cluded that the previous shareholder may not assert shareholder rights against the corporation, it seems that there is no denying the fact that this Supreme Court decision insufficiently demonstrated the meaning of relative ineffectiveness.

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7. Labor Law

1. Alteration of work rules for the calculation of severance allowance.

Decision by the Third Petty Bench of the Supreme Court on February 16, 1988. Case No.(*o*) 104 of 1985. 42 *Minshū* 60.

[Facts]

X_1, X_2 and X_3 (plaintiffs, *koso* appellants, *jokoku* respondents) had been employees of A (an agricultural cooperative association). X_1, X_2 and X_3 became employees of Y (defendants, *koso* respondents, *jokoku* appellants) when A and six other agricultural cooperative associations merged and formed Y. Several years after the merger, X_1, X_2 and X_3 retired at Y's mandatory retirement age.

At the time of the merger, Y made work rules to cover all of the diverse working conditions of the seven agricultural cooperative associations. Of the seven associations, A had provided the highest level of severance allowance; Y's work rules, however, fixed a level lower than what A's level had been. Thus for A's former employees, the work rules for calculating severance allowance were changed to their detriment. Although special measures were taken to mitigate the disadvantages suffered by A's former employees, the level of severance allowance was lowered from 64 months' amount of basic pay to 55.55 months' amount for X_1, from 55 months' amount to

45.945 months' amount for X_2, and from 61 months' amount to 53.75 months' amount for X_3. Y paid severance allowance to X_1, X_2 and X_3 according to the new calculation rule.

X_1, X_2 and X_3 filed an action demanding severance allowance calculated according to A's former rule. The basis for their action was that they had not agreed to the new rule, and therefore the new rule did not apply to them.

The court of first instance dismissed their claims for the following reasons. When an employer changes work rules and the new rules are unfavorable to the workers, so long as the new rules are reasonable they apply to the workers even though they do not consent to the new rules. In this case, even though the rule for calculating severance allowance was altered unfavorably to the plaintiffs, other conditions including monthly pay and mandatory retirement age were altered favorably, reducing the disadvantage in severance allowance considerably. Under these circumstance, the change was reasonable. The plaintiffs, dissatisfied with this decision, filed a *koso* appeal.

The *koso* appellate court of second instance reversed the decision of first instance for the following reasons. The improvements in monthly pay etc. at the time of merger were not effected to make up for the disadvantage regarding severance allowance, and were not designed to give any special advantages to A's former employees. Therefore, the change was not reasonable and the altered work rules on severance allowance do not apply to X_1, X_2 and X_3. Y, dissatisfied with this decision, filed a *jokoku* appeal.

[Opinions of the Court]

Original (*koso* appellate court) decision reversed.

The work rules system is based on the idea that all working conditions should be dealt with as one complete set and determined in a unified and coordinated manner for all employees. Because of this nature of the work rules system, if it is determined that the new rules are necessary and their content is reasonable, individual workers can not be permitted to refuse to have the new rules applied to them even if the workers do not consent to the new rules.

In this case, the necessity of unifying the work rules of the seven

associations was very strong, and the disadvantages in severance allowance were reduced considerably by the improvements of other conditions. Under these circumstances, the changes were reasonable.

[Comment]

In Japan, where there are not many organized workers and the trade unions are not powerful, work rules are the major method of determining working conditions. According to the Labor Standards Act, an employer may establish or alter work rules if he/she asks the opinion of the trade union or person that represents a majority of the employees of the working place. And it is established case law that altered work rules apply to workers even if the workers do not consent to the new work rules provided that the changes are reasonable.

In this case, the conflict was about severance allowance. The amounts of money involved are as great as amounts in many other cases in Japan. This decision, in considering the reasonableness of changing the work rules on severance allowance in this case, took other working conditions into account; thus, the court reversed the original decision, which emphasized the fact that the unfavorable changes in severance allowance and the improvements in other conditions were separate issues.

2. Reduction in wages and severance allowance in exchange for an extension of the mandatory retirement age.

Decision by the Niigata District Court on June 6, 1988. Case No (*wa*) 598 of 1984. 1280 *Hanrei Jihō* 25.

[Facts]

X (plaintiff) is an employee of Y (defendants). X, holding a managerial post, is not a member of A, a trade union that consists of more than three-fourths of Y's employees, because of the nature of the collective agreement between A and Y.

Although the work rules of Y had provided for a mandatory retirement age of 55, the practice had been that male workers were allowed to retire at the age of 58. Y altered its work rules to raise

the mandatory retirement age to 60 and to lower the working conditions of workers over 55, i.e., to reduce basic pay, bonus and severance allowance, and to stop annual pay raises; A and Y concluded a collective agreement in which they agreed to these work rules.

X filed an aciton demanding Y to pay wages according to the old rules.

[Opinions of the Court]

Claim dismissed.

Notwithstanding the two-year extension of the working period (from 58 to 60), the change in work rules in this case works a great disadvantage for workers in that it reduces the total amount of wages that they receive after age 55. Compensatory measures taken to mitigate the disadvantages of these changes in the work rules have only a small effect. In light of these facts, the changes in the work rules are not so reasonable that they bind non-consenting workers.

Article 17 of the Trade Union Act provides: "When three-fourths or more of the workers of similar kind normally employed in a factory or other working place come under application of one collective agreement, the remaining workers of similar kind employed in the same factory or other working place shall *ipso facto* be bound by the same agreement." "The remaining workers of similar kind" refers to all workers to whom the provisions of the collective agreement could apply. X falls within "the remaining workers of similar kind" employed by Y because of the type of work X does. Even if working conditions are changed to the workers' detriment, a collective agreement that satisfies the requirements of Article 17 is, unless special circumstances exist, generally binding force; and it has the effect of lowering the working conditions of the non-union workers to the level covered by the agreement. In this case, there are no special circumstances, and the collective agreement applys to X.

[Comment]

In Japan, the number of older people is increasing rapidly and accordingly the employment of older workers has become an important issue. Trade unions are trying to have the mandatory retirement

age raised. In this case, the employer raised the age limit to 60, but reduced the wages, etc. The reduction was so heavy that the court did not find it reasonable for the employer to change the work rules to effect the reduction.

The court, however, dismissed X's claim because of the general binding force of the collective agreement. Although there are diverse interpretations of Article 17, it should be pointed out that X cannot join the union that concluded the agreement. Therefore, in our opinion, the collective agreement should not bind such a worker like X.

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8. International Law

1. The export and provision of machine parts and technology to the Soviet Union in contravention of the COCOM (Coordinating Committee for Export Control) regulations.

Decision by the Thirteenth Criminal Division of the Tokyo District Court on March 22, 1988. Case No. *toku (wa)* 1547 of 1987. 670 *Hanrei Taimuzu* 257.

[Reference: Foreign Exchange and Foreign Export Control Act (before the 1987 amendment by Act Ch. 89; hereinafter referred to as the Foreign Exchange Act), Articles 25(ii), 48(1), 70(xx) and (xxix), and 73(1).]

[Facts]

In October 1979 V/O Techmashimport contacted the Toshiba Machine Company (hereinafter referred to as "Toshiba Machine") concerning the sale of Large Vessel, Propeller Manufacturing Machinery (Nine-Shaft, Simultaneous Control, Metal-Milling Machines). Since the export of the machines that Techmashimport