

Resolving Disputes on the "Cloud": Exploring a New Model for Resolving Market Disputes at the Front End

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Abstract: The People's Court of Yiwu bravely established the digital reform wave, constantly targeted digital, diversified, professional, and layered filtering of disputes, and built a collaborative application scenario of market trade dispute resolution with the "docking center for trade dispute litigation and mediation" as the main body. The platform has formed a series of experience in Yiwu, such as digital empowerment dispute resolution, electronic service lost connection repair, dispute early warning model litigation, etc. In the face of such major problems as insufficient cloud platform system optimization, limited dispute resolution scope, and low platform penetration, we can address them by improving the platform intelligence level, expanding the platform dispute resolution scope, and strengthening publicity and promotion. Its future outlook aims to create a front end for market trade disputes to resolve the "Yiwu sample", further promote the iterative upgrading of the platform system, cross regional and cross departmental linkage, and boost the construction of a unified national market.

1. Introduction

In order to comply with the strategic requirements of accelerating the construction of a unified national market, and optimize the market business environment, the construction of the "Yiwu Commerce and Trade Dispute Complaint and Mediation Docking Cloud Platform" focuses on the difficulties and blockages in resolving market trade disputes. It uses digital means to strengthen the source of litigation governance before mediation, serve the parties in mediation, strengthen the implementation after mediation, resolve market trade disputes in the bud, and promote the substantive resolution of disputes.

2. Yiwu Experience and Highlights of Cloud Platform

2.1. Digital Empowerment, Building a "Fast Track" for Dispute Resolution

Parties applying for mediation through the cloud platform can achieve "point-to-point" connection with mediators without paying, preparing litigation materials, pre court review, and notifying on-site mediation. The dispute resolution process in the digital context is from complex to simple, greatly

reducing the time and cost of conflict resolution. The establishment of the platform scenario no longer requires on-site mediation and the statistics and review of manual data. Merchants can realize online application mediation, online mediation, agreement signing and other functions by scanning their mobile phones to log in, achieve "one key direct access" to dispute management, and achieve information exchange in the whole process, thus realizing the transformation from a single function to a diversified scenario.

2.2. Efficient Dispute Resolution, Increase the "New Power" of Litigation Mediation Linkage

The cloud platform has gradually formed a closed-loop resolution process of source screening, intelligent assistance, process supervision, and efficient collaboration, organically linking the mediation of trade mediators with the judicial confirmation of the court, providing a legal barrier to the mediation agreement reached by the parties, so as to reduce the abuse that the mediation agreement does not have the force of enforcement and flows into the trial process, and break through the barrier of "soft handling" of trade disputes, On the basis of convenience and benefit to the people, the goal of efficient dispute resolution is achieved, thus creating a new pattern of litigation source governance.

2.3. Electronic Delivery, Introducing "New Channels" for Lost Connection Repair

The scene of "Yiwu Commerce and Trade Dispute Litigation and Mediation Docking Cloud Platform" constructs the legal document service address library, and the personnel who enter the mediation sign the legal document service address online, so as to provide a practical and effective party service address for possible subsequent litigation. In the event that the party cannot be contacted, the respondent can be contacted by using the big data lost connection repair system under the premise of ensuring the privacy of the other party. Through the cooperation with the Public Security Bureau, the Market Supervision Bureau, the Mall Group, the Floating Population Administration and other departments, the identity information database is connected, and the integrated legal document service address database of each functional department is built to achieve the matching verification of the party's name, ID card number, and mobile phone number, and effectively solve the problem of "difficult to find" of the addressee.

2.4. Early Warning of Disputes, Playing the "System Card" of Model Litigation

The value and characteristics of strengthening the ability to resolve litigation disputes, efficiency, trial and error function, and effectively making up the defects of representative litigation determine the necessity of the model litigation system in the construction of China's litigation system [1]. Explore the establishment of a model litigation system for trade disputes. Therefore, by establishing a perfect dispute demonstration mechanism, it is helpful for us to build the scenario of "Yiwu City Commerce and Trade Dispute Complaint and Mediation Docking Cloud Platform" and use the system automatic collection method to analyze big data, summarize and collect the applicant, dispute type and other relevant data information, finally form a data cockpit, and gradually establish a business conflict and dispute early warning mechanism; Conduct hot spot early warning for industries with frequent disputes, establish the first line of defense to resolve conflicts and disputes, and form industry management norms and research results of trade disputes.

3. Main Problems and Challenges Faced by Cloud Platforms

3.1. Insufficient Cloud Platform System Optimization

In the past two years since the cloud platform was built and put into operation, online dispute resolution has been basically achieved. However, from the feedback of practical research, many details of the platform still need to be improved, and the intelligent level of the platform still needs to be improved. First of all, the platform operation details must be improved. After interviewing with the mediator, the research team learned that the platform system has the problem of incomplete prompting functions. The specific performance is that the system will not prompt the materials submitted by the plaintiff and defendant when the mediator sends and receives relevant materials from the system. Due to the lack of active prompt function on the platform, the mediator must always pay attention to the material upload system, which virtually increases the workload of the mediator. Secondly, the process of submitting evidence on the platform is complicated, and the defendant is constrained by the complicated process of uploading evidence, which leads to that he will not upload evidence materials in practice. The last is the intelligent construction of the platform. At present, the platform construction has not reached a very mature stage, and the intelligent application level still needs to be greatly improved.

3.2. Limited Scope of Platform Dispute Resolution

Restricted by the orientation of platform establishment, the limitation of platform mediation scope is obvious, which is mainly reflected in the following two aspects: First, the mediation object is limited. At present, the mediation objects of the platform are mostly the subjects of disputes on online shopping platforms. Among the subjects of disputes on these online shopping platforms, Taobao, Pinduoduo and other online shopping platforms account for a large proportion. Secondly, the case type is limited. At present, the mediation cases of the platform are concentrated in the field of intellectual property. Because the basic people's court currently has no jurisdiction to hear patent disputes, the platform mediation only involves trademark infringement disputes and copyright infringement disputes in the field of intellectual property, and other disputes are not included.

3.3. The Main Status of Cloud Platform Mediator Is Unknown

The main status of mediators is unclear mainly in the following aspects: First, the issue of mediators' belonging to the organization. As mentioned earlier, mediators do not belong to the court in terms of organization, but belong to the Tongdao Cloud Mediation Center. In practice, they mediate in the name of "Yiwu Intellectual Property Litigation and Mediation Docking Center". The second problem is the status of the mediator. Due to some problems in the organization to which the mediator belongs, the status of the platform mediator is not clear. When the organizational status of the Complaint and Mediation Center has not been clearly defined, it is difficult for mediators to carry out a series of mediation activities with the Complaint and Mediation Center as the main body, and the platform mediators are greatly limited, so they are constrained in carrying out mediation work.

3.4. The Level of Mediators Varies

Because there is no uniform selection standard, the level of mediators varies greatly within the team. Some mediators lack legal education background and legal professional knowledge; Some mediators have insufficient mediation experience, and their mediation ability needs to be improved. Secondly, no special professional norms have been formulated for the mediation work of platform

mediators. Finally, an effective training, assessment and incentive mechanism has not been established for platform mediators. After the mediation, the parties can score and evaluate the mediators through the function similar to Taobao shopping evaluation, but it has not really played an assessment and incentive effect, which cannot improve the enthusiasm of the mediators; At the same time, if there is no training and assessment for mediators, it is difficult to improve the mediation ability and optimize the mediation effect.

3.5. Low Awareness and Application Rate of Cloud Platform

First of all, cloud platform mediation belongs to pre litigation mediation. For a long time, courts have not paid enough attention to non litigation dispute resolution, and the standardization and institutionalization of non litigation mediation are insufficient. The public has low trust and weak sense of identity in this non litigation mediation. Secondly, the court's propaganda on cloud platform mediation is insufficient, and the promotion methods are limited. The public's awareness and cognition of the pre litigation mediation method is low. The court's promotion of cloud platform mediation is mainly through the way that court staff notify lawyers one by one, and it is only for lawyers with a large number of cases, not directly for the general public. Most people are not aware of the platform and its mediation function. When lawyers with a large number of cases come to the court to file a case, the staff of the filing court will inform these lawyers when receiving the case that they need to conduct pre litigation mediation through the cloud platform the next time they represent the client's case, and issue the specific operation manual of the cloud platform to encourage lawyers to use the cloud platform; The subsequent court mainly relied on the mutual notification between lawyers and lawyers to explain the pre litigation mediation function of the cloud platform to the parties, which greatly limited the popularity.

4. Countermeasures and Suggestions for Improving Cloud Platform Construction

4.1. Focus on System Details Optimization

Many details still need to be improved during the operation of the cloud platform. In the process of optimizing the platform details, we should pay attention to the humanized construction of the cloud platform, and take the actual needs of all parties as the guidance. The platform construction should be based on different role positioning to meet the needs of all parties [2]. First of all, in terms of the optimization design of the mediator's main platform, the system interface designed by the platform system for mediators should reflect the principle of timeliness and efficiency, so that mediators can carry out pre litigation mediation work with maximum efficiency. The second is the optimization design of the mediation subject platform. Because the mediation subjects are diverse and the defendant's willingness to mediate as the mediation subject is low in practice, the platform system should maximize the convenience principle in the mediation subject design interface. The cloud platform should embed more intelligent application scenarios. The cloud platform should focus on building the architecture of "artificial intelligence+dispute resolution mechanism", and use the cognitive recognition method of "dialogue+reasoning" to learn and master Internet technology from the existing online dispute resolution mechanism as a whole [3]. Intelligent dispute resolution requires the support of big data, cloud computing, artificial intelligence, machine learning and other technologies to overcome the technical fortress encountered in litigation and mediation disputes [4].

4.2. Expand the Scope of Platform Dispute Resolution

When expanding the scope of platform dispute resolution, it can be carried out in a gradual way,

that is, first expand to the field of foreign-related disputes in a small scope, and then gradually expand to the field of trade disputes. Foreign related disputes account for a small proportion in market disputes. However, due to the high cost of settling disputes through litigation and the difficulty in delivering legal documents, it is very inconvenient to settle disputes offline. Online dispute settlement is the best choice. The cloud platform will be open to trade disputes when it has gained good experience in mediation of foreign-related disputes. In addition, supporting measures to expand the scope of dispute resolution on the platform should also be gradually completed. With the increase of the number of cases, the demand for mediators is also increasing, and the platform system function settings should be diversified. The platform can increase the configuration of mediators as the case types expand, and improve the diversified settings of the platform system.

4.3. Clarify the Main Status of the Platform Mediation Organization

Since the promulgation of the People's Mediation Law, the legislation on non litigation has been in a slow and stagnant state, and the operation of some new mediation institutions has been in a state of no special legal basis, no management department, chaotic operation, and vague status. In order to seek the legitimacy of development, some mediation organizations refer to the People's Mediation Law and adopt the implementation procedures of people's mediation organizations, which further makes it difficult to distinguish the status and role of special mediation and people's mediation [5]. To clarify the dominant position of cloud platform organizations, it is necessary to recognize the unique role played by cloud platforms. Cloud platforms have certain professional attributes and should avoid convergence with people's mediation. Conceptually, the mediation subject of the cloud platform should establish the concept of professional, market-oriented and professional mediation [6]. In terms of system design, the court, as a judicial organ, should timely adjust its working ideas, endow the cloud platform mediation organization with an independent subject status, so that it can better play its subjective initiative as an independent organization, provide high-quality and efficient mediation services for the parties to the dispute, and resolve disputes in the market field accurately and efficiently.

4.4. Standardize the Construction of Mediator Team

The construction of mediator team can be considered from three aspects: First, personnel selection before mediation; Second, the norms of work in mediation; The third is the assessment and incentive mechanism after mediation.

First, improve the unified mediator access mechanism, and select cloud platform mediators with high professional quality and strong dispute resolution ability. On the one hand, from the perspective of educational background, it should be required to have a good educational background of law discipline; On the other hand, from the perspective of dispute resolution capability, mediators should be selected based on mediation experience, and can be required to obtain corresponding qualification certificates for mediators [7].

Second, formulate a unified code of conduct for cloud platform mediators and standardize the work content of mediators. The mediator's strict neutrality is the basic criterion of his professional behavior, and also the source of the parties' trust in the mediation procedure [8]. Mediators should conduct mediation work on the basis of the materials submitted by the parties to the dispute on an equal and fair basis without prejudice or selfishness.

Third, establish a regular training system for mediators and improve the assessment and incentive mechanism for mediators. Through training classes, seminars, exchange studies and other forms, mediators are regularly provided with systematic legal knowledge training [9]. The training content can be divided into two parts: theoretical basic subjects and operational technology training. The

theoretical basic subjects are explained theoretically by employing university teachers in combination with the revision of laws and regulations, changes in judicial policies and the results of legal theory research, The operation technology training is carried out through experience sharing by senior mediators in combination with dispute resolution cases, and the training promotes the improvement of legal quality and mediation ability of mediators.

4.5. Strengthen Publicity and Promotion

Due to the constraints of many factors, the public's awareness and acceptance of cloud platform pre litigation mediation is low, and the publicity of non litigation mediation from all walks of life is also insufficient. Therefore, we should strengthen the publicity of cloud platform mediation from all walks of life while standardizing cloud platform mediation, and guide the public to give priority to cloud platform mediation when facing various disputes.

On the one hand, courts at all levels should expand the scope of publicity objects, not only for lawyers with a large number of cases, but also directly for the public. They should make full use of the media to play the role of public opinion guidance, improve the public awareness and first choice rate of cloud platform mediation, and publicize the advantages of cloud platform mediation, such as efficiency, convenience, flexibility in time and space, The parties to the dispute are encouraged to give priority to resolving the conflict through pre litigation mediation when conflicts and disputes occur, rather than just considering litigation as the preferred way of dispute resolution. On the other hand, courts at all levels should expand the forms of publicity. In addition to pushing and publicizing through WeChat public accounts and websites, and through electronic displays and promotional materials in the litigation and mediation docking center, they can also widely publicize the operation process and advantages of cloud platform mediation through newspapers, TV, Taobao platform and other ways with a wide audience The new network media popular with the public publicizes the results and experience of cloud platform mediation [10], enhances the public's awareness of cloud platform mediation, and makes cloud platform mediation truly accessible to millions of households.

5. Conclusions

The People's Court of Yiwu City, based on the regional characteristics of "the world's small commodity city", has taken the lead in building a national county level first-class "Yiwu business dispute litigation and mediation cloud platform" for cross-border trade disputes and e-commerce disputes. Digital empowerment has created diversified scenarios for dispute resolution, and the restoration of lost connections has boosted the success rate of electronic delivery, promoted the integration of dispute resolution with technology and data, and improved the digital level of litigation and mediation connection, we will optimize the mechanism for rapid handling of intellectual property disputes and effectively improve the effectiveness of intellectual property rights protection. "Yiwu Commerce and Trade Dispute Litigation and Mediation Docking Cloud Platform" fully relies on modern digital technology for development and construction, which can provide replicable and promotable experience in technology, management and operation mode for the construction of litigation and mediation docking platform of other courts across the country and the rapid handling of intellectual property disputes.

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