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.

Reference:

Labor Standards Law, Articles 65 and 67; Child-Care Leave Law, Article 10.

Facts:

X (plaintiff, *koso* respondent, and *jokoku* respondent) who was a clerical officer employed by an academic juridical person Y(defendant, *koso* appellant, and *jokoku* appellant) who manages major prepschools etc. gave birth to a boy on July 8, 1994, and acquired Post-Childbirth Leave for eight weeks after childbirth. Afterwards, X enjoyed the measure of the working hours being shortened of 1 hour and 15 minutes a day until the child became one years old based on the child care leave regulations of Y.

The salary regulations of Y provided that bonuses are awarded in June and December every year and would be provided for the person who attends work at a rate of 90% during the period covered.

In the document of a circular dated November 29, 1994, Y provided that the formula for calculating bonuses would add Pre-Childbirth and Post-Childbirth Leaves and physiology leaves, in addition to late and leaving earlier than usual, to the days of absence. In addition, in the document of a circular dated June 8, 1995, new regulations were added and when workers enjoy a shortening of working hours provided by the child care leave regulations, it would be added to the days of absence in proportion to total time reduced. As a result, X failed to meet the standard of 90% or more at the rate of going to work during the period covered for the summer bonus and the end of the term of the fiscal year in 1994 and 1995, and the bonuses were not provided at all.

In Y, the proportion of the bonuses in the total income of workers is large, and the proportion of the bonus in total income was between 27% and 31% for X in 1994 and 1995.

Then X sued Y for the bonus of the end of the term of fiscal year 1994 and the summer bonus by fiscal year 1995 because this "90%-Work Attendance-Requirement" contradicts the spirit of Articles 65 and 67 of the Labor Standards Law and Article 10 of the Child-Care Leave Law, and therefore this regulation violating public order would be invalid.

In Tokyo District Court (March 25, 1998, 735 ROHAN 15) and Tokyo High Court (April 17, 2001., 803 ROHAN 11), the court admitted X's insistence and decided that the payment of each bonus should be completely admitted. That is, though this "90%-Work Attendance-Requirement" is a reasonable regulation to evaluate the level of an employee's contribution, when Pre-Childbirth and Post-Childbirth Leaves and shortened working hours based on the child care leave regulations are included in the absences, the economical disadvantage that she would receive is too extensive even considering the principle of no work no pay, and the disadvantage could even lead to the situation that a woman gives up giving birth to a child. Therefore, it violates the spirit of Articles 65 and 67 of the Labor Standards Law and Article 10 of the Child-Care Leave Law, so it violates public order and is invalid.

Y filed *jokoku* appeals to the Supreme Court.

Opinion:

Reversed and remanded.

Among the judgments of the High Court, we approve the point that when Pre-Childbirth and Post-Childbirth Leaves and the shortened working hours based on the child care leave regulations are included in absences, the economical disadvantage that she would receive is too extensive, even considering the principle of no work no pay and the disadvantage could even lead to the situation that a woman gives up giving birth to a child. Therefore, it violates the spirit of Articles 65 and 67 of the Labor Standards Law and Article 10 of the Child-Care Leave Law, so it violates public order and is invalid. But we cannot approve the point that the payment of each bonus should be completely admitted.

That is, Article 65 of the Labor Standards Law provides for Pre-Childbirth and Post-Childbirth Leaves but does not provide for payment during the leaves. Therefore, it should be interpreted that this law doesn't secure payment during Pre-Childbirth and Post-Childbirth Leaves.

This "90%-Work Attendance-Requirement" regulation calculates the rate of going to work considering no work based on a legal profit to take Pre-Childbirth and Post-Childbirth Leaves admitted by Article 65 of the Labor Standards Law and to reduce working hours provided by the child care leave regulations based on Article 10 of the Child-Care

Leave Law to be absences. Considering the spirit of Article 65 of the Labor Standards Law and Article 10 of the Child-Care Leave Law, it should be interpreted that this measure becomes invalid assuming that in contradiction to the public order when the exercise of the right like the above-mentioned is suppressed, and the spirit that Labor Standards Law has secured the above-mentioned right is lost substantially.

This "90%-Work Attendance-Requirement" regulation causes the disadvantage that the bonus is not provided at all when the rate of going to work calculated considering Pre-Childbirth and Post-Childbirth Leaves as absences is less than 90%. The proportion of the bonus in the amount of a total income is very large, so the economical disadvantage for the person for whom the bonus is not provided by not meeting the "90%-Work Attendance-Requirement" regulation is considerable in Y. And considering the rate of 90% Work Attendance, when an employee takes Pre-Childbirth and Post-Childbirth Leaves or has the working hours reduced, the possibility that it corresponds to this regulation and the calculation of bonuses is very high. Therefore, it is thought that the possibility of avoiding giving birth in order to continue work and not claiming the measures for the reduction of working hours for child care could be caused under this system, and it should be thought that this situation greatly influences the exercise of their rights. Then, about this "90%-Work Attendance-Requirement" regulation, the part providing that the reduced time caused by Pre-Childbirth and Post-Childbirth Leaves and the reduction of the working hours is not included in days in which they have gone to work by, including days of Pre-Childbirth and Post-Childbirth Leaves in days that should go to work, violates public order and is invalid.

However, if the part of providing that the reduced time by Pre-Childbirth and Post-Childbirth Leaves and the measures of the working hours reducing is not included in days in which they have gone to work by including days of Pre-Childbirth and Post-Childbirth in days that they should go to work is invalid, in the calculation of bonuses, it should be thought that it is reasonable to reduce the amount of bonuses because of reduction of the working hours in this case. And different from this "90%-Work Attendance-Requirement" regulation, this calculation formula reduces the amount of bonuses within a definite range according to

the days of absence. On the other side, workers who take Pre-Childbirth and Post-Childbirth Leaves and the measures for reducing working hours for the child care do not have a pay claim corresponding to this no working period, and in the working regulation of Y, this no working period is assumed to be unpaid. Therefore, it is not admitted that this calculation formula restrains the exercise of labor rights, and eliminates substantially the spirit in which the Labor Standards Law secures these rights. So it cannot be said that this calculation formula violates public order directly and is invalid.

Editorial Note:

(1) Prohibition of disadvantageous treatment by reason of the exercise of rights in labor law:

This is a case concerning disadvantageous treatment by reason of the acquisition of Pre-Childbirth and Post-Childbirth Leaves and measures to reduce working hours for the child care. As for this, while cases concerning disadvantageous treatment by reason of the exercise of rights in labor law have been scarce, it can be estimated that a new case is added and a general judgment frame concerning this problem is established. There are some regulations that prohibit disadvantageous treatment by reason of the exercise of rights in labor law in Japan. For example, the prohibition of disadvantageous treatment by reason of having tried to join or organize a union (Art. 7 of the Trade Union Law), prohibition of disadvantageous treatment by reason of having declared a violation of Labor Standards Law to the administrative official agency (Art. 104 of the Labor Standards Law), duty to endeavor to prohibit disadvantageous treatments besides a reduction of wages by reason of the acquisition of Paid-Leave, prohibition of dismissal by reason of the acquisition of maternity leave and the acquisition of Pre-Childbirth and Post-Childbirth Leaves (Art. 8 of the Equal Employment Opportunity Law), prohibition of disadvantageous treatment by reason of having applied to acquire child care leaves or nursing leave (Arts. 10 and 16 of Child-Care Leave and Nursing Leave Law). However, there are no regulations that generally prohibit disadvantageous treatment in retaliation for the exercises of rights in labor law. It can be evaluated that this decision achieves this general prohibition. According to the decision of the Supreme Court, serious disadvantages

which eliminate substantially the spirit in which the law secures these rights must exist for the disadvantageous treatments to be invalid because of a violation of public order.

(2) Pay claims during a no working period:

The Supreme Court decides that the lack of work caused by Pre-Childbirth and Post-Childbirth Leaves and the measures for reducing the working hours for the child care is permitted to be treated as an absence when the amount of bonuses is calculated because Pre-Childbirth and Post-Childbirth Leaves and the measures for reducing working hours for the child care are not obligated to be paid in labor law.

In labor law, lack of work in which a wage has been secured is only Paid-Leave and the first three days of leave caused by industrial accidents (Art. 76 of the Labor Standards Law).

It can be said that the position of the Supreme Court decision that the pay claim is not generated in principle during a no working period when it is not obligated to be paid will confirm the principle of no work no pay.

9. International Law and Organizations

Japan v. X
Tokyo High Court, March 29, 2004
Case No. (*te*) 20 of 2004
1854 HANREI JIHO 35, 1155 HANREI TAIMUZU 118

Summary:

In an extradition hearing involving a Japanese national charged with economic espionage in the United States, if no probable cause is found to suspect that he has committed an offense under U.S. law, no probable cause is established, under Article 3 of the Japan-U.S. Extradition Treaty and Article 2, Paragraph 6, of the Fugitive Criminal Extradition Act of Japan, for the commission of the offense for which the extradition is requested.