

tion because it does not oppress the intent of a suspicious person.

Proofs acquired by illegal undercover investigation are said to be excluded.

According to the explanations below, it is thought that this judgment follows the traditional one and reconfirms the legality of undercover operation.

7. Commercial Law

X v. Kouno Tea & Foods

Osaka High Court, February 12, 2004

Case No. (*ne*) 2199 of 2003

1190 KINYU-SHOJI HANREI 38

Summary:

The court held that though there is an internal rule regarding retirement payments, directors do not have a right to claim compensation unless the amount of compensation has been determined in the articles of incorporation or by a resolution of a shareholders' meeting. Therefore, the claim of the plaintiff was dismissed.

Reference:

Commercial Code, Articles 266-3 (1) and 269 (1).

Facts:

K.K. Kouno Tea & Foods (hereinafter "Company K"), whose amount of capital was 62,322,500 yen, sales were over 520,000,000 yen, and numbers of employees were 130, was the company which restricted the transfer of shares and which a representative director Y (defendant, appellant) and his family owned most of the shares (around 90%).

On March 22, 1992, Company K provided a rule about compensation and retirement payment (hereinafter "the rule"). The rule said that the retirement payments of directors were "the amount of compensation of

the director per month) $\times 0.8 \times$ periods in office (years).”

X (plaintiff, appellee) became a director of Company K on April 1, 1996, and retired on March 31, 2000. His compensation per one month at the time of the retirement was 650,000 yen, so his retirement payment should have been 2,080,000 yen. But Company K refused to pay this amount saying the shareholders’ meeting regarding the payment had not been held.

On December 25, 2002, X brought this suit. On February 20, 2003, Y proposed at a board meeting to add a bill regarding the retirement payment for X as a bill on the shareholders’ meeting, and the bill was passed. On March 27, 2003, the shareholders’ meeting of the Company K passed the resolution that the retirement payment for X would be less than 1,000,001 yen. So X received only 1,000,000 yen.

X claimed as following:

- (1) Y breached his duties of care in not having convened the board of directors which would decide the bill of the shareholders’ meeting about the retirement payment.
- (2) Y breached the rule and proposed the “illegal” bill to the shareholders’ meeting. And the damages X were caused were 2,080,000 yen (2,080,000 – 1,000,000 + 1,080,000 [fee for the lawyers and compensation money]).
- (3) Y should compensate 2,080,000 yen to X based on Commercial Code Article 266-3 (1).

Opinion:

Claim dismissed on the merit.

1. Directors of joint stock companies do not claim compensation unless the amount of compensation has been determined in the articles of incorporation or by a resolution of a shareholders’ meeting. If retirement payments for directors are paid for their services in office, the payments are included in the compensation, as Commercial Code, Article 269(1) provides. Though there is an internal rule regarding retirement payments, directors do not have the right to claim their compensation unless the amount of compensation has been determined in the articles of incorporation or by a resolution of a shareholders’ meeting.

2. The rule must be applied only when the shareholders' meeting has decided that the amount of the payment, the time to pay and the way to pay should be determined by the board of directors or representative directors. When the shareholders' meeting determined the amount of payment, the time to pay and the way to pay, the rule must not be applied.
3. Therefore, X did not have the right to claim retirement payment on the basis of this rule. And Y does not have to compensate him 2,080,000 yen.

Editorial Note:

Recently, excessive compensation to company officers (especially CEOs) has become a big problem in U.S. and Europe and the power of shareholders' meetings to deter excessive compensation has been given attention. Though our Commercial Code provides "the following matters with respect to the amount of compensation to be received by the directors, if not provided in the articles of incorporation, shall be determined by a resolution of a shareholders' meeting," it is important to understand that when a part of the shareholders controls the shareholders' meeting, as in this case, there are not only excessive compensation cases but also cases where the amount of compensation is too small.

8. Labor Law

X v. Toho Gakuen.

Supreme Court 1st P.B., December 4, 2003

Case No. (*jyu*) 1066 of 2001

1847 HANREI JIHO 141; 1143 HANREI TAIMUZU 233; 862 ROHAN 14

Summary:

The rationality of the treatment of Pre-Childbirth and Post-Childbirth Leaves as absences for the "90%-Work Attendance" to gain bonuses.