DOI 10.31489/2020L4/94-103

UDC 349.2

A.Zh. Issayeva*, B.Zh. Aitimov

Zhetysu State University named after I.Zhansugurov, Taldykorgan, Kazakhstan
(E-mail: ayim_09@mail.ru, bola_30081978@mail.ru)

The concept and classification of labor disputes

Various approaches to define the types of labor disputes are analyzed in this article, general criteria for the classification of both individual and collective labor disputes are offered. The purpose of the publication is to identify the practical orientation of these theoretical provisions. A study of the dependence of the definition of the method and procedure for resolving a labor dispute on its subject and subject composition is carried out. Various approaches of the legislator to the solution of this issue, both at the present time and in the historical aspect, are demonstrated. It is pointed out that it is necessary to admit the resolution of collective labor disputes on law in court; for individual labor disputes of interest, provide for a conciliation procedure. Moreover, attention is paid to the theoretical aspect of the labor dispute, including the concept and classification of labor disputes, as well as certain types of disagreements between the employee and the employer on the establishment and application of the current labor and other social legislation, which is not allowed in direct negotiations with the employer and was the subject of office work in specially authorized bodies.

Keywords: labor dispute, labor conflict, conflict situation, labor contract, labor offense, labor relations, classification, individual, collective.

Introduction

One of the most pressing and daily problems of modern society is the problem of resolving labor disputes, which is faced by every citizen, that is, an employee.

Today, taking into account the difficult economic situation, the problem of resolving labor disputes arising between the owner of an enterprise, institution, organization, an authorized body or an individual and a specific employee or workforce is extremely urgent. Basically, controversial issues related to the labor activity of individual employees or their teams arise as a result of violation of labor legislation by the owner of the enterprise and unawareness of employees on the legally guaranteed rights and assigned duties.

The aim of the study is to substantiate the theoretical aspects of labor disputes and determine the classifications of labor disputes, taking into account the analysis of legal regulation.

This study pursues the following objectives: the study of various approaches to determine the types of labor disputes, offers general criteria for the classification of both individual and collective labor disputes.

Method and materials

The research materials are scientific works of scientists, regulatory documents of the Republic of Kazakhstan; methods of analysis and synthesis, history, comparative analysis are applied.

Results

Such an understanding of the dispute, as a rule, presupposes the presence of an impartial arbitrator who, in the opinion of the disputing parties, is capable of correctly assessing the arguments of each of them. The signs of this concept are quite suitable for labor disputes.

Despite the sufficient variety of legal literature on this issue, a number of issues still do not find sufficient coverage. The concept of labor disputes has not yet been fully disclosed, its essence and meaning have not been fully clarified. All this suggests the need for further study of this issue.

To determine the subject of our research, it is necessary to clarify initially what we mean by the category of «labor dispute», which requires preliminary clarification of the meanings of several different terms.

For many decades, both in legislation and in the doctrine of labor law, there has been a debate regarding the relationship between the terms «dispute» and «conflict».

So, in the first years of Soviet government, all the differences in the field of labor relations in literature and legislation were called «labor conflicts.» Later, the term «labor disputes» was used. Both of these terms

Corresponding author's e-mail: ayim_09@mail.ru

were initially used interchangeably. However, in essence, they denote concepts that are far from identical in the social sense. It would also be appropriate to point out that in the etymological sense there are significant differences between these words. The word «conflict», as indicated, for example, in the Great Soviet Encyclopedia, comes from the Latin word «conflictus» (collision) and denotes a clash of opposing interests, views, aspirations; serious disagreement, acute dispute, entailing more complex forms of struggle [1].

The convention of the International Labor Organization calls for these conflicts to be avoided, but if they do occur — to a just settlement of them through reconciliation [2].

In the legal literature of the countries of the Commonwealth of Independent States (hereinafter CIS), when defining the concept of «labor dispute», the term «conflict» is often used [3;11,14]. For example, some authors, under a labor dispute understand a conflict unresolved through direct negotiations between employees and employers [4;290].

Labor law does not consider such a concept as «labor conflict». There are different points of view in science, for example, E.Anderson defined «labor conflicts» as «disputes between workers and employees with their employer on the basis of the use of labor» [5; 25]. No matter how varied the collisions between workers and employers in labor disputes, «conflicts», the conflicts were divided into two types in terms of their content: conflicts based on law and conflicts based on conflicts of interest [6; 214]. In turn, S. Zharov understood labor conflicts as «disputes between an employer, on the one hand, and employed persons, on the other, arising from the use of hired labor» [7; 3].

The subject of a labor conflict can be both working conditions and the system of resource allocation, fulfillment of previously adopted agreements, etc. However, a labor conflict and a labor dispute are not equivalent concepts. It is necessary here to distinguish between the concepts of «labor conflict» and «labor dispute». A. Assadov notes that»... in labor disputes there is no clash of forces, there is only» psychological stress», and thus disagreements turn into conflicts» [8; 12]. Such psychological stress, of course, can cause a conflict, but the opposite is also possible, when a conflict that has nothing to do with labor relations will cause a labor dispute. Confusion arises not only due to the similarity of the concepts themselves, but also due to the fact that dispute and conflict often accompany each other and may even be the causes of each other.

The scientific concept of conflict and its various varieties is still being discussed by representatives of various sciences. This situation can be explained by the very scope of the concept (from conflict between states to intrapersonal conflict), the variety of approaches to its study. Thus, the American scientists R. Mack and R. Snyder, having analyzed many different concepts related to conflicts, made a conclusion: «Obviously,» conflict «is mostly a rubber-like concept that can be stretched and obtained to be used for their own purposes», which in turns confirms the impossibility of developing a single concept of this category [9; 38].

A distinctive feature of a labor dispute is that it is a dispute between an employee (staff member) and an employer (employers), and it is regulated by the current legislation (procedural, labor). In turn, the labor conflict also includes a clash of interests. Therefore, it is assumed that the labor conflict can be regulated by both legal and non-legal.

In S.I.Ozhegov's dictionary, a dispute is defined as «a verbal competition, a discussion of something in which everyone defends his opinion, his innocence,» and a conflict is «a clash, a serious disagreement, a dispute» [10; 299].

As Lysenko V. V. believes, «... if the parties who do not want to put up with the existing situation, having failed to resolve the problem through mutual concessions, turn to special bodies for its resolution, the labor conflict passes into the stage of a labor dispute» [11; 321].

Tolkunova V.N, agreeing with the opinion of Lysenko V.V., notes: Do not confuse a labor dispute with a conflict situation that may arise before a labor dispute in case of disagreement between the parties on a particular labor issue [12; 3].

We agree with this point of view, since very often labor conflicts arise (for example, when employees are untimely paid wages and other payments due), but its parties do not make any efforts to resolve it, i.e. they may simply be ignored by the parties or voluntarily resolved through negotiations. In such cases, it can be assumed that conflict situations do not turn into the stage of a labor dispute. This is especially true for individual labor disputes, when an employee directly dependent on the employer, fearing to be unemployed, does not seek protection of his labor rights, the relevant jurisdictional authorities. Thus, the current conflict situation does not develop into a labor dispute, since the dispute does not become a subject of consideration in special jurisdictional bodies. From this assumption, in our opinion, it follows that a labor conflict situation can become a labor dispute if an obstacle arises between the parties in the enforcement of rights and they cannot overcome it on their own, and then the intervention of a third party becomes necessary.

Moreover, we believe that the replacement of the term «labor conflict» with the term «labor dispute» that occurred in due time was correct and has its scientific justification. So, for example, a conflict from the point of view of philosophy, most likely, is some kind of insoluble contradiction that can threaten an «explosion» (for example, in labor relations — a strike), while labor disputes can end in reconciliation or agreement of the parties (depending on type of dispute).

Thus, it seems not entirely appropriate to take the concepts of «conflict» and «conflict situation» as the basis for the concept of «labor dispute».

Due to the fact that in legislation the term «labor conflicts» was still preserved in legal terminology, there are both terms in the periodicals during this period: «labor conflicts» and «labor disputes», denoting essentially the same concept. However, by 1940, the term «labor conflicts» was encountered less and less; the term «labor disputes» becomes dominant.

In addition to the concepts of «labor dispute» and «labor conflict» in the scientific literature there are different points of view regarding the relationship between the concepts of «labor dispute» and «labor disagreements», «labor dispute» and «labor offenses».

So, according to Balashov A.I., in the theory of labor law, the concept of labor disputes is usually distinguished from the previous labor disagreements of the parties, as well as from a labor offense, which is a direct reason for disagreements and one of the stages of the emergence of a labor dispute. A labor offense, in his opinion, is called a guilty failure or improper performance of his labor duties by an obliged subject, which led to a violation of the rights of another subject of this legal relationship [13; 7].

Agreeing with this statement, we believe that such a disagreement between subjects of labor law can develop into a labor dispute only in cases where it is not settled by the parties themselves and therefore referred to a special jurisdictional body, i.e. the action (inaction) of the obliged subject who violated the labor law of another was contested. So, for example, if an employer terminated an employment contract with an employee — a pregnant woman in accordance with subpar.2 of par.1of the article 52 of the Labor Code of the Republic of Kazakhstan (hereinafter referred to as the LC of RK) (on staff reduction) [14], then there was a labor violation. The employee knew that the termination of the employment contract with her was illegal, but she did not dispute this in court, since she was employed to another job. It follows from this example that a labor dispute did not arise here, despite the fact that there was a labor offense from employer`s part.

In the latest legal literature, particular attention has begun to be focused on the problem of labor offenses as a generic category. This is understandable, since the essence of this problem has not been fully investigated, although it was raised in the works of Syrovatskaya L.A., Smirnov V.N., etc. In the field of labor law, there is not one (as in criminal law), but several types responsibility (at least — material and disciplinary), this means that the basis of the responsibility of each type is its own legal fact [15; 78].

Thus, an analysis of legal literature shows that it is objectively necessary to distinguish between such concepts as «labor dispute» and «disagreement».

In our opinion, the labor offense itself is not yet the subjects of the labor legal relationship, but is just a disagreement that the subjects can resolve on their own. A disagreement between the subjects of labor law can develop into a labor dispute only when it is not settled by the parties independently, and therefore is submitted to the jurisdictional authority. For example, if the employer terminated the employment contract with the employee during his/her stay on the «sick leave» for any reason provided for in Art. 52 of the Labor Code of the Republic of Kazakhstan (except in case of a dispute, a different assessment of his/her labor activities, liquidation or termination of an individual`s powers) [15; 78], then there was also a labor offense, i.e. violation of Art. 52 of the LC of RK and labor disagreement, since the employee justly believes that the termination of the employment contract was illegal. At the same time, the employee may not be a legal entity, challenge this in the jurisdictional authority, but simply change the job, or do not work at all. In this situation, a labor dispute will not arise, although both a labor offense and a labor disagreement have taken place.

The disagreement between the disputing subjects of labor law develops into a labor dispute only when it is not settled by the parties themselves and is submitted to the jurisdictional authority. The appeal of an employee (employees) with an individual (or collective) disagreement to litigate it in the appropriate jurisdictional body is the most important form of self-protection of their labor rights. This appeal shows the manifestation of the initiative of the employee (employees) to self-defense (litigation) labor rights or their legitimate labor interests. Without the manifestation of such an initiative, there will be no labor dispute, even if the differences were not self-regulated [13; 8].

Иной точки зрения придерживается С.Ю. Чуча, по мнению которого «наличие разногласия между сторонами правоотношений само по себе означает наличие спора» [16; 7].

Chucha S.Yu. adheres to a different point of view., in whose opinion «the presence of a disagreement between the legal relations parties means the existence of a dispute itself» [16; 7].

Despite the fact that most scholars are of the opinion that not every disagreement should be considered as a labor dispute in the legal sense. The disagreement, in their opinion, develops into an individual (collective) labor dispute only in case of presence of different points of view on this issue, firstly, it was not possible to resolve it through negotiations, and, secondly, when the unresolved disagreement was referred for consideration and permission of the relevant jurisdictional authority [3; 14].

Thus, a labor offense, and then its different assessment by the subjects of the disputed legal relationship (disagreement), are not only other than the concept of «labor dispute» synonims, but, as a rule, precede it.

So what is meant by labor disputes?

If we consider the scientific views of domestic scientists, then under labor disputes, according to the Kazakh scientist Uvarov V.N., disagreements between the employee (employees) and the employer (employers) on the application of labor legislation and (or) acts of the employer are understood. It is quite obvious that disagreements arising between the employee and the employer may lead to fulfill or change the terms of agreements, labor collective agreements, which can be resolved in the course of direct negotiations through mutual concessions and agreements. However, if such an agreement has not happened, then the disagreement is transferred to the appropriate bodies for the consideration of labor disputes [17; 444].

In modern Kazakhstan, the issue of regulation of an individual labor dispute has been deeply studied in the dissertation work of Yermagambetova Zh.B. «Individual labor disputes» [18; 139], which was written before the adoption of the codified act in the field of labor relations, while other authors only touch on some points without deep analysis. In this regard, today, the problem of modern legal regulation of the definition of labor disputes in general, and individual labor disputes, including in the conditions of the modern labor market, has practically not been fully studied.

Thus, in the Labor Code of the Republic of Kazakhstan, labor disputes are considered as disagreements between the employee (employees) and the employer (employers) on the application of the labor legislation of the Republic of Kazakhstan, the implementation or amendment of the terms of agreements, labor and (or) collective agreements, acts of the employer [14].

Based on the foregoing, in our opinion, labor disputes are disagreements between the employee and the employer about the establishment and application of the current labor and other social legislation, which were not settled in direct negotiations with the employer and became the subject of proceedings in specially authorized bodies.

Labor disputes are objectively conditioned by the ambivalence of relations in the sphere of wage labor. This circumstance is a consequence of internal contradictions between labor and capital, between the interests of workers and employers. However, the resolution of emerging disagreements in order to establish balance and stability in social relations between these subjects determines the need for effective legal regulation of these social relations. Social phenomena and relationships do not exist in isolation from each other, because their relationship determines their interaction. With regard to labor disputes, this thesis determines the dependence of the choice of the method for resolving a dispute on its type, and also predetermines the powers of a particular jurisdictional body to consider and resolve it. Since these issues are ambiguously resolved in the current labor legislation, it seems important to give a scientific classification of labor disputes [19; 50].

From the course of the theory of labor law, we know that there is a classification of labor disputes depending on the type of disputed relationship:

- disputes arising from labor relations;
- disputes arising from the employment relationship;
- disputes arising from legal relations on supervision and control over compliance with labor legislation and labor protection rules;
- disputes over legal relations on personnel training and professional development in production;
- disputes arising from legal relations on compensation for material damage by an employee to an enterprise;
- disputes arising out of legal relations between the trade union body and the employer on issues of labor, everyday life, culture;
- disputes over legal relations between the labor collective and the employer, administration;
-disputes from social partnership legal relations at five higher levels associated with the establishment of new, changes in existing working conditions [20; 13].

In addition to the above classification in the doctrine (primarily, in the doctrine of foreign countries), labor disputes are usually divided, depending on their subject, into two types: conflicts of interest (economic) and disputes over rights (legal).

Conflicts of interest often arise in the absence of agreements or other formal legal grounds for claims between the parties. Usually they are associated with the requirements of establishing new or changing existing working conditions. Disputes about rights, on the other hand, arise from the violation of agreements or laws and relate to the application or interpretation of the rules established by regulatory legal acts, contracts or agreements. Accordingly, individual labor disputes are most often disputes over rights, and collective ones are conflicts of interest.

In the scientific explanation of the above classification of labor disputes and their generalization, the opinion of Lushnikov A.M. and Lushnikova M.V.. So, in their opinion, labor claims are disputes about rights, and non-claims about interests. The essence of the dispute about the law (a dispute over the application of the current social and labor legislation, collective and individual contracts and agreements) is that workers demand either to restore the rights that belong to them by law or contract, or to remove obstacles to the exercise of these rights. Disputes about law by their nature, as a rule, require judicial methods of resolution or administrative and arbitration ones, which are similar in function. The judicial authority considers the conflict on the merits on the basis of the law, and its solution is ensured by compulsory enforcement proceedings. These can be specialized labor courts (Brazil, Germany, Spain, Mexico, Finland, France, Sweden, etc.) or general courts. At the same time, labor courts are usually created on a parity basis from representatives of employers, workers and the state, which is a manifestation of the principles of social partnership. Meanwhile, in many countries, conciliatory and mediation and arbitration procedures for resolving a dispute about law are allowed as a voluntary alternative. Interest disputes are usually considered in a conciliatory and mediatory manner. The essence of a dispute about an interest (a dispute over the establishment of new working conditions, conclusion, change of a collective agreement) is that the parties to the dispute, more often employees, apply to the employer to establish new working conditions, and the employer has the right, but is not obliged by law to grant this request. An interest labor dispute, by its nature, involves conciliation and mediation procedures. Conciliation and mediation bodies consider the labor dispute in a conciliatory manner on the principle of expediency, therefore it is important to find a common compromise solution that suits the conflicting parties [21; 1004].

Discussion

The researchers note that there is no clear line between different types of labor disputes. It is more correct to say that they are in different, partially intersecting planes. The most optimal classification, from our point of view, is offered by the Kazakh scientist Uvarov V.N., believing that labor disputes can be classified on various grounds: according to the subject composition, according to the nature (subject) of the disputes, according to the jurisdiction of their consideration.

According to the subject composition and subject matter, all disputes are divided into individual and collective.

The subjects (parties) of an individual labor dispute are an individual employee and an employer (manager, administration). The subject of such a dispute is the employee's demand for the restoration or recognition of certain labor rights, which, in his opinion, should belong to him on the basis of the law, other regulatory legal acts, including local acts, or the terms of the employment contract. At the request of the employee, an individual dispute may arise, for example, about the unlawfulness of the transfer or about reinstatement at work and payment for forced absenteeism, about the lifting of a disciplinary penalty, etc. Individual labor disputes, as a rule, arise over the application of regulatory legal acts, agreements, collective agreements, other local acts regulating the labor relations of employees with the employer, as well as the terms of the employment contract.

Collective labor disputes involve, on the one part, employees (its representatives), and on the other, the employer (its representatives). Collective labor disputes arise over the establishment and change of working conditions, conclusion, change and implementation of collective agreements and contracts. The subject of a collective dispute may be general requirements of employees in the field of wages, working hours and rest time, labor protection and other socio-economic requirements affecting the collective interests of employees or their individual categories or professional groups.

Taking into account the legislation on labor disputes and its application in the Republic of Kazakhstan, as well as relying on Western experience in resolving collective labor disputes (conflicts), it can be concluded that the subject of these disputes is based on conflicts of interest.

Individual labor disputes as legal disputes arising in connection with the application and interpretation of existing legal norms are referred to as conflicts of law.

Individual labor disputes arise, in most cases, from labor relations. Collective disputes may arise from the following legal relations derived from labor: a) legal relations between workers and the employer (their representatives) on collective negotiations and concluding a collective agreement, other organizational and managerial legal relations; b) legal relations of the respective trade union bodies with representatives of employers, as a rule, with the participation of executive authorities or local self-government bodies.

The above means that each labor dispute is individual, as are the labor relations from which it arises. At the same time, one should not forget that although collective labor disputes arise much less frequently than individual ones, they pose a much greater danger not only for employers, for the stability of their business, but also for society as a whole.

By their nature, labor disputes are divided into claims and non-claims. Disputes of a claim nature arising from the application of regulations, contracts and agreements are related to the filing of an application (filing a claim) with a jurisdictional authority. These are individual labor disputes of a claim nature.

Disputes of a non-claim nature arise on the establishment or change of working conditions, as a rule, they have a collective meaning and, accordingly, are collective labor disputes.

It is also possible that an individual labor dispute of a non-disruptive nature arises to establish new or change existing working conditions for an individual employee. In the current period, this norm is applied infrequently, since the establishment and change of working conditions is carried out on the basis of a collective agreement, other agreements concerning all workers, their individual categories or professional groups, and the arising dispute has a collective meaning.

As we have noted, depending on the type of labor dispute and its nature, the method (procedure) for its resolution is determined.

Individual labor disputes (conflicts of law) as disputes of a claim nature are subject to consideration by the conciliation commission on labor disputes elected in the organization. If the employee, independently or with the participation of the trade union organization representing him, did not settle the differences in direct negotiations with the head (administration) and applied to the conciliation commission, then an individual labor dispute arose, considered in the manner prescribed by the Labor Code of the Republic of Kazakhstan. In case of disagreement with the decision of the Conciliation Committee, the parties to the dispute have the right to apply to the court to consider an individual dispute. Directly in court, bypassing the CC, disputes affecting the most important rights are considered, for example, about reinstatement at work or about refusal to hire in cases established by the law.

The conciliation commission and the court resolve individual disputes by making decisions on the restoration or recognition of the right, or by rejecting the claim. These decisions are binding on the parties, otherwise they are subject to compulsory execution.

A different procedure is established for resolving collective labor disputes of a non-disruptive nature (conflicts of interest). First of all, the parties to the dispute are obliged to take part in its resolution by means of conciliation procedures, which include several stages. The first of them allows the parties in direct negotiations, without contacting other persons or bodies, to resolve the dispute. To this end, they form, on an equal footing, in equal representation, a conciliation commission, which can make a decision only through an agreement reached by the parties to the dispute.

The following stages in the settlement of a collective labor dispute indicate that the disputing parties failed to resolve the dispute and were forced to seek the help of neutral third parties: the mediator and (or) labor arbitration.

The participation of the mediator ends with the adoption of an agreed decision or a protocol of disagreements, and the recommendations developed by the labor arbitration become binding on the parties if the parties have entered into an agreement on their implementation.

Consequently, only an agreement reached by the parties in the course of resolving a collective labor dispute is binding on the parties.

Failure to reach an agreement through conciliation can lead to an aggravation of the dispute and a strike. During the period of the strike, the parties are obliged to continue conducting conciliation procedures until the collective labor dispute is fully resolved. The procedure for resolving collective labor disputes in the

Republic of Kazakhstan is aimed at reaching agreement between the disputing parties through a possible compromise, mutual concessions, fulfillment of obligations assumed, and consideration of mutual interests. In general terms, the procedure for resolving collective labor disputes should contribute to the development of social partnership relations between workers (their representatives) and employers. [22; 27]

Thus, it should be noted that the Labor Code of the Republic of Kazakhstan, where in paragraph 16 of Art. 1 given a general concept of a labor dispute, however, the legislator, using in the future the concepts of «individual labor dispute» and «collective labor dispute», does not disclose them, which cannot be considered correct. It seems that the law should fix the general concept of labor disputes and disclose the definitions of their individual types.

One of the most controversial issues in the doctrine of labor law for a long time is the dispute about the need to consolidate the concept of labor disputes through the term «unresolved disagreement», as is done in the Labor Code of the Republic of Kazakhstan. Initially, the need to resolve differences in direct negotiations was enshrined in the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated October 6, 2017 No. 9. Through disagreement, the concept of dispute is also given in the ILO's Guide to Improving the System of Labor Dispute Resolution, where «dispute» is «disagreement and conflict between two or more parties on issues of mutual interest».

Thus, the Constitution of the Republic of Kazakhstan (Article 24, clause 3) and labor legislation recognize the right of an employee to resolve individual and collective labor disputes using the methods of their resolution established by law, including the right to strike.

Consideration of an individual labor dispute between an employee and an employer is established by Chapter 15, and the procedure for resolving collective labor disputes is provided for in Chapter 16 of the Labor Code of the Republic of Kazakhstan.

However, an analysis of all definitions shows that it is impossible to give the concept of a labor dispute in one definition, since individual and collective labor disputes have their own specific characteristics and they must be reflected in different concepts. In the Labor Code of the Republic of Kazakhstan, Article 1, par. 1 reveals the concept of a labor dispute, but does not give a clear definition of the concepts of «individual labor dispute» and «collective labor dispute».

Conclusions

In this regard, in our opinion, at this stage of development, the Kazakhstani legislator needs to introduce a clarification of the concepts of «individual labor dispute» and «collective labor dispute» into labor legislation, to outline the procedural procedure for their consideration, which, in turn, will eliminate discrepancies and interpretation in law enforcement.

Индивидуальный трудовой спор — неурегулированные разногласия между работодателем и работником по вопросам применения трудового законодательства и иных нормативных правовых актов, содержащих нормы трудового права, коллективного договора, соглашения, локального нормативного акта, трудового договора (в том числе об установлении или изменении индивидуальных условий труда), о которых заявлено в орган по рассмотрению индивидуальных трудовых споров.

Individual labor dispute — unresolved disagreements between the employer and the employee on the application of labor legislation and other regulatory legal acts containing labor law, collective agreement, agreement, local regulatory act, labor contract (including the establishment or change of individual working conditions), which are reported to the body for consideration of individual labor disputes.

An individual labor dispute is a dispute between an employer and a person who previously had an employment relationship with this employer, as well as a person who has expressed a desire to conclude an employment contract with an employer, if the employer refuses to conclude such an agreement.

Collective labor dispute — unresolved disagreements between employees (their representatives) and employers (their representatives) regarding the establishment and change of working conditions (including wages), the conclusion, change and implementation of collective agreements, agreements, as well as in connection with the refusal of the employer to take into account the opinion an elected representative body of employees when adopting local regulations.

So, the study of the types of labor disputes is important for the correct determination of the parties to the dispute, concerned parties, the choice of the method of protecting the rights and legitimate interests of the subjects of relations regulated by labor law.

And only an agreement, taking into account mutual interests, can lead the subjects to the agreement of the disputing parties.

References

1 Смолярчук В.И. Законодательство о трудовых спорах / В.И. Смолярчук. — М: Юрид. лит., 1966. — 106 с.

2 О праве на объединение и регулировании трудовых конфликтов на территориях вне метрополии: Конвенция № 84 Международной организации труда [Электронный ресурс] // Консультант Плюс: справ.-прав. система. (Дата обращения 26.09.2020 г.).

3 Куренной А.М. Практический комментарий к законодательству о трудовых спорах / А.М. Куренной, В.И. Миронов. — М.: Дело, 1997. — 384 с.

4 Трудовое право России / под ред. Р.З.Лившица, Ю.П.Орловского. — М.: Инфра-М, 1998. — 473 с.

5 Андерсон Э.Ф. Трудовые конфликты / Э.Ф. Андерсон. — М.: Моск. Губсуд, 1925. — 25 с.

6 Виноградова О.А. Проблемы терминологии индивидуального трудового спора: историко-правовой аспект / О.А. Виноградова // Вестн. Псков. гос. ун-та. Сер. Социально-гуманитарные и психолого-педагогические науки. — 2013. — № 3. — С. 212–218.

7 Жаров С. Примирительно-третейский порядок разрешения трудовых конфликтов / С. Жаров. — М., 1926. — 3 с.

8 Асадов А. Влияние оценок труда и распределение доходов на конфликтность в трудовых коллективах предприятий: дис. … канд. экон. наук. — СПб., 1994. — 16 с.

9 Нечипоренко Л.А. Буржуазная социология конфликта / Л.А. Нечипоренко. — М.: Политиздат, 1982. — С. 38, 39.

10 Ожегов С.И. Толковый словарь русского языка / С.И. Ожегов, Н.Ю. Шведова. — М.: ИТИ Технологии, 1992. — 944 с.

11 Лысенко В.В. Трудовое право: учеб. пос. для вузов / В.В. Лысенко и др. — М.: Экзамен, 2005. — 380 с.

12 Толкунова В.Н. Справочник судьи и адвоката по трудовым делам / В.Н. Толкунова. — М.: Проспект, 2004. — 288 с.

13 Балашов А.И. Трудовые споры и порядок их разрешения: учеб. пос. / А.И. Балашов. — СПб.: Изд-во ГУВШЭ, 2008. — 112 с.

14 Трудовой кодекс Республики Казахстан от 23 ноября 2015 года. № 414-V [Электронный ресурс]. Режим доступа: http://adilet.zan.kz/rus/docs/K1500000414. (Дата обращения: 09. 10.2020).

15 Оспанова Б. Правонарушения в сфере труда / Б. Оспанова // Заңгер. — 2013. — № 1(138). — С. 77–79.

16 Чуча С.Ю. Коллективные трудовые споры в Российской Федерации: автореф. … канд. юрид. наук. — Омск, 1997. — 180 с.

17 Уваров В.Н. Трудовое право Республики Казахстан: учеб. — 2-е изд. / В.Н. Уваров. — Алматы: Раритет, 2008. — 616 с.

18 Ермагамбетова Ж.Б. Индивидуальные трудовые споры: дис. … канд. юрид. наук. — 2004. — 139 с.

19 Мотина Е.В. Классификация трудовых споров в контексте оснований и правового значения / Е.В. Мотина // Вестн. ГрГУ. — 2016. — № 1. — С. 50–55.

20 Толкунова В.Н. Трудовое право: конспект лекций / В.Н. Толкунова. — М.: ИНФРА-М, 1998. — 448 с.

21 Лушников А.М. Курс трудового права: учеб.: [В 2 т.] / А.М. Лушкинов, М.В. Лушникова. — Т.2. — М.: Статут, 2009. — 1151 с.

22 Бугров Л.Ю. Право на забастовку / Л.Ю. Бугров // Государство и право. — 2002. — № 1.

А.Ж. Исаева, Б.Ж. Айтимов

Еңбек дауларының түсінігі мен жіктелуі

Мақалада еңбек дауларының түсінігі мен түрлерін анықтаудың әртүрлі тәсілдері талданды, жеке және ұжымдық еңбек дауларын жіктеудің жалпы критерийлері ұсынылды. Жарияланымның мақсаты — теориялық ережелердің практикалық бағытын анықтау. Еңбек дауын шешу тәсілі мен тәртібін айқындау, оның нысанасы мен субъектілік құрамының тәуелділігіне зерттеу жүргізілді. Заң шығарушының қазіргі уақытта да, тарихи тұрғыдан да бұл мәселені шешуге деген әртүрлі көзқарастары көрсетілген. Ұжымдық еңбек дауларын құқықтық реттеу негізінде, оны сот тәртібімен шешуге жол берудің қажеттігі көрсетілді, ал жеке еңбек даулары үшін татуластыру рәсімін қарастырудың қажеттілігі зерттелді. Сонымен қатар, еңбек дауының теориялық аспектісіне, соның ішінде еңбек дауларының түсінігі мен оның жіктелуіне көңіл аударылған. Сондай-ақ, жұмыс берушімен тікелей келіссөздер кезінде шешілмеген және арнайы уәкілетті органдарда іс жүргізудің тақырыбы болған қолданыстағы еңбек және өзге де әлеуметтік заңнаманы белгілеу мен қолдану туралы жұмыскер мен жұмыс берушінің арасындағы келіспеушіліктердің жекелеген түріне тоқталған.

Кілт сөздер: еңбек дауы, еңбек қақтығысы, жанжал жағдайы, еңбек шарты, еңбек құқық бұзушылығы, еңбек құқықтық қатынастары, жіктелуі, жеке, ұжымдық.

А.Ж. Исаева, Б.Ж. Айтимов

Понятие и классификация трудовых споров

В статье проанализированы различные подходы к определению видов трудовых споров, предложены общие критерии классификации как индивидуальных, так и коллективных трудовых споров. Целью публикации является выявление практической направленности данных теоретических положений. Проведено исследование зависимости определения способа и порядка разрешения трудового спора от его предмета и субъектного состава. Продемонстрированы различные подходы законодателя к решению этого вопроса как в настоящее время, так и в историческом аспекте. Авторами указано на необходимость допустить разрешение коллективных трудовых споров о праве в судебном порядке; для индивидуальных трудовых споров об интересе предусмотреть примирительную процедуру. Более того, обращено внимание на теоретический аспект трудового спора, в том числе на понятие и классификацию трудовых споров, а также на отдельные виды разногласий между работником и работодателем об установлении и применении действующего трудового и иного социального законодательства, которое не разрешено при прямых переговорах с работодателем и явилось предметом делопроизводства в специально уполномоченных органах.

Ключевые слова: трудовой спор, трудовой конфликт, конфликтная ситуация, трудовой договор, трудовое правонарушение, трудовые правоотношения, классификация, индивидуальный и коллективный трудовой спор.

References

1 Smoliarchuk, V.I. (1966). Zakonodatelstvo o trudovykh sporakh [Legislation on labor disputes]. — Moscow: Yuridicheskaia literatura [in Russian].

2 O prave na obedinenie i rehulirovanii trudovykh konfliktov na territoriiakh vne metropolii: Konventsiia No. 84 Mezhdunarodnoi orhanizatsii truda [Electronic resurs] [On the right for association and regulation of labor conflicts in territories outside the metropolis: Convention No84 of the International Labor Organization] Konsultant Plius: spravochno-pravovaia sistema [in Russian].

3 Kurennoi, A.M., & Mironov, V.I. (1997). Prakticheskii kommentarii k zakonodatelstvu o trudovykh sporakh [Practical commentary on labor law]. — Moscow: Delo [in Russian].

4 Trudovoe pravo Rossii [Labor law of Russia] R.Z. Livshitsa & Ju.P. Orlovskii (Eds.) Moscow: Infra-M [in Russian].

5 Anderson, Je.F. (1925). Trudovye konflikty [Labor conflicts]. Moscow: Moskow HubSud [in Russian].

6 Vinohradova, O.A. (2013). Problemy terminolohii individualnoho trudovoho spora: istoriko-pravovoi aspekt [Problems of terminology of individual labor dispute: historical and legal aspect] Bulletin of the Pskov State University. Series «Social-humanitarian and psychological-pedagogical sciences» ’03 Pskov: Vestnik Pskovskoho hosudarstvennoho universiteta. Seriia Sotsialno-humanitarnye i psiholoho-pedahohicheskie nauki (p. 212–218) [in Russian].

7 Zharov, S. (1926). Primiritelno-treteiskii poriadok razresheniia trudovykh konfliktov [Conciliation and arbitration procedure for resolving labor conflicts]. Moscow [in Russian].

8 Asadov, A. (1994). Vliianie otsenok truda i raspredelenie dokhodov na konfliktnost v trudovykh kollektivakh predpriiatii [Influence of labor assessments and income distribution on conflict in labor collectives of enterprises]. *Candidate s thesis’.* Saint Petersburg: SPbSU [in Russian].

9 Nechiporenko, L.A. (1982). Burzhuaznaia sotsiolohiia konflikta [Bourgeois Sociology of Conflict]. Moscow: Politizdat [in Russian].

10 Ozhehov, S.I., & Shvedova N.Yu. (1992). Tolkovyi slovar russkoho yazyka [Explanatory dictionary of the Russian language]. Moscow: ITI Tekhnolohii [in Russian].

11 Lysenko, V.V. et al. (2005). Trudovoe pravo: uchebnoe posobie dlia vuzov. Moscow: Ekzamen [in Russian].

12 Tolkunova V.N. (2004). Spravochnik sudi i advokata po trudovym delam [Reference guide for judges and lawyers in labor matters]. Moscow: Prospekt [in Russian].

13 Balashov, A.I. (2008). Trudovye spory i poriadok ikh razresheniia: uchebnoe posobie [Labor disputes and the procedure for their resolution: textbook]. Saint Petersburg.: Izdatelstvo GUVShJe [in Russian].

14 Trudovoi kodeks Respubliki Kazakhstan ot 23 noiabria 2015 hoda No414-V [Labor Code of the Republic of Kazakhstan dated November 23, 2015. No. 414-V] *adilet.zan.kz* Retrived from http://adilet.zan.kz/rus/docs/K1500000414 (data obrashcheniia: 09. 10.2020) [in Russian].

15 Ospanova, B. (2013). Pravonarusheniia v sfere truda [Offenses in the labor sphere] *Zanger — Lawyer, 1(138), 77–79* [in Russian].

16 Chucha, S.Ju. (1997). Kollektivnye trudovye spory v Rossiiskoi Federatsii [Collective labor disputes in the Russian Federation] *Extended abstract of candidate’s thesis*. Omsk [in Russian].

17 Uvarov, V.N. (2008). Trudovoe pravo Respubliki Kazakhstan: uchebnik [Labor law of the Republic of Kazakhstan: textbook]. Almaty: Raritet [in Russian].

18 Ermahambetova, Zh.B. (2004). Individualnye trudovye spory [Individual labor disputes]. *Candidate s thesis’.* Almaty, 139 [in Russian].

19 Motina, E.V. (2016). Klassifikatsiia trudovykh sporov v kontekste osnovanii i pravovoho znacheniia [Classification of labor disputes in the context of the grounds and legal significance]. *Vestnik GrGU, 1, 50–55* [in Russian].

20 Tolkunova, V. N. (1998). Trudovoe pravo: konspekt lektsii [Labor law: lecture notes]. Moscow: Infra-M [in Russian].

21 Lushnikov, A.M., & Lushnikova, M.V. (2009). Kurs trudovoho prava: uchebnik: [V 2 t.] [Course of labor law: textbook: in 2 volumes]. Moscow: Statut [in Russian].

22 Bugrov, L.Yu. (2002). Pravo na zabastovku [The right to strike]. *Hosudarstvo i pravo, 1, 2, 1* [in Russian].