

Y5 should be responsible under Art. 266, para. 1, no. 5.

As the exemption requirement of liability under Art. 266, para. 1, no. 5 is the consent of all shareholders, the exemption resolution in this case did not satisfy this exemption requirement. So I think that there is no resolution because this exemption resolution has a considerable defect.

YASUHIRO OSAKI
KENJI KAWAMURA

7. Labor Law

Supreme Court 2nd P.B., February 28, 1997

Sato v. Daishi Bank Co.

51(2) MINSHŪ 705, 1597 HANREI JIHŌ 7, 936 HANREI TAIMUZU
128, 710 RŌDŌ HANREI 12

Reduction of salary as a disadvantageous change in work rules can be applied to a dissenting employee, when the necessity for the change was very high, the disadvantage to the employee was relatively small, and the employer achieved the agreement on the change with a major labor union.

Facts:

Y (*jōkoku* respondent) is a local bank. X (*jōkoku* appellant) had hired Y since 1953 and he had retired in 1989 at the age of 60. Y raised the retirement age from 55 to 60 under the instructions of the Governor and the Labor Minister in 1983. Y concluded a collective bargaining agreement on the extension of the retirement age with the major labor union, and accordingly Y amended the work rules. When extending the retirement age, the salary for workers over 55 was reduced by about 30 percent. X sued Y for backpay, alleging that Y infringed his acquired rights to the salary under the old system.

The court of first instance (Niigata District Court, June 6, 1988, 1280 HANREI JIHŌ 25) denied application of the new work rules, but upheld the extended application of the collective bargaining agreement, and dismissed X's claim. Tokyo High Court (August 28, 1992, 1437 HANREI JIHŌ 60) upheld the application of the new work rules and dismissed X's claim again. X then filed a *jōkoku* appeal to the Supreme Court.

Opinion:

Appeal dismissed.

As a general rule, companies should not be allowed to impose working conditions disadvantageous to the employees and to deprive them of previously acquired rights by newly created or changed work rules. However, as long as the work rules are reasonable, an employee who did not agree with the rules should not deny its application, since work rules regulate working conditions uniformly and collectively. The creation or change of the work rules, even if disadvantageous to some employees, can be considered reasonable in view of their content and necessity in the particular worker-employer relationship. Whether a changed rule is reasonable or not should be determined by the totality of circumstances, which include the extent of the disadvantage it has inflicted upon the employees, the content and degree of business necessity, the appropriateness of the contents of new work rules, the compensatory *quid pro quo* and improvement of other related working conditions, the course of the union negotiations, the attitudes of other unions and workers, and the general treatment of similar matters in this country.

In this case, though the reduction of salary was substantially disadvantageous, extension of the retirement age inevitably required it. Consequently, it was strongly necessary to modify the salary standards for workers over 55 years old. Moreover, the new salary standards were considerably high as compared with those of other banks and companies, and the extension was considered advantageous as secure employment. Furthermore, since the employer had got the agreement on this change with the major union to which 90% of Y's employees belonged, we find the change of the work rules reasonable as an outcome

of balancing the interests of the employer and the employees. Thus, the changed rule is applicable to X.

Kawai, J., dissented, on the ground that the salary cut of from 33 to 37 percent (about 3 million yen per year) was too disadvantageous to X.

Editorial Note:

The disadvantageous change of the work rules has been a controversial issue among courts and scholars. The Supreme Court has several precedents until now since the *Shuhoku Bus* case, G.B., Dec. 25, 1968, 22(13) MINSHŪ 3459. This case could be regarded as the compilation of these precedents. Examining it in the context of practical matters, it can be said that the issue was settled by this decision.

We may summarize the approach taken by the Court as follows. As a general rule, disadvantageous change of the work rules has no binding effect on an employee who is against it. However, the working conditions should be regulated uniformly and collectively, and if there is a rationality in the change, the effect will be extended to them. Whether a change is reasonable or not is determined mainly in view of the content (the degree, content, etc., of disadvantage) and the necessity of change. The important factor to be considered is the negotiation with the labor union, and thus whether there is acceptance by most of employees. To change important working conditions such as wages, a high degree of necessity is required.

The Court has upheld the one-sided change of working rules by employers under the standard of rationality. We could deem this approach as suiting the Japanese tradition that employers have exercised a large discretionary power over working conditions as long as they have secured the lifetime employment.

However, we must consider two criticisms of this approach. First, it ignores that the dissenting employee has equal footing with the employer (or other employees) concerning changes in working conditions. A one-sided change of the rules is contradictory to the principles of contract. Second, the necessity to regulate working conditions uniformly and collectively by work rules, which this approach presupposes, is no longer important in the real relationship between labor

and management, since working conditions are being determined personally and styles of working have become varied. That is to say, it should be noticed that the real ground supporting the Court's view has been shifting gradually. It must be our future task to create a rule of changing the working conditions on the basis of not ignoring the will of each worker.

YOICHI SHIMADA
SHINO NAITO

8. International Law

Matsue Branch of Hiroshima High Court, September 11, 1998

Japan v. Kim Sun-Ki

1956 HANREI JIHŌ 56

Japan has control and jurisdiction over fishing boats of the Republic of Korea (hereinafter referred to as "Korea") in a newly established territorial sea area, irrespective of the existence of the Agreement on Fisheries between Japan and Korea of 1965 (hereinafter referred to as the "Fisheries Agreement").

Reference:

Law on the Regulation of Fishing Activities by Foreigners, art. 3, no. 1 and art. 9, para. 1, no. 1; Law on the Territorial Sea and the Contiguous Zone, art. 2; Agreement on Fisheries between Japan and the Republic of Korea, art. 1, para. 1 and art. 4, para. 1; United Nations Convention on the Law of the Sea, art. 7.

Facts:

The Defendant, Kim Sun-ki, is a Korean national. He is captain of a 68-ton Korean fishing boat, *Daedong-ho No. 909*, which was fishing for sea eels in the Sea of Japan off Hamada in Shimane Prefecture. On June 9, 1997, the Japanese authorities seized the boat for hav-