

# DETERMINING WAGES FOR CATTLE TRAINING WHEN THE OWNER SUES RECEIVING LOST CATTLE ACCORDING TO VIETNAM CIVIL LAW

Nguyen Chi Dung\*, Nguyen Mong Cam\*\*

\* University of Economics and Law, Vietnam National University Ho Chi Minh City

\*\* Faculty of Law, Nam Can Tho University

**Abstract-** When reclaiming lost livestock, the owner of the livestock is obliged to pay the fee for herding the livestock to the person who caught the lost livestock or the person who is possessing the livestock without legal basis but in good faith. In this article, the author clarifies the limitations and inadequacies in the legal regulations related to determining cattle herding wages when the owner sues to reclaim lost cattle, and at the same time make recommendations to improve the law.

**Index Terms-** determine herding wages; reclaim lost livestock

## I. CONCEPT OF LOST LIVESTOCK

The concept of livestock is studied from many different angles. From a linguistic perspective: "Cattle are animals with fur that are raised indoors (such as buffaloes, cows, dogs, pigs...)" (Nguyen Nhu Y, 2013). From the perspective of legal science, author Hoang The Lien said: "Cattle are four-legged animals" (Hoang The Lien, 2013). Meanwhile, according to Nguyen Van Cu and Tran Thi Hue: "Cattle is a concept used to refer to four-legged animals, mammals, domesticated and raised in family and farm conditions" (Nguyen Van Cu – Tran Thi Hue, 2017). In terms of legislation, the concept of cattle is officially recognized in Clause 6, Article 2 of the Law on Livestock 2018 as follows: "Cattle are understood as mammals with 4 legs that have been domesticated and used by humans". From the above concepts, it can be seen that cattle are also animals but not all animals are cattle. Only animals that have four legs and are domesticated and raised by humans are considered livestock. Four-legged animals that are raised by humans but have not been domesticated such as tigers, leopards, weasels...are not considered livestock. Besides, the connotations of the above concepts also show the difference between cattle and poultry. Accordingly, about 7 Article 2 of the Law on Livestock 2018 stipulates "Poultry is a two-legged, feathered animal, belonging to the group of winged animals domesticated and raised by humans". According to the author, the concept of cattle recognized in the Law on Livestock 2018 is applied in the field of animal husbandry. Meanwhile, the scope of regulation of the Livestock Law and the Civil Code is different. In fact, there are many types of wild animals that are not on the list of prohibited livestock farming and have not been domesticated or have only been partially domesticated, such as deer, foxes, and ornamental birds, but are

also raised by people with livestock. Different purposes such as ornamental, food. The pets mentioned above also belong to the legal ownership of the breeder and need to be protected by law. Therefore, the concept of cattle in civil law needs to be understood in a broader sense than the concept of cattle recognized in the Law on Livestock 2018. From the above analysis, the author proposes the concept of cattle as "Cattle are mammals with four legs and fur and are not on the list of wild animals banned from raising according to the law".

In terms of linguistics, "lost" is understood as being lost or not found" (Institute of Linguistics, 2007). From the perspective of legal science, according to author Hoang The Lien, "lost is understood as the owner losing the right to hold the livestock against his will" (Hoang The Lien, 2013). Meanwhile, author Nguyen Minh Tuan said that "lost cattle are cattle that are not in the possession of the owner or the person authorized by the owner. The owner of the lost cattle cannot identify who the owner of the cattle is" (Nguyen Minh Tuan, 2016). The author of the article believes that the above concepts do not distinguish between the case where the cattle owner lost the right to hold the cattle without his will because the cattle moved instinctively and was lost from the case where the owner lost the right to hold the cattle without his will. The owner lost the right to possess livestock because the livestock was stolen. This means that, in some cases, the cattle owner loses the right to possess the cattle against his will because the cattle move according to natural instincts, but there are also cases where the owner loses the right to possess the cattle without his will. Will is stolen by someone else. Authors Phung Trung Tap and Kieu Duy Linh said: "Lost cattle are cattle that were originally raised in the house but due to negligence during the grazing process or due to the practice of letting them roam unattended, they are lost" (Phung Trung Tap - Kieu Thi Thuy Linh 2021). According to this understanding, lost cattle are cattle due to the negligence of the owner or cattle manager or due to the custom of letting cattle roam freely without anyone taking care of them, so the cattle moved instinctively, leading to the owner loses the right to actual possession of livestock. The person in possession of the lost livestock may be the person who captured the lost livestock or may be a third person who received the lost livestock through a civil transaction.

From what has been analyzed above, the author introduces the concept of lost cattle as follows: "Lost livestock is a case where livestock moves instinctively and leaves the owner or legal possessor without the will of the owner or legal possessor".

## II. CASES WHERE THE OWNER OF A LOST LIVESTOCK IS PAID A HERDING FEE BY THE OWNER WHEN THE OWNER SUES TO RECLAIM THE LOST LIVESTOCK

Not every case where the owner of a lost livestock returns the lost livestock will receive payment from the owner for herding the livestock. Specifically, according to the provisions of Article 231 and Article 583 of the Civil Code 2015, the owner of lost cattle will be reimbursed the herding fee when the owner sues to reclaim the lost cattle in the following cases:

*First*, the person who catches the lost livestock meets the conditions prescribed in Article 231 of the Civil Code 2015. Specifically, the person who catches the lost livestock must keep it and immediately report it to the People's Committee of the commune or ward, town (called the Commune People's Committee) so that the Committee can notify the owner and take it back. After 06 months from the date of public announcement or after 01 year for cattle roaming freely according to custom, ownership of the cattle and the number of cattle born during the holding period belongs to the person who captured the cattle. In case the owner gets back the lost livestock, he/she must pay the keeping fee and other expenses to the person who captured the livestock. According to Article 131 of the Civil Code 2015, during the time the lost livestock is kept, if the livestock gives birth, the person who caught the livestock will receive half of the livestock born or 50% of the value of the livestock born and must pay compensation. Usually damage if occurs. error. intentionally killing livestock. When a person catches lost livestock and declares it according to the above regulations, he is considered the legal possessor - according to Article 165 of the Civil Code 2015. Therefore, when the owner receives back the lost livestock, he must pay the herding fee as well as other reasonable expenses to the person who caught the lost livestock.

*Second*, the person possessing lost livestock is the possessor without legal basis but in good faith. Specifically, based on Article 583 of the Civil Code 2015, the owner - the subject with other rights to the property or the person who has suffered damage and has the property returned must pay the necessary expenses that the possessor or person must pay. use the property or the person entitled to the property will do so. the person who benefits from the property has no legal basis but has honestly spent money to preserve and increase the value of the property. Accordingly, possession without legal basis but in good faith is the case where the possessor has grounds to believe that he or she has rights to that property as mentioned under article 180 of the Civil Code 2015. For example, the person who caught the lost cattle sold the cattle to another person and the cattle buyer could not know that the cattle he bought did not belong to the seller. In this case, when the owner of the livestock reclaims the lost livestock, the person in possession must return the livestock to the owner but the owner must pay the necessary expenses incurred by the possessor of the livestock. The above regulation does not directly mention shepherding wages but uses the phrase "necessary expenses" spent to "preserve and increase property value". It can be seen that the costs necessary to keep lost livestock can include wages for tending lost livestock and other expenses such as food for livestock and disease vaccination costs.

## III. INADEQUACIES IN LEGAL REGULATIONS AND APPLIED PRACTICE ON DETERMINING WAGES FOR HERDING LOST LIVESTOCK

Researching the provisions of the Civil Code 2015 and practical application in local courts shows that the issue of determining wages for herding lost livestock still has some limitations and inadequacies as follows:

*Firstly*, determining the time to start calculating wages for herding lost cattle as well as the applicable law is still limited and inadequate. Specifically, because the Civil Code 2015 does not specifically stipulate the time to start calculating wages for herding lost livestock, there are many different ways of understanding and applying the law among local courts. For example, in the dispute Judgment No. 01/2017/DS-ST of the People's Court of Dien Bien Dong district dated July 28, 2017, the Court commented: "*Considering the counterclaim for shepherding wages from defendant Mr. Quang Van B and those with related rights and obligations on the defendant's side. The jury found that although the defendant, Mr. Quang Van B, committed not to ask for money for herding (shown in record number 75), however, because of his psychological confidence, he affirmed that the buffalo in dispute belonged to him. family, that is why the above commitment was made. Furthermore, considering the fact that while it has not been determined exactly who owns the buffalo, Mr. Quang Van B's family will continue to be temporarily assigned to herd and take care of the buffalo. Avoiding property damage is necessary; The process of taking care of buffalo naturally requires effort in herding and taking care of the buffalo. Therefore, the defendant Mr. Quang Van B's request to claim herding wages has grounds for acceptance according to the provisions of Clause 2, Article 232; Article 583 of the Civil Code 2015*". Here, according to the Court, the payment of buffalo herding costs is consistent with both Article 231 and Article 583 of the Civil Code 2015. However, it can be seen that Mr. Quang Van B arrested the buffalo in the above circumstances. is not within the scope of Article 231 of the Civil Code 2015. Because Mr. B captured the buffalo currently in dispute because he believed that this was his family's buffalo, so he captured it, not someone else's lost buffalo. . On the other hand, Mr. B's seizure of the buffalo does not meet the conditions of Article 231 of the Civil Code 2015. Specifically, Mr. B did not notify the Commune People's Committee so that the Committee could notify the owner to reclaim it. . Therefore, the Court's finding that Mr. B's request for herding wages has grounds for acceptance according to Article 231 of the Civil Code 2015 is not convincing. According to the author, it would be more reasonable if the Court followed the direction of Mr. B who captured the childless buffalo legally but sincerely. Because, Mr. B also lost a buffalo similar to the one that Mr. B captured.

Regarding the time when the herding wages begin to be calculated, Article 231 and Article 583 of the Civil Code 2015 do not clearly state when the person possessing the lost cattle can calculate the herding wages from? In the above case, the Court determined that the time to start calculating herding wages is the time the First

Instance Court temporarily hands over the buffalo in dispute to Mr. B to care for and manage during the dispute resolution period. Determining the time for calculating herding wages is the time when the owner of the cattle is temporarily handed over the disputed cattle for management and use by the Court or another agency or organization is also recognized in a number of other judgments. In another dispute, specifically Judgment No. 03/2019/DS-ST of the People's Court of Huong Khe district, Ha Tinh province dated April 4, 2019 - the Court also said that Mr. Ho Duc L's cow raising costs are calculated from The day he was directly managed by the Social Insurance Council until the day of the first instance trial with livestock costs of 10,000 VND/day x 187 days = 1,870,000 VND.

From the above practice, it can be seen that the Courts in localities determine the date when the owner of the lost livestock is handed over the livestock by a competent agency or organization for care and management during the settlement period. The dispute is the time when wages for herding lost cattle begin to be calculated. The author believes that the Courts determine the time to start calculating the effort to herd lost livestock as the time when the owner of the lost livestock is given the livestock to be cared for by a competent agency or organization. not really reasonable. Because, first of all, it is necessary to determine which of the two cases in which the person actually possessing the lost livestock is paid for herding wages as analyzed above. Accordingly, in the case of a person who catches a lost livestock and takes possession of the livestock in accordance with the conditions prescribed in Article 231 of the Civil Code 2015, the time to start calculating herding wages should be determined as the time The person who catches the lost livestock shall notify the commune-level People's Committee. In case the person who captures the cattle clearly knows that this is another person's lost cattle but does not notify them, he or she is not considered to be possessing the animal without legal basis or in good faith, and therefore will not be paid. In the case of a person possessing lost livestock without legal basis but in good faith, the time to start calculating the fee for herding lost livestock should be determined as the time the bona fide possessor begins to take possession.

*Second*, there is no consensus among local courts in determining the wage for herding lost cattle and is not really reasonable. In the practice of resolving disputes and lawsuits to reclaim lost livestock, the costs necessary to maintain lost livestock are also known as herding wages. However, because current legal regulations do not provide a basis for determining the cost of cattle herding, this leads to inconsistent application of the law among local courts. Judgment practice shows that, in some cases, the Court has determined herding wages based on common labor days in the locality and if the cattle catcher herds many cattle, then takes the day's work. labor divided by the number of cattle he herds. For example, in the content of judgment No. 01/2017/DS-ST of the People's Court of Dien Bien Dong district dated July 28, 2017 - the Court commented: *"During a day of herding buffalo, the defendant's family not only herded buffalo but also There is still a dispute between a buffalo and a herd of buffaloes. herd of 5 buffaloes"*. Therefore, the buffalo herding salary of only 25,000 VND/day as proposed by the representative of the Procuracy is appropriate. Thus, buffalo herding salary is determined = 136 days x 25,000 VND/day = 3,400,000 VND. Meanwhile, in Judgment No. 03/2019/DS-ST of the People's Court of Huong Khe district,

Ha Tinh province dated April 4, 2019, the Trial Council said: *"The average income per capita of commune P is 28,000,000 VND. /person/year; 90% of workers in the area work in agriculture; Monthly income is 2,300,000 VND/person. The cost of raising buffaloes and cows freely in the forest is 3,000 VND/buffalo. cows/day; The form of grazing during the day and keeping cages at night is 5,000 VND/buffalo and cow/day; The form of raising livestock in barns takes advantage of leftover food and straw in the family, feeding 10,000 VND/buffalo or cow per day"*. Thus, although the Court referred to the average income level of the locality, when determining the cost of herding lost livestock, the Court did not base it on the average income level of the locality but determined it based on the local average income level depends on whether the cattle are grazed or kept in captivity to determine the cost of cattle raising. From the above practice, it can be seen that because there is no specific guidance on the basis for determining the salary for herding lost livestock, there is no uniformity in the application of the law among local courts.

The author believes that the fact that some Courts base on the average income of local unskilled workers to determine wages for herding lost cattle is not really appropriate. Because herding lost cattle does not take up the entire working day like other jobs. Besides, if we take the income of unskilled workers to determine the cost of herding cattle, in many cases the cost of herding and raising cattle is too high and in many cases even the cost of raising cattle is too high. the livestock would exceed the value of the disputed property. In the above case, the Court determined the average income of unskilled workers to be 120,000 VND. However, because the owner of the cattle grazed the lost cattle along with the family's four cattle, the Court took the average income of common laborers to calculate the herding work for all 5 buffaloes, from there. Determine the salary for herding a buffalo as 25,000,000 VND/day: (25,000 VND x 136 days = 3,400,000 VND). According to this calculation, assuming in the above case the person who caught the cattle only herded one lost cattle, the wages for herding the cattle will correspond to one day of common labor as determined by the court is: 120,000 VND/day: 120,000 VND x 136 days = 16,320,000 VND. Thus, if herding takes place over a long period of time, the salary for herding lost cattle may be much higher than the value of the cattle that the owner sues to reclaim. Research on foreign laws shows that some countries' laws also have regulations on limits on wages for keeping livestock. For example, according to the provisions of the Civil Code of the Russian Federation, the herding fee for lost livestock is regulated not to exceed 20% of the value of the livestock at the time of return (the issue is mentioned in Articles 229 and 232 of the 1994 Civil Code of the Russian Federation).

#### IV. PROPOSAL TO IMPROVE LEGAL REGULATIONS RELATED TO DETERMINING HERDING EFFORT WHEN THE OWNER SUES TO RECLAIM LOST LIVESTOCK

Based on the shortcomings analyzed above, the author proposes a number of recommendations to improve the provisions of the Civil Code 2015 related to determining wages for herding lost livestock as follows:

*Firstly*, there needs to be specific regulations on when to start calculating wages for herding lost livestock. As analyzed in the inadequacy section, because Article 231 and Article 583 of the Civil Code 2015 do not have specific regulations on when to start

calculating cattle herding wages. Therefore, judicial practice still has different perceptions and applications among local courts. Therefore, the author believes that it is necessary to amend and supplement the above regulations to uniformly determine the time to start calculating wages for herding lost livestock. Specifically, according to the author, Clause 2, Article 231 of the Civil Code 2015 needs to be amended and supplemented as follows: *"If the owner reclaims the stray domestic livestock, he/she must pay care remuneration and other expenses for the capturer from the time the person who caught the cattle notifies the commune-level People's Committee. During the period of feeding and taking care of the stray domestic livestock, the capturer shall be entitled to half of or 50% of value any offspring born. Such person must compensate for any damage if it intentionally causes the death of the stray domestic livestock". At the same time, Article 583 of the Civil Code 2015 needs to be amended and supplemented as follows: "Upon taking back property, an owner or holders of other property-related rights or an aggrieved person must reimburse the person having taken possession of or used the property, or having derived benefits from the property, unlawfully but in good faith, for the necessary expenses such person has incurred for taking care of the property and increasing its value from the time of possession until the moment that person knows or should know that his or her possession has no legal basis".*

*Second*, there needs to be specific guidance on the basis for determining the salary for handling lost livestock. From the above analysis, the author recommends that the Supreme People's Court needs to develop case law or issue a document providing specific guidance on the basis for determining the cost of herding lost livestock. According to the author, for lost livestock such as buffaloes and cows, when resolving disputes, the Court will base on local customs to determine the wages for herding livestock. In case there is no local custom to determine the wage for herding lost cattle, the wage for herding cattle is calculated as 1/4 of the average income of local unskilled workers for herding. 01 cattle. In cases where the catcher herds many cattle, including lost cattle, the herding wage does not exceed the average income of local unskilled workers. The author believes that the herding wage for a lost cattle in a day is 1/4 of the average income of local unskilled workers, which is appropriate. From practice, it can be seen that herding one animal does not take up a full working day. For other types of livestock other than buffaloes and cows, the Court may base it on the average cost of raising a livestock of the same type in the locality as a basis for determining wages and other benefits. Other reasonable expenses for livestock owners.

## V. CONCLUSION

Determining the exact and reasonable wages for herding lost livestock when the owner sues to reclaim the lost livestock is important, contributing to ensuring the rights of the livestock owner and the possessor of the livestock. cattle. Through the article, the author has analyzed and clarified a number of limitations and inadequacies and made a number of recommendations to improve legal regulations related to determining wages for herding livestock when the owner The owner sued to reclaim lost livestock.

## REFERENCES

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## AUTHORS

**First Author** – Nguyen Chi Dung, University of Economics and Law, Vietnam National University Ho Chi Minh City

**Second Author** – Nguyen Mong Cam, Faculty of Law - Nam Can Tho University

**Correspondence Author** – Nguyen Mong Cam,