

Analysis of the System of Claiming Right of Remuneration for No-Cause Managers

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Abstract

According to Article 121 of my country's "General Principles of Civil Law", no-cause managers have the right to request repayment of necessary expenses incurred for management affairs, but the law does not recognize that managers have the right to request remuneration for this, resulting in no Due to the obvious asymmetry between the rights and obligations of the administrator. In order to balance the rights and obligations between managers and themselves and encourage more people to engage in behaviors expected by society, it should be confirmed that there is no reason for managers to have the right to request remuneration for management affairs. Depending on whether the gratuitous manager provides professional management services, the amount of remuneration claims may vary, but it is unreasonable to deny non-professional persons the right to claim remuneration for gratuitous management.

Keywords

No-cause Management; Right to Claim Remuneration; Professional Activities.

1. The Status Quo of the No-Cause Management System

The no-cause management system originated from Roman law, aiming to implement the two principles of "not to interfere in other people's affairs at will" and "to promote the spirit of human mutual aid and mutual love" [1]. It is a typical representative of the legalization of morality, and was later introduced into our civil legislation. However, whether it is Article 93 of the General Principles of Civil Law of China or Article 121 of the General Principles of Civil Law of China, it only stipulates that the manager without cause has the right to request himself to repay the necessary expenses incurred thereby, and there is no reason for it. Whether the manager has the right to claim remuneration for this reason is not specified. Reading the statute itself, it seems that the answer should be negative. Even Article 132 of the "Mintong Opinions" only expands the interpretation of the actual losses suffered by the administrator and incorporates it into the "essential expenses", and does not provide for the right to claim remuneration. In management affairs, the administrator is not required to undertake obligations such as notification, custody, calculation, etc. [2], but the law only grants it the right to request the reimbursement of necessary expenses. It is doubtful whether the asymmetry of legal rights and obligations is appropriate because the manager has more obligations and less rights. Although management without cause is done for the benefit of others, the time and energy invested by the administrator can be regarded as a loss, and the demand for compensation is also a reasonable basis for the right to claim compensation. The legal norms of the management system without cause should be based on a practical point of view, use a more reasonable guideline of rights and obligations to motivate members of society to engage in behaviors expected by law [3].

2. Dispute over the Manager 's Right to Claim Remuneration

2.1. Negative Theory

Negative theory affirms that management without cause is a kind of social behavior, and the law encourages members of society to engage in management without cause, which is not a problem. However, it is not beyond doubt that if the manager claims the right to claim remuneration, it is inconsistent with the basic purpose that the management system exists for the benefit of others. First of all, if a manager for no reason manages affairs, he does not rule out taking into account the affairs of others and at the same time for his own interests. It is generally believed that this situation also constitutes management without cause . Second, management without cause refers to managing affairs for others without a legal obligation . The manager first conducts management without cause, and then claims the right to remuneration. This behavior of "learning from Lei Feng before charging" cannot change the essence of management without cause[4]. As long as the manager has an altruistic purpose and conducts affairs management seriously, it should be deemed as management without cause. If the manager only interferes with other people's affairs for the purpose of "seeking profit", it does not meet the constituent elements of "managing affairs for others" in the management without cause, and it is a tort, so there is no problem of claiming compensation. Finally, the view of negation actually presupposes a moral image of "selfless dedication and self-sacrifice", that is, it is assumed that every member of society who is engaged in non-cause management has the noble spirit of "selfless dedication and self-sacrifice". However, the construction of a legal system cannot only be based on some abstract moral assumptions, and only when the norms of rights and obligations meet the expectations of the public can it receive good social effects. The spirit of "selfless dedication and self-sacrifice" is certainly worth learning, but we cannot require every member of society to meet such a high standard, otherwise the legal provisions will be useless[5]. After all, everyone has a self-interested nature, and rational people will make the most self-interested choice after weighing the pros and cons. If you are not sure about the remuneration claim of the no-cause manager, and realize the balance of the rights and obligations of the no-cause manager, then engaging in the no-cause management behavior is obviously more paid and less rewarded. In the case of unbalanced rights and obligations, what is there to say? Incentivize the public to engage in management without cause? In this way, this strange phenomenon may occur: when others need help and their own conditions allow, if a person does not engage in management without cause, it may violate his basic moral conscience; However, in the management without cause, the obligations that one should undertake are more stringent, and thus fall into a dilemma .

2.2. Finite Affirmation Theory

This theory holds that managers generally cannot claim remuneration for managing affairs for others, but if management affairs are the occupational scope of managers, such as doctors helping people who have been involved in a car accident, they should be affirmed that they have the right to request remuneration. Based on the view of limited affirmation, the premise of the manager's right to claim remuneration is that the affairs of no-cause management are related to the manager's professional behavior[6]. Professor Guo Mingrui also believes: "No-cause managers generally do not have the right to request remuneration, but if the manager's remuneration can be included in the necessary expenses, the request for reimbursement should be allowed . If the management affairs department falls within the manager's occupational scope, it may be considered that If there are indirect property expenditures, compensation of the usual remuneration must be requested. The author believes that the manager without cause has invested a certain amount of time and energy in the management behavior. However, the premise of the manager's right to claim remuneration is that the management for no reason is

related to professional behavior ." This point is unreasonable. First of all, in social life, people may need help from others due to some emergencies, but they may not always be able to meet the help of professionals in time[7]. Those who can lend a helping hand in real time are mainly non-professionals. If the premise of whether to enjoy the right to request is based on the dichotomy between professionals and non-professionals, it is undoubtedly an unfair treatment in law. This will remind non-professionals not to engage in rash management behaviors, and it will dampen their enthusiasm to help others. Secondly, if it is affirmed that only professionals can enjoy the right to claim compensation, is it not only affirming that the management time of professionals is valuable? Time is equally precious to everyone, even for non-professionals, the time he spends on management without cause can be Converted from other business activities, also gave up the opportunity to provide paid services to others, which can be regarded as a loss. Finally, although some scholars have pointed out that professional people have a higher duty of care, the management of determining whether it constitutes no cause is more stringent, while the behaviors of non-professional people are more pure and simple, and the energy costs of the two are different[8]. Therefore, from the perspective of the allocation of rights and obligations, it is more reasonable not to give ordinary people the right to request remuneration for management without cause. However, it is undeniable that even non-professionals who conduct legal and no-cause management must perform the same duty of care as managing their own affairs. As long as the manager has exercised sufficient and reasonable duty of care, the legality of his management behavior should be affirmed. In terms of due diligence, there is no distinction between managers and professional service providers. Due to the different professionalism of the services provided by the managers, it can be considered that there are differences in the amount of compensation claims, but it is unreasonable to deny the non-professionals' compensation claims based on this.

2.3. Say with Absolute Certainty

From the perspective of complete affirmation, as long as the perpetrator has seriously engaged in management affairs without cause, the existence of the right to claim compensation should be affirmed, regardless of whether the management affairs are professional behaviors or not. Compared with the theory of negation and the theory of limited affirmation, the author is more in favor of the theory of complete affirmation. In modern society, personal wealth is the foundation of the overall wealth of the society[9]. The loss caused by a person's neglect of managing his own affairs is not only the economic loss of the individual, but also the loss of the overall wealth of the society. If managers can exert the fraternal spirit of "helping each other, I am for everyone", and take the initiative to manage the interests of others, whether it is an individual or a society, this behavior should be affirmed. Although management without cause requires "managing for other people's affairs , but for him at the same time for his own interests, there is no obstacle to the establishment of management without cause. This kind of meaning for oneself should include a certain right to request remuneration. Therefore, first If you manage and then offer compensation, you cannot change the nature of the previous management without cause. The meaning of compensation is not necessarily understood as labor income, but represents a kind of "honor reward", which is a material reward for management behavior without cause, and it is also a reward for Due to the affirmation of the morality of managers. Indeed, influenced by traditional thoughts such as "why does the king say benefit, there is only benevolence and righteousness" and other traditional ideas, "emphasis on righteousness and lightness on profit" has been advocated since ancient times. However, as righteousness and benefit can be mutually beneficial, morality is advocated. It is not contradictory to claiming remuneration[10]. The law is the minimum morality. Although the law advocates social members to "selfless dedication and sacrifice for others", it cannot require every member of society to achieve the level of "selfless dedication and sacrifice for others". It is undoubtedly a better way to guide people to engage in the behaviors expected by the law.

Give managers without cause the right to request remuneration, and encourage members of society to take the initiative to lend a helping hand when others need help, so as to reduce the risk of others. The probability of loss due to lack of timely assistance is a matter of shared interests for both the person and the manager.

Some scholars have also pointed out that the reason not to grant the general manager without a reason the right to request remuneration is to prevent the abuse of rights and avoid the possibility of the right to request remuneration being abused. But this view deserves further exploration. First of all, everyone has the right to help others, but others also have the right to refuse help. If others expressly reject it in advance, there will be no management problems for no reason. Even if the administrator first manages, and I know it later, if there is no reason for the administrator to violate the intention that I know or infer, it does not belong to the appropriate management without cause. The non-cause management conforms to my express or deduced intention, and the burden of proof shall be borne by the non-cause manager who claims the right to remuneration. If the manager conducts unlawful and unreasonable management, he must bear the risk of not being able to provide evidence. Secondly, if the manager engages in management without cause, only for the self-interested purpose of obtaining remuneration, rather than for the benefit of others, his behavior falls into the field of intrusive right liability law, which fundamentally denies the application of management without cause. The law encourages members of society to implement management without cause, but one of the constituent elements of management without cause is to have the intention of serving others, simply to claim remuneration without management without cause, its behavior is not management without cause, and naturally it is not protected by law. Finally, it takes a lot of time and energy to find transactions that can be managed without cause. From the perspective of a rational person, everyone will strive to maximize their own interests. When the cost of actively looking for a no-cause management agency is greater than the benefits that the no-cause management claims compensation itself can bring, the possibility of arbitrarily interfering in other people's affairs is also reduced based on the measure of interests. Because China's civil legislation has not yet recognized the right to claim compensation for managers without cause, in the current law, it is recommended to expand the interpretation of "necessary expenses" to include the compensation that should be obtained by managers for management affairs without cause. , in order to achieve the balance of rights and obligations between the uncaused administrator and the person.

3. Positive Meaning

3.1. Analysis from the Perspective of Rights and Obligations

In jurisprudence, rights and obligations are always relative. When legal rights are found, we can always find corresponding legal obligations; conversely, when legal obligations are found, we can always find corresponding rights. As mentioned above, in order to manage affairs for no reason, the administrator needs to undertake obligations such as notification, custody, calculation, etc., but only enjoys the right to request for necessary expenses. It is not due to the fact that the administrator has too many obligations and few rights, which obviously causes the legal rights and obligations to be unequal. This asymmetry of rights and obligations is likely to prompt people to "sweep the snow in front of their own doors and take care of other people's frost", resulting in indifference of social favor. If the administrator is properly granted the right to request compensation and balances the rights and obligations between the administrator without cause and himself, it will undoubtedly encourage members of society to manage without cause when possible, and the consistency of rights and obligations is also in line with the principle of fairness in civil law. Moreover, setting up the right to request does not prevent those who have higher demands on their own behavior from giving up the exercise of this right.

One of the guiding functions of the law is to guide people to behave correctly. The law affirms that no-cause managers have the right to request remuneration, and no-cause managers are rewarded for their corresponding management efforts, which will inspire more people to be willing to do good deeds, engage in no-cause management when possible, and form a good social atmosphere. The social effect should be expected and encouraged by the law.

3.2. Analysis from the Perspective of Human Nature

From the perspective of economics, every social person is actually an economic person, and has the characteristics of self-interest, rationality and profit maximization. As mentioned above, denying the manager's right to remuneration without a reason undoubtedly presupposes a spiritual image of "don't seek repayment, sacrifice oneself for others". Although the law does not require all members of society to engage in altruistic behavior, once you choose to do so, the law will require you to use altruistic standards. Since no-cause management is essentially altruistic, how can we talk about rewards? Logically speaking, there seems to be no problem, but altruism and self-interest are not contradictory, and the two can coexist. Just like merchants provide consumers with different types of commodities, the purpose is to sell them profitably, which is self-interested, but providing various commodities also enriches the choices of consumers, which has an altruistic side. The establishment of any system cannot only be based on the assumption of a certain human nature or moral concept, but should be based on reality and meet the general expectations of the public. In other words, the law should not start from some abstract moral concept to establish legal norms, but should consider how to configure the rights and obligations between the parties to achieve the best balance of interests of all parties. If management without cause overemphasizes the obligations of managers and does not pay attention to their rights, the final result may be counterproductive and have a negative impact on the enthusiasm of social members to help others. It is undeniable that there will be many people with high morals in life who are willing to actively engage in management without cause, and they do not seek fame and fortune. But such people are few and far between, and the vast majority of society are ordinary people, whose moral level has not yet reached an ideal level, and most of the social behaviors they engage in will proceed from the perspective of self-interest. The denial of the manager's right to request remuneration in the management without cause seems to affirm the manager's management behavior on the moral level, but there is no doubt that "you have lost face and lost your sanity". Considering the asymmetry of rights and obligations in management without cause, as well as the investment of time and energy, it actually hinders the enthusiasm of social members to implement management without cause. After all, once you engage in non-cause management, the law must implement altruism to require you, and you must not have selfish desires in the process of non-cause management. The dedication spirit of "selfless dedication, self-denial for others" can be advocated, but if we actually regulate people's behavior, we need to proceed from human nature and make the most of the situation to urge people to make choices that maximize their interests. Human beings are inherently self-interested, and it is human nature to pursue self-interested behaviors that maximize their own interests. Only when people's self-interested nature is protected by law can they be better altruistic for others. When the law regulates practical issues, it cannot take the morality that should be promoted as the minimum code of conduct for people. If you overemphasize that personal behavior is only altruistic, it will inhibit the enthusiasm to help others.

3.3. Analysis from a Social Perspective

From the perspective of sociology, one of the purposes of establishing the legal system is to maximize the interests of society. The arrangement of the legal system should benefit society as a whole. Giving the no-cause manager the right to request remuneration, thereby motivating more people to engage in no-cause management, can effectively avoid unnecessary resource

loss in the society, and at the same time form a good atmosphere of helping others, which is beneficial to the whole society. benefit. Although the person being helped needs to pay a certain amount of remuneration, the benefits they receive will be greater than the remuneration paid, which can not only take care of the enthusiasm of the person being managed, but also take into account their own interests. The administrator has paid the labor, and the person being managed has obtained the corresponding service, and it is reasonable and reasonable for him to give a certain remuneration. This is more conducive to promoting the optimal redistribution of social resources and achieving a win-win situation for the interests of managers and themselves. Some people may have doubts. my country's civil legislation has not recognized the right to claim compensation for managers without cause. What is the reason? The author believes that this may be an answer from our country's long-standing social concept. Since the Spring and Autumn Period and the Warring States Period, there has been a saying that "the gentleman is compared to righteousness, and the villain is compared to profit". Being a man of righteousness is a righteous gentleman, and chasing profit for others is a villain. The advocacy of the gentleman's style and the devaluation of the villain's practices make "righteousness and profit" seem to be the north and south poles of the earth. For thousands of years, the social concept of "emphasizing justice over profit" has always been the main theme of traditional Chinese culture. Even after the founding of New China, the well-known "Lei Feng Spirit" and "Jiao Yulu Spirit" are all calling on everyone to make selfless dedication and be proud of serving others and the collective. Management without cause is a good thing for good people. In this historical context, it is undoubtedly incompatible with the spirit of the times to claim rewards for doing good people and good things. Therefore, it is not unrelated to the social concept of our country for thousands of years that the law does not recognize the right to claim compensation for managers without cause. However, since the reform and opening up, the principles of equal compensation and fairness in the civil law have gradually been deeply rooted in the hearts of the people, and have become the guideline for people to engage in civil activities. The development of the socialist market economy and the gradual emancipation of people's minds have made more people feel that the pursuit of wealth and interests is no longer a shameful thing. The spirit of selfless dedication is noble, but paid dedication is not necessary. Therefore, if you want to inspire more people to help others and contribute more to social services, in addition to the necessary spiritual awards, material guarantees are also indispensable. Acknowledging the right to claim compensation for managers without cause is a good way to go. Blindly denying is no longer suitable for the development of the times, but will hinder the motivation of more people to engage in altruistic behavior.

4. System Construction: Requirement Standards for Managers to Enjoy Remuneration Claims

4.1. Management Actions Need to Lead to Beneficial Outcomes

In no-cause management, due to the expenditure of management expenses and the failure of the management behavior to achieve the expected effect, the expenses incurred by me due to the management behavior of the administrator may be greater than the income obtained. At this time, it is still certain that the unreasonable manager's right to request compensation will put me in a double disadvantage: on the one hand, he needs to pay the unreasonable manager's remuneration, and on the other hand, he has to bear the losses caused by the unfavorable management of the manager. Obviously Not suitable. Therefore, from the perspective of equity, if the manager wants to claim the right to remuneration, he must not only satisfy the constituent elements of no-cause management, but also need the management behavior to bring beneficial results to himself. Beneficial outcomes here include positive and negative increases in property. Whether the manager's management behavior is appropriate shall be determined based on

general social common sense and the manager's knowledge level. When managers can choose to manage affairs in multiple ways, they should choose the way that is most beneficial to them.

4.2. Determination of the Amount of Remuneration

If it is certain that the manager without cause has the right to claim compensation, then in order to prevent others from committing tortious acts in the name of management without cause, the amount of compensation needs to be further clarified. The author believes that different remunerations can be given according to whether professional services are provided, which is actually the embodiment of "remuneration according to work". Whether a professional management service is provided shall be determined according to the general concept of society. For example, a doctor who provides emergency assistance to a person who has been involved in a car accident may be considered to have provided professional services. But if it is only a medical student, it should be negatively evaluated. Based on the market price of professional services for reference, the amount that can be claimed for compensation claims can be determined on the basis of the compensation that should be paid locally for providing similar or similar services at the time when no-cause management behavior occurs. If a non-professional service is provided, such as driving an emergency vehicle to send a person who has suffered a car accident to a hospital for medical treatment, at this time, the payment is only general labor, and it can be comprehensively judged in combination with local general labor costs, and the economic situation of the parties and other reasonable factors. Remuneration for one's work is in no way detrimental to nobility, and managers can make legitimate remuneration requests to themselves. However, the remuneration that the parties can claim shall not exceed the benefits that the party can obtain due to the management behavior without cause. Only in this way can members of society be encouraged to engage in management behavior without cause, while taking into account their own interests.

4.3. The Administrator has not Waived the Right to Request

The law allows rights holders to dispose of rights by themselves without affecting the interests of third parties and public interests. Granting the right of request for compensation to the manager without cause will not affect the exercise of the right to waive the request by those who have higher requirements for their own moral level. And based on the principle of good faith, when there is no reason for the manager to give up his intention to give up, his right to claim remuneration will eventually be extinguished. The administrator shall claim the rights in a timely manner after the management affairs are completed, and the exercise of the right of claim shall be governed by the 3-year limitation rule stipulated in Article 188 of the General Principles of the Civil Law.

5. Conclusion

Civil legislation cannot presuppose a legal system from some abstract morality, but should achieve the purpose of urging members of society to engage in behavior expected by law through a reasonable distribution of rights and obligations. Giving unreasonable managers the right to request compensation is not a derogation of morality, but an affirmation of helping others, which is conducive to encouraging more people to actively engage in altruistic behavior when conditions permit. The right to claim remuneration should not be denied on the basis of whether or not the manager provides professional management services. At present, the remuneration claim rights of the unreasonable managers can be included in the "necessary expenses" by expanding the explanation, in order to achieve the balance of rights and obligations between the unreasonable managers and themselves.

Acknowledgments

This work is supported by Anhui University of Finance and Economics Graduate Research Innovation Project in 2021, Project number: ACYC2021093.

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