

522 of the Commercial Code should not be applied to the latter, but only to the former. The logic of the inferior courts is not persuasive.

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7. Labor Law

Effect of Work Rules on Overtime Work and Worker's Obligation

Decision by the First Petty Bench of the Supreme Court on November 28, 1991. Case No. (o) 840 of 1986, 45 *Minshū* 1270.

[Facts]

X (plaintiff, *koso* respondent, *jokoku* appellant) was an employee who worked at a factory of Y (defendant, *koso* appellant, *jokoku* respondent). One day, although Y ordered X to work overtime, X refused the overtime work.

Both the work rules of Y and an collective agreement concluded between Y and A (a trade union, which X was a member of) provided that Y may prolong the daily working hours beyond 8 hours according to the overtime agreement when business operations require.

The overtime agreement provided that Y may prolong normal working hours in the following cases: (1) work to ensure delivery on the appointed date; (2) calculation of wages to be paid soon, inventory, audit, payment and related work; (3) pipelaying or wiring work, which should be done outside the operating hours; (4) pressing work for changes location, installment and repair of equipment; (5) work required to achieve the production target; (6) unavoidable overtime work by reason of its nature; (7) work similar to afore-

mentioned. The agreement also provided that overtime hours should not exceed 40 hours a month in principle.

Though Y took sanctions against X's refusal to work overtime, X did not look repentant. Y had taken disciplinary action against X three times previously. Y dismissed X on disciplinary grounds according to the provisions of the work rules, which provided that Y may dismiss a worker who did not repent despite repeated disciplinary sanctions.

X filed an action against Y, demanding judicial affirmation of his position as an employee of Y. The court of first instance approved X's demand and held that X was not obliged to work overtime. In contrast, the court of second instance rejected X's demand. X, dissatisfied with this, filed a *jokoku* appeal.

[Opinion of the Court]

Jokoku appeal dismissed.

Provided that an employer has reached an agreement which enables overtime work exceeding hours provided in Art. 32 of the Labour Standards Act with the trade union composed of a majority of the workers at the establishment, or where there is no such union, with persons representing a majority of the workers at the establishment, and has submitted the agreement to the director of the Labour Standards Bureau, and provided that the employer has made work rules to the effect that the employer may have employees work overtime despite employment contract clauses within the framework of the agreement, employees under the work rules are obliged to work overtime according to the rules as the content of the provisions of the rules, in so far as it is reasonable, becomes that of employment contract.

In this case, the provisions of the work rules are reasonable because the overtime agreement, which provides the concrete content of the overtime work, limits the overtime hours and requires certain reasons. Though (5), (6) and (7) of the reasons are rather general and exhaustive, they are not inappropriate because the need for the enterprises to carry out production programs properly and smoothly is within the expectation of Art. 36 of the Labour Standards Act.

The disciplinary dismissal of X is justified.

[Comment]

This is the first time that the Supreme Court decided on private sector workers' obligation to work overtime. In this decision which relies on the work rules theory enunciated by the Court, the Supreme Court considers why and when a worker should work overtime. According to previous decisions by the Court, if the provisions of the work rules are reasonable, they constitute the terms of employment, even when the workers concerned do not agree with the provisions. In this decision, therefore, the Court rules that workers are obliged to work overtime according to the overtime clauses of the work rules since the clauses constitute the terms of the employment contract if they are reasonable. In this decision the Court also examines whether the clauses are reasonable or not and concludes they are reasonable. Such dispute on overtime work has not been seen in the decisions of lower courts.

Even if we approve the work rules theory by the Supreme Court, we cannot agree with this decision. Though the theory may contribute to the adjustment of a conflict of interests, it would be inadequate to apply the theory to a conflict of rights such as in this case. Furthermore, the decision has some deficiencies as follows: in deciding whether the clauses concerned in work rules were reasonable or not, the Court examined the overtime agreement; the Court found the agreement reasonable despite the "rather general and exhaustive" clauses; the Court did not take into account the reason why the worker refused to work overtime.

According to this decision, however, workers in Japan are obliged to work overtime at the request of the employer in nearly all cases. The notorious long working hours in Japan, which can bring about death from overwork (*karoshi*), has been authorized by the Supreme Court in this decision.

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