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Using Clearer Classification to Address the Threat on Gig Workers

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Abstract. Because of the rapid development of the Internet and platform businesses, multinational digital platforms have become increasingly remarkable in the global economy. Their growing reliance on gig workers has generated severe legal and social concerns, particularly because many platform workers did not receive the protections that are typically attached to formal employment. A central reason for this problem lies in the persistence of outdated legal classifications. In many host states, labour law continues to rely on a regimented distinction between employees and independent contractors, leaving gig workers outside the range of core protections such as minimum wage guarantees, social security, and collective bargaining rights. This paper examines why and how the misclassification cause the precarious situations of gig workers with multinational platform economies, arguing that existing legal structure is invalid to platform-based work and therefore fail to respond to new forms of control between platforms and gig workers. On this basis, the paper explores possible reform pathways, including clearer legal classification tests and the establishment of baseline protections for gig workers regardless of formal employment status.

Keywords: gig workers; MNEs; labour rights protection.

1. Introduction

In recent decades, society has entered a digital era characterized by a rise of multinational digital platforms that have already become typical forms of Multinational Enterprises (MNEs). Consequently, there are a large number of people working as digital gig workers for such platforms. The International Labour Organization (ILO) estimates that there are approximately 270 million gig workers worldwide, accounting for more than 8 percent of the global labour force [1]. Despite domestic laws and policies introduced to regulate the operations of MNEs in host states, regulatory limits have become rather evident. Domestic labour laws are mainly designed for physical offline workplaces and legal entities, and therefore struggle to regulate transnational corporate structures due to the vague legal status. This essay will examine the current legal misclassification and how it led to the dilemma of gig workers while exploring possible solutions to this issue.

The essay argues that existing legislation contains systematic errors when applied to regulating MNEs regarding the legal rights of gig workers. Firstly, this essay will analyse the current problem

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of unfair treatment of gig workers in the multinational ecosystem and the absence of legal protection, then examine key dilemmas and root causes of this issue. Finally, it will propose targeted solutions to the legal framework to establish a more valid legislation, and address the law's inability to deal with risk outsourcing by MNEs, concealed employment status, and fragmented legal responsibility.

2. Definition and clarification

2.1. Multinational enterprises

MNEs are enterprises that engage in foreign direct investment and own or control value—adding activities in more than one country [2]. With the development of globalization, there has been an increasing number of MNEs, especially in their digital forms. MNEs are the focused subjects of this essay, all the discussions will happen under the precondition of the digital forms of MNEs.

2.2. Gig workers

According to the ILO Working Definition, a gig worker is any individual employed or engaged to work for the provision of service organized and facilitated by a digital labour platform, for remuneration or payment, regardless of their classification of status in employment [3]. More specifically, gig workers are not formal workers or employees, instead, they are regarded as informal workers. Therefore, gig workers lack the equal protections of formal workers and suffer from precarity, such as the absence of insurance or compensation.

2.3. Misclassification

Misclassification in this essay means the unreasonable classification of gig workers and formal workers. Normally, Host states' labour laws universally apply a binary classification—employee or independent contractor—with statutory protections attaching exclusively to the former. Gig workers are almost invariably placed in the latter category, not as a reflection of their factual working conditions, but rather as a consequence of regulatory categories never designed to include platform-mediated work. The binary classification of workers into employee or independent contractor emerged during the late 19th and early 20th centuries, a period dominated by industrial capitalism and factory-based production. This legal framework was solidified with the passage of landmark labour legislation such as the U.S. National labour Relations Act of 1935, which explicitly defined employees as who entitled to social protections, while excluding independent contractors, as established by the Wagner Act. This model was effective in the past but has become outdated for a new digital era in 21st century with modern gig economy. To begin with, the classification fails to cover the spectrum of work relationships that exist in the digital age.

Gig workers often exhibit characteristics of both categories: they may have some autonomy over schedules but are often economically dependent on a single platform and subject to algorithmic management and performance monitoring [4]. As an illustration, although an Uber driver has the right to reject a ride, their incomes will be affected by the platform's policies as well as the customer's comments. Furthermore, the binary model leads to a significant protection gap. Statutory protections such as minimum wage, overtime pay, unemployment insurance, and workers' compensation are exclusively tied to employee status. By classifying gig workers as independent contractors, the law systematically excludes a growing section of the workforce from fundamental

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labour protections [5]. As a result, the legal status is a consequence of outdated categories, not a reflection of the workers' factual conditions of subordination and dependency.

3. Current status and key dilemmas

To ground such issue in empirical reality, the current status of gig workers must be examined. Suffering from precarity, gig workers across the globe face a systematic deficit in labour protections that were originally designed for standard employment relationships.

3.1. Exclusion from statutory benefits

Gig workers are generally excluded from core statutory benefits such as minimum wage guarantees, paid sick leave, unemployment insurance, and workers' compensation, as their classification as independent contractors places them outside the scope of traditional labour law [4]. Host states normally apply no special guarantee for gig workers because they are not formal employees. Moreover, MNEs exploit gig workers to make higher profits, which means that most MNEs are not inclined to offer gig workers with guarantee or benefits. This reluctance reflects that host states do not require MNEs to assume responsibility for the protection of gig workers, even though the protection ought to be a duty for them. The ILO's 2024-2025 standard-setting process on decent work in the platform economy has emphasised that platform workers should be entitled to comprehensive social security coverage, with platforms bearing appropriate contributions [3].

The basis is straightforward: platforms derive economic value from workers' labour: by providing tools and fining gig workers when they receive complaints from customers, in this way, platforms generate a great deal of money without investing extra cost. For example, delivery workers from Meituan are forced to rent the e-bikes for food delivery. In addition, if they are late for the orders or get low rates from customers, they are fined directly. However, fines do not become compensation for customers; instead, platforms retain them. In this context, the relationship between gig workers and digital platforms is fundamentally identical to the relationship between formal employees and corporations—workers perform labour under the platform's direction and control, yet they are denied the protections and benefits that accompany formal employment status. Accordingly, they should share the costs of the social risks that are inherent to that labour. When platforms are exempt from contribution obligations, costs for insurance and other guarantees are externalised onto workers individually or onto the state.

3.2. A gap between algorithmic direction and legal subordination

Despite being formally autonomous, many gig workers are subjected to algorithmic management which exerts significant control over their working conditions without creating a legal relationship of subordination. By using invisible algorithms to control gig workers, digital platforms escape the responsibility of providing guarantees that would otherwise attach to an employment relationship. Because no human manager issues direct instructions, platforms can argue that workers remain independent contractors exercising autonomous choice, even when algorithms effectively dictate every aspect of their work such as when to log on, which tasks to accept, what route to take, and how quickly to perform [5]. The legal insulation allows platforms to externalise labour costs onto workers and society while internalizing the profits generated by managed work.

The consequence is a regulatory arbitrage whereby platforms exploit the gap between economic reality and legal form. This asymmetry not only increases the vulnerability of gig workers but also

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puts traditional businesses that comply with labour laws at a competitive disadvantage. Addressing this problem requires rethinking how control is defined in the digital age. Legal tests should look beyond direct human supervision and recognise that algorithmic direction can function as an equal form of control.

3.3. The deprivation of collective bargaining rights

The absence of collective bargaining rights results in few practical paths for gig workers to negotiate for better right. Collective bargaining refers to the process that workers act through their representatives to negotiate with employers to determine wages, working time, safety, and other conditions of employment. According to the Labour Legislation Guidelines of the ILO, the purpose of collective bargaining is to resolve the inequality of bargaining power between individual workers and their employers. By negotiating collectively, workers can achieve better conditions than each could attain individually. A clear example of this principle can be seen in the 2023 collective agreement between the United Auto Workers and the Big Three U.S. automakers—General Motors, Ford, and Stellantis. Through coordinated bargaining, United Auto Workers members obtained a historic contract that included a 25 percent wage increase over four years, the elimination of wage tiers that had created pay disparities among workers doing the same job, and improved profit-sharing policies. This outcome was achieved because formal employees possess the legal right to bargain collectively; individual workers acting alone could never have gotten such concessions from multinational corporations.

For formal employees, this right is recognised as a fundamental labour right under international law, especially in the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which requires States to take measures to encourage and promote voluntary negotiation between employers and workers' organizations. However, gig workers do not have this right because they are classified as independent contractors rather than employees. Labour law frameworks in most countries grant collective bargaining rights only to those who are classified as employees. Gig workers are out of these protections. Instead, they are treated as independent economic operators , effectively as businesses in their own right. This classification has a essential consequence under competition law. Antitrust or competition laws are set to prevent businesses from colluding to fix prices or coordinate terms, as such acts harm market competition. Because independent contractors are viewed as separate businesses, when they come together to negotiate better pay or working conditions, their action may be considered as price-fixing or an illegal agreement among competitors [6]. Hence, if workers join together to address their unequal bargaining power, that can potentially violate competition law.

3.4. A gap between the legal definition of control and factual control

This dilemma places gig workers in a contradictory position. On the one hand, they do not enjoy the rights and protections that belong to employees, suffering from precariousness. On the other hand, because of their classification as independent contractors, they are treated as businesses under competition law. This means that when they attempt to cooperate to challenge unfair practices imposed by platforms, they risk being accused of illegal collusion [6].

The result is a double dilemma for gig workers. Gig workers did not enjoy the flexibility and autonomy that genuine independent contractors can enjoy, also, they could not get protections that employees receive neither. The labour terms of gig workers are completely decided by platforms, with no meaningful mechanism or policies to negotiate fair compensation and other guarantees.

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Their earnings are determined by algorithms and will constantly fluctuate, which often fall below minimum wage when calculated against working hours [7]. Therefore, they lack the legal tools to collectively demand better tools that are available to employees as a matter of fundamental right, and tools that genuine independent businesses possess.

Thus, gig workers find themselves in a position of structural vulnerability: they bear the risks of platform work—unpredictable income, uncompensated waiting time, equipment costs, and liability for complaints, while platforms capture the majority of the economic value generated by their labour. The very laws designed to protect such workers and ensure fair competition combine to exclude them from both frameworks, leaving them with neither the rights of employees nor the bargaining power of true independent businesses.

The ILO's ongoing standard-setting process on decent work in the platform economy has recognised this gap, emphasizing that platform workers should enjoy fundamental labour rights including freedom of association and the right to collective bargaining [3]. Extending rights to gig workers is necessary not only to address their individual vulnerability but also to uphold the principle that workers should have a voice in determining the terms under which they perform labour. This principle should depend not on formal classification, but on the reality of subordination and economic dependency.

3.5. The failure of traditional legal tests: a case in Malaysia

As an illustration, Malaysia's case is rather appropriate here—its judicial decisions offer a clear illustration of how traditional employment tests fail to capture platform work. What's more, its legislative response reveals both the possibilities and limitations of regulatory reform. The legal test applied in Malaysia illustrates this gap. The plaintiff, Loh Guet Ching, was a former driver for the e-hailing platform Grab. Following the termination of her relationship with the platform, she sought to challenge this as an unfair dismissal. To do this, she needed to be classified as a workman under the Industrial Relations Act 1967, which protects traditional employees from being dismissed without just cause or excuse. Under the legal procedure, she first submitted a representation to the Minister of Human Resources, asking the Minister to refer her dispute with Grab to the Industrial Court for a formal hearing. However, the Minister refused to refer the case to the Industrial Court. As a response, Loh Guet Ching asked the High Court to quash the Minister's decision and compel the Minister to send her case to the Industrial Court. Unfortunately, the High Court dismissed her application, agreeing with the Minister's initial stance. The plaintiff then appealed to the Court of Appeal, leading to the reported judgment in Loh Guet Ching v Grab MLJU 2503.

The Court of Appeal held that a Grab driver was not a workman under the Industrial Relations Act 1967 and therefore could not challenge her dismissal. The statutory definition of workman requires a contract of service—the traditional test for employment. Under Malaysian law, determining a contract of service involves several elements: control over how work is performed, integration into the business, provision of tools and equipment, method of payment, and the right to suspend or dismiss. The Court found that Grab drivers retained control over their working hours, could reject rides, used their own vehicles, were paid per task rather than a fixed salary, and were not under direct supervision—thus failing the control test and other relevant factors under the legislation. The plaintiff was rejected because of the different legal status under legislation. The statute could not see platform-mediated control, such as pricing algorithms, performance ratings. The law's test simply did not match the reality of how platforms structure work. This refusal was the direct trigger for the legal battle, as the driver then sought to overturn the Minister's decision.

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As a direct response, The Gig Workers Bill 2025 implicitly acknowledges this mismatch but does not resolve it. The Bill defines a gig worker as a Malaysian citizen or permanent resident who enters into a service agreement with a contracting entity to perform services in exchange for earnings, explicitly excluding a contract of service under the Employment Act or a contract of employment under the Industrial Relations Act. It creates a separate category for gig workers outside the Employment Act and the Industrial Relations Act an admission that the binary framework cannot accommodate platform work. However, this separation fails to address the underlying legal gap.

First, the Bill imposes no platform contribution obligations. The ILO's 2024-2025 standard-setting process on decent work in the platform economy has emphasised that platform workers should be entitled to comprehensive social security coverage, with platforms bearing appropriate contributions. The rationale is straightforward: platforms derive economic value from workers' labour; accordingly, they should share the costs of the social risks such as injury, illness, unemployment, that are inherent to that labour. When platforms are exempt from contribution obligations, these costs are externalised onto workers individually or onto the state.

Second, the Bill leaves minimum income standards undefined. This omission raises a fundamental question: who has the obligation to ensure gig workers receive minimum wages? Under international labour law, the primary obligation rests with States, not employers. ILO Convention 131 concerning Minimum Wage Fixing, 1970 (Article 1) requires ratifying States to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate (Article 1). Once a State establishes a minimum wage system, the duty to pay minimum wages falls on the employer. Because they control the terms of employment and derive economic benefit from workers' labour. The challenge with platform work is that gig workers are classified as independent contractors, falling outside the wage earners category to which minimum wage conventions apply which is precisely the problem Malaysia's Bill fails to solve.

The central problem identified across gig workers is that existing legal tests for employment are built on concepts that do not translate to platform work. The control test, developed in an era of factory floors and direct supervision, looks for visible instruction. However, since society already stepped into a digital era, platform workers are directed through algorithms. The law asks whether a manager gives orders; the platform answers by having no managers, only code. Such a structural mismatch between the technology of work and the technology of regulation.

4. Valid legal classification to resolve the existing issues

4.1. Control beyond direct supervision

To tackle such issues effectively, host states ought to adopt a clearer and more flexible classification for workers, because the current legal framework's binary categories lie at the root of the problem.

As discussed earlier, the existing classification criteria,which was developed in the factory era, are outdated for the realities of platform-mediated work. The traditional definition of control was set around visible supervision: a manager giving direct instructions in a factory. In the digital age, however, control is exercised through algorithms that achieve the same functional outcome without creating a formal employment relationship [4]. Therefore, host states should adopt a more appropriate test for determining employment status, one that reflects how platforms actually control workers.

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A more suitable approach should focus on the degree of economic dependency and platform control over work processes, rather than on formal labels or visible supervision. Firstly, the degree of the control about how the worker's performance is arranged by the platform. On a lot of digital MNEs platforms, gig workers have little or no autonomy over the working conditions and how, when, they perform their work. If they choose to work for that platform, they must directly follow the mandatory policies. For instance, Uber Eats and Meituan delivery riders directly get orders from platforms instead of choosing by themselves, and riders are expected to accept them with limited discretion [5]. Their pay is determined on the number of the orders, and their ability to earn income depends entirely on the platform's allocation system—a structure that are highly similar to the control over traditional employees.

Secondly, whether the platform exercises disciplinary authority over the worker. A key characteristic of genuine independent contracting is that the client does not have the power to impose penalties for performance issues; the relationship is governed by contract’s terms between equal individuals. In contrast, platforms impose financial penalties or account deactivations that often triggered by low ratings or customer complaints, as disciplinary measures. For instance, Didi drivers face automatic reductions in pay or bonuses when they are late for a pick-up or receive low ratings from passengers. These penalties are set by the platform, with no opportunity for negotiation or due process. This practice reflects an employer's disciplinary authority rather than a contractual relationship between independent businesses.

Algorithmic control and the disciplinary polices both indicate that many gig workers are economically dependent and subordinate to platforms in a nearly identical way from formal employment. The platforms determine how work is performed, sets the terms of compensation, and enforces compliance through penalties, the worker should not be described as an independent contractor [8].

4.2. Presumption-based classification

Several jurisdictions have begun to move in this direction. California's Assembly Bill 5, enacted in 2019, codified the ABC test which presumes that a worker is an employee unless the hiring entity can demonstrate that the worker is free from its control, performs work outside the usual course of its business, and is engaged in an independently established trade (California labour Code § 2750.3). Similarly, the European Union's Platform Work Directive (2024/2831), adopted in 2025, introduces a presumption of employment for platform workers where indicators of control—such as setting pay levels, monitoring performance, or restricting the freedom to organize work [9].

Such approaches shift the burden of proof from the worker to the platform. Under the traditional binary classification system, gig workers who wanted to challenge their status as independent contractors bore the burden of proving that they were in fact employees. However, it is difficult for gig workers, as it requires them to demonstrate the presence of direct supervision and control, which is often imposed invisibly through algorithms. For individual workers, gathering evidence to establish such control is particularly challenging, as they lack access to the platform's internal data, algorithmic systems, and performance management ways. By contrast, the presumption-based model places the burden on platforms to prove that workers are genuinely independent. This allocation of responsibility is both fairer and more efficient. Platforms possess superior access to information about their own operations because they control the data and algorithms, set the rules, and maintain records of all tasks. They are in a far better position to demonstrate whether a worker operates independently or is subject to the platform's direction and control. Shifting the burden of proof

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accordingly can reduces the practical barriers faced by gig workers in asserting their rights, while aligning the legal framework with the substantive reality of platform work. The legislative developments reflect a growing recognition that classification must be based on the reality of the working relationship, not on formal labels designed for previous time.

4.3. Baseline protections as a complementary strategy

Even though reforming the classification is a vital and indispensable step, such legal reforms often take time to enact and implement. Moreover, even under more flexible classification tests, certain forms of platform work may remain in a grey area where the employment status is still ambiguous. In recognition of practical realities, a complementary approach is necessary. Establishing a set of baseline protections that apply to all platform workers, regardless of their legal classification, can be useful to mitigate the issues timely [8].

Rather than waiting for courts or legislatures to resolve classification questions on a case by case basis, baseline protections directly guarantees certain fundamental rights to all individuals who perform work through digital platforms.

Several types of protections are particularly suitable for such an approach. Firstly, minimum wage guarantees should extend to platform workers. Through appropriate methods, technical questions such as the calculation of working time and which expenses to deduct can be resolved. What's more, implementing minimum wage is also useful to ensure less turnover for MNEs. If gig workers can benefit from a baseline of salary, they do not have to change their job or the platform so frequently. A stable income floor lessen the economic pressure that currently drives workers to shift between platforms or give up platform work entirely, which in turn lowers recruitment and training costs for platforms. Therefore, platforms can also maintain their stability with a consistent workforce. Jurisdictions such as California have required platforms to ensure that workers earn at least the minimum wage when their active working time is calculated, with the platform bearing responsibility for topping up earnings when algorithmic allocation results in insufficient compensation [7].

Secondly, social security coverage should be made universal and portable. Under the traditional employment model, contributions to unemployment insurance, workers' compensation, and pension systems are tied to the formal employment relationship. For gig workers who move frequently between platforms or engage in multi-platform work, a portable benefits model offers a more suitable framework [10]. Apart from that, to make sure the stability of such benefit, it should follow the worker rather than being tied to a single employer, which offers a more suitable framework [10]. This model addresses a fundamental mismatch: under the traditional system, a worker who splits their time across multiple platforms would either receive no coverage at all or face eligibility rules that assume a single employer that make participation impractical. A portable approach ensures that contributions accumulate regardless of which platform the worker is active on at any given time. Apart from that, to ensure the stability of such benefits, they should follow the worker rather than being tied to a single employer. This design principle is critical because gig workers, by definition, do not have a single, stable employment relationship. If benefits remain attached to a specific platform, workers lose coverage each time they switch platforms—a frequent occurrence in gig work. Portability ensures that coverage is continuous and genuinely protective, which can truly ensure gig worker's welfare.

Several pilot programs in jurisdictions such as Washington State have explored this model, requiring platforms to contribute to a fund that provides paid sick leave, family leave, and other

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benefits to gig workers on a pro-rated basis. Such practice indicates that this adjustment is feasible and can operate alongside existing social security frameworks [11].

Finally, basic procedural protections should be guaranteed. Even if platforms are not considered employers, they should be required to provide transparent processes for punishments such as account deactivations, complaint resolution. Under the current model, platforms can suspend a worker's account with no explanation and no opportunity for appeal, depriving their ability to earn income without any reasonable process. The lack of procedural fairness is very different from standard employment law, where an employer cannot dismiss a worker without a valid reason and a fair procedure. Gig workers, by contrast, can lose their main income overnight with no right to appeal.

Establishing minimum standards would address one of the most significant sources of precarity in gig work. Procedural protections do not require platforms to be reclassified as employers, instead, they simply mandate basic fairness in how platforms exercise their power to exclude workers from the ability to earn a living. Such requirements are already present in other sectors where service providers hold significant power over individual livelihoods, and there is no principled reason why digital platforms should be exempt. Measures such as requiring platforms to provide detailed reasons for punishments and establish internal appeal mechanisms, can be useful for a fair procedure.

The complementary approach does not replace the need for proper classification reform. Rather, it serves two important functions. First, it provides immediate protection to workers while classification is still developing. It is unrealistic to neglect their present difficulty while waiting for the reform of the legal classification. Therefore, such complementary approach seems to be necessary. Second, it establishes a floor of rights that can be applied regardless of classification,which can ensure that the classification of a worker does not determine if they receive any protection at all. That is because, even after a more valid classification is established, it is still possible that platforms may use new ways to control gig workers in order to escape their legal duty. Hence, to equip gig workers with doubled insurance, baseline protection is indispensable. The combination of reformed classification tests and baseline protections for all platform workers offers a more comprehensive response to the legal paradox and protection gap described earlier.

5. Conclusion

This paper has examined the legal misclassification of gig workers within the regulatory framework of multinational digital platforms and has argued that the traditional binary distinction between employee and independent contractor is no longer valid for the realities of platform-mediated work.

First of all, the analysis has demonstrated that the outdated classification system lies at the root of a persistent protection gap, leaving millions of gig workers excluded from core labour rights such as minimum wage guarantees, social security coverage, and collective bargaining. The key dilemma is algorithmic control without legal subordination, which reveals a structural mismatch between the new form of work and the outdated legal classification. These problems stem from a fundamental conceptual gap that should be resolved by a reform of basic definition of formal workers or control. Secondly, in response, this essay has proposed solutions.Most importantly, host states should adopt a more flexible classification framework that shifts the focus from formal labels to substantive indicators of control and economic dependency, with the burden of proof placed on platforms. Also, regardless of classification outcomes, a complementary set of baseline protections that include

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minimum wage guarantees, portable social security, and procedural fairness mechanisms. With such protections, all platform workers can be guaranteed.

Two measures are mutually reinforcing: reformed classification tests address the root cause of misclassification, while baseline protections ensure that all workers can get timely guarantee during the transition. By applying the two measures together, that can offer a more comprehensive and valid legal framework for the digital age. Since platform work continues to expand among the whole globe, the urgency of the reform ought to be prioritised.

Future research should further explore how will new technologies such as artificial intelligence and automated management systems reshape platform control structures and whether existing legal frameworks can adapt successfully.

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