuit. Although this case does not strictly belong to the category of B&B volunteers, it is enough to show that the authorities can easily get into a dilemma when dealing with the issue without a clear definition of the identity of volunteers, and it is also enough to see that it is difficult to apply the concepts of "helpers" or volunteers or "odd jobs" in such cases. In addition, we can also see that it is difficult to apply the concept of "helper" or volunteer or "odd job" in such cases.

The author believes that the personal relationship between a B&B volunteer and a B&B operator is a personal relationship that is initiated by the B&B to reduce labor costs and is responded to by a person who has the intention to save on the cost of food and lodging for the trip, with the two parties agreeing verbally or in writing that the volunteer will pay for temporary and simple labor and the B&B will provide him with material compensation such as food and lodging. The nature of labor of B&B volunteers is a special nature of labor based on this relationship, and although it has some similarities with "helpers", "odd jobs" and volunteers, it is ultimately different from them.

First, we explain the labor characteristics of B&B volunteers in our discussion of their equivalence of pay, where volunteers exchange their labor for room and board and the B&B party recruits them to start business activities. China's "Regulations on Volunteerism" stipulates that no organization or individual may use volunteers for profit-making activities, and volunteers cannot receive compensation, and from the requirements of this article, the identity of B&B volunteers should not be recognized as volunteers. Secondly, the folk concept of "helper" generally refers to people who provide labor assistance without compensation, and the concept of helper mentioned in the Supreme People's Court's Interpretation of Several Issues on the Application of Law to the Trial of Personal Injury Compensation Cases also refers to people who provide labor services without compensation, while the prerequisite for a B&B volunteer to agree to pay labor is to obtain free room and board. The people's courts have been able to find that the concept of "helpers" is also a concept that refers to people who provide labor for free, and the premise of the B&B volunteer's agreement to pay labor is to obtain free room and board. In addition, some scholars believe that B&B volunteers belong to "odd jobs" under the concept of "odd job economy", but such odd jobs must meet the characteristics of Internet-based tasking, i.e., they must match jobs through the Internet, and the labor performed is also fragmented and counted.^[8]In contrast, B&B volunteers do not rely entirely on the Internet to find jobs, and their labor is not scattered and counted, so the status of B&B volunteers does not match that of "odd jobs". As the above discussion summarizes, the nature of labor of B&B volunteers is different from any existing concept of labor, but is an unprecedented and distinctive special nature of labor.

3. Suggestions for protecting the legitimate rights and interests of B&B volunteers

Defining the labor nature of B&B volunteers is to better protect the rights and interests of both B&Bs and volunteers, especially the legitimate rights and interests of the volunteer side as a relatively vulnerable group. Based on the above definition of the nature of B&B volunteer labor, the author makes the following recommendations.

3.1 The introduction of regulations to fill the regulatory gap

Only by introducing relevant management methods can the authorities have a basis for resolving disputes between volunteers and B&Bs, and avoid falling into a dilemma similar to that of the case of Camarines Chung mentioned above. However, as of now, there is no legal certainty as to whether B&B volunteers are employed workers under the applicable labor laws or volunteers under the applicable volunteer regulations. The above definition of the nature of labor of B&B volunteers is special enough to see its special nature, the relevant departments should be independent of other established identity categories and forms of labor, the nature of labor of B&B volunteers, volunteers and personal relations between B&B as a new and special concept, and this concept as the core of the introduction of relevant regulations, in order to quickly clarify the rights and responsibilities of both sides when disputes arise.

In addition, it is necessary for the relevant departments and social groups to strengthen the supervision of the B&B industry. If B&Bs are found to have behaviors that harm the rights and interests of volunteers, it is necessary for the labor security department to deal with them, and industry associations should also introduce relevant measures to curb the malicious use of volunteers by B&Bs.

3.2 Leveraging a reliable platform and playing an intermediary role

In recent years, a number of travel volunteer recruitment platforms have emerged on the Internet, many of which include B&Bs and charge advertising fees to promote their environment and treatment to attract volunteers to join, but there are also a number of platforms that evaluate the B&Bs recruiting volunteers and list the red and black lists for volunteers' reference, which helps reputable B&Bs recruit more volunteers and also helps volunteers avoid shady B&Bs. This model is recommended for third-party platforms. In addition, you can also rely on the platform to agree on the rights and responsibilities of both sides, or the platform to intervene to mediate the conflicts between the two sides, etc. Some foreign volunteer travel platforms such as HelpX, wwoof, etc. have a strict access review for activity recruiters, and the threshold for joining these platforms to recruit volunteers is relatively high.^[9] It can be said that there is more room for the development of third-party platforms in China in the supervision and management of volunteer travel activities.

3.3 Sign a written agreement to ensure that there is evidence to support

Currently most volunteer travel activities rely only on verbal agreement on the rights and responsibilities of both parties before they begin, resulting in a lack of basis for both parties to defend themselves in the event of a conflict or dispute. Therefore, both parties interested in participating in volunteer travel activities should establish a sense of contract and contractual awareness, and sign a legally binding contract or agreement that stipulates the rights and responsibilities of both parties before the start of the activity. This agreement should include, but not be limited to, the type of work, daily working hours, meal and accommodation standards, disposal of work accidents, and compensation for breach of contract. The signing of a written agreement can make both parties to the agreement fearful of regulating their own behavior, thus reducing the occurrence of violations of rights and interests, and also provide the relevant departments with a basis for arbitration and mediation when a dispute requires third-party arbitration and mediation.

4. Conclusion

This article explores the labor characteristics of B&B volunteer travel activities from a legal perspective, argues that the labor nature of B&B volunteers is a special concept independent of other existing concepts, and offers suggestions accordingly. At a time when B&B volunteer travel is becoming increasingly popular, it is not only necessary for the relevant departments to formulate rules and regulations and improve the efficiency of dispute resolution to regulate themselves, but also for the participants to establish legal awareness, respect the rights of all parties and fulfill their obligations to achieve the effect of self-regulation.

References

[1] Zhang L. B&B industry : Opportunities and challenges to usher in rapid development --- 2019 China - Changsha B&B Industry

Development Conference Sidebar [N]. China Culture Daily, 2019-11-01.

[2] Sun YX, Wu YT, He S, Cai Y, Shuo Wang. The current situation of domestic volunteers for accommodation and the feasibility analysis of new media platform construction[J]. Culture Industry,2020,(06):91-93.

[3] Tang HJ. Urban bed and breakfast: the dilemma of security management and the way forward of legal governance [J]. Shanghai Real Estate,2022(06):29-33.

[4] Jia Y. Don't let "volunteer travel" "run naked" in risk [N]. Beijing Youth Daily, 2021-08-13.

[5] Zhang WX. Jurisprudence [M]. Beijing: Law Press, 2018.

[6] Wang WY. Volunteer travel: Behind the sentiment hidden "set" [N]. Workers' Daily,2019-9-19.

[7] Liang TT, Liang YL. New theory of labor law [M]. Beijing: Beijing University of Technology Press.

[8] Ban XH. Labor law regulation of task-based employment in the "zero-work economy"[J]. Law Review,2019,37(03):106-118.

[9] Pecenko K, (2014). Renovating with HelpX: Travellers ready to lend a hand. ReNew: Technology for a Sustainable Future, 129, 58-61.