

HIRE (*UJRAH*) IN THE LIGHT OF CONTEMPORARY ISLAMIC JURISPRUDENCE

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Abstract

Islam encourages seeking money and earning a living, as well as control of spending habit based on morals. Meanwhile, Islam forbids spending money through illegal means, and encourages spending for good; and established rules for financial transactions on the basis of consent. Ujrah (hire) is considered the most important issue in the life of the worker, and it is the focus of the relationship between the worker and the employer. It is lawful according to Islamic law. Ujrah (hire) is an agreement between the employer and the worker on exchange for payment of a sum of money as a reward for the work done. Islamic scholars have unanimously agreed that the reward which the people consider is either in cash or in-kind, or benefit. However, the scholars have different opinions regarding Ujrah Al-hijam (cupper hiring) and taking reward for teaching the Noble Qur'an. Reward is one of the pillars of contract; therefore the employer should pay the employee in time without delay. Also the jurists have different opinions regarding exchange of labour for food or clothing, or what is called Ijarah al-nafaqah (i.e, feeding in exchange for work). Islamic law established rules for determining the wages of workers in order to ensure appropriate amount of wage, so that it would enable workers and their families to access basic needs of life and to achieve equality between employers and workers. Meanwhile, we ask the Almighty Allah to make this study of benefit to researchers, and Muslim men and women.

Keywords: Hire, Contemporary, Jurisprudence.

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Introduction

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This verse indicates that it is permissible to hire a person to do a known job for a given reward, which both of parties have agreed upon, whether the worker is an individual, group or company, and whether the reward is in cash or benefit. The verse also shows impermissibility of exchange of labour for food or clothing. Abu Hurairah reported that the Prophet (peace be upon him) said "Allah, the Exalted, says: 'I will contend on the Day of Resurrection against three (types of) people: One who makes a covenant in My Name and then breaks it; one who sells a free man as a slave and devours his price; and one who hires a workman and having taken full work from him, does not pay him his wages'" (Al-Bukhari : Hadith No. 2075). This hadith indicates that the Prophet (peace be upon him) narrated that he will contend against some people in the Day of Resurrection, some of them do not pay their employees, and whoever employs a worker must pay him based on the amount they agreed upon.

Research Methodology

This paper uses the library-based research method by analyzing relevant materials such as the Holy Quran, the Hadith, the traditional Islamic books and literatures, journals, academic textual materials as well as internet sources.

Result and Discussion

The Concept of *Ujrah* and Time for Payment of Reward

The word hire (*Ujrah*) in Arabic Language is literary derived from the words wages, remuneration, and it has two meanings: the first meaning is “contract and reward” for work, while the second meaning is “to fix”; you may say I hired a man and he served me for ten years, meaning he becomes my employee, or he hired him on certain amount of wage (Al-jauhari, 1987). It is said: the word is mostly used as reward in the hereafter, and reward for good deeds, as the Almighty Allah says “And We gave him his reward in this world, and indeed, he is in the hereafter among the righteous” [Al-ankabut: 27]. This indicates that he will have a place, in addition to the high position he was given in this world. Also the Almighty says: “will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve” [Al-Baqarah: 262]. “Will have their reward” means “their reward of blessing in the Hereafter” (Al-Samarqandi, 2004).

The word *Isti'jar* in Arabic is a noun derived from *Ijarah*, meaning “to hire”. *Ista'jarahu* means he hired him to work for a given wage. The word *Isti'jar* is more general as it goes with or without reward. Ibn Faris said “the word *Ajr* has two origins which can be combined together, first “contract for a work”, and second “to fix broken bones. With regard to fixing bones, one can say *ajartu al-yad*, meaning “I fixed the hand”, these are the two origins. Therefore, combining them together means the wages of a worker is like something that can be used to solve any problem he has as a result of his labour. (Ibn Faris,1979). Ibn Manzur said: "*ajr* (wage) is a reward for a labour, and its plural is *ujur* while *ijarah* (hire) is derived from *ajara* (he hired), *ya'jur* (he is hiring) and is what is given as a reward for works done.

Al-ajru also means reward for good deeds, for example: Allah (SWT) rewarded him, Allah gave him a good reward (Ibn Manzur, 1993).

With regard to the technical meaning of *Ujra* (hire), Malikiyyah school of thought has the view that it refers to a contract that contains human benefit, or a contract that contains benefit for mankind. However, contract regarding animals and ships is called *Kira'* (Al-Dasuqi, 1398), while others said *Ujrah* means possession of benefit for a certain return (Muhammad, 1990). Also the Thai labor law in section 5, explained that the *Ujrah* (hire) is an agreement between the employer and the worker on exchange for payment of a sum of money as reward for the work done, and with additional bonuses and allowances.

The legality of *Ujrah* (Hire)

Hire is legal and permissible in Islam, as the Almighty Allah says [in the Qur'an]: "O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy" * He said, "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous (Al-qasas: 26-27). Imam Al-shafi'i (may Allah be pleased with him) said the Almighty Allah mentioned that one of His prophets worked as a hire for the mentioned (Eight) years with which he possessed a wife. Therefore, this indicates that 'hire' is permissible in Islam whether the person is hired for certain years or otherwise, depending on the basis of the contract (Al-Shafi'i, 1990). The best one you can hire is the strong and trustworthy in his work.

Imam Al-shafi'i (May Allah be pleased with him) said the Almighty Allah mentioned that one of His prophets worked as a hire for the mentioned (Eight) years with which he possessed a wife. Therefore, this indicates that 'hire' is permissible in Islam whether the person is hired for certain years or otherwise, depending on the basis of the contract (Al-shafi'i, 1990). The best one you can hire is the strong and trustworthy in his work.

Furthermore, the Almighty Allah says [in the Qur'an]: "And if they breastfed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman" [Al-talaq: 6]. This shows that breastfeeding differs; one baby may require more breastfeeding than the other. Also one woman may have more breast milk than the other, and her breast milk may be different. Then payment should be made based on this, because there is no closer meaning than this. Hire is also permissible with regard to slave service and other related services as an analogy for this (Ahmad, 1994).

Allah (SWT) enjoins the father to pay the nursing mother, provided that there is utterance and acceptance. Imam Al-Shafi'i (may Allah have mercy on him) said "Payment for breastfeeding is permissible, and breastfeeding differs according to the frequency of breastfeeding and the quantity of breast milk, but if another one is not found except this, then payment permissible on it and other similar matters" (Al-Shafi'i, 1990). Allah (SWT) says:

“And if you wish to have your children nursed by a substitute, there is no blame upon you as long you give payment according to what is acceptable. And fear Allah and know that Allah is seeing all what you do” (Al-Baqarah: 233). Ibn Ashur said “upon the father is the mothers’ provision and their clothing according to what is acceptable” refers to the reward for the breastfeeding. A woman in bond of marriage has no right to be paid or clothed for breastfeeding, but for the bond of marriage (Ibn Ashur, 2005). This verse indicates that there is no guilt upon anyone who hires a woman to nurse his baby for a given wage.

Similarly, the *Sunnah* of the Prophet clearly explained about hire (Ujrah). A’isha (may Allah be pleased with her) narrated that: The Prophet (Peace be upon him) and Abu Bakr employed a (pagan) man from the tribe of Bani Ad-Dail and the tribe of Bani 'Abu bin `Adi as a guide. He was an expert guide and he broke the oath contract which he had to abide by with the tribe of Al-`Asi bin Wail and he was on the religion of Quraish pagans. The Prophet (Peace be upon him) and Abu Bakr had confidence in him and gave him their riding camels and told him to bring them to the Cave of Thaur after three days. So, he brought them their two riding camels after three days and both of them (The Prophet (Peace be upon him) and Abu Bakr) set out accompanied by 'Amir bin Fuhaira and the Dili guide who guided them below Mecca along the road leading to the sea-shore (Al-Bukhari, Hadith No. 2263). This hadith indicates that the Prophet (Peace be upon him) and Abu Bakr (may Allah be pleased with him) hired a polytheist.

Anas narrated that: he was asked about the wages of the one who cups others. He said, 'Allah's Messenger (Peace be upon him) was cupped by `Abd Taiba, to whom he gave two Sa of food and interceded for him with his masters who consequently reduced what they used to charge him daily. Then the Prophet (Peace be upon him) said, "The best medicines you may treat yourselves with are cupping and sea incense.' He added, "You should not torture your children by treating tonsillitis by pressing the tonsils or the palate with the finger, but use incense" (Bukhari: Hadith No. 5698).

The previous evidences indicate that hire (Ujrah) is lawful in Islamic law, but the scholars have different opinions regarding hire for some kinds of works which include:

Cupper Hiring (Ujrah al-hijam)

The scholars also have different views regarding cupper hiring. The first view is that majority of the scholars consider it permissible, even if it involves gain with lowliness. This is based on the hadith of Anas (may Allah be pleased with him) as previously mentioned. The second view is the view of some hadith scholars that it is forbidden, and they cited the hadith of haram bin Muhayyisah, who narrated that his father asked the Prophet (Peace be upon him) about the earnings of a cupper and he forbade him from that. Then he mentioned his need and he said: "Spend it on feeding your she-camels that draw water" (Ibn Majah: Hadith No. 2166).

The majority responded to the view of the hadith scholars that the prohibition is on the basis of transcendence, because cupping is obligatory upon a Muslim if there is need for it. Thus the Almighty said “And cooperate in righteousness and piety, but do not cooperate in sin and

aggression. And fear Allah; indeed, Allah is severe in penalty” [Al-ma’idah: 2]. Therefore the majority said, the Prophet Muhammad (peace be upon him) ordered the one who asked him about the earning of a copper to spend it on feeding his she-camels, if it is forbidden he wouldn’t have permitted him to use it. They also responded that the phenomenon does not imply prohibition, as Allah (SWT) says “And do not aim toward the defective therefrom, spending [from that]” [Al-Baqarah: 267]. This shows that he called the despicable money defective, and did not forbid it; defective is the opposite of good things.

Taking Payment for Teaching the Quran:

The scholars have different opinions with regard to taking payment for teaching the Qur’an. There are two different views:

The first is the view of the majority of scholars of Shafi’I and Maliki schools of thought that, it is permissible to take payment for teaching the Quran (Al-nawawi, 1978) whether the students are young or adult. They stated this based on the hadith of the Prophet (Peace be upon him) "The best of which you take payment is the book of Allah" (Al-Bukhari: Hadith No. 5737). Also based on the hadith of Sahl ibn Sa’d al-Sa’adi (may Allah be pleased with him), that a woman came to the Messenger of Allah (peace be upon him) and said: "O Messenger of Allah, I give myself in marriage to you." She stood for a long time, then a man stood up and said: "Marry her to me if you do not want to marry her." The Messenger of Allah said: "Do you have anything to give her as dower?" He said: "I have nothing but this lower garment of mine". The Messenger of Allah (Peace be upon him) said: If you give your lower garment, you will sit while you have no lower garment". He said "I have nothing". The Messenger of Allah said "Look (for something), even if it is only an iron ring". So he looked but he could not find anything. The Messenger of Allah said to him: "Have you (memorized) anything of the Qur'an?" He said: "Yes, Surah such and such and Surah such and such," naming them. The Messenger of Allah said: "I marry her to you for what you know of the Qur'an". (Al-Bukhari: Hadith No. 2111). Regarding this hadith, Al-Qurraafi said, "I marry her to you for what you know of the Qur'an" denotes four things (Al-Qurraafi, 1994):

First, his statement “I have nothing but this lower garment of mine”: It is known that a person is not usually incapable of possessing stone or firewood or equivalent. This indicates that it means he has no interest, otherwise he will be denied by tradition, and would have been belied by the Prophet (Peace be upon him).

Second, his reply “I have nothing” to the saying of the Prophet (Peace be upon him) “look (for something), while it is clear that if he looks for it, he would find it.

Third, his statement "Look (for something), even if it is only an iron ring": To an extent, it justifies that it is the minimum of what is sufficient, and it is known that the ring is greater than the least he can possess.

Fourth, his statement “So he looked but he could not find anything”, and it is known that he could find. This indicates that what is meant is that he had no money to determine to an extent, so that it can be legalize with money, then it had to be estimated.

Therefore, there is consensus among the scholars that it is permissible to take payment in the era of the companions (May Allah be pleased with them) and their followers, and the as well as the respected doctrines, except what was narrated from some of those who came after them such as Abu Bakr Al-Asmi and Ibn Aliyyah who said it is not permissible because of ambiguity. It is a contradiction that came after a consensus, so it would not be considered (Ibn Qudaamah, 1988). Al-Kasaani said: "The scholars had this unanimous consensus before the coming of Al-asmī, as they hold this view on *Ujrah* (hire) agreement from the time of the companions (may Allah be pleased with them) to this day without being rebuked, so his contradiction should not be considered because it is against the consensus " (Al-Kasaani: 1986).

Therefore, with regard to absolute interest, there is no doubt that the permissibility of hire (*Ujrah*) ascertained many interests for the employer and the employee, where imperative needs make it lawful. Indeed, its prohibition results in severe difficulty incompatible with the purposes of Islamic law in eliminating the difficulty, as the Almighty Allah says “Allah intends for you ease and does not intend for you hardship” (Al-Baqarah: 185) , and says “and has not placed upon you in the religion any difficulty” (Hajj : 78). All people need money, clothing, food, utilities and so on. The needy needs money from the rich, while the rich needs work from the needy; the seller needs the buyer and the buyer needs the seller. The society in general is in need of exchange of money, business and benefits, and this can be achieved only through hire agreement (*Ujrah*).

The second is the view of Hanafi, Ahmad, Ata’u, Dhahaak and others that it is forbidden. Their view is based on the hadith of Ubadatu bin Al-samit (may Allah be pleased with him), who said: I taught some persons of the people of Suffah writing and the Qur'an. A man of them presented to me a bow. I said: It cannot be reckoned property; may I shoot with it in Allah's path? I must come to the Apostle of Allah (Peace be upon him) and ask him (about it). So I came to him and said: Messenger of Allah (Peace be upon him), one of those whom I have been teaching writing and the Qur'an has presented me a bow, and as it cannot be reckoned property, may I shoot with it in Allah's path? He said: If you want to have a necklace of fire on you, accept it (Ibn Majah: Hadith No. 2157).

Perhaps the first view is more acceptable, the Almighty Allah knows best. It is the view of the majority of scholars of Shafi'i and Maliki doctrines that, it is permissible to take payment for teaching the Quran, because the payment is given with necessity, as given to prayer leaders and those who call for the prayer in the mosques, as well as judges. Therefore, it is permissible with necessity, but teaching the Qur'an and Islamic knowledge without taking payment is better.

Pillars of *Ujrah* (hire)

The pillars of *Ujrah* (hire) are four: First, contracting parties, i.e. “the employer and the employee; the employer is the buyer, while the employee is the seller of the benefit” (Al-Dasuki, 1398). According to majority of scholars, the two contracting parties are required to be eligible for contracts; they should be adults and sensible, not boys who are indiscriminate, mad persons, or drunkard. It is impermissible to hire a boy even if he his discriminate according to Shafi’I and Zahiri doctrines, and they have different opinions as to whether he or the wage agreement would be considered (Al-Nawawi, 1991). According to Shafi’I doctrine, “if he is under guardian’s control, the contract will be based on permission, and the most acceptable view according to Malikis and a narration from Ahmad, is that because the guardianship is a requirement for entry not validity, but the contract is not valid according to Shafi’i. In another view of Maalikis and a narration from Ahmad, it is stated that the guardianship is a requirement for validity of the contract and not its entry”(Al-Dasuki, 1398H).

The second pillar is the form: "it should be based on what indicates consent like transactions, because it is a business relation, but if it is usually practiced, then the transaction indicates consent" (Al-Sawi, 1423H). The form should either be explicit or indirect expression. It is explicit when you say I hire you for this, or I employ you for one year service. It is not a time for employer and what comes after him; because it is the basis, and can elapse after his utterance, not estimation of the benefit. Similar to this is stated in the verse which the Almighty Allah said “So Allah caused him to die for a hundred years” [Al-Baqarah, 259], meaning He caused him to remain dead for the period of hundred years. If you say it is valid for the mentioned benefits, then there is no need for assumption unlike the verse as it is clear. I say: the benefit is not real now and the circumstance requires something else, then the assumption of what was mentioned is better or is determined" (Al-Haytami, 1983).

The third is confirmation, and it has five conditions: "it should be put in order" (Al-Ansari, 1997) , "and affordable to deliver" (Al-Ansari : 1994) , "and should not include taking interest deliberately. Also the benefit, the amount and the form should be known, and the benefit should reach the worker" (Al-nawawi, 1405H). "If it is workmanship, it can be based on time such as a one day making of cloth, or its nature such as sewing. If they are merged together, i.e. the restriction based on nature and time, and if the situation is complex, it is not permissible based on consensus. However, if the situation is not complex, that it can be completed before the expiration of term, it is opined that it is permissible, but according to the well-known view, it is not permissible" (Alaish, 1989).

The fourth one is *Ujrah* (wage): "for the validity of *Ujrah* (hire), it is required that the wage should be known in its type, importance and feature if it is in custody, if not, viewing it is enough for hire of property and contract" (Al-Ramli, 1984). "Majority of the scholars stipulated conditions for wage as stipulated in the price "(Al-Kasani, 1986) "as the same contract, and must be handed over, likewise the property" Al-nawawi, 1978). It is also required to be clean, and it is not permissible to hire what is unclean such as pigs or dogs. For the Prophet (peace be upon him) said “Allah and His Messenger have forbidden the sale of wines, meat of dead animals, pigs and 'idols'. It was said to him: 'O Messenger of Allah, what

do you think of the fat of dead animals, for it is used to caulk ships, it is daubed on animal skins and people use it to light their lamps?' He said: 'No, it is unlawful.' Then the Messenger of Allah (Peace be upon him) said: 'May Allah curse the jews, for Allah forbade them the fat (of animals) but they rendered it, (i.e. melted it) sold it and consumed its price' (Ibn Majah: Hadith No. 3486).

Time to Pay the Wage

It is known that wage is one of the pillars of hire contract (Ujrah). Therefore, it is obligatory upon the employer to pay the employee sooner, as it is better than to be delayed, because it is the right of the employees upon their employers. For the Almighty Allah says "O you who have believed, fulfill [all] contracts" (Al-Ma'idah: 1). This indicates that the Almighty Allah command us to fulfill contracts, and therefore, it is obligatory.

This refers to any contract such as the selling and buying; it is a duty that must be fulfilled. For example, the employer is obliged to fulfill the payment contract with the worker. For the Prophet (Peace be upon him) said "Give the worker his wages before his sweat dries" (Ibn Majah: Hadith No. 2434). The employee is entitled to his wages; the employer must pay the worker if the contract between the parties is complete naturally without compulsion or coercion on each other.

The scholars unanimously agreed that the contracting parties should agree on the payment, whether the payment should be on completion of the work immediately or at a later time, or in installments, but if the contracting parties have not agreed on the payment to be made immediately or at a later time, or in installments, the scholars have different opinions in the following cases: -

The first case: What represent the contract are described benefits in the agreement. The description should be clear without doubt, for example, as if to say to Abdullah "I agreed with you to describe a person's specifications, such and such to serve me for the period of four years on certain amount of money". This hire will be for four years, and then Abdullah can carry out this duty, or any other person who meets the required specifications. Al-nawai and Al-Haytami said "like someone who hires an animal described for the riding or carrying loads, or he says: I employ you for sewing this dress or building a wall " (Al-nawawi, 1990).

In this case, he is required to hand over the wage at the place of the contract "it should not be delayed, replaced, transferred or discharged" (Al-Sharbini, 1415H). Al-Dasuki (May Allah have mercy upon him) said "delay in payment of wage is permitted if the worker started collecting the benefit within three days from the date of the agreement on the contract, and if he delays, the agreement becomes invalid; because if the worker started collecting part of the benefit, it is counted as collection the benefit" (Al-Dasuki, 1398H).

The second case: If the hire refers to property "such that the hire be a motorcycle, in this case it is necessary to pay the wage with expedition" (Al-Imrani, 2000). Therefore, delay is not permitted for hire of property; because it leads to depreciation and damage; this is a precaution of the conflict and dispute between the parties.

Also Thai labor law stipulated in section No. (3): "the wage should be paid (cash) to the worker with the money in circulation, and legally provided that the payment is to be made according to the following": -

A. In normal working days.

B. At the end of each month for employees paid monthly.

C. At the end of each week, for workers on the basis of units of production, hours, days or week, hence the Thai Labour law obliged employers to pay workers their wages based on time and place in which the contract was initiated before the work begins, and did not specify a particular time such as a day or a week or a month.

Types of *Ujrah* (hire) and the Duration in the Labor Contract

The hire, which the general public deal with and the scholars agreed upon, is either in cash, property or the benefit. The scholars have different opinions regarding hire in exchange for food, clothing or what is called *Ijarah Al-nafaqah* (i.e, hire in return of feeding): -

The first view is that it is not permissible, according to some scholars of Hanafi (Zayla'i : 1313H) , Hanbali (Ibn Qudaamah, 1988) , Shafi'i (Al-Shirazi, 1990) , and Maaliki (Al-Dasuki, 1398H) , because the wage is unknown.

Second view is that, it is permissible according to some scholars of the Maaliki and Hanbali , based on the hadith of Ali bin Rabah, who said: "I heard 'Utbah bin Nuddar say: 'We were with the Messenger of Allah (Peace be upon him) and he recited Ta-Sin. When he reached the story of Musa, he said: 'Musa (A.S) hired himself out for eight years, or ten, in return for his chastity and food in his stomach' ” (Ibn Majah: Hadith No. 2444).

The third view: details, according to scholars of Hanafi (Al-Zayla'I, 1313H), hire on food, clothing is permissible only in wet-nursing. For the Almighty Allah says "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity" (Al-Baqarah: 233). This verse indicates that feeding them and clothing them is obligatory on breastfeeding, and does not differentiate between divorced women and others, but the context indicates her divorce, because a married woman must be fed and clothed even if she does not breastfeed, as the Almighty says "And upon the [father's] heir is [a duty] like that [of the father]" (Al-Baqarah, 233). This shows that "that the heir is not the parents, and because the benefit in the nursery and breastfeeding is unknown, then she can be compensated" (Ibn Qudaamah, 1988).

The most accepted view, the Almighty Allah knows best, is the first one, i.e. the impermissibility of *Ujrah* (hire) in exchange for food or clothing at all, and we can say that it is people's tradition today. The worker needs money more than the clothing or food or

what is called *Ijarah Al-nafaqah* (i.e. hire in return for feeding). Therefore, the employer should give the employee the money in time, and at the same time the employee can spend as he wishes.

Conclusion

Praise be to Allah, the Lord of the worlds, who helped us to complete this article on the *Haq Al-ujrah* (Hire Right) in light of contemporary Islamic Jurisprudence and the Thai Labor Law. The most important findings of this study is that *Ijarah* (hire) is permissible and legal, but the scholars hold different opinions regarding permissibility some works such as copper hiring and taking payment for teaching the Qur'an. As for copper hiring, the most acceptable is the view of the majority that it is permissible. Also regarding taking payment for teaching the Qur'an, the scholars have two different opinions, but the most acceptable is the view of majority of scholars of Shafi and Maliki doctrines, that is is permissible to take payment for teaching the Qur'an, because the payment is made based on needs as given to *Imams* and *Mu'azzins* (Prayer leaders and those who call for prayer in the mosques), as well as judges. Therefore, it is permissible, but teaching the Qur'an and Islamic Knowledge without taking payment is better. The scholars also unanimously agreed that the contracting parties should agree on immediate or delayed payment, or installments, but if the two contracting parties do not agree on immediate or delayed payment, or installments, the scholars also have different views. The scholars unanimously agreed on the impermissibility of *Ujrah* (hire) in return for feeding or clothing at all, which can be said, is the people's practice today. The worker needs money more than the clothing or the food, or what is called *Ijarah Al-nafaqah* (i.e hire in return for feeding). Therefore, the employer should give the worker the money, and at the same time the worker can spend as he wishes.

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