

6. Commercial Law

In the field of commercial law, there were many important judicial cases in 1992. The most characteristic point of these cases was that they were not the typical cases concerning conflicts between trading corporations, but were cases brought by individual shareholders, employees, investors, or consumers. For example, there is the case of Chisso Corporation, whose liability was claimed, under the doctrine of lifting the corporate veil, by the victims of pollution caused by its subsidiary (Tokyo District Court decision of February 7), and the representative suit of shareholder against Nomura securities firm (Tokyo District Court decision of February 13). This tendency seems to show that the acts of corporations are more closely monitored by a wider range of people than previously.

Also, there is an increasing number of cases concerning securities regulation. For example, there were insider trading cases (decisions by the Tokyo High Court on October 1 and the Tokyo District Court on September 25), and cases concerning unauthorized trading by broker-dealer firms (Supreme Court decision of February 28).

A case concerning the validity of a unilateral general shareholder's meeting resolution to make a director unpaid.

Decision by the Second Petty Bench of the Supreme Court on December 18, 1992. Case No.(o)1259 of 1990. A case demanding director's remuneration. 46 *Minshū* 3006.

[Reference: Commercial Code, Article 269.]

[Facts]

X (plaintiff, *kōso* appellant, *jōkoku* appellant) was a director of Y Corporation (defendant, *kōso* respondent, *jōkoku* respondent) which is a closely-held family corporation. After the founder of the corporation died, X disagreed with B, a representative director and the first-born son of the founder, concerning the management of the firm. As a result, at a board of directors meeting on October 15,

1983, the majority of directors resolved, without X's agreement, that X's status would be changed from full-time director to part-time director. Later, at a board of directors meeting on January 13, 1984, it was resolved that X's remuneration would not be paid after January 1, 1984. Furthermore, at a general shareholders meeting held on July 13, 1984, it was resolved that X's remuneration would not be paid. At the time of the shareholders meeting on June 14, 1985, X completed this term of office.

X brought an action against Y corporation, claiming that a corporation could not change the amount of a director's remuneration without his agreement, and therefore, Y corporation should pay his remuneration for the period after January 1, 1984.

The court of first instance allowed the claim in part, holding that remuneration should be paid until March, 1984, the last month of the accounting period. X filed a *kōso* appeal, and the *kōso* appellate court held that X's remuneration should be paid until July 13, 1984, the date of general shareholders meeting (Decision by the Osaka High Court on May 30, 1990). X then filed a *jōkoku* appeal.

[Opinions of the Court]

Appeal allowed.

When the amount of a director's remuneration is specifically provided for in a corporation's articles of incorporation (by-laws) or by a general shareholders meeting resolution, the amount shall constitute the content of a contract between the corporation and the director, and it shall bind contracting parties (that is, the corporation and the director). For this reason, if a resolution is unilaterally passed at a general shareholders meeting to the effect that the director shall no longer receive remuneration, as long as the director does not agree, he shall not be deprived of a claim for remuneration. It makes no difference that the director's responsibilities were drastically changed and the resolution was passed based on this fact.

[Comment]

Because the amount of a director's remuneration constitutes a contract between the corporation and the director, it is, in princi-

ple, binding on the contracting parties. However, a director's remuneration corresponds to his responsibilities. Therefore, when the responsibilities of a director are changed by the corporation, modification of the amount of his remuneration should be permitted.

For that reason, this decision, which would never admit modification of the amount of a director's remuneration without his consent, was highly criticized by commentators.

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7. Labor Law

A case concerning the legitimacy of an employer's exercise of the right to change the period of long-term annual paid-leave.

Decision by the Third Petty Bench of the Supreme Court on June 23, 1992. Case No. (o) 399 of 1992, 613 *Rōhan* 6.

[Reference: Labor Standards Law, Article 39.]

[Facts]

Y (defendant, *kōso* respondent, *jōkoku* appellant) is a news service company. X (plaintiff, *kōso* appellant, *jōkoku* respondent) is a journalist and was an employee of Y. X was a member of the Technology Journalist Club of the Technology Agency and is a specialist in technology. Having acquired a right to 40 days' leave, X designated the leave period for one month starting from August 20. The purpose of the leave was to gather information about the problems of nuclear power plants in Europe. S, a city editor employed by Y and X's superior, exercised the right to change the portion of leave from September 4 to 20, fearing that the long absence of a specialist in technology such as X would interfere with the covering and report-