7. Labor Law

A case concerning the question of whether the on-call time during which workers are allowd to sleep constitutes working hours.

Decision by the Nineteenth Civil Division of the Tokyo District Court on June 17, 1993. Case No. (*wa*) 3601 of 1989, 819 *Hanrei Taimuzu* 278.

[Reference: Labor Standards Law, Article 37.]

[Facts]

The plaintiffs are employed by the defendant, a company which superintends buildings. Their principal functions are maintaining and guarding the buildings in which they are posted.

Several times a month the plaintiffs perform night-time duties (called "24 hour service"). During night-time duties, they are allowed to sleep for eight hours but are obliged to stand by for an alarm in a designated sleeping room. Whenever the alarm sounds, they have to get up immediately even during sleeping hours, and perform prescribed duties.

The employer (defendant) does not regard the sleeping hours as working hours and therefore, does not pay wages for the sleeping hour. In the wage system of the defendant company, for the night-time duties a small sum of money has been given as a compensation, which is not regarded as wages by the defendant. Increased wages are paid only for the actual working hours following the alarm.

The plaintiffs, claiming that the sleeping hours should be regarded as working hours regardless of what they actually do, demanded wages, which are to be increased by virtue of Article 37 of the Labor Standards Law for overtime work for whole sleeping hours and for night work for the period between 10:00 p.m. and 5:00 a.m. in the sleeping hours.

[Opinions of the Court]

Claimed allowed.

Regardless of actual performance, the time during which a worker

is under his or her employer direction and supervision constitutes working hours and the employer should pay wages for work during such hours, even if labor rules stipulate that the time should be regarded as rest periods or sleeping hours.

Therefore, the question of whether the sleeping hours in this case constitute working hours should be judged from the following points of view: whether the plaintiffs are ensured free use of the hours; whether they are under their employer's direction and supervision during the hours; in concrete terms, whether the workers are guaranteed that they will be relieved from work during the hours; to what extent they are relieved from their work; to what extent their freedom of action is restricited; and how long they are really relieved from their work.

According to the findings in this case, it forms part of the defendant company's services that the plaintiffs should stand by for the alarm in the designated sleeping room. That is, the plaintiffs are under contractual obligation to deal with the alarm and telephone calls. They are not relieved from work during the sleeping hours in this case. Therefore, they are under their employer's direction and supervision during those hours.

It can be said that the restriction of their freedom of action during the sleeping hours in this case is strict and its scope is wide, for the plaintiffs are prohibited from going out and obliged to stand by for the alarm in the sleeping room.

Accordingly, the sleeping hours in this case should be regarded as working hours.

If the situation were that the plaintiffs are, in reality, completely relieved from work during the sleeping hours, the nature of the hours as working hours could be contestable. But in this case, the plaintiffs are really working during the sleeping hours.

[Comment]

The principal issue in this case is whether the sleeping hours in this case are working hours and whether the employer should pay wages for work during such hours.

The sleeping hours in this case are the on-call time, during which

the workers are allowed to sleep. Before this decision, the legal nature of sleeping hours as in this case was unclear. Therefore, this decision is of great importance. In this decision, the Court has enunciated the criteria by which the determination of working hours is made. And the criteria concerning working hours in this decision are theoretically interesting.

As a prevailing academic opinion and administrative interpretation, in this decision it was held that working hours are the time during which a worker is under his or her employer's direction and supervision and the nature of the hours was judged from whether the workers were guaranteed that they would be relieved from their work during the hours. According to this prevailing standard in determining the question of whether the hours concerned constitute working hours, working hours are not limited to the hours spent in active labor, but include time given by the employee to the employer even though part of the time may be spent in idleness.

Two characteristics can be found in the cirteria by which the nature of working hours is determined. First, in the criteria it is thought to be important to consider not only whether the workers are relieved from their work but also what extent they are relieve. Second, not only relieving from work *de jure* but also *de facto* are taken into consideration.

Accordingly, although in this decision "whether the workers are under their employer's direction and supervision" is said to be the test for the determination of working hours, the nature of the sleeping hours in this case is judged from whether the hours can be considered to be "work" regardless of the stipulations of the labor contract. In determining the question of whether the hours concerned constitute working hours, their business character is examined in this decision.

The "business character" standard for the determination of working hours is useful to distinguish working hours from various types of "on call" time. For example, a worker who is not required to remain on his or her employer's premises but is merely required to tell company officials where he or she may be contracted, is not working while on call. On the other hand, during sleeping hours in this

case the plaintiffs are obliged to stand by for the alarm in the designated room and in reality they are not completely relieved from work as the Court found. For this reason the business character of the sleeping hours is obvious, and the hours are considered to be working hours.

In addition, the provisions of the Labor Standards Law regarding working hours, rest periods and rest days do not apply to persons engaged in keeping watch or in intermittent labor, with respect to which the employer obtained approval from the administrative office. Also there is special provision for exemption where a regular worker is lodged and placed on daytime duty while performing his or her regular job. In this case, although these exemptions were available to the defendant, he did not obtain approval from the administrative office.

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8. International Law

1. A case in which it was held that the provisions of the International Covenant on Economic, Social, and Cultural Rights of December 16, 1966 and the International Covenant on Civil and Political Rights of December 16, 1966 were not directly applicable among private persons, and they did not create any duties to act which give rise to State liability for compensation as provided by Article 1(1) of the Law concerning State Liability for Compensation.

Decision by the Seventeenth Division of the Osaka District Court on June 18, 1993. Case No. (*wa*) 3122 of 1989. A case requesting the declaratory judgment of lease etc. 1468 *Hanrei Jihō* 122.

[Reference: International Covenant on Economic, Social and Cultural Rights of December 16, 1966, Articles 2(2) and 11(1): International Covenant on Civil and Political Rights of December 16, 1966,