8. Labor Law

X v. Matsushita PDP Co, Ltd.
Osaka High Court, April 25, 2008
Case No. (ne) 1661 of 2007
960 RODO HANREI 5

Summary:

As for a person employed by a subcontracting company who was sent to a chief contractor for work, the High Court found the original labour contract between the subcontracting company and the said employee unlawful and ineffective as he practically worked under the direction of the chief contractor, not the subcontracting company, and concluded that an implied labour contract was already formed between the employee and the chief contractor implicitly.

Reference:

Article 44 of the Employment Security Law, Article 6 of the Labour Standards Law, and Article 4, paragraph 3 and Article 40, paragraph 4 of the Law for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers

Facts:

Y (respondent, koso-respondent) is a manufacturer of plasma display panels (PDPs). Y made a contract with a third party A specifying that A was expected to do jobs subcontracted by Y at Y's plant. Hence, Y won worker dispatch services from A, and had A's employee's work at Y's plant. X (plaintiff, koso-appellant) made a labour contract of two months with A, under which he was sent to Y's plant for work. Since January of 2004, he had been engaged in jobs such as containing and attaching plasma inside the PDP panel with the contract renewed. At Y's plant, X worked together with Y's employees, following the directions of Y's employees as to the details of jobs or procedures directly. X was not under

the direction of A's employees.

On April 22, 2005, X requested Y to employ X directly; however, there was no reply from Y. Then, X notified the Osaka Labour Standards Office that the fact that he worked at Y's plant constituted unlawful dispatch under the name of a subcontracting agreement. As a result, the Office instructed Y to cancel the subcontracting agreement to make a new agreement for worker dispatch with A.

A terminated the subcontracting agreement with Y, and pulled out of its services at Y's plant on July 20, 2005. Then, X left A, and asked Y to employ him directly. Y gave a reply to X, saying that Y would directly employ X for jobs like repair, provided that the employment contract would end on January 31, 2006, without any renewal in principle.

On August 22, 2005, an employment contract was drawn up between X and Y, although X still had objections to the specified jobs and the limited period of employment written in it. Then, X was engaged in repair jobs as instructed by Y. After that, Y notified X that the employment contract would be terminated due to the expiry of the term of the contract on January 31, 2006, refusing X's work and payment of wages to X on the following day or later.

Worker dispatch in the sector of jobs for manufacturing products as shown in this case was banned under Article 4, paragraph 3 of the Law for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for the Dispatched Workers, hereinafter called the Worker Dispatch Law. However, such worker dispatch has been legally effective since the revised Worker Dispatch Law was implemented on March 1, 2004, as long as the period of dispatch is limited to one-year. In addition, the revised Law stipulates in Article 40, paragraph 4, that if an employer receiving worker dispatch services intends to exploit a dispatched worker for more than one year, the employer shall offer direct employment to the dispatched worker.

X instituted a suit against Y, demanding that his status as Y's employee (without a definite period) should be recognized, Y should pay wages payable to X, X had no duty to be engaged in repair jobs, and the like. X claimed that an implied labour contract without a definite period was already formed between X and Y, the relation of direct employment was already created between X and Y in that Y continued to exploit X after one

year of worker dispatch at jobs for manufacturing products legally permitted under the Worker Dispatch Law ended, and therefore, Y had a duty to offer direct employment to X or to make a labour contract with X as specified by a rule of good faith, and reallocating X to repair jobs and the notice of expiry of the period of employment - i.e., the notice of dismissal - constitutes an abuse of Y's power, breach of law and has no effect.

The Osaka District Court ruled on April 26, 2007 (941 RODO Hanrei 5) that there was no labour contract between X and Y, saying that no relation of a labour contract existed between X and Y as no relation of wage payment existed between them, even if the relation between them was based on a reporting line. The court added that A had paid wages to X under the labour contract made by/between A and X which ended on July 20, 2004, and it was impossible to recognize that A and Y were combined with each other because there were no capital ties between A and Y, and hence no relation of employment was recognized between Y and X. In addition, the decision said that while the Worker Dispatch Law stipulates an employer's duty to offer direct employment to a dispatched worker when the employer continues to exploit the dispatched worker subsequent to the end of the period of dispatch permitted by the Law, the breach of such a duty would never have the same effect as an offer of employment contract, concluding that since Y did not offer X an employment contract without a definite period actually, a relation of employment without a definite period was not formed between X and Y.

Y appealed against the court ruling.

Opinion:

The ruling at the appeal court changed that at the first trial, recognizing that X had a status as an employee of Y whose job was to contain and attach plasma inside the PDP panel, based on a renewable two-month contract and X had no duty to be engaged in repair jobs and ordering Y to pay wages payable to X. The reason for the ruling is as follows;

1. Whether an implied employment contact was formed between X and Y

(1) Whether the contract between A and Y or between A and X is unlawful and ineffective respectively

Article 4 and 44 of the Employment Security Law bans labour supply making an employee work under the direction of another person, based on a contract, provided that a type of work falling under the category of worker dispatch defined by the Worker Dispatch Law and in compliance with the Law is not part of such a labour supply under Article 4, paragraph 6, of the Law.

The agreement between Y and A was categorized as a subcontracting agreement in terms of legal style; however, in fact, it represents a labour supply agreement as X worked together with Y's employees under the direction of Y's employees, not A's employees. Additionally, the agreement between X and A was one for achieving the aim of supplying X with Y.

If the said agreement between Y and A is considered a worker dispatch agreement at all, worker dispatch in the sector for manufacturing products as shown in this case had been banned before March 1, 2004, and therefore, such a dispatch could not be immune from the prohibition of worker supply under the Employment Security Law. Hence, the agreement between Y and A or between X and A is very illegal and in breach of Article 44 of the Employment Security Law and Article 6 of the Labour Standards Law prohibiting intermediary exploitation, and then, it is found invalid under Article 90 of the Civil Code as it breaks public order.

Worker dispatch in the sector for manufacturing products has been legally allowed since March 1, 2004, as long as the period of dispatch is limited to one year. However, if X was dispatched to Y by A as defined in the Worker Dispatch Law at all, X continued to be dispatched for the period exceeding one year stipulated by the Law, and A violated many of the legal procedures of dispatch required by it. While Y recognized or could easily recognize the illegality of the situation, Y continued to allow X to work as a dispatched worker after X asked Y to employ X in April 2004 directly. Accordingly, considering such facts, the agreement between Y and A or between X and A which took over illegality and had no effect as well is deemed invalid and contrary to public order under Article 90 of the Civil Code.

(2) Whether an implied contract was formed between X and Y

Whether an implied employment contract was formed between X and Y can be judged to be dependent on whether it is objectively assumed by

implications that there was an implicit meeting of minds between both parties to sign an employment contract, considering the actual conditions.

According to the facts recognized by the court, X offered his services for containing and attaching plasma inside the PDP panel at Y's plant, and Y's employees gave X directions about the details of his services immediately. A's employees never did so. Therefore, since X reported to Y, the relation of boss to subordinate was found between X and Y. In addition, X was paid wages by A, which were the amount after subtracting A's profit or the like from the total amount paid to A by Y. In fact, Y was in a position to fix the amount of wages X was provided by A in the name of a salary.

Hence, the legal grounds found in the actual relation between X and Y is nothing but an agreement between X and Y objectively found by implications from the relation of boss to subordinate, wage-payments and the offer and reception of labour between both parties. As a result, it is recognized that an implied labour contract was formed between both parties.

What was described in the implied labour contract between X and Y, such as a two-month period of contract, renewable, 1,350 yen per hour, etc., is found to be equal to the working conditions recorded in the agreement between X and A.

(3) Whether a labour contract was formed as a result of the breach of the Labour Dispatch Law or not

As mentioned above, the agreement between X and A is unlawful and ineffective, and therefore, Y has no duty to propose that Y would employ X directly under Article 40 of the Labour Dispatch Law. In addition, even if the duty to offer direct employment to X arose in Y under the Law, working conditions, including the method of fixing the period of contract should be defined subject to negotiation or agreement between the parties. Accordingly, in this case, it is not understood that the employer receiving worker dispatch services had a duty to enter into a contract with X on the basis of Article 40. Additionally, the same as above is true, even if the duty to enter into a direct employment contract arose under a rule of good faith.

2. Whether X had the duty to be engaged in repair jobs

The order Y gave X to change jobs from the containment and attachment of plasma to repair constitutes a job transfer order. It is understood

that Y ordered X to change jobs based on an unfair reason or purpose to take revenge for X's conduct, such as having notified the Osaka Labour Standards Office of Y's breach of the Labour Dispatch Law, although Y had less need to order X to work in repair jobs. Accordingly, the said order represents an abuse of Y's power, becoming ineffective, and X has no duty to work in repair jobs.

3. Employment contract

The employment contract between X and Y made on August 22, 2005, which defined a renewable contract of two months was renewed several times. Specifically, the contract was also renewed on December 22, 2005. Therefore, Y's notice of expiry of the contract on January 21, 2006 is equal to an indication of Y's intention to dismiss X. However, since transferring X to repair jobs was invalid and jobs for containing and attaching plasma were still in operation at that time, the said indication of Y's intention constitutes an abuse of Y's power of dismissal, becoming ineffective.

Editorial Note:

1. Issues in dispute in this case and their background

In this case, the primary issue in dispute is whether a labour contract was already formed between a person who exploited a worker and the worker who was exploited, where a person unlawfully gained from another person the services of a worker employed by the latter person and exploited the services, or a person unlawfully exploited a dispatched worker.

The Employment Security Law enacted in 1947 prohibits worker supply in Article 4 and 44; that is, gaining worker supply from other persons and exploiting it without employing a worker for him/herself directly is prohibited with punitive provisions, except that a trade union is immune from it.

Considering from historical experience the facts that a labour supply brought about intermediary exploitation, those provisions provide that indirect employment involving suppliers should be rejected and a person who intends to exploit a worker should employ a worker directly and take responsibility for the employment.

However, in fact, in spite of these regulations, an unlawful labour sup-

ply where an employer avoiding the legal regulations on an employer's duty or termination of employment exploits dispatched workers in the form of subcontracting, as shown in this case, has been widely adopted.

In order to back such a reality, part of the worker supply was legalized as worker dispatch with some degree of legal regulation for protecting workers added; that is, the Labour Dispatch Law was enacted in 1985. The scope of dispatch legalized by the Law has widened through several revisions, with the protection of workers strengthened.

Worker dispatch in the sector for manufacturing products which is in question in this case was prohibited at first, but has been legally accepted since March 1, 2004, as long as the period of dispatch is limited to one year. At the same time, it has been also recognized that when a person receiving worker dispatch services intends to exploit a dispatched worker for the period of dispatch exceeding one year, the person has a duty to offer direct employment to the worker under Article 40, paragraph 4.

However, worker supply under a mask of subcontracting shows no end. In addition, there are many cases of dispatch breaking the provisions of the Worker Dispatch Law, where worker dispatch continues with no proposal for direct employment after the one-year legal period of worker dispatch in the sector for manufacturing ended, for instance.

Then, where a worker was exploited like this unlawfully, the point in question is whether an employment contract between the person who exploited a worker unlawfully and the worker who was exploited could be recognized as a means of effective remedy for the worker concerned in addition to administrative sanctions or whether the worker could claim a right of employment against the employer.

This case has two points in dispute. The first is whether it is recognized that an implied employment contract was formed between both parties (X and Y), and the second is whether it is recognized that where an employer (Y) has become subject to the duty to employ the worker (X) exploited by Y under the provisions of the Worker Dispatch Law or a rule of good faith, an employment contract was formed between both parties (X and Y) as an effect of Y's violation of the duty.

2. Significance of the ruling at the High Court

The most significant point of the ruling at the High Court is that the

court found that an implied labour contract was formed between X and Y.

Since a labour contract is based on an agreement on "offering services" and "paying wages for it", whether an implied labour contract was formed or not is dependent on the decision as to whether a person who exploited a worker (X in this case) promised X to pay wages for X's services. Judicial precedents show that where a labour contract exists between the worker concerned and a third party (A in this case) and the third party paid wages to the worker, it was not recognized that the person who exploited the worker promised payment of wages to the worker, and accordingly, the formation of an implied labour contract between the employer and the worker was rejected, except that the third party served as just a contact for payment. The ruling at the lower court in this case rejected the formation of an implied labour contract between X and Y for reasons such as this.

However, the High Court in this case concluded, in principle based on a basic framework for deciding that an agreement (or implied agreement) on "offering labour" and "paying wages for it" is needed to form a labour contract, that whether there was such an agreement in the said case should be determined by whether there was practically a relation of boss to subordinate, the offer and reception of labour, or wage-payments between both parties, and additionally, whether an implied meeting of the minds could be objectively assumed by implication between both parties. Then, concerning the relation of wage-payments, the court decided that since X's wages were the amount after subtracting A's profit from the fees for subcontracting Y paid to A, Y was in a position to fix the amount of wages X was provided by A in the name of a salary. Hence, it concluded that the relation of a labour contract between X and Y was objectively assumed by implication and an implied labour contract was already formed.

What was decided here shows that a meeting of the minds was found in a more extensive perspective through the "objective assumption" of that meeting, i.e., objective judgement, compared to that on wage payments as seen in former rulings.

On the other hand, the ruling here rejected the formation of direct employment contract as a legal effect of the breach of the duty to offer direct employment under the Worker Dispatch Law or a rule of good faith,

concluding that since working conditions are defined based on agreement, the said breach of the duty never leads to the formation of a labour contract although it may cause issues of administrative or civil damages.

3. Decision's impact

Concerning the ruling at the High Court, the final appeal was brought in the High Court.

Recently, as shown in this case, illegal worker supply or dispatch violating the Worker Dispatch Law to avoid the duty of employment is widespread. Coverage of Worker Dispatch Law has been widened through revisions, and the legal extent of indirect employment has become large. Particularly, worker dispatch in the sector for manufacturing products has been receiving a lot of criticism since the Law was revised, because it could risk the worker's status or the security of his/her rights. The ruling here has opened the way for the legal relief of workers, as the formation of an implied labour contract was recognized in a more extensive perspective than before, where a person illegally exploited a worker employed by another person. Nevertheless, there are some objections to the theoretical framework adopted by the judgement at the High Court. The final decision at the Supreme Court is attracting attention.

Furthermore, the High Court rejected the legal effect of the breach of the duty to offer direct employment. However, it has posed a question on whether it is enough as a measure of relief of the worker concerned. Such a point in question remains to be solved, in addition to the judgement of the necessity of the revision of the Labour Dispatch Law.

9. International Law and Organizations

Acquisition of Japanese Nationality by a Child born out of Wedlock

Supreme Court, Grand Bench, June 4, 2008
Case No. (*Gyo-Tsu*) No. 135 of 2006
62 Minshu 1367, 2002 Hanrei Jiho 3