

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.

Prof. KYOICHI TORIYAMA
KEISUKE MATSUOKA

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-

ing activities of the company.

X, however, took the leave according to his original schedule, and he was therefore absent from the company during September 4 to 20. Y then reprimanded X and cut his bonuses as disciplinary punishment for violation of his superior's job-related orders.

X filed a suit against Y, requesting a declaratory judgment of nullity of the reprimand and also claiming damages.

The court of first instance dismissed X's claim by reason that Y's exercise of the right to change the leave period was rational. The court of second instance, however, allowed X's claim; accordingly the court held Y's exercise of the right to change the leave period null and awarded partial damages. Y, dissatisfied with this, filed a *jōkoku* appeal.

[Opinions of the Court]

Original decision reversed and remanded.

The probability of interference with the normal operation of an enterprise (e.g., the difficulty of ensuring performance with substitute personnel) becomes greater in proportion to the length of an employee's leave. Therefore, when an employee is to take a long-term leave, adjustment between employee and employer prior to designation of the leave period is essential.

At the time of the employee's designation of the leave period, it is difficult for employers to predict precisely the conditions of the normal operations of the enterprise (e.g., the amount of the work at the workplace to which the absent employee belongs; the possibility of ensuring performance of his work with substitute personnel; and the number of other employees who would designate the same season for leave. Therefore, the employer has to speculate on the extent of interference with the normal operation of the enterprise that the employee's long-term leave would bring about.

Accordingly, when an employee designates the period for a long-term annual paid-leave without making some adjustment with his employer concerning business plans, other employees' leave schedules, and so on, we should admit the employer's discretion in predicting how the long-term leave will interfere with the operation of the

enterprise and how to change the leave period.

The employer's discretion, however, should be exercised based on reasonable grounds in accordance with the spirit of Article 39 of the Labor Standards Law, which guarantees the right to annual leave. If the employer's discretion in exercising the right to change the leave period should be judged contrary to the spirit of Article 39 and unreasonable, such exercise shall be judged unlawful by reason of not fulfilling the requirements provided by the proviso of Article 39(4).

From the standpoint of the above, Y's exercise of the right to change the leave period should be judged reasonable, since under circumstances which made it difficult to ensure performance of X's work by substitute personnel Y's exercise of the right was within his discretion. Therefore, Y's exercise of the right to change the leave period should be regarded as legitimate and lawful.

[Comment]

This decision is the first time that the Supreme Court has made a judgment concerning the legitimacy of an employer's exercise of the right to change the period of long-term annual paid leave.

Article 39(4) of the Labor Standards Law provides that "an employer shall give the leave with pay under the provisions of the preceding paragraphs during the season requested by a worker. Provided that, in the case where giving of leave with pay in the requested season interferes with the normal operation of the enterprise, the employer may give the leave in another season." This provision has been understood to establish both the employee's right to designate the leave period and the employer's right to change the period.

The principal issue of this case concerns the conditions that must be satisfied for exercising the right to change the leave period, that is, the meaning of "giving of leave with pay in the requested season interferes with the normal operation of the enterprise."

The decision states that the employer should be permitted to exercise the right to change the leave period at his discretion when the employee exercises the right to designate the period without advance adjustment with the employer and the period is as long as in this

case. That is, the Court will refrain from an examination of the employer's allegation of "interference with the normal operation of the enterprise" when no advance adjustment was conducted. However, the Court reserves its own authority to examine the reasonableness of the employer's discretion; that is whether or not the discretion is within the reasonable limits of the spirit of Article 39 of the Labor Standards Law.

It is a matter of course that long-term leave interferes with the normal operation of an enterprise and that the employer should decide on the degree of the interference that the leave will bring about, and accordingly, that the courts should respect the employer's prediction concerning the interference within reasonable limits. The question, then, is the meaning of reasonableness of the employer's discretion, on which the Court reserves its own authority to examine. This depends on the spirit of Article 39 of the Labor Standards Law. When Article 39 is understood to provide the employer's obligation to grant the leave in entirety, what is essential is the principle of adjustment between the necessity of keeping substitute personnel and the employer's freedom to place his personnel.

Rather, we should investigate the implications of the advance adjustment between employee and employer concerning designation of the period of long-term leave. The system of Article 39(4) of the Labor Standards Law, composed of the employee's right to designate the leave period and the employer's right to change the selected period, is not in accordance with the concept of long-term leave. It seems that it is the concept of "advance adjustment" proposed in the decision that suggests the future ideal of the annual leave system.

Prof. KAZUHISA NAKAYAMA
YOICHI MOTOHISA